

PILAR JOAQUIN, ET AL., PLAINTIFFS AND APPELLANTS, VS. FELIX ANICETO, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 18719. October 31, 1964*

Ponente: REGALA, J.

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This case comes to Us for review directly from the Court of First Instance of Manila. The facts are not in dispute. They are as follows:

While Pilar Joaquin was on the sidewalk of Aviles Street, Manila, on April 27, 1960, a taxicab driven by Felix Aniceto and owned by Ruperto Rodelas bumped her. As a result, she suffered physical injuries.

Aniceto was charged with serious physical injuries through reckless imprudence in the Municipal Court (now the City Court) of Manila. He was subsequently found guilty and sentenced to imprisonment. However, no ruling was made on his civil liability to the offended party in view of the latter's reservation to file a separate civil action for damages for the injuries suffered by her.

Aniceto appealed the judgment of conviction to the Court of First Instance of Manila. While the criminal case was thus pending appeal, Pilar Joaquin, the injured party, filed this case for damages in the Court of First Instance of Manila, in accordance with the reservation which she had earlier made. Felix Aniceto and Ruperto Rodelas, driver and owner, respectively, of the taxicab were made party defendants.

At the trial of this case, the plaintiff blocked all attempts of Rodelas to prove that, as employer, he had exercised due diligence in the selection and supervision of his employee, on the ground that such a defense is not available in a civil action brought under the Penal Code to recover the subsidiary civil liability arising from the crime. The lower court sustained plaintiff's objection. However, it dismissed the case on the ground that, in the absence of a final judgment of conviction against the driver in the criminal case, any action to enforce the employer's subsidiary civil liability would be premature. Such liability, the trial court added, may only be enforced on proof of the insolvency of the employee. Hence, this appeal.

The issue in the case is: May an employee's primary civil liability for crime and his employer's subsidiary liability therefor be proved in a separate civil action even while the criminal case against the employee is still pending?

To begin with, obligation arise from law, contract, quasi contract, crime and quasi-delict.[1] According to appellant, her action is one to enforce the civil liability arising from crime. With respect to obligations arising from crimes, Article 1161 of the New Civil Code provides:

"Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages." (Italics supplied)

The Revised Penal Code provides in turn that "every person criminally liable for a felony is also civilly liable"[2] and that in default of the persons criminally liable, employers, teachers, persons and corporations engaged in any

kind of Industry shall be civilly liable for felonies committed by their servants, pupils, workmen, apprentices or employees in the discharge of their duties.[3]

As this Court held in *City of Manila vs. Manila Electric Co.*, 52 Phil. 586:

"* * * The penal Code authorizes the determination of subsidiary liability. The Civil Code negatives its applicability by providing that civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code. In other words, the Penal Code affirms its jurisdiction while the Civil Code negatives its jurisdiction."

It is now settled that for an employer to be subsidiarily liable, the following requisites must be present: (1) That an employee has committed a crime in the discharge of his duties; (2) that said employee is insolvent and has not satisfied his civil liability; (3) that the employer is engaged in some kind of industry. (1 Padilla, *Criminal Law*, Re-vised Penal Code 794 [1964])

Without the conviction of the employee, the employer cannot be subsidiary liable.

Now, it is no reason to bring such action against the employer on the ground that in cases of defamation, fraud and physical injuries, Article 33 of the Civil Code authorizes a civil action that is "entirely separate and distinct from the criminal action," (*Carandang vs. Santiago*, 97 Phil., 94; 51 Off. Gaz. 2878; *Reyes vs. De la Rosa*, 99 Phil., 103; 52 Off. Gaz. 6548; *Dyogi vs. Yatco*, G. R. No. L-9623, January 22, 1957.

Can Article 33 above cited be made applicable to an employer in a civil action for subsidiary liability? The answer to this question is undoubtedly in the negative.

What this article 33 authorizes is an action against the employee on his primary civil liability. It cannot apply to an action against the employer to enforce his subsidiary civil liability as stated above, because, such liability arises only after conviction of the employee in the criminal case. Any action brought against him before the conviction of his employee is premature.

In cases of negligence, the injured party or his heirs has the choice between an action to enforce the civil liability arising from crime under Article 100 of the Revised Penal Code and an action for quasi delict under Articles 2176-2194 of the Civil Code. (See *Barredo vs. Garcia and Almario*, 73 Phil. 607; *Parker vs. Panlilio, et al.*, 91 Phil. 1)

If he chooses an action for quasi delict, he may hold an employer liable for the negligent act of the employee, subject, however, to the employer's defense of exercise of the diligence of a good father of the family. (Art. 2180, Civil Code)

On the other hand, should he choose to prosecute his action under Article 100 of the Penal Code, he can hold the employer subsidiarily liable only upon prior conviction of the employee. While a separate and independent civil action for damages may be brought against the employee under Article 33 of the Civil Code, no such action may be filed against the employer on the latter's subsidiary civil liability because such liability is governed not by the Civil Code but by the Penal Code, under which conviction of the employee is a condition sine qua non for the employer's subsidiary liability. If the court trying the employee's liability adjudges the employee liable, but the court trying the criminal action acquits the employee, the subsequent insolvency of the employee cannot make the employer subsidiarily liable to the offended party or to the latter's heirs.

Wherefore, decision appealed from is affirmed, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

[1] Art. 1157, Civil Code.

[2] Art. 100.

[3] Art. 103 in relation to Art. 102.

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