

**NORBERTO QUISUMBING, SR., AND GUNTHER LOEFFLER,
PETITIONERS, VS. COURT OF APPEALS AND PHILIPPINE AIR LINES,
INC., RESPONDENTS.**

G.R. No. 50076. September 14, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

Having met with no success in the Court of First Instance of Rizal and in the Court of Appeals, the petitioners are now in this Court in a third and final attempt to recover from the Philippine Airlines, Inc. (hereafter, simply PAL) the value of jewelry, other valuables and money taken from them by four (4) armed robbers on board one of the latter's airplanes while on a flight from Mactan City to Manila, as well as moral and exemplary damages, attorney's fees and expenses of litigation.

The petitioners accept the correctness of the basic facts adopted by the Court of Appeals from the judgment of the Court of First Instance, to wit:[1]

1. " ** Norberto Quisumbing, Sr. and Gunther Loeffler were among the passengers of ** (PAL's) Fokker 'Friendship' PIC-536 plane in its flight of November 6, 1968 which left Mactan City at about 7:30 in the evening with Manila for its destination."
2. "After the plane had taken off, Florencio O. Villarin, a Senior NBI Agent who was also a passenger of the said plane, noticed a certain 'Zaldy,' a suspect in the killing of Judge Valdez, seated at the front seat near the door leading to the cockpit of the plane. A check by Villarin with the passengers' ticket in the possession of flight Stewardess Annie Bontigao, who was seated at the last seat right row, revealed that 'Zaldy' had used the name 'Cardente,' one of his aliases known to Villarin. Villarin also came to know from the stewardess that 'Zaldy' had three companions on board the plane."
3. "Villarin then scribbled a note addressed to the pilot of the plane requesting the latter to contact NBI duty agents in Manila for the said agents to ask the Director of the NBI to send about six NBI agents to meet the plane because the suspect in the killing of Judge Valdez was on board (Exh. 'G'). The said note was handed by Villarin to the stewardess who in turn gave the same to the pilot."
4. "After receiving the note, which was about 15 minutes after take off, the pilot of the plane, Capt. Luis Bonnevie, Jr., came out of the cockpit and sat beside Villarin at the rear portion of the plane and explained that he could not send the message because it would be heard by all ground aircraft stations. Villarin, however, told the pilot of the danger of commission of violent acts on board the plane by the notorious. 'Zaldy' and his three companions."
5. "While the pilot and Villarin were talking, 'Zaldy' and one of his companions walked to the rear and stood behind them. Capt. Bonnevie then stood up and went back to the cockpit. 'Zaldy' and his companions returned to their seats, but after a few minutes they moved back to the rear throwing ugly looks at Villarin who, sensing danger, stood up and went back to his original seat across the aisle on the second to the last seat near the window. 'Zaldy' and his companion likewise went back to their respective seats in front."

6. "Soon thereafter an exchange of gunshots ensued between Villarin and 'Zaldy' and the latter's companions. 'Zaldy' announced to the passengers and the pilots in the cockpit that it was a hold-up and ordered the pilot not to send any SOS. The hold-uppers divested the passengers of their belongings."

7. "Specifically, ** Norberto Quisumbing, Sr. was divested of jewelries and cash in the total amount of P18,650.00 out of which recoveries were made amounting to P4,550.00. ** Gunther Loeffler was divested of a wrist watch, cash and a wallet in the total amount of P1,700.00. As a result of the incident ** Quisumbing, Sr. suffered shock, because a gun had been pointed at him by one of the hold? uppers."

8. "Upon landing at the Manila International Airport, 'Zaldy' and his three companions succeeded in escaping."

Demands were thereafter made on PAL by Quisumbing and Loeffler "to indemnify ** (them) on their aforesaid loss, but ** (PAL) refused ** (averring that) it is not liable to (them) in law or in fact." [2]

Contending that the "aforesaid loss is a result of breach of ** (PAL's) contractual obligation to carry ** (them) and their belongings and effects to their Manila destination without loss or damage, and constitutes a serious dereliction of ** (PAL's) legal duty to exercise extraordinary diligence in the vigilance over the same," Quisumbing and Loeffler brought suit against PAL in the Court of First Instance of Rizal, as stated in this opinion's opening paragraph, to recover the value of the property lost by them to the robbers as well as moral and exemplary damages, attorney's fees and expenses of litigation. [3] The plaintiffs declared that their suit was instituted " ** pursuant to Civil Code articles 1754, 1998, 2000 and 2001 and on the ground that in relation to said Civil Code article 2001 the complained-of act of the armed robbers is not a force majeure, as the 'use of arms' or 'irresistible force' was not taken advantage of by said armed robbers in gaining entrance to defendant's ill-fated plane in questions. And, with respect to said Civil Code article 1998, it is not essential that the lost effects and belongings of plaintiffs were actually delivered to defendant's plane personnel or that the latter were notified thereof (De los Santos v. Tam Khey, [CA] 58 O.G. 7693)." [4]

PAL filed answer denying liability, alleging inter alia that the robbery during the flight and after the aircraft was forcibly landed at the Manila Airport did indeed constitute force majeure, and neither of the plaintiffs had notified PAL "or its crew or employees that they were in possession of cash, German marks and valuable jewelries and watches" or surrendered said items to "the crew or personnel on board the aircraft." [5]

After trial, the Court of First Instance rendered judgment "dismissing plaintiffs' complaint with costs against ** (them)." [6] The Court opined that since the plaintiffs "did not notify defendant or its employees that they were in possession of the cash, jewelries, and the wallet they are now claiming," the very provision of law invoked by them, Article 1998 of the Civil Code, denies them any recourse against PAL. The Court also pointed out that -

" ** while it is true that the use of arms was not taken advantage of by the robbers in gaining entrance to defendant's ill-fated plane, the armed robbery that took place constitutes force majeure for which defendant is not liable because the robbers were able to gain entrance to the plane with the guns they used already in their possession, which fact could not have been prevented nor avoided by the defendant since it was not authorized to search its passengers for firearms and deadly weapons as shown in Exhibits '6,' '7,' '8,' and '8-A.' As its robbery constitutes force majeure, defendant is not liable."

The plaintiffs appealed to the Court of Appeals. [7] That Court affirmed the trial court's judgment. [8] It rejected the argument that "the use or arms or ** irresistible force" referred to in Article 2001 constitutes force majeure only if resorted to to gain entry into the airplane, and not if it attends "the robbery itself." The Court ruled that under the facts, "the highjacking-robbery was force majeure," observing that -

" ** hijackers do not board an airplane through a blatant display of firepower and violent fury. Firearms, hand-grenades, dynamite, and explosives are introduced into the airplane surreptitiously and with the utmost

cunning and stealth, although there is an occasional use of innocent hostages who will be coldly murdered unless a plane is given to the hijackers' complete disposal. The objective of modern-day hijackers is to display the irresistible force amounting to force majeure only when it is most effective and that is when the jetliner is winging its way at Himalayan altitudes and ill-advised heroics by either crew or passengers would send the multi-million peso airplane and the priceless lives of all its occupants into certain death and destruction. * *

The Appellate Court also ruled that in light of the evidence PAL could not be faulted for want of diligence, particularly for failing "to take positive measures to implement Civil Aeronautics Administration regulations prohibiting civilians from carrying firearms on board aircrafts;" and that "the absence of coded transmissions, the amateurish behaviour of the pilot in dealing with the NBI agent, the allegedly open cockpit door, and the failure to return to Mactan, in the light of the circumstances of the case * *, were not negligent acts sufficient to overcome the force majeure nature of the armed robbery." In fact, the Court went on to say,[9]

" * * it is illusive to assume that had these precautions been taken, the hijacking or the robbery would not have succeeded. The mandatory use of the most sophisticated electronic detection devices and magnetometers, the imposition of severe penalties, the development of screening procedures, the compilation of hijacker behavioural profiles, the assignment of sky marshals, and the weight of outraged world opinion may have minimized hijackings but all these have proved ineffective against truly determined hijackers. World experience shows that if a group of armed hijackers want to take over a plane in flight, they can elude the latest combined government and airline industry measures. And as our own experience in Zamboanga City illustrates, the use of force to overcome hijackers, results in the death and injury of innocent passengers and crew members. We are not in the least bit suggesting that the Philippine Airlines should not do everything humanly possible to protect passengers from hijackers' acts. We merely state that where the defendant has faithfully complied with the requirements of government agencies and adhered to the established procedures and precautions of the airline industry at any particular time, its failure to take certain steps that a passenger in hindsight believes should have been taken is not the negligence or misconduct which mingles with force majeure as an active and cooperative cause.

Under the circumstances of the instant case, the acts of the airline and its crew cannot be faulted as negligence. The hijackers had already shown their willingness to kill. One passenger was in fact killed and another survived gunshot wounds. The lives of the rest of the passengers and crew were more important than their properties. Cooperation with the hijackers until they released their hostages at the runway end near the South Superhighway was dictated by the circumstances."

Insisting that the evidence demonstrates negligence on the part of the PAL crew "occurring before and exposing them to hijacking," Quisumbing and Loeffler have come up to this Court praying that the judgments of the trial Court and the Court of Appeals be reversed and another rendered in their favor. Once again, the issue will be resolved against them.

A careful analysis of the record in relation to the memoranda and other pleadings of the parties, convinces this Court of the correctness of the essential conclusion of both the trial and appellate courts that the evidence does indeed fail to prove any want of diligence on the part of PAL, or that, more specifically, it had failed to comply with applicable regulations or universally accepted and observed procedures to preclude hijacking; and that the particular acts singled out by the petitioners as supposedly demonstrative of negligence were, in the light of the circumstances of the case, not in truth negligent acts "sufficient to overcome the force majeure nature of the armed robbery." The Court quite agrees, too, with the Appellate Tribunal's wry observation that PAL's "failure to take certain steps that a passenger in hindsight believes should have been taken is not the negligence or misconduct which mingles with force majeure as an active and cooperative cause."

No success can therefore attend petitioners' appeal, not only because they wish to have a review and modification

of factual conclusions of the Court of Appeals, which established and uniformly observed axiom proscribes,[10] but also because those factual conclusions have in this Court's view been correctly drawn from the proofs on record.

WHEREFORE, the petition is DENIED and the appealed Decision of the Court of Appeals is AFFIRMED, with costs against petitioners.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 19-21. The Trial Court's narrative is here reproduced, broken up into consecutively numbered paragraphs.

[2] Id., pp. 33, 38

[3] The action was docketed as Civil Case No. 12300

[4] Rollo, pp. 32-33

[5] Id., pp. 35, 39-40

[6] Id., pp. 42-47. The judgment was rendered by Judge Emilio V. Salas under date of January 30, 1974.

[7] Their appeal was docketed as CA-G.R. No. 55687-R

[8] Rollo, pp. 19-28. The decision, dated Jan. 18, 1979, was written for the Second Division by Gutierrez, J. (now Associate Justice of this Court), with whom concurred San Diego and Cuevas, JJ.

[9] Id., pp. 27-28

[10] Hernandez v. CA, 149 SCRA 67; Cu Bie v. IAC, 154 SCRA 599; Sumbingco v. CA, 155 SCRA 20; Hermo v. CA, 155 SCRA 24, citing Ramos v. Pepsi-Cola Bottling Co., 19 SCRA 289, Bacayo v. Genato, 135 SCRA 668, Republic v. IAC, 145 SCRA 25, and Sacay v. Sandiganbayan, 142 SCRA 593; de Guzman v. Intestate Estate of Benitez, 169 SCRA 284; Gregorio v. CA, G.R. No. L-44344, July 16, 1990

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