

1 Phil. 580

[G.R. No. 991. December 19, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FRANCISCO NAVA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

The defendant, Francisco Nava, is charged with causing the death of one Luciano de la Cruz through reckless negligence in the following manner:

On the 14th day of October, 1901, the defendant was the the patron of and having full authority over a certain steam launch known as the *Mariposa* in the harbor of the city of Manila, and having such authority he took in tow a certain lorcha known as the *Legaspi*. That while the *Mariposa* was towing the *Legaspi* by means of a towline the defendant willfully cast loose the towline from the launch *Mariposa* so as to cause the *Legaspi* to go adrift, and the *Legaspi* being without motive power was unable to resist the action of the wind, current, and the sea in the said harbor. That by reason of so being cast adrift the *Legaspi* was thrown by the action of the wind and waves upon the breakwater, wrecked, and broken to pieces, and that one Luciano de la Cruz, who was then on board of the lorcha *Legaspi*, was drowned.

The defendant was found guilty under the provisions of article 568 of the Penal Code and sentenced to the penalty of *presidio correccional* for the period of one year and one day and to the payment of the costs of the proceed1 ings, from which judgment he has appealed to this court.

“Criminal negligence” according to Viada, “consists in the failure to take such precautions or advance measures in the performance of an act as the most common prudence would suggest, whereby injury is caused to persons or to

property.”

Does the evidence in the case show such inexcusable negligence and want of care as to amount to reckless negligence?

The evidence shows that about 10 o'clock in the morning of the 14th of October, 1901, the typhoon signal was raised at the Captain of the Port's Office; that the launches set out to bring into the river the lorchas, cascoes, and other small craft which were used for loading and unloading the vessels in the bay.

That about 3.30 in the afternoon the steam launch *Mariposa*, of which the defendant was the patron, was solicited by the lorchas *Legaspi*, which was then lying alongside the steamer *Perla*, to be towed in the direction of the Pasig river; that the *Mariposa* took in tow the *Legaspi* and also three other lorchas; that while the *Mariposa* is a first-class launch it was unable on account of the weather growing worse to advance with the four lorchas, and she ordered the *Legaspi* to anchor and await her return.

At about 5.30 in the evening after the fifth typhoon signal was hoisted at the Captain of the Port's Office, the *Mariposa* returned to the *Legaspi* and took her in tow, and was going to take a tow of the lorchas and cascoes that were lying alongside of the ship *Esmeralda* which was near by, but making a bad mark of it she was delayed for nearly half an hour, when, if properly done, she would have picked them up in five to ten minutes.

The weather in the meanwhile continued to grow worse, the wind increasing in velocity and the waves running high. Under the circumstances the *Mariposa* desisted in her purpose of taking the other two lorchas and started out for the river with the *Legaspi* in tow.

It is claimed by the prosecution that it was within the power of the *Mariposa* to have steamed around the end of the breakwater into the inside of the harbor instead of going up the River Pasig, which was farther than the outer end of the breakwater.

The *Esmeralda* was at anchor about 50 yards from the breakwater. When about halfway between the *Esmeralda* and the breakwater the *Mariposa* with the *Legaspi* in tow found herself by the action of the wind and water sagging down towards the breakwater. All the steam was put on that the boilers were able to withstand without gaining any distance, and as stated by the defendant, a trepidation being felt as of touching upon rock, the defendant ordered the *Legaspi* to anchor, and he cast the towline from the *Mariposa*, sending the

Legaspi adrift. The *Legaspi*, being without motive power, was left to the mercy of the wind and waves and was soon dashed upon the breakwater. All those on the *Legaspi* succeeded in saving themselves except Luciano de la Cruz. The *Mariposa* after casting off the *Legaspi* steamed safely into harbor without giving further attention to the *Legaspi* or making any effort whatever to save those who had been thus left to their fate.

It can not be said, we think, that the acts of the patron of the *Mariposa* were not strictly adjusted to the necessities of the case.

The weather was continually growing worse, and the *Mariposa* finding herself unable to make headway against the wind and waves, had the alternative of casting the *Legaspi* adrift or herself being wrecked on the breakwater. A witness testifies that it was impossible at the time the *Mariposa* cast the *Legaspi* adrift to have succeeded in going around the breakwater to the other side. The patron of the *Mariposa*, perhaps lacking in skill in attempting to reach the lorchas alongside the *Esmeralda*, lost valuable time, and failing to foresee on leaving the *Esmeralda* the difficulties which he would encounter in attempting to go up the river, found himself drifting upon the breakwater, and was in such close proximity to the breakwater that the *Mariposa* could neither go up the river nor turn and make her way around the breakwater and go in the inside, and under these circumstances sent the *Legaspi* adrift.

The wrecking of the *Legaspi* seems to have been inevitable before the time of the casting off of its towline.

It can not be said with certainty that the casting off of the towline placed the *Legaspi* in a worse position than she would have been had the *Mariposa* held her tow and continued her course toward the river. The circumstances were such that it was impossible to calculate the chances with any degree of certainty. A different course might have been followed, but it is not certain that any other would not have been equally disastrous to the *Legaspi*.

We not only fail to discover that the defendant was guilty of reckless negligence, but we are in doubt as to whether he could have pursued any other course under the circumstances.

The negligence charged against the defendant is in sending the *Legaspi* adrift. There is no evidence showing that by proper effort on the part of the defendant the life of de la Cruz could have been saved, and therefore the act of his steaming off in safety can not be considered as an act of negligence. Whether the defendant, to whom was committed the sacred charge of the lives of his fellow beings, acted through the noble impulse and with the courageous conduct which so often characterizes those engaged in his occupation is not a

matter for us to determine.

For the reasons stated we must reverse the judgment of the lower court as being unsupported by the evidence and acquit the defendant of the charge, which is accordingly done, and the costs of proceedings are adjudged de officio. So ordered.

Arellano, C. J., Torres, Smith, Willard, Mapa, and Ladd, JJ., concur.

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