PHILIPPINE RABBIT BUS LINES, INC., PETITIONER, VS. HEIRS OF EDUARDO MANGAWANG AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 160355. May 16, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 78149 affirming the Decision[2] of the Regional Trial Court (RTC) in Criminal Case No. 743-C('93) convicting the accused Ernesto Ancheta of reckless imprudence resulting in homicide.

The Antecedents

Ernesto Ancheta was employed by the Philippine Rabbit Bus Lines, Inc. (PRBLI) as driver of one of its passenger buses. On July 23, 1993, an Information was filed with the RTC of Capas, Tarlac, Branch 66, charging Ancheta with reckless imprudence resulting in homicide. The inculpatory portion of the Information reads:

> That on November 23, 1992 at around 11:50 o'clock (sic) in the morning, at Brgy. Dolores, Municipality of Capas, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the driver and person-in-charge of a Philippine Rabbit Bus bearing Plate No. CVE-707 with MVRR No. 63044987, registered in the name of the Philippine Rabbit Bus Lines, Inc. of Tarlac, Tarlac, did then and there, willfully, unlawfully and feloniously and with reckless imprudence and managed the said Philippine Rabbit Bus at Brgy. Dolores, Capas, Tarlac, in a careless, negligent and imprudent manner, without due regard to laws, regulations, ordinances and traffic code and without taking the necessary precaution to prevent accident to persons and damage to property and in violation of the Land Transportation Laws, said bus driven by the accused while cruising the MacArthur Highway towards the south direction, bumped the left rear side of a Toyota jeep with Plate No. TAB 929 with MVRR No. 64284647 owned by Zenaida B. Dizon of 193 M. Santos St., Pasay City, Metro Manila, and driven by Eduardo Mangawang towards the north direction, and as a result thereof said Eduardo Mangawang ultimately died and the jeep he was then driving sustained damages of an undetermined amount, to the damage and prejudice of the deceased and the owner thereof.
>
> Contrary to law.[3]

The accused was assisted by Atty. Crispiniano Lamorena, Jr., whom the PRBLI assigned as counsel de parte. Atty. Andres Pangilinan entered his appearance as private prosecutor.

The trial court rendered judgment on November 12, 1999, convicting the accused of the crime charged. The fallo of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused, ERNESTO ANCHETA, guilty beyond reasonable doubt of the crime of Reckless Imprudence Resulting to Homicide.
>
> Accordingly, the said accused is hereby sentenced to suffer the indeterminate penalty of imprisonment of two

> (2) years and four (4) months of prision correccional in its minimum period as minimum to six (6) years of prision correccional in its maximum period as maximum.
>
> For the civil liability of the accused, Ernesto Ancheta is hereby ordered to indemnify the heirs of Eduardo Mangawang the amounts of P28,600.00 as actual or compensatory damages and P1,436,466.30 representing loss of earning capacity. The accused is similarly ordered to pay the amounts of P50,000.00 by way of indemnification for the death of Eduardo Mangawang and another P50,000.00 as moral damages.
>
> SO ORDERED.[4]

The accused appealed the decision to the CA. On November 10, 2000, the appellate court issued a Resolution dismissing the appeal due to Ancheta's failure to file his brief as accused-appellant.[5] The resolution of the CA dismissing the appeal became final and executory, thus, entry of judgment was made of record on December 7, 2000. After the transmission of the records to the RTC, it issued an Order on June 5, 2001 for the arrest of the accused.[6]

On June 29, 2001, the PRBLI, as Ancheta's employer, filed a Notice of Appeal of the decision of the RTC. On July 18, 2001, the RTC issued an Order denying due course to the notice of appeal, on its finding that the notice was filed long after the judgment of the RTC had become final and executory.[7] The PRBLI filed a motion for the reconsideration of the order, claiming that it was not served with a copy of the decision of the RTC convicting the accused of the crime charged; hence, could not have appealed the same. On August 1, 2001, the trial court issued an Order denying the said motion. The PRBLI filed an urgent motion, this time for clarification of the said order, which the trial court denied in an Order dated August 31, 2001. Undaunted, the PRBLI filed a manifestation with motion, citing the ruling of this Court in Ozoa v. Vda. de Madula.[8] On October 17, 2001, the trial court issued an Order, this time, granting the motion and giving due course to the appeal of the PRBLI. The trial court, likewise, ordered the records to be transmitted to the CA for the consideration of the appeal, where the latter made the following assignment of errors:

> I
>
> THE TRIAL COURT SERIOUSLY ERRED IN THE APPRECIATION OF THE FACTS AND THE EVIDENCE.
>
> II
>
> THE TRIAL COURT SERIOUSLY ERRED IN ATTRIBUTING SUPPOSED NEGLIGENCE AND LACK OF FORESIGHT ON THE PART OF THE ACCUSED ANCHETA.
>
> III
>
> THE TRIAL COURT SERIOUSLY ERRED IN SO GENEROUSLY AWARDING UNCONSCIONABLE AMOUNTS IN SUPPOSED DAMAGES TO THE HEIRS OF EDUARDO MANGAWANG.[9]

On October 10, 2003, the CA rendered judgment affirming with modification the decision of the RTC. The fallo of the decision reads:

> WHEREFORE, premises considered, the Decision dated November 12, 1999 of the Regional Trial Court of Capas, Tarlac, Branch 66, in Criminal Case No. 743-C('93) is hereby AFFIRMED with the correction that the actual damages to be awarded should only be P5,000.00. All other respects remain. Costs against appellant.
>
> SO ORDERED.[10]

The appellate court dismissed the appeal on the ground that the decision of the RTC had long become final and executory when the PRBLI appealed the decision. It ruled that the PRBLI was bound by the said decision against

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the accused therein.[11] Nevertheless, the appellate court resolved the appeal on its merits and affirmed the decision of the RTC, but with modification.[12]

The PRBLI forthwith filed the present petition for review on certiorari, assailing the decision of the CA on the following grounds:

> A.
>
> THE COURT OF APPEALS ERRED IN HOLDING THAT THE CONVICTION OF THE ACCUSED HAS ATTAINED FINALITY AS AGAINST PETITIONER.
>
> B.
>
> PETITIONER MUST BE AFFORDED THE STANDING AND THE OPPORTUNITY TO QUESTION THE ACCUSED'S CONVICTION.[13]

The petitioner submits the ruling of this Court in Pajarito v. Seneris[14] and Miranda v. Malate Garage & Taxicab, Inc.,[15] that "the decision of the trial court convicting the employee is binding and conclusive upon the employer not only with regard to the civil liability but also, with regard to its amount," should not apply to it. It avers that unlike in Pajarito and Miranda, the counsel of the accused therein was given ample opportunity to defend the accused during the trial and on appeal in the CA. The petitioner laments that in this case, the counsel it provided to defend the accused was remiss in the performance of his duties and failed to notify it of the RTC decision, the November 10, 2000 Resolution of the CA, as well as the June 5, 2001 Order of the RTC; consequently, it was not apprised of its civil liability to the heirs of the deceased, thus depriving the petitioner of its right to due process. It avers that it was only on account of its own diligence that it discovered the decision of the RTC, the November 10, 2000 Resolution of the CA and the June 5, 2001 Order of the RTC.

The petitioner further avers that it was not furnished with a copy of the said CA Resolution, and of the Arrest Order of the RTC dated June 5, 2001. The petitioner posits that until it is furnished with such copies, the period within which to assail the decision of the RTC on its civil liability to the heirs of the deceased had not commenced to run.

The petitioner submits that it is unjust and unreasonable for the CA to deprive it of its right to question its civil liability to the heirs of the deceased, considering the gross negligence of the counsel that it had provided the accused.

By way of comment on the petition, the Office of the Solicitor General (OSG) contends that the decision of the RTC convicting Ancheta of the crime charged had become final and executory, following the dismissal of his appeal before the CA. The decision of the RTC was conclusive on the petitioner, not only with regard to its civil liability but also as to the amount thereof, absent any collusion between the accused-employee and the private complainant. The petitioner was not a direct party in the criminal case; hence, was not entitled to a copy of the decision of the RTC or to appeal therefrom; it was, likewise, not entitled to be furnished a copy of the CA Resolution dated November 10, 2000 and the Order of the RTC dated June 5, 2001. Hence, according to the OSG, it cannot complain of denial of its right to due process. The OSG further asserts that the petition at bar is premature, considering that no writ of execution has yet been issued by the RTC, and cites the ruling of this Court in Philippine Rabbit Bus Lines, Inc. v. People[16] to buttress its stance.

The petition is denied for lack of merit.

The ruling of the CA dismissing the petitioner's appeal of the RTC decision convicting Ancheta of reckless imprudence resulting in homicide is correct. However, the Court of Appeals erred in modifying the decision of the

RTC.

The petitioner, as the employer of the said accused, had no right to appeal from the said decision because, in the first place, it was not a party in the said case. While the subsidiary liability provided for by Articles 102 and 103 of the Revised Penal Code may render the petitioner a party in substance and, in effect, it is not, for this reason, entitled to be furnished a copy of the decision of the RTC, as well as the resolution and decision of the CA.

Indeed, the petitioner was entitled to protect its interest by taking actual participation in the defense of its employee, Ancheta, by providing him with counsel. It cannot leave its employee to his own fate because his failure is its failure.[17] The petitioner, as the employer of the accused, would thereby be apprised of the progress of the case and the outcome thereof from time to time through the said counsel. The failure of such counsel to apprise the petitioner of the progress of the case is thus not equivalent to lack of due process. The pronouncement of the Court in Miranda v. Malate Garage & Taxicab, Inc. [18] is instructive on this score:

> 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. 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 of or as a result of the performance of their duties, if only in the way of giving them the benefit of counsel; and, consequently, doing away with the practices 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." (Martinez v. Barredo, Supra.)[19]

In Ozoa v. Vda. de Madula,[20] the Court explained the effect of a judgment of conviction against the employee on the subsidiary liability of the employer, as follows:

> To be sure, the correctness of the legal principles cited by the Court a quo cannot be gainsaid. A person criminally liable is also civilly liable; and upon the institution of the criminal action, the civil action for the recovery of the civil liability arising from the crime is also impliedly instituted unless waived, or the filing of a separate action therefor is reserved. The employer is subsidiarily answerable for the adjudicated civil liability ex delicto of his employee in the event of the latter's insolvency; and the judgment in the criminal action pronouncing the employee to be also civilly liable is conclusive on the employer not only as to the actuality of that liability but also as to its amount.[21]

Since the petitioner was not a party in the RTC and in the CA on the appeal of its employee (Ancheta), the petitioner cannot justifiably claim that it was deprived of its right to due process. As explained by this Court in Martinez v. Barredo:[22]

> 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 civil liability but also his employer's subsidiary liability for such criminal negligence. (Almeida, et al. v. Abaroa, 8 Phil. 178, affirmed in 218 U.S. 476; 54 Law ed., 1116; Wise & Co. v. Larion, 45 Phil. 314, 320; Francisco v. Onrubia, 46 Phil. 327;

> Province of Ilocos Sur v. Tolentino, G.R. No. 34186, 56 Phil. 829; Moran, Comments on the Rules of Court, Vol. II, p. 403.)[23]

Besides, as gleaned from the brief of the petitioner, as appellant in the CA, in CA-G.R. CV No. 78149, it sought the reversal of the decision of the RTC and the acquittal of its employee. In Philippine Rabbit Bus Lines, Inc. v. People,[24] this Court held that such an appeal would be impermissible for the following reasons:

> An appeal from the sentence of the trial court implies a waiver of the constitutional safeguard against double jeopardy and throws the whole case open to a review by the appellate court. The latter is then called upon to render judgment as law and justice dictate, whether favorable or unfavorable to the appellant. This is the risk involved when the accused decides to appeal a sentence of conviction. Indeed, appellate courts have the power to reverse, affirm or modify the judgment of the lower court and to increase or reduce the penalty it imposed.
>
> If the present appeal is given [due] course, the whole case against the accused-employee becomes open to review. It thus follows that a penalty higher than that which has already been imposed by the trial court may be meted out to him. Petitioner's appeal would thus violate his right against double jeopardy, since the judgment against him could become subject to modification without his consent.[25]

Indeed, to allow an employer to dispute its civil liability in the criminal case via an appeal from the decision of the RTC would be to annul, nullify or defeat a final judgment rendered by a competent court.[26]

The Court cannot second guess whether Ancheta's failure to file his brief as appellant in the CA was through the negligence of his counsel or because of the belief that, indeed, he was guilty of the crime charged and it was purposeless and futile for him to still file such brief.

We agree with the contention of the OSG that the right of the petitioner as the employer of the accused to due process occurs during the hearing of the motion for the issuance of an alias writ of execution, on the basis of the sheriff's return that the writ of execution issued by the court for the enforcement of its decision on the civil liability of the accused was not satisfied because of the latter's insolvency, the sheriff being unable to locate any property in the name of the accused. Such return is prima facie evidence of the insolvency of the accused.[27]

During the hearing of the motion for the issuance of an alias writ of execution, the prosecution must prove that (a) the petitioner PRBLI was the employer of the accused; (b) it was engaged in some kind of industry; (c) the crime was committed by the employee in the discharge of his duties; and (d) execution against the employee is unsatisfied.[28] The prosecution may offer in evidence the sheriff's return as prima facie evidence of the insolvency of the accused.

The petitioner, as the employer of the accused, may adduce evidence on questions which may be involved in the execution since the trial court which rendered the decision has a general supervisory control over the process of execution.[29]

From a ruling adverse to the employer, it may appeal by writ of error on questions of facts, or mixed questions of facts and of law, or by certiorari on questions of jurisdiction or grave abuse of discretion of the trial court, thus:

> It goes without saying that the determination thus made as regards the employer's subsidiary civil liability is not conclusive in the sense of being non-reviewable by higher judicial authority. It may be appealed to a higher court at the instance of the aggrieved party – either the offended party or the employer – by writ of error seeking review of questions of fact or mixed questions of fact and law, or through a petition for review on certiorari, limited to a consideration only of questions of law. Or review may be sought by the institution of a special civil action of certiorari, upon the theory that the determination was made by the trial court without or in excess of its jurisdiction, or with grave abuse of discretion.[30]

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Hence, the Court of Appeals erred in modifying the decision of the RTC which had long become final and executory. A final and executory decision, even if erroneous, can no longer be modified.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The Resolution of the Court of Appeals dismissing the appeal of the petitioner is AFFIRMED. However, that portion of the Decision of the Court of Appeals modifying the decision of the Regional Trial Court, dated November 12, 1999, is SET ASIDE.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang, concurring; Rollo, pp. 29-44.

[2] Penned by Judge Josefina D. Ceballos.

[3] Rollo, pp. 45-46.

[4] Rollo, p. 61.

[5] id. at 33.

[6] id.

[7] id. at 34.

[8] G.R. No. L-62955, 22 December 1987, 156 SCRA 779.

[9] Rollo, p. 35.

[10] id. at 43.

[11] Rollo, p. 39.

[12] id. at 43.

[13] id. at 15.

[14] G.R. No. 44627, 14 December 1978, 87 SCRA 275.

[15] 99 Phil. 670 (1956).

[16] G.R. No. 147703, 14 April 2004, 427 SCRA 456.

[17] Miranda v. Malate Garage & Taxicab, Inc., supra.

[18] Ibid.

[19] id. at 675.

[20] Supra.

[21] Supra.

[22] 81 Phil. 1 (1948), cited in Yusay v. Aslid, 164 SCRA 494, 499-500 (1988).

[23] id. at 3-4.

[24] Supra.

[25] Supra.

[26] Pajarito v. Seneris, Supra.

[27] Ibid.; Manalo and Salvador v. Robles Transportation Co., Inc., 99 Phil. 729 (1956).

[28] Ozoa v. Vda. de Madula, Supra.

[29] Pajarito v. Seneris, Supra.

[30] Ozoa v. Vda. de Madula, Supra.

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