

## SECOND DIVISION

[ G.R. No. 191018, January 25, 2016 ]

**CARLOS BORROMELO, PETITIONER, VS. FAMILY CARE HOSPITAL, INC. AND RAMON S. INSO, M.D., RESPONDENTS.**

### DECISION

#### BRION, J.:

Carlos Borromeo lost his wife Lillian when she died after undergoing a routine appendectomy. The hospital and the attending surgeon submit that Lillian bled to death due to a rare, life-threatening condition that prevented her blood from clotting normally. Carlos believes, however, that the hospital and the surgeon were simply negligent in the care of his late wife.

On January 22, 2010, the Court of Appeals (CA) in **CA-G.R. CV No. 89096**<sup>[1]</sup> dismissed Carlos' complaint and thus reversed the April 10, 2007 decision of the Regional Trial Court (RTC) in **Civil Case No. 2000-603-MK**<sup>[2]</sup> which found the respondents liable for medical negligence.

The present petition for review on *certiorari* seeks to reverse the CA's January 22, 2010 decision.

### ANTECEDENTS

The petitioner, Carlos Borromeo, was the husband of the late Lillian V. Borromeo (*Lilian*). Lilian was a patient of the respondent Family Care Hospital, Inc. (*Family Care*) under the care of respondent Dr. Ramon Inso (*Dr. Inso*).

On July 13, 1999, the petitioner brought his wife to the Family Care Hospital because she had been complaining of acute pain at the lower stomach area and fever for two days. She was admitted at the hospital and placed under the care of Dr. Inso.

Dr. Inso suspected that Lilian might be suffering from acute appendicitis. However, there was insufficient data to rule out other possible causes and to proceed with an appendectomy. Thus, he ordered Lilian's confinement for testing and evaluation.

Over the next 48 hours, Lilian underwent multiple tests such as complete blood count, urinalysis, stool exam, pelvic ultrasound, and a pregnancy test. However, the tests were not conclusive enough to confirm that she had appendicitis.

Meanwhile, Lilian's condition did not improve. She suffered from spiking fever and her abdominal pain worsened. The increasing tenderness of her stomach, which was previously confined to her lower right side, had also extended to her lower left side. Lilian abruptly developed an *acute surgical abdomen*.

On July 15, 1999, Dr. Inso decided to conduct an exploratory laparotomy on Lilian because of the findings on her abdomen and his fear that she might have a ruptured appendix. Exploratory laparotomy is a surgical procedure involving a large incision on the abdominal wall that would enable Dr. Inso to examine the abdominal cavity and identify the cause of Lilian's symptoms. After explaining the situation, Dr. Inso obtained the patient's consent to the laparotomy.

At around 3:45 P.M., Lilian was brought to the operating room where Dr. Inso conducted the surgery. During the operation, Dr. Inso confirmed that Lilian was suffering from acute appendicitis. He proceeded to remove her appendix which was already infected and congested with pus.

The operation was successful. Lilian's appearance and vital signs improved. At around 7:30 P.M., Lilian was brought back to her private room from the recovery room.

At around 1:30 A.M. on July 16, 1999, roughly six hours after Lilian was brought back to her room, Dr. Inso was informed that her blood pressure was low. After assessing her condition, he ordered the infusion of more intravenous (IV) fluids which somehow raised her blood pressure.

Despite the late hour, Dr. Inso remained in the hospital to monitor Lilian's condition. Subsequently, a nurse informed him that Lilian was becoming restless. Dr. Inso immediately went to Lilian and saw that she was quite pale. He immediately requested a blood transfusion.

Lilian did not respond to the blood transfusion even after receiving two 500 cc-units of blood. Various drugs, such as adrenaline or epinephrine, were administered.

Eventually, an endotracheal tube connected to an oxygen tank was inserted into Lilian to ensure her airway was clear and to compensate for the lack of circulating oxygen in her body from the loss of red blood cells. Nevertheless, her condition continued to deteriorate.

Dr. Inso observed that Lilian was developing *petechiae* in various parts of her body. *Petechiae* are small bruises caused by bleeding under the skin whose presence indicates a blood-coagulation problem - a defect in the ability of blood to clot. At this point, Dr. Inso suspected that Lilian had *Disseminated Intravascular Coagulation (DIC)*, a blood disorder characterized by bleeding in many parts of her body caused by the consumption or the loss of the clotting factors in the blood. However, Dr. Inso did not have the luxury to conduct further tests because the immediate need was to resuscitate Lilian.

Dr. Inso and the nurses performed cardiopulmonary resuscitation (CPR) on Lilian. Dr. Inso also informed her family that there may be a need to re-operate on her, but she would have to be put in an Intensive Care Unit (ICU). Unfortunately, Family Care did not have an ICU because it was only a secondary hospital and was not required by the Department of Health to have one. Dr. Inso informed the petitioner that Lilian would have to be transferred to another hospital.

At around 3:30 A.M., Dr. Inso personally called the Perpetual Help Medical Center to

arrange Lilian's transfer, but the latter had no available bed in its ICU. Dr. Inso then personally coordinated with the Muntinlupa Medical Center (MMC) which had an available bed.

At around 4:00 A.M., Lilian was taken to the MMC by ambulance accompanied by the resident doctor on duty and a nurse. Dr. Inso followed closely behind in his own vehicle.

Upon reaching the MMC, a medical team was on hand to resuscitate Lilian. A nasogastric tube (NGT) was inserted and IV fluids were immediately administered to her. Dr. Inso asked for a plasma expander. Unfortunately, at around 10:00 A.M., Lilian passed away despite efforts to resuscitate her.

At the request of the petitioner, Lilian's body was autopsied at the Philippine National Police (PNP) Camp Crame Crime Laboratory. Dr. Emmanuel Reyes (*Dr. Reyes*), the medico-legal assigned to the laboratory, conducted the autopsy. Dr. Reyes summarized his notable findings as:

x x x I opened up the body and inside the abdominal cavity which you call peritoneal cavity there were 3,000 ml of clot and unclot blood accumulated thereat. The peritoneal cavity was also free from any adhesion. Then, I opened up the head and the brain revealed paper white in color and the heart revealed abundant petechial hemorrhages from the surface and it was normal. The valvular leaflets were soft and pliable, and of course, the normal color is reddish brown as noted. And the coronary arteries which supply the heart were normal and unremarkable. Next, the lungs appears [*sic*] hemorrhagic. That was the right lung while the left lung was collapsed and paled. For the intestines, I noted throughout the entire lengths of the small and large intestine were hemorrhagic areas. Noted absent is the appendix at the ileo-colic area but there were continuous suture repair done thereat. However, there was a 0.5 x 0.5 cm opening or left unrepaired at that time. There was an opening on that repair site. Meaning it was not repaired. There were also at that time clot and unclot blood found adherent thereon. The liver and the rest of the visceral organs were noted exhibit [*sic*] some degree of pallor but were otherwise normal. The stomach contains one glassful about 400 to 500 ml.<sup>[3]</sup>

Dr. Reyes concluded that the cause of Lilian's death was hemorrhage due to bleeding petechial blood vessels: internal bleeding. He further concluded that the internal bleeding was caused by the 0.5 x 0.5 cm opening in the repair site. He opined that the bleeding could have been avoided if the site was repaired with double suturing instead of the single continuous suture repair that he found.

Based on the autopsy, the petitioner filed a complaint for damages against Family Care and against Dr. Inso for medical negligence.

During the trial, the petitioner presented Dr. Reyes as his expert witness. Dr. Reyes testified as to his findings during the autopsy and his opinion that Lilian's death could have been avoided if Dr. Inso had repaired the site with double suture rather than a single suture.

However, Dr. Reyes admitted that he had very little experience in the field of pathology and his only experience was an on-the-job training at the V. Luna Hospital where he was only on observer status. He further admitted that he had no experience in appendicitis or appendectomy and that Lilian's case was his first autopsy involving a death from appendectomy.

Moreover, Dr. Reyes admitted that he was not intelligently guided during the autopsy because he was not furnished with clinical, physical, gross, histopath, and laboratory information that were important for an accurate conclusion. Dr. Reyes also admitted that an appendical stump is initially swollen when sutured and that the stitches may loosen during the healing process when the initial swelling subsides.

In their defense, Dr. Inso and Family Care presented Dr. Inso, and expert witnesses Dr. Celso Ramos (*Dr. Ramos*) and Dr. Herminio Hernandez (*Dr. Hernandez*).

Dr. Ramos is a practicing pathologist with over 20 years of experience. He is an associate professor at the Department of Surgery of the Fatima Medical Center, the Manila Central University, and the Perpetual Help Medical Center. He is a Fellow of the Philippine College of Surgeons, a Diplomate of the Philippine Board of Surgery, and a Fellow of the Philippine Society of General Surgeons.

Dr. Ramos discredited Dr. Reyes' theory that the 0.5 x 0.5 cm opening at the repair site caused Lilian's internal bleeding. According to Dr. Ramos, appendical vessels measure only 0.1 to 0.15 cm, a claim that was not refuted by the petitioner. If the 0.5 x 0.5 cm opening had caused Lilian's hemorrhage, she would not have survived for over 16 hours; she would have died immediately, within 20 to 30 minutes, after surgery.

Dr. Ramos submitted that the cause of Lilian's death was hemorrhage due to DIC, a blood disorder that leads to the failure of the blood to coagulate; Dr. Ramos considered the abundant petechial hemorrhage in the myocardic sections and the hemorrhagic right lung; the multiple bleeding points indicate that Lilian was afflicted with DIC.

Meanwhile, Dr. Hernandez is a general surgeon and a hospital administrator who had been practicing surgery for twenty years as of the date of his testimony.

Dr. Hernandez testified that Lilian's death could not be attributed to the alleged wrong suturing. He submitted that the presence of blood in the lungs, in the stomach, and in the entire length of the bowels cannot be reconciled with Dr. Reyes' theory that the hemorrhage resulted from a single-sutured appendix.

Dr. Hernandez testified that Lilian had uncontrollable bleeding in the microcirculation as a result of DIC. In DIC, blood oozes from very small blood vessels because of a problem in the clotting factors of the blood vessels. The microcirculation is too small to be seen by the naked eye; the red cell is even smaller than the tip of a needle. Therefore, the alleged wrong suturing could not have caused the amount of hemorrhaging that caused Lilian's death.

Dr. Hernandez further testified that the procedure that Dr. Inso performed was consistent with the usual surgical procedure and he would not have done anything differently.<sup>[4]</sup>

The petitioner presented Dr. Rudyard Avila III (*Dr. Avila*) as a rebuttal witness. Dr. Avila, also a lawyer, was presented as an expert in medical jurisprudence. Dr. Avila testified that between Dr. Reyes who autopsied the patient and Dr. Ramos whose findings were based on medical records, greater weight should be given to Dr. Reyes' testimony.

On April 10, 2007, the RTC rendered its decision awarding the petitioner P88,077.50 as compensatory damages; P50,000.00 as death indemnity; P3,607,910.30 as loss of earnings; P50,000.00 as moral damages; P30,000.00 as exemplary damages; P50,000.00 as attorney's fees, and the costs of the suit.

The RTC relied on Dr. Avila's opinion and gave more weight to Dr. Reyes' findings regarding the cause of Lilian's death. It held that Dr. Inso was negligent in using a single suture on the repair site causing Lilian's death by internal hemorrhage. It applied the doctrine of *res ipsa loquitur*, holding that a patient's death does not ordinarily occur during an appendectomy.

The respondents elevated the case to the CA and the appeal was docketed as **CA-G.R. CV No. 89096**.

On January 22, 2010, the CA reversed the RTC's decision and dismissed the complaint. The CA gave greater weight to the testimonies of Dr. Hernandez and Dr. Ramos over the findings of Dr. Reyes because the latter was not an expert in pathology, appendectomy, nor in surgery. It disregarded Dr. Avila's opinion because the basic premise of his testimony was that the doctor who conducted the autopsy is a pathologist of equal or of greater expertise than Dr. Ramos or Dr. Hernandez.

The CA held that there was no causal connection between the alleged omission of Dr. Inso to use a double suture and the cause of Lilian's death. It also found that Dr. Inso did, in fact, use a double suture ligation with a third silk reinforcement ligation on the repair site which, as Dr. Reyes admitted on cross-examination, loosened up after the initial swelling of the stump subsided.

The CA denied the applicability of the doctrine of *res ipsa loquitur* because the element of causation between the instrumentality under the control and management of Dr. Inso and the injury that caused Lilian's death was absent; the respondents sufficiently established that the cause of Lilian's death was DIC.

On March 18, 2010, the petitioner filed the present petition for review on *certiorari*.

### **THE PETITION**

The petitioner argues: (1) that Dr. Inso and Family Care were negligent in caring for Lilian before, during, and after her appendectomy and were responsible for her death; and (2) that the doctrine of *res ipsa loquitur* is applicable to this case.

In their Comment, the respondents counter: (1) that the issues raised by the petitioner are not pure questions of law; (2) that they exercised utmost care and diligence in the treatment of Lilian; (3) that Dr. Inso did not deviate from the standard of care observed under similar circumstances by other members of the profession in good standing; (4) that *res ipsa loquitur* is not applicable because