

HERMINIO L. NOCUM, PLAINTIFF-APPELLEE, VS. LAGUNA TAYABAS BUS COMPANY, DEFENDANT-APPELLANT.

G.R. No. L-23733. October 31, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal of the Laguna Tayabas Bus Co., defendant in the court below, from a judgment of the said court (Court of First Instance of Batangas) in its Civil Case No. 834, wherein appellee Herminio L. Nocum was plaintiff, sentencing appellant to pay appellee the sum of P1,351.00 for actual damages and P500.00 as attorney's fees, with legal interest from the filing of the complaint plus costs. Appellee, who was a passenger in appellant's Bus No. 120 then making a trip within the barrio of Dita, Municipality of Bay, Laguna, was injured as a consequence of the explosion of firecrackers, contained in a box, loaded in said bus and declared to its conductor as containing clothes and miscellaneous items by a co-passenger. The findings of fact of the trial court are not assailed. The appeal is purely on legal questions.

Appellee has not filed any brief. All that We have before Us is appellant's brief with the following assignment of errors:

"I

"BASED ON THE FACTS THE LOWER COURT FOUND AS ESTABLISHED, IT ERRED AS A MATTER OF LAW IN NOT ABSOLVING APPELLANT FROM LIABILITY RESULTING FROM THE EXPLOSION OF FIRECRACKERS CONTAINED IN A PACKAGE, THE CONTENTS OF WHICH WERE MISREPRESENTED BY A PASSENGER.

"II

"THE LOWER COURT ERRED, AS A MATTER OF LAW, IN AWARDING DAMAGES WITH LEGAL INTEREST IN FAVOR OF THE APPELLEE.

"III

"THE LOWER COURT ERRED IN NOT DISMISSING THE COMPLAINT, WITH COSTS AGAINST THE APPELLEE."

Upon consideration of the points raised and discussed by appellant, We find the appeal to be well taken.

The main basis of the trial court's decision is that appellant did not observe the extraordinary or utmost diligence of a very cautious person required by the following articles of the Civil Code:

"ART. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

"Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

"ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

"ART. 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755."

Analyzing the evidence presented by the parties, His Honor found:

"According to Severino Andaya, a witness for the plaintiff, a man with a box went up the baggage compartment of the bus where he already was and said box was placed under the seat. They left Azcarraga at about 11:30 in the morning and when the explosion occurred, he was thrown out. PC investigation report states that thirty seven (37) passengers were injured (Exhibit 'O' and '2').

"The bus conductor, Sancho Mendoza, testified that the box belonged to a passenger whose name he does not know and who told him that it contained miscellaneous items and clothes. He helped the owner in loading the baggage which weighed about twelve (12) kilos and because of company regulation, he charged him for it twenty-five centavos (P0.25). From its appearance there was no indication at all that the contents were explosives or firecrackers. Neither did he open the box because he just relied on the word of the owner.

"Dispatcher Nicolas Cornista of defendant company corroborated the testimony of Mendoza and he said, among other things, that he was present when the box was loaded in the truck and the owner agreed to pay its fare. He added that they were not authorized to open the baggages of passengers because instruction from the management was to call the police if there were packages containing articles which were against regulations.

x x x x x

"There is no question that Bus No. 120 was road worthy when it left its Manila Terminal for Lucena that morning of December 5, 1960. The injuries suffered by the plaintiff were not due to mechanical defects but to the explosion of firecrackers inside the bus which was loaded by a co-passenger.

"x x x Turning to the present case, it is quite clear that extraordinary or utmost diligence of a very cautious person was not observed by the defendant company. The service manual, Exhibits '3' and '3-A', prohibits the employees to allow explosives, such as dynamite and firecrackers to be transported on its buses. To implement this particular rule for the safety of passengers, it was therefore incumbent upon the employees of the company to make the proper inspection of all the baggages which are carried by the passengers.

"But then, can it not be said that the breach of the contract was due to fortuitous event? The Supreme Court in the case of Lasam vs. Smith, 45 Phil. 657, quoted Escriche's definition of *caso fortuito* as 'an unexpected event or act of God which could neither be foreseen nor resisted, such as floods, torrents, shipwrecks, conflagrations, lightning, compulsions, insurrections, destructions of buildings by unforeseen accidents and other occurrences of a similar nature.' In other words, the cause of the unexpected event must be independent of the will of man or something which cannot be avoided. This cannot be said of instant case. If proper and rigid inspection were observed by the defendant, the contents of the box could have been discovered and the accident avoided. Refusal by the passenger to have the package opened was no excuse because, as stated by Dispatcher Cornista, employees should call the police if there were package containing articles against company regulations. Neither was failure by employees of defendant company to detect the contents of the packages of passengers because like the rationale in the *Necesito vs. Paras* case (supra), a passenger has neither choice nor control in the exercise of their discretion in determining what are inside the package of co-passengers which may eventually prove fatal."

We cannot agree. No doubt, the views of His Honor do seem to be in line with the reasons that the Code Commission had for incorporating the above-quoted provisions in its draft of the Civil Code. Indeed, in approving the said draft, Congress must have concurred with the Commission that by re-quiring the highest degree of diligence from common carriers in the safe transport of their passengers and by creating a presumption of negligence against them, the recklessness of their drivers which is a common sight even in crowded areas and, particularly, on the highways throughout the country may, somehow, if not in a large measure, be curbed. We are not convinced, however, that the exacting criterion of said provisions has not been met by appellant in the circumstances of this particular case.

It is undisputed that before the box containing the firecrackers were allowed to be loaded in the bus by the conductor, inquiry was made with the passenger carrying the same as to what was in it, since its "opening was folded and tied with abaca." (Decision p. 16, Record on Appeal.) According to His Honor, "if proper and rigid inspection were observed by the defendant, the contents of the box could have been discovered and the accident avoided. Refusal by the passenger to have the package opened was no excuse because, as stated by Dispatcher Cornista, employees should call the police if there were packages containing articles against company regulations." That may be true, but it is Our considered opinion that the law does not require as much. Article 1733 is not as unbending as His Honor has held, for it reasonably qualifies the extraordinary diligence required of common car-riers for the safety of the passengers transported by them to be "according to all the circumstances of each case." In fact, Article 1755 repeats this same qualification: "A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the ut-most diligence of very cautious persons, with due regard for all the circumstances."

In this particular case before Us, it must be consi-dered that while it is true the passengers of appellant's bus should not be made to suffer for something over which they had no control, as enunciated in the decision of this Court cited by His Honor,[1] fairness demands that in meas-uring a common carrier's duty towards its passengers, allow-ance must be given to the reliance that should be reposed on the sense of responsibility of all the passengers in re-gard to their common safety. It is to be presumed that a passenger will not take with him anything dangerous to the lives and limbs of his co-passengers, not to speak of his own. Not to be lightly considered must be the right to pri-vacy to which each passenger is entitled. He cannot be subjected to any unusual search, when he protests the in-nocuousness of his baggage and nothing appears to indicate the contrary, as in the case at bar. In other words, in-quiry may be verbally made as to the nature of a passenger's baggage when such is not outwardly perceptible, but beyond this, constitutional boundaries are already in danger of being transgressed. Calling a policeman to his aid, as suggested by the service manual invoked by the trial judge, in compelling the passenger to submit to more rigid inspect-ion, after the passenger had already declared that the box contained mere clothes and other miscellanies, could not have justified invasion of a constitutionally protected domain. Police officers acting without judicial authority secured in the manner provided by law are not beyond the pale of constitutional inhibitions designed to protect in-dividual human rights and liberties. Withal, what must be importantly considered here is not so much the infringement of the fundamental sacred rights of the particular passenger herein involved, but the constant threat any contrary ruling would pose on the right of privacy of all passengers of all common carriers, considering how easily the duty to inspect can be made an excuse for mischief and abuse. Of course, when there are sufficient indications that the representa-tions of the passenger regarding the nature of his baggage may not be true, in the interest of the common safety of all, the assistance of the police authorities may be solicited, not necessarily to force the passenger to open his baggage, but to conduct the needed investigation consistent with the rules of propriety and, above all, the constitutional rights of the passenger. It is in this sense that the mentioned service manual issued by appellant to its conductors must be understood.

Decisions in other jurisdictions cited by appellant in its brief, evidently because of the paucity of local precedents squarely in point, emphasize that there is need, as We hold here, for evidence of circumstances indicating cause or causes for apprehension that the passenger's baggage is dangerous and that it is failure of the common carrier's employee to act in the face of such evidence that constitutes the cornerstone of the common carrier's liability in cases similar to the present one.

"The principle that must control the servants of the carrier in a case like the one before us is correctly stated in the opinion in the case of *Clarke v. Louisville & N.R. Co.* 20 Ky. L. Rep. 839, 49 S. W. 1120. In that case Clarke was a passenger on the defendant's train. Another passenger took a quantity of gasoline into the same coach in which Clarke was riding. It ignited and exploded, by reason of which he was severely injured. The trial court peremptorily instructed the jury to find for the defendant. In the opinion, affirming the judgment, it is said: 'It may be stated briefly, in assuming the liability of a railroad to its passengers for injury done by another passenger, only where the conduct of this passenger had been such before the injury as to induce a reasonably prudent and vigilant conductor to believe that there was reasonable ground to apprehend violence and danger to the other passengers, and in that case asserting it to be the duty of the conductor of the railroad train to use all reasonable means to prevent such injury, and if he neglects this reasonable duty, and injury is done, that then the company is responsible; that otherwise the railroad is not responsible.'

"The opinion quotes with approval from the case of *Gulf, C. & S. F. R. Co. vs. Shields*, 9 Tex. Civ. App. 652, 29 S. W. 652, in which case the plaintiff was injured by alcohol which had been carried upon the train by another passenger. In the opinion in that case it is said: 'It was but a short period of time after the alcohol was spilt when it was set on fire and the accident occurred, and it was not shown that appellant's employees knew that the jug contained alcohol. In fact, it is not shown that the conductor or any other employee knew that Harris had a jug with him until it fell out of the sack, though the conductor had collected ... (his) fare, and doubtless knew that he had the sack on the seat with him ... It cannot be successfully denied that Harris had the right as a passenger to carry baggage on the train, and that he had a right to carry it in a sack if he chose to do so. We think it is equally clear that, in the absence of some intimation or circumstance indicating that the sack contained something dangerous to other passengers, it was not the duty of appellant's conductor or any other employee to open the sack and examine its contents.' *Quinn v. Louisville & N. R. Co.* 98 Ky. 231, 32 S. W. 742; *Wood v. Louisville & N. R. Co.* 101 Ky. 703, 42 S. W. 349; *Louisville & N. R. Co. v. Vincent*, 29 Ky. L. Rep. 1049, 96 S. W. 898; *Louisville & N. R. Co. v. Renfro*, 142 Ky. 590, 33 L. R. A. (N. S.) 133, 135 S. W. 266." [2] (Underscoring supplied.)

"Explosive or Dangerous Contents. - A carrier is ordinarily not liable for injuries to passengers from fires or explosions caused by articles brought into its conveyances by other passengers, in the absence of any evidence that the carrier, through its employees, was aware of the nature of the article or had any reason to anticipate danger therefrom. (*Bogard v. Illinois C. R. Co.* 144 Ky. 649, 139 S. W. 855, 36 L. R. A. [N. S.] 337; *Clarke v. Louisville & N. R. Co.* 101 Ky. 34, 39 S. W. 840, 36 L. R. A. 123 [explosion of can of gasoline]; *East Indian R. Co. v. Mukerjee* [1901] A. C. [Eng.] 396, 3 B. R. C. 420 - P. C. [explosion of fireworks]; Annotation: 37 L. R. A. [N. S.] 725.)" [3]

Appellant further invokes Article 1174 of the Civil Code which relieves all obligors, including, of course, common carriers like appellant, from the consequence of fortuitous events. The court a quo held that "the breach of contract (in this case) was not due to fortuitous event and that, therefore, the defendant is liable in damages." Since We hold that appellant has succeeded in rebutting the presumption of negligence by showing that it has exercised extraordinary diligence for the safety of its passengers, "according to the circumstances of the (each) case", We deem it unnecessary to rule whether or not there was any fortuitous event in this case.

ACCORDINGLY, the appealed judgment of the trial court is reversed and the case is dismissed, without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Fernando, JJ., concur.

Castro, J., in the result.

Teehankee, J., reserves his vote.

[1] Necesito vs. Paras, 104 Phil. 75.

[2] Bogard v. Illinois Central Railway Company, *infra*.

[3] 10 Am. Jur. 198.

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