

EDUARDO PRAGSA Y BANTILLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, HEIRS OF THE LATE INOCENCIA AND MARDIE RADAN, RESPONDENTS.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

“The right of a person using public streets and highways for travel in relation to other motorists is mutual, coordinate and reciprocal. He is bound to anticipate the presence of other persons whose rights on the street or highway are equal to his own. Although he is not an insurer against injury to persons or property, it is nevertheless his duty to operate his motor vehicle with due and reasonable care and caution under the circumstances for the safety of others as well as for his own.”

- Justice Tinga[1]

In this Petition for Review[2], Eduardo Pragsa seeks to reverse the decisions of MTCC, Sagay City, which were affirmed by RTC, Branch 60, Cadiz City, convicting him of two counts of Reckless Imprudence Resulting to Homicide and another for Damage to Property.

ANTECEDENTS

The Information in Criminal Case No. 8138 charging Eduardo Pragsa with Reckless Imprudence Resulting to Homicide alleged:

“That on or about the 4th day of September, 2005, in the City of Sagay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the driver of a Mitsubishi Fuso Dropside truck bearing plate number GJT-895 xxx drive and operate in a reckless xxx manner and at a speed greater than was reasonable and proper, without due regard to traffic laws xxx and without taking the necessary precaution to avoid accident to person and/or damage to property, thereby causing the victim INOCENCIA RADAN y DICHOSO who was riding at the back of the Honda wave motorcycle driven by her daughter MARDIE RADAN, bumped by one speeding Mitsubishi Fuso Dropside truck which resulted in the death of the said victim.

CONTRARY TO LAW.”

In the Information under Criminal Case No. 8139 Eduardo Pragsa is also charged with Reckless Imprudence Resulting to Homicide, viz:

“That on or about the 4th day of September, 2005, in the City of Sagay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then the driver of a Mitsubishi Fuso Dropside truck bearing plate number GJT-895 xxx drive xxx in a careless xxx manner and at a speed greater than was reasonable xxx without due regard to traffic laws xxx and without taking the necessary precaution to avoid accident to person xxx thereby causing the victim MARDIE RADAN y DICHOSO who was driving the Honda wave motorcycle, bumped and drugged under the speeding Mitsubishi Fuso Dropside truck which resulted in the death of the said victim.

CONTRARY TO LAW.”

In the third Information, Criminal Case No. 8140, charging Eduardo Pragsa with Reckless Imprudence Resulting to Damage to Property, it stated:

The accused pleaded

“That on or about the 4th day of September, 2005, in the City of Sagay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the driver of a Mitsubishi Fuso Dropside truck bearing plate number GJT-895, did then and there drive xxx in a careless xxx manner and at a speed greater than was reasonable xxx without due regard to traffic laws xxx and without taking the necessary precaution to avoid accident to person and/or damage to property, thereby causing the said one (1) Honda Wave motorcycle, bumped by one speeding Mitsubishi Fuso Dropside truck which resulted damage of the said motorcycle in the amount of Php 30,000.00.

CONTRARY TO LAW.”

The accused entered a plea of not guilty when he was arraigned of the aforequoted charges.

The MTCC summed up the evidence of the prosecution in this manner:

On September 4, 2006, Benjie Radan drove his Suzuki Multicab with his wife and two children. They were going to Purok Kakahuyan, Rizal, Sigay City Ahead of him was his sister, Mardie Radan who was driving a Honda Wave motorcycle. Their mother, Inocencia Radan, was riding the back of the motorcycle.

Benjie Radan testified that he was around 20 to 30 meters behind his sister when he saw her execute a left turn towards the crossing in Purok Kakahuyan. Then, he saw a Canter bump the motorcycle. As a consequence, the motorcycle was dragged underneath the Canter.

Wilfredo Salvareta, another eyewitness, testified that on the said date and time, he was in the waiting shed with his friends- Bano, Bebe, Arnel when he saw the motorcycle executing a signal to turn left. There was a vehicle following the motorcycle. Salvareta said that the motorcycle was already on the left side of the highway when suddenly, there was another vehicle which was running very fast, that hit the motorcycle on the right side. The motorcycle was dragged underneath for some 20-30 meters before the Canter stopped. When Salvareta saw that the Canter did not stop, still dragging the motorcycle and the driver underneath, he ran to the driver. He saw the driver's head, swaying back and forth. He shouted at the driver, “Are you drunk?” Salvareta smelled the liquor from the mouth of the driver.

Ronelo Capitli, testified that he was in his store when the incident occurred. The vehicle was running so fast that his store was lifted up and he thought it was an emergency. Then he heard the sound of the impact.

Arnel Orocio also saw the white Fuso Canter Truck running very fast and it bumped the motorcycle. He saw the victim Inocencia Radan thrown away from the motorcycle. He helped bring the victim to the hospital. As to the place of the incident, it was well-lighted by the streetlights.

These four witnesses the accused as the driver of Canter Truck that collided with the motorcycle driven by the Mardie Radan.

The attending physician, Dr. Carmelo Canto said that the two victims died of injuries sustained as a result of the vehicular accident.

Benjamin Radan, Sr., husband of Inocencia and father of Mardie testified about the moral anxiety he suffered from the death of his wife and daughter. He presented the death certificates of his wife and daughter. He claimed that spent for the medical expenses of his wife before she died: hospital charges of P 3,187.20, doctor's fee of P 7,100.00. He incurred expenses for his wife's funeral of P 7,775.00, for her wake in the amount of P

29,800.00 and embalment of P 30,000.00. He also spent P 50,000.00 for the services of counsel.

For the hospitalization of his daughter Mardie, Benjamin Radan, Sr. claimed he spent around P 281,000.00, and doctor's fees of P 39,000.00. Benjamin Radan recalled that his daughter earned a monthly salary of P 11,167.00 as a public school teacher. She received monthly PERA of P500.00, clothing allowance of P 4,000.00, productivity bonus of P 2,000.00, year-end bonus of P 11,167.00, cash gift of P 5,000.00 and cash allowance of P 300.00. His daughter died when she was 34 years old and single.

Vernon Celo, a motorcycle mechanic, estimated that the motorcycle sustained damage of P 18,546.00.

The evidence of the defense is summarized hereunder:

The accused stated that had already passed the Crossing of Purok Kakahuyan when he saw the lights of a motorcycle going in the opposite direction when this motorcycle suddenly entered his lane and bumped his truck. The accused said he had a professional driver's license. Before this case, he had not figured in a traffic incident.

Reynaldo Bersales, a passenger of the Canter truck, testified that he saw the motorcycle twenty meters away after they passed the Crossing of Purok Kakahuyan. The motorcycle was zigzagging when this motorcycle bumped the bumper of the Canter they were on.

Ali Reboton, another passenger of the Canter truck also testified that the motorcycle was zigzagging on the road before it bumped their vehicle. He shouted to the driver to apply the brakes but found out later that the brake line had been cut as the motorcycle was dragged under.

The MTCC promulgated the Decisions dated July 16, 2008[3] convicting the accused of the three charges.

The accused appealed to the RTC, which in its Joint Decisions dated May 26, 2009[4], affirmed the convictions.

Hence, this Petition for Review by the accused as petitioner, with the following assignment of errors:

I. THE RTC ERRED IN AFFIRMING THE LOWER COURT'S DECISION WHICH DECISION DISREGARDED PETITIONER'S TESTIMONIAL EVIDENCE, BEING FROM FRIENDS AND WORKMATES OF PETITIONERS, EVEN IF THEY ARE EYE-WITNESSES TO THE INCIDENT.

II. THE RTC ERRED IN AFFIRMING THE LOWER COURT'S DECISION WHICH DECISION COMPLETELY DISREGARDED THE FINDINGS OF PHYSICAL EVIDENCE BY TRAFFIC INVESTIGATOR (sic) PO2 BARRY LAYCO, POINTING TO REASONABLE DOUBT.

III. THE RTC ERRED IN AFFIRMING THE LOWER COURT'S DECISION WHICH FIND PETITIONER GUILTY EVEN IF THE PROXIMATE CAUSE CANNOT BE ATTRIBUTED TO HIM AND DESPITE THE LACK OF DRIVER'S LICENSE AND NON WEARING OF HELMETS BY VICTIMS.

On July 25, 2011, the Solicitor General filed his Comment[5] to the Petition for Review.

On December 19, 2011, the Solicitor General submitted his Memorandum of Authorities[6].

On January 6, 2012, the petitioner through counsel, also submitted his Memorandum[7].

OUR RULING

As the issues raised by the petitioner are interrelated, We shall discuss them jointly without losing sight of the rule reiterated in *Roño Seguritan y Jara v. People of the Philippines*[8]. In a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record[9]. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below.

From its assessment of the testimonies of the prosecution witnesses, the MTCC could not find any indication in their demeanor to show that they were not forthright. According to the MTCC, the testimonies of these witnesses came out of the crucible of cross examination intact[10]. The MTCC gave credence to the accounts of the prosecution witnesses that the Canter truck driven by the petitioner was running at a high speed as the windshield of the truck was totally damaged[11]. Further, the motorcycle was dragged underneath the truck by another 148 feet before it stopped[12]. Inocencia Radan was thrown towards the right side lane of the road and Mardie Radan was dragged underneath the Canter truck for about 30 meters[13].

Juxtaposing a different version of the incident, the defense, through its witnesses Reboton and Bersales, contends that it was the motorcycle that encroached the lane of the Canter truck, which had already passed the middle of the intersection. Mardie Radan was allegedly not in control of the motorcycle as shown by her zigzagging. Due to her miscalculation, Mardie Radan was not able to clear her turn so that her motorcycle collided with the Canter truck[14].

Our own examination of the sketch[15] taken from the place of the incident immediately after it happened, would sustain the accounts of the prosecution eyewitnesses that the Canter truck operated by the petitioner was running at a high speed when it hit and bumped the motorcycle driven by the victim. The considerable stretch of the 148-foot skid mark starting from the point of impact[16] to the point where the Canter truck was resting[17], shows that the petitioner took that far to stop the Canter truck after the collision. "The location, direction and length of skid marks may be very important to a reconstruction of the facts and to the evaluation of statement made by the driver of the vehicle or other witnesses. They serve to check on the driver's statement as to how soon he saw the pedestrian or obstacle and how rapidly he applied his brakes. They also give a fairly reliable guide as to the speed of his vehicle at the time the brakes were applied[18]."

A reasonable deduction can be drawn from the existence of the skid marks. These physical facts prove that the petitioner drove the Canter truck at such a high speed even as he was approaching the corner of Purok Kakahuyan[19]. The area was a curve though not necessarily a blind curve as reasoned out by the defense witness Bersales. That notwithstanding, an incoming vehicle from the opposite side could be seen. It is a relevant fact admitted by the petitioner that he only noticed the presence of the motorcycle when it was already ten meters away[20]. In contrast, his passengers, Reboton and Bersales, saw the motorcycle of the victim, some 20 to 25 meters away[21] before the collision. There is no mention by these witnesses that they immediately relayed to the driver (petitioner) their observation as a timely forewarning.

The petitioner was oblivious of the curve in the corner of Purok Kakahuyan and oblivious too by the oncoming motorcycle on his left because he drove too fast. Speeding is indicative of imprudent behavior because a motorist is bound to exercise such ordinary care and drive at a reasonable rate of speed commensurate with the conditions encountered on the road[22]. It is certain that the petitioner did not reduce his speed as he was approaching the curve. Neither did he apply the brakes when saw the light of the motorcycle some ten meters away on the opposite side. At the crucial moment before the collision, the petitioner failed to foresee that the motorcycle was about to make a left turn to Purok Kakahuyan, crossing his path. 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[23].

Under Section 35 of R.A. No. 4136, a person driving a motor vehicle on a highway is required to drive at a careful and prudent speed, not greater nor less than is reasonable and proper, having due regard for the traffic, the width of the highway, and any other condition then and there existing. Likewise, it states that no person shall drive any motor vehicle upon a highway at such speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead.

The observance of this speed restriction is more emphasized where the driver is approaching an intersection. In this case, the petitioner was naturally required to exercise more precaution at the corner and curve at Purok Kakahuyan. There is jurisprudence cited in *Larry V. Caminos, Jr. v. People*[24], that the driver approaching an intersection is generally under duty, among others, to be vigilant and to have the vehicle under control as to be able to stop at the shortest possible notice[25], that is, he must look for vehicles that might be approaching from within the radius that denotes the limit of danger[26].

Judging by the inordinate speed that he drove the Canter truck, the petitioner failed to stop the vehicle or reduce his speed at the curve. He failed to see the motorcycle, approaching, with its headlight on. He failed to foresee and avoid the collision. Said the Supreme Court in *Larry V. Caminos, Jr.*, it can only be surmised at this point that petitioner had inexcusably fallen short of the standard of care in a situation which called for more precaution on the highway in failing to make an observation in the interest at least of his own safety whether or not it was safe to enter the crossing. Since he is chargeable with what he should have observed only had he exercised the commensurate care required under the circumstances of the case, the inescapable conclusion is that he had inexcusably breached the elementary duties of a responsible, prudent and reasonable motorist.

The petitioner blames the negligence of the victim Mardie Radan as the principal cause of the collision. According to him, the MTCC and the RTC omitted to consider the testimony of the traffic investigator, PO2 Layco who opined that since the point of impact was in the right of way of the Canter truck, the motorcycle was in the wrong lane[27].

Other than that, the petitioner assails the decisions of the MTCC which found him criminally culpable because despite the lack of license of Mardie Radan and the failure of the latter and her mother to wear helmets, the MTCC still found him criminally culpable. The RTC also committed grave abuse of discretion and/or gravely erred when it ruled that the lack of license of Mardie Radan and by her non-wearing of helmet as well as by her mother, would not affect petitioner's culpability. The proximate cause of the collision should not thus be attributed to him.

We tackle first the opinion of PO2 Layco by citing Section 42 of Republic Act (R.A.) No. 4136[28]:

Section 42. Right of Way.

(a) When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right, except as otherwise hereinafter provided. The driver of any vehicle traveling at an unlawful speed shall forfeit any right which he might otherwise have hereunder.

(b) The driver of a vehicle approaching but not having entered an intersection shall yield the right of a way to a vehicle within such intersection or turning therein to the left across the line of travel of such first-mentioned vehicle, provided the driver of the vehicle turning left has given a plainly visible signal of intention to turn as required in this Act x x x.

Based on the factual circumstances in this case, the petitioner forfeited whatever favored right he had over his lane when he was traveling at an unlawful speed. The petitioner said he saw the light of the motorcycle driven by Mardie Radan as he passed the crossing[29]. Prosecution witnesses Benjie Radan and Salvatera testified that they saw the motorcycle executing a left turn signal. To Us, it is more likely that Mardie Radan had expressed the intention to execute a left turn into Purok Kakahuyan. The alleged zigzagging motion of the motorcycle that Bersales saw does not negate the inference that the victim was executing a left turn at the time of the collision for these are two different acts.

Assuming that Mardie Radan was negligent as she took a left turn to the corner of Purok Kakahuyan, her

negligence, will not amount to petitioner's acquittal. At best, it will only determine the applicability of several other rules governing situations where concurring negligence exists and only for the purpose of arriving at a proper assessment of the award of damages in favor of the private offended party. In a prosecution for reckless or dangerous driving, the negligence of the person who was injured or who was the driver of the motor vehicle with which the accused's vehicle collided does not constitute a defense[30].

So, even if Mardie Radan is said to be guilty of a traffic violation such as driving without license and not wearing a helmet, these may never work favors to the case of the accused[31]. The rule has been long- settled in *People v. Quiñones*[32], the defense of contributory negligence does not apply in criminal cases through reckless imprudence, since one cannot alleged the negligence of another to evade the effects of his own negligence. As the RTC determined in the appealed cases, the negligent acts of the victims can mitigate the civil liability of the accused who is adjudged by the trial court to be recklessly imprudent as the contributory negligence of the party injured will not defeat the action[33].

Following the dictum in *Larry Caminos, Jr., v. People*[34], proof that the victim was also negligent or imprudent in the operation of her motorcycle bears little weight for purposes of establishing the culpability of the petitioner beyond reasonable doubt. The RTC aptly ratiocinated that though the violation of a statute such as R.A. 4136[35] may be considered as negligence per se yet as long as the evidence shows that it is not the proximate cause of an injury, it cannot be made the basis of negligence xxx and as the facts of this case reveal, accused indeed was not driving at a moderate speed but was recklessly speeding xxx and it is precisely the inexcusable lack of precaution on the part of the accused which is the proximate cause of the deaths of the victims[36].

Article 365 of the Revised Penal Code provides that when, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by prison correccional in its medium and the maximum periods. Further, Article 365 says that when the execution of the act shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than twenty-five pesos.

The minimum of the indeterminate penalty imposed in Criminal Case Nos. 8138 and 8139 is one (1) year, eight (8) months and twenty-one (21) days of prison correccional. It is within the range of the penalty next lower in degree. Apropos of the maximum term of two (2) years, eleven (11) months and ten (10) days is it is also within the minimum range of the penalty provided and rightly so considering the attendance of contributory negligence of the victims. In *People v. Medroso, Jr.*[37], Supreme Court clarified that in applying paragraph 5[38], Article 365 on the imposition of the penalties provided therein, the courts shall exercise their sound discretion without regard to the rules prescribed in Article 64 of the Revised Penal Code. Thus, We consider the penalties imposed by the MTCC in Criminal Case Nos. 8138 and 8139 to be in order.

In Criminal Case No. 8140 for Reckless Imprudence Resulting to Damage to Property, We hold that the fine should be P 18,546.00 as this is the amount of damage sustained to the motorcycle.

Withal, in accord with the reduced percentage of damages imposed in *Flordeliza Mendoza v. Mutya Soriano and Minor Julie Ann Soriano, etc.*[39], We shall also reduce by 20% the amount of damages awarded by the MTCC in Criminal Case Nos. 8138, 8139 and 8140. As Article 2179 of the New Civil Code declares- When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

We delete the award of attorney's fees awarded by the RTC and the MTCC. The award is not substantiated in the

Joint Decisions of the RTC and the three separate Decisions of the MTCC. Hence, there is no sufficient legal and factual basis to grant attorney's fees. We also delete the award of loss of earning capacity due to the failure of the prosecution to present documentary evidence to prove it.[40]

In *People v. Torres, Sr.*[41], the damages awarded was imposed with interest at the rate of 6% per annum reckoned from the date of the killing, up to the finality of the judgment. In addition, interest at 12% per annum shall be imposed on said damages from finality of the judgment until paid.

One final note that We must not miss to state. The petitioner should have been charged with just one Information for Reckless Imprudence Resulting to Double Homicide and Damage to Property. It is a complex crime wherein the imprudent act of driving by the petitioner resulted to the deaths of the two victims and damage to the motorcycle. And yet, since the petitioner did not object to these duplicitous charges, he can be convicted under these culpable felonies. We agree with the RTC then when it explicated that:

“ xxx in view of the active participation of the accused during the trial, his conformity to a joint trial and moving for consolidation of the three cases has cured whatever technical errors there were xxx and he is already estopped to question the three (3) Decisions rendered by the trial court having already waived their perceived errors x x x”.[42]

WHEREFORE, the Petition for Review is DENIED. The assailed May 26, 2009 Joint Decisions of RTC, Branch 60, Cadiz City is AFFIRMED with MODIFICATIONS. In Criminal Case No. 8138, petitioner Eduardo Pragsa y Batillo is hereby ordered to pay to the heirs of Inocencia Radan:

- Death indemnity of P 50,000.00
- Hospital and doctor's expenses of P 10,287.00
- Burial expenses of P 37,775.00
- Moral damages of P 50,000.00

In Criminal Case No. 8139, the petitioner is ordered to pay to the heirs of Mardie Radan:

- Death indemnity of P 50,000.00
- Hospital and doctor's expenses of P 320,000.00
- Moral damages of P 50,000.00

In Criminal Case No. 8140, the petitioner is ordered to pay to the heirs of Mardie Radan:

- Cost of damage to the Honda Wave Motorcycle with Plate. No. 7H-053-8667 of P18, 546.00.

Actual payment of the aforementioned amounts in Criminal Case Nos. 8138, 8139 and 8140 should, however, be REDUCED by twenty (20%) per cent due to the presence of the contributory negligence by the victims as provided for in Article 2179 of the Civil Code. Interest at the rate of 6% per annum shall be reckoned from September 4, 2005 up to the finality of the judgment. In addition, interest at 12% per annum shall be imposed on said damages from finality of the judgment until paid.

SO ORDERED.

[*]Hernando, (Chairperson) and [*]Quijano-Padilla, JJ., concur

[*] Acting Chairman, per Office Order No. 05-14-ELDS dated February 26, 2014.

[*] Acting Junior Member, per Office Order No. 472-13-ABR dated December 12, 2013.

[1] Ponente in *Larry V. Caminos Jr. v. People of the Philippines*, G.R. No. 147437, May 8, 2009 citing *Richards v. Begenstos*, 21 N.W.2d 23; *Hodges v. Smith*, 298 S.W. 1023; *Lawson v. Fordyce*, 12 N.W.2d 301; *Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354; *Atlantic Greyhound Corp. v. Lyon*, 107 F.2d 157; *Oklahoma Natural Gas Co. v. McKee*, 121 F.2d 583; *Burdick v. Powell Bros. Truck Lines*, 124 F.2d 694; *Dixie Motor Coach Corp. v. Lane*, 116 F.2d 264; *Shipley v. Komer*, 154 F.2d,861.

[2] Rollo, pp. 8-37.

[3] “WHEREFORE, premises considered, the court hereby finds accused EDUARDO PRAGSA Y BANTILLO, guilty beyond reasonable doubt of Reckless Imprudence Resulting in Homicide and is hereby sentenced to imprisonment of 1 year, 8 months, and 21 days to 2 years, 11 months and 10 days of prision correccional. Accused is likewise ordered to compensate the heirs of the deceased the amount of P 50,000.00 as indemnity for causing the wrongful death of the deceased Inocencia Radan. Accused is also ordered to pay actual damages representing the hospitalization and doctor's expenses in the amount of P 10,287.00 funeral and embalming expenses in the amount of P 37,775, moral damages in the amount of P 50,000.00 attorney's fees in the amount of P 25,000.00.

Costs de oficio.” (Decision of the MTCC in Crim. Case No. 8138, p. 5; Rollo, p. 59)

“WHEREFORE, premises considered, the court hereby finds accused EDUARDO PRAGSA y BANTILLO, guilty beyond reasonable doubt of Reckless Imprudence Resulting in Homicide and is hereby sentenced to imprisonment of 1 year, 8 months, and 21 days to 2 years, 11 months and 10 days of prision correccional. Accused is likewise ordered to compensate the heirs of the deceased the amount of P 50,000.00 as indemnity for causing the wrongful death of the deceased Mardie Radan. Accused is likewise directed to pay the amount of P 25,000.00 as attorney's fees. Accused is also directed to pay the amount of P 50,000.00 as moral damages to compensate the suffering of the heirs of the deceased. The other claims for damages are disallowed for lack of evidence.

Cost de oficio.” (Decision of the MTCC in Crim. Case No. 8139, p. 5; Rollo, p. 64).

“WHEREFORE, premises considered, the court hereby finds accused EDUARDO PRAGSA Y BANTILLO, guilty beyond reasonable doubt of Reckless Imprudence Resulting in Damage to Property and is hereby sentenced to pay a fine of Twenty Thousand Pesos (Php 20,000.00). Accused is likewise ordered to indemnify the heirs of the deceased victim the amount of Eighteen Thousand Five Hundred Fifty Six Pesos (Php18,546.00) representing the cost of the damage to the Honda Wave Motorcycle with plate number 7H- 053-8667.

Cost de oficio”. (Decision of the MTCC in Crim. Case No. 8140, p. 4; Rollo, p. 68).

[4] “WHEREFORE, premises considered, the Decision of the trial court dated July 16, 2008 is hereby AFFIRMED with MODIFICATIONS. The award for moral damages on both Mardie Radan and Inocencia Radan and the award for loss of earning capacity for Mardie Radan together for the award for actual damages sustained by the Honda Wave Motorcycle, hospital and doctor's expenses as well as attorney's fees together with the actual damages for the embalming and burial are all hereby mitigated and reduced to fifty (50%) for all the three cases (Criminal Cases Nos. (8138) 3830-S; (8139) 3831-S and (8140) 3882-S.” (RTC Decision, p.17; Rollo p. 54).

[5] Rollo, pp. 105-123.

[6] Rollo, pp. 133-145.

[7] Rollo, pp. 151-182.

- [8] G.R. No. 172896, April 19, 2010.
- [9] *People v. Narca*, 341 Phil 713-714.
- [10] Decisions in *Crim. Case Nos. 8138*, p. 3; *Rollo*, p. 57; *8139*, p. 3; *Rollo*, p. 62 ; *8140*, p.3;, *Rollo*, p.67.
- [11] *Exh. "F-4"*.
- [12] *Exh. E-3"*.
- [13] *MTCC Decision in Criminal Case No. 8138*, p. 2; *Rollo*, p. 56.
- [14] *Petition*, p. 17; *Rollo*, p. 25.
- [15] *Exh. "W"* for the prosecution or "2" for the defense; *Rollo* 69.
- [16] *Exh. "W-4"*.
- [17] *Exk. "W-10"*.
- [18] *Journal of Criminal Law and Criminology*, 30:96 (1939-1940) cited in *Homicide Investigation* by Le Moyne Snyder, 3rd ed., p. 331
- [19] *Exh. "W-7"*.
- [20] *Petition*, p. 16; *Rollo*, p. 24.
- [21] *Petition*, pp. 11- 12; *Rollo*, pp. 19-20.
- [22] *Gabriel v. Court of Appeals*, G.R. No. 128474, 6 October 2004, 440 SCRA 136, 148-149.
- [23] *THE REVISED PENAL CODE*, REYES, LUIS B., 15th ed. (2001) pp. 994-995.
- [24] Footnote 1.
- [25] *Larry V. Caminos Jr. v. People of the Philippines*, footnote 1, citing *Reppert v. White Star Lines*, 106 A.L.R. 413; *Riccio v. Ginsberg*, 62 A.L.R. 967.
- [26] *Larry V. Caminos, Jr. v. People*, footnote 1, also citing *Stauffer v. School District of Tecumseh*, 473 N.W.2d 392.
- [27] *TSN*, September 29, 2006, pp. 130-133; *Petition*, p. 20; *Rollo*, p. 28.
- [28] Entitled "AN ACT TO COMPILE THE LAWS RELATIVE TO LAND TRANSPORTATION AND TRAFFIC RULES, TO CREATE A LAND TRANSPORTATION COMMISSION AND FOR OTHER PURPOSES." The law was approved on 20 June 1964.
- [29] *TSN*, August 6, 2007, pp. 50-53; *Petition*, p. 16; *Rollo*, p. 24.
- [30] *Larry Caminos, Jr. v. People*, footnote 1, citing *State v. Blake*, 255 N.W. 108.
- [31] See *Larry Caminos, Jr. v. People* also citing *State v. Sullivan*, 277 N.W. 230.
- [32] *C.A.* , 44 O.G. 1520; see also *Luis B Reyes, The Revised Penal Code*, Book Two, Eighteenth Edition, 2012, p. 1066.
- [33] *RTC Decision*, p. 16; *Rollo*, p. 53.
- [34] Footnote 1.

[35] Land Transportation and Traffic Code Act.

[36] RTC Joint Decisions, p. 16; Rollo, p. 53.

[37] 62 SCRA 245.

[38] “In the imposition of these penalties, the courts shall exercise their sound discretion , without regard to the rules prescribed in Article sixty-four.”

[39] G.R. No. 164102, June 8, 2007.

[40] P vs. Jadap, G.R. No. 177983, March 30, 2010.

[41] G.R. No. 190317, August 22, 2011.

[42] RTC Joint Decisions, p. 9; Rollo, p. 46.

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