

SERVILLANO DIZON, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, ET AL., RESPONDENTS.

G.R. No. L-8002. November 23, 1955

Ponente: BENGZON, J.

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Review on certiorari of the Court of Appeals' decision affirming the verdict of the Laguna court of first instance that sentenced Servillano Dizon, for double homicide thru reckless imprudence, to be imprisoned not less than six (6) months nor more than one year and eight months with the accessories, to indemnify the heirs of the deceased in the sum of P2,000.00 each, and the Government in the sum of P350.00 with subsidiary imprisonment in case of insolvency.

The petition for review was at first dismissed for raising factual questions and for lack of merit; but upon being amended, it was given due course in view of its allegation that the Revised Penal Code had been applied mistakenly, the crime having been committed on May 13, 1940, when the offenses of the kind were punished under the Revised Motor Vehicle Law, Act 3992, particularly sec. 67 which reads partly as follows:

"Sec. 67. Violation and penalties. - The following penalties shall be imposed for violations of this Act.

(d) If as the result of negligence or reckless or unreasonably fast driving, any accident occurs resulting death or serious bodily injury to any person, the motor vehicle driver or operator at fault shall upon conviction be punished by imprisonment for not less than fifteen days nor more than six years in the discretion of the Court."

The Solicitor-General agrees that this section is the governing statute; but he argues that under its provisions and other applicable rules, the judgments may be, and should be upheld.

According to the lower courts, "late in the afternoon of May 13, 1940, a group of three national internal revenue agents consisting of Maximino Hernandez, Gregorio Mercado and the accused, x x x left San Pablo for Calauan, Province of Laguna, on a government-owned motorcycle x x x with the accused at the control and his two companions occupying the sidecar. Upon reaching the barrio of Imoc, Calauan, Laguna, as the motorcycle was descending a downward grade or slope of the provincial road, it encountered a truck x x x coming from the opposite direction bound for San Pablo. When the distance between the two vehicles, however, was barely three meters, the accused suddenly swerved to the right in order to pass by the left side of the truck, which was then being operated by Bernardo Anigalan, now deceased, on the left-hand side of the road going to San Pablo. To avoid a collision, the truck wheeled towards the left, but since there was not sufficient space for the motorcycle to get through between the truck and the ditch towards the left, the motorcycle, upon swerving to the right, collided

with the truck, thereby killing Maximino Hernandez and Gregorio Mercado and badly damaging the motorcycle x x x."

Both courts found the defendant Servillano Dizon to have driven the motorcycle at excessive speed and to have swerved into the wrong side of the road a few moments before the actual impact. Reckless driving is mostly a question of fact, which we are not at liberty to revise.

There remains the question of the penalty. The terms of imprisonment given to herein defendant is actually within the range fixed by the Revised Vehicle Law, which is fifteen days to six years. And we are shown no reason to modify the lower courts' exercise of their legal discretion.

Appellant, however, suggests that no other additional penalty-civil indemnity of subsidiary imprisonment-should be imposed on him, because said Vehicle Law does not so provide. But we have heretofore decided that the article 100 (civil liability) and article 39 (subsidiary personal liability) of the Revised Penal Code are applicable to these offenses as supplementary provisions, the Revised Penal Code having provided in its article 10 that it shall be supplementary to other special laws punishing other offenses, unless the latter should specially provide the contrary. (People v. Moreno, 60 Phil. 178; Copiaco v. Luzon Brokerage, 66 Phil. 184.)

Wherefore, the decision under review will be affirmed, with costs against appellant. So ordered.

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

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