EN BANC

G.R. No. 240337 — FRANCIS O. MORALES, *petitioner, versus* **PEOPLE OF THE PHILIPPINES,** *respondent.*

Promulgated:

January 4, 2022

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SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur fully with the *ponencia*, including the stance it takes in finally resolving the inconsistent jurisprudence on Article 365[1] of the Revised Penal Code (RPC), specifically as to the issues of: 1) the proper characterization of Article 365, including the issue of whether Article 48[2] may be applied to complex the resulting acts therein; and 2) the determination of penalties in cases of reckless imprudence resulting to both damage to property and physical injuries *vis-a-vis* paragraph 3 of Article 365. I agree that the Court's Second Division's ruling in *Ivler v. Modesto-San Pedro*[3] (*Ivler*) is the sound law, which should be upheld, and thereby abandoning the Court *en banc*'s opposite ruling in the earlier case of *People v. De los Santos*[4] (*De los Santos*).

I write this separate opinion to stress: 1) that the Court's ruling in *Angeles, etc. v. Jose, et al.*[5] (*Angeles*), which applied paragraph 3 of Article 365 to cases where the reckless imprudence resulting in damage to property likewise resulted in injuries to persons, is sound and best conforms to the proper treatment of Article 365 as punishing a single *quasi*-crime, and 2) the important role of prosecutors in preventing the abuse of the proper doctrine that was demonstrated by the defense in *Ivler*.[6]

The third paragraph of Article 365 applies even in cases where the reckless imprudence resulted not just in damage to property, but likewise in injuries to persons.

As the *ponencia* discusses, there is a conflict in jurisprudence as to whether the fine fixed under paragraph 3 of Article 365 applies when the

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[1] Imprudence and Negligence.

[2] REVISED PENAL CODE, Art. 48 provides:

> **ART. 48.** *Penalty for complex crimes.* – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Commonwealth Act No. 400, December 5, 1932.)

[3] G.R. No. 172716, November 17, 2010, 635 SCRA 191.

[4] G.R. No. 131588, March 27, 2001, 355 SCRA 415.

[5] 96 Phil. 151 (1954).

[6] Supra note 3.

reckless imprudence likewise results in injuries to persons. This conflict arises from the use of the exclusive language of "only". Paragraph 3 reads:

> x x x x
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> When the execution of the act covered by this article shall have **only resulted in damage to the property** of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damage to three times such value, but which shall in no case be less than Five thousand pesos ([₱]5,000).
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> x x x x. (Emphasis supplied)

The *ponencia* affirms the ruling in *Angeles* that paragraph 3 imposing a penalty of fine still applies even where the reckless imprudence results in injury to persons fixed under the same Article 365. In other words, the penalties for the injury to persons shall simply be imposed in addition to the fine for the damage to property under paragraph 3.

The propriety of applying paragraph 3 had often arisen from the issue of which court has jurisdiction over the case filed. In *Cuyos v. Garcia*[7] (*Cuyos*), the Court cited *Angeles* and ruled that in determining such issue of jurisdiction, the fine fixed in paragraph 3 must be considered. Such fine may constitute a grave or less grave felony, thus, may be graver than the penalty corresponding to the physical injuries. Hence, in *Cuyos*, while the penalty for the resulting less serious physical injuries may place the case under the jurisdiction of the municipal trial courts, the proper court having jurisdiction was held to properly be the then Court of First Instance (CFI) because of the amount of the imposable fine.

The cases of *People v. Villanueva*[8] and *People v. Malabanan*[9]— both involving reckless imprudence resulting in damage to property and physical injuries — also applied the rule on allocation of jurisdiction as determined in *Angeles*, by considering the imposable fine for the damage to property under paragraph 3 and not just the penalty for physical injuries.

However, as discussed in the *ponencia*,[10] with the amendment of *Batas Pambansa Bilang* (BP) 129 by Republic Act No. (R.A.) 7691[11] on March 25, 1994, the amount of fine corresponding to the damage to property is no longer considered to determine which court has jurisdiction.[12] The *quasi*-crime under

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7 No. L-46934, April 15, 1988, 160 SCRA 302.
8 No. L-15014, April 29, 1961, 1 SCRA 1248.
9 No. L-16478, August 31, 1961, 2 SCRA 1184.
10 *Ponencia*, p. 21.
11 AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, otherwise known as the "JUDICIARY REORGANIZATION ACT OF 1980."
12 See Sec. 32(2) of BP 129 which provides:

> SEC. 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases.* – Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the

Article 365 now falls under the jurisdiction of the Metropolitan Trial Courts (MeTCs), Municipal Trial Courts (MTCs) and Municipal Circuit Trial Courts (MCTCs), except when the same is qualified according to the circumstances mentioned in the law, in which case jurisdiction lies with the Regional Trial Courts (RTCs).[13]

Ivler likewise cited and reproduced the *Angeles* ruling to demonstrate that the proper conceptualization of Article 365 rejects the application of Article 48. Thus, in the case of reckless imprudence resulting in both damage to property and physical injuries, the penalty of fine in paragraph 3 should be **added** to the appropriate penalty for the physical injuries under the penalty scheme of Article 365.

In contrast, in *Reodica v. Court of Appeals*[14] (*Reodica*), which involved a van driven by therein petitioner that hit the car of respondent, thus leading to the filing of an Information for Reckless Imprudence Resulting in Damage to Property with Slight Physical Injuries, the Court ruled that the third paragraph of Article 365 does not apply since the criminal negligence did not result in damage to property *only*. What the Court applied to the damage to property is the first paragraph of Article 365.[15] Thus, the Court used the penalties for malicious mischief under Article 329 of the RPC — as it would have been the offense produced had the acts been intentional — to determine the penalty corresponding to the damage to property.

Notably, in *Reodica*, the Court took the stance that Article 365 may be complexed if it produced resulting acts which are two or more grave or less grave felonies, but that since the crimes produced therein were less grave (as to the resulting damage to property) and light (as to the resulting slight physical injuries), the latter should have been charged in a separate information. In other words, since the latter act cannot be complexed under Article 48, the Court ruled that two Informations should have been filed —

Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

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(2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof: *Provided, however,* That in offenses involving damage to property through criminal negligence they shall have exclusive original jurisdiction thereof.

x x x x.

13 See REVISED PENAL CODE, Art. 365.

14 G.R. No. 125066, July 8, 1998, 292 SCRA 87.

15 REVISED PENAL CODE, Art. 365 states:

ART. 365. *Imprudence and negligence.* — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed; if it would have constituted a light felony, the penalty of *arresto menor* in its maximum period shall be imposed. x x x

one for reckless imprudence resulting in damage to property and another for reckless imprudence resulting in slight physical injuries.

A third position may be theoretically drawn from paragraph 3 — that it does not apply when the reckless imprudence also resulted in an act which would have been deemed as a felony had it been intentional, because of the law's language of exclusivity. The resulting damage to property does not anymore deserve an additional penalty as it is already subsumed by the greater punishment reserved for the negligent acts resulting in felonies had they been intentional. The accused will merely be liable to pay for such damage to the aggrieved party by way of actual or temperate damages, which are civil, not criminal, in nature. Of course, this differs from *Reodica* in that in the latter, the Court still imposed a criminal penalty on the resulting damage to property, except that, instead of applying the fine under paragraph 3, it applied the penalty scheme under paragraph 1.

The problem with this third position is that it disregards the treatment of Article 365 as punishing one *quasi*-offense, with the penalties for each consequent result merely imposed one over the other. The third position in effect dispenses with the penalty for the damage to property, sliding back to the erroneous ruling in *De los Santos* that the consequences of Article 365 may be complexed, save those constituting light felonies if intentional. To recall, one effect of complexing under Article 48 is that the accused, in lieu of serving multiple penalties for each crime committed, will only serve the maximum of the penalty for the most serious crime.[16]

On the other hand, while *Reodica* properly punishes every result arising from the reckless imprudence or negligence, including the damage to property, it nevertheless erroneously regarded such results as crimes in themselves, hence, as capable of being complexed under Article 48. This thinking led the Court in *Reodica* to pronounce that two Informations should have been filed, instead of one, because the slight physical injuries only constitutes a light felony which was not allowed to be complexed.

Everything considered, among the above-discussed schools of thought, it is *Angeles*, as ruled in the *ponencia*, that dovetails with the proper characterization of Article 365 as punishing a singular *quasi*-crime so that the results (*i.e.*, death, physical injuries, and damage to property) cannot be complexed and that each of these results will trigger the penalty set forth in Article 365. To recall, *Angeles* merely imposed the fine under paragraph 3 (because of the damage to property), on top of the penalties for the physical injuries caused to the victims. This adding of the fine to the penalty for physical injuries squarely conforms to the language of Article 365 and to the treatment of *quasi*-crimes.

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[16] *See* REVISED PENAL CODE, Art. 48; *see also Ivler v. Modesto-San Pedro*, supra note 3.

For a quasi-crime under Article 365, prosecutors must ensure that only one Information is filed and that the same accounts for all of the consequences of the quasi-crime in order to prevent the abuse of the correct doctrine as demonstrated by the defense in Ivler.

The *ponencia* upholds the doctrine in *Ivler* which forbids the application of Article 48 of the RPC because the distinct crime punished under Article 365 is reckless imprudence or negligence — and that this is not a mere way of committing a crime. Article 365 punishes only one *quasi*-crime, for which only one Information may be filed, regardless of the number or severity of the consequences of the imprudent or negligent act. In upholding *Ivler*, the *ponencia* formally abandons the contrasting ruling in *De los Santos*.

As intimated at the outset, I agree that *Ivler* should prevail as against *De los Santos* because this is more in keeping with the language and wisdom of Article 365.

However, while *Ivler* brought to fore, extensively discussed, and settled the conflicting doctrines applying Article 365, it likewise demonstrated the susceptibility to abuse of the correct treatment of *quasi*-crimes.

To recall, *Ivler* involved Jason Ivler (Jason) who was charged under two Informations: reckless imprudence resulting in slight physical injuries and reckless imprudence resulting in homicide and damage to property. Even as he filed dilatory motions in the second criminal case, he moved with alacrity in pleading guilty to the first charge where he was meted the penalty of only public censure. With this tactic, Jason then invoked such conviction and moved to quash the Information in the second charge, contending that it placed him in double jeopardy.

As for the prosecution, it reasoned that because Article 48 prevented light offenses from being complexed with grave or less grave offenses it was forced to separate the charges for slight physical injuries, on the one hand, and homicide and damage to property, on the other.

The Court was then faced with two issues: 1) whether there was double jeopardy in the second offense charged, and 2) whether Article 48 was applicable so as to bar the joining of the offenses in one Information.

As discussed in the *ponencia*, the Court sustained Jason and settled the jurisprudential dilemma in favor of understanding Article 365 as punishing a single *quasi*-offense — the mental attitude behind the act — irrespective of the resulting acts, so that such resulting acts may not be complexed under Article 48. The Court held that the reckless imprudence and all its resulting

acts must be alleged in a single Information so that double jeopardy does attach where there is prior conviction or acquittal on the first charge of reckless imprudence. The Court then declared that Article 48, which deals with intentional felonies, simply cannot be reconciled with Article 365 as the latter deals with *quasi*-crimes.

While conceptually and doctrinally sound, the practical result of the *Ivler* decision was the imposition upon the accused of a penalty that failed to reckon with the graver offense committed. To recall, while Article 365 treats of a single *quasi*-crime and mandates a single prosecution under one Information, penalties are still provided for each of the consequences arising from the *quasi*-crime — to be imposed independently of each other, depending on the class of felonies the same would have constituted had they been intentional (*i.e.*, grave, less grave, or light felony). In short, the consequences of the single act of criminal negligence or imprudence are still taken into consideration by Article 365 in the determination of the penalties to be imposed.

In *Ivler*, the charges were split into two — reckless imprudence resulting in slight physical injuries and reckless imprudence resulting in homicide and damage to property. The proper charge should have been, in just one Information, the single crime of reckless imprudence resulting in homicide, slight physical injuries and damage to property, and it is this singular charge that should have been prosecuted. This proper charge carries with it the graduated or set penalties laid down in Article 365 for *each* of the resulting consequences of homicide, slight physical injuries and damage to property.

However, because the charges were split and the first prosecution pertained to the lesser charge of reckless imprudence resulting in slight physical injuries, only the corresponding penalty therefor of public censure was meted upon Jason. This underhanded strategy thus allowed Jason to invoke this conviction to have the second Information quashed under the principle of double jeopardy.

To my mind, the Court was correct in dismissing the second charge, for a contrary ruling would have indeed transgressed Jason's constitutionally-enshrined right against double jeopardy.[17] However, the legal tactics employed by the defense — moving to plead guilty to the much lighter offense in the first case while employing tactics to delay the other case, and then invoking his conviction in the earlier case to defeat the second case that carried a heavier penalty — cannot be considered as ethically desirable. The correct understanding of Article 365 effectively enabled Jason to escape the proper and

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[17] CONSTITUTION, Art. III, Sec. 21 provides:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

substantially graver penalties corresponding to the homicide and damage to property caused by his reckless imprudence.

This kind of abuse arose in *Ivler* because of the need on the part of the prosecution to split the charges, following what was then the prevailing jurisprudence.

Thus, in the present case where the Court, sitting *en banc*, expressly and categorically abandons the erroneous ruling in *De los Santos*, there should no longer be any misunderstanding of the correct nature of Article 365 as a *quasi*-crime, that Article 48 of the RPC finds no application, and that the proper charge should be in just one Information, for the single crime of reckless imprudence resulting in homicide, slight physical injuries and/or damage to property. This should now close the doors to any repeat of the *Ivler* "strategy".

Nonetheless, this is as good a time as any to remind prosecutors of their crucial role in the effective enforcement of Article 365. Specifically, they must ensure that violators of Article 365 suffer the proper penalties for every consequence of their reckless imprudence or negligence, while likewise respecting the constitutionally-guaranteed right of the accused against double jeopardy.

To this end, prosecutors are enjoined to observe utmost diligence in ensuring that all the consequences — that is, the damages, injuries, and casualties — of the negligent or imprudent act are accounted for in the Information. Bearing in mind the rule herein affirmed that splitting of charges is prohibited under Article 365 and that subsequent charges are dismissible, prosecutors must see to it that the corresponding Information is complete and correct before the same is filed with the courts.

Should it appear, after the Information is filed, that material facts and consequences of the *quasi*-crime were omitted in said Information, the prosecutor must immediately undertake the corresponding amendment thereto, provided that the accused has not yet then entered his plea.

To this end, trial courts must likewise, on their own initiative and before arraignment of the accused, inquire from prosecutors whether the latter have taken steps to confirm the completeness of the Information filed and whether the same is the first and only one filed for the reckless or imprudent act. The courts may issue the corresponding order therefor.

Again, this circumspection from both the prosecutors and the trial courts must be observed to prevent the perpetration of such abusive legal tactics as in *Ivler*'s, ensure that the proper penalties under Article 365 are imposed upon a finding of guilt, at the same time upholding the constitutional right of the accused against double jeopardy.

In sum, Article 365 punishes but one *quasi*-crime such that: 1) all its consequences must be charged and prosecuted in one Information; and 2) paragraph 3 thereof must be applied in imposing the corresponding penalties for each consequence duly proven even though the reckless imprudence or negligence resulted, not just in damage to property, but also in physical injuries and/or death.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice