

**ROGELIO ENGADA, PETITIONER, VS. HON. COURT OF APPEALS,
FORMER FOURTEENTH DIVISION, MANILA, AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.***G.R. No. 140698. June 20, 2003*

Ponente: QUISUMBING, J.

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This petition for review seeks the reversal of the decision[1] dated May 31, 1999 of the Court of Appeals in CA-G.R. CR No. 18358, which affirmed with modification the judgment[2] dated August 25, 1994, of the Regional Trial Court of Iloilo City, Branch 29, in Criminal Case No. 36223. The RTC found petitioner guilty beyond reasonable doubt of simple imprudence resulting in physical injuries and damage to property, and sentenced him to (a) suffer imprisonment for one month and one day of arresto mayor, (b) pay private complainant, Mrs. Sheila Seyan, the amount of fifty one thousand pesos (P51,000) for the total destruction of the Toyota Tamaraw jeepney, and one hundred ten thousand pesos (P110,000) for her hospital and medical expenses, and (c) pay the costs of suit. The CA increased the prison term imposed on petitioner to four months of arresto mayor.

The facts culled from the records are as follows:

On November 29, 1989, at about 1:30 in the afternoon, Edwin Iran was driving a blue Toyota Tamaraw jeepney bound for Iloilo City. On board was Sheila Seyan, the registered owner of the Tamaraw. While traversing the road along Barangay Acquit, Barotac Nuevo, the Tamaraw passengers allegedly saw from the opposite direction a speeding Isuzu pick-up, driven by petitioner Rogelio Engada. The pick-up had just negotiated a hilly gradient on the highway. When it was just a few meters away from the Tamaraw, the Isuzu pick-up's right signal light flashed, at the same time, it swerved to its left, encroaching upon the lane of the Tamaraw and headed towards a head-on collision course with it. Seyan shouted at Iran to avoid the pick-up. Iran swerved to his left but the pick-up also swerved to its right. Thus, the pick-up collided with the Tamaraw, hitting the latter at its right front passenger side. The impact caused the head and chassis of the Tamaraw to separate from its body. Seyan was thrown out of the Tamaraw and landed on a ricefield. The pick-up stopped diagonally astride the center of the road.

Seyan and Iran were brought to Barotac Nuevo Medicare Hospital.[3] Seyan was profusely bleeding from her nose and was in a state of shock with her eyes closed. In the afternoon of the same day, November 29, 1989, she was transferred to St. Paul's Hospital in Iloilo City where she was confined. Her medical certificate revealed that she suffered a fracture on the right femur, lacerated wound on the right foot, multiple contusions, abrasions, blunt abdominal injury, and lacerations of the upper-lower pole of the right kidney.[4] She was discharged from the hospital only on January 15, 1990.

Seyan incurred P130,000 in medical expenses. The Toyota Tamaraw jeepney ended up in the junk heap. Its total loss was computed at P80,000.

A criminal complaint for damage to property through reckless imprudence with serious physical injuries was filed

with the Municipal Trial Court of Barotac Nuevo against petitioner Rogelio Engada and Edwin Iran.[5] Probable cause was found against petitioner, while the complaint against Iran was dismissed.[6]

Consequently, an Information was filed against petitioner charging him with serious physical injuries and damage to property through reckless imprudence, thus:

That on or about November 29, 1989, in the Municipality of Barotac Nuevo, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Rogelio Engada driving an Isuzu Pick-up with Plate No. SAR 117 owned by the Land Bank of the Philippines, did then and there wilfully, unlawfully and with reckless imprudence drive said pick-up in a careless, reckless and imprudent manner with disregard of traffic laws and regulations, and as a result of such negligent and reckless driving the Isuzu Pick-up driven by the accused bumped a Toyota Tamaraw jeep with Plate No. FBF 601 owned by Joelito and Sheila Seyan and driven by Edwin Iran thereby causing damage to the Toyota Tamaraw in the amount of P80,000.00 and serious physical injuries to Mrs. Sheila Seyan who was riding said vehicle, the injuries barring complications will heal in more than 30 days.

CONTRARY TO LAW.[7]

After trial, the court rendered on August 25, 1994 a decision, disposing as follows:

WHEREFORE, the Court, finding the accused guilty beyond reasonable doubt of Simple Imprudence resulting [in] physical injuries and damage to property defined and penalized in Article 263, paragraph 4 and in relation with Article 365, paragraph 2 of the Revised Penal Code, hereby sentences the accused Rogelio Engada to suffer imprisonment of ONE (1) MONTH and ONE (1) DAY of arresto mayor.

Accused is further ordered to pay complainant Mrs. Sheila Seyan the amount of P51,000.00 for the total destruction of the Toyota Tamaraw Jeepney and P110,000.00 for indemnification of hospital and medical expenses, and to pay the cost of the suit.

SO ORDERED.[8]

Petitioner appealed to the Court of Appeals. On May 31, 1999, the CA dismissed the appeal and affirmed with modification the trial court's decision, thus:

WHEREFORE, the instant appeal is hereby DISMISSED. Accordingly, the appealed decision is hereby AFFIRMED with modification as to the penalty imposed upon the accused who is hereby sentenced to suffer imprisonment of FOUR (4) MONTHS of arresto mayor.

SO ORDERED.[9]

Petitioner filed a motion for reconsideration, but it was denied. Hence, the instant petition, wherein petitioner raises the issue of:

WHETHER OR NOT THE FINDINGS OF RESPONDENT COURT OF APPEALS ARE SUPPORTED BY THE EVIDENCE OR BASED ON A MISAPPREHENSION OF FACTS RESULTING IN A MANIFESTLY MISTAKEN INFERENCE SPECIFICALLY ON WHAT WAS THE PROXIMATE CAUSE OF THE ACCIDENT AND WHOSE ACT WAS IT.[10]

Petitioner claims innocence and seeks acquittal. He contends that in this case we should relax the rule that only legal questions can be raised in a petition for review under Rule 45 of the Rules of Court. According to him, the Court of Appeals misapprehended the facts, and erred in its conclusion as to the proximate cause of the collision. He insists that the Court of Appeals erred when it found him negligent for occupying the lane of the Tamaraw jeepney, and then failing to return to his original lane at the safest and earliest opportunity.

Petitioner further contends that the CA failed to consider that he already relayed his intention to go back to his lane by flashing the pick-up's right signal light. He submits that at that moment Iran, the driver of the Tamaraw, had no more reason to swerve to his left. Had Iran not swerved to the left, according to petitioner, the collision would have been avoided. It was Iran who was clearly negligent, says petitioner. Citing our ruling in *McKee v. Intermediate Appellate Court*,^[11] petitioner avers that although his act of occupying the Tamaraw's lane was the initial act in the chain of events, Iran's swerving to the left after petitioner flashed his right turn signal, constituted a sufficient intervening event, which proximately caused the eventual injuries and damages to private complainant.

Petitioner also claims that the Court of Appeals erred when it found that the pick-up approached the Tamaraw at a fast speed. He maintains that this was not borne by the evidence on record.

The Office of the Solicitor General, as counsel for the state, counters that the Court of Appeals did not err in convicting the accused, now petitioner herein. Petitioner's negligence was the proximate cause of the accident, according to the OSG, for the following reasons: First, petitioner for no justifiable reason occupied the opposite lane. Second, while on the wrong lane, petitioner was driving the Isuzu pick-up fast, and he returned to his own lane only at the last minute. This left Iran, the driver of the Tamaraw, with no opportunity to reflect on the safest way to avoid the accident. Iran's swerving to the left was his reaction to petitioner's wrongful act, which appropriately calls for the application of the emergency rule. The rationale of this rule is that a person who is confronted with a sudden emergency might have no time for thought, and he must make a prompt decision based largely upon impulse or instinct. Thus, he cannot be held to the same standard of conduct as one who had an opportunity to reflect, even though it later appears that he made the wrong decision. Clearly, under the emergency rule petitioner cannot shift the blame to Iran, concludes the OSG.

As to petitioner's claim that there was no evidence showing that the pick-up was running very fast, the OSG avers that this is rebutted by the testimony of Seyan and Iran who both testified that petitioner drove the pick-up at a fast speed when it encroached on their lane immediately before the collision.

Did the Court of Appeals err in finding that the action of petitioner, Rogelio Engada, was the proximate cause of the collision? This is the crux of the present petition.

In our view, petitioner's attempt to pin the blame on Edwin Iran, the driver of the Tamaraw, for the vehicular collision is unfounded. Iran swerved to the left only to avoid petitioner's pick-up, which was already on a head to head position going against Iran's Tamaraw jeepney immediately before the vehicles collided. This fact has been established by the evidence on record. No convincing proof was adduced by petitioner that the driver of the Tamaraw, Iran, could have avoided a head-on collision.

We note that petitioner admitted his Isuzu pick-up intruded into the lane of the Tamaraw jeepney. Prosecution witness Nelson Alobin, one of those who went to the scene of the incident immediately, testified that when he arrived at the place where the collision took place, he saw the pick-up positioned diagonally at the center of the road.^[12] Its head was towards the direction of Barotac Nuevo and the rear tires were just a few inches beyond the center of the lane.^[13] Moving backwards facing Barotac Nuevo, at two arms length away from the pick-up, Alobin also saw a tire mark, 12 inches long and located at the left side of the center line going to the right side.^[14]

The above circumstance corroborates the testimony of both Seyan and Iran that, immediately before the collision, the pick-up was not on its proper lane but on the other lane (the left lane rather than the right) directly on collision course with the Tamaraw jeepney. The tire mark reveals the short distance between the two vehicles when the Isuzu pick-up attempted to return to its proper lane.

It is a settled rule that a driver abandoning his proper lane for the purpose of overtaking another vehicle in an ordinary situation has the duty to see to it that the road is clear and he should not proceed if he cannot do so in safety.[15] This rule is consistent with Section 41, paragraph (a) of R.A. 4136 as amended, otherwise known as The Land Transportation and Traffic Code, which provides:

Sec. 41. Restrictions on overtaking and passing. — (a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

In the present case, there was only a distance of 30 meters from the Tamaraw jeepney when the Isuzu pick-up abandoned its lane and swerved to the left of the center line.[16] In addition, petitioner was running at a fast clip while traversing this lane. This was testified to by Seyan and Iran, unrebutted by petitioner. The resulting damage to the Tamaraw jeepney, at the point where the head and chassis were separated from the body, bolsters this conclusion that petitioner was speeding. In our view, petitioner was negligent in several ways, and his negligence was the proximate cause of the collision. In abandoning his lane, he did not see to it first that the opposite lane was free of oncoming traffic and was available for a safe passage. Further, after seeing the Tamaraw jeepney ahead, petitioner did not slow down, contrary to the rule set in *Batangas Laguna Tayabas Bus Co. v. IAC*,[17] thus:

...[O]r if, after attempting to pass, the driver of the overtaking vehicle finds that he cannot make the passage in safety, the latter must slacken his speed so as to avoid the danger of a collision, even bringing his car to a stop if necessary.

For failing to observe the duty of diligence and care imposed on drivers of vehicles abandoning their lane, petitioner must be held liable.

Iran could not be faulted when in his attempt to avoid the pick-up, he swerved to his left. Petitioner's acts had put Iran in an emergency situation which forced him to act quickly. An individual who suddenly finds himself in a situation of danger and is required to act without much time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence if he fails to undertake what subsequently and upon reflection may appear to be a better solution, unless the emergency was brought by his own negligence.[18]

Petitioner tries to extricate himself from liability by invoking the doctrine of last clear chance. He avers that between him and Iran, the latter had the last clear chance to avoid the collision, hence Iran must be held liable.

The doctrine of last clear chance states that a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent, is considered in law solely responsible for the consequences of the accident.[19] But as already stated on this point, no convincing evidence was adduced by petitioner to support his invocation of the abovesited doctrine. Instead, what has been shown is the presence of an emergency and the proper application of the emergency rule. Petitioner's act of swerving to the Tamaraw's lane at a distance of 30 meters from it and driving the Isuzu pick-up at a fast speed as it approached the Tamaraw, denied Iran time and opportunity to ponder the situation at all. There was no clear chance to speak of. Accordingly, the Court of Appeals did not err in holding petitioner responsible for the vehicular collision and the resulting damages, including the injuries suffered by Mrs. Sheila Seyan and the total loss of the Tamaraw jeepney. It also did not err in imposing on petitioner the sentence of four (4) months of arresto mayor.[20]

WHEREFORE, the instant petition is DENIED for lack of merit. The assailed decision of the Court of Appeals in CA-G.R. CR No. 18358 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), and Callejo, Sr., JJ., concur.

Austria-Martinez, J., on official leave.

[1] Rollo, pp. 26-34.

[2] Records, pp. 374-381.

[3] TSN, 6 September 1991, p. 9. However in the testimony of Seyan dated 7 October 1991, p. 6, it was Barotac Rural Health Center.

[4] Records, p.16.

[5] Id. at 6.

[6] Id. at 31.

[7] Id. at 1.

[8] Id. at 381.

[9] Rollo, p. 33.

[10] Id. at 18.

[11] G.R. No. 68102, 16 July 1992, 211 SCRA 517.

[12] TSN, 13 September 1991, pp. 6-7.

[13] Id. at 15.

[14] Id. at 7.

[15] Mallari, Sr. v. Court of Appeals, G.R. No. 128607, 31 January 2000, 324 SCRA 147, 153.

[16] TSN, 6 September 1991, pp. 5 & 12.

[17] G.R. Nos. L-74387-90, 14 November 1988, 167 SCRA 379, 384.

[18] Valenzuela v. Court of Appeals, 323 Phil. 374, 389 (1996).

[19] Bustamante v. Court of Appeals, G.R. No. 89880, 6 February 1991, 193 SCRA 603, 611.

[20] 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.

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