

SECOND DIVISION

[G.R. No. 187246, July 20, 2011]

EDWIN TABAO Y PEREZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

R E S O L U T I O N

BRION, J.:

Edwin Tabao (*petitioner*) seeks reconsideration of our Resolution, dated June 8, 2009, denying his petition for review on *certiorari* for failure to show any reversible error in the assailed Court of Appeals (CA) decision to warrant the exercise of this Court's discretionary appellate jurisdiction, and for raising substantially factual issues.

The evidence for the prosecution reveals the following facts:

At around 10:00 p.m. of January 21, 1993, the petitioner was driving his Toyota Corolla car bearing plate number PCH-111 along Governor Forbes corner G. Tuazon Street towards Nagtahan when it suddenly ramped on an island divider, bumping Rochelle Lanete who was crossing the street. As a result of the impact, Rochelle was thrown into the middle of the road on her back.^[1] Thereafter, Leonardo Mendez' speeding blue Toyota Corona car with plate number PES-764 ran over Rochelle's body. Bystanders — armed with stones and wooden clubs — followed Mendez' car until it stopped near the Nagtahan Flyover.^[2] Francisco Cielo, a newspaper delivery boy, pleaded with the bystanders not to hurt Mendez. Cielo went inside Mendez' car, sat beside him, got his driver's license, and ordered him to move the car backwards. Mendez followed his order, but his car hit the center island twice while backing up.^[3] Cielo went out of the car and approached the sprawled body of Rochelle; he and the petitioner brought Rochelle's body inside Mendez' car. The three of them (the petitioner, Cielo and Mendez) brought Rochelle to the UST Hospital,^[4] where she died on February 6, 1993 due to *septicemia secondary to traumatic injuries*.^[5]

The defense presented a different version of the incident.

The petitioner narrated that at around 10:00 p.m. of January 21, 1993, he was driving along Governor Forbes corner G. Tuazon Street when his car ramped on an island at the foot of the Nagtahan Flyover. He tried to move the car backwards, but failed to do so. He alighted from his car and then saw that its two rear wheels had been elevated.^[6] He returned inside his car to turn off its engine; he then noticed that many people were approaching his car.^[7] He again alighted from his vehicle and saw a person lying on the road.^[8] He looked at his left side and saw a car that was "running fast like a wind" pass by. He approached the person lying on the road, and noticed that she was still breathing and moaning. Afterwards, he saw Mendez' car backing up; he carried the victim towards that car.^[9] Thereafter, he, Mendez and

Cielo brought the victim to the UST Hospital.^[10]

Mendez, for his part, testified that at around 9:00 to 9:30 p.m. of January 21, 1993, he left his girlfriend's house in Blumentritt, Sta. Cruz, Manila. As he was driving along Governor Forbes corner G. Tuazon Street on his way home, he saw a vehicle that had ramped on an island divider. Suddenly, another vehicle overtook his car from the right and cut his lane. He slowed down his car when he saw a rug-like object fall from the car that overtook him,^[11] and stopped when he realized that what had fallen was a person's body. When he moved his car backwards to help this person, many people approached his car. He alighted from his car and inquired from them what had happened. The people replied that someone was run over; some of them pointed to him as the culprit. He denied having run over the victim when they tried to hurt him. The petitioner carried the victim and placed her inside Mendez' car. Thereafter, the two of them brought the victim to the UST Hospital.^[12]

The Office of the City Prosecutor found probable cause and thereafter charged the petitioner and Mendez with reckless imprudence resulting to homicide before the Regional Trial Court (RTC), Branch 39, Manila.^[13] The RTC, in its decision^[14] dated September 15, 2003, found that it was "very clear that both accused are responsible for the death of Rochelle Lanete,"^[15] and convicted the two (2) accused of the crime charged. It found that the petitioner's car first hit the victim, causing her to be thrown into the road on her back, and that Mendez' car ran over her as she was lying down. It held that the two failed to observe the necessary precaution and due care in operating their respective vehicles, to wit: the petitioner was not attentive to his driving such that he failed to see the island divider and bumped Rochelle; Mendez was driving his car too fast at nighttime such that he was unable to avoid running over her as her body lay prone on the street. The RTC sentenced them to suffer the indeterminate penalty of four months and one day of *arresto mayor*, as minimum, to two years, 10 months and 20 days of *prision correccional*, as maximum. It also ordered them to pay the heirs of the victim the following amounts: (a) P478,434.12 as actual damages; (b) P50,000.00 as civil indemnity; and (c) P50,000.00 as moral damages.^[16]

The petitioner filed an appeal before the CA, docketed as CA-G.R. CR. No. 28401. The CA, in its decision^[17] dated July 27, 2007, agreed with the factual findings of the RTC, and affirmed its decision with the modification that the petitioner be sentenced to suffer an indeterminate penalty of four months and one day of *arresto mayor*, as minimum, to four years, nine months and 10 days of *prision correccional*, as maximum.

The petitioner moved to reconsider this decision, but the CA denied his motion in its resolution^[18] of March 17, 2009.

The petitioner filed before this Court a petition for review on certiorari alleging that the courts *a quo* erred in convicting him of the crime charged. As earlier stated, we denied this petition for failure to show any reversible error in the assailed CA decision to warrant the exercise of our discretionary appellate jurisdiction, and for raising substantially factual issues.

The petitioner now comes to us *via* the present motion for reconsideration, raising

the following arguments:

- I. THE FINDINGS OF FACTS OF BOTH THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT ARE HIGHLY SPECULATIVE, MANIFESTLY MISTAKEN AND UNSUPPORTED BY THE EVIDENCE [ON RECORD;]
- II. [THE] COURT OF APPEALS [ERRED IN UPHOLDING HIS] CONVICTION [ON THE BASIS OF THE] INCREDIBLE AND UNRELIABLE TESTIMONY OF x x x VICTOR SORIANO[; and]
- III. THE [SUPREME] COURT DISREGARDED [HIS CONSTITUTIONAL] PRESUMPTION OF INNOCENCE.^[19]

In its Comment, the People of the Philippines, through the Office of the Solicitor General, prays that the motion be denied for being *pro forma*; the petitioner merely advanced the same arguments which he raised in his appellant's brief and motion for reconsideration before the CA.

After due consideration, we resolve to **DENY** the motion.

As a general rule, findings of fact of the trial court, especially when affirmed by the CA, are binding and conclusive upon this Court; we will not normally disturb these factual findings unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on a misapprehension of facts.^[20] After a careful review of the records, we see no reason to overturn the lower courts' factual findings that found the petitioner guilty of the crime charged.

Reckless imprudence, generally defined by our penal law, consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. Imprudence connotes a deficiency of action. It implies a failure in precaution or a failure to take the necessary precaution once the danger or peril becomes foreseen.^[21] Thus, in order for conviction to be decreed for reckless imprudence, the material damage suffered by the victim, the failure in precaution on the part of the accused, and the direct link between material damage and failure in precaution must be established beyond reasonable doubt. We are morally convinced that all three were established in this case in accordance with the required level of evidence in criminal cases.

The petitioner was positively identified by an eyewitness

The fact of Rochelle Lanete's death was stipulated during pre-trial, as well as duly established during trial.^[22] What remain to be proven beyond reasonable doubt are the inexcusable lack in precaution on the part of the petitioner and the direct link of his negligence to the victim's death.

An eyewitness account established that the petitioner's vehicle actually hit Rochelle Lanete. Eyewitness identification is vital evidence, and, in most cases, decisive of the success or failure of the prosecution.^[23] One of the prosecution witnesses, Victor Soriano, unfortunately for the petitioner's cause, saw the incident in its entirety; Victor thus provided direct evidence as eyewitness to the very act of the commission of the crime.^[24] In his September 1, 1994 testimony, Victor **positively identified** the petitioner as the person who drove the car that ramped on an island divider along Governor Forbes corner G. Tuazon Street, and hit Rochelle. To directly quote from the records:

ATTY. ALICIA SERRANO:

Q: Mr. Soriano, do you remember where were you on or about 10:00 o'clock (sic) of January 21, 1993?

VICTOR SORIANO:

A: Yes, ma'am.

Q: Where were you?

A: I was at the corner of Governor Forbes and G. Tuazon.

Q: What were you doing at the corner of Governor Forbes and G. Tuazon at that time?

A: My sidecar was parked there because I was waiting for my wife, ma'am.

Q: And when you were there at the corner of G. Tuazon and Governor Forbes at the said time and place, was there any unusual incident that happened?

A: Yes, sir.

Q: And what was that unusual incident?

A: **I saw an accident involving a speeding car which ramped over the island and bumped a woman who was crossing the street.**

Q: **When you saw that the car ramped over the island and hit and bumped a woman, what happened to the woman that was hit and bumped by the car which you said ramped over the island?**

A: **The woman was thrown at the middle of the road on her back, ma'am.**

Q: **When you saw this woman after being hit and bumped by the car that ramped over the island and was thrown at the middle of the road, what else happened?**

x x x x

A: The woman was no longer moving at that time when I saw another car coming.

x x x x

Q: What else happened when you saw the car coming very fast?

A: The woman sprawled at the middle of the road was ran over by the speeding car and that car stopped while going up to the flyover.

x x x x

Q: **You said you saw a car that ramped over the island and that the car that ramped over the island was the car that hit and bumped the victim that was thrown at the middle of the street. Now, will you be able to**

identify before this court the driver of that car that ramped over the island and hit and bumped the victim?

A: **Yes, ma'am.**

Q: **If that driver of the car that hit and bumped the victim is inside the courtroom, would you be able to point to him before this Honorable Court?**

A: **Yes, ma'am, he is here.**

Q: Will you kindly point before this courtroom who is that driver of the car that hit and bumped the victim? Although, Your Honor, there was already a stipulation at the start of the pre-trial admitting that the accused Tabao is the driver of the car which ramped at the divider.

INTERPRETER:

Witness approaching a man seated inside the courtroom and who stood up and identified as Edwin Tabao, the accused in this case. ^[25] [emphases ours]

On cross-examination, Victor further elaborated on what he saw of the incident:

ATTY. ESTEBAN NANCHITO:

Q: Mr. Soriano, you said that the first car ramped over the island and bumped a woman, and as a result of that, the woman was thrown at the middle of Forbes Street. Do you confirm that?

VICTOR SORIANO:

A: Yes, sir, that is true.

Q: And can you tell us how the woman was hit, was bumped by the car that ramped over the island?

A: The woman was crossing the street and when she saw the on-coming car, she tried to avoid that but the car [which] ramped over the island bumped the woman.

Q: In other words, the car first ramped over the island before it hit the woman?

A: Yes, sir.

Q: What part of the car bumped the woman?

A: The bumper of the car, the left side of the bumper.

Q: What part of the body of the victim was hit by the car?

A: Her left side of the body.

Q: Are you saying that the victim was facing the car when the car bumped her.

A: Yes, sir, she was facing the car. She was about to avoid that car.

Q: How was the woman thrown at the middle of Forbes Street?

A: She was thrown backwards.

Q: And what part of the body of the victim first hit the pavement?

A: The back of her head.

x x x x

Q: And you said after the woman was thrown at the middle of the street[,] another speeding car ran over the body of the woman?