

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE V. ORTEGA, ACCUSED-APPELLANT.

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GONZALES-SISON, M., J.:[*]

Accused-appellant Vicente B. Ortega (“appellant”) appeals before this Court the 14 August 2013 Decision[1] of the Regional Trial Court (“RTC”) of Valenzuela City, Branch 172 in Criminal Case No. 389-V-06[2], finding appellant guilty beyond reasonable doubt of reckless imprudence resulting to slight physical injuries and reckless imprudence resulting to damage to property.

The assailed Decision disposes:

“WHEREFORE, the court finds the accused guilty beyond reasonable doubt as principal of the crime of reckless imprudence resulting to slight physical injuries and reckless imprudence resulting to damage to property and he is hereby sentenced to suffer the penalty of:

- 1) Public Censure for reckless imprudence resulting to slight physical injuries; and
- 2) Fine in the amount of P183,875.00 for reckless imprudence resulting to damage to property.

The accused is likewise ordered to pay Winston Carillo the amount of P13,645.80 for hospitalization expenses, P183,875.00 as reparation of the damage caused to the vehicle of complainant Winston Carillo and P5,000.00 for each of the victims as moral damages.

SO ORDERED.”

The antecedents are as follows:

In an Information[3] dated 27 February 2006, the appellant was charged with reckless imprudence resulting in damage to property, less serious physical injuries and serious physical injuries, to wit:

“That on or about October 23, 2005 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, being then the driver and person-in-charge of a Toyota RAV-4 with Plate No. JVS-333, did then and there unlawfully and feloniously drive, manage and operate the same along North Luzon Expressway, km 17+860 Lawang Bato, Valenzuela City, in a reckless, negligent and imprudent manner, without taking the necessary precautions to avoid accident to persons and damage to property, and as a result of such recklessness, negligence and imprudence, said vehicle driven by the accused, hit and bumped a right front door of Toyota Tamaraw FX wagon with Plate No. WHK-660 driven by Winston Carillo y Nuelan causing said Toyota Tamaraw FX wagon to spin around and roll over and said Winston Carillo y Nuealn (sic) and passengers Remedios Carillo, Annaliza de Leon, Evangeline Santiago, and Ricardo Umlas all sustained physical injuries which injuries required medical attendance for a period of less than thirty (30) days and incapacitated said victims from performing their habitual work for the same period of time and Mc Laren S. Duma-Os, 6 years old and Camille S. Carillo 11 years old also passengers of said Toyota Tamaraw FX wagon sustained physical injuries which injuries would render them ill or incapacitated for labor for more than 30 days and ISIDRA SAN DIEGO sustained serious physical injuries and causing the said Toyota Tamaraw FX wagon to be damaged in the amount of P183,837.00.

CONTRARY TO LAW.”

Appellant pleaded not guilty when arraigned, and no settlement was reached.

The RTC summarized the undisputed facts as follows:

“ Winston Carillo was the driver of Toyota Revo bearing Plate No. WHJ-660 while Vicente B. Ortega, the accused, was the driver of the Toyota RAV4 with Plate No. JVS-333.

On October 23, 2005 at around 7 o' clock in the evening, the Toyota Revo and Toyota RAV4 driven by Winston and the accused respectively were both cruising North Luzon Expressway (NLEX) going South.

On board the Toyota Revo with Winston and his wife Remedios Carillo; his daughter Camille Carillo, 11 years old (Exh. K); his son Charles Carillo; his mother-in-law Isidra San Diego; his sister-in-law Analiza De Leon; his nephew Mc Laren Dumo-os, who is only 5 years old (Exh. J); his niece Evangeline Santiago; and his nephew Ricardo Umlas. They came from Bocaue going to Valenzuela.

On board the Toyota RAV4 with the accused was his wife and daughter, his brother -in-law Edgardo Santos and the latter's wife and 11-year old daughter. They came from San Rafael, Bulacan going to Quezon City.

While the two vehicles were at km 17+ 860 Lawang Bato, Valenzuela City, the left headlight portion of the Toyota RAV 4 bumped the right front passenger side of the Toyota Revo.

As a result, the Toyota Revo turned turtle, turned around and continued to run upside-down. On the other hand, the Toyota RAV 4 driven by the accused fell on the canal at the right side of the highway.

Winston and his wife Remedios suffered multiple abrasions (Exh. G & G-1); Ricardo Dumlas suffered lacerated wound about 15 cm, right frontal area (Exh. G-2), Annaliza de Leon suffered contusion hematoma, right parieto-occipital area (Exh. G-3) and she was not able to do household chores for one (1) week; Camille Carillo suffered multiple abrasions on her face, right shoulder, lower back, right lateral thigh, right dorsal foot, left medial leg, contusion hematoma upper lip, myofascial pain syndrome, left medial leg (Exh. G-4, I-3 to I-4) and she was not able to go to school after the incident for one week; Evangeline Santiago suffered Myofascial Pain Syndrome, nape, right (Exh. G-5); Mc Laren S. Dumo-os suffered closed complete fracture, middle one-third clavicle, left (Exh. G-6 & I); and Isidra San Diego suffered contusion hematoma, frontal area (Exh. G-7, I-1 & I-2).

Winston and his wife spent the total amount of P13,645.80 for medical expenses of the victims (Exh. N, N-1, N-2). The Toyota Revo incurred damages in the amount of P183,857.00 (Exh. M&M-1).

Romeo Calventas, Accident Investigator of Tollways Management Corporation (TMC) who received a call about a traffic accident at Km. 17+800 proceeded to the site and took pictures. He also prepared a sketch of the scene and Traffic Accident Report. He turned over the drivers as well as the vehicles involved in the accident and the documents he prepared to the Valenzuela Police Station.

SPO1 Benjamin Valenzuela was the police investigator assigned in the case. The case was turned over to him around 10:00 o'clock in the evening of October 23, 2005. He prepared the Traffic Accident Report. He took the statements of the two drivers.”

The version of the prosecution blamed appellant for the accident[4], viz:

“On October 23, 2005, at around 7:10 in the evening, Winston Carillo was driving the Toyota Revo along NLEX coming from Bocaue going to Valenzuela City.

While he was at Lawang Bato occupying the 3[rd] lane from the right, the right front passenger side of the Toyota Revo was bumped by the Toyota RAV4 driven by the accused. As a result, Winston lost control of the Toyota Revo. He tried to control the Toyota Revo because it would hit a barrier but when he stepped on the

brake, the Toyota Revo turned turtle, turned around and continued to run upside-down. On the other hand, the Toyota RAV4 driven by the accused fell in the canal at the right side of the highway.

According to Winston, prior to the actual collision, the accused was behind a white car on his right side. The accused overtook the white vehicle using the shoulder road and when the accused returned to the main road, the left headlight portion of the RAV 4 driven by the accused bumped the right front passenger side of the Toyota Revo.

The recklessness of the accused was witnessed by Francis Belo, a motorist. According to Francis Belo, around the same time on the date of the incident, he was driving his car at the NLEX. On board his vehicle was his wife who is a pediatrician. While he was entering the NLEX coming from Meycauayan Exit going to Manila, the Toyota RAV 4 which was running fast suddenly cut his path. Then he suddenly saw a Toyota RAV 4 was rushing and was swerving all over the place. Then he suddenly saw a Toyota Revo that tipped over and the Toyota RAV 4 on the ditch at the right side of the highway. He and his wife helped carry the victims, an old lady and a boy to the side of the highway.“.

On the other hand, the appellant raised the defense[5] that complainant Winston Carillo caused the accident:

“ According to the accused, Winston was occupying Lane 2 from the center while he was occupying Lane 3 from the center of NLEX. He was behind the Toyota Revo by ten (10) meters. Suddenly, the Toyota Revo swerved to the right and blocked his path. Due to the proximity and the distance, he was not able to do anything except to step on his brakes but it was too late, because it was almost simultaneous with the impact or collision. The Toyota RAV 4 was thrown few meters (sic) obliquely facing the shoulder.”.

The RTC stated the issue as whether or not the accused was guilty of the offense charged.

After trial, the RTC rendered the assailed Decision convicting the appellant.

According to the RTC, the prosecution successfully established that appellant was guilty of reckless imprudence. It noted that appellant had admitted “bumping” the Toyota Revo. It also held that appellant's defense that the collision was pure accident – allegedly caused by complainant Winston's abrupt cutting into his lane – was untenable.

The RTC discussed that the proximate cause of the injuries and damages was the appellant, who had the “last clear chance” to avoid the collision, and which chance he ignored by driving fast (faster than the Revo) and recklessly, which a witness, Belo, corroborated.

With respect to the penalty, the RTC held that the injuries suffered by those aboard the Toyota Revo, there being no doctor's testimony on their extent and gravity, can only be considered slight. It affirmed that the Revo's damages amounted to Php183,857.00[6].

The RTC then ruled that damage to property and slight physical injuries cannot be complexed, both being light felonies. It then treated both as separate felonies, and correspondingly penalized appellant for each offense; as a result, appellant was sentenced to public censure, fine, hospitalization expenses, actual damages and moral damages, as patent in the dispositive portion quoted above.

Hence this appeal.

Appellant assigns the following errors:

THE TRIAL COURT ERRED IN FINDING THAT THE PROXIMATE CAUSE OF THE COLLISION IS THE RECKLESS DRIVING OF THE ACCUSED-APPELLANT.

THE TRIAL COURT ERRED IN SENTENCING ACCUSED TO SUFFER THE PENALTY OF FINE IN

THE AMOUNT OF PHP183,857.00 FOR RECKLESS IMPRUDENCE RESULTING IN DAMAGE TO PROPERTY.

THE TRIAL COURT ERRED IN AWARDING COMPENSATORY DAMAGES IN THE AMOUNT OF PHP13,645.80 FOR HOSPITALIZATION EXPENSES AND PHP183,857.00 AS REPARATION FOR THE DAMAGE CAUSED TO THE VEHICLE OF COMPLAINANT WINSTON CARILLO.

Appellant first insists on his version of the events. He maintains that it was the Revo which cut into his lane. Moreover, that he had collided with the Revo in the manner alleged by the complainant can only be described as “incredible”; appellant posits that if indeed he had overtaken the white car which was on the same lane (the second lane from the shoulder) as the Revo, he would have hit a vehicle on the third or fourth lane from the center of the expressway, and not a vehicle in the same (second) lane.

Appellant bewails that even as the RTC adopted his version of the facts, he contends that the trial court erred when it found that he was driving too fast, and faster than the Revo. He urges this Court to depart from the RTC's findings by discounting the testimony of Belo, whose Salaysay[7] arrived six weeks after the incident. Appellant pointed out too that in the Salaysay, Belo had alleged he was also on the Revo, which clashes with his testimony during trial, i.e., that he was on a separate car.

Appellant contends that the parties have admitted that their speed at the point of collision was at approximately ninety (90) kilometers per hour, which was well within the speed limit. At that rate, they were traveling 25 meters per second and the collision, resulting from complainant's sudden swerving, would have been impossible to avoid. This being the case, appellant insists that the collision was just an accident.

Appellant next argues that the RTC erred in finding him guilty of two separate crimes of reckless imprudence resulting in slight physical injuries and reckless imprudence resulting in damage to property. He cites *Ivler v. Hon. Modesto San Pedro*[8] which held that reckless imprudence is a single crime, the reckless behavior being the act sought to be penalized.

Appellant also faults the RTC for imposing upon him the penalty of a fine. Assuming that he was indeed guilty of reckless imprudence, he argues that the penalty of a fine can only be imposed in crimes of negligence and imprudence only if the offense resulted to damage to property only, based on Art. 365 of the Revised Penal Code (the “RPC”). Hence, since the offense charged upon the accused resulted both in damage to property and slight physical injuries, appellant contends that he must not be made to pay the fine.

Lastly, appellant argues that the prosecution failed to adduce sufficient evidence that the complainants paid Php183,857.00 for repair expenses and Php13,645.80 for hospital expenses. While complainant Winston had identified a Summary of Expenses, appellant posits that the Summary was a mere self-serving document, not being duly supported by receipts, and which was never identified by the person/s who actually prepared the same.

On 20 May 2014, the Office of the Solicitor General (“OSG”) filed the Appellee's Brief[9] in behalf of the appellee People of the Philippines.

The OSG argues that the RTC correctly convicted the appellant. It contends that the proximate cause of the collision was appellant's reckless driving, which was testified to by a witness, who narrated that appellant swerved from one lane to another while driving very fast. Such recklessness was also shown when appellant used the right lane and shoulder side to overtake vehicles, which the OSG averred was contrary to the safer practice of taking the left side of the lane when overtaking. Further, if indeed it was complainant Winston who had caused the collision, then appellant should have filed a case against the former.

The OSG then posits that for the Revo to have turned turtle and for it to have sustained such damage, appellant

must have collided with it while driving at a very fast speed. Even if such speed was within the speed limit on the NLEX, the OSG argues that driving within the limit does not guaranty due care; as seen here, appellant, while not driving beyond the maximum mark, still could not be said to have been driving diligently, due to his disregard of other motorists, the fact that he was driving on a highway at night, and the safe way to overtake vehicles, while driving very fast.

Thus, the OSG argues that the collision was not an accident, and appellant was solely to blame.

Tackling the second issue raised by appellant, the OSG agreed with appellant that the RTC should not have convicted him of two separate crimes, considering that, in reckless imprudence, a quasi-offense, what is principally penalized is the mental attitude or condition behind the act, dangerous recklessness, and lack of care or foresight[10]. Thus, appellant can only be held guilty of one crime, which is reckless imprudence, regardless of the consequences thereof.

The OSG disagrees with appellant's interpretation of Art. 365 of the RPC. The correct application of Art. 365, as guided by the Ivler case, should be that the penalty to be imposed should depend on the consequences of the reckless imprudence; if slight physical injuries and damage to property resulted from the recklessness, these should both be penalized. As to the penalty of the fine, the OSG cites *Angeles v. Jose*[11], wherein the Court, interpreting Art. 365 of the RPC, held that if there is only damage to property, a fine shall be imposed, but "if there are also physical injuries, there should be an additional penalty for the latter".

With respect to appellant's averment that the prosecution failed to prove that the complainants suffered medical and repair expenses in the amounts they alleged, the OSG counters that receipts had been duly presented in court to support those claims.

On 3 June 2014, appellant filed his Reply Brief[12].

We now resolve this case.

The essential issues are: first, whether or not appellant is guilty of reckless imprudence; and second, whether or not the prosecution duly established the expenses suffered by the supposed injured parties.

Reckless imprudence is defined in Art. 365 of the Revised Penal Code, to wit:

"Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place."

In *Dumayag v. People*[13] the Supreme Court had the occasion to apply such definition in cases involving reckless driving:

"Reckless imprudence, as defined by our penal law, consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. In order to establish a motorist's liability for the negligent operation of a vehicle, it must be shown that there was a direct causal connection between such negligence and the injuries or damages complained of. Thus, to constitute the offense of reckless driving, the act must be something more than a mere negligence in the operation of a motor vehicle, and a willful and wanton disregard of the consequences is required."

We now determine whether the RTC erred in ruling that appellant was guilty of reckless driving, and

consequently, reckless imprudence.

An appeal in a criminal case opens the entire case for review. The reviewing tribunal can correct errors though unassigned in the appeal, or even reverse the trial court's decision on grounds other than those raised as errors by the parties[14].

Following such review, We are inclined to uphold appellant's conviction but modify the assailed Decision. We discuss below.

According to the RTC, appellant's version of the incident was more credible, having even been affirmed by the prosecution. Appellant had testified that while he was traversing the second lane from the center, complainants' vehicle suddenly swerved into his lane and in front of him, at a distance of about ten meters. By then, given his speed, which he asserted to be within the speed limit, it was already too late to stop, and he plowed into the Revo. Appellant pleaded that the collision was an accident, caused principally by complainant Winston's sudden swerving.

On the other hand, complainant Winston maintained that he had been driving likewise along the second lane from the shoulder (or third lane from the right). He narrated that prior the collision, appellant was behind a white car on their (complainants') right side; appellant then overtook the white car using the shoulder road, and upon swerving back to the main road, hit complainants' vehicle at the right front passenger side.

Between these two versions, We agree with the RTC that the version of the appellant is indeed more credible.

First, it is axiomatic that factual findings of the trial court are entitled to great respect on appeal, and will not be disturbed in the absence of any showing that the court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which if considered would have affected the result of the case, for it is the trial court and not any court on appeal that can best ascertain the credibility of witnesses[15].

Second, an examination of the records does not support complainant's story. His narration that appellant overtook a white car appears for the first time during direct examination, which makes it suspect. His Salaysay[16] does not mention a white car, or any such overtaking maneuver by the appellant. Neither did the other occupants of the rammed vehicle mention the appellant's overtaking of another vehicle prior the collision. In addition, We add that it challenges credulity that complainant Winston managed to witness appellant's swerving while behind their vehicle, the actual overtaking and appellant's colliding with their Revo as a consequence of the maneuver, yet in his Salaysay, stating that the collision came as a surprise to all of them.

Lastly, complainant Winston failed to be consistent during his cross-examination, and under the scrutiny of the defense, produced a story more consistent with the narration of the appellant:

Q: Now, Mr. Witness, I am showing to you a written statement by one Winston Carillo with the signature at the right middle portion of this document. Will you please examine this carefully before I asked (sic) you a question. Now my question is is this your signature at the middle portion of the document?

A: Yes, sir.

Q: Now this time can you read properly what is written in this Salaysay?

A: Yes, sir.

Q: Now I made my own translation just correct me if I am wrong, I want to put it on record.

COURT: Why don't you let the witness read it?

FISCAL: Yes, your Honor, that would be more accurate.

ATTY. VARGAS: Okay, would you please read my own translation.

COURT: No, the sworn statement, the one written by the witness.

ATTY. VARGAS: Yes, your Honor. Will you please read it before this Honorable Court.

A: Pagdating ko sa Lawang Bato habang tumatakbo bigla na lang may nagcut sa amin kaya nawalan ako ng panimbang binangga kami hindi ko na alam kung ano ang sumunod. Tulirong tuliro po ako nyan.

Q: I am not asking about that. Now you said that there was a vehicle which made a cut in front of you is that correct?

A: Yes, sir.

Q: I understand that vehicle is another vehicle, correct?

A: Yes, sir.

Q: And a 2[nd] vehicle rampled (sic) the right front door of your Revo van, am I correct?

A: The one who followed, sir.

COURT:

Q: The one who followed your car?

A: No, the RAV-4, sir.

ATTY. VARGAS:

Q: In other words the RAV vehicle is the second vehicle and that is different from the third vehicle which cut you way am I correct?

A: Actually it was not cut but the car overtook my car, sir.

Q: Never mind. But the one who overtook you first is a different car from the Rav car?

A: Yes, sir.”[17]

Complainant Winston's cross-examination, considered alongside appellant's testimony, thus unravels a more persuasive version of the incident: that Winston was driving, unmindful of appellant behind him on the next lane; that another car suddenly overtook him and cut in front of Winston; that he was forced to swerve into appellant's lane; and that appellant, suddenly and with great force, hit complainants' Revo at the right front passenger door.

We now contend with the next emerging issue: whether or not appellant was driving at such excessive speed as to constitute reckless imprudence.

The RTC reached a positive finding. It took into account appellant's own testimony of his driving speed and a witness' testimony, who recalled appellant to have been swerving “all over the place” while driving really fast, and who chanced upon the collision after being cut off by the appellant himself.

In his defense, appellant, while admitting that he was driving faster than the Revo, contended that his speed fell within the speed limit allowed in the NLEX.

Relevantly, in *Caminos v. People*[18], the Supreme Court painstakingly discussed the guidelines in appreciating speed as a factor to determine reckless imprudence:

“Rate of speed, in connection with other circumstances, is one of the principal considerations in determining whether a motorist has been reckless in driving an automobile, and evidence of the extent of the damage caused may show the force of the impact from which the rate of speed of the vehicle may be modestly inferred.

x x x

x x x x x x x x

Speeding, moreover, 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. What is reasonable speed, of course, is necessarily subjective as it must conform to the peculiarities of a given case but in all cases, it is that which will enable the driver to keep the vehicle under control and avoid injury to others using the highway. This standard of reasonableness is actually contained in Section 35 of R.A. No. 4136. It states:

SEC. 35. Restriction as to speed.—(a) Any person driving a motor vehicle on a highway shall drive the same 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 of any other condition then and there existing; and 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.

Even apart from statutory regulations as to speed, a motorist is nevertheless expected to exercise ordinary care and drive at a reasonable rate of speed commensurate with all the conditions encountered which will enable him to keep the vehicle under control and, whenever necessary, to put the vehicle to a full stop to avoid injury to others using the highway.” (Emphasis Ours.)

Thus, when We consider that reasonableness of speed is another restraint on motorists' speed, apart from designated speed limits in roads and highways, appellant's argument loses persuasive weight. True, appellant may have been driving below the maximum speed limit on the NLEX, but was his speed still reasonable, i.e., was he still capable of controlling the vehicle, of putting it at a full stop to avoid injury to others?

After due consideration of the evidence on record, We find that appellant's speed was not reasonable, and indicated reckless behavior.

First, the prosecution's witness, Francis Belo, credibly established that appellant had been driving terribly fast and weaving carelessly a few moments prior the collision. The witness had testified in a categorical, clear and direct manner. There is likewise no ill motive on his part to testify against the appellant, a complete stranger. Belo's testimony is crucial because it proves that in the minutes leading to the crash, appellant was speeding recklessly through the highway, behaving with little regard for his fellow motorists.

Materially, the delay in the execution of Belo's Salaysay was sufficiently explained during cross-examination, wherein he clarified that he only caused the execution of the same when the complainants called him at the number he had provided them at the time of the crash[19].

Appellant also raised that Belo's testimony must be disbelieved because Belo's Salaysay clashes with it; appellant points out that in the Salaysay, the witness had written that he was also aboard the complainant's Revo.

We are unable to agree with appellant. A perusal of the same Salaysay persuades that when Belo (presumably) filled in the blanks regarding the preliminaries of the incident as “driver/pasahero” (driver/passenger) of the Revo, he was not in anyway representing to be aboard the vehicle, but had only filled up such portion as a formality. A reading of the Salaysay does not convince Us that this is part of his story. In fact, in that same document, he then proceeds to narrate what he had seen from the point of view of a third person/motorist, and consistent with his later testimony.

Second, appellant's own testimony reveals that his speed was not reasonable. As he had testified, complainants' Revo was still ten meters ahead of him[20] when it swerved into his lane, apparently caused by another vehicle cutting it off. Considering everyday observation and experience, a distance of ten meters is still considerable and allows time for appropriate action if the approaching driver is in control. Stated otherwise, since appellant had admitted that he could no longer do anything to avoid the imminent collision with a vehicle still ten meters ahead of him, We reach the conclusion that appellant must have had no control over his vehicle during those crucial moments, which can only be explained by his excessive speed.

Lastly, the extent of the damage caused to the vehicles concerned and the Revo's turning turtle supports the finding that appellant had been driving at a reckless speed when he rammed into the Revo. The side of the vehicle which appellant had collided with, unimpeded by any attempts to brake on his part, appears to have been thoroughly smashed. On the other hand, appellant's RAV4 suffered substantial damage on its frontal portion, also indicating that it was traveling at great speed up to the point of impact. In addition, the Revo would not have turned turtle had appellant been able to manipulate the brakes, the speed, and direction of his vehicle, thus lessening the force inflicted upon the Revo.

Thus, for the above reasons, We affirm that the RTC did not commit an error when it convicted appellant of reckless imprudence due to his excessive speed when he was driving. Had appellant exercised due care and observed reasonable speed that night, the effect of the collision would have been substantially mitigated, if not thoroughly avoided.

Anent the second error, We agree with the appellant and the OSG that the RTC erred in convicting him of two separate crimes of reckless imprudence resulting to slight physical injuries and reckless imprudence resulting to damage to property.

The Court settled this issue as early as 1955, in *Quizon v. Justice of the Peace of Pampanga*[21] cited by the OSG, which it then reiterated in the more recent *Ivler v. Hon. Modesto*[22], cited by the appellant. In those cases, the Supreme Court made it clear that reckless imprudence is a single crime, and the provisions penalizing such imprudence (as well as negligence) punish the mental attitude or condition behind the act, the dangerous recklessness and lack of care or foresight; it is not a crime in itself but a means to commit a crime, or crimes, be it damage to property or injury to other persons.

Thus in the *Ivler* case, the Court reminded that for purposes of prosecution under Art. 365 of the RPC, there should be no splitting of charges, and prosecutions under Article 365 should proceed from a single charge regardless of the number or severity of the consequences. While in imposing penalties, "the judge will do no more than apply the penalties under Article 365 for each consequence alleged and proven".

For this reason, the judgment will have to be modified.

Another error raised by appellant is that he cannot be made to pay the fine because the reckless imprudence resulted in both physical injuries and damage to property. Appellant interprets Art. 365 of the RPC to mean that a fine can only be imposed if the felonious recklessness produces only damage to property.

Appellant is mistaken.

The concerned provision provides:

"Where the execution of the act covered by this article 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".

A careful reading of such passage and the entirety of Art. 365 would show that appellant was misguided. The above passage means that if imprudence or negligence results only in damage to property, the offender shall be punished by a fine. Appellant distorts the same to mean that if a fine should be imposed, the imprudence or negligence must have resulted to damage to property only. Obviously, these are two starkly different propositions; the first interpretation allows for imprisonment and a fine if the imprudence or negligence results in injuries and damage to property, but clarifies that if there is only damage to property, then a fine shall suffice; the second, or appellant's interpretation, unduly conditions and restricts the penalty of fine to cases involving damage to property only, so that if the imprudence or negligence results in injury and damage to property, the offender is exempt from paying the fine. Unfortunately for the appellant, his interpretation finds no anchor in the clear language of Art. 365.

To eliminate any doubt, however, We cite the categorical and undisturbed holding in *Angeles, et. al. v. Jose, et. al.*[23], cited by the OSG, wherein the Court took time to elucidate on the meaning of the portion cited:

“The above-quoted provision simply means that if there is only damage to property, the amount fixed therein shall be imposed, but if there are also physical injuries, there should be an additional penalty for the later.”

Finally, We turn to appellant's assertion that the amount of repairs amounting to Php183,857.00 have not been proved.

Appellant's argument is with merit.

We agree that the prosecution failed to prove the costs of damages on the Revo. The Estimate Sheet has not been properly identified by the person who prepared the same. It must be emphasized that the value of damages on property partakes of the nature of actual damages; thus, these must be proved with a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable, and cannot be presumed[24]. Relevantly, it has also been held that an estimate of the costs will not suffice[25].

Thus, for failure of the prosecution to prove with ample evidence that the Revo suffered damages amounting to Php183,857.00, the same award must be deleted, as well as the fine based thereon.

However, this does not mean that appellant is off the hook.

In *Marikina Auto Line Transport Corp. v. People*[26], the Court affirmed exemplary damages despite the failure of the respondent-claimant to prove the amount of actual damages suffered by his property. Under the Civil Code, such damages are awarded by way of example for the common good, and are in addition to moral, temperate, liquidated, or compensatory damages[27].

After due consideration, We find that appellant must be made to pay the reasonable amount of P5,000.00 as exemplary damages to each of the victims, each of whom have already been awarded moral damages in that same amount.

We likewise award temperate damages. In *Tan, et. al. v. OMC Carriers, Inc. and Arambala*[28], the Supreme Court allowed the award of temperate damages in lieu of actual damages when the petitioner failed to prove actual damages to her house and materials, holding that:

Nonetheless, absent competent proof on the actual damages suffered, a party still has the option of claiming temperate damages, which may be allowed in cases where, from the nature of the case, definite proof of pecuniary loss cannot be adduced although the court is convinced that the aggrieved party suffered some pecuniary loss. As defined in Article 2224 of the Civil Code:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory

damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

Relying on the photographs of the damage inflicted upon the vehicle, the type of vehicle involved, and other attendant circumstances, We deem the award of P80,000.00 temperate damages as just and proper. The same shall be paid to complainant Remedios Carillo, under whose name the Revo is registered.

Since We are on the subject of damages and that this is a criminal case on appeal, We also reexamine the amount of hospital expenses appellant was ordered to pay. According to the RTC, appellant's victims incurred medical expenses in the amount of Php13,645.00. We find that unlike the cost of damages incurred by the complainants' vehicle, this amount had been duly proved. The complainants have formally offered official receipts[29] detailing the payment of these hospitalization related costs and complainant Winston Carillo has identified them[30]. Thus, appellant's assertion that the amount is not supported by receipts and is only self-serving deserves scant consideration[31]. We thus affirm the RTC's holding on this matter.

Thus, following the above discussions, We affirm but modify the Decision subject of this appeal.

WHEREFORE, the assailed judgment is AFFIRMED with MODIFICATION to read as follows:

1. The accused-appellant, Vicente B. Ortega, is guilty beyond reasonable doubt of the single crime of reckless imprudence resulting in slight physical injuries and damage to property. Accordingly, he is meted the penalty of public censure;
2. Since the prosecution failed to prove the amount of damages sustained by the Revo, accused-appellant is hereby ordered to pay, in lieu of actual damages, temperate damages to Remedios Carillo, amounting to Php80,000.00 for damages sustained by her vehicle; however, the fine is deleted since the basis for the computation thereof has not been established;
3. Accused-appellant is likewise ordered to pay moral damages of Php5,000.00, as well as exemplary damages of Php5,000.00, to each of his victims, herein private complainants; and
4. Finally, appellant is ordered to pay Winston Carillo the amount of Php13,645.80 for hospitalization expenses.

SO ORDERED.

Ybañez, E.A.,[**] and Sorongon, E.D., JJ., concur.

[*] Vice J. Carandang per Office Order No. 485-14-RSF dated November 24, 2014

[**] Vice J. Gonzales-Sison per Office Order No. 485-14-RSF dated November 24, 2014

[1] Rollo,37-43.

[2] Entitled "People of the Philippines v. Vicente B. Ortega".

[3] Rollo, p. 13.

[4] See pp. 2-3 of the Decision, at rollo, pp. 38-39.

[5] See p. 3 of the Decision, at rollo, p. 39.

[6] Based on an Estimate Sheet from the Prosecution; see Index of Exhibits, Exh. M-1.

- [7] Exh. U of the Prosecution.
- [8] G.R. No. 172716, 17 November 2010.
- [9] Rollo, pp. 87-103.
- [10] Citing *Quizon v. Justice of the Peace of Pampanga*, 97 Phil. 342 [1955].
- [11] 96 Phil. 151 [1954].
- [12] Rollo, pp. 105-108.
- [13] G.R. No. 172778, 26 November 2012.
- [14] G.R. No. 177163, 24 April 2009.
- [15] See *People v. Villanueva and Durana*, G.R. No. 114266, 4 December 1996.
- [16] Exhibit "O" of the prosecution
- [17] See TSN dated 25 May 2011, pp. 29-31.
- [18] G.R. No. 147437, 8 May 2009.
- [19] See TSN dated 26 August 2011, pp. 19-20.
- [20] See TSN dated 6 March 2013, p. 12.
- [21] *Supra*, at fn. 7.
- [22] *Supra*, at fn. 6.
- [23] *Supra*, at fn. 8.
- [24] See *Marikina Auto Line Transport Corp. v. People*, G.R. No. 152040, 31 March 2006.
- [25] *Ibid*; see also *Southeastern College, Inc. v. Court of Appeals, et. al.*, G.R. No. 126389, 10 July 1998.
- [26] *Supra*, at fn. 24.
- [27] See Art. 2229, Civil Code.
- [28] G.R. No. 190521, 12 January 2011.
- [29] See Exhibits N to N-34.
- [30] See TSN dated 25 May 2011, pp. 13-14.
- [31] See p. 8 of Appellant's Brief, at rollo, p. 65.

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