

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN MANANQUIL, DEFENDANT AND APPELLANT.

G. R. No. 17374. September 01, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 16th day of January, 1919, one of the prosecuting attorneys of the City of Manila presented a complaint against the defendant charging him with the crime of homicide through criminal negligence. The complaint alleged :

"That on or about the 14th day of January, 1919, in the city of Manila, Philippine Islands, and within the jurisdiction of this court, the herein accused, being the locomotive engineer in charge of the operation and management of the locomotive engine No. 127 of the Manila Railroad Co., did willfully, unlawfully and feloniously operate, run and drive said engine in a careless, imprudent and negligent manner, without taking the necessary precautions to avoid accident and damage to life and property, and without blowing the engine whistle and ringing the bell to give notice of its presence, thus causing the engine driven and operated by him to strike and overrun, as it did actually strike and overrun one Juan Aguilar, on passing through the intersection of a railroad crossing near Calle Antipolo of the city of Manila, where said Juan Aguilar was then walking carrying two cans of water; that as a result of the impact, the engine driven by the accused ran over the body of said Juan Aguilar, inflicting several injuries on different parts of his body, namely, several fractures and bruises on his right leg which was cut off, all of which injuries were necessarily fatal, and did, in fact, cause the immediate death of the said Juan Aguilar.

"That had the act been committed with malice, it would have constituted the crime of homicide.

"All contrary to law."

Upon said complaint the defendant was duly arrested, arraigned, pleaded not guilty of the crime charged in the complaint, tried and sentenced by the Honorable Pedro Concepcion, judge, to be imprisoned for a period of one year and one day of prison correccional with the accessory penalties of the law, to pay to the heirs of the deceased the sum of P1,000, and, in case of insolvency, to suffer subsidiary imprisonment in accordance with the provisions of the law, and to pay the costs. From that sentence he appealed to this court.

The appellant contends:

- (a) That the lower court committed an error in not holding that the deceased, Juan Aguilar, was guilty of contributory negligence which was the immediate and approximate cause of his own injury;
- (b) That the lower court committed an error in holding that the accused was careless and negligent in running his engine without first finding whether or not the railroad track was clear, and that it was his duty to see whether said railroad track was occupied by any person or not; and
- (c) That the lower court committed an error in holding that negligence and imprudence of the accused were the

cause of the injury of the deceased.

After a careful examination of the evidence adduced during the trial of the cause, we are persuaded that the following statement of facts by the appellant is fully justified. It is as follows:

"The defendant was a locomotive engineer. At about 10 o'clock on the morning of January 14, 1919, he was driving a locomotive engine, No. 127, of the Manila Railroad Company, coming from the railroad station of San Lazaro to Caloocan railroad station. At a point marked E on Exhibit A hereto attached, the defendant stopped his engine because of a signal given him by the switchman in the signal tower not to proceed. When, later, he was given a signal from the signal tower that the line was open he looked forward from point E of said Exhibit A and saw that the railroad track was clear. He then started the engine, and, at the same time, blew the engine whistle twice—one long and one short sound. When the defendant, with his engine, reached the place marked C on Exhibit A, he heard sounds of a tin can. Upon hearing said sounds he immediately stopped his engine. He looked backward and saw the body of a man lying on the railroad track. The man was later identified to be Juan Aguilar who, it is admitted, died because of the injury received from the accident. The proof further shows that at the time of the accident 'the deceased was carrying two balsas of water from a hydrant (grifo), located at the south side of Calle Antipolo, to his house. (See Exhibit A.) The proof further shows that the deceased was neither blind nor deaf and was of sound mind and body."

From an examination of Exhibit A, it will be seen that at the place where the deceased met his injury and death there were two main railroad tracks, a westbound track and an eastbound track. At the west end the track branches out into two, one leading to Tutuban railroad station and the other leading to Caloocan railroad station. The engine was on the west bound track going in the direction toward Caloocan. From an examination of Exhibit A it will also be seen that it is extremely difficult for a man, standing on the west side where the main tracks lead to their respective branches, to detect or anticipate which direction or branch a given incoming engine will take unless he looks at the signal in the signal tower and understands the same, or looks at the switch order. It follows, therefore, that it is very dangerous to be at those places when engines or trains are passing; in fact, the place where the accident occurred is not frequented by people, evidently because of the danger to which pedestrians would always be exposed.

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East bound tracks

Exhibit X B

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The record contains no evidence that there was a path or street or other indication indicating to pedestrians that it was a place for them to pass. There is nothing in the record to show that it was even customary for pedestrians to cross the property of the railroad company at or near the point where the accident occurred. There is nothing in the record to show that the deceased had permission, express or implied, to go upon the private property of the railroad company. There is nothing in the record to show that he, or any other pedestrian, had theretofore used the property of the railroad company at the point where the accident occurred for the purpose of crossing from one side to the other. In other words, there is no proof in the record which shows even remotely, directly or indirectly, nor in any way that the deceased was at the point where the accident occurred, as a matter of custom, as a matter of right, by invitation, express or implied, by the railroad company nor by any other right.

Upon the other hand, the defendant was operating a locomotive engine belonging to the Manila Railroad Company upon its own tracks; that he was in the performance of his duty as a locomotive engineer; that he had a right to run his engine over the tracks at the time and place where the accident occurred. In other words, the defendant was acting in the performance of a duty imposed upon him as an employee of the said railroad company; that he was operating his engine upon the property of the said railroad company; that he was acting in a legal manner; that he was doing the very thing which he had been employed to do. Whereas, upon the other hand, the deceased, at the time of the accident, was a trespasser upon the property of the railroad company, and as was said above, there is not a scintilla of evidence in the record to show that he had a right to be at that point.

There is no proof in the record which shows that the appellant, at the time of the accident, was violating any statute, law, rule, or regulation.

We think it is a rule well established in law that a railroad track in itself is a warning or is a signal of danger to those who go upon it. Persons who are about to cross a railroad track are bound to recognize the existing danger, and to make use of the sense of hearing as well as of sight, and if either cannot be rendered available the obligation to use the other is the stronger to ascertain before attempting to cross it whether a train is in dangerous proximity. If such a person neglects to do this, but ventures blindly and carelessly upon the track, without any effort to ascertain whether a train is approaching, such act must be at his own risk. Such conduct on the part of a person crossing a railway track is in itself an act of negligence.

In the present case, and by reference to Exhibit A, it will be seen that had the deceased, while at point X, used proper care, in looking and listening, he could easily have seen the engine approaching him from point E; and, moreover, there was no obstacle of any kind or character to interfere with his view between points X and E and had the deceased used but the ordinary care required of persons crossing railroad tracks he could easily have seen the engine approaching from point E.

It has been frequently held, in harmony with the great weight of authority, that a railroad track is in itself a notice of warning of danger, and that it is the duty of all persons approaching a railroad track or a railroad crossing to look and listen and to take every precaution before venturing upon it. (Mynning vs. Det., Lans. & Nor. Railroad Company, 59 Mich., 257; Mata, etc. vs. Chicago and West Michigan Railway Company, 69 Mich., 109; Chicago, Rock Island & Pac. Railroad Company vs. Houston, 95 U. S., 967; Northern Pacific Railroad Co. vs. Freeman, 174 U. S., 379; Schofield vs. Chicago, etc., Railway Co., 114 U. S., 615; U. S. vs. Manabat and Pasibi, 28 Phil., 560.)

Moreover, the record shows that the deceased lived within a short distance from the place where the accident

occurred and must have known that locomotive engines and trains frequently passed at that particular point.

In the case of *Schofield vs. Chicago, etc., Railway Company* (supra), the Supreme Court of the United States said:

"When the plaintiff was approaching a railway crossing with which he was familiar and could have seen the oncoming train in plenty of time to avoid an accident, if he had looked for it, and was struck and injured by the train, he was guilty of negligence, although the train was not a regular one and was running at a high rate of speed, and gave no signals by blowing a whistle or ringing a bell."

When a person approaches a railroad track and desires to cross it, even at a regular crossing, he is bound to use his sense of reason and to look, in order to avoid a possible accident from an approaching train. If he omits to use his senses and walks or drives thoughtlessly upon the track, or if using them he sees the train approaching and, instead of waiting for it to pass, undertakes to cross the railroad, he so far contributes to his injury, if injury is received, as to deprive himself of a right to complain. If one chooses, in such a position, to assume the risk, he must suffer the consequences. His negligence cannot be visited upon the heads of others. (*U. S. vs. Manabat and Pasibi*, 28 Phil., 560, 563.)

A person crossing a railroad track, either at a regular crossing or elsewhere, should do so cautiously and carefully. He should look and listen, and do everything that a reasonably prudent man would do, before he attempts to cross the track. If he fails to use his senses he is negligent and others who have acted legally should not be punished for his lack of care. (*U. S. vs. Manabat and Pasibi* [supra]; *Grand Trunk Railway Co. vs. Ives*, 144 U. S., 408; *Northern Pacific Railroad Co. vs. Freeman*, 174 U. S., 379.)

It will be noted from an examination of the allegations of the complaint that it was incumbent upon the prosecution to show that the defendant was guilty of criminal negligence. The proof shows that he was managing his locomotive engine upon the tracks of the Manila Railroad Company in obedience to orders and signals given him. He was acting in a perfectly legal manner upon the property of his employer. While, upon the other hand, the deceased was a trespasser, so far as the record shows, upon the property of the Manila Railroad Company. There is nothing in the record to show that he had any right to be at the point where the accident occurred. There is nothing to show that he or other pedestrians frequented that place. There is nothing in the record to show that the defendant had any reason to believe, or to suspect, that pedestrians would be found upon the railroad track at that place. There is no proof in the record to show that pedestrians crossed the railroad track at the point where the accident occurred. There is nothing to show either directly or indirectly in the record that the railroad company invited or even permitted pedestrians to go upon their tracks at that point.

Our conclusion is that the record clearly shows that the deceased acted in such a careless and negligent manner, without the exercise of any of his normal senses whatever, that he so far contributed to his own injury as to relieve the defendant, who acted in a performance of his duty, in a careful and cautious manner, from all criminal liability whatever. Negligence is a fact and must be proved; it cannot be presumed. There is no proof that the defendant acted in a negligent manner.

From all of the foregoing, we are of the opinion, and so decide, that the sentence imposed by the lower court should be and is hereby revoked, with costs de oficio. So ordered.

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

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