

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SIMEON DE VILLA, DEFENDANT AND APPELLANT.

*G. R. No. L-3410. March 07, 1951*

Ponente: REYES, J.

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### REYES, J.:

Accused of murder together with his son but tried separately and found guilty only of grave threats by the Court of First Instance of Mindoro, Simeon de Villa has nevertheless appealed to the Court of Appeals.[1] But that court has certified the case to us on the ground that in its opinion appellant is guilty of murder.

From the evidence adduced at the separate trial, the lower court found the facts to be as follows:

"\* \* \* that on March 18, 1948, Feliciano de Villa, son of Simeon de Villa, was boxed by Celestino Rivero, son of the deceased Pascual Rivero; that Feliciano de Villa reported the incident to his father the herein accused Simeon de Villa; that at about 4 o'clock in the afternoon of May 18, 1948, Simeon de Villa came to the house of Pascual Rivero, the deceased, the former saying: 'Come down I will kill all of you with my bolo;' that since Pascual Rivero was not at home at that time Simeon de Villa left and hid under the house of a neighbor; that at about four o'clock in the afternoon of the same day May 18, 1948, Simeon de Villa bolo in hand met Pascual Rivero who retreated and took hold of a piece of wood 1 1/2 meters long of those ordinarily used as fence poles; that Simeon de Villa directed a thrust with his bolo (Exhibit D) to Pascual Rivero but the latter was able to parry the thrust and when both contending parties were maneuvering for the next clash or encounter, Feliciano de Villa, the son of the accused Simeon de Villa, suddenly appeared at the scene of the crime and coming from behind Pascual Rivero stabbed the latter at the right side with a G. I. hunting knife; that after receiving the stab wound Pascual Rivero ran away leaving Simeon de Villa and his son Feliciano de Villa on the scene of the incident, that Pascual Rivero was taken to the Provincial Hospital at Calapan, Mindoro, but 8 hours and 30 minutes after surgical intervention the patient died as a consequence of the stab-wound (Medical Certificate Exhibit A, Certificate of Death Exh. E)."

The trial court then concluded:

"In the fight between the accused Simeon de Villa and the deceased Pascual Rivero none of the contestants had suffered any injury. In view of the fact that there is no evidence showing conspiracy between Simeon de Villa and Feliciano de Villa to kill Pascual Rivero, the former cannot be responsible for the death of said Pascual Rivero caused by the stab-wound inflicted by his son Feliciano de Villa."

The court, however found appellant guilty of grave threats because, according to the testimony of the widow of the deceased, appellant had threatened to kill the latter with a bolo.

As contended by the defense and agreed to by the Solicitor General, appellant's conviction for the crime of grave threats cannot stand, because that crime is neither charged in the information nor necessarily included in the crime of murder. The Solicitor General recommends, however, that appellant be convicted of murder, contending that "while it cannot be denied that there is no direct evidence showing the existence of conspiracy—still, their going together to the house of the deceased armed for aggression; their challenge to fight; their waiting for the return of

the deceased and the attack upon him—the common motive for aggression—all reveal the existence of conspiracy." But we find that not all of the circumstances just mentioned have been clearly proved. The widow declared that the son was with his father when the latter challenged or threatened to kill the deceased. But her testimony on that point is denied and is without corroboration. She also testified that the son was with the father when the latter attacked the deceased. But here again her testimony is not corroborated. On the contrary, it is contradicted by the Government's own witness, Dionisio Catoy, who saw the fight from the beginning and was only about 5 meters from the combatants. In contrast, the widow was about a hundred meters away. It is evident from Dionisio Catoy's testimony, which coincides with that of the defense witness Norberto Belsa, that at first the fight was only between the appellant and the deceased. What made appellant's son join the affray may be only conjectured but not exactly known.. Apparently he merely acted on the impulse of the moment. Now, if it be true, as contended, that father and son had conspired to kill the deceased and had for that purpose waited for him under the house of a neighbor, then why is it that the son took no part in the early stages of the combat? And why did not he and his father finish off their victim on the spot instead of letting him go away after receiving one stab wound? With the evidence as it is, we cannot hold that the alleged conspiracy has been proved beyond reasonable doubt to justify the conviction of the father for the murder committed by his son.

Wherefore, the judgment appealed from is revoked and the appellant acquitted, with costs de oficio.  
Moran, C. J., Feria, Pablo, Bengzon, Padilla and Jugo, JJ., concur.

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[1] Counsel for appellant stated at the hearing that the son was convicted of murder but did not appeal.

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### DISSENTING

MONTEMAYOR, J., with whom concur PARAS and TUASON, JJ.,

The reason for our dissent is our conviction, after a thorough study of the record, of the existence of a conspiracy between defendant Simeon de Villa and his son Feliciano de Villa. True, there is no direct evidence showing said conspiracy, but all the circumstances surrounding this case inevitably point to that agreement and understanding between father and son.

The majority opinion recites that the testimony of the widow of the deceased as to what happened just below her house at about four o'clock in the afternoon of the day of the killing when the appellant and his son, armed with a bolo and a hunting knife, respectively, challenged Pascual Rivero to come down his house and fight, was not corroborated. The rule followed by our courts is that a defendant may be convicted of a felony on the testimony of a lone witness, if said testimony is competent and reliable and otherwise acceptable. The testimony of the widow was clear and apparently sincere, and so convincing that it was readily accepted by the trial court. After examining all the evidence, it was also accepted and found to be true by the Court of Appeals. And we have no hesitancy in accepting the same despite the denial made by the appellant, which party had widely departed from the truth in his testimony during the trial.

The widow told the court that the son was with the father when the latter assaulted her husband. The majority opinion says that in this she was contradicted by her own witness, Dionisio Catoy. After examining Ca-toy's testimony, we believe that what he declared was not exactly a contradiction. He said that he saw the appellant, bolo in hand, advancing toward Pascual, and that it was only while the two men, were face to face, maneuvering for position before engaging in actual combat, that he, Catoy, saw the son, Feliciano de Villa, approach Pascual from behind and stab him with a hunting knife. Said version of the participation of appellant and his son does not

eliminate or preclude the theory of conspiracy between the two. Had appellant and his son simultaneously advanced toward Pascual, the latter, unarmed and outnumbered, in all probability would have run away and thus frustrated the criminal intentions of the assailants. So, only the father made the frontal assault, while the son made a flanking movement, and, apparently the tactical move proved successful, for, while the victim was concentrating all his attention on the father, the son, unperceived, approached from behind and delivered the fatal blow. That was probably the reason why Catoy, witness for the prosecution, failed to see the son until the latter actually entered the scene of the tragedy.

Because of the penalty imposed by the trial court, the appeal was first taken to the Court of Appeals, and the briefs for the appellant and the Government were filed in that court. After studying the case, said court made detailed findings of fact and came to the conclusion that I the appellant is guilty of murder because there was a conspiracy between him and his son. Of course, we are not bound by the findings of fact of the Court of Appeals in a case like the present where that Tribunal instead of finally deciding the appeal, certifies it to this court because the penalty imposable is either reclusion perpetua or death. But, it is the practice in similar cases for the Court of Appeals to make findings of fact, and as a matter of fact, by Supreme Court resolution in the case of *People vs. Ramos* (79 Phil., 612; 45 Official Gazette [5], p. 2055), the Court of Appeals has been required in such bases to make findings of fact to support its certification of the ease. Because of this practice and requirement, the Fourth Division of said Court in a decision penned by Mr. Justice Dizon and concurred in by Mr. Justice Concepcion and Mr. Justice De Leon, made the following findings and considerations. We quote:

"At about 4 o'clock in the afternoon of the same day, the appellant and his son, Feliciano, went to the house of the Riveros and challenged them to a fight, the appellant shouting: Tascual, come down or any of your family, and I will kill all of you with this bolo of mine, not with my revolver which I have at home.' Pascual was not in the house at that time, but his wife, Juliana Ramiento, upon hearing the shouts of the appellant, went to the stairs of their house and told him that 'Nobody was challenging him.' The appellant was then armed with a bolo and his son Feliciano with a hunting knife. Inasmuch as Pascual was away they waited for him under the house of Benedicta Abelgas, not far away from that of the Riveros. Soon thereafter, Pascual Rivero, totally unarmed, was seen coming on his way home with Abdon Dacayo and Andres Batibot. He was immediately met by the appellant who rushed at him, bolo in hand. To defend himself Pascual picked up a piece of wood. While the two were getting ready for the fight, Feliciano de Villa fatally stabbed Pascual from behind with his hunting knife, thus causing his death early the following morning. After that the appellant and his son sought refuge in the office of the Lazareto Saw Mill Company, located in the same barrio. Some constabulary soldiers arrived after the commission of the crime and were able to seize the hunting knife Exhibit A of Feliciano de Villa as well as the bolo Exhibit B, which was the one carried by the herein appellant.

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"The fact that Feliciano was the one who stabbed and killed Pascual Eivero not being disputed, the only question we have to consider is whether or not his father, the herein appellant, may be held liable therefor. This question, in our opinion, must be answered in the affirmative. True enough, there is lack of direct evidence to show the existence of a conspiracy between father and son, but the fact that hours before the tragedy Feliciano was boxed by Celestino Rivero; that in the afternoon of the same day the appellant and his son, Feliciano, the first armed with a bolo and the latter with a hunting knife, went to the house of Pascual where, upon arrival, the former challenged Pascual and other members of his family to a fight to death; the fact that because Pascual was then away, the appellant and his son waited for his return and immediately came out of their hiding place and rushed at him as soon as they saw him coming on his way home, all these circumstances can lead us to no other conclusion than that the appellant and his son Feliciano had conspired to attack and kill Pascual Rivero."

I repeat that we are not bound by the findings of the Court of Appeals but said findings are not entirely impertinent, irrelevant and useless, and should not have been lightly considered, if ever given any consideration at

all, by the majority. We are satisfied that the manner appellant and his son sought Pascual at his house, waited for him under the house of a neighbor and then when Pascual was coming home, attacked him, was substantially as found by the Court of Appeals.

All the circumstances surrounding this case in our opinion inevitably point to and establish the conspiracy. The evidence shows that father and son were working as laborers in the Lazareto Saw Mill Co., and that the working hours in this mill were from 7-12 a.m. and from 1-6 p.m. (t. s. n., p. 24). On the afternoon of the day of the killing, father and son did not work at the mill. The reason was obvious. They were making preparations for the assault upon Pascual. Even assuming to be true the claim of the appellant that after dismissal from the mill at 1 o'clock that afternoon, he and his wife went to the poblacion to make some purchases, still, according to his own version, he returned to the barrio where he lived and where the sawmill was located at about 2 o'clock in the afternoon. At first he told the court that thereafter he went to work at the mill but later he had to admit that he did not go to work that afternoon for his witness, Nor-berto Belsa, who preceded him on the witness stand so stated.

As already said, it has been conclusively established by the evidence and found by the trial court and the Court of Appeals, that father and son, both armed, at about 4 o'clock that same afternoon went in front of the house of Pascual to challenge him to a fight. Not long thereafter, and not far from Pascual's house, they attacked the deceased. Their being there at that precise hour, two hours after the father's arrival from the poblacion could not have been accidental; neither could appellant plausibly claim that he was still on his way home from the poblacion. Their being armed belies any peaceful intention or legitimate business, and the challenge hurled in front of Pascual's house clearly reveals their evil purpose. And, it should be borne in mind that the attack on Pascual was made near his house and while on his way thereto. What father and son were doing at that hour in that neighborhood instead of being at work in the sawmill or being in their respective residences, was not explained. The logical inference is that they were waiting for the return of Pascual to his home.

We said a while ago that the appellant in testifying as a witness, was guilty of falsehood. Among other things, he denied having gone with his son in front of the house of Pascual to challenge the latter. The evidence and the findings of the trial court and the Court of Appeals fully discredit him. He also told the court that he did not carry a bolo when he met Pascual that afternoon. Again, the evidence and the findings of the two courts already mentioned brand this statement as a lie. As a matter of fact, the bolo that he then carried, Exhibit "D", which weapon he admits to be his own, was found by the constabulary soldiers not; at his home where & bolo used for work in and around the house should be, but hidden in the sawmill where, after the attack, he and his son sought refuge from a possible retaliation or act of reprisal by the relatives of Pascual.

The majority in its opinion makes the query that, if it be true as contended, father and son had conspired to kill the deceased and for that purpose had waited for him under the house of a neighbor, then why is it that the son took no part in the early stages of the assault, and why did they not finish off their victim on the spot instead of letting him go away after being stabbed? The first part of the question may be amply and satisfactorily answered by what we have stated previously, that to insure success in their assault, father and son on leaving their hiding place separated, the father to make the frontal attack and attract and monopolize the whole attention of the victim, and the son to go around and attack from behind, all of which was successfully carried into execution. The second part of the question might be answered with the theory, in our opinion, plausible, that father and son might not really have intended to kill their victim but only to accept his challenge and call his bluff, to show him that he could not scare or push them around. It will be remembered that according to the evidence, especially for the defense, after appellant had scolded the son of Pascual that morning, Pascual armed with a chisel had gone to the mill at least two times looking for Simeon and his son Feliciano and challenging them to a fight, announcing to all and sundry what he would do to them. Apparently, at that time, appellant and his son were not prepared to fight and were not

ready for a showdown, and so could not accept the challenge or call the bluff of Pascual, a man who according to appellant was known as a baraco, meaning a brave man, a bully or what is vulgarly known as a tough guy. Besides, even if father and son had wanted to finish off their victim, it was entirely possible that they could not have done so because even tho stabbed, Pascual did not fall down. Realizing the futility of resistance, he ran home. At that precise moment, the father was still at some distance from him, in the act of maneuvering for position. The son was only a boy and possibly too young and inexperienced to press his advantage. Furthermore, Pascual had two male companions with him who might intervene at any moment. So, appellant and his son, satisfied that their honor and reputation had been vindicated, and heeding the voice of caution and safety, fled from the scene and sought refuge at the sawmill.

In order to find that there was no conspiracy between appellant and his son Feliciano de Villa, we must assume and find that when appellant attacked Pascual, at a place nowhere near his (appellant's) home or that of his son, or the mill where the son might in the natural course of things be found, at that hour, said son by pure accident was casually and peacefully strolling at or near the scene of the attack, but armed with a hunting knife, instead of at his home, or working at the mill. We confess that such assumption and finding are not justified by the evidence. For all the foregoing reasons we dissent.

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