682 Phil. 317

THIRD DIVISION

[G.R. No. 187926, February 15, 2012]

DR. EMMANUEL JARCIA, JR. AND DR. MARILOU BASTAN, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

> *Even early on, patients have consigned their lives to the skill of their doctors. Time and again, it can be said that the most important goal of the medical profession is the preservation of life and health of the people. Corollarily, when a physician departs from his sacred duty and endangers instead the life of his patient, he must be made liable for the resulting injury. This Court, as this case would show, cannot and will not let the act go unpunished.*[1]

This is a petition for review under Rule 45 of the Rules of Court challenging the August 29, 2008 Decision[2] of the Court of Appeals (CA), and its May 19, 2009 Resolution[3] in CA-G.R. CR No. 29559, dismissing the appeal and affirming in toto the June 14, 2005 Decision[4] of the Regional Trial Court, Branch 43, Manila (RTC), finding the accused guilty beyond reasonable doubt of simple imprudence resulting to serious physical injuries.

THE FACTS

Belinda Santiago (*Mrs. Santiago*) lodged a complaint with the National Bureau of Investigation (*NBI*) against the petitioners, Dr. Emmanuel Jarcia, Jr. (*Dr. Jarcia*) and Dr. Marilou Bastan (*Dr. Bastan*), for their alleged neglect of professional duty which caused her son, Roy Alfonso Santiago (*Roy Jr.*), to suffer serious physical injuries. Upon investigation, the NBI found that Roy Jr. was hit by a taxicab; that he was rushed to the Manila Doctors Hospital for an emergency medical treatment; that an X-ray of the victim's ankle was ordered; that the X-ray result showed no fracture as read by Dr. Jarcia; that Dr. Bastan entered the emergency room (*ER*) and, after conducting her own examination of the victim, informed Mrs. Santiago that since it was only the ankle that was hit, there was no need to examine the upper leg; that eleven (11) days later, Roy Jr. developed fever, swelling of the right leg and misalignment of the right foot; that Mrs. Santiago brought him back to the hospital; and that the X-ray revealed a right mid-tibial fracture and a linear hairline fracture in the shaft of the bone.

The NBI indorsed the matter to the Office of the City Prosecutor of Manila for preliminary investigation. Probable cause was found and a criminal case for reckless imprudence resulting to serious physical injuries, was filed against Dr. Jarcia, Dr. Bastan and Dr. Pamittan,[5] before the RTC, docketed as Criminal Case No. 01-

196646.

On June 14, 2005, the RTC found the petitioners guilty beyond reasonable doubt of the crime of *Simple Imprudence Resulting to Serious Physical Injuries*. The decretal portion of the RTC decision reads:

> WHEREFORE, premises considered, the Court finds accused *DR. EMMANUEL JARCIA, JR.* and **DR. MARILOU BASTAN** GUILTY beyond reasonable doubt of the crime of SIMPLE IMPRUDENCE RESULTING TO SERIOUS PHYSICAL INJURIES and are hereby sentenced to suffer the penalty of **ONE (1) MONTH and ONE (1) DAY to TWO (2) MONTHS** and to indemnify MRS. BELINDA SANTIAGO the amount of P3,850.00 representing medical expenses without subsidiary imprisonment in case of insolvency and to pay the costs.
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> It appearing that Dr. Pamittan has not been apprehended nor voluntarily surrendered despite warrant issued for her arrest, let warrant be issued for her arrest and the case against her be ARCHIVED, to be reinstated upon her apprehension.
>
> SO ORDERED.[6]

The RTC explained:

> After a thorough and in depth evaluation of the evidence adduced by the prosecution and the defense, this court finds that the evidence of the prosecution is the more credible, concrete and sufficient to create that moral certainty in the mind of the Court that accused herein [are] criminally responsible. The Court believes that accused are negligent when both failed to exercise the necessary and reasonable prudence in ascertaining the extent of injury of Alfonso Santiago, Jr.
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> However, the negligence exhibited by the two doctors does not approximate negligence of a reckless nature but merely amounts to simple imprudence. Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not the immediate nor the danger clearly manifest. The elements of simple imprudence are as follows.
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> 1. that there is lack of precaution on the part of the offender; and
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> 2. that the damage impending to be caused is not immediate of the danger is not clearly manifest.
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> Considering all the evidence on record, The Court finds the accused guilty for simple imprudence resulting to physical injuries. Under Article 365 of the Revised Penal Code, the penalty provided for is arresto mayor in its minimum period.[7]

Dissatisfied, the petitioners appealed to the CA.

As earlier stated, the CA affirmed the RTC decision *in toto*. The August 29, 2008 Decision of the CA pertinently reads:

> This Court holds concurrently and finds the foregoing circumstances sufficient to sustain a judgment of conviction against the accused-appellants for the crime of simple imprudence resulting in serious physical injuries. The elements of 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 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.
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> Whether or not Dr. Jarcia and Dr. Bastan had committed an "inexcusable lack of precaution" in the treatment of their 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. In the case of *Leonila Garcia-Rueda v. Pascasio*, the Supreme 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.
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> In litigations involving medical negligence, the plaintiff has the burden of establishing accused-appellants' negligence, and for a reasonable conclusion of negligence, there must be proof of breach of duty on the part of the physician as well as a causal connection of such breach and the resulting injury of his patient. The connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening efficient causes. In other words, the negligence must be the proximate cause of the injury. Negligence, no matter in what it consists, cannot create a right of action unless it is the proximate cause of the injury complained of. The proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.
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> In the case at bench, the accused-appellants questioned the imputation against them and argued that there is no causal connection between their failure to diagnose the fracture and the injury sustained by Roy.
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> We are not convinced.

The prosecution is however after the cause which prolonged the pain and suffering of Roy and not on the failure of the accused-appellants to correctly diagnose the extent of the injury sustained by Roy.

For a more logical presentation of the discussion, we shall first consider the applicability of the doctrine of *res ipsa loquitur* to the instant case. *Res ipsa loquitur* is a Latin phrase which literally means "the thing or the transaction speaks for itself. The doctrine of *res ipsa loquitur* 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 accused-appellant 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.

The specific acts of negligence was narrated by Mrs. Santiago who accompanied her son during the latter's ordeal at the hospital. She testified as follows:

Fiscal Formoso:

Q: Now, he is an intern did you not consult the doctors, Dr. Jarcia or Dra. Pamittan to confirm whether you should go home or not?
A: Dra. Pamittan was inside the cubicle of the nurses and I asked her, you let us go home and you don't even clean the wounds of my son.
Q: And what did she [tell] you?
A: They told me they will call a resident doctor, sir.
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Q: Was there a resident doctor [who] came?
A: Yes, Sir. Dra. Bastan arrived.
Q: Did you tell her what you want on you to be done?
A: Yes, sir.
Q: What did you [tell] her?
A: I told her, sir, while she was cleaning the wounds of my son, are you not going to x-ray up to the knee because my son was complaining pain from his ankle up to the middle part of the right leg.
Q: And what did she tell you?
A: According to Dra. Bastan, there is no need to x-ray because it was the ankle part that was run over.
Q: What did you do or tell her?
A: I told her, sir, why is it that they did not examine[x] the whole leg. They just lifted the pants of my son.
Q: So you mean to say there was no treatment made at all?
A: None, sir.

x x x x x x x x x

A: I just listened to them, sir. And I just asked if I will still return my son.

x x x x x x x x x

Q: And you were present when they were called?

A: Yes, sir.

Q: And what was discussed then by Sis. Retoria?

A: When they were there they admitted that they have mistakes, sir.

Still, before resort to the doctrine may be allowed, the following requisites must be satisfactorily shown:

1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;

2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and

3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.

In the above requisites, the fundamental element is the "control of the instrumentality" which caused the damage. Such element of control must be shown to be within the dominion of the accused-appellants. In order to have the benefit of the rule, a plaintiff, in addition to proving injury or damage, must show a situation where it is applicable and must establish that the essential elements of the doctrine were present in a particular incident. The early treatment of the leg of Roy would have lessen his suffering if not entirely relieve him from the fracture. A boy of tender age whose leg was hit by a vehicle would engender a well-founded belief that his condition may worsen without proper medical attention. As junior residents who only practice general surgery and without specialization with the case consulted before them, they should have referred the matter to a specialist. This omission alone constitutes simple imprudence on their part. When Mrs. Santiago insisted on having another x-ray of her child on the upper part of his leg, they refused to do so. The mother would not have asked them if they had no exclusive control or prerogative to request an x-ray test. Such is a fact because a radiologist would only conduct the x-ray test upon request of a physician.

The testimony of Mrs. Santiago was corroborated by a bone specialist Dr. Tacata. He further testified based on his personal knowledge, and not as an expert, as he examined himself the child Roy. He testified as follows:

Fiscal Macapagal:

Q: And was that the correct respon[se] to the medical problem that was presented to Dr. Jarcia and Dra. Bastan?