

THIRD DIVISION

[G.R. No. 163879, July 30, 2014]

DR. ANTONIO P. CABUGAO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND SPOUSES RODOLFO M. PALMA AND ROSARIO F. PALMA, RESPONDENTS.

[G.R. NO. 165805]

DR. CLENIO YNZON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND SPOUSES RODOLFO M. PALMA AND ROSARIO F. PALMA, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Before this Court are appeals via Rule 45 from the Decision^[1] dated June 4, 2004 of the Court of Appeals in CA-G.R. CR No. 27293, affirming the Decision^[2] dated February 28, 2003 of the Regional Trial Court (RTC), convicting appellant Dr. Antonio P. Cabugao (*Dr. Cabugao*) and Dr. Clenio Ynzon (*Dr. Ynzon*) of the crime of Reckless Imprudence Resulting to Homicide.

The Information^[3] alleged –

That on or about June 17, 2000 in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, DR. ANTONIO P. CABUGAO and DR. CLENIO YNZON, being then the attending physicians of one RODOLFO PALMA, JR., a minor 10 years old, confederating and acting jointly with one another, did, then and there, willfully, unlawfully and feloniously fail through negligence, carelessness and imprudence to perform immediate operation upon their patient, RODOLFO PALMA, JR. of acute appendicitis, when they, the said physicians, should have been done so considering that examinations conducted upon their patient Rodolfo Palma, Jr. seriously manifest to do so, causing by such negligence, carelessness, and imprudence the victim, RODOLFO PALMA JR., to die due to:

“CARDIORESPIRATORY ARREST, METABOLIC ENCEPHALOPATHY, SEPTICEMIA (ACUTE APPENDICITIS), CEREBRAL ANEURYSM RUPTURED (?)”

As per Certificate of Death issued by accused Dr. Antonio P. Cabugao, to the damage and prejudice of the legal heirs of said deceased RODOLFO PALMA, JR. and other consequential

damages relative thereto.

CONTRARY to Article 365, 1st par. of the Revised Penal Code.

Dagupan City, Philippines, January 29, 2001.

Arising from the same events, the Court resolved to consolidate these cases.^[4] The facts, as culled from the records, are as follows:

On June 14, 2000, at around 4 o'clock in the afternoon, ten (10)-year old Rodolfo F. Palma, Jr. (JR) complained of abdominal pain to his mother, Rosario Palma. At 5 o'clock that same afternoon, Palma's mother and father, Atty. Rodolfo Palma Sr., brought JR to the clinic of accused Dr. Cabugao. Dr. Cabugao, a general practitioner, specializing in family medicine gave medicines for the pain and told Palma's parents to call him up if his stomach pains continue. Due to persistent abdominal pains, at 4:30 in the early morning of June 15, 2000, they returned to Dr. Cabugao, who advised them to bring JR to the Nazareth General Hospital in Dagupan City, for confinement. JR was admitted at the said hospital at 5:30 in the morning.^[5]

Blood samples were taken from JR for laboratory testing. The complete blood count conveyed the following result: wbc – $27.80 \times 10^9/L$; lymphocytes – 0.10 and neutrophils – 0.90. Diagnostic ultrasound was likewise conducted on the patient's lower abdomen by radiologist, Dr. Ricky V. Querubin, with the following findings:

Normal liver, bile ducts, gallbladder, pancreas, spleen, kidneys and urinary bladder.

There is no free peritoneal fluid.

There is localized tenderness in the paraumbilical region, more so in the supra and right paraumbilical areas.

There is a vague elongated hypoechoic focus in the right periumbilical region roughly about 47 x 18 mm surrounded by undistended gas-filled bowels. ***This is suggestive of an inflammatory process wherein appendiceal or periappendiceal pathology cannot be excluded. Clinical correlation is essential.***^[6]

Dr. Cabugao did a rectal examination noting the following: "rectal: good sphincter, negative tenderness, negative mass." The initial impression was Acute Appendicitis,^[7] and hence, he referred the case to his co-accused, Dr. Ynzon, a surgeon.^[8] In the later part of the morning of June 15, 2000, Dr. Ynzon went to the hospital and read the CBC and ultrasound results. The administration of massive antibiotics and pain reliever to JR were ordered. Thereafter, JR was placed on observation for twenty-four (24) hours.

In the morning of June 16, 2000, JR complained again of abdominal pain and his parents noticed a swelling in his scrotum. In the afternoon of the same day, JR vomitted out greenish stuff three (3) times and had watery bowels also three (3) times. The nurses on-duty relayed JR's condition to Dr. Ynzon who merely gave

orders via telephone.^[9] Accused continued medications to alleviate JR's abdominal spasms and diarrhea. By midnight, JR again vomitted twice, had loose bowel movements and was unable to sleep. The following morning, June 17, 2000, JR's condition worsened, he had a running fever of 38o C. JR's fever remained uncontrolled and he became unconscious, he was given Aeknil (1 ampule) and Valium (1 ampule). JR's condition continued to deteriorate that by 2 o'clock in the afternoon, JR's temperature soared to 42oC, had convulsions and finally died.

The Death Certificate^[10] dated June 19, 2000 prepared by Dr. Cabugao indicated the following causes of death:

Immediate cause: CARDIORESPIRATORY ARREST
Antecedent cause: METABOLIC ENCEPHALOPATHY
Underlying cause: SEPTICEMIA (ACUTE APPENDICITIS)
Other significant conditions contributing to death:
CEREBRAL ANEURYSM RUPTURED (?)

No post-mortem examination was conducted on JR. On February 1, 2001, an Information was filed against accused for reckless imprudence resulting to homicide. At their arraignment, both accused, duly assisted by counsel, pleaded not guilty to the charge.

On February 28, 2003, in convicting both the accused, the trial court found the following circumstances as sufficient basis to conclude that accused were indeed negligent in the performance of their duties:

It is unquestionable that JR was under the medical care of the accused from the time of his admission for confinement at the Nazareth General Hospital until his death. Upon his admission, the initial working diagnosis was to consider acute appendicitis. To assist the accused in the consideration of acute appendicitis, Dr. Cabugao requested for a complete blood count (CBC) and a diagnostic ultrasound on JR. The findings of the CBC and ultrasound showed that an inflammatory process or infection was going on inside the body of JR. Said inflammatory process was happening in the periumbilical region where the appendix could be located. The initial diagnosis of acute appendicitis appears to be a distinct possibility. x x x.

Dr. Ynzon ordered medications to treat the symptoms being manifested by JR. Thereafter, he ordered that JR be observed for 24 hours. However, the accused, as the attending physicians, did not personally monitor JR in order to check on subtle changes that may occur. Rather, they left the monitoring and actual observation to resident physicians who are just on residency training and in doing so, they substituted their own expertise, skill and competence with those of physicians who are merely new doctors still on training. Not having personally observed JR during this 24-hour critical period of observation, the accused relinquished their duty and thereby were unable to give the proper and correct evaluation as to the real condition of JR. In situations where massive infection is going on

as shown by the aggressive medication of antibiotics, the condition of the patient is serious which necessitated personal, not delegated, attention of attending physicians, namely JR and the accused in this case.

x x x x

Throughout the course of the hospitalization and treatment of JR, the accused failed to address the acute appendicitis which was the initial diagnosis. They did not take steps to find out if indeed acute appendicitis was what was causing the massive infection that was ongoing inside the body of JR even when the inflammatory process was located at the paraumbilical region where the appendix can be located. x x x

There may have been other diseases but the records do not show that the accused took steps to find out what disease exactly was plaguing JR. It was their duty to find out the disease causing the health problem of JR, but they did not perform any process of elimination. Appendicitis, according to expert testimonies, could be eliminated only by surgery but no surgery was done by the accused. But the accused could not have found out the real disease of JR because they were treating merely and exclusively the symptoms by means of the different medications to arrest the manifested symptoms. In fact, by treating the symptoms alone, the accused were recklessly and wantonly ignoring the same as signs of the graver health problem of JR. This gross negligence on the part of the accused allowed the infection to spread inside the body of JR unabated. The infection obviously spread so fast and was so massive that within a period of only two and a half (2 ½) days from the day of admission to the hospital on June 15, 2000, JR who was otherwise healthy died [of] Septicemia (Acute Appendicitis) on June 17, 2000.^[11]

On June 4, 2004, in affirming the accused' conviction, the Court of Appeals gave similar observations, to wit:

The foregoing expert testimony clearly revealed such want of reasonable skill and care on the part of JR's attending physicians, appellants Dr. Cabugao and Dr. Ynzon in neglecting to monitor effectively and sufficiently the developments/changes during the observation period and act upon the situation *after* said 24-hour period when his abdominal pain subsisted, his condition even worsened with the appearance of more serious symptoms of nausea, vomiting and diarrhea. Considering the brief visit only made on regular rounds, the records clearly show such gross negligence in failing to take appropriate steps to determine the real cause of JR's abdominal pain so that the crucial decision to perform surgery (appendectomy) had even been ruled out precisely because of the inexcusable neglect to undertake such efficient diagnosis by process of elimination, as correctly pointed out by the trial court. As has been succinctly emphasized by Dr. Mateo, acute appendicitis was the working diagnosis, and with the emergence of symptoms after the 24-hour observation (high fever, vomiting, diarrhea) still, appellants ruled out surgery, not even considering exploratory laparoscopy. Dr. Mateo also

expressed the opinion that the decision to operate could have been made after the result of the ultrasound test, considering that acute appendicitis was the initial diagnosis by Dr. Cabugao after he had conducted a rectal examination.

Medical records buttress the trial court's finding that in treating JR, appellants have demonstrated indifference and neglect of the patient's condition as a serious case. Indeed, appendicitis remains a *clinical emergency* and a *surgical disease*, as correctly underscored by Dr. Mateo, a practicing surgeon who has already performed over a thousand appendectomy. In fact, appendectomy is the *only rational therapy for acute appendicitis*; it avoids clinical deterioration and may avoid chronic or recurrent appendicitis. Although difficult, prompt recognition and immediate treatment of the disease prevent complications. Under the factual circumstances, the inaction, neglect and indifference of appellants who, after the day of admission and *after being apprised of the ongoing infection from the CBC and initial diagnosis as acute appendicitis from rectal examination and ultrasound test* and only briefly visited JR once during regular rounds and gave medication orders by telephone – constitutes gross negligence leading to the continued deterioration of the patient, his infection having spread in so fast a pace that he died within just two and a half (2 ½) days' stay in the hospital. Authorities state that if the clinical picture is unclear a short period of *4 to 6 hours of watchful waiting and a CT scan may improve diagnostic accuracy and help to hasten diagnosis*. Even assuming that JR's case had an atypical presentation in view of the location of his appendix, laboratory tests could have helped to confirm diagnosis, as Dr. Mateo opined that the possibility of JR having a retrocecal appendicitis should have been a strong consideration. Lamentably, however, as found by the trial court, appellants had not taken steps towards correct diagnosis and demonstrated laxity even when JR was already running a high fever in the morning of June 17, 2000 and continued vomiting with diarrhea, his abdominal pain becoming more intense. This is the reason why private complainants were not even apprised of the progress of appellants' diagnosis – appellants have nothing to report because they did nothing towards the end and merely gave medications to address the symptoms.

[12]

Thus, these appeals brought before this Court raising the following arguments:

I

WHETHER THE CAUSE OF ACCUSATION AS CONTAINED IN THE INFORMATION IS "FAILURE TO PERFORM IMMEDIATE OPERATION UPON THE PATIENT ROFOLFO PALMA JR. OF ACUTE APPENDICITIS;

II

WHETHER THE SUBJECT INFORMATION APPEARS TO HAVE ACCUSED BOTH ACCUSED DOCTORS OF CONSPIRACY AND THE APPEALED