

EDWIN TABAO Y PEREZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 187246. July 20, 2011

Ponente: BRION, J.

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BRION, J.:

Edwin Tabao (petitioner) seeks reconsideration of our Resolution, dated June 8, 2009, denying his petition for review on certiorari for failure to show any reversible error in the assailed Court of Appeals (CA) decision to warrant the exercise of this Court's discretionary appellate jurisdiction, and for raising substantially factual issues.

The evidence for the prosecution reveals the following facts:

At around 10:00 p.m. of January 21, 1993, the petitioner was driving his Toyota Corolla car bearing plate number PCH-111 along Governor Forbes corner G. Tuazon Street towards Nagtahan when it suddenly ramped on an island divider, bumping Rochelle Lanete who was crossing the street. As a result of the impact, Rochelle was thrown into the middle of the road on her back.[1] Thereafter, Leonardo Mendez' speeding blue Toyota Corona car with plate number PES-764 ran over Rochelle's body. Bystanders — armed with stones and wooden clubs — followed Mendez' car until it stopped near the Nagtahan Flyover.[2] Francisco Cielo, a newspaper delivery boy, pleaded with the bystanders not to hurt Mendez. Cielo went inside Mendez' car, sat beside him, got his driver's license, and ordered him to move the car backwards. Mendez followed his order, but his car hit the center island twice while backing up.[3] Cielo went out of the car and approached the sprawled body of Rochelle; he and the petitioner brought Rochelle's body inside Mendez' car. The three of them (the petitioner, Cielo and Mendez) brought Rochelle to the UST Hospital,[4] where she died on February 6, 1993 due to septicemia secondary to traumatic injuries.[5]

The defense presented a different version of the incident.

The petitioner narrated that at around 10:00 p.m. of January 21, 1993, he was driving along Governor Forbes corner G. Tuazon Street when his car ramped on an island at the foot of the Nagtahan Flyover. He tried to move the car backwards, but failed to do so. He alighted from his car and then saw that its two rear wheels had been elevated.[6] He returned inside his car to turn off its engine; he then noticed that many people were approaching his car.[7] He again alighted from his vehicle and saw a person lying on the road.[8] He looked at his left side and saw a car that was "running fast like a wind" pass by. He approached the person lying on the road, and noticed that she was still breathing and moaning. Afterwards, he saw Mendez' car backing up; he carried the victim towards that car.[9] Thereafter, he, Mendez and Cielo brought the victim to the UST Hospital.[10]

Mendez, for his part, testified that at around 9:00 to 9:30 p.m. of January 21, 1993, he left his girlfriend's house in Blumentritt, Sta. Cruz, Manila. As he was driving along Governor Forbes corner G. Tuazon Street on his way home, he saw a vehicle that had ramped on an island divider. Suddenly, another vehicle overtook his car from the right and cut his lane. He slowed down his car when he saw a rug-like object fall from the car that overtook

him,[11] and stopped when he realized that what had fallen was a person's body. When he moved his car backwards to help this person, many people approached his car. He alighted from his car and inquired from them what had happened. The people replied that someone was run over; some of them pointed to him as the culprit. He denied having run over the victim when they tried to hurt him. The petitioner carried the victim and placed her inside Mendez' car. Thereafter, the two of them brought the victim to the UST Hospital.[12]

The Office of the City Prosecutor found probable cause and thereafter charged the petitioner and Mendez with reckless imprudence resulting to homicide before the Regional Trial Court (RTC), Branch 39, Manila.[13] The RTC, in its decision[14] dated September 15, 2003, found that it was "very clear that both accused are responsible for the death of Rochelle Lanete,"[15] and convicted the two (2) accused of the crime charged. It found that the petitioner's car first hit the victim, causing her to be thrown into the road on her back, and that Mendez' car ran over her as she was lying down. It held that the two failed to observe the necessary precaution and due care in operating their respective vehicles, to wit: the petitioner was not attentive to his driving such that he failed to see the island divider and bumped Rochelle; Mendez was driving his car too fast at nighttime such that he was unable to avoid running over her as her body lay prone on the street. The RTC sentenced them to suffer the indeterminate penalty of four months and one day of arresto mayor, as minimum, to two years, 10 months and 20 days of prision correccional, as maximum. It also ordered them to pay the heirs of the victim the following amounts: (a) P478,434.12 as actual damages; (b) P50,000.00 as civil indemnity; and (c) P50,000.00 as moral damages.[16]

The petitioner filed an appeal before the CA, docketed as CA-G.R. CR. No. 28401. The CA, in its decision[17] dated July 27, 2007, agreed with the factual findings of the RTC, and affirmed its decision with the modification that the petitioner be sentenced to suffer an indeterminate penalty of four months and one day of arresto mayor, as minimum, to four years, nine months and 10 days of prision correccional, as maximum.

The petitioner moved to reconsider this decision, but the CA denied his motion in its resolution[18] of March 17, 2009.

The petitioner filed before this Court a petition for review on certiorari alleging that the courts a quo erred in convicting him of the crime charged. As earlier stated, we denied this petition for failure to show any reversible error in the assailed CA decision to warrant the exercise of our discretionary appellate jurisdiction, and for raising substantially factual issues.

The petitioner now comes to us via the present motion for reconsideration, raising the following arguments:

- THE FINDINGS OF FACTS OF BOTH THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT ARE HIGHLY SPECULATIVE, MANIFESTLY MISTAKEN AND UNSUPPORTED BY THE EVIDENCE [ON RECORD;]
- [THE] COURT OF APPEALS [ERRED IN UPHOLDING HIS] CONVICTION [ON THE BASIS OF THE] INCREDIBLE AND UNRELIABLE TESTIMONY OF x x x VICTOR SORIANO[; and]
- THE [SUPREME] COURT DISREGARDED [HIS CONSTITUTIONAL] PRESUMPTION OF INNOCENCE.[19]

In its Comment, the People of the Philippines, through the Office of the Solicitor General, prays that the motion be denied for being pro forma; the petitioner merely advanced the same arguments which he raised in his appellant's brief and motion for reconsideration before the CA.

After due consideration, we resolve to DENY the motion.

As a general rule, findings of fact of the trial court, especially when affirmed by the CA, are binding and

conclusive upon this Court; we will not normally disturb these factual findings unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on a misapprehension of facts.[20] After a careful review of the records, we see no reason to overturn the lower courts' factual findings that found the petitioner guilty of the crime charged.

Reckless imprudence, generally defined by our penal law, consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. Imprudence connotes a deficiency of action. It implies a failure in precaution or a failure to take the necessary precaution once the danger or peril becomes foreseen.[21] Thus, in order for conviction to be decreed for reckless imprudence, the material damage suffered by the victim, the failure in precaution on the part of the accused, and the direct link between material damage and failure in precaution must be established beyond reasonable doubt. We are morally convinced that all three were established in this case in accordance with the required level of evidence in criminal cases.

The petitioner was positively identified by an eyewitness

The fact of Rochelle Lanete's death was stipulated during pre-trial, as well as duly established during trial.[22] What remain to be proven beyond reasonable doubt are the inexcusable lack in precaution on the part of the petitioner and the direct link of his negligence to the victim's death.

An eyewitness account established that the petitioner's vehicle actually hit Rochelle Lanete. Eyewitness identification is vital evidence, and, in most cases, decisive of the success or failure of the prosecution.[23] One of the prosecution witnesses, Victor Soriano, unfortunately for the petitioner's cause, saw the incident in its entirety; Victor thus provided direct evidence as eyewitness to the very act of the commission of the crime.[24] In his September 1, 1994 testimony, Victor positively identified the petitioner as the person who drove the car that ramped on an island divider along Governor Forbes corner G. Tuazon Street, and hit Rochelle. To directly quote from the records:

ATTY. ALICIA SERRANO:

Q:

Mr. Soriano, do you remember where were you on or about 10:00 o'clock (sic) of January 21, 1993?

VICTOR SORIANO:

A:

Yes, ma'am.

Q:

Where were you?

A:

I was at the corner of Governor Forbes and G. Tuazon.

Q:

What were you doing at the corner of Governor Forbes and G. Tuazon at that time?

A:

My sidecar was parked there because I was waiting for my wife, ma'am.

Q:

And when you were there at the corner of G. Tuazon and Governor Forbes at the said time and place, was there any unusual incident that happened?

A:

Yes, sir.

Q:

And what was that unusual incident?

A:

I saw an accident involving a speeding car which ramped over the island and bumped a woman who was crossing the street.

Q:

When you saw that the car ramped over the island and hit and bumped a woman, what happened to the woman that was hit and bumped by the car which you said ramped over the island?

A:

The woman was thrown at the middle of the road on her back, ma'am.

Q:

When you saw this woman after being hit and bumped by the car that ramped over the island and was thrown at the middle of the road, what else happened?

x x x x

A:

The woman was no longer moving at that time when I saw another car coming.

x x x x

Q:

What else happened when you saw the car coming very fast?

A:

The woman sprawled at the middle of the road was ran over by the speeding car and that car stopped while going up to the flyover.

x x x x

Q:

You said you saw a car that ramped over the island and that the car that ramped over the island was the car that hit and bumped the victim that was thrown at the middle of the street. Now, will you be able to identify before this court the driver of that car that ramped over the island and hit and bumped the victim?

A:

Yes, ma'am.

Q:

If that driver of the car that hit and bumped the victim is inside the courtroom, would you be able to point to him before this Honorable Court?

A:

Yes, ma'am, he is here.

Q:

Will you kindly point before this courtroom who is that driver of the car that hit and bumped the victim? Although, Your Honor, there was already a stipulation at the start of the pre-trial admitting that the accused Tabao is the driver of the car which ramped at the divider.

INTERPRETER:

Witness approaching a man seated inside the courtroom and who stood up and identified as Edwin Tabao, the accused in this case.[25] [emphases ours]

On cross-examination, Victor further elaborated on what he saw of the incident:

ATTY. ESTEBAN NANCHO:

Q:

Mr. Soriano, you said that the first car ramped over the island and bumped a woman, and as a result of that, the woman was thrown at the middle of Forbes Street. Do you confirm that?

VICTOR SORIANO:

A:

Yes, sir, that is true.

Q:

And can you tell us how the woman was hit, was bumped by the car that ramped over the island?

A:

The woman was crossing the street and when she saw the on-coming car, she tried to avoid that but the car [which] ramped over the island bumped the woman.

Q:

In other words, the car first ramped over the island before it hit the woman?

A:

Yes, sir.

Q:

What part of the car bumped the woman?

A:

The bumper of the car, the left side of the bumper.

Q:

What part of the body of the victim was hit by the car?

A:

Her left side of the body.

Q:

Are you saying that the victim was facing the car when the car bumped her.

A:

Yes, sir, she was facing the car. She was about to avoid that car.

Q:

How was the woman thrown at the middle of Forbes Street?

A:

She was thrown backwards.

Q:

And what part of the body of the victim first hit the pavement?

A:

The back of her head.

x x x x

Q:

And you said after the woman was thrown at the middle of the street[,] another speeding car ran over the body of the woman?

A:

Yes, sir.

x x x x

Q:

Now, from the time the body of the victim was thrown at the middle of the street, how much time had lapsed when the second car ran over the body of the victim?

A:

Not more than one minute. When I saw the car, it was a little bit far then I saw the car running very fast. It did not take more than a minute.

x x x x

Q:

Now, did you point at any person gathered at the scene of the accident that it were (sic) the 2 accused who were responsible for the accident?

A:

I told Cielo about that and I told him that whoever brought the victim to the hospital is the one who ran over the victim.[26]

The petitioner nonetheless claims that Victor is not a credible witness due to inconsistencies between his affidavit and court testimony. He harps on the fact that Victor declared in his affidavit that the petitioner's car first hit Rochelle before it ramped on an island divider; while he testified in court that the petitioner's vehicle ramped on the island divider before hitting the victim.

We find these arguments unmeritorious.

Discrepancies and/or inconsistencies between a witness' affidavit and testimony in open court do not impair credibility as affidavits are taken ex parte and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer.[27] At any rate, Victor was able to sufficiently explain the discrepancies between his affidavit and court statements. Victor reasoned out that the secretary who typed his affidavit made a mistake; and explained that he signed the affidavit despite the inaccuracies in paragraph 2 because the secretary told him, "kasi ho magugulo ang naimakinilya na." [28] Accordingly, when Victor informed his lawyer during the first day of the hearing about the inaccuracy, the latter told him to state the truth regardless of what was written in his affidavit.

The general rule – that contradictions and discrepancies between the testimony of a witness and his statements in an affidavit do not necessarily discredit him – is not without exception, as when the omission in the affidavit refers to a very important detail of the incident that one relating the incident as an eyewitness would not be expected to fail to mention, or when the narration in the sworn statement substantially contradicts the testimony in court.[29] In the present case, we see no substantial contradiction in Victor's affidavit and in his court statements as he declared in both that he saw the petitioner's car ramp on the island divider and bump Rochelle. As to whether the car ramped on the center island before or after it bumped the victim does not detract from the fundamental fact that Victor saw and identified the petitioner as the driver of the car that ramped on the island divider and hit Rochelle. As earlier discussed, Victor sufficiently explained this inconsistency during the trial.

Victor, who stood only seven meters from the incident, clearly and in a straightforward manner described how the petitioner's car had bumped the victim. We thus see no reason to overturn the lower courts' finding regarding Victor's credibility, more so since the petitioner did not impute any ill motive that could have induced Victor to testify falsely. The fundamental and settled rule is that the trial court's assessment regarding the credibility of witnesses is entitled to the highest degree of respect and will not be disturbed on appeal, especially when the assessment is affirmed by the CA.

The positive identification in this case, coupled with the failure of the defense to impute any ill-motive on the eyewitness, to our mind, works to dispel reasonable doubt on the fact that the petitioner's car had in fact hit Rochelle. The eyewitness account provides the necessary link between the petitioner's failure to exercise precaution in operating his vehicle and Rochelle Lanete's death.

The petitioner failed to exercise precaution
in operating his vehicle

The right of a person using public streets and highways for travel in relation to other motorists is mutual,

coordinate and reciprocal.[30] He is bound to anticipate the presence of other persons whose rights on the street or highway are equal to his own.[31] Although he is not an insurer against injury to persons or property, it is nevertheless his duty to operate his motor vehicle with due and reasonable care and caution under the circumstances for the safety of others as well as for his own.[32]

The petitioner repeatedly admitted that as he drove his vehicle on his way home from work on January 21, 1993, he did not notice the island divider at the foot of the Nagtahan Flyover. As a result, his car ramped on the island so that both its rear wheels became “elevated” from the road and he could no longer maneuver the vehicle.[33] The petitioner even testified that his car had to be towed.[34] Later, during cross-examination, he admitted that all four wheels of his car, not just the two rear wheels mentioned in his earlier testimony, lost contact with the ground.[35] The entire vehicle, therefore, ended up on top of the island divider. He puts the blame for the ramping and, essentially, his failure to notice the island on the darkness of nighttime and the alleged newness of the island.[36]

To our mind, the fact that the petitioner’s entire vehicle ended up ramped on the island divider strongly indicates what actually happened in the unfortunate incident. The vehicle could not have ended up in that condition had the petitioner been driving at a reasonable speed. We are not persuaded by the petitioner’s rather simplistic account that mere darkness, coupled with the traffic island’s alleged newness, caused his car to veer off the traffic trajectory of Governor Forbes Street and to end up jumping on top of the traffic island intended to channel vehicular traffic going to the Nagtahan Flyover.

A motorist is expected to exercise ordinary care and drive at a reasonable rate of speed commensurate with all the conditions encountered,[37] to enable him to keep the vehicle under control and, whenever necessary, to put the vehicle to a full stop to avoid injury to others using the highway.[38] It has not escaped our notice that the intersection of Governor Forbes Street and G. Tuazon Street is adjacent to the vicinity of the incident. A driver approaching an intersection is generally under duty, among others, to keep and maintain his vehicle under control so he can, if needed, stop at the shortest possible notice.[39] Ordinary or reasonable care in the operation of a motor vehicle at an intersection would naturally require more precaution than is necessary when driving elsewhere in a street or highway.[40]

The fact that the petitioner was driving near the Governor Forbes Street and G. Tuazon Street intersection gives rise to the expectation that he would drive at a speed that anticipated — or would have anticipated — that other persons are on the road, whether as pedestrians or as motorists. The facts show, however, that the petitioner was driving his car at an inappropriate speed for a vehicle crossing an intersection. Otherwise, he should have been able to put his vehicle to a complete stop or, at the very least, at a speed that would have prevented his car from climbing entirely on top of the island divider. That the petitioner’s entire vehicle landed on top of the traffic island — body, chassis, four wheels and all — sufficiently indicates his speed at that time. The force that propels an entire car off the street and on top of a traffic island could only have been inordinate speed, or at least speed beyond that of a motorist coming from or going to an intersection. In short, the ramping of his vehicle demonstrably indicates to us that the petitioner failed to observe the duty to maintain a reasonable speed. We therefore believe Victor’s testimony that the petitioner was speeding when he bumped the victim.[41]

We are likewise not persuaded by the petitioner’s claim that darkness and the traffic island’s alleged newness justify his failure to notice the island. The petitioner’s admission that he did not notice the traffic island is in itself an indication of his failure to observe the vigilance demanded by the circumstances. Ultimately, it shows the criminal recklessness for which he has been convicted. The record shows that pedestrians were present in the vicinity at the time of the incident. The CA even pointed out that the vicinity is near residential areas, while we pointed out its proximity to an intersection. The darkness and these circumstances should have caused the

petitioner to be more alert and more vigilant, to say nothing of slowing his car down. Newly constructed or not, the island divider should have received the petitioner's due attention. His bare allegation that the island lacked markers or reflectorized marks is likewise not persuasive. As the trial court correctly observed, many other vehicles passed the same road that night but only the petitioner failed to notice the island divider.[42] We thus find the trial court to be correct when it held that the petitioner failed to exercise precaution in operating his vehicle on the night of the incident.

The location of the victim's injuries vis-à-vis the position of the petitioner's vehicle

The petitioner insists that his car could not have bumped the victim because his car was coming from the right side (i.e., from España), while the victim was hit on the left side of her body. He argues that if the victim was on her way to her house on Mabini Street coming from the corner of Governor Forbes Street and G. Tuazon Street (where she alighted), then the responsible vehicle could only have come from the left (i.e., from Nagtahan) as only those vehicles coming from this direction could hit the victim on the left side of her body. He further claims that his car had no dents or scratches.

The petitioner's arguments are misleading.

Dr. Sergio Alteza, Jr., the attending physician, testified that the victim suffered multiple injuries "compatible and consistent with a vehicular accident." [43] He did not state that the injuries suffered by the victim were only on her left side. In fact, a perusal of Dr. Alteza's initial medical report shows that the victim suffered injuries both on the left and right sides of her body. In addition, Dr. Floresto Arizala, Jr., the National Bureau of Investigation medico-legal officer who conducted an autopsy on Rochelle's body, confirmed that the victim suffered injuries on various parts of her lower right and left extremities as a result of the initial or primary impact.

The petitioner relies heavily on Dr. Alteza's statement allegedly declaring that the victim's injuries on her lower left leg and left thigh were the "primary impact" injuries. However, this statement was not based on the actual incident but on Dr. Alteza's presumptions. For clarity, we reproduce Dr. Alteza's testimony:

ATTY. SERRANO:

Q:

Now doctor, you said that these injuries you found x x x on the body of the victim are compatible and consistent with a vehicular accident. Would you tell this court how these injuries were sustained?

x x x x

Doctor, what would be the possible situation when you use compatible and consistent vehicular accident?

DR. ALTEZA:

A:

If I would be allowed to make some presumptions, if the patient was standing up at that time he was hit by a vehicle, I would presume that the primary impact injuries, injuries hit first by the vehicle are the injuries of the lower leg and the left thigh considering that the height of the injuries are approximately the height of the bumper as well as the hood of the car.

Q:

There are several kinds of vehicles, doctor?

A:

Yes, Your Honor, I was thinking of a car. Now, after being hit by [a] car, under normal condition, the victim is normally thrown at the surface of the street.[44] [emphases ours]

From this exchange, we find it clear that Dr. Alteza was merely making a hypothetical statement that a person who is presumed to be standing when hit by a vehicle would suffer primary impact injuries on his lower leg and left thigh. He never declared that Rochelle suffered primary impact injuries on her lower left extremities. At any rate, it was not improbable for the victim to have been hit on the left side of her body as Victor testified that she (victim) tried to avoid the petitioner's car, and was in fact facing the car when she was hit.

We likewise do not believe the petitioner's claim that his vehicle was not involved in the incident due to the absence of dents or scratches. As the petitioner himself admitted, his vehicle was not subjected to any investigation after the incident. Moreover, the pictures of the car, presented by the petitioner in court, were taken long after the incident and after a repair had already been done to the vehicle. There was therefore no way of verifying petitioner's claim that his car did not have any dent or scratch after the incident. At any rate, the absence of a dent or a scratch on the petitioner's car, assuming it to be true, does not conclusively prove his non-participation in the incident. The absence of any dent or scratch is influenced by several factors: the type of paint, the speed of the car, the points of impact, and the material used on the car's exteriors.

Weight of expert testimony

The petitioner likewise claims that the CA violated Section 49, Rule 130 of the Revised Rules of Court when it disregarded the testimony of defense witness Police Senior Inspector Danilo Cornelio who testified that the petitioner's car could not have bumped the victim because the latter's body was not thrown in line with the car, but on its side. The petitioner argues that P/Sr. Insp. Cornelio is highly qualified in the field of traffic accident investigation, and as such, his statements are "backed-up by [the] principles of applied physics, engineering, and mathematics." [45]

The petitioner's arguments fail to convince us.

Section 49, Rule 130 of the Revised Rules of Court states that the opinion of a witness on a matter requiring special knowledge, skill, experience or training, which he is shown to possess, may be received in evidence. The use of the word "may" signifies that the use of opinion of an expert witness is permissive and not mandatory on the part of the courts. Allowing the testimony does not mean, too, that courts are bound by the testimony of the expert witness. The testimony of an expert witness must be construed to have been presented not to sway the court in favor of any of the parties, but to assist the court in the determination of the issue before it, and is for the court to adopt or not to adopt depending on its appreciation of the attendant facts and the applicable law. It has been held of expert testimonies:

Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they may choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study and observation of the matters about which he testifies, and any other matters which deserve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect. The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of abuse of discretion.[46]

We emphasize that P/Sr. Insp. Cornelio was not an eyewitness to the incident; his testimony was merely based on the Traffic Accident Report prepared by SPO4 Edgar Reyes who himself did not witness the incident. At any rate, nowhere in P/Sr. Insp. Cornelio's testimony did he conclusively state that the petitioner could not have been involved in the incident. For clarity, we reproduce the pertinent portions of P/Sr. Insp. Cornelio's testimony:

ATTY. SERRANO:

Q:

When you said in line with the motor vehicle that bumped the victim, is it that when a victim is bumped by the motor vehicle, the victim would be thrown in line with the vehicle?

P/SR. INSP. CORNELIO:

A:

Yes, Ma'am. Usually, that is the outcome of the incident.

Q:

He cannot be thrown sideward?

A:

Maybe if another vehicle would hit the pedestrian because that also happened. When a pedestrian is hit by a vehicle and another vehicle hit the pedestrian, it will be thrown somewhere else.

Q:

Mr. Witness, you are testifying as far as the vehicle of Tabao is concerned. You said that the line of vehicle that bumped the victim would be in line. Are you telling us that it is not possible that when the vehicle of Tabao hit the victim, the victim would be thrown sideways?

A:

Yes, Ma'am.

Q:

What do you mean, yes, Ma'am?

A:

He can be thrown either in front of the vehicle that hit the victim or slightly offset with the car of Tabao. It [may be] but not far from the side.

Q:

But he would be thrown sidewise[,] not frontal?

A:

Slightly to the side but not considerable length of distance away from the car. It is sideways.

Q:

In your Mathematics, do you consider that if a vehicle is speeding fast, he could have thrown anything that is bumped by that vehicle far away from the vehicle?

A:

Yes, Ma'am, possible.

Q:

So, that probability is also possible aside from the probability that you said the victim is thrown in line or in front. So, you are now saying it could be said that the victim can be thrown sidewise?

A:

It [may be] thrown sidewise. As I said [a while] ago, it might be slightly offset with the vehicle that hit the pedestrian but not too far from the side of the bumping vehicle.

Q:

So, it could depend on the speed of the vehicle that bumped the object bumped?

A:

Yes, Ma'am.

Q:

Whether it is forward or sidewise, the distance of the object thrown would depend on the speed of the vehicle that bumped?

A:

Yes, Ma'am.

Q:

So, if it is speeding, it could be thrown farther?

A:

Yes, Ma'am.

Q:

Sidewise or frontal?

A:

It should be frontal.

Q:

You said it could be thrown sidewise do I take it correct[ly,] it can be thrown sidewise also?

A:

Maybe. As I have said [a while] ago, it [may be] slightly offset with the line of the vehicle.

x x x x

Q:

So, do we take it from you that your basis only of telling the court that Tabao is not in [any way] responsible is the distance of the victim from the car that bumped?

A:

I am not saying categorically that the car of Tabao is not responsible. But as I can see in the sketch presented today in this Honorable Court, the position of the victim is too far from the vehicle of Mr. Tabao. If I were the investigator in this particular case, I should indicate the measurement of the victim from the car and this sketch [does] not indicate the distance.

Q:

Now, failure of the investigator to indicate the distance, would that show that it was not Tabao who bumped the victim?

A:

I cannot say categorically that the car of Tabao indeed, hit the victim. Because the distance is very significant in this sketch for proper evaluation.

x x x x

Q:

So, it cannot be said that when an object is bumped by a vehicle, it will be thrown forward. It will all depend on which portion of the bumper hit by object bumped?

A:

Yes, Ma'am.[47]

From the foregoing, it is clear that P/Sr. Insp. Cornelio did not discount the possibility that the victim could have been thrown on the side. He likewise admitted that the location of an accident victim in relation to the vehicle would also depend on the speed of the vehicle and the point of impact.

The defense of denial

The petitioner denied that his car had bumped the victim, and insists that he just saw the victim's body sprawled on the road after his car had already ramped on the island divider.

The petitioner's defense of denial must crumble in light of Victor's positive and specific testimony. We reiterate that the petitioner, aside from merely alleging the inconsistency between Victor's affidavit and court testimony, did not impute any ill motive on Victor's part to falsely testify against him. The petitioner, in fact, admitted that he and Victor did not know each other prior to the incident. We have consistently held that positive identification of the accused, when categorical and consistent, and without any showing of ill-motive on the part of the testifying eyewitness, should prevail over the denial of the accused whose testimony is not substantiated by clear and convincing evidence.[48] A denial is negative evidence. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, the denial is purely self-serving and has no evidentiary value.[49]

We significantly note that the petitioner claimed for the first time in his present petition that he saw a "rug-like thing"[50] being thrown out of a passing car as he was about to alight from his car after turning off its engine; he later discovered that the thing thrown was a person's body. He reiterated this claim in his motion for reconsideration before this Court. This assertion was a clear rip-off from his co-accused Mendez' version who likewise claimed to have seen the same thing. To our mind, the modification of the petitioner's story was a belated attempt to cover up his failure to convincingly explain the presence of the victim's slumped body on the road near his car and a last-ditch effort to exculpate himself. Nowhere in his affidavit or earlier court testimonies, or even in his previous pleadings with the lower courts, did he ever state that a passing car had thrown a "rug-like

thing”[51] on the street. The petitioner’s sudden change of story at this stage of the proceedings casts doubt on the veracity of his claim.

In addition, we are baffled by the petitioner’s act of frequenting the hospital after the incident. Amanda Ycong, the victim’s aunt, testified that she saw the petitioner “several times” at the hospital when the victim was confined there; but would immediately leave whenever he saw members of the victim’s family. We find it highly unusual for a person who allegedly had no participation in the incident to be overly concerned with the victim’s well-being. What puzzles us even more is why the petitioner would evade members of the victim’s family whenever he was seen by them at the hospital.

All told, we see no reason to overturn the lower courts’ findings of fact and conclusions of law finding the petitioner guilty beyond reasonable doubt of the crime charged.

WHEREFORE, premises considered, the Court resolves to DENY the motion with FINALITY, no substantial argument having been adduced to warrant the reconsideration sought. Costs against the petitioner.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro,[*] Peralta,**] and Perez, JJ., concur.

[*] Designated as Acting Member of the Second Division per Special Order No. 1006 dated June 10, 2011.

[**] Additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1040 dated July 6, 2011.

[1] TSN, September 1, 1994, pp. 12-13.

[2] Id. at 15-16; TSN, November 8, 1993, pp. 14-15.

[3] TSN, November 8, 1993, pp. 4-5.

[4] Id. at 6 and 18; TSN, January 24, 1994, p. 3.

[5] Records, p. 6.

[6] TSN, March 28, 2001, pp. 6-9.

[7] Id. at 10.

[8] Id. at 10 and 15; TSN, May 20, 2002, pp. 31-35; records, p. 282.

[9] TSN, March 28, 2001, pp. 10-17.

[10] Id. at 10-11 and 18-19; TSN, May 20, 2002, pp. 39-41.

[11] TSN, September 16, 1996, pp. 4-6; TSN, February 11, 1997, p. 11.

[12] TSN, September 16, 1996, pp. 7-8.

[13] The inculpatory portion of the Information reads:

That on or about January 21, 1993, in the City of Manila, Philippines, the said accused LEONARDO MENDEZ Y MENDEZ, being then the driver and person in charge of a Toyota Corona Sedan with plate [sic] No. PES-764, and accused EDWIN TABAO Y PEREZ, being then the driver and person in charge of a Toyota Corolla with plate [sic] No. PHC-111, did then and there unlawfully and feloniously drive, manage and operate the same along

Governor Forbes intersection of G. Tuazon Streets, Sampaloc, in said City, in a careless, reckless, negligent and imprudent manner, by then and there making the said vehicle run at a speed greater than was reasonable and proper, without taking the necessary precaution to avoid accident to person considering the condition of traffic at said place at the time, causing as a consequence of such carelessness, negligence, recklessness, imprudence and lack of precaution, the said vehicle so driven, managed and operate [sic] by them in the manner above setforth, said vehicle driven by accused EDWIN TABAO Y PEREZ hit and bumped one ROCHELLE LANETE Y MATAAC, a pedestrian, causing her to be thrown on the pavement, and thereafter was ran [sic] over by the vehicle driven by accused LEONARDO MENDEZ Y MENDEZ, and as a result of the said impact, said ROCHELLE LANETE Y MATAAC sustained physical injuries which were the cause of her death thereafter.

Contrary to law. [Records, p. 1.]

[14] Penned by Judge Reynaldo G. Ros; rollo, pp. 61-92.

[15] Records, p. 735.

[16] The dispositive portion of the RTC decision reads:

WHEREFORE, the prosecution having established the guilt of both accused, LEONARDO MENDEZ Y MENDEZ and EDWIN TABAO Y PEREZ, beyond reasonable doubt of the offense charged in the Information which is for Reckless Imprudence Resulting to Homicide, they are hereby sentenced to suffer the indeterminate penalty of FOUR (4) MONTHS and ONE (1) DAY of arresto mayor as minimum, to TWO (2) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of prison correctional as maximum.

Both accused are ordered to jointly and solidarity [sic] pay the heirs of the victim Rochelle Lanete Y Mataac the amount of P478,434.12 as actual damages; P50,000.00 as civil indemnity; and P50,000.00 as moral damages, and the costs of suit.

SO ORDERED. [Id. at 736.]

[17] Penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison; rollo, pp. 41-60.

[18] Id. at 119-120.

[19] Id. at 188-201.

[20] *Austria v. Court of Appeals*, 384 Phil. 408, 415 (2000).

[21] *Caminos, Jr. v. People*, G.R. No. 147437, May 8, 2009, 587 SCRA 348, 357, citing *The Revised Penal Code*, Reyes, Luis b., 15th ed. (2001), pp. 994-995.

[22] Order dated August 5, 1993; records, p. 51. The Certificate of Death of Rochelle Lanete was presented during trial as Exhibit "P"; records, p. 216.

[23] *People v. Meneses*, 351 Phil. 331, 334 (1998), citing *People v. Teehankee, Jr.*, 319 Phil. 128, 179 (1995).

[24] *People v. Gallarde*, 382 Phil. 718, 736 (2000).

[25] TSN, September 1, 1994, pp. 12-18.

[26] Id. at 37-41.

[27] See *People v. Villadares*, 406 Phil. 530, 540 (2001).

[28] TSN, September 1, 1994, p. 47.

[29] See *People v. Narvaez*, 425 Phil. 381, 402-403 (2002); and *People v. Castillo*, 330 Phil. 205, 212 (1996).

[30] *Camino, Jr. v. People*, supra note 21, at 350, citing *Richards v. Begenstos*, 21 N.W.2d 23, *Hodges v. Smith*, 298 S.W. 1023, and *Lawson v. Fordyce*, 12 N.W.2d 301.

[31] *Id.*, citing *Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354.

[32] *Id.*, citing *Atlantic Greyhound Corp. v. Lyon*, 107 F.2d 157, *Oklahoma Natural Gas Co. v. McKee*, 121 F.2d 583, *Burdick v. Powell Bros. Truck Lines*, 124 F.2d 694, *Dixie Motor Coach Corp. v. Lane*, 116 F.2d 264, *Shipley v. Komer*, 154 F.2d 861, and *Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354.

[33] TSN, March 28, 2001, pp. 5-7.

[34] TSN, January 22, 2002, p. 35.

[35] TSN, July 18, 2002, pp. 26-27.

[36] The pertinent portion from the March 28, 2001 TSN (pp. 6-7) reads:

[Direct Examination of Witness Edwin Tabao. Emphasis ours.]

x x x x

Q. After you dropped off your friend to the UST Hospital, what unusual incident happened on this night of January 21, 1993?

A. I was heading for home and that I did not notice an island.

Q. This island is located at the foot of the Nagtahan flyover at the corner of Forbes and G. Tuazon?

A. Yes, sir.

Q. So, what happened on your way home to this particular location?

A. My car was ramped on the island, sir.

Q. Why did you not notice the island divider on that location, Mr. Witness?

A. Because it was already nighttime and it was dark so I did not notice the island and “mukhang parang bago.”

[37] *Camino, Jr. v. People*, supra note 21, at 361, citing *Foster v. ConAgra Poultry Co.*, 670 So.2d 471.

[38] *Id.*, citing *Nunn v. Financial Indem. Co.*, 694 So.2d 630. Duty of reasonable care includes duty to keep the vehicle under control and to maintain proper lookout for hazards.

[39] *Id.* at 361-362, citing *Reppert v. White Star Lines*, 106 A.L.R. 413, and *Riccio v. Ginsberg*, 62 A.L.R. 967.

[40] *Id.* at 361, citing *Roberts v. Leahy*, 214 P.2d 673.

[41] TSN, September 1, 1994, p. 13.

[42] Records, p. 736.

[43] TSN, July 11, 1994, p. 12.

[44] TSN, July 11, 1994, pp. 15-16.

[45] Rollo, p. 204.

[46] See *People v. Basite*, 459 Phil. 197, 206-207 (2003), citing *People v. Baid*, G.R. No. 129667, July 31, 2000, 336 SCRA 656, 675.

[47] TSN, April 3, 2003, pp. 25-28 and 33-35.

[48] See *Tapdasan, Jr. v. People*, 440 Phil. 864, 877 (2002).

[49] *Tan v. Pacuribot*, A.M. Nos. RTJ-06-1982-1983, December 14, 2007, 540 SCRA 246, 300.

[50] Rollo, p. 7.

[51] *Ibid.*

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