

SECOND DIVISION

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

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

D E C I S I O N

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 28th 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