

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. FEDERICO DESPAVELLADOR Y DULOT, DEFENDANT AND APPELLANT.

G.R. No. 13814. January 28, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Defendant Federico Despavellador is charged with damage to property through reckless negligence. It is alleged in the information:

"That on or about the 27th day of July, 1955, in the City of Manila, Philippines, the said accused, being then the driver and person in charge of passenger bus (GMC) bearing plate No. TPU-4683 (Manila) did then and there unlawfully and feloniously drive, manage and operate the same eastward on Azcarraga street, in said city, in a negligent, reckless and imprudent manner by then and there making the said bus run at a speed greater than was reasonable and proper, without taking the necessary precautions to avoid accident to persons or damage to property considering the condition of the vehicular traffic at the time at the said place, causing as a consequence of his said negligence, recklessness, imprudence and want of precautions the said bus so driven by him to strike and sideswipe, as in fact it struck and sideswiped passenger jeepney plate No. TPU-5249 (Manila), driven by Jose Perez y Eusebio and belonging to Librada Manalo, which jeepney was also travelling eastward on said Azcarraga street, and also causing the latter vehicle to hit, as in fact it hit a Meralco post, damaging the said passenger Jeepney to the extent of P200.00, to the damage and prejudice of Librada Manalo in the aforesaid amount of P2000.00, Philippine currency."

After due trial, under a plea of guilty, the Court of First Instance of Manila rendered a decision in which it made the following findings:

"* * *" On the early morning of July 27, 1955 a passenger jeepney with Plate No. TPU-5249 (Manila) and driven by witness Jose Perez, was travelling eastward on Azcarraga street, Manila, On board thereof where some passengers among whom was Flaviana Enriquez, another witness who had a cargo of fish valued at P85.00 which she was then taking to San Juan for sale. Upon reaching that part of Azcarraga street in front of the University of the East, the jeepney was overtaken and sideswiped on the right side by a speeding big passenger bus, TPU-4683 (Manila), which came from behind and was driven by the defendant Federico Despavellador. The bus was going towards the same direction on the same street. The act of sideswiping produced an impact that forced the jeepney to swerve to the center of the street, thereby causing it to strike, bump into and collide against a post at the middle, as a result of which it suffered damages in the amount of P200.00 (Exhibits 'C', 'C-1' to C-11'), and the cargo of fish totally destroyed. There is evidence to show that the bus which the defendant was driving, was racing with two other buses moments before the accident. Although the bus did not show any appreciable, damage, the jeepney bore indications of slight damage at the portion thereof which came into bodily contact with the bus, in addition to the damages sustained by it on the front part where it struck the post.

"The Court is convinced that there was here a collision between the passenger jeepney and the passenger bus;

that the latter was speeding and so was the former; and that the defendant is guilty of damage to property thru reckless imprudence with contributory negligence on the part of the other driver."

* * * * *

The dispositive part of said decision reads:

"WHEREFORE, the defendant Federico Despavellador y Dulot is hereby found guilty beyond reasonable doubt of the offense of damage to property thru reckless negligence imputed to him in the information filed herein and quoted at the beginning of this decision, with contributory negligence on the part of the driver of the damaged jeepney, which should mitigate the civil liability of said accused, and, in accordance with the applicable provisions of Article 365 of the Revised Penal Code, hereby sentences him to pay a fine of one hundred pesos (P100.00), which is the damage as fixed by the Court in the exercise of its discretion and for which the accused should be made liable, considering the contributory negligence on the part of the driver of the damaged jeepney; to indemnify the owner of the said jeepney, Librada Manalo, in the said amount of one hundred pesos (P100.00) as well as to further indemnify Flaviana Enriquez in the additional sum of eighty five pesos (P85.00) representing the value of the fish belonging to her which had been totally destroyed, or to suffer subsidiary imprisonment in accordance with law in case of insolvency to pay the fine and the indemnities; and to pay the costs."

On appeal taken by the defendant, the Court of Appeals held that the value of the damage sustained by the jeep driven by Jose Perez had not been properly established, that the basis essential to the determination of the impossible penalty which by law (Article 365, Revised Penal Code) is dependent upon the amount of the damage caused to the offended party was, therefore, lacking, and that the extent of the contributory negligence of Jose Perez should be ascertained further for a proper elucidation of the main issue in the case, and, accordingly, set aside the decision of the lower court and remanded thereto the record of the case "for further proceedings on the questions of extent or amount of damages sustained by the jeepney driven by Jose Perez and the contributory negligence on the part of said Perez, on the condition that the evidence already adduced shall not be received anew." The Court of Appeals, moreover, directed the court below to render, after a new trial, another decision "as the law and the evidence so warrants."

When the case was called in the lower court, for the reception of additional evidence, the witnesses for the government failed to show up, despite several postponements granted on motion of the prosecution. Hence, the case was deemed resubmitted for decision and another one was rendered, the dispositive part of which we quote:

"There being no evidence sufficient, in the opinion of the Court of Appeals, to establish damage on the part of the jeep, decision is hereby rendered convicting the defendant of damage to property through reckless imprudence in the amount of eighty-five (P85.00), pesos, representing the value of the wares of the passenger Flaviana Enriquez, and for this reason, he is hereby found guilty thereof and sentenced to pay a fine of eighty-five pesos; (P85.00), to indemnify said Flaviana Enriquez in the amount of eighty-five pesos, (P85.00), with subsidiary imprisonment in case of insolvency to pay both the fine and the indemnity, and to pay the costs."

From this second decision, the defendant has appealed directly to this Court, only two (2) questions of law being raised in his brief. In view, however, of the conclusion we have reached with respect to the first error assigned in said brief, we deem it unnecessary to consider the other issue therein raised.

The main question before us is whether the last decision of the lower court suffers from a fatal infirmity, namely, that it convicts appellant herein of a crime not alleged in the information. Indeed, the same charges him with damage, through reckless negligence, to a jeep belonging to Librada Manalo, to the prejudice of the latter in the sum of P200.00, whereas the decision appealed from found appellant guilty of damage, thru reckless imprudence,

not to the jeep, but to the wares not of Librada Manalo the owner of the jeep, but of a passenger thereof named Flaviana Enriquez. We agree with the defense, that the crime of damage through reckless imprudence, to the wares of said passenger is not charged in the information and neither includes the fact alleged therein, nor is included in the latter. Thus, said decision punishes appellant for a crime of which he has not legally informed and, hence, denied him the due process of law.

The failure of the prosecution to establish specifically the value of the damage sustained by the jeep of Librada Manalo is not, however, an insurmountable obstacle to the imposition of the corresponding penalty, for, the third paragraph of Article 365 of the Revised Penal Code reads:

"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 damage to three times such value but which shall in no case be less than twenty-five pesos." (Italics ours.)

Hence, the value of the damage in question in the case at bar should be deemed to be, at least, P25.00 (People vs. Rodriguez, L-6300, April 20, 1954; People vs. Narvas, 107 Phil., 737).

Wherefore, the decision appealed from is hereby modified in the sense that appellant herein is convicted of the offense of damage, through reckless negligence, to the jeep of Librada Manalo, in the amount of P25.00, and is accordingly, sentenced to pay a fine of P25.00, and to indemnify said Librada Manalo in the aforementioned sum of P25.00, with subsidiary imprisonment in case of insolvency, apart from the costs. It is so ordered.

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

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