

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. No. 258710

Present:

-versus-

GESMUNDO, C.J., Chairperson
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

DATU AKMAD "TATO"
AMPATUAN, SR.,
Respondent.

Promulgated:

JAN 27 2025

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DECISION

ROSARIO, J.:

For purposes of conspiracy, an act is considered overt if it is done in furtherance thereof, i.e., if it promotes, advances, or facilitates the progress of the conspiratorial plan. Statements made *in agreement* with the plot should be distinguished from those made *in furtherance* thereof. Mere approval or acquiescence is not tantamount to furtherance and is not sufficient to convict.

The State assails via Petition for Review on *Certiorari*¹ under Rule 45, Rules of Court, the Court of Appeals (CA) Decision² and Resolution,³ which

¹ *Rollo*, pp. 3–80.

² *Id.* at 82–101. The May 24, 2021 Decision in CA-G.R. SP No. 164524 was penned by Associate Justice Carlito B. Calpatura and concurred in by Associate Justices Fernanda Lampas Peralta and Maria Elisa Sempio Diy of the Second Division, Court of Appeals, Manila.

³ *Id.* at 103–106. The December 10, 2021 Resolution in CA-G.R. SP No. 164524 was penned by Associate Justice Carlito B. Calpatura and concurred in by Associate Justices Fernanda Lampas Peralta and Maria Elisa Sempio Diy of the Former Second Division, Court of Appeals, Manila.

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affirmed the Regional Trial Court (RTC) Consolidated Partial Decision⁴ acquitting Datu Akmad “Tato” Ampatuan, Sr. (Datu Akmad) of murder.

I

Datu Akmad was among those indicted for 58 counts of murder in connection with the 2009 Maguindanao massacre. Except as to the names of the victims, the accusatory portions of the 58 Informations similarly⁵ read:

That on November 23, 2009, at Sitio Masalay, Brgy. Salman, Ampatuan, Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with evident premeditation, taking advantage of superior strength, treachery, with cruelty, in an uninhabited place and by a band, armed with high powered firearms, with intent to kill, did then and there willfully, unlawfully, and feloniously attack, assault and shoot [victim], with the use of the said firearms, thereby inflicting upon [them] multiple gunshot [wounds], that caused [their] death, to the damage and prejudice of [their] heirs.

.....
CONTRARY TO LAW.⁶

Upon arraignment, Datu Akmad pleaded *not guilty* to all counts.

After trial, the RTC, in its 761-page Consolidated Partial Decision, found that Datu Akmad was not part of the conspiracy to commit murder. It opined that he fell under the group of accused who had prior knowledge of the murder plot but did not perform any overt act. While he attended the meetings where the murder was planned and even expressed his support therefor, his absence during its execution showed that he did not cling to the agreed plot to kill. Thus, he was acquitted even as his other relatives were convicted of 57 counts of murder. The relevant portion of the Decision states:

The **third** class of accused – those who had prior knowledge of the murder plot but did not at all perform any overt act.

The following accused fall under this category: Datu Akmad “Tato” Ampatuan and Datu Sajid Islam Ampatuan.

In the meeting held on July 20, 2009, Datu Sajid Islam Ampatuan and Datu Akmad “Tato” Ampatuan were 2 of those who attended the meeting at Century Park Hotel to discuss the plot to kill Datu Toto Mangudadatu... They were likewise present in the meeting to further

⁴ *Id.* at 156–916. The December 19, 2019 Consolidated Partial Decision in Criminal Cases Nos. Q-09-162148–72, Q-09-162216–31, Q-10-162652–66, Q-10-163766, and GL-Q-12-178638 was penned by Presiding Judge Jocelyn A. Solis-Reyes of Branch 221, Regional Trial Court, Quezon City.

⁵ The Informations were similarly worded except as to the names of the victims.

⁶ *Id.* at 162.

discuss the details of the plot on November 17 and 22, 2009 at the house of Datu Zaldy and in Bagong, Shariff Aguak, respectively.

However, no one among the eyewitnesses had testified and pointed to them as being present at the crime site on November 23, 2009...

....

Insofar as Datu Akmad "Tato" is concerned, while it [may be] true that he attended several meetings called for the purpose of discussing how to carry out the plot to kill, the court however, is of the view that this is tantamount to conspiracy... His mere presence in the meeting will not suffice to declare that he indeed conspired with the other Ampatuans to commit the crimes charged. The fact that he uttered the following at the meeting, thus: "*pakinggan natin si Ama. Okay kami lahat na patayin sila*" and "*mabuti nga sa mga Mangudadatu na mahilig mag ambisyon na patayin sila lahat,*" does not necessarily mean that he pushed for the commission of the crime which prima facie may suffice to find a strong evidence of guilt. However, his having attended a medical mission for the whole day... on November 23, 2009 will show that he did not cling to the agreed plot to kill. There is no clear and convincing evidence that will show that accused had commit[t]ed an overt act in furtherance of the agreed plan.

....

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows, viz:

In Criminal Case Nos. Q-09-162148 to 72; Q-09-162216 to 31; Q-10-162652 to 66 and Q-10-163766 (or 57 counts of Murder)

1. The prosecution having established the guilt beyond reasonable doubt of the following accused who are found to have acted as principal namely: DATU ANDAL "Unsay" AMPATUAN, JR., ..., Talembo "Tammy" Masukat ..., Datu Zaldy Ampatuan, ... are hereby **CONVICTED**...;

....

3. On ground of reasonable doubt, the following accused are hereby **ACQUITTED**, namely: ... Datu Akmad "Tato" Ampatuan, and Datu Sajid Islam Ampatuan;

....

In Criminal Case No. GL-Q-12-178638

All the accused above-mentioned are hereby **ACQUITTED** on ground of reasonable doubt.

....

SO ORDERED.⁷ (Emphasis supplied, citations omitted)

⁷ *Id.* at 791-916.

Datu Akmad's acquittal prompted the State, through the Office of the Solicitor General, to file before the CA a petition for *certiorari*⁸ ascribing grave abuse of discretion on the RTC for clearing him of all charges.

In dismissing the petition, the CA observed that the errors raised by the State pertain to the merits of the RTC ruling, which are improper in a petition for *certiorari*. The State failed to show any arbitrariness or denial of due process that would have ousted the RTC of its jurisdiction and rendered void its exoneration of Datu Akmad. Since the RTC rendered the judgment of acquittal within the bounds of its jurisdiction, the constitutional right against double jeopardy had already attached. In any case, the CA found the RTC ruling to be in accord with the evidence on record and prevailing jurisprudence on conspiracy. It agreed that his mere presence in the meetings, even acquiescence to the plan, without an overt act in support of the criminal plot, does not make him liable as a conspirator. Thus, the CA held that the RTC correctly acquitted him of all charges. The pertinent portion provides:

[Datu Akmad]'s mere presence in the meetings of the Ampatuans and his purported utterances in one of the meetings are inadequate to render him criminally liable as conspirator. Granting that he, indeed, agreed with the other Ampatuans to kill Datu Esmael "Toto" Mangudadatu because of the latter's political ambition, that alone, not coupled with any overt acts, does not equate to conspiracy and is thus insufficient to find a strong evidence of guilt...

Thus, even if [Datu Akmad] was a participant in the planning to kill Datu Esmael "Toto" Mangudadatu, in the absence of eyewitnesses to the actual killing, there is a dearth of direct evidence as to whether or not [Datu Akmad] carried out his part in the plan.

The conclusion based on available evidence that [Datu Akmad] was never seen or heard during the actual abduction and killings on November 23, 2009 since he attended the medical mission... is an acceptable credible evidence that he did not cling to the agreed plot to kill Datu Esmael "Toto" Mangudadatu much more in the killing of the innocent media personnel and other civilians, bringing the total number to fifty seven (57) victims...

.....

WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED.⁹ (Emphasis in the original)

The State moved for reconsideration¹⁰ but the CA denied the same in its assailed Resolution.¹¹

⁸ *Id.* at 107–155.

⁹ *Id.* at 99–100.

¹⁰ *Id.* at 917–966.

¹¹ *Id.* at 103–106.

Hence, this Petition arguing that the CA grievously erred in affirming the RTC's acquittal of Datu Akmad. According to the State, the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in capriciously and whimsically disregarding prosecution evidence establishing his commission of overt acts in furtherance of the conspired plan to kill the victims. The State points to the following circumstances:

1. Datu Akmad was the Officer-in-Charge (OIC) Vice Governor of Maguindanao, and nephew and son-in-law of Ampatuan patriarch, Datu Andal Sr.
2. He participated in the meetings of the Ampatuan clan, during which the murder plot, its preparation, and manner of execution were discussed. In fact, he expressed conformity with, and even encouraged his family members to execute the plan.
3. His situation is similar to that of Datu Zaldy Ampatuan and Datu Anwar Ampatuan, who were also not present during the incident but the trial court convicted them as conspirators nonetheless.
4. He supported the plot by lending one of his men, Talembo "Tammy" Masukat (Talembo), who accompanied him to all meetings. During the massacre, Talembo even participated in the contest on who can kill the most victims.
5. His absence at the murder site was part of the plan so as not to invite suspicion that the Ampatuans were involved in the crime. At any rate, the prosecution witnesses narrated that the absent members of the clan were on standby, monitoring the execution of the plot, and prepared to give aid, if necessary.
6. Assuming he was not a conspirator, at the very least, he should have been convicted as an accessory. He had prior knowledge of the plan but did nothing to prevent its execution. When news of the massacre spread, he did not report his family to the authorities whereas several police officers were convicted as accessories for their failure to arrest or report implicated members of the clan.

In his Comment,¹² Datu Akmad contends: (1) that his alleged presence in clan meetings purportedly planning the murders does not constitute an overt act in furtherance of conspiracy; (2) that his alleged prior knowledge of the murder plan, inaction to prevent, and failure to report the murders do not make him liable as an accessory because, as nephew and son-in-law of Datu Andal, Sr., the law exempts him from liability pertaining to accessories; (3) and that his acquittal can no longer be reversed on the ground of double jeopardy.

¹² *Id.* at 1523-1540.

II

A judgment of acquittal, whether by the trial or the appellate court, is final, unappealable, and immediately executory.¹³ This finality-of-acquittal rule has the same *animus* as the right against double jeopardy, and finds its roots in freeing the individual, at some point, from the overwhelming powers of the State.¹⁴ Indeed, against the State with its vast resources and power, the Constitution steps in to the succor of the individual, protecting them from a continuing state of anxiety and insecurity by the threat of repeated criminal prosecution.¹⁵ So sacred is this rule that case law provides limited instances where an acquittal may be challenged without resulting in double jeopardy, the common denominator being the presence of grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case or where the trial was a sham.¹⁶

Case law also holds that grave abuse of discretion can be committed when there is patent violation of the Constitution, the law or jurisprudence,¹⁷ or where there is gross misapprehension of facts, such as when the trial court makes findings based on significant contradictions in the testimonies of witnesses, or when these findings are unfounded, speculative, or arbitrary.¹⁸ Gross misapprehension of facts is not per se an exception to the application of the double jeopardy rule but a circumstance which may be used to establish the allegation of grave abuse of discretion.¹⁹ The general rule remains that no grave abuse of discretion may be attributed to a court simply because of its alleged misapplication of facts and evidence, and erroneous conclusions based on said evidence. *Certiorari* will issue only to correct errors of jurisdiction, not errors in the findings and conclusions of the trial court.²⁰ An unfavorable evaluation of the evidence will not be inquired into via *certiorari* unless it is shown that it was done in an arbitrary manner by reason of passion, prejudice, or personal enmity. Whimsicality, not accuracy, is the core of *certiorari* proceedings.²¹ Thus, for a misapprehension of facts to establish grave abuse of discretion, it must not only be patent and gross but exercised in a capricious, arbitrary, whimsical or despotic manner, for the very essence of grave abuse of discretion lies not only in the error's gravity but in the caprice, arbitrariness or despotism in the exercise of discretion which gave rise to the error.

While *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must demonstrate that the

¹³ *People v. Alejandro*, 823 Phil. 684, 692 (2018) [Per J. Tijam, First Division].

¹⁴ *Raya v. People*, 902 Phil. 141, 160 (2021) [Per J. Caguioa, First Division].

¹⁵ *People v. Laguio, Jr.*, 547 Phil. 296, 313 (2007) [Per J. Garcia, First Division].

¹⁶ *People v. Arcega*, 880 Phil. 291, 306 (2020) [Per C.J. Peralta, First Division].

¹⁷ *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534, 558 (2013) [Per J. Perlas-Bernabe, *En Banc*].

¹⁸ *People v. Sandiganbayan (Fourth Division)*, 900 Phil. 251, 263 (2021) [Per J. Leonen, Third Division].

¹⁹ *Denila v. Republic*, 877 Phil. 380, 426 (2020) [Per J. Gesmundo, Third Division].

²⁰ *Villareal v. Aliga*, 724 Phil. 47, 61 (2014) [Per J. Peralta, Third Division].

²¹ *Dormido v. Office of the Ombudsman*, 871 Phil. 573, 582 (2020) [Per J. Hernando, Second Division].

trial court blatantly abused its authority to a point so grave as to deprive it of its power to dispense justice.²² Where there is only error of judgment or mere abuse of discretion, a review of alleged errors of judgment cannot be made without trampling upon the right of the accused against double jeopardy.²³

In the present case, the State anchors its petition on the alleged grievous error of the CA in denying its petition for *certiorari* and affirming the abusive acquittal of Datu Akmad despite the trial court having allegedly done so with grave abuse of discretion amounting to lack or excess of jurisdiction. In a petition for review on *certiorari* under Rule 45 of the Rules of Court, the scope of our review is narrow since only questions of law may be entertained. Narrower still is our scope of review when such ruling of the CA involves the grant or denial of a petition for *certiorari* under Rule 65. In such cases, this Court will examine the CA's ruling from the prism of whether it correctly determined the presence or absence of grave abuse of discretion on the part of the lower tribunal and not whether the latter decided correctly on the merits.²⁴ Whether the CA correctly determined the absence of grave abuse of discretion depends on whether the RTC misappreciated the facts not only in a patent and gross manner but also in a capricious or whimsical exercise of judgment.

As We have noted in the past, “[Datu Akmad]’s acquittal was not based on alleged non-participation in the planning meeting but on the absence of the prosecution to prove an overt act.”²⁵ In *Bahilidad v. People*,²⁶ We underscored the importance of the performance of an overt act in cases of conspiracy:

[A] conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.²⁷

Black defines *overt act* as “an outward, physical manifestation of the will performed [especially] by a conspirator” and “an outward act, possibly innocent in itself, done in furtherance of a conspiracy, treason, or criminal attempt.”²⁸ On the other hand, it defines *furtherance* as “the act or process of facilitating the progress of something or of making it more likely to occur.”²⁹

²² *Sanvicente v. People*, 441 Phil. 139, 147-148 (2002) [Per J. Ynares-Santiago, First Division].

²³ *People v. Court of Appeals*, 368 Phil. 169 (1999) [Per J. Panganiban, Third Division].

²⁴ *Gomez v. People*, 889 Phil. 915, 943 (2020) [Per J. Gesmundo, *En Banc*].

²⁵ *Datu Akmad “Tato” Ampatuan, Sr. v. Hon. Secretary of Justice*, G.R. No. 200106, February 22, 2023 [Per J. Leonen, Second Division] at 21. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

²⁶ 629 Phil. 567 (2010) [Per J. Nachura, Third Division].

²⁷ *Id.* at 575.

²⁸ BLACK’S LAW DICTIONARY 1328 (12th ed., 2024).

²⁹ *Id.* at 814.

Datu Zaldu, in addition to his verbal support, committed an overt act by offering his guns to carry out the plot when he said “*Todo suporta ako diyari, kahit lahat ng baril ko gagamitin ko. Kahit lahat ng baril ko gagamitin ninyo. Kailangan malinis ang pagkakatrabaho kasi kapag nagkataon makukulong tayong lahat...*”³⁰ The lending of his guns shows his unity of design and purpose with his co-conspirators³¹ and is certainly in furtherance of the plot as these would constitute the very tools needed to perpetrate the killing. Even if the conspirators later decided to use another person’s guns, Datu Zaldu’s statement would still constitute an overt act since it need only be *in furtherance of* a conspiracy, not that it *further*s the conspiracy.³²

In contrast, Datu Akmad’s statements (“*Pakinggan natin si Ama. Okay kami lahat na patayin sila*” and “*mabuti nga sa mga Mangudadatu na mahilig mag-ambisyon na patayin sila lahat*”), debauched and depraved as they may be, are mere expressions of approval of or acquiescence to the plot and cannot be said to be in furtherance thereof. Statements made *in agreement* with the plot should be distinguished from those made *in furtherance* thereof. Mere knowledge, acquiescence, or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.³³ Evidence of actual cooperation, rather than mere cognizance, acquiescence or approval of an unlawful act is required.³⁴ Unless such approval be so indispensable that without it, the plan would not be set in motion or carried out, it is not enough to convict. Datu Akmad’s approval could hardly be said to be indispensable. Even without it, the plan would still have been carried out.

While a conspirator who was remote from the situs of aggression could still be drawn within the enveloping ambit of the conspiracy if it be proved that through his moral ascendancy over the rest of the conspirators the latter were moved or impelled to carry out the conspiracy,³⁵ the prosecution here, other than harping on the fact that Datu Akmad was Datu Andal, Sr.’s nephew and OIC Vice Governor of Maguindanao, failed to prove that he exerted moral ascendancy over the conspirators as to move them to execute the conspiracy. While the RTC found that Datu Zaldu’s words elicited emotions, responses, and further actions, it was silent as to the effect of Datu Akmad’s utterances. Courts cannot rely on mere presumptions of moral ascendancy.³⁶

The State attempts to show that Datu Akmad cooperated by the fact that he knew and agreed to the plot, the preparations to be made, and the manner

³⁰ *Rollo*, p. 191.

³¹ *People v. Herbias*, 333 Phil. 422 (1996) [Per J. Bellosillo, First Division].

³² *United States v. Reyes*, 798 F.2d 380, 384 (10th Cir. 1986).

³³ *People v. Izon*, 104 Phil. 690 (1958). [Per J. Montemayor, *En Banc*].

³⁴ *People v. Mahlon*, 92 Phil. 883, 889 [Per J. Labrador, *En Banc*].

³⁵ *People v. Peralta*, 134 Phil. 703, 719 (1968) [Per Curiam, *En Banc*].

³⁶ *People v. Chua*, 418 Phil. 565, 583 (2001) [Per J. Puno, *En Banc*].

of its execution, with the rest of the clan, including himself, monitoring said execution and ready to aid Datu Unsay if needed. However, the records show that it was Datu Unsay who came up with the plan when he said “*Ang gawin lamang ng iba imonitor kami at tulungan kami kung kinakailangan.*”³⁷ Datu Akmad’s awareness of this statement is not tantamount to agreement thereto, much less an overt act to help Datu Unsay in carrying out his plan.

The records are bereft of evidence that Datu Akmad offered Talembo’s services to carry out the plot. The mere finding that Datu Akmad is Talembo’s boss, that they attended the same meetings, and that Talembo participated in the killing contest, does not mean that Datu Akmad committed an overt act as Talembo could have very well acted on his own accord or under another’s instruction. The Petition itself admits only an *imminent* possibility that Talembo was at the crime scene under Datu Akmad’s instruction.³⁸ Further, state witness Sukarno Badal testified that Talembo was a Civilian Volunteer Organization (CVO) commander and that “a CVO commander waits for directives from bosses like Datu Unsay.”³⁹ Thus, We cannot speculate that he was beholden only to his own boss as there were several bosses from whom he could have received directives. We cannot rely on mere speculation or conjecture in determining Datu Akmad’s involvement in Talembo’s actions.

Even granting that the RTC erred in finding that Datu Akmad did not cling to the agreed plot because he attended a medical mission, that on its own does not show that it grossly misapprehended the facts, much less that such gross misapprehension amounted to grave abuse of discretion. In fact, even if it had ruled that he had clung to the plot, the act of “clinging” is not in itself an overt act and could only mean adherence to, approval of, or acquiescence to the plot, which We have held to be insufficient to convict.

Finally, even assuming that Datu Akmad could be deemed an accessory to the crimes, as the son-in-law of one of the principal accused, Datu Andal Sr., Article 20⁴⁰ of the Revised Penal Code exempts him from liability. This by no means signifies his innocence. Rather, the law acknowledges that blood ties and the preservation of one’s family name compels one to conceal crimes committed by relatives so near as those mentioned in the article.⁴¹

ACCORDINGLY, the Petition is DENIED.

³⁷ *Rollo*, p. 175.

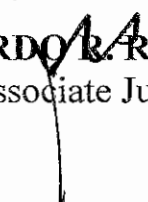
³⁸ *Id.* at 61.

³⁹ *Id.* at 205.

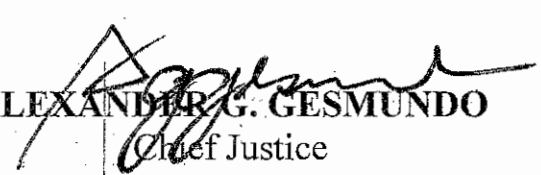
⁴⁰ REV. PEN. CODE, art. 20. *Accessories who are exempt from criminal liability.* — The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or **relatives by affinity within the same degrees**, with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article. (Emphasis supplied)

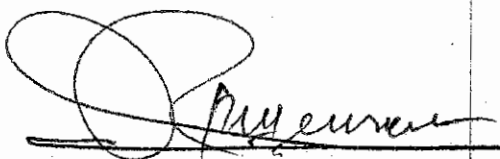
⁴¹ *People v. Mariano*, 400 Phil. 883, 899 (2000) [*Per Curiam, En Banc*].

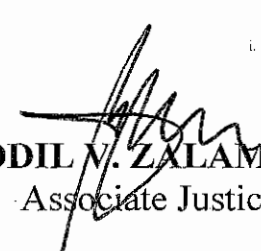
SO ORDERED.

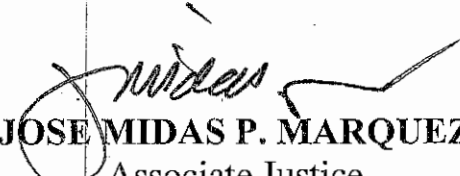

RICARDO R. ROSARIO
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

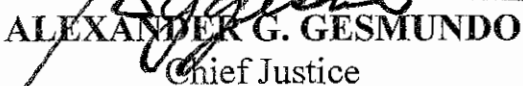

RAMON PAUL L. HERNANDO
Associate Justice


RODIL N. ZALAMEDA
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice