

ESTANISLAWA CANLAS, PLAINTIFF AND APPELLANT, VS. CHAN LIN PO, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 16929. July 31, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

In Criminal Case No. 19353 filed with the Court of First Instance of Manila, Juanito Chan was charged with homicide through reckless imprudence, in that on June 11, 1951, being then the driver of a motor vehicle with plate No. T-5713-1951, Manila, he drove and operated said vehicle along Rizal Avenue Extension, Manila, in a reckless and imprudent manner, thereby causing it to hit Nicolas Paras, aged 65, and run over his head, crushing it flat, resulting in the latter's instantaneous death.

At the initial stage of the trial of said criminal case, reservation was made by the private prosecutor representing the widow of the deceased, for the filing of a separate civil action, which was in fact subsequently filed.

Notwithstanding his aforementioned reservation, the private prosecutor continued handling the prosecution of the criminal case until trial thereof was terminated. In due time, decision was rendered the dispositive part of which reads:

"Wherefore, finding the accused Juanito Chan y Diala guilty beyond reasonable doubt of the crime as charged in the case at bar, the court hereby sentences said accused Juanito Chan y Diala to one (1) year and eight (8) months of prision correccional, to indemnify the heirs of the victim, Nicolas Paras, in the amount of P5,000.00, with subsidiary imprisonment in case of insolvency, and to pay the costs."

Upon appeal by the accused Juanito Chan, the Court of Appeals, despite the fact that its attention was called to the reservation to file a separate civil action, rendered judgment thus:

"Wherefore, we hereby sentence appellant to undergo an indeterminate penalty of not less than one (1) year and not more than four (4) years of prision correccional. With this only modification, the decision appealed from is hereby affirmed, with costs."

In the civil action filed pursuant to the reservation, it is alleged, inter alia, that defendants Chan Lim Po, Remedios Diala, and Lin Koo, were the operators and owners of truck No. T-5713-1951, registered in the name of defendant Lin Koo, and the driver of said vehicle on June 11, 1951, was defendant Juanito Chan y Diala; that the death of the victim, Nicolas Paras, left destitute his widow, plaintiff Estanislawa Canlas, and their five legitimate children; that defendants operators of the truck in question had committed the unpardonable fault and the imprudence of employing their co-defendant Juanito Chan y Diala to drive said vehicle, knowing as they do that the latter did not then have the necessary license to drive motor vehicles, his license having been confiscated by the authorities for various traffic violations, and knowing, furthermore, that he was insolvent and that he was employed only because he was the son of defendants Chan Lim Po and Remedios Diala.

Defendants, in their answer dated January 2, 1953, alleged that prior to July 4, 1952, the sole owner and operator

of the truck in question was defendant Lim Koo; that on July 4, 1952, said truck was bought by defendant Remedios Diala; that defendant Chan Lim Po, was never co-owner or co-operator of said vehicle; that defendant Juanito Chan y Diala was not employed as driver of said truck on June 11, 1951 when the mishap occurred or at any time before or after said date; and that on the alleged date of the accident, the truck-referred to was out of order and was not used, and was not involved in any accident.

On January 18, 1954 and on April 12, 1957, the case was ordered dismissed and the records sent to the archives, for failure of plaintiff Canlas to prosecute. However, upon plaintiff's motion, on the ground that the reason why she had not asked for the setting of the trial of the civil case was because she was waiting for the outcome of the trial of the criminal case (No. 19353), the present case was ordered reinstated on July 3, 1957.

Finally, on April 7, 1958, this case was heard. Plaintiff presented as her only witness her daughter, Isabel Paras Vda. de Morales, who identified Exhibit A (copy of the decision in Criminal Case No. 19353, CFI Manila) and Exhibit B (copy of the decision of the Court of Appeals in the same criminal case appealed to it—CA-G. R. No. 14463-R). In addition, she testified regarding the earning capacity of her deceased father as carpenter, and the effect of his death upon her, her plaintiff mother, and the other members of the family. Exhibit D was, likewise, offered to show that plaintiff tried to execute the judgment of the Court of Appeals as to the indemnity of P5,000.00, and that defendant Juanito Chan y Diala served the corresponding subsidiary imprisonment, on account of his inability to pay the indemnity.

Counsel for defendants did not cross-examine plaintiff's sole witness, but limited himself to offering, as evidence for defendants, Exhibits 1 and 2, the briefs filed in the Court of Appeals in the criminal action, inviting attention to Exhibits 1-A and 2-A, which apprised the Court of Appeals of the reservation made by counsel for herein plaintiff to file a separate civil action.

In its decision dated April 29, 1958 (the one now on appeal) absolving defendants from the complaint, and dismissing their (defendants') counterclaim, the lower court stated:

"It is the contention of defendants that when the trial court sentenced the accused, Juanito Chan y Diala, in the criminal action, to indemnify the heirs of the deceased Nicolas Paras in the amount of P5,000.00, which sentence was affirmed by the Court of Appeals, despite the aforesaid reservation to file a separate civil action, this constitutes *res judicata*, and is a bar to the present civil action. Defendants claim that while it is true that the reservation was made, nevertheless the same was disregarded by the Court, and abandoned by plaintiff, when judgment was rendered as already stated, without said plaintiff either asking that the indemnity be stricken out, or appealing from the portion of the decision. On the other hand, it appears that plaintiff had tried to execute the judgment for indemnity. The contention referred to is meritorious; and no evidence having been presented against the co-defendants of Juanito Chan y Diala, not even with respect to the relationship of said Juanito Chan y Diala with his co-defendants, it is not seen how this action can prosper.

"WHEREFORE, judgment is hereby rendered, absolving defendants from the complaint, and dismissing defendants' counterclaim, without pronouncement as to costs.

"SO ORDERED."

Her motion for reconsideration of said decision having been denied, plaintiff interposed the present appeal, claiming that the trial court erred—

"1. In holding that Criminal Case No. 19353 of the Court of First Instance of Manila is *res judicata* to the instant case.

"2. In holding that plaintiff-appellant had not presented evidence against other defendants-appellees."

At the outset, let it be said that there seems to be a confusion in the mind of counsel for plaintiff-appellant as to the basis of the complaint, whether it is for the purpose to enforcing the primary civil liability of defendants Chan Lin Po, Remedios Diala, and Lin Koo (the first two, as parents of defendant Juanito Chan y Diala, and the last, as the latter's employer) under Article 2180 of the New Civil Code, or their subsidiary liability under Article 103 of the Revised Penal Code. (See paragraph 11 of the amended complaint, page 34 of the Record on Appeal, which speaks of the primary liability of defendants, and appellant's argument invoking Article 103 of the Revised Penal Code and the cases cited in pages 4 and 5 of appellant's brief, all referring to subsidiary liability.) Be this as it may, the judgment in the criminal case, except as to the fact of commission by the accused of the act charged therein, can not be considered as *res judicata* constituting a bar to the present action, whether it be to enforce the subsidiary or primary liability of defendants who were not parties to the criminal case. The two cases are different in nature and purpose, and they affect different parties. Hence, to the extent that the decision appealed from holds that the present action is barred by the adjudication of indemnity in the criminal case, the same is reversed.

With respect to the second assignment of error, the appeal has no merit. There is absence of proof that the accused Juanito Chan y Diala was an employee (as driver) of defendant Lim Koo at the time of the mishap on June 11, 1951, or that the latter, as his employer was at the time engaged in a business or industry. Exhibit A (decision of the Court of First Instance of Manila in Crim. Case No. 19353) and Exhibit B (decision of the Court of Appeals in CA-G. R. No. 14463-R) presented in evidence by appellant, do not categorically state that said accused was, at the time of the mishap, an employee of said defendant. And, as observed by the trial court in the present case, "no evidence having been presented against the co-defendants of Juanito Chan y Diala, not even with respect to the relationship of said Juanito Chan y Diala with his co-defendants, it is not seen how this action can prosper." Hence, defendant Lim Koo can not be held subsidiarily liable to appellant under Article 103 of the Revised Penal Code.[1] Neither could he be held primarily responsible to appellant under paragraph 5, Article 2180 of the New Civil Code.[2] As already stated, there is no evidence as to the accused's relationship to said defendant. Furthermore, it was not shown that the accused, even as employee of Lim Koo, acted within the scope of his signed task at the time of the mishap. Likewise, defendants Chan Lim Po and Remedios Diala (father and mother of accused) can not be held answerable under paragraph 2, Article 2180 of said Code,[3] there being no proof that said accused was, at the time of the mishap, a minor living in the company of his parents. In fact, there is the finding in the decision of the Court of Appeals (Exhibit B) that he (accused) was at the time of the mishap already a married man. In the circumstances, the dismissal of the present action by the trial court was proper.

The case of *Buyayao, et al. vs. Itogon Mining Co., Inc.* (98 Phil., 931; 52 Off. Gaz., 3075) cited as authority by appellant, is inapplicable. In said case, we affirmed the decision of the trial court holding Itogon Mining Co., Inc. subsidiarily liable (as employer of Alejandro Bentes, convicted of homicide for the killing of one Dalasdas) in the sum of P4,000.00 under Article 103 of the Revised Penal Code, not only due to the finding in the judgment of the Court of Appeals that its employee Bentes "undoubtedly acted in the performance of a duty or in the lawful exercise of a right or office" (because he as policeman of the company shot the deceased when trying to stop and arrest the latter whom he caught stealing ores from the mines of said company), but also because said fact "appear in the Stipulation of Facts", which circumstance does not obtain in the case at bar.

Wherefore, with the modification above indicated, the judgment of the trial court appealed from is hereby affirmed, without costs. So ordered.

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Paredes, Dizon, and Natividad, JJ., concur.

[1] "The subsidiary liability established in the next preceding article also apply to employers, * * * engaged in any kind of industry for felonies committed by their * * * employees, in the discharge of their duties."

[2] "Employers shall also be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry."

[3] "The father and, in case of his death or incapacity, the mother are responsible for the damages caused by the minor children who live in their company."

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