

SECOND DIVISION

[G.R. No. 131117, June 15, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NELSON CARIÑO,
DOMINGO BANHAON, LUIS CORCOLON, ROGELIO "BOY"
CORCOLON, JOSELITO "LITO" CALONG-CALONG AND "BOY
PANSIT," ACCUSED,**

**DOMINGO BANHAON, LUIS CORCOLON, ROGELIO "BOY"
CORCOLON, AND JOSELITO "LITO" CALONG-CALONG,
APPELLANTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is the appeal of the Decision^[1] of the Regional Trial Court of Pasig City, Branch 160, in Criminal Case No. 107788-H, finding the appellants guilty beyond reasonable doubt of murder, qualified by treachery, sentencing all of them to suffer the penalty of reclusion perpetua and ordering them to indemnify, jointly and severally, the heirs of the deceased Ruben A. Velecina in the amount of P50,000; and to pay the said heirs P20,000 as moral damages; and, P10,000 as exemplary damages.

On March 3, 1994, accused Nelson Cariño, "Boy Pansit," appellants Domingo Banhaon, Luis Corcolon, Rogelio "Boy" Corcolon and Lito Calong-Calong were charged with murder in the Regional Trial Court of Calamba, Laguna, originally docketed as Criminal Case No. 3953-94-C. On March 2, 1998, the Court resolved to transfer the case to the Regional Trial Court of Pasig City. The case was re-docketed and raffled to Branch 160 thereof. The accusatory portion of the information reads as follows:

That on or about July 30, 1989 at Barangay Bayog, Los Baños, Laguna and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping each other and with treachery, abuse of superior strength and with the aid of armed men, did then and there wilfully, unlawfully and feloniously with intent to kill, attack, assault and employ violence upon the person of Ruben Velecina by then and there shooting him with powerful firearms thereby inflicting upon him serious and mortal injuries in the different parts of his body which directly caused his death to the damage and prejudice of his surviving heirs.^[2]

Except for Nelson Cariño and "Boy Pansit" who remained at large, the rest of the accused were arrested. When arraigned, the accused, assisted by counsel, entered their respective plea of not guilty.

The Case for the Prosecution

Leopoldo Cariño and his brother, Nelson Cariño, Luis Corcolon, Rogelio (Boy) Corcolon, Lito Calong-Calong, Domingo Banhaon, "Boy Pansit" and Norberto Ongjuatco were bodyguards of Mayor Antonio Sanchez of Calauan, Laguna. Leopoldo was gunned down by an unknown assailant, and Mayor Sanchez suspected that the following persons were involved in the killing: Ruben Velecina; his mother, Atanacia Velecina; his brother who was a tricycle driver, Valentin Velecina; Bernardo Velecina; and Recto Aniceto, all residents of Los Baños, Laguna.

Nelson Cariño was reported to have killed Bernardo Velecina, while Recto Aniceto was reportedly shot by the group of Lito Calong-Calong. Norberto Ongjuatco, one of the bodyguards of Mayor Sanchez, secretly warned Valentin to be careful. When apprised of the impending peril to their lives, Valentin, Ruben and their mother, Atanacia, were afraid that they would be killed next on orders of Mayor Sanchez.

Isidro Velecina and Dory Perez were to be wed on July 30, 1989. A pre-nuptial party was set in the evening of July 29, 1989, to be held in the yard of the Perez residence at Barangay Bayog, Los Baños, Laguna. Roger Perez, Dory's father, invited his friends, and among them was Edwin Botero, a former soldier in the Philippine Army and a security guard employed at the Philippine Long Distance Company. Ruben Velecina, Isidro's father, also invited guests of his own. Ruben's brother, Valentin, arrived at the house with his family at about 7:00p.m. His wife, Ofelia, his mother, Atanacia, and his son Rowel were with him. Valentin, Edwin and other guests had a drinking spree in front of the house where the other guests were dancing and singing. The house was made of bamboo and wood.

Between 12:30 and 1:00 a.m., July 30, 1989, Edwin noticed a white Ford Fiera with plate number 777 stop in front of the alley leading to Roger's house, about twenty (20) meters from where he and his friends were drinking Tanduay. The Fiera was followed by a tricycle and a galvanized owner-type jeep driven by "Boy Pansit." Edwin saw that Mayor Sanchez was inside the Fiera, along with two others who were seated at the backseat; beside "Boy Pansit" was Lito Corcolon. The latter alighted from the jeepney, approached Edwin and asked him if Ruben and Roger, the fathers of the persons to be wed, were inside the house. Edwin replied in the affirmative.^[3] Thereafter, Lito Corcolon returned to the Ford Fiera and whispered something to Mayor Sanchez.^[4] The Ford Fiera then drove away.

Lito Corcolon, Rogelio Corcolon, Nelson Cariño, "Boy Pansit," Lito Calong-Calong and Domingo Banhaon then alighted from the jeepney and entered the alley leading to the Perez residence. They posted themselves near the kitchen. When Valentin Velecina saw Mayor Sanchez' men arrive, he posted himself in a dark place near the chicken coop, about seven (7) meters from the western side of the house. Valentin could see the kitchen from where he was. He could also see the bodyguards of Mayor Sanchez, all of whom were armed with short handguns.

Momentarily, Carlos Medel, Valentin's cousin arrived near the chicken coop to urinate. When he saw Carlos, Valentin pulled his leg and told him to go to the kitchen to tell his brother, Ruben, and his mother, Atanacia, that the bodyguards of Mayor Sanchez were in the vicinity. Carlos obliged and left. Meanwhile, Ruben went to the comfort room which was near the kitchen sink and was covered by bamboo

slits. As he emerged from the comfort room, Nelson Cariño, Lito Calong-Calong, Rogelio and Lito Corcolon aimed their guns at the kitchen and fired successively. "Boy Pansit" and Domingo Banhaon pulled out their guns and acted as lookouts.

People hurriedly scampered away when they heard the gunfire. There were shouts of: "*May patay, may patay!*" Momentarily, Nelson Cariño told his companions: "*Tayo na, yari na iyan.*" The six bodyguards of Mayor Sanchez then left the scene and boarded the jeepney. Edwin and Valentin heard two more gunshots coming from the direction of the jeep, after which the vehicle sped away.

Meanwhile, Valentin remained behind the chicken coop until he felt that it was safe for him to come out. Momentarily, he heard his brother, Ruben, cry out, "*Ate Uping, may tama ako.*"^[5] Valentin rushed to the kitchen and saw Ruben lying on the floor, mortally wounded.

Isidro Velecina and Roger Perez reported the incident to the police. Policemen, including Wilfredo Palacpac and Oscar Ampao, rushed to the scene,^[6] and saw the cadaver of Ruben lying on the ground, face down. The policemen recovered five empty shells fired from a .45 caliber gun, as well as slugs which were embedded on the cement walls of the house. In the course of the policemen's on-the-spot investigation, no one ventured to identify the perpetrators. The shooting incident was recorded in the police blotter.

Dr. Ruben B. Escueta, the Rural Health Physician of Calauan, Laguna, conducted an autopsy on the cadaver of Ruben Velecina and submitted a report of his findings, viz:

NECROPSY FINDING

General Survey

Well develop (sic), well nourish (sic), male, white complexion measuring 165 cms. and weighing about 130 lbs. Wearing checkered and white and black brief and bearing gun shot (sic) wounds on different parts of the body.

REGIONAL EXAMINATION

Head – No Injury

Face – No Injury

Neck and Nape – No Injury

Chest

1). Through and through gun shot (sic) wound on the left lateral side of the chest to the right lateral side. The point of entrance is located between the 5th and 6th ribs. Its entrance measure 1 cm. in length and 1 cm. in width. The point of exit is located between the 9th and 10th rib on the right lateral side of the chest, measuring 2 cms. in length and 1.5 cms. in width.

Back

2) Through and through gun shot (sic) wound on the right side of the back. Through the left side. The point of entrance located between 4th and 5th ribs medial portion measuring 1 cm. in width. The point of exit is located at the lateral side of the chest between the 9th and 10th ribs

measuring 2 cms. in length and 1.5 cms. in width.

3) Through and through gun shot (sic) wound on the right flank wound between the 2nd and 3rd lumbar vertebrae through posterior portion of the chest between the 9th and 10th ribs left side of the chest. The point of entrance is located between the 2nd and 3rd lumbar vertebrae measuring 1 cm. in length and 1 cm. in width. The point of exit is located between the 9th and 10th ribs, lateral side of the chest. Measuring 2.5 cms. in length and 1.5 cms. in width.

4) Through and through gun shot (sic) wound on the left lumbar area. Located at the level of 6th vertebrae, through left waist line (sic). The point of entrance is located at the level of 6th lumbar vertebrae. Measuring 1 cm. in length and 1 cm. in width. The point of exit is located at the left waistline. Measuring 2.5 cms. in length and 1.5 cms. in width.

EXTREMITIES

Upper extremities

Right –

5) Through and through gun shot (sic) wound on the right shoulder through the left lateral side of the chest. The point of entrance is located on the tip of the right shoulder measuring 1 cm. in length and 1 cm. in width. The point of exit is located on the left lateral side of the chest between the 5th and 6th ribs.

6) Left upper extremity –

Gun shot (sic) wound on the medial portion of the left forearm. The point of entrance is located on the lateral medial portion of left forearm measuring 1 cm. in length and 1 cm. in width. The bullet lodge (sic) on the medial portion of the humerus (sic).

Lower Extremity

Right Lower Extremity – No Injury

Left Lower extremity

Through and through gun shot (sic) wound on the medial portion of left thigh. The point of entrance is lateral medial portion of left thigh measuring 1 cm. in length and 1 cm. in width. The point of exit is located on the inner medial portion of the left thigh. Measuring 2.5 cms. in length and 1.5 cms. in width.

AUTOPSY FINDING

Head

Cranial vault – No injury

Brain tissue – pale in appearance with collapsed blood vessel

Chest

Bonythorax –

Fracture on the medial portion of 10th rib left side of the chest.

-through and through gun shot (sic) on the left upper lobe of

the
lungs

Right lungs – congested

Heart – laceration of the paracardiac soc (sic).

laceration of the posterior portion of the ventricle.

laceration of the coronary blood vessel.

Abdominal Cavity – laceration of peretonal (sic) covering of the abdomen.

laceration of anterior lobe of the liver.

Laceration of the rectus muscle on the muscle on the right side of the abdomen

Extremities – upper right extremity

laceration of the deltoid muscle blood vessel on the right shoulder

REMARKS:

About 2 liters of blood were obtain (sic) from the thoracic cavity.

CAUSE OF DEATH:

Massive Intra Thoracic Hemorrhage due to Gun Shot (sic) Wounds.^[7]

In the meantime, Atanacia advised her son Valentin to hide, as he might be killed next. Valentin heeded his mother's advice and hid in San Pablo City. He sought the help of the Ombudsman and the Criminal Investigation Service (CIS) of the Philippine National Police, but was told to seek the help of the New People's Army in Quezon. He reported the shooting to NBI Director Antonio Carpio, who referred him to the police authorities in Batangas. When he went to the police authorities in Batangas and revealed the identity of his brother's assassins, he was told: *"Bumangga ka pala sa pader, magpahinog ka."*

Nonetheless, on March 15, 1991, Valentin sought the help of the President of the Philippines and gave a sworn statement to Norberto Galang at the Kalayaan Hall, Malacañang, Manila.^[8] Edwin Botero was, however, afraid to reveal the identities of the culprits to the police authorities and that he witnessed the killing.

On August 13, 1993, Mayor Antonio Sanchez was arrested for rape with homicide. His bodyguards, the Corcolon Brothers Luis and Rogelio, had earlier surrendered to the Criminal Investigation Service for the same crime.^[9] Barely three (3) days after Mayor Sanchez' arrest, Edwin Botero gave his sworn statement to the Anti-Organized Crime Division of the NBI.^[10] He applied for and was granted protection under the Witness Protection Program of the Department of Justice.

The Case for the Appellants

Appellant Rogelio "Boy" Corcolon denied the charge against him and offered alibi as his defense. While admitting that he knew Mayor Antonio Sanchez,^[11] he denied that he had ever been in the latter's employ. He claimed that he worked as a company guard of San Miguel Corporation.^[12] He related that at or about 1:00 a.m. of July 30, 1989, he was in his residence at Barangay Mabacan, Calauan, Laguna,