DR. JAIME T. CRUZ, PETITIONER, VS. FELICISIMO V. AGAS, JR., RESPONDENT.

G.R. No. 204095. June 15, 2015

Ponente: MENDOZA, J.

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MENDOZA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the May 22, 2012 Decision[1] and October 18, 2012 Resolution[2] of the Court of Appeals (CA), in CA-G.R. SP No. 111910, which affirmed the March 2, 2007[3] and September 23, 2009[4] Resolutions of the Secretary of Justice. The said resolutions let stand the February 16, 2004 Resolution of the Office of the Prosecutor of Quezon City, dismissing the complaint of petitioner Dr. Jaime T. Cruz (Dr. Cruz) for Serious Physical Injuries through Reckless Imprudence and Medical Malpractice against respondent, Dr. Felicisimo V. Agas, Jr. (Dr. Agas).

The Antecedents

In his Complaint-Affidavit[5] for Serious Physical Injuries through Reckless Imprudence and Medical Malpractice against Dr. Agas, Dr. Cruz alleged, among others, that sometime in May 2003, he engaged the services of St. Luke's Medical Center (SLMC) for a medical check-up; that after being admitted in SLMC on May 28, 2003, he underwent stool, urine, blood, and other body fluid tests conducted by the employees and doctors of the said hospital; that on May 29, 2003, he was sent to the Gastro-Enterology Department for a scheduled gastroscopy and colonoscopy; that because the specialist assigned to perform the procedure was nowhere to be found, he gave the colonoscopy results to the attending female anesthesiologist for the information and consideration of the assigned specialist; that, thereafter, he was sedated and the endoscopic examination was carried out; that when he regained consciousness, he felt that something went wrong during the procedure because he felt dizzy, had cold clammy perspiration and experienced breathing difficulty; that he could not stand or sit upright because he felt so exhausted and so much pain in his abdomen; that when he was about to urinate in the comfort room, he collapsed; that he tried to consult the specialist who performed the colonoscopy but he was nowhere to be found; and that his cardiologist, Dra. Agnes Del Rosario, was able to observe his critical condition and immediately referred him to the surgical department which suspected that he had hemorrhage in his abdomen and advised him to undergo an emergency surgical operation.

Dr. Cruz further averred that he agreed to the operation and upon waking up at the ICU on May 30, 2003, he found out that the doctors did an exploratory laparatomy because of the internal bleeding; that he learned that the doctors cut a portion of the left side of his colon measuring 6-8 inches because it had a partial tear of the colonic wall which caused the internal bleeding; that despite the painkillers, he was under tremendous pain in the incision area during his recovery period in the ICU and had fever; and that he had intravenous tubes attached to his arms, subclavian artery on the left part of his chest and a nasogastric tube through his nose.

Dr. Cruz claimed that Dr. Agas admitted that he was the one who performed the colonoscopy procedure but the latter insisted that nothing went wrong. On June 7, 2003, he was discharged from SLMC. Nevertheless, he

complained that he had a hard time digesting his food; that he was frequently fed every two hours because he easily got full; that he had fresh blood stools every time he moved his bowel; that he had lost his appetite and had gastric acidity; that he slept most of the day; and that he was in good physical condition before the colonoscopy procedure. He asserted that at the time of the filing of the complaint, he was still weak, tired and in pain.

Defense of Dr. Agas

Dr. Agas, on the other hand, countered that Dr. Cruz failed to prove the basic elements of reckless imprudence or negligence. He averred that Dr. Cruz unfairly made it appear that he did not know that he would perform the procedure. He explained that before the start of the colonoscopy procedure, he was able to confer with Dr. Cruz and review his medical history which was taken earlier by a fellow gastrointestinal physician. He claimed that the gastroscopy and colonoscopy procedures conducted on Dr. Cruz were completely successful considering that the latter did not manifest any significant adverse reaction or body resistance during the procedures and that his vital signs were normal throughout the procedure.[6]

Dr. Agas added that certifications and sworn statements were submitted by the Assistant Medical Director for Professional Services, the Director of the Institute of Digestive Diseases, the anesthesiologist, and the hospital nurse attesting to the fact that the intraperitonial bleeding which developed after the colonoscopy procedure, was immediately recognized, evaluated, carefully managed, and corrected; that he provided an adequate and reasonable standard of care to Dr. Cruz; that the endoscopist followed all precautionary measures; that the colonoscopy procedure was done properly; that he was not negligent or reckless in conducting the colonoscopy procedure; that he did not deviate from any standard medical norm, practice or procedure; and that he exercised competence and diligence in rendering medical services to Dr. Cruz.[7]

Antecedents at the Prosecution Level

On February 16, 2004, the Office of the City Prosecutor (OCP) issued a resolution dismissing the complaint for Serious Physical Injuries through Reckless Imprudence and Medical Malpractice. Aggrieved, Dr. Cruz filed a petition for review with the Department of Justice (DOJ) but the same was dismissed in its March 2, 2007 Resolution. Dr. Cruz filed a motion for reconsideration but it was denied by the DOJ in its September 23, 2009 Resolution.[8]

At the Court of Appeals

Not satisfied, Dr. Cruz filed a petition for certiorari before the CA questioning the unfavorable DOJ resolutions. On May 22, 2012, the CA rendered a decision affirming the said DOJ resolutions. The CA explained that, as a matter of sound judicial policy, courts would not interfere with the public prosecutor's wide discretion of determining probable cause in a preliminary investigation unless such executive determination was tainted with manifest error or grave abuse of discretion. It stated that the public prosecutor's finding of lack of probable cause against Dr. Agas was in accordance with law and that his alleged negligence was not adequately established by Dr. Cruz.

The CA also declared that Dr. Cruz failed to state in his Complaint-Affidavit the specific procedures that Dr. Agas failed to do which a reasonable prudent doctor would have done, or specific norms he failed to observe which a reasonably prudent doctor would have complied with. The CA pointed out that Dr. Agas was able to satisfactorily explain in his Counter-Affidavit that the complications suffered by Dr. Cruz was not caused by his negligence or was the result of medical malpractice. Dr. Agas explained as follows:

> That the complication was due to the abnormal condition and configuration of the digestive system, colon in particular, of the complainant and not from any negligent act in connection with the conduct of colonoscopy.

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> The surgical findings (xxx) revealed marked adhesions in the sigmoid colon which is not and never within my control. That the tear in the serosa (the outermost layer of the colonic wall which has 4 layers) happened likely because of the marked interloop adhesions and tortuousity of the sigmoid segment of the colon. These adhesions that connect the serosa to the peritoneal lining of each loop detached from the serosa during the procedure. It is not possible to detect the presence of marked adhesions prior to the endoscopic procedure because no clinical findings, laboratory tests or diagnostic imaging such as x-ray, ultrasound or computed tomography (CT scan) of the abdomen can diagnose these conditions. This can only be detected by surgically opening up the abdomen. Moreover, marked adhesions and serosal tear, in particular, cannot likewise be detected by colonoscopy because they are in the outer wall of the colon and only the inner lining of the colon is within the view of the colonoscope (camera).[9]

The CA further wrote that the counter-affidavit of Dr. Agas was supported by the sworn affidavit of Dr. Jennifel S. Bustos, an anesthesiologist at the SLMC and the affidavit of Evelyn E. Daulat, a nurse at SLMC, both swearing under oath that Dr. Agas was not negligent in conducting a gastroscopy and colonoscopy procedure on Dr. Cruz and the certification issued by the Hospital Ethics Committee which stated that Dr. Cruz was given an adequate and reasonable standard of care; that Dr. Agas followed all precautionary measures in safeguarding Dr. Cruz from any possible complications; and that the colonoscopy was done properly.

Hence, this petition.

> ISSUE
> WHETHER OR NOT THE CA WAS CORRECT IN AFFIRMING THE DECISION OF THE DOJ THAT NO PROBABLE CAUSE EXISTS FOR FILING AN INFORMATION AGAINST THE RESPONDENT, THAT THE RESPONDENT WAS NOT NEGLIGENT AND THAT THERE WAS NO DENIAL OF DUE PROCESS.

Non-interference with Executive

Determination of Probable Cause

in Preliminary Investigations

Under the doctrine of separation of powers, courts have no right to directly decide on matters over which full discretionary authority has been delegated to the Executive Branch of the Government, or to substitute their own judgment for that of the Executive Branch, represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an Information, in the absence of grave abuse of discretion. That abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

Medical Negligence and

Malpractice Not Established

In the case at bench, Dr. Cruz failed to show that the DOJ gravely abused its discretion in finding that there was lack of probable cause and dismissing the complaint against Dr. Agas for Serious Physical Injuries through Reckless Imprudence and Medical Malpractice.

A medical negligence case can prosper if the patient can present solid proof that the doctor, like in this case, either failed to do something which a reasonably prudent doctor would have done, or that he did something that a reasonably prudent doctor would not have done, and such failure or action caused injury to the patient.

> To successfully pursue this kind of case, a patient must only prove that a health care provider either failed to do something which a reasonably prudent health care provider would have done, or that he did something that a reasonably prudent provider would not have done; and that failure or action caused injury to the patient. Simply put, the elements are duty, breach, injury and proximate causation.[10]

In this case, Dr. Cruz has the burden of showing the negligence or recklessness of Dr. Agas. Although there is no dispute that Dr. Cruz sustained internal hemorrhage due to a tear in the serosa of his sigmoid colon, he failed to show that it was caused by Dr. Agas's negligent and reckless conduct of the colonoscopy procedure. In other words, Dr. Cruz failed to show and explain that particular negligent or reckless act or omission committed by Dr. Agas. Stated differently, Dr. Cruz did not demonstrate that there was "inexcusable lack of precaution" on the part of Dr. Agas.

Res Ipsa Loquitur Doctrine
Not Applicable Against Respondent

Literally, res ipsa loquitur means the thing speaks for itself. It is the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's prima facie case, and present a question of fact for defendant to meet with an explanation.[11]

The requisites for the applicability of the doctrine of res ipsa loquitur are: (1) the occurrence of an injury; (2) the thing which caused the injury was under the control and management of the defendant; (3) the occurrence was such that in the ordinary course of things, would not have happened if those who had control or management used proper care; and (4) the absence of explanation by the defendant. Of the foregoing requisites, the most instrumental is the control and management of the thing which caused the injury.[12]

In this case, the Court agrees with Dr. Agas that his purported negligence in performing the colonoscopy on Dr. Cruz was not immediately apparent to a layman to justify the application of res ipsa loquitur doctrine.

Dr. Agas was able to establish that the internal bleeding sustained by Dr. Cruz was due to the abnormal condition and configuration of his sigmoid colon which was beyond his control considering that the said condition could not be detected before a colonoscopic procedure. Dr. Agas adequately explained that no clinical findings, laboratory tests, or diagnostic imaging, such as x-rays, ultrasound or computed tomography (CT) scan of the abdomen, could have detected this condition prior to an endoscopic procedure. Specifically, Dr. Agas wrote:

> On the other hand, in the present case, the correlation between petitioner's injury, i.e., tear in the serosa of sigmoid colon, and the colonoscopy conducted by respondent to the petitioner clearly requires the presentation of an expert opinion considering that no perforation of the sigmoid colon was ever noted during the laparotomy. It cannot be overemphasized that the colonoscope inserted by the respondent only passed through the inside of petitioner's sigmoid colon while the damaged tissue, i.e., serosa, which caused the bleeding, is located in the outermost layer of the colon. It is therefore impossible for the colonoscope to touch, scratch, or even tear the serosa since the said membrane is beyond reach of the colonoscope in the absence of perforation on the colon.[13]

Dr. Cruz failed to rebut this.

WHEREFORE, the petition is DENIED.

Carpio, (Chairperson), Brion, Del Castillo, and Jardeleza,[*] JJ., concur.

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[*] Designated Acting Member in lieu of Associate Justice Marvic M.V.F. Leonen, per Special Order No. 2056,

dated June 10, 2015.

[1] CA Decision, rollo, pp. 38-51, (Penned by Associate Justice Agnes Reyes Carpio and concurred in by Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla).

[2] CA Resolution, id. at 61-62.

[3] Id. at 52-58.

[4] Id. at 59-60.

[5] Id. at 63-66.

[6] Id. at 53.

[7] Id. at 44-47.

[8] Id. at 40-41.

[9] As quoted in the CA Decision, id. at 44-45.

[10] Professional Services, Inc. v. Natividad and Enrique Agana, 542 Phil. 464, 481 (2007).

[11] Id. at 482.

[12] Id. at 483.

[13] Rollo, p. 82.

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