104 Phil. 397

[G. R. No. L-7664. August 29, 1958]

MR. AND MRS. AMADOR C. ONG, PLAINTIFFS AND APPELLANTS VS. METROPOLITAN WATER DISTRICT, DEFENDANT AND APPELLEE.

D E C I S I O N

BAUTISTA ANGELO, J.:

Plaintiffs spouses seek to recover from defendant, a government-owned corporation, the sum of P50,000 as damages, P5,000 as funeral expenses, and P11,000 as attorneys' fees, for the death of their son Dominador Orig in one of the swimming pools operated by defendant.

Defendant admits the fact that plaintiffs' son was drowned in.one of its swimming pools but avers that his death was caused by his own negligence or by unavoidable accident. Defendant also avers that it had exercised due diligence in the selection of, and supervision over, its employees and that it had observed the diligence required by law under the circumstances.

After trial, the lower court found that the action of plaintiffs is untenable and dismissed the complaint without pronouncement as to costs. Plaintiffs took the case on appeal directly to this Court because the amount involved exceeds the sum of P50,000.

Defendant owns and operates three recreational'swimming pools at its Balara filters, Diliman, Quezon City, to which people are invited and for which a nominal fee of P0.50 for adults and P0.20 for children is charged. The main pool is between two small pools of oval shape known as the "Wading pool" and the "Beginners Pool." There are diving boards in the big pools and the depths of the water at different parts are indicated by appropriate marks on the wall. The care and supervision of the pools and the users thereof is entrusted to a recreational section composed of Simeon Chongco as chief, Armando Rule, a male nurse, and six lifeguards who had taken the life-saving course given by the Philippine Red Cross at the YMCA in Manila. For the safety of its patrons, defendant has provided the pools with a ring buoy, toy roof, towing line, saving kit and a resuscitator. There is also a sanitary

inspector who is in charge of a clinic established for the benefit of the patrons. Defendant has also on display in a conspicuous place certain rules and regulations governing the use of the pools, one of which prohibits the swimming in the pool alone or without any attendant. Although defendant does not maintain a full-time physician in the swimming pool compound, it bad however a nurse and a sanitary inspector ready to administer injections or operate the oxygen resuscitator if the need should arise.

In the afternoon of July 5, 1952, at about 1:00 o'clock, Dominador Ong, a 14-year old high school student and a boy scout, and his brothers Ruben and Eusebio, went to defendant's swimming pools. This was not the first time that the three brothers had gone to said natatorium for they had already been there four or five times before. They arrived at the natatorium at about 1:45 p.m. After paying the requisite admission fee, they immediately went to one of the small pools where the water was shallow. At about 4:35 p.m., Dominador Ong told his brothers that he was going to the locker room in an adjoining building to drink a bottle of coke. Upon hearing this, Ruben and Eusebio went to the bigger pool leaving Dominador in the small pool and so they did not see the latter when he left the pool to get a bottle of coke. In that afternoon, there were two lifeguards on duty in the pool compound, namely, Manuel Abaño and Mario Villanueva. The tour of duty of Abano was from 8:00 to 12:00 in the morning and from 2:00 to 6:00 in the afternoon, and of Villanueva from 7:30 to 11:30 a.m. and from 12:30 to 4:30 p.m. Between 4:00 to 5:00 that afternoon, there were about twenty bathers inside the pool area and Manuel Abano was going around the pools to observe the bathers in compliance with the instructions of his chief.

Between 4:40 to 4:45 p.m., some boys who were in the pool area informed a bather by the name of Andres Hagad, Jr., that somebody was swimming under water for quite a long time. Another boy informed lifeguard Manuel Abano of the same happening and Abano immediately jumped into the big swimming pool and retrieved the apparently lifeless body of Dominador Ong from the bottom. The body was placed at the edge of the pool and Abaño immediately applied manual artificial respiration. Soon after, male nurse Armando Rule came to render assistance, followed by sanitary inspector Iluminado Vicente who, after being called by phone from the clinic by one of the security guards, boarded a jeep carrying with him the resuscitator and a medicine kit, and upon arriving he injected the boy with camphorated oil. After the injection, Vicente left on a jeep in order to fetch Dr. Ayuyao from the University of the Philippines. Meanwhile, Abaño continued the artificial manual respiration, and when this failed to revive him, they applied the resuscitator until the two oxygen tanks were exhausted. Not long thereafter, Dr. Ayuyao arrived with another resuscitator, but the same became of no use because he found the boy already dead. The

doctor ordered that the body be taken to the clinic.

In the evening of the same day, July 5, 1952, the incident was investigated by the Police Department of Quezon City and in the investigation boys Ruben Ong and Andres Hagad, Jr. gave written statements. On the following day, July 6, 1952, an autopsy was performed by Dr. Enrique V. de los Santos, Chief, Medico Legal Division, National Bureau of Investigation, who found in the body of the deceased the following: an abrasion on the right elbow lateral aspect; contusion on the right forehead; hematoma on the scalp, frontal region, right side; a congestion in the brain with petechial subcortical hemorrhage, frontal lobe; cyanosis on the face and on the nails; the lung was soggy with fine froth in the bronchioles; dark fluid blood in the heart; congestion in the visceral organs, and brownish fluid in the stomach. The death was due to asphyxia by submersion in water.

The issue posed in this appeal is whether the death of minor Dominador Ong can be attributed to the negligence of defendant and/or its employees so as to entitle plaintiffs to recover damages.

The present action is governed by Article 2176 in relation to Article 2080 of the new Civil Code. The first article provides that "whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damages done." Such fault or negligence is called *quasi-delict*. Under the second article, this obligation is demandable not only for one's own acts or omissions but also for those of persons for whom one is responsible. In addition, we may quote the following authorities cited in the decision of the trial court:

> "'The rule is well settled that the owners of resorts to which people generally are expressly or by implication invited are legally bound to exercise ordinary care and prudence in the management and maintenance of such resorts, to the end of making them reasonably safe for visitors1 (Larkin vs. Saltair Beach Co., 30 Utah 86, 83 Pac. 686).
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> "'Although the proprietor of a natatorium is liable for injuries to a patron, resulting from lack of ordinary care in providing for his safety, without the fault of the patron, he is not, however, in any sense deemed to be the insurer of the safety of patrons. And the death of a patron within his premises does not cast upon him the burden of excusing himself from any presumption of negligence' (Bertalot vs. Kinnare. 72 III App. 52, 22 A. L. R. 635; Flora vs. Bimini Water Co.,

> 161 Cal. 495, 119 Pac. 661). Thus in Bertalot vs. Kinnare, supra, it was held that there could be no recovery for the death by drowning of a fifteen-year boy in defendant's natatorium, where it appeared merely that he was lastly seen alive in water at the shallow end of the pool, and some ten or fifteen minutes later was discovered unconscious, and perhaps lifeless, at the bottom of the pool, all efforts to resuscitate him being without avail."

Since the present action is one for damages founded on culpable negligence, the principle to be observed is that the person claiming damages has the burden of proving that the damage is caused by the fault or negligence of the person from whom the damage is claimed, or of one of his employees (Walter A. Smith & Co. vs. Cadwallader Gibson Lumber Co., 55 Phil, 517). The question then that arises is: Have appellants established by sufficient evidence the existence of fault or negligence on the part of appellee so as to render it liable for damages for the death of Dominador Ong?

There is no question that appellants had striven to prove that appellee failed to take the necessary precaution to protect the lives of its patrons by not placing at the swimming pools efficient and competent employees who may render help at a moment's notice, and they ascribed such negligence to appellee because the lifeguard it had on the occasion minor Ong was drowning was not available or was attending to something else with the result that his help came late. Thus, appellants tried to prove through the testimony of Andres Hagad, Jr. and Ruben Ong that when Eusebio Ong and Hagad, Jr. detected that there was a drowning person in the bottom of the big swimming pool and shouted to the lifeguard for help, lifeguard Manuel Abaño did not immediately respond to the alarm and it was only upon the third call that he threw away the magazine he was reading and allowed three or four minutes to elapse before retrieving the botty from the water. This negligence of Abaño, they contend, is attributable to appellee.

But the claim of these two witnesses not only was vehemently denied by lifeguard Abaño, but is belied by the written statements given by them in the investigation conducted by the Police Department of Quezon City approximately three hours after the happening of the accident. Thus, these two boys admitted in the investigation that they narrated in their statements everything they knew of the accident, but, as found by the trial, nowhere in said statements do they state that the lifeguard was chatting with the security guard at the gate of the swimming pool or was reading a comic magazine when the alarm was given for which reason he failed to immediately respond to the alarm. On the contrary, what Ruben Ong

particularly emphasized therein was that after the lifeguard heard the shouts for help, *the latter immediately dived into the pool* to retrieve the person under water who turned out to be his brother. For this reason, the trial court made this conclusion: "The testimony of Ruben Ong and Andres Hagad, Jr. as to the alleged failure of the lifeguard Abaño to immediately respond to their call *may therefore be disregarded* because they are belied by their written statements." (Italics supplied.)

On the other hand, there is sufficient evidence to show that appellee has taken all necessary precautions to avoid danger to the lives of its patrons or prevent accident which may cause their death. Thus, it has been shown that the swimming pools of appellee are provided with a ring buoy, toy roof, towing line, oxygen resuscitator and a first aid medicine kit. The bottom of the pools is painted with black colors so as to insure clear visibility. There is on display in a conspicuous place within the area certain rules and regulations governing the use of the pools. Appellee employs six lifeguards who are all trained as they had taken a course for that purpose and were issued certificates of proficiency. These lifeguards work on schedule prepared by their chief and arranged in such a way as to have two guards at a time on duty to look after the safety of the bathers. There is a male nurse and a sanitary inspector with a clinic provided with oxygen resuscitator. And there are security guards who are available always in case of emergency.

The record also shows that when the body of minor Ong was retrieved from the bottom of the pool, the employees of appellee did everything possible to bring him back to life. Thus, after he was placed at the edge of the pool, lifeguard Abaño immediately gave him manual artificial respiration. Soon thereafter, nurse Armando Rule arrived, followed by sanitary inspector Iluminado Vicente who brought with him an oxygen resuscitator. When they found that the pulse of the boy was abnormal, the inspector immediately injected him with camphorated oil. When the manual artificial respiration proved ineffective they applied the oxygen resuscitator until its contents were exhausted. And while all these efforts were being made, they sent for Dr. Ayuyao from the University of the Philippines who however came late because upon examining the body he found him to be already dead. All of the foregoing shows that appellee has done what is humanly possible under the circumstances to restore life to minor Ong and for that reason it is unfair to hold it liable for his death.

Sensing that their former theory as regards the liability of appellee may not be of much help, appellants now switch to the theory that even if it be assumed that the deceased is partly to be blamed for the unfortunate incident, still appellee may be held liable under the doctrine of "last clear chance" for the reason that, having the last opportunity to save the

victim, it failed to do so.

We do not see how this doctrine may apply considering that the record does not show how minor Ong came into the big swimming pool. The only thing the record discloses is that minor Ong informed his elder brothers that he was going to the locker room to drink a bottle of coke but that from that time on nobody knew what happened to him until his lifeless body was retrieved. The doctrine of last clear chance simply means that the negligence of a claimant does not preclude a recovery for the negligence of defendant where it appears that the latter, by exercising reasonable care and prudence, might have avoided injurious consequences to claimant notwithstanding his negligence. Or, "As the doctrine usually is stated, a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent or the negligence of a third person which is imputed to his opponent, is considered in law solely responsible for the consequences of the accident." (38 Am. Jur. pp. 900-902)

> "It goes without saying that the plaintiff himself was not free from fault, for he was guilty of antecedent negligence in planting himself in the wrong side of the road. But as we have already stated, the defendant was also negligent; and in such case the problem always is to discover which agent is immediately and directly responsible. It will be noted that the negligent acts of the two parties were not contemporaneous, since the negligence of the defendant succeeded the negligence of the plaintiff by an appreciable interval. Under these circumstances, the law is that a person who has the last clear chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party." (Picart vs. Smith, 37 Phil., 809)

Since it is not known how minor Ong came into the big swimming pool and it being apparent that he went there without any companion in violation of one of the regulations of appellee as regards the use of the pools, and it appearing that lifeguard Abaño responded to the call for help as soon as his attention was called to it and immediately after retrieving the body all efforts at the disposal of appellee had been put into play in order to bring him back to life, it is clear that there is no room for the application of the doctrine now invoked by appellants to impute liability to appellee.

> "The last clear chance doctrine can never apply where the party charged is

> required to act instantaneously, and if the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered; at least in cases in which any previous negligence of the party charged cannot be said to have contributed to the injury. O'Mally vs. Eagan, 77 ALR 582, 43 Wyo. 233, 350, 2, P2d 1063." (A.L.R. Digest, Vol. 8, pp. 955-956)

Before closing, we wish to quote the following observation of the trial court, which we find supported by the evidence: "There is (also) a strong suggestion coming from the expert evidence presented by both parties that Dominador Ong might have dived where the water was only 5.5 feet deep, and in so doing he might have hit or bumped his forehead against the bottom of the pool, as a consequence of which he was stunned, and which eventually led to his drowning. As a boy scout he must have received instructions in swimming. He knew, or must have known, that it was dangerous for him to dive in that part of the pool."

Wherefore, the decision appealed from being in accordance with law and the evidence, we hereby affirm the same, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

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