

EIGHTH DIVISION

[CA - G.R. CR HC No. 05353, April 14, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JONATHAN GAGWIS Y FONTELO, ACCUSED-APPELLANT.**

D E C I S I O N

LOPEZ, J.:

Jonathan Gagwis y Fontelo and one Rufo Manalo are charged with murder in an Information dated July 15, 1996, to wit:^[1]

That on or about the 24th day of May, 1996, at around 10:00 o'clock in the evening, at Sitio Balogbog Baboy, Barangay Formon, [M]unicipality of Bongabong, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RUFO MANALO AND JONATHAN GAGWIS, armed with bolos and a gun, conspiring, confederating and mutually helping with one another, with intent to kill, treachery and taking advantage of superior stren[g]th, did then and there wil[l]fully, unlawfully and feloniously attack, assault and shoot Edizon Pedraza with an unknown make or caliber of a gun, inflicting upon said Edizon Pedraza fatal wounds in the abdomen and the chest which caused his direct death.

That in the commission of the offense, the qualifying circumstance of treachery and abuse of superior stren[g]th are present.

Contrary to law.

An order of arrest was issued on July 19, 1996 but the accused were not apprehended because they cannot be located. The case was archived until Gagwis' arrest on May 31, 2010, but Manalo remained at large.^[2]

Gagwis was arraigned and he pleaded not guilty.^[3] Trial then ensued.

The prosecution presented Romulo Bukid who testified that he was inside his house in the evening of May 24, 1996 when he saw Gagwis, armed with a bolo, chasing Edizon Pedraza. When Pedraza reached the center of the road, he stopped and raised his hands as if to surrender. Manalo and Gagwis were standing together by then. Manalo frisked Pedraza then shot him twice. Pedraza fell to the ground. Manalo and Gagwis left and parted ways. Pedraza was able to stand and walk for thirty meters, but he fell again. He was brought to the hospital where he later died.^[4]

Another witness, Marvel Cordero, testified that he and Pedraza were attending a birthday party in his neighbor's house on May 24, 1996 at 10:00 o'clock in the evening. Gagwis and Manalo were also there. They were having a drinking session

when a heated argument spawned between Pedraza and Gagwis as to whose turn it was to take a shot of the liquor. Immediately after the argument, Gagwis and Manalo left the party together. Cordero and Pedraza went home later at about 11:00 o'clock in the evening. On their way, they were waylaid by Gagwis and Manalo, who were both armed and emerged from the side of the road. Manalo was an arm's length away when he shot Pedraza twice. The first shot hit Pedraza on his left chest while the second hit him on the lower portion of his abdomen. Pedraza fell on his back. Gagwis was beside Manalo watching the whole shooting incident. Gagwis and Manalo then left together.^[5]

For his part, Gagwis denied that he participated in the killing of Pedraza. He did not attend a birthday party in the evening of May 24, 1996 nor saw Manalo on that day. He likewise denied knowing Pedraza. He claimed that at around 10:00 o'clock in the evening on that date, he was at Sitio Balogbog Baboy, Barangay Formon, spending a vacation in his aunt Analyn Bukid's house. While lying down, he heard someone shouting. He went outside the house to check and saw that it was Pedraza, who was drunk. Pedraza approached Gagwis and drew his bolo. Gagwis ran to the side of Analyn's house and stumbled. Pedraza caught up with him, but he was able to snatch the bolo from Pedraza. Then, Analyn embraced Gagwis. Suddenly, they heard two (2) gunshots. Gagwis was frightened and ran away leaving his aunt there at the scene. He went to his grandmother's house in the mountain at Barangay Hagan. After a week, he went to Quezon City and stayed there until he was arrested in 2010.^[6]

In its Decision dated May 17, 2011,^[7] the trial court ruled that Gagwis conspired with Manalo in killing Pedraza and appreciated the qualifying circumstance of treachery. Gagwis was found guilty of murder and sentenced as follows:

ACCORDINGLY, judgment is hereby rendered finding accused Jonathan Gagwis guilty beyond reasonable doubt of the crime charged in conspiracy with accused Rufo Manalo, qualified by Treachery and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA together with accessory penalties provided by law and to pay the heirs of the offended party the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages to pay the sum of P15,000 for the coffin and funeral services and the sum of P2,000.00 for the tomb without subsidiary imprisonment in case of insolvency.

SO ORDERED.

When reconsideration failed,^[8] Gagwis filed the instant appeal assigning the following errors of the trial court:

- I. xxx IN FINDING CONSPIRACY BETWEEN THE ACCUSED-APPELLANT AND HIS CO-ACCUSED RUFO MANALO;
- II. xxx IN GIVING FULL CREDENCE TO THE INCONSISTENT TESTIMONIES OF THE ALLEGED EYEWITNESSES AND IN DISREGARDING THE VERSION OF THE DEFENSE;
- III. xxx IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.^[9]

Appellant contends that Manalo shot Pedraza without his knowledge or agreement. The prior disagreement between him and Pedraza is not conclusive evidence of conspiracy. He did not talk to Rufo before, during and after the shooting incident. Assuming that there is conspiracy between appellant and Manalo, the trial court erred in appreciating treachery because it was not proved that there was any conscious effort on the part of the appellant to adopt any particular means, method or form of attack to ensure the commission of the crime. Lastly, the trial court gravely erred in giving credit to the inconsistent testimonies of the prosecution witnesses.

The appeal is partly meritorious.

There is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it.^[10] Conspiracy may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances. A conspirator need not participate in every detail of the execution; he need not even take part in every act, or need not even know the exact part to be performed by the others in the execution of the conspiracy. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.^[11]

To prove conspiracy, direct proof is not necessary. Conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be 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. Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.^[12]

In this case, there was no direct evidence showing a previous agreement between appellant and Manalo. However, the chain of events that transpired showed their commonality of purpose to kill Pedraza, thus: 1) after a heated argument between appellant and Pedraza, appellant and Manalo immediately left the party together; 2) on his way home, Pedraza was chased by appellant and Manalo who were both armed; 3) when Pedraza stopped and raised his hands in surrender, Manalo frisked him while appellant stood beside them; 4) appellant remained quietly watching while Manalo was shooting Pedraza, i.e. he neither showed surprise nor stopped Manalo from shooting Pedraza; and 5) after the shooting, appellant and Manalo fled the crime scene. These are convincing circumstantial evidence of the unity of purpose in the minds of appellant and Manalo to kill Pedraza. Appellant's actuations amount to moral assistance to Manalo in perpetrating the crime.

Appellant's denial that he conspired with Manalo, because he did not see or talk to him before the shooting incident, cannot be given credence. The existence of