

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. EDGAR S. GO, RESPONDENT.

G.R. No. 210816. December 10, 2018

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

Assailed in these consolidated petitions for review on certiorari filed under Rule 45 of the Rules of Court are the March 22, 2013 Decision[1] and the January 8, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 115165 which dismissed the charge for reckless imprudence against respondent Edgar S. Go (respondent).

The Facts

On June 20, 2008, M/V Princess of the Stars (Stars), a passenger cargo owned and operated by Sulpicio Lines, Inc. (SLI), was expected to depart at 8:00 p.m. from the Port of Manila for Cebu City. At 11:00 a.m. of June 20, 2008, the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) issued Severe Weather Bulletin (SWB) No. 7, raising Storm Warning Signal (SWS) No. 1 over Romblon, Marinduque, Southern Quezon, Cebu, Bohol, Panay Island, and Surigao del Norte. SWB No. 7 stated that the eye of Typhoon Frank was located 60 kilometers northeast of Guiuan, Eastern Samar, and forecasted to move west northwest at 19 kilometers per hour.[3]

At 3:00 p.m., Captain Benjamin Eugenio (Captain Eugenio), SLI Manila Port Captain, met with Captain Florencio Marimon (Captain Marimon), Master of the vessel, at SLI's Engineering Office for a pre- departure conference to discuss SWB No. 7. At said conference, Captain Eugenio and Captain Marimon decided to await the next PAGASA typhoon forecast, which was expected at around 5:00 p.m., considering that based on SWB No.7, Stars' regular route would not be affected by Typhoon Frank.[4]

At 4:45 p.m., PAGASA issued SWB No. 8, hoisting SWS No. 3 over Camarines Norte, Camarines Sur, Burias Islands, Sorsogon, Catanduanes, Masbate, and the Samar provinces; SWS No. 2 over Quezon, Marinduque, Romblon, Northern Cebu, and Southern Leyte; and SWS No. 1 over Aurora, Rizal, Laguna, Batangas, Cavite, Mindoro provinces, Metro Manila, Panay Island, Guimaras, Cebu, Bohol, Siquijor, Negros provinces, Dinagat and Siargao Island. SWB No. 8 indicated that Typhoon Frank, then located in the vicinity of Western Samar, had intensified and was forecasted to move west northwest and cross Samar within the day and Camarines Sur in the afternoon of the following day, June 21, 2008.[5]

Prior to Stars' departure, Philippine Coast Guard (PCG) Boarding Officer PO1 Felix Sardan (PO1 Sardan) boarded the vessel to inspect its documents and conduct verification, specifically the correctness of the entries in the Master's Oath of Safe Departure, and the soundness and sufficiency of the cargo hold, the life saving devices, and all the navigational lights. Finding the vessel's documents in order and noting no deficiency in its safety equipment, PO1 Sardan concluded his inspection and informed Captain Marimon that SWS No. 3 was hoisted over Masbate, which was along the vessel's regular route. In response, Captain Marimon showed PO1 Sardan a new voyage plan and explained that he would instead navigate the route west of Tablas below Panay Island which

would not be affected by SWS No. 3. PO1 Sardan immediately relayed the alternate route via text message to PCG Station Commander Erwin Balagtas who approved the alternate plan with the order that should SWS No. 3 affect the alternate route, the vessel should either take shelter or return to the port of Manila for the safety of the passengers and the crew. SLI received SWB No. 8 a few minutes prior to 8:00 p.m.[6]

After obtaining a clearance from the PCG, Stars departed at 8:04 p.m. for its regular Friday voyage to Cebu under Voyage No. 392 along its regular route. On board the vessel were 709 passengers, 29 contractors and 111 crew members or a total of 849 persons, which number was in compliance with the Minimum Safe Manning Certificate and the PCG rules and regulations.[7]

At around 11:20 p.m., when Stars was in the vicinity of Cape Santiago, within its regular route, Manila radio operator Edgar Gorillo (Gorillo) received PAGASA's SWB No. 9 which forecasted that Typhoon Frank was moving northwest away from the vessel's route. Gorillo relayed SWB No.9 to Stars' radio operator Santiago Doroy (Doroy). From that time until 1:00 a.m. of June 21, 2008, Gorillo kept close contact with Stars and SLI's ship officers were confident that the vessel was in the safe zone in view of SWB No. 9.[8]

At 5:00 a.m. of June 21, 2008, Gorillo and Captain Eugenio received SWB No. 10 indicating that for the past six hours, Typhoon Frank had been moving westward away from its original northwest movement. At 5:30 a.m., respondent arrived at SLI's Manila Office and checked on the radio room. Gorillo informed respondent that Captain Marimon assessed the sea condition as "slight." At 6:20 a.m., Doroy relayed to Gorilla that the vessel was still navigating its regular route at 1.3 miles off Sibuyan Point of Romblon and approaching Apunan Point and that the sea was rough but manageable.[9]

At 7:05 a.m., Captain Marimon sent SLI Manila a telegram stating that he was steering Stars away from its regular course, moving towards the south of Tablas to take shelter and evade the center of Typhoon Frank. At 8:30 a.m., the vessel was within the vicinity of Aklan Point where it was caught in the center of Typhoon Frank. At 9:00 a.m., communications with the vessel were cut off. Then, at 11:30 a.m., Captain Nestor Ponteres (Captain Ponteres), Cebu port captain, received a text message from his nephew Jay Franco Labiada (Labiada), then second mate in Stars, informing him that the vessel was "listing to port 25-30 degrees." At that point, Stars was within the vicinity of Aklan and was retreating to San Fernando, Sibuyan. Captain Ponteres called Labiada and asked to talk to Captain Marimon. Captain Marimon informed Captain Ponteres that the vessel had listed and he could no longer steer it and would instead adapt to the wind to keep the vessel stable and upright. Captain Ponteres communicated with Captain Marimon thrice between 11:30 a.m. and past 12 noon, the last of which was Captain Marimon's declaration that he had given the order to abandon ship via the vessel's public announcement system. Continuously pounded by heavy waves and buffeted by strong winds, Stars eventually capsized and sank in the Sibuyan Sea at around 12:30 p.m. of June 21, 2008.[10]

Respondent called the PCG to dispatch a rescue team and ordered that SLI's cargo vessel Surcon 12 and its M/V Princess of Caribbean sail to the area to undertake rescue operations. Due to inclement weather, immediate rescue efforts had to be deferred and it was only at noon time of June 23, 2008. 1en the rescue arrived at the site. Of the 849 persons on board, only 32 survived, 227 died and 592 were reported missing.[11]

Board of Marine Inquiry Findings

In an Investigation Report[12] dated August 18, 2008, the Board of Marine Inquiry (BMI) stated that SLI and its senior officers failed to ensure the safety of Stars, its passengers and its cargo because it did not assess the potential danger of Typhoon Frank before the vessel departed on June 20, 2008 and while the vessel was in transit. It added that SLI failed to monitor the condition of the vessel during the critical moment from 7:00 a.m. to 9:00 a.m. of June 21, 2008, a period when the vessel was about 40 nautical miles from Typhoon Frank. The BMI

also noted that SLI could have discouraged the Master from sailing in its intended voyage considering that SWS No. 3 was hoisted in the vessel's route. It further observed that SLI did not inform immediately the PCG when the vessel lost contact with the company at 9:00 a.m. of June 21, 2008.[13] The BMI concluded:

B. Conclusion

1. Causes of the Incident

1.1 Immediate Cause

After a thorough deliberation, the Board concludes that the immediate cause of the capsizing of MV Princess of the Stars was the failure of the Master to exercise [extraordinary] diligence and good seamanship thereby committing an error of judgment that brought MV Princess of the Stars in harm's way into the eye of typhoon "Frank."

x x x x

Another cause was the failure of the company to exercise [extraordinary] diligence in preventing or discouraging the Master from leaving port and sailing despite the very severe weather condition (PSWS [N]o. 3) in the vessel's route particularly in Masbate and Biliran Island. The company likewise failed to monitor closely and assess the movement of the vessel relative to [the] movement of the typhoon which could have prompted the Master to take effective typhoon evasion procedures.

1.2 Proximate Cause

The Board further concludes that the proximate cause of [the] capsizing of [the] MV Princess of the Stars was the failure of SLI management to effectively implement its Safety Quality Management Manual issued on 07 May 2002 in compliance with IMO's-ISM Code for the Safe Operation of Ships and Pollution Prevention including the requirements of Quality/Safety System ISO 9001:2000. It was indicative of a system failure in which the company was responsible.

1.3 Contributory Cause(s)

President - x x x

Chief Executive Officer/ Executive Vice-President - x x x

First Vice-President - He failed to exercise [extraordinary] diligence to apprise the Master of M/V Princess of the Stars of the potential danger of typhoon Frank and its failure to discourage the Master from sailing on its intended voyage inspite of the severe weather condition (PSWS [N]o. 3) in the vessel's route specifically in Masbate and Biliran Island. This incident resulted to the capsizing of MV Princess of the Stars and the death of 227 persons onboard, 592 missing and only 32 persons survive and damage to cargo and marine environment. He also failed to implement effectively the QSMS of the company and ensure smooth coordination between the different department heads in the company and effective ship/shore communication and for lack of contingency response plan on this account the Board finds him negligent.[14]

On September 2, 2008, the Volunteers Against Crime and Corruption and petitioners in G.R. No. 210854, who are some of the heirs of the passengers of Stars, instituted in the Department of Justice (DOJ) a complaint for reckless imprudence resulting in multiple homicide, serious physical injuries, and damage to property under Article 365 of the Revised Penal Code (RPC) against SLI, its officers and Captain Marimon. They alleged that the rough seas encountered by Stars on June 21, 2008 was reasonably foreseeable by the owners and officers of SLI had they performed their bounden duty to keep track of the weather conditions. They averred that SLI's officers allowed Stars to sail and proceed on its usual sailing schedule despite the presence of the typhoon.

The DOJ Panel's Resolution

In a Resolution^[15] dated June 22, 2009, the panel of four prosecutors (DOJ Panel) created by the DOJ to conduct a preliminary investigation found probable cause to indict Captain Marimon and respondent for reckless imprudence resulting in multiple homicide, physical injuries, and damage to property. It declared that the alleged alternate route for Stars was a mere afterthought, employed merely to secure departure clearance from the PCG, especially considering that subsequent events established by uncontroverted evidence in fact showed that Stars embarked on that particular voyage using its original or regular route to Cebu. As a consequence, it navigated towards the center of Typhoon Frank and eventually ran into the eye of the typhoon at the vicinity of Sibuyan Island in the province of Romblon. The DOJ Panel pronounced that the lack of an appropriate passage plan, be it alternate voyage plan or alternate route, on the part of SLI was a clear evidence of inexcusable negligence and lack of foresight, and that such recklessness was further demonstrated when the vessel was allowed to sail despite severe weather condition along its route. It added that Captain Marimon and SLI failed to comply with PCG Memorandum Circular 04-07 which requires the former to study carefully the typhoon movement to ensure that the vessel would not be within the areas directly affected by typhoon signals, and for the latter to discourage any vessel movement except for sheltering purposes especially when typhoon signals are hoisted or expected to be hoisted within the area of origin, the route and the destination.

As regards respondent, the DOJ Panel found that as First Vice--President for Administration and team leader of the Crisis Management Committee, respondent was involved in making decisions on whether a vessel should be allowed to sail such that he should have cancelled or discouraged the voyage considering the severe weather at that time. The DOJ Panel held that allowing Captain Eugenio and Captain Marimon to decide if the vessel should depart speaks of respondent's failure to exercise extraordinary care and precaution in light of the brewing storm along the vessel's route. It also found out that upon learning that the vessel was navigating its regular route when the eye of Typhoon Frank was already in the vicinity of Romblon, respondent admittedly did not give instruction to take shelter or drop anchor, thus:

As for the persons criminally liable for the resulting deaths and injuries, as well as damage to properties, well-settled is the rule that a corporation, like SLI in the instant case, acts through its officers, therefore, criminal liability for an offense attaches to those officers who appear to be responsible for its commission. To be sure, criminal liability is personal and circumscribed to acts or omissions of the person of the offender, not of other persons, natural or juridical, whom he might represent in his capacity as officer of a corporation. Taken in this light vis--a-vis the evidence adduced by the parties, the Panel finds probable cause for reckless imprudence resulting in multiple homicide, physical injuries and damage to properties against respondent Edgar S. Go. As 1[st] [V]ice [P]resident for Administration and team leader of Crisis Management Committee, both Capt. Benjamin Eugenio who is in charge of vessel operations in Manila and Engr. Emelson Morales, SLI safety officer, report directly to him. Thus, he is unarguably involved in making decisions on whether a vessel would be allowed to sail out of the Port of Manila, in fact Capt. Eugenio reported to him on the pre-departure conference with respondent Marimon. Considering the severe weather condition prevailing at that time, prudence should have dictated him to cancel or discourage voyage no. 392 of "Stars" especially after SWB No. 8 was issued by PAGASA, pursuant to the guidelines provided under PCG MC 04-07 as explained elsewhere above. The fact that he admittedly allowed respondent Marimon, Capt. Eugenio, and Engr. Morales to decide among themselves whether "Stars" should depart likewise bespeak[s] of his failure to exercise extraordinary care and precaution considering the brewing storm along the vessel's route and in reckless disregard to the 849 persons on board the "Stars." Then, after learning that "Stars" was navigating along its regular route when the eye of Typhoon Frank was already at the vicinity of Romblon, he admittedly did not give any specific instruction to take shelter or drop anchor. The Panel cannot subscribe to his defense that he trusted the judgment of respondent Marimon, for, to begin with, the latter's judgment in navigating along the vessel's regular route, thus, taking "Stars" into the eye of Typhoon Frank, is far from being reliable and

trustworthy.[16]

The other SLI officers were excluded from the charge. The DOJ Panel declared that their specific participation in Voyage No. 392 was not satisfactorily established and there was no proof of their complicity in the negligent acts complained of. Although probable cause was also found against Captain Eugenio and Captain Ponteres for their direct involvement in Voyage No. 392, they were excluded from the indictment, considering that they were not impleaded as respondents. Nevertheless, preliminary investigation was recommended against them.[17]

On June 22, 2009, an Information[18] for reckless imprudence, docketed as Crim. Case No. 09-269169, was filed with the Regional Trial Court of Manila and raffled to Branch 5 thereof.

Aggrieved, respondent filed a petition for review with the DOJ Secretary.

During the pendency of respondent's petition for review with the DOJ Secretary, then Department of Transportation and Communications Secretary Leandro Mendoza issued a Resolution[19] on August 28, 2009, exculpating SLI from any negligence and holding Captain Marimon solely responsible for the sinking of Stars, viz.:

x x x x

- That from all the evidence on hand as evaluated, assessed and considered[;] it can be stated that the capsizing and demise of the M/V "Princess of the Stars" as not entirely and completely attributable to a fortuitous event (Typhoon Frank) and that the determining element established herein is that the STARS' navigation and operation was dependent on the skill, discretion and authority of her Master, Captain Florencio M. Marimon, Sr. It can be deduced from the records and the evidence gathered during the investigation that the proximate cause of the tragedy was the fact that Captain Marimon made a calculated option and decision of maintaining his regular passage via East Tablas, despite the said area and its vicinity being earlier on tracked and identified to be affected by Typhoon Frank, and his not considering the West Tablas route earlier during the voyage. x x x. The proximate cause of the tragic encounter with Typhoon Frank and the eventual capsizing of the M/V "Princess of the Stars" is mainly attributable to HUMAN ERROR on the part of its Master, Captain Florencio Marimon, Sr. who with erroneous [judgment] and lack of sufficient foresight took a calculated option of maintaining his regular course while the vessel was already underway and solely under his authority and command.[20]

The DOJ Secretary's Resolution

On March 22, 2010, then DOJ Secretary Alberto Agra denied respondent's petition for review.[21] The DOJ Secretary ruled that there was sufficient evidence to warrant respondent's indictment and that the issue on whether or not respondent was responsible in the movement of Stars on June 20, 2008 was a matter that could be better appreciated by the trial court. He declared that when the DOJ Panel recommended the filing of information against respondent for reckless imprudence, it merely found probable cause that a crime had been committed and that respondent was probably guilty thereof, which finding was not tantamount to a declaration of guilt.[22]

Respondent filed a motion for reconsideration, but it was denied by the DOJ Secretary in a Resolution[23] dated June 8, 2010.

The CA Ruling

In a Decision dated March 22, 2013, the CA held that the rule on non- interference in the conduct of preliminary investigations is not absolute such that where the prosecutor's findings are tainted with grave abuse of discretion or manifest error, or when, for various reasons, there was a misapprehension of facts, judicial interference is warranted, for then it becomes the duty of the courts to temper the exclusive and unilateral authority of the

prosecuting authorities lest they be used for persecution. It ruled that respondent's act of allowing the officers of the vessel to decide whether to set sail or not did not make him criminally liable as such decision was within the authority of the captain of the vessel, in coordination with the PCG, in view of the weather bulletin. The appellate court also found erroneous the finding of the DOJ Panel that respondent was criminally liable for not instructing the vessel to seek shelter or drop anchor in the face of the storm because there was not a shred of evidence from which such power to decide matters pertaining to the vessel's navigation could be inferred. It observed that the DOJ Panel did not cite any law or regulation that grants an administrative officer of a company operating a vessel the power to direct the vessel at sea and requires him to so act in times of emergency. Thus, the CA concluded that the charge for reckless imprudence against respondent in Criminal Case No. 09-269169 must be dismissed as the latter's constitutional right to due process and the higher interest of substantial justice must prevail over adherence to the policy of non-interference on the executive prerogatives of the DOJ.

The petitioners in G.R. No. 210854 moved for reconsideration, but the same was denied by the CA in a Resolution dated January 8, 2014. Hence, these consolidated petitions for review which were initially denied by the Court in a Resolution[24] dated July 2, 2014. However, in a subsequent Resolution[25] dated August 18, 2014, the Court granted the petitioners' motion for reconsideration and reinstated the consolidated petitions for review.

Issues

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN TAKING COGNIZANCE OF THE SUBJECT PETITION FOR [CERTIORARI AND GRANTING THE SAME, DESPITE THE FAILURE TO IMPLEAD THE PEOPLE OF THE PHILIPPINES AS AN INDISPENSABLE PARTY IN THE PROCEEDINGS BELOW[; and]

x x x x

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THERE IS NO PROBABLE CAUSE TO INDICT RESPONDENT EDGAR S. GO [THE PETITIONER BELOW], AND CONSEQUENTLY IN DISMISSING CRIMINAL CASE NO. 09-269169 AS AGAINST RESPONDENT EDGAR S. GO.[26]

x x x x

The People argue that the CA erred in exercising jurisdiction and taking cognizance of the petition for certiorari and, thereafter, in granting the same because respondent failed to implead the People of the Philippines which is an indispensable party in criminal prosecutions; that the determination of the existence of probable cause for indictment is left to the sound discretion of the prosecutor, and the same may not be interfered with by courts, absent a showing of any grave abuse of discretion on the part of the prosecutor; that the CA unmistakably substituted its own judgment for that of the prosecutor and the Secretary of Justice; that the CA gravely erred in ruling that the case falls under the exception to the non-interference by the courts in the determination of the existence of probable cause; that in recommending that respondent be indicted for reckless imprudence resulting in multiple homicide, physical injuries and damage to property, the DOJ Panel, in accordance with law, and without unnecessary haste, conducted the requisite preliminary investigation for the purpose of determining whether or not probable cause exists in order to hold respondent for trial; that the DOJ Panel conducted clarificatory hearings on March 13 and 20, 2009 for the purpose of eliciting important facts necessary in determining whether probable cause exists; that it must be emphasized that the issue at hand involves only the existence of probable cause to indict and hold respondent for trial, and not his conviction for the crime charged;

that it was established that respondent was remiss in his responsibilities as an officer of SLI; that respondent failed to exercise extraordinary care and precaution in securing the safety of the passengers, among others, when he admittedly allowed Captain Marimon, Captain Eugenio and. Engineer Ernelson Morales to decide among themselves on whether to permit the vessel to depart or not, notwithstanding the severe weather condition at that time; that respondent did not even dictate upon Captain Marimon to cancel or discourage the voyage of the vessel or to take shelter or drop anchor in order not to come face to face with the eye of the typhoon; and that the determination and appreciation of respondent's culpability for the crime charged are better left to the trial court's assessment.[27]

For their part, petitioners in G.R. No. 210854 contend that respondent possesses the authority and duty to control and decide matters pertaining to the vessel's navigation at sea; that the Port Captains and Safety Officers of SLI directly report to him; that it is within the power of respondent to order the Master of the vessel to drop anchor or seek shelter in a safe location immediately upon learning that the vessel was already in the path of Typhoon Frank; that despite his knowledge that Stars was moving towards the area where SWS No. 3 was already hoisted, he did not instruct the Master to take shelter to the nearest port; that if it becomes apparent that the Master's course of action would be disastrous, then it becomes the bounden duty of the company to avert the impending disaster; that the liability of respondent is not premised on his ownership of SLI, but on his active management and control over SLI's vessels and employees; that the DOJ Panel did not commit grave abuse of discretion because it did not just rely on the affidavits of the complainants and their witnesses and the counter--affidavits of respondent and his witnesses, but also conducted clarificatory hearings; and that the defenses raised by respondent are better threshed out in a full-blown trial.[28]

In his Consolidated Comment,[29] respondent counters that in a reckless imprudence case involving a common carrier, it is the captain who should be subjected to criminal culpability as he is in the best position to determine the best measures to be taken for the protection of the passengers, crew, vessel and its cargo, a land-based person far removed from the situation, is unaware of the circumstances confronting the voyage; that the liability of the common carrier or shipowner is merely civil in nature even if the accident results in the death or injury of passengers, and even when the negligence of the shipowner concurs with the negligence of the captain; that the ship captain is the one in control, being the one actually in the open sea with direct first-hand knowledge of the running condition of his vessel and the actual wind and sea conditions prevailing at any given time affecting the voyage; that the ship captain is the one actually manning the vessel, hence, he is the one responsible for its safe navigation to its intended destination; that the DOJ committed manifest injustice by ordering his prosecution because he is not an officer or crew member manning the vessel or a person responsible for the vessel's safe navigation; that respondent's duties as Vice--President for Administration for Land-Based Personnel of the Manila Branch Office and the Head of the Crisis Management Committee did not include the authority to control and supervise matters pertaining to vessel movement and navigation; that no liability for criminal negligence may be imputed against respondent because he was never on board the vessel when the tragic accident occurred; and that he did not order the Master of the vessel to find a safe place and drop anchor because he had no authority to do so, the decision on how to navigate the vessel clearly resting solely on the captain thereof.

The Court's Ruling

Failure to implead the People of the Philippines does not ipso facto deprive the CA of jurisdiction over the petition for certiorari.

Section 5, Rule 110 of the Revised Rules of Criminal Procedure provides that all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, respondent's petition for certiorari before the CA which failed to implead the People of the Philippines as a party thereto was defective. It must be stressed that

the true aggrieved party in a criminal prosecution is the People of the Philippines whose collective sense of morality, decency and justice has been outraged.[30]

The Court, however, has repeatedly declared that "the failure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner's/plaintiff's failure to comply." [31] The Court declared the rationale for this exception in *Commissioner Domingo v. Scheer* [32] in this wise:

There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty.

In this case, the CA, in a Resolution [33] dated September 24, 2010, required then DOJ Secretary Leila De Lima, public respondent in the petition for certiorari, to comment on the said petition. However, in its Manifestation and Motion [34] dated October 5, 2010, the Office of the Solicitor General (OSG) declared that "being the real party interested in upholding public respondent's questioned rulings, private respondents therefore have the duty to appear and defend in their behalf and in behalf of public respondent." [35] It further stated, "being merely a nominal party, public respondent thus should not appear against petitioner, or any party for that matter, who seeks the reversal of her rulings that are unfavorable to the latter." [36] Thus, the People, through the OSG, was given the opportunity to refute respondent's arguments, but it refused in the belief that it was merely a nominal party with little interest in upholding respondent's indictment for reckless imprudence. Accordingly, it would be the height of injustice to sustain the People's claim of denial of due process and to dismiss the petition for certiorari for a procedural defect.

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.

In *First Women's Credit Corporation v. Hon. Perez*, [37] the Court declared that the policy of non-interference in the conduct of preliminary investigations was meant to leave to the investigating prosecutor "ample latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against a supposed offender." [38]

The rationale for this policy was enunciated in *PCGG Chairman Elma v. Jacobi*, [39] viz.:

The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government. The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal complaint is necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice. Who to charge with what crime or none at all is basically the prosecutor's call.

Accordingly, the Court has consistently adopted the policy of non-interference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of

what constitutes sufficient evidence to establish probable cause. Courts cannot order the prosecution of one against whom the prosecutor has not found a prima facie case; as a rule, courts, too, cannot substitute their own judgment for that of the Executive. (Citations omitted)

In accordance with the policy of non-interference, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.[40] "[j]udicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion." [41] Instructive is the Court's pronouncement in *Jacobi*, thus:

In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained.[42] (Emphasis supplied; citations omitted)

In the case at bar, the Court rules that no grave abuse of discretion attended the DOJ Panel's Resolution finding probable cause to indict respondent for reckless imprudence.

Probable cause refers to the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[43] It does not mean "actual and positive cause" nor does it require absolute certainty.[44] A finding of probable cause is merely based on opinion and reasonable belief that the act or omission complained of constitutes the offense charged.[45] A finding of probable cause merely binds over the suspect to stand trial for the reception of prosecution evidence in support of the charge. It is not a pronouncement of guilt.[46]

"The elements of reckless 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 reckless 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." [47]

In this case, the DOJ Panel, in charging respondent with reckless imprudence, reasoned "As [First Vice-President] for Administration and team leader of Crisis Management Committee, both Capt. Benjamin Eugenio[,] who is in charge of vessel operations in Manila, and Engr. Ernelson Morales, SLI safety officer, report directly to him. Thus, he is unarguably involved in making decisions on whether a vessel would be allowed to sail out of the Port of Manila, in fact[,] Capt. Eugenio reported to him on the pre-departure conference with respondent Marimon. Considering the severe weather condition prevailing at that time, prudence should have dictated him to cancel or discourage [V]oyage [N]o. 392 of [']Stars['] especially after SWB No. 8 was issued by PAGASA, pursuant to the guidelines provided under PCG MC 04-07 as explained elsewhere above. The fact that he admittedly allowed respondent Marimon, Capt. Eugenio, and Engr. Morales to decide among themselves whether [']Stars['] should

depart likewise bespeak[s] of his failure to exercise extraordinary care and precaution considering the brewing storm along the vessel's route and in reckless disregard to the 849 persons on board the [']Stars.['] Then, after learning that [']Stars['] was navigating along its regular route when the eye of Typhoon Frank was already at the vicinity of Romblon, he admittedly did not give any specific instruction to take shelter or drop anchor." [48]

First, the DOJ Panel explicitly identified the decisions which respondent could have taken to prevent Stars from sailing and, consequently, to avert the accident. Among others, he failed to closely monitor and assess the movement of the vessel as against the movement of Typhoon Frank such that he did not instruct Captain Marimon to take shelter in the vicinity of Batangas despite information from PAGASA that the vessel would come face to face with the eye of Typhoon Frank if it continued along its regular route. Second, the DOJ Panel also made it clear that respondent's acts, though not malicious, were indeed voluntary. Third, it is undisputed that as a result of the sinking of Stars, only 32 persons survived out of the 849 on board the vessel. Finally, there was an explicit and reasonable conclusion drawn by the DOJ Panel that respondent's act of allowing the vessel to sail despite the severe weather condition at that time demonstrated inexcusable lack of precaution on the latter's part.

The Court, thus, concludes that the DOJ Panel's Resolution clearly supports a prima facie finding that reckless imprudence under Article 365 of the RPC has been committed. The DOJ Panel, in arriving at such conclusion, did not just rely on the affidavits of the complainants and the respondents as well as their respective witnesses. It also conducted clarificatory hearings on March 13 and 20, 2009 wherein respondent, Captain Eugenio (SLI Manila Port Captain), Captain Ponteres (SLI Cebu Port Captain), Engineer Morales (SLI Manila Safety Officer), Juanito Cabangonay and Gorillo (SLI Manila Radio Operators), and Noelito Alpas (SLI Cebu Radio Operator) appeared and testified.[49] The DOJ Panel merely acted on the belief that respondent's acts or omissions constitute the offense of reckless imprudence. Further, it is worthy to note that when a party files a special civil action for certiorari, he or she must allege the acts constituting grave abuse of discretion.[50] However, respondent's petition for certiorari before the CA merely identified the alleged errors of fact and law in the DOJ Panel's Resolution.

It must be emphasized that in this case, the Court is merely charged with determining whether the DOJ Panel acted with grave abuse of discretion in filing an Information for reckless imprudence against respondent. The Court does not concern itself yet with the evidence presented by the petitioners and respondent in support of their respective arguments. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.[51] Hence, to be clear, the present ruling of the Court is not equivalent to a determination of respondent's guilt in the criminal case for reckless imprudence.

Shipowner's liability based on the contract of carriage is separate and distinct from the criminal liability of those who may be found negligent.

Under Article 1755 of the Civil Code, a common carrier is bound to carry the passengers safely as far as human care and foresight can provide using the utmost diligence of very cautious persons with due regard for all the circumstances. Moreover, under Article 1756 of the Civil Code, in case of death or injuries to passengers, a common carrier is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence. In addition, pursuant to Article 1759 of the same Code, it is liable for the death of, or injuries to passengers through the negligence or willful acts of the former's employees. These provisions evidently refer to a civil action based not on the act or omission charged as a felony in a criminal case, but to one based on an obligation arising from other sources, such as law or contract. Thus, the obligation of the common carrier to indemnify its passenger or his heirs for injury or death arises from the contract of carriage entered into by the common carrier and the passenger.[52]

On the other hand, "the essence of the quasi offense of criminal negligence under [A]rticle 365 of the RPC lies in

the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes, thus, the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty; it does not qualify the substance of the offense."^[53]

Consequently, in criminal cases for reckless imprudence, the negligence or fault should be established beyond reasonable doubt because it is the basis of the action, whereas in breach of contract, the action can be prosecuted merely by proving the existence of the contract and the fact that the common carrier failed to transport his passenger safely to his destination.^[54] The first punishes the negligent act, with civil liability being a mere consequence of a finding of guilt, whereas the second seeks indemnification for damages. Moreover, the first is governed by the provisions of the RPC, and not by those of the Civil Code. Thus, it is beyond dispute that a civil action based on the contractual liability of a common carrier is distinct from an action based on criminal negligence.

In this case, the criminal action instituted against respondent involved exclusively the criminal and civil liability of the latter arising from his criminal negligence as responsible officer of SLI. It must be emphasized that there is a separate civil action instituted against SLI based on culpa contractual incurred by it due to its failure to carry safely the passengers of Stars to their place of destination. The civil action against a shipowner for breach of contract of carriage does not preclude criminal prosecution against its employees whose negligence resulted in the death of or injuries to passengers.

WHEREFORE, the consolidated petitions for review are GRANTED. The March 22, 2013 Decision and the January 8, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 115165 are REVERSED and SET ASIDE. The Regional Trial Court of Manila, Branch 5 is ORDERED to forthwith REINSTATE Criminal Case No. 09-269169 as against respondent EDGAR S. GO.

SO ORDERED.

Peralta (Chairperson), Leonen, Gesmundo, and Hernando, JJ., concur.

[*] Also referred to as Evelyn Bajet in some parts of the rollo.

[1] Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Celia C. Librea-Leagogo and Franchito N. Diamante, concurring; rollo (G.R. No. 210816), Vol. I, pp. 77-109.

[2] Id. at 110-112.

[3] Id. at 80.

[4] Id. at 80-81.

[5] Id. at 81.

[6] Id.

[7] Id.

[8] Id. at 82.

[9] Id.

[10] Id. at 82-83.

[11] Id. at 83.

- [12] Id. at 217-278.
- [13] Id. at 261-262.
- [14] Id. at 271-272.
- [15] Id. at 138-185.
- [16] Id. at 181-182.
- [17] Id. at 182-183.
- [18] Id. at 298-306.
- [19] Id. at 337-370.
- [20] Id. at 367-368.
- [21] Id. at 114-136.
- [22] Id. at 133.
- [23] Id. at 137-137-A.
- [24] Id. at 508-510.
- [25] Rollo (G.R. No. 210816), Vol. II, pp. 600-601.
- [26] Rollo (G.R. No. 210816), Vol. I, pp. 36-37.
- [27] Id. at 20-71.
- [28] Rollo (G.R. No. 210854), Vol. I, pp. 11-66.
- [29] Rollo, (G.R. No. 210816), Vol. II, pp. 622-671.
- [30] *People v. Dela Cerna*, 439 Phil. 394, 408 (2002).
- [31] *Cuenca Vda. de Manguerra v. Risos*, 585 Phil. 490, 497 (2008).
- [32] 466 Phil. 235, 266-267 (2004).
- [33] Rollo (G.R. No. 210816), Vol. I, p. 412.
- [34] Id. at 413-416.
- [35] Id. at 414.
- [36] Id.
- [37] 524 Phil. 305 (2006).
- [38] Id. at 309.
- [39] 689 Phil. 307, 340-341 (2012).
- [40] *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591 (2007).
- [41] Id.
- [42] *Elma v. Jacobi*, *supra* note 39, at 341-342.

- [43] R.R. Paredes v. Calilung, 546 Phil. 198, 223 (2007).
- [44] Id.
- [45] Id.
- [46] Webb v. Hon. De Leon, 317 Phil. 758, 789 (1995).
- [47] Senit v. People, 776 Phil. 372, 385 (2016).
- [48] Rollo (G.R. No. 210816), Vol. I, pp. 181-182.
- [49] Id. at 153.
- [50] G.V. Florida Transport, Inc. v. Tiara Commercial Corporation, G.R. No. 201378, October 18, 2017, 842 SCRA 576, 590.
- [51] Clay & Feather International, Inc. v. Lichaytoo, 664 Phil. 764, 773 (2011).
- [52] Candano Shipping Lines, Inc. v. Sugata-on, 547 Phil. 131, 143 (2007).
- [53] People v. Buan, 131 Phil. 498, 500 (1968).
- [54] Air France v. Gillego, 653 Phil. 138, 149 (2010).

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