

DR. VICTORIA L. BATIQUIN AND ALLAN BATIQUIN, PETITIONERS, VS. COURT OF APPEALS, SPOUSES QUEDO D. ACOGIDO AND FLOTILDE G. VILLEGAS, RESPONDENTS.*G.R. No. 118231. July 05, 1996*

Ponente: DAVIDE, JR., J.

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Throughout history, patients have consigned their fates and lives to the skill of their doctors. For a breach of this trust, men have been quick to demand retribution. Some 4,000 years ago, the Code of Hammurabi[1] then already provided: "If a physician make a deep incision upon a man with his bronze lancet and cause the man's death, or operate on the eye socket of a man with his bronze lancet and destroy the man's eyes, they shall cut off his hand." [2] Subsequently, Hippocrates[3] wrote what was to become part of the healer's oath: "I will follow that method of treatment which according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous While I continue to keep this oath unviolated may it be granted me to enjoy life and practice the art, respected by all men at all times but should I trespass and violate this oath, may the reverse be my lot." At present, the primary objective of the medical profession is the preservation of life and maintenance of the health of the people.[4]

Needless to say then, when a physician strays from his sacred duty and endangers instead the life of his patient, he must be made to answer therefor. Although society today cannot and will not tolerate the punishment meted out by the ancients, neither will it and this Court, as this case would show, let the act go uncondemned.

The petitioners appeal from the decision[5] of the Court of Appeals of 11 May 1994 in CA-G.R. CV No. 30851, which reversed the decision[6] of 21 December 1990 of Branch 30 of the Regional Trial Court (RTC) of Negros Oriental in Civil Case No. 9492.

The facts, as found by the trial court, are as follows:

Dr. Batiquin was a Resident Physician at the Negros Oriental Provincial Hospital, Dumaguete City from January 9, 1978 to September 1989. Between 1987 and September, 1989 she was also the Actg. Head of the Department of Obstetrics and Gynecology at the said Hospital.

Mrs. Villegas is a married woman who submitted to Dr. Batiquin for prenatal care as the latter's private patient sometime before September 21, 1988.

In the morning of September 21, 1988 Dr. Batiquin, with the assistance of Dr. Doris Teresita Sy who was also a Resident Physician at the same Hospital, C.I. and O.R. Nurse Arlene Diones and some student nurses performed a simple cesarean section on Mrs. Villegas at the Negros Oriental Provincial Hospital and after 45 minutes Mrs. Villegas delivered her first child, Rachel Acogido, at about 11:45 that morning. Thereafter, Plaintiff remained confined at the Hospital until September 27, 1988 during which period of confinement she was regularly visited by Dr. Batiquin. On September 28, 1988, Mrs. Villegas checked out of the Hospital . . . and on the same day she paid Dr. Batiquin, thru the latter's secretary, the amount of P1,500.00 as "professional

fee"

Soon after leaving the Hospital Mrs. Villegas began to suffer abdominal pains and complained of being feverish. She also gradually lost her appetite, so she consulted Dr. Batiquin at the latter's polyclinic who prescribed for her certain medicines . . . which she had been taking up to December, 1988.

In the meantime, Mrs. Villegas was given a Medical Certificate by Dr. Batiquin on October 31, 1988 . . . certifying to her physical fitness to return to her work on November 7, 1988. So, on the second week of November, 1988 Mrs. Villegas returned to her work at the Rural Bank of Ayungon, Negros Oriental.

The abdominal pains and fever kept on recurring and bothered Mrs. Villegas no end and despite the medications administered by Dr. Batiquin. When the pains become unbearable and she was rapidly losing weight she consulted Dr. Ma. Salud Kho at the Holy Child's Hospital in Dumaguete City on January 20, 1989.

The evidence of Plaintiffs show that when Dr. Ma. Salud Kho examined Mrs. Villegas at the Holy Child's Hospital on January 20, 1989 she found Mrs. Villegas to be feverish, pale and was breathing fast. Upon examination she felt an abdominal mass one finger below the umbilicus which she suspected to be either a tumor of the uterus or an ovarian cyst, either of which could be cancerous. She had an x-ray taken of Mrs. Villegas' chest, abdomen and kidney. She also took blood tests of Plaintiff. A blood count showed that Mrs. Villegas had [an] infection inside her abdominal cavity. The result of all those examinations impelled Dr. Kho to suggest that Mrs. Villegas submit to another surgery to which the latter agreed.

When Dr. Kho opened the abdomen of Mrs. Villegas she found whitish-yellow discharge inside, an ovarian cyst on each of the left and right ovaries which gave out pus, dirt and pus behind the uterus, and a piece of rubber materials on the right side of the uterus embedded on [sic] the ovarian cyst, 2 inches by 3/4 inch in size. This piece of rubber material which Dr. Kho described as a "foreign body" looked like a piece of a "rubber glove" . . . and which is [sic] also "rubber-drain like" It could have been a torn section of a surgeon's gloves or could have come from other sources. And this foreign body was the cause of the infection of the ovaries and consequently of all the discomfort suffered by Mrs. Villegas after her delivery on September 21, 1988.[7]

The piece of rubber allegedly found near private respondent Flotilde Villegas' uterus was not presented in court, and although Dr. Ma. Salud Kho testified that she sent it to a pathologist in Cebu City for examination,[8] it was not mentioned in the pathologist's Surgical Pathology Report.[9]

Aside from Dr. Kho's testimony, the evidence which mentioned the piece of rubber are a Medical Certificate,[10] a Progress Record,[11] an Anesthesia Record,[12] a Nurse's Record,[13] and a Physician's Discharge Summary.[14] The trial court, however, regarded these documentary evidence as mere hearsay, "there being no showing that the person or persons who prepared them are deceased or unable to testify on the facts therein stated Except for the Medical Certificate (Exhibit "F"), all the above documents were allegedly prepared by persons other than Dr. Kho, and she merely affixed her signature on some of them to express her agreement thereto"[15] The trial court also refused to give weight to Dr. Kho's testimony regarding the subject piece of rubber as Dr. Kho "may not have had first-hand knowledge" thereof,[16] as could be gleaned from her statement, thus:

A . . . I have heard somebody that [sic] says [sic] there is [sic] a foreign body that goes with the tissues but unluckily I don't know where the rubber was.[17]

The trial court deemed vital Dr. Victoria Batiquin's testimony that when she confronted Dr. Kho regarding the piece of rubber, "Dr. Kho answered that there was rubber indeed but that she threw it away." [18] This statement, the trial court noted, was never denied nor disputed by Dr. Kho, leading it to conclude:

There are now two different versions on the whereabouts of that offending "rubber" - (1) that it was sent to the Pathologist in Cebu as testified to in Court by Dr. Kho and (2) that Dr. Kho threw it away as told by her to

Defendant. The failure of the Plaintiffs to reconcile these two different versions serve only to weaken their claim against Defendant Batiquin.[19]

All told, the trial court held in favor of the petitioners herein.

The Court of Appeals reviewed the entirety of Dr. Kho's testimony and, even without admitting the private respondents' documentary evidence, deemed Dr. Kho's positive testimony to definitely establish that a piece of rubber was found near private respondent Villegas' uterus. Thus, the Court of Appeals reversed the decision of the trial court, holding:

4. The fault or negligence of appellee Dr. Batiquin is established by preponderance of evidence. The trial court itself had narrated what happened to appellant Flotilde after the cesarean operation made by appellee doctor After the second operation, appellant Flotilde became well and healthy. Appellant Flotilde's troubles were caused by the infection due to the "rubber" that was left inside her abdomen. Both appellants testified that after the operation made by appellee doctor, they did not go to any other doctor until they finally decided to see another doctor in January, 1989 when she was not getting any better under the care of appellee Dr. Batiquin Appellee Dr. Batiquin admitted on the witness stand that she alone decided when to close the operating area; that she examined the portion she operated on before closing the same Had she exercised due diligence, appellee Dr. Batiquin would have found the rubber and removed it before closing the operating area.[20]

The appellate court then ruled:

Appellants' evidence show[s] that they paid a total of P17,000.00 [deposit of P7,100.00 (Exh. G-1-A) plus hospital and medical expenses together with doctor's fees in the total amount P9,900.00 (Exhs. G and G-2)] for the second operation that saved her life.

For the miseries appellants endured for more than three (3) months, due to the negligence of appellee Dr. Batiquin, they are entitled to moral damages in the amount of P100,000.00; exemplary damages in the amount of P20,000.00 and attorney's fees in the amount of P25,000.00.

The fact that appellant Flotilde can no longer bear children because her uterus and ovaries were removed by Dr. Kho is not taken into consideration as it is not shown that the removal of said organs were the direct result of the rubber left by appellee Dr. Batiquin near the uterus. What is established is that the rubber left by appellee cause infection, placed the life of appellant Flotilde in jeopardy and caused appellants fear, worry and anxiety

WHEREFORE, the appealed judgment, dismissing the complaint for damages is REVERSED and SET ASIDE. Another judgment is hereby entered ordering defendants-appellees to pay plaintiffs-appellants the amounts of P17,000.00 as and for actual damages; P100,000.00 as and for moral damages; P20,000.00 as and for exemplary damages; and P25,000.00 as and for attorney's fees plus the cost of litigation.

SO ORDERED.[21]

From the above judgment, the petitioners appealed to this Court claiming that the appellate court; (1) committed grave abuse of discretion by resorting to findings of fact not supported by the evidence on record, and (2) exceeded its discretion, amounting to lack or excess of jurisdiction, when it gave credence to testimonies punctured with contradictions and falsities.

The private respondents commented that the petition raised only questions of fact, which were not proper for review by this Court.

While the rule is that only questions of law may be raised in a petition for review on certiorari, there are exceptions, among which are when the factual findings of the trial court and the appellate court conflict, when the

appealed decision is clearly contradicted by the evidence on record, or when the appellate court misapprehended the facts.[22]

After deciphering the cryptic petition, we find that the focal point of the instant appeal is the appreciation of Dr. Kho's testimony. The petitioners contend that the Court of Appeals misappreciated the following portion of Dr. Kho's testimony:

Q What is the purpose of the examination?

A Just in case, I was just thinking at the back of my mind, just in case this would turn out to be a medico-legal case, I have heard somebody that [sic] says [sic] there is [sic] a foreign body that goes with the tissues but unluckily I don't know where the rubber was. It was not in the Lab, it was not in Cebu.[23] (Italics supplied)

The petitioners prefer the trial court's interpretation of the above testimony, i.e., that Dr. Kho's knowledge of the piece of rubber was based on hearsay. The Court of Appeals, on the other hand, concluded that the underscored phrase was taken out of context by the trial court. According to the Court of Appeals, the trial court should have likewise considered the other portions of Dr. Kho's testimony, especially the following:

Q So you did actually conduct the operation on her?

A Yes, I did.

Q And what was the result?

A Opening up her abdomen, there was whitish-yellow discharge inside the abdomen, there was an ovarian cyst on the left and side and there was also an ovarian cyst on the right which, on opening up or freeing it up from the uterus, turned out to be pus. Both ovaries turned out . . . to have pus. And then, cleaning up the uterus, at the back of the uterus it was very dirty, it was full of pus. And there was a [piece of] rubber, we found a [piece of] rubber on the right side.[24]

We agree with the Court of Appeals. The phrase relied upon by the trial court does not negate the fact that Dr. Kho saw a piece of rubber in private respondent Villegas' abdomen, and that she sent it to a laboratory and then to Cebu City for examination by a pathologist.[25] Not even the Pathologist's Report, although devoid of any mention of a piece of rubber, could alter what Dr. Kho saw. Furthermore, Dr. Kho's knowledge of the piece of rubber could not be based on other than first hand knowledge for, as she asserted before the trial court:

Q But you are sure you have seen [the piece of rubber]?

A Oh yes. I was not the only one who saw it.[26]

The petitioners emphasize that the private respondents never reconciled Dr. Kho's testimony with Dr. Batiquin's claim on the witness stand that when Dr. Batiquin confronted Dr. Kho about the foreign body, the latter said that there was a piece of rubber but that she threw it away. Although hearsay, Dr. Batiquin's claim was not objected to, and hence, the same is admissible[27] but it carries no probative value.[28] Nevertheless, assuming otherwise, Dr. Batiquin's statement cannot belie the fact that Dr. Kho found a piece of rubber near private respondent Villegas' uterus. And even if we were to doubt Dr. Kho as to what she did to the piece of rubber, i.e., whether she threw it away or sent it to Cebu City, we are not justified in distrusting her as to her recovery of a piece of rubber from private respondent Villegas' abdomen. On this score, it is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve his testimony with respect to other facts. And it has been aptly said that even when a witness is found to have deliberately falsified in some material particulars, it is not required that the whole of his uncorroborated testimony be rejected, but such portions thereof deemed worthy of belief may be credited.[29]

It is here worth noting that the trial court paid heed to the following portions of Dr. Batiquin's testimony: that no rubber drain was used in the operation,[30] and that there was neither any tear on Dr. Batiquin's gloves after the operation nor blood smears on her hands upon removing her gloves.[31] Moreover, the trial court pointed out that the absence of a rubber drain was corroborated by Dr. Doris Sy, Dr. Batiquin's assistant during the operation on private respondent Villegas.[32] But the trial court failed to recognize that the assertions of Drs. Batiquin and Sy were denials or negative testimonies. Well-settled is the rule that positive testimony is stronger than negative testimony.[33] Of course, as the petitioners' advocate, such positive testimony must come from a credible source, which leads us to the second assigned error.

While the petitioners claim that contradictions and falsities punctured Dr. Kho's testimony, a reading of the said testimony reveals no such infirmity and establishes Dr. Kho as a credible witness. Dr. Kho was frank throughout her turn on the witness stand. Furthermore, no motive to state any untruth was ever imputed against Dr. Kho, leaving her trustworthiness unimpaired.[34] The trial court's following declaration shows that while it was critical of the lack of care with which Dr. Kho handled the piece of rubber, it was not prepared to doubt Dr. Kho's credibility, thus only supporting out appraisal of Dr. Kho's trustworthiness:

This is not to say that she was less than honest when she testified about her findings, but it can also be said that she did not take the most appropriate precaution to preserve that "piece of rubber" as an eloquent evidence of what she would reveal should there be a "legal problem" which she claim[s] to have anticipated.[35]

Considering that we have assessed Dr. Kho to be a credible witness, her positive testimony [that a piece of rubber was indeed found in private respondent Villegas' abdomen] prevails over the negative testimony in favor of the petitioners.

As such, the rule of *res ipsa loquitur* comes to fore. This Court has had occasion to delve into the nature and operation of this doctrine:

This doctrine [*res ipsa loquitur*] is stated thus: "Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care." Or as Black's Law Dictionary puts it:

Res ipsa loquitur. The thing speaks for itself. Rebuttable presumption or inference that defendant was negligent, which arises upon proof that [the] instrumentality causing injury was in defendant's exclusive control, and that the accident was one which ordinary does not happen in absence of negligence. *Res ipsa loquitur* is [a] rule of evidence whereby negligence of [the] alleged wrongdoer may be inferred from [the] mere fact that [the] accident happened provided [the] character of [the] accident and circumstances attending it lead reasonably to belief that in [the] absence of negligence it would not have occurred and that thing which caused injury is shown to have been under [the] management and control of [the] alleged wrongdoer Under [this] doctrine . . . the happening of an injury permits an inference of negligence where plaintiff produces substantial evidence that [the] injury was caused by an agency or instrumentality under [the] exclusive control and management of defendant, and that the occurrence [sic] was such that in the ordinary course of things would not happen if reasonable care had been used.

xxx xxx xxx

The doctrine of [*res ipsa loquitur*] as a rule of evidence is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence. The doctrine is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. The rule, when applicable to the facts and circumstances of a particular case, is not intended to and does not dispense with the requirement of proof of culpable negligence on the party charged. It merely determines

and regulates what shall be prima facie evidence thereof and facilitates the burden of plaintiff of proving a breach of the duty of due care. The doctrine can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available.[36]

In the instant case, all the requisites for recourse to the doctrine are present. First, the entire proceedings of the cesarean section were under the exclusive control of Dr. Batiquin. In this light, the private respondents were bereft of direct evidence as to the actual culprit or the exact cause of the foreign object finding its way into private respondent Villegas' body, which, needless to say, does not occur unless through the intervention of negligence. Second, since aside from the cesarean section, private respondent Villegas underwent no other operation which could have caused the offending piece of rubber to appear in her uterus, it stands to reason that such could only have been a by-product of the cesarean section performed by Dr. Batiquin. The petitioners, in this regard, failed to overcome the presumption of negligence arising from resort to the doctrine of *res ipsa loquitur*. Dr. Batiquin is therefore liable for negligently leaving behind a piece of rubber in private respondent Villegas' abdomen and for all the adverse effects thereof.

As a final word, this Court reiterates its recognition of the vital role the medical profession plays in the lives of the people,[37] and State's compelling interest to enact measures to protect the public from "the potentially deadly effects of incompetence and ignorance in those who would undertake to treat our bodies and minds for disease or trauma." [38] Indeed, a physician is bound to serve the interest of his patients "with the greatest of solicitude, giving them always his best talent and skill." [39] Through her tortious conduct, the petitioner endangered the life of Flotilde Villegas, in violation of her profession's rigid ethical code and in contravention of the legal standards set forth for professionals, in the general,[40] and members of the medical profession,[41] in particular.

WHEREFORE, the challenged decision of 11 May 1994 of the Court of Appeals in CA-G.R. CV No. 30851 is hereby AFFIRMED in toto.

Costs against the petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Implemented in *Babylon*, CA 2250 B.C.

[2] See L.J. REGAN, *DOCTOR AND PATIENT AND THE LAW*, 2d. ed. [1949], 34.

[3] 460" 377 B.C.

[4] P. SOLIS, *MEDICAL JURISPRUDENCE* [1988 ed.], 5.

[5] Appendix "A" of Petition; Rollo, 12-22. Per Austria-Martinez, M.A., J., with Marigomen, A., and Reyes, R., JJ., concurring.

[6] Original Records (OR), 260-272. Per Judge Enrique C. Garrovillo.

[7] OR, 261-264.

[8] TSN, 12 July 1990, 49.

[9] *Id.*, 50-51.

[10] OR, 132.

- [11] Id., 135-137.
- [12] Id., 138.
- [13] Id., 139-140.
- [14] Id., 141.
- [15] Id., 268.
- [16] Id., 266.
- [17] TSN, 12 July 1990, 49.

[18] OR, 269.

- [19] Id.
- [20] Rollo, 20.
- [21] Id., 21.
- [22] Remalante vs. Tibe, 158 SCRA 138, 145 [1988]; Medina vs. Asistio, 191 SCRA 218, 223-224 [1990]; Borillo vs. Court of Appeals, 209 SCRA 130, 140-141 [1992]; Director of Lands vs. Intermediate Appellate Court, 209 SCRA 214, 221 [1992]; Margolles vs. Court of Appeals, 230 SCRA 97, 106 [1994].
- [23] TSN, 12 July 1990, 49.
- [24] TSN, 12 July 1990, 9.
- [25] Id., 10, 49.
- [26] TSN, 12 July 1990, 10.
- [27] RICARDO J. FRANCISCO, Evidence, 255 [1993].
- [28] People vs. Laurente, G.R. No. 116734, 29 March 1996, at 24, citations omitted.
- [29] People vs. Ducay, 225 SCRA 1, 14 [1993]; People vs. Cañeja, 235 SCRA 328, 337 [1994].
- [30] TSN, 31 August 1990, 20.
- [31] Id., 21.
- [32] TSN, 10 September 1990, 5.
- [33] People vs. Antonio, 233 SCRA 283, 299 [1994].
- [34] See People vs. De Leon, 245 SCRA 538, 545 [1995]; People vs. Malunes, 247 SCRA 317, 326-327 [1995].

[35] OR, 267.

- [36] Layugan vs. Intermediate Appellate Court, 167 SCRA 363, 376-377 [1988]. See discussions in Martinez vs. Van Buskirk, 18 Phil. 79, 85-86 [1910]; Africa vs. Caltex (Phil.) Inc., 16 SCRA 448, 454-456 [1966]; F.F. Cruz and Co., Inc. vs. Court of Appeals, 164 SCRA 731, 736 [1988].

[37] Department of Education, Culture, and Sports vs. San Diego, 180 SCRA 533, 538 [1989].

[38] Tablarin vs. Gutierrez, 152 SCRA 730, 743 [1987].

[39] Section 3, Article 1, 1960 Code of Ethics of the Medical Profession in the Philippines, as cited in Carillo vs. People, 229 SCRA 386, 396 [1994].

[40] Culion Ice, Fish & Elec. Co. vs. Phil. Motors Corporation, 55 Phil. 129, 133 [1930].

[41] Stevenson vs. Yates, 208 SW 820 [1919]; Kennedy vs. Parrott, 90 SE 2d 754 [1956]; DeLaughter vs. Womack, 164 So 2d 762 [1964]; Hill vs. Stewart, 209 So 2d 809 [1968].

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