Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DR. FERNANDO P. SOLIDUM,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 192123

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

MAR 10 2014

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DECISION

BERSAMIN, *J.*:

This appeal is taken by a physician-anesthesiologist who has been pronounced guilty of reckless imprudence resulting in serious physical injuries by the Regional Trial Court (RTC) and the Court of Appeals (CA). He had been part of the team of anesthesiologists during the surgical pull-through operation conducted on a three-year old patient born with an imperforate anus.[1]

The antecedents are as follows:

Gerald Albert Gercayo (Gerald) was born on June 2, 1992[2] with an imperforate anus. Two days after his birth, Gerald underwent colostomy, a

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[1] Imperforate anus is a defect that is present from birth (congenital) in which the opening to the anus is missing or blocked. The anus is the opening to the rectum through which stools leave the body. *http://www.nlm.nih.gov/medlineplus/ency/article/001147.html.* Visited on March 3, 2014.

[2] *Rollo,* p. 55.

surgical procedure to bring one end of the large intestine out through the abdominal wall,[3] enabling him to excrete through a colostomy bag attached to the side of his body.[4]

On May 17, 1995, Gerald, then three years old, was admitted at the Ospital ng Maynila for a pull-through operation.[5] Dr. Leandro Resurreccion headed the surgical team, and was assisted by Dr. Joselito Luceño, Dr. Donatella Valeña and Dr. Joseph Tibio. The anesthesiologists included Dr. Marichu Abella, Dr. Arnel Razon and petitioner Dr. Fernando Solidum (Dr. Solidum).[6] During the operation, Gerald experienced bradycardia,[7] and went into a coma.[8] His coma lasted for two weeks,[9] but he regained consciousness only after a month.[10] He could no longer see, hear or move.[11]

Agitated by her son's helpless and unexpected condition, Ma. Luz Gercayo (Luz) lodged a complaint for reckless imprudence resulting in serious physical injuries with the City Prosecutor's Office of Manila against the attending physicians.[12]

Upon a finding of probable cause, the City Prosecutor's Office filed an information solely against Dr. Solidum,[13] alleging: –

> That on or about May 17, 1995, in the City of Manila, Philippines, the said accused, being then an anesthesiologist at the Ospital ng Maynila, Malate, this City, and as such was tasked to administer the anesthesia on three-year old baby boy GERALD ALBERT GERCAYO, represented by his mother, MA. LUZ GERCAYO, the former having been born with an imperforate anus [no anal opening] and was to undergo an operation for anal opening [pull through operation], did then and there willfully, unlawfully and feloniously fail and neglect to use the care and diligence as the best of his judgment would dictate under said circumstance, by failing to monitor and regulate properly the levels of anesthesia administered to said GERALD ALBERT GERCAYO and using 100% halothane and other anesthetic medications, causing as a consequence of his said carelessness and negligence, said GERALD ALBERT GERCAYO suffered a cardiac arrest and consequently a defect called hypoxic encephalopathy meaning

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3 *http://www.nlm.nih.gov/medlineplus/ostomy.html.* Visited on March 3, 2014.
4 *Rollo,* p. 10.
5 Id. at 53.
6 Id. at p. 10.
7 Bradycardia is an abnormally slow heart rate of less than 60 beats per minute. A normal heartbeat is between 60 and 100 beats per minute. *http://www.intelihealth.com/IH/ihtIH/c/9339/23653.html.* Visited on March 3, 2014.
8 *Rollo,* p. 55.
9 Id.
10 Id. at 11.
11 Id.
12 Id.
13 Id. at 51A-52.

> insufficient oxygen supply in the brain, thereby rendering said GERALD ALBERT GERCAYO incapable of moving his body, seeing, speaking or hearing, to his damage and prejudice.
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> Contrary to law.[14]

The case was initially filed in the Metropolitan Trial Court of Manila, but was transferred to the RTC pursuant to Section 5 of Republic Act No. 8369 (*The Family Courts Act of 1997*),[15] where it was docketed as Criminal Case No. 01-190889.

Judgment of the RTC

On July 19, 2004, the RTC rendered its judgment finding Dr. Solidum guilty beyond reasonable doubt of reckless imprudence resulting to serious physical injuries,[16] decreeing:

> WHEREFORE, premises considered, the Court finds accused DR. FERNANDO P. SOLIDUM GUILTY beyond reasonable doubt as principal of the crime charged and is hereby sentenced to suffer the indeterminate penalty of TWO (2) MONTHS and ONE (1) DAY of arresto mayor as minimum to ONE (1) YEAR, ONE (1) MONTH and TEN (10) DAYS of prision correccional as maximum and to indemnify, jointly and severally with the Ospital ng Maynila, Dr. Anita So and Dr. Marichu Abella, private complainant Luz Gercayo, the amount of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages and to pay the costs.
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> Accordingly, the bond posted by the accused for his provisional liberty is hereby CANCELLED.
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> SO ORDERED.[17]

Upon motion of Dr. Anita So and Dr. Marichu Abella to reconsider their solidary liability,[18] the RTC excluded them from solidary liability as to the damages, modifying its decision as follows:

> WHEREFORE, premises considered, the Court finds accused Dr. Fernando Solidum, guilty beyond reasonable doubt as principal of the crime charged and is hereby sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor* as minimum to one (1) year, one (1) month and ten (10) days of *prision correccional* as maximum and to indemnify jointly and severally with Ospital ng Maynila, private complainant Luz Gercayo the amount of ₱500,000.00 as moral damages and ₱100,000 as exemplary damages and to pay the costs.

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14 Id. at 51A.
15 Id. at 53.
16 Id. at 53-81.
17 Records, p. 539.
18 Id. at 551-554.

Accordingly, the bond posted by the accused for his provisional liberty is hereby cancelled.[19]

Decision of the CA

On January 20, 2010, the CA affirmed the conviction of Dr. Solidum,[20] pertinently stating and ruling:

> The case appears to be a textbook example of *res ipsa loquitur.*
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> x x x [P]rior to the operation, the child was evaluated and found fit to undergo a major operation. As noted by the OSG, the accused himself testified that pre-operation tests were conducted to ensure that the child could withstand the surgery. Except for his imperforate anus, the child was healthy. The tests and other procedures failed to reveal that he was suffering from any known ailment or disability that could turn into a significant risk. There was not a hint that the nature of the operation itself was a causative factor in the events that finally led to hypoxia.
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> In short, the lower court has been left with no reasonable hypothesis except to attribute the accident to a failure in the proper administration of anesthesia, the gravamen of the charge in this case. The High Court elucidates in Ramos vs. Court of Appeals 321 SCRA 584 –
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> > In cases where the *res ipsa loquitur* is applicable, the court is permitted to find a physician negligent upon proper proof of injury to the patient, without the aid of expert testimony, where the court from its fund of common knowledge can determine the proper standard of care. Where common knowledge and experience teach that a resulting injury would not have occurred to the patient if due care had been exercised, an inference of negligence may be drawn giving rise to an application of the doctrine of *res ipsa loquitur* without medical evidence, which is ordinarily required to show not only what occurred but how and why it occurred. When the doctrine is appropriate, all that the patient must do is prove a nexus between the particular act or omission complained of and the injury sustained while under the custody and management of the defendant without need to produce expert medical testimony to establish the standard of care. Resort to *res ipsa loquitur* is allowed because there is no other way, under usual and ordinary conditions, by which the patient can obtain redress for injury suffered by him.
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> The lower court has found that such a *nexus* exists between the act complained of and the injury sustained, and in line with the hornbook

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[19] Id. at 561.

[20] *Rollo*, pp. 10-21; penned by Associate Justice Mario L. Guariña III (retired), with Associate Justice Sesinando E. Villon and Associate Justice Franchito N. Diamante concurring.

rules on evidence, we will afford the factual findings of a trial court the respect they deserve in the absence of a showing of arbitrariness or disregard of material facts that might affect the disposition of the case. People v. Paraiso 349 SCRA 335.

The *res ipsa loquitur* test has been known to be applied in criminal cases. Although it creates a presumption of negligence, it need not offend due process, as long as the accused is afforded the opportunity to go forward with his own evidence and prove that he has no criminal intent. It is in this light not inconsistent with the constitutional presumption of innocence of an accused.

IN VIEW OF THE FOREGOING, the modified decision of the lower court is affirmed.

SO ORDERED.[21]

Dr. Solidum filed a motion for reconsideration, but the CA denied his motion on May 7, 2010.[22]

Hence, this appeal.

Issues

Dr. Solidum avers that:

I.

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT IN UPHOLDING THE PETITIONER'S CONVICTION FOR THE CRIME CHARGED BASED ON THE TRIAL COURT'S OPINION, AND NOT ON THE BASIS OF THE FACTS ESTABLISHED DURING THE TRIAL. ALSO, THERE IS A CLEAR MISAPPREHENSION OF FACTS WHICH IF CORRECTED, WILL RESULT TO THE ACQUITTAL OF THE PETITIONER. FURTHER, THE HONORABLE COURT ERRED IN AFFIRMING THE SAID DECISION OF THE LOWER COURT, AS THIS BREACHES THE CRIMINAL LAW PRINCIPLE THAT THE PROSECUTION MUST PROVE THE ALLEGATIONS OF THE INFORMATION BEYOND REASONABLE DOUBT, AND NOT ON THE BASIS OF ITS PRESUMPTIVE CONCLUSION.

II.

THE HONORABLE COURT OF APPEALS ERRED IN APPLYING THE PRINCIPLE OF RES IPSA LOQUITOR (sic) WHEN THE DEFENSE WAS ABLE TO PROVE THAT THERE IS NO NEGLIGENCE ON THE PART OF THE PETITIONER, AND NO

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21 Id. at 12-21.
22 Id. at 22.

> OVERDOSING IN THE APPLICATION OF THE ANESTHETIC AGENT BECAUSE THERE WAS NO 100% HALOTHANE ADMINISTERED TO THE CHILD, BUT ONLY ONE (1%) PERCENT AND THE APPLICATION THEREOF, WAS REGULATED BY AN ANESTHESIA MACHINE. THUS, THE APPLICATION OF THE PRINCIPLE OF RES IPSA LOQUITOR (sic) CONTRADICTED THE ESTABLISHED FACTS AND THE LAW APPLICABLE IN THE CASE.
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> III.
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> THE AWARD OF MORAL DAMAGES AND EXEMPLARY DAMAGES IS NOT JUSTIFIED THERE BEING NO NEGLIGENCE ON THE PART OF THE PETITIONER. ASSUMING THAT THE CHILD IS ENTITLED TO FINANCIAL CONSIDERATION, IT SHOULD BE ONLY AS A FINANCIAL ASSISTANCE, BECAUSE THERE WAS NO NEGLIGENCE, AND NO OVERDOSING OF ANESTHETIC AGENT AND AS SUCH, THE AWARD IS SO EXCESSIVE, AND NO FACTUAL AND LEGAL BASIS.[23]

To simplify, the following are the issues for resolution, namely: (*a*) whether or not the doctrine of *res ipsa loquitur* was applicable herein; and (*b*) whether or not Dr. Solidum was liable for criminal negligence.

Ruling

The appeal is meritorious.

Applicability of the Doctrine of *Res Ipsa Loquitur*

Res ipsa loquitur is literally translated as "the thing or the transaction speaks for itself." The doctrine *res ipsa loquitur* means that "where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care."[24] It is simply "a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the defendant who is charged with negligence. It is grounded in the superior logic of ordinary human experience and on the basis of such experience or common knowledge, negligence may be deduced from the mere occurrence of the accident itself.

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23 Id. at 30-31.

24 *Jarcia, Jr. v. People*, G.R. No. 187926, February 15, 2012, 666 SCRA 336, 351.

Hence, *res ipsa loquitur* is applied in conjunction with the doctrine of common knowledge."[25]

Jarcia, Jr. v. People[26] has underscored that the doctrine is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. The doctrine, when applicable to the facts and circumstances of a given case, is not meant to and does not dispense with the requirement of proof of culpable negligence against the party charged. It merely determines and regulates what shall be *prima facie* evidence thereof, and helps the plaintiff in proving a breach of the duty. The doctrine can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available.[27]

The applicability of the doctrine of *res ipsa loquitur* in medical negligence cases was significantly and exhaustively explained in *Ramos v. Court of Appeals*,[28] where the Court said –

> Medical malpractice cases do not escape the application of this doctrine. Thus, *res ipsa loquitur* has been applied when the circumstances attendant upon the harm are themselves of such a character as to justify an inference of negligence as the cause of that harm. The application of *res ipsa loquitur* in medical negligence cases presents a question of law since it is a judicial function to determine whether a certain set of circumstances does, as a matter of law, permit a given inference.
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> Although generally, expert medical testimony is relied upon in malpractice suits to prove that a physician has done a negligent act or that he has deviated from the standard medical procedure, when the doctrine of *res ipsa loquitur* is availed by the plaintiff, the need for expert medical testimony is dispensed with because the injury itself provides the proof of negligence. The reason is that the general rule on the necessity of expert testimony applies only to such matters clearly within the domain of medical science, and not to matters that are within the common knowledge of mankind which may be testified to by anyone familiar with the facts. Ordinarily, only physicians and surgeons of skill and experience are competent to testify as to whether a patient has been treated or operated upon with a reasonable degree of skill and care. However, testimony as to the statements and acts of physicians and surgeons, external appearances, and manifest conditions which are observable by any one may be given by non-expert witnesses. Hence, in cases where the *res ipsa loquitur* is applicable, the court is permitted to find a physician negligent upon proper proof of injury to the patient, without the aid of expert testimony, where the court from its fund of common knowledge can determine the proper standard of care. Where common knowledge and experience teach that a resulting injury would not have occurred to the patient if due care had been exercised, an inference of negligence may be drawn giving rise to an application of the doctrine of *res ipsa loquitur* without medical evidence, which is ordinarily required to show not only what occurred but how and

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25 *Ramos v. Court of Appeals,* G.R. No. 124354, December 29, 1999, 321 SCRA 584, 599.
26 Supra note 24, at 352.
27 Id.
28 Supra note 25, at 600-603.

> why it occurred. When the doctrine is appropriate, all that the patient must do is prove a nexus between the particular act or omission complained of and the injury sustained while under the custody and management of the defendant without need to produce expert medical testimony to establish the standard of care. Resort to *res ipsa loquitur* is allowed because there is no other way, under usual and ordinary conditions, by which the patient can obtain redress for injury suffered by him.
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> Thus, courts of other jurisdictions have applied the doctrine in the following situations: leaving of a foreign object in the body of the patient after an operation, injuries sustained on a healthy part of the body which was not under, or in the area, of treatment, removal of the wrong part of the body when another part was intended, knocking out a tooth while a patient's jaw was under anesthetic for the removal of his tonsils, and loss of an eye while the patient plaintiff was under the influence of anesthetic, during or following an operation for appendicitis, among others.
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> Nevertheless, despite the fact that the scope of *res ipsa loquitur* has been measurably enlarged, it does not automatically apply to all cases of medical negligence as to mechanically shift the burden of proof to the defendant to show that he is not guilty of the ascribed negligence. *Res ipsa loquitur* is not a rigid or ordinary doctrine to be perfunctorily used but a rule to be cautiously applied, depending upon the circumstances of each case. It is generally restricted to situations in malpractice cases where a layman is able to say, as a matter of common knowledge and observation, that the consequences of professional care were not as such as would ordinarily have followed if due care had been exercised. A distinction must be made between the failure to secure results, and the occurrence of something more unusual and not ordinarily found if the service or treatment rendered followed the usual procedure of those skilled in that particular practice. It must be conceded that the doctrine of *res ipsa loquitur* can have no application in a suit against a physician or surgeon which involves the merits of a diagnosis or of a scientific treatment. The physician or surgeon is not required at his peril to explain why any particular diagnosis was not correct, or why any particular scientific treatment did not produce the desired result. Thus, *res ipsa loquitur* is not available in a malpractice suit if the only showing is that the desired result of an operation or treatment was not accomplished. The real question, therefore, is whether or not in the process of the operation any extraordinary incident or unusual event outside of the routine performance occurred which is beyond the regular scope of customary professional activity in such operations, which, if unexplained would themselves reasonably speak to the average man as the negligent cause or causes of the untoward consequence. If there was such extraneous intervention, the doctrine of *res ipsa loquitur* may be utilized and the defendant is called upon to explain the matter, by evidence of exculpation, if he could.

In order to allow resort to the doctrine, therefore, the following essential requisites must first be satisfied, to wit: (1) the accident was of a kind that does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency that caused the injury was under the exclusive control of the person charged; and (3) the injury suffered must not have been due to any voluntary action or contribution of the person injured.[29]

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[29] *Reyes v. Sisters of Mercy Hospital*, G.R. No. 130547, October 3, 2000, 341 SCRA 760, 771.

The Court considers the application here of the doctrine of *res ipsa loquitur* inappropriate. Although it should be conceded without difficulty that the second and third elements were present, considering that the anesthetic agent and the instruments were exclusively within the control of Dr. Solidum, and that the patient, being then unconscious during the operation, could not have been guilty of contributory negligence, the first element was undeniably wanting. Luz delivered Gerald to the care, custody and control of his physicians for a pull-through operation. Except for the imperforate anus, Gerald was then of sound body and mind at the time of his submission to the physicians. Yet, he experienced bradycardia during the operation, causing loss of his senses and rendering him immobile. Hypoxia, or the insufficiency of oxygen supply to the brain that caused the slowing of the heart rate, scientifically termed as bradycardia, would not ordinarily occur in the process of a pull-through operation, or during the administration of anesthesia to the patient, but such fact alone did not prove that the negligence of any of his attending physicians, including the anesthesiologists, had caused the injury. In fact, the anesthesiologists attending to him had sensed in the course of the operation that the lack of oxygen could have been triggered by the vago-vagal reflex, prompting them to administer atropine to the patient.[30]

This conclusion is not unprecedented. It was similarly reached in *Swanson v. Brigham,*[31] relevant portions of the decision therein being as follows:

> On January 7, 1973, Dr. Brigham admitted 15-year-old Randall Swanson to a hospital for the treatment of infectious mononucleosis. The patient's symptoms had included a swollen throat and some breathing difficulty. Early in the morning of January 9 the patient was restless, and at 1:30 a.m. Dr. Brigham examined the patient. His inspection of the patient's air passage revealed that it was in satisfactory condition. At 4:15 a.m. Dr. Brigham received a telephone call from the hospital, advising him that the patient was having respiratory difficulty. The doctor ordered that oxygen be administered and he prepared to leave for the hospital. Ten minutes later, 4:25 a.m., the hospital called a second time to advise the doctor that the patient was not responding. The doctor ordered that a medicine be administered, and he departed for the hospital. When he arrived, the physician who had been on call at the hospital had begun attempts to revive the patient. Dr. Brigham joined him in the effort, but the patient died.
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> The doctor who performed the autopsy concluded that the patient died between 4:25 a.m. and 4:30 a.m. of asphyxia, as a result of a sudden, acute closing of the air passage. He also found that the air passage had been adequate to maintain life up to 2 or 3 minutes prior to death. He did not know what caused the air passage to suddenly close.
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30 Records, p. 110.

31 571 P.2d 217, 18 Wash. App. 647; Wash. Ct. App. 1917.

> It is a rare occurrence when someone admitted to a hospital for the treatment of infectious mononucleosis dies of asphyxiation. But that is not sufficient to invoke *res ipsa loquitur*. The fact that the injury rarely occurs does not in itself prove that the injury was probably caused by someone's negligence. *Mason v. Ellsworth, 3 Wn. App. 298, 474 P.2d 909 (1970)*. Nor is a bad result by itself enough to warrant the application of the doctrine. *Nelson v. Murphy, 42 Wn.2d 737, 258 P.2d 472 (1953)*. *See* 2 S. Speiser, *The Negligence Case – Res Ipsa Loquitur* § 24:10 (1972). The evidence presented is insufficient to establish the first element necessary for application of *res ipsa loquitur* doctrine. The acute closing of the patient's air passage and his resultant asphyxiation took place over a very short period of time. Under these circumstances it would not be reasonable to infer that the physician was negligent. There was no palpably negligent act. The common experience of mankind does not suggest that death would not be expected without negligence. And there is no expert medical testimony to create an inference that negligence caused the injury.

Negligence of Dr. Solidum

In view of the inapplicability of the doctrine of *res ipsa loquitur*, the Court next determines whether the CA correctly affirmed the conviction of Dr. Solidum for criminal negligence.

Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance that the circumstances justly demand, whereby such other person suffers injury.[32] Reckless imprudence, on the other hand, 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.[33]

Dr. Solidum's conviction by the RTC was primarily based on his failure to monitor and properly regulate the level of anesthetic agent administered on Gerald by overdosing at 100% halothane. In affirming the conviction, the CA observed:

> On the witness stand, Dr. Vertido made a significant turnaround. He affirmed the findings and conclusions in his report except for an observation which, to all intents and purposes, has become the storm center of this dispute. He wanted to correct one piece of information regarding the dosage of the anesthetic agent administered to the child. He declared that he made a mistake in reporting a 100% halothane and said that based on the records *it should have been 100% oxygen.*
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> The records he was relying on, as he explains, are the following:

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32 *Gaid v. People*, G.R. No. 171636, April 7, 2009, 584 SCRA 489, 497.
33 Id. at 495.

(a) the *anesthesia record* – A portion of the chart in the record was marked as Exhibit 1-A and 1-B to indicate the administration at intervals of the anesthetic agent.

(b) the *clinical abstract* – A portion of this record that reads as follows was marked Exhibit 3A. 3B – *Approximately 1 hour and 45 minutes through the operation, patient was noted to have bradycardia (CR = 70) and ATSO4 0.2 mg was immediately administered. However, the bradycardia persisted, the inhalational agent was shut off, and the patient was ventilated with 100% oxygen and another dose of ATSO4 0.2 mg was given. However, the patient did not respond until no cardiac rate can be auscultated and the surgeons were immediately told to stop the operation. The patient was put on a supine position and CPR was initiated. Patient was given 1 amp of epinephrine initially while continuously doing cardiac massage – still with no cardiac rate appreciated; another ampule of epinephrine was given and after 45 secs, patient's vital signs returned to normal. The entire resuscitation lasted approximately 3-5 mins. The surgeons were then told to proceed to the closure and the child's vital signs throughout and until the end of surgery were: BP = 110/70; CR = 116/min and RR = 20-22 cycles/min (on assisted ventilation).*

Dr. Vertido points to the crucial passage in the clinical abstract that the patient was ventilated with 100% oxygen and another dose of ATSO4 when the bradycardia persisted, but for one reason or another, he read it as 100% halothane. He was asked to read the anesthesia record on the percentage of the dosage indicated, but he could only sheepishly note *I can't understand the number.* There are no clues in the clinical abstract on the quantity of the anesthetic agent used. It only contains the information that the *anesthetic plan was to put the patient under general anesthesia using a nonrebreathing system with halothane as the sole anesthetic agent and that 1 hour and 45 minutes after the operation began, bradycardia occurred after which the inhalational agent was shut off and the patient administered with 100% oxygen*. It would be apparent that the 100% oxygen that Dr. Vertido said should be read in lieu of 100% halothane was the pure oxygen introduced after something went amiss in the operation and the halothane itself was reduced or shut off.

The key question remains – *what was the quantity of halothane used before bradycardia set in?*

The implication of Dr. Vertido's admission is that *there was no overdose of the anesthetic agent,* and the accused Dr. Solidum stakes his liberty and reputation on this conclusion. He made the assurance that he gave his patient the utmost medical care, never leaving the operating room except for a few minutes to answer the call of nature but leaving behind the other members of his team Drs. Abella and Razon to monitor the operation. He insisted that he administered only a point 1% *not 100%* halothane, receiving corroboration from Dr. Abella whose initial MA in the record should be enough to show that she assisted in the operation and was therefore conversant of the things that happened. She revealed that they were using a machine that closely monitored the concentration of the agent during the operation.

But most compelling is Dr. Solidum's interpretation of the anesthesia record itself, as he takes the bull by the horns, so to speak. In his affidavit, he says, reading from the record, *that the quantity of halothane used in the operation is one percent (1%) delivered at time*

> *intervals of 15 minutes.* He studiedly mentions – *the concentration of halothane as reflected in the anesthesia record (Annex D of the complaint-affidavit) is only one percent (1%) – The numbers indicated in 15 minute increments for halothane is an indication that only 1% halothane is being delivered to the patient Gerard Gercayo for his entire operation; The amount of halothane delivered in this case which is only one percent cannot be summated because halothane is constantly being rapidly eliminated by the body during the entire operation.*
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> In finding the accused guilty, despite these explanations, the RTC argued that the volte-face of Dr. Vertido on the question of the dosage of the anesthetic used on the child would not really validate the non-guilt of the anesthesiologist. Led to agree that the halothane used was not 100% as initially believed, he was nonetheless unaware of the implications of the change in his testimony. The court observed that Dr. Vertido had described the condition of the child as hypoxia which is deprivation of oxygen, a diagnosis supported by the results of the CT Scan. All the symptoms attributed to a failing central nervous system such as stupor, loss of consciousness, decrease in heart rate, loss of usual acuity and abnormal motor function, are manifestations of this condition or syndrome. But why would there be deprivation of oxygen if 100% oxygen to 1% halothane was used? Ultimately, to the court, whether oxygen or halothane was the object of mistake, the detrimental effects of the operation are incontestable, and they can only be led to one conclusion – if the application of anesthesia was really closely monitored, the event could not have happened.[34]

The Prosecution did not prove the elements of reckless imprudence beyond reasonable doubt because the circumstances cited by the CA were insufficient to establish that Dr. Solidum had been guilty of inexcusable lack of precaution in monitoring the administration of the anesthetic agent to Gerald. The Court aptly explained in *Cruz v. Court of Appeals*[35] that:

> 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 the recent case of *Leonila Garcia-Rueda v. Wilfred L. Pacasio, et. al.*, this Court stated that 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. It is in this aspect of medical malpractice that expert testimony is essential to establish not only the standard of care of the profession but also that the physician's conduct in the treatment and care falls below such standard. Further, inasmuch as the causes of the injuries involved in malpractice actions are determinable only in the light of

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34 *Rollo*, pp. 87-91.

35 G.R. No. 122445, November 18, 1997, 282 SCRA 188, 200-202.

> scientific knowledge, it has been recognized that expert testimony is usually necessary to support the conclusion as to causation.
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> In litigations involving medical negligence, the plaintiff has the burden of establishing appellant's negligence and for a reasonable conclusion of negligence, there must be proof of breach of duty on the part of the surgeon *as well as a causal connection of such breach and the resulting death of his patient.* In *Chan Lugay v. St Luke's Hospital, Inc.*, where the attending physician was absolved of liability for the death of the complainant's wife and newborn baby, this Court held that:
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> > "In order that there may be a recovery for an injury, however, it must be shown that the 'injury for which recovery is sought must be the legitimate consequence of the wrong done; the connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening efficient causes.' *In other words, the negligence must be the proximate cause of the injury. For, 'negligence, no matter in what it consists, cannot create a right of action unless it is the proximate cause of the injury complained of.'* And 'the proximate cause of an injury is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.'"

An action upon medical negligence – whether criminal, civil or administrative – calls for the plaintiff to prove by competent evidence each of the following four elements, namely: (a) the duty owed by the physician to the patient, as created by the physician-patient relationship, to act in accordance with the specific norms or standards established by his profession; (b) the breach of the duty by the physician's failing to act in accordance with the applicable standard of care; (3) the causation, *i.e*., there must be a reasonably close and causal connection between the negligent act or omission and the resulting injury; and (4) the damages suffered by the patient.[36]

In the medical profession, specific norms or standards to protect the patient against unreasonable risk, commonly referred to as *standards of care*, set the duty of the physician to act in respect of the patient. Unfortunately, no clear definition of the duty of a particular physician in a particular case exists. Because most medical malpractice cases are highly technical, witnesses with special medical qualifications must provide guidance by giving the knowledge necessary to render a fair and just verdict. As a result, the standard of medical care of a *prudent physician* must be determined from expert testimony in most cases; and in the case of a

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[36] Flamm, Martin B., *Medical Malpractice and the Physician Defendant*, Chapter 11, *Legal Medicine*, Fourth Edition (1998), pp. 123-124, American College of Legal Medicine, Mosby, Inc., St. Louis, Missouri.

specialist (like an anesthesiologist), the standard of care by which the specialist is judged is the care and skill *commonly possessed and exercised by similar specialists under similar circumstances*. The specialty standard of care may be higher than that required of the general practitioner.[37]

The standard of care is an objective standard by which the conduct of a physician sued for negligence or malpractice may be measured, and it does not depend, therefore, on any individual physician's own knowledge either. In attempting to fix a standard by which a court may determine whether the physician has properly performed the requisite duty toward the patient, expert medical testimony from both plaintiff and defense experts is required. The judge, as the trier of fact, ultimately determines the standard of care, after listening to the testimony of all medical experts.[38]

Here, the Prosecution presented no witnesses *with special medical qualifications in anesthesia* to provide guidance to the trial court on what standard of care was applicable. It would consequently be truly difficult, if not impossible, to determine whether the first three elements of a negligence and malpractice action were attendant.

Although the Prosecution presented Dr. Benigno Sulit, Jr., an anesthesiologist himself who served as the Chairman of the Committee on Ethics and Malpractice of the Philippine Society of Anesthesiologists that investigated the complaint against Dr. Solidum, his testimony mainly focused on how his Committee had conducted the investigation.[39] Even then, the report of his Committee was favorable to Dr. Solidum,[40] to wit:

> Presented for review by this committee is the case of a 3 year old male who underwent a pull-thru operation and was administered general anesthesia by a team of anesthesia residents. The patient, at the time when the surgeons was manipulating the recto-sigmoid and pulling it down in preparation for the anastomosis, had bradycardia. The anesthesiologists, sensing that the cause thereof was the triggering of the vago-vagal reflex, administered atropine to block it but despite the administration of the drug in two doses, cardiac arrest ensued. As the records show, prompt resuscitative measures were administered and spontaneous cardiac function re-established in less than five (5) minutes and that oxygen was continuously being administered throughout, unfortunately, as later become manifest, patient suffered permanent irreversible brain damage.
>
> In view of the actuations of the anaesthesiologists and the administration of anaesthesia, the committee find that the same were all in accordance with the universally accepted standards of medical care and there is no evidence of any fault or negligence on the part of the anaesthesiologists.

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37 Id. at 123-124.
38 Id. at 124.
39 TSN of December 1, 1999.
40 Records, p. 110.

Dr. Antonio Vertido, a Senior Medico-Legal Officer of the National Bureau of Investigation, was also presented as a Prosecution witness, but his testimony concentrated on the results of the physical examination he had conducted on Gerald, as borne out by the following portions of his direct examination, to wit:

FISCAL CABARON	Doctor, what do you mean by General Anesthetic Agent?
WITNESS	General Anesthetic Agent is a substance used in the conduction of Anesthesia and in this case, halothane was used as a sole anesthetic agent.
x x x x	
Q	Now under paragraph two of page 1 of your report you mentioned that after one hour and 45 minutes after the operation, the patient experienced a bradycardia or slowing of heart rate, now as a doctor, would you be able to tell this Honorable Court as to what cause of the slowing of heart rate as to Gerald Gercayo?
WITNESS	Well honestly sir, I cannot give you the reason why there was a bradycardia of time because is some reason one way or another that might caused bradycardia.
FISCAL CABARON	What could be the possible reason?
A	Well bradycardia can be caused by anesthetic agent itself and that is a possibility, we're talking about possibility here.
Q	What other possibility do you have in mind, doctor?
A	Well, because it was an operation, anything can happen within that situation.
FISCAL CABARON	Now, this representation would like to ask you about the slowing of heart rate, now what is the immediate cause of the slowing of the heart rate of a person?
WITNESS	Well, one of the more practical reason why there is slowing of the heart rate is when you do a vagal reflex in the neck wherein the vagal receptors are located at the lateral part of the neck, when you press that, you produce the slowing of the heart rate that produce bradycardia.

Q	I am pro[p]ounding to you another question doctor, what about the deficiency in the supply of oxygen by the patient, would that also cause the slowing of the heart rate?
A	Well that is a possibility sir, I mean not as slowing of the heart rate, if there is a hypoxia or there is a low oxygen level in the blood, the normal thing for the heart is to pump or to do not a bradycardia but a … to counter act the Hypoxia that is being experienced by the patient (sic).
x x x x	
Q	Now, you made mention also doctor that the use of general anesthesia using 100% halothane and other anesthetic medications probably were contributory to the production of hypoxia.
A	Yes, sir in general sir.[41]

On cross-examination, Dr. Vertido expounded more specifically on his interpretation of the anesthesia record and the factors that could have caused Gerald to experience bradycardia, *viz*:

ATTY. COMIA	I noticed in, may I see your report Doctor, page 3, will you kindly read to this Honorable court your last paragraph and if you will affirm that as if it is correct?
A	"The use of General Anesthesia, that is using 100% Halothane probably will be contributory to the production of Hypoxia and - - - -"
ATTY COMIA	And do you affirm the figure you mentioned in this Court Doctor?
WITNESS	Based on the records, I know the - - -
Q	100%?
A	100% based on the records.
Q	I will show you doctor a clinical record. I am a lawyer I am not a doctor but will you kindly look at this and tell me where is 100%, the word "one hundred" or 1-0-0, will you kindly look at this Doctor, this Xerox copy if you can show to this Honorable Court and even to this representation the word "one hundred" or 1-0-0 and then call me.

[41] TSN of November 11, 1997, pp. 16-31.

x x x x

ATTY. COMIA — Doctor tell this Honorable Court where is that 100, 1-0-0 and if there is, you just call me and even the attention of the Presiding Judge of this Court. Okay, you read one by one.

WITNESS — Well, are you only asking 100%, sir?

ATTY. COMIA — I'm asking you, just answer my question, did you see there 100% and 100 figures, tell me, yes or no?

WITNESS — I'm trying to look at the 100%, there is no 100% there sir.

ATTY. COMIA — Okay, that was good, so you Honor please, may we request also temporarily, because this is just a xerox copy presented by the fiscal, that the percentage here that the Halothane administered by Dr. Solidum to the patient is 1% only so may we request that this portion, temporarily your Honor, we are marking this anesthesia record as our Exhibit 1 and then this 1% Halothane also be bracketed and the same be marked as our Exhibit "1-A".

x x x x

ATTY. COMIA — Doctor, my attention was called also when you said that there are so many factors that contributed to Hypoxia is that correct?

WITNESS — Yes, sir.

Q — I remember doctor, according to you there are so many factors that contributed to what you call hypoxia and according to you, when this Gerald suffered hypoxia, there are other factors that might lead to this Hypoxia at the time of this operation is that correct?

WITNESS — The possibility is there, sir.

Q — And according to you, it might also be the result of such other, some or it might be due to operations being conducted by the doctor at the time when the operation is being done might also contribute to that hypoxia is that correct?

A — That is a possibility also.

x x x x

ATTY. COMIA — How will you classify now the operation conducted to this Gerald, Doctor?

WITNESS	Well, that is a major operation sir.
Q	In other words, when you say major operation conducted to this Gerald, there is a possibility that this Gerald might [be] exposed to some risk is that correct?
A	That is a possibility sir.
Q	And which according to you that Gerald suffered hypoxia is that correct?
A	Yes, sir.
Q	And that is one of the risk of that major operation is that correct?
A	That is the risk sir.[42]

At the continuation of his cross-examination, Dr. Vertido maintained that Gerald's operation for his imperforate anus, considered a major operation, had exposed him to the risk of suffering the same condition.[43] He then corrected his earlier finding that 100% halothane had been administered on Gerald by saying that it should be 100% oxygen.[44]

Dr. Solidum was criminally charged for "failing to monitor and regulate properly the levels of anesthesia administered to said Gerald Albert Gercayo and using 100% halothane and other anesthetic medications."[45] However, the foregoing circumstances, taken together, did not prove beyond reasonable doubt that Dr. Solidum had been recklessly imprudent in administering the anesthetic agent to Gerald. Indeed, Dr. Vertido's findings did not preclude the probability that other factors related to Gerald's major operation, which could or could not necessarily be attributed to the administration of the anesthesia, had caused the hypoxia and had then led Gerald to experience bradycardia. Dr. Vertido revealingly concluded in his report, instead, that "although the anesthesiologist followed the normal routine and precautionary procedures, still hypoxia and its corresponding side effects did occur."[46]

The existence of the probability about other factors causing the hypoxia has engendered in the mind of the Court a reasonable doubt as to Dr. Solidum's guilt, and moves us to acquit him of the crime of reckless imprudence resulting to serious physical injuries. "A reasonable doubt of guilt," according to *United States v. Youthsey*:[47]

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42 TSN of November 11, 1997, pp. 44-53.
43 TSN of December 10, 1997, pp. 2-3.
44 Id. at 5-10.
45 *Rollo*, p. 51.
46 TSN of December 10, 1997, p. 13.
47 91 Fed. Rep. 864, 868.

> x x x is a doubt growing reasonably out of evidence or the lack of it. It is not a captious doubt; not a doubt engendered merely by sympathy for the unfortunate position of the defendant, or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty, to that degree of certainty as would lead you to act on the faith of it in the most important and crucial affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of mistake.

We have to clarify that the acquittal of Dr. Solidum would not immediately exempt him from civil liability. But we cannot now find and declare him civilly liable because the circumstances that have been established here do not present the factual and legal bases for validly doing so. His acquittal did not derive only from reasonable doubt. There was really no firm and competent showing how the injury to Gerard had been caused. That meant that the manner of administration of the anesthesia by Dr. Solidum was not necessarily the cause of the hypoxia that caused the bradycardia experienced by Gerard. Consequently, to adjudge Dr. Solidum civilly liable would be to speculate on the cause of the hypoxia. We are not allowed to do so, for civil liability must not rest on speculation but on competent evidence.

Liability of Ospital ng Maynila

Although the result now reached has resolved the issue of civil liability, we have to address the unusual decree of the RTC, as affirmed by the CA, of expressly holding Ospital ng Maynila civilly liable jointly and severally with Dr. Solidum. The decree was flawed in logic and in law.

In criminal prosecutions, the civil action for the recovery of civil liability that is deemed instituted with the criminal action refers only to that arising from the offense charged.[48] It is puzzling, therefore, how the RTC and the CA could have adjudged Ospital ng Maynila jointly and severally liable with Dr. Solidum for the damages despite the obvious fact that Ospital ng Maynila, being an artificial entity, had not been charged along with Dr. Solidum. The lower courts thereby acted capriciously and whimsically, which rendered their judgment against Ospital ng Maynila void as the product of grave abuse of discretion amounting to lack of jurisdiction.

Not surprisingly, the flawed decree raises other material concerns that the RTC and the CA overlooked. We deem it important, then, to express the following observations for the instruction of the Bench and Bar.

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[48] Section 1, Rule 111, *Rules of Court*.

For one, Ospital ng Maynila was not at all a party in the proceedings. Hence, its fundamental right to be heard was not respected from the outset. The RTC and the CA should have been alert to this fundamental defect. Verily, no person can be prejudiced by a ruling rendered in an action or proceeding in which he was not made a party. Such a rule would enforce the constitutional guarantee of due process of law.

Moreover, Ospital ng Maynila could be held civilly liable only when subsidiary liability would be properly enforceable pursuant to Article 103 of the *Revised Penal Code*. But the subsidiary liability seems far-fetched here. The conditions for subsidiary liability to attach to Ospital ng Maynila should first be complied with. Firstly, pursuant to Article 103 of the *Revised Penal Code,* Ospital ng Maynila must be shown to be a corporation "engaged in any kind of industry." The term *industry* means any department or branch of art, occupation or business, especially one that employs labor and capital, and is engaged in industry.[49] However, Ospital ng Maynila, being a public hospital, was not engaged in industry conducted for profit but purely in charitable and humanitarian work.[50] Secondly, assuming that Ospital ng Maynila was engaged in industry for profit, Dr. Solidum must be shown to be an employee of Ospital ng Maynila acting in the discharge of his duties during the operation on Gerald. Yet, he definitely was not such employee but a consultant of the hospital. And, thirdly, assuming that civil liability was adjudged against Dr. Solidum as an employee (which did not happen here), the execution against him was unsatisfied due to his being insolvent.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES AND SETS ASIDE** the decision promulgated on January 20, 2010; **ACQUITS** Dr. Fernando P. Solidum of the crime of reckless imprudence resulting to serious physical injuries; and **MAKES** no pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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49 Regalado, *Criminal Law Conspectus*, First Edition (2000), National Book Store, Inc., p. 263.
50 Id. at 264.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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