

ENRIQUE SERVO Y DE LA CRUZ, PETITIONER AND APPELLANT, VS. MARIANO ALCANABA, ET AL., RESPONDENTS AND APPELLEES.

G.R. No. L-13204. March 20, 1959

Ponente: BENGZON, J.

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BENGZON, J.:

On September 23, 1953, at the corner of Atlanta and 13th streets, Port Area, Manila, a jeepney and an autobus, collided so violently that a passenger of the jeepney died on account of the injuries he received.

In due course, the "two drivers were prosecuted for homicide with damages to property through reckless imprudence. After trial, the court convicted the driver of the bus, Enrique Servo y de la Cruz, but acquitted the other driver.

The Court of Appeals, affirmed the judgment of conviction awarding, at the same time, a bigger indemnity to the heirs of the deceased.

On petition for certiorari by way of appeal Servo moved for review (G. R. No. L-12728) contending that the appellate court had failed to make a finding as to whether the bus had hit the jeepney or vice-versa, and to specify the act constituting his negligence. For lack of merit, we dismissed such petition on September 3, 1957. Denial of a motion to reconsider followed on October 1, 1957.

Thereafter, on October 12, 1957, he started this habeas corpus proceeding in the Manila court of first instance, asserting that the judgment of conviction was null and void on its face because it contained no specification of the particular act, punished by law, committed by the accused. His position rested on the proposition that the Court of Appeals' decision limited its findings of fact to the statement that "the two vehicles collided and one was at fault" without declaring who between the two drivers, had caused the smashup through his negligence.

After hearing the parties, the Honorable Juan P. Enriquez, Judge, refused to issue the writ, for three reasons: (1) the petitioner was at liberty under bail; (2) the judgment of conviction could not be collaterally attacked nor reviewed on habeas corpus, and (3) the decision set forth enough findings of fact to sustain Servo's conviction.

Servo appealed.

This is a mere dilatory move. Appellant seeks another review of the judgment of conviction, on the very grounds explained in his petition for certiorari in G. R. No. L12728, which petition we declined to entertain, for lack of merit, in September 1957.

It may be stated in this connection that in a detailed and long opinion the Court of Appeals, after describing the particular of the mishap, the testimony of the witnesses, the condition of the streets, and the speed of the vehicles, reached the final conclusion that this driver was guilty of reckless negligence. Just before the impact, it found, the bus was speeding (35 miles an hour) upon entering a busy thoroughfare, whereas the jeepney moved slowly[1], even as it had the right of way.

The opinion may not have explicitly declared that "this driver acted recklessly for driving so fast at a city intersection, and thereby causing the collision"; but such inference is easily implied from the facts related therein. In logic, there is a mode of reasoning called "enthymeme", in which one of the premises is understood but not stated.

We must decline to go further; otherwise, Servo would obtain the review which had precisely been denied him way back in September 1957.

Judgment affirmed with double costs against appellant.

Paras, C. J. Padilla, Montemayor, Reyes A., Bautista Angelo, Labrador, Concepcion Reyes J. B. L., and Endencia JJ., concur.

[1] It had just shifted from first to second gear.

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