

## THIRD DIVISION

[ G.R. No. 190696, August 03, 2010 ]

**ROLITO CALANG AND PHILTRANCO SERVICE ENTERPRISES,  
INC., PETITIONERS, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### R E S O L U T I O N

**BRION, J.:**

We resolve the motion for reconsideration filed by the petitioners, Philtranco Service Enterprises, Inc. (*Philtranco*) and Rolito Calang, to challenge our Resolution of February 17, 2010. Our assailed Resolution denied the petition for review on *certiorari* for failure to show any reversible error sufficient to warrant the exercise of this Court's discretionary appellate jurisdiction.

#### **Antecedent Facts**

At around 2:00 p.m. of April 22, 1989, Rolito Calang was driving Philtranco Bus No. 7001, owned by Philtranco along Daang Maharlika Highway in *Barangay* Lambao, Sta. Margarita, Samar when its rear left side hit the front left portion of a Sarao jeep coming from the opposite direction. As a result of the collision, Cresencio Pinohermoso, the jeep's driver, lost control of the vehicle, and bumped and killed Jose Mabansag, a bystander who was standing along the highway's shoulder. The jeep turned turtle three (3) times before finally stopping at about 25 meters from the point of impact. Two of the jeep's passengers, Armando Nablo and an unidentified woman, were instantly killed, while the other passengers sustained serious physical injuries.

The prosecution charged Calang with multiple homicide, multiple serious physical injuries and damage to property thru reckless imprudence before the Regional Trial Court (RTC), Branch 31, Calbayog City. The RTC, in its decision dated May 21, 2001, found Calang guilty beyond reasonable doubt of reckless imprudence resulting to multiple homicide, multiple physical injuries and damage to property, and sentenced him to suffer an indeterminate penalty of thirty days of *arresto menor*, as minimum, to four years and two months of *prision correccional*, as maximum. The RTC ordered Calang and Philtranco, **jointly and severally**, to pay P50,000.00 as death indemnity to the heirs of Armando; P50,000.00 as death indemnity to the heirs of Mabansag; and P90,083.93 as actual damages to the private complainants.

The petitioners appealed the RTC decision to the Court of Appeals (CA), docketed as CA-G.R. CR No. 25522. The CA, in its decision dated November 20, 2009, affirmed the RTC decision *in toto*. The CA ruled that petitioner Calang failed to exercise due care and precaution in driving the Philtranco bus. According to the CA, various eyewitnesses testified that the bus was traveling fast and encroached into the opposite lane when it evaded a pushcart that was on the side of the road. In

addition, he failed to slacken his speed, despite admitting that he had already seen the jeep coming from the opposite direction when it was still half a kilometer away. The CA further ruled that Calang demonstrated a reckless attitude when he drove the bus, despite knowing that it was suffering from loose compression, hence, not roadworthy.

The CA added that the RTC correctly held Philtranco jointly and severally liable with petitioner Calang, for failing to prove that it had exercised the diligence of a good father of the family to prevent the accident.

The petitioners filed with this Court a petition for review on *certiorari*. In our Resolution dated February 17, 2010, we denied the petition for failure to sufficiently show any reversible error in the assailed decision to warrant the exercise of this Court's discretionary appellate jurisdiction.

### **The Motion for Reconsideration**

In the present motion for reconsideration, the petitioners claim that there was no basis to hold Philtranco jointly and severally liable with Calang because the former was not a party in the *criminal* case (for multiple homicide with multiple serious physical injuries and damage to property thru reckless imprudence) before the RTC.

The petitioners likewise maintain that the courts below overlooked several relevant facts, supported by documentary exhibits, which, if considered, would have shown that Calang was not negligent, such as the affidavit and testimony of witness Celestina Cabriga; the testimony of witness Rodrigo Bocaycay; the traffic accident sketch and report; and the jeepney's registration receipt. The petitioners also insist that the jeep's driver had the last clear chance to avoid the collision.

We **partly grant** the motion.

### ***Liability of Calang***

We see no reason to overturn the lower courts' finding on Calang's culpability. The finding of negligence on his part by the trial court, affirmed by the CA, is a question of fact that we cannot pass upon without going into factual matters touching on the finding of negligence. In petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record, or the assailed judgment is based on a misapprehension of facts.

### ***Liability of Philtranco***

We, however, hold that the RTC and the CA both erred in holding Philtranco *jointly and severally* liable with Calang. We emphasize that Calang was charged criminally before the RTC. Undisputedly, Philtranco was not a direct party in this case. Since the cause of action against Calang was based on delict, both the RTC and the CA erred in holding Philtranco jointly and severally liable with Calang, based on quasi-delict under Articles 2176<sup>[1]</sup> and 2180<sup>[2]</sup> of the Civil Code. Articles 2176 and 2180 of the Civil Code pertain to the vicarious liability of an employer for quasi-delicts that an employee has committed. Such provision of law does not apply to civil liability arising from delict.