

**ROGELIO E. RAMOS AND ERLINDA RAMOS, IN THEIR OWN BEHALF
AND AS NATURAL GUARDIANS OF THE MINORS, ROMMEL RAMOS,
ROY RODERICK RAMOS, AND RON RAYMOND RAMOS, PETITIONERS,
VS. COURT O...**

G.R. No. 124354. April 11, 2002

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-124354/>

KAPUNAN, J.:

Private respondents De Los Santos Medical Center, Dr. Orlino Hosaka and Dr. Perfecta Gutierrez move for a reconsideration of the Decision, dated December 29, 1999, of this Court holding them civilly liable for petitioner Erlinda Ramos' comatose condition after she delivered herself to them for their professional care and management.

For better understanding of the issues raised in private respondents' respective motions, we will briefly restate the facts of the case as follows:

Sometime in 1985, petitioner Erlinda Ramos, after seeking professional medical help, was advised to undergo an operation for the removal of a stone in her gall bladder (cholecystectomy). She was referred to Dr. Hosaka, a surgeon, who agreed to perform the operation on her. The operation was scheduled for June 17, 1985 at 9:00 in the morning at private respondent De Los Santos Medical Center (DLSMC). Since neither petitioner Erlinda nor her husband, petitioner Rogelio, knew of any anesthesiologist, Dr. Hosaka recommended to them the services of Dr. Gutierrez.

Petitioner Erlinda was admitted to the DLSMC the day before the scheduled operation. By 7:30 in the morning of the following day, petitioner Erlinda was already being prepared for operation. Upon the request of petitioner Erlinda, her sister-in-law, Herminda Cruz, who was then Dean of the College of Nursing at the Capitol Medical Center, was allowed to accompany her inside the operating room.

At around 9:30 in the morning, Dr. Hosaka had not yet arrived so Dr. Gutierrez tried to get in touch with him by phone. Thereafter, Dr. Gutierrez informed Cruz that the operation might be delayed due to the late arrival of Dr. Hosaka. In the meantime, the patient, petitioner Erlinda said to Cruz, "Mindy, inip na inip na ako, ikuha mo ako ng ibang Doctor."

By 10:00 in the morning, when Dr. Hosaka was still not around, petitioner Rogelio already wanted to pull out his wife from the operating room. He met Dr. Garcia, who remarked that he was also tired of waiting for Dr. Hosaka. Dr. Hosaka finally arrived at the hospital at around 12:10 in the afternoon, or more than three (3) hours after the scheduled operation.

Cruz, who was then still inside the operating room, heard about Dr. Hosaka's arrival. While she held the hand of Erlinda, Cruz saw Dr. Gutierrez trying to intubate the patient. Cruz heard Dr. Gutierrez utter: "ang hirap ma-intubate nito, mali yata ang pagkakapasok. O lumalaki ang tiyan." Cruz noticed a bluish discoloration of

Erlinda's nailbeds on her left hand. She (Cruz) then heard Dr. Hosaka instruct someone to call Dr. Calderon, another anesthesiologist. When he arrived, Dr. Calderon attempted to intubate the patient. The nailbeds of the patient remained bluish, thus, she was placed in a trendelenburg position – a position where the head of the patient is placed in a position lower than her feet. At this point, Cruz went out of the operating room to express her concern to petitioner Rogelio that Erlinda's operation was not going well.

Cruz quickly rushed back to the operating room and saw that the patient was still in trendelenburg position. At almost 3:00 in the afternoon, she saw Erlinda being wheeled to the Intensive Care Unit (ICU). The doctors explained to petitioner Rogelio that his wife had bronchospasm. Erlinda stayed in the ICU for a month. She was released from the hospital only four months later or on November 15, 1985. Since the ill-fated operation, Erlinda remained in comatose condition until she died on August 3, 1999.[1]

Petitioners filed with the Regional Trial Court of Quezon City a civil case for damages against private respondents. After due trial, the court a quo rendered judgment in favor of petitioners. Essentially, the trial court found that private respondents were negligent in the performance of their duties to Erlinda. On appeal by private respondents, the Court of Appeals reversed the trial court's decision and directed petitioners to pay their "unpaid medical bills" to private respondents.

Petitioners filed with this Court a petition for review on certiorari. The private respondents were then required to submit their respective comments thereon. On December 29, 1999, this Court promulgated the decision which private respondents now seek to be reconsidered. The dispositive portion of said Decision states:

WHEREFORE, the decision and resolution of the appellate court appealed from are hereby modified so as to award in favor of petitioners, and solidarily against private respondents the following: 1) P1,352,000.00 as actual damages computed as of the date of promulgation of this decision plus a monthly payment of P8,000.00 up to the time that petitioner Erlinda Ramos expires or miraculously survives; 2) P2,000,000.00 as moral damages, 3) P1,500,000.00 as temperate damages; 4) P100,000.00 each exemplary damages and attorney's fees; and 5) the costs of the suit.[2]

In his Motion for Reconsideration, private respondent Dr. Hosaka submits the following as grounds therefor:

I

THE HONORABLE SUPREME COURT COMMITTED REVERSIBLE ERROR WHEN IT HELD RESPONDENT DR. HOSAKA LIABLE ON THE BASIS OF THE "CAPTAIN-OF-THE-SHIP" DOCTRINE.

II

THE HONORABLE SUPREME COURT ERRED IN HOLDING RESPONDENT DR. HOSAKA LIABLE DESPITE THE FACT THAT NO NEGLIGENCE CAN BE ATTRIBUTABLE TO HIM.

III

ASSUMING WITHOUT ADMITTING THAT RESPONDENT DR. HOSAKA IS LIABLE, THE HONORABLE SUPREME COURT ERRED IN AWARDING DAMAGES THAT WERE CLEARLY EXCESSIVE AND WITHOUT LEGAL BASIS.[3]

Private respondent Dr. Gutierrez, for her part, avers that:

- THE HONORABLE SUPREME COURT MAY HAVE INADVERTENTLY OVERLOOKED THE FACT THAT THE COURT OF APPEAL'S DECISION DATED 29 MAY 1995 HAD ALREADY BECOME FINAL AND EXECUTORY AS OF 25 JUNE 1995, THEREBY DEPRIVING THIS HONORABLE COURT

OF JURISDICTION OVER THE INSTANT PETITION;

- THE HONORABLE SUPREME COURT MAY HAVE INADVERTENTLY OVERLOOKED SEVERAL MATERIAL FACTUAL CIRCUMSTANCES WHICH, IF PROPERLY CONSIDERED, WOULD INDUBITABLY LEAD TO NO OTHER CONCLUSION BUT THAT PRIVATE RESPONDENT DOCTORS WERE NOT GUILTY OF ANY NEGLIGENCE IN RESPECT OF THE INSTANT CASE;

B.1

RESPONDENT DOCTOR PERFECTA GUTIERREZ HAS SUFFICIENTLY DISCHARGED THE BURDEN OF EVIDENCE BY SUBSTANTIAL PROOF OF HER COMPLIANCE WITH THE STANDARDS OF DUE CARE EXPECTED IN HER RESPECTIVE FIELD OF MEDICAL SPECIALIZATION.

B.2

RESPONDENT DOCTOR PERFECTA GUTIERREZ HAS SUFFICIENTLY DISCHARGED THE BURDEN OF EVIDENCE BY SUBSTANTIAL PROOF OF HER HAVING SUCCESSFULLY INTUBATED PATIENT ERLINDA RAMOS

- THE SUPREME COURT MAY HAVE INADVERTENTLY PLACED TOO MUCH RELIANCE ON THE TESTIMONY OF PETITIONER'S WITNESS HERMINDA CRUZ, DESPITE THE EXISTENCE OF SEVERAL FACTUAL CIRCUMSTANCES WHICH RENDERS DOUBT ON HER CREDIBILITY

- THE SUPREME COURT MAY HAVE INADVERTENTLY DISREGARDED THE EXPERT TESTIMONY OF DR. JAMORA AND DRA. CALDERON

- THE HONORABLE SUPREME COURT MAY HAVE INADVERTENTLY AWARDED DAMAGES TO PETITIONERS DESPITE THE FACT THAT THERE WAS NO NEGLIGENCE ON THE PART OF RESPONDENT DOCTOR.[4]

Private respondent De Los Santos Medical Center likewise moves for reconsideration on the following grounds:

I

THE HONORABLE COURT ERRED IN GIVING DUE COURSE TO THE INSTANT PETITION AS THE DECISION OF THE HONORABLE COURT OF APPEALS HAD ALREADY BECOME FINAL AND EXECUTORY

II

THE HONORABLE SUPREME COURT ERRED IN FINDING THAT AN EMPLOYER-EMPLOYEE [RELATIONSHIP] EXISTS BETWEEN RESPONDENT DE LOS SANTOS MEDICAL CENTER AND DRS. ORLINO HOSAKA AND PERFECTA GUTIERREZ

III

THE HONORABLE SUPREME COURT ERRED IN FINDING THAT RESPONDENT DE LOS SANTOS MEDICAL CENTER IS SOLIDARILY LIABLE WITH RESPONDENT DOCTORS

IV

THE HONORABLE SUPREME COURT ERRED IN INCREASING THE AWARD OF DAMAGES IN FAVOR OF PETITIONERS.[5]

In the Resolution of February 21, 2000, this Court denied the motions for reconsideration of private respondents Drs. Hosaka and Gutierrez. They then filed their respective second motions for reconsideration. The Philippine College of Surgeons filed its Petition-in-Intervention contending in the main that this Court erred in holding private respondent Dr. Hosaka liable under the captain of the ship doctrine. According to the intervenor, said doctrine had long been abandoned in the United States in recognition of the developments in modern medical and hospital practice.[6] The Court noted these pleadings in the Resolution of July 17, 2000.[7]

On March 19, 2001, the Court heard the oral arguments of the parties, including the intervenor. Also present during the hearing were the amici curiae: Dr. Felipe A. Estrella, Jr., Consultant of the Philippine Charity Sweepstakes, former Director of the Philippine General Hospital and former Secretary of Health; Dr. Iluminada T. Camagay, President of the Philippine Society of Anesthesiologists, Inc. and Professor and Vice-Chair for Research, Department of Anesthesiology, College of Medicine-Philippine General Hospital, University of the Philippines; and Dr. Lydia M. Egay, Professor and Vice-Chair for Academics, Department of Anesthesiology, College of Medicine-Philippine General Hospital, University of the Philippines.

The Court enumerated the issues to be resolved in this case as follows:

- WHETHER OR NOT DR. ORLINO HOSAKA (SURGEON) IS LIABLE FOR NEGLIGENCE;
- WHETHER OR NOT DR. PERFECTA GUTIERREZ (ANESTHESIOLOGIST) IS LIABLE FOR NEGLIGENCE; AND
- WHETHER OR NOT THE HOSPITAL (DELOS SANTOS MEDICAL CENTER) IS LIABLE FOR ANY ACT OF NEGLIGENCE COMMITTED BY THEIR VISITING CONSULTANT SURGEON AND ANESTHESIOLOGIST.[8]

We shall first resolve the issue pertaining to private respondent Dr. Gutierrez. She maintains that the Court erred in finding her negligent and in holding that it was the faulty intubation which was the proximate cause of Erlinda's comatose condition. The following objective facts allegedly negate a finding of negligence on her part: 1) That the outcome of the procedure was a comatose patient and not a dead one; 2) That the patient had a cardiac arrest; and 3) That the patient was revived from that cardiac arrest.[9] In effect, Dr. Gutierrez insists that, contrary to the finding of this Court, the intubation she performed on Erlinda was successful.

Unfortunately, Dr. Gutierrez' claim of lack of negligence on her part is belied by the records of the case. It has been sufficiently established that she failed to exercise the standards of care in the administration of anesthesia on a patient. Dr. Egay enlightened the Court on what these standards are:

x x x What are the standards of care that an anesthesiologist should do before we administer anesthesia? The initial step is the preparation of the patient for surgery and this is a pre-operative evaluation because the anesthesiologist is responsible for determining the medical status of the patient, developing the anesthesia plan and acquainting the patient or the responsible adult particularly if we are referring with the patient or to adult patient who may not have, who may have some mental handicaps of the proposed plans. We do pre-operative evaluation because this provides for an opportunity for us to establish identification and personal acquaintance with the patient. It also makes us have an opportunity to alleviate anxiety, explain techniques and risks to the patient, given the patient the choice and establishing consent to proceed with the plan. And lastly, once this has been agreed upon by all parties concerned the ordering of pre-operative medications. And following this line at the end of the evaluation we usually come up on writing, documentation is very important as far as when we train an anesthesiologist we always emphasize this because we need records for our protection, well, records. And it entails having brief summary of patient history and physical findings pertinent to anesthesia, plan, organize as a problem list, the plan anesthesia technique, the plan post operative, pain management if appropriate, special issues for this particular patient. There are needs for special care after surgery and if it so it

must be written down there and a request must be made known to proper authorities that such and such care is necessary. And the request for medical evaluation if there is an indication. When we ask for a cardio-pulmonary clearance it is not in fact to tell them if this patient is going to be fit for anesthesia, the decision to give anesthesia rests on the anesthesiologist. What we ask them is actually to give us the functional capacity of certain systems which maybe affected by the anesthetic agent or the technique that we are going to use. But the burden of responsibility in terms of selection of agent and how to administer it rest on the anesthesiologist.[10]

The conduct of a preanesthetic/preoperative evaluation prior to an operation, whether elective or emergency, cannot be dispensed with.[11] Such evaluation is necessary for the formulation of a plan of anesthesia care suited to the needs of the patient concerned.

Pre-evaluation for anesthesia involves taking the patient's medical history, reviewing his current drug therapy, conducting physical examination, interpreting laboratory data, and determining the appropriate prescription of preoperative medications as necessary to the conduct of anesthesia.[12]

Physical examination of the patient entails not only evaluating the patient's central nervous system, cardiovascular system and lungs but also the upper airway. Examination of the upper airway would in turn include an analysis of the patient's cervical spine mobility, temporomandibular mobility, prominent central incisors, deceased or artificial teeth, ability to visualize uvula and the thyromental distance.[13]

Nonetheless, Dr. Gutierrez omitted to perform a thorough preoperative evaluation on Erlinda. As she herself admitted, she saw Erlinda for the first time on the day of the operation itself, one hour before the scheduled operation. She auscultated[14] the patient's heart and lungs and checked the latter's blood pressure to determine if Erlinda was indeed fit for operation.[15] However, she did not proceed to examine the patient's airway. Had she been able to check petitioner Erlinda's airway prior to the operation, Dr. Gutierrez would most probably not have experienced difficulty in intubating the former, and thus the resultant injury could have been avoided. As we have stated in our Decision:

In the case at bar, respondent Dra. Gutierrez admitted that she saw Erlinda for the first time on the day of the operation itself, on 17 June 1985. Before this date, no prior consultations with, or pre-operative evaluation of Erlinda was done by her. Until the day of the operation, respondent Dra. Gutierrez was unaware of the physiological make-up and needs of Erlinda. She was likewise not properly informed of the possible difficulties she would face during the administration of anesthesia to Erlinda. Respondent Dra. Gutierrez' act of seeing her patient for the first time only an hour before the scheduled operative procedure was, therefore, an act of exceptional negligence and professional irresponsibility. The measures cautioning prudence and vigilance in dealing with human lives lie at the core of the physician's centuries-old Hippocratic Oath. Her failure to follow this medical procedure is, therefore, a clear indicia of her negligence.[16]

Further, there is no cogent reason for the Court to reverse its finding that it was the faulty intubation on Erlinda that caused her comatose condition. There is no question that Erlinda became comatose after Dr. Gutierrez performed a medical procedure on her. Even the counsel of Dr. Gutierrez admitted to this fact during the oral arguments:

CHIEF JUSTICE:

Mr. Counsel, you started your argument saying that this involves a comatose patient?

ATTY. GANA:

Yes, Your Honor.

CHIEF JUSTICE:

How do you mean by that, a comatose, a comatose after any other acts were done by Dr. Gutierrez or comatose before any act was done by her?

ATTY. GANA:

No, we meant comatose as a final outcome of the procedure.

CHIEF JUSTICE:

Meaning to say, the patient became comatose after some intervention, professional acts have been done by Dr. Gutierrez?

ATTY. GANA:

Yes, Your Honor.

CHIEF JUSTICE:

In other words, the comatose status was a consequence of some acts performed by D. Gutierrez?

ATTY. GANA:

It was a consequence of the well, (interrupted)

CHIEF JUSTICE:

An acts performed by her, is that not correct?

ATTY. GANA:

Yes, Your Honor.

CHIEF JUSTICE:

Thank you.[17]

What is left to be determined therefore is whether Erlinda's hapless condition was due to any fault or negligence on the part of Dr. Gutierrez while she (Erlinda) was under the latter's care. Dr. Gutierrez maintains that the bronchospasm and cardiac arrest resulting in the patient's comatose condition was brought about by the anaphylactic reaction of the patient to Thiopental Sodium (pentothal).[18] In the Decision, we explained why we found Dr. Gutierrez' theory unacceptable. In the first place, Dr. Eduardo Jamora, the witness who was presented to support her (Dr. Gutierrez) theory, was a pulmonologist. Thus, he could not be considered an authority on anesthesia practice and procedure and their complications.[19]

Secondly, there was no evidence on record to support the theory that Erlinda developed an allergic reaction to pentothal. Dr. Camagay enlightened the Court as to the manifestations of an allergic reaction in this wise:

DR. CAMAGAY:

All right, let us qualify an allergic reaction. In medical terminology an allergic reaction is something which is not usual response and it is further qualified by the release of a hormone called histamine and histamine has an effect on all the organs of the body generally release because the substance that entered the body reacts with the particular cell, the mass cell, and the mass cell secretes this histamine. In a way it is some form of response to take away that which is not mine, which is not part of the body. So, histamine has multiple effects on the body. So, one of the effects as you will see you will have redness, if you have an allergy you will have tearing of the eyes, you will have swelling, very crucial swelling sometimes of the larynxes which is your voice box

main airway, that swelling may be enough to obstruct the entry of air to the trachea and you could also have contraction, constriction of the smaller airways beyond the trachea, you see you have the trachea this way, we brought some visual aids but unfortunately we do not have a projector. And then you have the smaller airways, the bronchi and then eventually into the mass of the lungs you have the bronchus. The difference is that these tubes have also in their walls muscles and this particular kind of muscles is smooth muscle so, when histamine is released they close up like this and that phenomenon is known as broncho spasm. However, the effects of histamine also on blood vessels are different. They dilate blood vessel open up and the patient or whoever has this histamine release has hypertension or low blood pressure to a point that the patient may have decrease blood supply to the brain and may collapse so, you may have people who have this.[20]

These symptoms of an allergic reaction were not shown to have been extant in Erlinda's case. As we held in our Decision, "no evidence of stridor, skin reactions, or wheezing – some of the more common accompanying signs of an allergic reaction – appears on record. No laboratory data were ever presented to the court." [21]

Dr. Gutierrez, however, insists that she successfully intubated Erlinda as evidenced by the fact that she was revived after suffering from cardiac arrest. Dr. Gutierrez faults the Court for giving credence to the testimony of Cruz on the matter of the administration of anesthesia when she (Cruz), being a nurse, was allegedly not qualified to testify thereon. Rather, Dr. Gutierrez invites the Court's attention to her synopsis on what transpired during Erlinda's intubation:

12:15 p.m.

Patient was inducted with sodium pentothal 2.5% (250 mg) given by slow IV. O₂ was started by mask. After pentothal injection this was followed by IV injection of Norcuron 4mg. After 2 minutes O₂ was given by positive pressure for about one minute. Intubation with endotracheal tube 7.5 m in diameter was done with slight difficulty (short neck & slightly prominent upper teeth) chest was examined for breath sounds & checked if equal on both sides. The tube was then anchored to the mouth by plaster & cuff inflated. Ethrane 2% with O₂ 4 liters was given. Blood pressure was checked 120/80 & heart rate regular and normal 90/min.

12:25 p.m.

After 10 minutes patient was cyanotic. Ethrane was discontinued & O₂ given alone. Cyanosis disappeared. Blood pressure and heart beats stable.

12:30 p.m.

Cyanosis again reappeared this time with sibilant and sonorous rales all over the chest. D₅% H₂O & 1 ampule of aminophylline by fast drip was started. Still the cyanosis was persistent. Patient was connected to a cardiac monitor. Another ampule of [sic] aminophylline was given and solu cortef was given.

12:40 p.m.

There was cardiac arrest. Extra cardiac massage and intercardiac injection of adrenalin was given & heart beat reappeared in less than one minute. Sodium bicarbonate & another dose of solu cortef was given by IV. Cyanosis slowly disappeared & O₂ continuously given & assisted positive pressure. Laboratory exams done (see results in chart).

Patient was transferred to ICU for further management.[22]

From the foregoing, it can be allegedly seen that there was no withdrawal (extubation) of the tube. And the fact that the cyanosis allegedly disappeared after pure oxygen was supplied through the tube proved that it was properly placed.

The Court has reservations on giving evidentiary weight to the entries purportedly contained in Dr. Gutierrez' synopsis. It is significant to note that the said record prepared by Dr. Gutierrez was made only after Erlinda was taken out of the operating room. The standard practice in anesthesia is that every single act that the anesthesiologist performs must be recorded. In Dr. Gutierrez' case, she could not account for at least ten (10) minutes of what happened during the administration of anesthesia on Erlinda. The following exchange between Dr. Estrella, one of the amici curiae, and Dr. Gutierrez is instructive:

DR. ESTRELLA

Q.

You mentioned that there were two (2) attempts in the intubation period?

DR. GUTIERREZ

Yes.

Q

There were two attempts. In the first attempt was the tube inserted or was the laryngoscope only inserted, which was inserted?

A

All the laryngoscope.

Q

All the laryngoscope. But if I remember right somewhere in the re-direct, a certain lawyer, you were asked that you did a first attempt and the question was – did you withdraw the tube? And you said – you never withdrew the tube, is that right?

A

Yes.

Q

Yes. And so if you never withdrew the tube then there was no, there was no insertion of the tube during that first attempt. Now, the other thing that we have to settle here is – when cyanosis occurred, is it recorded in the anesthesia record when the cyanosis, in your recording when did the cyanosis occur?

A

(sic)

Q

Is it a standard practice of anesthesia that whatever you do during that period or from the time of induction to the time that you probably get the patient out of the operating room that every single action that you do is so recorded in your anesthesia record?

A

I was not able to record everything I did not have time anymore because I did that after the, when the patient was about to leave the operating room. When there was second cyanosis already that was the (interrupted)

Q

When was the first cyanosis?

A

The first cyanosis when I was (interrupted)

Q

What time, more or less?

A

I think it was 12:15 or 12:16.

Q

Well, if the record will show you started induction at 12:15?

A

Yes, Your Honor.

Q

And the first medication you gave was what?

A

The first medication, no, first the patient was oxygenated for around one to two minutes.

Q

Yes, so, that is about 12:13?

A

Yes, and then, I asked the resident physician to start giving the pentothal very slowly and that was around one minute.

Q

So, that is about 12:13 no, 12:15, 12:17?

A

Yes, and then, after one minute another oxygenation was given and after (interrupted)

Q

12:18?

A

Yes, and then after giving the oxygen we start the menorecure which is a relaxant. After that relaxant (interrupted)

Q

After that relaxant, how long do you wait before you do any manipulation?

A

Usually you wait for two minutes or three minutes.

Q

So, if our estimate of the time is accurate we are now more or less 12:19, is that right?

A

Maybe.

Q

12:19. And at that time, what would have been done to this patient?

A

After that time you examine the, if there is relaxation of the jaw which you push it downwards and when I saw that the patient was relax because that monorcure is a relaxant, you cannot intubate the patient or insert the laryngoscope if it is not keeping him relax. So, my first attempt when I put the laryngoscope on I saw the trachea was deeply interiorly. So, what I did ask "mahirap ata ito ah." So, I removed the laryngoscope and oxygenated again the patient.

Q

So, more or less you attempted to do an intubation after the first attempt as you claimed that it was only the laryngoscope that was inserted.

A

Yes.

Q

And in the second attempt you inserted the laryngoscope and now possible intubation?

A

Yes.

Q

And at that point, you made a remark, what remark did you make?

A

I said “mahirap ata ito” when the first attempt I did not see the trachea right away. That was when I (interrupted)

Q

That was the first attempt?

A

Yes.

Q

What about the second attempt?

A

On the second attempt I was able to intubate right away within two to three seconds.

Q

At what point, for purposes of discussion without accepting it, at what point did you make the comment “na mahirap ata to intubate, mali ata ang pinasukan”

A

I did not say “mali ata ang pinasukan” I never said that.

Q

Well, just for the information of the group here the remarks I am making is based on the documents that were forwarded to me by the Supreme Court. That is why for purposes of discussion I am trying to clarify this for the sake of enlightenment. So, at what point did you ever make that comment?

A

Which one, sir?

Q

The “mahirap intubate ito” assuming that you (interrupted)

A

Iyon lang, that is what I only said “mahirap intubate (interrupted)

Q

At what point?

A

When the first attempt when I inserted the laryngoscope for the first time.

Q

So, when you claim that at the first attempt you inserted the laryngoscope, right?

A

Yes.

Q

But in one of the recordings somewhere at the, somewhere in the transcript of records that when the lawyer of the other party try to inquire from you during the first attempt that was the time when “mayroon ba kayong hinugot sa tube, I do not remember the page now, but it seems to me it is there. So, that it was on the second attempt that (interrupted)

A

I was able to intubate.

Q

And this is more or less about what time 12:21?

A

Maybe, I cannot remember the time, Sir.

Q

Okay, assuming that this was done at 12:21 and looking at the anesthesia records from 12:20 to 12:30 there was no recording of the vital signs. And can we presume that at this stage there was already some problems in

handling the patient?

A

Not yet.

Q

But why are there no recordings in the anesthesia record?

A

I did not have time.

Q

Ah, you did not have time, why did you not have time?

A

Because it was so fast, I really (at this juncture the witness is laughing)

Q

No, I am just asking. Remember I am not here not to pin point on anybody I am here just to more or less clarify certainty more ore less on the record.

A

Yes, Sir.

Q

And so it seems that there were no recording during that span of ten (10) minutes. From 12:20 to 12:30, and going over your narration, it seems to me that the cyanosis appeared ten (10) minutes after induction, is that right?

A

Yes.

Q

And that is after induction 12:15 that is 12:25 that was the first cyanosis?

A

Yes.

Q

And that the 12:25 is after the 12:20?

A

We cannot (interrupted)

Q

Huwag ho kayong makuwan, we are just trying to enlighten, I am just going over the record ano, kung mali ito kuwan eh di ano. So, ganoon po ano, that it seems to me that there is no recording from 12:20 to 12:30, so, I am just wondering why there were no recordings during the period and then of course the second cyanosis, after the first cyanosis. I think that was the time Dr. Hosaka came in?

A

No, the first cyanosis (interrupted).[23]

We cannot thus give full credence to Dr. Gutierrez' synopsis in light of her admission that it does not fully reflect the events that transpired during the administration of anesthesia on Erlinda. As pointed out by Dr. Estrella, there was a ten-minute gap in Dr. Gutierrez' synopsis, i.e., the vital signs of Erlinda were not recorded during that time. The absence of these data is particularly significant because, as found by the trial court, it was the absence of oxygen supply for four (4) to five (5) minutes that caused Erlinda's comatose condition.

On the other hand, the Court has no reason to disbelieve the testimony of Cruz. As we stated in the Decision, she is competent to testify on matters which she is capable of observing such as, the statements and acts of the physician and surgeon, external appearances and manifest conditions which are observable by any one.[24] Cruz, Erlinda's sister-in-law, was with her inside the operating room. Moreover, being a nurse and Dean of the Capitol Medical Center School of Nursing at that, she is not entirely ignorant of anesthetic procedure. Cruz narrated that she heard Dr. Gutierrez remark, "Ang hirap ma-intubate nito, mali yata ang pagkakapasok. O lumalaki ang tiyan." She observed that the nailbeds of Erlinda became bluish and thereafter Erlinda was placed in trendelenburg position.[25] Cruz further averred that she noticed that the abdomen of Erlinda became distended.[26]

The cyanosis (bluish discoloration of the skin or mucous membranes caused by lack of oxygen or abnormal hemoglobin in the blood) and enlargement of the stomach of Erlinda indicate that the endotracheal tube was improperly inserted into the esophagus instead of the trachea. Consequently, oxygen was delivered not to the lungs but to the gastrointestinal tract. This conclusion is supported by the fact that Erlinda was placed in

trendelenburg position. This indicates that there was a decrease of blood supply to the patient's brain. The brain was thus temporarily deprived of oxygen supply causing Erlinda to go into coma.

The injury incurred by petitioner Erlinda does not normally happen absent any negligence in the administration of anesthesia and in the use of an endotracheal tube. As was noted in our Decision, the instruments used in the administration of anesthesia, including the endotracheal tube, were all under the exclusive control of private respondents Dr. Gutierrez and Dr. Hosaka.[27] In *Voss vs. Bridwell*,[28] which involved a patient who suffered brain damage due to the wrongful administration of anesthesia, and even before the scheduled mastoid operation could be performed, the Kansas Supreme Court applied the doctrine of *res ipsa loquitur*, reasoning that the injury to the patient therein was one which does not ordinarily take place in the absence of negligence in the administration of an anesthetic, and in the use and employment of an endotracheal tube. The court went on to say that "[o]rdinarily a person being put under anesthesia is not rendered decerebrate as a consequence of administering such anesthesia in the absence of negligence. Upon these facts and under these circumstances, a layman would be able to say, as a matter of common knowledge and observation, that the consequences of professional treatment were not as such as would ordinarily have followed if due care had been exercised." [29] Considering the application of the doctrine of *res ipsa loquitur*, the testimony of Cruz was properly given credence in the case at bar.

For his part, Dr. Hosaka mainly contends that the Court erred in finding him negligent as a surgeon by applying the Captain-of-the-Ship doctrine.[30] Dr. Hosaka argues that the trend in United States jurisprudence has been to reject said doctrine in light of the developments in medical practice. He points out that anesthesiology and surgery are two distinct and specialized fields in medicine and as a surgeon, he is not deemed to have control over the acts of Dr. Gutierrez. As anesthesiologist, Dr. Gutierrez is a specialist in her field and has acquired skills and knowledge in the course of her training which Dr. Hosaka, as a surgeon, does not possess.[31] He states further that current American jurisprudence on the matter recognizes that the trend towards specialization in medicine has created situations where surgeons do not always have the right to control all personnel within the operating room,[32] especially a fellow specialist.[33]

Dr. Hosaka cites the case of *Thomas v. Raleigh General Hospital*,[34] which involved a suit filed by a patient who lost his voice due to the wrongful insertion of the endotracheal tube preparatory to the administration of anesthesia in connection with the laparotomy to be conducted on him. The patient sued both the anesthesiologist and the surgeon for the injury suffered by him. The Supreme Court of Appeals of West Virginia held that the surgeon could not be held liable for the loss of the patient's voice, considering that the surgeon did not have a hand in the intubation of the patient. The court rejected the application of the "Captain-of-the-Ship Doctrine," citing the fact that the field of medicine has become specialized such that surgeons can no longer be deemed as having control over the other personnel in the operating room. It held that "[a]n assignment of liability based on actual control more realistically reflects the actual relationship which exists in a modern operating room." [35] Hence, only the anesthesiologist who inserted the endotracheal tube into the patient's throat was held liable for the injury suffered by the latter.

This contention fails to persuade.

That there is a trend in American jurisprudence to do away with the Captain-of-the-Ship doctrine does not mean that this Court will ipso facto follow said trend. Due regard for the peculiar factual circumstances obtaining in this case justify the application of the Captain-of-the-Ship doctrine. From the facts on record it can be logically inferred that Dr. Hosaka exercised a certain degree of, at the very least, supervision over the procedure then being performed on Erlinda.

First, it was Dr. Hosaka who recommended to petitioners the services of Dr. Gutierrez. In effect, he represented to petitioners that Dr. Gutierrez possessed the necessary competence and skills. Drs. Hosaka and Gutierrez had worked together since 1977. Whenever Dr. Hosaka performed a surgery, he would always engage the services of Dr. Gutierrez to administer the anesthesia on his patient.[36]

Second, Dr. Hosaka himself admitted that he was the attending physician of Erlinda. Thus, when Erlinda showed signs of cyanosis, it was Dr. Hosaka who gave instructions to call for another anesthesiologist and cardiologist to help resuscitate Erlinda.[37]

Third, it is conceded that in performing their responsibilities to the patient, Drs. Hosaka and Gutierrez worked as a team. Their work cannot be placed in separate watertight compartments because their duties intersect with each other.[38]

While the professional services of Dr. Hosaka and Dr. Gutierrez were secured primarily for their performance of acts within their respective fields of expertise for the treatment of petitioner Erlinda, and that one does not exercise control over the other, they were certainly not completely independent of each other so as to absolve one from the negligent acts of the other physician.

That they were working as a medical team is evident from the fact that Dr. Hosaka was keeping an eye on the intubation of the patient by Dr. Gutierrez, and while doing so, he observed that the patient's nails had become dusky and had to call Dr. Gutierrez's attention thereto. The Court also notes that the counsel for Dr. Hosaka admitted that in practice, the anesthesiologist would also have to observe the surgeon's acts during the surgical process and calls the attention of the surgeon whenever necessary[39] in the course of the treatment. The duties of Dr. Hosaka and those of Dr. Gutierrez in the treatment of petitioner Erlinda are therefore not as clear-cut as respondents claim them to be. On the contrary, it is quite apparent that they have a common responsibility to treat the patient, which responsibility necessitates that they call each other's attention to the condition of the patient while the other physician is performing the necessary medical procedures.

It is equally important to point out that Dr. Hosaka was remiss in his duty of attending to petitioner Erlinda promptly, for he arrived more than three (3) hours late for the scheduled operation. The cholecystectomy was set for June 17, 1985 at 9:00 a.m., but he arrived at DLSMC only at around 12:10 p.m. In reckless disregard for his patient's well being, Dr. Hosaka scheduled two procedures on the same day, just thirty minutes apart from each other, at different hospitals. Thus, when the first procedure (proctoscopy) at the Sta. Teresita Hospital did not proceed on time, Erlinda was kept in a state of uncertainty at the DLSMC.

The unreasonable delay in petitioner Erlinda's scheduled operation subjected her to continued starvation and consequently, to the risk of acidosis,[40] or the condition of decreased alkalinity of the blood and tissues, marked by sickly sweet breath, headache, nausea and vomiting, and visual disturbances.[41] The long period that Dr. Hosaka made Erlinda wait for him certainly aggravated the anxiety that she must have been feeling at the time. It could be safely said that her anxiety adversely affected the administration of anesthesia on her. As explained by Dr. Camagay, the patient's anxiety usually causes the outpouring of adrenaline which in turn results in high blood pressure or disturbances in the heart rhythm:

DR. CAMAGAY:

x x x Pre-operative medication has three main functions: One is to alleviate anxiety. Second is to dry up the secretions and Third is to relieve pain. Now, it is very important to alleviate anxiety because anxiety is associated with the outpouring of certain substances formed in the body called adrenalin. When a patient is anxious there is an outpouring of adrenalin which would have adverse effect on the patient. One of it is high blood pressure, the other is that he opens himself to disturbances in the heart rhythm, which would have

adverse implications. So, we would like to alleviate patient's anxiety mainly because he will not be in control of his body there could be adverse results to surgery and he will be opened up; a knife is going to open up his body. x x x[42]

Dr. Hosaka cannot now claim that he was entirely blameless of what happened to Erlinda. His conduct clearly constituted a breach of his professional duties to Erlinda:

CHIEF JUSTICE:

Two other points. The first, Doctor, you were talking about anxiety, would you consider a patient's stay on the operating table for three hours sufficient enough to aggravate or magnify his or her anxiety?

DR. CAMAGAY:

Yes.

CHIEF JUSTICE:

In other words, I understand that in this particular case that was the case, three hours waiting and the patient was already on the operating table (interrupted)

DR. CAMAGAY:

Yes.

CHIEF JUSTICE:

Would you therefore conclude that the surgeon contributed to the aggravation of the anxiety of the patient?

DR. CAMAGAY:

That this operation did not take place as scheduled is already a source of anxiety and most operating tables are very narrow and that patients are usually at risk of falling on the floor so there are restraints that are placed on them and they are never, never left alone in the operating room by themselves specially if they are already pre-medicated because they may not be aware of some of their movement that they make which would contribute to their injury.

CHIEF JUSTICE:

In other words due diligence would require a surgeon to come on time?

DR. CAMAGAY:

I think it is not even due diligence it is courtesy.

CHIEF JUSTICE:

Courtesy.

DR. CAMAGAY:

And care.

CHIEF JUSTICE:

Duty as a matter of fact?

DR. CAMAGAY:

Yes, Your Honor.[43]

Dr. Hosaka's irresponsible conduct of arriving very late for the scheduled operation of petitioner Erlinda is violative, not only of his duty as a physician "to serve the interest of his patients with the greatest solicitude, giving them always his best talent and skill,"[44] but also of Article 19 of the Civil Code which requires a person, in the performance of his duties, to act with justice and give everyone his due.

Anent private respondent DLSMC's liability for the resulting injury to petitioner Erlinda, we held that respondent hospital is solidarily liable with respondent doctors therefor under Article 2180 of the Civil Code[45] since there exists an employer-employee relationship between private respondent DLSMC and Drs. Gutierrez and Hosaka:

In other words, private hospitals, hire, fire and exercise real control over their attending and visiting "consultant" staff. While "consultants" are not, technically employees, x x x the control exercised, the hiring and the right to terminate consultants all fulfill the important hallmarks of an employer-employee relationship, with the exception of the payment of wages. In assessing whether such a relationship in fact exists, the control test is determining. x x x[46]

DLSMC however contends that applying the four-fold test in determining whether such a relationship exists between it and the respondent doctors, the inescapable conclusion is that DLSMC cannot be considered an employer of the respondent doctors.

It has been consistently held that in determining whether an employer-employee relationship exists between the parties, the following elements must be present: (1) selection and engagement of services; (2) payment of wages; (3) the power to hire and fire; and (4) the power to control not only the end to be achieved, but the means to be used in reaching such an end.[47]

DLSMC maintains that first, a hospital does not hire or engage the services of a consultant, but rather, accredits the latter and grants him or her the privilege of maintaining a clinic and/or admitting patients in the hospital upon a showing by the consultant that he or she possesses the necessary qualifications, such as accreditation by the appropriate board (diplomate), evidence of fellowship and references.[48] Second, it is not the hospital but the patient who pays the consultant's fee for services rendered by the latter.[49] Third, a hospital does not dismiss a consultant; instead, the latter may lose his or her accreditation or privileges granted by the hospital.[50] Lastly, DLSMC argues that when a doctor refers a patient for admission in a hospital, it is the doctor who prescribes the treatment to be given to said patient. The hospital's obligation is limited to providing the patient with the preferred room accommodation, the nutritional diet and medications prescribed by the doctor, the equipment and facilities necessary for the treatment of the patient, as well as the services of the hospital staff who perform the ministerial tasks of ensuring that the doctor's orders are carried out strictly.[51]

After a careful consideration of the arguments raised by DLSMC, the Court finds that respondent hospital's position on this issue is meritorious. There is no employer-employee relationship between DLSMC and Drs. Gutierrez and Hosaka which would hold DLSMC solidarily liable for the injury suffered by petitioner Erlinda under Article 2180 of the Civil Code.

As explained by respondent hospital, that the admission of a physician to membership in DLSMC's medical staff as active or visiting consultant is first decided upon by the Credentials Committee thereof, which is composed of the heads of the various specialty departments such as the Department of Obstetrics and Gynecology, Pediatrics, Surgery with the department head of the particular specialty applied for as chairman. The Credentials Committee then recommends to DLSMC's Medical Director or Hospital Administrator the acceptance or rejection of the applicant physician, and said director or administrator validates the committee's recommendation.[52] Similarly, in cases where a disciplinary action is lodged against a consultant, the same is initiated by the department to whom the consultant concerned belongs and filed with the Ethics Committee consisting of the department

specialty heads. The medical director/hospital administrator merely acts as ex-officio member of said committee.

Neither is there any showing that it is DLSMC which pays any of its consultants for medical services rendered by the latter to their respective patients. Moreover, the contract between the consultant in respondent hospital and his patient is separate and distinct from the contract between respondent hospital and said patient. The first has for its object the rendition of medical services by the consultant to the patient, while the second concerns the provision by the hospital of facilities and services by its staff such as nurses and laboratory personnel necessary for the proper treatment of the patient.

Further, no evidence was adduced to show that the injury suffered by petitioner Erlinda was due to a failure on the part of respondent DLSMC to provide for hospital facilities and staff necessary for her treatment.

For these reasons, we reverse the finding of liability on the part of DLSMC for the injury suffered by petitioner Erlinda.

Finally, the Court also deems it necessary to modify the award of damages to petitioners in view of the supervening event of petitioner Erlinda's death. In the assailed Decision, the Court awarded actual damages of One Million Three Hundred Fifty Two Thousand Pesos (P1,352,000.00) to cover the expenses for petitioner Erlinda's treatment and care from the date of promulgation of the Decision up to the time the patient expires or survives.[53] In addition thereto, the Court awarded temperate damages of One Million Five Hundred Thousand Pesos (P1,500,000.00) in view of the chronic and continuing nature of petitioner Erlinda's injury and the certainty of further pecuniary loss by petitioners as a result of said injury, the amount of which, however, could not be made with certainty at the time of the promulgation of the decision. The Court justified such award in this manner:

Our rules on actual or compensatory damages generally assume that at the time of litigation, the injury suffered as a consequence of an act of negligence has been completed and that the cost can be liquidated. However, these provisions neglect to take into account those situations, as in this case, where the resulting injury might be continuing and possible future complications directly arising from the injury, while certain to occur, are difficult to predict.

In these cases, the amount of damages which should be awarded, if they are to adequately and correctly respond to the injury caused, should be one which compensates for pecuniary loss incurred and proved, up to the time of trial; and one which would meet pecuniary loss certain to be suffered but which could not, from the nature of the case, be made with certainty. In other words, temperate damages can and should be awarded on top of actual or compensatory damages in instances where the injury is chronic and continuing. And because of the unique nature of such cases, no incompatibility arises when both actual and temperate damages are provided for. The reason is that these damages cover two distinct phases.

As it would not be equitable—and certainly not in the best interests of the administration of justice—for the victim in such cases to constantly come before the courts and invoke their aid in seeking adjustments to the compensatory damages previously awarded—temperate damages are appropriate. The amount given as temperate damages, though to a certain extent speculative, should take into account the cost of proper care.

In the instant case, petitioners were able to provide only home-based nursing care for a comatose patient who has remained in that condition for over a decade. Having premised our award for compensatory damages on the amount provided by petitioners at the onset of litigation, it would be now much more in step with the interests of justice if the value awarded for temperate damages would allow petitioners to provide optimal care for their loved one in a facility which generally specializes in such care. They should not be compelled by dire circumstances to provide substandard care at home without the aid of professionals, for anything less would be grossly inadequate. Under the circumstances, an award of P1,500,000.00 in temperate damages would

therefore be reasonable.[54]

However, subsequent to the promulgation of the Decision, the Court was informed by petitioner Rogelio that petitioner Erlinda died on August 3, 1999.[55] In view of this supervening event, the award of temperate damages in addition to the actual or compensatory damages would no longer be justified since the actual damages awarded in the Decision are sufficient to cover the medical expenses incurred by petitioners for the patient. Hence, only the amounts representing actual, moral and exemplary damages, attorney's fees and costs of suit should be awarded to petitioners.

WHEREFORE, the assailed Decision is hereby modified as follows:

- (1) Private respondent De Los Santos Medical Center is hereby absolved from liability arising from the injury suffered by petitioner Erlinda Ramos on June 17, 1985;
- (2) Private respondents Dr. Orlino Hosaka and Dr. Perfecta Gutierrez are hereby declared to be solidarily liable for the injury suffered by petitioner Erlinda on June 17, 1985 and are ordered to pay petitioners—
 - (a) P1,352,000.00 as actual damages;
 - (b) P2,000,000.00 as moral damages;
 - (c) P100,000.00 as exemplary damages;
 - (d) P100,000.00 as attorney's fees; and
 - (e) the costs of the suit.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.

[1] See Decision, pp. 2-5.

[2] Rollo, p. 217.

[3] Id., at 226.

[4] Id., at 252-253.

[5] Id., at 469.

[6] Id., at 440.

[7] Id., at 454-455.

[8] Resolution, dated March 19, 2001, pp. 1-2; Rollo, pp. 543-544.

[9] TSN, March 19, 2001, p. 51.

[10] Id., at 182-184.

[11] Memorandum of Amicus Curiae Dr. Iluminada M. Camagay, Rollo, p. 620

[12] Decision, p. 28, Id., at 197, citing *STOELTING AND MILLER, BASICS OF ANESTHESIA*, p. 103 (1994); Memorandum of Dr. Camagay, Id., at 616.

[13] Decision, Id.

[14] To “auscultate” means to listen to the sounds arising within organs as an aid to diagnosis and treatment, the examination being made either by use of the stethoscope or by direct application of the ear to the body. (WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, p. 145 [1976]).

[15] Decision, p. 29, Rollo, p. 198; see also Motion for Reconsideration of Dr. Gutierrez, Id., at 266.

[16] Id., at 28-29; Id., at 197-198.

[17] TSN, March 19, 2001, pp. 77-78.

[18] Motion for Reconsideration, p. 54; Rollo, p. 305.

[19] Decision, p. 31; Id. at 200.

[20] TSN, March 19, 2001, pp. 211-212.

[21] Decision, p. 34, Rollo, p. 203.

[22] Second Motion for Reconsideration, pp. 6-7; Id., at 421-422.

[23] TSN, March 19, 2001, pp. 136-144.

[24] Decision, p. 25 citing *Stockholm v. Hall*, 65 P. 348 (1937); Rollo, p.194.

[25] Id., at 23-24; Rollo, pp. 192-193.

[26] Id., at 4.

[27] Decision, p. 20; Id., at 189.

[28] 364 P2d 955 (1961).

[29] Id., at 971.

[30] The Captain-of-the-Ship Doctrine was discussed in *McConnell v. Williams* (65 A 2d 243 [1949]), where the Supreme Court of Pennsylvania stated that under this doctrine, a surgeon is likened to a captain of the ship, in that it is his duty to control everything going on in the operating room.

[31] Motion for Reconsideration of Dr. Hosaka, Rollo, p. 231.

[32] Id., at 229.

[33] Id., at 231, citing *Thomas vs. Raleigh General Hospital*, 358 SE 2d 222 (1987).

[34] *Supra*.

[35] Id., at 225.

[36] TSN, March 19, 2001, pp. 11-12.

[37] Id., at 7.

[38] The following exchange between Justice Puno and Dr. Hosaka’s counsel is instructive:

JUSTICE REYNATO S. PUNO:

Counsel.

RET. JUSTICE HOFILEÑA:

Yes, Your Honor.

JUSTICE REYNATO S. PUNO:

Well, your thesis is that Dr. Hosaka did not have complete control of the anesthesiologist in this case and therefore whatever is the negligent act of the anesthesiologist cannot be attributed to Dr. Hosaka, is that a correct appreciation of your thesis?

RET. JUSTICE HOFILEÑA:

Yes, Your Honor.

JUSTICE REYNATO S. PUNO:

But would you agree that even if Dr. Hosaka did not have that complete control nevertheless he had a degree of supervision over the anesthesiologist?

RET. JUSTICE HOFILEÑA:

If Your Honor please, I think that neither the evidence in this case nor the developments in the field of medicine, the usual practice in these days, would lead to that conclusion that he had a degree of supervision over the anesthesiologist.

JUSTICE REYNATO S. PUNO:

You are saying that the surgeon is completely independent of the anesthesiologist in the discharge of their respective functions and vice versa?

RET. JUSTICE HOFILEÑA:

Yes, Your Honor.

JUSTICE REYNATO S. PUNO:

But the record of the case will show that it was Dr. Hosaka who got the services of Dr. Gutierrez, isn't it?

RET. JUSTICE HOFILEÑA:

Yes, Your Honor, when he was given the authority to secure, I understand.

JUSTICE REYNATO S. PUNO:

And in fact the patient here did not know of any anesthesiologist that is why, she gave the authority to Dr. Hosaka to get the anesthesiologist who will assist him?

RET. JUSTICE HOFILEÑA:

That is correct, Your Honor.

JUSTICE REYNATO S. PUNO:

Now, in the course of the proceedings in the hospital the records would show that it was Dr. Hosaka who observed the dusky nails of the patient?

RET. JUSTICE HOFILEÑA:

Yes, Your Honor.

JUSTICE REYNATO S. PUNO:

At a certain juncture and this means that cyanosis was setting in, lack of oxygen on the part of the patient?

RET. JUSTICE HOFIÑEÑA:

Yes, Your Honor.

JUSTICE REYNATO S. PUNO:

Now, if the two, Dra. Gutierrez and Dr. Hosaka, are completely independent of each other, why is it that Dr. Hosaka has to call the attention of Dra. Gutierrez on this development about this cyanosis of the patient?

RET. JUSTICE HOFIÑEÑA:

In the first place, Your Honor, I was informed that according to Dr. Hosaka in his testimony, he said that it is his habit to take a look at the hands of the patient while they are undergoing anesthesia and when he noticed the duskiness of the nailbeds he informed Dr. Gutierrez about it. But he left her entirely free to do whatever steps she would like to take, as in this case, I understand that she stopped the administration [of] the anesthesia and (interrupted)

JUSTICE REYNATO S. PUNO:

Yes, but that does show that the surgeon, Dr. Hosaka should not be completely indifferent to what is happening to the patient while in the hands of the anesthesiologist, isn't it?

RET. JUSTICE HOFIÑEÑA:

In a sense, Your Honor, yes, they coordinate in that sense, Your Honor, but not, I would not say that one is under the control of the other.

JUSTICE REYNATO S. PUNO:

Yes, not under the control, now, you used the word "coordinate", so you are now conceding that there is that degree of supervision on the part of the surgeon over the anesthesiologist, as a matter of defining that degree of supervision, they are not completely independent of each other?

RET. JUSTICE HOFIÑEÑA:

Your Honor, I would not use the word supervision but working together, perhaps is a better term.

JUSTICE REYNATO S. PUNO:

Working together.

RET. JUSTICE HOFIÑEÑA:

Yes, Your Honor.

JUSTICE REYNATO S. PUNO:

Which means that – somehow their duties intersect with each other?

RET. JUSTICE HOFIÑEÑA:

As I said before (interrupted)

JUSTICE REYNATO S. PUNO:

There is an area where both of them have to work together in order that the life of the patient would be

protected?

RET. JUSTICE HOFIÑEÑA:

Yes, Your Honor. As I said before if on the other hand it is the anesthesiologist who notices because he monitors the condition of the patient during the surgery and he calls the attention of the surgeon also.

JUSTICE REYNATO S. PUNO:

And in accord with the concept of teamwork, is it not true also that it was Dr. Hosaka who called for a second anesthesiologist?

RET. JUSTICE HOFIÑEÑA:

Your Honor, that is not so, Your Honor, I was told that the second anesthesiologist was just nearby and it is their habit to look in some operations taking place. In this particular case the second anesthesiologist was passing by and she noticed that there was some kind of a, not really a commotion but some kind of, increased activity and so she decided to take a look.

JUSTICE REYNATO S. PUNO:

Who gave the order for Dra. Calderon to help in the intubation of the patient?

RET. JUSTICE HOFIÑEÑA:

I understand, Your Honor that she did it voluntarily, she just happened to pass by.

JUSTICE REYNATO S. PUNO:

And Dr. Hosaka did not object?

RET. JUSTICE HOFIÑEÑA:

No, Your Honor, because his position is that this is outside of his expertise, Dr. Calderon is also an anesthesiologist so, he just left them alone.

JUSTICE REYNATO S. PUNO:

How long have Dr. Hosaka and Dr. Gutierrez worked together as a team?

RET. JUSTICE HOFIÑEÑA:

They started their association way back in 1977, Your Honor, at the time of this incident about eight years, Your Honor.

JUSTICE REYNATO S. PUNO:

Would you know how the relationship of Dr. Hosaka and Dr. Gutierrez is defined by any kind of agreement, oral or written, or is it defined by the standard practice of the profession?

RET. JUSTICE HOFIÑEÑA:

I would say it would be in accordance of the standard practice of the profession, Your Honor. There is no particular agreement between them.

JUSTICE REYNATO S. PUNO:

What do you say is the standard practice, how would the practice vary from case to case?

RET. JUSTICE HOFIÑEÑA:

I believe, Your Honor, that the, in the first place if the patient would have his own anesthesiologist, would prefer his own anesthesiologist, he can retain the services of another anesthesiologist but of his own but if he does not know of anybody and he asks the surgeon to provide one, then this surgeon can recommend. But I would like to emphasize, Your Honor, that the relationship is between the patient and the anesthesiologist. It is not that the anesthesiologist is the employee of the surgeon.

JUSTICE REYNATO S. PUNO:

But is there an agreement, expressed or implied, between the two (2), to the effect that, you know the anesthesiologist could say to the surgeon that you have no business interfering with my work as anesthesiologist. Is that how the relationship is defined?

RET. JUSTICE HOFIÑEÑA:

Once the start the (interrupted)

JUSTICE REYNATO S. PUNO:

Right from the very beginning?

RET. JUSTICE HOFIÑEÑA:

I believe Your Honor that on the matter of retaining the services of the anesthesiologist in the sense that the surgeon reposes confidence on the ability of the anesthesiologist, he hires him if he is authorized, he hires him on behalf of the patient if he is authorized to do that but once they are already performing their own task, then there should be no interference.

JUSTICE REYNATO S. PUNO:

But the work of the two cannot be separated in watertight compartments, do you agree?

RET. JUSTICE HOFIÑEÑA:

I agree, Your Honor (TSN, March 19, 2001, pp. 14-23).

[39] *Id.*, at 19.

[40] Memorandum of Amicus Curiae Dr. Iluminada Camagay, Rollo, p. 616.

[41] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, p. 17 (1976).

[42] TSN, March 19, 2001, pp. 196.

[43] *Id.*, at 205-206.

[44] *Batiquin vs. Court of Appeals*, 258 SCRA 334, 346 (1996); *Carillo vs. People*, 229 SCRA 386, 396 (1994).

[45] Article 2180 states:

The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by

their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

[46] Decision, p. 40; Rollo, p. 209.

[47] Traders Royal Bank vs. National Labor Relations Commission, 321 SCRA 467 (1999).

[48] Motion for Reconsideration of DLSMC, p. 10; Rollo, p. 477.

[49] Ibid.

[50] Id., at 478.

[51] Id., at 480.

[52] TSN, March 19, 2001, pp. 113-116.

[53] Decision, p. 48, Rollo, p. 217.

[54] Id., at 43-45; Id., at 212-214.

[55] See letter dated November 4, 2000 of petitioner Rogelio E. Ramos addressed to Mr. Justice Santiago M. Kapunan, Id., at 489.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.