

## SECOND DIVISION

[ G.R. No. 95682-83, May 27, 1997 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,  
VS. PEDRO ONDALOK AND ISMAEL MAHINAY, ACCUSED-  
APPELLANTS.**

### DECISION

**TORRES, JR., J.:**

Challenged in this appeal is the decision of the Regional Trial Court, Branch 60, Cadiz City, Negros Occidental, in Criminal Cases Nos. 272-S and 273-S dated June 4, 1990, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, the Court finds PEDRO ONDALOK y CABAG alias "Pandak" and ISMAEL MAHINAY y GUANZON, guilty beyond reasonable doubt of the crime of "Murder" defined and penalized under Art. 248 of the Revised Penal Code and there being no mitigating nor aggravating circumstances, hereby<sup>[1]</sup> sentences each of them to suffer a penalty of RECLUSION PERPETUA in Criminal Case No. 272-S, to be served successively with Criminal Case No. 273-S but in no case shall exceed FORTY (40) YEARS, together with the accessory penalty provided for by law and each to indemnify the heirs of the deceased Simeon Aransado and Nicolas Moralde, the sum of P30,000.00, without subsidiary imprisonment in case of insolvency, and each to pay proportionate costs.

SO ORDERED."

The following are the antecedent facts:

On February 13, 1985, appellants Pedro Ondalok and Ismael Mahinay, and co-accused Estelito Comargo were charged with two counts of Murder before the Regional Trial Court, Branch 60, in Cadiz City. The two informations read:

#### **Criminal Case No. 272-S**

#### **INFORMATION**

"The undersigned Provincial Fiscal accuses PEDRO ONDALOK y CABAG alias "Pandak", ISMAEL MAHINAY y GUANZON and ESTELITO COMARGO y VILLAQUIZ of the crime of Murder, committed as follows:

"That on or about the 19th day of February, 1984, in the Municipality of Sagay, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bladed weapons, with intent to kill and with evident premeditation, taking advantage of their superior strength, conspiring, confederating and mutually helping one another, did then and

there, wilfully, unlawfully and feloniously attack, assault, hack and stab one SIMEON ARANSADO, thereby inflicting multiple wounds upon the body of the latter, which caused the death of said Simeon Aransado.

"That in the commission of the crime, the aggravating circumstance of excessive cruelty was present, that is, the accused deliberately and inhumanly augmented the suffering of the victim by cutting off the neck of the latter.

CONTRARY TO LAW."<sup>[2]</sup>

### **Criminal Case No. 273-S**

#### **INFORMATION**

"The undersigned Provincial Fiscal accuses PEDRO ONDALOK y CABAG alias "Pandak", ISMAEL MAHINAY y GUANZON and ESTELITO COMARGO y VILLAQUIZ of the crime of Murder, committed as follows:

That on or about the 19th day of February, 1984, in the Municipality of Sagay, Province of Negros Occidental, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, armed with bladed weapons, with intent to kill, and with evident premeditation, taking advantage of their superior strength, conspiring, confederating, and mutually helping one another, did then and there, wilfully, unlawfully and feloniously attack, assault, hack and stab one NICHOLAS (NICOLAS) MORALDE, thereby inflicting multiple wounds upon the body of the latter, which caused the death of said Nicholas (Nicolas) Moralde.

CONTRARY TO LAW."<sup>[3]</sup>

On arraignment, the accused-appellants pleaded not guilty to the charges.

On June 18, 1987, the prosecution filed a motion to discharge the accused Estelito Omargo, on the following grounds: 1) there was absolute necessity for his testimony; 2) there was no other direct evidence available for the proper prosecution of the offense committed except the testimony of the accused; 3) the testimony of the accused can be substantially corroborated in its material points; 4) Said accused did not appear to be the most guilty; and 5) Said accused had not been at any time convicted of any offense involving moral turpitude. This motion was opposed by the accused's counsel contending that there was no absolute necessity of Omargo's testimony, that his testimony cannot be substantially corroborated in its material points, and that he did not appear to be the least guilty. On June 30, 1987, the trial court granted the motion and ordered the discharge of accused Estelito Omargo who would then be used as state witness for the prosecution.

On October 1, 1987, a motion to dismiss either Criminal Case No. 272-S or 273-S was filed by the accused-appellants alleging that there was multiplicity of informations filed against them for one and the same criminal act. The motion was denied on October 30, 1987.

Trial on the merits thereafter ensued. Prosecution witness Estelito Comargo testified

that in the evening of February 19, 1984, he was invited by accused Pedro Ondalok and Ismael Mahinay to attend a benefit dance at Sitio Datag, Brgy. Bulanon, Sagay, Negros Occidental. He accepted the invitation and went to Sitio Datag with them together with his wife and in-laws. On their way to the dance, accused Ondalok and Mahinay informed him that they were planning to execute Simeon Aransado and Nicolas Moralde since they learned that the latter were hired by one Lolong Aparecio to kill them because of an old feud. It was decided that Comargo and Ondalok would proceed first to the dance hall and Mahinay would stay behind near the hall. Thus, when they reached the dance hall, accused Ondalok approached Simeon Aransado and Nicolas Moralde who were then drinking at a stall. After a few drinks, the three went outside, fetched accused Mahinay, and proceeded to Sitio Daro. Comargo followed the group from behind at a distance of fifteen arms length. As they reached the sugarcane field, accused Ondalok and Mahinay pulled out their weapons and confronted Aransado and Moralde who admitted that they were hired by Lolong Aparecio to kill the former. Thereafter, accused Ondalok hacked Simeon Aransado with a "pinuti" (bolo), severing the head from the neck, and another blow in the abdomen. Accused Mahinay stabbed Nicolas Moralde on his left hip but the latter was able to run away. Accused Ondalok chased Moralde, was able to catch up with him, and then stabbed him to death. Accused Mahinay, on his part, picked the severed head of Aransado and threw it to the sugarcane field. After the incident, accused Ondalok told Comargo to just go home with accused Mahinay and ordered him not to tell anybody about what happened.

Another witness for the prosecution was Dr. Diego de Ocampo, Rural Health Physician of Sagay, Negros Occidental, who testified that he conducted post mortem examinations on the cadavers of Moralde and Aransado. Dr. de Ocampo stated that the causes of the victims' death were shock due to severe hemorrhage secondary to multiple incised and stab wounds. In both cases, the weapon used was a sharp bladed instrument.

The defense presented accused Ismael Mahinay, 43 years old, laborer, and resident of Sitio Daro, Bulanon, Sagay, Negros Occidental. Accused Mahinay claimed to be in his house with his wife and children on the night of the incident. He vehemently denied the story of the witness Comargo. He alleged that he only met his co-accused Pedro Ondalok in November 1984 at the municipal jail of Sagay when they were both detained there. He said that he was apprehended by the police because he was suspected to be with Pedro Ondalok who was caught in possession of a revolver.

Accused Pedro Ondalok was 25 years old, married, and resident of Sitio Tunga, Barangay Vito, Sagay, Negros Occidental. He admitted having met his co-accused Mahinay, who lived about three kilometers away from his house, at a fishpond. On the night of the crime, however, he alleged that he was only in his house. He again saw his co-accused only in the municipal jail after they were both apprehended. He denied that he knew the victims and met them on February 19, 1984.

The defense presented two other witnesses Sergio Acebar and Jimmy Toble to corroborate the testimonies of the two accused. Witness Acebar, a neighbor of accused Ondalok, testified that in the evening of February 19, 1984, he saw the latter in his house taking care of his sick child until 12:00 o' clock midnight. His house was only three meters away and he claimed to have seen the accused because he was also awake and was taking care of his children who were also sick