

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. NARCISO VISTAN Y DE LA CRUZ, DEFENDANT AND APPELLANT.

G. R. No. 17218. September 08, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant was prosecuted in the Court of First Instance of Manila for the crime of serious physical injuries through reckless imprudence, and sentenced to imprisonment for three months of *arresto mayor*, with the corresponding accessory penalties and to pay the costs. The complaint is as follows:

"That on or about the 10th day of April, 1920, in the city of Manila, Philippine Islands, while street car No. 203 of the Manila Electric Railroad and Light Co. was receiving passengers at the intersection of M. H. del Pilar and Isaac Peral Streets of this city, said accused, who was then and there the conductor in charge of said street car, did then and there wilfully, unlawfully, and feloniously and with reckless imprudence signal the motorman to go ahead without minding and without taking into account that one Hugo Borromeo, whom he could then see was at that very moment about to board the car with one foot on the running board, thereby causing the said Hugo Borromeo to be thrown down by the jerk of the moving car and his foot overrun by the rear wheels of said car No. 203 upon falling on the ground, with the result that his left foot was crushed and injured to such an extent as to require medical attendance and prevent the said offended party from engaging in his habitual work for a period of more than ninety days; that due to said accident Hugo Borromeo lost his left foot which had to be amputated. Contrary to law."

It appears from the record that on April 10, 1920, after two sons of the offended Hugo Borromeo, who were with him had boarded the street car No. 203 which had stopped at the intersection of M. H. del Pilar and Isaac Peral Streets of this city, and also in attempting to board the same car, the said Hugo Borromeo with his right hand took a hold of the iron bar on the right side of the only entrance door, and with the left the iron bar in the middle of the entrance. When he had his right foot on the platform, the conductor in charge of the car, the accused herein, gave the signal to start. Thereupon the car suddenly moved forward with a jerk thus causing his left hand to slip off while the right one was pinioned between the iron bar and the woodwork upon which it was fixed and he was unable to draw it out immediately due to the speed of the car. In the meantime he was momentarily dragged along and when his knees were touching the ground, he felt that his left foot had become numb, unaware that his foot was overrun by the wheel, until he was on the ground about 10 meters, more or less, from the place where the car had started.

The defense tried to prove that the street car being in motion, the offended party ran after it and attempted to board it, but unfortunately missed the running board and upon falling down one of his feet was caught by the wheels of the car. The witnesses who testified to this fact undoubtedly referred to the fact related by the aggrieved party himself when he gave the facts as to how he was for a time dragged by the car. It was not necessary for the offended party to run after the car in order to board it, as it was stopped when his two sons entered it, behind

whom he was with his hands holding the bars of the car, and was then placing his right foot on the running board when the car started in response to the signal to start given at that very moment by the accused. The fact is that due probably to the abrupt motion of the car in starting, the left hand of the offended party slipped off and his right hand was caught between the iron bar and woodwork upon which it was attached and having lost the equilibrium he was dragged along for a short distance until his left foot was caught by the wheels of the car. This fact, which was seen by the witness Lawson who was some distance behind the car, might cause the impression that the offended party was running after the car when he fell down, and, we believe, the witness testified under this impression.

We believe it to be clear that at the time of boarding the car, the offended party was watching the man who gave the signal to start, that is, the conductor, and the latter, who had his eyes toward the door, seeing that nobody was alighting or boarding the car, rang the bell, whereupon the car started. It is not improbable that when the accused saw the last passenger with both hands clinging to the holding device of the car and one foot on the running board, he thought that the passenger had completely boarded the car and that is why he gave the signal to start. The question that presents itself is whether or not the accused acted with reckless negligence as alleged in the information.

In the case of *U. S. vs. Gomez* (R. G. No. 14068),^[1] the accused was convicted of the crime of homicide through reckless negligence. The accused was the motorman of a street car that collided with a carabao cart at the intersection of Concepcion and Arroceros Streets of the city of Manila. As a result of the collision, one of the occupants of the cart, Santos Alcartado, was thrown under the car and killed. In discussing the responsibility of the accused, this court, among other things, said:

"Upon the other point, whether the negligence or imprudence of the accused can properly be denominated rash, it is to be observed that the amount of care and diligence which a man is required to use in a particular situation in order to avoid the imputation of negligence varies with the obviousness of the risk. If the danger of doing injury to the person or property of another by the pursuance of a certain line of conduct is great, the individual who proposes to pursue that particular course is bound to use great care in order to avoid the foreseeable harm. On the other hand, if the danger is slight, only a slight amount of care is required. It is thus seen that there are infinite shades of care or diligence, from the slightest momentary thought or transient glance of attention to the most vigilant anxiety and solicitude, and whether a person is bound to use a high or a low degree of care depends upon the situation presented in the particular case. Now the term negligence is used to indicate the legal delinquency which results wherever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary or great; and it is clear that in a situation where immediate danger to an individual is indicated the requirement for the exercise of a high degree of care is more exigent than where nothing more than possible harm to inanimate things is concerned. As experience only too well teaches collisions between cars and vehicles carrying people in the streets are fraught with a high degree of danger to the passengers, and it results that a high degree of care is required of those who have control of the agencies involving such danger. The failure to use the requisite care in such cases is properly denominated gross negligence or rash imprudence if the actor, having at his command the means of avoiding the harm, fails to avail himself of it.

"The term 'rash imprudence,' as used in the Spanish Code, would seem to be approximately equivalent to the 'gross negligence' of the common law; and as was once observed by a brilliant English judge, gross negligence is only negligence with a vituperative epithet (Rofe, B., in *Wilson vs. Brett* [1843], Mees. & Wels., 113). The same may substantially be said of the term 'rash imprudence' in Spanish law. It is imprudence with a vituperative epithet. In common usage the word 'rash' seems sometimes to imply a wanton disregard of consequences, indicative of a state of mind bordering upon deliberate intention to inflict a positive injury. The legal import of the expression is in our opinion of somewhat greater latitude, since it wholly excludes the idea of malice and under conditions more readily felt than denned is satisfied by proof of mere lack of foresight.

" 'Reckless imprudence consists in doing or not doing voluntarily, but without malice, an act, from which material injury results due to lack of foresight, unexcusable on the part of the person executing or omitting to do it.' (Decision of the supreme court of Spain, May 14, 1904, referred to by Viada in his Commentaries, 5 Supp., 457.)

" 'Reckless imprudence, punishable as crime, consists in the lack of prevision and rational precaution with which all acts must be executed, from which probable injury or damage may easily result.' (Decision of the supreme court of Spain, March 16, 1905, referred to by Viada in his Commentaries, 5 Supp., 461.)

"The distinction between simple imprudence, which is a constitutive element of a misdemeanor under article 590 of the Penal Code, and rash imprudence, which is a constitutive element of the offense punishable under article 568 of the same Code, is not clearly indicated in the books; but we think the weight of authority will be found to support the proposition that where immediate personal harm, preventable in the exercise of reasonable care, is threatened to a human being by reason of a course of conduct which is being pursued by another, and the danger is visible and consciously appreciated by the actor, the failure to use reasonable care to prevent the threatened injury constitutes reckless negligence.

"Simple imprudence, on the other hand, is a mere lack of prevision in a situation where either the threatened harm is not immediate or the danger is not openly visible. The following is cited in Viada as a case of simple imprudence: A man goes hunting and raises his gun to shoot at a bird. Upon lowering the gun without firing, he negligently fails to lower the hammer; and while the gun is being thus carried cocked, it is accidentally discharged with the result that a person casually in range of the gun is wounded. As will be seen in this case, although there is imprudence, on the part of the hunter, there is not a conscious advertance to the danger to which the other person is being subjected. Said the court:

" 'The fact set forth as proved in the first finding of the court below is not sufficiently such as would indicate real reckless imprudence on the part of Cecilio Mogarra, inasmuch as the act of lowering his gun and putting it under his arm without lowering the hammer, which constitutes negligence, does not show grave fault, but only mere lack of foresight chargeable as simple imprudence.' (Decision of the supreme court of Spain, March 12, 1904, referred to by Viada in his Commentaries, 5 Supp., 457.)"

Taking into consideration all the circumstances of the case at bar, we are of the opinion that the act of the accused in giving the order to start the car, when the offended party had his hands already on the holding devices of the car and his foot on the running board, constitutes carelessness or negligence, but does not show grave fault amounting to reckless imprudence and the accused having acted with simple imprudence or negligence, has incurred the penalty provided by article 590, case No. 4, of the Penal Code.

The judgment appealed from is modified, and the accused and appellant is sentenced to pay a fine of 60 pesetas and to suffer the corresponding subsidiary imprisonment in case of insolvency and to censure, with the costs of this instance de oficio. So ordered

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

[1] Decided January 17, 1919, not reported.

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