

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL PAOYO, ACCUSED-APPELLANT.

G.R. NO. 170193. April 04, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Margarito Carelo (the victim) was fatally shot on the night of March 28, 1992 outside his house at Canda Ilaya, Lopez, Quezon.

Twenty days after the incident or on April 17, 1992, the victim's wife, Eugenia Carelo (Eugenia), gave a Sworn Statement[1] before the Lopez police naming herein respondent Ariel Paoyo (Paoyo or the accused) and his companion, whom she did not know but whom she could identify, as the ones responsible for the victim's death, specifically naming said companion as the one who shot the victim; and declaring that, inter alia, at the time of the incident, the victim's son by his first marriage, Jose Crizaldy Carelo, was at their house. Thus she narrated:

x x x x

11. T. Papaano naganap ang pangyayari, isalaysay mo nga sa maigse lamang pangungusap?

S. Nuon po na araw at oras na nasabi ko na sa itaas ng salaysay kung ito ay ako at ang aking asawa na si MARGARITO CARELO at ang anak niya na si JOSE CRIZALDY CARELO ay naruruon sa aming bahay sa Brgy. Canda Ilaya, Lopez, Quezon, ng mayruon pong tumawag sa asawa ko at sinilip po niya bintana at ang sabi sa akin ay kilala ko ang mga iyon at nagpantalon po ang asawa ko at binuksan niya ang pintuan ng aming bahay at siya ay lumabas at sumunod po ako at duon sa labas ng gate ng aming bahay ay nakita ko itong si ARIEL PAOYO na nakaupo sa banko at ang kasama niya na isang lalaki na mataas na kilala ko ang mukha ay nakatayo sa harapan ng gate ng aming bahay at pinapapasok sila ng aming [sic] asawa at binubuksan niya ang gate ng aming bahay at nuon po ay kitang kita ko na ang aking asawa ay binaril nuong kasama ni ARIEL PAOYO at matapos pong barilin at tamaan sa leeg ang asawa ko ay silang dalawa ay mabilis na tumakas . . .

x x x x[2]

Paoyo and John Doe were later charged before the Regional Trial Court (RTC) of Quezon at Calauag in an Information dated November 19, 2002, for murder, alleged to have been committed as follows:

That on or about the 28[th] day of March 1992, at Barangay Canda Ilaya, Municipality of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with a caliber .38 revolver, conspiring and confederating together and mutually helping each other with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Margarito Carelo, thereby inflicting upon the latter a gunshot wound on his neck which directly caused his death.

That the accused attacked and shot said Margarito Carelo suddenly and unexpectedly without giving the latter any opportunity to defend himself or to escape.[3] (Underscoring supplied)

John Doe has remained unidentified.

From the evidence for the prosecution consisting of, among other things, the testimonies[4] of the victim's wife Eugenia Carelo (Eugenia), his son Jose Crizaldy Carelo (Crizaldy), and his sister-in-law Paz Malubay Carelo (Paz), the following are established:

In the evening of March 28, 1992, Paoyo and John Doe repaired to the store of Paz at Canda Ilaya, Lopez, Quezon where they bought cigarettes and matches and stayed for about one hour. The two thereafter proceeded to the nearby house of the victim.

On arriving at the victim's residence, Paoyo summoned the victim, drawing his son Crizaldy to peep out of the window. Obliging, the victim, followed by his wife, went out to open the gate. As the victim was opening the gate, John Doe shot him between the neck and the shoulder.

Immediately after the shooting, Paoyo and John Doe fled. The victim was brought to a hospital where he was pronounced "dead on arrival."

In defense, the accused interposed alibi, claiming that in the evening of March 28, 1992, he, being then a Civilian Armed Forces Geographical Unit (CAFGU) member, was on duty at a military camp in Barangay Silang, Lopez, Quezon which is more or less five kilometers away from Barangay Canda Ilaya where the shooting took place. Staff Sergeant Romulo Cristobal, who was stationed in the same camp, corroborated the claim of the accused, adding that persons on duty are not allowed to leave the camp.[5]

Branch 63 of the RTC at Calauag brushed aside the alibi of Paoyo. And it found the elements of murder[6] present, thus:

The evidence of the prosecution has xxx convincingly established that the qualifying circumstance of treachery attended the killing of Margarito Carelo by accused Ariel Paoyo and his unidentified companion. In criminal jurisprudence, "There is treachery when (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the offender consciously adopted the particular means[,] method or form of attack employed by him."

In the case at bar, it was obvious that accused Ariel Paoyo and his unidentified companion consciously adopted the mode of attack, which was sudden and unexpected firing upon the victim Margarito Carelo when the latter was about to open the gate of the fence of their house. Ariel Paoyo and his co-accused John Doe deliberately called Margarito Carelo who was then inside his house, and when the latter comes [sic] out and [was] about to open the gate of the fence, John Doe fired upon the victim. The suddenness of the attack caught the unarmed victim Margarito Carelo unaware and precluded him from defending himself, thus ensuring the execution of the crime. There was not the slightest provocation on the part of the victim Margarito Carelo. The fact of Margarito Carelo's death was evidence[d] by the Death Certificate [the] existence and due execution [of which] was admitted by the defense.[7] (Underscoring supplied)

Finding the presence of conspiracy between Paoyo and John Doe,[8] the trial court convicted Paoyo of the crime charged by Decision[9] of May 30, 2003, disposing as follows:

WHEREFORE, in view of all the foregoing considerations, this Court finds the accused Ariel Paoyo GUILTY beyond reasonable doubt with the crime of MURDER defined and penalized under Article 248 No. 1 of [the] Revised Penal Code and hereby sentences the accused to suffer the penalty of Reclusion Perpetua and to pay the heirs of the victim Margarito Carelo the amount of P50,000.00 as moral damages and P50,000.00 as civil indemnity.

The accused Ariel Paoyo is to be credited with his preventive imprisonment if any and proper in the instant case pursuant to Article 29 of the Revised Penal Code as amended by R.A. No. 6127 and E.O No. 214.[10] (Underscoring supplied)

Upon the filing by Paoyo of a Notice of Appeal,[11] the records of the case were transmitted to this Court which transferred the case to the Court of Appeals, however, by Resolution of September 22, 2004,[12] following *People v. Mateo*[13] which calls for intermediate review by the appellate court of criminal cases imposing the penalty of death, life imprisonment, or reclusion perpetua.[14]

In his Appellant's Brief[15] filed before the case was reviewed by the appellate court, Paoyo raised only one error of the trial court, viz:

. . . FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.[16]
(Underscoring supplied)

By Decision[17] of February 28, 2005, the Court of Appeals affirmed the decision of the trial court, with modification by ordering Paoyo to further pay the heirs of the victim P56,000 as actual damages.[18]

His Motion for Reconsideration[19] having been denied,[20] Paoyo appealed the case to this Court which accepted it. Both parties manifested that they were no longer filing supplemental briefs as their respective arguments had been exhaustively discussed in the briefs which they had earlier filed.[21]

After a considered review of the records of the case, this Court finds the appeal bereft of merit.

Prosecution eyewitness Eugenia named Paoyo and identified him in open court as the companion of John Doe who shot the victim.[22] Being the wife of the victim, her claim is more credible, it being "unnatural" for her to point to one other than the real culprit.[23]

Albeit Paoyo invoked alibi, he, in his Motion for Reconsideration[24] of the appellate court's decision, contended that mere companionship does not establish conspiracy.

The accused's contention does not impress. The presence of conspiracy was established beyond reasonable doubt. As the trial court found, which is borne out by the records:

[T]he series of events before, during and after the killing indubitably show that there was unity of purpose, harmony of design, and concurrence of will, and that Ariel Paoyo and his unidentified co-accused both acted in concert towards the same end: (1) Ariel Paoyo and his unidentified companion were together in buying cigarette[s] in the store of Paz Malubay Carelo which is just beside the house of the victim Margarito Carelo. The two even stayed in the store of Paz Malubay Carelo and conversed with the latter for almost one hour, asking Paz about the location of Margarito Carelo's house; (2) After conversing with Paz Carelo Malubay, Ariel Paoyo and his companion were [sic] seen by Paz proceeding to the house of Margarito Carelo; (3) Eugenia Carelo and Jose Crizaldy Carelo both testified that Ariel Paoyo called Margarito Carelo from their house; (4) when Margarito Carelo went out of their house and was about to open the gate of their fence, the unidentified companion of Ariel Paoyo shot Margarito Carelo with a short firearm hitting the latter in his neck; (5) After the shooting of Margarito Carelo, Ariel Paoyo and his unidentified companion were seen running away towards the direction of Brgy. Bebito by prosecution witnesses Eugenia Carelo, Jose Crizaldy Carelo and Paz Malubay Carelo.

This Court is morally convinced that such series of events undeniably point to one conclusion, that Ariel Paoyo and his unidentified companion [had] unity of action and joint purpose, that is to kill Margarito Carelo. Moreover, there was no evidence presented by the defense showing that Ariel Paoyo tried to prevent his unidentified companion from shooting Margarito Carelo. If Ariel Paoyo was not in conspiracy with his unidentified companion, then why is it that he did not report to the authorities the identity of the gunman in order to show his innocence in the killing incident subject matter of this case? Worse, the evidence show[s] that after the shooting of the victim, Ariel Paoyo together with the gunman fled from the scene of the crime. It

is axiomatic as the Supreme Court held that
Flight is evidence of a guilty conscience. For as the good book says, the wicked fleeth even when no man
pursueth, whereas the righteous are as brave as a lion.[25]

Since conspiracy between Ariel Paoyo and his unidentified companion who shot and killed Margarito Carelo was proven by prosecution's evidence, the act of the unidentified gunman becomes the act of Ariel Paoyo and both of them will thus be liable as principals.[26] (Underscoring supplied)

In another vein, the accused harps on Eugenia's claim in her April 17, 1992 Sworn Statement that Crizaldy was at their house when the incident occurred as being in conflict with her following testimony on cross-examination which, by the way, was given on August 3, 2000 or more than eight years after the incident, viz:

x x x x

Q :

Alright, how many children does Margarito Carelo [have] from his first marriage which are of age?

A :

Five (5), sir.

Q :

Who were at Canda Ilaya, Lopez, Quezon at that time?

A :

They were all in Manila, sir.

Q :

You are sure of that Madam Witness?

A :

Yes, sir.

Q :

By the way, who are these children of Margarito Carelo who were in Manila on that incident?

A :

Alicia, Meme, Gemma and Crizaldy.

Q :

Crizaldy Carelo was placed as witness during the preliminary investigation and he testified that he was present during the shooting incident and he recognized the face of the companion of Ariel Paoyo?

PROSECUTOR BONIFACIO

The witness, Your Honor, is incompetent.

ATTY. MESA:

I am confronting him in [sic] the presence of Crizaldy Carelo and there is a testimony that Crizaldy Carelo is at the place of incident at Canda Ilaya when the shooting incident took place. And he saw the companion of Ariel

Paoyo, so he was there.

How can you now say that he is in Manila?

A :

He went home at that time when the incident happened.

Q :

You mentioned awhile ago that he was in Manila together with the three (3) children Alicia, Meme and Gemma?

A :

Yes, sir, they are already there.

Q :

My question is that, awhile ago you stated that the three (children) together with Crizaldy Carelo were in Manila when the shooting incident happened?

A :

Yes, sir.

Q :

So the fact that they are in Manila at the time of the shooting incident . . .

PROSECUTOR BONIFACIO

The question is vague, Your Honor, whom are you referring to were in Manila?

ATTY. MESA

The four children, Your Honor, Alicia, Meme, Gemma and Crizaldy.

COURT

Reform the question.

Q :

The fact, that these four (4) children of Margarito Carelo, Gemma, Crizaldy, Meme and Alicia were in Manila at the time of the shooting incident, you have no one to request that the shooting be reported to the PNP, Lopez, Quezon immediately after the incident?

A :

Yes, sir, and we waited for his children.

Q :

You are sure of that Madam Witness?

A :

Yes, sir.

x x x x

Q :

How about your children with Margarito Carelo, were they present immediately after the incident?

A :

They were there, sir.

Q :

Who are these children?

A :

We have only one, sir.

Q :

In the person of?

A :

Erwin, sir.

Q :

So what you are saying Madam Witness is that only Erwin Carelo was present because the children of Margarito Carelo [with] his first wife were in Manila?

A :

Yes, sir.[27] (Emphasis and underscoring supplied)

As highlighted in Eugenia's above-quoted statements on cross-examination, she declared that "[Crizaldy] went home at the time when the incident happened,"[28] which declaration became more plausible during her testimony on re-direct examination given after the conclusion of her prolonged cross-examination, viz:

PROS. BONIFACIO:

Q:

What I am asking you here is that, when you testified on July 18, you mentioned that Jose Crizaldy was in Manila, now in your affidavit that you signed it appears that Jose Crizaldy was an eyewitness, what can you say about that, apparently conflicting this statement of yours?

A:

Yes sir, he saw the incident.

Q:

Why [did] you [testify] earlier that Jose Crizaldy was in Manila?

A:

I cannot understand the question, sir.

PROS. BONIFACIO:

Q:

Now according to you, you reached grade V according to your affidavit that you affirm. [Are] you confirming that again?

A:

Yes, sir.

Q:

Where?

A: Magarao, Naga, sir.

Q: You mean to say you are a native of Naga?

A: Yes, sir.

Q: And when did you arrive in Quezon?

A: 1976, sir.

Q: So what you are saying is that you could hardly understand the question because according to you are a Bicolana that's why you are incompetent to answer.

A: Yes, sir.[29](Emphasis and underscoring supplied)

Given Eugenia's educational attainment — "tapos ng grade five,"[30] it is not difficult to credit her claim that she "[did] not understand the question" bearing on Crizaldy's presence during the incident, which question, like all those addressed to her, was propounded in English and translated to Tagalog, certainly not her native tongue, she being a Bicolana.

What are important though are that when Eugenia gave her sworn statement on April 17, 1992, 20 days after the victim's fatal shooting, she categorically claimed that Crizaldy was present during the incident; and Crizaldy likewise gave a sworn statement, also on April 17, that he was a witness to the incident, which statement he echoed at the witness stand on September 19, 2000. The prosecution in fact acknowledged Crizaldy having identified Paoyo during the preliminary investigation of the case.

In a further attempt to weaken the case for the prosecution, Paoyo questions the non-presentation of Paz's brother Ruperto Malubay (Malubay) who executed a sworn statement on April 17, 1992 against him.[31] He posits that the omission casts doubt on Paz's testimony (about Paoyo and John Doe having bought cigarette from, and stayed for about an hour at, her store before the two repaired to the victim's residence) since she made no mention of an incident between Paoyo and Malubay which the latter mentioned in his sworn statement.[32] He thus suggests that by such omission, the prosecution was suppressing evidence that contradicts Paz's testimony.[33] Paoyo's position fails.

It is settled that each party has the prerogative to determine which witnesses to present and to dispense with testimony which is merely corroborative,[34] in which case the presumption in Section 3(e), Rule 131 of the Rules of Court that evidence willfully suppressed would be adverse if produced does not apply.[35] That Malubay's sworn statement substantially jibed with the gist and import of Paz's testimony in open court that Paoyo and John Doe went to her store before proceeding to the residence of the victim is not disputed.

At all events, Eugenia, an eyewitness to the actual shooting incident who has not been shown, nay alleged, to have an ill motive to incriminate Paoyo, narrated early on in her sworn statement before the police that she saw Paoyo, in the company of John Doe when the latter shot the victim, and that the two immediately fled thereafter. And

despite the lengthy cross-examination to which she was subjected, she maintained and never waned in such tale. That she even furnished the motive for the killing, which is not necessary as Paoyo's identity has never been put in issue, should dissipate any nagging doubts on his involvement.

WHEREFORE, the appeal is DENIED and the assailed decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Exhibit "A," folder of exhibits (prosecution), p. 3.

[2] Ibid.

[3] Records, p. 17.

[4] TSN, July 18, 2000, pp. 2-22; TSN, August 3, 2000, pp. 2-47; TSN, September 19, 2000, pp. 3-10; TSN October 3, 2000, pp. 12-43.

[5] TSN, February 5, 2002, p. 4.

[6] Revised Penal Code, Article 248:

Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death, if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity

- In consideration of a price, reward, or promise;

- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment of or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

- On the occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity;

- With evident premeditation;

- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[7] Records, p. 293 (citations omitted).

[8] Id. at 291-292.

[9] Id. at 280-294.

[10] Id. at 294.

[11] Id. at 296.

[12] CA rollo, p. 94.

[13] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640.

[14] Id. at 656-658.

[15] CA rollo, pp. 67-80.

[16] Id. at 69.

[17] Id. at 120-131. Penned by Court of Appeals Associate Justice Bienvenido L. Reyes, with the concurrences of Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente.

[18] Id. at 130.

[19] Id. at 137-140.

[20] Id. at 146-147.

[21] Rollo, pp. 18-19, 21-22.

[22] TSN, July 18, 2000, p. 5.

[23] Vide *People v. Tagana*, G.R. No. 133027, March 4, 2004, 424 SCRA 620, 638-639.

[24] CA rollo, pp. 137-140. Id. at 139.

[25] *Sevalle v. Court of Appeals*, 405 Phil. 472, 483 (2001).

[26] Records, p. 291.

[27] TSN, July 18, 2000, pp. 15-19.

[28] Id. at 17.

[29] TSN, August 3, 2000, pp. 44-45.

[30] Exhibit "A," April 17, 1992 Sworn Statement, note 1.

[31] CA rollo, pp. 77-78. Vide records, p. 6.

[32] Id. at 78.

[33] Ibid.

[34] *People v. Bagawe*, G.R. Nos. 88515-16, April 7, 1992, 207 SCRA 761, 763-764.

[35] *People v. Quijada*, 328 Phil. 505, 531 (1996).

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