

ALBERTO AUSTRIA, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 133323. March 09, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review on certiorari, seeking to set aside (1) the decision dated August 13, 1997, of the respondent Court of Appeals in CA G.R. CR No. 16889, affirming with modification the March 21, 1994, judgment of the Regional Trial Court, Branch 43, of San Fernando, Pampanga, in Criminal Case No. 5784, which convicted the petitioner of reckless imprudence resulting in serious physical injuries, and (2) the resolution of said respondent court dated March 25, 1998 denying petitioner's motion for reconsideration.

The original Information dated August 27, 1990, charging petitioner Alberto Austria and his co-accused was amended as to correctly state the name of co-accused Rolando M. Flores, which was Rolando Torres in the original Information. Consequently, the Amended Information reads:

"AMENDED INFORMATION

The undersigned Provincial Prosecutor and Assistant Provincial Prosecutor accuse ALBERTO AUSTRIA y PENAFLOR and ROLANDO M. FLORES of the crime of Reckless Imprudence resulting in Homicide and Multiple Physical Injuries, committed as follows:

That on or about the 9th day of July 1989, in barangay Cabetican, municipality of Bacolor, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Alberto Austria y Peñaflor, being then the driver and person-in-charge of a Ford Fiera Crew Cab bearing Plate No. DEB 558 UV Pil. '88 and registered under the name of Geronimo Noceda, without due regard to traffic laws, rules and regulations, without taking the necessary precaution to avoid accident to persons and by giving said vehicle a speed far greater than is allowed by law, did then and there wilfully, unlawfully and feloniously drive, manage and operate said vehicle in a careless, reckless and imprudent manner, causing as a result of his carelessness, recklessness and imprudence to bump and hit a cargo trailer truck bearing Plate No. CES 518 which was improperly and carelessly parked along the right shoulder of the road by accused Rolando M. Flores, driver of said cargo trailer truck, thereby causing fatal injuries upon Virginia Lapid Vda. de Diwa, occupant of said Ford Fiera Crew Cab, which directly caused her death shortly thereafter, and inflicted physical injuries upon the following occupants of said Ford Fiera Crew Cab, to Wit:

Armin Q. Manalansan - which required and did require medical attendance for a period of more than thirty (30) days and incapacitated and did incapacitate said victim from performing her customary labor for the same period of time;

Mylene S. Gigante - which required and did require medical attendance for a period of five (5) to seven (7) days and incapacitated and did incapacitate from performing her customary labor for the same period of time;

Luzviminda S. Diwa - which required and did require medical attendance for less than two (2) weeks and incapacitated and did incapacitate her from performing her customary labor for the same period of time;

Mark S. Diwa - which required and did require medical attendance for an unknown duration an incapacitated and did incapacitate him from performing his customary labor for the same period of time.

All contrary to law."[1]

The facts of the case as summarized by the respondent court are as follows:

"On July 9, 1989 at around 7:00 P.M. along the Olongapo-Gapan Road in the vicinity of barangay Cabetican, Bacolor, Pampanga, the appellant was driving his Ford Fiera with ten (10) passengers. They came from the Manila International Airport bound to Dinalupihan, Bataan.

One of the vehicle's tire suddenly hit a stone lying in the road, while thus cruising, which caused the appellant to lose control and collide with the rear of an improperly parked cargo truck trailer driven by accused Rolando M. Flores. As a result of the collision, five (5) passengers suffered varying degrees of injuries."[2]

While trial ensued, accused truck driver Rolando M. Flores remained at-large.

On March 21, 1994, the trial court promulgated its decision, disposing as follows:

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt hereby sentences him to suffer an indeterminate penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, ten (10) months and twenty (20) days of *Prision Correccional*, as maximum.

The accused is likewise ordered to:

- 1) Pay the heirs of Virginia Lapid Vda. de Diwa the amount of P50,000.00 as indemnity;
- 2) P6,320.00 as and for actual expenses incurred by Luzviminda Diwa, representing medical and funeral expenses; and
- 3) Cost of suit.

SO ORDERED."

Subsequently, on June 10, 1994, the court modified its decision after the accused filed his motion for reconsideration dated April 4, 1994. The modified judgment reads:

"WHEREFORE, the Decision promulgated on March 21, 1994 is hereby modified as follows:

The Court, finding accuse Alberto Austria guilty beyond reasonable doubt of the crime of Reckless Imprudence Resulting in Serious Physical Injuries (Art. 365 in relation to Art. 263 (3), Revised Penal Code), hereby sentences the said accused to suffer a[n] indeterminate penalty of imprisonment of one (1) month and one (1) day to four (4) months of *arresto mayor*.

The said accused is likewise ordered to indemnify Luzviminda Diwa the amount of P1,345.75; Mark Diwa the amount of P4,716.31; and Mylene Gigante the amount of P6,199.62 as and for actual damages incurred.

No pronouncement as to the civil liability of the accused to private complainant Armin Manalansan considering that the latter filed a separate civil action against accused Alberto Austria before the Regional Trial Court of Bataan (TSN., p. 7, February 18, 1992).

SO ORDERED."[3]

Defendant Austria timely appealed his conviction before the Court of Appeals, which affirmed with modifications the lower court's decision. The appellate court's decision disposed as follows:

"WHEREFORE, foregoing considered, the appealed decision is AFFIRMED with modification that: 1) a

straight penalty of one (1) month and one (1) day of arresto mayor for the imprisonment of the accused is imposed; and 2) the award in favor of Mylene Gigante of P6,199.62 is deleted.

SO ORDERED."[4]

Petitioner now comes before the Court assigning the following errors:

- THE RESPONDENT COURT ERRED IN AFFIRMING THE PETITIONER'S CONVICTION FOR THE CRIME OF RECKLESS IMPRUDENCE;
- THE RESPONDENT COURT ERRED IN FINDING THE PETITIONER NEGLIGENT ;
- THE RESPONDENT COURT ERRED IN AWARDING DAMAGES TO THE PRIVATE COMPLAINANTS;
- IF THE PETITIONER IS INDEED GUILTY OF SIMPLE NEGLIGENCE, THE RESPONDENT COURT ERRED IN IMPOSING A PENALTY OF ARRESTO MAYOR, INSTEAD OF DESTIERRO.

Petitioner faults respondent court for its failure to appreciate and give credence to his testimony that when the accident occurred, the petitioner was driving along the Olongapo-Gapan road on the lane properly belonging to him and driving at a moderate speed.[5] Petitioner cites the case of Phoenix Construction, Inc. v. Intermediate Appellate Court, 148 SCRA 353 (1987), which he alleges, contains a set of almost identical facts. Further, he claims that the other driver's negligence in parking his vehicle caused the collision.[6] He asserts that the truck driver, Rolando Flores, negligently parked his trailer truck with the rear end protruding onto road, without any warning device. This being so, he should not be held responsible for Flores' negligence.[7]

Worth noting, the first and second assigned errors are factual in nature. As a general rule, findings of fact of the Court of Appeals are binding and conclusive upon this Court, and we will not normally disturb such factual findings unless the findings of the court are palpably unsupported by the evidence on record or unless the judgment itself is based on misapprehension of facts.[8] We find no palpable factual error that would warrant a reversal of the appellate courts' factual determination in this wise:

"In his direct examination, the appellant admitted that he saw the trailer at a distance of about six (6) meters but at the same time stated that the distance of the focus of the vehicle's headlight in dim position was twenty (20) meters. These inconsistent statements, taken together with his claim on cross-examination that he saw the trailer only when he bumped it, only show that he was driving much faster than thirty (30) kilometers per hour. Assuming that he was driving his vehicle at that speed of thirty (30) kilometers per hour, appellant would have not lost control of the vehicle after it hit the stone before the collision. Under these circumstances, the appellant did not exercise the necessary precaution required of him. He was negligent."[9]

While we note similarities of the factual milieu of Phoenix to that of the present case, we are unable to agree with petitioner that the truck driver should be held solely liable while the petitioner should be exempted from liability. In Phoenix, we ruled that the driver of the improperly parked vehicle was liable and the driver of the colliding car contributorily liable. We agree with the respondent court in its observation on the petitioner's culpability: "That he had no opportunity to avoid the collision is of his own making and [this] should not relieve him of liability." [10] Patently, the negligence of the petitioner as driver of the Ford Fiera is the immediate and proximate cause of the collision.

On the third issue, petitioner argues that there is no basis for the award of damages since the medical certificates and receipts presented did not directly reveal the relation of these documents to the accident. Petitioner's argument is flawed. The materiality of these documents is amply supported by evidence on record, and we are constrained to adhere to these factual holding of the appellate court, thus:

"The award of liability by the trial court to Luzviminda Diwa and Mark Diwa was justified because the expenses for hospitalization and treatments were incurred as a direct result of the collision caused by the appellant's negligence. The fact that the doctors did not testify on the medical certificates is of no moment. Appellant's counsel admitted their due execution and genuiness (sic) during the trial." [11]

Anent the last issue, petitioner prays for the modification of the penalty. He avers that respondent court erred when it found the petitioner guilty of simple negligence and imposed a straight penalty of One (1) month and One (1) day of arresto mayor, invoking the second paragraph of Art. 365 of the Revised Penal Code, in relation to the sixth paragraph of the same article. He submits that the correct and proper penalty to be imposed against him should be destierro.

It is not quite accurate, however, for the petitioner to state that the respondent court found him guilty of simple negligence. The assailed decision reveals that the respondent court AFFIRMED the findings of the trial court convicting the accused beyond reasonable doubt for the crime of Reckless Imprudence resulting in Serious Physical Injuries. The respondent court only MODIFIED the trial court's decision by imposing the straight penalty of one (1) month and one (1) day of arresto mayor and deleted the award in favor of Mylene Gigante in the amount of P6,199.62. [12]

We find nothing objectionable legally in the imposition of a straight penalty of one (1) month and one (1) day of arresto mayor by the respondent court against the petitioner. The penalty imposed is well within the limits fixed by law and within the sound discretion of the respondent court as well. As Article 365 pertinently provides:

"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.

x x x

In the imposition of these penalties, the courts shall exercise their sound discretion, without regard to the rules prescribed in article sixty-four." (Revised Penal Code)

Since the determination of the minimum and maximum periods of the penalty as provided by law is left entirely to the discretion of the respondent court, its exercise of that discretion will not be disturbed on appeal, unless there is a clear abuse. [13] And finding no such clear abuse in this case, we are constrained to sustain the judgment of respondent court.

WHEREFORE, the instant petition is DENIED, and the assailed decision of the Court of Appeals is AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Records, p. 43.

[2] Rollo, p. 40.

[3] Id. at 37.

[4] Id. at 42-43.

[5] Id. at 23.

[6] Id. at 16.

[7] Id. at 29.

[8] DBP vs. CA, et al., 302 SCRA 362, 375-376 (1999).

[9] Rollo, pp. 40-41.

[10] Id. at 42.

[11] Ibid.

[12] Supra, note 10.

[13] People vs. Medroso, Jr., 62 SCRA 245, 251 (1975).

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