

**DR. NINEVETCH CRUZ, PETITIONER, VS. COURT OF APPEALS AND
LYDIA UMALI, RESPONDENTS.***G.R. No. 122445. November 18, 1997*

Ponente: FRANCISCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-122445/>**FRANCISCO, J.:**

The present case against petitioner is in the nature of a medical malpractice suit, which in simplest term is the type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm.[2] In this jurisdiction, however, such claims are most often brought as a civil action for damages under Article 2176 of the Civil Code,[3] and in some instances, as a criminal case under Article 365 of the Revised Penal Code[4] with which the civil action for damages is impliedly instituted. It is via the latter type of action that the heirs of the deceased sought redress for the petitioner's alleged imprudence and negligence in treating the deceased thereby causing her death. The petitioner and one Dr. Lina Ercillo who was the attending anaesthesiologist during the operation of the deceased were charged with "reckless imprudence and negligence resulting to (sic) homicide" in an information which reads:

"That on or about March 23, 1991, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused abovenamed, being then the attending anaesthesiologist and surgeon, respectively, did then and there, in a negligence (sic), careless, imprudent, and incompetent manner, and failing to supply or store sufficient provisions and facilities necessary to meet any and all exigencies apt to arise before, during and/or after a surgical operation causing by such negligence, carelessness, imprudence, and incompetence, and causing by such failure, including the lack of preparation and foresight needed to avert a tragedy, the untimely death of said Lydia Umali on the day following said surgical operation."[5]

Trial ensued after both the petitioner and Dr. Lina Ercillo pleaded not guilty to the above-mentioned charge. On March 4, 1994, the Municipal Trial Court in Cities (MTCC) of San Pablo City rendered a decision, the dispositive portion of which is hereunder quoted as follows:

"WHEREFORE, the court finds the accused Dr. Lina Ercillo not guilty of the offense charged for insufficiency of evidence while her co-accused Dra. Ninevetch Cruz is hereby held responsible for the death of Lydia Umali on March 24, 1991, and therefore guilty under Art. 365 of the Revised Penal Code, and she is hereby sentenced to suffer the penalty of 2 months and 1 day imprisonment of *arresto mayor* with costs."[6]

The petitioner appealed her conviction to the Regional Trial Court (RTC) which affirmed in toto the decision of the MTCC[7] prompting the petitioner to file a petition for review with the Court of Appeals but to no avail. Hence this petition for review on certiorari assailing the decision promulgated by the Court of Appeals on October 24, 1995 affirming petitioner's conviction with modification that she is further directed to pay the heirs of Lydia Umali P50,000.00 as indemnity for her death.[8]

In substance, the petition brought before this Court raises the issue of whether or not petitioner's conviction of the crime of reckless imprudence resulting in homicide, arising from an alleged medical malpractice, is supported by the evidence on record.

First the antecedent facts.

On March 22, 1991, prosecution witness, Rowena Umali De Ocampo, accompanied her mother to the Perpetual Help Clinic and General Hospital situated in Balagtas Street, San Pablo City, Laguna. They arrived at the said hospital at around 4:30 in the afternoon of the same day.[9] Prior to March 22, 1991, Lydia was examined by the petitioner who found a "myoma"[10] in her uterus, and scheduled her for a hysterectomy operation on March 23, 1991.[11] Rowena and her mother slept in the clinic on the evening of March 22, 1991 as the latter was to be operated on the next day at 1:00 o'clock in the afternoon.[12] According to Rowena, she noticed that the clinic was untidy and the window and the floor were very dusty prompting her to ask the attendant for a rag to wipe the window and the floor with.[13] Because of the untidy state of the clinic, Rowena tried to persuade her mother not to proceed with the operation.[14] The following day, before her mother was wheeled into the operating room, Rowena asked the petitioner if the operation could be postponed. The petitioner called Lydia into her office and the two had a conversation. Lydia then informed Rowena that the petitioner told her that she must be operated on as scheduled.[15]

Rowena and her other relatives, namely her husband, her sister and two aunts waited outside the operating room while Lydia underwent operation. While they were waiting, Dr. Ercillo went out of the operating room and instructed them to buy tagamet ampules which Rowena's sister immediately bought. About one hour had passed when Dr. Ercillo came out again this time to ask them to buy blood for Lydia. They bought type "A" blood from the St. Gerald Blood Bank and the same was brought by the attendant into the operating room. After the lapse of a few hours, the petitioner informed them that the operation was finished. The operating staff then went inside the petitioner's clinic to take their snacks. Some thirty minutes after, Lydia was brought out of the operating room in a stretcher and the petitioner asked Rowena and the other relatives to buy additional blood for Lydia. Unfortunately, they were not able to comply with petitioner's order as there was no more type "A" blood available in the blood bank. Thereafter, a person arrived to donate blood which was later transfused to Lydia. Rowena then noticed her mother, who was attached to an oxygen tank, gasping for breath. Apparently the oxygen supply had run out and Rowena's husband together with the driver of the accused had to go to the San Pablo District Hospital to get oxygen. Lydia was given the fresh supply of oxygen as soon as it arrived.[16] But at around 10:00 o'clock P.M. she went into shock and her blood pressure dropped to 60/50. Lydia's unstable condition necessitated her transfer to the San Pablo District Hospital so she could be connected to a respirator and further examined.[17] The transfer to the San Pablo City District Hospital was without the prior consent of Rowena nor of the other relatives present who found out about the intended transfer only when an ambulance arrived to take Lydia to the San Pablo District Hospital. Rowena and her other relatives then boarded a tricycle and followed the ambulance.[18]

Upon Lydia's arrival at the San Pablo District Hospital, she was wheeled into the operating room and the petitioner and Dr. Ercillo re-operated on her because there was blood oozing from the abdominal incision.[19] The attending physicians summoned Dr. Bartolome Angeles, head of the Obstetrics and Gynecology Department of the San Pablo District Hospital. However, when Dr. Angeles arrived, Lydia was already in shock and possibly dead as her blood pressure was already 0/0. Dr. Angeles then informed petitioner and Dr. Ercillo that there was nothing he could do to help save the patient.[20] While petitioner was closing the abdominal wall, the patient died.[21] Thus, on March 24, 1991, at 3:00 o'clock in the morning, Lydia Umali was pronounced dead. Her death certificate states "shock" as the immediate cause of death and "Disseminated Intravascular Coagulation (DIC)" as the antecedent cause.[22]

In convicting the petitioner, the MTCC found the following circumstances as sufficient basis to conclude that she was indeed negligent in the performance of the operation:

"x x x, the clinic was untidy, there was lack of provision like blood and oxygen to prepare for any contingency

that might happen during the operation. The manner and the fact that the patient was brought to the San Pablo District Hospital for reoperation indicates that there was something wrong in the manner in which Dra. Cruz conducted the operation. There was no showing that before the operation, accused Dr. Cruz had conducted a cardio pulmonary clearance or any typing of the blood of the patient. It was (sic) said in medical parlance that the "abdomen of the person is a temple of surprises" because you do not know the whole thing the moment it was open (sic) and surgeon must be prepared for any eventuality thereof. The patient (sic) chart which is a public document was not presented because it is only there that we could determine the condition of the patient before the surgery. The court also noticed in Exh. "F-1" that the sister of the deceased wished to postpone the operation but the patient was prevailed upon by Dra. Cruz to proceed with the surgery. The court finds that Lydia Umali died because of the negligence and carelessness of the surgeon Dra. Ninevetch Cruz because of loss of blood during the operation of the deceased for evident unpreparedness and for lack of skill, the reason why the patient was brought for operation at the San Pablo City District Hospital. As such, the surgeon should answer for such negligence. With respect to Dra. Lina Ercillo, the anaesthesiologist, there is no evidence to indicate that she should be held jointly liable with Dra. Cruz who actually did the operation." [23]

The RTC reiterated the abovementioned findings of the MTCC and upheld the latter's declaration of "incompetency, negligence and lack of foresight and skill of appellant (herein petitioner) in handling the subject patient before and after the operation." [24] And likewise affirming the petitioner's conviction, the Court of Appeals echoed similar observations, thus:

"x x x. While we may grant that the untidiness and filthiness of the clinic may not by itself indicate negligence, it nevertheless shows the absence of due care and supervision over her subordinate employees. Did this unsanitary condition permeate the operating room? Were the surgical instruments properly sterilized? Could the conditions in the OR have contributed to the infection of the patient? Only the petitioner could answer these, but she opted not to testify. This could only give rise to the presumption that she has nothing good to testify on her defense. Anyway, the alleged "unverified statement of the prosecution witness" remains unchallenged and unrebutted.

Likewise undisputed is the prosecution's version indicating the following facts: that the accused asked the patient's relatives to buy Tagamet capsules while the operation was already in progress; that after an hour, they were also asked to buy type "A" blood for the patient; that after the surgery, they were again asked to procure more type "A" blood, but such was not anymore available from the source; that the oxygen given to the patient was empty; and that the son-in-law of the patient, together with a driver of the petitioner, had to rush to the San Pablo City District Hospital to get the much-needed oxygen. All these conclusively show that the petitioner had not prepared for any unforeseen circumstances before going into the first surgery, which was not emergency in nature, but was elective or pre-scheduled; she had no ready antibiotics, no prepared blood, properly typed and cross-matched, and no sufficient oxygen supply.

Moreover, there are a lot of questions that keep nagging Us. Was the patient given any cardio-pulmonary clearance, or at least a clearance by an internist, which are standard requirements before a patient is subjected to surgery. Did the petitioner determine as part of the pre-operative evaluation, the bleeding parameters of the patient, such as bleeding time and clotting time? There is no showing that these were done. The petitioner just appears to have been in a hurry to perform the operation, even as the family wanted the postponement to April 6, 1991. Obviously, she did not prepare the patient; neither did she get the family's consent to the operation. Moreover, she did not prepare a medical chart with instructions for the patient's care. If she did all these, proof thereof should have been offered. But there is none. Indeed, these are overwhelming evidence of recklessness and imprudence." [25]

This court, however, holds differently and finds the foregoing circumstances insufficient to sustain a judgment of conviction against the petitioner for the crime of reckless imprudence resulting in homicide. The elements of reckless imprudence are: (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that

act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time and place.

Whether or not a physician has committed an "inexcusable lack of precaution" in the treatment of his patient is to be determined according to the standard of care observed by other members of the profession in good standing under similar circumstances bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science.[26] In the recent case of *Leonila Garcia-Rueda v. Wilfred L. Pacasio, et. al.*,[27] this Court stated that in accepting a case, a doctor in effect represents that, having the needed training and skill possessed by physicians and surgeons practicing in the same field, he will employ such training, care and skill in the treatment of his patients. He therefore has a duty to use at least the same level of care that any other reasonably competent doctor would use to treat a condition under the same circumstances. It is in this aspect of medical malpractice that expert testimony is essential to establish not only the standard of care of the profession but also that the physician's conduct in the treatment and care falls below such standard.[28] Further, inasmuch as the causes of the injuries involved in malpractice actions are determinable only in the light of scientific knowledge, it has been recognized that expert testimony is usually necessary to support the conclusion as to causation.[29]

Immediately apparent from a review of the records of this case is the absence of any expert testimony on the matter of the standard of care employed by other physicians of good standing in the conduct of similar operations. The prosecution's expert witnesses in the persons of Dr. Floresto Arizala and Dr. Nieto Salvador, Jr. of the National Bureau of Investigation (NBI) only testified as to the possible cause of death but did not venture to illuminate the court on the matter of the standard of care that petitioner should have exercised.

All three courts below bewail the inadequacy of the facilities of the clinic and its untidiness; the lack of provisions such as blood, oxygen, and certain medicines; the failure to subject the patient to a cardio-pulmonary test prior to the operation; the omission of any form of blood typing before transfusion; and even the subsequent transfer of Lydia to the San Pablo Hospital and the reoperation performed on her by the petitioner. But while it may be true that the circumstances pointed out by the courts below seemed beyond cavil to constitute reckless imprudence on the part of the surgeon, this conclusion is still best arrived at not through the educated surmises nor conjectures of laymen, including judges, but by the unquestionable knowledge of expert witnesses. For whether a physician or surgeon has exercised the requisite degree of skill and care in the treatment of his patient is, in the generality of cases, a matter of expert opinion.[30] The deference of courts to the expert opinion of qualified physicians stems from its realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating.[31] Expert testimony should have been offered to prove that the circumstances cited by the courts below are constitutive of conduct falling below the standard of care employed by other physicians in good standing when performing the same operation. It must be remembered that when the qualifications of a physician are admitted, as in the instant case, there is an inevitable presumption that in proper cases he takes the necessary precaution and employs the best of his knowledge and skill in attending to his clients, unless the contrary is sufficiently established.[32] This presumption is rebuttable by expert opinion which is so sadly lacking in the case at bench.

Even granting arguendo that the inadequacy of the facilities and untidiness of the clinic; the lack of provisions; the failure to conduct pre-operation tests on the patient; and the subsequent transfer of Lydia to the San Pablo Hospital and the reoperation performed on her by the petitioner do indicate, even without expert testimony, that petitioner was recklessly imprudent in the exercise of her duties as a surgeon, no cogent proof exists that any of

these circumstances caused petitioner's death. Thus, the absence of the fourth element of reckless imprudence: that the injury to the person or property was a consequence of the reckless imprudence.

In litigations involving medical negligence, the plaintiff has the burden of establishing appellant's negligence and for a reasonable conclusion of negligence, there must be proof of breach of duty on the part of the surgeon as well as a casual connection of such breach and the resulting death of his patient.[33] In *Chan Lugay v. St Luke's Hospital, Inc.*, [34] where the attending physician was absolved of liability for the death of the complainant's wife and newborn baby, this court held that:

"In order that there may be a recovery for an injury, however, it must be shown that the 'injury for which recovery is sought must be the legitimate consequence of the wrong done; the connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening efficient causes.' In other words, the negligence must be the proximate cause of the injury. For, 'negligence, no matter in what it consists, cannot create a right of action unless it is the proximate cause of the injury complained of.' And 'the proximate cause of an injury is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.'" [35] (Underscoring supplied.)

Dr. Arizala who conducted an autopsy on the body of the deceased summarized his findings as follows:

Atty. Cachero:

Q. You mentioned about your Autopsy Report which has been marked as Exh. "A-1-b". There appears here a signature above the typewritten name Floresto Arizala, Jr., whose signature is that?

A. That is my signature, sir.

Q. Do you affirm the truth of all the contents of Exh. "A-1-b"?

A. Only as to the autopsy report no. 91-09, the time and place and everything after the post mortem findings, sir.

Q. You mentioned on your "Post Mortem Findings" about surgical incision, 14:0 cm., infraumbilical area, anterior abdominal area, midline, will you please explain that in your own language?

A. There was incision wound (sic) the area just below the navel, sir.

Q. And the last paragraph of the postmortem findings which I read: Uterus, pear-shaped and pale measuring 7.5 x 5.5 x 5.0 cm, with some surface nodulation of the fundic area posteriorly. Cut-section shows diffusely pale myometrium with areas of streak induration. The ovaries and adnexal structures are missing with the raw surfaces patched with clotted blood. Surgical sutures were noted on the operative site.

Intestines and mesenteries are pale with blood clots noted between the mesentric folds.

Hemoperitonium: 300 s.s.,

right paracolic gutter,

50 c.c., left paracolic gutter

200 c.c., mesentric area,

100 c.c., right pelvic gutter

stomach empty.

Other visceral organs, pale.',

will you please explain that on (sic) your own language or in ordinary.....

A. There was a uterus which was not attached to the adnexal structures namely ovaries which were not present and also sign of previous surgical operation and there were (sic) clotted blood, sir.

Q. How about the ovaries and adnexal structures?

A. They are missing, sir.

Q. You mean to say there are no ovaries?

A. During that time there are no ovaries, sir.

Q. And there were likewise sign of surgical sutures?

A. Yes, sir.

Q. How about the intestines and mesenteries are place (sic) with blood clots noted between the mesenteric folds, will you please explain on (sic) this?

A. In the peritoneal cavity, they are mostly peritoneal blood.....

Q. And what could have caused this blood?

A. Well, ordinarily blood is found inside the blood vessel. Blood were (sic) outside as a result of the injuries which destroyed the integrity of the vessel allowing blood to sip (sic) out, sir.

Q. By the nature of the postmortem findings indicated in Exh. A-1-B, can you tell the court the cause of death?

A. Yes, sir. The cause of death is: Gross findings are compatible with hemorrhagic shock.

Q. Can you tell the us what could have caused this hemorrhagic shock?

A. Well hemorrhagic shock is the result of blood loss.

Q. What could have the effect of that loss of blood?

A. Unattended hemorrhage, sir.[36] (Underscoring supplied.)

The foregoing was corroborated by Dr. Nieto Salvador:

Q. And were you able to determine the cause of death by virtue of the examination of the specimen submitted by Dr. Arizala?

A. Without knowledge of the autopsy findings it would be difficult for me to determine the cause of death, sir.

Q. Have you examined the post mortem of Dr. Arizala?

A. Yes, sir, and by virtue of the autopsy report in connection with your pathology report.

Q. What could have caused the death of the victim?

A. This pathologic examination are (sic) compatible with the person who died, sir.

Q. Will you explain to us the meaning of hemorrhagic compatible?

A. It means that a person died of blood loss. Meaning a person died of non-replacement of blood and so the victim before she died there was shock of diminish of blood of the circulation. She died most probably before the actual complete blood loss, sir.

Court: Is it possible doctor that the loss of the blood was due on (sic) operation?

A. Based on my pathology findings, sir.

Q. What could have caused this loss of blood?

A. Many, sir. A patient who have undergone surgery. Another may be a blood vessel may be cut while on operation and this cause (sic) bleeding, or may be set in the course of the operation, or may be (sic) he died after the operation. Of course there are other cause (sic).

Atty. Cachero:

Q. Especially so doctor when there was no blood replacement?

A. Yes, sir."[37] (Underscoring supplied.)

The testimonies of both doctors establish hemorrhage or hemorrhagic shock as the cause of death. However, as likewise testified to by the expert witnesses in open court, hemorrhage or hemorrhagic shock during surgery may be caused by several different factors. Thus, Dr. Salvador's elaboration on the matter:

Atty. Pascual:

Q. Doctor, among the causes of hemorrhage that you mentioned you said that it could be at the moment of operation when one losses (sic) control of the presence, is that correct? During the operation there is lost (sic) of control of the cut vessel?

A. Yes, sir.

Q. Or there is a failure to ligate a vessel of considerable size?

A. Yes, sir.

Q. Or even if the vessel were ligated the knot may have slipped later on?

A. Yes, sir.

Q. And you also mentioned that it may be possible also to some clotting defect, is that correct?

A. May be (sic)."[38] (Underscoring supplied).

Defense witness, Dr. Bu C. Castro also gave the following expert opinion:

Q. Doctor even a patient after an operations (sic) would suffer hemorrhage what would be the possible causes of such hemorrhage (sic)?

A. Among those would be what we call Intravascular Coagulation and this is the reason for the bleeding, sir, which cannot be prevented by anyone, it will happen to anyone, anytime and to any persons (sic), sir.

COURT:

What do you think of the cause of the bleeding, the cutting or the operations done in the body?

A. Not related to this one, the bleeding here is not related to any cutting or operation that I (sic) have done.

Q. Aside from the DIC what could another causes (sic) that could be the cause for the hemorrhage or bleeding in a patient by an operations (sic)?

A. In general sir, if there was an operations (sic) and it is possible that the ligature in the suture was (sic) become (sic) loose, it is (sic) becomes loose if proven.

Q. If the person who performed an autopsy does not find any untight (sic) clot (sic) blood vessel or any suture that become (sic) loose the cause of the bleeding could not be attributed to the fault of the subject?

A. Definitely, sir."[39] (Underscoring supplied.)

According to both doctors, the possible causes of hemorrhage during an operation are: (1) the failure of the surgeon to tie or suture a cut blood vessel; (2) allowing a cut blood vessel to get out of control; (3) the subsequent loosening of the tie or suture applied to a cut blood vessel; and (4) and a clotting defect known as DIC. It is significant to state at this juncture that the autopsy conducted by Dr. Arizala on the body of Lydia did not reveal any untied or unsutured cut blood vessel nor was there any indication that the tie or suture of a cut blood vessel had become loose thereby causing the hemorrhage.[40] Hence the following pertinent portion of Dr. Arizala's testimony:

Q: Doctor, in examining these structures did you know whether these were sutured ligature or plain ligature

A: Ligature, sir.

Q: We will explain that later on. Did you recall if the cut structures were tied by first suturing it and then tying a knot or the tie was merely placed around the cut structure and tied?

A: I cannot recall, sir.

Q: As a matter of fact, you cannot recall because you did not even bothered (sic) to examine, is that correct?

A: Well, I bothered enough to know that they were sutured, sir.

Q: So, therefore, Doctor, you would not know whether any of the cut structures were not sutured or tied neither were you able to determine whether any loose suture was found in the peritoneal cavity?

A: I could not recall any loose sutured (sic), sir."[41]

On the other hand, the findings of all three doctors do not preclude the probability that DIC caused the hemorrhage and consequently, Lydia's death. DIC which is a clotting defect creates a serious bleeding tendency and when massive DIC occurs as a complication of surgery leaving raw surface, major hemorrhage occurs.[42] And as testified to by defense witness, Dr. Bu C. Castro, hemorrhage due to DIC "cannot be prevented, it will happen to anyone, anytime."[43] He testified further:

Q. Now, under the circumstance one of the possibility as you mentioned in (sic) DIC?

A. Yes, sir.

Q. And you mentioned that it cannot be prevented?

A. Yes, sir.

Q. Can you even predict if it really happen (sic)?

A. Possible, sir.

Q. Are there any specific findings of autopsy that will tell you whether this patient suffered among such things as DIC?

A. Well, I did reserve because of the condition of the patient.

Q. Now, Doctor you said that you went through the record of the deceased Lydia Umali looking for the chart, the operated (sic) records, the post mortem findings on the histophanic (sic) examination based on your examination of record, doctor, can you more or less says (sic) what part are (sic) concerned could have been the caused (sic) of death of this Lydia Umali?

A. As far as the medical record is concern (sic) the caused (sic) of death is dessimulated (sic) Intra Vascular Coagulation or the DIC which resulted to hemorrhage or bleedings, sir.

Q. Doctor based on your findings then there is knowing (sic) the doctor would say whether the doctor her (sic) has been (sic) fault?

ATTY. MALVEDA:

We will moved (sic) to strike out the (sic) based on finding they just read the chart as well as the other record.

ATTY. PASCUAL:

Precisely based on this examination.

ATTY. MALVEDA:

Not finding, there was no finding made.

COURT:

He is only reading the record.

ATTY. PASCUAL:

Yes, sir.

A. No, sir, there is no fault on the part of the surgeon, sir." [44]

This court has no recourse but to rely on the expert testimonies rendered by both prosecution and defense witnesses that substantiate rather than contradict petitioner's allegation that the cause of Lydia's death was DIC which, as attested to by an expert witness, cannot be attributed to the petitioner's fault or negligence. The probability that Lydia's death was caused by DIC was unrebutted during trial and has engendered in the mind of this Court a reasonable doubt as to the petitioner's guilt. Thus, her acquittal of the crime of reckless imprudence resulting in homicide. While we condole with the family of Lydia Umali, our hands are bound by the dictates of justice and fair dealing which hold inviolable the right of an accused to be presumed innocent until proven guilty beyond reasonable doubt. Nevertheless, this Court finds the petitioner civilly liable for the death of Lydia Umali, for while a conviction of a crime requires proof beyond reasonable doubt, only a preponderance of evidence is required to establish civil liability.[45]

The petitioner is a doctor in whose hands a patient puts his life and limb. For insufficiency of evidence this Court was not able to render a sentence of conviction but it is not blind to the reckless and imprudent manner in which the petitioner carried out her duties. A precious life has been lost and the circumstances leading thereto exacerbated the grief of those left behind. The heirs of the deceased continue to feel the loss of their mother up to the present time[46] and this Court is aware that no amount of compassion and commiseration nor words of bereavement can suffice to assuage the sorrow felt for the loss of a loved one. Certainly, the award of moral and exemplary damages in favor of the heirs of Lydia Umali are proper in the instant case.

WHEREFORE, premises considered, petitioner DR. NINEVETCH CRUZ is hereby ACQUITTED of the crime of reckless imprudence resulting in homicide but is ordered to pay the heirs of the deceased Lydia Umali the amount of FIFTY THOUSAND PESOS (P50,000.00) as civil liability, ONE HUNDRED THOUSAND PESOS (P100,000.00) as moral damages, and FIFTY THOUSAND PESOS (P50,000.00) as exemplary damages.

Let the copy of this decision be furnished to the Professional Regulation Commission (PRC) for appropriate action.

SO ORDERED.

Romero, Melo, and Panganiban, JJ., concur.

Narvasa, C.J., (Chairman), on leave.

[1] "THE PHYSICIAN'S LIABILITY AND THE LAW OF NEGLIGENCE" by Constantino Nuñez, p.1 citing Louis Nizer, *My Life in Court*, New York: Double Day & Co., 1961 in Tolentino, Jr., *MEDICINE and LAW*, Proceedings of the Symposium on Current Issues Common to Medicine and Law U.P. Law Center, 1980.

[2] *Leonila Garcia-Rueda vs. Wilfred L. Pascasio, et. al.*, G.R. No. 118141, September 5, 1997.

[3] 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.

[4] Art. 365. Imprudence and Negligence. Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed; if it would have constituted a light felony,

the penalty, of arresto menor in its maximum period shall be imposed.

Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of arresto mayor in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of arresto mayor in its minimum period shall be imposed.

When 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 fine not exceeding two hundred pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.

In the imposition of this penalties, the court shall exercise their sound discretion, without regard to the rules prescribed in article sixty-four.

The provisions contained in this article shall not be applicable:

1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the courts shall impose the penalty next lower in degree than that which should be imposed, in the period which they may deem proper to apply.
2. 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 prision correccional in its medium and the maximum periods.

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.

Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

The penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the injured parties such help as may be in his hands to give.

[5] INFORMATION,

[6] DECISION in Criminal Case No. 25534, March 4, 1994, p. 12; Rollo, p. 65.

[7] DECISION in Criminal Case No. 9273-SP, July 26, 1994, p. 4; Rollo, p. 53.

[8] DECISION in CA-G.R. CR No. 16388, October 25, 1995, p. 10; Rollo, p. 49.

[9] TSN, Rowena Umali De Ocampo, November 10, 1992, pp. 5-6.

[10] TSN, Edna Pujanes, September 30, 1992, p. 5.

[11] Record of Exhibits, p. 15.

[12] TSN, *supra*, p. 8.

[13] *Ibid.*, p. 6.

- [14] Ibid., p. 8.
- [15] Ibid., pp. 27-28.
- [16] Ibid., pp. 10-14
- [17] Records of Exhibits, supra.
- [18] TSN, supra, pp. 15-16.
- [19] Record of Exhibits, supra.
- [20] TSN, Dr. Bartolome Angeles, October 7, 1992, pp. 10-12.
- [21] Record of Exhibits, supra.
- [22] Record of Exhibits, p. 5.
- [23] DECISION, supra, pp. 11-12; Rollo, pp. 64-65.
- [24] DECISION, supra, p. 4; Rollo, p. 53.
- [25] DECISION, supra, p. 7; Rollo, pp. 47.
- [26] MEDICINE and LAW, supra, p. 24.
- [27] Supra.
- [28] MEDICINE and LAW, supra, p. 25; Willard vs. Hutson, 1 ALR 3d 1092, 1102 [1963]; Snyder vs. Pantaleo, 122 A. 2d 21, 23 [1956].
- [29] American Jurisprudence 2d, Vol. 61, p. 510.
- [30] Willard vs. Hutson, supra.
- [31] MEDICINE and LAW, supra.
- [32] Abaya, et. al. vs. Favis, 3 CA Reports 450, 454-455 [1963].
- [33] Ibid.
- [34] 10 CA Reports 415 [1966].
- [35] Ibid., pp. 427-428.
- [36] TSN, Dr. Floresto Arizala, Jr. January 20, 1993, pp. 43-46.
- [37] TSN, Dr. Nieto Salvador, Jr., pp. 10-11.
- [38] TSN, Dr. Nieto Salvador, Ibid., pp. 20-21.
- [39] TSN, Dr. Bu C. Castro, September 28, 1993, pp. 10-13.
- [40] TSN, Dr. Floresto Arizala, supra.
- [41] TSN, Dr. Floresto Arizala, supra, pp. 27-28.
- [42] Robert Berkow, The Merck Manual of Diagnosis and Therapy, 1987, p. 1170.
- [43] TSN, Dr. Bu Castro, supra.

[44] TSN, Dr. Bu C. Castro, *supra*, pp. 13-15.

[45] *Padilla vs. Court of Appeals*, 129 SCRA 558, 565 [1984]; *People vs. Jalandoni*, 131 SCRA 454 [1984].

[46] "Q. When you came to know that your mother was already dead there in the operating room of the San Pablo District Hospital, how did you feel being the daughter?

A. I was crying and crying hysterically. And I asked why it happened to my mother, sir.

Q. And up to the present time do you still feel about the loss of your mother?

A. Yes, sir.

Q. How about your sister and brother?

A. Same with me, sir.

Q. Estimated to money value, how much I cost you and your sister and brother the loss of your mother?

A. There is no equivalent, sir." (TSN, Rowena Umali De Ocampo, *supra*, p. 18.)

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