

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BERNABE BACHO, DEFENDANT AND APPELLANT.

G.R No. 4091. March 25, 1908

Ponente: CARSON, J.

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CARSON, J.:

The appellant was convicted of the crime of homicidio por imprudencia temeraria (homicide resulting from reckless negligence) and sentenced to four months and one day of arresto mayor, to pay 1,000 civil damages to the heirs of the deceased, and to the accessory and subsidiary penalties prescribed by law in such cases.

The information charges, in substance, that the accused, the chief engineer on board the steamer Carmen which was lying at anchor near Cebu, carelessly and with reckless negligence released the screws which held in place the manhole plate on the steamer's boiler, without taking proper precautions to keep the plate from falling into the boiler; that as a result the plate fell into the boiler, and plunging into the hot water splashed some of it through the manhole so that it fell upon a Chinaman named Chan-Yan, scalding him so severely that he died the following day.

The evidence of record discloses that in the usual and proper discharge of his duties as engineer, the accused directed one of his firemen to open the manhole in the boiler on his steamer; that the accused personally superintended the work, and that it was done in accordance with the method usually adopted on board steamers in Philippine waters; that the manhole plate, which is so constructed that it can not be taken off, is held in position by large screws in such manner that when the bolts on these screws are loosened the plate drops into the boiler, unless it be supported by a cord or rope; that under the direction of the accused the plate, which weighed about 20 pounds, was suspended on a rope kept for that purpose; that thereafter the accused and the fireman went about their work in another part of the ship; and that in from one to three minutes, the plate fell into the boiler and splashed the hot water through the manhole on the Chinaman Chan-Yan, who died within twenty-four hours from the effect of the scalds thus inflicted on his person.

Except so far as it can be inferred from the fact that the plate fell into the boiler, there is not a particle of evidence which tends to show that in opening the manhole of the boiler the accused was guilty of negligence. On the contrary all the evidence of record tends to prove that he adopted the usual, proper, and necessary method of procedure, and that in opening the manhole at that time and under the conditions then existing he was in the usual and proper performance of his duties as engineer.

The evidence throws no light on the true cause of the accident. It may have resulted from a hidden defect in the rope on which the plate was suspended, for which the accused could in no wise be held responsible. It may have resulted from the slipping of one of the knots used by the fireman in tying the ends of the rope on which the plate was suspended, and while it may be admitted that there are cases where it might be the duty of a ship's officer to examine personally a knot tied by a subordinate, where there is reason to believe that a slip resulting from an imperfect tie would endanger the lives or the property of others, nevertheless in a case such as the one under

consideration, wherein there was apparently only the most remote possibility of danger resulting from a failure to tie the knot in an absolutely safe and secure manner, we do not think that such extreme diligence could be required. Indeed the usefulness of ship's officers would be dangerously impaired if they were required to give their personal attention to all such petty details, and a ship's officer might well hesitate to take command if he could be held criminally responsible for every accident resulting from the neglect of those under his command. Again, the fall of the plate might have been caused by some mischievous or malicious person, and indeed there is some evidence in the record which suggests this as the true solution of the problem. The rope which the defendant produced at the trial as the one on which the plate was suspended showed evidences of having been cut, and from the description of the boiler and the parts about the manhole, it is difficult to understand how it could have been found in that condition unless some one had deliberately used a knife. We presume it will not be contended, and it was not proven, that it was the duty of the defendant to keep such a strict watch on any particular part of the engine as to make it impossible for a malicious mischievous person to give the rope a cut with a knife, with perhaps no other object than to annoy the engineer by letting the plate fall into the boiler, so that he would be compelled to go in after it.

Whatever was the cause of the fall of the plate, we find nothing in the record to indicate that it was due to the negligence or carelessness of the defendant, and on the contrary there is evidence to show that he exercised all the care and took all the precautions required of him in the due performance of his duty.

The trial judge seems to have been of opinion that if a rope strong enough had been used, and if the knots had been tied in a proper manner, and if the plate had been properly secured, it could not have fallen, so that there must have been negligence somewhere, and as the defendant was in charge of the work, he should be held responsible. What has been said would seem to be sufficient answer to this reasoning, and it may be added, that in the general experience of mankind, accidents apparently unavoidable and often inexplicable are unfortunately too frequent to permit us to conclude that some one must be criminally liable for negligence in every case where an accident occurs. It is the duty of the prosecution in each case to prove by competent evidence not only the existence of criminal negligence, but that the accused was guilty thereof.

The accused produced a rope at the trial which he swore was the rope upon which the plate was suspended, and his statement was corroborated by the fireman; the court, however, refused to believe that this was the very rope used by the defendant, although there was not a particle of evidence to the contrary. The trial judge found that, since the rope appeared to be so strong that the swinging plate could not have broken it, either this was not the rope used or it must have been already cut at the place where it was supposed to have broken before it was put in use. As we have said, it might have been cut after the plate was suspended, or there might have been a hidden defect in the rope, or so far as appears from the testimony of record, the accident might have resulted from some other cause than the breaking of the rope; and in any event, it is going far to say that, as the accident had occurred, the court would refuse to believe uncontradicted testimony that a certain rope had been used, unless that rope were so weak as to justify a finding of negligence in its use.

The accused maintained that before opening the boiler he sent the deceased to work at another part of the ship, and there is some evidence in support of his statement. The prosecution introduced testimony to prove that after the accident, the accused admitted that he had forgotten that the deceased was working near the boiler. We do not think, however, that the point is of special importance, as unless it appeared that the accused was guilty of criminal negligence in the method employed in opening the boiler, we do not think the mere fact that he opened the manhole of the boiler while the deceased was working in the neighborhood constituted such criminal negligence as would sustain the judgment of conviction. The steamer was lying quietly at anchor, and the possibility that the accident by which the deceased, came to his death would occur was so remote that it would be

most unreasonable to hold him criminally responsible for failing to anticipate it.

The judgment of conviction and the sentence imposed upon the appellant are reversed with the costs in both instances de oficio. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ.

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