

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARIANO AZAJAR, DEFENDANT AND APPELLANT.

G.R. No. 9706. March 30, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of "homicide by reckless negligence." The complaint alleged:

"About the 9th day of August, 1913, in the municipality of Santa Rosa, Province of Laguna, the defendant, being a locomotive engineer, did, with reckless negligence, run over Catalino Delmo, who was working on the track, causing his death; an act performed in violation of the law."

Upon said complaint the defendant was arrested, arraigned, tried, found guilty of the crime charged in the complaint, and sentenced to be imprisoned for a period of one year and one day of prison correccional, with the accessory penalties of the Jaw, to indemnify the family of the deceased in the sum of P500, and in case of insolvency to suffer subsidiary imprisonment, and to pay the costs. From that sentence the defendant appealed to this court and made the following assignments of error: "I. The lower court erred in giving belief and credence to the statements made by the witnesses for the prosecution. II. The lower court erred in giving preponderance to the evidence for the prosecution over that for the defense. III. The lower court erred in not holding a reasonable doubt in the defendant's favor and in not acquitting him of the crime with which he is charged. IV. The lower court erred in not holding that the sole cause of the accident to Catalino Delmo was his own imprudence and in no way the negligence of the engineer, Mariano Azajar."

Inasmuch as each assignment of error presents a question of fact, they may be discussed together.

From an examination of the record brought to this court we find that certain facts are undisputed. First, that on the afternoon of the 9th of August, 1913, the said Catalino Delmo was engaged, with five or six other men, in cutting grass upon the tracks of the Manila Railroad Company near Santa Rosa station, in the Province of Laguna. Second, that the five or six companions of Catalino Delmo were at work very near the station of Santa Rosa and that Catalino Delmo was working alone at a distance of about seven telegraph poles from them in the direction of Manila. Third, that the defendant, Mariano Azajar, was an engineer, employed by the Manila Railroad Company on the day in question, running a locomotive, attached to a train, which was going in the direction from Manila toward Santa Rosa station. Fourth, that the said Catalino Delmo was run over by said locomotive, managed by the defendant, and instantly killed, at or near the place on said track where he had been working, on the afternoon of said day.

The only question presented by the record is whether or not the defendant was guilty of such criminal negligence and imprudence in the management of his train at the time Catalino Delmo was killed, taking into consideration the acts and conduct of the deceased, as to justify the court in condemning him for the crime with which he is charged. In the evidence adduced by the respective parties concerning the negligence of the defendant, there is an irreconcilable conflict. A number of witnesses were presented, both for the prosecution and the defense. It will be

remembered that the deceased, at the time of the accident, was working alone, cutting grass between the rails of said railroad, at a distance of about seven telephone or telegraph poles from where his companions were working, and was that much nearer the train than his companions; that the distance between his companions and himself was about 350 meters. Three hundred and fifty meters are more than one-fifth of a mile. The deceased was then, at the time of the accident, about one-fifth of a mile away from his companions. The foreman of said gang of men, on the afternoon in question, testified that he and his companions heard the train coming; that Catalino Delmo continued to work, sitting down between the rails of the track, apparently oblivious of the approaching train; that he, with a red flag in his hand, ran in the direction and toward the coming train, and called to the engineer to stop his train; that the engineer failed to give any alarm whatever to Catalino Delmo, or to slow down his engine; that, notwithstanding his attempt to induce the defendant to slow down his engine, he continued to run ahead and ran over the said Catalino Delmo and killed him. The foreman, according to his own statement, made no attempt to call the attention of Catalino Delmo to the coming train. He apparently was greatly agitated by reason of his fear that Catalino Delmo would be injured by the train, and, according to his statement, he made a great effort to have the defendant stop his train, but made no effort whatever to call the attention of Catalino Delmo to the fact that a train was approaching and the consequent danger which he was in if he did not get off the track. The strange thing about his conduct is that he failed, in the slightest degree, to render any assistance to Catalino Delmo.

Two or three other witnesses were called by the prosecution who attempted to confirm the acts of said foreman in his endeavor to have the defendant stop his train. They also confirmed his statement that the engineer made no effort to give Catalino Delmo any warning or to slow down his train.

A number of witnesses were called for the defense. The defendant testified in his own behalf. He testified that he used every means in his hands to give Catalino Delmo notice of the approaching train, as well as to slow down the speed of his train. He testified that finally Catalino Delmo got out of the way of the train, but immediately returned to get his hat, which in some way or other, was still on the track and that at that moment the train struck him and killed him. He testified that he stopped his train within the distance between two posts and a half. No one seems to have been immediately present at the time and place where Catalino Delmo was killed, except the defendant and the other men engaged on the engine with him. The defendant's testimony that he gave repeated signals to Catalino Delmo was confirmed by a number of passengers who were on the train. The defendant testified that he slowed down his train at the time of the accident to a speed of 25 to 30 kilometers an hour. The proof shows that after repeated signals Catalino Delmo left the track, but almost immediately returned to get his hat which had been left between the rails. It seems that the defendant (the engineer) used every precaution necessary to avoid the accident. He blew his whistle and rang the bell of the engine. When he saw Catalino leave the track, he had a right to assume that his signals had been noted and that there was no further danger at that moment. He had a right to assume that the track was clear and that he could proceed with safety. The sudden and unexpected return of Catalino to the track could certainly not have been contemplated or foreseen by the defendant; and, moreover, Catalino himself being a workman on the track, also had some duty on his own part to perform. He knew that trains were frequently passing on said track. He was bound to exercise some care in order to avoid injury to himself. The proof shows that, notwithstanding the fact that the defendant blew the whistle and rang the bell of the engine, notwithstanding the fact that his associates, who were working more than 300 meters further away from the train than he was, saw and heard the train approaching, Catalino Delmo continued his work without apparently looking or taking any precaution whatever to avoid the danger resulting from a passing train. He must have known that the train was approaching for the reason that he left the track. There seems to have been no other reason or occasion for his leaving the track except to avoid danger from the coming train. Had he remained outside the track no danger would have resulted. But the proof shows that he returned to the track, apparently for the purpose of getting his hat, at a moment when it was absolutely impossible for, the

defendant to avoid the impact which resulted in Catalino's death.

We believe that it is a rule well established that any person walking or being upon a railroad track is bound to be diligent and to keep a lookout for approaching trains. This rule, it would seem, is especially applicable to employees of a railroad company, who are working on the track. The engineer managing the train has a right to assume that adult persons who are upon the track and especially the workmen regularly employed thereon, will exercise reasonable care and will be on the lookout for approaching trains, that they will take due notice of signals properly given, and will leave the track in ample time to avoid injury. (Hebert vs. Railroad Co., 104 La., 483; Erickson vs. St. Paul etc. Ry Co., 41 Minn., 500; Hutchinson vs. Mo. Pac. Ry. Co., 195 Mo., 546; Fisk vs. Chicago etc. Ry. Co., Ill Iowa, 392.)

There is no dispute of the fact that the defendant was a laborer engaged with others in cleaning or maintaining the railroad track. The train which was being managed by the defendant was a regular train and was running on schedule time. The person injured was engaged in working between the rails. The engineer had a right to assume that the laborer was taking due notice of the possibility of passing trains and that he would therefore leave the track in due time to avoid the possibility of injury to himself. The engineer had a right to assume that the deceased would take due notice of the signals given, would act promptly, would leave the track and avoid danger. The engineer had a right to assume that the laborer would ultimately obey the Signals. The engineer was not obliged to stop his train immediately after the failure of the deceased to obey the signals. The engineer had a right to assume that the workman was in the possession of all of his faculties and would act in answer to the signals in ample time to avoid danger to himself. The proof shows that the engineer exercised every precaution required of him to avoid danger. The proof also shows that the deceased left the track in time to avoid any possible injury to himself; but that he returned to the track without any justifiable reason, at a moment when it was too late for the engineer to avoid the impact from the result of which he was injured and died.

In our opinion the defendant was guilty of no negligence, willful, intentional, or otherwise, in view of all of the facts and circumstances, sufficient to justify us in holding him guilty of the crime charged. Therefore the sentence of the lower court is hereby reversed, and it is hereby ordered and decreed that the complaint against the defendant be dismissed and that he be ordered discharged from the custody of the law, with costs de officio. So ordered.

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

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