

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BENITO MANABAT AND LUCAS PASIBI, DEFENDANTS. LUCAS PASIBI, APPELLANT.

G.R. No. 9700. December 03, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of "imprudencia temeraria." The complaint alleged:

"That on or about the 22d of August, 1913, in the municipality of Dagupan, Province of Pangasinan, the said Benito Manabat and Lucas Pasibi, defendants, engineer of train No. 118 and chauffeur of automobile No. 24, respectively, through lack of due precaution caused said train and auto mobile to collide with each other at the railroad crossing situated near the railroad station of said municipality of Dagupan; that said Manabat failed to blow the whistle and strike the bell before reaching said crossing, as it was his duty to do in order to avoid accidents or cause injuries to persons crossing the railroad; that the said Pasibi, on his part, did not stop the automobile before passing over the said crossing while the train was approaching; but on account of said lack of precaution the train collided with the said automobile; as a result of the collision, one of the occupants of the automobile, Lieutenant of Constabulary Frank B. Jenkins, died from the effects of the contusions and fractures suffered by being rolled under the engine of the train, and the other occupants of the said automobile were also injured: facts constituting the crime of reckless negligence, committed within the jurisdiction of this court of First Instance and in violation of the law."

Upon said complaint the defendants were duly arrested, arraigned, and tried. After hearing the evidence, the Honorable J. C. Jenkins, judge, found that the evidence was insufficient to show that the defendant, Benito Manabat, was guilty of the crime charged in the complaint and dismissed the complaint against him and discharged him from the custody of the law, with one-half costs de officio. The lower court found that the evidence was sufficient to show that the defendant, Lucas Pasibi, was guilty of the crime charged and sentenced him to be imprisoned for one year and one day of prision correccional, with the accessory penalties prescribed in article 61 of the Penal Code and to pay one-half the costs.

The lower court further decreed that the defendant, Lucas Pasibi, should indemnify the heirs of the deceased, Lieut. Frank B. Jenkins, in the sum of P1,000, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law. From that sentence the defendant, Lucas Pasibi, appealed to this court.

The only question presented by the appellant is one of fact. The contention of the appellant is that the evidence adduced during the trial of the cause was insufficient to show that he was guilty of the crime charged in the complaint.

The lower court based its conclusions largely upon the admissions of the defendant. The lower court held that the admissions of the defendant and appellant showed, beyond a reasonable doubt, that his own negligence was the direct cause of the accident which resulted in the death of Lieut. Frank B. Jenkins.

From the evidence it appears that between 8 and 9 o'clock on the morning of August 22, 1913, the defendant, Lucas Pasibi, was the chauffeur of an automobile belonging to the Bureau of Public Works; that he made regular trips with said automobile between the city of Dagupan and the municipality of Magaldan, for the purpose of carrying passengers from Dagupan to Magaldan; that on the morning in question he left the hotel at Dagupan to make his regular trip to Magaldan with 8 or 10 passengers in said automobile; that he left the hotel with said automobile, running at a speed of from 4 to 6 miles an hour; that the railroad track of the Manila Railway Company crosses the main road running from Dagupan to Magaldan at a distance of less than 400 yards from said hotel; that there was a moving train on said railroad, moving in the direction from Magaldan to Dagupan, which reached the said wagon road at or about the same time that the defendant reached the said railroad with the automobile; that the relation of the railroad to the wagon road was such that had the defendant been on the lookout for the train, he might have seen it at some distance before it reached the wagon road and before he reached the railroad track; that there were at least two points on the wagon road, between the hotel and the railroad crossing, from which an approaching train might have been seen by the defendant; that had the defendant been watching for an approaching train, from either of said points, he might have seen it before it arrived at the wagon-road crossing, at least for a distance of several hundred yards; that at the point where the railway crosses the wagon road, the wagon road was considerably elevated; that the said train and automobile collided at the crossing and as a result of said collision Lieut. Frank B. Jenkins, who was riding in the front seat of the automobile beside the chauffeur, was killed, the automobile was dragged for a short distance by the train, was turned upside down by the side of the track and several passengers were pinned under the wrecked automobile, some of whom received slight injuries.

The defendant attempts to show that the engineer in charge of the railroad train failed and neglected to ring the bell or sound the whistle of his engine; that the engineer in charge of the train failed to give due warning of the approaching train. Upon that question there is much conflict in the testimony. Whether or not the engineer failed to ring the bell or sound the whistle of his engine is a question of little importance when we consider the negligent acts of the defendant, under his own admissions. The negligence of the engineer was no excuse for the negligence of the defendant. The contributory negligence of the engineer might be considered had he been injured, but it can not be considered as against a third person whose injury resulted from the admitted negligence of the defendant. The neglect of an engineer to sound the whistle or ring the bell on nearing a wagon-road crossing does not relieve a person on the wagon road from the necessity of taking ordinary precautions. Before attempting to cross the railroad track, he is bound to use his senses, to listen and to look, in order to avoid any possible accident from an approaching train. If he omits to use them and walks or drives thoughtlessly upon the track, or if using them he sees the train approaching, and instead of waiting for it to pass, undertakes to cross the railroad and receives injury, he so far contributes to his injury as to deprive himself of any right to complain. If one chooses, in such a position, to take risks, he must suffer the consequences. His negligence can not be visited upon others. (*Railroad Co. vs. Houston*, 95 U. S., 697; *Northern Pacific Railroad Co. vs. Freeman*, 174 U. S., 379.)

In the case of *Schofield vs. Chicago, etc., Railway Co.* (114 U. S., 615), the Supreme Court of the United States said: "Where the plaintiff was approaching a railway crossing with which he was familiar and could have seen the on-coming train in plenty of time to avoid an accident, if he had looked for it, and was struck and injured by the train, he was guilty of negligence, although the train was not a regular one and was running at a high rate of speed, and gave no signals by blowing a whistle or ringing a bell."

The defendant admitted that he had passed over said wagon road with an automobile, acting as chauffeur, more than one hundred times, carrying passengers from Dagupan to Magaldan; that he knew of the existence of the railroad crossing and that on the occasion of the accident he did not see the train and he repeatedly asserts that he did not try to see it; that he did not look either to the right or to the left, upon approaching said crossing; that he

looked straight ahead—neither to the right nor to the left—neither up nor down the track, and that such was his custom before the date of the accident; that he knew that trains frequently passed said wagon road crossing.

The prosecution presented a plan showing the relation of the railroad and the wagon road and the place of the accident. An examination of said plan shows clearly that it was easily possible for one upon the wagon road to see an approaching train upon the railroad at a distance of several hundred feet, from a point at a distance of 100 or more feet from the railroad crossing. It was admitted that both the railroad train and the automobile were traveling at a very slow speed. That being true, it is difficult to understand how the defendant, without being criminally negligent, did not avoid the collision. He knew of the existence of the railroad and that trains were frequently crossing the wagon road. Under these circumstances he should have kept his automobile under such complete control as to have been able to have stopped it at a moment's notice, upon the appearance of conditions which made it dangerous to proceed. A person in control of an automobile who crosses a railroad, even at a regular road crossing, and who does not exercise that precaution and that control over it as to be able to stop the same almost immediately upon the appearance of a train, is guilty of criminal negligence, providing a collision occurs and injury results. Considering the purposes and the general methods adopted for the management of railroads and railroad trains, we think it is incumbent upon one approaching a railroad crossing to use all of his faculties of seeing and hearing. He should approach a railroad crossing cautiously and carefully. He should look and listen and do everything that a reasonably prudent man would do before he attempts to cross the track. (*Grand Trunk Railway Co. vs. Ives*, 144 U. S., 408; *Northern Pacific Railroad Co. vs. Freeman*, 174 U. S., 379.) It is shown clearly in the present case that had the defendant used just ordinary care and precaution, he might have seen the train long before he reached the railroad crossing and might easily have avoided the collision. He admitted that he did not look to see whether there was a train upon the railroad or not. He admitted that he looked neither to the right nor to the left. A mere glance in the direction from which the train was approaching would have been sufficient to have informed the defendant of the approaching train. His ability to have seen the train, had he exercised ordinary care, is undisputed. Reckless imprudence or criminal negligence is an act from which injury results, which, had it been done with malice, would constitute a crime, punishable under article 568 of the Penal Code.

After a careful examination of the record brought to this court, we find no reason for reversing or modifying the sentence of the lower court. The same is, therefore, hereby affirmed with costs.

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

Moreland and Araullo, JJ., concur in the result.

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