

SOR CONSUELO BARCELO, MOTHER SUPERIOR OF THE AUGUSTINIAN SISTERHOOD OF CONSOLATION, PLAINTIFF AND APPELLANT, VS. THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, DEFENDANT AND AP...

G.R. No. 8348. January 28, 1915

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of Manila dismissing the complaint filed in this action, which was brought to recover damages resulting from a fire alleged to have been occasioned by a defective installation of some temporary electric lights by the defendant company.

Appellant's general preliminary statement of facts as found in her brief is as follows:

"Plaintiff with her sisterhood in 1909 occupied adjacent buildings in the city of Manila ad a convent and school. In one of them, on the corner of the south side of Calle San Sebastian and the west side of Plaza del Carmen, was a chapel, being the corner room on the first floor, the altar of the chapel having its back to the plaza on the east. The door and main entrance to the chapel was directly opposite the altar, or to the west. Behind the altar and slightly more than the width of a person's body, so that there was room to pass between, was a board partition from ceiling to floor, cutting off the end of the room from the usual corridor, which ran around the room on the east and north sides. There was an entrance to the corridor on the north, or Calle San Sebastian, side at about the middle of the chapel, none behind the altar, but one to the east corridor from the room adjoining, which room was known as the "sala de labor." The corridor on the north side, from the entrance to the corner, was used as the sacristy of the chapel and here near the entrance, was the general switch for the house lights. The altar itself consisted of a foundation closed in table about four feet, or a little less, in height, upon which, terraced back, were three smaller platforms forming steps. Surmounting the whole was an arched niche occupying a good part of the width of the top step and running from the front to the rear. Behind and fastened to the niche was a screen with a small arched opening so that it partly filled the back of the niche and extended a short distance above it. Shortly before the 25th of December, 1909, a painted curtain of coarse coco cloth had been stretched vertically from the ceiling to the top step of the altar at the rear and fastened thereto, with an opening therein of the size and shape of the niche. This curtain extended across the room but not quite to either side. The altar was, prior to that time, lighted during services by a pair of wax candelabra which stood on the lower platform and sometimes also by a pair of removable electric candelabra which stood on the next step above. About five feet in front of the altar, suspended from the ceiling by an attachment which permitted raising and lowering, was a small coconut oil metal lamp open at the top, containing a layer of water at the bottom with oil floating thereon, and a wick arrangement known as a timsin. This lamp was raised slightly during services so as to permit free passage underneath and lowered at other times to a considerable distance from the ceiling. It was kept burning continuously.

"The chapel was lighted by electricity supplied by defendant with lights suspended from the ceiling, the switch for turning them on and off being the one mentioned in the sacristy, on the partition between the chapel and the San Sebastian corridor. The electric candles had a separate switch on the partition behind the altar and to the

right thereof as one faced it.

"Shortly before Christmas, 1909, the plaintiff hired defendant to install four small electric lights in the arch or roof of the niche of the altar for the better illumination of the scene beneath. The work was begun on the morning of the 23d of December and brought to a condition where the lights could be used about noon of the 24th, although it was not entirely finished; the workman assured the sister in charge that it was safe to use them. The new lights were tried at that time, were used the night of the 24th and again on the afternoon of the 27th, a total of about two hours to two hours and a half.

"Shortly after using the lights on the 27th a fire broke out in or near the chapel which destroyed the building and contents. This action was brought, on the ground of the negligence of the electric light company, to recover damages for the loss of the contents owned by plaintiff's sisterhood. It was tried in part before the late Judge Yusay and after his death the proofs taken before him were stipulated into the trial which was continued before Judge Del Rosario. The value of the contents destroyed was admitted by defendant. Judgment was rendered for defendants, a new trial asked for and denied, and plaintiff appeals."

Defendant's general statement of facts as found in its brief is as follows:

"On the 23d and 24th of December, 1909, the defendant company, at the request of the plaintiff, placed in a building on Calle San Sebastian, city of Manila, occupied and used by the plaintiff and her associates as a convent and school, a temporary electrical installation consisting of four 16-candlepower lights, with the necessary accessories. The work of installing these lights was done by skilled and experienced employees of the company, under the direction and supervision of a competent inspector employed for the purpose; suitable materials, new and of the best quality, were used, and the small circuit of lights installed was well within the factor of safety allowed in such cases. The work of installation having been completed on the morning of December 24, and tested, and found to operate perfectly, the lights were used during several hours, in connection with certain religious ceremonies, first on the night of December 24, and again on the afternoon of December 27. After the use of the lights on the 27th, they were switched off, by means of the key provided for the purpose. Other means of illumination, consisting of candles, an open oil lamp, and two candelabra made up of five electric lights each, and connected with the main house installation by means of a plug, were employed in the same room and in and about the altar in which the four new lights were placed, which altar, in preparation for the religious ceremonies of the 24th and 27th of December, had been draped and decorated with cloth hangings, paper flowers, and hay. There was no eyewitness to the origin of the fire, which broke out in the chapel, at about 5 o'clock in the evening of December 27, and destroyed the building and its contents. Subsequently this action was brought by the plaintiff, who sought to recover damages on account of alleged negligence of the defendant company in making the aforesaid electrical installation, the plaintiff alleging specific acts of negligence on the part of defendant as follows: "That the employees of the company made the installation in a defective manner, in that the work was done with inadequate materials, by means of splices, and without any insulation whatever; without extending or altering the fuses of the original installation, and without the proper permit from the municipal authorities."

"The case having come to trial, the court found that the plaintiff had failed to prove the allegations of the complaint and further held that, even assuming the existence of negligence on the part of the defendant, the plaintiff was guilty of contributory negligence in using the lights, which, according to the testimony of plaintiff's representative and chief witness, were believed to be defective and dangerous. Another suit brought upon similar grounds by one Maria Gomez was consolidated and tried with this case. Judgment having been rendered in favor of the defendant, the plaintiff did not perfect an appeal."

The defendant company called to the witness stand employees who positively and unqualifiedly testified that the work of installation "was done by skilled and experienced employees of the company, under the direction and supervision of a competent inspector employed for the purpose; that suitable materials, new and of the best quality, were used, and that the small circuit of lights installed was well within the factor of safety allowed in such

cases." As might be expected under all the circumstances of this case, plaintiff wholly failed to establish by direct evidence her allegations as to the defective character of the electrical installation by the defendant. If there was any latent or concealed defect in the installation, all traces of it were destroyed by the fire, and of course the women in whose house the installation was made were not sufficiently skilled in such matters to be able to observe or to testify to such a defect even had their attention been specially directed to the work being done at the time of the installation. Counsel for plaintiff, in his brief on appeal, admits that "what the particular negligence of the defendant may have been, we do not know," but he insists that the evidence of record sustains a finding that the fire must have been occasioned by some such latent defect in the electrical installation. His contention is that the testimony of some of the sisters discloses, that the fire broke out in two different places near the ceiling where the electric wires were recently located, and that this testimony sustains a finding that the fire had its origin in the defective and negligent installation of the electrical system by the defendant company, when taken together with other evidence in the record tending to eliminate the possibility that the fire could have been occasioned in any other way. We do not doubt that cases may arise wherein an inference of negligence in the workmanship or in the materials used may be predicated on proof of a fire breaking out at or near a recent electrical installation under circumstances which preclude the reasonable possibility that it had its origin in any other way. But such an inference could only be maintained on clear and satisfactory proof that no reasonable ground exists for believing that the fire might have originated from some other cause than a suspected defective installation, especially in a case in which there is unimpeached evidence tending to show that the installation had been properly made.

In the case at bar we do not feel that we would be justified in holding that there is any greater probability that the fire had its origin in the negligence of the skilled workman who made the installation, than that it may have been occasioned by the negligence of some of the sisters or attendants in extinguishing the candles that stood near by the altar, decorated as it was for the festal season with paper flowers and other inflammable materials; or that it may have resulted from the carelessness of some of the ladies or children in putting these decorations in too close proximity to the open, swinging lamp, filled with coconut oil. There is testimony tending to show that the sister in charge always exercised great care in an effort to avoid the danger of fire; but others had access to the room and the altar, and despite the utmost diligence on the part of the sister in charge, the possibility that some of those who came to pay their devotions at the altar may have been guilty of some carelessness in this regard is too manifest to be overlooked.

No one was present when the fire broke out, and the evidence as to the precise point at which it originated is not very definite or satisfactory. The sister who appears to have first entered the room after the fire was discovered gives a somewhat excited and not altogether coherent account of what she saw at that time. From her statement it may be inferred that she was under the impression that the fire was notably most intense well up in the corner of the room, above the altar, where it is claimed the electrical wiring was located. She thought that it was burning at two separate points, and counsel from her evidence seeks to infer that the defective installation caused two or more simultaneous outbreaks of flame. Her testimony, however, reflects the natural excitement which doubtless controlled her when she entered the room and rushed away for help; and, while we have not the slightest doubt that she endeavored to tell on the witness stand just what she saw on that occasion, her testimony, even taken by itself, is too confused and uncertain to sustain the contention of counsel for appellant that the fire had its origin near the ceiling. On the other hand, the evidence of Lieutenant Antikol, an experienced member of the fire department, who happened to pass the convent at the time of the first outcry, and who entered the room very shortly after the sister who first discovered the fire strongly tends, though not conclusively, to prove that the fire had its origin lower down in the corner where the altar stood surrounded by the decorations already referred to. He, of course, was a wholly disinterested witness, accustomed to such experiences, and not likely to have become unduly excited. While he gathered the impression that the fire was for the most part in or about the lower part of

the altar, he also noticed that the flames were being carried upward by the wind as far as the ceiling, passing over the front of the altar. Giving his testimony due weight, we think we may fairly conclude that there is at least as strong a probability that the fire had its origin low down in the corner close to the altar, and extended up to the neighborhood of the ceiling where the flames were seen by the sister, as that it had its origin at the ceiling, and from there dropped down so as to envelope the altar.

After a careful review of the whole record, we are of opinion, and so hold, that plaintiff has failed to establish affirmatively her contention that the outbreak of the fire was occasioned by the negligence of the defendant company or of its employees in making a defective electrical installation. We think that the evidence of record discloses that there is at least as great, if not a greater probability that the fire had its origin in the accidental contact of the swinging lamp or the candles used about the altar with the very inflammable decorations with which the altar was surrounded, as that it resulted from any defect in the installation of electric lights by the defendant. The burden of proof always rests on one who seeks to recover damages on the ground of the alleged negligence of another. Before judgment for damages can be entered in such cases, the fact of negligence must be affirmatively established by competent evidence. We conclude, therefore, that the judgment entered in the court below dismissing the complaint must be sustained.

The trial judge in his opinion discussed at length the question of the alleged contributory negligence on the part of the plaintiff in turning on the lights. He was of opinion that even if it appeared that the fire was occasioned by a defective electrical installation, nevertheless the plaintiff was guilty of contributory negligence in turning on the lights, the sister in charge of the altar having admitted that after the work was completed, she entertained some fears that the electric lights were unsafe, and that she had some apprehensions of the possibility of fire as a result of the temporary character of the work.

Our ruling that the alleged fact of negligence is not affirmatively established by the evidence of record renders it unnecessary for us to discuss this question at length. We may say, however, that it appearing that before the lights were turned on, the expert workman employed by the defendant company to make the installation had assured the occupants of the house that they could use these lights with perfect safety, we would require very clear and convincing proof of knowledge of a dangerous defect in the installation in order to sustain a finding of contributory negligence based upon the mere act of turning on the lights. A vague apprehension of danger such as many unskilled persons entertain as to the use of electricity for lighting and heating purposes would not suffice. The assurances of safety by a skilled workman would, in our opinion, be sufficient to justify their use, despite such vague apprehensions of danger entertained by the owner, who has a right to rely upon the assurances of safety by the company's representative, based as they should be upon his superior knowledge and skill.

On the ground that plaintiff failed to establish the alleged fact of negligence affirmatively and by a preponderance of the evidence, we affirm the judgment entered in the court below, dismissing the complaint, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Moreland, Trent, and Araullo, JJ., concur.

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