409 Phil. 275

FIRST DIVISION

[G.R. No. 137873, April 20, 2001]

D.M. CONSUNJI, INC., PETITIONER, VS. COURT OF APPEALS AND MARIA J. JUEGO, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

At around 1:30 p.m., November 2, 1990, Jose Juego, a construction worker of D.M. Consunji, Inc., fell 14 floors from the Renaissance Tower, Pasig City to his death.

PO3 Rogelio Villanueva of the Eastern Police District investigated the tragedy and filed a report dated November 25, 1990, stating that:

> x x x. [The] [v]ictim was rushed to [the] Rizal Medical Center in Pasig, Metro Manila where he was pronounced dead on arrival (DOA) by the attending physician, Dr. Errol de Yzo[,] at around 2:15 p.m. of the same date.
>
> Investigation disclosed that at the given time, date and place, while victim Jose A. Juego together with Jessie Jaluag and Delso Destajo [were] performing their work as carpenter[s] at the elevator core of the 14th floor of the Tower D, Renaissance Tower Building on board a [p]latform made of channel beam (steel) measuring 4.8 meters by 2 meters wide with pinulid plywood flooring and cable wires attached to its four corners and hooked at the 5 ton chain block, when suddenly, the bolt or pin which was merely inserted to connect the chain block with the [p]latform, got loose xxx causing the whole [p]latform assembly and the victim to fall down to the basement of the elevator core, Tower D of the building under construction thereby crushing the victim to death, save his two (2) companions who luckily jumped out for safety.
>
> It is thus manifest that Jose A. Juego was crushed to death when the [p]latform he was then on board and performing work, fell. And the falling of the [p]latform was due to the removal or getting loose of the pin which was merely inserted to the connecting points of the chain block and [p]latform but without a safety lock.[1]

On May 9, 1991, Jose Juego's widow, Maria, filed in the Regional Trial Court (RTC) of Pasig a complaint for damages against the deceased's employer, D.M. Consunji, Inc. The employer raised, among other defenses, the widow's prior availment of the benefits from the State Insurance Fund.

After trial, the RTC rendered a decision in favor of the widow Maria Juego. The dispositive portion of the RTC decision reads:

> WHEREFORE, judgment is hereby rendered ordering defendant to pay plaintiff, as follows:
>
> 1. P50,000.00 for the death of Jose A. Juego.
> 2. P10,000.00 as actual and compensatory damages.
> 3. P464,000.00 for the loss of Jose A. Juego's earning capacity.
> 4. P100,000.00 as moral damages.
> 5. P20,000.00 as attorney's fees, plus the costs of suit.
>
> SO ORDERED.[2]

On appeal by D.M. Consunji, the Court of Appeals (CA) affirmed the decision of the RTC *in toto*.

D.M. Consunji now seeks the reversal of the CA decision on the following grounds:

> • THE APPELLATE COURT ERRED IN HOLDING THAT THE POLICE REPORT WAS ADMISSIBLE EVIDENCE OF THE ALLEGED NEGLIGENCE OF PETITIONER.
>
> • THE APPELLATE COURT ERRED IN HOLDING THAT THE DOCTRINE OF *RES IPSA LOQUITOR* [sic] IS APPLICABLE TO PROVE NEGLIGENCE ON THE PART OF PETITIONER.
>
> • THE APPELLATE COURT ERRED IN HOLDING THAT PETITIONER IS PRESUMED NEGLIGENT UNDER ARTICLE 2180 OF THE CIVIL CODE, AND
>
> • THE APPELLATE COURT ERRED IN HOLDING THAT RESPONDENT IS NOT PRECLUDED FROM RECOVERING DAMAGES UNDER THE CIVIL CODE.[3]

Petitioner maintains that the police report reproduced above is hearsay and, therefore, inadmissible. The CA ruled otherwise. It held that said report, being an entry in official records, is an exception to the hearsay rule.

The Rules of Court provide that a witness can testify only to those facts which he knows of his personal knowledge, that is, which are derived from his perception.[4] A witness, therefore, may not testify as what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned.[5] This is known as the hearsay rule.

Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements.[6] The theory of the hearsay rule is that the many possible deficiencies, suppressions, sources of error and untrustworthiness, which lie underneath the bare untested

assertion of a witness, may be best brought to light and exposed by the test of cross-examination.[7] The hearsay rule, therefore, excludes evidence that cannot be tested by cross-examination.[8] The Rules of Court allow several exceptions to the rule,[9] among which are entries in official records. Section 44, Rule 130 provides:

> Entries in official records made in the performance of his duty made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law are *prima facie* evidence of the facts therein stated.

In *Africa, et al. vs. Caltex (Phil.), Inc., et al.*,[10] this Court, citing the work of Chief Justice Moran, enumerated the requisites for admissibility under the above rule:

> (a) that the entry was made by a public officer or by another person specially enjoined by law to do so;
>
> (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and
>
> (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.

The CA held that the police report meets all these requisites. Petitioner contends that the last requisite is not present.

The Court notes that PO3 Villanueva, who signed the report in question, also testified before the trial court. In *Rodriguez vs. Court of Appeals*,[11] which involved a Fire Investigation Report, the officer who signed the fire report also testified before the trial court. This Court held that the report was inadmissible for the purpose of proving the truth of the statements contained in the report but admissible insofar as it constitutes part of the testimony of the officer who executed the report.

> x x x. Since Major Enriquez himself took the witness stand and was available for cross-examination, the portions of the report which were of his personal knowledge or which consisted of his perceptions and conclusions were not hearsay. The rest of the report, such as the summary of the statements of the parties based on their sworn statements (which were annexed to the Report) as well as the latter, having been included in the first purpose of the offer [as part of the testimony of Major Enriquez], may then be considered as *independently relevant statements* which were gathered in the course of the investigation and may thus be admitted as such, but not necessarily to prove the truth thereof. It has been said that:
>
> > "Where regardless of the truth or falsity of a statement, the fact that it has been made is relevant, the hearsay rule does not apply,

> but the statement may be shown. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue, or be circumstantially relevant as to the existence of such a fact."

When Major Enriquez took the witness stand, testified for petitioners on his Report and made himself available for cross-examination by the adverse party, the Report, insofar as it proved that certain utterances were made (but not their truth), was effectively removed from the ambit of the aforementioned Section 44 of Rule 130. Properly understood, this section does away with the testimony in open court of the officer who made the official record, considers the matter as an exception to the hearsay rule and makes the entries in said official record admissible in evidence as *prima facie* evidence of the facts therein stated. The underlying reasons for this exceptionary rule are necessity and trustworthiness, as explained in *Antillon v. Barcelon*.

> The litigation is unlimited in which testimony by officials is daily needed; the occasions in which the officials would be summoned from his ordinary duties to declare as a witness are numberless. The public officers are few in whose daily work something is not done in which testimony is not needed from official sources. Were there no exception for official statements, hosts of officials would be found devoting the greater part of their time to attending as witnesses in court or delivering deposition before an officer. The work of administration of government and the interest of the public having business with officials would alike suffer in consequence. For these reasons, and for many others, a certain verity is accorded such documents, which is not extended to private documents. (3 Wigmore on Evidence, Sec. 1631).
>
> The law reposes a particular confidence in public officers that it presumes they will discharge their several trusts with accuracy and fidelity; and, therefore, whatever acts they do in discharge of their duty may be given in evidence and shall be taken to be true under such a degree of caution as to the nature and circumstances of each case may appear to require.

It would have been an entirely different matter if Major Enriquez was not presented to testify on his report. In that case the applicability of Section 44 of Rule 143 would have been ripe for determination, and this Court would have agreed with the Court of Appeals that said report was inadmissible since the aforementioned third requisite was not satisfied. The statements given by the sources of information of Major Enriquez failed to qualify as "official information," there being no showing that, at the very least, they were under a duty to give the statements for record.

Similarly, the police report in this case is inadmissible for the purpose of proving the truth of the statements contained therein but is admissible insofar as it constitutes part of the testimony of PO3 Villanueva.

In any case, the Court holds that portions of PO3 Villanueva's testimony which were of his personal knowledge suffice to prove that Jose Juego indeed died as a result of the elevator crash. PO3 Villanueva had seen Juego's remains at the morgue,[12] making the latter's death beyond dispute. PO3 Villanueva also conducted an ocular inspection of the premises of the building the day after the incident[13] and saw the platform for himself.[14] He observed that the platform was crushed[15] and that it was totally damaged.[16] PO3 Villanueva also required Garcia and Fabro to bring the chain block to the police headquarters. Upon inspection, he noticed that the chain was detached from the lifting machine, without any pin or bolt.[17]

What petitioner takes particular exception to is PO3 Villanueva's testimony that the cause of the fall of the platform was the loosening of the bolt from the chain block. It is claimed that such portion of the testimony is mere opinion. Subject to certain exceptions,[18] the opinion of a witness is generally not admissible.[19]

Petitioner's contention, however, loses relevance in the face of the application of *res ipsa loquitur* by the CA. The effect of the doctrine is to warrant a presumption or inference that the mere fall of the elevator was a result of the person having charge of the instrumentality was negligent. As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.[20] The concept of *res ipsa loquitur* has been explained in this wise:

> While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of res ipsa loquitur, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.
>
> x x x where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.[21]

One of the theoretical bases for the doctrine is its necessity, i.e., that necessary evidence is absent or not available.[22]

> The res ipsa loquitur doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either