

SECOND DIVISION

[G.R. No. 113433, March 17, 2000]

**LUISITO P. BASILIO, PETITIONER, VS. THE COURT OF APPEALS,
HON. JESUS G. BERSAMIRA, AND FE ADVINCULA, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This is a petition for review^[1] under Rule 45 of the Revised Rules of Court which seeks to annul and set aside the Decision^[2] and Resolution^[3] of the Court of Appeals dated October 27, 1992 and January 5, 1994, respectively. The decision sustained the Order dated April 7, 1992 of the Regional Trial Court of Pasig City, Branch 166, denying due course to petitioner's appeal from the Judgment in Criminal Case No. 70278 and allowing execution against the petitioner of the subsidiary indemnity arising from the offense committed by his truck driver.

The relevant facts as gleaned from the records are as follows:

On July 23, 1987, Simplicio Pronebo was charged by the Provincial Fiscal of Rizal with the crime of reckless imprudence resulting in damage to property with double homicide and double physical injuries.^[4] The case was docketed as Criminal Case No. 70278.

The information against him reads:

"The undersigned Assistant Fiscal accused Simplicio Pronebo y Cruz of the crime of Reckless Imprudence Resulting in Damage to Property with Double Homicide and Double Physical Injuries, committed as follows:

"That on or about the 15th day of July, 1987 in the municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said accused, being then the driver and person in charge of a dump truck with plate no. NMW-609 owned and registered in the name of Luisito Basilio, without due regard to traffic laws, rules and regulations and without taking the necessary care and precaution to prevent damage to property and avoid injuries to persons, did then and there willfully, unlawfully and feloniously drive, manage and operate said dump truck in a careless, reckless, negligent and imprudent manner as a result of which said dump truck being then driven by him hit/bumped and sideswiped the following vehicles, to wit: a) a motorized tricycle with plate no. NF-2457 driven by Benedicto Abuel thereby causing damage in the amount of P1,100.00; b) an automobile Toyota Corona with plate no. NAL -138 driven by Virgilio Hipolito thereby causing damage in the amount of P2,190.50 c) a motorized tricycle with plate no. NW-9018 driven by Ricardo Sese y Julian thereby causing damage of an

undetermined amount d) an automobile Mitsubishi Lancer with plate no. PHE-283 driven by Angelito Carranto thereby causing damage of an undetermined amount and 3) a Ford Econo Van with plate no. NFR-898 driven by Ernesto Aseron thereby causing damage of an undetermined amount; that due to the strong impact caused by the collision, the driver Ricardo Sese y Julian and his 3 passengers including Danilo Advincula y Poblete were hit/bumped which directly caused their death; while the other 2 passengers, namely; Cirilo Bangot sustained serious physical injuries which required medical attendance for a period of more than 30 days which incapacitated him from performing his customary labor for the same period of time and Dominador Legaspi Jr. sustained physical injuries which required medical attendance for a period of less than nine days and incapacitated him from performing his customary labor for the same period of time.

Contrary to law."

After arraignment and trial, the court rendered its judgment dated February 4, 1991, which reads:

"WHEREFORE, the court finds accused Simplicio Pronebo y Cruz guilty beyond reasonable doubt of Reckless Imprudence resulting in the death of Danilo Advincula and is hereby sentenced to suffer the indeterminate penalty of two (2) years and four (4) months, as minimum to six (6) years of *prision correccional*, as maximum, and to indemnify the heirs of Danilo Advincula P30,000.00 for the latter's death, P31,614.00, as actual and compensatory damages. P2,000,000.00 for the loss of his earning capacity. P150,000.00, as moral damages, and P30,000.00 as attorney's fees, plus the costs of suit."^[5]

Thereafter, the accused filed an application for probation, so that the above judgment became final and executory.

Pertinently, the trial court also found that at the time of the vehicular accident accused Simplicio Pronebo was employed as the driver of the dump truck owned by petitioner Luisito Basilio.

On March 27, 1991, petitioner Luisito Basilio filed with the trial court a "Special Appearance and Motion for Reconsideration"^[6] praying that the judgment dated February 4, 1991, be reconsidered and set aside insofar as it affected him and subjected him to a subsidiary liability for the civil aspect of the criminal case. The motion was denied for lack of merit on September 16, 1991.^[7] Petitioner filed a Notice of Appeal^[8] on September 25, 1991.

On September 23, 1991, private respondent filed a Motion for Execution of the subsidiary civil liability^[9] of petitioner Basilio.

On April 7, 1992, the trial court issued two separate Orders. One denied due course and dismissed Basilio's appeal for having been filed beyond the reglementary period.^[10] The other directed the issuance of a writ of execution against him for the enforcement and satisfaction of the award of civil indemnity decreed in judgment on

February 4, 1991.^[11]

Aggrieved, petitioner filed a petition for *certiorari*^[12] under Rule 65 of the Revised Rules of Court with the Court of Appeals, alleging that respondent judge acted without jurisdiction or with grave abuse of discretion in issuing: (1) the Order dated September 16, 1991, denying the petitioner's motion for reconsideration of the judgment dated February 4, 1991 insofar as the subsidiary liability of the petitioner was concerned, and (2) the Order dated April 7, 1992, directing the issuance of a writ of execution against the petitioner. Before the appellate court, petitioner claimed he was not afforded due process when he was found subsidiarily liable for the civil liability of the accused Pronebo in the criminal case.

The Court of Appeals dismissed the petition in its Decision dated October 27, 1992, disposing as follows:

"ACCORDINGLY, in view of the foregoing disquisitions, the instant petition for certiorari and prohibition with preliminary injunction is DENIED DUE COURSE and should be, as it is hereby, DISMISSED for lack of persuasive force and effect."^[13]

A motion for reconsideration^[14] was filed by the petitioner on November 24, 1992. This was denied in a Resolution^[15] dated January 5, 1994. Hence this petition for review.

Now, petitioner, in his assignment of errors, avers that respondent Court of Appeals erred:

- I. ... IN SUSTAINING THE RULING OF THE TRIAL COURT THAT THE JUDGMENT OF 4 FEBRUARY 1991 HAD BECOME FINAL AND EXECUTORY AS REGARDS BOTH THE CIVIL AND CRIMINAL ASPECTS WHEN THE ACCUSED APPLIED FOR PROBATION AT THE PROMULGATION.
- II. ... IN HOLDING THAT AS PETITIONER IS NEITHER AN ACCUSED OR A PARTY IN CRIMINAL CASE NO. 70278, HE IS NOT ENTITLED TO FILE A MOTION FOR RECONSIDERATION OF THE JUDGMENT OF SUBSIDIARY CIVIL LIABILITY AGAINST HIM.
- III. ... IN HOLDING THAT PETITIONER WAS NOT DEPRIVED OF HIS DAY IN COURT IN VIOLATION OF PROCEDURAL DUE PROCESS.
- IV. ... IN HOLDING THAT PETITIONER WAS NOT ENTITLED TO THE AUXILIARY RELIEF OF PRELIMINARY INJUNCTION BECAUSE THE JUDGMENT OF CONVICTION "IS CONCLUSIVE UPON THE EMPLOYER".
- V. ... IN RULING THAT THE RESPONDENT JUDGE DID NOT ACT IN ABUSE OF AND/OR EXCESS OF JURISDICTION.^[16]

The issue before us is whether respondent Court of Appeals erred and committed grave abuse of discretion in denying the special civil action under Rule 65 filed by petitioner against the trial court. To resolve it, we must, however, also pass upon the