Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NAPOLEON D. SENIT,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 192914

Present:

BRION, *J.*,*
PERALTA,
Acting Chairperson,
VILLARAMA, JR.,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

January 11, 2016

x----------x

DECISION

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated November 20, 2009 and the Resolution[3] dated June 17, 2010 of the Court of Appeals (CA) in CA-G.R. CR No. 00390-MIN which affirmed with modification the Decision[4] dated April 26, 2006 of the Regional Trial Court (RTC) of Malaybalay City, Bukidnon, Branch 10, in Criminal Case No. 10717-00 convicting Napoleon D. Senit (petitioner) guilty beyond reasonable doubt of Reckless Imprudence resulting to Multiple Serious Physical Injuries and Damage to Property.

---

* Designated Additional Member per Raffle dated June 29, 2015.

1 *Rollo*, pp. 4-34.

2 Penned by Associate Justice Edgardo A. Camello, with Associate Justices Edgardo T. Lloren and Leoncia R. Dimagiba concurring; id. at 47-58.

3 Id. at 60-66.

4 Rendered by Judge Josefina Gentiles Bacal; id. at 40-45.

The Antecedents

The facts as narrated are culled from the Comments[5] of the Office of the Solicitor General (OSG) and from the assailed decision of the CA:

> In the morning of September 2, 2000, private complainant Mohinder Toor, Sr. was driving north along Aglayan from the direction of Valencia on board his Toyota pick-up with his wife Rosalinda Toor, their three-year-old son Mohinder Toor, Jr., and househelper Mezelle Jane Silayan. He turned left and was coming to the center of Aglayan when a speeding Super 5 bus driven by petitioner and coming from Malaybalay headed south towards Valencia, suddenly overtook a big truck from the right side. Petitioner tried to avoid the accident by swerving to the right towards the shoulder of the road and applying the brakes, but he was moving too fast and could not avoid a collision with the pick-up. The bus crashed into the right side of private complainant's pick-up at a right angle.
>
> All passengers of the pick-up were injured and immediately brought to Bethel Baptist Hospital, Sumpong, Malaybalay City. However, because of lack of medical facilities, they were transferred to the Bukidnon Doctor's Hospital in Valencia City, Bukidnon. Rosalinda Toor sustained an open fracture of the humerus of the right arm and displaced, closed fracture of the proximal and distal femur of the right lower extremity which required two surgical operations. She was paralyzed as a result of the accident and was unable to return to her job as the Regional Manager of COSPACHEM Product Laboratories. Mohinder Toor, Sr. spent about P580,000.00 for her treatment and P3,000.00 for Mezelle Jean Silayan, who suffered frontal area swelling as a result of the accident. Mohinder Toor, Sr. suffered a complete fracture of the scapular bone of his right shoulder while his son Mohinder Toor, Jr. sustained abdominal injury and a wound on the area of his right eye which required suturing. The damage sustained by the pick-up reached P106,155.00.
>
> Thus, on May 30, 2001, Carlo B. Mejia, City Prosecutor of Malaybalay City, charged petitioner with Reckless Imprudence Resulting to Multiple Serious Physical Injuries and Damage to Property in an Amended Information which was filed with Branch 10 of the [RTC] in Malaybalay City. The information reads:
>
> > "That on or about September 2, 2000 in the morning at [sic] Barangay Aglayan, Malaybalay City, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and criminally in violation of the Land Transportation and Traffic Code, in negligent, careless, imprudent manner and without precaution to prevent accident [to] life and property, drive a Super Five Nissan Bus, color white/red bearing plate No. MVD-776

---

5 Id. at 76-115.

> owned by PAUL PADAYHAG of Rosario Heights, Iligan City, as a result hit and bumped the [sic] motor vehicle, Toyota Pick-up color blue with plate No. NEF-266 driven and owned by MOHINDER S. TOO[R,] SR., and with his wife Rosalinda Toor, son Mohinder Toor, Jr., 3 years old and househelp Mezelle Jane Silayan, 17 years old, riding with him. The Toyota pick-up was damaged in the amount of [₱]105,300.00 and spouses Mohinder Toor[,] Sr. and Rosalinda Toor, Mohinder Toor[,] Jr[.] and Mezelle Jane Silayan sustained the following injuries to wit:
>
> MOHINDER TOOR[,] SR.
>
> = complete fracture of superior scapular bone right shoulder
>
> MOHINDER TOOR[,] JR.
>
> = MPI secondary to MVA r/o Blunt abdominal injury
> = Saturing [sic] right eye area
>
> ROSALINDA TOOR
>
> = Fracture, open type 11, supracondylar, humerus right
> = Fracture, closed, Complete, displaced, subtrochanter
> = and supracondylar femur right
>
> MEZELLE JANE SILAYAN
>
> = Frontal area swelling 20 vehicular accident
>
> to the damage and prejudice of the complainant victim in such amount that they are entitled to under the law.
>
> CONTRARY TO and in Violation of Article 365 in relation to 263 of the Revised Penal Code. *IN RELATION TO THE FAMILY CODE*."[6] (Citations omitted)

Upon being arraigned on June 21, 2001, the petitioner, with the assistance of his counsel, pleaded not guilty to the Information in this case.[7]

Trial ensued. However, after the initial presentation of evidence for the petitioner, he resigned from his employment and transferred residence. His whereabouts allegedly became unknown so he was not presented as a witness by his new counsel.[8]

---

6 Id. at 77-80.
7 Id. at 80.
8 Id. at 49.

On April 26, 2006, the RTC rendered its Decision *in absentia* convicting the petitioner of the crime charged. The *fallo* of the decision reads:

> WHEREFORE, premises considered and finding the accused NAPOLEON SENIT y Duhaylungsod guilty beyond reasonable doubt of the crime as charged, he is hereby sentenced to an imprisonment of an indeterminate penalty of Four [4] months and One [1] day of Arresto Mayor maximum as minimum and to Four [4] years and Two [2] months Prision Correc[c]ional medium as maximum. The accused is further ordered to indemnify the private complainant the amount of Fifty Thousand [P50,000.00] Pesos as moral damages, the amount of Four Hundred Eighty Thousand [P480,000.00] [Pesos] for the expenses incurred in the treatment and hospitalization of Rosalinda Toor, Mohinder Toor, Jr[.] and Mezelle Jean Silayan and the amount of Eighty Thousand [P80,000.00] [Pesos] for the expenses incurred in the repair of the damaged Toyota pick-up vehicle.
>
> SO ORDERED.[9]

The RTC issued a Promulgation[10] dated August 4, 2006, which included an order for the arrest of the petitioner.

The petitioner then filed a motion for new trial *via* registered mail on the ground that errors of law or irregularities have been committed during trial that are allegedly prejudicial to his substantial rights. He claimed that he was not able to present evidence during trial because he was not notified of the schedule. Likewise, he mistakenly believed that the case against him has been dismissed as private complainant Mohinder Toor, Sr. (Toor, Sr.) purportedly left the country.[11]

On September 22, 2006, the public prosecutor opposed the motion for new trial filed by the petitioner.[12]

On October 26, 2006, the motion for new trial was denied by the lower court pronouncing that notices have been duly served the parties and that the reason given by the petitioner was self-serving.[13]

Dissatisfied with the RTC decision, the petitioner filed his Notice of Appeal dated November 6, 2006 by registered mail to the CA, on both questions of facts and laws.[14]

---

9 Id. at 45.
10 Id. at 39.
11 Id. at 49-50.
12 Id. at 50.
13 Id.
14 Id. at 7-8.

Ruling of the CA

On November 20, 2009, the CA affirmed the decision of the RTC with modification as to the penalty imposed, the dispositive portion thereof reads:

> ACCORDINGLY, with MODIFICATION that [the petitioner] should suffer the penalty of three (3) months and one (1) day of *arresto mayor*, the Court AFFIRMS in all other respects the appealed 26 April 2006 Decision of the [RTC] of Malaybalay City, Branch 10, in Criminal Case No. 10717-00.
>
> No pronouncement as to costs.
>
> SO ORDERED.[15]

In affirming with modification the decision of the RTC, the CA ratiocinated as follows: *first*, the evidence presented by OSG overwhelmingly points to the petitioner as the culprit. A scrutiny of the records further reveals that the pictures taken after the accident and the Traffic Investigation Report all coincide with the testimonies of the prosecution witnesses, which are in whole consistent and believable thus, debunking the claim of the petitioner that he was convicted on the mere basis of allegedly biased and hearsay testimonies which do not establish his guilt beyond reasonable doubt. In addition, there was no existing evidence to show that there was an improper motive on the part of the eyewitnesses.[16]

Second, it found the arguments of the petitioner to move for a new trial as baseless.[17]

Lastly, it rendered that the proper imposable penalty is the maximum period of *arresto mayor* in its minimum and medium periods that is – imprisonment for three (3) months and one (1) day of *arresto mayor* since the petitioner has, by reckless imprudence, committed an act which, had it been intentional, would have constituted a less grave felony, based on the first paragraph of Article 365 in relation to Article 48 of the Revised Penal Code (RPC).[18]

---

15 Id. at 57.
16 Id. at 53-55.
17 Id. at 55.
18 Id. at 56-57.

The petitioner filed a motion for reconsideration which was denied by the CA, in its Resolution[19] dated June 17, 2010.

As a final recourse, the petitioner filed the petition for review before this Court, praying that the applicable law on the matter be reviewed, and the gross misappreciation of facts committed by the court *a quo* and by the CA be given a second look.

The Issues

> I. WHETHER OR NOT THE RTC AND THE CA ERRED IN DENYING THE MOTION FOR NEW TRIAL OR TO RE-OPEN THE SAME IN ORDER TO ALLOW THE PETITIONER TO PRESENT EVIDENCE ON HIS BEHALF; AND
>
> II. WHETHER OR NOT THE RTC ERRED IN CONVICTING THE PETITIONER DESPITE THE APPARENT FAILURE ON THE PART OF THE PROSECUTION TO PROVE THE GUILT OF THE PETITIONER BEYOND REASONABLE DOUBT.[20]

Ruling of the Court

The petition lacks merit.

The RTC and CA did not err in denying the petitioner's motion for new trial or to re-open the same.

The Court finds that no errors of law or irregularities, prejudicial to the substantial rights of the petitioner, have been committed during trial.

The petitioner anchors his motion for new trial on Rule 121, Section 2(a) of the Revised Rules of Criminal Procedure, to wit:

> Sec. 2. *Grounds for a new trial*. – The Court shall grant a new trial on any of the following grounds:
>
> (a) **That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial**;

---

19 Id. at 60-66.

20 Id. at 13.

> (b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment. (Emphasis ours)

To sum up the claims of the petitioner, he theorizes that there was an error of law or irregularities committed when the RTC promulgated a decision *in absentia* and deemed that he had waived his right to present evidence resulting to denial of due process, a one-sided decision by the RTC, and a strict and rigid application of the Revised Rules of Criminal Procedure against him.

First, it must be noted that the petitioner had already been arraigned and therefore, the court *a quo* had already acquired jurisdiction over him. In fact, there was already an initial presentation of evidence for the defense when his whereabouts became unknown.

The petitioner's claims that he had not testified because he did not know the schedule of the hearings, and mistakenly believed that the case had already been terminated with the departure of Toor, Sr., do not merit our consideration.[21]

The holding of trial *in absentia* is authorized under Section 14(2), Article III of the 1987 Constitution which provides that after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.[22] It is established that notices have been served to the counsel of the petitioner and his failure to inform his counsel of his whereabouts is the reason for his failure to appear on the scheduled date. Thus, the arguments of the petitioner against the validity of the proceedings and promulgation of judgment *in absentia* for being in violation of the constitutional right to due process are doomed to fail.[23]

In *Estrada v. People*,[24] the Court ruled that:

> Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy.
>
> In the present case, petitioner was afforded such opportunity. The trial court set a hearing on May 14, 1997 for reception of defense evidence, notice of which was duly sent to the addresses on record of

---

21 Id. at 14.

22 *Bernardo v. People*, 549 Phil. 132, 144 (2007), citing *Estrada v. People,* 505 Phil. 339, 351 (2005).

23 *Estrada v. People*, id.

24 505 Phil. 339 (2005).

> petitioner and her counsel, respectively. When they failed to appear at the May 14, 1997 hearing, they later alleged that they were not notified of said setting. Petitioner's counsel never notified the court of any change in her address, while petitioner gave a wrong address from the very beginning, eventually jumped bail and evaded court processes. Clearly, therefore, petitioner and her counsel were given all the opportunities to be heard. They cannot now complain of alleged violation of petitioner's right to due process when it was by their own fault that they lost the opportunity to present evidence.[25] (Citation omitted)

Similarly in the present case, the petitioner clearly had previous notice of the criminal case filed against him and was given the opportunity to present evidence in his defense. The petitioner was not in any way deprived of his substantive and constitutional right to due process as he was duly accorded all the opportunities to be heard and to present evidence to substantiate his defense, but he forfeited this right, through his own negligence, by not appearing in court at the scheduled hearings.[26]

The negligence of the petitioner in believing that the case was already terminated resulting to his failure to attend the hearings, is inexcusable. The Court has ruled in many cases that:

> It is petitioner's duty, as a client, to be in touch with his counsel so as to be constantly posted about the case. It is mandated to inquire from its counsel about the status and progress of the case from time to time and cannot expect that all it has to do is sit back, relax and await the outcome of the case. It is also its responsibility, together with its counsel, to devise a system for the receipt of mail intended for them.[27] (Citations omitted)

The Court finds that the negligence exhibited by the petitioner, towards the criminal case against him in which his liberty is at risk, is not borne of ignorance of the law as claimed by his counsel rather, lack of concern towards the incident, and the people who suffered from it. While there was no showing in the case at bar that the counsel of the petitioner was grossly negligent in failing to inform him of the notices served, the Court cannot find anyone to blame but the petitioner himself in not exercising diligence in informing his counsel of his whereabouts.

The Court also agrees with the Comment of the OSG that there is neither rule nor law which specifically requires the trial court to ascertain whether notices received by counsel are sufficiently communicated with his client.[28]

---

25 Id. at 353-354.
26 *Rollo*, pp. 89-90.
27 *GCP-Manny Transport Services, Inc. v. Judge Principe*, 511 Phil. 176, 186 (2005).
28 *Rollo*, p. 93.

In *GCP-Manny Transport Services, Inc. v. Judge Principe*,[29] the Court held that:

> [W]hen petitioner is at fault or not entirely blameless, there is no reason to overturn well-settled jurisprudence or to interpret the rules liberally in its favor. Where petitioner failed to act with prudence and diligence, its plea that it was not accorded the right to due process cannot elicit this Court's approval or even sympathy. It is petitioner's duty, as a client, to be in touch with his counsel so as to be constantly posted about the case. x x x.[30] (Citations omitted)

Even if the Court assumed that the petitioner anchors his claim on Section 2(b) of Rule 121 of the Revised Rules of Criminal Procedure, the argument still has no merit.

"A motion for new trial based on newly-discovered evidence may be granted only if the following requisites are met: (a) that the evidence was discovered after trial; (b) that said evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative, corroborative or impeaching; and (d) that the evidence is of such weight that, if admitted, it would probably change the judgment. It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it."[31] The Court agrees with the CA in its decision which held that "a new trial may not be had on the basis of evidence which was available during trial but was not presented due to its negligence. Likewise, the purported errors and irregularities committed in the course of the trial against [the petitioner's] substantive rights do not exist."[32]

In *Lustaña v. Jimena-Lazo*,[33] the Court ruled that:

> Rules of procedure are tools designed to promote efficiency and orderliness as well as to facilitate attainment of justice, such that *strict adherence thereto is required*. Their application may be relaxed only when rigidity would result in a defeat of equity and substantial justice, which is not present here. Utter disregard of the Rules cannot just be rationalized by harking on the policy of liberal construction.[34] (Citations omitted and italics in the original)

---

29 511 Phil. 176 (2005).
30 Id. at 185-186.
31 *De Villa v. Director, New Bilibid Prisons*, 485 Phil. 368, 388-389 (2004).
32 *Rollo*, p. 56.
33 504 Phil. 682 (2005).
34 Id. at 684.

In the instant case, the Court finds no reason to waive the procedural rules in order to grant the motion for new trial of the petitioner. There is just no legal basis for the grant of the motion for new trial. The Court believes that the petitioner was given the opportunity to be heard but he chose to put this opportunity into waste by not being diligent enough to ask about the status of the criminal case against him and inform his counsel of his whereabouts.

The RTC did not err in convicting the petitioner.

The law applicable to the case at bar is Article 365 of the RPC, which provides that:

> Art. 365. *Imprudence and negligence.* – x x x.
>
> x x x x
>
> Reckless imprudence consists in voluntary, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.
>
> x x x x

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.[35]

All elements for the crime of reckless imprudence have been established in the present case.

The petitioner questions the credibility of the prosecution witnesses and claims that their testimonies are biased. He also claims that Toor, Sr. is the real culprit when he turned left without looking for an incoming vehicle, thus violating traffic rules resulting to the mishap.

---

35 *Dr. Cruz v. CA*, 346 Phil. 872, 883 (1997).

The Court believes that the RTC and CA correctly appreciated the evidence and testimonies presented in the instant case.

The Court agrees with the OSG that not only were the witnesses' narrations of the accident credible and worthy of belief, their accounts were also consistent and tallied on all significant and substantial points.[36] These witnesses' testimonies are as follows:

PO3 Jesus Delfin testified that he investigated the accident at Aglayan. He made the following findings in his accident report: the pick-up owned and driven by Toor, Sr., together with his family and a househelper as his passengers, was turning left along Aglayan when it was hit at a right angle position by a Super 5 bus driven by the petitioner. He noted skid marks made by the bus and explained that the petitioner was overtaking but was not able to do so because of the pick-up. The petitioner could not swerve to the left to avoid the pick-up because there was a ten-wheeler truck. He swerved to the right instead and applied breaks to avoid the accident. The investigator clearly testified that, on the basis of data gathered, the collision was due to the error of the bus driver who was driving too fast, as evinced by the distance from the skid marks towards the axle.[37]

Albert Alon testified that he saw Toor, Sr.'s pick-up turn left along Aglayan. He also saw a big truck and a Super 5 bus both coming from Malaybalay. The truck was running slowly while the Super 5 bus was running fast and overtaking the big truck from the right side. The bus crashed into the pick-up and pushed the smaller vehicle due to the force of the impact. He went nearer the area of collision and saw that the four passengers of the pick-up were unconscious.[38]

Mezelle Jane Silayan testified that while moving towards the center of Aglayan on board her employer's pick-up, she saw a Super 5 bus overtaking a big truck from the right side. Their vehicle was hit by the bus. She was thrown out of the pick-up and hit her head on the ground.[39]

Toor, Sr. testified that while he was driving his pick-up at the corner of the center of Aglayan, a Super 5 bus, moving fast, overtook a big truck from the right side. The bus then hit the pick up, injuring him and all his passengers.[40]

---

36 *Rollo*, p. 103.
37 Id. at 98-99.
38 Id. at 99.
39 Id. at 100.
40 Id. at 98-100.

Taken all together, the testimonies of the witnesses conclusively suggest that: (1) the Super 5 bus was moving fast; (2) the bus overtook a big truck which was moving slowly from the right side; and (3) when the petitioner saw the pick-up truck turning left, he applied the brakes but because he was moving fast, the collision became inevitable.

"Well-entrenched is the rule that the trial court's assessment of the credibility of witnesses is entitled to great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of significance and influence. This rule is based on the fact that the trial court had the opportunity to observe the demeanor and the conduct of the witnesses."[41] The Court finds in the instant case that there is no reason for this Court to deviate from the rule.

The Court finds the testimonies of the witnesses not biased. There was no evidence of ill motive of the witnesses against the petitioner.

Lastly, the petitioner claims that Toor, Sr. committed a traffic violation and thus, he should be the one blamed for the incident. The Court finds this without merit.

The prosecution sufficiently proved that the Super 5 bus driven by the petitioner recklessly drove on the right shoulder of the road and overtook another south-bound ten-wheeler truck that slowed at the intersection, obviously to give way to another vehicle about to enter the intersection. It was impossible for him not to notice that the ten-wheeler truck in front and traveling in the same direction had already slowed down to allow passage of the pick-up, which was then negotiating a left turn to Aglayan public market. Seeing the ten-wheeler truck slow down, it was incumbent upon the petitioner to reduce his speed or apply on the brakes of the bus in order to allow the pick-up to safely make a left turn. Instead, he drove at a speed too fast for safety, then chose to swerve to the right shoulder of the road and overtake the truck, entering the intersection and directly smashing into the pick-up. In flagrantly failing to observe the necessary precautions to avoid inflicting injury or damage to other persons and things, the petitioner was recklessly imprudent in operating the Super 5 bus.[42]

In *Dumayag v. People*,[43] the Court held:

---

41 *People v. Rendaje*, 398 Phil. 687, 701 (2000).
42 *Rollo,* pp. 53-54.
43 G.R. No. 172778, November 26, 2012, 686 SCRA 347.

> Section 37 of R.A. No. 4136, as amended, mandates all motorists to drive and operate vehicles on the right side of the road or highway. When overtaking another, it should be made only if the highway is clearly visible and is free from oncoming vehicle. Overtaking while approaching a curve in the highway, where the driver's view is obstructed, is not allowed. Corollarily, **drivers of automobiles, when overtaking another vehicle, are charged with a high degree of care and diligence to avoid collision. The obligation rests upon him to see to it that vehicles coming from the opposite direction are not taken unaware by his presence on the side of the road upon which they have the right to pass.**[44] (Citations omitted and emphasis ours)

Thus, the petitioner cannot blame Toor, Sr. for not noticing a fast-approaching bus, as the cited law provides that the one overtaking on the road has the obligation to let other cars in the opposite direction know his presence and not the other way around as the petitioner suggests.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated November 20, 2009 and the Resolution dated June 17, 2010 of the Court of Appeals in CA-G.R. CR No. 00390-MIN are **AFFIRMED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

---

44 Id. at 360.

FRANCIS H. JARDELEZA
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.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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