

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. IGNACIO REODIQUE, DEFENDANT AND APPELLANT.

G.R. No. 10956. December 07, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Ambos Camarines convicting the appellant of the crime of causing death by gross or reckless negligence in that he, on or about the 29th day of November, 1914, discharged an airgun, loaded with in the left breast from which death resulted in about 9 days.

From the evidence in the case it appears that, on the 29th of November, 1914, one Candido Sabit, being the owner and in possession of a rifle operated by compressed air, placed it in a corner of a room in a house owned by Quirico Labordio, Where he was, at the time, a guest. On that occasion there were several persons in the room, including the accused and a girl about 14 years old named Isabel Dalmifa. The accused picked up the rifle, asked its owner if it was loaded, who answered in the negative, and, after receiving certain instructions with respect to the manner of handling and using it, and without knowing that it was loaded, discharged it. Unfortunately, however, the gun was loaded and at the time it was discharged, was pointed directly at Isabel Dalmita, who received the shot in her left breast.

The accused was convicted of the crime already mentioned and was sentenced to 1 year and 6 months of prison correctional, to the accessories provided by law, to pay to the heirs of the deceased girl the sum of P1,000, and to subsidiary imprisonment in case of nonpayment.

It is contended by the appellant, in the first place, that it has not been shown that the gunshot wound caused the death of Isabel Dalmita; but that the record discloses, rather, that she died as a result of the administration to her by her mother of a certain poisonous beverages called dogong-naga.

It is true that the child was not examined by a physician or by any person who was, technically speaking, capable of determining the cause of death from a physical examination alone; and it may be said, perhaps, that, from that point of view, there is no evidence that the death was caused by the gunshot wound. On the other hand, we have the fact that the child was wounded by a gunshot wound in the left breast, that the shot penetrated deeply, that the wound bled considerably, and that, from that time forward, she showed symptoms of illness, had fever and cold extremities, with death finally resulting. We are of the opinion that, although there is no medical testimony on which the trial court could predicate the cause of death, there is, notwithstanding, a concatenation of events which leads reasonably and necessarily to the conclusion that death resulted from the wound inflicted.

The trial court gave no credence to the testimony of the defense that the death of the child was caused by the administration of a noxious potion. The concoction administered appears not to have been poisonous and there is no claim that there was an attempt on the part of the parents to cause death by the administration of any noxious beverage. The potion given seems to have been a sort of family medicine commonly used when one displayed signs of illness, and, on the occasion referred to, seems to have been administered to the child to relieve her from

the effects of the gunshot wound. A careful examination of the record leads us to the conclusion at which the trial court arrived on this phase of the case.

Dealing with the other aspect of the case, that of negligence, we are satisfied that the court properly decided that the accused was guilty of negligence in causing the wound described.

This case is not to be decided in accordance with the principles governing *The United States vs. Catangay* (28 Phil. Rep., 490). There the facts were as follows: "From the evidence introduced at the trial, it has been fully proven that on the night of the crime the deceased, Mauricio Ramos, taking his shotgun with him, went to hunt deer in the barrio of Quinatihan, municipality of Candelaria, Tayabas, first passing by the house of Santiago Abandia, whom he took along with him and in his company also passed by the house of the defendant, Joaquin Catangay, whom they both invited to bring his shotgun and go with them for a hunt; that while the three men were passing along in the middle of a field of talahib (high grass), the deceased in front carrying a lighted lantern fastened to his forehead, behind him the defendant, and lastly Santiago Abandia, the first two men saw a deer and alighted from their respective horses, for they were all mounted; that thereupon Santiago Abandia stopped his horse and also dismounted, in order that the deer might not become aware of the presence of the hunters by the noise; that a few moments afterwards, two shots were heard in quick succession and then the light the deceased carried went out; that Santiago Abandia, upon noticing that the said light was extinguished, approached the deceased; and he found the defendant alongside of him, raising him up, saying: 'What can have happened to my godfather?'; that, as the deceased could not get up, Santiago Abandia asked the defendant for matches and lit a little stick, by which light witness saw the wound in the back of the head of the deceased, who was already dead; and that the said wound consisted of a fracture of the left parietal region, the brain being exposed. It has also been proved that there had been no previous trouble between the defendant and the deceased, but that on the contrary they had always been on intimate terms of friendship."

In deciding that case the court said: "According to the trial judge, the reckless negligence on the part of the defendant consists in that the latter did not take the necessary Precaution, which the court considered elemental on that occasion in view of the circumstances, not to carry his shotgun cocked and aimed; but the court also took into account the fact that, as testified by the defendant, the discharge of his firearm (the shot from which wounded and "led the deceased) was caused by his stumbling against an embankment or pilapil that lay between him and the victim, causing him to fall to one of his knees.

"The accidental cause, then, of the discharge of the a was not due to the fact of the defendant's having it Coci and aimed, but to the accident of his stumbling against an embankment in the way. The occurrence was entire! accidental and involuntary. Consequently, the crime charged in this prosecution lacks the necessary element to allow of it being considered as reckless negligence under article 568 of the Penal Code, as would have been the case if though through no malice on the part of the defendant the damage had been produced, nevertheless, by some voluntary act of his. (*U. S. vs. Barnes*, 12 Phil. Rep., 93; and decision of the supreme court of Spain, of June 28, 1881.)"

Nor can the theory on which *XJ. S. vs. Barnes* (12 Phil. Rep., 93) was decided be called in aid of the contention of the accused in this case. There the facts were as follows: "At about 10 o'clock on the morning of the 15th of December, 1906, A. H. Barnes, J. A. Ryan, and three Filipinos, one of whom was Pedro Leonardo, were out duck shooting and went through the barrio of San Pablo, sitio of Muyot, in the municipality of San Antonio, Nueva Ecija; when they were about to return it was noticed that there were ducks on an estero or stream; Barnes at once fired his gun twice, the said Pedro Leonardo being near to him at the time; when trying to reload the weapon, the cartridge would not go in easily, and Barnes had to force it by closing the breech of the gun which is automatic, pressing the same upon his knee, at which moment the gun was discharged, Barnes being still on his knees; when

he rose to look for the ducks he saw said Leonardo sinking beneath the water, for which reason he left his gun on the ground and told his friend Ryan that it looked as if the said individual was hurt; they went into the river and with the assistance of the other men recovered the body of Pedro Leonardo who was already dead; a surgeon who examined the body found a gunshot wound in the back of the head; bones had been broken, and the wound was of necessity a mortal one."

The court said: "It is true that the second paragraph of article 1 of the code above cited provides that acts and omissions punished by law are always presumed to be voluntary unless the contrary shall appear; but as it is proven in the proceedings, by undeniable evidence, that the gun which is of the automatic class, and for the use of which the accused carried a license, went off at the moment when the accused was placing the cartridge into the chamber and pressing the gun against his knee, and not when he was in the act of aiming and firing; and inasmuch as it has not been proven, even by circumstantial evidence, that the accused saw or was aware that the deceased Leonardo, who stood behind him, had moved near him and in front of the muzzle of the gun; the conclusion to be arrived at must necessarily be that the said death was not the result of a voluntary and criminal act, nor of an omission or reckless negligence, but an involuntary act devoid of a criminal character, that is a regrettable and unfortunate accident without any effort of the will."

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Neither is the doctrine enunciated in the United States vs. Tañedo (15 Phil. Rep., 196) applicable in the case before us. There it appeared that, on the morning of the 26th of January, 1909, the accused, with a number of his employees, went to work on a dam located on his land. He took with him a shotgun and a few shells, with the intention of hunting wild chickens after he had set his laborers at work. He remained with the workmen an hour or so and then went across a stream a short distance away to investigate how an alteration which he had made in the dam affected the flow of water from a rice field located on the other side of the stream. He carried his shotgun with him. While making the investigation he met one Sanchez, for whose murder he was subsequently arrested and tried, together with his mother and uncle, who had been living nearby in a small shack during the rice-harvesting season. The accused asked the uncle of Sanchez where he could find some wild chickens. The uncle being sick of fever, Sanchez answered the question and pointed out in a general way a portion of the forest near the edge of which the shack stood. After some conversation Sanchez went with the accused to hunt wild chickens. While hunting, the accused came upon a wild chicken, and, not seeing Sanchez about and not knowing or having any reason to believe that he was in that vicinity shot the chicken. The shot took effect, killing the chicken, but, passing beyond, entered the body of Sanchez, producing instant death. In that case the court held that the act causing the death was involuntary so far as Sanchez was concerned and that the death was accidental. In its decision the court held that, while acts and omissions punished by law are always presumed to be voluntary unless the contrary is proved, the accused had, by his uncontradicted evidence, brought his act within the other principle of law set out in the Penal Code that he who, while performing a legal act with due care, causes injury by mere accident, without intention of causing it, is exempt from the operation of the provision which holds all

men responsible for their voluntary acts. In that case the court said: "The American doctrine is substantially the same. It is uniformly held that if life is taken by misfortune or accident while in the performance of a lawful act executed with due care and without intention of doing harm, there is no criminal liability. (*Tidwell vs. State*, 70 Ala., 33; *State vs. Benham*, 23 Iowa, 154; 92 Am. Dec., 417; *Bertroung vs. State*, 2 Tex. App., 160; *Williamson vs. State*, 2 Ohio C. C., 292; *U. S. vs. Meagher*, 37 Fed. Rep., 875; *U. S. vs. Castro*, Fed. Cas., 14752; *State vs. Legg*, 3 L. R. A., N. S., 1152.)"

As will be seen from the cases cited, the accused, in those cases, were using due care and the death occurred through a pure accident whereby the accused, involuntarily and without negligence, brought about a result which the diligence required by law could not, under the circumstances, have prevented. In the case at bar the accused deliberately pulled the trigger of the airgun, thereby, voluntarily and intentionally, causing its discharge, with the result that injury was produced. The fact that the accused did not know that the gun was loaded is not of controlling consequence in the determination of the question as to whether his act in discharging the gun was negligent. It was his duty to know. His act being voluntary and performed without investigation or real effort to prevent injury, he cannot now be heard to say that its consequences were different from those which he anticipated. The case, on the contrary, more closely resembles many of the cases on death by *imprudencia temeraria* found in the decisions of the supreme court of Spain; such as leaving a loaded revolver on a chair or other place within the reach of small children then in the house, one of whom picks it up to play with it and is killed by its discharge; exhibiting a loaded revolver to a friend, who was killed by the accidental discharge brought about by negligent handling; setting a fire on a piece of land which passed to adjoining lands doing damage thereto; negligently dropping a loaded pistol on the floor of a room occupied by several persons, one of whom was injured by the resulting discharge; riding a horse at a gallop through the streets and injuring a person walking therein; examining the pistol of another in the midst of persons who were looking on, one of whom was injured by its negligent discharge; an operator of dangerous machinery leaving his place, by reason of which an accident occurred to another; leaving a cart on the street without blocking the wheels, a small child being injured by the sudden starting thereof; cleaning a loaded firearm in an inhabited house; making excavations in the lands of one person and, by lack of proper precautions, causing other lands to fall; the conductor of a street car negligently failing to put on the brakes, colliding with a carriage in consequence.

The Penal Code recognizes and distinguishes three classes of negligence in connection with homicide or other crimes: First, reckless negligence (*imprudencia temeraria*), closely approaching if not identified with, gross negligence, which consists in any act of improvidence (lack of foresight), thoughtlessness, carelessness, negligence, unskillfulness or imprudence, executed or done without taking those precautions or measures which the most common prudence would require. For example, discharging a firearm from the window of one's house and killing a neighbor who just at the moment had leaned over the balcony in front. Leaving a loaded firearm on a chair or other place within the reach of small children then in the house—one of whom picks it up for the purpose of playing with it, and is killed -by its discharge. The facts in both of these cases constitute homicide by reckless negligence, because death was produced by failure to exercise the most ordinary and common care. (*Viada*, Vol. III, p. 629.)

The second class is that in which the act is performed with simple negligence (*imprudencia*), i. e., with negligence less than reckless or gross negligence, but accompanied with the violation of some ordinance, rule, or regulation enacted by some competent body or official for the public good. An illustration: The superintendent of a jail, in a moment of benevolence, permits a prisoner to leave the prison, who, abusing the confidence and good nature of the superintendent, escapes. In such case the superintendent has not only been imprudent but he has violated the rules and regulations which prohibit him from permitting a prisoner to leave the prison. The escape, brought about by the superintendent's breach of the rules, renders him guilty of the crime of infidelity in the custody of prisoners

committed by simple imprudence or negligence with violation of the rules relating to prisons. (Id.)

Finally, the Code recognizes as the third class that in which the negligence can neither be called reckless, because it is impossible to foresee the evil produced, nor negligence with violation of rules, regulations or ordinances, because, in reality, none are violated. It is called simple imprudence or negligence, and is punished as a misdemeanor in paragraph 3 of article 605 (Spanish) of the Penal Code. An example of this class is presented in a case where the driver of a cart, passing along the street of a city at the speed prescribed by the ordinances and leading his team from the side by a strap attached to the bridle or head of one of the horses, on turning" a corner, in a moment of distraction, does not see a child asleep in the gutter on the side of the team opposite to him; by reason whereof the child is run over by the cart and killed. The act cannot be denominated purely accidental, because, if he had been paying attention to his duty, he would have seen the child and very likely would have been able to avoid the accident. Nor can it be called gross or reckless negligence, because he was not able to foresee the extremely unusual occurrence of a child being asleep in the gutter. Neither was there a violation of an ordinance, because he was driving his vehicle strictly in conformity therewith, Such act is qualified as simple imprudence or negligence, punishable as a misdemeanor only. (Id.; U. S. vs. Clemente, 24 Phil. Rep., 178.)

From a consideration of these three classes into which the Penal Code divides all crimes committed by negligence, it is clear that the case at bar belongs to the class first named, that is, the class in which the person committing the offense fails to use the most common prudence; and this result turns us back to our conclusion stated at the beginning of this discussion, viz., that the trial court was correct in declaring that, in causing the death of Isabel Dalmita, the accused was guilty of gross negligence. (U. S. vs. Jarrilla, 1 Phil. Rep., 53; U. S. vs. Penalosa and Rodriguez, 1 Phil. Rep., 109; U. S. vs. De los Reyes, 1 Phil. Rep., 375; U. S. vs. Nava, 1 Phil. Rep., 580; U. S. vs. Zabala, 6 Phil. Rep., 431; Rakes vs. Atlantic, Gulf and Pacific Co., 7 Phil. Rep., 359; U. S. vs. Campo, 10 Phil. Rep., 97; U. S. vs. Arceo, 11 Phil. Rep., 530; U. S. vs. Barnes, 12 Phil. Rep., 93; U. S. vs. Divino, 12 Phil. Rep., 175; U. S. vs. Maleza and Adlaon, 14 Phil. Rep., 468; U. S. vs. Eduardo, 15 Phil. Rep., 161; U. S. vs. Ah Chong, 15 Phil. Rep., 488; U. S. vs. Pacheco, 18 Phil. Rep., 399; U. S. vs. Agustin, 21 Phil. Rep., 270; U. S. vs. Tayongtong, 21 Phil. Rep., 476; China Navigation Co. vs. Vidal, 22 Phil. Rep., 121; U. S. vs. Juanillo, 23 Phil. Rep., 212; U. S. vs. Barias, 23 Phil. Rep., 434; U. S. vs. Clemente, 24 Phil. Rep., 178; U. S. vs. Apigo, 25 Phil. Rep., 631; Novo & Co. vs. Ainsworth, 26 Phil. Rep., 380; U. S. vs. Knight, 26 Phil. Rep., 216; Williams vs. Yangco, 27 Phil. Rep., 68; U. S. vs. Manabat and Pasibi, 28 Phil. Rep., 560; U. S. vs. Catangay, 28 Phil. Rep., 490; U. S. vs. Crame, 30 Phil. Rep., 2.)

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Arellano, C.J., Torres, Johnson, Carson, and Araullo, JJ., concur.

Judgment affirmed.

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