

**[ G.R. No. 123853, August 25, 2000 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
AGUSTIN AGPAWAN, ACCUSED-APPELLANT.**

**D E C I S I O N**

**BELLOSILLO, J.:**

AGUSTIN AGPAWAN and BONIFACIO CHUMACOG together with three (3) John Does were charged with murder for the violent death of Christopher Batan. Only Agpawan was apprehended and tried, while the rest have remained at large.

On 23 February 1993 Christopher Batan, Mila Fana-ang and Fr. Eduardo Solang were taking a rest at a dried creek on their way to Betwagan, Sadanga, Mountain Province. The group of accused Agpawan passed by. After some thirty (30) minutes, Batan, Fana-ang and Solang proceeded on their way to Betwagan. There they met the group of accused Chumacog who ordered them to stop. Batan, Fana-ang and Solang obliged but after a short while they were greeted by a volley of gunfire which hit Batan on the left leg. The gunshots according to Fana-ang came from the other side of the creek about thirty (30) meters away where Agpawan was seen in a squatting position aiming his rifle at them.

Even before the incident Fana-ang was already acquainted with Agpawan. Upon being attacked, Fana-ang summoned enough courage and stood up. She somehow identified herself to Agpawan but the latter only waved his hand and then joined the group of Chumacog who approached the fallen Batan and shot him at close range on the chest. Agpawan, Chumacog and their companions then left towards the direction of Betwagan.

On the witness stand Agpawan did not deny shooting Batan. He claimed instead that he fired twice at the group of Batan to warn them of the impending attack by the group of Chumacog. He insisted that he never intended to kill or harm them nor did he conspire with the group of Chumacog to ambush them.

But the trial court did not believe the story of Agpawan. On the other hand, appreciating the qualifying circumstance of treachery the court below found him guilty of murder and sentenced him to reclusion perpetua and to indemnify the heirs of Batan P50,000.00.<sup>[1]</sup>

The defense submits in this appeal that the lower court erred in finding that (a) there was conspiracy between accused-appellant and the group of Chumacog; (b) treachery qualified the killing to murder; and (c) accused-appellant was guilty of murder instead of a much lower offense.

In arguing for his acquittal accused-appellant claims that no single evidence of conspiracy was presented against him before the lower court.

We are not persuaded. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.<sup>[2]</sup> Proof

of the agreement need not rest on direct evidence as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or how an illegal objective was to be carried out. It may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.<sup>[3]</sup> In order to hold an accused liable as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. The overt act may consist of active participation in the actual commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.<sup>[4]</sup>

Conspiracy was established in the instant case by the concerted and synchronized actions of accused-appellant and his companions in carrying out the ambush. That they were prompted by a common criminal agenda was shown by the fact that even after Batan was shot and hit by accused-appellant, Chumacog also approached Batan and finished him off by shooting him on the chest. After making sure that their victim was already dead, accused-appellant signalled to Chumacog and his companions and together they left the place and proceeded towards Betwagan.

This Court cannot lend credence to the testimony of accused-appellant that he waved his right hand at Fana-ang only as a warning signal for them to leave the place because of the imminent attack from the group of Chumacog. In the first place, there was no convincing evidence as to how accused-appellant knew of the plan of Chumacog and his cohorts to ambush Batan, Fana-ang and Solang. Second, had accused-appellant only wanted to warn Batan, Fana-ang and Solang, he could have done so without causing harm, particularly to Batan. Accused-appellant could have just fired his gun into the air if his purpose was merely to drive them away from danger. Third, he could have simply forewarned Batan, Fana-ang and Solang of the impending assault without waiting for them to actually meet the group of Chumacog face to face. If his sole objective was only to alert Batan, Fana-ang and Solang, he could have done so with the least risk not only to himself but also to the trio. As correctly observed and well reasoned out by the court a quo -

x x x (A)fter the accused fired the second volley of shots he waved his right hand from right to left and then turned his back and moved towards the direction of Betwagan. Upon seeing the signal from the accused, the group of four (4) to five (5) civilian volunteers referring to the group of Chumacog also moved out and headed towards Betwagan. The Court does not buy the proposition advanced by the accused that his purpose in waving his hand was to make Mila Fana-ang and her group leave the place. As the Court sees it, the accused's waving of his hand was meant as a signal for the civilian volunteers to already leave the area. Note that the accused waved his right hand from right to left indicating the direction towards Betwagan and immediately thereafter he and the civilian volunteers in unison turned and headed towards Betwagan.

The Court also notes the almost simultaneous assault staged by the accused and the four <sup>[4]</sup> or five <sup>[5]</sup> civilian volunteers on the person of the deceased Christopher Batan. Just a few seconds after the accused