

## **GIL TAPALLA AND RENE TAPALLA, PETITIONERS, VS. THE HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

*G.R. No. 100682. May 31, 1993*

Ponente: GRIÑO-AQUINO, J.

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### **GRIÑO-AQUINO, J.:**

This is a petition for review on certiorari of the decision of the respondent Court of Appeals promulgated on June 19, 1991, the dispositive part of which reads:

"WHEREFORE, the decision appealed is affirmed with the modification that accused Gil Tapalla is also found guilty beyond reasonable doubt of the crime of homicide and that both accused are sentenced to suffer an indeterminate penalty of from seven (7) years of prison mayor to twelve (12) years and one (1) day of reclusion temporal.

"Costs against the accused-appellants." (p. 7, Rollo.)

The facts of the case, as found by the Court of Appeals are as follows:

"On March 25, 1988, at about 7:00 o'clock in the evening, several unknown persons stoned the house of accused Gil Tapalla at Barangay Magallang, Libon, Albay. Believing that it was his next door neighbor, Vicente Balayo, who was responsible, Rene went out of the house carrying a piece of bamboo and challenged Vicente to a fight.

"At this time, Vicente was conversing with Carlos Rañola and Jose Arevalo at the balcony of his house. Upon hearing the challenge, Carlos and Jose approached and tried to pacify Rene. But Rene cannot be subdued.

"The deceased, Ernesto Roy, Sr., happened to pass by at this juncture. When Rene saw him, he said: 'Here comes one of my ene-mies.' And as soon as Ernesto came near, Rene suddenly struck him on the chest with the bamboo.

"Thereupon, both Ernesto and Rene ran home. But before Ernesto could reach his house, he hurled something at Rene.

"Infuriated, Rene went inside his house and came out a second later armed with a samurai sword. He approached Ernesto, who remained standing on the street, and started hacking him. Not long after, Gil, Rene's father, joined the fray with a 'guinonting,' a kind of bolo. He also attacked Ernesto who tried to parry the thrusts with his arms. A few minutes later, Ernesto fell on the ground severely wounded and bleeding profusely.

"With both accused gone, Jose approached the victim. Upon seeing that he was still alive, Jose summoned Vicente so that they could take the victim to a doctor.

"However, Vicente went to Bgy. Sagrada to get PC soldiers and when they returned, Ernesto was already dead. The PC soldiers promptly arrested both accused who were taken to the police station in Libon, Albay. Both

weapons were confiscated.

"In the meantime, the body of the victim was brought to the Pantao District Hospital where, after autopsy, the following injuries were found:

- "1. Gaping stab wound, 2-1/2 inches long and 3/4 of an inch deep, located at the medial portion of the right arm, 4-1/2 inches from the axillary region and 2--1/2 inches from the elbow joint.
- "2. Incised wound 3/4 of an inch long, located at the latero--posterior portion of the right wrist, running across, severing the radial vein.
- "3. Superficial incised wound, 2--1/2 inches long located at the latero-posterior portion of the right elbow, running horizon-tally.
- "4. Incised wound, 1 inch long, located at the dorsum of the left hand, near the base of the small finger.
- "5. Contusion, located at the upper anterior medial portion of the chest wall.
- "6. Probable cause of death based on the above findings was: Massive external hemorrhage secondary to numbers 1 and 2 described injuries. (Exhibits '1,' '1-A')." (pp. 28-30.)

Father and son were charged with murder before the Regional Trial Court of Albay where after trial, judgment was rendered declaring Rene Tapalla guilty of homicide only and Gil Tapalla guilty of less serious physical injuries.

Both accused appealed to the Court of Appeals which rendered the aforequoted decision. In this petition for review, the appellants contend that the trial court and the Court of Appeals failed to consider many facts of substance and value that would have resulted in their acquittal.

The petition has no merit. The Court of Appeals correctly found that the crime committed by Rene was simple homicide. His claim that he acted in self-defense is untenable. As found by the Court of Appeals:

"x x x. The mere fact that his house was stoned cannot certain-ly be considered an act of unlawful aggression on the part of the victim who, incidentally, was not even shown as one of the stone throwers. As it was, when the accused came out of the house for the second time, already brandishing a samurai sword, he became the unlawful aggressor.

"Secondly, We find that there was no aggression on the part of the victim who was not shown to have thrown stones at the house and at Rene when he came out the first time, and allegedly ganged up on him. Indeed, there is no evidence on the exact number of assailants.

"Likewise, the means employed by the accused to defend himself, that is, by using a samurai sword was clearly unreasonable under the circumstances. The people who stoned the house were not shown to have been armed. If Rene was really beaten up by eight men, how come that he and the other defense wit-nesses cannot identify even one of them? He was not even sure if the deceased was one of his assailants.

"On the other hand, We find the prosecution's version to be more logical considering the location and nature of the injuries sustained by the victim. The prosecution witnesses all said that Ernesto tried to shield his face and chest with his arms. The autopsy report shows that all the injuries were inflicted on the victim's arms and wrists.

"The basic issue then in this case rests on credibility. As the findings of fact of the trial court on the credibility of witnesses are generally entitled to the highest respect, because of its opportunity to observe the deportment and de-menor of the witnesses, We see no reason to disturb its findings (People vs. Abagon, supra, citing People vs. Traya, 147 SCRA 387 and People vs. Romilo, 147 SCRA 102)." (pp. 33-34, Rollo.)

Review of the findings of fact of the Court of Appeals is not a function that this Court ordinarily undertakes, for as a general rule, such findings are binding and conclusive upon us (*Tolentino vs. De Jesus*, 56 SCRA 67 and cases cited therein; *People vs. Traya*, 147 SCRA 381; *Apex Investment and Financing Corp. vs. IAC*, 166 SCRA 458). However, jurisprudence has de-veloped certain exceptions to that rule, namely: (1) where the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is made on misapprehen-sion of facts; (5) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellants and appellee; (6) the findings of fact of the Court of Appeals are contrary to those of the trial court; (7) said findings of facts are conclusions without citation of specific evidence on which they are based; (8) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (9) when the findings of fact of the Court of Appeals are prem-ised on the absence of evidence and is contradicted by the evidence on record. Unfortunately, we find nothing in the records of this case which warrant a review based on any of these well-recognized exceptions.

The Court of Appeals correctly found that the crime committed by Rene was simple homicide. However, we disagree with the finding that his father and co-accused, Gil Tapalla, is also liable for the same crime. According to the appellate court, when Gil Tapalla rushed out to join the fight, his intention was not to defend his son who was then hacking the victim with his sword, but rather, it was also his intention to attack Ernesto with the bolo that he had drawn. In effect, the court was saying that having acted in presumed conspiracy with Rene, Gil Tapalla is likewise guilty of the crime of homicide.

However, this Court has held in *People vs. Laurio* [200 SCRA 465, 467 (1991)] that:

"x x x. The same degree of proof necessary to establish the crime is required to establish a criminal conspiracy (*People vs. Drilon, Jr.*, 123 SCRA 72). It cannot be established by conjectures but by positive and conclusive evidence (*People vs. Martinez*, 127 SCRA 260). A conspiracy may be inferred from the circumstances attending the commission of the crime, but, like any other ingredi-ent of the offense, it must be established by clear and convincing evidence (*People vs. Agda*, 111 SCRA 330)."

Also, in *Siton vs. Enselada* (204 SCRA 473), we held that "it is not enough that the attack be joint or simultaneous. It is necessary that the assailants be animated by one and the same purpose. A conspiracy must be shown to exist as clearly as the crime itself [citing *People vs. Caballero* (53 Phil. 585); *People vs. Barto-lay* (42 SCRA 1); and *People vs. Doricao* (54 SCRA 172)]. It must also be established beyond reasonable doubt (*People vs. Saavedra*, 149 SCRA 610)."

In the case of Gil Tapalla, we agree with the trial court that there is no evidence that he and Rene had conspired to kill Ernesto (p. 39, Rollo). The circumstance that he joined the fray armed with a bolo is not sufficient to warrant the conclusion that his intention was to help his son kill Ernesto. The requi-site that there should be unity of criminal purpose among the perpetrators of the crime, which may be gleaned from the surrounding circumstances of the case, has not been satisfied. As a matter of fact, Gil Tapal-la only arrived at the scene of the crime long after the fray had began (p. 39, Rollo). As found by the trial court, Gil inflicted only one wound that was superfi-cial, wound No. 4, on the left hand, hence, only less serious. All the other injuries had been inflicted by Rene Tapalla (p. 39, Rollo). It cannot be said there-fore that the injury inflicted by Gil on the victim could have been a probable cause of the latter's death.

In the absence of a conspiracy or unity of crimi-nal purpose and intention immediately before the commission of the crime, or community of criminal design, the criminal responsibility arising from acts directed against one and the same person is individual and not collective. Each of the participants is liable only for the acts committed by

him (U.S. vs. Abiog, et al., 37 Phil. 137). Gil Tapalla is guilty of the lesser crime of less serious physical injuries only.

WHEREFORE, the petition for review is GRANTED. The decision of the Court of Appeals is affirmed with regard to petitioner Rene Tapalla, but modified with regard to Gil Tapalla whom we find guilty of the lesser crime of less serious physical injuries. He is hereby sentenced to suffer a straight penalty of four (4) months of arresto mayor. Both accused shall be credited in the service of their respective sentences with the full period of their preventive imprisonment.

The records of this case do not show that the civil action had been waived, instituted separately, or instituted prior to the criminal action. Since both the trial court and the Court of Appeals failed to render any judgment on the civil liability of the accused, we further sentence Rene Tapalla to pay indemnity to the heirs of Ernesto Roy the sum of P50,000.00 for his death.

**SO ORDERED.**

Cruz, (Chairman), Bellosillo, and Quiason, JJ., concur.

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