

LEANDRO CARILLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 86890. January 21, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Dr. Leandro Carillo, an anesthetist, seeks review of the Decision of the Court of Appeals dated 28 November 1988, which affirmed his conviction by the Regional Trial Court of the crime of simple negligence resulting in homicide, for the death of his thirteen (13) year old patient Catherine Acosta. The trial court had sentenced him to suffer the penalty of arresto mayor in its medium period (four[4] months' imprisonment), as well as to pay the heirs of his patient an indemnity of P30,000.00 for her death, P10,000.00 as reimbursement for actual expenses incurred, P50,000.00 as moral damages and to pay the costs of the suit.[1]

The information filed against petitioner and his co-accused, the surgeon Dr. Emilio Madrid, alleged the following:

"That on or about the 31st day of May 1981, in the municipality of Paranaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding with one another, without taking the necessary care and precaution to avoid injury to person, did then and there willfully, unlawfully and feloniously operate, in a reckless, careless and imprudent manner and neglected to exercise their respective medical knowhow and tasks and/or departed from the recognized standard in their treatment, diagnosis of the condition, and operation of the patient, one Catherine Acosta, 13 years old, which negligence caused the death of the said Catherine Acosta." [2]

Petitioner and Dr. Emilio Madrid entered pleas of not guilty at arraignment and the case proceeded to trial with Judge Job B. Madayag presiding.[3]

The prosecution presented as its principal evidence the testimony of four (4) witnesses, namely: 1) Yolanda Acosta, Catherine's mother, who was able to observe the conduct of the accused outside the operating theater before, during and after the appendectomy procedure carried out on her daughter; [4] 2) Domingo Acosta, Catherine's father, who corroborated some parts of his wife's testimony; [5] 3) Dr. Horacio Buendia, an expert witness who described before the trial court the relationship between a surgeon and an anaesthetist in the course of a surgical operation, as well as define the likelihood of cardiac arrest as a post operative complication; [6] and 4) Dr. Nieto Salvador, an expert witness who analyzed and explained the significance of the results of the pathological study and autopsy conducted on Catherine's body by one Dr. Alberto Reyes. [7]

After the prosecution had rested its case, the defense was granted leave to file a demurrer to the evidence. [8] After failing to file the demurrer within the reglementary period, Judge Manuel Yuzon, who had in the meantime taken over as presiding judge of the sala where this case was pending, denied the defense motion for extension of time to file demurrer and declared the case submitted for decision. [9]

On 19 September 1985, the trial court promulgated its decision convicting both accused of the crime charged. [10]

On appeal, the Court of Appeals affirmed the judgment of conviction, and specified that the civil liability of the two (2) accused was solidary in nature.[11]

Petitioner Dr. Carillo alone filed the present Petition for Review with the Court, seeking reversal of his conviction, or in the alternative, the grant of a new trial. Dr. Madrid did not try to appeal further the Court of Appeals Decision. Accordingly, the judgment of conviction became final insofar as the accused surgeon Dr. Madrid is concerned.

The facts of the case as established by the Court of Appeals are as follows:

"The deceased, Catherine Acosta, a 13 year old girl, daughter of spouses Domingo and Yolanda Acosta, complained to her father at about 10:30 o'clock in the morning of May 31, 1981 of pains in the lower part of her abdomen. Catherine was then brought to Dr. Elva Peña. Dra. Peña called for Dr. Emilio Madrid and the latter examined Catherine Acosta. According to Dr. Madrid, his findings might be appendicitis. Then Dr. Peña told Catherine's parents to bring the child to the hospital in Baclaran so that the child will be observed.

At the Baclaran General Hospital, a nurse took blood sample from the child. The findings became known at around 3:00 o'clock in the afternoon and the child was scheduled for operation at 5:00 o'clock in the afternoon. The operation took place at 5:45 P.M. because Dr. Madrid arrived only at that time.

When brought inside the operating room, the child was feeling very well and they did not subject the child to ECG (electrocardiogram) and X-ray.

The appellant Dr. Emilio Madrid, a surgeon, operated on Catherine. He was assisted by appellant, Dr. Leandro Carillo, an anesthesiologist.

During the operation, while Yolanda Acosta, Catherine's mother, was staying outside the operating room, she 'noticed something very unfamiliar.' The three nurses who assisted in the operation were going in and out of the operating room, they were not carrying anything, but in going out of the operating room, they were already holding something.

Yolanda asked one of the nurses if she could enter the operating room but she was refused.

At around 6:30 P.M., Dr. Emilio Madrid went outside the operating room and Yolanda Acosta was allowed to enter the first door.

The appendicitis (sic) was shown to them by Dr. Madrid because, according to Dr. Madrid, they might be wondering because he was going to install drainage near the operating (sic) portion of the child.

When asked, the doctor told them the child is already out of danger but the operation was not yet finished.

It has also been established that the deceased was not weighed before the administration of anesthesia on her.

The operation was finished at 7:00 o'clock in the evening and when the child was brought out from the operating room, she was observed to be shivering (nanginginig); her heart beat was not normal; she was asleep and did not wake up; she was pale; and as if she had difficulty in breathing and Dr. Emilio Madrid suggested that she be placed under oxygen tank; that oxygen was administered to the child when she was already in the room.

Witness Yolanda Acosta further testified that shortly before her child was transferred from the operating room to her room, she (witness) was requested by the anesthesiologist to go home and get a blanket. A portion of Yolanda Acosta's testimony on what happened when she returned to the hospital are reproduced hereunder as follows:

'Q.

What happened afterward?

A.

When I arrived in the hospital, my child was being transferred to her bed.

Q.

What else happened?

A.

I noticed that the heartbeat of my daughter was not normal. And I noticed that her hospital gown was rising up and down.

Q.

What transpired after that?

A.

I asked Dr. Madrid why it was like that, that the heartbeat of my daughter is not normal.

Q.

And did the doctor make any reply?

A.

The doctor said because of the lesion of the child.

Q.

What else happened?

A.

After they have revived the heartbeat of the child, Dr. Carillo and Dr. Madrid left.

Q.

Now, do you remember what time was it when Dr. Carillo stepped out?

A.

Only a minute after they have transferred the child to the bed.

Q.

What happened later on after Dr. Carillo and Dr. Madrid stepped out of the hospital?

A.

After 15 or 30 minutes has lapsed at about 7:15 or 7:30, the child developed convulsion and stiffening of the body.

Q.

When you observed convulsion and stiffening of the body, did you do anything?

A.

We requested the nurse who was attending to her to call for a doctor.

Q.

And the nurse who was attending to the patient called for a doctor?

A.

They called for Dra. Peña, their family physician.

Q.

What transpired afterwards?

A.

What Dra. Peña did was to call for Dr. Madrid and the cardiologist.

Q.

Did this doctor arrive?

A.

Yes.

Q.

What transpired after the doctor arrived?

A.

They examined the child.

Q.

After they examined the child, did they inform you of the result of the examination?

A.

The cardiologist was the one who informed us after he stepped out of the room when we followed him. The doctor told us that she suffered severe infection which went up to her head.

Q.

After you were informed of the result of his examination, what transpired next?

A.

According to them, they will do their best for the child and that they will call for Dr. Carillo.

Q.

Did Dr. Carillo arrive?

A.

At around 10:30 in the evening.

Q.

Did Dr. Carillo do anything when he arrived on 31 May 1981?

A.

When he arrived, he noticed that there were two small bottles and big bottles of dextrose which were hanging above the bed of the child. Then he said, 'What is this? Christmas tree or what?' He told us that one bottle of dextrose be removed. And the big one will remain.

Q.

What happened after that?

A.

After that we talked to Dr. Carillo and asked him how did this happen to the child.

Q.

What did Dr. Carillo reply (sic) to you?

A.

He answered 'that is nothing, the child will regain consciousness and if the child will not regain consciousness, I will resigned (sic) as a doctor.'"[12] (Underscoring supplied)

When Catherine remained unconscious until noontime the next day, a neurologist examined her and she was diagnosed as comatose.[13] Three (3) days later, Catherine died without regaining consciousness.[14]

The Court of Appeals held that Catherine had suffered from an overdose of, or an adverse reaction to, anaesthesia, particularly the arbitrary administration of Nubain, a pain killer, without benefit of prior weighing of the patient's body mass, which weight determines the dosage of Nubain which can safely be given to a patient.[15] The Court of Appeals held that this condition triggered off a heart attack as a post-operative complication, depriving Catherine's brain of oxygen, leading to the brain's hemorrhage.[16] The Court of Appeals identified such cardiac arrest as the immediate cause of Catherine's death.[17]

The Court of Appeals found criminal negligence on the part of petitioner Dr. Carillo and his co-accused Dr. Madrid, holding that both had failed to observe the required standard of diligence in the examination of Catherine prior to the actual administration of anaesthesia;[18] that it was "a bit rash" on the part of the accused Dr. Carillo "to have administered Nubain without first weighing Catherine";[19] and that it was an act of negligence on the part of both doctors when, (a) they failed to monitor Catherine's heartbeat after the operation and (b) they left the hospital immediately after reviving Catherine's heartbeat, depriving the latter of immediate and expert medical assistance when she suffered a heart attack approximately fifteen (15) to (30) thirty minutes later.[20]

Since neither petitioner nor his co-accused presented evidence in their own behalf, the present Petition seeks to question the soundness of the factual conclusions drawn by the Court of Appeals, upon which the affirmance of petitioner's conviction was based.

Close examination of the instant Petition for Review shows that petitioner's main arguments are two-fold: (1) the Court of Appeals "completely brushed aside" and "misapprehended" Catherine's death certificate and biopsy report which allegedly showed that the cause of death was a ruptured appendix, which led to blood poisoning;[21] rather than faulty anaesthetic treatment; and (2) there was no direct evidence of record showing that Nubain was administered to Catherine either during the appendectomy procedure or after such operation.[22]

Two (2) related issues are thus posed for the Court's consideration. The first is whether the Court of Appeals so drastically "misapprehended" the relevant, operative facts in this case as to compel this Court to examine and resolve question(s) of fact which would have a decisive significance for the disposition of this case. The rule is

too firmly settled to require much documentation that only questions of law may be raised before this Court in a petition for review on certiorari, subject to certain well-known exceptions.[23] After careful scrutiny of petitioner's contentions before us and the record of this case, we do not believe that petitioner has shown "misapprehension of facts" on the part of the Court of Appeals which would require this Court to overturn the judgment reached by the former.

The second issue is whether or not the findings of fact of the Court of Appeals adequately support the conclusion that petitioner Dr. Carillo was, along with Dr. Madrid, guilty of simple negligence which resulted in homicide. Our review of the record leads us to an affirmative answer.

Petitioner contends that the Court of Appeals seriously erred in finding that an overdose of, or an allergic reaction to, the anaesthetic drug Nubain had led to the death of Catherine Acosta and that the true cause of Catherine's death was that set out in the death certificate of Catherine: "Septicemia (or blood poisoning) due to perforated appendix with peritonitis." [24] The concept of causation in general, and of the cause of death in human beings in particular, are complex and difficult notions. What is fairly clear is that death, understood as a physical condition involving cessation of vital signs in the brain and heart, is preceded by a series of physiological events, any one of which events can, with equal cogency, be described as a "cause of death." The Court of Appeals found that an overdose of, or an adverse reaction to, Nubain, an anaesthetic or pain-killing drug the appropriate dose of which depends on the body weight or mass of the patient, had generated or triggered off cardiac arrest, which in turn led to lack of oxygen in Catherine's brain, which then brought about hemorrhaging in the brain. Vital activity in the brain thereupon ceased. The medical evidence presented at the trial was quite consistent with the findings of the Court of Appeals which concluded that cardiac arrest was the cause of Catherine's death.[25]

For his part, petitioner insists that cardiac arrest is not the only cause of oxygen-starvation of the brain, that septicemia with peritonitis or severe infection which had "gone up to the head" of Catherine was an equally efficient cause of deprivation of the brain of oxygen and hence of brain hemorrhage. The medical testimony of the expert witnesses for the prosecution on which petitioner relies is also consistent with petitioner's theory that septicemia with peritonitis was, or at least could have been, the cause of Catherine's death.[26]

Indeed, it appears to the Court that there was no medical proof submitted to the trial court to show that one or the other "cause" was necessarily an exclusive cause of death in the case of Catherine Acosta; that an overdose of or allergic reaction to Nubain could not have combined with septicemia and peritonitis in bringing about Catherine's death.

What is of critical importance for present purposes is not so much the identification of the "true cause" or "real cause" of Catherine's death but rather the set of circumstances which both the trial court and the Court of Appeals found constituted simple (as distinguished from reckless) negligence on the part of the two accused Dr. Madrid and Dr. Carillo leading to the death of Catherine.

When the patient was wheeled out of the operating room after completion of surgery, she manifested signs of medical instability (i.e., shivering, paleness, irregular breathing and weak heart beat).[27] She was not brought to a properly equipped recovery room, or intensive care unit which the hospital lacked.[28] Such facilities and their professional staffs, of which an anaesthetist is commonly a part, are essential for providing close observation and patient care while a post-surgery patient is recovering from the effects of anaesthesia and while the normal protective mechanisms are still dull or obtunded.[29] Instead, the patient was merely brought to her assigned hospital bed and was provided oxygen on the instructions of Dr. Madrid and where both petitioner and Dr. Madrid then "revived" her heartbeat.[30] Both doctors then left their patient and the hospital; approximately fifteen minutes later, she suffered convulsions and cardiac arrest.[31]

The conduct of Dr. Madrid and of the petitioner constituted inadequate care of their patient in view of her vulnerable condition. Both doctors failed to appreciate the serious condition of their patient whose adverse physical signs were quite manifest right after surgery. And after reviving her heartbeat, both doctors failed to monitor their patient closely or extend further medical care to her; such conduct was especially necessary in view of the inadequate, post-operative facilities of the hospital. We do not, of course, seek to hold petitioner responsible for the inadequate facilities of the Baclaran General Hospital. We consider, however, that the inadequate nature of those facilities did impose a somewhat higher standard of professional diligence upon the accused surgeon and anaesthetist personally than would have been called for in a modern fully-equipped hospital.

While Dr. Madrid and a cardiologist were containing the patient's convulsions, and after the latter had diagnosed that infection had reached the patient's head, these two (2), apparently after consultation, decided to call-in the petitioner.[32] There is here a strong implication that the patient's post-operative condition must have been considered by the two (2) doctors as in some way related to the anaesthetic treatment she had received from the petitioner either during or after the surgical procedure.

Once summoned, petitioner anaesthesiologist could not be readily found. When he finally appeared at 10:30 in the evening, he was evidently in a bad temper, commenting critically on the dextrose bottles before ordering their removal.[33] This circumstance indicated he was not disposed to attend to this unexpected call, in violation of the canons of his profession that as a physician, he should serve the interest of his patient "with the greatest of solicitude, giving them always his best talent and skill." [34] Indeed, when petitioner finally saw his patient, he offered the unprofessional bluster to the parents of Catherine that he would resign if the patient will not regain consciousness.[35] The canons of medical ethics require a physician to "attend to his patients faithfully and conscientiously." He should secure for them all possible benefits that may depend upon his professional skill and care. As the sole tribunal to adjudge the physician's failure to fulfill his obligation to his patient is, in most cases, his own conscience, violation of this rule on his part is "discreditable and inexcusable." [36]

Nubain was an experimental drug for anaesthesia and post-operative pain and the medical literature required that a patient be weighed first before it is administered and warned that there was no (or inadequate) experience relating to the administration thereof to a patient less than eighteen (18) years of age.[37] Yet, the doctor's order sheet (Exhibit "C") did not contain this precaution but instead directed a reader to apply the drug only when warranted by the circumstances.[38] During the offer of Exhibit "C" by the prosecution, Dr. Madrid admitted that this prescription, which was unsigned, was made in his own handwriting.[39] It must be observed that the instruction was open-ended in that some other individual still had to determine if circumstances existed warranting administration of the drug to the patient. The document thus indicated the abdication of medical responsibility on an extremely critical matter. Since petitioner anaesthesiologist entered subsequent prescriptions or orders in the same order sheet, which were signed by him, at 7:15 P.M, on the same evening of 31 May 1981, he was in a position to appreciate the dangers inherent in the prior prescription, which was within his (petitioner's) area of specialization, and to order measures to correct this anomaly and protect his patient's well-being. So far as the condition of the evidence shows, he failed to do so. In sum, only a low level of diligence was exhibited by petitioner and Dr. Madrid in the prescription of medication for their patient.

As noted earlier, petitioner relied heavily in this proceeding on the testimony on cross-examination of the expert witnesses for the prosecution to show that blood poisoning resulting from a ruptured appendix could also be responsible for the patient's death.

No suggestion has been made that the rupture of the patient's appendix occurred prior to surgery. After her blood sample was examined, the patient was merely diagnosed as a case of appendicitis, without further elaboration.[40] No intensive preoperative preparations, like the immediate administration of antibiotics, was thereafter undertaken

on the patient. This is standard procedure for patients who are, after being diagnosed, suspected of suffering from a perforated appendix and consequent peritonitis.[41] The mother also testified that petitioner anaesthesiologist merely injected a drug, "pre-anaesthesia" intended to put the patient to sleep, into the container of fluids being administered to her daughter intravenously at her room, prior to surgery.[42] We note further that the surgeon Dr. Madrid was forty-five minutes late in arriving at the operating theater.[43] Considering that delay in treatment of appendicitis increases the morbidity of the patient.[44] Dr. Madrid's conduct can only be explained by a pre-operative diagnosis on his part that the condition of appendicitis was not yet attended by complications (i.e., a ruptured appendix and peritonitis).

The above circumstances do strongly indicate that the rupture of the patient's appendix occurred during the appendectomy procedure, that is, at a time and place -- the operating room -- where the two (2) accused were in full control of the situation and could determine decisively what needed to be done in respect of the patient.[45] This circumstance must be considered in conjunction with other related circumstances which the prosecution had proven: that the patient was ambulatory when brought to the operating room;[46] that she left the operating room two (2) hours later in obviously serious condition; and that an appendectomy accompanied or followed by sustained antibiotic treatment is a fairly common and generally accepted medical procedure for dealing with ruptured appendix and peritonitis,[47] a fact of which judicial notice may be taken.

As early as in *People v. Vistan*,[48] the Court defined simple negligence, penalized under what is now Article 365 of the Revised Penal Code, as "a mere lack of prevision in a situation where either the threatened harm is not immediate or the danger not openly visible." Put in a slightly different way, the gravamen of the offense of simple negligence is the failure to exercise the diligence necessitated or called for by the situation which was not immediately life-destructive but which culminated, in the present case, in the death of a human being three (3) days later. Such failure to exercise the necessary degree of care and diligence is a negative ingredient of the offense charged. The rule in such cases is that while the prosecution must prove the negative ingredient of the offense, it needs only to present the best evidence procurable under the circumstances, in order to shift the burden of disproving or countering the proof of the negative ingredient to the accused, provided that such initial evidence establishes at least on a *prima facie* basis the guilt of the accused.[49] This rule is particularly applicable where the negative ingredient of the offense is of such a nature or character as, under the circumstances, to be specially within the knowledge or control of the accused.[50] In the instant case, the Court is bound to observe that the events which occurred during the surgical procedure (including whether or not Nubain had in fact been administered as an anaesthesia immediately before or during the surgery) were peculiarly within the knowledge and control of Dr. Carillo and Dr. Madrid. It was, therefore, incumbent upon the two (2) accused to overturn the *prima facie* case which the prosecution had established, by reciting the measures which they had actually taken to prevent or to counter the obviously serious condition of Catherine Acosta which was evident right after surgery. This they failed or refused to do.

Still another circumstance of which account must be taken is that both petitioner and Dr. Madrid failed to inform the parents of their minor patient of the nature of her illness, or to explain to them either during the surgery (if feasible) or at any time after the surgery, the events which comprised the dramatic deterioration of her condition immediately after surgery as compared with her pre-surgery condition. To give a truthful explanation to the parents was a duty imposed upon them by the canons of their profession.[51] Petitioner should have explained to Catherine's parents the actual circumstances surrounding Catherine's death, how, in other words, a simple appendectomy procedure upon an ambulatory patient could have led to such fatal consequences.

By way of resume, in the case at bar, we consider that the chain of circumstances above noted, namely: (1) the failure of petitioner and Dr. Madrid to appreciate the serious post-surgery condition of their patient and to monitor

her condition and provide close patient care to her; (2) the summons of petitioner by Dr. Madrid and the cardiologist after the patient's heart attack on the very evening that the surgery was completed; (3) the low level of care and diligence exhibited by petitioner in failing to correct Dr. Madrid's prescription of Nubain for post-operative pain; (4) the extraordinary failure or refusal of petitioner and Dr. Madrid to inform the parents of Catherine Acosta of her true condition after surgery, in disregard of the requirements of the Code of Medical Ethics; and (5) the failure of petitioner and Dr. Madrid to prove that they had in fact exercised the necessary and appropriate degree of care and diligence to prevent the sudden decline in the condition of Catherine Acosta and her death three (3) days later, leads the Court to the conclusion, with moral certainty, that petitioner and Dr. Madrid were guilty of simple negligence resulting in homicide.

In addition to the main arguments raised by petitioner earlier, he also raised an ancillary, constitutional claim of denial of due process. He contends that he was deprived of his right to have competent representation at trial, and to have his cause adequately heard, because his counsel of record, Atty. Jose B. Puerto, was "incompetent" and exhibited "gross negligence" by manifesting an intent to file a demurrer to the evidence, in failing to present evidence in his behalf and in omitting to file a defense memorandum for the benefit of Judge Yuzon, after the latter took over the case at the end of trial and before the Judge rendered his decision.[52] Petitioner submits he is entitled to a new trial.[53]

These contentions do not persuade. An examination of the record indicates that Atty. Puerto represented petitioner during trial with reasonable competence. Except for the two hearing sessions when witness Domingo Acosta was cross-examined and recross-examined by Atty. Puerto, petitioner was present during all the sessions when the other prosecution witnesses were presented and during which Atty. Puerto extensively cross-examined them in behalf of petitioner and Dr. Madrid. This counsel elicited from the two (2) expert witnesses for the prosecution testimony favorable to petitioner and which was relied upon by the latter in this proceeding.[54] The record further indicates that if petitioner indeed entertained substantial doubts about the capability of Atty. Puerto, he could have easily terminated the services of that counsel and retained a new one, or sought from the trial court the appointment of counsel de oficio, during the ample opportunity given him from the time Atty. Puerto manifested his intent to file a demurrer on 16 October 1985, to the submission of the case for decision on 25 June 1986 and before the promulgation of judgment on 19 September 1986.[55] During all this time, petitioner could have obtained leave of court to present evidence in his behalf in lieu of a demurrer, or to submit a memorandum for the defense. After promulgation of the judgment of conviction, petitioner did not seek a new trial, but permitted Atty. Puerto to obtain leave from the trial court to continue on bail during the pendency of the proceedings before the Court of Appeals.[56] Indeed, petitioner replaced Atty. Puerto as counsel only upon institution of the present petition.[57]

Petitioner's constitutional objection is plainly an afterthought.

WHEREFORE, the Decision of the Court of Appeals dated 28 November 1988 is hereby **AFFIRMED**, subject only to the modification that the indemnity for the death of Catherine Acosta is hereby increased to P50,000.00, in line with current jurisprudence.[58]

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Rollo, pp. 60-61.

[2] Record, p. 1.

- [3] Id., pp. 29 and 59.
- [4] TSN, 15 November 1983 and 18 January 1984.
- [5] TSN, 26 November 1984, 11 January and 27 March 1985.
- [6] TSN, 25 July 1984.
- [7] TSN, 7 August 1985.
- [8] Record, p. 185.
- [9] Id., pp. 188, 190, 192 and 198.
- [10] Id., pp. 213-214.
- [11] Decision, pp. 14-15; Rollo, pp. 60-61.
- [12] Id., pp. 3-6; Rollo, pp. 49-52.
- [13] TSN, 15 November 1983, pp. 31-35.
- [14] Exhibit "B," Record, p. 61; TSN, 5 January 1984, p. 25.
- [15] Decision, p. 10; Rollo, p. 56.
- [16] Id., p. 14; Rollo, p. 60.
- [17] Id.
- [18] Id.
- [19] Id., p. 10; Rollo, p. 56.
- [20] Id.
- [21] Petition, p. 22; Rollo, p. 27.
- [22] Petitioner's Memorandum, pp. 6-8; Rollo, pp. 223-225.
- [23] *Caina v. People*, 213 SCRA 309, 313-314 (1992); *Lukban-Ang v. Court of Appeals*, 160 SCRA 138, 149 (1988).
- [24] Exhibit "B," Record, p. 61.
- [25] TSN, 25 July 1984, pp. 16-17; TSN, 7 August 1985, pp. 19-21 and 24-26.
- [26] TSN, 25 July 1984, pp. 27-28; TSN, 7 August 1985, pp. 38-42.
- [27] TSN, 15 November 1983, p. 25; TSN, 26 November 1984, pp. 20-21.
- [28] TSN, 15 November 1983, pp. 39-40.
- [29] Davis-Christopher (Ed.), *Textbook of Surgery*, volume 1, (hereafter referred to as "Davis-Cristopher") p. 216 (1981); See also Katzung (Ed.), *Basic and Clinical Pharmacology*, p. 297 (1984).
- [30] TSN, 15 November 1983, pp. 23, 25-26.
- [31] Id., pp. 26-27.
- [32] TSN, 15 November 1983, pp. 28-29.

- [33] TSN, 15 November 1983, p. 29.
- [34] Article 1, Section 3, 1960 Code of Ethics of the Medical Profession in the Philippines.
- [35] TSN, 15 November 1983, pp. 29-30.
- [36] Article 2, Section 1, 1960 Code of Ethics of the Medical Profession in the Philippines.
- [37] Exhibits "D" and "E" for the Prosecution; Record, pp. 63-64.
- [38] Record, p. 62.
- [39] TSN, 7 August 1985, pp. 47-49.
- [40] TSN, 26 November 1984, pp. 11-12.
- [41] Davis-Christopher, at pp. 1055-1056; see also Schwartz (Ed.), Principles of Surgery, Vol. 2 (hereafter referred to as "Schwartz," pp. 1252 & 1401 (1984).
- [42] TSN, 15 November 1983, pp. 48-54; TSN, 18 January 1984, pp. 13 and 19.
- [43] TSN, 26 November 1984, pp. 12-13.
- [44] Davis-Christopher, at p. 1051; Schwartz at p. 1398.
- [45] See Ybarra v. Spangard, 208 P 2d 445 (1949); Anderson v. Somberg, 338 A 2d 1 (1975).
- [46] TSN, 26 November 1984, p. 14.
- [47] Davis-Christopher, at pp. 1055-1056 and 1061-62; Schwartz at p. 1404.
- [48] 42 Phil. 112-113 (1921).
- [49] See U.S. v. Tria, 17 Phil. 303 (1910); People v. Quebral, 68 Phil. 564 (1939).
- [50] In People v. Pajenado (31 SCRA 812 [1970]), the Court quoted with approval former Chief Justice Moran:

"The mere fact that the adverse party has the control of the better means of proof of the fact alleged, should not relieve the party making the averment of the burden of proving it. This is so, because a party who alleges a fact must be assumed to have acquired some knowledge thereof, otherwise he could not have alleged it. Familiar instance of this is the case of a person prosecuted for doing an act or carrying on a business, such as, the sale of liquor without a license. How could the prosecution aver the want of a license if it had acquired no knowledge of that fact? Accordingly, although proof of the existence or non-existence of such license can, with more facility, be adduced by the defendant, it is nevertheless, incumbent upon the party alleging the want of the license to prove the allegation. Naturally, as the subject matter of the averment is one which lies peculiarly within the control or knowledge of the accused prima facie evidence thereof on the part of the prosecution shall suffice to cast the onus upon him. (6 Moran, Comments on the Rules of Court, 1963 edition, p. 8)." (31 SCRA at 817; underscoring supplied)

This doctrine has been reiterated more recently in People v. Tiozon (198 SCRA 368 [1991]).

- [51] Article I, Section 5 of the 1960 Code of Ethics of the Medical Profession in the Philippines read as follows:

"Sec. 5. A physician must exercise good faith and strict honesty in expressing his opinion as to the diagnosis, prognosis, and treatment of the cases under his care. Timely notice of the serious tendency of the disease should be given to the family or friends of the patients, and even to the patient himself if such information will serve the best interest of the patient and his family. It is highly unprofessional to conceal the gravity of the patient's condition, or to pretend to cure or alleviate a disease for the purpose of persuading the patient to take

or continue the course of treatment, knowing that such assurance is without accepted basis. It is also unprofessional to exaggerate the condition of the patient." (See also Article II, paragraph 3, 1993 Code of Ethics of the Medical Profession)

[52] Petition, pp. 13-15; Petitioner's Memorandum, pp. 24-27; Rollo, pp. 18-20 and 242-244.

[53] Id., p. 16; Rollo, p. 21.

[54] Minutes of the hearing sessions in Criminal Case No. 3840 for 18 January and 25 July 1984, 11 January, 27 March and 7 August 1985; Record, pp. 72, 110, 137, 154 and 179; transcript of stenographic notes of witnesses Yolanda Acosta, Domingo Acosta, Dr. Horacio Buendia and Dr. Nieto Salvador.

[55] People v. Luvendino, 211 SCRA 36, 53-54 (1992); Record, pp. 185, 198, 201, 202, 209, 211 and 232,

[56] See People v. Martinez, 205 SCRA 666, 675 (1992).

[57] Rollo, p. 70.

[58] People v. Jumanoy, G.R. No. 101584, 7 April 1993; People v. Chanas, 212 SCRA 65, 74 (1992).

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