

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RUFINO GENSOLA, FIDELINA TAN AND FELICISIMO TAN,  
DEFENDANTS-APPELLANTS.**

*G.R. No. L-24491. September 30, 1969*

Ponente: CAPISTRANO, J.

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**CAPISTRANO, J.:**

Appeal from the decision of the Court of First Instance of Iloilo finding the defendants, Rufino Gensola, Fidelina Tan and Felicisimo Tan, guilty as principals of the crime of murder and sentencing each of them to reclusion perpetua and ordering said defendants to pay in solido the sum of P6,000 as indemnity to the heirs of the deceased Miguel Gayanilo.

Rufino Gensola was the driver, while Fidelina Tan and Felicisimo Tan were the conductors, of a passenger truck, Gelveson No. 17 (belonging to Jose Tan, father of Fidelina and Felicisimo), with station at Guimbal, Ilo-ilo. They suspected Miguel Gayanilo of having punctured the tires of the truck while it was parked in front of his carinderia on Gerona St., Guimbal, on November 18, 1958. In the afternoon of the following day, November 19, in the return trip of the truck, then driven by a temporary driver, Restituto Gersaneva, from Iloilo City, Enrique Gelario and Enrique Gela were among the passengers of the truck. Before the truck entered the poblacion of Guimbal, it parked on Gonzales St. to discharge a passenger and his baggage. Enrique Gelario and Enrique Gela overheard Fidelina Tan mutter to herself, obviously referring to someone she did not name: "He does not appear because I will kill him." ("No aparece porque le voy matar.") The truck then continued on its way and parked in front of Teodora Gellicanao's carinderia on Gerona St. in the poblacion. All the passengers got off the truck. Enrique Gelario and Enrique Gela crossed the street towards the carinderia of Pedro Genciana to await another passenger truck for their respective barrios. The Gelveson No. 17 then left in the direction of the nearby carinderia of Violeta Garin, returned a short time later, and parked in front of the bodega of its owner, Jose Tan. The time was about 6:30 P.M. Miguel Gayanilo was crossing the street from the public market in the direction of his carinderia with Rufino Gensola, holding in his right hand a stone as big as a man's fist, following closely behind. At this time, Felicisimo Tan and Fidelina Tan were standing in the middle of the street. After Miguel Gayanilo had crossed the middle of the street near the two, Fidelina Tan shouted, "Rufino, strike him." Upon hearing the shout Miguel looked back and Rufino suddenly struck him on the left face with the stone. Felicisimo then struck Miguel with a piece of iron on the back of the head causing serious wounds and fracture of the skull. Not content with the two blows already given, Fidelina struck Miguel with another piece of iron on the left forehead causing serious wounds and fracture of the skull. Miguel fell to the ground near the canal along the side of the street. Rufino Gensola immediately left for his house situated on Gonzales St. Felicisimo and Fidelina observed the prostrate body for a few seconds until Fidelina muttered: "He is already dead." ("Ya esta muerto.") The two then left the scene of the crime.

The autopsy report shows that Miguel Gayanilo suffered lacerated wounds on the left face, serious wounds and fracture of the skull on the back of the head, and serious wounds and fracture of the skull on the left forehead.

Death was caused by traumatic shock.

The death of Miguel Gayanilo caused by traumatic shock which resulted from the strong blows inflicting trauma on the back of the head and on the left forehead, was admitted particularly by the accused Rufino Gensola, who assumed sole responsibility for the same.

The lower court found the three defendants guilty as principals of the crime of murder and rendered judgment as follows:

"Por tanto, el Juzgado declara a los acusados Rufino Gensola, Fidelina Tan y Felicisimo Tan culpables, fuera de toda duda racional, del delito de asesinato, tal como se alega en la querella y, no habiendo circunstancias que pueden modificar su responsabilidad criminal, condena a cada uno de los tres a sufrir la pena de reclusion perpetua, a indemnizar, mancomunada y solidariamente, a los herederos de Miguel Gayanilo en la suma de P6,000.00, sin sufrir prision subsidiaria cor-respondiente, en caso de insolvencia, dada la naturaleza de la pena principal, a las acceso-rias de la ley y a pagar ademas, cada uno una tercera (1/3) parte de las costas del juicio."

Defendants appealed.

Appellants contend that Rufino Gensola alone inflicted with stone blows the serious wounds and fractures of the skull which caused the death of Miguel Gayanilo, but that he did so in legitimate defense of Fidelina Tan and of himself. The contention is unmeritorious in view of the following considerations: (1) The testimony of Rufino Gensola and Fidelina Tan that Miguel Gayanilo, then drunk, angrily demanded to know from Fidelina why she suspected him of having punctured the tires of the truck and was about to strike Fidelina with a stone, and that in legitimate defense of Fidelina and of himself Rufino picked up two stones, struck Miguel on the left face with one stone and threw the other stone at him when he started to run away, hitting him on the back of the head and causing him to fall and strike his forehead against a pile of stones, is belied by, first, the serious wounds and fractures of the skull on the back of the head and on the left forehead of the victim, which could have been caused only by strong blows with pieces of iron; and, second, by the testimony of Dr. Juan Encanto, who performed the autopsy, that he did not see any pile of stones near the dead body of Miguel Gayanilo when he arrived at the place in response to a call. (2) The admission of Rufino Gensola that he alone was responsible for the serious wounds and fractures of the skull inflicted upon Miguel Gayanilo in legitimate defense of Fidelina Tan and of himself, has no probative value because it constitutes, in the face of contrary credible evidence for the prosecution, an assumption by Rufino Gensola of the criminal liability of Felicisimo Tan and Fidelina Tan. The penal law does not allow anyone to assume the criminal liability of another.

Appellants contend that the testimonies of the principal prosecution witnesses, Enrique Gelario and Enrique Gela, are unworthy of credence because of contradictions and uncertainties, showing that they were not present and did not witness the commission of the crime. The contention is untenable for the following reasons: (1) The contradictions pointed out involve only the relative locations of the three carinderias near the scene of the crime, not the acts of commission of the three defendants at a distance of about seven meters from where the two state witnesses were then standing. (2) The uncertainties pointed out refer to the description of the pieces of iron used by Felicisimo Tan and Fidelina Tan, that is, as to the size, length and other details. Considering that the place was not well lighted and that there was little time to observe, accurate description of the weapons used could not be expected three years later when the witnesses testified. (3) The contention that Enrique Gelario and Enrique Gela testified against Felicisimo Tan and Fidelina Tan out of spite because the latter had refused to transport the former to their respective barrios, is not well taken. It is not natural for a person to testify under oath against his neighbor on a matter of life and death just because of a trifling incident causing slight inconvenience. (4) We find the testimonies of the four defense witnesses, Fidelina Tan, Felicisimo Tan, Elias Gensola and Salvador Gayatao, that Enrique Gelario and Enrique Gela were not present at the scene of the crime because they had

already left Gerona St. walking to another street to await transportation to their respective barrios, unworthy of credence.

Let us now consider the criminal liability of the three appellants. The lower court found them guilty as principals of the crime of murder on the assumption that there was con-spiracy among them. We do not agree, for the following reasons: (1) Fidelina Tan's intention revealed by the words she muttered to herself, "He does not appear because I will kill him," was not shared by Felicisimo Tan, who kept si-lent. Silence is not a circumstance indicating participa-tion in the same criminal design. With respect to Rufino Gensola, he was not even in the truck at the time. (2) When Miguel Gayanilo was crossing Gerona St., it was only Rufino Gensola who followed closely behind. Fidelina Tan and Feli-cisimo Tan were in the middle of the street. The words shouted by Fidelina Tan, "'Rufino, strike him," were meant as a command and did not show previous concert of criminal design. (3) The blows given with pieces of iron on the back of the head and on the left forehead by Felicisimo and Fi-delina after Rufino had struck with a piece of stone the left face of Miguel, do not in and by themselves show pre-vious concert of criminal design. Particularly when it is considered that Rufino immediately left thereafter while Felicisimo and Fidelina remained for a few seconds observ-ing the prostrate body of Miguel until Fidelina muttered, "He is already dead."

In the absence of conspiracy, the liability of the three appellants is individual, that is, each appellant is liable only for his own act.

Appellant Rufino Gensola is liable only for the la-cerated wounds inflicted by him on the left face of Miguel Gayanilo. Such lacerated wounds caused disfigurement ("de-formity") of the face within the meaning of Article 263(3) of the Revised Penal Code punishable by prision correccional in its minimum and medium periods in relation to the Inde-terminate Sentence Law. The offense having been committed with treachery, the penalty should be imposed in its maximum period.

Is appellant Fidelina Tan also liable for the offense considering that she gave the command "Rufino, strike him"? The second class of principals, according to Article 17 of the Revised Penal Code, comprises, "those who directly force or induce others to commit it (the act)." Those who direct-ly induce others to commit the act are called "principals by inducement" or "principals by induction," from the Spanish "autores por induction." The word "inducement" comprises, in the opinion of Viada and the Supreme Court of Spain, re-ward, promise of reward, command, and pacto. With respect to command, it must be the moving cause of the offense. In the case at bar, the command shouted by Fidelina, "Rufino, strike him," was not the moving cause of the act of Rufino Gensola. The evidence shows that Rufino would have commit-ted the act of his own volition, even without said words of command.

Are the appellants Felicisimo Tan and Fidelina Tan both liable for the death of Miguel Gayanilo? Our opinion is in the affirmative. The trauma inflicted by Felicisimo and the trauma inflicted by Fidelina, combined, produced death due to traumatic shock. When Fidelina struck with a piece of iron the left forehead of Miguel, he was not yet dead. It was only after the trauma inflicted by Fidelina that the dying Miguel fell to the ground and died seconds later. This is clear from the evidence that after Miguel had fallen to the ground, Felicisimo and Fidelina observed his prostrate body for a few seconds until Fidelina muttered, "He is al-ready dead."

Assuming that the trauma inflicted by Felicisimo was by itself sufficient to produce death due to traumatic shock, should Fidelina be also held liable considering that death could have resulted anyway from the act of Felicisimo and that a person cannot be killed twice? The obvious answer is that although a dead person cannot be killed again, a dying person can still be killed. Miguel was not dead but dying when Fidelina struck his left forehead with a piece of iron. Hence, the trauma inflicted by her hastened the death of Miguel from traumatic shock made

doubly severe. She must, therefore, be also held criminally liable for the death of the victim.

Was the killing murder? Our opinion is in the affirmative because it was attended with the qualifying circumstance of alevosia. There was alevosia because after Rufino suddenly struck Miguel Gayanilo with a stone, Miguel, defenseless, was struck by Felicisimo Tan with a piece of iron on the back of the head and by Fidelina Tan with a piece of iron on the left forehead.

PREMISES CONSIDERED, that part of the appealed judgment sentencing each of the appellants Felicisimo Tan and Fidelina Tan to reclusion perpetua is affirmed. Said appellants are also ordered to pay in solidum the sum of P12,000 as indemnity to the heirs of the deceased, Miguel Gayanilo. That part of the judgment against appellant Rufino Gensola is modified by sentencing said appellant to an indeterminate penalty of from 3 months of arresto mayor as minimum to 3 years of prision correccional as maximum.

Costs against the appellants.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, and Teehankee, JJ., concur.

Barredo, J., did not take part.

Reyes, JBL, Dizon, and Sanchez, JJ., on leave.

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