

SECOND DIVISION

[G.R. No. 133323, March 09, 2000]

**ALBERTO AUSTRIA, PETITIONER, VS. COURT OF APPEALS AND
THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

QUISUMBING, J.:

Before us is a petition for review on *certiorari*, seeking to set aside (1) the decision dated August 13, 1997, of the respondent Court of Appeals in CA G.R. CR No. 16889, affirming with modification the March 21, 1994, judgment of the Regional Trial Court, Branch 43, of San Fernando, Pampanga, in Criminal Case No. 5784, which convicted the petitioner of reckless imprudence resulting in serious physical injuries, and (2) the resolution of said respondent court dated March 25, 1998 denying petitioner's motion for reconsideration.

The original Information dated August 27, 1990, charging petitioner Alberto Austria and his co-accused was amended as to correctly state the name of co-accused Rolando M. Flores, which was Rolando Torres in the original Information. Consequently, the Amended Information reads:

"AMENDED INFORMATION

The undersigned Provincial Prosecutor and Assistant Provincial Prosecutor accuse ALBERTO AUSTRIA y PENAFLOR and ROLANDO M. FLORES of the crime of Reckless Imprudence resulting in Homicide and Multiple Physical Injuries, committed as follows:

That on or about the 9th day of July 1989, in barangay Cabetican, municipality of Bacolor, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Alberto Austria y Peñaflor, being then the driver and person-in-charge of a Ford Fiera Crew Cab bearing Plate No. DEB 558 UV Pil. '88 and registered under the name of Geronimo Noceda, without due regard to traffic laws, rules and regulations, without taking the necessary precaution to avoid accident to persons and by giving said vehicle a speed far greater than is allowed by law, did then and there wilfully, unlawfully and feloniously drive, manage and operate said vehicle in a careless, reckless and imprudent manner, causing as a result of his carelessness, recklessness and imprudence to bump and hit a cargo trailer truck bearing Plate No. CES 518 which was improperly and carelessly parked along the right shoulder of the road by accused Rolando M. Flores, driver of said cargo trailer truck, thereby causing fatal injuries upon Virginia Lapid Vda. de Diwa, occupant of said Ford Fiera Crew Cab, which directly caused her death shortly thereafter, and inflicted physical injuries upon the following occupants of said Ford Fiera Crew Cab, to Wit:

Armin Q. Manalansan - which required and did require medical attendance for a period of more than thirty (30) days and incapacitated and did incapacitate said victim from performing her customary labor for the same period of time;

Mylene S. Gigante - which required and did require medical attendance for a period of five (5) to seven (7) days and incapacitated and did incapacitate from performing her customary labor for the same period of time;

Luzviminda S. Diwa - which required and did require medical attendance for less than two (2) weeks and incapacitated and did incapacitate her from performing her customary labor for the same period of time;

Mark S. Diwa - which required and did require medical attendance for an unknown duration and incapacitated and did incapacitate him from performing his customary labor for the same period of time.

All contrary to law."^[1]

The facts of the case as summarized by the respondent court are as follows:

"On July 9, 1989 at around 7:00 P.M. along the Olongapo-Gapan Road in the vicinity of barangay Cabetican, Bacolor, Pampanga, the appellant was driving his Ford Fiera with ten (10) passengers. They came from the Manila International Airport bound to Dinalupihan, Bataan.

One of the vehicle's tire suddenly hit a stone lying in the road, while thus cruising, which caused the appellant to lose control and collide with the rear of an improperly parked cargo truck trailer driven by accused Rolando M. Flores. As a result of the collision, five (5) passengers suffered varying degrees of injuries."^[2]

While trial ensued, accused truck driver Rolando M. Flores remained at-large.

On March 21, 1994, the trial court promulgated its decision, disposing as follows:

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt hereby sentences him to suffer an indeterminate penalty of imprisonment of two (2) months and one (1) day of arresto mayor, as minimum, to two (2) years, ten (10) months and twenty (20) days of Prision Correccional, as maximum.

The accused is likewise ordered to:

- 1) Pay the heirs of Virginia Lapid Vda. de Diwa the amount of P50,000.00 as indemnity;
- 2) P6,320.00 as and for actual expenses incurred by Luzviminda Diwa, representing medical and funeral expenses; and

3) Cost of suit.

SO ORDERED."

Subsequently, on June 10, 1994, the court modified its decision after the accused filed his motion for reconsideration dated April 4, 1994. The modified judgment reads:

"WHEREFORE, the Decision promulgated on March 21, 1994 is hereby modified as follows:

The Court, finding accuse Alberto Austria guilty beyond reasonable doubt of the crime of Reckless Imprudence Resulting in Serious Physical Injuries (Art. 365 in relation to Art. 263 (3), Revised Penal Code), hereby sentences the said accused to suffer a^[n] indeterminate penalty of imprisonment of one (1) month and one (1) day to four (4) months of arresto mayor.

The said accused is likewise ordered to indemnify Luzviminda Diwa the amount of P1,345.75; Mark Diwa the amount of P4,716.31; and Mylene Gigante the amount of P6,199.62 as and for actual damages incurred.

No pronouncement as to the civil liability of the accused to private complainant Armin Manalansan considering that the latter filed a separate civil action against accused Alberto Austria before the Regional Trial Court of Bataan (TSN., p. 7, February 18, 1992).

SO ORDERED."^[3]

Defendant Austria timely appealed his conviction before the Court of Appeals, which affirmed with modifications the lower court's decision. The appellate court's decision disposed as follows:

"WHEREFORE, foregoing considered, the appealed decision is AFFIRMED with modification that: 1) a straight penalty of one (1) month and one (1) day of arresto mayor for the imprisonment of the accused is imposed; and 2) the award in favor of Mylene Gigante of P6,199.62 is deleted.

SO ORDERED."^[4]

Petitioner now comes before the Court assigning the following errors:

1. THE RESPONDENT COURT ERRED IN AFFIRMING THE PETITIONER'S CONVICTION FOR THE CRIME OF RECKLESS IMPRUDENCE;
2. THE RESPONDENT COURT ERRED IN FINDING THE PETITIONER NEGLIGENT ;
3. THE RESPONDENT COURT ERRED IN AWARDING DAMAGES TO THE PRIVATE COMPLAINANTS;
4. IF THE PETITIONER IS INDEED GUILTY OF SIMPLE NEGLIGENCE, THE RESPONDENT COURT ERRED IN IMPOSING A PENALTY OF ARRESTO MAYOR, INSTEAD OF *DESTIERRO*.