

CONSOLACION GABETO, IN HER OWN RIGHT AND AS GUARDIAN AD LITEM OF HER THREE CHILDREN, PLAINTIFF AND APPELLEE, VS. AGATON ARANETA, DEFENDANT AND APPELLANT.

G. R. No. 15674. October 17, 1921

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of Iloilo by Consolacion Gabeto, in her own right as widow of Proceso Gayetano, and as guardian ad litem of the three children, Conchita Gayetano, Rosita Gayetano, and Fermin Gayetano, for the purpose of recovering damages incurred by the plaintiff as a result of the death of the said Proceso Gayetano, supposedly caused by the wrongful act of the defendant Agaton Araneta. Upon hearing the evidence, his Honor, Judge L. M. Southworth, awarded damages to the plaintiff in the amount of P3,000, from which judgment the defendant appealed.

It appears in evidence that on August 4, 1918, Basilio llano and Proceso Gayetano took a carromata near Plaza Gay, in the City of Iloilo, with a view to going to a cockpit on Calle Ledesma in the same City. When the driver of the carromata had turned his horse and started in the direction indicated, the defendant, Agaton Araneta, stepped out into the street, and laying his hands on the reins, stopped the horse, at the same time protesting to the driver that he himself had called this carromata first. The driver, one Julio Pagnaya, replied to the effect that he had not heard or seen the call of Araneta, and that he had taken up the two passengers then in the carromata as the first who had offered employment. At or about the same time Pagnaya pulled on the reins of the bridle to free the horse from the control of Agaton Araneta, in order that the vehicle might pass on. Owing, however, to the looseness of the bridle on the horse's head or to the rottenness of the material of which it was made, the bit came out of the horse's mouth; and it became necessary for the driver to get out, which he did, in order to fix the bridle. The horse was then pulled over to near the curb, by one or the other—it makes no difference which—and Pagnaya tried to fix the bridle.

While he was thus engaged, the horse, being free from the control of the bit, became disturbed and moved forward, in doing which he pulled one of the wheels of the carromata up on the sidewalk and pushed Julio Pagnaya over. After going a few yards further the side of the carromata struck a police telephone box which was fixed to a post on the sidewalk, upon which the box came down with a crash and frightened the horse to such an extent that he set out at full speed up the street.

Meanwhile one of the passengers, to wit, Basilio llano, had alighted while the carromata was as yet alongside the sidewalk; but the other, Proceso Gayetano, had unfortunately retained his seat, and after the runaway horse had proceeded up the street to a point in front of the Mission Hospital, the said Gayetano jumped or fell from the rig, and in so doing received injuries from which he soon died.

As to the facts above stated the evidence cannot be said to be materially in conflict; but there is decided conflict upon the point of the exact relation of the defendant Agaton Araneta, to the runaway. The evidence for the

plaintiff on this point consists chiefly of the testimony of Julio Pagnaya and of Basilio llano. They both say that while yet in the middle of the street, the defendant jerked the bridle, which caused the bit to come out of the horse's mouth, and Julio says that at that juncture the throatlatch of the bridle was broken. Be this as it may, we are of the opinion that the mere fact that the defendant interfered with the carromata by stopping the horse in the manner stated would not make him liable for the death of Proceso Gayetano; because it is admitted by Julio Pagnaya that he afterwards got out of the carromata and went to the horse's head to fix the bridle. The evidence is furthermore convincing to the effect that, after Julio Pagnaya alighted, the horse was conducted to the curb and that an appreciable interval of time elapsed—same witnesses say several minutes—before the horse started on his career up the street.

It is therefore evident that the stopping of the rig by Agaton Araneta in the middle of the street was too remote from the accident that presently ensued to be considered the legal or proximate cause thereof. Moreover, by getting out and taking his post at the head of the horse, the driver was the person primarily responsible for the control of the animal, and the defendant cannot be charged with liability for the accident resulting from the action of the horse thereafter.

Julio Pagnaya testifies to one fact which, if it were fully accredited, would possibly put a different complexion on the case; for he says that when the horse was pulled over to the curb, the defendant, by way of emphasizing his verbal denunciation of Pagnaya, gesticulated with one of his arms and incidentally brought his hand down on the horse's nose. This, according to Pagnaya, is what made the horse run away. There is no other witness who testifies to this; and it is noteworthy that Basilio llano does not mention it. A decided preponderance of the evidence in our opinion is against it.

The evidence indicates that the bridle was old, and the leather of which it was made was probably so weak as to be easily broken. Julio Pagnaya had a natural interest in refuting this fact, as well as in exculpating himself in other respects; and we are of the opinion that the several witnesses who testified for the defendant gave a more credible account of the affair than the witnesses for the plaintiff. According to the witnesses for the defendant, it was Julio who jerked the rein, thereby causing the bit to come out of the horse's mouth; and they say that Julio, after alighting, led the horse over to the curb, and proceeded to fix the bridle; and that in so doing the bridle was slipped entirely off, when the horse, feeling himself free from control, started to go away as previously stated.

Upon the whole we are constrained to hold that the defendant is not legally responsible for the death of Proceso Gayetano; and though reluctant to interfere with the findings of fact of a trial court when there is a conflict of testimony, the evidence in this case so clearly preponderates in favor of the defendant, that we have no recourse but to reverse the judgment.

The judgment will therefore be reversed, and the defendant will be absolved from the complaint; and it is so ordered, without express finding as to costs of either instance. So ordered.

Johnson, Araullo, Avancena, and Villamor, JJ., concur.

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