

BALBINO CUISON, PLAINTIFF AND APPELLANT, VS. NORTON & HARRISON CO., TELESORO BINOYA Y ALMINANZA AND FRANCISCO BAUTISTA Y CRUZ, DEFENDANTS. NORTON & HARRISON CO., APPELLEE.

G.R. No. 32774. October 14, 1930

Ponente: MALCOLM, J.

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MALCOLM, J.:

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This is an action brought by the father to recover damages in the amount of P30,000 for the death of his son, alleged to have been caused by the negligence of the defendant. The answer pleaded the general issue. The judgment in the Court of First Instance absolved the defendant from the complaint, without pronouncement as to costs.

A succinct statement of the facts will be first undertaken as follows: On the afternoon of August 9, 1928, Moises Cuison, a boy 7 years of age, the son of the plaintiff, was on his way to the Santa Mesa School, in the City of Manila, in company with his sister Marciana. As they came near to the fire station, some large pieces of lumber on a truck which had stopped fell from it pinning the boy beneath, and causing his almost instant death. The Truck in question was owned by Antonio Ora. It was driven by Felix Jose with Telesforo Binoya as a washing and Francisco Bautista as the helper, the two latter being youths less than 18 years of age. Jose, Binoya, and Bautista were employees of Ora. The truck was rented by Ora to Norton & Harrison Co. On the truck were the letters "N-H," which were the first letters of the firm name. Ora was in the employ of Norton & Harrison Co. as a capataz. It was his duty as such employee to direct the loading and transportation of the lumber. When the accident occurred the lumber had become loosened, and it was to rearrange it that the truck halted, without, however, the rearrangement having been made before the pieces of lumber had fallen and killed the boy.

Important details were not brought out in the testimony, although it would have been easy to supply those details.. The most important question of fact to determine was the relationship of Ora to Norton & Harrison Co., whether he was a servant of the company or an independent contractor. In view of the debatable facts found in the record, and in view of the propriety, of obtaining as much enlightenment as possible on the main issue, it is deemed advisable to set forth a considerable portion of Ora's testimony. He testified :

"Q. Do you know the truck T-101?—A. Yes, sir.

"Q. Whose is that truck?—A. Mine.

"Q. Showing you this document which I ask to be marked Exhibit 1 (certificate of ownership of a truck) state

what is that document?—A. This is the document of my truck,

"Q. On August 9, 1928, when, according to the complaint, the boy Moises Cuison was killed, was that truck used?—A. Yes, sir.

"Q. For whom?—A. For me.

"Q. For what kind of work?—A. For loading lumber.

"Q. Lumber of whom ?—A. Of Norton & Harrison Co.

"Q. Where was the lumber to be taken?—A. To Santa Mesa.

"Q. What was the agreement between you and Norton & Harrison regarding the transportation of lumber to Santa Mesa? He * * * * *

"A. The truck carried the lumber which I contracted with Norton & Harrison for transportation to certain places. I had an agreement with Norton & Harrison to carry and transport lumber coming from its lumber yard to the place of its destination.

"Q. Did you rent the truck to Norton & Harrison monthly or annually?—A. By the cubic foot, depending upon the distance travelled.

"Q. Do you know Telesforo Binoya y Alminanza and Francisco Bautista y Cruz?—A. Yes, sir.

"Q. Had they anything to do with the loading of the lumber of Norton & Harrison on the truck?

"A. The said Bautista and Binoya were not the ones who did the loading on my truck. There were other persons stronger than these two who did the loading.

"Q. What I mean to say is whether Binoya and Bautista, on August 9, 1928, when the truck went to the office of Norton & Harrison to carry lumber to Santa Mesa, had anything to do with the loading of the lumber on said truck?—A. No, sir.

* * * * *

"Q. In your agreement with Norton & Harrison for the transportation of lumber, who was under the obligation to load the lumber on the truck?

* * * * *

"A. I have already said that the agreement with Norton & Harrison was to load the lumber on my truck and take it to its destination. "Judge:

"Q. But who was to do the loading of the lumber, your men or their men?—A. My men.

* * * * *

"Q. You said that you are an employee?—A. Yes, sir.

"Q. Where are you employed?—A. In the firm of Norton & Harrison.

"Q. Since when?—A. Since 1911.

"Q. In what capacity?—A. As foreman.

"Q. What kind of work do you have?—A. Foreman.

"Q. Capataz?—A. Yes, sir.

"Q. And as foreman, are you in charge of paying the wages of the workers?—A. No, sir.

"Q. Therefore you are the capataz who directs the loading; and transportation of lumber?—A. Yes, sir.

"Q. Please see Exhibit I of the plaintiff and state if truck T-101 is what appears therein?—A. Yes, sir.

"Q. Do you admit that the condition of that truck on August 9, 1928, is as it appears in this photograph?—A. Yes, sir.

"Q. What explanation can you give the court accounting for the sign 'N-H' which appears on the coach box of the truck?—A. The sign 'N-H' appearing there means that the lumber belongs to Norton & Harrison.

"Q. And as foreman of Norton & Harrison, do you receive any salary?—A. Yes, sir.

"Q. How much?—A. P200.

"Q. You said that you entered into a contract with Norton & Harrison, do you have a copy of that contract?—A. No, sir, we had an agreement and not a contract.

"Q. Verbal agreement?—A. Yes, sir.

* * * * *

"Q. How do you collect the rent of the truck, monthly or daily?—A. It depends upon the cargo and the distance travelled.

"Q. Daily?—A. If I have loaded three times, then I have three collections.

"Q. Do you issue receipts therefor?—A. Yes, sir.

"Q. Have you any with you?—A. I don't have.

"Q. Can that truck of yours be rented by anybody?—A. No, sir.

"Q. Only by Norton & Harrison?—A. Only for my work.

"Q. Do you have with you any books of account pertaining to the business of your truck?—A. No, sir.

"Q. Not even a note?—A. I don't have.

"Q. Not even the firm of Norton & Harrison?—A. They may have because the number of the truck and the total number of board feet appear on every receipt.

"Q. As owner of the truck, don't you have any note?—A. No, sir.

"Q. Is that truck No. T-101 the only one you have?—A. I have some more.

"Q. Some more?—A. Yes, sir.

"Q. For rent?—A. For my own use.

"Q. For the exclusive use of Norton & Harrison?—A. I have a lime factory, and they are used for the transportation of lime.

"Q. But this truck T-101 is exclusively intended to be rented by Norton & Harrison?—A. It is not rented exclusively to Norton & Harrison. I use it in my other contracts to carry cargoes, and also to carry lime.

"Q. For the exclusive use of Norton & Harrison?—A. No, sir, I use it also for the transportation of lime."

It is evident from the foregoing that Ora was a contractor and an employee at the same time of Norton & Harrison Co. Reverting now to the law, counsel for neither party has considered it necessary to assist the court in this regard. However, just as the ascertainment of the facts is important, so is it important to have before us the applicable law.

The Penal Code makes provision for the civil liability of persons criminally liable, and establishes subsidiary liability for persons and corporations engaged in any kind of industry for felonies and misdemeanors committed by their servants in the discharge of their duties. (Penal Code, arts. 17-20.) In this instance, recurring to the facts, it should have been mentioned that the two youths, Binoya and Bautista, pleaded' guilty to the crime of homicide through reckless negligence, and were sentenced accordingly.

The basis of civil law liability is not respondent superior but the relationship of panterfamilias. This theory bases the liability of the master ultimately on his own negligence and not on that of his servant. (Bahia vs. Litonjua and Leynes [1915], 30 Phil, 624; Cangco vs. Manila Railroad Co. [1918], 38 Phil., 768. As to Porto Rico, see Acosta vs. Porto Rico Gas Co. [1915], 7 Porto Rico Fed., 475; and Ortiz vs. Ezquiaga [1918], 10 Porto Rico Fed., 350.) Article 1902 of the Civil Code provides:

"Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done." Article 1903, paragraphs 4 and 7 of the same Code provides:

"Owners or directors of any establishment or business are, in the same way, liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on occasion of the performance of their duties.

"The liability imposed by this article shall cease in case the persons subject thereto prove that they exercised all the diligence of a good father of a family to prevent the damage."

It is well to repeat that under the civil law an employer is only liable for the negligence of his employees in the

discharge of their respective duties. The defense of independent contractor would be a valid one in the Philippines just as it would be in the United States. Here Ora was a contractor, but it does not necessarily follow that he was an independent contractor. The reason for this distinction is that the employer retained the power of directing and controlling the work. The chauffeur and the two persons on the truck were the employees of Ora, the contractor, but Ora, the contractor, was an employee of Norton & Harrison Co., charged with the duty of directing the loading and transportation of the lumber. And it was the negligence in loading the lumber and the use of minors on the truck which caused the death of the unfortunate boy. On the facts and the law, Ora was not an independent contractor, but was the servant of the defendant, and for his negligence defendant was responsible.

Conceding that the record discloses a most unusual state of facts, and conceding that the evidence is not as ample as it should be, nevertheless on the record as it is and on the law as it is, it is incumbent on the court to rule that error was committed in the lower court in not awarding the father of the dead boy damages for the wrongful death of his son. It has been the practice of this court in cases of death through negligence, in the absence of special proof, to allow the sum of P1,000. (Manzanares vs. Moreta [1918], 38 Phil., 821; Bernal and Enverso vs. House and Tacloban Electric & Ice Plant [1930], 54 Phil., 327.)

Judgment will be reversed, and in the court of origin another judgment will issue in favor of the plaintiff and against the defendant for the sum of P1,000. So ordered, without special finding as to costs in either instance.

Avanceña, C. J., Street, Villamor and Romualdez, JJ., concur.

CONCURRING

Villa-Real, J.:

I concur in the result.

I am of the opinion, however, that the case at bar is governed by the provisions of article 20 in connection with article 17 of the Penal Code and article 1092 of the Civil Code, and not by the provisions of articles 1902 and 1903 of the latter Code.

Ora was a foreman of the defendants Norton and Harrison for the loading and unloading of their lumber the falling of which caused the death of the son of the plaintiff Balbino Cuison. As such foreman, Ora was the agent or employee of Norton and Harrison. In the performance of his duties as such foreman, he used the services of Francisco Bautista and Telesforo Binoya for the loading and unloading of said lumber, thus making them his employees in such work, and consequently the employees of Norton and Harrison through him.

Under the provisions of article 20 of the Penal Code persons and corporations engaged in any kind of industry are subsidiarily liable for felonies and misdemeanors committed by their employees. There is in the complaint filed in the present action sufficient allegation that the said Francisco Bautista and Telesforo Binoya committed the crime of homicide through reckless imprudence in the handling of the lumber of Norton and Harrison and that they were the employees of said firm. Norton and Harrison are therefore civilly liable for the crime of homicide through reckless negligence committed by their said employees, such liability being of subsidiary nature.

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