

ANTONIO RAMON ONGSIAKO, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 69901. July 31, 1987*

Ponente: CRUZ, J.

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Prosecuted for reckless imprudence resulting in multiple physical injuries and damage to property, the petitioner was convicted by the trial court* of only simple negligence resulting in serious physical injuries and damage to property. He was sentenced to two months of arresto mayor and to pay a total indemnity of P143,131.04 for medical expenses, unearned salaries and as moral damages.[1] On appeal, the conviction was affirmed but the respondent court** reduced the moral damages by P84,000.00, thus lowering the total indemnity to P61,131.04.[2] Still not satisfied, the petitioner has come to this Court for a complete reversal of the judgment below.

This case arose from a collision between the car being driven by the petitioner and the jeep of Robert Ha on December 30, 1981, at about 4 o'clock in the afternoon, at MacArthur Highway, in Moncada, Tarlac. The petitioner had a companion, Leon Miguel Heras, who was seated beside him. Robert Ha was at the wheel of his vehicle, which had seven other passengers. It appears that the petitioner was south-bound, toward Manila, and the jeep was coming from the opposite direction; that a Philippine Rabbit bus ahead of the jeep swerved into the petitioner's lane to overtake and bypass a tricycle; and that as a result of this sudden move, the petitioner, to avoid a head-on collision, immediately veered his car to the shoulder of the highway. The car went out of control when it hit the soft shoulder, moved back diagonally across the cemented highway, then collided with Ha's jeep, damaging it and causing multiple injuries to its passengers. The Philippine Rabbit bus sped away.[3]

After considering the arguments of the parties in the petition itself, the comment thereon of the public respondent and the reply thereto, we gave due course to this petition and required the parties to file simultaneous memoranda. The petitioner complied in due time but the Solicitor General, to avoid repetitiousness, as he put it, merely adopted his sketchy comment as the memorandum for the respondent.[4]

While this Court is ordinarily not a trier of facts, it has the authority to review and reverse the factual findings of the lower courts if it finds that they do not conform to the evidence of record. We so find in this case, for reasons to be discussed presently.

The trial court held, and the respondent court affirmed, that "the jeep was still about 150 meters away from the Philippine Rabbit bus when the accused drove his car toward the road shoulder to avoid the collision with the on-coming bus. In other words, there was sufficient time for Antonio Ramon Ongsiako to avail of a feasible time to avert hitting the jeep." [5] The judge should have been more careful in reaching this conclusion for it is not founded on the facts as established. The evidence of record is that the distance was not 150 meters but 150 feet, which makes quite a difference, indeed. The correct distance, incidentally, was established by no less than the

trial court it-self which, in its examination of Robert Ha, the principal prosecution witness, elicited from him the said information in the following exchange:

"COURT:

"Q How far was the Philippine Rabbit bus ahead of you before the car swerved to your lane?

"WITNESS

"A: Approximately about 150 feet ahead of me, Your Honor."[6]

The Court considers this discrepancy important be-cause the finding of negligence by the trial court is based on whether or not the accused had enough opportunity to avoid the collision. And that opportunity depended on the distance between the two vehicles. If the trial judge had carefully considered the evidence and discovered that the distance was 150 feet and not meters, it is doubtful that he would have concluded as he did that the accused was negligent. The distance of 150 feet is less than one-third of 150 meters, which means that the sufficient time imagined by the trial judge would have been correspondingly - and significantly - reduced by two-thirds of the actual period. The time as shortened could not have, if we apply the trial judge's own calculations, prevented the petitioner from avoiding the collision.

Another indication of carelessness, this time on the part of the respondent court, is its observation, in rejecting the petitioner's version of the collision, that "the police sketch of the collision scene fails to reveal any skidmarks of the appellant's car,"[7] on the highway. What is rather odd about this finding is that the trial court, and the respondent court later, never considered the fact that the sketch was made five days after the collision, as clearly emphasized by the petitioner in his brief. Apparently, it did not occur to the courts below - and this is also somewhat puzzling - that all skidmarks would have disappeared by that time on the busy highway.

There was also apparent disregard of the record when the respondent court observed that the petitioner had not presented his companion to testify on his behalf, concluding that "such failure to present Heras raises the presumption that his testimony, had it been presented, would have been adverse to the appellant's cause (*Orfanel v. People*, 30 SCRA 825)."[8] This is another careless conclusion. The premise is incorrect, and so the conclusion must also be rejected. In fact, the petitioner did present Heras, and Heras did testify in support of the petitioner, substantially corroborating the petitioner's account of the collision. A reading of the transcript of the stenographic notes in the hearing of the case on July 27, 1983, will readily disclose this.[9]

The Court is also perplexed by the following portion of the appealed decision:

"If it was true that appellant lost control of his vehicle as early as when his car hit the shoulder of the road, it was extremely stupid of him to move his car back to the highway while his car was still out of control. This is especially true in the face of his own admission that he saw the Rabbit bus for the first time when it was still about 200 meters away overtaking a vehicle (jeep of Robert Ha) which was immediately behind a tricycle' (p. 2, *ibid.*). Assuming that appellant indeed lost control of his car as he hit the shoulder, he should have applied full not a little pressure upon his brakes. He should have stopped his vehicle instead of driving it back to the highway and risking collision with oncoming vehicles."[10]

As the car was "still out of control," why is it assumed that the petitioner would nonetheless be able, although this would be "extremely stupid," to move it back to the highway? It is really mystifying that the respondent court would still expect the petitioner to control the car which, as it says so itself, was then "out of control." "Assuming the appellant indeed lost control of his car as he hit the shoulder," the decision adds, "he should have stopped his vehicle instead of driving it back to the highway and risking collision with oncoming vehicles." This is hardly logical. The court cannot assume that the petitioner lost control of his vehicle and on that assumption fault him for

not correctly controlling it. That would be impossible, to say the least. When one loses control of his car, he cannot direct it the way he wants, or move it in the direction he chooses, or accelerate or stop it, for the simple reason that it is precisely out of control. A car out of control is simply out of control, period. As for the "little pressure" the petitioner says he applied on the brakes, the purpose, according to him, was to prevent his car from turning turtle as a result of a sudden stop that would have been caused by his jamming on the brakes.

The real culprit in this unfortunate incident, as the Court sees it, could be the driver of the Philippine Rabbit bus whose recklessness was the cause of the collision between the petitioner's car and Robert Ha's jeep. We notice that the trial court made the meaningful observation that "the Philippine Rabbit bus may be faulted," but added rather helplessly, that "it is not here charged."^[11] We hope it did not mean by this that someone else had to be made liable, to vindicate the victims' rights.

It seems to us that a simple investigation would have uncovered the identity and whereabouts of the Rabbit bus driver, with a view to his prosecution for his involvement in the collision. Why this was not done reflects on the sense of duty of the law-enforcement officers who investigated this matter and on the resourcefulness of the petitioner and his counsel whose cause could have improved with the indictment of the said driver.

At any rate, it is the finding of the Court, in view of the misappreciation of the evidence of record by the respondent court and the trial court, that the guilt of the petitioner has not been proved beyond reasonable doubt. Consequently, he should not have been held guilty of even simple negligence and instead is entitled to be completely absolved of criminal responsibility.

The civil liability is, however, a different question.

While the quantum of proof necessary for conviction has not been established, there is, in our view, a preponderance of evidence to hold the petitioner liable in damages for the injuries sustained by the victims of this accident. Although it is really doubtful that he was criminally negligent, we find there is enough evidence to sustain the conclusion that a little more caution and discretion on his part in reacting to the threat of a head-on collision with the oncoming bus, could have avoided the unfortunate accident. For this shortcoming, we hold him liable for the hospitalization expenses and unearned salaries of the victims as itemized by the trial court and affirmed by the respondent court. We absolve him, however, from the payment of moral damages and so reduce his total civil liability to P46,131.04.

We apply here the doctrine announced in the recent case of *People v. Ligon*,^[12] where the accused was acquitted of the crime of homicide for lack of clear and convincing proof that he had criminally caused a cigarette vendor to fall to his death from the jeep where he was hanging onto. Nevertheless, from the totality of the facts presented, we declared there was a preponderance of evidence to hold the accused liable in damages for the tragic mishap that befell the victim. We make a similar finding in this case and hold the petitioner civilly answerable for his quasi-delict.

WHEREFORE, the petitioner is ACQUITTED and his conviction is REVERSED, but he is held liable in the total sum of P46,131.04 for damages as above specified. No costs.

SO ORDERED.

Teahankee, C.J., Narvasa, Paras, and Gancayco, JJ., concur.

* Presided by Judge Romeo D. Magat

[1] Rollo, pp. 27-28.

** J.A. Sison, ponente, Nocon and Alfonso, JJ.

[2] Rollo, pp. 36-37.

[3] Ibid., p. 20.

[4] Id., pp. 96-97.

[5] id. p. 30.

[6] id., p. 14; TSN, May 5, 1983, pp. 22-23.

[7] id., p. 31.

[8] id., p. 32.

[9] id., p. 22

[10] Decision, p. 6.

[11] Rollo, p. 30.

[12] G.R. No. 74041, prom. July 29, 1987.

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