

FIRST DIVISION [G.R. No. 131280. October 18, 2000] PEPE CATAUTAN and AURELIANA CATAUTAN, petitioners, vs. HEIRS OF NORMAN KADUSALE, HEIRS OF LITO AMANCIO and GIL B. IZON, resp...

G.R. No. 131280. October 18, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

The issue raised in this petition for review on certiorari is whether or not a subsidiary writ of execution may issue against the employers of an accused, against whom a judgment of conviction had been entered, even when said employers never took part in the criminal proceedings where the accused was charged, tried and convicted.

Assailed in the instant petition is the August 12, 1997 Decision[1] of the Court of Appeals in CA-G.R. SP No. 43617, directing the issuance of a subsidiary writ of execution against petitioners, as well as its October 9, 1997 Resolution,[2] denying petitioners' Motion for Reconsideration.

The antecedent facts relevant to the issue before us may be summarized, as follows -

Petitioner Aureliana Catacutan is the registered owner and operator of a jeepney, driven by the accused Porferio Vendiola, which bumped a tricycle on April 11, 1991, in Banilad, Bacong, Negros Oriental, thereby causing the death of its driver, Norman Kadusale, and its passenger, Lito Amancio, and serious physical injuries to another passenger, respondent Gil B. Izon.

Respondents thus filed a criminal case against Porferio Vendiola, for Reckless Imprudence Resulting in Double Homicide with Physical Injuries and Damages to Property on July 26, 1991, before the Regional Trial Court of Negros Oriental.

On December 1, 1995, the trial court rendered judgment,[3] the dispositive portion of which reads as follows:

Wherefore, foregoing considered, this court is convinced beyond doubt that accused is guilty of negligence and imprudence under Article 365 of the Revised Penal Code in the collision which occurred in Banilad, Bacong, Negros Oriental on April 11, 1991 which claimed the lives of Norman Kadusale, the driver of the motortricycle, and Lito Amancio, a passenger of the motortricycle, and caused injury to Gil B. Izon.

He is therefore sentenced to suffer the penalty of prision correccional medium and maximum periods. Applying the Indeterminate Sentence Law, the accused is sentenced to one year eight months and one day of prision correccional as minimum to two years, four months and one day of prision correccional as maximum for each death to be served successively, and for the physical injuries suffered by Gil B. Izon, accused is ordered to suffer the penalty of thirty days of arresto mayor straight. He is likewise ordered to indemnify the heirs of Norman Kadusale and Lito Amancio in the amount of Fifty Thousand Pesos each victim; and to pay actual damages to:

- Norman Kadusale or his heirs the amount of P170,543.24;

- Lito Amancio or his heirs the amount of P38,394.35; and
- Gil B. Izon, the amount of P23,454.00.

SO ORDERED.[4]

Accused Vendiola did not appeal the judgment of conviction. Instead, he applied for probation. Meanwhile, when the judgment became final and executory, respondents moved for the issuance of a writ of execution and the corresponding writ was issued by the trial court on April 24, 1996. However, per the Sheriff's Return of Service,[5] dated July 3, 1996, the writ was unsatisfied as the accused had "nothing to pay off the damages in the decision."

On August 28, 1996, respondents filed a Motion for Subsidiary Writ of Execution[6] before the trial court, praying that such writ be issued against petitioner Aureliana Catacutan as registered owner and operator of the jeepney driven by the accused when the collision occurred. Petitioner Aureliana Catacutan filed her Opposition[7] thereto, arguing that she was never a party to the case and that to proceed against her would be in violation of the due process clause of the Constitution. Petitioner also argued that the subsidiary liability of the employer is not determined in the criminal case against the employee.

On October 3, 1996, the trial court issued an Order[8] denying the said Motion for lack of merit. According to the trial court, it never acquired jurisdiction over petitioner Aureliana Catacutan since she was never impleaded as party to the case, and respondents' remedy was to file a separate case for damages. Respondents' Motion for Reconsideration was also denied on December 3, 1996.[9]

Undaunted, respondents went on certiorari to the Court of Appeals. On August 12, 1997, the Court of Appeals rendered the assailed Decision.

The issue raised in the instant petition is not new. It has been passed upon in the case of *Yusay v. Adil*,[10] where this Court held -

Petitioners contend that they were not informed of Criminal Case No. 11828 nor heard therein, in the matter of their alleged subsidiary liability and that they were thus denied their day in court, and that the court did not acquire jurisdiction over them.

We hold otherwise. Petitioners were given ample opportunity to present their side. The respondent judge admitted their "Urgent Ex Parte Motion for Time to File Necessary Pleadings." The respondent judge also issued an order suspending the execution of the writ dated 24 October 1980 and granting petitioners until 5 November 1980 within which to file their comment and/or opposition to the Motion for Issuance of the Writ of Subsidiary Execution. On 4 November 1980, petitioners filed their Motion for Reconsideration of the order of 24 October 1980 and To Set Aside Subsidiary Writ of Execution. This was opposed by private respondent. On 21 November 1980, an order of denial of the Motion dated 4 November 1980 was issued. A second motion for reconsideration was filed by petitioners which was again opposed by private respondent. Petitioners filed their reply thereto. Acting on the pleadings, respondent judge issued a resolution denying petitioners' second motion for reconsideration.

As stated in *Martinez v. Barredo*:

"The employer cannot be said to have been deprived of his day in court, because the situation before us is not one wherein the employer is sued for a primary liability under article 1903 of the Civil Code, but one in which enforcement is sought of a subsidiary civil liability incident to and dependent upon his driver's criminal negligence which is a proper issue to be tried and decided only in a criminal action. In other words, the employer becomes ipso facto subsidiarily liable upon his driver's conviction and upon proof of the latter's insolvency, in the same way that acquittal wipes out not only the employee's primary liability but also his

employer's subsidiary liability for such criminal negligence (81 Phil. 1, 3, G.R. No. L-49308, May 13, 1948, citing Almeida et al., vs. Abaroa, 8 Phil., 178, affirmed in 218 U.S. 476; 54 Law ed., 1116; Wise & Co. vs. Larion, 45 Phil. 314, 320; Francisco vs. Onrubia, 46 Phil. 327; Province of Ilocos Sur vs. Tolentino, G.R. No. 34186, 56 Phil., 829; Moran, Comments on the Rules of Court, Vol. II, p. 403)."

The employer is, in substance and in effect, a party to the criminal case against his employee, considering the subsidiary liability imposed upon him by law. Thus:

"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 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. It was not without purpose that this Court sounded the following stern warning:

"It is high time that the employer exercised the greatest care in selecting his employees, taking real and deep interest in their welfare; intervening in any criminal action brought against them by reason or as a result of the performance of their duties, if only in the way of giving them benefit of counsel; and consequently doing away with the practice of leaving them to their fates. If these be done, the American rule requiring notice on the part of the employer shall have been satisfied (Miranda vs. Malate Garage and Taxicab, Inc., 99 Phil. 670, 675, citing Martinez vs. Barredo, supra)."

More recently, in the case of Basilio v. Court of Appeals,[11] the issuance of a subsidiary writ of execution against the employer of the accused therein was once more upheld, notwithstanding the non-participation of such employer in the criminal case against the accused. Instructive as it is on the issue at hand, we are reproducing hereunder this Court's pronouncement in said case, to wit -

The statutory basis for an employer's subsidiary liability is found in Article 103 of the Revised Penal Code. This liability is enforceable in the same criminal proceeding where the award is made. (Rules of Court, Rule 111, Sec. 1) However, before execution against an employer ensues, there must be a determination, in a hearing set for the purpose of 1) the existence of an employer-employee relationship; 2) that the employer is engaged in some kind of industry; 3) that the employee is adjudged guilty of the wrongful act and found to have committed the offense in the discharge of his duties (not necessarily any offense he commits "while" in the discharge of such duties); and 4) that said employee is insolvent. (Yonaha vs. CA, 255 SCRA 397, 402 [1996].)

In Vda. De Paman vs. Señeris, 115 SCRA 709, 714 (1982), the Court observed that the drawback in the enforcement of the subsidiary liability in the same criminal proceeding is that the alleged employer is not afforded due process. Not being a party to the case, he is not heard as to whether he is indeed the employer. Hence, we held:

To remedy the situation and thereby afford due process to the alleged employer, this Court directed the court a quo in Pajarito vs. Señeris (supra) to hear and decide in the same proceeding the subsidiary liability of the alleged owner and operator of the passenger bus. It was explained therein that the proceeding for the enforcement of the subsidiary liability may be considered as part of the proceeding for the execution of the judgment. A case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. (Vda. De Paman vs. Señeris, 115 SCRA 709, 714 [1982].)

There are two instances when the existence of an employer-employee relationship of an accused driver and the alleged vehicle owner may be determined. One during the criminal proceeding, and the other, during the proceeding for the execution of the judgment. In both instances, petitioner should be given the opportunity to be heard, which is the essence of due process. (National Federation of Labor vs. National Labor Relations

Commissions, 283 SCRA 275, 284 [1997].)

Petitioner knew of the criminal case that was filed against accused because it was his truck that was involved in the incident. Further, it was the insurance company, with which his truck was insured, that provided the counsel for the accused, pursuant to the stipulations in their contract. Petitioner did not intervene in the criminal proceedings, despite knowledge, through counsel, that the prosecution adduced evidence to show employer-employee relationship. With the convict's application for probation, the trial court's judgment became final and executory. All told, it is our view that the lower court did not err when it found that petitioner was not denied due process. He had all his chances to intervene in the criminal proceedings, and prove that he was not the employer of the accused, but he chooses not to intervene at the appropriate time.

Petitioner was also given the opportunity during the proceedings for the enforcement of judgment. Even assuming that he was not properly notified of the hearing on the motion for execution of subsidiary liability, he was asked by the trial court to make an opposition thereto, which he did on October 17, 1991, where he properly alleged that there was no employer-employee relationship between him and accused and that the latter was not discharging any function in relation to his work at the time of the incident. In addition, counsel for private respondent filed and duly served on December 3, 1991, and December 9, 1991, respectively, a manifestation praying for the grant of the motion for execution. This was set for hearing on December 13, 1991. However, counsel for petitioner did not appear. Consequently, the court ordered in open court that the matter be submitted for resolution. It was only on January 6, 1992, that the petitioner's counsel filed a counter-manifestation that belatedly attempted to contest the move of the private prosecutor for the execution of the civil liability. Thus, on April 7, 1992, the trial court issued the Order granting the motion for execution of the subsidiary liability. Given the foregoing circumstances, we cannot agree with petitioner that the trial court denied him due process of law. Neither can we fault respondent appellant court for sustaining the judgment and orders of the trial court.

In the instant case, we find no reason why the subsidiary writ of execution issued against petitioner Aureliana Catacutan should be set aside. To begin with, as in *Yusay and Basilio*, supra, petitioners cannot complain of having been deprived of their day in court. They were duly furnished a copy of respondents' Motion for Subsidiary Writ of Execution to which they filed their Opposition.

So, too, we find no good ground to order a separate hearing to determine the subsidiary liability of petitioner Aureliana Catacutan, as was ordered in the case of *Pajarito v. Señeris*, supra. To do so would entail a waste of both time and resources of the trial court as the requisites for the attachment of the subsidiary liability of the employer have already been established, to wit: First, the existence of an employer-employee relationship.[12] Second, the employer is engaged in some kind of industry, land transportation industry in this case as the jeep driven by accused was admittedly a passenger jeep.[13] Third, the employee has already been adjudged guilty of the wrongful act and found to have committed the offense in the discharge of his duties.[14] Finally, said employee is insolvent.[15]

WHEREFORE, based on the foregoing, the petition is DENIED. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Jorge S. Imperial and Ramon U. Mabutas, Jr.; Petition, Annex "E"; Rollo, pp. 46-51.

[2] Petition, Annex "F"; Rollo, p. 53.

- [3] See Decision, Criminal Case No. 9858, of the Regional Trial Court of Negros Oriental, Branch 44, penned by Judge Alvin L. Tan; Petition, Annex "A"; Rollo, pp. 14-41.
- [4] Id., at pp. 27-28; Rollo, pp. 40-41.
- [5] Record, CA-G.R. SP No. 43617, p. 16.
- [6] Id., pp. 45-47.
- [7] Id., pp. 48-49.
- [8] Petition, Annex "B"; Rollo, p. 42.
- [9] See Petition, Annex C"; Rollo, p. 43.
- [10] G.R. No. 56612, 164 SCRA 494 [1988].
- [11] G.R. No. 113433, 17 March 2000.
- [12] In their Statement of Facts in their Petition, petitioners categorically hold out the accused as "the driver of herein petitioner-operator Aurelianana Catacutan". See Petition, p. 3; Rollo, p. 6.
- [13] Petitioners also hold out in their Statement of Facts that "petitioner-operator Aurelianana Catacutan is the registered owner of the passenger jeepney". See Petition, p. 3; Rollo, p. 6.
- [14] See Decision, Criminal Case No. 9858; Rollo, pp. 14-41.
- [15] The Sheriff's Return of Service manifests that the Writ of Execution issued by the trial court against the accused was served upon the latter but that "no cash money or personal property was taken" by the sheriff and the Writ of Execution was not satisfied because the accused "has nothing to pay off the damages in the decision". See Note 5.

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