

## **THIRD DIVISION**

**[ G.R. No. 210816, December 10, 2018 ]**

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. EDGAR S. GO,  
RESPONDENT.**

**[G.R. No. 210854]**

**PURITA HIBE, JONATHAN A. TESSLER, CAROL T. MEJIAS, HEIDE  
V. LAUREL, NISSAN V. LAUREL, ESTELA LAURELGELI, KATHERINE  
DELA CRUZ LAUREL, ARLENE OLANG, SARLINA SEPE, ALLAN  
CARONO-O, EPHRAIM OSORIO, JUARINA R. CRUZ, NESHAMIE  
PAGLINAWAN, JOSEPHINE PADUA, VICENTA R. CHUA,  
ILLUMINADA TIMAJO, LILYBETH CUNANAN, ELORDE  
ILUSTRISIMO, BOB ILLUT, ERNESTO B. CLARIN, ROQUE LABAD,  
EVELYN BAJIT,\* LARINA L. MATRIZ, BENITO S. ESPINA, MARLYN  
T. HIBE, CELERNA M. CALAYAG, NELLY T. LOPEZ, AND SONIA O.  
MANZANILLA, VS. EDGAR S. GO, RESPONDENT.**

### **DECISION**

**REYES, J. JR., J.:**

Assailed in these consolidated petitions for review on *certiorari* filed under Rule 45 of the Rules of Court are the March 22, 2013 Decision<sup>[1]</sup> and the January 8, 2014 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP. No. 115165 which dismissed the charge for reckless imprudence against respondent Edgar S. Go (respondent).

### **The Facts**

On June 20, 2008, M/V Princess of the Stars (Stars), a passenger cargo owned and operated by Sulpicio Lines, Inc. (SLI), was expected to depart at 8:00 p.m. from the Port of Manila for Cebu City. At 11:00 a.m. of June 20, 2008, the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) issued Severe Weather Bulletin (SWB) No. 7, raising Storm Warning Signal (SWS) No. 1 over Romblon, Marinduque, Southern Quezon, Cebu, Bohol, Panay Island, and Surigao del Norte. SWB No. 7 stated that the eye of Typhoon Frank was located 60 kilometers northeast of Guiuan, Eastern Samar, and forecasted to move west northwest at 19 kilometers per hour.<sup>[3]</sup>

At 3:00 p.m., Captain Benjamin Eugenio (Captain Eugenio), SLI Manila Port Captain, met with Captain Florencio Marimon (Captain Marimon), Master of the vessel, at SLI's Engineering Office for a pre departure conference to discuss SWB No. 7. At said conference, Captain Eugenio and Captain Marimon decided to await the next PAGASA typhoon forecast, which was expected at around 5:00 p.m., considering

that based on SWB No.7, Stars' regular route would not be affected by Typhoon Frank.<sup>[4]</sup>

At 4:45 p.m., PAGASA issued SWB No. 8, hoisting SWS No. 3 over Camarines Norte, Camarines Sur, Burias Islands, Sorsogon, Catanduanes, Masbate, and the Samar provinces; SWS No. 2 over Quezon, Marinduque, Romblon, Northern Cebu, and Southern Leyte; and SWS No. 1 over Aurora, Rizal, Laguna, Batangas, Cavite, Mindoro provinces, Metro Manila, Panay Island, Guimaras, Cebu, Bohol, Siquijor, Negros provinces, Dinagat and Siargao Island. SWB No. 8 indicated that Typhoon Frank, then located in the vicinity of Western Samar, had intensified and was forecasted to move west northwest and cross Samar within the day and Camarines Sur in the afternoon of the following day, June 21, 2008.<sup>[5]</sup>

Prior to Stars' departure, Philippine Coast Guard (PCG) Boarding Officer PO1 Felix Sardan (PO1 Sardan) boarded the vessel to inspect its documents and conduct verification, specifically the correctness of the entries in the Master's Oath of Safe Departure, and the soundness and sufficiency of the cargo hold, the life saving devices, and all the navigational lights. Finding the vessel's documents in order and noting no deficiency in its safety equipment, PO1 Sardan concluded his inspection and informed Captain Marimon that SWS No. 3 was hoisted over Masbate, which was along the vessel's regular route. In response, Captain Marimon showed PO1 Sardan a new voyage plan and explained that he would instead navigate the route west of Tablas below Panay Island which would not be affected by SWS No. 3. PO1 Sardan immediately relayed the alternate route *via* text message to PCG Station Commander Erwin Balagtas who approved the alternate plan with the order that should SWS No. 3 affect the alternate route, the vessel should either take shelter or return to the port of Manila for the safety of the passengers and the crew. SLI received SWB No. 8 a few minutes prior to 8:00 p.m.<sup>[6]</sup>

After obtaining a clearance from the PCG, Stars departed at 8:04 p.m. for its regular Friday voyage to Cebu under Voyage No. 392 along its regular route. On board the vessel were 709 passengers, 29 contractors and 111 crew members or a total of 849 persons, which number was in compliance with the Minimum Safe Manning Certificate and the PCG rules and regulations.<sup>[7]</sup>

At around 11:20 p.m., when Stars was in the vicinity of Cape Santiago, within its regular route, Manila radio operator Edgar Gorillo (Gorillo) received PAGASA's SWB No. 9 which forecasted that Typhoon Frank was moving northwest away from the vessel's route. Gorillo relayed SWB No.9 to Stars' radio operator Santiago Doroy (Doroy). From that time until 1:00 a.m. of June 21, 2008, Gorillo kept close contact with Stars and SLI's ship officers were confident that the vessel was in the safe zone in view of SWB No. 9.<sup>[8]</sup>

At 5:00 a.m. of June 21, 2008, Gorillo and Captain Eugenio received SWB No. 10 indicating that for the past six hours, Typhoon Frank had been moving westward away from its original northwest movement. At 5:30 a.m., respondent arrived at SLI's Manila Office and checked on the radio room. Gorillo informed respondent that Captain Marimon assessed the sea condition as "slight." At 6:20 a.m., Doroy relayed to Gorilla that the vessel was still navigating its regular route at 1.3 miles off Sibuyan Point of Romblon and approaching Apunan Point and that the sea was rough but manageable.<sup>[9]</sup>

At 7:05 a.m., Captain Marimon sent SLI Manila a telegram stating that he was steering Stars away from its regular course, moving towards the south of Tablas to take shelter and evade the center of Typhoon Frank. At 8:30 a.m., the vessel was within the vicinity of Aklan Point where it was caught in the center of Typhoon Frank. At 9:00 a.m., communications with the vessel were cut off. Then, at 11:30 a.m., Captain Nestor Ponteres (Captain Ponteres), Cebu port captain, received a text message from his nephew Jay Franco Labiada (Labiada), then second mate in Stars, informing him that the vessel was "listing to port 25-30 degrees." At that point, Stars was within the vicinity of Aklan and was retreating to San Fernando, Sibuyan. Captain Ponteres called Labiada and asked to talk to Captain Marimon. Captain Marimon informed Captain Ponteres that the vessel had listed and he could no longer steer it and would instead adapt to the wind to keep the vessel stable and upright. Captain Ponteres communicated with Captain Marimon thrice between 11:30 a.m. and past 12 noon, the last of which was Captain Marimon's declaration that he had given the order to abandon ship via the vessel's public announcement system. Continuously pounded by heavy waves and buffeted by strong winds, Stars eventually capsized and sank in the Sibuyan Sea at around 12:30 p.m. of June 21, 2008.<sup>[10]</sup>

Respondent called the PCG to dispatch a rescue team and ordered that SLI's cargo vessel Surcon 12 and its M/V Princess of Caribbean sail to the area to undertake rescue operations. Due to inclement weather, immediate rescue efforts had to be deferred and it was only at noon time of June 23, 2008. Then the rescue arrived at the site. Of the 849 persons on board, only 32 survived, 227 died and 592 were reported missing.<sup>[11]</sup>

### *Board of Marine Inquiry Findings*

In an Investigation Report<sup>[12]</sup> dated August 18, 2008, the Board of Marine Inquiry (BMI) stated that SLI and its senior officers failed to ensure the safety of Stars, its passengers and its cargo because it did not assess the potential danger of Typhoon Frank before the vessel departed on June 20, 2008 and while the vessel was in transit. It added that SLI failed to monitor the condition of the vessel during the critical moment from 7:00 a.m. to 9:00 a.m. of June 21, 2008, a period when the vessel was about 40 nautical miles from Typhoon Frank. The BMI also noted that SLI could have discouraged the Master from sailing in its intended voyage considering that SWS No. 3 was hoisted in the vessel's route. It further observed that SLI did not inform immediately the PCG when the vessel lost contact with the company at 9:00 a.m. of June 21, 2008.<sup>[13]</sup> The BMI concluded:

#### B. Conclusion

##### 1. Causes of the Incident

##### 1.1 Immediate Cause

After a thorough deliberation, the Board concludes that the immediate cause of the capsizing of MV Princess of the Stars was the failure of the Master to exercise [extraordinary] diligence and good seamanship thereby committing an error of judgment that brought MV Princess of the

Stars in harm's way into the eye of typhoon "Frank."

x x x x

Another cause was the failure of the company to exercise [extraordinary] diligence in preventing or discouraging the Master from leaving port and sailing despite the very severe weather condition (PSWS [N]o. 3) in the vessel's route particularly in Masbate and Biliran Island. The company likewise failed to monitor closely and assess the movement of the vessel relative to [the] movement of the typhoon which could have prompted the Master to take effective typhoon evasion procedures.

## 1.2 Proximate Cause

The Board further concludes that the proximate cause of [the] capsizing of [the] MV Princess of the Stars was the failure of SLI management to effectively implement its Safety Quality Management Manual issued on 07 May 2002 in compliance with IMO's-ISM Code for the Safe Operation of Ships and Pollution Prevention including the requirements of Quality/Safety System ISO 9001:2000. It was indicative of a system failure in which the company was responsible.

## 1.3 Contributory Cause(s)

President - x x x

Chief Executive Officer/ Executive Vice-President - x x x

First Vice-President - He failed to exercise [extraordinary] diligence to apprise the Master of M/V Princess of the Stars of the potential danger of typhoon Frank and its failure to discourage the Master from sailing on its intended voyage inspite of the severe weather condition (PSWS [N]o. 3) in the vessel's route specifically in Masbate and Biliran Island. This incident resulted to the capsizing of MV Princess of the Stars and the death of 227 persons onboard, 592 missing and only 32 persons survive and damage to cargo and marine environment. He also failed to implement effectively the QSMS of the company and ensure smooth coordination between the different department heads in the company and effective ship/shore communication and for lack of contingency response plan on this account the Board finds him negligent.<sup>[14]</sup>

On September 2, 2008, the Volunteers Against Crime and Corruption and petitioners in G.R. No. 210854, who are some of the heirs of the passengers of Stars, instituted in the Department of Justice (DOJ) a complaint for reckless imprudence resulting in multiple homicide, serious physical injuries, and damage to property under Article 365 of the Revised Penal Code (RPC) against SLI, its officers and Captain Marimon. They alleged that the rough seas encountered by Stars on June 21, 2008 was reasonably foreseeable by the owners and officers of SLI had they performed their bounden duty to keep track of the weather conditions. They averred that SLI's officers allowed Stars to sail and proceed on its usual sailing schedule despite the presence of the typhoon.

## *The DOJ Panel's Resolution*

In a Resolution<sup>[15]</sup> dated June 22, 2009, the panel of four prosecutors (DOJ Panel) created by the DOJ to conduct a preliminary investigation found probable cause to indict Captain Marimon and respondent for reckless imprudence resulting in multiple homicide, physical injuries, and damage to property. It declared that the alleged alternate route for Stars was a mere afterthought, employed merely to secure departure clearance from the PCG, especially considering that subsequent events established by uncontroverted evidence in fact showed that Stars embarked on that particular voyage using its original or regular route to Cebu. As a consequence, it navigated towards the center of Typhoon Frank and eventually ran into the eye of the typhoon at the vicinity of Sibuyan Island in the province of Romblon. The DOJ Panel pronounced that the lack of an appropriate passage plan, be it alternate voyage plan or alternate route, on the part of SLI was a clear evidence of inexcusable negligence and lack of foresight, and that such recklessness was further demonstrated when the vessel was allowed to sail despite severe weather condition along its route. It added that Captain Marimon and SLI failed to comply with PCG Memorandum Circular 04-07 which requires the former to study carefully the typhoon movement to ensure that the vessel would not be within the areas directly affected by typhoon signals, and for the latter to discourage any vessel movement except for sheltering purposes especially when typhoon signals are hoisted or expected to be hoisted within the area of origin, the route and the destination.

As regards respondent, the DOJ Panel found that as First Vice-President for Administration and team leader of the Crisis Management Committee, respondent was involved in making decisions on whether a vessel should be allowed to sail such that he should have cancelled or discouraged the voyage considering the severe weather at that time. The DOJ Panel held that allowing Captain Eugenio and Captain Marimon to decide if the vessel should depart speaks of respondent's failure to exercise extraordinary care and precaution in light of the brewing storm along the vessel's route. It also found out that upon learning that the vessel was navigating its regular route when the eye of Typhoon Frank was already in the vicinity of Romblon, respondent admittedly did not give instruction to take shelter or drop anchor, thus:

As for the persons criminally liable for the resulting deaths and injuries, as well as damage to properties, well-settled is the rule that a corporation, like SLI in the instant case, acts through its officers, therefore, criminal liability for an offense attaches to those officers who appear to be responsible for its commission. To be sure, criminal liability is personal and circumscribed to acts or omissions of the person of the offender, not of other persons, natural or juridical, whom he might represent in his capacity as officer of a corporation. Taken in this light vis-a-vis the evidence adduced by the parties, the Panel finds probable cause for reckless imprudence resulting in multiple homicide, physical injuries and damage to properties against respondent Edgar S. Go. As 1<sup>st</sup> [V]ice [P]resident for Administration and team leader of Crisis Management Committee, both Capt. Benjamin Eugenio who is in charge of vessel operations in Manila and Engr. Emelson Morales, SLI safety officer, report directly to him. Thus, he is unarguably involved in making decisions on whether a vessel would be allowed to sail out of the Port of Manila, in fact Capt. Eugenio reported to him on the pre-departure conference with respondent Marimon. Considering the severe weather