

**ISIDRA FARAON AND LUCIA DE MESA,
COMPLAINANTS-APPELLANTS, VS. TOMAS PRIELA,
ACCUSED-APPELLEE.**

G.R. No. L-23129. August 02, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

From a decision of the Court of First Instance of Rizal acquitting defendant Tomas A. Priela of the crime of damage to property through reckless imprudence, with which he is charged, the offended parties - namely, Isidra Faraon and Lucia de Mesa, as owners of a "cadillac" car which was hit by a train operated by Priela as its engineer - have interposed the present appeal, insofar as the civil aspect of the case is concerned.

Appellants maintain that the lower court erred in finding that the damage to said car was due to a "freak accident so unu-sual and so unique as to defy all expectations", and that, for this reason, they should bear the "unfortunate damage to property" suffered by them.

The first question that suggests itself is whether or not appellants may still pursue the present appeal and recover damages from Priela, considering that he has been explicitly acquitted by the trial court, upon the ground that "he has not been remiss in his caution nor in his presence of mind in trying to avoid" said "freak accident".

Pursuant to Rule III, section 3(c), of the Rules of Court:

"Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. In other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damage suffered."

In the case at bar, the decision appealed from, which is final and executory as regards its criminal phase, has not only acquitted Priela, but, also, declared that the collision, which resulted in the destruction of appellants' car, had not been due to any negligence on his part. Since appellants' civil action is predicated upon Priela's alleged negligence, which does not exist, according to said final judgment, it follows necessarily that his acquittal in the criminal action carries with it the extinction of the civil responsibility arising therefrom.[1]

Independently of the foregoing, the record does not show that the lower court had erred in absolving Priela from the charge of negligence.

Indeed, it appears that, said car was, in the afternoon of September 10, 1960, headed for Manila, coming from a barrio in the Municipality of Muntinlupa, Rizal; that as it was negotiating the railroad crossing therein, the right front wheel of the car got stuck into a rut, "right on top of the railroad tracks after passing the second rail"; that despite the efforts of the driver, who shifted to first gear and then to reverse, the car could not move either forward or backward; that as the north-bound Diesel train No. 512, operated and driven by Priela, came into view, after turning a bend, coming from the Bicol region, Lucia de Mesa got down from the car and signalled it to stop;

and that, this notwithstanding, the train proceeded headlong and hit the car, completely destroying the same.

The prosecution tried to prove that the train was about 400 yards away when Lucia signaled thereto to stop, but, the lower court gave more credence to the testimony of Priela and his fire-man, Cecilio Pacion, to the effect that the railroad crossing was preceded by a curve, bounded on both sides by high earthen embankments which precluded them from seeing the car until it was about 75 meters away. Moreover, relying upon the expert evidence given by Cesar Poblete - an engineer who worked in the mechanical department of the Manila Railroad since 1945, and had specialized in Diesel locomotives, such as Train No. 512 - said court concluded that, pulling eleven (11) coaches, at a speed of from 30 to 40 miles an hour, the train would cover a distance of about 300 meters from the place where its air brakes were applied, and, that it could not have stopped, therefore, before reaching the place where appellants' car was.

Inasmuch as said expert testimony has not been contradicted, and in the light of the attending circumstances, we are not prepared to disturb the aforementioned findings of fact, which are partly, if not mainly, dependent upon the credence and weight given by His Honor, the trial Judge, to the testimonial evidence on record.

WHEREFORE, the decision appealed from is hereby affirmed, with the costs of this instance against appellants, Isidra Faraon and Lucia de Mesa.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Tan v. Standard Vacuum Oil Co., 91 Phil. 672; De Soriano v. Albornoz, 98 Phil. 785.

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