

HAWAIIAN-PHILIPPINE COMPANY, PETITIONER, VS. THE WORKMEN'S COMPENSATION COMMISSIONER AND PACITA S. VDA. DE SUATARON, RESPONDENTS.

G.R. No. L-8114. May 25, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal taken by the Hawaiian-Philippine Co., from a decision of the Workmen's Compensation Commissioner, affirming the award of a referee of the Workmen's Compensation Commission ordering said appellant

"1. To pay Pacita Salabaria Vda. de Suataron, Maria Eva Suataron and Romeo Suataron, Jr., through this Commission, the sum Of TWO THOUSAND ONE HUNDRED SEVENTY ONE AND 52/100 PESOS (P2,171.52), with interest thereon at the legal rate from January 29, 1952 until fully paid, less whatever amount of compensation which was already paid.

"2. To pay the claimants, through this Commission, the sum of one hundred pesos (P100) as burial expenses.

"3. To pay direct to this Commission the sum of TWENTY-TWO pesos (P22.00) as cost per Sec. 55 of Act No. 3428, as amended,"

and requiring said company to pay the additional sum of Five Pesos (P5.00) as fee, pursuant to section 55 of the Workmen's Compensation Act (No. 3428, as amended).

This proceeding was commenced by a claim for Compensation filed by the respondent Pacita S. Vda. de Suataron, in her behalf, as widow of Romeo Suataron, deceased, and on behalf of their minor children, Eva and Romeo, Jr., both surnamed Suataron. Romeo Suataron was killed by Benigno Duazo on January 29, 1952, while both under the employment of the Hawaiian-Philippine Company, as security guards or special policemen thereof. The circumstances surrounding the tragic event are set forth in the report of the Chief of Police of the company, who repaired to the scene of the occurrence and investigated the same, soon after it took place. The pertinent parts of said report read as follows:

"At about 5:30 P. M., January 29, 1952, Romeo Suataron, a policeman of the Hawaiian-Philippine Company, was shot by Benigno Duazo, also a policeman of this Company, and as a result he died instantaneously. After shooting Suataron, Duazo shot himself too by placing the muzzle of the shotgun under his chin, near his throat and pressed the trigger.

"The case was investigated and my investigation revealed that Romeo Suataron was on duty in Post No. 1 from 4:00 P. M. to 12:00 P. M., while Benigno Duazo was on duty in Post No. 2 from 12:00 P. M. to 8:00 A. M. Post No. 1 embraces the police office, the timekeeper's Office, main office building, the nearby staff houses, the laboratory and all warehouse buildings. Post No. 2 embraces the main gate, the school building and its premises.

"At about 5:00 P. M., January 29, 1952, Duazo arrived at Post No. 1. He went direct to timekeeper Panfilo Artagame and asked for a scratch of paper which the latter gave him. Then with the permission granted by Suataron who was standing by the door, he (Duazo) entered the police office. He sat on a chair by the table of the police clerk and read the new issue (Jan. 29/52) of the 'The Manila Chronicle'. After a while he stood at the door of the police office holding a shotgun and told Strataron saying, 'Pare (meaning brother spiritually) you stand.' When Suataron saw him, he stood up from the chair on which he was sitting and said 'Pare, do not joke with that gun.' He stood for a while and observed the movement of Duazo. After an elapse of a few minutes when he saw nothing unusual in Duazo's action, he sat again on the chair which was placed outside of the door of the police office. Within a few minutes after Suataron sat on the chair the shotgun exploded in his face. He was hit straight to the left eye. All the buck shots in the shell passed thru his head and went out at the back of the right ear. The fatal wound caused his instantaneous death.

"As the immediate superior of Romeo Suataron and Benigno Duazo, I know both men in regards to their behavior, conduct and character. I also know besides the information of the people around and their fellow policemen, that they were good friends. During the time that they were under me as policemen of the Hawaiian-Philippine Company, I have never known that their close friendship was marred by minor differences or misunderstanding which would lead to their fatal tragedy.

"In view of the above, I can conclude that Duazo shot Suataron accidentally and when he saw his friend dead, he committed suicide by placing the muzzle of the shotgun under his chin near his throat and pressed the trigger." (Annex 1, Record, pp. 33-34.) (Italics supplied.)

The Chief of Police of Silay, Negros Occidental, within whose jurisdiction the incident took place, made a similar investigation and reached the same conclusion. In fact, the award of the referee and the petition filed by the company with this Court quote with approval the narration of facts made in said reports.

Under the foregoing circumstances, are the widow and children of the deceased, Romeo Suataron, entitled to the benefits of the Workmen's Compensation Act? Sections 2 and 4 of Act No. 3428, as amended by Republic Act No. 772, provide:

"Sec. 2. Grounds for compensation.—When an employee suffers personal injury from any accident arising out of and in the course of his employment, or contracts tuberculosis or other illness directly caused by such employment, or either aggravated by or the result of the nature of such employment, his employer shall pay compensation in the sums and to the person hereinafter specified. The right to compensation as provided in this Act shall not be defeated or impaired on the ground that the death, injury or disease was due to the negligence of a fellow servant or employee, without prejudice to the right of the employer to proceed against the negligent party."

"Sec. 4. Injuries not covered.—Compensation shall not be allowed for injuries caused: (1) by the voluntary intent of the employee to inflict such injury upon himself or another person; (2) by drunkenness on the part of the laborer who had the accident; and (3) by notorious negligence of the same."

It is not denied that the death of Romeo Suataron occurred in the course of his employment. Hence, the issue narrows down to whether or not it (1) arose out of his employment, and (2) was caused by his notorious negligence, as contended by petitioner herein.

With reference to the first question, petitioner maintains that the injury sustained by Romeo Suataron did not "grow out of the risks peculiar to the nature of" his work or "incidental" to his employment, and is not traceable to some risk or hazard to which he was "exposed in a special degree by reason of such employment," "but was due to a risk "to which all persons similarly situated are equally exposed," in the language quoted by this Court in the case of *Afable vs. Singer Sewing Machine Co.* (58 Phil., 39, 42).

We do not agree with this pretense. To begin with, admittedly, the killer acted without criminal intent, and the death of Suataron was purely accidental. Indeed, when security guard Duazo held the gun of Suataron and bade him to stand up, Suataron remarked: "Pare, do not joke with that gun?" Moreover, as stated in the aforementioned award of the referee:

"If the death of the deceased was the result of horseplay or larking among employees the courts have also declared the same as a compensable accident. Thus, in the case of Leonbruno V. Champlain Silk Milles, 229 N.Y. 470 (1920), claimant hit in eye by apple thrown by one boy at another, Cardozo, J. said that the innocent victim 'was injured, not merely while he was in a factory, but because he was ... in touch with associations and conditions inseparable from factory life. The risk of such associations and conditions were risks of the employment.'" (Ibid., p. 111 *Italics supplied.*)

In the words of the decision appealed from:

"There can be no question that horseplay or larking is unfortunately too common in factory life. That employees are placed in such an environment where it is a natural tendency for normal people to indulge in occasional foolery cannot be denied. In the case of Leonbruno V. Champlain Silk Mills, 229 N. Y. 470, N. E. 711, 13 A. L. R. 522 (1920), cited by the referee in his decision under review, wherein an apple thrown by one co-employee hit claimant in the eye, the court held:

'Whatever men and boys will do, when gathered together in such surroundings, at all events if it is something reasonably to be expected was one of the perils of his service * * *.'

Considering, therefore, that risks of associations and conditions inseparable from factory life are risks of the employment, the death of Romeo Suataron through a joke played on him which proved fatal should be considered as having arisen out of and in the course of his employment. The deceased did not participate in the horseplay as can be gleaned from his statement to his co-employee not to joke with the gun when he saw it being pointed at him. 'It is now established by the great majority of decisions that the non-participating victim of horseplay may recover compensation.' (Larson's Workmen's Compensation Law, Vol. 1, p. 343)."

In the case at bar, both Duazo and Suataron were security guards or special policemen of petitioner herein. As such, they were provided with firearms, which are meant to be carried around by them while on duty, as Suataron was at the time of the fatal incident. The peculiar nature of their work, accordingly, exposed them, in a special degree, to the risks incidental to the handling of said firearms, including the accidents which may occur while engaged in horseplay with each other. Indeed, Suataron was at the door of the office of the security guards, where he was posted by reason of his duties. Being himself another security guard, Duazo was free to enter, and did enter, said office. For the same reason it was riot particularly unusual for him to approach Suataron and hold his gun, even if only out of curiosity. Had Duazo been a stranger, or, at least, not a security guard, Suataron would not have allowed him, in all probability, to take possession of the gun, much less to aim it at him. At least, Suataron would have immediately retrieved the firearm from Duazo, and the accident would have been averted thereby. The risk in question resulted, therefore, from "association and conditions" arising out of the nature of their employment. Hence, the injury sustained in consequence thereof is compensable, unless, as contended by petitioner, there was notorious negligence on the part of Suataron.

In this connection, the decision appealed from has the following to say:

"We believe that the deceased, Romeo Sutataron, was not guilty of notorious negligence simply because a co-employee was able to take hold of and play with his gun. If at all, he was merely guilty of simple negligence as he was supposed to keep the gun in his possession at all times whenever he was on duty. But this should not in any way deprive him of his compensation under the law. It should be stated in this connection that the deceased and the assailant were both policemen of the respondent company though the latter at the

time of the accident was off duty."

We are fully in agreement with this view. Besides, Suataron was entitled to assume that Duazo knew how to handle the gun, and would take special care to avoid any accident, not only because both were security guards and were familiar, therefore, with the corresponding risks, but, also, because they were very good friends.

In view of the foregoing, the decision appealed from is hereby affirmed, with cost against petitioner, Hawaiian-Philippine Company. It is so ordered.

Pablo, Actg. C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador and Reyes, J. B. L., JJ., concur.

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