Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DR. ANTONIO P. CABUGAO,
Petitioner,

G.R. No. 163879

-versus -

PEOPLE OF THE PHILIPPINES and SPOUSES RODOLFO M. PALMA and ROSARIO F. PALMA,
Respondents.

x - x

DR. CLENIO YNZON,
Petitioner,

G.R. No. 165805

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
BERSAMIN,*
MENDOZA, and
LEONEN, *JJ.*

- versus-

PEOPLE OF THE PHILIPPINES and SPOUSES RODOLFO M. PALMA AND ROSARIO F. PALMA,
Respondents.

Promulgated:

July 30, 2014

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* Designated Acting Member, per Special Order No. 1691-L dated May 22, 2014, in view of the vacancy in the Third Division.

D E C I S I O N

PERALTA, *J.*:

Before this Court are appeals via Rule 45 from the Decision[1] dated June 4, 2004 of the Court of Appeals in CA-G.R. CR No**.** 27293, affirming the Decision[2] dated February 28, 2003 of the Regional Trial Court (*RTC*), convicting appellant Dr. Antonio P. Cabugao (*Dr. Cabugao*) and Dr. Clenio Ynzon (*Dr. Ynzon*) of the crime of Reckless Imprudence Resulting to Homicide.

The Information[3] alleged –

> That on or about June 17, 2000 in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, DR. ANTONIO P. CABUGAO and DR. CLENIO YNZON, being then the attending physicians of one RODOLFO PALMA, JR., a minor 10 years old, confederating and acting jointly with one another, did, then and there, willfully, unlawfully and feloniously fail through negligence, carelessness and imprudence to perform immediate operation upon their patient, RODOLFO PALMA, JR. of acute appendicitis, when they, the said physicians, should have been done so considering that examinations conducted upon their patient Rodolfo Palma, Jr. seriously manifest to do so, causing by such negligence, carelessness, and imprudence the victim, RODOLFO PALMA JR., to die due to:
>
> "CARDIORESPIRATORY ARREST, METABOLIC ENCEPHALOPATHY, SEPTICEMIA (ACUTE APPENDICITIS), CEREBRAL ANEURYSM RUPTURED (?)"
>
> As per Certificate of Death issued by accused Dr. Antonio P. Cabugao, to the damage and prejudice of the legal heirs of said deceased RODOLFO PALMA, JR. and other consequential damages relative thereto.
>
> CONTRARY to Article 365, 1st par. of the Revised Penal Code.
>
> Dagupan City, Philippines, January 29, 2001.

Arising from the same events, the Court resolved to consolidate these cases.[4] The facts, as culled from the records, are as follows:

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1 Penned by Associate Justice Martin S. Villarama, Jr. (now a member of the Supreme Court), with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo*, (G.R. No. 163879), pp. 25-46.

2 *Rollo*, (G.R. No. 165805), pp. 106-112.

3 *Id.* at 103-104.

4 Resolution dated August 2, 2006; *id.* at 611.

On June 14, 2000, at around 4 o'clock in the afternoon, ten (10)-year old Rodolfo F. Palma, Jr. (*JR*) complained of abdominal pain to his mother, Rosario Palma. At 5 o'clock that same afternoon, Palma's mother and father, Atty. Rodolfo Palma Sr., brought JR to the clinic of accused Dr. Cabugao. Dr. Cabugao, a general practitioner, specializing in family medicine gave medicines for the pain and told Palma's parents to call him up if his stomach pains continue. Due to persistent abdominal pains, at 4:30 in the early morning of June 15, 2000, they returned to Dr. Cabugao, who advised them to bring JR to the Nazareth General Hospital in Dagupan City, for confinement. JR was admitted at the said hospital at 5:30 in the morning.[5]

Blood samples were taken from JR for laboratory testing. The complete blood count conveyed the following result: wbc – 27.80 x 10 9/L; lymphocytes – 0.10 and neutrophils – 0.90. Diagnostic ultrasound was likewise conducted on the patient's lower abdomen by radiologist, Dr. Ricky V. Querubin, with the following findings:

> Normal liver, bile ducts, gallbladder, pancreas, spleen, kidneys and urinary bladder.
>
> There is no free peritoneal fluid.
>
> There is localized tenderness in the paraumbilical region, more so in the supra and right paraumbilical areas.
>
> There is a vague elongated hypoechoic focus in the right periumbilical region roughly about 47 x 18 mm surrounded by undistended gas-filled bowels. ***This is suggestive of an inflammatory process wherein appendiceal or periappendiceal pathology cannot be excluded. Clinical correlation is essential."***[6]

Dr. Cabugao did a rectal examination noting the following: "rectal: good sphincter, negative tenderness, negative mass." The initial impression was Acute Appendicitis,[7] and hence, he referred the case to his co-accused, Dr. Ynzon, a surgeon.[8] In the later part of the morning of June 15, 2000, Dr. Ynzon went to the hospital and read the CBC and ultrasound results. The administration of massive antibiotics and pain reliever to JR were ordered. Thereafter, JR was placed on observation for twenty-four (24) hours.

In the morning of June 16, 2000, JR complained again of abdominal pain and his parents noticed a swelling in his scrotum. In the afternoon of the same day, JR vomitted out greenish stuff three (3) times and had watery

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5 *Rollo* (G.R. No. 163879), p. 26.
6 Exhibit "C," records, p. 23. (Emphasis ours)
7 Exhibit "D-2," *id*. at 331.
8 *Rollo*, p. 27.

bowels also three (3) times. The nurses on-duty relayed JR's condition to Dr. Ynzon who merely gave orders via telephone.[9] Accused continued medications to alleviate JR's abdominal spasms and diarrhea. By midnight, JR again vomitted twice, had loose bowel movements and was unable to sleep. The following morning, June 17, 2000, JR's condition worsened, he had a running fever of 38º C. JR's fever remained uncontrolled and he became unconscious, he was given Aeknil (1 ampule) and Valium (1 ampule). JR's condition continued to deteriorate that by 2 o'clock in the afternoon, JR's temperature soared to 42ºC, had convulsions and finally died.

The Death Certificate[10] dated June 19, 2000 prepared by Dr. Cabugao indicated the following causes of death:

> Immediate cause: CARDIORESPIRATORY ARREST
> Antecedent cause: METABOLIC ENCEPHALOPATHY
> Underlying cause: SEPTICEMIA (ACUTE APPENDICITIS)
> Other significant conditions contributing to death:
> CEREBRAL ANEURYSM RUPTURED (?)

No post-mortem examination was conducted on JR. On February 1, 2001, an Information was filed against accused for reckless imprudence resulting to homicide. At their arraignment, both accused, duly assisted by counsel, pleaded not guilty to the charge.

On February 28, 2003, in convicting both the accused, the trial court found the following circumstances as sufficient basis to conclude that accused were indeed negligent in the performance of their duties:

> It is unquestionable that JR was under the medical care of the accused from the time of his admission for confinement at the Nazareth General Hospital until his death. Upon his admission, the initial working diagnosis was to consider acute appendicitis. To assist the accused in the consideration of acute appendicitis, Dr. Cabugao requested for a complete blood count (CBC) and a diagnostic ultrasound on JR. The findings of the CBC and ultrasound showed that an inflammatory process or infection was going on inside the body of JR. Said inflammatory process was happening in the periumbilical region where the appendix could be located. The initial diagnosis of acute appendicitis appears to be a distinct possibility. x x x.
>
> Dr. Ynzon ordered medications to treat the symptoms being manifested by JR. Thereafter, he ordered that JR be observed for 24 hours. However, the accused, as the attending physicians, did not personally monitor JR in order to check on subtle changes that may occur. Rather,

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9 Pre-trial Order; records, p. 181.
10 Exhibit "E," *id.* at 6.

> they left the monitoring and actual observation to resident physicians who are just on residency training and in doing so, they substituted their own expertise, skill and competence with those of physicians who are merely new doctors still on training. Not having personally observed JR during this 24-hour critical period of observation, the accused relinquished their duty and thereby were unable to give the proper and correct evaluation as to the real condition of JR. In situations where massive infection is going on as shown by the aggressive medication of antibiotics, the condition of the patient is serious which necessitated personal, not delegated, attention of attending physicians, namely JR and the accused in this case.
>
> x x x x
>
> Throughout the course of the hospitalization and treatment of JR, the accused failed to address the acute appendicitis which was the initial diagnosis. They did not take steps to find out if indeed acute appendicitis was what was causing the massive infection that was ongoing inside the body of JR even when the inflammatory process was located at the paraumbilical region where the appendix can be located. x x x
>
> There may have been other diseases but the records do not show that the accused took steps to find out what disease exactly was plaguing JR. It was their duty to find out the disease causing the health problem of JR, but they did not perform any process of elimination. Appendicitis, according to expert testimonies, could be eliminated only by surgery but no surgery was done by the accused. But the accused could not have found out the real disease of JR because they were treating merely and exclusively the symptoms by means of the different medications to arrest the manifested symptoms. In fact, by treating the symptoms alone, the accused were recklessly and wantonly ignoring the same as signs of the graver health problem of JR. This gross negligence on the part of the accused allowed the infection to spread inside the body of JR unabated. The infection obviously spread so fast and was so massive that within a period of only two and a half (2 ½) days from the day of admission to the hospital on June 15, 2000, JR who was otherwise healthy died [of] Septicemia (Acute Appendicitis) on June 17, 2000.[11]

On June 4, 2004, in affirming the accused' conviction, the Court of Appeals gave similar observations, to wit:

> The foregoing expert testimony clearly revealed such want of reasonable skill and care on the part of JR's attending physicians, appellants Dr. Cabugao and Dr. Ynzon in neglecting to monitor effectively and sufficiently the developments/changes during the observation period and act upon the situation *after* said 24-hour period when his abdominal pain subsisted, his condition even worsened with the appearance of more serious symptoms of nausea, vomiting and diarrhea. Considering the brief visit only made on regular rounds, the records clearly show such gross negligence in failing to take appropriate steps to determine the real cause of JR's abdominal pain so that the crucial decision to perform surgery

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[11] *Rollo* (G.R. No. 165805), pp. 110-111.

(appendectomy) had even been ruled out precisely because of the inexcusable neglect to undertake such efficient diagnosis by process of elimination, as correctly pointed out by the trial court. As has been succinctly emphasized by Dr. Mateo, acute appendicitis was the working diagnosis, and with the emergence of symptoms after the 24-hour observation (high fever, vomiting, diarrhea) still, appellants ruled out surgery, not even considering exploratory laparoscopy. Dr. Mateo also expressed the opinion that the decision to operate could have been made after the result of the ultrasound test, considering that acute appendicitis was the initial diagnosis by Dr. Cabugao after he had conducted a rectal examination.

Medical records buttress the trial court's finding that in treating JR, appellants have demonstrated indifference and neglect of the patient's condition as a serious case. Indeed, appendicitis remains a *clinical emergency* and a *surgical disease*, as correctly underscored by Dr. Mateo, a practicing surgeon who has already performed over a thousand appendectomy. In fact, appendectomy is the *only rational therapy for acute appendicitis*; it avoids clinical deterioration and may avoid chronic or recurrent appendicitis. Although difficult, prompt recognition and immediate treatment of the disease prevent complications. Under the factual circumstances, the inaction, neglect and indifference of appellants who, after the day of admission and *after being apprised of the ongoing infection from the CBC and initial diagnosis as acute appendicitis from rectal examination and ultrasound test* and only briefly visited JR once during regular rounds and gave medication orders by telephone – constitutes *gross negligence* leading to the continued deterioration of the patient, his infection having spread in so fast a pace that he died within just two and a half (2 ½) days' stay in the hospital. Authorities state that if the clinical picture is unclear a short period of *4 to 6 hours of watchful waiting and a CT scan may improve diagnostic accuracy and help to hasten diagnosis.* Even assuming that JR's case had an atypical presentation in view of the location of his appendix, laboratory tests could have helped to confirm diagnosis, as Dr. Mateo opined that the possibility of JR having a retrocecal appendicitis should have been a strong consideration. Lamentably, however, as found by the trial court, appellants had not taken steps towards correct diagnosis and demonstrated laxity even when JR was already running a high fever in the morning of June 17, 2000 and continued vomiting with diarrhea, his abdominal pain becoming more intense. This is the reason why private complainants were not even apprised of the progress of appellants' diagnosis – appellants have nothing to report because they did nothing towards the end and merely gave medications to address the symptoms.[12]

Thus, these appeals brought before this Court raising the following arguments:

I

WHETHER THE CAUSE OF ACCUSATION AS CONTAINED IN THE INFORMATION IS "FAILURE TO PERFORM IMMEDIATE

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[12] *Rollo* (G.R. No. 163879), pp. 44-45. (Citations omitted; italics in the original)

OPERATION UPON THE PATIENT ROFOLFO PALMA JR. OF ACUTE APPENDICITIS;

II

WHETHER THE SUBJECT INFORMATION APPEARS TO HAVE ACCUSED BOTH ACCUSED DOCTORS OF CONSPIRACY AND THE APPEALED DECISION SEEMS TO HAVE TREATED BOTH ACCUSED DOCTORS TO BE IN CONSPIRACY;

III

WHETHER PETITIONER DR. CABUGAO IS A GENERAL PRACTITIONER (NOT A SURGEON) AND HAVE EXCLUDED SURGERY FROM THE LIMITS OF HIS PRACTICE, AND IT WAS NOT AND NEVER HIS DUTY TO OPERATE THE PATIENT RODOLFO PALMA JR., THAT WAS WHY HE REFERRED SUBJECT PATIENT TO A SURGEON, DR. CLENIO YNZON;

IV

WHETHER THE DEFENSE NEVER STATED THAT THERE IS GUARANTEE THAT DOING SURGERY WOULD HAVE SAVED THE PATIENT;

V

WHETHER THE WITNESSES FOR THE PROSECUTION INCLUDING PROSECUTION'S EXPERT WITNESSES EVER DECLARED/TESTIFIED THAT PETITIONER DR. CABUGAO HAD THE DUTY TO PERFORM IMMEDIATE OPERATION ON RODOLFO PALMA, JR., AND THEY FAILED TO STATE/SHOW THAT THE PROXIMATE CAUSE OF DEATH OF JR WAS ACUTE APPENDICITIS;

VI

WHETHER THE EXPERT WITNESSES PRESENTED BY THE PROSECUTION EVER QUESTIONED THE MANAGEMENT AND CARE APPLIED BY PETITIONER DR. CABUGAO;

VII

WHETHER THE EXPERT WITNESSES PRESENTED BY THE DEFENSE ARE UNANIMOUS IN APPROVING THE METHOD OF TREATMENT APPLIED BY BOTH ACCUSED DOCTORS ON SUBJECT PATIENT, AND THEY DECLARED/AFFIRMED THAT THEY WOULD FIRST PLACE SUBJECT THE PATIENT UNDER OBSERVATION, AND WOULD NOT PERFORM IMMEDIATE OPERATION;

VIII

WHETHER THE CONVICTION OF PETITIONER DR. YNZON WAS ESTABLISHED WITH THE REQUIRED QUANTUM OF PROOF BEYOND REASONABLE DOUBT THAT THE PATIENT WAS SPECIFICALLY SUFFERING FROM AND DIED OF ACUTE APPENDICITIS; and

IX

WHETHER THE FAILURE TO CONDUCT THE SPECIFIC SURGICAL OPERATION KNOWN AS APPENDECTOMY CONSTITUTED CRIMINAL NEGLIGENCE.

In a nutshell, the petition brought before this Court raises the issue of whether or not petitioners' conviction of the crime of reckless imprudence resulting in homicide, arising from an alleged medical malpractice, is supported by the evidence on record.

Worth noting is that the assigned errors are actually factual in nature, which as a general rule, findings of fact of the trial court and the Court of Appeals are binding and conclusive upon this Court, and we will not normally disturb such factual findings unless the findings of the court are palpably unsupported by the evidence on record or unless the judgment itself is based on misapprehension of facts. In the instant case, we find the need to make certain exception.

AS TO DR. YNZON'S LIABILITY:

Reckless imprudence consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an *inexcusable lack of precaution* on the part of the person performing or failing to perform such act.[13] The elements of reckless imprudence are: (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time and place.[14]

With respect to Dr. Ynzon, all the requisites of the offense have been clearly established by the evidence on record. The court *a quo* and the appellate court were one in concluding that Dr. Ynzon failed to observe the required standard of care expected from doctors.

In the instant case, it was sufficiently established that to prevent certain death, it was necessary to perform surgery on JR immediately. Even the prosecution's own expert witness, Dr. Antonio Mateo,[15] testified during cross-examination that he would perform surgery on JR:

ATTY. CASTRO:
Q. ***Given these data soft non-tender abdomen, ambulatory, watery***

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13 *Gaid v. People*, G.R. No. 171636, April 7, 2009, 584 SCRA 489, 495.

14 *Dr. Cruz v. Court of Appeals*, 346 Phil. 872, 883 (1993).

15 The prosecution has presented Dr. Antonio Mateo as an expert witness having performed more than a thousand appendectomy in his seventeen (17) years as a practicing surgeon and holds the position of Chief of the Department of Surgery of the Rizal Provincial Hospital and a Regular Fellow of the Philippine College of Surgeons.

diarrhea, Exhibit C which is the ultrasound result, with that laboratory would you operate the patient?
A Yes, I would do surgery.

Q ***And you should have done surgery with this particular case?"***
A Yes, sir.[16]

x x x x

COURT:
Q You stated a while ago doctor that you are going to [do] surgery to the patient, why doctor, if you are not going to do surgery, what will happen?
A If this would be appendicitis, the usual progress would be that it would be ruptured and generalized peritonitis and eventually septicemia, sir.

Q What do you mean by that doctor?
A That means that infection would spread throughout the body, sir.

Q ***If unchecked doctor, what will happen?***
A It will result to death.[17]

x x x x

Q And what would have you done if you entertain other considerations from the time the patient was admitted?
A From the time the patient was admitted until the report of the sonologist, I would have made a decision by then.

Q And when to decide the surgery would it be a particular exact time, would it be the same for all surgeons?
A ***If you are asking acute appendicitis, it would be about 24 hours because acute appendicitis is a 24-hour disease, sir.***

Q. And would it be correct to say that it depends on the changes on the condition of the patient?
A. Yes, sir.

Q. So, are you saying more than 24 hours when there are changes?
A. If there are changes in the patient pointing towards appendicitis then you have to decide right there and then, sir.

Q. So if there are changes in the patient pointing to appendicitis?
A. It depends now on what you are trying to wait for in the observation period, sir.
Q. So precisely if the change is a condition which bring you in doubt that there is something else other than appendicitis, would you extend over a period of 24 hours?
A. It depends on the emergent development, sir.

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16 TSN, June 29, 2001, p. 68. (Emphases ours)
17 *Id.* at 69. (Emphases ours)

Q. That is the point, if you are the attending physician and there is a change not pointing to appendicitis, would you extend over a period of 24 hours?
A. In 24 hours you have to decide, sir.

x x x x

Q. And that is based on the assessment of the attending physician?
A. Yes, sir.[18]

Dr. Mateo further testified on cross-examination:

ATTY. CASTRO:
Q: So you will know yourself, as far as the record is concerned, because if you will agree with me, you did not even touch the patient?
A. ***Yes, I based my opinion on what is put on record, sir. The records show that after the observation period, the abdominal pain is still there plus there are already other signs and symptoms which are not seen or noted.***

Q. But insofar as you yourself not having touched the abdomen of the patient, would you give a comment on that?
A. ***Yes, based on the record, after 24 hours of observation, the pain apparently was still there and there was more vomiting and there was diarrhea. In my personal opinion, I think the condition of the patient was deteriorating.***

Q. Even though you have not touched the patient?
A. I based on what was on the record, sir.[19]

From the foregoing, it is clear that if JR's condition remained unchecked it would ultimately result in his death, as what actually happened in the present case. Another expert witness for the defense, Dr. Vivencio Villaflor, Jr. testified on direct examination that ***he would perform a personal and thorough physical examination of the patient as frequent as every 4 to 6 hours***, to wit:

ATTY. CASTRO:
Q. As an expert doctor, if you were faced with a history of abdominal pain with nausea, vomiting, fever, anurecia (sic), elevated white blood cell count, physical examination of a positive psoas sign, observation of the sonologist of abdominal tenderness and the ultrasound findings of the probability of appendiceal (sic) pathology, what will you do if you have faced these problems, Doctor?
A. ***I will examine the patient thoroughly and it will depend on my physical examination and that is probably every 4 to 6 hours, sir.***[20]

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18 *Id.* at 73-74. (Emphasis ours)
19 TSN, July 18, 2001, p. 11. (Emphases ours)
20 TSN (Dr. Vivencio Villaflor, Jr.), September. 7, 2001, p. 17. (Emphasis ours)

On cross-examination, Dr. Villaflor affirmed:

Cross Exam. By Atty. Marteja:

Q. x x x However, there are corrections and admissions made at that time, your Honor, do I understand that T/C does not mean ruled out but rather to consider the matter?
A. Yes, now that I have seen the records of the patient, it says here, impression and T/C means to consider the appendicitis.

Q. Isn't it that it is worth then to say that the initial working diagnosis on Rodolfo Palma, Jr., otherwise known as JR, to whom I shall now refer to as JR, the primary consideration then is acute appendicitis, is that correct to say Doctor?
A. I think so, that is the impression.

Q. x x x Now if it is to be considered as the primary consideration in the initial working diagnosis, isn't it a fact that it has to be ruled out in order to consider it as not the disease of JR?
A. Yes. Sir.

Q. ***Isn't it a fact that to rule out acute appendicitis as not the disease of JR, surgery or operation must be done, isn't it Doctor?***
A. You have to correlate all the findings.

Q. Is it yes or no, Doctor?
A. Yes.

Q. So, you are saying then that in order to rule out acute appendicitis there must be an operation, that is right Doctor?
A. No, sir. If your diagnosis is to really determine if it is an acute appendicitis, you have to operate.[21]

x x x x

Q. Now Doctor, considering the infection, considering that there was a [symptom] that causes pain, considering that JR likewise was feverish and that he was vomiting, does that not show a disease of acute appendicitis Doctor?
A. Its possible.

Q. So that if that is possible, are we getting the impression then Doctor what you have earlier mentioned that the only way to rule out the suspect which is acute appendicitis is by surgery, you have said that earlier Doctor, I just want any confirmation of it?
A. Yes, sir.[22]

Verily, whether a physician or surgeon has exercised the requisite degree of skill and care in the treatment of his patient is, in the generality of

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21 TSN (Dr. V. Villaflor, Jr.), March 20, 2002, pp. 4-5. (Emphases ours)
22 *Id.* at 17. (Emphases ours)

cases, a matter of expert opinion. The deference of courts to the expert opinions of qualified physicians stems from its realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating.[23] From the testimonies of the expert witnesses presented, it was irrefutably proven that Dr. Ynzon failed to practice that degree of skill and care required in the treatment of his patient.

As correctly observed by the appellate court, Dr. Ynzon revealed want of reasonable skill and care in attending to the needs of JR by neglecting to monitor effectively the developments and changes on JR's condition during the observation period, and to act upon the situation after the 24-hour period when his abdominal pain persisted and his condition worsened. Lamentable, Dr. Ynzon appeared to have visited JR briefly only during regular rounds in the mornings. He was not there during the crucial times on June 16, 2000 when JR's condition started to deteriorate until JR's death. As the attending surgeon, he should be primarily responsible in monitoring the condition of JR, as he is in the best position considering his skills and experience to know if the patient's condition had deteriorated. While the resident-doctors-on-duty could likewise monitor the patient's condition, he is the one directly responsible for the patient as the attending surgeon. Indeed, it is reckless and gross negligence of duty to relegate his personal responsibility to observe the condition of the patient. Again, acute appendicitis was the working diagnosis, and with the emergence of graver symptoms after the 24-hour observation, Dr. Ynzon ruled out surgery for no apparent reason. We, likewise, note that the records are devoid of showing of any reasonable cause which would lead Dr. Ynzon to overrule appendectomy despite the initial diagnosis of appendicitis. Neither was there any showing that he was entertaining another diagnosis nor he took appropriate steps towards another diagnosis.

Among the elements constitutive of reckless imprudence, what perhaps is most central to a finding of guilt is the conclusive determination that the accused has exhibited, by his voluntary act without malice, an inexcusable lack of precaution. It is that which supplies the criminal intent so indispensable as to bring an act of mere negligence and imprudence under the operation of the penal law. This is because a conscious indifference to the consequences of the conduct is all that is required from the standpoint of the frame of mind of the accused.[24] Quasi-offenses penalize the mental attitude or condition behind the act, the dangerous recklessness, the lack of care or foresight, the "*imprudencia punible*," unlike willful offenses which punish the *intentional criminal*

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23 *Dr. Cruz v. Court of Appeals*, *supra* note 14, at 885.

24 *Caminos, Jr. v. People*, 605 Phil. 402, 435 (2009).

act.[25] This is precisely where this Court found Dr. Ynzon to be guilty of - his seemingly indifference to the deteriorating condition of JR that he as a consequence, failed to exercise lack of precaution which eventually led to JR's death.

To be sure, whether or not a physician has committed an "inexcusable lack of precaution" in the treatment of his patient is to be determined according to the standard of care observed by other members of the profession in good standing under similar circumstances bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science. In accepting a case, a doctor in effect represents that, having the needed training and skill possessed by physicians and surgeons practicing in the same field, he will employ such training, care and skill in the treatment of his patients. He, therefore, has a duty to use at least the same level of care that any other reasonably competent doctor would use to treat a condition under the same circumstances.[26] Sadly, Dr. Ynzon did not display that degree of care and precaution demanded by the circumstances.

AS TO DR. CABUGAO'S LIABILITY:

Every criminal conviction requires of the prosecution to prove two things — the fact of the crime, *i.e.*, the presence of all the elements of the crime for which the accused stands charged, and the fact that the accused is the perpetrator of the crime. Based on the above disquisitions, however, the prosecution failed to prove these two things. The Court is not convinced with moral certainty that Dr. Cabugao is guilty of reckless imprudence as the elements thereof were not proven by the prosecution beyond a reasonable doubt.

Both the trial court and the appellate court bewail the failure to perform appendectomy on JR, or the failure to determine the source of infection which caused the deterioration of JR's condition. However, a review of the records fail to show that Dr. Cabugao is in any position to perform the required appendectomy.

Immediately apparent from a review of the records of this case is the fact that Dr. Cabugao is not a surgeon, but a general practitioner specializing in family medicine;[27] thus, even if he wanted to, he cannot do an operation, much less an appendectomy on JR. It is precisely for this reason why he referred JR to Dr. Ynzon after he suspected appendicitis. Dr. Mateo, the

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25 *Ivler v. Modesto-San Pedro*, G.R. No. 172716, November 17, 2010, 635 SCRA 191, 223.
26 *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 332 (1997).
27 Annex “D-13,” records, p. 39.

prosecution's expert witness, emphasized the role of the surgeon during direct examination, to wit:

> ATTY. MARTEJA:
> Q. You had mentioned that under this circumstances and condition, you have mentioned that surgery is the solution, would you have allowed then a 24 hour observation?
> A. If there is a lingering doubt, in short period of observation of 18-24 hours can be allowed provided that there would be close monitoring of the patient, sir.
>
> ***Q. Would you please tell us who would be doing the monitoring doctor?***
> ***A. The best person should be the first examiner, the best surgeon, sir.***
>
> ***Q. So that would you say that it is incumbent on the surgeon attending to the case to have been the one to observe within the period of observation?***
> ***A. Yes, because he will be in the best position to observe the sudden changes in the condition of the patient, sir.***
>
> ***Q. And how often would in your experience doctor, how often would the surgeon re-assist (sic) the condition of the patient during the period of observation?***
> ***A. Most foreign authors would recommend every four (4) hours, some centers will recommend hourly or every two hours but here in the Philippines, would recommend for 4 to 6 hours, sir.***[28]

Dr. Cabugao's supervision does not cease upon his endorsement of his patient to the surgeon. Here, Dr. Cabugao has shown to have exerted all efforts to monitor his patient and under these circumstances he did not have any cause to doubt Dr. Ynzon's competence and diligence. Expert testimonies have been offered to prove the circumstances surrounding the case of JR and the need to perform an operation. Defense witness, Dr. Villaflor, on cross examination testified, to wit:

> Q. Isn't it a fact that to rule out acute appendicitis as not the disease of JR, surgery or operation must be done, isn't it Doctor?
> A. You have to [correlate] all the findings.
>
> Q. Is it yes or no, Doctor?
> A. Yes.
>
> Q. So, you are saying then that in order to rule out acute appendicitis there must be an operation, that is right Doctor?
> A. No, sir. If your diagnosis is to really determine if it is an acute

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[28] TSN, June 29, 2001, pp. 35-36. (Emphasis ours)

appendicitis, you have to operate.[29]

x x x x

Q. Now Doctor, considering the infection, considering that there was a [symptom] that causes pain, considering that JR likewise was feverish and that he was vomitting, does that not show a disease of acute appendicitis Doctor?
A. It's possible.

Q. So that if that is possible, are we getting the impression then Doctor what you have earlier mentioned that the only way to rule out the suspect which is acute appendicitis is by surgery, you have said that earlier Doctor, I just want any confirmation of it?
A. Yes, sir.[30]

Neither do we find evidence that Dr. Cabugao has been negligent or lacked the necessary precaution in his performance of his duty as a family doctor. On the contrary, a perusal of the medical records would show that during the 24-hour monitoring on JR, it was Dr. Cabugao who frequently made orders on the administration of antibiotics and pain relievers. There was also repetitive instructions from Dr. Cabugao to refer JR to Dr. Ynzon as it appeared that he is suspecting appendicitis. The referral of JR to Dr. Ynzon, a surgeon, is actually an exercise of precaution as he knew that appendicitis is not within his scope of expertise. This clearly showed that he employed the best of his knowledge and skill in attending to JR's condition, even after the referral of JR to Dr. Ynzon. To be sure, the calculated assessment of Dr. Cabugao to refer JR to a surgeon who has sufficient training and experience to handle JR's case belies the finding that he displayed inexcusable lack of precaution in handling his patient.[31]

We likewise note that Dr. Cabugao was out of town when JR's condition began to deteriorate. Even so, before he left, he made endorsement and notified the resident-doctor and nurses-on-duty that he will be on leave.

Moreover, while both appeared to be the attending physicians of JR during his hospital confinement, it cannot be said that the finding of guilt on Dr. Ynzon necessitates the same finding on the co-accused Dr. Cabugao. Conspiracy is inconsistent with the idea of a felony committed by means of *culpa*.[32] Thus, the accused-doctors to be found guilty of reckless imprudence resulting in homicide, it must be shown that both accused-

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29 TSN, (Dr. Vivencio Villaflor, Jr.), March 20, 2002, p. 5.
30 *Id.* at 17.
31 *See Jarcia, Jr. v. People*, G.R. No. 187926, February 15, 2012, 666 SCRA 336, 358.
32 *Villareal v. People*, G.R. No. 151258, G.R. No. 154984, G.R. No. 155101, G.R. Nos. 178057 and 178080, February 1, 2012, 664 SCRA 519, 559.

doctors demonstrated an act executed without malice or criminal intent – but with lack of foresight, carelessness, or negligence. Noteworthy, the evidence on record clearly points to the reckless imprudence of Dr. Ynzon; however, the same cannot be said in Dr. Cabugao's case.

AS TO CIVIL LIABILITY

While this case is pending appeal, counsel for petitioner Dr. Ynzon informed the Court that the latter died on December 23, 2011 due to "multi-organ failure" as evidenced by a copy of death certificate.[33] Thus, the effect of death, pending appeal of his conviction of petitioner Dr. Ynzon with regard to his criminal and pecuniary liabilities should be in accordance to *People v. Bayotas*,[34] wherein the Court laid down the rules in case the accused dies prior to final judgment:

> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
>
> 2. ***Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:***
>
> ***a) Law***
> ***b) Contracts***
> ***c) Quasi-contracts***
> ***d) x x x x x x x x x***
> ***e) Quasi-delicts***
>
> 3. ***Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.***
>
> 4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed

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33 *Rollo* (G.R. No. 163879), pp. 303-307.
34 G.R. No. 102007, September 2, 1994, 236 SCRA 239.

> interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[35]

In view of the foregoing, it is clear that the death of the accused Dr. Ynzon pending appeal of his conviction extinguishes his criminal liability. However, the recovery of civil liability subsists as the same is not based on *delict* but by contract and the reckless imprudence he was guilty of under Article 365 of the Revised Penal Code. For this reason, a separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based,[36] and in accordance with Section 4, Rule 111 of the Rules on Criminal Procedure, we quote:

> Sec. 4. *Effect of death on civil actions*. – The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the *delict*. ***However, the independent civil action instituted under section 3 of this Rule or which thereafter is instituted to enforce liability arising from other sources of obligation may be continued against the estate or legal representative of the accused after proper substitution or against said estate, as the case may be. The heirs of the accused may be substituted for the deceased without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.***
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
>
> A final judgment entered in favor of the offended party shall be enforced in the manner especially provided in these rules for prosecuting claims against the estate of the deceased.
>
> If the accused dies before arraignment, the case shall be dismissed without prejudice to any civil action the offended party may file against the estate of the deceased. (Emphases ours)

In sum, upon the extinction of the criminal liability and the offended party desires to recover damages from the same act or omission complained of, the party may file a separate civil action based on the other sources of obligation in accordance with Section 4, Rule 111.[37] If the same act or omission complained of arises from *quasi-delict*, as in this case, a separate civil action must be filed against the executor or administrator of the estate of the accused, pursuant to Section 1, Rule 87 of the Rules of Court:[38]

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35 *People v. Bayotas, supra*, at 255-256. (Citations omitted; emphases ours.)
36 See *People v. Abungan*, 395 Phil. 456, 461 (2000).
37 2000 Rules on Criminal Procedure, as amended.
38 *People v. Bayotas, supra* note 30, at 254.

> Section 1. *Actions which may and which may not be brought against executor or administrator*. — No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and ***actions to recover damages for an injury to person or property, real or personal, may be commenced against him. (Emphases ours)***

Conversely, if the offended party desires to recover damages from the same act or omission complained of arising from contract, the filing of a separate civil action must be filed against the estate, pursuant to Section 5, Rule 86 of the Rules of Court, to wit:

> **Section 5.** *Claims which must be filed under the notice. If not filed, barred*; *exceptions*. — All claims for money against the decent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expense for the last sickness of the decedent, and judgment for money against the decent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value.

As a final note, we reiterate that the policy against double recovery requires that only one action be maintained for the same act or omission whether the action is brought against the executor or administrator, or the estate.[39] The heirs of JR must choose which of the available causes of action for damages they will bring.

WHEREFORE, premises considered, petitioner DR. ANTONIO P. CABUGAO is hereby **ACQUITTED** of the crime of reckless imprudence resulting to homicide.

Due to the death of accused Dr. Clenio Ynzon prior to the disposition of this case, his criminal liability is extinguished; however, his civil liability subsists. A separate civil action may be filed either against the executor/administrator, or the estate of Dr. Ynzon, depending on the source of obligation upon which the same are based.

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[39] See *Maniego v. Court of Appeals*, 324 Phil. 34, 39 (1996).

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice