Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

RAUL OFRACIO, Petitioner,	**G.R. No. 221981**
	Present:
-versus-	LEONEN, *J., Chairperson,* HERNANDO, INTING, DELOS SANTOS, and ROSARIO, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondents.	**Promulgated:** November 4, 2020

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DECISION

LEONEN, *J.:*

The doctrine of last clear chance does not apply when only one of the parties was negligent. For the doctrine to apply, it must be shown that both parties were negligent but the negligent act of one was appreciably later in time than that of the other. It may also apply when it is impossible to determine who caused the resulting harm, thus, the one who had the last opportunity to avoid the impending harm and failed to do so will be held liable.[1]

This resolves a Petition for Review on Certiorari[2] assailing the Court of Appeals Decision[3] which affirmed the Regional Trial Court Decision[4]

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1 *LBC Air Cargo, Inc. v. Court of Appeals,* 311 Phil 717, 722–723 (1995) [Per J. Vitug, Third Division] (citation omitted)

2 *Rollo*, pp. 8–25.

3 Id. at 27–34. The November 27, 2015 Decision docketed as CA-G.R. CR No. 35640 was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas

convicting Raul Ofracio (Ofracio) of Reckless Imprudence Resulting to Homicide with Damage to Property.

On May 29, 2002, Ofracio was driving a tricycle loaded with lumber when it collided with the tricycle being driven by Roy Ramirez (Ramirez). Ramirez was hit by the lumber, causing his instantaneous death. Ramirez's tricycle was also damaged in the collision.[5]

On June 25, 2002, a complaint for reckless imprudence resulting to homicide with damage to property was filed with the Municipal Trial Court in Cities, Branch 2, Sorsogon City against Ofracio. The Municipal Trial Court in Cities found probable cause and issued a warrant for Ofracio's arrest.[6]

On August 7, 2002, Ofracio entered a plea of not guilty to the charge against him.[7]

The parties admitted the following during the pre-trial conference:

> (T)he place, date[,] and time of the incident subject of the case; identity of the parties; that there was a vehicular accident involving two tricycles one of which was driven by accused Raul Ofracio; an investigation was conducted by the police authorities; and the competence of Dra. Myrna Listanco, who issued the Certificate of Death of the victim, Roy Ramirez.[8]

The prosecution presented the following as their witnesses: (a) SPO2 Camelo Murillo (SPO2 Murillo) (b) Carlos Dayao (Dayao); (c) Rosario Ramirez (Rosario); and (d) Dr. Larry Garrido (Dr. Garrido).

SPO2 Murillo testified that he was on duty at the Police Sub-Station 2 when a tricycle driver reported an accident in Bibincahan, Sorsogon City. When he arrived at the scene of the accident, he saw Ramirez lying face down on the road. He then asked a barangay tanod to bring Ramirez to the hospital. At the accident scene, he observed that some of the lumber atop Ofracio's tricycle had pierced the windshield of Ramirez's tricycle.[9]

Dayao testified that he was conversing with some friends at around 11:00 p.m. when he heard a loud thud and cries for help. He and his friends ran towards the noise and found Ramirez bloodied and lying on the ground,

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Peralta and Maria Elisa Sempio Diy of the Special Sixth Division, Court of Appeals, Manila.

4 Id. at 27. The January 8, 2013 Decision was docketed as Criminal Case No. 2012-8402 and promulgated by Regional Trial Court, Branch 52, Sorsogon City.

5 Id. at 28.

6 Id.

7 Id.

8 Id.

9 Id. at 29.

face down. Dayao admitted that he did not see the actual collision of the tricycles.[10]

Rosario was the deceased's mother and she testified on the expenses she incurred in burying her son and filing a case against Ofracio.[11]

Dr. Garrido, an expert witness who testified on the post-mortem examination report conducted by Dr. Myrna Jasmin-Listanco, concluded that the cause of Ramirez's death appeared to be "cerebral hemorrhage secondary to skull fracture secondary to vehicular accident."[12]

The defense presented two witnesses: (a) Ofracio and (b) Reyden Despuig (Despuig).

Ofracio testified that on May 29, 2002, past 11:00 p.m., he was transporting forty-six (46) pieces of lumber in a tricycle with Despuig as his passenger.[13]

Ofracio claimed that he was slowly and carefully driving because of his heavy cargo. As he was driving, he suddenly saw a bright light 4 to 5 meters in front of him. The collision occurred in Ofracio's lane, with his tricycle hitting Ramirez's sidecar. He admitted fleeing the scene of the accident but the following day, when he went to the hospital for his own injuries, he voluntarily surrendered to the police when he found out that they knew about his involvement in the collision.[14]

Despuig corroborated Ofracio's testimony.[15]

On June 1, 2011, the Municipal Trial Court in Cities, Branch 2 of Sorsogon City found Ofracio guilty beyond reasonable doubt of the crime of reckless imprudence resulting in homicide and sentenced him to an indeterminate penalty of four (4) months and one (1) day of *arresto mayor* as minimum, to four (4) years, nine (9) months and ten (10) days of *prision correccional* as maximum. Ofracio was also ordered to compensate the heirs of Ramirez in the amounts of ₱60,950.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱30,000.00 as moral damages.[16]

Ofracio appealed, but the Regional Trial Court, Branch 52 of Sorsogon City affirmed the ruling of the Municipal Trial Court in Cities.

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10 Id.
11 Id.
12 Id. at 29–30.
13 Id. at 30.
14 Id.
15 Id.
16 Id. at 30–31.

The Regional Trial Court also denied his motion for reconsideration.[17]

Ofracio elevated the Regional Trial Court's ruling to the Court of Appeals, arguing that the Regional Trial Court erred in holding him liable under the doctrine of last clear chance.[18] However, the Court of Appeals[19] upheld the findings of both the Municipal Trial Court in Cities and the Regional Trial Court.[20]

In his Petition for Review on Certiorari[21] before this Court, petitioner posits that the Court of Appeals failed to take judicial notice of the laws of physics which find application in any vehicular accident.[22] Petitioner presents computations to show that contrary to the lower courts' findings, perceiving the imminent collision at a distance of only 4 or 5 meters, was not enough to avoid the collision, since the total stopping distance was 5.39m.[23]

Furthermore, petitioner maintains that he was slowly driving because his tricycle was weighed down by the 46 pieces of lumber it was transporting.[24] He states that the lumber on top of his tricycle were still in their original position even after the collision, supporting his testimony that he was not driving at high speed.[25]

Petitioner likewise claims that transporting lumber on top of a tricycle is a common practice in Sorsogon City and cannot be considered as imprudence and negligence per se, as long as the necessary precautions are taken to secure the lumber to the tricycle.[26]

In its Comment,[27] respondent People of the Philippines, represented by the Office of the Solicitor General, states that the factual issues raised in the Petition are beyond the ambit of a petition for review on certiorari.[28] Respondent also posits that the lower courts did not err when they unanimously found that even if Ramirez was driving his tricycle in a zigzagging motion, petitioner still had the last clear chance to avoid the collision.[29]

Petitioner was directed to submit a reply to respondent's Comment but

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17 Id. at 31.
18 Id.
19 Id. at 27–34.
20 Id. at 32–34.
21 Id. at 8–25.
22 Id. at 13–22.
23 Id. at 19–21.
24 Id. at 16.
25 Id. at 18.
26 Id. at 22.
27 Id. at 55–70.
28 Id. at 61.
29 Id. at 64–66.

he manifested that he was waiving his right to do so.[30]

The only issue raised for this Court's resolution is whether or not petitioner should be held liable under the doctrine of last clear chance.

The Petition is meritorious.

Pascual v Burgos[31] instructs that only questions of law may be raised in a petition for review on *certiorari* and that factual findings of the Court of Appeals bind this Court. While there are exceptions to this rule, these exceptions must be alleged, substantiated, and proved by the parties.[32]

Medina v. Mayor Asistio, Jr.[33] lists 10 recognized exceptions to the rule:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[34] (Citations omitted)

The first exception where "the conclusion is a finding grounded entirely on speculation, surmises or conjectures" is present here, thus placing this case well-within the exception to the general rule that only questions of law may be brought to this Court in a Rule 45 petition.

In the case at bar, the lower courts found both parties negligent but that petitioner could have avoided the accident had he only acted with prudence. The Municipal Trial Court in Cities held:

> (T)he accused himself testified, he saw the victim Roy Ramirez' tricycle approaching him in a zigzagging manner. At this point, the prudent driver seeing the possibility of a collision should have stopped immediately upon seeing the danger which was clearly approaching. But

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30 Id. at 94–96.
31 776 Phil. 167 (2016) [Per J. Leonen, Second Division].
32 Id. at 184.
33 269 Phil. 225 (1990) [Per J. Bidin, Third Division].
34 Id. at 232.

> alas, the accused did otherwise or proceeded to confront the peril looming closer.
>
> This account cannot absolve the victim, Roy Ramirez from any negligence, as by accounts, he was driving in a zigzagging manner.
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> Considering that both drivers were negligent, the doctrine of Last Clear Chance finds application.[35]

The Court of Appeals then stated:

> The doctrine of last clear chance states that where both parties are negligent but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the clear opportunity to avoid the loss but failed to do so is chargeable with the loss.
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> In the case at bar, assuming that the deceased Roy Ramirez was indeed driving his tricycle in a "zigzagging" and fast manner as claimed by Petitioner Raul Ofracio, the latter cannot be exonerated from his culpability for the death of Roy Ramirez, as he, himself, admitted that he already saw "a very bright light" / the incoming vehicle "about four (4) or five (5) meters away." In fact, in his testimony before the trial court, he stated:
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> . . . .
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> To our mind, considering that Petitioner was aware of the incoming tricycle as far away as 4 or 5 meters because of the bright headlight of the tricycle, he could have taken precautionary measures to avoid the collision with the other tricycle. He could have slowed down, parked at the side of the road, or applied his breaks and stopped on his tracks.
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> To make matters worse, records show that Petitioner had in his tricycle 46 pieces of lumber[,] some of which even protruded from his tricycle. The absence of any evidence showing that Petitioner made efforts to secure the said pieces of wood to his tricycle further evinces his imprudence and negligence.[36]

The lower courts surmised that petitioner's failure to avoid the collision when he had every opportunity to do so made him liable under the doctrine of last clear chance.

The lower courts are mistaken.

The doctrine of last clear chance contemplates two (2) possible scenarios. First is when both parties are negligent but the negligent act of one party happens later in time than the negligent act of the other party.

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35 *Rollo*, pp. 31–32.

36 Id. at 32–34.

Second is when it is impossible to determine which party caused the accident. When either of the two (2) scenarios are present, the doctrine of last clear chance holds liable for negligence the party who had the last clear opportunity to avoid the resulting harm or accident but failed to do so.[37] *Bustamante v. Court of Appeals*[38] further explains:

> The practical import of the doctrine is that a negligent defendant is held liable to a negligent plaintiff, or even to a plaintiff who has been grossly negligent in placing himself in peril, if he, aware of the plaintiff's peril, or according to some authorities, should have been aware of it in the reasonable exercise of due care, had in fact an opportunity later than that of the plaintiff to avoid an accident.[39]

From every indication, it was Ramirez's act of driving his tricycle in a speedy and unpredictable manner (i.e. zigzagging) which caused the accident. However, the lower courts also ascribed negligence to petitioner because he supposedly had enough time to either steer clear of Ramirez or stop his tricycle altogether to prevent the collision.

The records showed that Ramirez's tricycle hit petitioner's tricycle while the latter was within its lane, thereby substantiating petitioner's testimony that Ramirez was driving in a zigzag manner. This also demonstrated that petitioner stayed within his lane the entire time prior to the accident.

Petitioner likewise testified that he was slowly driving prior to the accident, and this was corroborated by his passenger.[40] Additionally, he had 46 pieces of lumber strapped on top of his tricycle, which made it impossible for him to drive his tricycle at top speed. This was apparent during his cross-examination:

> COURT INTERPRETER:
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> [Ofracio] A. I was still p[l]ying my route that day because of my purpose also to augment the family income.
>
> [Atty. Labitag] Q. And because you were then performing something illegal you were driving your motorized tricycle in a very fast speed?
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> A. No Sir, at the time I cannot drive my tricycle fast or as fast as I wanted to because the fact is I had lumber in the tricycle and I cannot make the tricycle run as fast.
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> Q. You wanted to run the tricycle fast at that time?
> A. No Sir.

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37 *Philippine National Railways Corporation v. Vizcara*, 682 Phil. 343, 358 (2012) [Per J. Reyes, Second Division].

38 271 Phil 633 (1991) [Per J. Medialdea, First Division].

39 Id. at 642.

40 *Rollo*, p. 30.

> Q. You cannot run fast because your motorized tricycle was laden with lumber, 46 pieces in all according to the police report, do you agree with me Mr. witness?
> A. I was so careful in driving at that time because I was aware that I had so much lumber in my tricycle and it was heavy.[41]

Also, the fact that only two (2) pieces of lumber were dislodged from the roof of petitioner's tricycle even after the collision supports his testimony that he was slowly driving and that the pieces of lumber were secured to his tricycle.[42]

The lower courts concluded that petitioner had ample time to avoid Ramirez as he became aware of the oncoming tricycle when it was about 4-5 meters away, thus, he should have taken precautionary measures like slowing down, parking at the side of the road, or even stopping altogether.[43]

The lower courts erred on this point.

A tricycle, traveling within the speed limit, can easily cover four (4) to five (5) meters (or 13-16.5 feet) in a few seconds. A speeding tricycle would traverse the same distance even faster. Hence, from the moment petitioner saw the approaching tricycle, which was barreling towards his lane in an erratic and unpredictable manner, no appreciable time had elapsed which would have afforded him the last clear opportunity to avoid the collision.

Even petitioner's act of transporting lumber on top of his tricycle cannot be said to be a negligent act per se. This Court takes judicial notice[44] that the use of tricycles to transport heavy objects such as appliances and furniture is a common practice in the Philippines, particularly in rural areas, as tricycles are readily available and a more affordable way of transporting items, especially for those who cannot afford to rent a truck or jeepney.

Clearly, the doctrine of last clear chance is not applicable here since the prosecution failed to show beyond reasonable doubt that petitioner negligently acted or that he could have avoided the accident if he had acted with more prudence.

In the same manner, the prosecution failed to prove that petitioner was

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41 Id. at 17.
42 Id. at 18 and 22.
43 Id. at 33.
44 RULES OF COURT, Rule 129, sec. 2 provides:
SECTION 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

guilty of reckless imprudence as punished in Article 365[45] of the Revised Penal Code. Reckless imprudence "consists in voluntary, but without malice, doing or falling 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."[46] It has the following elements:

> (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.[47]

Gonzaga v. People[48] instructs that the prosecution must show the "direct causal connection between such negligence and the injuries or damages complained of"[49] to establish a motorist's liability for negligence. *Gonzaga* likewise stressed that mere negligence is not enough to constitute reckless driving, rather, the prosecution must prove that the motorist acted in utter disregard of the consequence of his or her action, as it is the

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45 REV. PEN. CODE, art. 365 provides:
ARTICLE 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 prisión 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.
Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of arresto mayor in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of arresto mayor in its minimum period shall be imposed.
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 damages to three times such value, but which shall in no case be less than 25 pesos.
A fine not exceeding 200 pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.
In the imposition of these penalties, the court shall exercise their sound discretion, without regard to the rules prescribed in article 62.
The provisions contained in this article shall not be applicable:
1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the court shall impose the penalty next lower in degree than that which should be imposed, in the period which they may deem proper to apply.
2. When, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by prisión correccional in its medium and maximum periods.
Reckless imprudence consists in voluntary, but without malice, doing or falling 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.
Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

46 REV. PEN.CODE, art. 365.

47 *Cabugao v. People,* 740 Phil. 9, 21–22 (2014) [Per J. Peralta, Third Division].

48 751 Phil 218 (2015) [Per J. Perlas-Bernabe, First Division].

49 *Gonzaga v. People,* 751 Phil 218, 227 (2015) [Per J. Perlas-Bernabe, First Division].

"inexcusable lack of precaution or conscious indifference to the consequences of the conduct which supplies the criminal intent and brings an act of mere negligence and imprudence under the operation of the penal law."[50]

Here, petitioner was slowly driving his lumber-laden tricycle on the lane where he was supposed to be, when Ramirez's tricycle appeared from the opposite direction, moving at great speed and in an erratic manner, before it crashed into his tricycle. Clearly, there was no imprudent or negligent act on petitioner's part which led to or contributed to the collision or to Ramirez's death.

It seems as if the lower courts construed petitioner's flight after the accident as an absolute manifestation of guilt[51] and ignored the other pieces of evidence which pointed to his lack of negligence. While leaving the severely injured Ramirez after the collision might have been a badge of guilt, this remains disputable and is not the willful and inexcusable negligence required to uphold a finding of guilt for reckless imprudence resulting to homicide and damage to property.

For a successful conviction in a criminal case, the prosecution must prove the elements of the crime charged beyond reasonable doubt or with moral certainty. Rule 133, Section 2 of the Revised Rules on Evidence defines moral certainty as "that degree of proof which produces conviction in an unprejudiced mind."

The Constitution requires the prosecution to establish the accused's guilt beyond reasonable doubt in recognition of the presumption of innocence enjoyed by the accused. *People v. Ganguso*[52] expounds:

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[53]

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50 Id. at 228.
51 *Rollo*, pp. 33–34.
52 320 Phil. 324 (1995) [Per J. Davide, Jr., First Division].
53 Id. at 335.

With the prosecution's failure to prove beyond reasonable doubt all the elements of reckless imprudence resulting to homicide or that petitioner was liable under the doctrine of last clear chance, petitioner must consequently be acquitted.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals Decision dated November 27, 2015 in CA-G.R. CR No. 35640 is **REVERSED** and **SET ASIDE.** Raul Ofracio is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond unreasonable doubt.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

RICARDO R. ROSARIO
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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.

DIOSDADO M. PERALTA
Chief Justice