

**MAXIMILIANO ALVAREZ, PETITIONER, VS. HON. COURT OF APPEALS, HON. MILAGROS V. CAGUIOA, AS PRESIDING JUDGE OF BRANCH VIII, COURT OF FIRST INSTANCE OF QUEZON &#038; LUCENA CITY, ATTY. ...**

*G.R. No. 59621. February 23, 1988*

Ponente: PADILLA, J.

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**PADILLA, J.:**

Petition for review on certiorari of the Resolution[\*] of the Court of Appeals dated 23 October 1980 in CA-G.R. No. SP-10069, entitled "Maximiliano Alvarez, petitioner, versus Hon. Milagros V. Caguioa, etc. et al., respondents" setting aside its earlier decision of 16 May 1980[\*\*], and the Resolution dated 20 January 1982 denying petitioner's Motion for Reconsideration of the Resolution of 23 October 1980.

Renato Ramos was charged with Double Homicide with Multiple Serious Physical Injuries Through Reckless Imprudence in the Court of First Instance of Quezon Province. After trial, the court rendered judgment against the accused, the dispositive part of which reads as follows:

"This Court, therefore, finds the accused Renato Ramos guilty of negligence and sentences him to pay a fine of TWO HUNDRED (P200.00) PESOS, with subsidiary imprisonment in case of insolvency. He is civilly liable for the death and physical injuries that resulted from the collision of the sakbayan and the weapon's [sic] carrier. He should indemnify the heirs of the deceased Rodolfo Briones, the amount of TWELVE THOUSAND (P12,000.00) PESOS, as actual damages; the heirs of the deceased Juan Briones, the amount of TWELVE THOUSAND (P12,000.00) PESOS, as actual damages; Socorro Briones, the amount of FIFTEEN THOUSAND (P15,000.00) PESOS, hospitaliza-tion and burial expenses; Exaltacion de Gala, the amount of THREE THOUSAND (P3,000.00) PESOS, hospitalization and incidental expenses; Basi-lica de Gala, the amount of THREE THOUSAND (P3,000.00) PESOS, hospitalization and incidental expenses; to Joselito Leonor and Cenon Leonor, for actual damages and for permanent facial de-formity, the amount of FIFTEEN THOUSAND (P15,000.00) PESOS and for attorney's fees, the amount of TWO THOUSAND (P2,000.00) PESOS. x x x

"The records show that Maximiliano Alvarez is engaged in his business of buying coconuts and copra for resale, therefore, he is 'x x x engaged in any kind of industry x x x'. He should, therefore, be subsidiarily liable and pay the amount above-mentioned to the persons concerned jointly and severally with Renato Ramos. The bail bond filed by the accused Renato Ramos for his provisional liberty is hereby ordered cancelled"[1].

The accused appealed to the Court of Appeals, where the appeal was docketed as CA-G.R. No. 19077-CR. On 13 Decem-ber 1977, the Court of Appeals affirmed the trial court's decision but deleted that part thereof making herein petitio-ner, as employer of Renato Ramos, subsidiarily liable for payment of the adjudged indemnities to the offended parties. The Court of Appeals, in said CA-G.R. No. 19077-CR, reasoned thus:

"There is merit in the appellant's conten-tion that the trial court erred in ordering Maximiliano Alvarez to be subsidiarily liable with the appellant in the payment of the indemnities awarded in favor of the offended parties

and the heirs of the deceased. Maximiliano Alvarez is not a party in this action. Altho it is the law that employers are subsidiarily liable for the civil liability of their employees for felonies committed in the discharge of the latter's duties if they are engaged in any kind of industry (Art. 103, Revised Penal Code), such sub-sidiary liability is not litigated in connection with the criminal prosecution of the employees and may not therefore be adjudged therein (Philippine Railways Company v. Jalandoni, CA, 40 O.G. 19). It is true that the judgment of conviction in the criminal case binds the person subsidiarily liable with the accused (Martinez v. Barredo, 81 Phil. 1), and it is therefore the duty of the employer to participate in the defense of his employee (Miranda v. Malate Garage, 99 Phil. 670). The law, however, does not authorize that the subsidiary liability of the employer be adjudged in the criminal action. This is because, in the criminal proceeding, the employer, not being a party, is denied the opportunity to present his defense against such subsidiary liability, such as, his not being engaged in any kind of industry or that the crime committed by his employee was not on the occasion of the discharge of the latter's duties. Due regard to due process and observance of procedural requirements demand that a separate action should be filed against the supposed employer to enforce the subsidiary liability under Article 103 of the Revised Penal Code"[2].

The appellate court's decision in CA-G.R. No. 19077-CR was not appealed. Meanwhile, on 14 December 1978, Pajarito v. Seneris [3] was decided by this Court, holding inter alia that -

"Considering that the judgment of conviction, sentencing a defendant employee to pay an indemnity under Articles 102 and 103 of the Revised Penal Code, is conclusive upon the employer not only with regard to the latter's civil liability but also with regard to its amount, xxx in the action to enforce the employer's subsidiary liability, the court has no other function than to render decision based upon the indemnity awarded in the criminal case and has no power to amend or modify it even if in its opinion an error has been committed in the decision.

In view of the foregoing principles, xxx it would serve no important purpose to require petitioner to file a separate and independent action against the employer for the enforcement of the latter's subsidiary civil liability. Under the circumstances, it would not only prolong the litigation but would require the heirs of the deceased victim to incur unnecessary expenses. At any rate, the proceeding for the enforcement of the subsidiary civil 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. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution.

x x x. Indeed, the enforcement of the employer's subsidiary civil liability may be conveniently litigated within the same proceeding because the execution of the judgment is a logical and integral part of the case itself. This would certainly facilitate the application of justice to the rival claims of the contending parties. "The purpose of procedure", observed this Court in Manila Railroad Co. v. Attorney General, "is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of the contending parties. It was created not to hinder and delay but to facilitate and promote the administration of justice." In proceedings to apply justice, it is the duty of the courts "to assist the parties in obtaining just, speedy, and inexpensive determination" of their rival claims. Thus, the Rules require that they should be liberally construed "to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceedings"[4].

After finality of the Court of Appeals judgment in CA-G.R. No. 19077-CR, the case was remanded to the trial court where, on 2 July 1979, the private prosecutor filed a "Motion for Issuance of Subsidiary Writ of Execution" after the writ of execution against the accused was returned unsatisfied on 27 February 1979 [5]. Petitioner opposed the Motion. However, on 14 November 1979, respondent Judge ordered the issuance of the subsidiary writ of execution. A motion for reconsideration of this order was denied in an order dated 26 November 1979.

Consequently, on 29 November 1979, petitioner filed a petition for certiorari with the Court of Appeals, questioning the acts of the respondent Judge and the Sheriff who had levied on his properties pursuant to said subsidiary writ of execution. The petition was docketed as CA-G.R. No. SP?10069.

On 16 May 1980, the Court of Appeals granted the petition and declared the Orders of the respondent Judge, dated 14 November 1979 and 26 November 1979, as well as the Subsidiary Writ of Execution issued on 15 November 1979 null and void. It reasoned that, as its judgment in the criminal case (CA-G.R. No. 19077-CR) was promulgated on 13 December 1977, whereas, Pajarito was promulgated by the Supreme Court only on 14 December 1978, the final judgment in the criminal case, which expressly declared that a separate action should be instituted to enforce petitioner's subsidiary civil liability, had long become the "law of the case"[6] and, therefore, prevails.

On 24 July 1980, respondents filed a Motion for Reconsideration. On 23 October 1980, the Motion was granted and the decision of 16 May 1980 was set aside on the strength of the Pajarito decision. Said the Court of Appeals:

"The doctrine of the "law of the case" is ordinarily a very wise rule of action, but it is not a universal, inexorable command. For while the doctrine is generally deemed applicable whether the former determination is right or wrong, (Wills vs. Lloyd, 21 Cal. 2d 452, 132 p. 20 471, 474; In re Taylor's Estate, 110 Vt. 80, 2 A. 2d 317, 319; Greenwood Country vs. Watkins, 196 S.C. 51, 12 S. E. 2d 545, 550), there are some cases which hold that the doctrine is in-applicable where [the] prior decision is unsound (Standard Oil Co. of California vs. Johnson, 56 Cal. App. 2d 411, 132 P. 2d 910, 913; Atchison T. & S.F. Ry Co. vs. Ballard, C.C.A. Tax., 108 F. 2d 768, 772); or incorrect principles were announced or [a] mistake of fact was made on first appeal. (Nation of Match Co. vs. Empire Storage & Ice Co., 227 Mo. Supp. 115, 58 S.W. 2d 997; Morris vs. E.I. Du Pont De Nemours & Com; 346 Mo. 126, 139 S.W. 2D 984, 986, 129 A.L.R. 352).

It is a peculiar virtue of our system of law that in the search for truth through the process of inclusion and exclusion, it behooves us to correct the application of the doctrine of "the law of the case" upon such questions which prove to have been mistaken.

xxx [T]he Honorable Supreme Court in the case of Lucia Pajarito vs. Hon. Alberto V. Seneres, et. al. (G.R. No. L-44627, December 14, 1978; 87 SCRA 275) has definitely set the rule that: -

"x x x considering that Felipe Aizon does not deny that he was the registered operator of the bus x x x, it would serve no important purpose to require petitioner to file a separate and independent action against the employer for the enforcement of the latter's subsidiary civil liability x x x. At any rate, the proceeding for the enforcement of the subsidiary civil 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."

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Indeed, the enforcement of the employer's subsidiary civil liability may be conveniently litigated within the same proceeding because the execution of the judgment is a logical and integral part of the case itself." (pp. 282, 283)

[W]hile We had, by our Decision in CA-G.R. No. 19077-CR, modified the decision of the trial court when, among such modifications. We deleted the trial court's direction, in the dispositive portion of said decision, that Maximiliano Alva-rez "should, therefore, be subsidiarily liable and pay the amount above-mentioned to the persons concerned jointly and severally with Renato Ramos", and all other references of the trial court of

Articles 102 and 103 of the Revised Penal Code, yet such modification does not reduce the effectiveness nor prevent the application of the ruling laid down in the case of Lucia S. Pajarito vs. Hon. Alberto V. Seneres, et. al. Indeed, it was not necessary at all for the trial court to have pronounced, in the dispositive portion of its decision, on the subsidiary liability of the employer, Maximiliano Alvarez, because the provisions of the Revised Penal Code on subsidiary liability (Articles 102 and 103) are deemed written in the judgment in the respective cases in which they are applicable. In a word, such a pronouncement and a direction of such subsidiary liability is a surplusage, although we should not, in the least, begrudge the trial court in having done so. It was, perhaps, to him, an attempt to be emphatic, or if not, a matter of legal taste than an answer to a legal requirement. In other words, even if the pronouncement and direction of the subsidiary liability of the employer were not written in the dispositive portion of the decision, or any part of the decision for that matter, just the same the trial court, upon the finality of its decision, can order the employer, on its subsidiary liability, to answer for the civil liability of the convicted employee, if the latter is shown to be unable to satisfy his civil liability because of his insolvency.

"To underscore, Our deletion from Our decision in CA-G.R. No. 19077-CR, therefore, of the trial court's pronouncement and directions on the subsidiary liability of Maximiliano Alvarez would have not prevented the respondent court from issuing the writ of subsidiary execution and all other matters now under question.

"On the issue of the deprivation of the employer of due process, unless he is allowed his day in court in the enforcement of his subsidiary liability in a separate civil action, the Honorable Supreme Court, citing relevant holdings in previous cases said:

"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 articles 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. (Almeda et al. vs. Albaroa, 8 Phil. 178, affirmed in 218 U.S. 476, 54 Law ed., 116; 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)" (Martinez vs. Barredo, 81 Phil. 1).

Then, the Supreme Court went on to say:

"In Miranda vs. Malate Garage & Taxicab Inc. this Court further amplified the rule that the decision convicting the employee is binding and conclusive upon the employer, "not only with regard to (the latter's) civil liability but also with regard to its amount because the liability of an employer can not be separated but follows that of his employee xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx And this Court, in Miranda, further explained that the employer is in substance and in effect a party to the criminal case, considering the subsidiary liability imposed upon him by law.

"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."

"This is the rule that governs the case at bar. It does not matter now that Our decision in CA-G.R. No. 19077-CR was promulgated on December 13, 1977 while the case of Pajarito vs. Seneris was promulgated later on on [sic] December 14, 1978. This fact alone would not prevent the application of the Pajarito vs. Seneris ruling to the

execution of the case at bar, because, firstly, the Seneris case is merely a reiteration and perhaps an amplification of the previous rulings in the Miranda and the Martinez cases adopted much earlier than the rendition of the trial court's decision, subject of the appeal in CA-GR. No. 19077-CR; and secondly, because, for all purposes of the execution of Our decision in CA-G.R. No. 19077-CR, the said case is still pending and there is no legal impediment to the application, even retroactively if private respondents think it that way, of the Seneris ruling to the execution of Our decision.

"We hold, therefore, that the respondent Court has not committed any grave abuse of discretion in the issuance of the questioned orders for such issuance has been made in pursuance of law and jurisprudence.

"WHEREFORE, We set aside Our decision promulgated on May 16, 1980, and enter another dismissing the instant petition for lack of merit. With costs against petitioner"[7].

Petitioner filed a motion for reconsideration of the above Resolution. He pointed out that the 16 May 1980 decision of the Court of Appeals had already become final and executory when respondents, through counsel, filed their Motion for Reconsideration, hence, the Court of Appeals no longer had jurisdiction to reverse itself. He argued that the 16 May 1980 decision was already the "law of the case" as far as petitioner's subsidiary liability is concerned, notwithstanding Pajarito.

Petitioner also cited the "bad faith" of respondents' counsel in deliberately instructing his clerks not to receive the 16 May 1980 decision on the day of its service on 22 May 1980, while he was still in the United States, with the consequent finality of the decision thirty (30) days from the day it should have been received by respondents' counsel. Respondents could not, according to petitioner, have belatedly asked for reconsideration on 24 July 1980[8]. He further pointed to the non-existence of the Pajarito doctrine on 13 December 1977, the day judgment of conviction against the accused employee Renato Ramos was affirmed by the Court of Appeals, excluding the trial court's order finding petitioner-employer subsidiarily liable in case Ramos was found insolvent.

The Court of Appeals denied petitioner's motion for reconsideration in its Resolution dated 20 January 1982.

Hence, petitioner's present recourse to this Court. The petition is not impressed with merit.

While counsel for respondents could have been more efficient and even scrupulous in the receipt of the adverted to decision of 16 May 1980, his censurable act cannot be made the basis for a strict and rigorously technical interpretation of procedural rules on grounds which do not touch on the merits of the criminal case but will only needlessly prolong its course and unjustly delay relief to the victims of petitioner-employer's criminally negligent driver.

It is already a settled rule that the subsidiary liability of an employer automatically arises upon his employee's conviction, and subsequent proof of inability to pay. In this light, the application of Pajarito is merely the enforcement of a procedural remedy designed to ease the burden of litigation for recovery of indemnity by the victims of a judicially-declared criminally negligent act.

As has been aptly stated,

"A separate civil action may be warranted where additional facts have to be established or more evidence must be adduced or where the criminal case has been fully terminated and a separate complaint would be just as efficacious or even more expedient than a timely remand to the trial court where the criminal action was decided for further hearings on the civil aspects of the case. xxx These do not exist in this case. Considering moreover the delays suffered by the case in the trial, appellate, and review stages, it would be unjust to the complainants in this case to require at this time a separate civil action to be filed"[9]. (Emphasis supplied)

Moreover, the principle of "law of the case" as discussed in *People vs. Pinuila*[10] is not applicable to a Court of Appeals decision at odds with this Court's decision, and where the Supreme Court still has the power to decide on the applicable doctrine to the issue at hand. The rule cannot be utilized to accomplish injustice or manifest delay in the execution of justice. The principle is merely a rule of convenience and public policy to stabilize judicial decisions of tribunals of coordinate jurisdiction, to prevent re-litigation of questions in the same action, and to obviate undue prolongation of litigation, purposes which would be negated if Pajarito were not to be applied in this case simply because of purely technical reasons not touching on the merits of the case.

One last word: there is sufficient evidence to hold that counsel for respondents, Felicisimo S. Garin, deliberately skirted the first service on him of the Court of Appeals judgment of 16 May 1980. He wanted it served on him at his own convenience. We note his action with great disapproval. As an officer of the court, he must conduct himself with candor and sincerity. He is warned that any repetition of this or similar misconduct will be dealt with severely.

WHEREFORE, the petition is hereby DENIED. The Resolutions of the Court of Appeals, dated 23 October 1980 and 20 January 1982, are AFFIRMED. Costs against the petitioner.

### **SO ORDERED.**

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

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[\*] Penned by Justice Elias B. Asuncion with the concurrence of Justice Guillermo P. Villazor and concurrence in the result of Justice Oscar R. Victoriano.

[\*\*] In CA-G.R. No. 10069-SP, penned by Justice Corazon Juliano-Agrava, with the concurrence of Justices Guillermo P. Villazor and Elias B. Asuncion.

[1] Rollo at 61

[2] Rollo at 74-75

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

[4] Id at 282-283

[5] Rollo at 77

[6] Rollo at 171-172

[7] Rollo at 190-194

[8] REVISED RULES OF COURT, Sec. 3, Rule 41, now Sec. 39 BP Blg. No. 129, otherwise known as the Judiciary Act of 1981, which has reduced the period within which appeal may be taken to fifteen (15) days, except in habeas corpus cases.

[9] *Padilla vs. CA*, 129 SCRA 559, 570 (1984)

[10] 103 Phil. 992 (1958). "'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irre-vocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court," et seq. (Id at 999).

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