

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
BENJAMIN AGUILAR Y PEREZ AND JOSE OLIVEROS Y OLAT,
DEFENDANTS AND APPELLEES.**

G.R. No. L-11302. October 28, 1960

Ponente: PAREDES, J.

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PAREDES, J.:

On June 24, 1955, in the Municipal Court of Manila, the defendants-appellees were charged in an information as follows:

"The undersigned accuses Benjamin Aguilar y Perez and Jose Oliveros y Olat of the crime of multiple slight physical injuries thru reckless imprudence, committed as follows:

That on or about the 25th day of April, 1955, in the City of Manila, Philippines, the said accused, being then the drivers and persons incharge of a passenger jeepney bearing Plate No. TPU-2271 (Manila), and Liberty taxicab with Plate No. 3165 (Rizal), respectively, did then and there unlawfully drive, manage and operate their respective vehicles along the corner of Requesens and Oroquieta streets, in said city, in a careless, reckless and imprudent manner, by then and there giving their respective vehicles a rate of speed greater than was reasonable and proper and without taking the necessary precautions to avoid accident to persons and damage to property considering the condition of vehicular traffic at the time at said place, causing as a consequence of their carelessness, recklessness, imprudence and want of precaution the said vehicles so driven, managed and operated by them respectively in the manner above set forth to bump against and collide with, as they in fact bumped against and collided with each other, and as a result of the impact the following passengers of the said passenger jeepney 1. Erlinda Saludes y Alfonso, 2. Renato Saludes y Alfonso, 3. Rosa Almario (Umali) Amistoso, 4. Leonisa Amistoso and 5. Avelino Miranda-sustained physical injuries which have required medical attendance for a period of more than one (1) but not more than nine (9) days and which have incapacitated them from engaging in their customary labor for the same period of time."

Motions to Quash the information were presented by the defendants on the ground that reckless imprudence is punishable only if the acts complained of constitute a grave or less grave felony. The municipal court granted the motion. The City Fiscal appealed, and the Court of First Instance of Manila sustained the order granting the Motions to Quash and dismissing the case. This is an appeal from said order.

The People contends that the trial court erred in dismissing the case on the ground that the facts alleged in the information did not constitute an offense and that the law did not provide a penalty therefor. The pertinent portions of Article 365 of the Revised Penal Code, under which the defendants-appellees were charged, provide as follows:

"Art. 365. Imprudence and negligence.-Any person who, by reckless imprudence, shall commit any act which, had it been intentional; would constitute a grave felony, shall suffer the penalty of arresto mayor in its maximum period to prison correctional in its minimum period; if it would have constituted a less grave felony, the penalty of arresto mayor in its minimum and medium periods shall be imposed.

Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of *arresto mayor* in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period shall be imposed.

When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than 25 pesos.

A fine not exceeding 200 pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony."

The cited provision, therefore, punishes (1) an act by reckless negligence, which if intentional, would constitute a grave felony or a less grave felony; (2) an act by simple negligence, which if intentional, would constitute a grave felony or less grave felony; (3) a negligent*act resulting in the damage of the property of another; and (4) an act by simple negligence, which if maliciously done, would constitute a light felony. Verily, the article does not include an act of reckless imprudence, which if done intentionally, would have constituted a light felony, like slight physical injuries. The rule of *inclusio unius est exclusio alterius* fittingly operates in the present case, and courts should not consider as crimes by inference or implication, acts or omissions which are not expressly and clearly punishable by law. In effect, after noticing that the Revised Penal Code did not punish slight physical injuries thru reckless imprudence, the Legislature, in 1957, filled the hiatus found in article 365, by providing the penalty of *arresto menor* in its maximum period, for light felony committed thru reckless imprudence or negligence (Republic Act No. 1790, promulgated on June 21, 1957).

This notwithstanding, inasmuch as the information in the case at bar heretofore quoted, describes equally reckless and simple negligence, the principle enunciated in the case of *People vs. Benigno Lingad* 103 Phil., 980; 55 Off. Gaz. (48) 10062, where the accused was prosecuted for slight physical injuries thru reckless imprudence, should be similarly made to apply in the present case. In that case, this Court said:

"* * *. In sustaining the motion to quash, the trial court relied on the decision of the Court of Appeals in *People vs. Macario Ande y Marino*, 51 Off. Gaz., p. 5222, wherein it held that 'The law does not declare as a crime and does not provide any penalty for the execution of an act more serious as it is committed thru reckless imprudence which, if intentional, (only) amounts to a light felony.' And this decision is predicated on a portion of Article 365 of the Revised Penal Code which provides that 'A fine not exceeding 200 pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.'

We have no quarrel with the above citation. The same is in accordance with law. But the question is: Do the acts alleged in the information not fit into the framework of said decision, or do they not come under the above quoted portion of Art. 365 of the Revised Penal Code?

The answer is obviously in the affirmative if we carefully examine the averments of the information. While the information gives the designation of the crime as 'slight physical injuries thru reckless imprudence,' the body thereof does not specify the kind of negligence or imprudence that qualifies the crime charged, for it merely alleges that it was committed 'in a careless, reckless, negligent and imprudent manner * * * causing by such careless, recklessness, imprudence and lack of precaution,' the collision which resulted in the injury. Under such vague allegation of the imprudent act, one may infer that the act may have been committed either thru reckless or simple negligence, depending upon the nature of the evidence that may be presented by the prosecution. And even if what was intended was to qualify the crime with reckless imprudence, still it cannot be said that the same is not punishable by law for it may still be shown during the trial that the accused committed the act only thru simple negligence upon the theory that what is more or graver includes the less or lighter, in the same manner as a serious physical injury includes a slight injury, or robbery includes the crime

of theft. The question, therefore, in the last analysis may boil down to a matter of evidence. In other words, the elements of the two kinds of negligence are practically the same, the only difference lies in the degree, and this can be substantiated by proper evidence.

We are, therefore, of the opinion that the trial court erred in sustaining the motion to quash and in dismissing the case."

In view hereof, we hereby set aside the order appealed from, and direct that the case be remanded to the trial court, for hearing on the merits. No costs.

Paras, C.J., Bengzon, Padilla, Bautista, Angelo, Labrador, Reyes, J.B.L., Barrera, and Gutierrez David, JJ., concur.

Order set aside.

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