

SECOND DIVISION

[G.R. No. 204095, June 15, 2015]

**DR. JAIME T. CRUZ, PETITIONER, VS. FELICISIMO V. AGAS, JR.,
RESPONDENT.**

DECISION

MENDOZA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the May 22, 2012 Decision^[1] and October 18, 2012 Resolution^[2] of the Court of Appeals (CA), in CA-G.R. SP No. 111910, which affirmed the March 2, 2007^[3] and September 23, 2009^[4] Resolutions of the Secretary of Justice. The said resolutions let stand the February 16, 2004 Resolution of the Office of the Prosecutor of Quezon City, dismissing the complaint of petitioner Dr. Jaime T. Cruz (*Dr. Cruz*) for Serious Physical Injuries through Reckless Imprudence and Medical Malpractice against respondent, Dr. Felicisimo V. Agas, Jr. (*Dr. Agas*).

The Antecedents

In his Complaint-Affidavit^[5] for Serious Physical Injuries through Reckless Imprudence and Medical Malpractice against Dr. Agas, Dr. Cruz alleged, among others, that sometime in May 2003, he engaged the services of St. Luke's Medical Center (*SLMC*) for a medical check-up; that after being admitted in SLMC on May 28, 2003, he underwent stool, urine, blood, and other body fluid tests conducted by the employees and doctors of the said hospital; that on May 29, 2003, he was sent to the Gastro-Enterology Department for a scheduled gastroscopy and colonoscopy; that because the specialist assigned to perform the procedure was nowhere to be found, he gave the colonoscopy results to the attending female anesthesiologist for the information and consideration of the assigned specialist; that, thereafter, he was sedated and the endoscopic examination was carried out; that when he regained consciousness, he felt that something went wrong during the procedure because he felt dizzy, had cold clammy perspiration and experienced breathing difficulty; that he could not stand or sit upright because he felt so exhausted and so much pain in his abdomen; that when he was about to urinate in the comfort room, he collapsed; that he tried to consult the specialist who performed the colonoscopy but he was nowhere to be found; and that his cardiologist, Dra. Agnes Del Rosario, was able to observe his critical condition and immediately referred him to the surgical department which suspected that he had hemorrhage in his abdomen and advised him to undergo an emergency surgical operation.

Dr. Cruz further averred that he agreed to the operation and upon waking up at the ICU on May 30, 2003, he found out that the doctors did an exploratory laparotomy because of the internal bleeding; that he learned that the doctors cut a portion of the left side of his colon measuring 6-8 inches because it had a partial tear of the colonic wall which caused the internal bleeding; that despite the painkillers, he was

under tremendous pain in the incision area during his recovery period in the ICU and had fever; and that he had intravenous tubes attached to his arms, subclavian artery on the left part of his chest and a nasogastric tube through his nose.

Dr. Cruz claimed that Dr. Agas admitted that he was the one who performed the colonoscopy procedure but the latter insisted that nothing went wrong. On June 7, 2003, he was discharged from SLMC. Nevertheless, he complained that he had a hard time digesting his food; that he was frequently fed every two hours because he easily got full; that he had fresh blood stools every time he moved his bowel; that he had lost his appetite and had gastric acidity; that he slept most of the day; and that he was in good physical condition before the colonoscopy procedure. He asserted that at the time of the filing of the complaint, he was still weak, tired and in pain.

Defense of Dr. Agas

Dr. Agas, on the other hand, countered that Dr. Cruz failed to prove the basic elements of reckless imprudence or negligence. He averred that Dr. Cruz unfairly made it appear that he did not know that he would perform the procedure. He explained that before the start of the colonoscopy procedure, he was able to confer with Dr. Cruz and review his medical history which was taken earlier by a fellow gastrointestinal physician. He claimed that the gastroscopy and colonoscopy procedures conducted on Dr. Cruz were completely successful considering that the latter did not manifest any significant adverse reaction or body resistance during the procedures and that his vital signs were normal throughout the procedure.^[6]

Dr. Agas added that certifications and sworn statements were submitted by the Assistant Medical Director for Professional Services, the Director of the Institute of Digestive Diseases, the anesthesiologist, and the hospital nurse attesting to the fact that the intraperitoneal bleeding which developed after the colonoscopy procedure, was immediately recognized, evaluated, carefully managed, and corrected; that he provided an adequate and reasonable standard of care to Dr. Cruz; that the endoscopist followed all precautionary measures; that the colonoscopy procedure was done properly; that he was not negligent or reckless in conducting the colonoscopy procedure; that he did not deviate from any standard medical norm, practice or procedure; and that he exercised competence and diligence in rendering medical services to Dr. Cruz.^[7]

Antecedents at the Prosecution Level

On February 16, 2004, the Office of the City Prosecutor (OCP) issued a resolution dismissing the complaint for Serious Physical Injuries through Reckless Imprudence and Medical Malpractice. Aggrieved, Dr. Cruz filed a petition for review with the Department of Justice (DOJ) but the same was dismissed in its March 2, 2007 Resolution. Dr. Cruz filed a motion for reconsideration but it was denied by the DOJ in its September 23, 2009 Resolution.^[8]

At the Court of Appeals

Not satisfied, Dr. Cruz filed a petition for *certiorari* before the CA questioning the unfavorable DOJ resolutions. On May 22, 2012, the CA rendered a decision affirming

the said DOJ resolutions. The CA explained that, as a matter of sound judicial policy, courts would not interfere with the public prosecutor's wide discretion of determining probable cause in a preliminary investigation unless such executive determination was tainted with manifest error or grave abuse of discretion. It stated that the public prosecutor's finding of lack of probable cause against Dr. Agas was in accordance with law and that his alleged negligence was not adequately established by Dr. Cruz.

The CA also declared that Dr. Cruz failed to state in his Complaint-Affidavit the specific procedures that Dr. Agas failed to do which a reasonable prudent doctor would have done, or specific norms he failed to observe which a reasonably prudent doctor would have complied with. The CA pointed out that Dr. Agas was able to satisfactorily explain in his Counter-Affidavit that the complications suffered by Dr. Cruz was not caused by his negligence or was the result of medical malpractice. Dr. Agas explained as follows:

That the complication was due to the abnormal condition and configuration of the digestive system, colon in particular, of the complainant and not from any negligent act in connection with the conduct of colonoscopy. The surgical findings (xxx) revealed marked adhesions in the sigmoid colon which is not and never within my control. That the tear in the serosa (the outermost layer of the colonic wall which has 4 layers) happened likely because of the marked interloop adhesions and tortuosity of the sigmoid segment of the colon. These adhesions that connect the serosa to the peritoneal lining of each loop detached from the serosa during the procedure. It is not possible to detect the presence of marked adhesions prior to the endoscopic procedure because no clinical findings, laboratory tests or diagnostic imaging such as x-ray, ultrasound or computed tomography (CT scan) of the abdomen can diagnose these conditions. This can only be detected by surgically opening up the abdomen. Moreover, marked adhesions and serosal tear, in particular, cannot likewise be detected by colonoscopy because they are in the outer wall of the colon and only the inner lining of the colon is within the view of the colonoscope (camera).^[9]

The CA further wrote that the counter-affidavit of Dr. Agas was supported by the sworn affidavit of Dr. Jennifel S. Bustos, an anesthesiologist at the SLMC and the affidavit of Evelyn E. Daulat, a nurse at SLMC, both swearing under oath that Dr. Agas was not negligent in conducting a gastroscopy and colonoscopy procedure on Dr. Cruz and the certification issued by the Hospital Ethics Committee which stated that Dr. Cruz was given an adequate and reasonable standard of care; that Dr. Agas followed all precautionary measures in safeguarding Dr. Cruz from any possible complications; and that the colonoscopy was done properly.

Hence, this petition.

ISSUE

WHETHER OR NOT THE CA WAS CORRECT IN AFFIRMING THE DECISION OF THE DOJ THAT NO PROBABLE CAUSE EXISTS FOR FILING AN INFORMATION AGAINST THE RESPONDENT, THAT THE