

## SECOND DIVISION

[ G.R. No. 124301, May 18, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EDUARDO MELCHOR Y CARIÑO AND ORLANDO FARIÑAS,  
ACCUSED. EDUARDO MELCHOR Y CARIÑO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

Accused-appellant Eduardo C. Melchor and accused Orlando C. Fariñas were charged with the felony of murder before Branch 19<sup>[1]</sup> of the Regional Trial Court of Cauayan, Isabela for the death of Arnold Garingan. The information<sup>[2]</sup> against the two accused reads:

"x x x

"That on or about the 31st day of January, 1994, in the municipality of Alicia, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and helping one another, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and shoot with a short firearm one Arnold Garingan inflicting upon him a gunshot wound on the right temporal area, which directly caused his death.<sup>[3]</sup> "

Both accused pleaded not guilty during their arraignment.<sup>[4]</sup> Trial on the merits ensued thereafter.

Evidence for the prosecution show that on January 31, 1994 at about 10:30 in the evening, Sabina<sup>[5]</sup> N. Rodolfo<sup>[6]</sup> was preparing for the night inside her house located at Sto. Domingo, Alicia, Isabela when she suddenly heard a loud crack. After she checked around the house to determine the source of the blast, she saw her son-in-law Arnold Garingan lying and bleeding on the kitchen floor.<sup>[7]</sup> Sabina shouted for her sons Eufronciliano, Jr.<sup>[8]</sup> and Dominador<sup>[9]</sup> who were living nearby, to help Arnold. Before the Rodolfo brothers could come, Arnold was dead.<sup>[10]</sup>

The shooting was allegedly seen by Aida R. Guiraban. Guiraban<sup>[11]</sup> testified that while she was listening to the radio at about 10:20 in the evening of January 31, 1994, she heard gunfire coming from the house of Sabina. Looking through the half-opened window of her house, she saw appellant and Fariñas under a *bayog* (bamboo tree) running away from the house of Sabina. Guiraban claimed that she was able to recognize the two accused because of the illumination coming from the light of the electric post standing in front of the house of Eufronciliano, Jr. Guiraban executed

before the police an affidavit on February 17, 1994.

On the same night, a team of policemen, led by SPO4 Edwin D. Gumpal,<sup>[12]</sup> investigated the crime. After surveying the house of Sabina, SPO4 Gumpal found an opening in the bamboo wall of the kitchen and he concluded that Garingan's assassin perpetrated the crime by inserting the barrel of a gun through the said hole. Gumpal also learned that Garingan had a previous fight with Jaime Melchor, a brother of appellant.

Arturo L. Redon<sup>[13]</sup> testified on the fight between Garingan and Jaime in the evening of January 30, 1994. He said that after the fight broke up, Jaime warned Garingan that he would not be able to leave for abroad without first dealing with him. Jaime was treated in the clinic of Dr. Ernesto Piedad due to the injuries he sustained in the brawl.

Further investigation was conducted in the morning of February 1, 1994 by SPO2 Warlito A. Ramones,<sup>[14]</sup> SPO1 Nicasio Bautista and barangay captain Norberto Nabua. They went again to Sabina's house and brought with them appellant and his brother Luzonico, Jr.<sup>[15]</sup> SPO2 Ramones found four footprints (two sets) at the back of the kitchen. He asked appellant to place his feet on the footprints. He alleged that appellant's right foot matched one of the footprints. He declared that appellant was trembling while trying the footprints.

Appellant and Luzonico, Jr. also agreed to undergo a paraffin test. They were brought to the PNP crime laboratory located at Minate I, Cauayan, Isabela on February 1, 1994. SPO3 Orville A. Raposas made the paraffin casts of their hands.<sup>[16]</sup> The casts were then brought to the PNP crime laboratory at Tuguegarao, Cagayan where they were examined by Major Rosalinda L. Royales.<sup>[17]</sup> After applying diphenylamine agent on the paraffin casts, forensic chemist Royales found gunpowder residue (nitrates) on the right hand of appellant but not on the hands of Luzonico, Jr.<sup>[18]</sup> Royales opined that the nitrates on appellant's hand came from gunpowder and not from other sources. Her opinion was based on the location, formation, number and the time of appearance of the blue specks on the paraffin cast of appellant. She explained that nitrates from gunpowder usually form on the thumb and forefinger and cause blue specks to appear three to five minutes after the application of diphenylamine agent. She added that the specks would have tails in appearance and number four or more. A sketch of the hands of appellant made by Royales showed six blue specks on the dorsal region of his right hand.<sup>[19]</sup>

The *post mortem* examination conducted by Dr. Charito T. Cacayan<sup>[20]</sup> revealed that Garingan sustained a gunshot wound on his right temple. In the course of the autopsy, Dr. Cacayan found a deformed metal substance imbedded in the mid-frontal bone of Garingan.

Susana C. Garingan,<sup>[21]</sup> mother of the victim, testified on the civil damages they suffered. She declared that her son was earning six hundred pesos (P600.00) a day as a passenger jeepney driver and twenty-one thousand pesos (P21,000.00) per cropping from his farmland at the time of his death. They also incurred P23,000 for funeral expenses. When confronted with an affidavit of desistance she executed in favor of appellant, Susana explained that she was very much confused and still

grieving over the death of her son when she signed the affidavit.<sup>[22]</sup>

Appellant and Fariñas denied any part in the killing of Garingan and raised the defense of alibi. They claimed that at the time of the commission of the crime, they were at the clinic of Dr. Ernesto Piedad located at Poblacion, San Mateo, Isabela.

Fariñas<sup>[23]</sup> alleged that he and his wife brought their one-year old daughter<sup>[24]</sup> to the clinic of Dr. Piedad at about six o'clock in the evening of January 31, 1994 due to her diarrhea. While at the clinic, he saw appellant, Luzonico, Sr., Leonora C. Melchor, Bonifacio Upana<sup>[25]</sup> and Herminigildo Upana, Sr. visiting Jaime Melchor. Fariñas left the clinic at ten o'clock in the evening in the company of appellant, Luzonico, Sr. and the Upanas. They rode a tricycle driven by appellant and reached Sto. Domingo at about 10:30 in the evening. He alighted at the house of Luzonico, Sr. and walked towards his house located six hundred (600) meters away. He returned to the clinic of Dr. Piedad at seven o'clock in the morning of February 1, 1994. Fariñas is a cousin of appellant.

Appellant<sup>[26]</sup> alleged that he went to his father's rice field at about four o'clock in the afternoon of January 31, 1994 to drive away the birds eating their palay. To scare the birds, appellant used firecrackers made by his father. He clipped the firecrackers on one-foot sticks, ignited them with a lighted cigarette and with his right hand held the sticks above him until they exploded. Thereafter, he went back to his house for supper and then proceeded to his father's house as they were to visit his brother Jaime confined at the Piedad Clinic. Appellant, Luzonico, Sr. and the Upanas left the house about 5:30 p.m. aboard a tricycle. They arrived at the clinic at six o'clock in the evening and left it before ten o'clock of the same evening. After thirty minutes of traveling, they reached the house of his father at Sto. Domingo. Appellant left his father's house after the Upanas. He immediately slept upon reaching his house. Appellant alleged that the footprints found at the scene of the crime were bigger than his feet. He admitted he felt bad by the beating of his brother Jaime but stressed that he would never take the law into his own hands. Appellant revealed that Jaime died on February 2, 1994.

Luzonico, Sr. corroborated the story of appellant and Fariñas. He brought out the affidavit of desistance<sup>[27]</sup> executed by Susana C. Garingan and Virgilio C. Garingan, mother and brother, respectively, of the victim. Luzonico, Sr. stated that when he met the two outside the trial court on June 7, 1994, he pleaded with them to withdraw their complaint against his son. He learned from Susana that the victim had confided to her the name of a suspect in the event someone assassinates him. Susana and Virgilio signed the affidavit of desistance prepared by appellant's lawyer in the office of the provincial prosecutor of Isabela. They sought in their affidavit the dismissal of the case against appellant and Fariñas and the investigation of another suspect. Luzonico, Sr. also declared that prosecution witness Guiraban could not have seen the two accused near Sabina's house as there were bamboo, coconut and banana trees obstructing her line of vision.

Dr. Ernesto H. Piedad<sup>[28]</sup> also corroborated the story of Fariñas and appellant. He stated that Fariñas brought his daughter to the clinic at about 6:30 to 7:00 p.m. of January 31, 1994. He likewise affirmed that at seven o'clock in the morning of that day, Jaime was brought to the clinic by his father, mother and several male companions.

The defense also presented Alicia P. Liberato,<sup>[29]</sup> a forensic chemist of the National Bureau of Investigation who testified that the nitrates found on appellant's right hand did not necessarily come from gunpowder. She opined that it is possible for nitrates from firecrackers lighted one foot or shorter from the hand to be imbedded on the skin because of the heat and force coming from the explosion.

After trial, the lower court<sup>[30]</sup> acquitted accused Fariñas and convicted appellant of murder. Fariñas was absolved due to the unreliability of the testimony of Guiraban. It was found that bamboo trees blocked the illumination coming from the light of the electric post and it was impossible for Guiraban to recognize Fariñas as the person running away from Sabina's house. The 15-day delay by Guiraban in reporting to the police what she witnessed that night further eroded her credibility.

Appellant was convicted on the basis of circumstantial evidence. For the trial court, the beating of Jaime by Garingan, the presence of nitrates on appellant's right hand and the matching of appellant's foot with the footprints found at the back of Sabina's house were enough proof to convict appellant. Appellant was sentenced to suffer the penalty of *reclusion perpetua*. He was also ordered to pay the heirs of the victim twenty-three thousand pesos (P23,000.00) as funeral expenses, one hundred thousand pesos (P100,000.00) as compensatory damages, and three hundred thousand pesos (P300,000.00) as the victim's unearned income.

Appellant now contends:

#### "ASSIGNMENT OF ERRORS

"1. The lower court committed a reversible error in convicting the accused-appellant of the crime charged based on speculations and inferences;

"2. The lower court committed a reversible error in not giving weight and credence to the affidavit of desistance executed by Susana C. Garingan, mother of the victim and Virgilio C. Garingan, a policeman and brother of the victim, swearing under oath and invoking the name of God that the (sic) accused a wrong person for the reason that before his death the victim confided to them that if he would meet his death by reason of a gun the person responsible were (sic) one Carlos Annagao of Santo Domingo, Alicia, Isabela which the lower court would have considered the said circumstance favoring the innocence of the accused."

The Solicitor General asked for the affirmance of the prison term imposed upon appellant but sought the reversal of the award of civil damages made by the trial court for lack of competent proof.<sup>[31]</sup>

We find merit in the appeal. The conviction of appellant is predicated on circumstantial evidence. Conviction based on circumstantial evidence needs the concurrence of the following requisites: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.<sup>[32]</sup> These requisites were not satisfied by the evidence of the prosecution.