

THIRD DIVISION

[G.R. No. 221981, November 04, 2020]

**RAUL OFRACIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

LEONEN, J.:

The doctrine of last clear chance does not apply when only one of the parties was negligent. For the doctrine to apply, it must be shown that both parties were negligent but the negligent act of one was appreciably later in time than that of the other. It may also apply when it is impossible to determine who caused the resulting harm, thus, the one who had the last opportunity to avoid the impending harm and failed to do so will be held liable.^[1]

This resolves a Petition for Review on Certiorari^[2] assailing the Court of Appeals Decision^[3] which affirmed the Regional Trial Court Decision^[4] convicting Raul Ofracio (Ofracio) of Reckless Imprudence Resulting to Homicide with Damage to Property.

On May 29, 2002, Ofracio was driving a tricycle loaded with lumber when it collided with the tricycle being driven by Roy Ramirez (Ramirez). Ramirez was hit by the lumber, causing his instantaneous death. Ramirez's tricycle was also damaged in the collision.^[5]

On June 25, 2002, a complaint for reckless imprudence resulting to homicide with damage to property was filed with the Municipal Trial Court in Cities, Branch 2, Sorsogon City against Ofracio. The Municipal Trial Court in Cities found probable cause and issued a warrant for Ofracio's arrest.^[6]

On August 7, 2002, Ofracio entered a plea of not guilty to the charge against him.^[7]

The parties admitted the following during the pre-trial conference:

(T)he place, date[,] and time of the incident subject of the case; identity of the parties; that there was a vehicular accident involving two tricycles one of which was driven by accused Raul Ofracio; an investigation was conducted by the police authorities; and the competence of Dra. Myrna Listanco, who issued the Certificate of Death of the victim, Roy Ramirez.

^[8]

The prosecution presented the following as their witnesses: (a) SPO2 Camelo Murillo (SPO2 Murillo) (b) Carlos Dayao (Dayao); (c) Rosario Ramirez (Rosario); and (d) Dr. Larry Garrido (Dr. Garrido).

SPO2 Murillo testified that he was on duty at the Police Sub-Station 2 when a tricycle driver reported an accident in Bibincahan, Sorsogon City. When he arrived at the scene of the accident, he saw Ramirez lying face down on the road. He then asked a barangay tanod to bring Ramirez to the hospital. At the accident scene, he observed that some of the lumber atop Ofracio's tricycle had pierced the windshield of Ramirez's tricycle.^[9]

Dayao testified that he was conversing with some friends at around 11:00 p.m. when he heard a loud thud and cries for help. He and his friends ran towards the noise and found Ramirez bloodied and lying on the ground, face down. Dayao admitted that he did not see the actual collision of the tricycles.^[10]

Rosario was the deceased's mother and she testified on the expenses she incurred in burying her son and filing a case against Ofracio.^[11]

Dr. Garrido, an expert witness who testified on the post-mortem examination report conducted by Dr. Myrna Jasmin-Listanco, concluded that the cause of Ramirez's death appeared to be "cerebral hemorrhage secondary to skull fracture secondary to vehicular accident."^[12]

The defense presented two witnesses: (a) Ofracio and (b) Reyden Despuig (Despuig).

Ofracio testified that on May 29, 2002, past 11:00 p.m., he was transporting forty-six (46) pieces of lumber in a tricycle with Despuig as his passenger.^[13]

Ofracio claimed that he was slowly and carefully driving because of his heavy cargo. As he was driving, he suddenly saw a bright light 4 to 5 meters in front of him. The collision occurred in Ofracio's lane, with his tricycle hitting Ramirez's sidecar. He admitted fleeing the scene of the accident but the following day, when he went to the hospital for his own injuries, he voluntarily surrendered to the police when he found out that they knew about his involvement in the collision.^[14]

Despuig corroborated Ofracio's testimony. ^[15]

On June 1, 2011, the Municipal Trial Court in Cities, Branch 2 of Sorsogon City found Ofracio guilty beyond reasonable doubt of the crime of reckless imprudence resulting in homicide and sentenced him to an indeterminate penalty of four (4) months and one (1) day of *arresto mayor* as minimum, to four (4) years, nine (9) months and ten (10) days of *prision correccional* as maximum. Ofracio was also ordered to compensate the heirs of Ramirez in the amounts of P60,950.00 as actual damages, P50,000.00 as civil indemnity, and P30,000.00 as moral damages.^[16]

Ofracio appealed, but the Regional Trial Court, Branch 52 of Sorsogon City affirmed the ruling of the Municipal Trial Court in Cities. The Regional Trial Court also denied his motion for reconsideration.^[17]

Ofracio elevated the Regional Trial Court's ruling to the Court of Appeals, arguing that the Regional Trial Court erred in holding him liable under the doctrine of last clear chance.^[18] However, the Court of Appeals^[19] upheld the findings of both the Municipal Trial Court in Cities and the Regional Trial Court.^[20]

In his Petition for Review on Certiorari^[21] before this Court, petitioner posits that the Court of Appeals failed to take judicial notice of the laws of physics which find application in any vehicular accident.^[22] Petitioner presents computations to show that contrary to the lower courts' findings, perceiving the imminent collision at a distance of only 4 or 5 meters, was not enough to avoid the collision, since the total stopping distance was 5.39m.^[23]

Furthermore, petitioner maintains that he was slowly driving because his tricycle was weighed down by the 46 pieces of lumber it was transporting.^[24] He states that the lumber on top of his tricycle were still in their original position even after the collision, supporting his testimony that he was not driving at high speed.^[25]

Petitioner likewise claims that transporting lumber on top of a tricycle is a common practice in Sorsogon City and cannot be considered as imprudence and negligence per se, as long as the necessary precautions are taken to secure the lumber to the tricycle.^[26]

In its Comment,^[27] respondent People of the Philippines, represented by the Office of the Solicitor General, states that the factual issues raised in the Petition are beyond the ambit of a petition for review on certiorari.^[28] Respondent also posits that the lower courts did not err when they unanimously found that even if Ramirez was driving his tricycle in a zigzagging motion, petitioner still had the last clear chance to avoid the collision.^[29]

Petitioner was directed to submit a reply to respondent's Comment but he manifested that he was waiving his right to do so.^[30]

The only issue raised for this Court's resolution is whether or not petitioner should be held liable under the doctrine of last clear chance.

The Petition is meritorious.

Pascual v. Burgos^[31] instructs that only questions of law may be raised in a petition for review on certiorari and that factual findings of the Court of Appeals bind this Court. While there are exceptions to this rule, these exceptions must be alleged, substantiated, and proved by the parties.^[32]

Medina v. Mayor Asistio, Jr. ^[33] lists 10 recognized exceptions to the rule:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the findings of fact are conflicting;
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) The findings of the Court of Appeals are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
- (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents;
- and (10) The finding of fact of the Court of

Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.^[34] (Citations omitted)

The first exception where "the conclusion is a finding grounded entirely on speculation, surmises or conjectures" is present here, thus placing this case well-within the exception to the general rule that only questions of law may be brought to this Court in a Rule 45 petition.

In the case at bar, the lower courts found both parties negligent but that petitioner could have avoided the accident had he only acted with prudence. The Municipal Trial Court in Cities held:

(T)he accused himself testified, he saw the victim Roy Ramirez' tricycle approaching him in a zigzagging manner. At this point, the prudent driver seeing the possibility of a collision should have stopped immediately upon seeing the danger which was clearly approaching. But alas, the accused did otherwise or proceeded to confront the peril looming closer.

This account cannot absolve the victim, Roy Ramirez from any negligence, as by accounts, he was driving in a zigzagging manner.

Considering that both drivers were negligent, the doctrine of Last Clear Chance finds application.^[35]

The Court of Appeals then stated:

The doctrine of last clear chance states that where both parties are negligent but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the clear opportunity to avoid the loss but failed to do so is chargeable with the loss.

In the case at bar, assuming that the deceased Roy Ramirez was indeed driving his tricycle in a "zigzagging" and fast manner as claimed by Petitioner Raul Ofracio, the latter cannot be exonerated from his culpability for the death of Roy Ramirez, as he, himself, admitted that he already saw "a very bright light" / the incoming vehicle "about four (4) or five (5) meters away." In fact, in his testimony before the trial court, he stated:

. . . .

To our mind, considering that Petitioner was aware of the incoming tricycle as far away as 4 or 5 meters because of the bright headlight of the tricycle, he could have taken precautionary measures to avoid the collision with the other tricycle. He could have slowed down, parked at the side of the road, or applied his breaks and stopped on his tracks.

To make matters worse, records show that Petitioner had in his tricycle 46 pieces of lumber[,], some of which even protruded from his tricycle. The absence of any evidence showing that Petitioner made efforts to secure the said pieces of wood to his tricycle further evinces his imprudence and negligence.^[36]

The lower courts surmised that petitioner's failure to avoid the collision when he had every opportunity to do so made him liable under the doctrine of last clear chance.

The lower courts are mistaken.

The doctrine of last clear chance contemplates two (2) possible scenarios. First is when both parties are negligent but the negligent act of one party happens later in time than the negligent act of the other party. Second is when it is impossible to determine which party caused the accident. When either of the two (2) scenarios are present, the doctrine of last clear chance holds liable for negligence the party who had the last clear opportunity to avoid the resulting harm or accident but failed to do so.^[37] *Bustamante v. Court of Appeals*^[38] further explains:

The practical import of the doctrine is that a negligent defendant is held liable to a negligent plaintiff, or even to a plaintiff who has been grossly negligent in placing himself in peril, if he, aware of the plaintiff's peril, or according to some authorities, should have been aware of it in the reasonable exercise of due care, had in fact an opportunity later than that of the plaintiff to avoid an accident.^[39]

From every indication, it was Ramirez's act of driving his tricycle in a speedy and unpredictable manner (i.e. zigzagging) which caused the accident. However, the lower courts also ascribed negligence to petitioner because he supposedly had enough time to either steer clear of Ramirez or stop his tricycle altogether to prevent the collision.

The records showed that Ramirez's tricycle hit petitioner's tricycle while the latter was within its lane, thereby substantiating petitioner's testimony that Ramirez was driving in a zigzag manner. This also demonstrated that petitioner stayed within his lane the entire time prior to the accident.

Petitioner likewise testified that he was slowly driving prior to the accident, and this was corroborated by his passenger.^[40] Additionally, he had 46 pieces of lumber strapped on top of his tricycle, which made it impossible for him to drive his tricycle at top speed. This was apparent during his cross-examination:

COURT INTERPRETER:

[Ofracio] A. I was still p[l]ying my route that day because of my purpose also to augment the family income.

[Atty. Labitag] Q. And because you were then performing something illegal you were driving your motorized tricycle in a very fast speed?

A. No Sir, at the time I cannot drive my tricycle fast or as fast as I wanted to because the fact is I had lumber in the tricycle and I cannot make the tricycle run as fast.

Q. You wanted to run the tricycle fast at that time?

A. No Sir.