

**DR. EMMANUEL JARCIA, JR. AND DR. MARILOU BASTAN,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.***G.R. No. 187926. February 15, 2012*

Ponente: MENDOZA, J.

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Even early on, patients have consigned their lives to the skill of their doctors. Time and again, it can be said that the most important goal of the medical profession is the preservation of life and health of the people. Corollarily, when a physician departs from his sacred duty and endangers instead the life of his patient, he must be made liable for the resulting injury. This Court, as this case would show, cannot and will not let the act go unpunished.[1]

This is a petition for review under Rule 45 of the Rules of Court challenging the August 29, 2008 Decision[2] of the Court of Appeals (CA), and its May 19, 2009 Resolution[3] in CA-G.R. CR No. 29559, dismissing the appeal and affirming in toto the June 14, 2005 Decision[4] of the Regional Trial Court, Branch 43, Manila (RTC), finding the accused guilty beyond reasonable doubt of simple imprudence resulting to serious physical injuries.

THE FACTS

Belinda Santiago (Mrs. Santiago) lodged a complaint with the National Bureau of Investigation (NBI) against the petitioners, Dr. Emmanuel Jarcia, Jr. (Dr. Jarcia) and Dr. Marilou Bastan (Dr. Bastan), for their alleged neglect of professional duty which caused her son, Roy Alfonso Santiago (Roy Jr.), to suffer serious physical injuries. Upon investigation, the NBI found that Roy Jr. was hit by a taxicab; that he was rushed to the Manila Doctors Hospital for an emergency medical treatment; that an X-ray of the victim's ankle was ordered; that the X-ray result showed no fracture as read by Dr. Jarcia; that Dr. Bastan entered the emergency room (ER) and, after conducting her own examination of the victim, informed Mrs. Santiago that since it was only the ankle that was hit, there was no need to examine the upper leg; that eleven (11) days later, Roy Jr. developed fever, swelling of the right leg and misalignment of the right foot; that Mrs. Santiago brought him back to the hospital; and that the X-ray revealed a right mid-tibial fracture and a linear hairline fracture in the shaft of the bone.

The NBI indorsed the matter to the Office of the City Prosecutor of Manila for preliminary investigation. Probable cause was found and a criminal case for reckless imprudence resulting to serious physical injuries, was filed against Dr. Jarcia, Dr. Bastan and Dr. Pamittan,[5] before the RTC, docketed as Criminal Case No. 01-196646.

On June 14, 2005, the RTC found the petitioners guilty beyond reasonable doubt of the crime of Simple Imprudence Resulting to Serious Physical Injuries. The decretal portion of the RTC decision reads:

WHEREFORE, premises considered, the Court finds accused DR. EMMANUEL JARCIA, JR. and DR. MARILOU BASTAN GUILTY beyond reasonable doubt of the crime of SIMPLE IMPRUDENCE RESULTING TO SERIOUS PHYSICAL INJURIES and are hereby sentenced to suffer the penalty of ONE (1) MONTH and ONE (1) DAY to TWO (2) MONTHS and to indemnify MRS. BELINDA SANTIAGO the amount of P3,850.00 representing medical expenses without subsidiary imprisonment in case of insolvency

and to pay the costs.

It appearing that Dr. Pamittan has not been apprehended nor voluntarily surrendered despite warrant issued for her arrest, let warrant be issued for her arrest and the case against her be ARCHIVED, to be reinstated upon her apprehension.

SO ORDERED.[6]

The RTC explained:

After a thorough and in depth evaluation of the evidence adduced by the prosecution and the defense, this court finds that the evidence of the prosecution is the more credible, concrete and sufficient to create that moral certainty in the mind of the Court that accused herein [are] criminally responsible. The Court believes that accused are negligent when both failed to exercise the necessary and reasonable prudence in ascertaining the extent of injury of Alfonso Santiago, Jr.

However, the negligence exhibited by the two doctors does not approximate negligence of a reckless nature but merely amounts to simple imprudence. Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not the immediate nor the danger clearly manifest. The elements of simple imprudence are as follows.

- that there is lack of precaution on the part of the offender; and
- that the damage impending to be caused is not immediate of the danger is not clearly manifest.

Considering all the evidence on record, The Court finds the accused guilty for simple imprudence resulting to physical injuries. Under Article 365 of the Revised Penal Code, the penalty provided for is arresto mayor in its minimum period.[7]

Dissatisfied, the petitioners appealed to the CA.

As earlier stated, the CA affirmed the RTC decision in toto. The August 29, 2008 Decision of the CA pertinently reads:

This Court holds concurrently and finds the foregoing circumstances sufficient to sustain a judgment of conviction against the accused-appellants for the crime of simple imprudence resulting in serious physical injuries. The elements of imprudence are: (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time and place.

Whether or not Dr. Jarcia and Dr. Bastan had committed an “inexcusable lack of precaution” in the treatment of their patient is to be determined according to the standard of care observed by other members of the profession in good standing under similar circumstances, bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science. In the case of *Leonila Garcia-Rueda v. Pascasio*, the Supreme Court stated that, in accepting a case, a doctor in effect represents that, having the needed training and skill possessed by physicians and surgeons practicing in the same field, he will employ such training, care and skill in the treatment of his patients. He therefore has a duty to use at least the same level of care that any other reasonably competent doctor would use to treat a condition under the same circumstances.

In litigations involving medical negligence, the plaintiff has the burden of establishing accused-appellants’ negligence, and for a reasonable conclusion of negligence, there must be proof of breach of duty on the part of the physician as well as a causal connection of such breach and the resulting injury of his patient. The

connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening efficient causes. In other words, the negligence must be the proximate cause of the injury. Negligence, no matter in what it consists, cannot create a right of action unless it is the proximate cause of the injury complained of. The proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.

In the case at bench, the accused-appellants questioned the imputation against them and argued that there is no causal connection between their failure to diagnose the fracture and the injury sustained by Roy.

We are not convinced.

The prosecution is however after the cause which prolonged the pain and suffering of Roy and not on the failure of the accused-appellants to correctly diagnose the extent of the injury sustained by Roy.

For a more logical presentation of the discussion, we shall first consider the applicability of the doctrine of *res ipsa loquitur* to the instant case. *Res ipsa loquitur* is a Latin phrase which literally means “the thing or the transaction speaks for itself. The doctrine of *res ipsa loquitur* is simply a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the accused-appellant who is charged with negligence. It is grounded in the superior logic of ordinary human experience and, on the basis of such experience or common knowledge, negligence may be deduced from the mere occurrence of the accident itself. Hence, *res ipsa loquitur* is applied in conjunction with the doctrine of common knowledge.

The specific acts of negligence was narrated by Mrs. Santiago who accompanied her son during the latter’s ordeal at the hospital. She testified as follows:

Fiscal Formoso:

Q:

Now, he is an intern did you not consult the doctors, Dr. Jarcia or Dra. Pamittan to confirm whether you should go home or not?

A:

Dra. Pamittan was inside the cubicle of the nurses and I asked her, you let us go home and you don’t even clean the wounds of my son.

Q:

And what did she [tell] you?

A:

They told me they will call a resident doctor, sir.

x x x x x x x x

Q:

Was there a resident doctor [who] came?

A:

Yes, Sir. Dra. Bastan arrived.

Q:

Did you tell her what you want on you to be done?

A:

Yes, sir.

Q:

What did you [tell] her?

A:

I told her, sir, while she was cleaning the wounds of my son, are you not going to x-ray up to the knee because my son was complaining pain from his ankle up to the middle part of the right leg.

Q:

And what did she tell you?

A:

According to Dra. Bastan, there is no need to x-ray because it was the ankle part that was run over.

Q:

What did you do or tell her?

A:

I told her, sir, why is it that they did not examine[x] the whole leg. They just lifted the pants of my son.

Q:

So you mean to say there was no treatment made at all?

A:

None, sir.

x x x x x x x x

A:

I just listened to them, sir. And I just asked if I will still return my son.

x x x x x x x x

Q:

And you were present when they were called?

A:

Yes, sir.

Q:

And what was discussed then by Sis. Retoria?

A:

When they were there they admitted that they have mistakes, sir.

Still, before resort to the doctrine may be allowed, the following requisites must be satisfactorily shown:

- The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
- It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
- The possibility of contributing conduct which would make the plaintiff responsible is eliminated.

In the above requisites, the fundamental element is the "control of the instrumentality" which caused the damage. Such element of control must be shown to be within the dominion of the accused-appellants. In order to have the benefit of the rule, a plaintiff, in addition to proving injury or damage, must show a situation where it is applicable and must establish that the essential elements of the doctrine were present in a particular incident. The early treatment of the leg of Roy would have lessened his suffering if not entirely relieve him from the fracture. A boy of tender age whose leg was hit by a vehicle would engender a well-founded belief that his condition may worsen without proper medical attention. As junior residents who only practice general surgery and without specialization with the case consulted before them, they should have referred the matter to a specialist. This omission alone constitutes simple imprudence on their part. When Mrs. Santiago insisted on having another x-ray of her child on the upper part of his leg, they refused to do so. The mother would not have asked them if they had no exclusive control or prerogative to request an x-ray test. Such is a fact because a radiologist would only conduct the x-ray test upon request of a physician.

The testimony of Mrs. Santiago was corroborated by a bone specialist Dr. Tacata. He further testified based on his personal knowledge, and not as an expert, as he examined himself the child Roy. He testified as follows:

Fiscal Macapagal:

Q:

And was that the correct respon[se] to the medical problem that was presented to Dr. Jarcia and Dra. Bastan?

A:

I would say at that stage, yes. Because they have presented the patient and the history. "At sabi nila, nadaanan lang po ito." And then, considering their year of residency they are still junior residents, and they are not also orthopedic residents but general surgery residents, it's entirely different thing. Because if you are an orthopedic resident, I am not trying to say...but if I were an orthopedic resident, there would be more precise and accurate decision compare to a general surgery resident in so far as involved.

Q:

You mean to say there is no supervisor attending the emergency room?

A:

At the emergency room, at the Manila Doctor's Hospital, the supervisor there is a consultant that usually comes from a family medicine. They see where a certain patient have to go and then if they cannot manage it, they refer it to the consultant on duty. Now at that time, I don't [know] why they don't....Because at that time, I think, it is the decision. Since the x-rays....

Ordinarily, only physicians and surgeons of skill and experience are competent to testify as to whether a patient has been treated or operated upon with a reasonable degree of skill and care. However, testimony as to the statements and acts of physicians, external appearances, and manifest conditions which are observable by any one

may be given by non-expert witnesses. Hence, in cases where the *res ipsa loquitur* is applicable, the court is permitted to find a physician negligent upon proper proof of injury to the patient, without the aid of expert testimony, where the court from its fund of common knowledge can determine the proper standard of care. Where common knowledge and experience teach that a resulting injury would not have occurred to the patient if due care had been exercised, an inference of negligence may be drawn giving rise to an application of the doctrine of *res ipsa loquitur* without medical evidence, which is ordinarily required to show not only what occurred but how and why it occurred. In the case at bench, we give credence to the testimony of Mrs. Santiago by applying the doctrine of *res ipsa loquitur*.

Res ipsa loquitur is not a rigid or ordinary doctrine to be perfunctorily used but a rule to be cautiously applied, depending upon the circumstances of each case. It is generally restricted to situations in malpractice cases where a layman is able to say, as a matter of common knowledge and observation, that the consequences of professional care were not as such as would ordinarily have followed if due care had been exercised. A distinction must be made between the failure to secure results and the occurrence of something more unusual and not ordinarily found if the service or treatment rendered followed the usual procedure of those skilled in that particular practice. The latter circumstance is the primordial issue that confronted this Court and we find application of the doctrine of *res ipsa loquitur* to be in order.

WHEREFORE, in view of the foregoing, the appeal in this case is hereby **DISMISSED** and the assailed decision of the trial court finding accused-appellants guilty beyond reasonable doubt of simple imprudence resulting in serious physical injuries is hereby **AFFIRMED** in toto.

SO ORDERED.[8]

The petitioners filed a motion for reconsideration, but it was denied by the CA in its May 19, 2009 Resolution.

Hence, this petition.

The petitioners pray for the reversal of the decision of both the RTC and the CA anchored on the following

GROUND-

1. IN AFFIRMING ACCUSED-PETITIONERS' CONVICTION, THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ACTUAL, DIRECT, IMMEDIATE, AND PROXIMATE CAUSE OF THE PHYSICAL INJURY OF THE PATIENT (FRACTURE OF THE LEG BONE OR TIBIA), WHICH REQUIRED MEDICAL ATTENDANCE FOR MORE THAN THIRTY (30) DAYS AND INCAPACITATED HIM FROM PERFORMING HIS CUSTOMARY DUTY DURING THE SAME PERIOD OF TIME, WAS THE VEHICULAR ACCIDENT WHERE THE PATIENT'S RIGHT LEG WAS HIT BY A TAXI, NOT THE FAILURE OF THE ACCUSED-PETITIONERS TO SUBJECT THE PATIENT'S WHOLE LEG TO AN X-RAY EXAMINATION.

2. THE COURT OF APPEALS ERRED IN DISREGARDING ESTABLISHED FACTS CLEARLY NEGATING PETITIONERS' ALLEGED NEGLIGENCE OR IMPRUDENCE. SIGNIFICANTLY, THE COURT OF APPEALS UNJUSTIFIABLY DISREGARDED THE OPINION OF THE PROSECUTION'S EXPERT WITNESS, DR. CIRILO TACATA, THAT PETITIONERS WERE NOT GUILTY OF NEGLIGENCE OR IMPRUDENCE COMPLAINED OF.

3. THE COURT OF APPEALS ERRED IN HOLDING THAT THE FAILURE OF PETITIONERS TO SUBJECT THE PATIENT'S WHOLE LEG TO AN X-RAY EXAMINATION PROLONGED THE PAIN AND SUFFERING OF THE PATIENT, SUCH CONCLUSION BEING UNSUPPORTED BY, AND EVEN CONTRARY TO, THE EVIDENCE ON RECORD.

4. ASSUMING ARGUENDO THAT THE PATIENT EXPERIENCED PROLONGED PAIN AND SUFFERING, THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ALLEGED PAIN AND SUFFERING WERE DUE TO THE UNJUSTIFIED FAILURE OF THE PATIENT'S MOTHER, A NURSE HERSELF, TO IMMEDIATELY BRING THE PATIENT BACK TO THE HOSPITAL, AS ADVISED BY THE PETITIONERS, AFTER HE COMPLAINED OF SEVERE PAIN IN HIS RIGHT LEG WHEN HE REACHED HOME AFTER HE WAS SEEN BY PETITIONERS AT THE HOSPITAL. THUS, THE PATIENT'S ALLEGED INJURY (PROLONGED PAIN AND SUFFERING) WAS DUE TO HIS OWN MOTHER'S ACT OR OMISSION.

5. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT NO PHYSICIAN-PATIENT RELATIONSHIP EXISTED BETWEEN PETITIONERS AND PATIENT ALFONSO SANTIAGO, JR., PETITIONERS NOT BEING THE LATTER'S ATTENDING PHYSICIAN AS THEY WERE MERELY REQUESTED BY THE EMERGENCY ROOM (ER) NURSE TO SEE THE PATIENT WHILE THEY WERE PASSING BY THE ER FOR THEIR LUNCH.

6. THE COURT OF APPEALS GRAVELY ERRED IN NOT ACQUITTING ACCUSED-PETITIONERS OF THE CRIME CHARGED.”[9]

The foregoing can be synthesized into two basic issues: [1] whether or not the doctrine of *res ipsa loquitur* is applicable in this case; and [2] whether or not the petitioners are liable for criminal negligence.

THE COURT'S RULING

The CA is correct in finding that there was negligence on the part of the petitioners. After a perusal of the records, however, the Court is not convinced that the petitioners are guilty of criminal negligence complained of. The Court is also of the view that the CA erred in applying the doctrine of *res ipsa loquitur* in this particular case.

As to the Application of The Doctrine of *Res Ipsa Loquitur*

This doctrine of *res ipsa loquitur* means "Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care." The Black's Law Dictionary defines the said doctrine. Thus:

The thing speaks for itself. Rebuttable presumption or inference that defendant was negligent, which arises upon proof that the instrumentality causing injury was in defendant's exclusive control, and that the accident was one which ordinarily does not happen in absence of negligence. *Res ipsa loquitur* is a rule of evidence whereby negligence of the alleged wrongdoer may be inferred from the mere fact that the accident happened provided the character of the accident and circumstances attending it lead reasonably to belief that in the absence of negligence it would not have occurred and that thing which caused injury is shown to have been under the management and control of the alleged wrongdoer. Under this doctrine, the happening of an injury permits an inference of negligence where plaintiff produces substantial evidence that the injury was caused by an agency or instrumentality under the exclusive control and management of defendant, and that the occurrence was such that in the ordinary course of things would not happen if reasonable care had been used.[10]

The doctrine of *res ipsa loquitur* as a rule of evidence is unusual to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence. The doctrine, however, is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. The rule, when applicable to the facts and circumstances of a given case, is not meant to and does not dispense with the requirement of proof of culpable negligence on the party charged. It merely

determines and regulates what shall be prima facie evidence thereof and helps the plaintiff in proving a breach of the duty. The doctrine can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available.[11]

The requisites for the application of the doctrine of *res ipsa loquitur* are: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person in charge; and (3) the injury suffered must not have been due to any voluntary action or contribution of the person injured.[12]

In this case, the circumstances that caused patient Roy Jr.'s injury and the series of tests that were supposed to be undergone by him to determine the extent of the injury suffered were not under the exclusive control of Drs. Jarcia and Bastan. It was established that they are mere residents of the Manila Doctors Hospital at that time who attended to the victim at the emergency room.[13] While it may be true that the circumstances pointed out by the courts below seem doubtless to constitute reckless imprudence on the part of the petitioners, this conclusion is still best achieved, not through the scholarly assumptions of a layman like the patient's mother, but by the unquestionable knowledge of expert witness/es. As to whether the petitioners have exercised the requisite degree of skill and care in treating patient Roy, Jr. is generally a matter of expert opinion.

As to Dr. Jarcia and
Dr. Bastan's negligence

The totality of the evidence on record clearly points to the negligence of the petitioners. At the risk of being repetitious, the Court, however, is not satisfied that Dr. Jarcia and Dr. Bastan are criminally negligent in this case.

Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[14]

Reckless imprudence consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an inexcusable lack of precaution on the part of the person performing or failing to perform such act.[15]

The elements of simple negligence are: (1) that there is lack of precaution on the part of the offender, and (2) that the damage impending to be caused is not immediate or the danger is not clearly manifest.[16]

In this case, the Court is not convinced with moral certainty that the petitioners are guilty of reckless imprudence or simple negligence. The elements thereof were not proved by the prosecution beyond reasonable doubt.

The testimony of Dr. Cirilo R. Tacata (Dr. Tacata), a specialist in pediatric orthopedic, although pointing to some medical procedures that could have been done by Dr. Jarcia and Dr. Bastan, as physicians on duty, was not clear as to whether the injuries suffered by patient Roy Jr. were indeed aggravated by the petitioners' judgment call and their diagnosis or appreciation of the condition of the victim at the time they assessed him. Thus:

Q:

Will you please tell us, for the record, doctor, what is your specialization?

A:

At present I am the chairman department of orthopedic in UP-PGH and I had special training in pediatric orthopedic for two (2) years.

Q:

In June 1998, doctor, what was your position and what was your specialization at that time?

A:

Since 1980, I have been specialist in pediatric orthopedic.

Q:

When Alfonso Santiago, Jr. was brought to you by his mother, what did you do by way of physicians as first step?

A:

As usual, I examined the patient physically and, at that time as I have said, the patient could not walk so I [began] to suspect that probably he sustained a fracture as a result of a vehicular accident. So I examined the patient at that time, the involved leg, I don't know if that is left or right, the involved leg then was swollen and the patient could not walk, so I requested for the x-ray of [the] lower leg.

Q:

What part of the leg, doctor, did you request to be examined?

A:

If we refer for an x-ray, usually, we suspect a fracture whether in approximal, middle or lebistal tinial, we usually x-ray the entire extremity.

Q:

And what was the result?

A:

Well, I can say that it was a spiral fracture of the mid-tibial, it is the bigger bone of the leg.

Q:

And when you say spiral, doctor, how long was this fracture?

A:

When we say spiral, it is a sort of letter S, the length was about six (6) to eight (8) centimeters.

Q:

Mid-tibial, will you please point to us, doctor, where the tibial is?

(Witness pointing to his lower leg)

A:

The tibial is here, there are two bones here, the bigger one is the tibial and the smaller one is the fibula. The bigger one is the one that get fractured.

Q:

And in the course of your examination of Alfonso Santiago, Jr. did you ask for the history of such injury?

A:

Yes, actually, that was a routine part of our examination that once a patient comes in, before we actually examine the patient, we request for a detailed history. If it is an accident, then, we request for the exact mechanism of injuries.

Q:

And as far as you can recall, Doctor, what was the history of that injury that was told to you?

A:

The patient was sideswiped, I don't know if it is a car, but it is a vehicular accident.

Q:

Who did you interview?

A:

The mother.

Q:

How about the child himself, Alfonso Santiago, Jr.?

A:

Normally, we do not interview the child because, usually, at his age, the answers are not accurate. So, it was the mother that I interviewed.

Q:

And were you informed also of his early medication that was administered on Alfonso Santiago, Jr.?

A:

No, not actually medication. I was informed that this patient was seen initially at the emergency room by the two (2) physicians that you just mentioned, Dr. Jarcia and Dra. Bastan, that time who happened to be my residents who were [on] duty at the emergency room.

x x x x

A:

At the emergency room, at the Manila Doctor's Hospital, the supervisor there is a consultant that usually comes from a family medicine. They see where a certain patient have to go and then if they cannot manage it, they refer it to the consultant on duty. Now at that time, I don't why they don't ... Because at that time, I think, it is the decision. Since the x-rays...

x x x

Q:

You also said, Doctor, that Dr. Jarcia and Dra. Bastan are not even an orthopedic specialist.

A:

They are general surgeon residents. You have to man[x] the emergency room, including neurology, orthopedic, general surgery, they see everything at the emergency room.

x x x x

Q:

But if initially, Alfonso Santiago, Jr. and his case was presented to you at the emergency room, you would have subjected the entire foot to x-ray even if the history that was given to Dr. Jarcia and Dra. Bastan is the same?

A:

I could not directly say yes, because it would still depend on my examination, we cannot subject the whole body for x-ray if we think that the damaged was only the leg.

Q:

Not the entire body but the entire leg?

A:

I think, if my examination requires it, I would.

Q:

So, you would conduct first an examination?

A:

Yes, sir.

Q:

And do you think that with that examination that you would have conducted you would discover the necessity subjecting the entire foot for x-ray?

A:

It is also possible but according to them, the foot and the ankle were swollen and not the leg, which sometimes normally happens that the actual fractured bone do not get swollen.

x x x x

Q:

Doctor, if you know that the patient sustained a fracture on the ankle and on the foot and the history that was told to you is the region that was hit is the region of the foot, will the doctor subject the entire leg for x-ray?

A:

I am an orthopedic surgeon, you have to subject an x-ray of the leg. Because you have to consider the kind of fracture that the patient sustained would you say the exact mechanism of injury. For example spiral, “paikot yung bale nya,” so it was possible that the leg was run over, the patient fell, and it got twisted. That’s why the leg seems to be fractured.[17] [Emphases supplied]

It can be gleaned from the testimony of Dr. Tacata that a thorough examination was not performed on Roy Jr. As residents on duty at the emergency room, Dr. Jarcia and Dr. Bastan were expected to know the medical protocol in treating leg fractures and in attending to victims of car accidents. There was, however, no precise evidence and scientific explanation pointing to the fact that the delay in the application of the cast to the patient’s fractured leg because of failure to immediately diagnose the specific injury of the patient, prolonged the pain of the child or aggravated his condition or even caused further complications. Any person may opine that had patient Roy Jr.

been treated properly and given the extensive X-ray examination, the extent and severity of the injury, spiral fracture of the mid-tibial part or the bigger bone of the leg, could have been detected early on and the prolonged pain and suffering of Roy Jr. could have been prevented. But still, that opinion, even how logical it may seem would not, and could not, be enough basis to hold one criminally liable; thus, a reasonable doubt as to the petitioners' guilt.

Although the Court sympathizes with the plight of the mother and the child in this case, the Court is bound by the dictates of justice which hold inviolable the right of the accused to be presumed innocent until proven guilty beyond reasonable doubt. The Court, nevertheless, finds the petitioners civilly liable for their failure to sufficiently attend to Roy Jr.'s medical needs when the latter was rushed to the ER, for while a criminal conviction requires proof beyond reasonable doubt, only a preponderance of evidence is required to establish civil liability. Taken into account also was the fact that there was no bad faith on their part.

Dr. Jarcia and Dr. Bastan cannot pass on the liability to the taxi driver who hit the victim. It may be true that the actual, direct, immediate, and proximate cause of the injury (fracture of the leg bone or tibia) of Roy Jr. was the vehicular accident when he was hit by a taxi. The petitioners, however, cannot simply invoke such fact alone to excuse themselves from any liability. If this would be so, doctors would have a ready defense should they fail to do their job in attending to victims of hit-and-run, maltreatment, and other crimes of violence in which the actual, direct, immediate, and proximate cause of the injury is indubitably the act of the perpetrator/s.

In failing to perform an extensive medical examination to determine the extent of Roy Jr.'s injuries, Dr. Jarcia and Dr. Bastan were remiss of their duties as members of the medical profession. Assuming for the sake of argument that they did not have the capacity to make such thorough evaluation at that stage, they should have referred the patient to another doctor with sufficient training and experience instead of assuring him and his mother that everything was all right.

This Court cannot also stamp its imprimatur on the petitioners' contention that no physician-patient relationship existed between them and patient Roy Jr., since they were not his attending physicians at that time. They claim that they were merely requested by the ER nurse to see the patient while they were passing by the ER for their lunch. Firstly, this issue was never raised during the trial at the RTC or even before the CA. The petitioners, therefore, raise the want of doctor-patient relationship for the first time on appeal with this Court. It has been settled that "issues raised for the first time on appeal cannot be considered because a party is not permitted to change his theory on appeal. To allow him to do so is unfair to the other party and offensive to the rules of fair play, justice and due process."^[18] Stated differently, basic considerations of due process dictate that theories, issues and arguments not brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court.^[19]

Assuming again for the sake of argument that the petitioners may still raise this issue of "no physician-patient relationship," the Court finds and so holds that there was a "physician-patient" relationship in this case.

In the case of *Lucas v. Tuaño*,^[20] the Court wrote that "[w]hen a patient engages the services of a physician, a physician-patient relationship is generated. And in accepting a case, the physician, for all intents and purposes, represents that he has the needed training and skill possessed by physicians and surgeons practicing in the same field; and that he will employ such training, care, and skill in the treatment of the patient. Thus, in treating his patient, a physician is under a duty to exercise that degree of care, skill and diligence which physicians in the same general neighborhood and in the same general line of practice ordinarily possess and exercise in like cases. Stated otherwise, the physician has the obligation to use at least the same level of care that any other reasonably competent physician would use to treat the condition under similar circumstances."

Indubitably, a physician-patient relationship exists between the petitioners and patient Roy Jr. Notably, the latter and his mother went to the ER for an immediate medical attention. The petitioners allegedly passed by and were requested to attend to the victim (contrary to the testimony of Dr. Tacata that they were, at that time, residents on duty at the ER).[21] They obliged and examined the victim, and later assured the mother that everything was fine and that they could go home. Clearly, a physician-patient relationship was established between the petitioners and the patient Roy Jr.

To repeat for clarity and emphasis, if these doctors knew from the start that they were not in the position to attend to Roy Jr., a vehicular accident victim, with the degree of diligence and commitment expected of every doctor in a case like this, they should have not made a baseless assurance that everything was all right. By doing so, they deprived Roy Jr. of adequate medical attention that placed him in a more dangerous situation than he was already in. What petitioners should have done, and could have done, was to refer Roy Jr. to another doctor who could competently and thoroughly examine his injuries.

All told, the petitioners were, indeed, negligent but only civilly, and not criminally, liable as the facts show.

Article II, Section 1 of the Code of Medical Ethics of the Medical Profession in the Philippines states:

A physician should attend to his patients faithfully and conscientiously. He should secure for them all possible benefits that may depend upon his professional skill and care. As the sole tribunal to adjudge the physician's failure to fulfill his obligation to his patients is, in most cases, his own conscience, violation of this rule on his part is discreditable and inexcusable.[22]

Established medical procedures and practices, though in constant instability, are devised for the purpose of preventing complications. In this case, the petitioners failed to observe the most prudent medical procedure under the circumstances to prevent the complications suffered by a child of tender age.

As to the Award of Damages

While no criminal negligence was found in the petitioners' failure to administer the necessary medical attention to Roy Jr., the Court holds them civilly liable for the resulting damages to their patient. While it was the taxi driver who ran over the foot or leg of Roy Jr., their negligence was doubtless contributory.

It appears undisputed that the amount of P3,850.00, as expenses incurred by patient Roy Jr., was adequately supported by receipts. The Court, therefore, finds the petitioners liable to pay this amount by way of actual damages.

The Court is aware that no amount of compassion can suffice to ease the sorrow felt by the family of the child at that time. Certainly, the award of moral and exemplary damages in favor of Roy Jr. in the amount of P100,000.00 and P50,000.00, respectively, is proper in this case.

It is settled that moral damages are not punitive in nature, but are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly inflicted on a person. Intended for the restoration of the psychological or emotional status quo ante, the award of moral damages is designed to compensate emotional injury suffered, not to impose a penalty on the wrongdoer.[23]

The Court, likewise, finds the petitioners also liable for exemplary damages in the said amount. Article 2229 of the Civil Code provides that exemplary damages may be imposed by way of example or correction for the public good.

WHEREFORE, the petition is PARTLY GRANTED. The Decision of the Court of Appeals dated August 29, 2008 is REVERSED and SET ASIDE. A new judgment is entered ACQUITTING Dr. Emmanuel Jarcia, Jr. and Dr. Marilou Bastan of the crime of reckless imprudence resulting to serious physical injuries but declaring them civilly liable in the amounts of:

- (1) P3,850.00 as actual damages;
- (2) P100,000.00 as moral damages;
- (3) P50,000.00 as exemplary damages; and
- (4) Costs of the suit.

with interest at the rate of 6% per annum from the date of the filing of the Information. The rate shall be 12% interest per annum from the finality of judgment until fully paid.

SO ORDERED.

Carpio[*], Peralta[**], Abad, and Perez[***], JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1185 dated February 10, 2012.

[**] Designated as Acting Chairperson, per Special Order No. 1184 dated February 10, 2012.

[***] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1192 dated February 10, 2012.

[1] See the case of Dr. Batiquin v. Court of Appeals, 327 Phil. 965 (1996).

[2] Rollo, pp. 50-65. Penned by Associate Justice Isaias Dicdican, with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Marlene Gonzales-Sison, concurring.

[3] Id. at 67-68.

[4] Id. at 70-79.

[5] No first name on record.

[6] Rollo, p. 79.

[7] Id. at 78.

[8] Id. at 58-65.

[9] Id. at 20-22.

[10] Also quoted in the case of Layugan v. Intermediate Appellate Court, 249 Phil. 363, 377 (1988).

[11] Dr. Batiquin v. CA, supra note 1, at 979-980.

[12] Reyes v. Sisters of Mercy Hospital, 396 Phil. 87, 98 (2000).

[13] TSN, September 20, 2004, p. 13.

[14] Gaid v. People, G.R. No. 171636, April 7, 2009, 584 SCRA 489, 497.

[15] Id. at 495.

[16] Id. at 497.

[17] TSN, September 20, 2004, pp. 9-24.

[18] *Balitaosan v. The Secretary of Education*, 457 Phil. 300, 304 (2003).

[19] *Del Rosario v. Bonga*, 402 Phil. 949, 957-958 (2001).

[20] G.R. No. 178763, April 21, 2009, 586 SCRA 173, 200.

[21] TSN, September 20, 2004, p. 13.

[22] As quoted in the case of *Ruñez, Jr. v. Jurado*, 513 Phil. 101, 106 (2005).

[23] *Quezon City Govt. v. Dacara*, 499 Phil. 228, 243 (2005).

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