

## JESUS MANAHAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. No. L-37010. November 07, 1988*

Ponente: PARAS, J.

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### PARAS, J.:

This is a petition for review on certiorari of the April 4, 1973 decision of the Court of Appeals[\*] in CA--G.R. 10334-CR entitled "People of the Philippines, Plaintiff-Appellee vs. Jesus Manahan and Jose Nuñez, Defendants-Appellants," affirming with modification the November 6, 1968 decision of the Court of First Instance of Cebu, Branch III[\*\*] in Criminal Case No. V-12030, "People of the Philippines vs. Jesus L. Manahan", find-ing the accused guilty beyond reasonable doubt of the crime of Multiple Homicide and Damage to Property Thru Simple Negligence.

The dispositive portion of respondent Appellate Court's decision is as follows:

"The portion of the dispositive part of the decision of the trial court, ordering the two accused to indemnify the heirs of the deceased in the sum of 'P6,000 for each death or the sum of P18,000.00 with subsidiary imprisonment in case of insolvency' stands correction. The indemnity in favor of the heirs of the deceased Anabelle Nuñez, Consorcia Flores and Ilfreda Flores should be raised to P12,000.00 for each death (People vs. Pantoja, G.R. No. L-18793, October 11, 1968).

"Accused-appellant Jose Nuñez is not civilly liable for the death of his daughter, Anabelle Nuñez, he being the presumptive heir of the deceased (People vs. Berang, 69 Phil. 83).

"Accused-appellants should not be made to serve subsidiary imprisonment for failure to meet the reparation of the damage caused and the indemnification of the consequential damages (Articles 39, as amended by Republic Act No. 5465).

"WHEREFORE, with the modifications mentioned, the decision appealed from is AFFIRMED." (Rollo, p. 40).

The undisputed facts of this case, as found by the trial court and adopted by respondent Court of Appeals are as follows:

In the afternoon of June 5, 1965, the M/L Marli III left Bayawan, Oriental Negros, for Cebu. It was loaded with plywood, rattan, lumber and empty drums. The vessel was owned and operated by the Marli Plywood and Veneer Corporation. The officers and crew were Captain Jose Nuñez (one of the accused-appellants), Irineo Macabante, Beryo Taneo, Ildefonso Nierves, Luzor Japdos, Robustiano Torreque and others. Also aboard, as guest passengers of Captain Jose Nuñez, were his wife, his niece - Consorcia Flores, his daughter ? Anabelle Nuñez, his son - Nelson Nuñez, Nimfa Macabante (daughter of Irineo Macabante) and his granddaughter - Ilfreda Flores. Irineo Macabante was at the wheel from 4:00 o'clock that afternoon until midnight. He was relieved by Ildefonso Nierves from midnight until past 2:30 o'clock in the morning of the next day.

At about 1:00 o'clock that morning the M/L Marli III was approaching the Lawis Lighthouse of Talisay, Cebu.

Ildefonso Nierves was at the wheel while Captain Jose Nuñez was standing beside him to give orders for the maneuver of the wheel. Robustiano Torreque was stationed on the top of the bridge above Ildefonso Nierves and Captain Jose Nuñez, as the lookout. At past 2:00 o'clock that morning, Robustiano Torreque observed a green light at a far distance. He notified Ildefonso Nierves through a speaker's tube of an approaching vessel with a green light. On order of Captain Jose Nuñez, Ildefonso Nierves kept the vessel on course going 30 degrees. It was dark and only the green light could be seen. Then, suddenly there was a change from green to red light of the oncoming vessel, which was later identified as M/V Pioneer Butuan under the command of Captain Jesus Manahan. Captain Jose Nuñez of Marli III, ordered Ildefonso Nierves to turn "hard port", which means to the left. But it was too late to do so, for the M/V Pioneer Butuan was already upon them with her bow hitting the starboard side of the M/L Marli III at Hatch No. 1 near the bow. Immediately, the M/L Marli III was swamped with water and the entire body, except the top, was submerged. The vessel did not sink, because it was made of wood and was loaded with plywood, rattan, lumber and empty drums, which kept her buoyant. The impact was so violent and unexpected that the women passengers who were sleeping on the open deck near the bridge, were thrown overboard. As a result of their exposure to the sea, Anabelle Nuñez, Consorcia Flores and Ifreda Flores were drowned. Nelson Nuñez, Nimfa Macabante and Captain Jose Nuñez suffered physical injuries.

Captain Jesus Manahan, skipper of M/V Pioneer Butuan and Captain Jose Nuñez, skipper of Marli III were charged at the Court of First Instance of Cebu with Multiple Homicide, Multiple Physical Injuries and Damage to Property Thru Reckless Imprudence.

During the pendency of said criminal case before the trial court, the Cebu Special Board of Marine Accident conducted an investigation of the collision and its report was reviewed by the Board of Marine Inquiry (BMI Case No. 41), which rendered its decision and the dispositive portion reads:

"In view of the foregoing, we conclude that Capt. Manahan has not committed any negligence and therefore he deserves exoneration. On the other hand it is established that Capt. Nuñez committed wrong maneuvers causing the collision. The Board, however, considers the fact that Capt. Nunez in executing hard left had done it due to confusion created by he circumstances of time and place and had to do it on the assumption and honest belief that it was the only possible way of minimizing the impact as the collision was already imminent. Under those circumstances he was acting in extremis and, therefore, even if wrong he cannot be held responsible for the collision. (*Urrutia & Co. vs. Baco River Plantation Co.*, 26 Phil. 632).

"It is therefore, the opinion of this Board that both Capt. Manahan and Capt. Nuñez are not guilty, and recommend their exoneration." (Rollo, pp. 55-56).

After trial, the two officers were convicted of the crime charged, the dispositive portion of the decision reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered, finding the accused, Captain Jose Nuñez and Captain Jesus Manahan, guilty beyond reasonable doubt of the crime of multiple homicide and damage to property thru simple negligence and the Court hereby sentences each to suffer imprisonment of six months of arresto mayor and to indemnify (pay solidarily) the heirs of Anabelle Nuñez, Consorcia Flores and Ifreda Flores the sum of P6,000 for each death or the sum of P18,000 with subsidiary imprisonment in case of insolvency and to pay solidarily damages in the sum of P36,813.69 with legal interest from the date hereof, to the Marli Plywood and Veneer Corporation and to pay each one half of the costs.

"IT IS SO ORDERED." (Brief for the Defendant-Appellant, p. 41).

Defendant-appellant Jesus Manahan filed a Motion for Reconsideration and/or New Trial which was denied by respondent Court (Former Fifth Division) in its resolution dated June 5, 1973 (Rollo, p. 51).

Hence, this petition.

In the resolution of June 13, 1973, the Court, without giving due course to the petition, required respondents to comment thereon, which comment was filed by the Solicitor General as counsel for public respondent, on October 16, 1973 (Rollo, p. 63). In its resolution dated October 16, 1973, the Court resolved to give due course to the petition and required both parties to submit simultaneously their respective memoranda in lieu of brief, after which said case is considered submitted for decision (Rollo, p. 67).

Considering that petitioner had already filed his memorandum, while the Solicitor General failed to file his memorandum for respondent within the required period, the Second Division in a resolution dated January 24, 1973, considered the case submitted for decision without respondent's memorandum (Rollo, p. 80).

Petitioner raised the following assignment of errors, to wit:

## I

THE LOWER COURT ERRED IN TOTALLY DISREGARDING THE DECISION OF THE BOARD OF MARINE INQUIRY EXONERATING PETITIONER FROM ANY CRIMINAL AND CIVIL LIABILITY.

## II

THE LOWER COURT ERRED IN DENYING PETITIONER'S ALTERNATIVE PRAYER IN HIS MOTION FOR RECONSIDERATION AND/OR NEW TRIAL TO REMAND THE CASE TO THE TRIAL COURT TO ENABLE HIM TO PRESENT ADDITIONAL EVIDENCE TO ESTABLISH HIS INNOCENCE.

## I

Verily, administrative findings of facts are sufficient if supported by substantial evidence on record (Police Commission vs. Lood, 127 SCRA 757 [1984]) and as a general rule, actions of administrative agencies need not be disturbed by the judicial department (National Housing Authority vs. CA, 121 SCRA 777 [1983]). However, in the case at bar the decision of the Board of Marine Inquiry falls under the exception as it is not supported by substantial evidence to warrant its conclusion "that Captain Manahan has not committed any negligence and therefore, he deserves exoneration." The records show that the only basis for the conclusion of the Board was the fact, that he "is a master mariner and without any doubt is more versed than Captain Nuñez in the technique of navigation and the Rules of the Road." (Rollo, p. 9)

Noteworthy is the observation of the trial court that "the vessels were displaying the regulation lights of green and red before they came into close proximity of each other." (Decision, CA, G.R. No. 10334, CR-7-10; Rollo, pp. 34-37) Therefore, Captain Manahan "was bound to take the necessary precautions to avoid the collision" If the look-out of the Butuan had been alert, the lights of the Marli could have been observed at a distance and the officers warned of her presence before the two vessels came together. But Captain Manahan noticed the presence of the Marli only when she was dangerously near, showing a red light. Captain Manahan thus failed to take the necessary precautions which the occasion demanded.

Further, with respect to accused Jose Nuñez, it is clear from the testimonies of the members of the crew of M/L Marli III that "Nuñez was aware of the presence of M/V Pioneer Butuan as early as 1:00 o'clock in the morning of June 6, 1965." (Rollo, p. 2) Since it was dark at the time, it was his duty to exercise utmost diligence by carefully watching the movement of the incoming vessel and observing her lights so as to avoid a collision with her. Had Nuñez been observant, as the accident took place more than an hour after he had noticed the presence of the other vessel and had taken the necessary precaution as required of him, the accident could have been prevented. Hence, Nuñez is equally negligent.

Thus, in a similar case, this Court sustained the findings of the trial court reversing the conclusion of the Board of Marine Inquiry which exonerated the captain from any negligence. It was held:

"While the Board of Marine Inquiry which investigated the disaster, exonerated the captain from any negligence, it was because it had considered the question of negligence as 'moot and academic', the captain having 'lived up to the true tradition of the profession'. While we are bound by the Board's factual findings, we disagree with its conclusion since it obviously had not taken into account the legal responsibility of a common carrier towards the safety of the passengers involved." (Vasquez vs. Court of Appeals, L-42926, September 13, 1985, 138 SCRA 553).

It is too well-settled to need further elaboration, that the findings of fact of the trial court, if supported by substantial evidence, are binding on the Supreme Court (Talisay Employees and Laborers' Association et al. vs. CIR et al., G.R. No. 39844, July 31, 1986, 143 SCRA 213; People vs. Monteverde, G.R. No. 60962, July 11, 1986, 142 SCRA 668; People vs. Cruz, G.R. No. L-68805, July 9, 1986, 142 SCRA 576; Director of Lands et al. vs. Funtalar, G.R. No. 68533, May 23, 1986, 142 SCRA 57; Legaspi vs. CA et al., L-45510, May 27, 1986, 142 SCRA 82, cited in Francisco vs. Mandi, No. L-74625, July 31, 1987, 152 SCRA 711).

It is beyond question that the findings of the trial court are based on substantial evidence.

## II

Respondent court cannot be faulted for denying petitioner's motion for new trial.

Among the requirements of new trial based on newly discovered evidence is that the evidence could not have been discovered and produced during the trial even with the exercise of reasonable diligence (People vs. Delasa, 115 SCRA 74 [1982]). It will be noted that petitioner failed to appear during the trial as he was always out of the country, on board a foreign vessel. His intended testimony could have been, upon reasonable effort, made available to the court had appellant simply made use of the rules on depositions and discovery under the Rules of Court. Here there is no showing that petitioner tried to do so and failed. Accordingly, the motion for new trial should be denied. He had a standby waiver of personal appearance before the court (Order dated July 2, 1968; CFI Records, Rollo, p. 351), a clear manifestation that he did not have a concrete basis for his defense and for the grant of a new trial. He completely relied on his exoneration by the Board of Marine Inquiry as his defense.

Hence, as correctly observed by the Solicitor General, the petition for new trial even failed to state what the new evidence, if any, consists of. It is axiomatic that new trial is not to be granted if it will serve no purpose, and the defense is nil or ineffective (Philippine Bank of Commerce vs. Aruego, 102 SCRA 530 [1981]; Ferrer vs. Yang Sepeng, 60 SCRA 149 [1974]). Besides, additional evidence is not a ground for new trial (U.S. vs. Zamora, 2 Phil. 582 [1903]; People vs. Singumuto, 3 Phil. 176 [1904]; People vs. Sepillo, 80 Phil. 805 [1948]).

PREMISES CONSIDERED, this petition is DENIED, and the decision of respondent Court of Appeals (imposing upon each accused an imprisonment of six [6] months of arresto mayor) is AFFIRMED, with the modification that the indemnity for each death is increased to Thirty Thousand (P30,000.00) pesos. In all other respects, said decision is AFFIRMED.

## SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[\*] Penned by Justice Luis B. Reyes, concurred in by Justices Jesus Y. Perez and Jose N. Leuterio.

[\*\*] Judge Mateo Canonoy, CFI, Branch III, Cebu City.

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