

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. E. M. KNIGHT, DEFENDANT AND APPELLANT.

G.R. No. 8561. December 04, 1913

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of Manila convicting the defendant and appellant of reckless negligence resulting in homicide.

The information alleges: "That on or about the 13th day of September, 1912, in the city of Manila, Philippine Islands, the said E. M. Knight, being then and there a chauffeur driving automobile truck No. 774, as registered by the Bureau of Public Works, and No. 4 of the quartermaster department, through Calle Isaac Peral of this city, willfully, unlawfully, with reckless imprudence, and in violation of regulations, conducted and drove said automobile truck at a greater speed than was reasonable and proper, without regard to the state of traffic and other conditions of the said street and of the atmosphere and weather, and without sounding a horn or ringing a bell, or attracting in any other way the attention of the passers-by, or keeping to the left-hand side of the road, according to the direction he was going, thereby permitting the said auto truck, through his inexcusable recklessness and carelessness, as aforesaid, to run over one Jose Prestuosa, fracturing his skull and thereby causing his instantaneous death; that if the acts committed by the defendant had been done with malice, he would have been guilty of the grave crime of homicide: contrary to law."

The trial court found the defendant guilty of reckless negligence resulting in homicide as defined and penalized in article 568 of the Penal Code, and sentenced him to one year and one day of prison correccional, to pay an indemnity in the sum of p500 to the heirs of the deceased, and to the payment of the costs.

The undisputed facts as developed by the evidence of record may be briefly summarized as follows: About 3.30 in the afternoon of the 13th of September, 1912, the defendant, a chauffeur in the employ of the quartermaster's department of the United States Army, was proceeding in charge of a heavily loaded automobile truck along Calle Isaac Peral toward the bay. Except for a steam road roller, which was slowly making its way in the same direction, in advance of the truck, the street was wholly unoccupied at that time. Just as the truck was passing the slow-moving road roller, a boy about 10 or 12 years of age jumped from the step or sideboard of the road roller directly in front of the truck, was knocked down, run over, and instantly killed.

Giving the accused the benefit of any doubt which might arise upon a review of all the testimony, it further appears that while the truck was still a considerable way behind the road roller, the boy, who had been running alongside the road roller, jumped on the step or sideboard to take a ride; that the truck was running at the rate of about 8 miles an hour as it came up with the road roller; that at a distance of about 45 or 50 feet from the road roller, and while on or approaching a small bridge near the Columbia Club, the defendant sounded his horn twice and then began to turn to the right in order to pass the road roller, which was on the left side of the street; that at that point the street was about 14 meters wide, and that except for the road roller and those riding upon it the

street was wholly unoccupied and clear of all obstruction.

Basing our conclusions on these facts we agree with the Solicitor-General that the prosecution failed to establish its charge of reckless negligence.

In reviewing the conduct of the defendant, in order to determine whether or not he was recklessly negligent on the occasion when the accident occurred, it will be well to have in mind the following sections of Act No. 2159, which quite clearly prescribe the course which it was his duty to pursue under all the circumstances.

"SEC. 24. No person shall operate a motor vehicle on any highway in these Islands recklessly or at a rate of speed greater than is reasonable and proper, having regard to the width, traffic, grades, crossings, curvatures, 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.

"No person shall unreasonably obstruct or impede the passage or right of travel of any motor vehicle or operator thereof and no operator shall unreasonably obstruct the passage of any other vehicle or person on any highway. Every person found guilty of violating the provisions of this section shall be punished by a fine of not less than five nor more than fifty pesos or by imprisonment of not more than six months or by both such fine and imprisonment.

"SEC. 25. Every person operating a motor vehicle on a highway shall turn to the left when meeting persons or vehicles coming toward him, and to the right when overtaking persons or vehicles going in the same direction, unless a different course of action is required in the interests of the safety and security of life, person, or property.

* * * * *

"SEC. 31. When meeting or overtaking persons or vehicles every operator of a motor vehicle shall give timely notice and warning of his proximity by sounding his horn. Such warning should be sounded when the operator, having regard to the speed at which he is traveling, is still a safe distance from the person or vehicle about to be met or overtaken and before the motor vehicle has drawn opposite to or abreast of such person or vehicle, the intent of this provision being the requirement of a warning within such a distance that the same will be clearly heard and not within such a short distance that, owing to its nearness and suddenness, it is likely to cause fright or to startle the person, horse, or other animal which is being met or overtaken."

As pointed out by counsel for the appellant, in his very interesting brief, the charge of reckless negligence in this case cannot be sustained unless the evidence be deemed sufficient to establish either that the accident was due to the fact that, when it occurred, defendant was on the wrong side of the street; or that, he was running at an excessive speed; or that he had failed to give timely notice of his approach to those who were riding on the road roller by sounding his horn.

As to the contention that defendant was on the wrong side of the street when the accident occurred, it is sufficient to say that On the broad unobstructed street, wholly unoccupied except for the slow-moving road roller, he was clearly within his rights in attempting to pass to the right, as the evidence shows, that he did; and indeed, it will be seen that in doing so he was proceeding strictly in conformity with the provisions of section 25 of Act No. 2159, above cited.

"One person is not compelled to travel behind another on the highway, and one has not the exclusive right to precede another. The traveler may pass to the front when he can do so in safety." (Clifford vs. Tyman, 61 N. H., 508, 510; Law of Automobiles, Berry, 113.)

The contention as to the alleged excessive speed at which the accused was running and his failure to give timely

warning of his intention to pass would seem to be sufficiently disposed of by our findings that, at the time of the accident, he was running at the rate of about 8 miles an hour, and that he blew his horn twice at a distance of between 45 and 50 feet from the road roller. There is some conflict in the record upon these points, but we think that the clear weight of the evidence sustains our findings in this regard, and the Solicitor-General practically concedes both these contentions to the defendant. Certain it is that the evidence does not sustain findings to the contrary beyond a reasonable doubt, and this being a criminal prosecution, the benefit of any doubts which may arise from an examination of the testimony should be given to the accused.

In the absence of some exceptional circumstance, a speed of 8 miles an hour maintained by an automobile or automobile truck on a wide, unobstructed, and unoccupied street, in broad daylight, cannot be said to be excessive; and the accused having sounded his horn twice before he came up with the road roller, and before he turned out in the road in the attempt to pass, must be held to have complied with the regulations in that regard. (See section 31 of Act No. 2159, above cited.)

The Solicitor-General in concluding his brief recommends that the judgment of the lower court be reversed, but that the appellant be convicted of the offense defined and penalized in the second paragraph of article 568 of the Penal Code. In support of this contention he says:

"The first paragraph of article 568 under which the defendant was sentenced reads thus: 'Any person who by reckless imprudence * * *.' From the evidence it is plain that the defendant was not guilty of 'reckless imprudence,' and should not have been sentenced under that paragraph. It seems certain, however, that the defendant has violated section 24 of Act No. 2159, in that he operated his motor vehicle in such a way as to endanger life and cause the death of Jose Prestuosa, and should have been punished according to the second paragraph of article 568 of the Penal Code, which reads:

" 'Any person who, while violating any regulation, shall, by any act of imprudence or negligence not amounting to reckless imprudence, commit an offense, shall suffer the penalty of arresto mayor in its medium and maximum degrees "

The Solicitor-General's argument would seem to be that proof that a fatal automobile accident occurred is conclusive proof of a violation of the above cited section 24 of Act No. 2159, and that while the defendant was not shown to be guilty of reckless negligence he was guilty of negligence not amounting to reckless negligence in two respects:

"First, in passing a playing boy at a speed, which, however slow it may have been, was still too fast to avoid the accident; and, second, granting that the horn was blown at a distance of 40 or 50 feet from the boy, the defendant was negligent in not continuing to sound the horn until he had passed the child."

We cannot agree with the Solicitor-General in these contentions. They would seem, in their last analysis, to rest on the theory that when one is injured or killed by an automobile it may always be presumed that there was some negligence on the part of the chauffeur and a violation of the above cited section 24 of Act No. 2159, prohibiting the operation of a motor vehicle on any highway recklessly or so as to endanger the property or the safety or rights of any person. Stated in this form the contention is manifestly untenable. Automobile accidents may happen and do happen for which the persons operating the machines are in no wise responsible. In the case of *United States vs. Tayongtong* (21 Phil. Rep., 476), wherein we reversed a judgment of conviction of a chauffeur charged with reckless negligence in running down and killing a foot passenger, we said that:

"* * * Where death is due to the negligence of the decedent himself and not to the negligence of the driver of the automobile, the latter cannot be held for homicide. In this case the death of the deceased was due entirely to his own negligence. There is not sufficient reliable proof in the record to establish negligence on the part of the accused. There being no negligence, he is not responsible, no matter what the result of the accident may have

been."

So, in the case of *United States vs. Bacho* (10 Phil. Rep., 574), we said: "* * * In the general experience of mankind, accidents apparently unavoidable and often inexplicable are unfortunately too frequent to permit us to conclude that some one must be criminally liable for negligence in every case where an accident occurs. It is the duty of the prosecution in each case to prove by competent evidence not only the existence of criminal negligence, but that the accused was guilty thereof."

In support of his claim that there was some negligence on the part of the defendant and that his conduct amounted to a violation of Act No. 2159, the Solicitor-General contends that while "a prudent man under the same conditions might not have taken any greater precaution" than did the defendant, nevertheless the defendant was negligent in that he did not take extraordinary precautions when he saw the boy riding on the road roller. The Solicitor-General insists that he should have reduced his speed lower than the comparatively slow rate of 8 miles an hour at which he was running, and that he should have continued to sound his horn from the moment he saw the boy until he passed him.

We think, however, that we would not be justified in holding the drivers of motor vehicles to such extraordinary precautions.

"The employment of an automobile on the highway as a means of transportation is a lawful use of the road, and if it results in an injury to one traveling by another mode the driver of the automobile cannot be held liable for injury, unless it is made to appear that he used the machine at a time, or in a manner, or under circumstances inconsistent with a proper regard for the rights of others." (*McIntyre vs. Ames (Ind.)*, 8-1087.)

So long as motor vehicles are not used at a time or in a manner or under circumstances inconsistent with the rights of others, or in violation of the regulations, their owners are entitled to all the advantages afforded by a commodious and speedy means of transportation. While those who undertake to drive high-power motor vehicles over the public highways may be, and should be required to exercise great care and skill in the management and control of their machines, so as to avoid inflicting injury upon others, still, they should not be required to exercise such extraordinary precautions as would be necessary to avoid all possibility that others may be injured in person or property as a result of their own negligence or of unforeseen contingencies which a prudent and skillful driver could not be expected to anticipate and provide against.

It is true that the statute penalizes the operation of a motor vehicle recklessly or at an excessive rate of speed, "or so as to endanger the property or safety or rights of any person;" but this does not mean that in any case where an accident occurs it can be presumed that there was a violation of the provisions of the statute. If it appears that the machine was being operated carefully, prudently, and skillfully at the time when the accident occurred, having regard to all the surrounding circumstances, it cannot fairly be said to have been operated "so as to endanger the property, safety, or rights of any person." Whatever may have been the cause of the accident, if it cannot be attributed to the misconduct or the negligence of the operator in the management of the machine, he cannot be held liable either civilly or criminally. To hold otherwise would be to place an intolerable burden on the use and enjoyment of a class of vehicles of known and admitted utility, and would be a violation of the sound legal principles on which the doctrine of criminal liability as well as that of civil liability for personal injuries have their basis.

Had the lad who was run over and killed been a little child below "the age of understanding," or as it is sometimes expressed "below the thinking age," there would be much ground for the contention of the Solicitor-General that the accused was guilty of a violation of the ordinance; indeed, under the doctrine laid down in *United States vs. Glemente* (24 Phil. Rep., 178), there can be little doubt that had the lad been a child under the age of

understanding, the failure of the accused to have the truck under such perfect control that the accident could have been avoided would have rendered him subject to conviction of the crime of homicide by reckless negligence with which he was charged. In that case we said, in the language of the syllabus prepared by the writer of the opinion:

"Duty of all drivers of vehicles and street cars; children in the streets.—It is the duty of any person driving a vehicle, and especially a street car, in the public thoroughfares to reduce the same to control ready to be stopped at any moment if he sees a child below the age of understanding in such a place that it can, by any reasonable chance, place itself in a dangerous position with respect to the vehicle. In such case the vehicle must be under such control that, if the child, by some sudden or unusual movement, places itself in the way of the vehicle, it can be stopped in time to avert injury.

"Vehicles are not permitted to be driven in the public streets in such a way as to endanger the life of a child below the thinking age who may have strayed upon the streets in search of its mother or who may be there, for any other purpose; the child having no judgment of its own, the drivers of vehicles must substitute theirs; not having the intelligence to direct itself, men who drive cars or vehicles must exercise their intelligence on its behalf. Seeing such child in the street in front of his vehicle, the driver thereof must reduce the vehicle to such control that, if the child by a sudden dart places itself in front of the vehicle, the driver may save it from injury by stopping his vehicle."

In the case at bar, however, the evidence clearly discloses that the boy who was killed was a lad 10 or 12 years of age. Boys 10 or 12 years of age, unattended by their parents or guardians, are always to be found on the streets and bypaths of our cities and villages, and no one questions their right to be there. A driver of a vehicle seeing a boy of that age on the street or side path may fairly assume that he has sufficient "intelligence to direct" himself under ordinary conditions. Indeed boys of that age are often more wide awake and alert in avoiding danger than are their elders, as anyone who has ever watched a crowd of lively newsboys plying their trade will readily agree. Manifestly, it would place an intolerable burden on all wheeled traffic on our streets and highways, to rule that the drivers of all vehicles, when they see boys 10 or 12 years of age on the street or side path or riding on other vehicles, unattended by their parents or guardians, must reduce their vehicles to such control that, if one of these boys "by a sudden dart" places himself in front of a vehicle, "the driver may save him from injury by stopping his vehicle." Boys 10 or 12 years of age, who are permitted to go about unattended, may fairly be presumed to have sense enough to take care of themselves from the ordinary and usual dangers of street traffic.

The accused in the case at bar cannot be said to have been negligent in the management of his machine, merely because he did not anticipate that the boy, 10 or 12 years of age, who was riding on the slow-moving road roller, would jump down directly in front of him at the moment when he turned his machine out into the open street in an effort to pass by. And it appearing that in all other respects he operated his machine carefully, prudently, and skillfully at the time when the accident occurred, having regard to all the surrounding circumstances, he must be acquitted of all criminal liability arising out of the unfortunate accident which resulted in the death of the boy.

The judgment of the lower court convicting and sentencing the appellant should be and is hereby reversed, and he should be and is hereby acquitted of the offense with which he is charged, with the costs of both instances de officio.

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

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