

WILLIAM ADDENBROOK Y BARKER, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-22995. June 29, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for certiorari to review the decision of the Court of Appeals affirming a conviction by the Court of First Instance of Manila for homicide through reckless imprudence upon the petitioner William Addenbrook y Barker.

The appellate court's decision depict the facts as follows:

"x x x about 3:15 in the afternoon of 9 January 1960, the front bumper of the Stanvac Service Truck with Plate No. 2740, Manila, 1960, while travelling southward along Marquez de Comillas, being driven then by accused William Addenbrook, and in front of House No. 1010, came into contact with the body of a pedestrian Wenceslao Risaldo, with the result that the latter fell and was taken to the Philippine General Hospital by accused and his helper in the truck named Amando Valeriano, but was dead on arrival, it having been found that he had received abrasions on the left forehead, and contusions with lacerations on the face, left arm, right thigh, knee joints, and right buttocks and waist and fracture of the skull, Exh. B, so that the Fiscal filed the present criminal case for homicide thru reckless imprudence against accused resulting in his conviction, x x x."

Upon impact of the van against the victim, the latter fell and rolled to a distance of fifteen (15) paces, as shown by two (2) sets of bloodstains observed by patrolman Emilio Guzman in his ocular investigation immediately after the occurrence of the incident. From these facts, the appellate court found it difficult to believe that the van was traveling at a slow and reasonable speed. Considering further that as postulated by the accused himself, his view of the street was partly blocked by a parked car in front of house No. 1010, Marquez de Comillas, from behind which the deceased tried to cross the street; and with the added fact that the appellant did not blow his horn despite the visual obstruction by the parked car, the Court of Appeals concluded that he failed to observe that reasonable care required of a driver of a motor vehicle.

Appellant insists that such conclusion is error, and assails the credibility and competency of witness Guzman.

Credibility of witnesses is a question of fact (*Rumbaoa vs. Arzaga*, 84 Phil. 812; *Lim vs. Calaguas*, 83 Phil. 796) and, therefore, not reviewable by the Supreme Court. (*Abeto vs. People*, 90 Phil. 581). The objection to patrolman Guzman's competency because he was not presented as an expert witness, nor did he see the incident actually happen, is untenable. What Guzman testified to are what he saw in his ocular investigation, such as the two (2) sets of bloodstains and the 15 paces distance between them, that were facts derived from his own perception.

The Court of Appeals gave no credence to the claim that the deceased suddenly darted from behind the parked car. Neither did the trial court do so, considering the lack of corroboration of petitioner's version, and the circumstance that the victim, being a grown-up man, and not a child, would not have ignored the noise of the oncoming vehicle, there being no reason shown for his disregarding the obvious danger.

At any rate, that the accident could not be avoided because the victim was so close to the truck when he, as alleged by appellant, suddenly darted across the street, does not exculpate the accused, since the latter was driving at excessive speed.

"The fact that a pedestrian came into the path of the car suddenly and so close that the driver could not stop and avoid striking him will not excuse the driver, where the car was being driven at an unreasonable rate of speed under the circumstances." (5 Am. Jur. p. 612, sec. 195).

While the general rule is that a driver is not held accountable just because he failed to take the wisest choice in a sudden emergency, the rule does not apply where the emergency is of the driver's own creation or devising.

The other assigned errors raise questions of fact and credibility which this Court is not at liberty to revise.

We, therefore, find no error in the appealed decision, and the same is hereby affirmed. Costs against appellant, William Addenbrook y Barker.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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