

EN BANC

[G.R. No. 129535, July 20, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CALIXTO RECONES, CARLOS WAHING AND PABLO DEGAMO,
ALIAS "OBLOY", ACCUSED. PABLO DEGAMO, ALIAS "OBLOY",
ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

Calixto Recones, Carlos Wahing and Pablo Degamo were charged with murder in an Information^[1] that reads:

"That on or about the 17th^[2] day of July 1993, in the municipality of Clarin, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring, confederating and mutually helping one another, with intent to kill and without justifiable cause, with treachery by suddenly attacking the victim without giving him the opportunity to defend himself, with evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and strike or hit with the use of the remaining broken portion of a concrete land marker one Tranquilino L. Garate who was unarmed and unaware of the attack, thereby inflicting mortal injuries on the victim's body which resulted in the untimely death of the said Tranquilino Garate; to the damage and prejudice of the heirs of the victim in the amount to be proved during trial."

Recones was arrested first and tried separately. He pleaded guilty to the charged and is now serving sentence in Muntinlupa. Wahing remains at large. Degamo was arrested on December 8, 1994. The instant appeal therefore pertains only to accused-appellant Degamo.

When brought before the court, Degamo entered a plea of "not guilty." Trial on the merits ensued.

The facts as ascertained by the trial court are as follows:

The prosecution presented William Amodia as an eyewitness. Basically, he testified that he personally knew Wahing and accused-appellant. The victim, Tranquilino Garate, was his uncle-in-law. On July 7, 1993, Amodia was at the waiting shed in Bogtongbod, Clarin with Garate and unidentified pregnant woman. From the waiting shed Amodia proceeded to the basketball court 20 to 30 meters away. While engaged in a conversation with Joseph Maramara and Maricho Belamala, Amodia noticed a motorcycle driven by Ferdinand Legaspo. The motorcycle, with Recones, Wahing, and accused-appellant as "back riders," passed by and stopped at the

waiting shed.

The three back riders alighted from the vehicle and without provocation, Recones smashed the head of Garate with a stone marker or "*mojon*". Recones hit Garate on the head four times. While Recones was hitting Garate with the stone marker, Wahing was also pummeling Garate with his fists. Accused-appellant only watched and did nothing to stop his companions from hitting Garate. In fact, he acted as lookout in case others might try to intervene. Recones, Wahing, and accused-appellant later left on foot and proceeded to Sitio Dakit, Bogtongbod. Garate, 67 and a retired municipal treasurer expired before reaching the hospital.

On August 15, 1993, Amodia met accused-appellant at the town plaza of Cordova, Cebu where the latter confronted the former. Pointing a knife menacingly at Amodia's stomach, accused-appellant threatened to kill the former if he continues to testify against him.

Another prosecution witness, Maricho Belamala testified that at five o'clock in the afternoon of July 7, 1993, she saw Recones, Wahing and accused-appellant at the waiting shed fronting Garate's house. Wahing even greeted her when she passed by. When she chanced to look back, she was surprised to see Recones, Wahing and accused-appellant pursuing Garate who was running towards his house. Accused-appellant caught up with Garate first before the latter could reach the safety of his house. Blocking off the victim while holding his hands, Recones and Wahing rained blows on their victim. Not satisfied, Recones smashed the head of Garate with a stone marker. All the time, accused-appellant was watching but did nothing to stop his companions from hitting the unarmed Garate. Recones hit Garate with the stone marker four times. When Garate fell into the canal bleeding, the trio fled on foot towards the direction of Sitio Dakit, Bogtongbod.

For his part, accused-appellant admitted he was at the *locus criminis* at the time of its commission but denied any participation in it. The trial court, being unconvinced, lent credence to the testimonies of prosecution witnesses who categorically and positively identified accused-appellant as one of the malefactors. Although accused-appellant did not deliver the fatal blows, the trial court decreed him guilty of murder, as conspiracy can be inferred from the acts of the three culprits. The act of one was deemed the act of another. Thus, the court *a quo* ruled:

WHEREFORE, the court finds the accused Pablo Degamo guilty as co-conspirator in the murder of deceased Tranquilino Garate and punishable under Art. 248 of the Revised Penal Code as amended by R.A. 7659 and there being present the two aggravating circumstances of employing means to weaken the defense or of the means of persons to insure or afford impunity and the disregard due the offended party on account of his age and no mitigating circumstances. (*sic*) The court hereby sentenced the accused the maximum penalty of DEATH. (*sic*) The accused is further sentenced to indemnify the heirs of the deceased in the amount of P50,000.00 and to pay the costs.

SO ORDERED. [3]

Obviously unsatisfied with the verdict, accused-appellant comes before this Court with the following assignment of errors:

- I. THE COURT OF ORIGIN HAS COMMITTED A GRAVE ERROR IN NOT GIVING CREDENCE AND WEIGHT TO THE EVIDENCE PRESENTED BY THE DEFENSE.

- II. THE COURT OF ORIGIN HAS COMMITTED A SERIOUS ERROR IN FINDING AND CONCLUDING THAT THE ACCUSED-APPELLANT IS A CO-CONSPIRATOR IN THE MURDER OF THE VICTIM IN THE CASE AT BAR.

The defense posits that accused-appellant enjoys the fundamental right to be presumed innocent. Accordingly, his plea of "not guilty" must be construed in favor of his innocence. Accused-appellant stresses that he did not participate in the commission of the crime although he was there at the place at the time of its commission. Thus, his failure to pacify Recones should not be taken against him.

The above contentions are not well-taken. Consequently, accused-appellant's conviction must stand.

Under the first contention, the defense would like this Court to overthrow the findings of the trial court for its failure to lend credence to his own avowals. This is unavailing. Factual findings of the trial courts are accorded due respect by this Court and are generally not disturbed on appeal except for strong or valid reasons.^[4] No such strong or valid reason is present in this case.

The trial court correctly gave credence to the testimonies of prosecution witnesses Amodia and Belamala. Not being prompted by ill-motive, they testified against accused-appellant. In fact, their testimonies correspond in all material points. The defense could not even cite any discrepancy in their testimonies.

After carefully going over the pieces of evidence presented by both parties, this Court finds that the trial court did not overlook any material point to justify his acquittal. On the contrary, the trial court correctly found accused-appellant's guilt to have been satisfactorily established beyond a shadow of doubt.

The trial court correctly appreciated the presence of conspiracy among the malefactors. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Proof of a previous agreement to commit a felony is not necessary to establish conspiracy, it being sufficient that the acts of the accused, before, during, and after the commission of the felony, demonstrate its existence.^[5]

Conspiracy was appropriately inferred from the following circumstances, to wit: (1) accused-appellant was in the company of Recones and Wahing in the afternoon of July 7, 1993. (2) upon seeing Garate at the waiting shed, the trio alighted from the motorcycle and ganged up on Garate with Recones and Wahing raining blows on Garate in the presence of accused-appellant who did nothing to stop his companions; (3) when Garate attempted to flee, accused-appellant, together with Recones and Wahing, pursued him; (4) when accused-appellant caught up with Garate, he gripped the latter tightly, thereby effectively preventing any possible escape; (5) he, likewise, blocked the path of Garate when the latter attempted to flee towards the safety of his house; (6) accused-appellant was holding Garate while Recones and Wahing were raining blows on the victim; (7) accused-appellant did not