

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MANUEL LOJO, JR., DEFENDANT AND APPELLANT.

G.R. Nos. 29535, 29536. November 26, 1928

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

Manuel Lojo, jr., appeals to this court from two judgments of the Court of First Instance of Manila, the first in criminal case No. 35810 of said court (G. R. No. 29535) wherein, in accordance with the information, he was found guilty of the crime of homicide and sentenced to fourteen years, eight months and one day reclusion temporal, with the accessories of law, to indemnify the deceased's heirs in the sum of P1,000, and to pay the costs; and the other in criminal case No. 35902 of the same court (G. R. No. 29536), finding him guilty of violation of section 1139 of the Revised Ordinances of the City of Manila, and sentencing him to six months' imprisonment, to pay a fine of P200, with the proper subsidiary imprisonment in case of insolvency, and the costs of both instances.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court below, in said judgments, to wit:

"1. The lower court erred in holding as a fact that the deceased, whom the appellant ran over, was in the middle of the street with one hand raised, with the evident desire that the defendant should stop his automobile.

"2. The lower court erred in finding the defendant guilty of the crime of consummated homicide, and in sentencing him to fourteen years, eight months and one day reclusion temporal; and to indemnify the deceased's heirs in the sum of P1,000.

"3. The court below erred in sentencing the defendant to six months' imprisonment and a fine of P600 for having violated section 1139 of Revised Ordinances No. 1600 of the City of Manila."

The following facts were proven at the hearing, beyond a reasonable doubt:

At about 3.30 a. m. of the 18th of January 1928, the dancers Maria Lingat and Natalia Tanchico, having finished their services as such in Lerma Cabaret for the night contracted with the herein accused, Manuel, Lojo, jr., to take them in his car to Manila to eat. The defendant made his passengers seat themselves beside him placing Maria Lingat in the middle. After having started his engine, Manuel Lojo jr., drove with his right hand while he put his left arm around his two passengers. Before going up Pretil Bridge on Juan Luna Street and towards the City of Manila, as the car was running very fast and had one of the front lights off, Policeman Nicanor Constantino, standing in the middle of the road, raised his club as a signal to the defendant to stop his automobile. The defendant, far from paying any attention to the order of the agent of authority, headed straight for the policeman without diminishing his speed, dashing into him so that the unfortunate policeman sprawled upon the radiator of the car, then fell on the left running board and was thence hurled to the ground dying instantly as a result of a fracture of the skull and several internal and external injuries sustained in different parts of his body. When the dancer Maria Lingat saw that the car had run over the policeman she shouted to the defendant to stop, but the latter, instead of doing so, speeded it up and said to her: "Shut up, and don't tell anybody." On reaching the corner

of Solis Street, in the City of Manila, Policeman Pelagio C. de las Alas, who was on duty there, signalled the defendant to stop his car, but again the latter paid no heed and sped dizzily.

The defendant, testifying in his own behalf, admitted that he ran over the deceased Nicanor Constantino with his car and alleged by way of defense that on coming to the Pretil Bridge, and seeing a policeman in the middle of the street he tried to go to the right, but said policeman went in the same direction, thus resulting in the accident; that he did not stop his automobile for fear of being roughly treated by the people of the place.

This alleged defense of the defendant's is untenable, for when he saw the policeman signalling him to stop, the traffic regulations obliged him to slacken his speed and to obey the order. The fact that the defendant continued to speed, with the policeman ahead of him in the middle of the road signalling to him to stop, and, the fact that he did not obey the order, show that he did not care whether he ran over that agent of authority or not. That he was conscious of his guilt is shown, moreover, by the fact that having violated the Revised Ordinances of the City of Manila, not only did he not report the incident to the first policeman he met on the road, that is Pelagio C. de las Alas, but he also disobeyed the latter's order to stop. All of this contradicts his statement that he tried to avoid the accident by turning aside.

A chauffeur who, going at great speed, sees in the middle of the road directly in his path a policeman signalling to him with the hand to stop, pays no attention to the order nor lessens the speed of his car, but goes straight for said policeman, runs over him, and kills him instantly, cannot pretend that he did not intend to cause the evil that he did; because, even within the limits of human foresight, such an act could not produce any other result than what took place. The fact that the policeman moved, doubtless impelled by the instinct of self-preservation, and that the driver attempted to turn aside his car, cannot be construed to show a lack of intention to cause the injury, because at that psychological moment, the movement of the defendant's hand in turning the car from one side to another was not voluntary, but purely automatic—a mere reflection of the policeman's movement.

For the foregoing considerations, we arrive at the conclusion, and so hold, that in running over the policeman and causing his death, the defendant acted with full knowledge of his act and its consequences, and with malice, being therefore criminally liable as a principal by direct participation in the crime of homicide.

The act committed by the defendant constitutes, furthermore, the crime of assault upon an agent of authority, defined and penalized in article 249, paragraph 2, in connection with article 250, paragraph 1, of the Penal Code, the deceased policeman being actually engaged in the performance of his official duties when the accident occurred. The act committed by the defendant constituting two crimes, homicide and assault upon an agent of authority, according to article 89 of the same Code, the penalty for the more serious crime, which in this case is homicide, must be imposed on the defendant in its maximum degree.

In virtue whereof, the appealed judgment in criminal case No. 35810 (G. R. No. 29535) is modified, and the defendant is found guilty of the complex crime of assault on an agent of authority with homicide, and sentenced to eighteen years' reclusion temporal, the said appealed judgment being affirmed in all other respects, with costs against the appellant.

The appealed judgment in criminal case No. 35902 (G. R. No. 29536) is affirmed in its entirety, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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