

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO LIGON Y TRIAS AND FERNANDO GABAT Y ALMERA,
ACCUSED, FERNANDO GABAT Y ALMERA, ACCUSED-APPELLANT.**

G.R. No. 74041. July 29, 1987

Ponente: YAP, J.

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YAP, J.:

This is an appeal from the judgment of the Regional Trial Court of Manila, Branch xx, rendered on February 17, 1986, convicting the accused-appellant, Fernando Gabat, of the crime of Robbery with Homicide and sentencing him to reclusion perpetua. The victim was Jose Rosales y Ortiz, a seventeen-year old working student who was earning his keep as a cigarette vendor. He was allegedly robbed of his cigarette box containing cigarettes worth P300.00 more or less.[1]

Only Fernando Gabat was arrested and brought to trial and convicted. The other accused, Rogelio Ligon, was never apprehended and is still at large.

The fatal incident happened on a Sunday, October 23, 1983 at about 6:10 p.m. The accused, Fernando Gabat, was riding in a 1978 Volkswagon Kombi owned by his father, Antonio Gabat, and driven by the other accused, Rogelio Ligon. The Kombi was coming from Espana Street going towards the direction of Quiapo. Fernando Gabat was seated beside the driver, in the front seat by the window on the right side of the Kombi. At the intersection of Quezon Boulevard and Lerma Street before turning left towards the underpass at C. M. Recto Avenue, the Kombi had to stop as the traffic light was red. While waiting for the traffic light to change, Fernando Gabat beckoned a cigarette vendor, Jose Rosales y Ortiz (Rosales for short) to buy some cigarettes from him. Rosales approached the Kombi and handed Gabat two sticks of cigarettes. While this transaction was occurring, the traffic light changed to green, and the Kombi driven by Rogelio Ligon suddenly moved forward. As to what precisely happened between Gabat and Rosales at this crucial moment, and immediately thereafter, is the subject of conflicting versions by the prosecution and the defense. It is not controverted, however, that as the Kombi continued to speed towards Quiapo, Rosales clung to the window of the Kombi but apparently lost his grip and fell down on the pavement. Rosales was rushed by some bystanders to the Philippine General Hospital, where he was treated for multiple physical injuries and was confined thereat until his death on October 30, 1983.

Following close behind the Kombi at the time of the incident was a taxicab driven by Prudencio Castillo. He was behind the Kombi, at a distance of about three meters, travelling on the same lane in a slightly oblique position ("a little bit to the right").[2] As the Kombi did not stop after the victim fell down on the pavement near the foot of the underpass, Castillo pursued it as it sped towards Roxas Boulevard, beeping his horn to make the driver stop. When they reached the Luneta near the Rizal monument, Castillo saw an owner-type jeep with two persons in it. He sought their assistance in chasing the Kombi, telling them "nakaaksidente ng tao".[3] The two men in the jeep joined the chase and at the intersection of Vito Cruz and Roxas Boulevard, Castillo was able to overtake the Kombi when the traffic light turned red. He immediately blocked the Kombi while the jeep pulled up right behind

it. The two men on board the jeep turned out to be police officers, Patrolmen Leonardo Pugao and Peter Ignacio. They drew their guns and told the driver, Rogelio Ligon, and his companion, Fernando Gabat, to alight from the Kombi. It was found out that there was a third person inside the Kombi, a certain Rodolfo Primicias who was sleeping at the rear seat.[4] The three were all brought by the police officers to the Western Police District and turned over to Pfc. Fermin Payuan. The taxicab driver, Prudencio Castillo, also went along with them. The written statements of Castillo and Rodolfo Primicias were taken by the traffic investigator, Pfc. Fermin Payuan.[5] Payuan also prepared a Traffic Accident Report, dated October 23, 1983.[6] Fernando Gabat and Rodolfo Primicias were released early morning the following day, but Rogelio Ligon was detained and turned over to the City Fiscal's Office for further investigation.

Investigating Fiscal Alfredo Cantos, filed an information in court against Rogelio Ligon dated December 6, 1983 charging him with Homicide thru Reckless Imprudence.[7] Six months later, however, or on June 28, 1984, Assistant Fiscal Cantos filed another information against Rogelio Ligon and Fernando Gabat for Robbery with Homicide.[8] He filed the latter information on the basis of a Supplemental Affidavit of Prudencio Castillo[9] and a joint affidavit of Armando Espino and Romeo Castil, cigarette vendors, who allegedly witnessed the incident on October 23, 1983.[10] These affidavits were already prepared and merely sworn to before Fiscal Cantos on January 17, 1984.

On October 31, 1983, an autopsy was conducted by the medico-legal officer of the National Bureau of Investigation, Dr. Orlando V. Salvador, who stated in his autopsy report that the cause of death of Rosales was "pneumonia hypostatic, bilateral, secondary to traumatic injuries of the head".[11]

The prosecution tried to establish, through the sole testimony of the taxicab driver, Prudencio Castillo, that Gabat grabbed the box of cigarettes from Rosales and pried loose the latter's hand from the window of the Kombi, resulting in the latter falling down and hitting the pavement. In its decision, the trial court summarized the testimony of Castillo as follows: At about 6:00 o'clock in the evening of October 23, 1983, Castillo was then driving his taxicab along Lerma Street near Far Eastern University, and at the intersection of Lerma and Quezon Boulevard, the traffic light changed from green to red. The vehicular traffic stopped and Prudencio Castillo's taxi was right behind a Volkswagon Kombi. While waiting for the traffic light to change to green, Castillo idly watched the Volkswagon Kombi and saw Gabat, the passenger sitting beside the driver, signal to a cigarette vendor. The cigarette vendor, Rosales, approached the right side of the Kombi. While Rosales was handing the cigarettes to Gabat, the traffic light suddenly changed to green. When the Kombi moved forward, Gabat suddenly grabbed the cigarette box held by Rosales. Taken aback, Jose Rosales ran beside the Kombi and was able to hold on to the windowsill of the right front door with his right hand. While Rosales was clinging to the windowsill, with both feet off the ground, the Kombi continued to speed towards the C.M. Recto underpass. Castillo, who was closely following the Kombi, then saw Gabat forcibly remove the hand of Rosales from the windowsill and the latter fell face down on Quezon Boulevard near the Recto underpass.[12]

The version of the defense, on the other hand, was summarized by the court as follows: On the date and time in question, Fernando Gabat, 31 years old, an underwriter, was on board the Volkswagon Kombi driven by Rogelio Ligon. The Kombi had to stop at the intersection of Lerma Street and Quezon Boulevard when the traffic light turned red. Fernando Gabat, who wanted to buy cigarettes, called a cigarette vendor who approached the right side of the Kombi. Gabat bought two sticks of cigarettes and handed to the cigarette vendor, Rosales, a P5.00 bill. In order to change the P5.00 bill, Rosales placed his cigarette box containing assorted cigarettes on the windowsill of the front door of the Kombi between the arm of Gabat and the window frame. Suddenly, the traffic light changed from red to green and Rogelio Ligon moved the vehicle forward, heedless of the transaction between Gabat and the cigarette vendor. As the vehicle sped onward, the cigarette box which was squeezed between the right arm of

Gabat and the window frame fell inside the Kombi. Rosales then ran beside the vehicle and clung to the windowsill of the moving vehicle. Gabat testified that when he saw the cigarette vendor clinging on the side of the front door, he told Ligon to veer to the right in order that Rosales could get off at the sidewalk. However, Gabat declared, that Ligon said that it could not be done because of the moving vehicular traffic. Then, while the vehicle slowed down and Ligon was maneuvering to the right in an attempt to go toward the sidewalk, Rosales lost his grip on the window frame and fell to the pavement of Quezon Boulevard. Gabat allegedly shouted at Ligon to stop but Ligon replied that they should go on to Las Pinas, and report the incident to the parents of Gabat, and later they would come back to the scene of the incident. However, while the Kombi was speeding along Dewey Boulevard, it was blocked by the taxi of Prudencio Castillo and a jeep driven by policemen. Gabat and Ligon were brought to police headquarters, but neither of them executed any written statement.[13]

The trial court gave full credence to the prosecution's version, stating that there can be no doubt that Gabat forcibly took or grabbed the cigarette box from Rosales because, otherwise, there could be no reason for the latter to run after the Kombi and hang on to its window. The court also believed Castillo's testimony that Gabat forcibly removed or pried off the right hand of Rosales from the windowsill of the Kombi, otherwise, the latter could not have fallen down, having already been able to balance himself on the stepboard.

On the other hand, the trial court dismissed as incredible the testimony of Gabat that the cigarette vendor placed the cigarette box on the windowsill of the Kombi, holding it with his left hand, while he was trying to get from his pocket the change for the 5-peso bill of Gabat. The court said that it is of common knowledge that cigarette vendors plying their trade in the streets do not let go of their cigarette box; no vendor lets go of his precious box of cigarettes in order to change a peso bill given by a customer.

As a rule, the findings of fact of the trial court are accorded great respect and are not disturbed on appeal, unless it is shown that the findings are not supported by the evidence, or the court failed to consider certain material facts and circumstances in its evaluation of the evidence. In the case at bar, a careful review of the record shows that certain material facts and circumstances had been overlooked by the trial court which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt which would entitle the accused to acquittal.

While the prosecution witness, Castillo, may be a disinterested witness with no motive, according to the court a quo, "other than to see that justice be done", his testimony, even if not tainted with bias, is not entirely free from doubt because his observation of the event could have been faulty or mistaken. The taxicab which Castillo was driving was lower in height compared to the Kombi in which Gabat was riding - a fact admitted by Castillo at the trial.[14] Judicial notice may also be taken of the fact that the rear windshield of the 1978 Volkswagen Kombi is on the upper portion, occupying approximately one-third (1/3) of the rear end of the vehicle, thus making it visually difficult for Castillo to observe clearly what transpired inside the Kombi at the front end where Gabat was seated. These are circumstances which must be taken into consideration in evaluating Castillo's testimony as to what exactly happened between Gabat and the cigarette vendor during that crucial moment before the latter fell down. As the taxicab was right behind the Kombi, following it at a distance of about three meters, Castillo's line of vision was partially obstructed by the back part of the Kombi. His testimony that he saw Gabat grab the cigarette box from Rosales and forcibly pry loose the latter's hand from the windowsill of the Kombi is thus subject to a reasonable doubt, specially considering that this occurrence happened in just a matter of seconds, and both vehicles during that time were moving fast in the traffic.

We find it significant that in his statement given to the police that very evening,[15] Castillo did not mention that he saw Gabat forcibly prying off the hand of Rosales from the windowsill of the Kombi, although the police report prepared by the investigating officer, Pfc. Fermin M. Payuan, on the same date, stated that when the traffic

signal changed to green and the driver stepped on the gas, the cigarette box of the cigarette vendor (Rosales) was grabbed by the passenger (Gabat) and "instantly the former clung to the door and was dragged at a distance while at the same time the latter punched the vendor's arm until the same (sic) fell to the pavement", thus showing that during the police investigation Castillo must have given a statement to the police which indicated that Gabat did something to cause Rosales to fall from the Kombi.[16] It was by way of a supplementary affidavit prepared by the lawyer of the complainant and sworn to by Castillo before the Assistant City Fiscal on January 17, 1984 that this vital detail was added. This supplementary affidavit was made the basis for filing another information charging both Gabat and the driver with the crime of Robbery with Homicide.

Considering the above circumstances, the Court is not convinced with moral certainty that the guilt of the accused Fernando Gabat has been established beyond reasonable doubt. In our view, the quantum of proof necessary to sustain Gabat's conviction of so serious a crime as robbery with homicide has not been met in this case. He is therefore entitled to acquittal on reasonable doubt.

However, it does not follow that a person who is not criminally liable is also free from civil liability. While the guilt of the accused in a criminal prosecution must be established beyond reasonable doubt, only a preponderance of evidence is required in a civil action for damages.[17] The judgment of acquittal extinguishes the civil liability of the accused only when it includes a declaration that the facts from which the civil liability might arise did not exist.[18]

The reason for the provisions of Article 29 of the Civil Code, which provides that the acquittal of the accused on the ground that his guilt has not been proved beyond reasonable doubt does not necessarily exempt him from civil liability for the same act or omission, has been explained by the Code Commission as follows:

"The old rule that the acquittal of the accused in a criminal case also releases him from civil liability is one of the most serious flaws in the Philip-pine legal system. It has given rise to numberless instances of miscarriage of justice, where the acquittal was due to a reasonable doubt in the mind of the court as to the guilt of the accused. The reasoning followed is that inasmuch as the civil responsibility is de-rived from the criminal offense, when the latter is not proved, civil liability cannot be demanded.

"This is one of those cases where confused thinking leads to unfortunate and deplorable consequences. Such reasoning fails to draw a clear line of demarcation between criminal liability and civil responsibility, and to determine the logical result of the distinction. The two liabilities are separate and distinct from each other. One affects the social order and the other, private rights. One is for the punish-ment or correction of the offender while the other is for reparation of damages suffered by the aggrieved party. The two responsibilities are so different from each other that article 1813 of the present (Spanish) Civil Code reads thus: "There may be a compromise upon the civil action arising from a crime; but the public action for the imposition of the legal penalty shall not thereby be extinguished." It is just and proper that, for the purposes of the impri-sonment of or fine upon the accused, the offense should be proved beyond reasonable doubt. But for the pur-pose of indemnifying the complaining party, why should the offense also be proved beyond reasonable doubt? Is not the invasion or violation of every private right to be proved only by a preponderance of evidence? Is the right of the aggrieved person any less private because the wrongful act is also punishable by the criminal law?

"For these reasons, the Commis-sion recommends the adoption of the reform under discussion. It will correct a serious defect in our law. It will close up an inexhaustible source of injustice - a cause for disillusionment on the part of the innumerable persons injured or wronged."[19]

In the instant case, we find that a preponderance of evidence exists sufficient to establish the facts from which the civil liability of Gabat arises. On the basis of the trial court's evaluation of the testimonies of both prosecution and defense witnesses at the trial and applying the quantum of proof required in civil cases, we find that a preponderance of evidence establishes that Gabat by his act and omission with fault and negligence caused

damage to Rosales and should answer civilly for the damage done. Gabat's wilfull act of calling Rosales, the cigarette vendor, to the middle of a busy street to buy two sticks of cigarettes set the chain of events which led to the death of Rosales. Through fault and negligence, Gabat (1) failed to prevent the driver from moving forward while the purchase was completed; (2) failed to help Rosales while the latter clung precariously to the moving vehicle, and (3) did not enforce his order to the driver to stop. Finally, Gabat acquiesced in the driver's act of speeding away, instead of stopping and picking up the injured victim. These proven facts taken together are firm bases for finding Gabat civilly liable under the Civil Code^[20] for the damage done to Rosales.

WHEREFORE, judgment is rendered acquitting the appellant Gabat for the crime of Robbery with Homicide. However, he is hereby held civilly liable for his acts and omissions, there being fault or negligence, and sentenced to indemnify the heirs of Jose Rosales y Ortiz in the amount of P15,000.00 for the latter's death, P1,733.35 for hospital and medical expenses, and P4,100.00 for funeral expenses. The alleged loss of income amounting to P20,000.00, not being supported by sufficient evidence, is DENIED. Costs de officio.

SO ORDERED.

Teehankee, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Information, Records, p. 1.

[2] T.S.N., October 31, 1984, p. 17.

[3] T.S.N., October 10, 1984, p. 8.

[4] T.S.N., October 31, 1984, pp. 12-13.

[5] Exhibits A and D.

[6] Exhibit C.

[7] Exhibit 1.

[8] Records, p. 1; Exhibit 6.

[9] Exhibit 3.

[10] Exhibit 4.

[11] Exhibit G.

[12] Decision, Records, p. 130.

[13] Ibid., p. 132.

[14] T.S.N., October 31, 1984, p. 16.

[15] Exhibit A.

[16] Exhibit C.

[17] Article 29, Civil Code.

[18] Padilla vs. Court of Appeals, 129 SCRA 559.

[19] Report of the Code Commission, pp. 45-46.

[20] Article 2176.

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