Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CARLOS BORROMEO,
Petitioner,

- versus -

FAMILY CARE HOSPITAL, INC. and RAMON S. INSO, M.D.,
Respondents.

G.R. No. 191018

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

25 JAN 2016

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DECISION

BRION, *J.*:

Carlos Borromeo lost his wife Lillian when she died after undergoing a routine appendectomy. The hospital and the attending surgeon submit that Lillian bled to death due to a rare, life-threatening condition that prevented her blood from clotting normally. Carlos believes, however, that the hospital and the surgeon were simply negligent in the care of his late wife.

On January 22, 2010, the Court of Appeals *(CA)* in **CA-G.R CV No. 89096**[1] dismissed Carlos' complaint and thus reversed the April 10, 2007 decision of the Regional Trial Court *(RTC)* in **Civil Case No. 2000-603-MK**[2] which found the respondents liable for medical negligence.

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1 Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Romeo F. Barza and Antonio L. Villamor, *rollo*, pp. 9-32.

2 Marikina City, Branch 273 through Presiding Judge Manuel S. Quimbo.

The present petition for review on *certiorari* seeks to reverse the CA's January 22, 2010 decision.

ANTECEDENTS

The petitioner, Carlos Borromeo, was the husband of the late Lilian V. Borromeo (*Lilian*). Lilian was a patient of the respondent Family Care Hospital, Inc. (*Family Care*) under the care of respondent Dr. Ramon Inso (*Dr. Inso*).

On July 13, 1999, the petitioner brought his wife to the Family Care Hospital because she had been complaining of acute pain at the lower stomach area and fever for two days. She was admitted at the hospital and placed under the care of Dr. Inso.

Dr. Inso suspected that Lilian might be suffering from acute appendicitis. However, there was insufficient data to rule out other possible causes and to proceed with an appendectomy. Thus, he ordered Lilian's confinement for testing and evaluation.

Over the next 48 hours, Lilian underwent multiple tests such as complete blood count, urinalysis, stool exam, pelvic ultrasound, and a pregnancy test. However, the tests were not conclusive enough to confirm that she had appendicitis.

Meanwhile, Lilian's condition did not improve. She suffered from spiking fever and her abdominal pain worsened. The increasing tenderness of her stomach, which was previously confined to her lower right side, had also extended to her lower left side. Lilian abruptly developed an *acute surgical abdomen*.

On July 15, 1999, Dr. Inso decided to conduct an exploratory laparotomy on Lilian because of the findings on her abdomen and his fear that she might have a ruptured appendix. Exploratory laparotomy is a surgical procedure involving a large incision on the abdominal wall that would enable Dr. Inso to examine the abdominal cavity and identify the cause of Lilian's symptoms. After explaining the situation, Dr. Inso obtained the patient's consent to the laparotomy.

At around 3:45 P.M., Lilian was brought to the operating room where Dr. Inso conducted the surgery. During the operation, Dr. Inso confirmed that Lilian was suffering from acute appendicitis. He proceeded to remove her appendix which was already infected and congested with pus.

The operation was successful. Lilian's appearance and vital signs improved. At around 7:30 P.M., Lilian was brought back to her private room from the recovery room.

At around 1:30 A.M. on July 16, 1999, roughly six hours after Lilian was brought back to her room, Dr. Inso was informed that her blood pressure was low. After assessing her condition, he ordered the infusion of more intravenous (*IV*) fluids which somehow raised her blood pressure.

Despite the late hour, Dr. Inso remained in the hospital to monitor Lilian's condition. Subsequently, a nurse informed him that Lilian was becoming restless. Dr. Inso immediately went to Lilian and saw that she was quite pale. He immediately requested a blood transfusion.

Lilian did not respond to the blood transfusion even after receiving two 500 cc-units of blood. Various drugs, such as adrenaline or epinephrine, were administered.

Eventually, an endotracheal tube connected to an oxygen tank was inserted into Lilian to ensure her airway was clear and to compensate for the lack of circulating oxygen in her body from the loss of red blood cells. Nevertheless, her condition continued to deteriorate.

Dr. Inso observed that Lilian was developing *petechiae* in various parts of her body. *Petechiae* are small bruises caused by bleeding under the skin whose presence indicates a blood-coagulation problem – a defect in the ability of blood to clot. At this point, Dr. Inso suspected that Lilian had *Disseminated Intravascular Coagulation* (*DIC*), a blood disorder characterized by bleeding in many parts of her body caused by the consumption or the loss of the clotting factors in the blood. However, Dr. Inso did not have the luxury to conduct further tests because the immediate need was to resuscitate Lilian.

Dr. Inso and the nurses performed cardiopulmonary resuscitation (*CPR*) on Lilian. Dr. Inso also informed her family that there may be a need to re-operate on her, but she would have to be put in an Intensive Care Unit (*ICU*). Unfortunately, Family Care did not have an ICU because it was only a secondary hospital and was not required by the Department of Health to have one. Dr. Inso informed the petitioner that Lilian would have to be transferred to another hospital.

At around 3:30 A.M., Dr. Inso personally called the Perpetual Help Medical Center to arrange Lilian's transfer, but the latter had no available bed in its ICU. Dr. Inso then personally coordinated with the Muntinlupa Medical Center *(MMC)* which had an available bed.

At around 4:00 A.M., Lilian was taken to the MMC by ambulance accompanied by the resident doctor on duty and a nurse. Dr. Inso followed closely behind in his own vehicle.

Upon reaching the MMC, a medical team was on hand to resuscitate Lilian. A nasogastric tube (*NGT*) was inserted and IV fluids were

immediately administered to her. Dr. Inso asked for a plasma expander. Unfortunately, at around 10:00 A.M., Lilian passed away despite efforts to resuscitate her.

At the request of the petitioner, Lilian's body was autopsied at the Philippine National Police *(PNP)* Camp Crame Crime Laboratory. Dr. Emmanuel Reyes (*Dr. Reyes*), the medico-legal assigned to the laboratory, conducted the autopsy. Dr. Reyes summarized his notable findings as:

> x x x I opened up the body and inside the abdominal cavity which you call peritoneal cavity there were 3,000 ml of clot and unclot blood accumulated thereat. The peritoneal cavity was also free from any adhesion. Then, I opened up the head and the brain revealed paper white in color and the heart revealed abundant petechial hemorrhages from the surface and it was normal. The valvular leaflets were soft and pliable, and of course, the normal color is reddish brown as noted. And the coronary arteries which supply the heart were normal and unremarkable. Next, the lungs appears [*sic*] hemorrhagic. That was the right lung while the left lung was collapsed and paled. For the intestines, I noted throughout the entire lengths of the small and large intestine were hemorrhagic areas. Noted absent is the appendix at the ileo-colic area but there were continuous suture repair done thereat. However, there was a 0.5 x 0.5 cm opening or left unrepaired at that time. There was an opening on that repair site. Meaning it was not repaired. There were also at that time clot and unclot blood found adherent thereon. The liver and the rest of the visceral organs were noted exhibit [*sic*] some degree of pallor but were otherwise normal. The stomach contains one glassful about 400 to 500 ml.[3]

Dr. Reyes concluded that the cause of Lilian's death was hemorrhage due to bleeding petechial blood vessels: internal bleeding. He further concluded that the internal bleeding was caused by the 0.5 x 0.5 cm opening in the repair site. He opined that the bleeding could have been avoided if the site was repaired with double suturing instead of the single continuous suture repair that he found.

Based on the autopsy, the petitioner filed a complaint for damages against Family Care and against Dr. Inso for medical negligence.

During the trial, the petitioner presented Dr. Reyes as his expert witness. Dr. Reyes testified as to his findings during the autopsy and his opinion that Lilian's death could have been avoided if Dr. Inso had repaired the site with double suture rather than a single suture.

However, Dr. Reyes admitted that he had very little experience in the field of pathology and his only experience was an on-the-job training at the V. Luna Hospital where he was only on observer status. He further admitted that he had no experience in appendicitis or appendectomy and that Lilian's case was his first autopsy involving a death from appendectomy.

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[3] TSN dated March 5, 2002, p. 14, quoted in the RTC Decision; see *rollo*, pp. 143-144.

Moreover, Dr. Reyes admitted that he was not intelligently guided during the autopsy because he was not furnished with clinical, physical, gross, histopath, and laboratory information that were important for an accurate conclusion. Dr. Reyes also admitted that an appendical stump is initially swollen when sutured and that the stitches may loosen during the healing process when the initial swelling subside.

In their defense, Dr. Inso and Family Care presented Dr. Inso, and expert witnesses Dr. Celso Ramos (*Dr. Ramos*) and Dr. Herminio Hernandez (*Dr. Hernandez*).

Dr. Ramos is a practicing pathologist with over 20 years of experience. He is an associate professor at the Department of Surgery of the Fatima Medical Center, the Manila Central University, and the Perpetual Help Medical Center. He is a Fellow of the Philippine College of Surgeons, a Diplomate of the Philippine Board of Surgery, and a Fellow of the Philippine Society of General Surgeons.

Dr. Ramos discredited Dr. Reyes' theory that the 0.5 x 0.5 cm opening at the repair site caused Lilian's internal bleeding. According to Dr. Ramos, appendical vessels measure only 0.1 to 0.15 cm, a claim that was not refuted by the petitioner. If the 0.5 x 0.5 cm opening had caused Lilian's hemorrhage, she would not have survived for over 16 hours; she would have died immediately, within 20 to 30 minutes, after surgery.

Dr. Ramos submitted that the cause of Lilian's death was hemorrhage due to DIC, a blood disorder that leads to the failure of the blood to coagulate. Dr. Ramos considered the abundant petechial hemorrhage in the myocardic sections and the hemorrhagic right lung; the multiple bleeding points indicate that Lilian was afflicted with DIC.

Meanwhile, Dr. Hernandez is a general surgeon and a hospital administrator who had been practicing surgery for twenty years as of the date of his testimony.

Dr. Hernandez testified that Lilian's death could not be attributed to the alleged wrong suturing. He submitted that the presence of blood in the lungs, in the stomach, and in the entire length of the bowels cannot be reconciled with Dr. Reyes' theory that the hemorrhage resulted from a single-sutured appendix.

Dr. Hernandez testified that Lilian had uncontrollable bleeding in the microcirculation as a result of DIC. In DIC, blood oozes from very small blood vessels because of a problem in the clotting factors of the blood vessels. The microcirculation is too small to be seen by the naked eye; the red cell is even smaller than the tip of a needle. Therefore, the alleged wrong suturing could not have caused the amount of hemorrhaging that caused Lilian's death.

Dr. Hernandez further testified that the procedure that Dr. Inso performed was consistent with the usual surgical procedure and he would not have done anything differently.[4]

The petitioner presented Dr. Rudyard Avila III (*Dr. Avila*) as a rebuttal witness. Dr. Avila, also a lawyer, was presented as an expert in medical jurisprudence. Dr. Avila testified that between Dr. Reyes who autopsied the patient and Dr. Ramos whose findings were based on medical records, greater weight should be given to Dr. Reyes' testimony.

On April 10, 2007, the RTC rendered its decision awarding the petitioner ₱88,077.50 as compensatory damages; ₱50,000.00 as death indemnity; ₱3,607,910.30 as loss of earnings; ₱50,000.00 as moral damages; ₱30,000.00 as exemplary damages; ₱50,000.00 as attorney's fees, and the costs of the suit.

The RTC relied on Dr. Avila's opinion and gave more weight to Dr. Reyes' findings regarding the cause of Lilian's death. It held that Dr. Inso was negligent in using a single suture on the repair site causing Lilian's death by internal hemorrhage. It applied the doctrine of *res ipsa loquitur,* holding that a patient's death does not ordinarily occur during an appendectomy.

The respondents elevated the case to the CA and the appeal was docketed as **CA-G.R. CV No. 89096.**

On January 22, 2010, the CA reversed the RTC's decision and dismissed the complaint. The CA gave greater weight to the testimonies of Dr. Hernandez and Dr. Ramos over the findings of Dr. Reyes because the latter was not an expert in pathology, appendectomy, nor in surgery. It disregarded Dr. Avila's opinion because the basic premise of his testimony was that the doctor who conducted the autopsy is a pathologist of equal or of greater expertise than Dr. Ramos or Dr. Hernandez.

The CA held that there was no causal connection between the alleged omission of Dr. Inso to use a double suture and the cause of Lilian's death. It also found that Dr. Inso did, in fact, use a double suture ligation with a third silk reinforcement ligation on the repair site which, as Dr. Reyes admitted on cross-examination, loosened up after the initial swelling of the stump subsided.

The CA denied the applicability of the doctrine of *res ipsa loquitur* because the element of causation between the instrumentality under the control and management of Dr. Inso and the injury that caused Lilian's death was absent; the respondents sufficiently established that the cause of Lilian's death was DIC.

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4 TSN dated November 19, 2003, pp. 27, 29 and 36.

On March 18, 2010, the petitioner filed the present petition for review on *certiorari.*

THE PETITION

The petitioner argues: (1) that Dr. Inso and Family Care were negligent in caring for Lilian before, during, and after her appendectomy and were responsible for her death; and (2) that the doctrine of *res ipsa loquitur* is applicable to this case.

In their Comment, the respondents counter: (1) that the issues raised by the petitioner are not pure questions of law; (2) that they exercised utmost care and diligence in the treatment of Lilian; (3) that Dr. Inso did not deviate from the standard of care observed under similar circumstances by other members of the profession in good standing; (4) that *res ipsa loquitur* is not applicable because direct evidence as to the cause of Lilian's death and the presence/absence of negligence is available; and (5) that doctors are not guarantors of care and cannot be held liable for the death of their patients when they exercised diligence and did everything to save the patient.

OUR RULING

The petition involves factual questions.

Under Section 1 of Rule 45, a petition for review on *certiorari* shall only raise questions of law. The Supreme Court is not a trier of facts and it is not our function to analyze and weigh evidence that the lower courts had already passed upon.

The factual findings of the Court of Appeals are, as a general rule, conclusive upon this Court. However, jurisprudence has also carved out recognized exceptions[5] to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises, or conjectures;[6] (2) when the inference made is manifestly mistaken, absurd, or impossible;[7] (3) when there is grave abuse of discretion;[8] (4) when the judgment is based on a misapprehension of facts;[9] (5) when the findings of facts are conflicting;[10] (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;[11] **(7) when the findings are contrary to those of the trial court's**;[12] (8) when the findings are conclusions without citation of

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5 *New City Builders, Inc. v. NLRC,* 499 Phil. 207, 212-213 (2005), citing *Insular Life Assurance Company, Ltd. v. CA,* 472 Phil. 7 (2004).

6 *Joaquin v. Navarro,* 93 Phil. 257-270 (1953).

7 *De Luna v. Linatoc,* 74 Phil. 15 (1942).

8 *Buyco v. People,* 95 Phil. 453 (1954).

9 *Cruz v. Sosing,* 94 Phil. 26 (1953).

10 *Casica v. Villaseca,*101 Phil. 1205 (1957).

11 *Lim Yhi Luya v. Court of Appeals,* G.R. No. L-40258, September 11, 1980, 99 SCRA 668-669.

12 *Sacay v. Sandiganbayan,* G.R. No. L-66497-98, July 10, 1986, 142 SCRA 593.

specific evidence on which they are based;[13] (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 respondent;[14] (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record;[15] and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[16]

Considering that the CA's findings with respect to the cause of Lilian's death contradict those of the RTC, this case falls under one of the exceptions. The Court will thus give due course to the petition to dispel any perception that we denied the petitioner justice.

The requisites of establishing medical malpractice

Whoever alleges a fact has the burden of proving it. This is a basic legal principle that equally applies to civil and criminal cases. In a medical malpractice case, the plaintiff has the duty of proving its elements, namely: (1) a *duty* of the defendant to his patient; (2) the defendant's *breach* of this duty; (3) *injury* to the patient; and (4) *proximate causation* between the breach and the injury suffered.[17] In civil cases, the plaintiff must prove these elements by a preponderance of evidence.

A medical professional has the duty to observe the *standard of care* and exercise the degree of skill, knowledge, and training ordinarily expected of other similarly trained medical professionals acting under the same circumstances.[18] A breach of the accepted standard of care constitutes negligence or malpractice and renders the defendant liable for the resulting injury to his patient.[19]

The standard is based on the norm observed by other reasonably competent members of the profession **practicing the same field of medicine**.[20] Because medical malpractice cases are often highly technical, expert testimony is usually essential to establish: (1) the standard of care that the defendant was bound to observe under the circumstances; (2) that the defendant's conduct fell below the acceptable standard; and (3) that the

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13 *Universal Motors v. Court of Appeals,* G.R. No. L-47432, January 27, 1992, 205 SCRA 448.
14 *Alsua-Betts v. Court of Appeals,* G.R. No. L-46430-31, July 30, 1979, 92 SCRA 332.
15 *Medina v. Asistio,* G.R. No. 75450, November 8, 1990, 191 SCRA 218.
16 *Abellana v. Dosdos,* 121 Phil. 241 (1965).
17 *Garcia-Rueda v. Pascasio,* 344 Phil. 323, 331-332 (1997); *Sps. Flores v. Sps. Pineda,* 591 Phil. 699, 706 (2008); *Reyes v. Sisters of Mercy Hospital,* 396 Phil. 87, 95-96 (2000).
18 *Garcia-Rueda v. Pascasio, supra* note 17, at 332; *Dr. Cruz v. CA,* 346 Phil. 872, 883-884 (1997); *Reyes v. Sisters of Mercy Hospital, supra* note 17, at 104.
19 *Sps. Flores v. Sps. Pineda, supra* note 17.
20 *Dr. Cruz v. CA, supra* note 18, at 884; *Cabugao v. People of the Philippines,* G.R. No. 163879, July 30, 2014, 731 SCRA 214, 234.

defendant's failure to observe the industry standard caused injury to his patient.[21]

The expert witness must be a similarly trained and experienced physician. Thus, a pulmonologist is not qualified to testify as to the standard of care required of an anesthesiologist[22] and an autopsy expert is not qualified to testify as a specialist in infectious diseases.[23]

The petitioner failed to present an expert witness.

In ruling against the respondents, the RTC relied on the findings of Dr. Reyes in the light of Dr. Avila's opinion that the former's testimony should be given greater weight than the findings of Dr. Ramos and Dr. Hernandez. On the other hand, the CA did not consider Dr. Reyes or Dr. Avila as expert witnesses and disregarded their testimonies in favor of Dr. Ramos and Dr. Hernandez. The basic issue, therefore, is whose testimonies should carry greater weight?

We join and affirm the ruling of the CA.

Other than their conclusion on the culpability of the respondents, the CA and the RTC have similar factual findings. The RTC ruled against the respondents based primarily on the following testimony of Dr. Reyes.

> Witness: Well, **if I remember right during my residency in my extensive training**, during the operation of the appendix, your Honor, it should really be sutured twice which we call double.
>
> Court: What would be the result if there is only single?
>
> Witness: We cannot guarranty [*sic*] the bleeding of the sutured blood vessels, your Honor.
>
> Court: So, the bleeding of the patient was caused by the single suture?
>
> Witness: **It is possible**.[24]

Dr. Reyes testified that he graduated from the Manila Central University (*MCU)* College of Medicine and passed the medical board exams in 1994.[25] He established his personal practice at his house clinic before being accepted as an on-the-job trainee in the Department of Pathology at the V. Luna Hospital in 1994. In January 1996, he joined the PNP Medico-Legal Division and was assigned to the Crime Laboratory in Camp Crame. He currently heads the Southern Police District Medico-Legal division.[26] His

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21 *Dr. Cruz v. CA, supra* note 18, at 885.
22 *Ramos v. CA,* 378 Phil. 1198,1236 (1999).
23 *Reyes v. Sisters of Mercy Hospital, supra* note 17.
24 TSN dated March 5, 2002, pp. 22-23 (Direct Examination of Dr. Emmanuel Reyes).
25 Cross Examination, TSN dated March 19, 2002, p. 3.
26 TSN dated March 5, 2002, pp. 3-11 (Direct Examination of Dr. Emmanuel Reyes).

primary duties are to examine victims of violent crimes and to conduct traumatic autopsies to determine the cause of death.

After having conducted over a thousand traumatic autopsies, Dr. Reyes can be considered an expert in traumatic autopsies or autopsies involving violent deaths. However, his expertise in traumatic autopsies does not necessarily make him an expert in clinical and pathological autopsies or in surgery.

Moreover, Dr. Reyes' cross-examination reveals that he was less than candid about his qualifications during his initial testimony:

> Atty. Castro: Dr. Reyes, you mentioned during your direct testimony last March 5, 2002 that you graduated in March of 1994, is that correct?
>
> Witness: Yes, sir.
>
> Atty. Castro: You were asked by Atty. Fajardo, the counsel for the plaintiff, when did you finish your medical works, and you answered the following year of your graduation which was in 1994?
>
> Witness: **Not in 1994, it was in 1984**, sir.
>
> Atty. Castro: And after you graduated Mr. Witness, were there further study that you undergo after graduation? [*sic*]
>
> Witness: It was during my service only at the police organization that I was given the chance to attend the training, one year course.
>
> Atty. Castro: Did you call that what you call a post graduate internship?
>
> Witness: Residency.
>
> Atty. Castro: Since you call that a post graduate, you were not undergo post graduate? [*sic*]
>
> Witness: I did.
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> Atty. Castro: Where did you undergo a post graduate internship?
>
> Witness: Before I took the board examination in the year 1984, sir.
>
> Atty. Castro: That was where?
>
> Witness: MCU Hospital, sir.
>
> Atty. Castro: After the post graduate internship that was the time you took the board examination?
>
> Witness: Yes, sir.

Atty. Castro: And I supposed that you did it for the first take?

Witness: Yes, sir.

Atty. Castro: Are you sure of that?

Witness: Yes, sir.

Atty. Castro: After you took the board examination, did you pursue any study?

Witness: During that time, no sir.

Atty. Castro: You also testified during the last hearing that "page 6 of March 5, 2002, answer of the witness: then I was accepted as on the job training at the V. Luna Hospital at the Department of Pathologist in 1994", could you explain briefly all of this Mr. witness?

Witness: I was given an order that I could attend the training only as a civilian not as a member of the AFP because at that time they were already in the process of discharging civilian from undergoing training.

Atty. Castro: So in the Department of Pathology, what were you assigned to?

Witness: **Only as an observer status**.

Atty. Castro: So you only observed.

Witness: Yes, sir.

Atty. Castro: And on the same date during your direct testimony on March 5, 2002, part of which reads "well if I remember right during my residency in my extensive training during the operation of the appendix," what do you mean by that Mr. witness?

Witness: I was referring to my **internship**, sir.

Atty. Castro: So this is **not a residency training**?

Witness: **No, sir.**

Atty. Castro: This is not a specialty training?

Witness: No, sir.

Atty. Castro: This was the time the year before you took the board examination?

Witness: That's right, sir. Yes, sir.

Atty. Castro: You were **not then a license[d] doctor**?

Witness: **No**, **sir**.

Atty. Castro: And you also mentioned during the last hearing shown by page 8 of the same transcript of the stenographic notes, dated March 5, 2002 and I quote "and that is your residence assignment?", and you answered "yes, sir." What was the meaning of your answer? What do you mean when you say yes, sir?

x x x x

Witness: Okay, **I stayed at the barracks of the Southern Police District Fort Bonifacio**.

Atty. Castro: So this is not referring to any kind of training?

Witness: No, sir.

Atty. Castro: This is not in anyway related to appendicitis?

Witness: No, sir.[27]

Atty. Reyes appears to have inflated his qualifications during his direct testimony. First, his "extensive training during [his] residency" was neither extensive actual training, nor part of medical residency. His assignment to the V. Luna Hospital was not as an on-the-job trainee but as a mere *observer*. This assignment was also *before* he was *actually* licensed as a doctor. Dr. Reyes also loosely used the terms "residence" and "residency" – terms that carry a technical meaning with respect to medical practice – during his initial testimony[28] to refer to (1) his physical place of dwelling and (2) his internship before taking the medical board exams. This misled the trial court into believing that he was more qualified to give his opinion on the matter than he actually was.

Perhaps nothing is more telling about Dr. Reyes' lack of expertise in the subject matter than the petitioner's counsel's own admission during Dr. Reyes' cross examination.

Atty. Castro: How long were you assigned to observe with the Department of Pathology?

Witness: Only 6 months, sir.

Atty. Castro: During your studies in the medical school, Mr. Witness, do you recall attending or having participated or [sic] what you call motivity mortality complex?

Atty. Fajardo: Your honor, what is the materiality?

Atty. Castro: That is according to his background, your honor. This is a procedure which could more or less measure his knowledge in autopsy proceedings when he was in medical school and compared to what he is actually doing now.

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27 Cross Examination of Dr. Reyes, TSN dated March 19, 2002, pp. 4-11.

28 See Direct Examination of Dr. Reyes, TSN dated March 5, 2002, pp. 8 and 22.

> Atty. Fajardo: **The witness is not an expert witness**, your honor.
>
> Atty. Castro: He is being presented as an expert witness, your honor.[29]

When Atty. Castro attempted to probe Dr. Reyes about his knowledge on the subject of medical or pathological autopsies, Dr. Fajardo objected on the ground that Dr. Reyes was not an expert in the field. His testimony was offered to prove that Dr. Inso was negligent during the surgery without necessarily offering him as an expert witness.

> Atty. Fajardo: x x x The purpose of this witness is to establish that there was negligence on the surgical operation of the appendix or in the conduct of the appendectomy by the defendant doctor on the deceased Lilian Villaran Borromeo.[30]

Dr. Reyes is not an expert witness who could prove Dr. Inso's alleged negligence. His testimony could not have established the standard of care that Dr. Inso was expected to observe nor assessed Dr. Inso's failure to observe this standard. His testimony cannot be relied upon to determine if Dr. Inso committed errors during the operation, the severity of these errors, their impact on Lilian's probability of survival, and the existence of other diseases/conditions that might or might not have caused or contributed to Lilian's death.

The testimony of Dr. Avila also has no probative value in determining whether Dr. Inso was at fault. Dr. Avila testified in his capacity as an expert in medical jurisprudence, not as an expert in medicine, surgery, or pathology. His testimony fails to shed any light on the actual cause of Lilian's death.

On the other hand, the respondents presented testimonies from Dr. Inso himself and from two expert witnesses in pathology and surgery.

Dr. Ramos graduated from the Far Eastern University, Nicanor Reyes Medical Foundation, in 1975. He took up his post-graduate internship at the Quezon Memorial Hospital in Lucena City, before taking the board exams. After obtaining his professional license, he underwent residency training in pathology at the Jose R. Reyes Memorial Center from 1977 to 1980. He passed the examination in Anatomic, Clinical, and Physical Pathology in 1980 and was inducted in 1981. He also took the examination in anatomic pathology in 1981 and was inducted in 1982.[31]

At the time of his testimony, Dr. Ramos was an associate professor in pathology at the Perpetual Help Medical School in Biñan, Laguna, and at the De La Salle University in Dasmariñas, Cavite. He was the head of the Batangas General Hospital Teaching and Training Hospital where he also

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29 Cross Examination of Dr. Reyes, TSN dated March 19, 2002, pp. 30-31.
30 Direct Examination of Dr. Reyes, TSN dated March 5, 2002, p. 4.
31 Direct Examination of Dr. Ramos, TSN dated June 6, 2003, p. 13.

headed the Pathology Department. He also headed the Perpetual Help General Hospital Pathology department.[32]

Meanwhile, Dr. Hernandez at that time was a General Surgeon with 27 years of experience as a General Practitioner and 20 years of experience as a General Surgeon. He obtained his medical degree from the University of Santo Tomas before undergoing five years of residency training as a surgeon at the Veterans Memorial Center hospital. He was certified as a surgeon in 1985. He also holds a master's degree in Hospital Administration from the Ateneo de Manila University.[33]

He was a practicing surgeon at the: St. Luke's Medical Center, Fatima Medical Center, Unciano Medical Center in Antipolo, Manila East Medical Center of Taytay, and Perpetual Help Medical Center in Biñan.[34] He was also an associate professor at the Department of Surgery at the Fatima Medical Center, the Manila Central University, and the Perpetual Help Medical Center. He also chaired the Department of Surgery at the Fatima Medical Center.[35]

Dr. Hernandez is a Fellow of the American College of Surgeons, the Philippine College of Surgeons, and the Philippine Society of General Surgeons. He is a Diplomate of the Philippine Board of Surgery and a member of the Philippine Medical Association and the Antipolo City Medical Society.[36]

Dr. Hernandez affirmed that Dr. Inso did not deviate from the usual surgical procedure.[37] Both experts agreed that Lilian could not have died from bleeding of the appendical vessel. They identified Lilian's cause of death as massive blood loss resulting from DIC.

To our mind, the testimonies of expert witnesses Dr. Hernandez and Dr. Ramos carry far greater weight than that of Dr. Reyes. The petitioner's failure to present expert witnesses resulted in his failure to prove the respondents' negligence. The preponderance of evidence clearly tilts in favor of the respondents.

Res ipsa loquitur is not applicable when the failure to observe due care is not immediately apparent to the layman.

The petitioner cannot invoke the doctrine of *res ipsa loquitur* to shift the burden of evidence onto the respondent. *Res ipsa loquitur,* literally, "the

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32 *Id.* at 14.
33 Direct Examination of Dr. Hernandez, TSN dated November 19, 2003, pp. 5-10.
34 *Id.* at 9.
35 *Id.* at 10.
36 *Id.* at 11.
37 *Id.* at 27, 29 and 36.

thing speaks for itself;" is a rule of evidence that presumes negligence from the very nature of the accident itself using *common human knowledge* or experience.

The application of this rule requires: (1) that the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) that the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) that the injury suffered must not have been due to any voluntary action or contribution from the injured person.[38] The concurrence of these elements creates a presumption of negligence that, if unrebutted, overcomes the plaintiff's burden of proof.

This doctrine is used in conjunction with the *doctrine of common knowledge*. We have applied this doctrine in the following cases involving medical practitioners:

a. Where a patient who was scheduled for a cholecystectomy (removal of gall stones) but was otherwise healthy suffered irreparable brain damage after being administered anesthesia prior to the operation.[39]

b. Where after giving birth, a woman woke up with a gaping burn wound close to her left armpit;[40]

c. The removal of the wrong body part during the operation; and

d. Where an operating surgeon left a foreign object (*i.e.*, rubber gloves) inside the body of the patient.[41]

The rule is not applicable in cases such as the present one where the defendant's alleged failure to observe due care is not immediately apparent to a layman.[42] These instances require expert opinion to establish the culpability of the defendant doctor. It is also not applicable to cases where the actual cause of the injury had been identified or established.[43]

While this Court sympathizes with the petitioner's loss, the petitioner failed to present sufficient convincing evidence to establish: (1) the standard of care expected of the respondent and (2) the fact that Dr. Inso fell short of this expected standard. Considering further that the respondents established that the cause of Lilian's uncontrollable bleeding (and, ultimately, her death) was a medical disorder – *Disseminated Intravascular Coagulation* – we find no reversible errors in the CA's dismissal of the complaint on appeal.

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38 *Malayan Insurance Co. v. Alberto,* G.R. No. 194320, February 1, 2012, 664 SCRA 791, 803-804.
39 *Ramos v. CA, supra* note 22.
40 *Dr. Cantre v. Spouses Go,* 550 Phil. 637 (2007).
41 *Batiquin v. Court of Appeals,* 327 Phil. 965-971 (1996).
42 *Reyes v. Sisters of Mercy Hospital, supra* note 17, at 98.
43 See *Professional Services, Inc. v. Agana,* 542 Phil. 464, 484 (2007).

WHEREFORE, we hereby **DENY** the petition for lack of merit. No costs.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
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.

MARIA LOURDES P. A. SERENO
Chief Justice