

SECOND DIVISION

[G.R. No. 167366, September 26, 2012]

**DR. PEDRO DENNIS CERENO, AND DR. SANTOS ZAFE,
PETITIONERS, VS. COURT OF APPEALS, SPOUSES DIOGENES S.
OLAVERE AND FE R. SERRANO, RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

Before the Court is a Petition for Review on Certiorari^[1] under Rule 45 of the Rules of Court seeking the annulment and setting aside of the 21 February 2005 decision^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 65800. In the assailed decision, the CA affirmed *in toto* the decision of the Regional Trial Court (RTC), Branch 22, Naga City finding herein petitioners Dr. Pedro Dennis Cereno (Dr. Cereno) and Dr. Santos Zafe (Dr. Zafe) liable for damages.

Culled from the records are the following antecedent facts:

At about 9:15 in the evening of 16 September 1995, Raymond S. Olavere (Raymond), a victim of a stabbing incident, was rushed to the emergency room of the Bicol Regional Medical Center (BRMC). There, Raymond was attended to by Nurse Arlene Balares (Nurse Balares) and Dr. Ruel Levy Realuyo (Dr. Realuyo)—the emergency room resident physician.

Subsequently, the parents of Raymond—the spouses Deogenes Olavere (Deogenes) and Fe R. Serrano—arrived at the BRMC. They were accompanied by one Andrew Olavere, the uncle of Raymond.

After extending initial medical treatment to Raymond, Dr. Realuyo recommended that the patient undergo “*emergency exploratory laparotomy*.” Dr. Realuyo then requested the parents of Raymond to procure 500 cc of type “O” blood needed for the operation. Complying with the request, Deogenes and Andrew Olavere went to the Philippine National Red Cross to secure the required blood.

At 10:30 P.M., Raymond was wheeled inside the operating room. During that time, the hospital surgeons, Drs. Zafe and Cereno, were busy operating on gunshot victim Charles Maluluy-on. Assisting them in the said operation was Dr. Rosalina Tatad (Dr. Tatad), who was the only senior anesthesiologist on duty at BRMC that night. Dr. Tatad also happened to be the head of Anesthesiology Department of the BRMC.

Just before the operation on Maluluy-on was finished, another emergency case involving Lilia Aguila, a woman who was giving birth to triplets, was brought to the operating room.

At 10:59 P.M., the operation on Charles Maluluy-on was finished. By that time,

however, Dr. Tatad was already working with the obstetricians who will perform surgery on Lilia Aguila. There being no other available anesthesiologist to assist them, Drs. Zafe and Cereno decided to defer the operation on Raymond.

Drs. Zafe and Cereno, in the meantime, proceeded to examine Raymond and they found that the latter's blood pressure was normal and "nothing in him was significant."^[3] Dr. Cereno reported that based on the x-ray result he interpreted, the fluid inside the thoracic cavity of Raymond was minimal at around 200-300 cc.

At 11:15 P.M., Deogenes and Andrew Olavere returned to the BRMC with a bag containing the requested 500 cc type "O" blood. They handed over the bag of blood to Dr. Realuyo.

After Dr. Tatad finished her work with the Lilia Aguila operation, petitioners immediately started their operation on Raymond at around 12:15 A.M. of 17 September 1995. Upon opening of Raymond's thoracic cavity, they found that 3,200 cc of blood was stocked therein. The blood was evacuated and petitioners found a puncture at the inferior pole of the left lung.

In his testimony, Dr. Cereno stated that considering the loss of blood suffered by Raymond, he did not immediately transfuse blood because he had to control the bleeders first.^[4]

Blood was finally transfused on Raymond at 1:40 A.M. At 1:45 A.M., while the operation was on-going, Raymond suffered a cardiac arrest. The operation ended at 1:50 A.M. and Raymond was pronounced dead at 2:30 A.M.

Raymond's death certificate^[5] indicated that the immediate cause of death was "*hypovolemic shock*" or the cessation of the functions of the organs of the body due to loss of blood.^[6]

Claiming that there was negligence on the part of those who attended to their son, the parents of Raymond, on 25 October 1995, filed before the RTC, Branch 22, Naga City a complaint for damages^[7] against Nurse Balaes, Dr. Realuyo and attending surgeons Dr. Cereno and Dr. Zafe.

During trial, the parents of Raymond testified on their own behalf. They also presented the testimonies of Andrew Olavere and one Loira Oira, the aunt of Raymond. On the other hand, Dr. Cereno, Dr. Realuyo, Nurse Balaes and Security Guard Diego Reposo testified for the defense. On rebuttal, the parents of Raymond presented Dr. Tatad, among others.

On 15 October 1999, the trial court rendered a decision^[8] the dispositive portion of which reads:

WHEREFORE, premises considered, this Court hereby renders judgment:

1. Dismissing the case against Dr. Ruel Levy Realuyo and Arlene Balaes for lack of merit;

2. Ordering defendants Dr. Santos Zafe and Dr. Dennis Cereno to pay the heirs of Raymond Olavere, jointly and severally the following amounts:

1. P50,000.00 for the death of the victim;
2. P150,000.00 as moral damages;
3. P100,000.00 as exemplary damages;
4. P30,000.00 for attorney's fees; and
5. Cost of suit.^[9]

x x x x.

The trial court found petitioners negligent in not immediately conducting surgery on Raymond. It noted that petitioners have already finished operating on Charles Maluluy-on as early as 10:30 in the evening, and yet they only started the operation on Raymond at around 12:15 early morning of the following day. The trial court held that had the surgery been performed promptly, Raymond would not have lost so much blood and, therefore, could have been saved.^[10]

The trial court also held that the non-availability of Dr. Tatad after the operation on Maluluy-on was not a sufficient excuse for the petitioners to not immediately operate on Raymond. It called attention to the testimony of Dr. Tatad herself, which disclosed the possibility of calling a standby anesthesiologist in that situation. The trial court opined that the petitioners could have just requested for the standby anesthesiologist from Dr. Tatad, but they did not.

Lastly, the trial court faulted petitioners for the delay in the transfusion of blood on Raymond.

On appeal, the CA in a decision dated 21 February 2005 affirmed *in toto* the judgment rendered by the RTC finding herein petitioners guilty of gross negligence in the performance of their duties and awarding damages to private respondents.

Hence, this petition for review on certiorari under Rule 45 of the Rules of Court assailing the CA decision on the following grounds:

1. THAT THE CA ERRED IN RULING THAT PETITIONERS WERE GROSSLY NEGLIGENT IN THE PERFORMANCE OF THEIR DUTIES;
2. THAT THE CA ERRED IN NOT CONSIDERING THE BICOL REGIONAL MEDICAL CENTER AS AN INDISPENSABLE PARTY AND SUBSIDIARILY LIABLE SHOULD PETITIONERS BE FOUND LIABLE FOR DAMAGES; and
3. THAT THE CA ERRED IN NOT FINDING THE AWARD OF MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES EXORBITANT OR EXCESSIVE.

We grant the petition.

It is well-settled that under Rule 45 of the Rules of Court, only questions of law may

be raised. The reason behind this is that this Court is not a trier of facts and will not re-examine and re-evaluate the evidence on record.^[11] Factual findings of the CA, affirming that of the trial court, are therefore generally final and conclusive on this Court. This rule is subject to the following exceptions: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of fact are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.^[12] In this case, We find exceptions (1) and (4) to be applicable.

The type of lawsuit which has been called medical malpractice or, more appropriately, medical negligence, is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm. In order to successfully pursue such a claim, a patient must prove **that a health care provider, in most cases a physician, either failed to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent provider would not have done; and that the failure or action caused injury to the patient.**^[13] Stated otherwise, the complainant must prove: (1) that the health care provider, either by his act or omission, had been negligent, and (2) that such act or omission proximately caused the injury complained of.

The best way to prove these is through the opinions of expert witnesses belonging in the same neighborhood and in the same general line of practice as defendant physician or surgeon. The deference of courts to the expert opinion of qualified physicians stems from the former's realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating, hence, the indispensability of expert testimonies.^[14]

Guided by the foregoing standards, We dissect the issues at hand.

Petitioners Not Negligent

The trial court first imputed negligence on the part of the petitioners by their failure to perform the operation on Raymond immediately after finishing the Maluluy-on operation. It rejected as an excuse the non-availability of Dr. Tatad. The trial court relied on the testimony of Dr. Tatad about a "*BRMC protocol*" that introduces the possibility that a standby anesthesiologist could have been called upon. The pertinent portions of the testimony of Dr. Tatad provides:

- Q: Aside from you and Dr. Rebancos, who was the standby anesthesiologist?
- A: We have a protocol at the Bicol Medical Center to have a consultant who is on call.
- Q: How many of them?

A: One.
Q: Who is she?
A: Dra. Flores.
Q: What is the first name?
A: Rosalina Flores.
Q: Is she residing in Naga City?
A: In Camaligan.
Q: She is on call anytime when there is an emergency case to be attended to in the Bicol Medical Center?
A: Yes sir.^[15]

Dr. Tatad further testified:

Q: Alright (sic), considering that you said you could not attend to Raymond Olavere because another patient was coming in the person of Lilia Aguila, did you not suggest to Dr. Cereno to call the standby anesthesiologist?
A: They are not ones to do that. They have no right to call for the standby anesthesiologist.
Q: Then, who should call for the standby anesthesiologist?
A: It is me if the surgeon requested.
Q: But in this case, the surgeon did not request you?
A: No. It is their prerogative.
Q: I just want to know that in this case the surgeon did not request you to call for the standby anesthesiologist?
A: No sir.^[16]

From there, the trial court concluded that it was the duty of the petitioners to request Dr. Tatad to call on Dr. Rosalina Flores, the standby anesthesiologist. Since petitioners failed to do so, their inability to promptly perform the operation on Raymond becomes negligence on their part.

This Court does not agree with the aforesaid conclusion.

First. There is nothing in the testimony of Dr. Tatad, or in any evidence on the record for that matter, which shows that the petitioners were aware of the "*BRMC protocol*" that the hospital keeps a standby anesthesiologist available on call. Indeed, other than the testimony of Dr. Tatad, there is no evidence that proves that any such "*BRMC protocol*" is being practiced by the hospital's surgeons at all.

Evidence to the effect that petitioners knew of the "*BRMC protocol*" is essential, especially in view of the contrary assertion of the petitioners that the matter of assigning anesthesiologists rests within the full discretion of the BRMC Anesthesiology Department. Without any prior knowledge of the "*BRMC protocol*," We find that it is quite reasonable for the petitioners to assume that matters regarding the administration of anesthesia and the assignment of anesthesiologists are concerns of the Anesthesiology Department, while matters pertaining to the surgery itself fall under the concern of the surgeons. Certainly, We cannot hold petitioners accountable for not complying with something that they, in the first place, do not know.