

NAZARIO CATUIZA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE HON. COURT OF APPEALS, RESPONDENTS.

G. R. No. L-20455. March 31, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by defendant-appellant Nazario Catuiza, from a decision of the Court of Appeals affirming that of the Court of First Instance of Nueva Ecija, which convicted him of the crime of multiple homicide, with multiple serious physical injuries, through reckless negligence, with which he is charged and sentenced him to an indeterminate penalty ranging from six (6) months of arresto mayor to six (6) years of prision correccional and to indemnify the following in the sums set forth after their respective names, to wit:

1) the heirs of:

a) Pedro Pagdanganan,

P17,850.00;

b) Gualberto Castillo,

P9,635.00;

c) Ramon Batangan,

P10,890.00;

d) Angel Dimla,

P10,680.00;

e) Mrs. Felipe B. llano,

P11,060.00;

f) Paz Nieves,

P10,922.00;

g) Felix Ligon,

P9.180.00;;

h) Leoncio Atayde,

P10,460.00;

2) Julian Lipana,

P8.788.00,

3) Florentina Santillan,

P4,100.00,

with subsidiary imprisonment in case of insolvency, not to exceed one third (1/3) of the principal penalty, and to pay the costs.

The basic facts are set forth in the decision of the Court of Appeals, from which we quote:

"In the morning of August 10, 1957, Halili Transit buses Nos. 187 and 606, loaded with students and professors of Araneta University and Far Eastern University, left Manila on an educational trip to the Central Luzon Agricultural College in Nueva Ecija. It had been raining, the weather was cloudy and the concrete road wet. Between kilometers 99 and 100 of the National Highway leading; to Cabanatuan, bus 606 driven by the accused Nazario Catuiza, which was following bus 187, collided with a jeep, coming from the opposite direction, resulting in the death of eight persons and serious injuries to two others, all passengers of the jeep."

The questions raised in the Court of Appeals, were: 1) whether the collision and the consequences thereof are imputable or not to appellant Catuiza; and 2) whether the sums paid by insurance companies and the financial aid given to the heirs of the victims should be deducted from the award.

In connection with the first question, the Court of Appeals said:

"The prosecution's evidence tended to show that at about 11:000 o'clock in the morning Halili buses Nos. 187 and 000 sped thru the town of Gapan northward toward Sta. Rosa, Nueva Ecija. In the meantime, a jeepney carrying ten persons named in the decision (of the Court of First Instance) was cruising southward from Cabanatuan City at 15 to 20 miles per hour. After bus 187 met and passed the jeepney, bus 606 then running over 70 kilometers per hour swerved to the left, its left front wheel about one meter beyond the center line in an apparent attempt to overtake the other bus. But in so doing, bus 606 after applying its brakes hit the jeepney on its left side throwing it to the West shoulder of the road near the canal where it lay battered (Exhibits B, C, 1) & E) ; while bus 606 continued to slide and then swerved to the right shoulder of the road until it finally landed on its left side in the canal some 40 paces from the point of impact (Exhibits B, C, 10, 10-a).

"* * * * *

"The evidence for the defense tended to show that between kilometers 99 and 100 the driver of the bus 606 which was behind bus 187 saw a freight truck coming from the opposite direction, followed by a jeep driven by a woman. The witnesses for the defense are not agreed as to the distance between the freight truck and the jeepney. They were, however, unanimous in declaring that a woman was at the steering wheel. After bus 187 had met and passed the jeep, the latter which was running 50 miles per hour tried to overtake the freight truck ahead and in so doing collided with the bus 606."

Upon a review of the record the Court of Appeals accepted the version of the prosecution and held that the proximate cause of the accident was appellant's reckless negligence. He now maintains that the Court of Appeals

erred: (a) "in affirming the award of P1,000 made by the trial court for damages to the jeep of Pedro Pagdanganan"; (b) "in not reducing from the damages due to the deceased, the indemnities received from the insurance companies on their life insurance policies"; (c) "in not holding that loss of earning, capacity can not be awarded to the heirs of the deceased, where they are not dependent upon said deceased for support"; (d) "in not equitably reducing the damages awarded by the trial court * * * considering the absence of malice or intentional wrong on the part of the accused, and considering, furthermore, that the deceased were guilty of contributory negligence" and (e) "in not sustaining the theory that in necessary and essential industries, it is the duty of the courts to place some limitations on recoveries of damages against them".

With respect to the first question, it is urged that, since the information herein merely charges multiple homicide and physical injuries, with no allegation that the acts of the accused, resulted, also, in damages to property, the award for P1,000 for damages to the jeep of the deceased Pedro Pagdanganan is erroneous. This contention is well taken, for appellant cannot be convicted of and sentenced for something with which he is not charged (*People vs. Narvas*, 107 Phil., 737; *People vs. Despavellador*, 110 Phil., 800).

As regards the second contention, appellant cites Article 2207 of the Civil Code of the Philippines, reading:

"If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury". (Italics ours.)

This provision refers, however, to damages to "property" and is, accordingly, inapplicable to damages resulting from the loss of human life and/or injury sustained by natural persons. In fact, by making specific reference to "property", said Art. 2207 necessarily excludes from its operation-upon the principle "*expressio unius est exclusio alterius*" all other damages, including those suffered in consequence of loss of life or injury suffered by natural persons. Indeed, whereas insurance policies on property have, under the law, no other purpose than to reimburse the insured for such loss as the property insured may have suffered, such is not the object of life insurance.

Appellant's third claim is predicated upon the second paragraph of Article 2206 of said Code. This article reads in full:

"The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

"(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and of the deceased may demand moral damages for mental by reason of the death of the deceased."

The case at bar comes under the first subdivision of this Article. Its second subdivision is not in point, for the award made in the decision appealed from is in favor of the "heirs" of the deceased, to which the first subdivision refers, whereas the second subdivision applies to persons entitled to support from the deceased who are not his

heirs.

In connection with the fourth contention, appellant alleges that the jeep of Pedro Pagdanganan was overloaded, from which he (appellant) deduces that there has been contributory negligence on the part of the deceased. In view of this inference and because he had acted without malice, appellant concludes that the damages awarded by the trial court should in equity be reduced. This pretense is clearly devoid of merit. To begin with, absence of malice is of the essence of the crime charged. Hence, it cannot mitigate the liability arising therefrom. Secondly, the alleged overloading did not contribute, in any manner whatsoever, to the collision. Thirdly, the passengers of the jeep did not contribute, and could not possibly have contributed to the occurrence of said collision.

As regards the last assignment of error, suffice it to say that there is nothing in our laws to justify the claim that the award for damages should be reduced merely because appellant is engaged in a necessary and essential industry. The State has, at one time or another, granted some concessions to necessary and essential industries, "in connection with taxes, import quotas, imposts, exchange control, and other similar regulations of or impositions by the government. Our laws make no distinction, however between necessary and essential industry on the one hand and other endeavors on the other, insofar as responsibility for damages caused to third persons are concerned.

Wherefore, modified as to the indemnity due to the heirs of Pedro Pagdanganan, which is reduced from P17,850.00 to P16,850.00, the decision appealed from is hereby affirmed, in all other respects, with costs against petitioner Nazario Catuiza. It is so ordered.

Bengzon, C. J., Bautista Angela, Reyes, J. B. L., Barrera, Paredes, Dizov, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

Decision affirmed with modification.

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