

BENITO ARAMBULO, PLAINTIFF AND APPELLEE, VS. MANILA ELECTRIC COMPANY, DEFENDANT AND APPELLANT.*G.R. No. 33229. October 23, 1930*

Ponente: VILLA-REAL, J.

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This is an appeal taken by the defendant Manila Electric Company from the judgment of the Court of First Instance of Manila sentencing it to pay the plaintiff, Benito Arambulo, P1,000 by way of indemnity and P300 for hospital and funeral expenses, plus legal interest thereon, and the costs.

In support of the appeal, the appellant assigns the following alleged errors as committed by the trial court in its decision, to wit:

"1. The trial court erred in admitting in evidence, over the objection of the defendant, plaintiff's Exhibit B-1.

"2. The trial court erred in sentencing the defendant to pay the plaintiff the sum of P1,300, with interest, and the costs of the suit.

"3. The trial court erred in denying defendant's motion for a new trial."

With respect to the first assignment of error, although it has been held in *City of Manila vs. Manila Electric Company* (52 Phil., 586) that the record in a criminal case cannot be admitted in a civil action except by way of inducement or to show a collateral fact, or when the party in the civil action had control over the proceedings in the criminal action, and in *Ed. A. Keller & Co. vs. Ellerman & Bucknall Steamship Co.* (38 Phil., 514) that a judgment of conviction in a criminal proceeding cannot be admitted in evidence in a civil action except to show a collateral fact; the judgment Exhibit B-1 entered in criminal case No. 28201 of the Court of First Instance of Manila (G. R. No. 24174),^[1] entitled *People vs. Marzo* while not admissible to establish the commission of the offense which was the subject matter of the said criminal action, and with which the instant civil action is also concerned, is certainly admissible to show the collateral or incidental fact of the defendant's conviction for that offense, which under articles 17 and 19 of the Penal Code gave rise to civil liability on his part, for which the defendant-appellant is subsidiarily liable, according to article 20 of said Code.

With respect to the second assignment of error, the evidence shows that on July 30, 1924, between 5 and 6 o'clock in the evening, two policemen who were standing on the front platform of car No. 130, then 20 meters from the corner of Ylaya and Raja Matanda Streets in Tondo, beside the motorman and a student-motorman, who was then operating the street car, caught sight of Basilisa Pacheco, the plaintiff's aged mother, stepping off the curb at the corner to cross Ylaya Street. The car was then running at nine points, that is, from 35 to 40 kilometers an hour,

and the student motorman did not slacken its speed until the danger was imminent and could not be averted. When the car came within 5 meters of the old woman, who had by that time reached the tracks, the regular motorman seized the hand gear from the student, applied the brakes, and switched on to reverse, causing the electric box overhead to explode. Notwithstanding all these emergency measures, the car hit the woman, throwing her to the ground. She was picked up unconscious and conveyed to the General Hospital, where she died eight days later as a result of the accident, in which she sustained concussion of the brain and necrosis, due to a fracture of the skull, followed by a hemorrhage. In spite of the brakes and the reverse, the car continued on 20 meters from where the accident took place before it came to a stop;

The facts above stated as proved at the trial, leave no room for doubt that the motorman was negligent and imprudent in running the car belonging to the defendant.

The appellant attempted to show that it has used all the diligence of a good father of a family to prevent the accident, taking every precaution to assure itself that the motorman Simeon Marzo was careful, experienced, and skillful in running the car to be entrusted to him before doing so, and upon the strength of that evidence it now contends that it is exempt from civil liability, citing the

case of *Chaves and Garcia vs. Manila Electric Railroad and Light Co.* (31 Phil., 47).

In the recent case of *City of Manila vs. Manila Electric Company* (52 Phil., 586), this court laid down the following doctrine:

"Criminal Law ; Subsidiary Civil Liability for Crimes ; Relations of Penal Code and Civil Code.—Where a motorman was convicted of the crime of damage to property and slight injuries through reckless imprudence, and was sentenced therefor to pay a fine of P900, to indemnify the offended party in the sum of P1,788.27, with subsidiary imprisonment in case of insolvency, and to pay the costs, and where the offended party was not able to collect the indemnity from the accused and so began an action to obtain payment from the master, it is held that the case relates to the Penal Code and not to the Civil Code, and so should be governed by the provisions of the Penal Code and not by the provisions of the Civil Code."

Article 1092 of the Civil Code provides the following:

"Art. 1092. Civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code."

The acts of Simeon Marzo, the motorman in charge of one of the electric street cars belonging to the defendant-appellant, constitute the offense of homicide by simple negligence and therefore the case, as regards the subsidiary civil liability, is governed by article 20 of the Penal Code, which provides as follows:

"Art. 20. The subsidiary liability established in the next preceding article shall also apply to masters, teachers, persons, and corporations engaged in any kind of industry for felonies and misdemeanors committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

It will be seen that neither, in this nor in any other article of the same Code is it provided that the employment of the diligence to be expected of a good father of a family will exempt the parties secondarily liable from damages, as is provided in article 1903 taken in connection with articles 1902 and 1093 of the Civil Code, which treat of liabilities arising from acts or omissions not punishable by law.

With regard to the amount for which the defendant must subsidiarily answer, since Simeon Marzo, the motorman in the employ of the defendant, has only been sentenced to pay the heirs of the deceased P1,000 indemnity as principal, the appellant Manila Electric Company cannot be held to answer for a greater sum, since subsidiary civil liability can in no case exceed the principal civil liability.

In view of the foregoing considerations we are of opinion and so hold, (1) that the exemption from civil liability established in article 1903 of the Civil Code for all who have acted with the diligence of a good father of a family, is not applicable to the subsidiary civil liability provided in article 20 of the Penal Code; and (2) that the amount of the subsidiary civil liability can in no case exceed that of the principal civil liability.

Wherefore, the judgment appealed from is modified, and the defendant Manila Electric Company is required to pay the plaintiff Benito Arambulo P1,000 indemnity, with legal interest from the promulgation hereof, and the costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Johns and Romualdez, JJ., concur.

[1] Promulgated November 9, 1925, not reported.

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