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Imprudence — A Crime Or A Mode Of Commission?

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IS imprudence a crime in itself? Or is it merely a mode of commission?

The question has been posed time and again by members of the bar, by professors and students alike who in disbelief of the pronouncement of the Supreme Court that imprudence is a crime in itself, find it a novel theory and contrary to the provisions of the

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Revised Penal Code. As stated, the Supreme Court has ruled that imprudence is a crime in itself and not a mere modality in the commission of a felony. Thus, in tht leading case of *Quizon vs. The Justice of the Peace of Bacolor, Pampanga*[1] cited with approval in the case of *Pabulario vs. Palarca*[2] the Court stated

> "The proposition (inferred from Art. 3 of the Revised Penal Code) that reckless imprudence" is not a crime in itself but simply a way of committing it and merely determines " 'a lower degree of criminal liability' " is too broad to deserve unqualified assent. There are crimes that by their structure cannot be committed through imprudence: murder, treason, robbery, malicious mischief, etc. In truth, criminal negligence in our Revised Penal Code is treated as a mere quasi-offense, and dealt separately from wilful offenses. It is not a mere question of classification or terminology. In intentional crimes, the act itself is punished; in negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight; the " '*imprudencia punible*' ". Much of the confusion has arisen from the common use of such descriptive phrases as " 'homicide through reckless imprudence,' " and the like; when the strict technical offense is, more accurately " 'reckless imprudence resulting in homicide' ", or " 'simple imprudence causing damages to property.' "
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> "Were criminal negligence but a modality in the commission of felonies, operating only to reduce the penalty therefor then it would be absorbed in the mitigating circumstances of Art. 13, specially the lack of intent to commit so grave a wrong as the one actually committed. Furthermore, the theory would require that the corresponding penalty should be fixed in proportion to the penalty prescribed for each crime when committed wilfully. For each penalty for the wilful offense, there would then be a corresponding penalty for the negligence variety. But instead, our Revised Penal Code (Art. 365) fixes the penalty for reckless imprudence at *arresto mayor* maximum to *prision correccional* minimum if the wilful act would constitute a grave felony, notwithstanding that the penalty for the latter could range all the way from *prision mayor* to death, according to the case. It can be seen that the actual penalty for criminal negligence bears no relation to the individual wilful crime, but is set in relation to a whole class, or series of crimes."

The above ruling was reiterated in several other cases, among them *People vs. Cano*,[3] *People vs. Buan*,[4] and *Corpus vs. Paje*[5]

Notwithstanding the repeated pronouncements of our Supreme Court, my views on the matter, as a professor of Criminal Law, has been solicited. With due respect to the opinion of the highest tribunal of the land, composed of persons well-versed in law and experience, I raise my humble voice in dissent. Perhaps the reader

[1] 97 Phil. 342.
[2] 21 SCRA 769, 772-773.
[3] 17 SCRA 237.
[4] 22 SCRA 1383.
[5] 28 SCRA 1062.

may not agree with what I may say, but I am sure he will have food for thought on this controversial matter.

Paragraphs 2 and 3 of Article 3 of the Revised Penal Code expressly provide:

> "Felonies are committed not only by means of deceit (*dolo*) but also by means of fault (*culpa*)."
>
> "There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill."

A perusal of the foregoing provisions will readily disclose that imprudence, whether reckless or otherwise, is nothing but a mode of commission that lessens the criminal liability of the offender, except in the crime of malversation of public funds or property. In fact, in the case of *People vs. Faller*,[6] the Supreme Court, speaking through Chief Justice Ramon Avanceña, declared:

> "Reckless imprudence is not a crime in itself. It is simply a way of committing it and merely determines a lower degree of criminal liability."

If imprudence were a crime in itself, there was no reason for the Code Committee that drafted the Revised Penal Code to include fault or imprudence in prescribing the modes of commission of felonies. To hold that imprudence is in itself a felony would be tantamount to nullifying or repealing the provisions of Article 3 of the Revised Penal Code; it would constitute a usurpation of the legislative powers. Among the members of the Code Committee were Justice Anacleto Diaz, Justice Antonio Villa-real and Senator Quintin Paredes, Sr., all of them well-known experts on Criminal Law.

In support of the theory that imprudence is a crime in itself, the Honorable Supreme Court points out that imprudence is treated in a separate title of the Revised Penal Code. True enough, but in my humble opinion, this is so only to separate or distinguish felonies committed with deliberate intent from those resulting from imprudence. Otherwise, the Code would have omitted "imprudence" from the provisions of the aforequoted second and third paragraphs of Article 3. It should be mentioned that Title Fourteen of the Revised Penal Code, in its only article 365, deals with imprudence or negligence. What does the said article penalize, the imprudence itself or the injury to persons or damage to property resulting from the imprudent act of the offender? A study of Article 365 reveals the undeniable fact that the penalties therein prescribed are not for the imprudence but for the felony that resulted from the imprudent act, the law taking into consideration the lack of criminal intent on the part of the offender. For instance, Mr. A is the licensed holder of a revolver. He loads the firearm, cocks it, and then leave the firearm on a table within the reach of children playing nearby. Thereafter, Mr. A goes away even if temporarily. Is not Mr. A guilty of reckless

[6] 67 Phil. 529

imprudence? The answer is obvious. But suppose that a child took hold of the revolver, and while playing with it, the firearm was discharged but fortunately no one was injured and no damage to property was caused. If imprudence is a felony in itself, what then is the liability of Mr. A? What penalty shall be imposed upon Mr. A? It cannot be gainsaid that if the Revised Penal Code intended to punish imprudence as a crime in itself, the Code would have provided the corresponding repression. While it is true that Chapter One, Title Fourteen of the Revised Penal Code is entitled "Culpa Criminal," this does not mean that what is being punished is the imprudence. What controls is the specific article, not the title that merely indicates the subject matter covered. In fact, Article 365 provides in its first paragraph the following:

> Art 365. Imprudencia y negligencia. — El que, por imprudencia temeraria, *ojecutare un acto que, si mediare malicia, constituiria un delito grave sera castigado*...etc.[7] (Underscoring ours.)

It is clear then that what is being punished is not the imprudence, but the act that, had it been intentionally done, would have constituted a grave felony. In a case of homicide for example, the felony is not the reckless driving but the homicide that resulted from the imprudent act; the homicide is the "delito culposo."

In its decision in the case of *Quezon vs. The Justice of the Peace of Bacolor, Pampanga,*[8] the Supreme Court stated:

> "It is not a mere question of classification or terminology. In intentional crimes, the act itself is punished; in negligence or imprudence, what is principally punished is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight; the 'imprudencia punible.'"

But then, if such were the purpose of the law, would not the Code have provided for a penalty for any imprudent and reckless act, irrespective of whether it results in injury to persons or damage to property? The mental condition or attitude of the offender, being an internal act, cannot be the subject of repression. If the offender must be punished for such mental attitude, it must be the result of such attitude, the injury or damage caused by his imprudence. This is precisely what Article 365 provides. The situation is akin to the so-called "impossible crime" where the intent of the law is to curb or repress the dangerous tendency of the offender, his anti-social attitude. The difference between the impossible crime and the theory of the Supreme Court is that in the case of the impossible crime the Code has prescribed a penalty in Article 59 of the Code.

To bolster its theory, the Supreme Court went further by saying that were imprudence "but a modality in the commission of felonies, operating only to reduce the penalty therefor, then it would be absorbed in the mitigating circumstances of Article 13, especially the lack of intent to commit so grave a wrong as the one actually committed." The argument is, to my mind, fallacious. The mitigating circumstance of lack of intention referred to presupposes that the offender deliberately and intentionally committed a felonious act; an act that in itself is punishable, only that the result of the felonious act was beyond that which the offender intended actually to commit. In imprudence, under the Revised Penal Code, the offender had no intention to commit a felony because recklessness is not in itself a felony punishable by law, but such recklessness resulted in a felony, that is, homicide, physical injuries, or damage to property. There is no parity, therefore, between the mitigating circumstance of lack of intention to commit so grave a wrong as that committed and imprudence.

[7] Art. 365. Imprudence and Negligence. — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer... etc.

[8] Supra.

In the later case of *People vs. Buan,*[9] the Supreme Court reiterated its ruling that in cases of imprudence, the crime is not the resulting injury to persons or damage to property, but the imprudence itself. The Court cites the opinion of the eminent Spanish commentator Cuello Calon and two decisions of the Supreme Court of Spain, purportedly the basis of the opinion of Cuello Calon. The two decisions, as cited by the Court, read as follows:

> "8 octubre 1887, 18 octubre 1927.
>
> "Si con el hecho imprudente se causa la muerte de una persona y además se ocasionan daños, existe un solo hecho punible, pues uno solo fué el acto, aun cuando deben appreciarse dos en orden a la responsabilidad civil, 14 deciembre 1931; *si a consecuencia de un solo acto imprudente se produjeron tres delitos,* dos de homicidio y uno de daños, *como todos son consecuencia de un solo acto culposo, no cabe penarlos por separado,* 2 abril 1932."[10]

I do not dispute the correctness of the pronouncement of the Supreme Court of Spain. But, after analyzing the aforecited decisions, I hesitate to concur in the views of our Supreme Court that the crime is the imprudence and not the resulting felonies. Note that the Spanish Court used the phrase "*un solo hecho punible*"[11]; it did not say that the result of the one act should be considered as only one offense and punished by only one penalty. Certainly, if there was only one imprudent act that resulted in homicide, physical injuries and/or damage to property, the resulting felony must necessarily be the subject of only one information, and only one penalty must be imposed. This is in essence the ruling of the Supreme Court of Spain and it is in accordance with the provisions of Article 71 of the Spanish

[9] Supra.

[10] "8 october 1887, 18 october 1927.
"If by an imprudent act, the death of another is caused and in addition it results in damages, only one punishable act exists, because there was only one act although two acts ought to be considered for purposes of civil responsibility, 14 december 1931; if as a consequence of a single imprudent act, three crimes have resulted, two for homicide and one for damages, because all were consequences of one culpable act, they should not be punished separately, 2 april 1932."

[11] "One punishable act."

Penal Code of 1944 which is the counterpart of Article 48 of our Revised Penal Code. Article 71 of the Spanish code reads as follows:

> "71. Las disposiciones del articulo anterior no son applicables en el caso de que un solo hecho constituya dos o mas delitos o cuando uno de ellos sea midio necesario para cometer otro.
>
> En estos casos se impondra la pena correspondiente al delito mas grave en su grado maximo. . .[12]

Under the Spanish code, therefore, the slight physical injuries that have been caused together with the more serious felonies resulting from one imprudent act could be and had to be the subject of only one prosecution, not because only one crime was committed — the imprudent act, — but because the resulting felonies, whether grave, less grave, or slight, resulted from one act. Our Supreme Court, however, seems to have overlooked the fact that Article 48 of the Revised Penal Code, was amended by Act No. 4000. The application of Article 48 was limited to grave and less grave felonies. Consequently, the slight physical injuries could not be charged in the same information with the graver felonies that resulted from the same imprudent act. The aforequoted decisions of the Supreme Court of Spain have no application to our case.

Closely related to the issue of whether or not imprudence is in itself a felony, is the question of whether or not slight physical injuries through reckless imprudence should be included in the same information, charging, let us say, homicide and serious or less serious physical injuries resulting from the same act of imprudence. In the case of *People vs. Cano*,[13] the Supreme Court declared that the fact that the slight physical injuries were alleged in the same information charging homicide and less serious physical injuries through reckless imprudence did not necessarily mean that they were complex. It thus implied that the slight physical injuries could be charged in the same information and that, regardless of whether or not the issue of whether the crime is the negligence or the felonies resulting therefrom is the prime factor, the proper procedure for the Court was not to dismiss the case, but to proceed and try the case on its merits. The Court, however, did not state whether the trial court should punish the slight physical injuries separately from the other offenses. There is no doubt that the trial court could impose a penalty for the less serious physical injuries and damage to property since it had jurisdiction over the subject matter. But could the trial court impose the penalty for the slight physical injuries? Perhaps the answer will be in the negative, on the theory that the slight physical injuries, being the result of the same act of imprudence, is absorbed by the graver offense. This may be true if Article 48 of the Revised Penal Code had not been amended. It will be observed, however, that while in the Cano case

[12] "71. The provisions of the preceding article are not applicable in a case where a single act constitutes two or more felonies or when one of them is a necessary means to commit the other.
In those cases the penalty for the most serious crime shall be imposed in its maximum period. . .

[13] Supra.

the Court intimated that slight physical injuries through reckless imprudence and the grave or less grave felonies resulting from the same imprudent act could be charged in one and the same information, th same court, in the later case of *Buan*,[14] citing the case of *People vs. Diaz*,[15] hinted that the slight physical injuries through reckless imprudence could be filed separately from the serious or less serious felonies. The court declared:

> "The Solicitor General stresses in his brief that the charge for slight physical injuries through reckless imprudence could not be joined with the accusation for serious physical injuries through reckless imprudence, because Article 48 of the Revised Penal Code allows only the complexing of grave or less grave felonies. This same argument was considered and rejected by this Court in the case of People vs. Diaz, supra:
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> "x x x The prosecution's contention might be true. But neither was the prosecution obliged to first prosecute the accused for slight physical injuries through reckless imprudence before pressing the more serious charge of homicide with serious physical injuries through reckless imprudence. Having first prosecuted the defendant for the lesser offense in the Justice of the Peace Court of Meycauayan, Bulacan, which acquitted the defendant, the prosecuting attorney is not now in a position to press in this case the more serious charge of homicide with serious physical injuries through reckless imprudence which arose out of the same alleged reckless imprudence of which the defendant has been previously cleared by the inferior court."

From the foregoing, it can be inferred that the slight physical injuries could be filed separately before the municipal court, but the Court suggested that the prosecuting fiscal should have pressed ahead the prosecution of the more grave felonies in the Court of First Instance. Now, which is which? Must the slight physical injuries through reckless imprudence be included in the same information charging graver felonies arising from the same imprudent act, or can such slight physical injuries be the subject of a separate information filed before the court of competent jurisdiction? The issue thus reverts to the main question of whether or not imprudence is a felony in itself.

In accordance with the interpretation or theory of the Supreme Court, an act of injustice appears to have been committed. A Victory Liner bus, driven by Felardo Paje, collided with a jeep driven by Clemente Marcia. As a result, the latter was killed and two passengers of the jeep suffered physical injuries. Paje was prosecuted for homicide and serious physical injuries through reckless imprudence. The heirs of Clemente Marcia reserved their right to file a separate civil action for damages and actually filed it against Felardo Paje and the Victory Liner. Subsequently, the Court of Appeals acquitted Paje of the criminal charge. In view thereof, a motion to dismiss was filed in the civil case on the ground that the extinction of the criminal

[14] Supra.
[15] L-6518, March 30, 1954 (94 Phil. 714)