

ANTONIO SORIAO, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 56481. July 21, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court of the decision of the Court of Appeals dated January 30, 1981 which affirmed the decision of the Court of First Instance of Aurora Subprovince, Baler, Quezon (now the Regional Trial Court, Branch 66, at Baler, Aurora).

The antecedent facts as summarized in the People's brief are as follows:

"On January 9, 1978, at about 9:00 o'clock in the evening, M/B Sweet Lord departed from the log pond of Dibet, Casiguran, Quezon (pp. 4-5, ts., June 27, 1978). The boat was around 44 feet in length, 5 feet in height and five feet in width (pp. 8-9, t.s.n., August 24, 1978). On board were 23 passengers, 70 sacks of copra with as weight of 80 kilos per sacks (sic), 4 sacks of rice, 4 sacks of carabao hide, luggages (sic) of the passengers, 4 pigs, 4 chickens, cash and other valuables (pp. 8, 34, t.s.n., June 27, 1978; p. 41, ts., July 24, 1978). In addition, there were five (5) crew members among whom was the petitioner who boarded the boat in Dinalungan, Quezon (p. 5, ts., June 27, 1978). The boat was overloaded as evidenced by the fact that only a palm's width of its height was above the water and its waterline was already submerged (p. 8, ts., June 27, 1978). When the boat left Casiguran, it was piloted by Domingo Zamora until the petitioner boarded. (p. 21, Id.)

"At around 1:00 o'clock the following morning the boat left Dinalungan, but this time, upon the orders of the petitioner (pp. 6, 27, ts., Id.). The waves then were as big as a hut so that the boat had to stop at the port of Dinadiawan (Id., p. 6, ts., June 26, 1978). After three hours of waiting, the petitioner ordered the boat to resume its voyage despite the fact that the sea was still rough (pp. 6-7, Id.). Petitioner made this order over the objection of the employed captain Zamora, who said that the boat could not cope with the trip anymore (p. 6, ts., June 27, 1978). And as expected the boat sank, causing the death of most of the passengers and the loss and destruction of the cargoes. (p. 7, Id.)" (pp. 132-134, Rollo).

Petitioner Antonio Soriao (Soriao, for brevity) and Domingo Zamora (Zamora, for brevity) were charged with the crime of multiple homicide and damage to property thru reckless imprudence before the Court of First Instance of Aurora Sub-province, Baler, Quezon, under an information which reads:

"That on or about the 10th day of January, 1978, on the Pacific Ocean, in the Municipality of Baler, Subprovince of Aurora Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and helping each other, being then the persons-in-charge and operators of a motor boat, 'SWEET LORD,' which they had overloaded with passengers and cargoes, did then and there wilfully, unlawfully and feloniously manage and operate, or cause to be managed and operate, the said motor boat SWEET LORD, which is owned jointly by accused Antonio Soriao and his cousin, Anacleto Tejerero, in a careless, reckless and imprudent manner without taking the necessary precautions to avoid accident to persons or damage to property, thus causing by their said carelessness, recklessness and

imprudence the said motor boat, to capsize and casting into the ocean all its 28 passengers and cargoes, drowning to death the following passengers, to wit: Teresita Teves, Maria Teves, Gloria Bernal, Salvacion Bernal, Jose Bernal, Rodrigo Discarga, Julio Discarga, Arturo Turno, Rosa Bernal Turno, Ricky Rodolfo, Aurora Estabaya Ocillado, Nelson Ocillado, and other missing or unidentified passengers, and causing the irretrievable loss at sea of the following properties, to wit: P5,700.00 cash money, 2 male pigs valued at P750.00, and 4 sacks of rice worth P400, belonging to Teresita Teves; P1,300.00 cash money, Titus wrist watch worth P150.00, 6 chickens, 1 goose, and two ducks all worth P128.00, owned by Dominga Teves, two luggages full of clothes worth P600.00 belonging to Teresita Teves, Dominga Teves and Maria Teves; P4,000.00 cash money and 22 pieces of dried cowhide worth P3,430.00 belonging to Jose Bernal; P700.00 cash money and Fly Wheel machine for generator worth P550.00 owned by Julio Discarga; P500 cash money of Rodrigo Discarga; P399.00 cash money of Gloria Bernal; 2 pigs worth P400.00, cash money in the sum of P3,000.00, and one bayong or bag full of clothes worth P200.00 belonging to Arturo Turno; and P500.00 cash money owned by Raul Ocillada, to the damage and prejudice of the aforementioned owners in the total sum of P22,707.00, Philippine Currency.

"Contrary to law." (pp. 1-2, Records)

The case proceeded against Soriao only since Zamora remains at-large. On October 27, 1978, after trial on the merits, the Court of First Instance rendered judgment, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Antonio Soriao guilty beyond reasonable doubt of the crime of multiple homicide with damage to property thru reckless imprudence, and applying Article 365, paragraphs 1 and 5 in connection with Article 48 of the Revised Penal Code, and the Indeterminate Sentence Law, hereby sentences him to suffer the indeterminate penalty of from four (4) months of arresto mayor as minimum to two (2) years and four (4) months of prision correccional as maximum; to indemnify the heirs of the deceased in the sums appearing opposite their respective names:

Benilda Temejo

P12,400

Teresita Tanteo -Teves

P17,728

Dominga Teves and Maria

Teves (sisters)

P25,300

Ricky Rodolfo

P12,000

Aurora Estabaya

P12,400

Nelson Osellada (Ocillado)

P12,000

Emma Aseniro and Reynaldo

Banania (spouses)

P26,000

Gloria Bernal

P12,500

Salvacion Bernal

P12,000

Arturo Turno and Rosa

Bernal (spouses)

P27,400

Julio Discarga

P13,200

Rodrigo Discarga

P12,500

Jose Bernal

P16,000

Leonisa Bagadiong

P12,000

Edna Bagadiong

P12,000

Benjie Bagadiong

P12,000

Eduardo Bagadiong

P12,000

and Felix Rodolfo in the sum of P1,459 and Loreto Tanteo in the sum of P2,430, without subsidiary imprisonment in case of insolvency, with all the accessory penalties of the law, and to pay one-half (1/2) of the costs.

"The accused Domingo Zamora not having been as yet arrested since the issuance of the warrant of arrest on May 2, 1978, LET another warrant of arrest be issued for his apprehension, and so that this case with respect to him may not remain pending, LET the record be sent to the files after the promulgation of this decision, without prejudice to its withdrawal therefrom as soon as he is arrested.

"The Clerk of Court shall forward the original warrant to the Commanding Officer of the Aurora District Command stationed at San Luis, Quezon, and a copy thereof to the proper station commander of the Integrated National Police.

"SO ORDERED.

"Baler, Subprovince of Aurora, Quezon, October 27, 1978." (pp. 71-72, Records)

Whereupon, Soriao appealed to the Court of Appeals which, as earlier stated, affirmed the aforesaid judgment. Hence, the present recourse.

In the resolution of July 15, 1981 (p. 42, Rollo), We required the respondents to comment on the herein petition. Said comment was filed on September 17, 1981 (p. 49, Rollo). On September 30, 1981, We denied the petition for lack of merit (p. 58, Rollo). Petitioner Soriao filed two succeeding motions for extension to file motion for reconsideration which We granted in the resolutions of November 18, 1981 (p. 71, Rollo) and December 7, 1981 (p. 86, Rollo), respectively. Subsequently, the motion for reconsideration was filed (p. 75, Rollo). In the same resolution of December 7, 1981, We required the respondents to comment thereon. Said comment was filed on January 28, 1982 (p. 93, Rollo) to which a reply thereto was filed by Soriao (p. 100, Rollo). In the resolution of March 7, 1982, We (1) set aside the resolution of September 30, 1981; and (2) gave due course to the petition (p. 107, Rollo). Thereafter, the parties were required to file their respective briefs.

The sole issue posed in the instant petition is whether or not Soriao is liable to suffer the prison terms and civil damages meted out by the trial court and affirmed by the Court of Appeals (Petitioner's Brief, p. 7).

Petitioner Soriao contends that he is neither the owner nor captain of the M/B Sweet Lord but merely a passenger thereof and submits proofs of a (1) deed of sale of the boat engine to his cousin, Cleto Tejerero on August 30, 1977; (2) Mayor's permit which showed the registration of the boat in the name of Cleto Tejerero; (3) official receipt for fixed tax payment dated January 26, 1978; and (4) municipal tax license; that he merely suggested that the voyage continue despite the rough weather to which the other passengers did not object and thus, if he were negligent, all the others had an equal share in that negligence; that he took over the command of the boat since the boat captain had lost control of himself and was seen just "walking back and forth on the boat" (p. 11, Petitioner's Brief); that he merely acted on the instinct of self-preservation; and that, therefore, he has no civil and criminal liability pursuant to Article 2184 of the New Civil Code.

At first blush it would appear that Soriao's arguments could be valid. However, after a painstaking review of the records of the case, We are constrained to uphold the findings of the Court of Appeals.

Soriao asserts that he is neither the owner nor the captain but only a passenger of M/B Sweet Lord. Likewise, he maintains that he merely suggested that the voyage continue despite the stormy weather to which the other passengers did not object. Thus, he concludes that if he were negligent, then the rest of the passengers would equally share in his negligence under the doctrine of *pari delicto*. Soriao's submissions deserve no merit. We are not dealing here with the issue of ownership of the boat but of Soriao's criminal liability under Article 365 of the Revised Penal Code. A reading of the judgment of the trial court reveals that Soriao's conviction was based not on the latter's ownership of M/B Sweet Lord but on his role in the operation and management thereof which cost so many lives and damage to properties. Contrary to his contention, Soriao was not an ordinary passenger in that voyage. The survivors of the ill-fated M/B Sweet Lord positively declared that Soriao piloted the boat from Dinalungan up to the time just before it sank in the waters of Baler (TSNs, June 26, 1978, pp. 7, 15-16; June 27, 1978, p. 6; July 24, 1978, pp. 18 and 20). These testimonies were uncontradicted by Soriao. We find no evidence of any improper motive on the witnesses' part to testify against Soriao. Hence, their testimonies are worthy of full faith and credit (*People vs. Sawah*, L-15333, June 29, 1962; 5 SCRA 385). The relatives of the victims and the survivors themselves believed that Soriao was the owner of the boat and the boss of Captain Domingo Zamora and the crew (TSNs, June 26, 1978, pp. 16, 19, 36, 82; June 27, 1978, pp. 14, 20-22). Such impression naturally would foreclose any opposition from the passengers to Soriao's alleged suggestion that the voyage continue and

his having taken the helm of the boat in lieu of Zamora. The doctrine of *pari delicto* would, therefore, not apply in this case.

Soriao's claim that the instinct of self-preservation prodded him to pilot the boat because Zamora had lost control of himself and was seen just "walking back and forth on the boat" is negated by evidence which showed that he was in full command of the boat from the time he boarded the boat in Dinalungan until it proceeded on its voyage up to the time before the boat capsized. Diosdado Temajo testified that Soriao instructed Zamora to go and stop at Dinadiawan to "let the big waves subside"; that after three hours, he directed the continuation of the voyage inspite of the turbulent weather since the boat could withstand the storm; and that Soriao steered the boat sometimes (TSN, June 26, 1978, pp. 6-7). Witness Raul Ocillada corroborated Temajo's testimony in regard to Soriao's order to stop by Dinadiawan; that he ordered the captain not to proceed unless the order is given; and that he ordered the resumption of the trip (TSN, June 26, 1978, pp. 36, 35-39). Another witness, Felix Rodolfo testified that Soriao piloted the boat when it left Dinalungan; and that he ordered the continuation of the voyage despite the objection of Zamora (TSN, June 27, 1978). Against this backdrop, Soriao could not have just taken the helm of M/B Sweet Lord moments before the disaster occurred as he wants Us to believe. He proceeded with the voyage despite the evident risk to the lives of the passengers in view of the storm and the fact that the boat was then overloaded. The Court of Appeals noted such recklessness and ruled:

"x x x. Instead of waiting for fair weather to return, appellant ordered Domingo Zamora to resume the voyage of the boat, in the belief that their boat could cope with the weather situation. Viewed thus, there was therefore already an attendant risk brought about by the weather conditions still prevailing but appellant then entertained the reckless belief that the newly constructed vessel could cope with the situation which unfortunately turned out to be a mistake. As the vessel then was manifestly a common carrier, loaded with paying passengers and cargo it was the legal and moral duty of appellant to observe extraordinary diligence specially with regard to the safety of the passengers. Here added to the handicap of the bad weather which had not fully subsided is the overloaded condition of the boat such that the portion of the boat above the water is stated to be only the length of a palm and the indicated red water line was submerged (tsn 9, June 26, 1978)." (pp. 37-38, Rollo)

Also, We find that Soriao could easily take over the management of the boat considering his moral ascendancy over Zamora. Thus, We agree with the trial court which held that:

"3. Given the evidence presented by the defense itself, that the accused and Cleto Tejerero are first cousins; the M/B Sweet Lord was constructed in Dinalungan near the house of the brother of the accused, Honorio Soriao, adjacent to the house of Dominador Bagadiong for about thirty-nine days; the accused helped in its construction as a carpenter during which Cleto Tejerero and Master Carpenter Potenciano de Guzman stayed in his house; he was on the M/B Sweet Lord when it was tested for a long distance trip to Baler on January 5, 1978, together with Cleto Tejerero, Master Carpenter Potenciano de Guzman, Crispulo Udato, Eddie Bagadiong and Domingo Zamora who was its pilot and was also being tested as such; he was on the M/B Sweet Lord when it made its ill-fated trip to Baler at about 1 in the morning of January 10, 1978; and that after it capsized, he reported it to the police of Baler and he told them, among other things, that:

'12. T: Bakit at sa aking pagkaka-alam sangayon sa mga tao o sakay na nakaligtas sa nasabing aksidente ikaw daw ang siyang may-ari nito?

S: Hindi po ako ang may-ari kundi itong si Anacleto Tejerero at ang bilin lamang niya sa akin ng siya ay umalis patungo sa Maynila para kumuha ng lisensiya ay ibigay sa akin ang collection ng nasabing bangka hanggat hindi siya dumating galing sa Maynila.'

which instruction was given by Cleto Tejerero, in the presence of Domingo Zamora, on January 5, 1978 in the store in Cemento, Baler, Quezon where they took a snack after the successful test-trip of the M/B Sweet Lord, it is not hard to believe that the accused piloted the said M/B Sweet Lord at about 9-to-10 in the morning of

January 10, 1978 when it was between Dipaculao and Baler and when it was hit by three waves and it capsized, for he being a closer relative and confidant of Cleto Tejerero had ascendancy over Domingo Zamora who was a pilot-on-test x x x." (pp. 70-71, Records)

Finally, Soriao anchors his arguments on Article 2184 of the New Civil Code which, as correctly observed by the Solicitor General, is totally irrelevant in this case. His civil liability arises from his criminal conviction pursuant to Article 100 of the Revised Penal Code.

The maximum term of the indeterminate penalty imposed by the trial court on the accused Soriao and affirmed by the respondent court is not correct. Considering the provisions of Article 48 of the Revised Penal Code, such maximum term should have been taken from the maximum period of the prescribed penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period under paragraph 1 of Article 365 of the same Code, that is from two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. The proper penalty, therefore, that the accused Soriao should suffer is an indeterminate penalty of not less than four (4) months of *arresto mayor*, as minimum, but not more than four (4) years and two (2) months of *prision correccional*, as maximum, taking into account the circumstances surrounding the offense committed.

The trial court likewise granted actual damages in addition to the indemnity for the death of the victims in the amount of P12,000.00 each. Presently, the indemnity for death has been increased to P30,000.00 (*People v. Daniel*, L-66551, April 25, 1985; 136 SCRA 92). Consequently, Soriao should indemnify the heirs of each of the victims the amount of P30,000.00 in addition to the actual damages adjudged in the decision of the trial court.

ACCORDINGLY, the petition is DENIED and the decision of the Court of Appeals is hereby AFFIRMED with the modification of the penalty imposed upon Soriao and the increased amount of indemnity for death in addition to the actual damages adjudged in the decision of the trial court as above indicated. With costs against Soriao.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Gancayco, JJ., concur.

Grino-Aquino, J., see separate concurring and dissenting opinion.

Soriao vs CA : 56481 : July 21, 1989 : J. Griño-Aquino : First Division : Concurring & Dissenting Opinion Clean
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Concurring & Dissenting OPINION

GRIÑO-AQUINO, J.:

I concur in the affirmance of the conviction of the petitioner, but I regret to have to dissent with regard to the penalty.

The crime in this case is a complex one: multiple homicide (28 persons killed) with damage to property (worth P22,707.00) through reckless imprudence. The penalty for homicide through reckless imprudence is *arresto mayor* its maximum period to *prision correccional* in its medium period (Art. 365, Rev. Penal Code). Since the offense is complexed with other homicides and damage to property, it should be imposed in its maximum period, i.e., *prision correccional* in its medium period, or two years, 4 months and 1 day to four (4) years, and two (2) months (Art. 48, Rev. Penal Code). In view of the Indeterminate Sentence Law, the accused is entitled to an indeterminate

sentence the maximum term of which shall be that which in view of the attending circumstances, could be properly imposed under the Revised Penal Code and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.

Since the penalty prescribed by the Penal Code in this particular case is prision correccional medium, what is the next lower penalty?

In computing the indeterminate penalty in this case, the Honorable Ponente took the whole range of arresto mayor maximum to prision correccional medium, consisting of three periods, which is the penalty for simple homicide through reckless imprudence, and treated it as though it were also the penalty for the complex crime of multiple homicide with damage to property through reckless imprudence. He imposed on the accused an indeterminate penalty of arresto mayor medium (4 months) as minimum, to prision correccional medium (4 years & 2 months) as maximum. In so doing, he skipped two periods: prision correccional minimum and arresto mayor maximum, which should not have been done because these periods are independent penalties; they do not form part of the penalty for the complex crime of multiple homicide with damage to property through reckless imprudence which is only prision correccional in its medium period.

In my opinion, the next lower penalty to prision correccional medium is prision correccional minimum, but as the crime is a complex one, We should take the upper limits of that penalty as the minimum penalty imposable on the accused.

The authority for this manner of graduating the penalty for a complex crime is *People vs. Gayrama*, 60 Phil. 796 (1934) where the crime committed was homicide with assault upon an agent of authority which is punishable with reclusion temporal in its maximum period. This Court held that the next lower penalty (in view of the presence of three mitigating circumstances) was reclusion temporal medium which, in view of the Indeterminate Sentence Law, was further reduced by one degree to reclusion temporal minimum.

Gayrama was followed in *Cu Unjieng*, 61 Phil. 236, 302; *Silvallana*, 61 Phil. 636; *Del Carmen*, 61 Phil. 401; *Co Arquiza*, 62 Phil. 611; *Catacutan*, 64 Phil. 107; *Lawas*, 97 Phil. 975; and *Peñas*, 66 Phil. 682 and 68 Phil. 533.

Evidently, when the penalty prescribe by law consists of only one period of a divisible penalty, the next lower penalty is the period immediately following it in the scale of penalties (Vol. 1, 1987 Ed., Aquino's Rev. Penal Code, p. 655).

I therefore suggest that an indeterminate prison term of two years and four months of prision correccional minimum, as minimum, to four years and two months of prision correccional medium, as maximum, be imposed on the petitioner in this case.

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