

VIRGILIO OZOA, PETITIONER, VS. CARIDAD VDA. DE MADULA, HON. CELSO LARGO, ETC., AND PROVINCIAL SHERIFF OF BUKIDNON, RESPONDENTS.*G.R. No. 62955. December 22, 1987*

Ponente: NARVASA, J.

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In this special civil action of certiorari and prohibition, we are asked by the petitioner to annul and set aside the Order of respondent Judge which denied his appeal -- and his motion to recall a writ of execution for the enforcement of his subsidiary civil liability under Article 103 of the Revised Penal Code, i.e., to answer for his employee's own liability arising from the felony of which the latter had been convicted.[1]

Petitioner Ozoa was the employer of Policarpio Balatayo, who was convicted by the Court of First Instance of Bukidnon of homicide with serious physical injuries thru reckless imprudence, under an information[2] pertinently reading as follows:

"That on or about the 9th day of February, 1976, in the evening, at the * * municipality of Libona, province of Bukidnon ** the accused, who was the driver of Weapons Carrier truck bearing Plate No. T-528-73 owned by Virgilio Ozoa, did then and there wilfully, unlawfully and feloniously drive fast and operate the said vehicle in a negligent, careless and imprudent manner in disregard of traffic rules and regulations and as a result thereon ran over Arcadio Madula Lagas, inflicting on his person ** (certain specified) injuries ** which resulted in his instantaneous death and inflicting serious physical injuries on Nenito Ayag y Regidor."

Balatayo was convicted on the strength of his plea of guilty, which he entered after withdrawing his initial plea of not guilty.¹ He was sentenced to "undergo imprisonment ranging from SIX (6) MONTHS of arresto mayor, as minimum, to THREE (3) YEARS, SIX (6) MONTHS and TWENTY-ONE (21) DAYS of prision correccional, as maximum." He was further sentenced "to indemnify the heirs of the deceased Arcadio Madula Lagas in the amount of P12,000.00 and Nenito Ayag Y. Regidor, the amount of P3,000.00 without subsidiary imprisonment in case of insolvency, to suffer the accessory penalties provided by law, and to pay the costs."²

The judgment of conviction having become final, a writ of execution issued at the instance of the widow of the deceased (Caridad Madula, herein private respondent), for the enforcement of the defendant's civil liability. The writ was however returned unsatisfied by reason of the insolvency of the accused.

The widow Madula then moved for the issuance of a writ of execution against the accused's employer, Ozoa. Ozoa opposed the motion. He stated that the widow had executed an "Affidavit of Desistance" acknowledging full satisfaction of civil liability; and a separate civil case "should and must be ventilated ** in order that the Court can acquire jurisdiction over ** (his) person ** so that the employer-employee relationship could be established and to afford ** (him) the opportunity to prove his defense."³

The Court held a hearing on the motion. It received evidence on the issues, presented by the widow-movant as

well as Ozoa. In addition to the fact that execution against the accused Balatayo had been returned unsatisfied on account of his insolvency, not disputed, the Court found other facts to have been adequately proven by the evidence adduced by both parties, to wit:

- 1) Ozoa was the employer of Balatayo, and was a businessman engaged in the hauling of corn, these being admitted by him in his affidavit marked Exhibit "F".
- 2) Ozoa promised to pay the widow Madula P6,000 and thus persuaded her to sign an affidavit of desistance (marked Exhibit 1), but this amount was never paid. The only amount in fact given by Ozoa was P1,500.00, which was used to defray the burial expenses.⁴

Upon these facts, the Court a quo directed execution against Ozoa. In support of its ruling the Court placed reliance on Article 103, in relation to Article 102, of the Revised Penal Code, declaring the employer subsidiarily responsible for the civil liability of his employee when the latter is insolvent; to *Miranda v. Malate Garage, etc.*, 99 Phil. 670, holding that the conviction of the employee is binding and conclusive upon the employer not only with regard to the civil liability but also as to its amount because the employer's liability is inseparable from and indeed follows that of the employee; and to *Pajarito v. Seneris*, 87 SCRA 275, holding that in substance and in effect, the employer is a party to the criminal action where his employee's civil liability is adjudged.

Ozoa filed a notice of appeal, and a motion to recall the writ of execution. Madula opposed the appeal, and in turn moved for the issuance of an alias writ of execution.

By Order dated May 12, 1982, the Trial Court denied Ozoa's appeal and his motion to recall writ. The Court declared that on account of Ozoa's failure to submit an appeal bond and a record on appeal, only a notice of appeal having been filed by him, his appeal had not been perfected within the reglementary period of 30 days; and that, moreover, the correct remedy was not appeal but the special civil action of certiorari.¹ Ozoa moved for reconsideration and for quashal of the execution issued against him. His motion was denied.

This Order of May 12, 1982 is now challenged by Ozoa before us. He contends that the order should be annulled because tainted by grave abuse of discretion. He argues that -

1. An employer may appeal from an order finding him subsidiarily civilly liable in the same criminal proceeding and in the same manner as in appeals in criminal cases.
2. It was error for the Trial Court to deny his appeal for failure on his part to submit a record on appeal and an appeal bond because in appeals in criminal cases, only a notice of appeal need be filed to perfect the appeal; and he did file the requisite notice of appeal within 15 days from notice of the order declaring him subsidiarily liable, i.e., within the period prescribed for appeals in criminal cases. An employer should be allowed to appeal as regards the civil aspect of the criminal case, since a new and different matter is involved, and the judgment declaring him liable can not be deemed to have become final merely because the criminal action has itself become final.
3. It was beyond the power of the Court a quo to issue an alias writ of execution after the perfection of the appeal. The perfection of the appeal causes the Court to lose jurisdiction over the case.

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.¹ 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.

But the foregoing statement does not exhaust the entirety of the rules relevant and applicable to the juridical situation under consideration. There is the additional precept, of which sight should not be lost because essential to due process, that before the employer's subsidiary liability is exacted, there must be adequate evidence establishing that (1) he is indeed the employer of the convict; (2) that he is engaged in some kind of industry; (3) the crime was committed by the employee in the discharge of his duties; and (4) execution against the employee is unsatisfied.² The determination of these issues need not be done in a separate civil action. But a determination there must be, on the basis of evidence that the offended party and the employer may fully and freely present; and this may be done in the same criminal action at which the employee's liability, criminal and civil, has been pronounced. It may be done at a hearing set for that precise purpose, with due notice to the employer, "as part of the proceeding for the execution of the judgment."³

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,⁴ or through a petition for review on certiorari, limited to a consideration only of questions of law.⁵ 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.⁶

Now, there is no explicit rule or law governing the situation dealt with in the case at bar, at least as to the precise manner and time in which an appeal may be taken from any adjudgment of an employer's subsidiary civil liability. This is not surprising since the basic proposition itself -- that adjudication of the employer's subsidiary civil liability need not be done by separate suit against the employer but merely in the same criminal action which resulted in the judgment declaring the employee liable both criminally and civilly -- has not been laid down by legislation, but by judicial construction of related statutory provisions. A party should not therefore be strictly held to account for any mistake as to the proper mode of appeal in such a situation which, as it were, is yet largely uncharted territory.

It does not seem reasonable to apply the rules on appeal in civil actions. The proceeding in question was not after all a civil action, but one considered a part or a continuation of the criminal action. The more logical step then is to apply the corresponding rules in criminal cases, which provide that an appeal is taken simply by filing a notice of appeal within fifteen (15) days from notice or promulgation of the judgment.¹

The private respondent's theory, on the other hand, that this fifteen-day period for appeal should be reckoned from the time the accused pleaded guilty and commenced to serve sentence, on May 17, 1978, and not from the issuance of the Order for the execution of the judgment against Ozoa on May 12, 1982, is obviously incorrect. There is no occasion to speak of enforcing the employer's subsidiary civil liability until and unless it appears that the employee's primary liability cannot in the first instance be satisfied by reason of insolvency. This fact cannot, in the very nature of things, be known until some time after the verdict of conviction shall have become final. And even if it appear *prima facie* that execution against the employee cannot be satisfied, execution against the employer will not issue as a matter of course. There must first be, as above pointed out, a determination that the convict was in truth in the employ of the employer, that the latter is engaged in some kind of industry, and the employee committed the crime to which civil liability attaches while in the performance of his duties as such. It is from this Court order embodying that determination that an appeal should be taken; and it is from notice of this order that the 15-day period of appeal must be counted.

The Trial Court's view that the remedy against an order of execution is not appeal but the special civil action of certiorari, is not correct either. As already above declared, the appropriate remedy is either an appeal by writ of error or by certiorari, depending on the nature of the questions sought to be raised. Exceptionally, the special civil action of certiorari may be resorted to as a vehicle for review if the claim be of lack or excess of jurisdiction, or the attendance of grave abuse of discretion, in the issuance of the order of execution. Parenthetically, even if the appeal were mistakenly directed to the Court of Appeals despite raising only questions of law, the mistake would not be fatal. The appeal would not be dismissed but referred to the Supreme Court "with a specific and clear statement of the grounds therefor."²

It was therefore error for the Trial Court to have declined to give due course to Ozoa's appeal. Under ordinary circumstances, this error should suffice to justify reinstatement of Ozoa's appeal and directing its referral to the Court of Appeals in due course. To do so however would only prolong the litigation to no valid purpose, and to the prejudice of the parties entitled to execution of judgment.

There is in fact no need for any further proceedings in this case. We have gone over the record quite carefully and are convinced that Ozoa's subsidiary civil responsibility has been duly established by the evidence. That evidence was presented at a hearing at which Ozoa was given opportunity to submit, as he did submit proofs in his behalf. We agree that the facts proven adequately demonstrate the existence of the requisites for holding Ozoa subsidiarily liable as an employer under Article 103 of the Revised Penal Code, specified earlier in this opinion.

WHEREFORE, the petition is dismissed. The case is remanded to the Trial Court which is hereby directed forthwith to cause execution against the properties of petitioner Ozoa for the satisfaction of his subsidiary civil liability in accordance with its decision dated May 7, 1978. No pronouncement as to costs.

Teehankee, C.J., Cruz, Paras, and Gancayco, JJ., concur.

[1] Criminal Case No. 1812; Order dated May 12, 1982, *infra*

[2] Rollo, p. 28

1 He subsequently moved to withdraw the plea of guilty and substitute it for one of not guilty; but this was denied.

2 *Id.*, pp. 28-30

3 *Id.*, p. 23

4 *Id.*, pp. 24-25

1 *Id.*, p. 21

1 Sec. 1, Rule 111 of the Rules of Court of 1964, in force at the time

2 Article 103, Revised Penal Code; *Pajarito v. Seneris*, 87 SCRA 275, 284

3 *Pajarito v. Seneris*, 87 SCRA 275, 283, *supra*. N.B. Such a proceeding is analogous to that designed to hold sureties on a bond for attachment, injunction, receivership or writ of seizure, liable upon their bond (Sec. 20, Rule 57; Sec. 9, Rule 58; Sec. 9, Rule 59; Sec. 10, Rule 60).

4 Rule 41, Rules of Court

5 Rule 45, Rules of Court

6 Rule 65, Rules of Court

1 Secs. 3 and 6, Rule 122

2 Sec. 3, Rule 50

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