

DECISIONS OF THE COURT OF APPEALS

I

Valentin Domasig, Plaintiff-Appellee, vs. A. L. Ammen Transportation Co., Inc., Defendant-Appellee, CA-G. R. No. 8244-R, August 30, 1952, Gutierrez David, J.:

ACTION FOR DAMAGES ARISING FROM A COLLISION BETWEEN A TRUCK AND A BUS; NEGLIGENCE; LIABILITY OF THE BUS COMPANY; CASE AT BAR. — On September 5, 1949 between 3:00 and 4:00 o'clock p.m., plaintiff boarded an Alatco bus of the Ammen Transportation Company at Sorsogon, Sorsogon, bound for Gubat and after passing a curve said bus stopped in front of a store in Gubat to take in and unload passengers. It parked on the right edge of the road and at a distance of 20 meters from the curve. While the inspector of the bus was examining the tickets of the passengers, a 6 x 6 cargo truck coming at a great speed from the direction of Sorsogon and bound for Gubat, bumped said Alatco bus on the left rear side destroying and damaging its rear portion and seats and pinning the left leg of the plaintiff between two seats thereof. Plaintiff was brought to the hospital wherein his leg was amputated at the joint below the knee. As a result of said injury he is now permanently disabled and has to depend on charity and the help of friends and relatives for his living. This action was brought by the plaintiff-appellee against the Ammen Transportation Company, the defendant-appellant for the recovery of damages in the amount of ₱6,300 resulting from the injury suffered by the plaintiff. HELD: It is beyond debate that appellant's liability was contractual. The contract was of carriage, appellant binding itself to carry the appellee safely and securely to his destination. Upon the facts of the case, we are of the opinion that the accident in question was caused by an act of a third person which, even with the exercise of utmost diligence, could not be reasonably foreseen. It was an extraordinary circumstance independent of the will of the appellant or its employees. It was, therefore, a *case fortuito*. The plaintiff may claim proper damages for his injury from the owner or operator of the cargo truck which bumped the Alatco bus.

Vicente L. Peralta, for the plaintiff-appellee.

Manuel O. Chan, for the defendant-appellant.

DECISION

GUTIERREZ DAVID, J.:

On May 22, 1950 Valentin Domasig filed this action in the Court of First Instance of Sorsogon, against A. L. Ammen Transportation Company, Inc. — hereinafter referred to as Alatco — to recover damages in the amount of ₱6,300.00 for the injury he suffered while a passenger of the bus No. 316 of the defendant transportation company.

In the main there is no dispute on the following facts of the case:

On September 5, 1949 between 3:00 and 4:00 o'clock p.m. Valentin Domasig boarded Bus No. 316 of the Alatco, at Sorsogon, Sorsogon, bound for Gubat and after passing a curve, said bus stopped in front of a store in Gubat, Sorsogon, to take in and unload passenger. It parked at the right edge of the road and at a distance of 20 meters from the curve. While the inspector of said bus was examining the tickets of the passengers, a 6 x 6 truck — owned and operated by Arnedo and Salandanan, of Castilla, coming at a great speed from the direction of Sorsogon and bound for Gubat — bumped said Alatco car on the left rear side destroying and damaging its rear portion and seats and pinning the left leg of Valentin Domasig between two seats thereof. Domasig was able to extricate himself with the help of his son, Benbenuto, and another passenger. He was later on brought to the Sorsogon Provincial Hospital in a sedan car of the Alatco. In

the hospital his leg was amputated at the joint below the knee. He stayed in said hospital from September 5 to November 5, 1949 and spent ₱275.10 for hospitalization; ₱200.00 for medicines and ₱200.00 for subsistence. As a result of said injury he is now permanently disabled and has to depend on charity and the help of friends and relatives for his living.

Plaintiff has proved that although he was already old, of 87 years of age, he was still able to work as tenant, and had, at the time of the accident, an earning capacity of not less than ₱4.00 a day.

After trial, the lower court rendered judgment ordering the Alatco to pay to Domasig, as damages, the amounts of ₱2,000.00 for his permanent disability, ₱1,000.00 for moral damages and ₱525.10 for hospital expenses, and to pay the costs.

From the aforesaid judgment the Alatco has brought this appeal assigning, as errors of the trial court, the following: (1) in holding that parking a car 20 meters from a curve constitutes negligence; (2) in failing to consider that the accident from which plaintiff-appellee suffered the injuries complained of, was not due to the fault of the appellant or any of its agents; (3) in failing to take into account that the negligence and imprudence of the driver of the cargo truck which struck car No. 316 of the appellant was the immediate cause of the accident; (4) in holding appellant liable for damages to appellee; (5) in holding appellant liable to the plaintiff-appellee in the total sum of ₱3,525.10; and (6) in not dismissing plaintiff's complaint.

The judgment of the lower court against the appellant was predicated on the following findings:

"x x x Considering specially the admitted fact that the Alatco car No. 316 was parked not only after passing the curve, but that the road was going down, and that the bus could be seen only after passing the curve, or at a distance of less than 20 meters, the defendant transportation company was guilty of negligence in parking in that place. By parking in that place, the defendant made it possible for the accident to happen. It should have exercised reasonable diligence, and should not have placed its car in a situation, where the contributory negligence of other drivers, and accident might happen. The defendant, having contributed to the accident, is liable for damages caused to the plaintiff who was a passenger in its car, as it is its duty as a carrier to transport its passengers safely to their destination."

(R. on A., p. 13)

It is beyond debate that appellant's liability, if any, was contractual. The contract was of carriage, appellant binding itself to carry the appellee safely and securely to his destination. The only question to be determined is whether appellant's failure to do so was due to the causes mentioned in Art. 1105 of the Civil Code which reads as follows: "No one shall be liable by events which could not be foreseen or which, even if foreseen, were inevitable, with the exception of the cases in which the law expressly provides otherwise and those in which the obligation itself imposes such liability."

Upon the facts of the case, we are of the opinion that the accident in question was caused by an act of a third person which, even with the exercise of utmost diligence, could not be reasonably foreseen. It was an extraordinary circumstance independent of the will of the appellant or its employees. It was, therefore, a *case fortuito*.

The act of the driver of the Alatco bus in stopping to load passengers and parking on the right side of the road at a distance of 20 meters from a curve is not a violation of any traffic regulation nor does it constitute negligence. The driver of the cargo truck which struck the Alatco bus was the one guilty of negligence.

Had he been sufficiently careful he would have had time and opportunity to avoid the mishap. Since the negligence of this driver created the situation from which the injury resulted, neither the driver nor the owner of the Alatco bus should be held liable therefor; and as far as these are concerned the injury should be regarded as an unavoidable accident.

WHEREFORE, without prejudice to the right of the appellee to claim the proper damages for his injury from the owner or operator of the cargo truck which bumped the Alatco bus, the judgment appealed from is, hereby, ordered reversed and the complaint dismissed, without costs.

Felix and Peña, J.J., concur,

II

Pedro Villarama, Plaintiff-Appellant, vs. Pampanga Bus Company, Inc., Defendant-Appellee; Adriano Lindayag, Plaintiff-Appellant, vs. Pampanga Bus Company, Inc., Defendant-Appellant CA-G.R. Nos. 11026-27-R, Rodas, J.

ACTION FOR DAMAGES RESULTING FROM A COLLISION BETWEEN A BUS AND AN ARMY TRUCK; NEGLIGENCE; FORCE MAJEURE; CASE AT BAR. — In the afternoon of December 22, 1948 plaintiffs boarded the Pambusco bus which was on its run from Manila to Malolos. On reaching a place at the highway between Bocaue and Bigaa, Bulacan, and when it was about to meet an Army Convoy, a bus of Villanueva Transit went ahead the Pambusco bus and before the Villanueva Transit Bus could take its proper side on the road a collision took place between said bus and a 6 x 6 truck of the Army Convoy, as a result of which the driver of the latter lost control of the wheel and in turn struck the Pambusco Bus which fell on its right side. Plaintiffs suffered injuries. They filed this action against the Pambusco Bus Company asking each one of them ₱10,000.00 damages arising from the injuries they suffered. **HELD:** The Pambusco Bus Company is exempt from any civil liability. It was impossible for the Pambusco driver to do anything to prevent the collision of the Army truck with his bus. What the law says about fortuitous event is that it is an event which could not be foreseen or which though foreseen is inevitable. There was no means on the part of the Pambusco driver to avoid the collision of the Army truck with his bus. Had he stopped his bus by putting on the brake the collision would have taken place just the same.

F. R. Capistrano & M. L. Nicolas for the plaintiff.

Manuel O. Chan Counsel for the Defendant.

DECISION

RODAS, J.:

At 5 o'clock in the afternoon of December 22, 1948, Adriano Lindayag boarded the Pambusco Bus No. 44, which was on its run from Manila to Malolos, at the corner of Magdalena and Azcarraga streets, Manila, and Pedro Villarama on Rizal Avenue of the same City. On reaching a place at the highway between Bocaue and Bigaa, Bulacan, and when it was about to meet an Army convoy, a bus of the Villanueva Transit went ahead of the Pambusco bus and before the Villanueva Transit bus could take its proper side on the road collision took place between said bus and a 6 x 6 truck of the Army convoy, as a result of which the driver of the latter lost control of the wheel and in turn struck the Pambusco bus which fell on its right side. Both Pedro Villarama and Adriano Lindayag suffered injuries and had to be taken to the provincial hospital of Bulacan where they were treated, Villarama having remained in said hospital until January 9, 1948, while Adriano left after five days with the doctor's permission upon the assurance that he would have a local doctor of Paombong where he hails from to assist him.

Pedro Villarama filed Civil Case No. 377 on June 22, 1949, and Adriano Lindayag filed Civil Case No. 397 on October 10,

1949, both in the Court of First Instance of Bulacan, each asking ten thousand pesos damages arising from the injuries they suffered.

After the presentation of evidence by plaintiffs Villarama and Lindayag in said two civil cases which were tried together against defendant Pambusco Bus Co., Inc., the lower court on July 28, 1952, ordered the suspension of further proceedings until Criminal Cases Nos. 1009 and 10010 of said court concerning the same accident which gave rise to the filing of said two civil cases and were then pending in the Court of Appeals, be finally decided. Counsel for plaintiff Villarama moved in vain for the setting aside of said order. After due trial, the lower court handed down its decision in said two cases acquitting the defendant in both cases with costs against the plaintiffs, without prejudice to any civil action which plaintiffs may have against the Villanueva Transit.

The case is now before this Court on appeal based on the following assignment of errors:

1. In holding that defendant's breach of the contractual obligation of carriage was due to a fortuitous event.
2. In not holding that defendant was not free from fault or negligence or from participation in the aggravation of the injury resulting to the plaintiffs.
3. In absolving defendant from the plaintiffs' complaints and in not giving judgment for each plaintiff in the amount of ten thousand pesos (₱10,000.00) as compensatory and moral damages.

It is true that the actions brought by plaintiffs in the above-mentioned two civil cases arise from the contracts of transportation impliedly entered into between said defendant company and the plaintiffs for their safe conveyance from the place where they boarded the bus in Manila to their destination in Malolos, Bulacan, and that any obligation arising from any injury or loss they may suffer on the way could only be excused by a fortuitous event and the burden of proof is incumbent upon the defendant to establish fortuitous event to rebut the presumption of fault or negligence on its part.

Pedro Villarama testified that the Pambusco bus was running at a regular speed or a little bit faster than the ordinary because "we were on a straight road and the Army trucks were coming from a different direction or toward Manila. The Villanueva bus which was following the same direction as ours succeeded in passing our bus".

Adriano Lindayag testified that after passing the building of the San Miguel Brewery in Balintawak the speed of "our bus was increased because there was no heavy traffic; it was running at a speed of 40 miles per hour. While between Bocaue and Bigaa at about 7 o'clock in the evening I suddenly noticed a collision of our bus with a truck and up to the moment of the collision our driver had not lower down his speed."

Juan Manalo, driver of the Pambusco bus, testified that upon arriving at Marilao, Bulacan, he put on his lights; that he noticed that all the cars had already their lights on; that he was running then at the rate of 30 kilometers per hour; that between Bocaue and Bigaa, he saw a convoy of Army trucks coming from the opposite direction and when he was about to meet them the Villanueva Transit bus suddenly passed him; that before it could reach its proper place it collided with the first Army truck and the truck in turn collided with his bus which was thrown sidewise.

Appellant's counsel contend "that the testimony of the Pambusco driver on cross-examination shows that he was not free from fault or negligence or from participation in the aggravation of the injury resulting to the plaintiffs", and in support of their contention they quoted part of his testimony:

P. Sabe usted si despues del choque siguio en camino corriendo o paro despues del choque?

- R. No se he fijado porque mi coche se cayo.
- P. Bueno, inmediatamente antes del choque del Army truck con Pambusco, usted se ha fijado a que sitio o a que distancia estaba Villanueva Transit?
- R. Poco mas o menos de 10 metros.
- P. Ese despues de que el Army (truck) haya chocado con el Villanueva Transit?
- R. Si señor.
- P. Al ver esto, que hizo cuando al ver que el Army truck choco con el Villanueva Transit que hizo usted?
- R. Continuo manejando porque no podemos hacer parar.
- P. Quiere usted decir que continuo corriendo haciendo correr el Pambusco?
- R. Cuando al tiempo que ellos, el Army y Villanueva chocaron, inmediatamente el Army truck estaba ya conmigo y me chocco. (Tr. p. 10, trial of July 23, 1952).

The negligence of the Pambusco bus driver is made to consist in his inability to state whether after the Army truck collided with his bus the latter continued to run or came to a stop and in his failure to slacken his speed in spite of the fact that he saw an Army truck coming from the opposite direction and likewise in his failure to stop his bus when the Army truck collided with the Villanueva Transit bus. The inability of said driver to state whether the Army truck came to a stop after colliding with his bus only proves failure of his memory caused by the unexpected and unforeseen event of the collision of the Army truck first with the Villanueva bus and then with his bus. When the collision between the Villanueva Transit bus and the Army 6 x 6 truck took place the Pambusco bus was behind the Villanueva Transit bus at a distance of about 10 meters but before he could do anything the Army truck hit his bus. We don't see any negligence on the part of the driver of the Pambusco bus because of his failure to stop his bus. There was no chance or time for him to either slacken his speed or put the bus to a dead stop, for before he could do so the Army truck had already struck his bus. The collision between the Villanueva Transit bus and the Army truck and the collision between the 6 x 6 truck and the Pambusco bus must have taken place almost at the same time or at the wink of the eye. It was impossible for the Pambusco driver to do anything to prevent the collision of the Army truck with his bus. What the law says about fortuitous event is that it is an event which could not be foreseen or which though foreseen is inevitable. There was no means on the part of the Pambusco driver to avoid the collision of the Army truck with his bus. Had he stopped his bus by putting on the brake the collision would have taken place just the same.

Again appellant's counsel tried to lay the blame on the Pambusco bus driver because of his failure to slacken his speed when the Villanueva Transit bus overtook and passed him despite the fact that he saw an Army convoy of trucks coming from the opposite direction, and it was already dark, and in support of this contention counsel quoted from the testimony of the Pambusco bus driver the following:

- Q. Immediately before the Villanueva Transit bus and the Army truck collided, did you notice whether there was any vehicle parked along the road?
- A. No habia.
- Q. Was there any pedestrian walking?
- A. No me he fijado.
- Q. At the time were the lamps of your vehicle already lighted?
- A. Si, señor.
- Q. How long had you already lighted your lamps at the time you met the accident?
- R. Estando en Marilao ya he abierto la luz.

- Q. About the vehicles which are coming from the opposite direction of Malolos to Manila were they already lighted at the time the accident happened?
- R. Si, señor, ya tenian.
- Q. Immediately before you were overtaken by the Villanueva Transit bus did you notice any vehicle going ahead of you towards Malolos?
- R. Muchos.
- Q. Can you tell this Court the number more or less?
- R. Habia muchos, ya era de noche.
- Q. Were they more than ten?
- R. Mas de dies.
- Q. What were those vehicles if you know?
- R. Trucks of an Army.

COURT:

- Q. All those ten vehicles more or less that you saw are all Army trucks?
- R. Si señor, porque tenian luz.
- Q. Only you can see it was an army vehicle because of the light?
- R. Yo lea vi por medio de la luz que tienen que eran convoy. (tr. pp. 14-16, July 28, 1952)

Counsel contend that the Pambusco bus driver's failure to notice whether there was a pedestrian on the road ahead of him again shows that he was inattentive or negligent. Again this is a question of memory. A driver, while passing along a road should notice of course the presence of pedestrians on both sides of the road and more particularly on the side where he is travelling, but that does not mean that he is bound to remember that at such and such a place at the time he was passing there were pedestrians and we believe no driver can have enough retentive memory as to be able to remember at what place or places on his way he saw pedestrians. He may remember for instance that while passing on the approach of a bridge or on the bridge he saw pedestrians on both sides or while going through a city or town or a barrio he saw people on the road but not in all the places of the road could he remember the presence of pedestrians. And when, as in this case, a collision occurred which involved his own bus and caused considerable damage thereto, there is nothing strange that he may have forgotten whether there were pedestrians or not at the place of the collision.

Again counsel contend that "the fact that it was already dark, that his bus and all vehicles he had met prior to the collision had their headlights on and that, prior to the mishap, he had already met ten Army trucks from the opposite direction, should have put him on his guard when he noticed or saw the Villanueva Transit bus trying to overtake and pass him and an Army convoy of trucks speeding toward them from the opposite direction should have put him on his guard when he noticed or saw the Villanueva Transit bus trying to overtake and pass him and an Army convoy of trucks speeding toward them from the opposite direction. Prudence and caution dictated an immediate slackening of his speed due to a possibility of collision between the Villanueva Transit bus and the incoming Army truck considering the narrow stretch of the road; but said Pambusco driver did not do so, in view of which the Army truck, after colliding with the Villanueva bus, struck the Pampanga bus on the rebound. Therefore, and even assuming that the collision between the Army truck and the Villanueva Transit bus was a case of fortuitous event, still there was fault or negligence on the part of the driver of the Pambusco bus." The Pambusco bus driver stated that upon seeing the Army convoy he lowered down his speed from 30 to about 25 kilometers per hour. He admitted that he did not slacken his speed while the Villanueva Transit bus was passing him or immediately after it had passed him. It should be remembered that both the drivers of the Pambusco bus and the plaintiff Adriano Lindayag testified that the

passing of the Villanueva Transit bus took place so suddenly and in fact Lindayag said he only noticed it when all of a sudden the collision took place. And the plaintiff Pedro Villarama did not even notice the Villanueva Transit bus passing the Pambusco bus. The Pambusco bus driver stated that he knew the Villanueva Transit bus was following him because of his light but all of a sudden he just saw it ahead. If the Pambusco bus was running fast it would have taken the Villanueva Transit bus sometime to get ahead of the Pambusco bus. The fact that he was able to do so without being noticed shows that he did it so quick while the Pambusco bus, as the driver stated, was running about 25 kilometers per hour after having slackened down his speed upon seeing the convoy coming. A speed of 25 kilometers per hour would allow the driver to bring the bus to a dead stop within less than one meter distance if his brakes are in good working condition. If the driver of the Villanueva Transit bus dared pass the Pambusco bus notwithstanding the incoming Army convoy of several trucks that goes to show that said driver must have estimated that he could do so without any risk of collision. And the driver of the Pambusco bus who feared no collision at all between the incoming Army convoy and his bus had no reason to still slacken his speed after having done so upon seeing the Army convoy. At any rate, at the speed he was running he could bring his bus to a dead stop within a distance of one meter but the trouble came because of the miscalculation of the distance between the Villanueva Transit bus and the incoming Army convoy and this brought about the collision and made it impossible for the Pambusco driver to stop his bus or maneuver in some way to avoid the accident because of the suddenness of the event. If cars or buses have to stop on the highway upon seeing incoming Army convoy of trucks, we can hardly figure out the blocking of traffic that may result. A slackening of the speed of said cars or buses was more than enough to forestall untoward event and no collision would have taken place had the Villanueva Transit bus which was behind the Pambusco bus had not dared to pass the latter. No rules of traffic require the stopping of cars or buses on a highway upon meeting Army convoy. In fact no rules of traffic require even the slackening of speed provided the proper distance is observed; that is why a middle line is always drawn on highways so that no car or bus will encroach on the opposite lane except when there is a clear road. Counsel for appellants are willing to concede that the collision between the Army truck and the Villanueva Transit bus was a case of fortuitous event but are not willing to concede that there was no fault or negligence on the part of the driver of the Pambusco bus. We differ on this altogether, that is, that the collision between the Army truck and the Villanueva Transit bus was due to the carelessness and imprudence of the latter's driver while the collision between the Army truck and the Pambusco bus was a clear case of fortuitous event.

Counsel for appellants contend that the Pambusco bus driver was running at a speed of more than 40 miles per hour or about 64 kilometers and not 25 or 30 kilometers, as testified to by said driver. In this connection said counsel stated: "It is, therefore, probable that when the Villanueva Transit bus was trying to overtake the Pambusco bus, each considerably increased its speed; the

former to overtake and pass the latter, and the latter not to be overtaken and passed behind by the former. Under the circumstances, the estimated speed of 40 miles per hour given by Adriano Lindayag as the speed of the Pambusco bus when it was overtaken and left behind by the Villanueva Transit bus is more worthy of credence, than the speed of 25 kilometers (about 15 miles) testified to by the Pambusco bus driver. At the speed of 15 miles per hour, a motor vehicle can be put to a stop in an instant. If the Pambusco bus could not be put to a stop despite the application of the brakes, it was because it was running fast despite the apparent probability of collision under the circumstances, which the Pambusco bus driver did not heed. He was, therefore, negligent because he should have foreseen the collision, and did not exercise diligence to avoid or prevent the same." Experience tells us that buses on the highway run most of the time faster than 40 miles per hour. In fact only powerful cars can overtake them and even drivers of such cars would not dare do so. Such buses constitute a terror not only to pedestrians but also to automobiles. In the instant case, however, all indications are to the contrary. It was established without contradiction that the distance between Manila and Malolos is 43 kilometers and that around five o'clock in the afternoon of December 22 the Pambusco bus No. 44 was at the corner of Azcarraga and Magdalena streets where plaintiff Villarama boarded it and a little later the other plaintiff Lindayag boarded the same bus along Rizal Avenue and that the collision took place between Bocaue and Bigaa between 6 and 8 o'clock in the evening or about 20 or 25 kilometers from the starting point which was covered by said bus in over one hour. It is, therefore, not probable that it would have run faster than 30 kilometers per hour. Moreover if, as contended by counsel for appellants, "when the Villanueva Transit bus was trying to overtake the Pambusco bus, each considerably increased its speed, the former to overtake and pass the latter, and the latter not to be overtaken and passed behind by the former, and that under the circumstances, the estimated speed could not be less than 40 miles per hour," the passengers of the Pambusco bus, including the two plaintiffs herein, would have naturally noticed the race between the two buses and certainly the damage caused to the buses would have been greater and probably there would have been some casualties. Nothing of this sort happened. The passing of the Villanueva Transit bus was almost unnoticed by the passengers of the Pambusco bus including the two plaintiffs, so that even against our personal experience we have to admit that all the facts established by the evidence in this case afforded by the witnesses for both sides — excluding Adriano Lindayag who inspite of not having noticed that there was a race between the Pambusco bus and the Villanueva Transit bus has assured the court that the Pambusco bus was running over forty miles per hour — do not uphold the theory of appellants' counsel.

We need not pass on the other legal questions raised by counsel for appellants for what has already been stated is more than sufficient to lead us to the conclusion that the decision appealed from is in accordance with the law and facts of the case and is hereby affirmed with costs against appellants.

Felix and Peña, J.J., concur.

JUDGE MORFE UPHOLDS THE . . .

(Continued from page 618)

crime of illegal association for which the accused was formerly convicted, it being possible under Arts. 134 and 135 of our Revised Penal Code for one who is not a member of an illegal association to commit rebellion by joining in an armed uprising against the government. Moreover, this Court does not adhere to the doctrine set by our Court of Appeals in the case of *People v. Cube*, CA-G.R. No. 1069, decided on November 24, 1948, in which it was held that mere membership in or identification with an organization openly fighting to overthrow the government is legally sufficient to render one guilty of rebellion in this jurisdiction. This Court holds the view, in this connection, that one accused of rebellion must perform an overt act of public disorder consisting in

direct participation in an uprising against the government before he can be convicted of the offense of rebellion under our Revised Penal Code, and is consequently of the opinion, and so holds, that the evidence of membership in an illegal association for which the accused was convicted in *Crim. Case No. 19179* of this Court on December 14, 1951 would not be sufficient to convict him of the offense of rebellion now charged against him, it being necessary in the latter case that an additional evidence, namely, that he actually took part in armed uprising against the government, be adduced against him. This accused's motion to quash under sub-sec. (h), Sec. 2, of Rule 113 is, therefore, without merit. (*People v. Garcia*, 63 Phil. 296; *Blair v. State*, 81 Ga. 629; 7 S.E. 855; *State v. White*, 123 Iowa 425; 98 N.W. 1027).