

**BENJAMIN SALVOSA AND BAGUIO COLLEGES FOUNDATION,
PETITIONERS, VS. THE INTERMEDIATE APPELLATE COURT,
EDUARDO B. CASTRO, DIOMEDES B. CASTRO, VIRGINIA B. CASTRO
AND RODOLFO B. CAST...**

G.R. No. 70458. October 05, 1988

Ponente: PADILLA , J.

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PADILLA , J.:

In this petition for review on certiorari, petitioners seek the reversal of the decision[1] of respondent Intermediate Appellate Court, dated 7 December 1984, in AC-G.R. No. CV 69876, in so far as it affirmed the decision[2] of the Court of First Instance of Tarlac (hereinafter referred to as the Trial Court), which held, among others, petitioners solidarily liable with Jimmy B. Abon, under Art. 2180 of the Civil Code.

The relevant facts, as found by the Trial Court and adopted by reference by the respondent Court, are:

"x x x Baguio Colleges Foundation (BCF, hereafter) is an academic institution. x x x [However], it is also an institution of arts and trade. It has so advertised itself, as its own evidence shows. Its brochure (Exh. 2) shows that BCF has a full-fledged technical-vocational department offering Communication, Broadcast and Telytype Technician courses as well as electronics Serviceman and Automotive Mechanics courses. x x x these courses divest BCF of the nature or character of being purely or exclusively an academic institution." [3]

Within the premises of the BCF is an ROTC Unit, the Baguio Colleges Foundation Reserve Officers Training Corps (ROTC) Unit, which is under the full control of the Armed Forces of the Philippines.[4] The ROTC Unit, by way of accomodation to the Armed Forces of the Philippines (AFP), pursuant to Department Order No. 14, Series of 1975 of the Department of Education and Culture,[5] is provided by the BCF an office and an armory located at the basement of its main building.[6]

The Baguio Colleges Foundation ROTC Unit had Jimmy B. Abon as its duly appointed armorer.[7] As armorer of the ROTC Unit, Jimmy B. Abon received his appointment from the AFP. Not being an employee of the BCF, he also received his salary from the AFP,[8] as well as orders from Captain Roberto C. Ungos, the Commandant of the Baguio Colleges Foundation ROTC Unit, concurrent Commandant of other ROTC units in Baguio and an employee (officer) of the AFP.[9] Jimmy B. Abon was also a commerce student of the BCF.[10]

On 3 March 1977, at around 8:00 p.m., in the parking space of BCF, Jimmy B. Abon shot Napoleon Castro a student of the University of Baguio with an unlicensed firearm which the former took from the armory of the ROTC Unit of the BCF.[11] As a result, Napoleon Castro died and Jimmy B. Abon was prosecuted for, and convicted of the crime of Homicide by Military Commission No. 30, AFP.[12]

Subsequently, the heirs of Napoleon Castro sued for damages, impleading Jimmy B. Abon, Roberto C. Ungos (ROTC Commandant), Benjamin Salvosa (President and Chairman of the Board of BCF), Jesus Salvosa (Executive Vice President of BCF), Libertad D. Quetolio (Dean of the College of Education and Executive

Trustee of BCF) and the Baguio Colleges Foundation, Inc. as party defendants. After hearing, the Trial Court rendered a decision, (1) sentencing defendants Jimmy B. Abon, Benjamin Salvosa and Baguio Colleges Foundation, Inc., jointly and severally, to pay private respondents, as heirs of Napoleon Castro: a) P12,000.00 for the death of Napoleon Castro, (b) P316,000.00 as indemnity for the loss of earning capacity of the deceased, (c) P5,000.00 as moral damages, (d) P6,000.00 as actual damages, and (e) P5,000.00 as attorney's fees, plus costs; (2) absolving the other defendants; and (3) dismissing the defendants' counterclaim for lack of merit.[13] On appeal by petitioners, the respondent Court affirmed with modification the decision of the Trial Court. The modification consisted in reducing the award for loss of earning capacity of the deceased from P316,000 to P30,000, by way of temperate damages, and increasing the indemnity for the death of Napoleon Castro from P12,000 to P30,000.

Hence, this petition.

The central issue in this case is whether or not petitioners can be held solidarily liable with Jimmy B. Abon for damages under Article 2180 of the Civil Code, as a consequence of the tortious act of Jimmy B. Abon.

Under the penultimate paragraph of Art. 2180 of the Civil Code, teachers or heads of establishments of arts and trades are liable for "damages caused by their pupils and students or apprentices, so long as they remain in their custody." The rationale of such liability is that so long as the student remains in the custody of a teacher, the latter "stands, to a certain extent, in loco parentis [as to the student] and [is] called upon to exercise reasonable super-vision over the conduct of the [student]."[14] Likewise, "the phrase used in [Art. 2180]- 'so long as (the students) remain in their custody' means the protective and super-visory custody that the school and its heads and teachers exercise over the pupils and students for as long as they are at attendance in the school, including recess time." [15]

In the case at bar, in holding that Jimmy B. Abon was still in the protective and supervisory custody of the Baguio Colleges Foundation when he shot Napoleon Castro, the respondent Court ruled that:

"it is true that Abon was not attending any class or school function at the time of the shooting incident, which was at about 8 o'clock in the evening; but considering that Abon was employed as an armorer and property custodian of the BCF ROTC unit, he must have been attend-ing night classes and therefore that hour in the evening was just about dismissal time for him or soon thereafter. The time interval is safely within the 'recess time' that the trial court spoke of and envisioned by the Palisoc case, supra." [16] (Italic supplied)

In line with the case of Palisoc,[17] a student not "at attendance in the school" cannot be in "recess" thereat. A "recess," as the concept is embraced in the phrase "at attendance in the school," contemplates a situation of temporary adjournment of school activities where the student still remains within call of his mentor and is not permitted to leave the school premises, or the area within which the school activity is conducted. Recess by its nature does not include dismissal.[18] Likewise, the mere fact of being enrolled or being in the premises of a school without more does not constitute "attending school" or being in the "protective and supervisory custody" of the school, as contemplated in the law.

Upon the foregoing considerations, we hold that Jimmy B. Abon cannot be considered to have been "at attendance in the school," or in the custody of BCF, when he shot Napoleon Castro. Logically, therefore, petitioners cannot under Art. 2180 of the Civil Code be held solidarily liable with Jimmy B. Abon for damages resulting from his acts.

Besides, the record shows that before the shooting incident, Roberto B. Ungos ROTC Unit Commandant, AFP, had instructed Jimmy B. Abon "not to leave the office and [to keep the armory] well guarded." [19] Apart from negating a finding that Jimmy B. Abon was under the custody of the school when he committed the act for which

the petitioners are sought to be held liable, this circumstance shows that Jimmy B. Abon was supposed to be working in the armory with definite instructions from his superior, the ROTC Commandant, when he shot Napoleon Castro.

Petitioners also raise the issue that, under Art. 2180 of the Civil Code, a school which offers both academic and technical-vocational courses cannot be held liable for a tort committed by a student enrolled only in its academic program; however, considering that Jimmy B. Abon was not in the custody of BCF when he shot Napoleon Castro, the Court deems it unnecessary to pass upon such other issue.[20]

WHEREFORE, the decision appealed from is hereby REVERSED in so far as it holds petitioners solidarily liable with Jimmy B. Abon for his tortious act in the killing of Napoleon Castro. No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Justice Serafin E. Camilon and concurred in by Justices Crisolito Pascual and Desiderio P. Jurado.

[2] Penned by Judge Fernando S. Alcantara.

[3] Rollo, p. 18.

[4] Id., at 24; Record on Appeal, p. 41; As stated in the decision of the Trial Court and adopted by reference by the respondent Court.

[5] Exhibits, p. 21.

[6] See note 4, *supra*.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Rollo, p. 24; Record on Appeal, p. 42; As stated in the decision of the Trial Court and adopted by reference by the respondent Court.

[11] Rollo, p. 24; Record on Appeal, p. 40; As stated in the decision of the Trial Court and adopted by reference by the respondent Court.

[12] Ibid.

[13] Rollo, p. 24; Record on Appeal, p. 46.

[14] *Palisoc v. Brillantes*, 41 SCRA 548.

[15] Ibid.

[16] Rollo, p. 19.

[17] *Palisoc vs. Brillantes, et al.*, L-29025, Oct. 4, 1971, 41 SCRA 548.

[18] Schedule of classes at BCF is from 7:30 a.m. to 8:00 p.m.

[19] TSN, 6 January 1981, p. 25.

[20] The writer, however, like the ponente in the case of Palisoc, former Mr. Chief Justice Claudio Teehankee, also manifests his concurrence "with the views expressed in the dissenting opinion of Mr. Justice J.B.L. Reyes in Exconde [concurred in by Justices S. Padilla and A. Reyes] that '(I) can see no sound reason for limiting Art. 1903 of the old Civil Code to teachers of arts and trades and not to academic ones. What substantial difference is there between them in so far as concerns the proper supervision and vigilance over their pupils. It cannot be seriously contended that an academic teacher is exempt from the duty of watching that his pupils do not commit a tort to the detriment of third persons, so long as they are in a position to exercise authority and supervision over the pupil.'"

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