

43 Phil. 644

[ G. R. No. 18606. August 01, 1922 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CIRIACO ALIGAN,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**JOHNSON, J.:**

It appears from the record that on or about the 19th day of March, 1921, a complaint was presented in the Municipal Court of the city of Manila, charging the defendant with a violation of section 4 of Act No. 2389. After hearing the evidence the judge of the Municipal Court found him guilty of the crime charged in the complaint and sentenced him to pay a fine of P50. From that sentence he appealed to the Court of First Instance where he was again tried. After hearing the evidence the Honorable Manuel V. del Rosario, judge, found the defendant guilty of the crime charged in the complaint and sentenced him to pay a fine of P30, and in case of insolvency to suffer subsidiary imprisonment in accordance with the provisions of the law, and to pay the costs. From that sentence he appealed.

The appellant now contends that the lower court committed an error in finding as a matter of law, upon all of the evidence adduced, that the operation of the automobile by the defendant at the rate of 27 miles per hour, constitutes a violation of section 4 of Act No. 2389. The complaint presented against the defendant alleged that on or about the 22d day of February, 1921, in the city of Manila, Philippine Islands, the said accused did then and there willfully, and unlawfully, being the chauffeur operating automobile No. 3322, run the same along Cavite Boulevard in said city at a rate of speed greater than was reasonable and proper, to wit, 27 miles per hour, in violation of section 4 of said Act No. 2389.

It is admitted (a) that the speed of said automobile at no time exceeded 27 miles per hour; (b) that the automobile in question was driven in a wide and unobstructed road, the Cavite Boulevard; and (c) that there were no vehicles of any description nor any pedestrians in front of the automobile.

The only question presented is whether or not said facts constitute a violation of section 4 of Act No. 2389. Said section provides:

“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. If the rate of speed of any motor vehicle operated within any city or the *poblacion* limits of any municipality exceeds twenty miles per hour such rate of speed shall be prima facie evidence that the person operating same is operating at a rate of speed greater than is reasonable and proper, and in violation of the provisions of this section.”

An examination of said section shows that no maximum speed for motor vehicles on highways is fixed. It provides that if the speed of a motor vehicle “exceeds twenty miles per hour such rate of speed shall be prima facie evidence” that the person operating the same is violating the other provisions of the law. The rate of speed, therefore, may be more than “twenty miles per hour” if such speed does not violate the other provisions of this section. In other words, a motor vehicle may be operated on the highways in these Islands at any speed provided the other provisions of the law are not violated. It becomes important therefore to determine what are the acts in operating a motor vehicle on the highways in these Islands which will constitute a violation of the law. The provisions mentioned in said section may be stated as follows:

- (a) A motor vehicle operated on the highways must not be operated recklessly;
- (b) It must not be operated 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.

Stating the provisions of said law more briefly, they are: That motor vehicles must not be operated (1) *recklessly*, or (2) at a rate of speed greater than is *reasonable and proper* having regard for all of the facts and conditions surrounding the operation of the motor

vehicle at the particular time and place complained of.

In this connection it becomes important to ascertain when the operator of a motor vehicle is operating it recklessly. We believe that what would amount to recklessness under certain conditions would not be regarded as recklessness under other conditions. Section 4 itself provides that the "recklessness" is only so regarded when such operation might endanger the property or the safety or rights of any person, or cause excessive or unreasonable damage to the highway. Even under the provisions of the law, the operation of a motor vehicle would scarcely be regarded reckless if it did not endanger the property or the safety or rights of persons, nor cause excessive or unreasonable damage to the highway. It must follow therefore that since at the time of the operation of the motor vehicle there was neither property nor the safety or rights of persons involved and there was no possibility of excessive or unreasonable damage to the highway, the operation could scarcely be regarded reckless. The Standard Dictionary says that recklessness is "destitute of heed or concern for consequences; especially, foolishly heedless of danger; headlong; rash; desperate; not caring or noting; neglectful; indifferent." It may be said that recklessness is an indifference whether wrong is done or not; an indifference to the rights of others. Recklessness and wantonness are stronger terms than mere or ordinary negligence. (Lake Shore etc. Railway Co. vs. Bodemer, 139 Ill., 596; 32 Am. St. Rep., 218.)

Recklessness is synonymous with heedlessness and indifference; as for example, when a chauffeur who drives his automobile across streets filled with pedestrians or other vehicles with indifference as to whether any damage may be done to person or property or not. Recklessness is an indifference whether wrong is done or not; an indifference to the rights of others. (Kansas Pacific Railway Co. vs. Whipple, 39 Kansas, 531.) Recklessness may imply mere inattention to duty, thoughtlessness, indifference, carelessness or negligence. It is a heedless disregard of obvious consequences.

With reference to the second provision of said section 4, to wit, that motor vehicles must not be operated at a rate of speed greater than is *reasonable and proper*, it may be said that said section itself gives a wide latitude to the meaning of those words. Said section recognizes that what would be a *reasonable and proper* rate of speed under one condition would not be a reasonable and proper speed under other conditions. Said section recognizes that the width of the street, the amount of traffic operating upon the street, grades, crossings, curvatures, and other conditions not mentioned, as well as the condition of the atmosphere and the weather, etc., etc., as well as the possibility of causing excessive or unreasonable damage, all may be considered in determining whether the motor vehicle at

the particular time and place is being operated at a speed which is reasonable and proper. In other words, the law does not attempt to fix what is "a rate of speed greater than 13 reasonable and proper." The law leaves that question to be determined by the facts and circumstances surrounding the particular speed in question. A particular rate of speed at a particular time and place might be reasonable and proper on one day and very unreasonable and improper at the same place on another day, or at another time on the same day, depending altogether upon the particular surroundings and conditions. A rate of speed, for example, on the Luneta at one time of the day might be reasonable and proper, and at another time on the same day be very unreasonable and improper. It must follow, therefore, that in order to determine what is a reasonable speed at any particular time and place, the courts must examine into the conditions existing at that particular time and place.

An attempt to give a specific meaning to the words reasonable and proper is trying to count what is not number and measure what is not space, (*Altschuler vs. Coburn*, 38 Nebraska, 881.)

The phrase reasonable and proper speed is relative, and the facts of the particular controversy must be considered before the question as to what would constitute a reasonable and proper speed. (*In re Nice & Schreiber etc.*, 123 Fed. Rep., 987.)

What is a reasonable and proper speed is nearly always, if not always, a question of law and fact, difficult of definition and still more so of determination; that depending on the relative facts in each case and coming peculiarly within the province of the court. (*Hendricks vs. Western Union Telegraph Co.*, 126 N. C, 304.)

From all of the foregoing our conclusions are:

(1) That there is nothing in the record, taking into consideration all of the facts and circumstances surrounding the operation of the motor vehicle in question at the time and place, which justifies the conclusion that he was operating the same recklessly;

(2) That taking into consideration all of the facts, circumstances, and conditions existing at the time and place mentioned in the complaint, in relation with the width of the street and the fact that there were no pedestrians or other motor vehicles in the street, there is nothing in the record which justifies the conclusion that the defendant was operating the motor vehicle in question "at a rate of speed greater than is reasonable and proper;"

(3) That the law does not fix a maximum rate of speed at which motor vehicles may be

operated, and that while a rate of speed of more than 20 miles constitutes prima facie evidence that the person operating the same is operating it at a rate of speed greater than is reasonable and proper, that presumption may be overcome by showing that at the particular time and place the rate of speed was neither reckless nor greater than is reasonable and proper; and

(4) That the operator of a motor vehicle might be liable for any damage, which he might cause or do, even at a less rate of speed than 20 miles per hour, if the facts and circumstances surrounding the particular time and place showed that he was operating his vehicle *recklessly* or at a rate of speed greater than is *reasonable* and *proper* under the existing conditions. The operator of a motor vehicle must at all times have it under complete control, having regard for the particular conditions at the time and place.

For all of the foregoing reasons we are persuaded that the appellant is not guilty of the crime charged in the complaint, and therefore the sentence of the lower court is hereby revoked, and without any finding as to costs it is so ordered.

*Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.*