

SABINA EXCONDE, PLAINTIFF AND APPELLANT, VS. DELFIN CAPUNO AND DANTE CAPUNO, DEFENDANTS AND APPELLEES.

G. R. No. L-10134. June 29, 1957

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Dante Capuno, son of Delfin Capuno, was accused of double homicide through reckless imprudence for the death of Isidoro Caperina and Amado Ticzon on March 31, 1949 in the Court of First Instance of Laguna (Criminal Case No. 15001). During the trial, Sabina Exconde, as mother of the deceased Isidoro Caperina, reserved her right to bring a separate civil action for damages against the accused. After trial, Dante Capuno was found guilty of the crime charged and, on appeal, the Court of Appeals affirmed the decision. Dante Capuno was only fifteen (15) years old when he committed the crime.

In line with her reservation, Sabina Exconde filed the present action against Delfin Capuno and his son Dante Capuno asking for damages in the aggregate amount of P2,959.00 for the death of her son Isidoro Caperina. Defendants set up the defense that if any one should be held liable for the death of Isidoro Caperifia, he is Dante Capuno and not his father Delfin because at the time of the accident, the former was not under the control, supervision and custody of the latter. This defense was sustained by the lower court and, as a consequence, it only convicted Dante Capuno to pay the damages claimed in the complaint. From this decision, plaintiff appeal.

It appears that Dante Capuno was a member of the Boy Scouts Organization and a student of the Balintawak Elementary School situated in a barrio in the City of San Pablo and on March 31, 1949 he attended a parade in honor of Dr. Jose Rizal in said city upon instruction of the city school's supervisor. From the school Dante, with other students, boarded a jeep and when the same started to run, he took hold of the wheel and drove it while the driver sat on his left side. They have not gone far when the jeep turned turtle and two of its passengers, Amado Ticzon and Isidoro Caperiia, died as a consequence. It further appears that Delfin Capuno, father.

The only issue involved in this appeal is whether defendant Delfin Capuno can be held civilly liable, jointly and severally with his son Dante, for damages resulting from the death of Isidoro Caperifla caused by the negligent act of minor Dante Capuno.

The case comes under Article 1903 of the Spanish Civil Code, paragraph 1 and 5, which provides:

"Art. 1903. The¹ obligation imposed by the next preceding¹ articles is enforceable not only for personal acts and omissions, but also for those of persons for whom another is responsible.

The father, and, in case of his death or incapacity, the mother, are liable for any damages caused by the minor children who live with them.

* * * * *

Finally, teachers or directors of arts and trades are liable for any damages caused by their pupils or apprentices while they are under their custody."

Plaintiff contends that defendant Delfin Capuno is liable for the damages in question jointly and severally with his son Dante because at the time the latter committed the negligent act which resulted in the death of the victim, he was a minor and was then living with his father, and inasmuch as these facts are not disputed, the civil liability of the father is evident. And so, plaintiff contends, the lower court erred in relieving the father from liability.

We find merit in this claim. It is true that under the law above quoted, "teachers or directors of arts and trades are liable for any damages caused by their pupils or apprentices while they are under their custody", but this provision only applies to an institution of arts and trades and not to any academic educational institution (Padilla, Civil Law, 1953, Ed., Vol. IV, p. 841; See 12 Manresa, 4th Ed., p. 557). Here Dante Capuno was then a student of the Balintawak Elementary School and as part of his extra-curricular activity, he attended the parade in honor of Dr. Jose Rizal upon instruction of the city school's supervisor. And it was in connection with that.

The civil liability which the law impose upon the father, and, in case of his death or incapacity, the mother, for any damages that may be caused by the minor children who live with them, is obvious. This is a necessary consequence of the parental authority they exercise over them which imposes upon the parents the "duty of supporting them, keeping them in their company, educating them and instructing them in proportion to their means", while, on the other hand, gives them the "right to correct and punish them in moderation" (Articles 154 and 155, Spanish Civil Code). The only way by which they can relieve themselves of this liability is if they prove that.

Wherefore, the decision appealed from is modified in the sense that defendants Delfin Capuno and Dante Capuno shall pay to plaintiff, jointly and severally, the sum of P2,959.00 as damages, and the costs of action.

Bengzon, Montemayor, Labrador, and Endencia, JJ., concur.

Paras, C. J., concurs in the result.

DISSENTING OPINION

Reyes, J. B. L., J.;

After mature consideration I believe we should affirm the judgment relieving the father of liability. I can see no sound reason for limiting Art. 1903 of the old Civil Code to teachers of arts and trades and not to academic ones. What substantial difference is there between them in so far as concerns the proper supervision and vigilance over their pupils? It cannot be seriously contended that an academic teacher is exempt from the duty of watching that his pupils do not commit a tort to the detriment of third persons, so long as they are in a position to exercise authority and supervision over the pupil. In my opinion, in the phrase "teachers or heads of establishments of arts and trades" used in Art. 1903 of the Old Civil Code, the word "arts and trades" does not qualify "teachers" but only head of establishments". The Phrase is only an updated version of the equivalent terms "preceptores y artesanos" used in the Italian and French Codes.

If, as conceded by all commentators, the basis of the presumption of negligence of Art. 1903 in some culpti in vigilando that the parents, teachers, etc. are supposed to have incurred in the exercise of their authority, it would seem clear that where the parent places the child under the effective authority of the teacher, the latter, and not the parent, should be the one answerable for the torts committed while under his custody, for the very reason that the parent is not supposed to interfere with the discipline of the school nor with the authority and supervision of the teacher while the child is under instruction. And if there is no authority, there can be no responsibility.

In the case before us, there is no question that the pupil, Dante Capuno, was instructed by the City School

Supervisor to attend the Rizal parade. His father could not properly refuse to allow the child to attend, in defiance of the school authorities. The father had every reason to assume that in ordering a minor to attend a parade with other children, the school authorities would provide adequate supervision over them. If a teacher or scout master was present, then he should be the one responsible for allowing the minor to drive the jeep without being qualified to do so. On the other hand, if no teacher or master was at hand to watch over the pupil, the school authorities are the one answerable for that negligence, and not the father.

At any rate, I submit that the father should not be held liable for a tort that he was in no way able to prevent, and which he had every right to assume the school authorities would avoid. Having proved that he entrusted his child to the custody of school authorities that were competent to exercise vigilance over him, the father has rebutted the presumption of Art. 1903 and the burden of proof shifted to the claimant to show actual negligence on the part of the parent in order to render him liable.

Padilla and Reyes, A., JJ., concur.

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