

THIRD DIVISION

[G.R. No. 122445, November 18, 1997]

**DR. NINEVETCH CRUZ, PETITIONER, VS. COURT OF APPEALS
AND LYDIA UMALI, RESPONDENTS.**

D E C I S I O N

FRANCISCO, J.:

The present case against petitioner is in the nature of a medical malpractice suit, which in simplest term is the type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has cause bodily harm.^[2] In this jurisdiction, however, such claims are most often brought as a civil action for damages under Article 2176 of the Civil Code,^[3] and in some instances, as a criminal case under Article 365 of the Revised Penal Code^[4] with which the civil action for damages is impliedly instituted. It is via the latter type of action that the heirs of the deceased sought redress for the petitioner's alleged imprudence and negligence in treating the deceased thereby causing her death. The petitioner and one Dr. Lina Ercillo who was the attending anaesthesiologist during the operation of the deceased were charged with "reckless imprudence and negligence resulting to (sic) homicide" in an information which reads:

"That on or about March 23, 1991, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused abovenamed, being then the attending anaesthesiologist and surgeon, respectively, did then and there, in a negligence (sic), careless, imprudent, and incompetent manner, and failing to supply or store sufficient provisions and facilities necessary to meet any and all exigencies apt to arise before, during and/or after a surgical operation causing by such negligence, carelessness, imprudence, and incompetence, and causing by such failure, including the lack of preparation and foresight needed to avert a tragedy, the untimely death of said Lydia Umali on the day following said surgical operation."^[5]

Trial ensued after both the petitioner and Dr. Lina Ercillo pleaded not guilty to the above-mentioned charge. On March 4, 1994, the Municipal Trial Court in Cities (MTCC) of San Pablo City rendered a decision, the dispositive portion of which is hereunder quoted as follows:

"WHEREFORE, the court finds the accused Dr. Lina Ercillo not guilty of the offense charged for insufficiency of evidence while her co-accused Dra. Ninevetch Cruz is hereby held responsible for the death of Lydia Umali on March 24, 1991, and therefore guilty under Art. 365 of the Revised Penal Code, and she is hereby sentenced to suffer the penalty of 2 months and 1 day imprisonment of *arresto mayor* with costs."^[6]

The petitioner appealed her conviction to the Regional Trial Court (RTC) which affirmed in toto the decision of the MTCC^[7] prompting the petitioner to file a petition for review with the Court of Appeals but to no avail. Hence this petition for review on certiorari assailing the decision promulgated by the Court of Appeals on October 24, 1995 affirming petitioner's conviction with modification that she is further directed to pay the heirs of Lydia Umali P50,000.00 as indemnity for her death.^[8]

In substance, the petition brought before this Court raises the issue of whether or not petitioner's conviction of the crime of reckless imprudence resulting in homicide, arising from an alleged medical malpractice, is supported by the evidence on record.

First the antecedent facts.

On March 22, 1991, prosecution witness, Rowena Umali De Ocampo, accompanied her mother to the Perpetual Help Clinic and General Hospital situated in Balagtas Street, San Pablo City, Laguna. They arrived at the said hospital at around 4:30 in the afternoon of the same day.^[9] Prior to March 22, 1991, Lydia was examined by the petitioner who found a "myoma"^[10] in her uterus, and scheduled her for a hysterectomy operation on March 23, 1991.^[11] Rowena and her mother slept in the clinic on the evening of March 22, 1991 as the latter was to be operated on the next day at 1:00 o'clock in the afternoon.^[12] According to Rowena, she noticed that the clinic was untidy and the window and the floor were very dusty prompting her to ask the attendant for a rag to wipe the window and the floor with.^[13] Because of the untidy state of the clinic, Rowena tried to persuade her mother not to proceed with the operation.^[14] The following day, before her mother was wheeled into the operating room, Rowena asked the petitioner if the operation could be postponed. The petitioner called Lydia into her office and the two had a conversation. Lydia then informed Rowena that the petitioner told her that she must be operated on as scheduled.^[15]

Rowena and her other relatives, namely her husband, her sister and two aunts waited outside the operating room while Lydia underwent operation. While they were waiting, Dr. Ercillo went out of the operating room and instructed them to buy tagamet ampules which Rowena's sister immediately bought. About one hour had passed when Dr. Ercillo came out again this time to ask them to buy blood for Lydia. They bought type "A" blood from the St. Gerald Blood Bank and the same was brought by the attendant into the operating room. After the lapse of a few hours, the petitioner informed them that the operation was finished. The operating staff then went inside the petitioner's clinic to take their snacks. Some thirty minutes after, Lydia was brought out of the operating room in a stretcher and the petitioner asked Rowena and the other relatives to buy additional blood for Lydia. Unfortunately, they were not able to comply with petitioner's order as there was no more type "A" blood available in the blood bank. Thereafter, a person arrived to donate blood which was later transfused to Lydia. Rowena then noticed her mother, who was attached to an oxygen tank, gasping for breath. Apparently the oxygen supply had run out and Rowena's husband together with the driver of the accused had to go to the San Pablo District Hospital to get oxygen. Lydia was given the fresh supply of oxygen as soon as it arrived.^[16] But at around 10:00 o'clock P.M. she went into shock and her blood pressure dropped to 60/50. Lydia's unstable condition

necessitated her transfer to the San Pablo District Hospital so she could be connected to a respirator and further examined.^[17] The transfer to the San Pablo City District Hospital was without the prior consent of Rowena nor of the other relatives present who found out about the intended transfer only when an ambulance arrived to take Lydia to the San Pablo District Hospital. Rowena and her other relatives then boarded a tricycle and followed the ambulance.^[18]

Upon Lydia's arrival at the San Pablo District Hospital, she was wheeled into the operating room and the petitioner and Dr. Ercillo re-operated on her because there was blood oozing from the abdominal incision.^[19] The attending physicians summoned Dr. Bartolome Angeles, head of the Obstetrics and Gynecology Department of the San Pablo District Hospital. However, when Dr. Angeles arrived, Lydia was already in shock and possibly dead as her blood pressure was already 0/0. Dr. Angeles then informed petitioner and Dr. Ercillo that there was nothing he could do to help save the patient.^[20] While petitioner was closing the abdominal wall, the patient died.^[21] Thus, on March 24, 1991, at 3:00 o'clock in the morning, Lydia Umali was pronounced dead. Her death certificate states "shock" as the immediate cause of death and "Disseminated Intravascular Coagulation (DIC)" as the antecedent cause.^[22]

In convicting the petitioner, the MTCC found the following circumstances as sufficient basis to conclude that she was indeed negligent in the performance of the operation:

"x x x, the clinic was untidy, there was lack of provision like blood and oxygen to prepare for any contingency that might happen during the operation. The manner and the fact that the patient was brought to the San Pablo District Hospital for reoperation indicates that there was something wrong in the manner in which Dra. Cruz conducted the operation. There was no showing that before the operation, accused Dr. Cruz had conducted a cardio pulmonary clearance or any typing of the blood of the patient. It was (sic) said in medical parlance that the "abdomen of the person is a temple of surprises" because you do not know the whole thing the moment it was open (sic) and surgeon must be prepared for any eventuality thereof. The patient (sic) chart which is a public document was not presented because it is only there that we could determine the condition of the patient before the surgery. The court also noticed in Exh. "F-1" that the sister of the deceased wished to postpone the operation but the patient was prevailed upon by Dra. Cruz to proceed with the surgery. The court finds that Lydia Umali died because of the negligence and carelessness of the surgeon Dra. Ninevetch Cruz because of loss of blood during the operation of the deceased for evident unpreparedness and for lack of skill, the reason why the patient was brought for operation at the San Pablo City District Hospital. As such, the surgeon should answer for such negligence. With respect to Dra. Lina Ercillo, the anaesthesiologist, there is no evidence to indicate that she should be held jointly liable with Dra. Cruz who actually did the operation."^[23]

The RTC reiterated the abovementioned findings of the MTCC and upheld the latter's declaration of "incompetency, negligence and lack of foresight and skill of appellant (herein petitioner) in handling the subject patient before and after the operation."

[24] And likewise affirming the petitioner's conviction, the Court of Appeals echoed similar observations, thus:

"x x x. While we may grant that the untidiness and filthiness of the clinic may not by itself indicate negligence, it nevertheless shows the absence of due care and supervision over her subordinate employees. Did this unsanitary condition permeate the operating room? Were the surgical instruments properly sterilized? Could the conditions in the OR have contributed to the infection of the patient? Only the petitioner could answer these, but she opted not to testify. This could only give rise to the presumption that she has nothing good to testify on her defense. Anyway, the alleged "unverified statement of the prosecution witness" remains unchallenged and unrebutted.

Likewise undisputed is the prosecution's version indicating the following facts: that the accused asked the patient's relatives to buy Tagamet capsules while the operation was already in progress; that after an hour, they were also asked to buy type "A" blood for the patient; that after the surgery, they were again asked to procure more type "A" blood, but such was not anymore available from the source; that the oxygen given to the patient was empty; and that the son-in-law of the patient, together with a driver of the petitioner, had to rush to the San Pablo City District Hospital to get the much-needed oxygen. All these conclusively show that the petitioner had not prepared for any unforeseen circumstances before going into the first surgery, which was not emergency in nature, but was elective or pre-scheduled; she had no ready antibiotics, no prepared blood, properly typed and cross-matched, and no sufficient oxygen supply.

Moreover, there are a lot of questions that keep nagging Us. Was the patient given any cardio-pulmonary clearance, or at least a clearance by an internist, which are standard requirements before a patient is subjected to surgery. Did the petitioner determine as part of the pre-operative evaluation, the bleeding parameters of the patient, such as bleeding time and clotting time? There is no showing that these were done. The petitioner just appears to have been in a hurry to perform the operation, even as the family wanted the postponement to April 6, 1991. Obviously, she did not prepare the patient; neither did she get the family's consent to the operation. Moreover, she did not prepare a medical chart with instructions for the patient's care. If she did all these, proof thereof should have been offered. But there is none. Indeed, these are overwhelming evidence of recklessness and imprudence." [25]

This court, however, holds differently and finds the foregoing circumstances insufficient to sustain a judgment of conviction against the petitioner for the crime of reckless imprudence resulting in homicide. The elements of reckless imprudence are: (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of

precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time and place.

Whether or not a physician has committed an "inexcusable lack of precaution" in the treatment of his patient is to be determined according to the standard of care observed by other members of the profession in good standing under similar circumstances bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science.^[26] In the recent case of *Leonila Garcia-Rueda v. Wilfred L. Pacasio, et. al.*,^[27] this Court stated that in accepting a case, a doctor in effect represents that, having the needed training and skill possessed by physicians and surgeons practicing in the same field, he will employ such training, care and skill in the treatment of his patients. He therefore has a duty to use at least the same level of care that any other reasonably competent doctor would use to treat a condition under the same circumstances. It is in this aspect of medical malpractice that expert testimony is essential to establish not only the standard of care of the profession but also that the physician's conduct in the treatment and care falls below such standard.^[28] Further, inasmuch as the causes of the injuries involved in malpractice actions are determinable only in the light of scientific knowledge, it has been recognized that expert testimony is usually necessary to support the conclusion as to causation.^[29]

Immediately apparent from a review of the records of this case is the absence of any expert testimony on the matter of the standard of care employed by other physicians of good standing in the conduct of similar operations. The prosecution's expert witnesses in the persons of Dr. Floresto Arizala and Dr. Nieto Salvador, Jr. of the National Bureau of Investigation (NBI) only testified as to the possible cause of death but did not venture to illuminate the court on the matter of the standard of care that petitioner should have exercised.

All three courts below bewail the inadequacy of the facilities of the clinic and its untidiness; the lack of provisions such as blood, oxygen, and certain medicines; the failure to subject the patient to a cardio-pulmonary test prior to the operation; the omission of any form of blood typing before transfusion; and even the subsequent transfer of Lydia to the San Pablo Hospital and the reoperation performed on her by the petitioner. But while it may be true that the circumstances pointed out by the courts below seemed beyond cavil to constitute reckless imprudence on the part of the surgeon, this conclusion is still best arrived at not through the educated surmises nor conjectures of laymen, including judges, but by the unquestionable knowledge of expert witnesses. For whether a physician or surgeon has exercised the requisite degree of skill and care in the treatment of his patient is, in the generality of cases, a matter of expert opinion.^[30] The deference of courts to the expert opinion of qualified physicians stems from its realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating.^[31] Expert testimony should have been offered to prove that the circumstances cited by the courts below are constitutive of conduct falling below the standard of care employed by other physicians in good standing when performing the same operation. It must be remembered that when the qualifications of a physician are admitted, as in the instant case, there is an inevitable presumption that in proper cases he takes the necessary precaution and employs the best of his knowledge and skill in attending to his clients, unless the contrary is