

OSCAR MAGNO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 149725. October 23, 2003

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-149725/>

CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure for the reversal of the decision[1] of the Court of Appeals in CA-G.R. CR No. 22399 reversing the decision[2] of the Regional Trial Court of Ifugao, Branch 14, in Criminal Case No. 808.

The Indictment

The petitioner was charged with homicide in an Information, the accusatory portion of which reads:

That on or about the 4[th] day of June, 1992, in the Municipality of Lagawe, Ifugao, and within the jurisdiction of the Honorable Court, the above-named accused with intent to kill, and without any justifiable reason whatsoever DID then and there willfully, unlawfully and feloniously inflict physical injuries on the different parts of the body of Dov Lourenz Dunuan which directly caused the latter's death.

CONTRARY TO LAW.[3]

On arraignment, the petitioner, assisted by counsel, pleaded not guilty.

The Case for the Prosecution

As culled by the trial court, the case stemmed from the following facts:

In the early evening of June 4, 1992, Buss, Gilbert Baccay and Herman Dinamling were drinking liquor (beer) inside the backroom of the restaurant owned and managed by Emerita Danao, known then as the Top Side Restaurant. This restaurant faces the concrete house of the accused and their distance is more or less 10 meters with the national highway separating both buildings.

There were other customers also drinking. While the liquor binge of the three was on-going, Dov arrived and joined them as he was invited. Moments later, Dov went to the juke box and played a tune and continued taking in beer just as the rest were doing. After consuming the bottle, he informed the group that he will go to the other side (referring to the house of the accused which has a store in it), but he was followed by Gilbert who stayed up to the main door of the restaurant Buss and Herman Dinamling were left behind drinking. Realizing that Gilbert was staying outside long, Buss told Herman to stay put as he was going out to see the two. Reaching outside, he saw Gilbert standing just near the Platinum Office (an insurance office also located in the house of the accused) and near him was Dov.

Buss decided to join the two who were still in front of the house of the accused. Gilbert then intimated to Dov that Buss be his companion to which Dov agreed. So Gilbert returned back to the restaurant while Dov and Buss entered the store of Mr. Magno. Upon entering, Buss saw the accused at the counter, the maid was

situated at the kitchen. Meanwhile, Dov sat near a table while Buss went to the counter to order for some soft drinks (cola-cola). Mr. Magno did not answer but at this moment, Olen (who is actually Lorraine Magno), daughter of the accused, came out and told Buss that their soft drinks were consumed but Buss retorted that earlier, he bought some soft drinks and how come said drinks are now not available. With the exchange of words between Olen and Buss, accused eyed sharply the two intoxicated youngsters. Buss then urged and tried to pull Dov to get out but the latter refused because the former saw the accused getting angry. Dov persisted in staying and in fact removed Buss' hold on him. By this time, feeling the necessity of urination, Buss went outside to relieve himself. After that, he turned to call Dov but when he was in between the house of Cora Martin and that of the house of the accused as both houses were very adjacent and likewise both facing the Top Side Restaurant, he saw the accused strangle Dov. Aside from this, he saw further Mr. Magno landing more blows on Dov's chest and twisted the latter's hand. While this was taking place, he saw Dov with eyes and mouth opened due to the strangling and the boxes thrown because he was four meters more or less from the place where accused inflicted the injuries which was beside the accused's ISUZU cargo truck parked in front of the same house on a sloping cemented portion.

Shocked by what he saw, he ran away proceeding to the nearby Top Side Restaurant, then went to the direction of the Don Bosco High School which was also very near and as he was about to proceed to Lagawe Proper (a nearby barangay), he thought his companions left the restaurant, so he returned back as fast as he could, opened the door, sat down and leaned his head on a table. As he was tongue tied, he did not tell anyone what he saw but at this very instance, shouts were heard and the voice of Emerita Danao yelling "It's Dov, it's Dov , it's Dov," was in particular the voice he heard.

Hearing this, Buss then went out and saw his companions Herman and Gilbert carrying the body of Dov just near the store of the accused. He noticed further that the parked truck of the same accused was nowhere to be seen, so he helped his two friends hold the body of Dov and saw blood oozing from the latter's nose and mouth (Exhibits "A," "A-1," "A-2").

Meanwhile, Gilbert Baccay, after leaving Buss and Dov at the frontage of accused's residence, returned to the restaurant to join Herman Dinamling in the drinking and while telling stories and listening to the music, they suddenly heard a shout outside, and Gilbert saw Mrs. Emerita Danao crying. He immediately went out of the restaurant and saw his friend Dov sprawled on the cemented portion of the frontage of Magno's house just beside the paved national road. Hurriedly, he went to Dov, turned and took hold of him and asked "Dov, what happened to you?" but the latter did not move and answer. He saw Dov's eyes "blankly open and blood was oozing from his nose. Then Herman Dinamling arrived but Gilbert still asked Dov "what happened," but the little son of Emerita Danao who was present pointed to the accused, who by then just arrived still driving the big vehicle, as "... That one who did it to him." The accused next told them "to look for a tricycle" to bring Dov to the hospital. (Exhibit "K" and sub-markings). After saying this, accused drove said truck and proceeded towards the direction of the Don Bosco Teacher's Quarters passing the Top Side Restaurant. Mrs. Emerita Danao by then called a tricycle to rush Dov to the hospital. Buss and Gilbert rushed to inform Dov's parents what transpired.

Upon the request of the relatives of the victim, coursed through official channels (Exhibits "B," "C," "D," and "E"), Dr. Ruben Angobung, Medico-Legal Officer, NBI, Ilagan, Isabela, conducted an autopsy or exhumation on the body of Dov. (Exhibits "F," "G," "H" and its sub-markings, "I," "J"). Hereunder are his findings and the extent of the injuries, to wit:

PHYSICAL INJURIES:

CONTUSED ABRASIONS:

- 3.0 x 2.0 cms., cheek, left aspect.
- Multi-linear; irregularly distributed in a horizontal fashion, covering an area of 5.0 x 1.0 cm., located more at

the anterior aspect of the neck tapering irregularly on the left side.

- Confluent; measuring 10.0 x 7.5 cms., located at the anterior upper-half, chest, between the anterior fold and the nipple, right.
- 1.0 x 1.0 cm., located at the anterior chest wall, midline.
- 2.5 x 1.5 cms., anterior upper-half, chest left side.
- 1.5 x 0.3 cm., posterior aspect, upper midline thorax;
- 4.5 x 1.0 cm., posterior aspect, medial to inner left scapula margin, left.
- 22.0 x 3.0 cms., postero-lateral aspect, forearm, left.

CONTUSIONS:

- 10.0 x 1.0 cm., postero-lateral aspect, external ear, right.
- 10.0 x 4.5 cms., posterior-proximal third, arm, left.
- 4.0 x 1.0 cm., anterior wrist, right.

HEMATOMA:

- Subcutaneous and intramuscular, moderate in amount, anterior chest, right side above 3[rd], 4[th] and 5[th] anterior ribs.
- Subcutaneous and intramuscular, severe, located at the anterior chest, above 2[nd] and 3[rd] anterior ribs, left.

FRACTURED:

- Second anterior rib, complete along mid-clavicular line, left.
- Third anterior rib, complete at costo-chondral junction, left.

INTERNAL ORGAN INVOLVEMENT:

- Lungs, left contused at its anterior aspect, upper and lower lobes.
- Spleen, superficial ruptures with ramifications at its dome.
- Brain and other visceral organs, pale, but otherwise unremarkable.

HEMORRHAGE:

Intra-thoracic, severe; Intra-peritoneal, minimal.
Stomach, contained small amount of partially digested rice and other food particles.

CAUSE OF DEATH:

Hemorrhagic shock; Traumatic. (Exhibit "G")

Dov's father Manuel Dunuan, Jr., claimed that his youngest son died on June 4, 1992 and Funeraria Gambito, Bayombong, Nueva Vizcaya was contacted for the funeral services. In the process, the family paid P30,000.00 covered by a receipt issued by said funeral parlor (Exhibit "L"). During the wake and for the duration of 5 days, one pig valued at P4,000.00 was butchered for a day except the 3[rd] and 5[th] day where additional pigs of more or less the same value were likewise butchered for the many visitors and mourners. For the duration of the novena, one cow worth P10,000.00 and one pig worth P4,000.00 were butchered for the people. One sack

of rice valued at P600.00 per day was consumed for the duration of five days.

All the members of the family suffered heavily and they experienced mental anguish, sadness and tortured thoughts. The loss of Dov, being the youngest and closest to all affected Dov's elder sister Pamela such that she was referred and confined at the Makati Medical Center for psychiatric care and the family spent P60,000.00 plus another P20,000.00 for the food, travel and other related expenses incurred while Pamela was confined. The other sister had to drop all her subjects at the University of Baguio, Baguio City, because she can't accept the loss of her little brother.

His wife, who has a fondness to Dov had to take a leave of absence from her work. They have now recovered from the loss of her son but they still suffer whenever Dov is remembered.[4]

The Case for the Petitioner

The case for the petitioner as culled from the evidence is as follows:

The residence of the accused is a three-storey house. The first floor could not be seen on the street, but the second floor is on level with the national road (Rizal Avenue). The second floor is where the store (sari-sari and snack house) is located and also where the Platinum Office is stationed. The third floor is where the family of the accused used as their residence.

...

On June 4, 1992, Jun Mar Danao was then 10 years old; Nerry Ann Bravo - a niece of Mr. and Mrs. Magno, was also ten years old and Lorraine Magno, daughter of the accused, was then 12 years old.

Between 6:00 to 7:00 p.m. of June 4, 1992, the store of the accused was opened and Lorraine Magno and her cousin Nerry Ann Bravo together with the accused were inside the store. Lorraine and Nerry were sitting just behind the counter and attending to the store for any customer. The accused was reading a newspaper at the counter. Two persons entered the store and they were Dov and Buss who were drunk because of the smell of liquor and their swaying movements. They seated themselves beside one of the tables, and they asked for soft drinks (coke) from Lorraine but she told them that their soft drinks were consumed. Buss stood up and called Dov "come now" but Dov answered "you go," so Buss left Dov. Dov stood up and went to the counter and looked at the accused who was near the counter reading a newspaper. The accused advised Dov in a soft tone to go home because he was drunk. Dov went out. Mr. Magno ordered Nerry and Lorraine to close the store but it was the latter who closed the accordion door and a space of two feet was left opened because Dov was forcing the door to be opened for him to tell something to the accused. Dov was telling Lorraine "Can I talk to your papa?" to which Lorraine retorted, "What will you talk about?" Dov turned to leave, so Lorraine shut the accordion door.

Moments later, they heard banging sounds particularly the sound of stones thrown at the accordion door. The accused stood up as he was surprised by the stoning and opened the same door. The accused went out looking for anybody who stoned. He went to the street while Lorraine followed his father but she stayed just at the accordion door while Nerry Ann Bravo was at her back. They saw nobody on the street except the accused. Then immediately accused passed by the front of the Isuzu truck parked in front of the store of the accused and got to the driver's seat, switched on the light, started the engine and proceeded to the plaza turning in the right direction. Before the accused drove away, Lorraine noticed a boy under the truck "crawling towards her" so she screamed to her father to stop the truck but her father did not hear and sped off, leaving this boy in the same spot where the truck was parked. Lorraine went near the boy and noticed him to be Dov Dunuan, as if he was sleeping and not moving. Nerry Ann Bravo saw that the person was ran over by the last wheel of the truck. Lorraine ran to the Topside Restaurant to call for help and she met Emerita Danao on the steps. The latter followed Lorraine and both of them went to the body of Dov and Emerita Danao was crying. Mrs. Danao then lifted the head of the victim and rested it again on the ground, while she was looking for a tricycle to rush Dov

to the hospital. A few seconds, the accused riding on the same truck arrived and appeared surprised as to what happened. Lorraine informed him that Dov was ran over. The accused then told them to look for a tricycle and bring him to the hospital while the accused went to report the incident to the police. Emerita Danao and Emilio Bugatti brought Dov to the hospital but Mr. Bugatti dropped by at the Provincial Headquarters. (Exhibits "10," "10-A," "11" and "11-A").

Nerry Ann and Lorraine never saw any strangulation made by the accused on the victim, nor did they see any mauling or boxing nor a quarrel between the accused and victim.

At about this time between 6:00 to 7:00 p.m. of June 4, 1992, Jun Mar Danao was sitting at the step located in front of their house when somebody threw a stone at the house of the accused, so he went inside and peeped through the window of their sala and saw the late Dov at the front of the house of the accused. That Dov was standing there and suddenly he ran under the Isuzu truck parked just in front of the store of the accused. Just then, the accused and his daughter Olen or Lorraine came out from the store. The accused went to the edge of the road as if he was looking for somebody, then went and entered the driver's seat, started the engine and was going to the plaza. When the truck left, he saw Dov lying down on the ground where the truck came from, so he ran to her mother and shouted "Ma, Dov Dov was ran over by the truck."

Mrs. Emerita Danao, by that time was busy doing kitchen chores and at the same time attending to some customers who were drinking and among them were Gilbert Baccay, Herman Dinamling, and Dennis Baliti and his group. Not long after, Buss entered together with Dov both using separate doors all located at the back of the restaurant but before their entrance, Buss and Dov were playing throwing stones at each other also at the back of the restaurant.

When Dov entered, she cautioned him to go home because the latter was a little bit drunk. Buss was likewise observed to be under the influence of liquor. These two friends proceeded to where Gilbert and Herman were seated and they ordered beer. The restaurant, pursuant to an Ordinance, was supposed to close at 7:00 p.m., so she told the group of Buss to leave as soon as they finish their last order. She continued her work in the kitchen when suddenly she heard her son shouting "Dov was ran over by a vehicle." After hearing this, she rushed to the front door and also heard Olen (Lorraine Magno) saying "you come and see Dov because he was ran over by my daddy, the truck of my Daddy." When she went down to see Dov, she noticed the parked truck she usually sees in front of the house of the accused was not there, so she held again the head of Dov and tried to look for a tricycle. She observed Dov a little bit unconscious and not talking but she kept looking around for a ride. She returned back to her restaurant to ask for help. She found Buss lying his head down on a table so she shook him and told him that "please go to the house of Dov Dunuan and ask the parents to come." Buss was awakened from his sleep and he was surprised and said "Neh," and then ran to the direction of the house of Dov. (Exhibit "M" for the prosecution which is the Affidavit of Emerita Danao). Just then the truck of the accused arrived and the latter appeared surprised but he was told by his daughter, Dov was ran over by the truck. The accused told them to look for a vehicle to bring Dov to the hospital while he will report to the police.

Finally, she found a tricycle and rushed Dov to the hospital together with some companions.

SPO3 Agustin Nabanalan was then on duty in the early evening of June 4, 1992. At around 7:00 p.m., accused Oscar Magno, driving his Isuzu truck, appeared before the Lagawe PNP Station particularly appearing before him who was then the assigned investigating officer at that time. The latter inquired from the accused and he was told that the accused accidentally ran over Dov Lourenz Dunuan in front of accused's residence. The accused stayed at the station until the following morning for security reasons and to surrender himself.

Based from his interview with the accused and from what he gathered at the crime scene when they later went that evening, he prepared a spot report (Exhibit "7," "8" and "9") which basically involved a vehicular accident. His findings were:

"...Initial investigation conducted by this Police Station reveals that allegedly the victim hid himself under the

same vehicle which was parked and without the knowledge of the driver of his presence, he drove the vehicle thus the incident happened..." (Exhibit "7-A")

He has submitted to higher authorities a progress report stating therein that the relatives of the victim will be responsible in filing the case directly in Court or with the Provincial Prosecutor's Office. But despite this, they continued the investigation for additional evidence but no one appeared to give his/her statements. Except for the spot report he prepared, nothing was done until they were called by Atty. Evelyn Dunuan who interviewed them and thereafter, she prepared an affidavit and they were given time to correct the same. After they made the necessary corrections, they had it subscribed before they affixed their signatures (Exhibit "6" - Joint Affidavit of Gabriel Guinanoy, Edmundo Pinkihan, Agustin Nabanalan and Orlando Bandao).

He likewise stated that what was narrated by the accused was entered in the police blotter but the entry in the blotter was missing. Not only that, almost one-half of the pages was missing from the blotter reason for which he could not bring to Court the excerpt of the blotter or the blotter itself. In fact, the entries covering the pages from January to November, 1992 do not exist and he cannot explain how the pages containing the entries were missing. Worse, three months after the death of Dov, he was relieved and re-assigned at the Patrol Center so that all the records were left at the office. In one way or the other, the head of their investigation section SPO3 Clemencio Kimmayong and his fellow investigation officers were also relieved. SPO3 Orlando Somera was the replacement as Chief of that section.

SPO1 Orlando Bandao then off-duty in the early evening of June 4, 1992, was at his house at Poblacion West, Lagawe, Ifugao. It was getting dark and then their Chief Inspector Lt. Pascua dropped by and he was told that an accident happened. Both of them proceeded to the Ifugao Provincial Hospital. Reaching the hospital, they proceeded to the emergency room and heard Dr. Pasigon declaring that Dov Dunuan was already dead. There were several people inside the hospital and he just inquired who was the suspect and somebody mentioned the name of Oscar Magno - the accused in this case. Both of them immediately returned to the PNP Station where they found Oscar Magno already ahead of them. Mr. Bandao came to know that the accused was already interviewed, so he took also the chance to conduct his interview. From his interview, herein witness gathered that accused came to know that Dov was ran over from his daughter Lorraine Magno, reason for which he surrendered to the police authority. That this information was given by the accused to herein witness about 20 to 30 minutes from the time the incident occurred.

Mr. Bandao, together with Lt. Pascua, and some policemen proceeded to the situs of the incident, and while there a certain Emilio Bugatti, a close neighbor of the accused, approached them and relayed the information that her daughter Abbigail then 6 years more or less had seen the incident.

Bandao and the group then entered the house of Emilio Bugatti and Abbigail was interviewed. The latter told them that the late Dov was peeping inside the house of the accused and when accused came out, Dov hid under the truck which was parked in front of the same house. The accused went to the street to look for somebody, then returned back to the truck and started the engine and when the truck moved away, she saw Dov lying at the cemented parking space fronting the house.

Bandao still testified that Busa, who was brought to the police station by one of the sons of Mr. Gallman and a relative of the victim, when he interviewed him, Buss accordingly related that he had not witnessed the incident.

He averred that he had no hand in the preparation of the spot report. It was Officer Agustin Nabanalan who prepared said report. No formal or final investigation was done on the case because they were told by their superiors to desist as they were informed that the family of the victim and one Atty. Evelyn Dunuan will be the one to file the case with the proper agency. It was unusual for the PNP to desist from further investigation but he

was told to stop the conduct of investigation by his superiors.

He was one of those relieved and the records of the case surrounding the death of Dov remained intact but when they were re-assigned, whenever he would request for the documents, nothing is available to him.

Chief Inspector Santiago Dunuan replaced Chief Inspector Pascua and the former is the uncle of the deceased Dov.

Dr. Ronald Bandonill, Medico-Legal Officer, NBI-CAR, Baguio City, as an expert witness affirmed some findings of prosecution expert witness Dr. Ruben Angobung, NBI, Ilagan, Isabela, specifically the findings on contused abrasions No. 2:

"Multi-linear; irregularly distributed in a horizontal fashion, covering an area of 5.0 x 1.0 cm., located more at the anterior aspect of the neck tapering irregularly on the left side."

and which the prosecution claims to be evidence of strangulation but herein witness agreed with Dr. Angobung statements that the above-mentioned injury is not a strangulation wound, and that the word "multi-linear" is usually found in victims of vehicular accidents. Examining the exhumation report of Dr. Angobung, he "didn't see any signs which are attributed to strangulation."

Then in wound No. 3.

"Confluent; measuring 10.0 x 7.5 cm., located at the anterior upper-half chest, between the anterior fold and the nipple right."

said doctor agrees with Dr. Angobung's claim that such wound on the chest was not caused or produced by the bare fist of a human being.

Taking the totality of the exhumation findings of Dr. Ruben Angobung, he agrees with the statements of the former that the wounds/contusions/abrasions listed are compatible with that of the injuries caused or introduced by a slow moving vehicle.[5]

After due proceedings, the trial court rendered judgment convicting the petitioner of homicide under Article 249 of the Revised Penal Code, the decretal portion of which reads:

From the foregoing premises, the Court finds that the prosecution was able to establish the guilt of the accused Oscar Magno beyond reasonable doubt and accordingly, he is hereby sentenced to suffer the penalty of reclusion temporal. Applying the Indeterminate Sentence Law, he is sentenced to serve imprisonment of from 10 years and one day to 12 years and 6 months of reclusion temporal in its minimum period.

He is further ordered to pay the heirs of the late Dov Lourenz Dunuan, the indemnity of P50,000.00. Likewise, he is also ordered to pay said heirs the following:

- A) P117,000.00 representing the actual damages;
- B) P50,000.00 moral damages;
- C) P15,000.00 exemplary damages; and
- D) to pay the costs.

SO ORDERED.[6]

The petitioner appealed to the Court of Appeals (CA) contending that he deserved acquittal of the crime charged. The CA rendered judgment reversing the decision of the RTC and finding the petitioner guilty beyond reasonable doubt of reckless imprudence resulting in homicide under Article 365 of the Revised Penal Code. The decretal portion of the decision of the CA reads:

WHEREFORE, premises considered, the Decision appealed from is hereby SET ASIDE and anew one entered, finding the accused-appellant Oscar Magno GUILTY beyond reasonable doubt of the crime of RECKLESS IMPRUDENCE RESULTING IN HOMICIDE punishable under Article 365 of the Revised Penal Code. Accused-appellant Oscar Magno is hereby sentenced to suffer an indeterminate imprisonment of One (1) Year, Seven (7) months and Eleven (11) days of prision correccional, as minimum, to Two (2) years, Ten (10) months and Twenty (20) days of prision correccional, as maximum, and to pay the heirs of the late Dov Lourenz Dunuan, the sum of P75,000.00 as indemnity for the death of the victim. Accused-appellant is likewise ordered to pay said heirs P117,000.00 as actual damages plus costs.

SO ORDERED.[7]

The petitioner's motion for reconsideration of the decision was denied by the CA.

Before this Court, the petitioner assails the decision of the CA and prays for the reversal thereof, contending that the Court of Appeals erred in finding him guilty beyond reasonable doubt of reckless imprudence resulting in homicide on a charge of homicide committed with dolo or with malice.[8]

The Petitioner prays ex abundentia cautela that if this Court sustains the decision of the Court of Appeals, he be granted probation. He appended a copy of his petition for probation to his petition in this Court. He prays the Court that:

- The case against your petitioner OSCAR MAGNO be dismissed because he cannot be convicted for Reckless Imprudence resulting in Homicide as the said charge is not included in the original charge of Homicide; WITHOUT PREJUDICE to the filing of the proper charges and before the proper courts in accordance with the guidelines implied by the Decision of the Honorable COURT OF APPEALS on what should be the proper offense charged;
- Or, in the alternative, assuming that this Honorable Court shall not look kindly upon his prayer above, that he be allowed to APPLY FOR PROBATION whether directly ordered by this Honorable SUPREME COURT in the valid exercise of its inherent judicial powers, or by remanding the records of the case to the lower court for promulgation of the DECISION of the COURT OF APPEALS dated April 4, 2001 with instructions to allow the petitioner to forthwith file an Application for Probation or accept the Application for Probation attached hereto in cautela;
- It is most respectfully prayed that your petitioner be granted such other and further relief as may be just and equitable in the premises.[9]

The petition is not impressed with merit.

Sections 4 and 5, Rule 120 of the Revised Rules of Criminal Procedure reads:

SEC. 4. Judgment in case of variance between allegation and proof.— When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. (4a)

SEC. 5. When an offense includes or is included in another.— An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter. (5a).[10]

The issue raised by the petitioner in this case is not new. In *People v. De Fernando*,^[11] this Court ruled that one charged with murder may be convicted of reckless imprudence resulting in homicide. In *People v. Carmen*,^[12] the Court convicted the appellants of reckless imprudence resulting in homicide on a charge of murder. The Court

ruled that the quasi offense of reckless imprudence resulting in homicide is necessarily included in a charge of murder. The Court in *Samson v. Court of Appeals*,^[13] emphasized that while a criminal negligent act is not a simple modality of a willful crime, but a distinct crime in itself, defined as an offense in the Revised Penal Code, it may, however, be said that a conviction for the former can be had under an information exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense.

The Petitioner's plaint that by convicting him of reckless imprudence resulting in homicide on a charge of homicide by dolo, and sentencing him to an indeterminate penalty, he is deprived of his right to file a petition for probation under P.D. 968, as amended, and his right to the equal protection of laws, is patently without legal basis. The conviction of the petitioner for reckless imprudence resulting in homicide and sentencing him to an indeterminate penalty has nothing to do with his qualifications or disqualifications for probation under P.D. No. 968. Whether or not the petitioner may still file a petition for probation despite his appeal from the judgment of the trial court; and whether or not he is entitled to probation under P.D. No. 968, as amended, and under prevailing jurisprudence, will have to be ascertained by the trial court in which a petition for probation is filed as mandated in Section 4 of P.D. 968, as amended,^[14] and not by this Court.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The Decision of the Court of Appeals is AFFIRMED. With costs against the petitioner.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] CA Rollo, p. 255.

[2] Penned by Judge Anastacio D. Anghad.

[3] Records, p. 1.

[4] CA Rollo, pp. 190-194.

[5] Id. at 196-202.

[6] Id. at 217-218.

[7] Rollo, pp. 30-31.

[8] Id. at 6-7.

[9] Id. at 14.

[10] Supra.

[11] 49 Phil. 75 (1926).

[12] 355 SCRA 267 (2001).

[13] 103 Phil. 277 (1958).

[14] SEC. 4. Grant of Probation.— Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best: Provided, That no application for probation shall be entertained or

granted if the defendant has perfected the appeal from the judgment or conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall be appealable.

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.