

FEDERICO YLARDE AND ADELAIDA DORONIO, PETITIONERS, VS. EDGARDO AQUINO, MAURO SORIANO AND COURT OF APPEALS, RESPONDENTS.*G.R. No. L-33722. July 29, 1988*

Ponente: GANCAYCO, J.

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In this petition for review on certiorari seeking the reversal of the decision of the Court of Appeals in CA-G.R. No. 36390-R entitled "Federico Ylarde, et al. vs. Edgardo Aquino, et al.," a case which originated from the Court of First Instance of Pangasinan, We are again called upon to determine the responsibility of the principals and teachers towards their students or pupils.

In 1963, private respondent Mariano Soriano was the principal of the Gabaldon Primary School, a public educational institution located in Tayug, Pangasinan. Private respondent Edgardo Aquino was a teacher therein. At that time, the school was littered with several concrete blocks which were remnants of the old school shop that was destroyed in World War II. Realizing that the huge stones were serious hazards to the schoolchildren, another teacher by the name of Sergio Banez started burying them one by one as early as 1962. In fact, he was able to bury ten of these blocks all by himself.

Deciding to help his colleague, private respondent Edgardo Aquino gathered eighteen of his male pupils, aged ten to eleven, after class dismissal on October 7, 1963. Being their teacher-in-charge, he ordered them to dig beside a one-ton concrete block in order to make a hole wherein the stone can be buried. The work was left unfinished. The following day, also after classes, private respondent Aquino called four of the original eighteen pupils to continue the digging. These four pupils -- Reynaldo Alonso, Francisco Alcantara, Ismael Abaga and Novelito Ylarde, dug until the excavation was one meter and forty centimeters deep. At this point, private respondent Aquino alone continued digging while the pupils remained inside the pit throwing out the loose soil that was brought about by the digging.

When the depth was right enough to accommodate the concrete block, private respondent Aquino and his four pupils got out of the hole. Then, said private respondent left the children to level the loose soil around the open hole while he went to see Banez who was about thirty meters away. Private respondent wanted to borrow from Banez the key to the school workroom where he could get some rope. Before leaving, private respondent Aquino allegedly told the children "not to touch the stone."

A few minutes after private respondent Aquino left, three of the four kids, Alonso, Alcantara and Ylarde, playfully jumped into the pit. Then, without any warning at all, the remaining Abaga jumped on top of the concrete block causing it to slide down towards the opening. Alonso and Alcantara were able to scramble out of the excavation on time but unfortunately for Ylarde, the concrete block caught him before he could get out, pinning him to the wall in a standing position. As a result thereof, Ylarde sustained the following injuries:

"1. Contusion with hematoma, left inguinal region and suprapubic region.

2. Contusion with ecchymosis, entire acrotal region.

3.

Lacerated wound, left lateral aspects of penile skin with phimosis.

4. Abrasion, gluteal region, bilateral.

5.

Intraperitoneal and extraperitoneal extravasation of blood and urine about 2 liters.

6.

Fracture, simple, symphysis pubis.

7. Ruptured (macerated) urinary bladder with body of bladder almost entirely separated from its neck.

REMARKS:

1. Above were incurred by crushing injury.

2. Prognosis very poor.

(Sgd.)MELQUIADES A. BRAVO

Physician on Duty."[1]

Three days later, Novelito Ylarde died.

Ylarde's parents, petitioners in this case, filed a suit for damages against both private respondents Aquino and Soriano. The lower court dismissed the complaint on the following grounds: (1) that the digging done by the pupils is in line with their course called Work Education; (2) that Aquino exercised the utmost diligence of a very cautious person; and (3) that the demise of Ylarde was due to his own reckless imprudence.[2]

On appeal, the Court of Appeals affirmed the Decision of the lower court.

Petitioners base their action against private respondent Aquino on Article 2176 of the Civil Code for his alleged

negligence that caused their son's death while the complaint against respondent Soriano as the head of school is founded on Article 2180 of the same Code.

Article 2176 of the Civil Code provides:

"Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

On the other hand, the applicable provision of Article 2180 states:

"Art. 2180. x x x

"x x x.

"Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody."[3]

The issue to be resolved is whether or not under the cited provisions, both private respondents can be held liable for damages.

As regards the principal, We hold that he cannot be made responsible for the death of the child Ylarde, he being the head of an academic school and not a school of arts and trades. This is in line with Our ruling in *Amadora vs. Court of Appeals*,[4] wherein this Court thoroughly discussed the doctrine that under Article 2180 of the Civil Code, it is only the teacher and not the head of an academic school who should be answerable for torts committed by their students. This Court went on to say that in a school of arts and trades, it is only the head of the school who can be held liable. In the same case, We explained:

"After an exhaustive examination of the problem, the Court has come to the conclusion that the provision in question should apply to all schools, academic as well as non-academic. Where the school is academic rather than technical or vocational in nature, responsibility for the tort committed by the student will attach to the teacher in charge of such student, following the first part of the provision. This is the general rule. In the case of establishments of arts and trades, it is the head thereof, and only he, who shall be held liable as an exception to the general rule. In other words, teachers in general shall be liable for the acts of their students except where the school is technical in nature, in which case it is the head thereof who shall be answerable. Following the canon of *reddendo singula singulis*, 'teachers' should apply to the words 'pupils and students' and 'heads of establishments of arts and trades' to the word 'apprentices.'"

Hence, applying the said doctrine to this case, We rule that private respondent Soriano, as principal, cannot be held liable for the reason that the school he heads is an academic school and not a school of arts and trades. Besides, as clearly admitted by private respondent Aquino, private respondent Soriano did not give any instruction regarding the digging.

From the foregoing, it can be easily seen that private respondent Aquino can be held liable under Article 2180 of the Civil Code as the teacher-in-charge of the children for being negligent in his supervision over them and his failure to take the necessary precautions to prevent any injury on their persons. However, as earlier pointed out, petitioners base the alleged liability of private respondent Aquino on Article 2176 which is separate and distinct from that provided for in Article 2180.

With this in mind, the question We need to answer is this: Were there acts and omissions on the part of private respondent Aquino amounting to fault or negligence which have direct causal relation to the death of pupil Ylarde? Our answer is in the affirmative. He is liable for damages.

From a review of the record of this case, it is very clear that private respondent Aquino acted with fault and gross

negligence when he: (1) failed to avail himself of services of adult manual laborers and instead utilized his pupils aged ten to eleven to make an excavation near the one-ton concrete stone which he knew to be a very hazardous task; (2) required the children to remain inside the pit even after they had finished digging, knowing that the huge block was lying nearby and could be easily pushed or kicked aside by any pupil who by chance may go to the perilous area; (3) ordered them to level the soil around the excavation when it was so apparent that the huge stone was at the brink of falling; (4) went to a place where he would not be able to check on the children's safety; and (5) left the children close to the excavation, an obviously attractive nuisance.

The negligent act of private respondent Aquino in leaving his pupils in such a dangerous site has a direct causal connection to the death of the child Ylarde. Left by themselves, it was but natural for the children to play around. Tired from the strenuous digging, they just had to amuse themselves with whatever they found. Driven by their playful and adventurous instincts and not knowing the risks they were facing, three of them jumped into the hole while the other one jumped on the stone. Since the stone was so heavy and the soil was loose from the digging, it was also a natural consequence that the stone would fall into the hole beside it, causing injury on the unfortunate child caught by its heavy weight. Everything that occurred was the natural and probable effect of the negligent acts of private respondent Aquino. Needless to say, the child Ylarde would not have died were it not for the unsafe situation created by private respondent Aquino which exposed the lives of all the pupils concerned to real danger.

We cannot agree with the finding of the lower court that the injuries which resulted in the death of the child Ylarde were caused by his own reckless imprudence. It should be remembered that he was only ten years old at the time of the incident. As such, he is expected to be playful and daring. His actuations were natural to a boy his age. Going back to the facts, it was not only him but the three of them who jumped into the hole while the remaining boy jumped on the block. From this, it is clear that he only did what any other ten-year old child would do in the same situation.

In ruling that the child Ylarde was imprudent, it is evident that the lower court did not consider his age and maturity. This should not be the case. The degree of care required to be exercised must vary with the capacity of the person endangered to care for himself. A minor should not be held to the same degree of care as an adult, but his conduct should be judged according to the average conduct of persons of his age and experience.^[5] The standard of conduct to which a child must conform for his own protection is that degree of care ordinarily exercised by children of the same age, capacity, discretion, knowledge and experience under the same or similar circumstances.^[6] Bearing this in mind, We cannot charge the child Ylarde with reckless imprudence.

The court is not persuaded that the digging done by the pupils can pass as part of their Work Education. A single glance at the picture showing the excavation and the huge concrete block^[7] would reveal a dangerous site requiring the attendance of strong, mature laborers and not ten-year old grade-four pupils. We cannot comprehend why the lower court saw it otherwise when private respondent Aquino himself admitted that there were no instructions from the principal requiring what the pupils were told to do. Nor was there any showing that it was included in the lesson plan for their Work Education. Even the Court of Appeals made mention of the fact that respondent Aquino decided all by himself to help his co-teacher Banez bury the concrete remnants of the old school shop.^[8] Furthermore, the excavations should not be placed in the category of school gardening, planting trees, and the like as these undertakings do not expose the children to any risk that could result in death or physical injuries.

The contention that private respondent Aquino exercised the utmost diligence of a very cautious person is certainly without cogent basis. A reasonably prudent person would have foreseen that bringing children to an excavation site, and more so, leaving them there all by themselves, may result in an accident. An ordinarily

careful human being would not assume that a simple warning "not to touch the stone" is sufficient to cast away all the serious danger that a huge concrete block adjacent to an excavation would present to the children. Moreover, a teacher who stands in loco parentis to his pupils would have made sure that the children are protected from all harm in his company.

We close by categorically stating that a truly careful and cautious person would have acted in all contrast to the way private respondent Aquino did. Were it not for his gross negligence, the unfortunate incident would not have occurred and the child Ylarde would probably be alive today a grown man of thirty-five. Due to his failure to take the necessary precautions to avoid the hazard, Ylarde's parents suffered great anguish all these years.

WHEREFORE, in view of the foregoing, the petition is hereby GRANTED and the questioned judgment of the respondent court is REVERSED and SET ASIDE and another judgment is hereby rendered ordering private respondent Edgardo Aquino to pay petitioners the following:

(1) Indemnity for the death of Child

Ylarde P30,000.00

(2) Exemplary damages 10,000.00

(3) Moral damages 20,000.00

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Pages 2-3, Rollo.

[2] Decision of the Court of First Instance of Pangasinan, page 22, Original Record.

[3] Article 2180 of the Civil Code.

[4] G.R. No. L-47745, April 15, 1988.

[5] Sangco, Philippine Law on Torts and Damages, 1978 ed., p. 62.

[6] Ibid, p. 123.

[7] Exh. "B", Original Exhibit.

[8] Decision of the Court of Appeals; page 33, Rollo.

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