

VICTOR AGUILAR, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G. R. No. 47493. April 08, 1941

Ponente: MORAN, J.

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MORAN, J.:

In the afternoon of June 23, 1937, a locomotive of the Manila Railroad Company driven by appellant Victor Aguilar, collided at a railroad crossing in the provincial highway of San Juan, Kawit, Cavite, with a jitney of the United States Navy resulting in serious physical injuries to its driver, Mariano Gomez, and a passenger, F. J. Marino, and death to Antonio Escaño and Jacobo Baylon, two other passengers of said jitney. The evidence, as found by the Court of Appeals, discloses that the locomotive was running at an excessive speed; that in approaching the railroad crossing, it did not blow its whistle nor ring its bell; that the line on which it was then passing has for sometime been declared abandoned, as authorized by an Act of the National Assembly (Commonwealth Act No. 59) of October 20, 1936, and that as evidence of this abandonment, "las barreras de cruce habían sido removidas un mes y medio antes del suceso"; that the jitney, on approaching the railroad crossing, slowed down and did not cross the railroad until after an automobile, ahead of it, had crossed the same. Upon an information for double homicide and serious physical injuries through reckless negligence filed in the Court of First Instance of Cavite, judgment was rendered condemning appellant to a penalty of two months and one day of arresto mayor to one year and one day of prision correccional and to indemnify the heirs of the deceased in the sum of P1,000, with subsidiary imprisonment in case of insolvency. On appeal, the Court of Appeals affirmed this judgment raising, however, the principal penalty to not less than six months and not more than two years of imprisonment.

While we agree that a person in control of an automobile who approaches a railroad track and desires to cross it is bound to take that precaution and that control over the car as to be able to stop it almost immediately upon the appearance of the train, and that if he fails to do so he is guilty of criminal negligence (U. S. vs. Manankil, 42 Phil., 97; U. S. vs. Manabat, 28 Phil., 565; Yamada vs. Manila Railroad Company, 33. Phil., 9), yet this rule does not apply when, as in the instant case, the railroad track has been abandoned and is in fact being actually dismantled.

Appellant contends that the lower court erred in not considering contributory negligence as a legitimate defense in cases of this character. This conclusion is groundless, since the facts, as found by the Court of Appeals, disclose no contributory negligence on the part of the driver of the Navy jitney.

The other errors assigned by the appellant involved matters of fact about which the findings of the Court of Appeals cannot by us be disturbed.

Judgment is affirmed, with costs against appellant.

Avanceña, C. J., Imperial, Diaz, and Laurel, JJ., concur.

Judgment affirmed.

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