

## FIRST DIVISION

[ G.R. No. 192123, March 10, 2014 ]

**DR. FERNANDO P. SOLIDUM, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**BERSAMIN, J.:**

This appeal is taken by a physician-anesthesiologist who has been pronounced guilty of reckless imprudence resulting in serious physical injuries by the Regional Trial Court (RTC) and the Court of Appeals (CA). He had been part of the team of anesthesiologists during the surgical pull-through operation conducted on a three-year old patient born with an imperforate anus.<sup>[1]</sup>

The antecedents are as follows:

Gerald Albert Gercayo (Gerald) was born on June 2, 1992<sup>[2]</sup> with an imperforate anus. Two days after his birth, Gerald underwent colostomy, a surgical procedure to bring one end of the large intestine out through the abdominal wall,<sup>[3]</sup> enabling him to excrete through a colostomy bag attached to the side of his body.<sup>[4]</sup>

On May 17, 1995, Gerald, then three years old, was admitted at the Ospital ng Maynila for a pull-through operation.<sup>[5]</sup> Dr. Leandro Resurreccion headed the surgical team, and was assisted by Dr. Joselito Luceño, Dr. Donatella Valeña and Dr. Joseph Tibio. The anesthesiologists included Dr. Marichu Abella, Dr. Arnel Razon and petitioner Dr. Fernando Solidum (Dr. Solidum).<sup>[6]</sup> During the operation, Gerald experienced bradycardia,<sup>[7]</sup> and went into a coma.<sup>[8]</sup> His coma lasted for two weeks,<sup>[9]</sup> but he regained consciousness only after a month.<sup>[10]</sup> He could no longer see, hear or move.<sup>[11]</sup>

Agitated by her son's helpless and unexpected condition, Ma. Luz Gercayo (Luz) lodged a complaint for reckless imprudence resulting in serious physical injuries with the City Prosecutor's Office of Manila against the attending physicians.<sup>[12]</sup>

Upon a finding of probable cause, the City Prosecutor's Office filed an information solely against Dr. Solidum,<sup>[13]</sup> alleging: –

That on or about May 17, 1995, in the City of Manila, Philippines, the said accused, being then an anesthesiologist at the Ospital ng Maynila, Malate, this City, and as such was tasked to administer the anesthesia on three-year old baby boy GERALD ALBERT GERCAYO, represented by his mother, MA. LUZ GERCAYO, the former having been born with an

imperforate anus [no anal opening] and was to undergo an operation for anal opening [pull through operation], did then and there willfully, unlawfully and feloniously fail and neglect to use the care and diligence as the best of his judgment would dictate under said circumstance, by failing to monitor and regulate properly the levels of anesthesia administered to said GERALD ALBERT GERCAYO and using 100% halothane and other anesthetic medications, causing as a consequence of his said carelessness and negligence, said GERALD ALBERT GERCAYO suffered a cardiac arrest and consequently a defect called hypoxic encephalopathy meaning insufficient oxygen supply in the brain, thereby rendering said GERALD ALBERT GERCAYO incapable of moving his body, seeing, speaking or hearing, to his damage and prejudice.

Contrary to law.<sup>[14]</sup>

The case was initially filed in the Metropolitan Trial Court of Manila, but was transferred to the RTC pursuant to Section 5 of Republic Act No. 8369 (*The Family Courts Act of 1997*),<sup>[15]</sup> where it was docketed as Criminal Case No. 01-190889.

### **Judgment of the RTC**

On July 19, 2004, the RTC rendered its judgment finding Dr. Solidum guilty beyond reasonable doubt of reckless imprudence resulting to serious physical injuries,<sup>[16]</sup> decreeing:

WHEREFORE, premises considered, the Court finds accused DR. FERNANDO P. SOLIDUM GUILTY beyond reasonable doubt as principal of the crime charged and is hereby sentenced to suffer the indeterminate penalty of TWO (2) MONTHS and ONE (1) DAY of *arresto mayor* as minimum to ONE (1) YEAR, ONE (1) MONTH and TEN (10) DAYS of prison correccional as maximum and to indemnify, jointly and severally with the Ospital ng Maynila, Dr. Anita So and Dr. Marichu Abella, private complainant Luz Gercayo, the amount of P500,000.00 as moral damages and P100,000.00 as exemplary damages and to pay the costs.

Accordingly, the bond posted by the accused for his provisional liberty is hereby CANCELLED.

SO ORDERED.<sup>[17]</sup>

Upon motion of Dr. Anita So and Dr. Marichu Abella to reconsider their solidary liability,<sup>[18]</sup> the RTC excluded them from solidary liability as to the damages, modifying its decision as follows:

WHEREFORE, premises considered, the Court finds accused Dr. Fernando Solidum, guilty beyond reasonable doubt as principal of the crime charged and is hereby sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor* as minimum to one (1)

year, one (1) month and ten (10) days of *prision correccional* as maximum and to indemnify jointly and severally with Ospital ng Maynila, private complainant Luz Gercayo the amount of P500,000.00 as moral damages and P100,000 as exemplary damages and to pay the costs.

Accordingly, the bond posted by the accused for his provisional liberty is hereby cancelled.<sup>[19]</sup>

### **Decision of the CA**

On January 20, 2010, the CA affirmed the conviction of Dr. Solidum,<sup>[20]</sup> pertinently stating and ruling:

The case appears to be a textbook example of *res ipsa loquitur*.

x x x x

x x x [P]rior to the operation, the child was evaluated and found fit to undergo a major operation. As noted by the OSG, the accused himself testified that pre-operation tests were conducted to ensure that the child could withstand the surgery. Except for his imperforate anus, the child was healthy. The tests and other procedures failed to reveal that he was suffering from any known ailment or disability that could turn into a significant risk. There was not a hint that the nature of the operation itself was a causative factor in the events that finally led to hypoxia.

In short, the lower court has been left with no reasonable hypothesis except to attribute the accident to a failure in the proper administration of anesthesia, the gravamen of the charge in this case. The High Court elucidates in *Ramos vs. Court of Appeals* 321 SCRA 584 –

In cases where the *res ipsa loquitur* is applicable, the court is permitted to find a physician negligent upon proper proof of injury to the patient, without the aid of expert testimony, where the court from its fund of common knowledge can determine the proper standard of care. Where common knowledge and experience teach that a resulting injury would not have occurred to the patient if due care had been exercised, an inference of negligence may be drawn giving rise to an application of the doctrine of *res ipsa loquitur* without medical evidence, which is ordinarily required to show not only what occurred but how and why it occurred. When the doctrine is appropriate, all that the patient must do is prove a nexus between the particular act or omission complained of and the injury sustained while under the custody and management of the defendant without need to produce expert medical testimony to establish the standard of care. Resort to *res ipsa loquitur* is allowed because there is no

other way, under usual and ordinary conditions, by which the patient can obtain redress for injury suffered by him.

The lower court has found that such a nexus exists between the act complained of and the injury sustained, and in line with the hornbook rules on evidence, we will afford the factual findings of a trial court the respect they deserve in the absence of a showing of arbitrariness or disregard of material facts that might affect the disposition of the case. *People v. Paraiso* 349 SCRA 335.

The *res ipsa loquitur* test has been known to be applied in criminal cases. Although it creates a presumption of negligence, it need not offend due process, as long as the accused is afforded the opportunity to go forward with his own evidence and prove that he has no criminal intent. It is in this light not inconsistent with the constitutional presumption of innocence of an accused.

IN VIEW OF THE FOREGOING, the modified decision of the lower court is affirmed.

SO ORDERED.<sup>[21]</sup>

Dr. Solidum filed a motion for reconsideration, but the CA denied his motion on May 7, 2010.<sup>[22]</sup>

Hence, this appeal.

### **Issues**

Dr. Solidum avers that:

#### **I.**

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT IN UPHOLDING THE PETITIONER'S CONVICTION FOR THE CRIME CHARGED BASED ON THE TRIAL COURT'S OPINION, AND NOT ON THE BASIS OF THE FACTS ESTABLISHED DURING THE TRIAL. ALSO, THERE IS A CLEAR MISAPPREHENSION OF FACTS WHICH IF CORRECTED, WILL RESULT TO THE ACQUITTAL OF THE PETITIONER. FURTHER, THE HONORABLE COURT ERRED IN AFFIRMING THE SAID DECISION OF THE LOWER COURT, AS THIS BREACHES THE CRIMINAL LAW PRINCIPLE THAT THE PROSECUTION MUST PROVE THE ALLEGATIONS OF THE INFORMATION BEYOND REASONABLE DOUBT, AND NOT ON THE BASIS OF ITS PRESUMPTIVE CONCLUSION.

#### **II.**

THE HONORABLE COURT OF APPEALS ERRED IN APPLYING THE PRINCIPLE OF RES IPSA LOQUITUR (sic) WHEN THE DEFENSE WAS ABLE

TO PROVE THAT THERE IS NO NEGLIGENCE ON THE PART OF THE PETITIONER, AND NO OVERDOSING IN THE APPLICATION OF THE ANESTHETIC AGENT BECAUSE THERE WAS NO 100% HALOTHANE ADMINISTERED TO THE CHILD, BUT ONLY ONE (1%) PERCENT AND THE APPLICATION THEREOF, WAS REGULATED BY AN ANESTHESIA MACHINE. THUS, THE APPLICATION OF THE PRINCIPLE OF RES IPSA LOQUITUR (sic) CONTRADICTED THE ESTABLISHED FACTS AND THE LAW APPLICABLE IN THE CASE.

### III.

THE AWARD OF MORAL DAMAGES AND EXEMPLARY DAMAGES IS NOT JUSTIFIED THERE BEING NO NEGLIGENCE ON THE PART OF THE PETITIONER. ASSUMING THAT THE CHILD IS ENTITLED TO FINANCIAL CONSIDERATION, IT SHOULD BE ONLY AS A FINANCIAL ASSISTANCE, BECAUSE THERE WAS NO NEGLIGENCE, AND NO OVERDOSING OF ANESTHETIC AGENT AND AS SUCH, THE AWARD IS SO EXCESSIVE, AND NO FACTUAL AND LEGAL BASIS.<sup>[23]</sup>

To simplify, the following are the issues for resolution, namely: (a) whether or not the doctrine of *res ipsa loquitur* was applicable herein; and (b) whether or not Dr. Solidum was liable for criminal negligence.

### **Ruling**

The appeal is meritorious.

### **Applicability of the Doctrine of *Res Ipsa Loquitur***

*Res ipsa loquitur* is literally translated as "the thing or the transaction speaks for itself." The doctrine *res ipsa loquitur* means that "where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care."<sup>[24]</sup> It is simply "a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the defendant who is charged with negligence. It is grounded in the superior logic of ordinary human experience and on the basis of such experience or common knowledge, negligence may be deduced from the mere occurrence of the accident itself. Hence, *res ipsa loquitur* is applied in conjunction with the doctrine of common knowledge."<sup>[25]</sup>

*Jarcia, Jr. v. People*<sup>[26]</sup> has underscored that the doctrine is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. The doctrine, when applicable to the facts and circumstances of a given case, is not meant to and does not dispense with the requirement of proof of culpable negligence against the party charged. It merely determines and regulates what shall be *prima facie*