

SECOND DIVISION

[G.R. No. 171636, April 07, 2009]

**NORMAN A. GAID, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

TINGA, J.:

Before the Court is a petition for review on certiorari^[1] assailing the 12 July 2005 Decision^[2] of the Court of Appeals and its subsequent Resolution^[3] denying petitioner's motion for reconsideration.

Petitioner Norman A. Gaid was charged with the crime of reckless imprudence resulting in homicide in an information which reads as follow:

That on or about 12:00 high noon of October 25, 2001, in front of the Laguindingan National High School, Poblacion, Laguindingan, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the said accused mentioned above while driving a passenger's jeepney color white bearing plate no. KVG-771 owned by barangay captain Levy Etom has no precautionary measure to preempt the accident, did then and there willfully, unlawfully and feloniously ran [*sic*] over Michael Dayata resulting of [*sic*] his untimely death as pronounced by the attending physician of Northern Mindanao Medical Center Hospital, Cagayan de Oro City.

CONTRARY TO LAW.^[4]

Petitioner entered a not guilty plea. Thereafter, trial ensued.

The antecedent facts are undisputed.

At around 12:00 noon on 25 October 2001, petitioner was driving his passenger jeepney along a two-lane road where the Laguindingan National High School is located toward the direction of Moog in Misamis Oriental. His jeepney was filled to seating capacity.^[5] At the time several students were coming out of the school premises.^[6] Meanwhile, a fourteen year-old student, Michael Dayata (Dayata), was seen by eyewitness Artman Bongolto (Bongolto) sitting near a store on the left side of the road. From where he was at the left side of the road, Dayata raised his left hand to flag down petitioner's jeepney^[7] which was traveling on the right lane of the road.^[8] However, neither did petitioner nor the conductor, Dennis Mellalos (Mellalos), saw anybody flagging down the jeepney to ride at that point.^[9]

The next thing Bongalto saw, Dayata's feet was pinned to the rear wheel of the

jeepney, after which, he laid flat on the ground behind the jeepney.^[10] Another prosecution witness, Usaffe Actub (Actub), who was also situated on the left side of the street but directly in front of the school gate, heard "a strong impact coming from the jeep sounding as if the driver forced to accelerate in order to hurdle an obstacle."^[11] Dayata was then seen lying on the ground^[12] and caught in between the rear tires.^[13] Petitioner felt that the left rear tire of the jeepney had bounced and the vehicle tilted to the right side.^[14]

Mellalos heard a shout that a boy was run over, prompting him to jump off the jeepney to help the victim. Petitioner stopped and saw Mellalos carrying the body of the victim.^[15] Mellalos loaded the victim on a motorcycle and brought him to the hospital. Dayata was first brought to the Laguindingan Health Center, but it was closed. Mellalos then proceeded to the El Salvador Hospital. Upon advice of its doctors, however, Dayata was brought to the Northern Mindanao Medical Center where he was pronounced dead on arrival.^[16]

Dr. Tammy Uy issued an autopsy report stating cranio-cerebral injuries as the cause of death.^[17] She testified that the head injuries of Dayata could have been caused by having run over by the jeepney.^[18]

The Municipal Circuit Trial Court (MCTC) of Laguindingan^[19] found petitioner guilty beyond reasonable doubt of the crime charged. The lower court held petitioner negligent in his driving considering that the victim was dragged to a distance of 5.70 meters from the point of impact. He was also scored for "not stopping his vehicle after noticing that the jeepney's left rear tire jolted causing the vehicle to tilt towards the right."^[20] On appeal, the Regional Trial Court (RTC)^[21] affirmed *in toto* the decision of the MCTC.

The Court of Appeals affirmed the trial court's judgment with modification in that it found petitioner guilty only of simple negligence resulting in homicide.

The Court of Appeals exonerated petitioner from the charge of reckless imprudence resulting to homicide on the ground that he was not driving recklessly at the time of the accident. However, the appellate court still found him to be negligent when he failed "to promptly stop his vehicle to check what caused the sudden jotting of its rear tire."^[22]

In its 6 February 2006 Resolution, the Court of Appeals denied petitioner's motion for reconsideration.^[23]

Hence, the instant petition.

Petitioner submits that the Court of Appeals erred in finding that "there is (*sic*) absolutely lack of precaution on the part of the petitioner when he continued even after he had noticed that the left rear tire and the jeep tilted to its right side."^[24] Petitioner stressed that he, in fact, stopped his jeep when its left rear tire bounced and upon hearing that somebody had been ran over.

Moreover, petitioner asserts that the Court of Appeals committed a grave abuse of

discretion in convicting him of the offense of simple negligence resulting in homicide. Assuming *arguendo* that he failed to promptly stop his vehicle, petitioner maintains that no prudent man placed in the same situation could have foreseen the vehicular accident or could have stopped his vehicle in time when its left rear tire bounced due to the following reasons: (1) the victim was only a trespasser; (2) petitioner's attention was focused on the road and the students outside the school's gate; and (3) the jeepney was fully loaded with passengers and cargoes and it was impossible for the petitioner to promptly stop his vehicle.^[25]

The Office of the Solicitor-General (OSG) maintained that petitioner was negligent when he continued to run towards the direction of Moog, Laguindingan, dragging the victim a few meters from the point of impact, despite hearing that a child had been run over.^[26]

The presence or absence of negligence on the part of petitioner is determined by the operative events leading to the death of Dayata which actually comprised of two phases or stages. The first stage began when Dayata flagged down the jeepney while positioned on the left side of the road and ended when he was run over by the jeepney. The second stage covered the span between the moment immediately after the victim was run over and the point when petitioner put the jeepney to a halt.

During the first stage, petitioner was not shown to be negligent.

Reckless imprudence consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an inexcusable lack of precaution on the part of the person performing or failing to perform such act.^[27]

In *Manzanares v. People*,^[28] this Court convicted petitioner of the crime of reckless imprudence resulting in multiple homicide and serious physical injuries when he was found driving the Isuzu truck very fast before it smashed into a jeepney.^[29] Likewise, in *Pangonorom v. People*,^[30] a public utility driver, who was driving very fast, failed to slow down and hit a swerving car. He was found negligent by this Court.

In the instant case, petitioner was driving slowly at the time of the accident, as testified to by two eyewitnesses. Prosecution witness Actub affirmed this fact on cross-examination, thus:

ATTY. MACUA:

(to the witness)

Q Mr. Witness, when the passenger jeepney passed by the gate of the Laguindingan National High School, is it running slowly, am I correct?

A Yes, he was running slowly.^[31]

The slow pace of the jeepney was seconded by Mellalos:

Q You testified that you heard somebody outside from the vehicle shouting that a boy was ran over, am I correct?

A Yes, Sir.

- Q Now, before you heard that shouting, did you observe any motion from the vehicle?
- A The jeep was moving slowly and I noticed that there was something that [*sic*] the jeep a little bit bounced up as if a hump that's the time I heard a shout from outside.^[32]

Petitioner stated that he was driving at no more than 15 kilometers per hour.^[33]

It appears from the evidence Dayata came from the left side of the street. Petitioner, who was driving the jeepney on the right lane, did not see the victim flag him down. He also failed to see him go near the jeepney at the left side. Understandably, petitioner was focused on the road ahead. In Dayata's haste to board the jeep which was then running, his feet somehow got pinned to the left rear tire, as narrated by Bongolto. Actub only saw Dayata after he heard a strong impact coming from the jeep.

With the foregoing facts, petitioner can not be held liable during the first stage. Specifically, he cannot be held liable for reckless imprudence resulting in homicide, as found by the trial court. The proximate cause of the accident and the death of the victim was definitely his own negligence in trying to catch up with the moving jeepney to get a ride.

In the instant case, petitioner had exercised extreme precaution as he drove slowly upon reaching the vicinity of the school. He cannot be faulted for not having seen the victim who came from behind on the left side.

However, the Court of Appeals found petitioner guilty of simple negligence resulting in homicide for failing to stop driving at the time when he noticed the bouncing of his vehicle. Verily, the appellate court was referring to the second stage of the incident.

Negligence has been defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.^[34]

The elements of simple negligence: are (1) that there is lack of precaution on the part of the offender; and (2) that the damage impending to be caused is not immediate or the danger is not clearly manifest.^[35]

The standard test in determining whether a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: could a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course actually pursued? If so, the law imposes a duty on the actor to refrain from that course or to take precautions to guard against its mischievous results, and the failure to do so constitutes negligence. Reasonable foresight of harm, followed by the ignoring of the admonition born of this provision, is always necessary before negligence can be held to exist.^[36]

In *Philippine National Construction Corporation v. Court of Appeals*,^[37] the

petitioner was the franchisee that operates and maintains the toll facilities in the North and South Luzon Toll Expressways. It failed to exercise the requisite diligence in maintaining the NLEX safe for motorists. The lighted cans and lane dividers on the highway were removed even as flattened sugarcanes lay scattered on the ground. The highway was still wet from the juice and sap of the flattened sugarcanes. The petitioner should have foreseen that the wet condition of the highway would endanger motorists passing by at night or in the wee hours of the morning.^[38] Consequently, it was held liable for damages.

In an American case, *Hernandez v. Lukas*,^[39] a motorist traveling within the speed limit and did all was possible to avoid striking a child who was then six years old only. The place of the incident was a neighborhood where children were playing in the parkways on prior occasions. The court ruled that it must be still proven that the driver did not exercise due care. The evidence showed that the driver was proceeding in lawful manner within the speed limit when the child ran into the street and was struck by the driver's vehicle. Clearly, this was an emergency situation thrust upon the driver too suddenly to avoid.

In this case, the courts below zeroed in on the fact that petitioner did not stop the jeepney when he felt the bouncing of his vehicle, a circumstance which the appellate court equates with negligence. Petitioner contends that he did not immediately stop because he did not see anybody go near his vehicle at the time of the incident.^[40]

Assuming *arguendo* that petitioner had been negligent, it must be shown that his negligence was the proximate cause of the accident. Proximate cause is defined as that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury, and without which the result would not have

occurred.^[41] In order to establish a motorist's liability for the negligent operation of a vehicle, it must be shown that there was a direct causal connection between such negligence and the injuries or damages complained of. Thus, negligence that is not a substantial contributing factor in the causation of the accident is not the proximate cause of an injury.^[42]

The head injuries sustained by Dayata at the point of impact proved to be the immediate cause of his death, as indicated in the post-mortem findings.^[43] His skull was crushed as a result of the accident. Had petitioner immediately stopped the jeepney, it would still not have saved the life of the victim as the injuries he suffered were fatal.

The evidence on record do not show that the jeepney dragged the victim after he was hit and run over by the jeepney. Quite the contrary, the evidence discloses that the victim was not dragged at all. In fact, it is the other way around. Bongolto narrated that after the impact, he saw Dayata left behind the jeepney.^[44] Actub saw Dayata in a prone position and bleeding within seconds after impact.^[45] Right after the impact, Mellalos immediately jumped out of the jeepney and saw the victim lying on the ground.^[46] The distance of 5.70 meters is the length of space between the spot where the victim fell to the ground and the spot where the jeepney stopped as observed by the trial judge during the ocular inspection at the scene of the accident.^[47]