

ALEJANDRIA SUÑGA, PLAINTIFF AND APPELLANT, VS. THE CITY OF MANILA, DEFENDANT AND APPELLEE.

G.R. No. 36844. February 17, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the plaintiff, Alejandria Suñga, from the judgment rendered by the Court of First Instance of Manila, absolving the defendant City of Manila from the complaint filed by the said plaintiff to recover an indemnity at P7.20 a week for a period of 208 weeks from September 17, 1930, for the death of her husband Narciso Yalun.

Yalun was a laborer employed in the sanitation section, Department of Engineering and Public Works, City of Manila, at a salary of P50 a month. He was married to the plaintiff with whom he had four minor children. He used to work from 6 o'clock in the evening until dawn the following day. On the night of September 2 or 3, 1930, Yalun went to the Chinese cemetery at La Loma, Manila, to deposit the contents of the defendant's dump-car, which contents were then being used for filling purposes. According to the story of the appellant and her sister, when Yalun tilted the dump-car to unload the garbage and tried to scatter it on the ground, he wounded his right foot with the iron pitch-fork he was using for that purpose.

Yalun bandaged his wound, went home and continued to work that day for a week. On the 9th, he went with his family to his home-town, Macabebe, to attend the town-fiesta, notwithstanding the pains he then felt in his back. He continued to feel worse and about the 13th of the same month he returned with his family to Manila. On the 15th, he entered the San Lazaro Hospital where he died on the 17th, of tetanus as a complication or consequence of the wound he received on his foot.

The appellant's attorney assigned in his typewritten brief but one error, as follows:

"The lower court erred in not holding that the evidence of the appellant with regard to the injury, being part of the *res gestae*, is sufficient proof of the said injury and how the same occurred, and that the appellant is entitled to the compensation prayed for in her complaint under Act No. 3428."

The lower court, in absolving the defendant, based its decision on the evidence presented, according to which the accident suffered by the deceased was due to his own notorious negligence, and nothing could be inferred from the account given by the appellant and her sister, other than that Yalun was very negligent in wounding the back of his right foot with the iron pitch-fork.

The trial court also held that the cause of the accident was not established, and did not admit the testimony of the appellant and her sister to the effect that the deceased had explained to them the manner in which he was wounded by the fork. On this point, the court declared that such testimony was incompetent and hearsay evidence.

We have not found any proof to the effect that the accident was due to the deceased's notorious negligence and we do not believe that, in accordance with law, such defense can be established merely by deduction or inference.

However, we are of the opinion that the court weighed the evidence correctly in holding that the appellant has not satisfactorily proved that the accident occurred during the employment of the deceased or that the wound he received on his right foot was caused during the performance of his duties in the appellee's service and by a blow he received from the iron pitch-fork the night aforementioned.

We cannot consider as admissible evidence the testimony of the appellant and her sister who tried to repeat what the deceased had told them as to how he was wounded, inasmuch as it appears that such Statements were not spontaneous in the sense that they were not made at the time of the accident or immediately thereafter. If we have to give credit to the testimony of the two sisters, the deceased made such statements either many hours after the occurrence of the accident or a week later. In both instances the evidence is incompetent and inadmissible.

We are really at a loss to understand how the accident could have happened without some one being present. Otherwise, that person could have testified as a competent eyewitness.

In view of the evidence, we cannot dispel from our mind the reasonable possibility that the deceased received the wound outside the performance of his duties and in a place other than that mentioned by the appellant and her sister.

Having reached this conclusion, we believe it unnecessary to discuss whether or not notice was served in the manner prescribed by law, aside from the fact that this point was not discussed in the decision nor was it the subject of any assignment of error.

The judgment appealed from is affirmed without costs. So ordered.

Villamor, Villa-Real, Hull, and Vickers, JJ., concur.

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