

HEDY GAN Y YU, PETITIONER; VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. L-44264. September 19, 1988*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a8230ecff318/>**FERNAN, C.J.:**

Petitioner Hedy Gan was convicted of the crime of Homicide thru Reckless Imprudence in Criminal Case No. 10201 of the then Court of First Instance of Manila, Branch XXII, presided by Judge Federico C. Alikpala. She was sentenced to an indeterminate penalty of four (4) months and one (1) day of arresto mayor as minimum and two (2) years, four (4) months and one (1) day of prision correccional as maximum and was made to indemnify the heirs of the victim the sum of P12,000.00 without any subsidiary imprisonment in case of insolvency and to pay the costs. On appeal, the trial court's decision was modified and petitioner was convicted only of Homicide thru Simple Imprudence. Still unsatisfied with the decision of the Court of Appeals,[1] petitioner has come to this Court for a complete reversal of the judgment below.

The facts of the case as found by the appellate court are as follows:

"In the morning of July 4, 1972 at about 8:00 o'clock, the accused Hedy Gan was driving a Toyota car along North Bay Boulevard, Tondo, Manila. While in front of house no. 694 of North Bay Boulevard, there were two vehicles, a truck and a jeepney parked on one side of the road, one following the other about two to three meters from each other. As the car driven by the accused approached the place where the two vehicles were parked, there was a vehicle coming from the opposite direction, followed by another which tried to overtake and bypass the one in front of it and thereby encroached the lane of the car driven by the accused. To avoid a head-on collision with the oncoming vehicle, the defendant swerved to the right and as a consequence, the front bumper of the Toyota Crown Sedan hit an old man who was about to cross the boulevard from south to north, pinning him against the rear of the parked jeepney. The force of the impact caused the parked jeepney to move forward hitting the rear of the parked truck ahead of it. The pedestrian was injured, the Toyota Sedan was damaged on its front, the jeep suffered damages on its rear and front parts, and the truck sustained scratches at the wooden portion of its rear. The body of the old man who was later identified as Isidoro Casino was immediately brought to the Jose Reyes Memorial Hospital but was (pronounced) dead on arrival." [2]

An information for Homicide thru Reckless Imprudence was filed against petitioner in view of the above incident. She entered a plea of not guilty upon arraignment and the case was set for trial.

Meanwhile, petitioner sought and was granted a re-investigation by the City Fiscal, as a result of which the trial fiscal moved for the dismissal of the case against petitioner during the resumption of hearing on September 7, 1972. The grounds cited therefor were lack of interest on the part of the complaining witness to prosecute the case as evidenced by an affidavit of desistance submitted to the trial court and lack of eyewitness to sustain the charge.

The motion to dismiss filed by the fiscal was never resolved. The Court instead ordered the prosecution to present its evidence. After the prosecution rested its case, the petitioner filed a motion to dismiss the case on the ground of insufficiency of evidence.

On December 22, 1972, the trial court rendered judgment finding petitioner guilty beyond reasonable doubt of the

offense charged.

Petitioner appealed to the Court of Appeals in CA-G.R.No. 14472-CR. On May 3, 1976, the Court of Appeals rendered a decision, the dispositive portion of which reads as follows:

"Wherefore, as modified, the accused Hedy Gan is guilty beyond reasonable doubt of the crime of homicide thru simple imprudence and, pursuant to paragraph 2, Article 365 of the Revised Penal Code she is hereby sentenced to the indeterminate penalty of three (3) months and eleven (11) days of arresto mayor and to indemnify the heirs of Isidoro Casino in the sum of Twelve Thousand Pesos (P12,000.00) without, however, any subsidiary imprisonment in case of insolvency, and to pay the costs."[3]

Petitioner now appeals to this Court on the following assignments of errors:

I

The Court of Appeals erred in holding that when the petitioner saw a car travelling directly towards her, she should have stepped on the brakes immediately or in swerving her vehicle to the right should have also stepped on the brakes or lessened her speed, to avoid the death of a pedestrian.

II

The Court of Appeals erred in convicting the petitioner of the crime of Homicide thru Simple Imprudence.

III

The Court of Appeals erred in adjudging the petitioner liable to indemnify the deceased in the sum of P12,000.00.[4]

We reverse.

The test for determining whether or not a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: Would a prudent man in the position of the person to whom negligence is attributed foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes the duty on the doer to take precaution against its mischievous results and the failure to do so constitutes negligence.[5]

A corollary rule is what is known in the law as the emergency rule. "Under that rule, one who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence."[6]

Applying the above tests to the case at bar, we find the petitioner not guilty of the crime of Simple Imprudence resulting in Homicide.

The appellate court in finding the petitioner guilty said:

"The accused should have stepped on the brakes when she saw the car going in the opposite direction followed by another which overtook the first by passing towards its left. She should not only have swerved the car she was driving to the right but should have also tried to stop or lessen her speed so that she would not bump into the pedestrian who was crossing at the time but also the jeepney which was then parked along the street."[7]

The course of action suggested by the appellate court would seem reasonable were it not for the fact that such

suggestion did not take into account the amount of time afforded petitioner to react to the situation she was in. For it is undeniable that the suggested course of action presupposes sufficient time for appellant to analyze the situation confronting her and to ponder on which of the different courses of action would result in the least possible harm to herself and to others.

Due to the lack of eyewitnesses, no evidence was presented by the prosecution with respect to the relative distances of petitioner to the parked jeepney and the oncoming overtaking vehicle that would tend to prove that petitioner did have sufficient time to reflect on the consequences of her instant decision to swerve her car to the right without stepping on her brakes. In fact, the evidence presented by the prosecution on this point is the petitioner's statement to the police[8] stating:

"Ang masasabi ko lang ho umiwas ho ako set isang sasakyan ng biglang nagoovertake sa sasakyan na aking kasalubong kung kaya ay aking kinabig sa kanan ang aking kotse subalit siya naman bis!ang pagtawid ng tao o victim at hindi ko na ho naiiwasan at ako ay wala ng magawa. Iyan ho ang buong pangyayari nang nasabing aksidente."[9] (*italics supplied*)

The prosecution having presented this exhibit as its own evidence, we cannot but deem its veracity to have been admitted by it. Thus, under the circumstances narrated by petitioner, we find that the appellate court is asking too much from a mere mortal like the petitioner who in the blink of an eye had to exercise her best judgment to extricate herself from a difficult and dangerous situation caused by the driver of the overtaking vehicle. Petitioner certainly could not be expected to act with all the coolness of a person under normal conditions.[10] The danger confronting petitioner was real and imminent, threatening her very existence. She had no opportunity for rational thinking but only enough time to heed the very powerful instinct of self-preservation.

Also, the respondent court itself pronounced that the petitioner was driving her car within the legal limits. We therefore rule that the "emergency rule" enunciated above applies with full force to the case at bar and consequently absolve petitioner from any criminal negligence in connection with the incident under consideration.

We further set aside the award of damages to the heirs of the victim, who by executing a release of the claim due them, had effectively and clearly waived their right thereto.

WHEREFORE, judgment is hereby rendered acquitting petitioner HEDY GAN y YU of the crime of Homicide thru Simple Imprudence. She is no longer liable for the P12,000.00 civil indemnity awarded by the appellate court to the heirs of the victim.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Gutierrez, Jr., J., on leave.

[1] Penned by then CA Justice Lorenzo Relova, concurred in by Justices Ramon G. Gaviola, Jr., and Mariano Serrano.

[2] pp. 33-34. Rollo.

[3] pp. 42-43. Rollo.

[4] p. 15, Rollo.

[5] Picart vs. Smith, 35 Phil. 809.

[6] Siegl vs. Watson, 1 95 NW 867; Hickman v. Southern Pacific Transport Co., 262 So. 2d., 385. 262 La., 102: Robert v. Travelers Indemnity Co., 196 So. 2d. 657.

[7] p. 42, Rollo.

[8] Exhibit E.

[9] p. 16, Rollo.

[10] Smith v. Tate, 289 So. 2d 189.

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