

RAFAEL REYES TRUCKING CORPORATION, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND ROSARIO P. DY (FOR HERSELF AND ON BEHALF OF THE MINORS MARIA LUISA, FRANCIS EDWARD, FRANCIS MARK...

G.R. No. 129029. April 03, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal via certiorari from the amended decision[1] of the Court of Appeals[2] affirming the decision and supplemental decision of the trial court,[3] as follows:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered dismissing the appeals interposed by both accused and Reyes Trucking Corporation and affirming the Decision and Supplemental Decision dated June 6, 1992 and October 26, 1992 respectively.

"SO ORDERED." [4]

The facts are as follows:

On October 10, 1989, Provincial Prosecutor Patricio T. Durian of Isabela filed with the Regional Trial Court, Isabela, Branch 19, Cauayan an amended information charging Romeo Dunca y de Tumol with reckless imprudence resulting in double homicide and damage to property, reading as follows:

"That on or about the 20th day of June, 1989, in the Municipality of Cauayan, Province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused being the driver and person-in-charge of a Trailer Truck Tractor bearing Plate No. N2A-867 registered in the name of Rafael Reyes Trucking Corporation, with a load of 2,000 cases of empty bottles of beer grande, willfully, unlawfully and feloniously drove and operated the same while along the National Highway of Barangay Tagaran, in said Municipality, in a negligent, careless and imprudent manner, without due regard to traffic laws, rules and ordinances and without taking the necessary precautions to prevent injuries to persons and damage to property, causing by such negligence, carelessness and imprudence the said trailer truck to hit and bump a Nissan Pick-up bearing Plate No. BBG-957 driven by Feliciano Balcita and Francisco Dy, Jr., @ Pacquing, due to irreversible shock, internal and external hemorrhage and multiple injuries, open wounds, abrasions, and further causing damages to the heirs of Feliciano Balcita in the amount of P100,000.00 and to the death of Francisco Dy, Jr.; @ Pacquing and damages to his Nissan Pick-Up bearing Plate No. BBG-957 in the total amount of P2,000,000.00.

"CONTRARY TO LAW.

"Cauayan, Isabela, October 10, 1989.

"(Sgd.) FAUSTO C. CABANTAC

"Third Assistant Provincial Prosecutor"

Upon arraignment on October 23, 1989, the accused entered a plea of not guilty. On the same occasion, the offended parties (Rosario P. Dy and minor children and Angelina M. Balcita and minor son Paolo) made a reservation to file a separate civil action against the accused arising from the offense charged.[5] On November 29, 1989, the offended parties actually filed with the Regional Trial Court, Isabela, Branch 19, Cauayan a complaint against petitioner Rafael Reyes Trucking Corporation, as employer of driver Romeo Dunca y de Tumol, based on quasi delict. The petitioner settled the claim of the heirs of Feliciano Balcita (the driver of the other vehicle involved in the accident). The private respondents opted to pursue the criminal action but did not withdraw the civil case quasi ex delicto they filed against petitioner. On December 15, 1989, private respondents withdrew the reservation to file a separate civil action against the accused and manifested that they would prosecute the civil aspect ex delicto in the criminal action.[6] However, they did not withdraw the separate civil action based on quasi delict against petitioner as employer arising from the same act or omission of the accused driver.[7]

Upon agreement of the parties, the trial court consolidated both criminal and civil cases and conducted a joint trial of the same.

The facts, as found by the trial court, which appear to be undisputed, are as follows:

"The defendant Rafael Reyes Trucking Corporation is a domestic corporation engaged in the business of transporting beer products for the San Miguel Corporation (SMC for short) from the latter's San Fernando, Pampanga plant to its various sales outlets in Luzon. Among its fleets of vehicles for hire is the white truck trailer described above driven by Romeo Dunca y Tumol, a duly licensed driver. Aside from the Corporation's memorandum to all its drivers and helpers to physically inspect their vehicles before each trip (Exh. 15, pars. 4 & 5), the SMC's Traffic Investigator-Inspector certified the roadworthiness of this White Truck trailer prior to June 20, 1989 (Exh. 17). In addition to a professional driver's license, it also conducts a rigid examination of all driver applicants before they are hired.

"In the early morning of June 20, 1989, the White Truck driven by Dunca left Tuguegarao, Cagayan bound to San Fernando, Pampanga loaded with 2,000 cases of empty beer "Grande" bottles. Seated at the front right seat beside him was Ferdinand Domingo, his truck helper ("pahinante" in Pilipino). At around 4:00 o'clock that same morning while the truck was descending at a slight downgrade along the national road at Tagaran, Cauayan, Isabela, it approached a damaged portion of the road covering the full width of the truck's right lane going south and about six meters in length. These made the surface of the road uneven because the potholes were about five to six inches deep. The left lane parallel to this damaged portion is smooth. As narrated by Ferdinand Domingo, before approaching the potholes, he and Dunca saw the Nissan with its headlights on coming from the opposite direction. They used to evade this damaged road by taking the left lane but at that particular moment, because of the incoming vehicle, they had to run over it. This caused the truck to bounce wildly. Dunca lost control of the wheels and the truck swerved to the left invading the lane of the Nissan. As a result, Dunca's vehicle rammed the incoming Nissan dragging it to the left shoulder of the road and climbed a ridge above said shoulder where it finally stopped. (see Exh. A-5, p. 8, record). The Nissan was severely damaged (Exhs. A-7, A-8, A-9 and A-14, pp. 9-11, record), and its two passengers, namely: Feliciano Balcita and Francisco Dy, Jr. died instantly (Exh. A-19) from external and internal hemorrhage and multiple fractures (pp. 15 and 16, record).

"For the funeral expenses of Francisco Dy, Jr. her widow spent P651,360.00 (Exh. I-3). At the time of his death he was 45 years old. He was the President and Chairman of the Board of the Dynamic Wood Products and Development Corporation (DWPC), a wood processing establishment, from which he was receiving an income of P10,000.00 a month (Exh. D). In the Articles of Incorporation of the DWPC, the spouses Francisco Dy, Jr. and Rosario Perez Dy appear to be stockholders of 10,000 shares each with par value of P100.00 per share out of its outstanding and subscribed capital stock of 60,000 shares valued at P6,000,000.00 (Exhs. K-1 & 10-B). Under its 1988 Income Tax Returns (Exh. J) the DWPC had a taxable net income of P78,499.30

(Exh. J). Francisco Dy, Jr. was a La Salle University graduate in Business Administration, past president of the Pasay Jaycees, National Treasurer and President of the Philippine Jaycees in 1971 and 1976, respectively, and World Vice-President of Jaycees International in 1979. He was also the recipient of numerous awards as a civic leader (Exh. C). His children were all studying in prestigious schools and spent about P180,000.00 for their education in 1988 alone (Exh. H-4).

"As stated earlier, the plaintiffs' procurement of a writ of attachment of the properties of the Corporation was declared illegal by the Court of Appeals. It was shown that on December 26, 1989, Deputy Sheriff Edgardo Zabat of the RTC at San Fernando, Pampanga, attached six units of Truck Tractors and trailers of the Corporation at its garage at San Fernando, Pampanga. These vehicles were kept under PC guard by the plaintiffs in said garage thus preventing the Corporation to operate them. However, on December 28, 1989, the Court of Appeals dissolved the writ (p. 30, record) and on December 29, 1989, said Sheriff reported to this Court that the attached vehicles were taken by the defendant's representative, Melita Manapil (Exh. O, p. 31, record). The defendant's general Manager declared that it lost P21,000.00 per day for the non-operation of the six units during their attachment (p. 31, t.s.n., Natividad C. Babaran, proceedings on December 10, 1990)."[8]

On June 6, 1992, the trial court rendered a joint decision, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing considerations judgment is hereby rendered:

"1. Finding the accused Romeo Dunca y de Tumol guilty beyond reasonable doubt of the crime of Double Homicide through Reckless Imprudence with violation of the Motor Vehicle Law (Rep. Act No. 4136), and appreciating in his favor the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same, the Court hereby sentences him to suffer two (2) indeterminate penalties of four months and one day of arresto mayor as minimum to three years, six months and twenty days as maximum; to indemnify the Heirs of Francisco Dy, Jr. in the amount of P3,000,000.00 as compensatory damages, P1,000,000.00 as moral damages, and P1,030,000.00 as funeral expenses;

"2. Ordering the plaintiff in Civil Case No. Br. 19-424 to pay the defendant therein actual damages in the amount of P84,000.00; and

"3. Ordering the dismissal of the complaint in Civil Case No. Br. 19-424.

"No pronouncement as to costs.

"SO ORDERED.

"Cauayan, Isabela, June 6, 1992.

"(Sgd.) ARTEMIO R. ALIVIA

"Regional Trial Judge"[9]

On September 3, 1992, petitioner and the accused filed a notice of appeal from the joint decision.[10]

On the other hand, private respondents moved for amendment of the dispositive portion of the joint decision so as to hold petitioner subsidiarily liable for the damages awarded to the private respondents in the event of insolvency of the accused.[11]

On October 26, 1992, the trial court rendered a supplemental decision amending the dispositive portion by inserting an additional paragraph reading as follows:

"2:A – Ordering the defendant Reyes Trucking Corporation subsidiarily liable for all the damages awarded to the heirs of Francisco Dy, Jr., in the event of insolvency of the accused but deducting therefrom the damages of P84,000.00 awarded to said defendant in the next preceding paragraph; and x x x"[12]

On November 12, 1992, petitioner filed with the trial court a supplemental notice of appeal from the supplemental decision.[13]

During the pendency of the appeal, the accused jumped bail and fled to a foreign country. By resolution dated December 29, 1994, the Court of Appeals dismissed the appeal of the accused in the criminal case.[14]

On January 6, 1997, the Court of Appeals rendered an amended decision affirming that of the trial court, as set out in the opening paragraph of this decision.[15]

On January 31, 1997, petitioner filed a motion for reconsideration of the amended decision.[16]

On April 21, 1997, the Court of Appeals denied petitioner's motion for reconsideration for lack of merit.[17]

Hence, this petition for review.[18]

On July 21, 1997, the Court required respondents to comment on the petition within ten (10) days from notice.[19]

On January 27, 1998, the Solicitor General filed his comment.[20] On April 13, 1998, the Court granted leave to petitioner to file a reply and noted the reply it filed on March 11, 1998.[21]

We now resolve to give due course to the petition and decide the case.

Petitioner raises three (3) grounds for allowance of the petition, which, however, boil down to two (2) basic issues, namely:

- May petitioner as owner of the truck involved in the accident be held subsidiarily liable for the damages awarded to the offended parties in the criminal action against the truck driver despite the filing of a separate civil action by the offended parties against the employer of the truck driver?
- May the Court award damages to the offended parties in the criminal case despite the filing of a civil action against the employer of the truck driver; and in amounts exceeding that alleged in the information for reckless imprudence resulting in homicide and damage to property?[22]

We grant the petition, resolving under the circumstances pro hac vice to remand the cases to the trial court for determination of the civil liability of petitioner as employer of the accused driver in the civil action quasi ex delicto re-opened for the purpose.

In negligence cases, the aggrieved party has the choice between (1) an action to enforce civil liability arising from crime under Article 100 of the Revised Penal Code; and (2) a separate action for quasi delict under Article 2176 of the Civil Code of the Philippines. Once the choice is made, the injured party can not avail himself of any other remedy because he may not recover damages twice for the same negligent act or omission of the accused.[23] This is the rule against double recovery.

In other words, "the same act or omission can create two kinds of liability on the part of the offender, that is, civil liability ex delicto, and civil liability quasi delicto" either of which "may be enforced against the culprit, subject to the caveat under Article 2177 of the Civil Code that the offended party can not recover damages under both types of liability." [24]

In the instant case, the offended parties elected to file a separate civil action for damages against petitioner as employer of the accused, based on quasi delict, under Article 2176 of the Civil Code of the Philippines. Private respondents sued petitioner Rafael Reyes Trucking Corporation, as the employer of the accused, to be vicariously liable for the fault or negligence of the latter. Under the law, this vicarious liability of the employer is founded on

at least two specific provisions of law.

The first is expressed in Article 2176 in relation to Article 2180 of the Civil Code, which would allow an action predicated on quasi-delict to be instituted by the injured party against the employer for an act or omission of the employee and would necessitate only a preponderance of evidence to prevail. Here, the liability of the employer for the negligent conduct of the subordinate is direct and primary, subject to the defense of due diligence in the selection and supervision of the employee. The enforcement of the judgment against the employer in an action based on Article 2176 does not require the employee to be insolvent since the nature of the liability of the employer with that of the employee, the two being statutorily considered joint tortfeasors, is solidary.[25] The second, predicated on Article 103 of the Revised Penal Code, provides that an employer may be held subsidiarily civilly liable for a felony committed by his employee in the discharge of his duty. This liability attaches when the employee is convicted of a crime done in the performance of his work and is found to be insolvent that renders him unable to properly respond to the civil liability adjudged.[26]

As regards the first issue, the answer is in the negative. Rafael Reyes Trucking Corporation, as employer of the accused who has been adjudged guilty in the criminal case for reckless imprudence, can not be held subsidiarily liable because of the filing of the separate civil action based on quasi delict against it. In view of the reservation to file, and the subsequent filing of the civil action for recovery of civil liability, the same was not instituted with the criminal action. Such separate civil action was for recovery of damages under Article 2176 of the Civil Code, arising from the same act or omission of the accused.[27]

Pursuant to the provision of Rule 111, Section 1, paragraph 3 of the 1985 Rules of Criminal Procedure, when private respondents, as complainants in the criminal action, reserved the right to file the separate civil action, they waived other available civil actions predicated on the same act or omission of the accused-driver. Such civil action includes the recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, and 34 of the Civil Code of the Philippines arising from the same act or omission of the accused.[28]

The intention of private respondents to proceed primarily and directly against petitioner as employer of accused truck driver became clearer when they did not ask for the dismissal of the civil action against the latter based on quasi delict.

Consequently, the Court of Appeals and the trial court erred in holding the accused civilly liable, and petitioner-employer of the accused subsidiarily liable for damages arising from crime (*ex delicto*) in the criminal action as the offended parties in fact filed a separate civil action against the employer based on quasi delict resulting in the waiver of the civil action *ex delicto*.

It might be argued that private respondents as complainants in the criminal case withdrew the reservation to file a civil action against the driver (accused) and manifested that they would pursue the civil liability of the driver in the criminal action. However, the withdrawal is ineffective to reverse the effect of the reservation earlier made because private respondents did not withdraw the civil action against petitioner based on quasi delict. In such a case, the provision of Rule 111, Section 1, paragraph 3 of the 1985 Rules on Criminal Procedure is clear that the reservation to file or the filing of a separate civil action results in a waiver of other available civil actions arising from the same act or omission of the accused. Rule 111, Section 1, paragraph 2 enumerated what are the civil actions deemed waived upon such reservation or filing, and one of which is the civil indemnity under the Revised Penal Code. Rule 111, Section 1, paragraph 3 of the 1985 Rules on Criminal Procedure specifically provides:

"A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others."

The rationale behind this rule is the avoidance of multiple suits between the same litigants arising out of the same

act or omission of the offender. The restrictive phraseology of the section under consideration is meant to cover all kinds of civil actions, regardless of their source in law, provided that the action has for its basis the same act or omission of the offender.[29]

However, petitioner as defendant in the separate civil action for damages filed against it, based on quasi delict, may be held liable thereon. Thus, the trial court grievously erred in dismissing plaintiff's civil complaint. And the Court of Appeals erred in affirming the trial court's decision. Unfortunately private respondents did not appeal from such dismissal and could not be granted affirmative relief.[30]

The Court, however, in exceptional cases has relaxed the rules "in order to promote their objectives and assist the parties in obtaining just, speedy, and inexpensive determination of every action or proceeding"[31] or exempted "a particular case from the operation of the rules." [32]

Invoking this principle, we rule that the trial court erred in awarding civil damages in the criminal case and in dismissing the civil action. Apparently satisfied with such award, private respondent did not appeal from the dismissal of the civil case. However, petitioner did appeal. Hence, this case should be remanded to the trial court so that it may render decision in the civil case awarding damages as may be warranted by the evidence.[33]

With regard to the second issue, the award of damages in the criminal case was improper because the civil action for the recovery of civil liability was waived in the criminal action by the filing of a separate civil action against the employer. As enunciated in *Ramos vs. Gonong*, [34] "civil indemnity is not part of the penalty for the crime committed." The only issue brought before the trial court in the criminal action is whether accused Romeo Dunca y de Tumol is guilty of reckless imprudence resulting in homicide and damage to property. The action for recovery of civil liability is not included therein, but is covered by the separate civil action filed against the petitioner as employer of the accused truck-driver.

In this case, accused-driver jumped bail pending his appeal from his conviction. Thus, the judgment convicting the accused became final and executory, but only insofar as the penalty in the criminal action is concerned. The damages awarded in the criminal action was invalid because of its effective waiver. The pronouncement was void because the action for recovery of the civil liability arising from the crime has been waived in said criminal action.

With respect to the issue that the award of damages in the criminal action exceeded the amount of damages alleged in the amended information, the issue is de minimis. At any rate, the trial court erred in awarding damages in the criminal case because by virtue of the reservation of the right to bring a separate civil action or the filing thereof, "there would be no possibility that the employer would be held liable because in such a case there would be no pronouncement as to the civil liability of the accused.[35]

As a final note, we reiterate that "the policy against double recovery requires that only one action be maintained for the same act or omission whether the action is brought against the employee or against his employer.[36] The injured party must choose which of the available causes of action for damages he will bring.[37]

Parenthetically, the trial court found the accused "guilty beyond reasonable doubt of the crime of Double Homicide Through Reckless Imprudence with violation of the Motor Vehicle Law (Rep. Act No. 4136)." There is no such nomenclature of an offense under the Revised Penal Code. Thus, the trial court was misled to sentence the accused "to suffer two (2) indeterminate penalties of four (4) months and one (1) day of arresto mayor, as minimum, to three (3) years, six (6) months and twenty (20) days of prision correccional, as maximum." This is erroneous because in reckless imprudence cases, the actual penalty for criminal negligence bears no relation to the individual willful crime or crimes committed, but is set in relation to a whole class, or series of crimes.[38]

Unfortunately, we can no longer correct this judgment even if erroneous, as it is, because it has become final and executory.

Under Article 365 of the Revised Penal Code, criminal negligence "is treated as a mere quasi offense, and dealt with separately from willful offenses. It is not a question of classification or terminology. In intentional crimes, the act itself is punished; in negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the imprudencia punible. Much of the confusion has arisen from the common use of such descriptive phrase as 'homicide through reckless imprudence', and the like; when the strict technical sense is, more accurately, 'reckless imprudence resulting in homicide'; or 'simple imprudence causing damages to property'." [39]

There is need, therefore, to rectify the designation of the offense without disturbing the imposed penalty for the guidance of bench and bar in strict adherence to precedent.

WHEREFORE, the Court GRANTS the petition and SETS ASIDE the amended decision and resolution of the Court of Appeals in CA-G. R. CR No. 14448, promulgated on January 6, 1997, and the joint decision of the Regional Trial Court, Isabela, Branch 19, Cauayan, in Criminal Case No. Br. 19-311 and Civil Case No. Br. 19-424, dated June 6, 1992.

IN LIEU THEREOF, the Court renders judgment as follows:

(1) In Criminal Case No. Br. 19-311, the Court declares the accused Romeo Dunca y de Tumol guilty beyond reasonable doubt of reckless imprudence resulting in homicide and damage to property, defined and penalized under Article 365, paragraph 2 of the Revised Penal Code, with violation of the automobile law (R. A. No. 4136, as amended), and sentences him to suffer two (2) indeterminate penalties of four (4) months and one (1) day of arresto mayor, as minimum, to three (3) years, six (6) months and twenty (20) days of prision correccional, as maximum, [40] without indemnity, and to pay the costs, and

(2) In Civil Case No. Br. 19-424, the Court orders the case re-opened to determine the liability of the defendant Rafael Reyes Trucking Corporation to plaintiffs and that of plaintiffs on defendant's counterclaim.

No costs in this instance.

SO ORDERED.

Bellosillo, Melo, Kapunan, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Davide, Jr., C.J. see dissenting opinion.

Puno, J., concur but pro hac vice.

Vitug, J., see separate opinion.

Mendoza, J., see dissenting opinion.

Panganiban, J., in the result.

Quisumbing, J., concur in separate opinion of J. Vitug.

Purisima, J., join Justice Mendoza's dissenting opinion.

[1] In CA-G. R. CR No. 14448, promulgated on January 6, 1997.

[2] Ibay-Somera, J., ponente, Lipana-Reyes+, and Vasquez, JJ., concurring.

- [3] Dated June 6, 1992, and October 26, 1992, respectively, in Consolidated Criminal Case No. Br. 19-311 and Civil Case No. Br. 19-424, Regional Trial Court, Cauayan, Isabela, Judge Artemio R. Alivia, presiding.
- [4] Rollo, pp. 35-43.
- [5] See Manifestation, Rollo, p. 55.
- [6] Ibid., pp. 55-56.
- [7] Civil Case No. Br. 19-424.
- [8] Petition, Annex "F", Rollo, pp. 64-80, at pp. 67-69.
- [9] Petition, Annex "F", Rollo, pp. 64-80.
- [10] Rollo, pp. 81-82.
- [11] It is not indicated when the motion for amendment of the trial court's decision was filed, but this fact is mentioned in the trial court's supplemental decision of October 26, 1992.
- [12] Rollo, pp. 83-84.
- [13] Rollo, pp. 85-86.
- [14] CA Record, pp. 92-94.
- [15] Rollo, pp. 35-43.
- [16] Petition, Annex "J", Rollo, pp. 87-91.
- [17] Rollo, p. 45.
- [18] Filed on June 13, 1997, Rollo, pp. 11-33.
- [19] Rollo, p. 96.
- [20] Rollo, pp. 114-120.
- [21] Rollo, p. 133.
- [22] Petition, par. V, Rollo, pp. 11-33, at p. 19.
- [23] Rule 111, Section 1, paragraph 5, 1985 Rules on Criminal Procedure; Article 2177, Civil Code; *Virata vs. Ochoa*, 81 SCRA 472 (1978)
- [24] *Jarantilla vs. Court of Appeals*, 171 SCRA 429, 436 (1989)
- [25] Article 2194, Civil Code of the Philippines.
- [26] *Franco vs. Intermediate Appellate Court*, 178 SCRA 331, 338 (1989)
- [27] *Maniago vs. Court of Appeals*, 253 SCRA 674, 681 (1996)
- [28] Rule 111, Section 1, paragraph 2, 1985 Rules on Criminal Procedure.
- [29] *Pamaran*, *The 1985 Rules on Criminal Procedure Annotated*, 1998 edition, pp. 128-129.
- [30] *Policarpio vs. Court of Appeals*, 269 SCRA 344, 357 (1997)
- [31] *Nerves vs. Civil Service Commission*, 276 SCRA 610, 617 (1997)
- [32] *Blanco vs. Bernabe*, 63 Phil. 124 (1936)
- [33] *Guaring, Jr. vs. Court of Appeals*, 336 Phil. 274, 283 (1997)
- [34] 72 SCRA 562, 566 (1976)
- [35] *Maniago vs. Court of Appeals*, *supra*, at p. 686.
- [36] *Maniago vs. Court of Appeals*, *supra*, at p. 687.
- [37] *Barredo vs. Garcia*, 73 Phil. 607 (1942), reiterated in *Maniago vs. Court of Appeals*, *supra*.
- [38] *Quizon vs. The Justice of the Peace of Pampanga*, 97 Phil. 342, 346 (1955)
- [39] *Quizon vs. The Justice of the Peace of Pampanga*, *supra*, at p. 345.
- [40] This was the penalty imposed by the trial court, which has become final and executory.

DISSENTING OPINION

DAVIDE, JR., C.J.:

I understand that this is an appeal by an employer from a decision holding it subsidiarily liable with the driver. The driver's appeal from the judgment of conviction was dismissed because the driver jumped bail. Hence, the decision in the criminal case insofar as the criminal liability is concerned is already firm and final. Accordingly, for this reason alone we cannot modify the decision as to him. The modifications introduced in the ponencia is very substantial for it deletes the award of indemnity.

Also, the plaintiff in Civil Case No. Br. 19-424- the action for damages based on quasi-delict – did not appeal from the decision of the Regional Trial Court dismissing the case. That decision had long become final and executory.

Since there was no appeal from the dismissal of the civil case to the Court of Appeals, it logically follows that it was not brought to that Court. Obviously, too, it was never brought to our jurisdiction. Accordingly, there is nothing to remand to the court of origin for further proceedings.

I believe that we cannot even suspend the rules to accommodate the plaintiffs in Civil Case No. Br. 19-424. Such suspension would do much violence to the rules and open floodgates to dangerous precedents.

The simple solution in this case is to sustain the judgment of the trial court, affirmed by the Court of Appeals, holding petitioner, as employer of the offending driver, subsidiarily liable for the damages adjudged.

It is settled that every person criminally liable for a felony is also civilly liable. (Article 100, Revised Penal Code). Employers are subsidiarily civilly liable for felonies committed by their employees. (Article 103, id.).

The aggrieved parties in criminal cases may pursue their claims for damages either as delictual damages, or quasi-delictual damages under Article 2176 of the Civil Code, which the Code considers as "entirely distinct and separate from the civil liability arising from negligence under the Revised Penal Code." However, article 2177 of the Civil Code expressly provides that "the plaintiffs cannot recover damages twice for the same act or omission of the defendant."

The offended parties filed a separate action for damages under Article 2176. It must, however, be pointed out that, as can be gathered from the ponencia, only petitioner was made as defendant in that civil case. Part of the first paragraph of page three of the ponencia reads:

On November 29, 1989, the offended parties actually filed with the Regional Trial Court, Isabela, Branch 19, Cauayan, a complaint against petitioner Rafael Reyes Trucking corporation, as employer of driver Romeo Dunca y de Tumol, based on quasi-delicts.

Obviously then there was no separate civil action for damages arising from the felony. It was then deemed impliedly instituted in the criminal action against the driver.

The civil case against petitioner alone was consolidated with the criminal case where the civil aspect arising from the delict was impliedly instituted against the driver. Hence, there was no legal obstacle for the trial court to award damages therein, such as indemnity for the death, etc. and pursuant to Article 103 of the Revised Penal Code, to make petitioner subsidiarily liable for the awards. Considering, however, the abovementioned proscription in article 2177 of the Civil Code, the trial court had dismissed the civil case for damages against petitioner, which was already made subsidiarily liable for the damages in the criminal case.

To recapitulate, both the trial court and the Court of Appeals committed no error.

I vote to DENY the petition.

SEPARATE OPINION

VITUG, J.:

An early established rule under our law is that an act or omission, extra-contractual in nature, causing damage to another, there being fault or negligence can create two separate civil liabilities on the part of the offender, i.e., civil liability *ex delicto* and civil liability *ex quasi delicto*. Either one of these two possible liabilities may be sought to be enforced against the offender subject, however, to the caveat under Article 2177 of the Civil Code that the offended party cannot "recover damages twice for the same act or omission" or under both causes.[1] Outside of this proscription, the two civil liabilities are distinct and independent of each other; thus, and conversely against the rule on double recovery, the failure of recovery in one will not necessarily preclude recovery in the other.

Procedurally, the Revised Rules of Criminal Procedure, while reiterating that a civil action under the Civil Code may be brought separately from the criminal action, provides, nevertheless, that the right to bring it must be reserved. Rule 111 reads in full:

"Section 1. Institution of criminal and civil actions. - When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

"Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

"A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others.

The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

In no case may the offended party recover damages twice for the same act or omission of the accused.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate or exemplary damages, the filing fees for such civil action as provided in these Rules shall constitute a first lien on the judgment except in an award for actual damages.

In cases wherein the amount of damages, other than actual, is alleged in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial.

"Sec. 2. Institution of separate civil action. - Except in the cases provided for in Section 3 hereof, after the criminal action has been commenced, the civil action which has been reserved cannot be instituted until final judgment has been rendered in the criminal action.

"(a) Whenever the offended party shall have instituted the civil action as provided for in the first paragraph of Section 1 hereof before the filing of the criminal action and the criminal action is subsequently commenced, the pending civil action shall be suspended, in whatever stage before final judgment it may be found, until final judgment in the criminal action has been rendered. However, if no final judgment has been rendered by the trial court in the civil action, the same may be consolidated with the criminal action upon application with the court trying the criminal action. If the application is granted, the evidence presented and admitted in the civil action shall be deemed automatically reproduced in the criminal action, without prejudice to the admission of additional evidence that any party may wish to present. In case of consolidation, both the criminal and the civil actions shall be tried and decided jointly.

"(b) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.

"Sec. 3. When civil action may proceed independently.- In the cases provided for in articles 32, 33, 34, and 2176 of the Civil Code of the Philippines, the independent civil action which has been reserved may be brought by the offended party, shall proceed independently of the criminal action, and shall require only a preponderance of evidence."

In the recently decided case of *San Ildefonso Lines, Inc., vs. Court of Appeals, et al.*,^[2] the Supreme Court has ruled that, notwithstanding the independent nature of civil actions falling under Articles 32, 33, 34 and 2176 of the Civil Code, the right to institute the action must still have to be reserved. In the stern words of the Court: The "past pronouncements that view the reservation requirement as an unauthorized amendment to substantive law, i.e., the Civil Code, should no longer be controlling." Essentially, I share this view although I also understand *San Ildefonso* as merely fortifying a procedural rule that unless a reservation is made, the court trying the criminal case would not, for instance, be precluded from taking cognizance of the civil aspect of the litigation and that, upon the other hand, the other court in the civil case might, *motu proprio* or at the instance of a party, hold in abeyance the consideration thereof pending the outcome of the criminal case. In *Maniago vs. Court of Appeals*,^[3] the Court has said that the requirement of reservation is not incompatible with the distinct and separate character of independent civil actions. Indeed, there is no incongruence between allowing the trial of civil actions to proceed independently of the criminal prosecution and mandating that, before so proceeding, a reservation to do so should first be made.

In fine -

First - The civil action is deemed instituted together with the criminal case except when the civil action is reserved.^[4] The reservation should be made at the institution of the criminal case.^[5] In independent civil actions, not being dependent on the criminal case, such reservation would be required not for preserving the cause of action but in order to allow the civil action to proceed separately from the criminal case in interest of good order and procedure.^[6] Indeed, independent civil actions already filed and pending may still be sought to be consolidated in the criminal case before final judgment is rendered in the latter case.^[7] When no criminal proceedings are instituted, a separate civil action may be brought to demand the civil liability, and a preponderance of evidence is sufficient to warrant a favorable judgment therefor.^[8] The same rule applies if the information were to be dismissed upon motion of the fiscal.^[9]

Second - The pendency of the criminal case suspends the civil action, except-

(1) When properly reserved, in independent civil actions, such as those cases (a) not arising from the act or omission complained of as a felony (e.g. culpa contractual under Art. 31,^[10] intentional torts under Arts. 32^[11] and 34,^[12] and culpa acquiliana under Art. 2176^[13] of the Civil Code); or (b) where the injured party is granted a right to file an action independent and separate from the criminal action (e.g. Art. 33,^[14] Civil Code); and

(2)....In the case of pre-judicial questions which must be decided before any criminal prosecution may be instituted or may proceed (Art. 36, Civil Code).

In the above instances, the civil case may proceed independently and regardless of the outcome of the criminal case.

Third - An acquittal in the criminal case may bar any further separate civil action, except-

(1).... In independent civil actions, unless the complainant, not having reserved a separate action, has actively participated and intervened in the criminal case.^[15] Such active participation and intervention can only be

deemed to be an unequivocal election by the complainant to sue under *ex-delictu* rather than on another cause of action (arising from the same act or omission complained of as being *ex-delictu*). If, however, the acquittal is predicated on the ground that guilt has not been proven beyond reasonable doubt, and not upon a finding that the "fact from which the civil (action) might arise did not exist," an action for damages can still be instituted.[16]

(2) In dependent civil actions where the acquittal is premised on a failure of proof beyond reasonable doubt, which the court shall so declare as its basis, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Where acquittal is thus based on the fact that the crime did not exist or that the offender did not commit the crime, and not on mere quantum of proof, a civil action based on such *ex delictu* of which the accused is already acquitted would be improper.[17]

The vicarious liability of an employer for the fault or negligence of an employee is founded on at least two specific provisions of law. The first is expressed in Article 2176, in relation to Article 2180, of the Civil Code which would allow an action predicated on quasi-delict to be instituted by the injured party against the employer for an act or omission of the employee and would necessitate only a preponderance of evidence in order to prevail. Here, the liability of the employer for the negligent conduct of the subordinate is direct and primary subject to the defense of due diligence in the selection and supervision of the employee. The enforcement of the judgment against the employer for an action based on Article 2176 does not require the employee to be insolvent since the nature of the liability of the employer with that of the employee, the two being statutorily considered joint tortfeasors, is solidary.[18] The second, predicated on Article 103 of the Revised Penal Code, provides that an employer may be held subsidiarily liable for a felony committed by his employee in the discharge of his duty. This liability attaches when the employee is convicted of a crime done in the performance of his work and is found to be insolvent that renders him unable to properly respond to the civil liability adjudged.[19]

Normally, the judgment in the criminal case concludes the employer not only with regard to the civil liability but likewise with regard to its amount since the liability of an employer follows that of the employee.[20] Nevertheless, due process demands that the employer be accorded full opportunity to be heard to dispute the basic thesis upon which that liability is premised, i.e., the existence of an employer-employee relationship, engagement in an industry by the employer, and commission of the felony by the employee in carrying on his tasks. In highly meritorious cases, the extent of the liability of the employer himself, including the amount of damages, although final and conclusive on the accused, may be shown by the employer to be clearly unwarranted or unconscionable to be a valid measure of his own subsidiary liability. In such an instance, there is little excuse for not allowing the employer due process and to be given a chance to be heard thereon. The right of the employer to his own day in court, in no way, would amend or nullify the final judgment rendered by the court which stands unaffected insofar as the accused himself is concerned. It bears stressing that the employer takes no active role in the criminal proceedings, nor entitled to take such role, up until he suddenly finds himself open to a possible subsidiary liability following the judgment of conviction.

Finally, it may not be amiss to repeat that in independent civil actions only a successful recourse in one would foreclose recovery in the other.

I concur, therefore, with the majority in remanding the case to the court *a quo* for the determination and extent of the subsidiary liability of the employer conformably with the foregoing opinion.

[1] *Barredo vs. Garcia*, 73 Phil 607; *Mendoza vs. Arrieta*, 91 SCRA 113; *Padilla vs. Court of Appeals*, 129 SCRA 558.

[2] 289 SCRA 568.

[3] 253 SCRA 674; *Emerencia vs. Gonzales*, 104 Phil. 1059.

[4] Sec. 1, Rule 111, Revised Rules of Court; see also Art. 100, Revised Penal code.

[5] *Abellana vs. Marave*, 57 SCRA 106.

[6] See *Reyes vs. Sempio-Diy*, 141 SCRA 208; *Jarantilla vs. Court of Appeals*, 171 SCRA 429; *Castillo vs. Court of Appeals*, 176 SCRA 591.

[7] *Cojuangco, Jr. vs. CA*, 203 SCRA 619.

[8] Art. 30. When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of.

[9] See *Calalang vs. IAC*, 194 SCRA 514.

[10] ART. 31. When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.

[11] ART. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

- (1) Freedom of religion;
- (2) Freedom of speech;
- (3) Freedom to write for the press or to maintain a periodical publication;
- (4) Freedom from arbitrary or illegal detention;
- (5) Freedom of suffrage;
- (6) The right against deprivation of property without due process of law;
- (7) The right to a just compensation when private property is taken for public use;
- (8) The right to the equal protection of the laws;
- (9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
- (10) The liberty of abode and of changing the same;
- (11) The privacy of communication and correspondence;
- (12) The right to become a member of associations or societies for purposes not contrary to law;
- (13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
- (14) The right to be free from involuntary servitude in any form;
- (15) The right of the accused against excessive bail;
- (16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
- (17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;

(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and

(19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or the penal statute.

[12] ART. 34. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.

[13] ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[14] ART. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

[15] *Mendoza vs. Arietta*, 91 SCRA 113, *Ruiz vs. Ucol*, 153 SCRA 14; see also *Diong Bi Chu vs. CA*, 192 SCRA 554.

[16] ART. 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

If in a criminal case the judgement of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.

See also Art. 31, Civil Code; *Gula vs. Dianala, et al.*, 132 SCRA 245.

[17] *People vs. Amistad*, 108 SCRA 601.

[18] Article 2194, Civil Code of the Philippines.

[19] *Franco vs. Intermediate Appellate Court*, 178 SCRA 333.

[20] *Miranda vs. Malate Garage and Taxicab, Inc.*, 99 Phil. 670.

DISSENTING OPINION

MENDOZA, J., dissenting:

The question in this case is whether petitioner, as employer of the driver found guilty of reckless imprudence resulting in homicide and damage to property, can be held subsidiarily liable for damages awarded in the criminal

case considering that a separate civil action for quasi-delict had been filed against said petitioner, although the case was later dismissed. Based on the facts as stated in the majority opinion, the answer is yes. My reasons are twofold: first, because the filing of the case for quasi-delict against petitioner was without basis, the same being contrary to the reservation earlier made by the offended parties of their right to file a separate civil action arising from the crime against the driver, and, second, because the action for quasi-delict against petitioner was dismissed precisely because the civil action against petitioner's driver had been reinstituted in the criminal case against him. Let me explain.

As the records show, at the arraignment on October 23, 1989 of the driver Romeo Dunca, the heirs of Francisco Dy, Jr. and Feliciano Balcita reserved in Criminal Case No. Br. 19-311 their right "to institute a separate civil action arising from the offense charged against the herein accused." [1] In accordance with Rule 111, §1 of the 1985 Rules on Criminal Procedure, [2] such reservation of the right to file a civil action ex delicto was a waiver of the right to file any other civil action under Arts. 32, 33, 34 and 2176 of the Civil Code for recovery of damages for the same act or omission of the accused. Hence, the subsequent filing by private respondent Rosario P. Dy of a civil action for quasi-delict, based on Arts. 2176 and 2180 of the Civil Code, against petitioner Rafael Reyes Trucking Corporation was without any basis, the same having been waived by the reservation earlier made by her of the right to file a separate civil action arising from crime.

Be that as it may, the records further show that on December 15, 1989, private respondent filed a manifestation in the criminal case that she was withdrawing the previous reservation made by her to institute a separate civil action and that she was instead going to prosecute the civil action in the criminal case. Hence, she prayed "that the reservation to institute separate civil action in this case be ordered withdrawn and the Heirs of the victims be allowed to present evidence in support of the civil liability to the accused in this case." [3] The trial court granted private respondent's motion and allowed her to intervene in the criminal case. Consequently, the civil action ex delicto was merged with the criminal prosecution.

The civil action for quasi-delict against petitioner, which had been docketed as Civil Case No. Br. 19-424, was subsequently consolidated and jointly tried with the criminal case (Criminal Case No. Br. 19-311) against the driver. Then, on June 6, 1992, the trial court rendered judgment, which was amended on October 26, 1992-

- (1) finding the driver Romeo Dunca guilty of double homicide through reckless imprudence and violation of the Motor Vehicle Law and sentencing him to two indeterminate penalties of 4 months and 1 day of arresto mayor to 3 years, 6 months and 20 days and to pay the heirs of Francisco Dy, Jr. in the total amount of P 5,030,000.00;
- (2) ordering private respondent to pay P84,000.00 as damages for wrongful attachment of petitioner's trucks; and
- (3) dismissing Civil Case No. Br. 19-424 but declaring petitioner subsidiarily liable to private respondent heirs of Francisco Dy, Jr. in the event of insolvency of the accused driver.

It is contended that, as the trial court had dismissed the action for quasi-delict (Civil Case No. Br. 19-424) and private respondent did not appeal, no award of damages can be made in her favor. This contention has no merit. The civil action for quasi-delict was dismissed precisely so that petitioner's liability for its driver's negligence could be determined in the criminal case. Thus, the trial court stated:

Since Civil Case No. Br. 19-424 was admittedly instituted after the criminal case was filed, the Court believes that the waiver made by the Heirs of Francisco Dy, Jr. on December 15, 1969 included their right to file a separate civil action against the Rafael Reyes Trucking Corporation, the accused's employer, for the reason that under Section 1, Rule 111, actions arising from Article 2176 of the Civil Code or quasi-delicts are deemed included in the waiver. As such, since the latter raised as an affirmative defense the defense that the plaintiffs cannot maintain Civil Case No. [Br.] 19-424, this Court must have to rule that the filing of said case was not

proper. Nevertheless, inasmuch as the plaintiffs cannot recover damages twice for the offense committed by the accused, under Article 103 of the Revised Penal Code, in the event the accused will be insolvent, the Corporation could be held subsidiarily liable for the same damages.[4]

On the other hand, because of the subsequent withdrawal of the reservation to file a separate civil action the same was reinstituted in the criminal case, as though no reservation to file it separately had ever been made. The trial court, therefore, properly included in its decision in the criminal case a finding of the driver's civil liability, in addition to his criminal liability.

Petitioner and its driver, Romeo Dunca, appealed to the Court of Appeals. However, while the appeal was thus pending, Dunca jumped bail. The decision convicting him and imposing on him civil liability *ex delicto* thereby became final and executory. This circumstance allows for the application of Art. 103 of the Revised Penal Code, which provides:

Subsidiary civil liability of other persons. - The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

To establish the subsidiary civil liability of the petitioner, the following must be shown: (1) that petitioner is engaged in an industry; (2) that its employee (Romeo Dunca) committed the offense in the discharge of his duties; and (3) that the employee is insolvent.[5]

The first requisite has already been established considering that petitioner admitted in its answer in the trial court that it is engaged in an industry and that Dunca was its employee at the time of the accident.[6]

The second requisite must likewise be deemed to have been established since it is settled that, in the absence of any collusion between the accused employee and the offended party, a judgment convicting the former is conclusive upon the party subsidiarily liable.[7] Petitioner cannot claim that he has been deprived of due process on the ground that it was not a party to the suit. For as held in *Miranda v. Malate Garage & Taxicab, Inc.*:

It is true that an employer, strictly speaking, is not a party to the criminal case instituted against his employee but in substance and in effect he is, considering the subsidiary liability imposed upon him by law. It is his concern, as well as of his employee, to see to it that his interest be protected in the criminal case by taking virtual participation in the defense of his employee. He cannot leave him to his own fate because his failure is also his. And if because of his indifference or inaction the employee is convicted and damages are awarded against him, he cannot later be heard to complain, if brought to court for the enforcement of his subsidiary liability, that he was not given his day in court....[8]

Indeed, Civil Case No. Br. 19-424 and Criminal Case No. Br. 19-311 were jointly tried. All the parties in the two cases - the prosecution and the defense in the criminal case, and the Dys and petitioner Rafael Reyes Trucking Corporation in the civil case - were duly heard, before the trial court, in its joint decision, rendered judgment dismissing the civil action for quasi delict against petitioner and finding it instead subsidiarily liable in the criminal case. Petitioner and its driver were in fact represented by the same counsel, who raised all possible defenses that petitioner could raise.[9] The remand of this case to the trial court should, therefore, be solely for the purpose of determining, in the execution of the decision, whether Dunca, the accused driver, is insolvent.

The Court holds, however, that petitioner cannot be held liable in the criminal case on the ground that the right to file a civil action *ex delicto* has been waived and that instead its liability for its driver's negligence must be determined under Arts. 2176 and 2180 of the Civil Code. For this purpose, the Court orders the reopening of the action for quasi delict (Civil Case No. Br. 19-424). As basis for its decision, the Court states:

In the instant case, the offended parties elected to file a separate civil action for damages against petitioner as

employer of the accused, based on quasi delict, under Article 2176 of the Civil Code of the Philippines... Rafael Reyes Trucking Corporation, as employer of the accused who has been adjudged guilty in the criminal case for reckless imprudence, can not be held subsidiarily liable because of the filing of the separate civil action based on quasi delict against it. In view of the reservation to file, and the subsequent filing of the civil action for recovery of civil liability, the same was not instituted with the criminal action. Such separate civil action was for recovery of damages under Article 2176 of the Civil Code, arising from the same act or omission of the accused.[10]

With due respect, it is not true that private respondent reserved the right to file a separate civil action based on quasi delict and thereby waived the right to recover from petitioner civil liability ex delicto in the event of the insolvency of the driver. The offended parties stated very clearly that what they were reserving was the right "to institute a separate civil action arising from the offense charged against the herein accused." It is, therefore, error to say that what was reserved was the right to bring a civil action based on quasi delict.

Following Rule 111, §1, the reservation of the right to file a separate civil action ex delicto against the driver was a waiver of the offended parties' right to institute a civil action based on quasi delict against petitioner. The filing of Civil Case No. Br. 19-424 against petitioner was, therefore, without basis, and its dismissal by the trial court in its decision was in order. On the other hand, as the offended parties had withdrawn their reservation of the right to file a separate civil action against the driver so that they can pursue their action in the criminal case, the trial court correctly determined petitioner's subsidiary civil liability for its driver's negligence in the criminal case.

It is contended that the offended parties did not appeal from the decision of the trial court insofar as it dismissed their complaint for quasi delict. That is because, as they had previously manifested in withdrawing their reservation of the right to file a separate civil action against the driver, they intended to pursue their action in the criminal case. That included the action to enforce the subsidiary civil liability of petitioner, as employer, in the event of the driver's insolvency.

To relieve petitioner from its subsidiary liability, the Court has to declare the award of damages ex delicto void because, by filing a civil action based on quasi delict, the offended parties allegedly waived the right to bring action ex delicto. As already stated, it was the right to bring an action for quasi delict which was waived as a result of the reservation to file a civil action ex delicto. Hence, as a consequence of the driver's jumping bail, the judgment finding him liable not only criminally but also civilly became final. As under Art. 103 of the Revised Penal Code the employer is subsidiarily liable, there is no way by which petitioner may be absolved from such liability except upon a showing that the driver is not insolvent.

Even assuming that the right of the offended parties to recover damages ex delicto had been waived, the award of such damages by the trial court simply constitutes an error of judgment. Hence, the award of damages ex delicto to the offended parties is not void and is now final. The Court has not only set aside a final disposition by declaring it void; it has likewise ordered the reopening of a case already dismissed with finality on the simplistic reasoning that rules of procedure may be relaxed "in order to promote their objectives and assist the parties in obtaining just, speedy, and inexpensive determination of every action or proceedings." There is no reason for doing so in this case since, as already stated, all the parties herein had been duly heard before the trial court rendered its decision.

Indeed, for what purpose is this case to be remanded to the trial court? So that petitioner can present evidence in its defense? But it has already done so. For the trial court to re-determine the amount of damages? But even under Arts. 2176 and 2180, the employer is liable for the same amount the employee is liable, as the only difference between its liability ex delicto and its liability based on quasi delict is that the former is subsidiary or secondary to that of the driver while its liability for quasi delict is primary.

I do not think it is worth sacrificing legal rules to reach the judgment the majority arrives at in this case. The award of damages ex delicto in the decision of the trial court is final, just as the dismissal of the case for quasi delict is final. To ignore this fact is to set at naught the policy behind the finality of judicial decisions and deprive adjudication of stability.

Apparently realizing the cost to basic rules of its decision today, the majority says that it is ordering the determination of petitioner's liability for quasi delict only pro hac vice. Apparently, the majority is not willing to apply its ruling in this case to similar situations should they arise in the future. For that is what pro hac vice means - "for this turn; for this one particular occasion" only.[11] But adjudication cannot be limited to the immediate parties and declared to have no precedential value. Adjudication, such as this, is like a restricted or one-way railroad ticket, good for this day and train only.[12]

For the foregoing reasons, I dissent and vote to affirm the decision of the Court of Appeals with the modification that this case should be remanded to the trial court for the sole purpose of determining the subsidiary civil liability of petitioner in the event of insolvency of its driver, the accused Romeo Dunca.

[1] Rollo, p. 55.

[2] Rule 111, §1 provides in pertinent parts:

Institution of criminal and civil actions. – When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others....

[3] Rollo, p. 55.

[4] Emphasis added.

[5] Baza Marketing Corp. v. Bolinao Security and Investigation Service, Inc., 117 SCRA 156 (1982)

[6] Rollo, p. 57.

[7] Manalo v. Robles Trans. Co., Inc., 99 Phil. 729 (1956)

[8] 99 Phil. 670, 675 (1956)

[9] Rollo, p. 69.

[10] Citing Maniago v. Court of Appeals, 253 SCRA 674 (1996)

[11] BLACK'S LAW DICTIONARY 1212 (6th ed. 1990)

[12] Compare CIVIL CODE, ART. 8: Judicial decisions applying or interpreting the laws or be Constitution shall form part of the legal system of the Philippines.

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