

**ELISEO B. YUSAY AND AIDA O. YUSAY, SPOUSES, PETITIONERS, VS.
HON. MIDPANTAO L. ADIL, AS PRESIDING JUDGE, BRANCH II, CFI OF
ILOILO, THE PROVINCIAL SHERIFF OF ILOILO AND IGMEDIO S...**

G.R. No. 56612. August 18, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

On 5 September 1979, a cargo truck or log leader driven by Rodolfo Guillen figured in a traffic mishap in Jaro, Iloilo City with another cargo truck owned by Igmedio Sumbanon.[1] Thereafter, Guillen was charged in a criminal case for less serious physical injuries and damage to property through reckless imprudence, docketed with the respondent court as Criminal Case No. 11828. Upon arraignment, accused Guillen, assisted by counsel de oficio, entered a plea of guilty. After trial, the respondent Judge found the accused guilty beyond reasonable doubt of the crime charged and sentenced him to imprisonment of one (1) month and one (1) day of arresto mayor, minimum, together with all the accessory penalties, and to pay the costs. In addition, accused was ordered to pay Igmedio Sumbanon, the offended party, the sum of P19,800.00 for the repairs of his damaged cargo truck: P58,800.00 for unearned income; P7,000.00, as moral damages; P5,000.00, as exemplary damages and P2,000.00 as attorney's fee.[2]

A writ of execution was issued against the accused. It was returned unsatisfied on the ground of accused's insolvency. Igmedio Sumbanon then filed a motion for execution of owner/employer's subsidiary civil liability. On 24 October 1980, the respondent court issued an order granting the motion and forthwith ordered the issuance of a writ of subsidiary execution against the spouses Mr. and Mrs. Eliseo Yusay.[3] As stated in said order, Eliseo B. Yusay received a copy of the motion but did not file any objection thereto. His wife, Aida O. Yusay, received a copy of the order and the aforesaid writ of subsidiary execution in the evening of 24 October 1980.

On 4 November 1980, petitioners (Spouses Yusay) filed a motion for reconsideration of the order and subsidiary writ of execution.[4] Upon denial of the motion, a second motion for reconsideration was filed, which was likewise denied in an order dated 27 January 1981.[5]

The case is now before this Court on a petition by said spouses Yusay for certiorari with prayer for preliminary mandatory and/or prohibitory injunction, and damages. On 10 April 1981, the Court issued a temporary restraining order[6] which was subsequently amended in the resolution, dated 3 June 1981, directing the Provincial Sheriff and his deputy to show cause why they should not be disciplinarily dealt with or held in contempt for enforcing and carrying out the subsidiary writ of execution when no such execution is allowed pursuant to the temporary restraining order issued by the Court on 10 April 1981 enjoining them from enforcing or carrying out any alias subsidiary writs of execution and ordering them to return to petitioners or third parties all properties theretofore seized.[7]

Since *Martinez v. Barredo*, the rule has been that a judgment of conviction sentencing the defendant-employee to pay indemnity is conclusive in an action against his employer for the enforcement of the latter's subsidiary

liability under Articles 102 and 103 of the Revised Penal Code. In said case, the Court ruled:

"After very careful reflection, we have arrived at the opinion that the judgment of conviction, in the absence of any collusion between the defendant and the offended party should bind the person subsidiarily liable. The stigma of a criminal conviction surpasses in effect and implications mere civil liability. Common sense dictates that a finding of guilt in a criminal case in which proof beyond reasonable doubt is necessary, should not be nullified in a subsequent civil action requiring only preponderance of evidence to support a judgment, unless those who support the contrary rule should also hold that an absolution in a civil case will operate to automatically set aside the verdict against the defendant in the criminal case. It is anomalous, to say the least, to suppose that the driver, excelling "Dr. Jekyll and Mr. Hyde", could be guilty of reckless negligence in so far as his obligation to pay indemnity is concerned, and at the same time could be free from any blame when said indemnity is sought to be collected from his employer, although the right to the indemnity arose from and was based on one and the same act of the driver." [8]

The same rule was reiterated in *Fernando v. Franco*, thus:

"It is beyond dispute that a judgment of conviction in the case of a driver accused of homicide through reckless imprudence, there being no collusion between the accused and the offended party, conclusively binds the employer to answer subsidiarily for the damages awarded. So it has been since the leading case of *Martinez v. Barredo*. Necessarily then, in this appeal from a judgment of the Court of First instance of Ilocos Norte holding defendant-appellant Anastacio Franco, as employer, liable for the indemnity awarded, the plaintiffs-appellees, the heirs of the deceased who met his death as a result of being run over by a driver of a passenger truck owned by defendant-appellant and thereafter prosecuted and convicted for the crime of homicide through reckless imprudence, the only way responsibility may be avoided by defendant-appellant for the amount in question is for a legal defense sufficient in law to defeat such a claim. x x x" [9]

In *Pajarito v. Seneris*, [10] the case relied upon by the respondent court, but assailed by petitioners herein as not applicable in the case at bar, this Court stated:

"Pursuant to Article 103, in relation to Article 102, of the Revised Penal Code, an employer may be subsidiary (sic) liable for the employee's civil liability in a criminal action when: (1) the employer is engaged in any kind of industry; (2) the employee committed the offense in the discharge of his duties; and (3) he is insolvent and has not satisfied his civil liability. The subsidiary civil liability of the employer, however, arises only after conviction of the employee in the criminal case. In *Martinez v. Barredo*, this Court ruled that a judgment of conviction sentencing a defendant employee to pay an indemnity, in the absence of any collusion between the defendant and the offended party, is conclusive upon the employer in an action for the enforcement of the latter's subsidiary liability." [11]

The Court, in *Miranda v. Malate Garage and Taxicab, Inc.* ruled that the decision convicting the employee is binding and conclusive upon the employer "not only with regard to its civil liability but also with regard to its amount because the liability of an employer cannot be separated but follows that of his employee. That is why the law says that his liability is subsidiary (Art. 103, Revised Penal Code). To allow an employer to dispute the civil liability fixed in the criminal case would be to amend, nullify or defeat a final judgment rendered by a competent court." [12]

In the instant case, the spouses Yusay do not deny that, while the cargo truck in question was not registered in their names but in the name of the Calinog - Lambunao Sugarmill, Inc. by virtue of a contract to sell between the spouses, as vendees, and the latter, as vendor, with reservation of ownership on the part of the vendor, until final payment has been made, yet the contract provides that responsibility for any and all damages arising from the operation of the vehicle is for the account of the petitioners, the spouses Yusay. The latter cannot, therefore, escape subsidiary civil liability under the law.

Petitioners contend that they were not informed of Criminal Case No. 11828 nor heard therein, in the matter of their alleged subsidiary civil 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 vs. 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 civil liability but also his employer's subsidiary liability for such criminal negligence (*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.)."[13]

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 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 vs. Barredo*, supra.)."[14]

WHEREFORE, the petition is DISMISSED. The temporary restraining order issued by the Court on 10 April 1981 and the amended restraining order dated 3 June 1981 are hereby LIFTED. With costs against petitioners.

SO ORDERED.

Melencio-Herrera, (Chairperson), Paras, and Sarmiento, JJ., concur.

- [1] P. 2, Sentence; CFI of Iloilo, Branch II
- [2] Pp, 3-4, Sentence.
- [3] Annex II, p. 24, Rollo; Annex III, p. 25, Rollo
- [4] Annex V, p. 28, Rollo
- [5] Annex VIII, p. 53, Rollo
- [6] P. 58, Rollo
- [7] P. 153, Rollo
- [8] 81 Phil. 1, 3, G.R. No. L-49308, May 13, 1948
- [9] 37 SCRA 311, 313, G.R. No. L-27786, January 30, 1971.
- [10] 67 SCRA 275, G.R. No. L-44627, December 14, 1978
- [11] P. 280, Id.
- [12] 99 Phil. 670, 673-674, G.R. No. L-8943, July 31, 1956
- [13] 81 Phil. 1, 3, G.R. No. L-49308, May 13, 1948
- [14] Miranda vs. Malate Garage and Taxicab, Inc., 99 Phil. 670, 675

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