

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO EDUARDO, DEFENDANT AND APPELLANT.

G.R. No. 5097. February 10, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendant was accused of executing, with reckless negligence, an act, which if done with malice would constitute a grave crime, committed as follows:

"That the said Pedro Eduardo on or about the 16th day of July, 1908, in the city of Manila, Philippine Islands, did then and there, willfully, unlawfully, and feloniously, with deliberate premeditation and through reckless negligence, cause the death of and kill one Erisberta Garrido and others, whose names are unknown, in this, to wit:

"That on and for a long time prior to the said 16th day of July, 1908, the said accused, Pedro Eduardo, was patron and master of a small steamer, bark, and seagoing vessel, propelled by steam, of less than 95 tons burden, which steamer was then and there duly registered and licensed under the name of San Gabriel and was then and there navigating in and making voyages in the waters of the Philippine Islands, between the port of Manila and Corregidor Island, lying near the entrance to the Bay of Manila, Philippine Islands; that as such patron and master the said Pedro Eduardo was then and there in complete command and control of said vessel and the loading, sailing, departure and navigation of said vessel, San Gabriel, in the harbor of Manila, and on her voyages in the waters of the Philippine Islands; that on the said 16th day of July, in the said city of Manila, Philippine Islands, the said Pedro Eduardo, while so in complete control and command of the said vessel San Gabriel, did then and there, while said steamer and vessel San Gabriel was lying moored in the harbor of the said city of Manila and in the Pasig River in said city, willfully, unlawfully, and knowingly, and with gross and reckless negligence, greatly overload the said steamer San Gabriel and take and cause to be taken upon and aboard the said steamer San Gabriel passengers and freight far in excess of her carrying capacity to such an extent as to render her navigation and voyage upon the waters of Manila Bay, between the city of Manila and Corregidor, unsafe and perilous to the said vessel and to the lives of the passengers and crew thereof; and did further, then and there, while the said steamer San Gabriel was so overloaded, as the said accused, then and there well knew, and when, as the accused then and there well knew, the hull of the said steamer San Gabriel was in an injured state and unable to resist heavy seas and stormy weather, willfully, unlawfully, and in gross violation of harbor regulations and with gross and criminal negligence, take and cause the said vessel San Gabriel to be taken from her dock and moorings in the Pasig River in said city of Manila, and proceed with said vessel, so, overloaded, on a voyage to Corregidor Island, lying at the entrance of Manila Bay, when, as the said accused well knew, a typhoon and storm was raging over Manila Harbor and Bay and the storm and typhoon was threatening to become worse and the said storm was, at the time of the actual sailing of said vessel San Gabriel, as the said accused well knew, of such violence as to render the voyage of the San Gabriel exceedingly unsafe and dangerous and when, as the said accused well knew, by reason of all of the aforesaid, the said San Gabriel could not leave her moorings and pass into the waters of Manila Bay and on her voyage to Corregidor without grave danger and peril of being wrecked, foundered, and sunk at sea and without grave danger of the said Erisberta Garrido, a child of tender years, and others whose names are unknown, who were

then and there passengers aboard the said San Gabriel, as the said accused well knew, being shipwrecked with said vessel and drowned; that the said vessel San Gabriel while proceeding and being taken by the said accused, Pedro Eduardo, upon the voyage to Corregidor, as aforesaid, and while within the waters of Manila Bay and beyond the harbor limits of the city of Manila, by reason of being so overloaded by the accused, as aforesaid, and by reason and because of the unseaworthy condition of her hull, as aforesaid, and by reason of being then and there a vessel of less than 96 tons burden, was unable to resist the severe storm and stress of weather aforesaid and was then and there wrecked, foundered, and sunk in the waters of Manila Bay, whereby said Erisberta Garrido and others whose names are unknown were then and there drowned.

"That the said vessel San Gabriel was unable, by reason of said foundering and shipwreck, to come into any port of the Philippine Islands after she sailed from the said port of Manila, but the said Pedro Eduardo was rescued and brought to the city of Manila on the 19th day of July, 1908, on the steam launch De la Rama, duly licensed and registered in the Philippine Islands, under the laws thereof; and the said Pedro Eduardo is now within the jurisdiction of this court; that all of the acts of negligence aforesaid were committed within the harbor of the city of Manila and within the jurisdiction of the Court of First Instance of the city of Manila, but the foundering of the vessel at sea and the death of the said Erisberta Garrido and others, whose names are unknown, took place without the harbor of the city of Manila and within the waters of Manila Bay, navigable waters of the Philippine Islands and more than 3 miles distant from any land, harbor, or port of the Philippine Islands.

"All contrary to law."

After hearing the evidence adduced during the trial, the lower court found the defendant guilty, beyond any reason of doubt, of the crime charged in the complaint, and sentenced him to be imprisoned for one year and six months of presidio correccional, and to pay the costs.

From this sentence of the lower court the defendant appealed. No question is presented to this court except the question of the sufficiency of the evidence adduced during the trial in the lower court to justify said sentence.

From an examination of the evidence adduced during the trial, the following facts seem to be proven, beyond peradventure of doubt:

First. That the defendant, Pedro Eduardo, on the 16th of July, 1908, was captain in charge of the launch San Gabriel and had been such captain of said launch from the 13th of April, 1903.

Second. That said launch San Gabriel was a launch constructed of wood, with a gross tonnage of 43.94 tons, and on the 16th of July, 1908, was licensed to carry thirty passengers only, together with a crew composed of eleven persons, composed of one captain, one machinist, four firemen, and five sailors.

Third. That on the said 16th of July, 1908, said launch was anchored in the Pasig River, in the city of Manila; that the hold was filled with freight and additional freight was piled upon the deck; that a policeman who was near the place where the said launch was anchored just before the time of raising said anchor, forbade the captain from taking any more freight on board, because of the then overloaded condition of said launch.

Fourth. That there was on board said launch at the time it sailed out of the Pasig River into Manila Bay, about one hundred passengers, more or less, among whom was one Erisberta Garrido, a child of tender years.

Fifth. That there were no cabins for passengers on said launch, and that all the passengers were required to remain on deck, and that the launch was a single-deck launch.

Sixth. That at and before the time (16th of July, 1908) the said launch raised anchor, the second storm signal was displayed at the usual place for displaying such signals in the city of Manila, knowledge of which the defendant

had.

Seventh. That the defendant had full knowledge of the provisions of the Customs Administrative Circular, No. 436, issued by the Hon. H. B. McCoy, Acting Insular Collector of Customs, which contains the following precautions to captains of vessels when the second storm signal is displayed:

"Vessels shall strengthen their moorings. It is deemed advisable that vessels shall send down light yards and masts. Steamers shall be ready to use their engines on short notice. Dangerous for small vessels to be in the bay. Bancas must not leave the river."

Eighth. That the son of the owner of the vessel, Andres Gabriel, who had under his control the disposition and direction of said launch, on the afternoon of the 15th of July, 1908, in view of the bad condition of the weather, advised the machinist and the said captain, that they should not go out of the river on the following day.

Ninth. That a few days before the said 16th of July, 1908, the said launch had collided with the stone wall or embankment of the Pasig River with such force as might have weakened the frame of said launch.

Tenth. That notwithstanding the instructions of the son of the owner of said launch given to the defendant not to leave the river on the 16th of July, 1908; and notwithstanding the fact that the hold was filled with freight and that additional freight was piled upon the single deck of said launch; and notwithstanding the fact that the launch was loaded with one hundred passengers, more or less, being more than three times the number which she was permitted to carry; and notwithstanding the fact that the second storm signal had been displayed several hours; and notwithstanding the fact that the defendant knew that the second storm signal had been displayed and was then displayed, he raised anchor and left the Pasig River and steamed out into Manila Bay, where, after two or more hours of sailing in the direction of Corregidor Island, in the face of a severe storm, the said launch foundered and one Erisberta Garrido, a child of tender years, and others whose names are unknown, were then and there drowned; that ninety-five of the passengers who were on board the said launch at the time she foundered, and who were struggling in the water at or near the place where the said launch sunk, were rescued by other launches and bancas, which went to the scene for that purpose, the bodies of others being found a few days later on the shores of Manila Bay.

The theory of the prosecution is that the defendant is criminally liable under the provisions of article 568 of the Penal Code, in its first paragraph. Said article provides that "he who shall execute through reckless negligence an act that, if done with malice, would constitute a grave crime, shall be punished with the penalty of *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree, and with *arresto mayor* in its minimum and medium degrees if it shall constitute a less grave crime."

The crime imputed to the defendant here is that he drowned Erisberta Garrido, which would, had it been done with malice, have constituted a grave crime.

The phrase "reckless negligence" is one most difficult to define. Many courts have attempted to define it. It seems impossible to give an exact definition of what constitutes "reckless negligence." We do not attempt here to define it. Each case must depend upon its own facts. We deem it sufficient, under the facts and circumstances of the present case, to hold that the defendant did, through his reckless negligence and without due regard for the safety of Erisberta Garrido and the other passengers on board the said launch *San Gabriel*, raise the anchor of said launch and steam out of the Pasig River into Manila Bay, in the face of a severe storm, while the boat was overloaded both with freight and passengers, where, by reason of said negligence and overloading, Erisberta Garrido was drowned.

In our conclusions we have taken into consideration the decisions of the supreme court of Spain of the 7th of

March, 1871; the 13th of May, 1874; the 3d of May, 1876; the 23d of December, 1887, and the 18th of October, 1899.

After a full consideration of all of the facts and circumstances, we are of the opinion and so hold that the evidence shows, beyond peradventure of doubt, that the defendant is guilty of a violation of the provisions of said article 568 of the Penal Code, and that the penalty imposed by the lower court was in accordance with the provisions of law; it is, therefore, hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Moreland, and Elliott, JJ., concur.

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