

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FERNANDO AGUSTIN, DEFENDANT AND APPELLANT.

G.R. No. 6460. January 25, 1912

Ponente: TORRES, J.

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TORRES, J.:

Appeal by counsel for the defendant from a judgment rendered by the Honorable Dionisio Chanco.

About 9 a. m. of January 9, 1910, Fernando Agustin was driving along the Currimao Road toward Paoay with a bull hitched to a cart, on which rode Magdalena Saguyot and in which were three trunks and a bundle, coming from a steamer that had just anchored in the port of Currimao. The road was crowded with people by reason of the steamer's arrival, but still said Agustin yelled at his bull and made the animal run, with the result that one of the pedestrians, an old man named Melecio Navarro, was knocked down and one wheel of the cart passed over him; and in spite of the assistance immediately rendered him he died within an hour.

Complaint was filed in the Court of First Instance of Ilocos Norte by the provincial fiscal, charging Fernando Agustin with the crime of homicide by reckless negligence, and the court, on July 23, 1910, sentenced him to the penalty of a year and a day of prision correccional, with the accessories of article 61, to pay P1,000 indemnity to the heirs of the deceased, and to the costs; from which judgment the defendant's counsel appealed.

"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." (Art. 568, Penal Code.)

It was fully proven at the trial, by the testimony of eyewitnesses, that the defendant was riding a bull drawing a loaded cart and that he began to yell at the animal so that it started to run fast along the road through the town and port of Currimao in the direction of Paoay, although he had seen that this road was filled with people owing to the arrival of the steamer from Cagayan. In so doing he was guilty of reckless negligence, for, in spite of the noise made by the cart and his yells, he struck the old man, Melecio Navarro, who was run over and died an hour afterwards.

We must conclude from the trial that, in making his bull run, the defendant acted without malice or intention of hurting the people who were walking along the road, but still in so doing he might have seen that, because of the crowd of people in the road, he was likely to hurt some one, as in fact he did do serious damage by causing a death, which, if he had acted with malice, would have constituted the crime of homicide. This occurred because he did not drive the animal with care and caution, and therefore it is unquestionable that he caused the death of Melecio Navarro through reckless negligence, as it was not shown at the trial that he acted with the malicious intention of killing the victim.

The defendant Fernando Agustin is responsible before the law for what happened, for the very reason that he carelessly, negligently, imprudently, and with genuine recklessness excited his bull so as to make it run among the

people walking along the said road, thereby becoming liable to do serious damage, as happened in the case of one of the pedestrians, whose death may have deprived a family of its sole protection and support. The defendant pleaded not guilty, but in spite of his denial and his unsubstantiated allegations in his own defense, the case as a whole furnishes conclusive proof of his guilt. It does not appear that the people assembled at the scene of the accident made any noise to frighten the animal and make it run away, or that the cord for guiding it was broken, while two eye-witnesses who testified under oath at the trial refute the evidence of the defendant by declaring that when the latter mounted upon the bull he began to excite the animal to make it run fast and continued to yell while it was running and until the old man Navarro was knocked down. The defendant does not seem to have been in the cart but was mounted on the bull, driving it with a cord that served as a rein, and even if this cord had broken he would not have been able to stop the animal in obedience to the signal made to him by a policeman who appeared on the scene later and chased the cart which had afterwards continued on its way some distance.

Paragraph 3 of said article 568 provides that, in imposing the penalty the defendant has incurred as perpetrator of homicide by reckless negligence, the courts are not bound by the regulations prescribed in article 81 of the Penal Code but that they shall use their discretion; therefore it is held that the penalty imposed upon the defendant is in accordance with law.

For the foregoing reasons, whereby the errors assigned on appeal have been refuted, it is our opinion that the judgment should be and it is hereby affirmed, with the costs of this instance against the defendant; and provided, further, that, in case of insolvency for the indemnity, he be sentenced to subsidiary imprisonment not to exceed one-third of the principal penalty.

Arellano, C. J., Mapa, Johnson, Carson, Moreland, and Trent, JJ., concur.

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