

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN MORENO, DEFENDANT AND APPELLANT.

G. R. No. 41036. October 10, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

The appellant was tried in the Court of First Instance of Bulacan for the crime of homicide through reckless negligence, committed as follows:

"Que en o hacia el 17 de agosto de 1933, en el Municipio de Meycauayan, Provincia de Bulacan, Islas Filipinas, y dentro de la jurisdiccion de este Honorable Juzgado, el acusado arriba referido siendo chauffeur del automdvil No. 1-9925-Manila voluntariamente guio y manejo dicho automovil en una carretera provincial y que por su imprudencia, negligencia, falta de cuidado y sin observar las debidas precauciones para evitar que se causen dafios contra las personas choco dicho automovil manejado por el acusado contra Una barandilla del puente del Barrio de Saluysoy del Municipio de Meycauayan, causando a uno de los pasajeros ilamado Eulogio Pabalan de dicho automovil heridas en diferentes partes del cuerpo que determinaron la muerte de dicho Eulogio Pabalan horas despues."

The trial judge found the defendant guilty as charged and sentenced him to suffer one year and one day of prision correccional, to indemnify the heirs of the deceased, Eulogio Pabalan, in the sum of P1,000, with the subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused appealed to this court, and his attorney now makes the following assignments of error :

"I. The lower court erred in holding that the collision of the automobile driven by the accused with the foot of the bridge was due to the negligent driving of the said accused.

"II. The lower court erred in not finding that the collision was due to the efforts of the accused in trying to prevent the automobile from falling into the river, thus endangering not only his life but also the lives of the other passengers.

"III. The lower court erred in finding the accused guilty of the crime of homicide thru reckless imprudence."

It appears from the evidence that on August 17, 1933 the defendant and Aurelio Lee came to Manila from San Pedro Makati in the defendant's automobile. On the way they stopped at a Chinese store in Tejeron Street to drink some gin. From there they went to the San Lazaro Jockey Club, and then to the house of the Pabalan brothers, where Fabian Pabalan joined them, and the three went to the Bureau of Labor to get Eulogio Pabalan. While they were waiting for the latter, the defendant remained in the automobile and Went to sleep. As the defendant was still asleep when they were ready to start, Aurelio Lee drove the automobile until they reached Sangandaan, Caloocan, when he was relieved by the defendant. Eulogio Pabalan was seated on the left side of the automobile and Aurelio Lee between him and the defendant. Fabian Pabalan was in the rumble seat. As soon as the defendant took the wheel, he began to drive very fast, and the course of the automobile was crooked. The companions of the accused protested and told him to stop the automobile and let them go out, but he did not heed their request. The defendant

continued to drive in a reckless manner, and in going around a curve leading to a concrete bridge in Meycauayan he violently struck the railing of the bridge and crushed the left side of the automobile. Eulogio Pabalan received injuries from which he died the same day. Fabian Pabalan and Aurelio Lee were also injured.

We entirely agree with the finding of the lower court that the accident resulted from defendant's reckless negligence in approaching the bridge at high speed on a curve.

The principal contention of appellant's attorney is that when the defendant and his companions were approaching the bridge they saw a truck coming towards them, and the deceased became frightened and pulled defendant's left sleeve, causing the automobile to swerve to the left, and that it would have gone into the river if the defendant had not suddenly swerved to the right; that in executing this maneuver he struck the bridge.

This effort to place the blame for the accident on the deceased is not sustained by the evidence.

In a statement subscribed and sworn to before the justice of the peace of Meycauayan the defendant said:

"That at about 9 a. m., August 17, 1933, I with Aurelio Lee left Makati for Manila. While on the way, we stopped at Tejeron Street to drink gin in a Chinese store proceeding to San Lazaro Jockey Club. There we stopped a couple of minutes and then proceeded to Tondo. I was the one managing the car when we proceeded to Tondo. In Tondo, I slept inside the car. When I woke up together with Eulogio and one Fabian Pabalan, we were already in Saloysoy, Meycauayan, Bulacan. I then told Aurelio Lee who was then managing the car that I should be the one to manage the car. I took the wheel from him and managed it and I asked where we were and he answered that we were on our way to Manila. I continued driving and accidentally I saw a car that was also entering a bridge where I was about also to get in. I placed my car on the left side and when I turned my car to the left side of the bridge, the back of my car struck the bridge. It resulted that the body of my car became completely wrecked on the left side and my companions got physical injuries. A policeman on duty at the place came to us and gave us help. I was brought by the policeman to the Municipal Building and my other companions were brought to the Provincial Hospital for medical treatment. I suffered only a slight wound on the right of the lower lip and a slight bruise on the left forehead."

At the trial the defendant described the accident as follows :

"Al volver yo a manejar la manivela, el andar de nuestro auto era en linea recta; al llegar nosotros al sitio de Saloysoy venia un truck en direccion contraria a la nuestra cuya distancia de nuestro coche era de 15 metros despues de una curva cerrada. Nuestro coche continuaba andando hasta que llegd a la distancia de 5 metros del otro coche que venia en direccidn contraria. Como quiera que aquel auto estaba en medio de la calle y como quiera tambien que a esa distancia de 5 metros, de continuar andando nuestro coche, iba a caerse al rio o un precipicio, entonces para evitar esa caida, lo que hice es virar hacia la derecha nuestro auto. En vista de ese hecho, la parte delantera de nuestro coche donde esta la maquina paso uno de los postes del puente, asi que la parte izquierda de nuestro coche chocd contra ese poste."

The defendant did not claim that the accident was caused by Eulogio Pabalan's pulling his sleeve until it was suggested to him by leading questions at the trial.

It is true that Aurelio Lee defendant's compadre, testified that when they saw the truck coming from the opposite direction Eulogio Pabalan touched the accused with his left hand; that at that moment the accused swerved the automobile towards the left, but as he saw that the automobile was going to fall into the river he then swerved to the right. The statement that the deceased touched the defendant with his left hand seems very improbable, in view of the fact that the deceased was sitting on the left side of the car, and Aurelio Lee was sitting between the deceased and the defendant. The same witness testified further as follows:

"P. Si es cierto que su compadre corria una velocidad de 12 a 15 millas por hora antes de llegar a aauel puente,

ipor que habia necesidad de tener miedo solamente porque vio un coche en medio de aquel puente?

"Sr. RAMOS.

Objecion por ser vaga.

"JUZGADO.

Puede contestar.

"R. Yo me espante porque e1 seguia entrando por ese puente con una velocidad bastante.

"P.

Y por aquella actitud de su compadre, ousted se asusto y usted dijo: 'Jesus Maria y Jose?

—

R.

Si, senor."

Section 52 of the Revised Motor Vehicle Law, Act No. 3992, effective January 1, 1933, provides that no person shall operate a motor vehicle on any highway in these Islands recklessly or without reasonable caution considering the width, traffic, grades, crossings, curvatures, visibility and other conditions of the highway and to the conditions of the atmosphere and weather, or so as to endanger the property or the safety or rights of any person or so as to cause excessive or unreasonable damage to the highway.

Section 67 (d) of the same Act provides that if, as the result of negligence or reckless or unreasonably fast driving any accident occurs resulting in death or serious bodily injury to any person, the motor vehicle driver or operator at fault shall, upon conviction be punished by imprisonment for not less than fifteen days nor more than six years in the discretion of the court.

It is clear therefore that the acts of the defendant as alleged and proved constitute a violation of the Revised Motor Vehicle Law, and that he should have been sentenced in accordance with section 67 (d) thereof, because it supersedes the corresponding provision of the Revised Penal Code with respect to the penalty in cases of accidents resulting in death or serious bodily injury to any person as a consequence of negligence or reckless or unreasonably fast driving.

The penalty of one year and one day imposed by the lower court is not in accordance with article 365 of the Revised Penal Code, which provides that when the death of a person shall be caused by imprudence or negligence and with a violation of the Automobile Law, the defendant shall be punished by prision correccional in its medium and maximum period, or from two years, four months, and one day to six years.

The next question is whether the defendant can be sentenced to indemnify the heirs of the deceased and to suffer the corresponding subsidiary imprisonment in case of insolvency, in view of the fact that the Revised Motor Vehicle Law contains no provision to that effect and repeals "all other acts, or parts of acts¹, contrary to the provisions of this Act."

Article 10 of the Revised Penal Code, effective January 1, 1932, is as follows:

"Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the

contrary."

Article 100 of the Revised Penal Code provides that every person criminally liable for a felony is also civilly liable, and article 39 provides that if the convict has no property with which to meet the reparation of the damage caused, he shall be subject to a subsidiary personal liability at the rate of one day for each two pesos and fifty centavos, subject to the rules given in said article for the imposition of subsidiary imprisonment.

We are of the opinion therefore that although the Revised Motor Vehicle Law, Act No. 3992, is a special law, the provisions of article 100 and article 39 of the Revised Penal Code are applicable to a person found guilty of a violation of the Revised Motor Vehicle Law, because of the provision of article 10 of the Revised Penal Code that the Code shall be supplementary to special laws under which offenses are punishable, unless the latter shall specially provide the contrary, and there is nothing to the contrary in the Revised Motor Vehicle Law.

A further reason for applying to the present case the general provisions of the Revised Penal Code respecting indemnity and subsidiary imprisonment for the non-payment thereof is that said provisions were not affected by the approval of the Revised Motor Vehicle Law.

In the case of the United States vs. Velazquez (33 Phil., 368), promulgated February 1, 1916, it was contended that Act No. 1740, under which the accused was convicted, did not authorize an indemnity by way of restoration of the sum misappropriated. The Supreme Court held that Act No. 1740, providing for the punishment of public officers and employees who fail or refuse to account for public funds or property or who make personal use of such funds or property, which expressly repealed articles 390, 391, and 392 of the Penal Code in so far as they might be in conflict with said Act, did not affect the general principles embodied in articles 119, 120, and 121 of the Penal Code. The right to indemnification in such cases was reaffirmed in the United States vs. Lafuente (37 Phil., 671). In the case of the United States vs. Ondaro (39 Phil., 70), the accused was found guilty of embezzlement and, in addition to a prison sentence and a fine was ordered to indemnify the offended party in the sum of P34.90, or to suffer subsidiary imprisonment in case of insolvency.

For the foregoing reasons, the appellant is sentenced to suffer an indeterminate sentence of not less than two years and not more than four years of imprisonment, to indemnify the heirs of the deceased Eulogio Pabalan in the sum of P1,000, with subsidiary imprisonment in case of insolvency which shall not exceed one-third of the principal penalty, and to pay the costs. As thus modified, the decision appealed from is affirmed.

Avancena, C. J., Street, Malcolm, Villa-Real, Hull, Butte, Goddard, and Diaz, JJ., concur.

CONCURRING AND DISSENTING

IMPERIAL, J., :

I adhere to the conclusion reached by the majority opinion that the defendant is guilty of a violation of section 67 (d) of Act No. 3992, known as Revised Motor Vehicle Law. I also concur in the imprisonment penalty imposed upon the defendant. But I disagree as to the additional imposition of the accessory penalty of indemnification of P1,000 with subsidiary imprisonment in case of insolvency.

The information was drafted and filed under the provision of article 365 of the Revised Penal Code. The facts, as proven by the evidence, fall under the definitions and terms of both the said article and section 67 (d) of the Revised Motor Vehicle Law. The reason for applying the last named provision was undoubtedly because the penalty so fixed is more favorable to the defendant. The indemnity and the subsidiary imprisonment which are imposed as additional accessory penalties are not authorized by the Revised Motor Vehicle Law. Nevertheless,

in applying them the provision of article 10 of the Revised Penal Code is invoked. If the application of the Revised Motor Vehicle Law was inspired by acts of benevolence and because the penalty therein prescribed is more favorable to the defendant, I am at a loss to understand why additional penalties provided for in another Code should be imposed upon the defendant.

Article 10 of the Revised Penal Code reads as follows:

"ART. 10. Offenses not subject to the provisions of this Code.—Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary."

It is argued that under the terms of this article the additional accessory penalties should be imposed. But, the undeniable fact that the whole article refers only to special laws, is disregarded. The Revised Motor Vehicle Law is not a special law; it is a general law. A special law is one that relates to particular persons or things of a class, as distinguished from a general law which applies to all persons or things of a class. It could not be said that the provisions of section 67 (d) of the Revised Motor Vehicle Law do not apply equally to all persons of a class who violate its terms. In *State vs. Baltimore & O. R. Co.* (77 AJ;1. Rep., 433), the following was said:

"* * * A special law is one that relates to particular persons or things of a class, as distinguished from a general law which applies to all persons or things of a class. In *Baltimore City vs. AHehany County* (99 Md., 1; 57 Atl, 632), Judge Pearce said: In *Cooley's Constitutional Limitations*, 165 note, it is said: 'The term 'general', when used in antithesis to 'special/ means relating to 'all' of a class, instead of to persons only, of that class.'" In the case of *Schmalz vs. Wooley* (56 N. J. Eq., 649; 39 Atl., 539), the court said that where a statute 'does not relate to persons or things of a class, but to particular persons or things of a class, it is a special, as contradistinguished from a general law.' And in *7 Words & Phrases*, 6578, it is said: 'Special laws are those made for individual cases, or for less than a class requiring laws to its peculiar conditions and circumstances. *

When the Philippine Legislature enacted the Revised Motor Vehicle Law, which took effect on January 1, 1938, the Revised Penal Code was already in force and if its intention was to apply accessory penalties common to crimes defined by the latter Code express provision to that effect should have been made. But, on the contrary, section 74 of the Revised Motor Vehicle Law expressly repealed all other acts or parts of acts contrary to its provisions.

For the foregoing reasons, I believe that the aforesaid additional penalties should not have been imposed.

DISSENTING

ABAD SANTOS, J.,

I agree with Justice Imperial that there is no legal warrant for sentencing the appellant to indemnify the heirs of the deceased Eulogio Pabalan in the sum of P1,000, with subsidiary imprisonment in case of insolvency. The imposition of such accessory penalty is not authorized by Act No. 3992 under which the appellant has been sentenced. Neither can it be justified, in my opinion, under article 10 of the Revised Penal Code. The last sentence of said article which says, "This Code shall be supplementary to such laws (special laws), unless the latter should specially provide the contrary," is too general and vague to justify the imposition of additional penalty under article 39, in relation with article 100, of the Code.

It is a well-settled rule of law that penal statutes should be construed strictly in favor of the accused, and that any doubt arising therefrom should be resolved in favor of the liberty of the citizen. In the interpretation of article 10

of the Revised Penal Code, resort must be had to the Spanish text thereof because it was the text finally approved by the Legislature. The Spanish text uses the word "supletorio", which has been translated into English as "supplementary". "Supletorio" is defined in a standard Spanish dictionary, Nuuevo Diccionario de la Lengua Castellxma, as follows: "Supletorio. Dicese de lo que suple la falta de otra cosa." Now, Act No. 3992 is complete in itself. As far as the present case is concerned, it has no "falta" or defect to be supplied. The effect of the majority decision is not to supply any defect in Act No. 3992, but to add something to it. This, I believe, is unjustified, especially when it results in deprivation of the liberty of a citizen.

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