

**DIONISIO CARPIO, PETITIONER, VS. HON. SERGIO DOROJA,
(PRESIDING JUDGE, MTC, BRANCH IV, ZAMBOANGA CITY) AND
EDWIN RAMIREZ Y WEE, RESPONDENTS.**

G.R. No. 84516. December 05, 1989

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a petition to review by certiorari the decision of the Municipal Trial Court of Zamboanga City, Branch IV, which denied petitioner's motion for subsidiary writ of execution against the owner-operator of the vehicle which figured in the accident.

The facts of the case are undisputed.

Sometime on October 23, 1985, accused-respondent Edwin Ramirez, while driving a passenger Fuso Jitney owned and operated by Eduardo Toribio, bumped Dionisio Carpio, a pedestrian crossing the street, as a consequence of which the latter suffered from a fractured left clavicle as reflected in the medico-legal certificate and sustained injuries which required medical attention for a period of (3) three months.

An information for Reckless Imprudence Resulting to Serious Physical Injuries was filed against Edwin Ramirez with the Municipal Trial Court of Zamboanga City, Branch IV. On January 14, 1987, the accused voluntarily pleaded guilty to a lesser offense and was accordingly convicted for Reckless Imprudence Resulting to Less Serious Physical Injuries under an amended information punishable under Article 365 of the Revised Penal Code. The dispositive portion of the decision handed down on May 27, 1987 reads as follows:

"WHEREFORE, finding the accused EDWIN RAMIREZ y WEE guilty as a principal beyond reasonable doubt of the Amended Information to which he voluntarily pleaded guilty and appreciating this mitigating circumstance in his favor, hereby sentences him to suffer the penalty of One (1) month and One (1) day to Two (2) months of Arresto Mayor in its minimum period. The accused is likewise ordered to indemnify the complainant Dionisio A. Carpio the amount of P45.00 representing the value of the 1/2 can of tomatoes lost; the amount of P200.00 which complainant paid to the Zamboanga General Hospital, to pay complainant the amount of P1,500.00 as attorney's fees and to pay the cost of this suit.

"SO ORDERED." (p. 7, Rollo)

Thereafter, the accused filed an application for probation.

At the early stage of the trial, the private prosecutor manifested his desire to present evidence to establish the civil liability of either the accused driver or the owner-operator of the vehicle. Accused's counsel moved that the court summon the owner of the vehicle to afford the latter a day in court, on the ground that the accused is not only indigent but also jobless and thus cannot answer any civil liability that may be imposed upon him by the court. The private prosecutor, however, did not move for the appearance of Eduardo Toribio.

The civil aspect of the above-quoted decision was appealed by the private prosecutor to the Regional Trial Court Branch XVI, appellant praying for moral damages in the amount of P10,000.00, compensatory damages at P6,186.40, and attorney's fees of P5,000.00. The appellate court, on January 20, 1988, modified the trial court's decision, granting the appellant moral damages in the amount of Five Thousand Pesos (P5,000.00), while affirming all other civil liabilities.

Thereafter, a writ of execution dated March 10, 1988 was duly served upon the accused but was, however, returned unsatisfied due to the insolvency of the accused as shown by the sheriff's return. Thus, complainant moved for a subsidiary writ of execution against the subsidiary liability of the owner-operator of the vehicle. The same was denied by the trial court on two grounds, namely, the decision of the appellate court made no mention of the subsidiary liability of Eduardo Toribio, and the nature of the accident falls under "culpa-aquiliana" and not "culpa-contractual." A motion for reconsideration of the said order was disallowed for the reason that complainant having failed to raise the matter of subsidiary liability with the appellate court, said court rendered its decision which has become final and executory and the trial court has no power to alter or modify such decision.

Hence, the instant petition.

Petitioner relies heavily on the case of *Pajarito v. Seneris*, 87 SCRA 275, which enunciates that "the subsidiary liability of the owner-operator is fixed by the judgment, because if a case were to be filed against said operator, the court called upon to act thereto has no other function than to render a decision based on the indemnity award in the criminal case without power to amend or modify it even if in his opinion an error has been committed in the decision." Petitioner maintains that the tenor of the aforesaid decision implies that the subsidiary liability of the owner-operator may be enforced in the same proceeding and a separate action is no longer necessary in order to avoid undue delay, notwithstanding the fact that said employer was not made a party in the criminal action.

It is the theory of respondent that the owner-operator cannot be validly held subsidiarily liable for the following reasons, namely: (a) the matter of subsidiary liability was not raised on appeal; (b) contrary to the case of *Pajarito v. Seneris*, the injuries sustained by the complainant did not arise from the so-called "culpa-contractual" but from "culpa-aquiliana"; (c) the judgments of appellate courts may not be altered, modified, or changed by the court of origin; and (d) said owner was never made a party to the criminal proceedings.

Thus, the underlying issue raised in this case is: whether or not the subsidiary liability of the owner-operator may be enforced in the same criminal proceeding against the driver where the award was given, or in a separate civil action.

The law involved in the instant case is Article 103 in relation to Article 100, both of the Revised Penal Code, which reads thus:

"Art. 103. Subsidiary civil liability of other persons. The subsidiary liability established in the next preceding article shall apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

Respondent contends that the case of *Pajarito v. Seneris* cannot be applied to the present case, the former being an action involving culpa-contractual, while the latter being one of culpa-aquiliana. Such a declaration is erroneous. The subsidiary liability in Art. 103 should be distinguished from the primary liability of employers, which is quasi-delictual in character as provided in Art. 2180 of the New Civil Code. Under Art. 103, the liability emanated from a delict. On the other hand, the liability under Art. 2180 is founded on culpa aquiliana. The present case is neither an action for culpa-contractual nor for culpa-aquiliana. This is basically an action to enforce the civil liability arising from crime under Art. 100 of the Revised Penal Code. In no case can this be regarded as a

civil action for the primary liability of the employer under Art. 2180 of the New Civil Code, i.e., action for culpa aquiliana.

In order that an employer may be held subsidiarily liable for the employee's civil liability in the criminal action, it should be shown (1) that the employer, etc. is engaged in any kind of industry, (2) that the employee committed the offense in the discharge of his duties and (3) that he is insolvent (*Basa Marketing Corp. v. Bolinao*, 117 SCRA 156). The subsidiary liability of the employer, however, arises only after conviction of the employee in the criminal action. All these requisites present, the employer becomes ipso facto subsidiarily liable upon the employee's conviction and upon proof of the latter's insolvency. Needless to say, the case at bar satisfies all these requirements.

Furthermore, we are not convinced that the owner-operator has been deprived of his day in court, because the case before us is not one wherein the operator is sued for a primary liability under the Civil Code but one in which the subsidiary civil liability incident to and dependent upon his employee's criminal negligence is sought to be enforced. Considering the subsidiary liability imposed upon the employer by law, he is in substance and in effect a party to the criminal case. Ergo, the employer's subsidiary liability may be determined and enforced in the criminal case as part of the execution proceedings against the employee. This Court held in the earlier case of *Pajarito v. Seneris*, supra, that "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."

The argument that the owner-operator cannot be held subsidiarily liable because the matter of subsidiary liability was not raised on appeal and in like manner, the appellate court's decision made no mention of such subsidiary liability is of no moment. As already discussed, the filing of a separate complaint against the operator for recovery of subsidiary liability is not necessary since his liability is clear from the decision against the accused. Such being the case, it is not indispensable for the question of subsidiary liability to be passed upon by the appellate court. Such subsidiary liability is already implied from the appellate court's decision. In the recent case of *Vda. de Paman v. Seneris*, 115 SCRA 709, this Court reiterated the following pronouncement: "A judgment of conviction sentencing a defendant employer 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 not only with regard to the civil liability, but also with regard to its amount." This being the case, this Court stated in *Rotea v. Halili*, 109 Phil. 495, that 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. A separate and independent action is, therefore, unnecessary and would only unduly prolong the agony of the heirs of the victim."

Finally, the position taken by the respondent appellate court that to grant the motion for subsidiary writ of execution would in effect be to amend its decision which has already become final and executory cannot be sustained. Compelling the owner-operator to pay on the basis of his subsidiary liability does not constitute an amendment of the judgment because in an action under Art. 103 of the Revised Penal Code, once all the requisites as earlier discussed are met, the employer becomes ipso facto subsidiarily liable, without need of a separate action. Such being the case, the subsidiary liability can be enforced in the same case where the award was given, and this does not constitute an act of amending the decision. It becomes incumbent upon the court to grant a motion for subsidiary writ of execution (but only after the employer has been heard), upon conviction of the

employee and after execution is returned unsatisfied due to the employee's insolvency.

WHEREFORE, the order of respondent court disallowing the motion for subsidiary writ of execution is hereby SET ASIDE. The Court a quo is directed to hear and decide in the same proceeding the subsidiary liability of the alleged owner?operator of the passenger jitney. Costs against private respondent.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J., on leave.

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