

FIRST DIVISION

[G.R. No. 116098, April 26, 1996]

**GEORGE C. ARCENO, SAMSON C. ARCENO, ZALDY C. ARCENO,
ROBERTO P. JINO-O, MARCELINO S. PALMA, JR. AND NOEL A.
BANICO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND
THE HONORABLE SANDIGANBAYAN, RESPONDENTS.**

D E C I S I O N

PADILLA, J.:

Petitioners appeal from the decision^[1] of the Sandiganbayan, First Division, promulgated on 15 April 1994, finding them guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, qualified by superior strength, and sentencing them to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim, Bernardito P. Vencer, in the amount of P50,000.00 as indemnify for death, as well as other damages and costs of suit.

The Information filed by the Special Prosecutor/Ombudsman before the public respondent reads as follows:

"That on or about April 25, 1986 at Brgy. Calangag, Batad, Iloilo, Philippines and within the jurisdiction of this Honorable Court, accused GEORGE ARCENO, SAMSON ARCENO, ROBERTO P. JINO-O, all members of the Integrated National Police assigned at the INP sub-station, Batad, Iloilo, MARCELINO S. PALMA, JR., NOEL A. BANICO, Staff Sergeant and a Constable 2nd Class (C2C), respectively of the 321st Philippine Constabulary Company, Camp Jalandoni, Sara, Iloilo, while allegedly on a military operation to effect the arrest of one Bernardito Vencer, mutually conspiring and confederating with one another and with ZALDY C. ARCENO, also of 321st Philippine Constabulary Company, and with civilians Alejandro Gullos, Pablo Bernales and Igmedio Ecoy, Jr., taking advantage of their superior strength and number and with the aid of armed men, did then and there wilfully, unlawfully and feloniously shoot, stab and kill one Bernardito P. Vencer, which offense was committed by the accused in relation to their office.

CONTRARY TO LAW."^[2]

The accused were arraigned on 28 October 1991 and with the assistance of their counsel *de parte*, each entered a plea of not guilty.

The prosecution's version of the facts are as follows:

On 25 April 1986, the victim Bernardito P. Vencer, upon instruction of his father, went to the house of his uncle, Bernardino Vencer, in Barangay Calangag, Batad, Iloilo City, to get some rice. At around 11:00 or 11:30 in the evening of the same date, Bernardino Vencer was awakened by one Alejandro Gullos who told him that there were policemen with him (Gullos) downstairs looking for his nephew Bernardito Vencer. When Bernardino opened the windows, he saw a group composed of policemen, PC soldiers and some civilians. He was able to recognize the military men to be Zaldy Arceño, Noel Banico, Marcelino Palma, Samson Arceño, Domingo Diosalan, Raymundo Escovidal, Roberto Jino-o, Rolly Gellera, Faustino Arceño, Jr., George Arceño and the civilians as Alejandro Gullos, Pablo Bernales and Igmedio Ecoy, Jr. He was able to recognize them all because aside from being his townmates, the moon was shining brightly that night. He went downstairs where the group told him that they were taking with them his nephew Bernardito Vencer for investigation at the Headquarters but they did not show him any warrant of arrest. Despite his plea that the investigation be done in the morning, the group managed to take Bernardito with them.

Witness Fernando Aguasa, an "*herbolario*" who treated the sick child of Bernardino in the afternoon of the same day, decided to stay overnight and sleep at the house of Bernardino because it was drizzling that night. At about midnight, Aguasa and Bernardino were awakened by Alejandro Gullos. He heard Gullos asking Bernardino if his nephew Bernardito was in their house to which Bernardino answered in the affirmative. When Aguasa peeped out of the window, he saw Alejandro Gullos, Zaldy Arceño, Samson Arceño, Domingo Diosalan, Raymundo Escovidal, Noel Banico and Pablo Bernales. He was able to recognize them because it was no longer raining and the moon was shining brightly. He saw the group, with Bernardito Vencer with them, proceeding to the direction of the east. Both Bernardino Vencer and Fernando Aguasa declared that about twenty (20) to thirty (30) minutes after the group had left, they heard a shot which was followed by successive shots coming from the east.

At about 3:00 o'clock in the early morning of 26 April 1986, Edmundo Evangelio passed by Bernardino's house and told them of the death of Bernardito.

Edmundo Evangelio, a farmer of Barangay Calangag, Batad, Iloilo, testified that at about 7:00 p.m. on 25 April 1996, he went to his hut to watch his newly harvested palay. The weather was then fine and the moon brightly shining. The hut was two (2) meters higher in elevation compared to the ricefield. It measured about two (2) arms long in width and more than two (2) arms long in length. It had no walls; the floor was made of bamboo slats which were about a knee high from the ground. Its roof was A-shaped, made of cogon. The crest was not covered so that the moonlight illuminated the inner portion of the hut.

At about midnight, he heard voices of people who were coming from the east and walking towards his hut. He immediately went down from the hut and hid himself behind the "*talahib*" grass about 6-1/2 meters away. As the group approached the hut, he recognized as among them Bernardito Vencer escorted by two (2) policemen, George Arceño and Samson Arceño, P.C. Zaldy Arceño and three (3) civilians Alejandro Gullos, Pablo Bernales and Igmedio Ecoy, Jr. The Arceño brothers (George, Samson and Zaldy) were not in uniform but he saw them carrying long firearms. He knew personally the victim Bernardito because he was once his

classmate in the elementary grades. The two (2) Arseño brothers (George and Samson) were policemen assigned in their town. Igmedio Ecoy was his schoolmate, and he often saw Pablo Bernales in the poblacion of Batad.

From his hiding place, Evangelio saw how the victim was slain. According to Evangelio, Bernardito was made to sit on the floor of the hut facing George Arceño who interrogated Bernardito about his identity, the latter answering that he was Bernardito, and why he was at Brgy. Calangag. He heard Bernardito say he was there to get rice from his uncle. Evangelio presumed that George did not believe Bernardito because he saw George shoot Bernardito and push the latter who fell, face upwards. Then, he saw Bernardito stand up, plead for mercy to the group not to kill him as he had not done anything wrong. He heard George order Bernardito to run but the latter remained standing. He then saw George, Samson and Zaldy Arceño who were crowding Bernardito aim their firearms at Bernardito and he heard several shots. A moment later, he saw Bernardito struggle on his knees and embrace the legs of Samson Arceño, still pleading for mercy. The next moment, the witness heard another gunshot. He saw Bernardito still embracing the thigh of Arceño. Then they pushed Bernardito who fell on the ground, face downwards. Evangelio heard the group blaming Igmedio Ecoy Jr. for firing a shot while Bernardito was embracing the legs of Samson, thus hitting the latter. He saw Igmedio Ecoy Jr. standing about one meter away from Bernardito.

Afterwards, the witness (Evangelio) saw and heard George Arceño order Pablo Bernales to stab Bernardito. He saw Bernales, who was standing somewhere near the head of Bernardito, stab Bernardito who was lying prostrate with his hands extended forward. Since he was already scared, Evangelio did not notice which hand Bernales used in stabbing the victim nor the number of times that he stabbed Bernardito. Then the group left. He stayed at his hiding place for sometime as he was very scared. After about two (2) hours, he went home, passing the house of Bernardino Vencer and there he shouted to the latter that his nephew Bernardito was killed by some policemen.

The medical report dated 26 April 1986 of Dr. Noel C. Posadas, Rural Health Physician of Batad, Iloilo, who conducted an external examination of the cadaver of Bernardito Vencer at 5:16 p.m. on 26 April 1986, shows that Bernardito died of "irreversible shock due to profuse hemorrhage due to massive lacerations of the lungs, big blood vessels of the neck due to multiple gunshot and stab wounds" (Exhibit "T").

Upon request of the victim's family, a re-autopsy of the cadaver was done by the National Bureau of Investigation. Dr. Ricardo Y. Jaboneta, of the Medico-Legal Office of the NBI, Region VI, Iloilo City, conducted on 30 April 1986 an autopsy of the body which was already embalmed. His findings were contained in Necropsy Report No. 86-N-04 (Exhibit "A"). The autopsy revealed that the cause of death was "hemorrhage, massive, secondary to multiple gunshot and stab wounds."

On the other hand, the version of the defense runs thus:

Sometime in April 1986, PNP Chief Inspector Noel Rosales, who was then the Commanding Officer of 321st PC Company, INP District IV, in Camp Jalandoni, Sara, Iloilo, received reliable information from his NCO Intelligence Reporter that Bernardo Vencer, a notorious criminal, was present at Batad, Iloilo. He issued Mission Order

No. 0405-86 dated 24 April 1986 (Exhibit "3") to S/Sgt. Marcelino Palma, Jr. as Team Leader, C2C Noel Banico, Pat. George Arceño and Pat. Roberto Jino-o, directing them to verify the veracity of the report, conduct preventive patrol and arrest Bernardo Vencer alias "Bernardito" or "Odong" at Batad, Iloilo, and turn him (Bernardito) over to the Station Commander of Batad.

The team left Headquarters for Brgy. Binon-an, Batad, Iloilo, the following day, 25 April 1986, at 1:00 p.m. They had with them two (2) warrants of arrest against Bernardo Vencer alias Bernardito issued by the Regional Trial Court of Iloilo and by the Municipal Trial Court of Batad. They proceeded to Batad Police Station at 8:00 p.m. to coordinate with the Station Commander and they asked for another police officer to augment their team. Officer-in-charge Franklin Catequista, upon request of S/Sgt. Palma, designated Samson Arceño to be the team's guard as the latter was more familiar with the place where their quarry was hiding. They rode on two (2) motorcycles which they borrowed from Binon-an Barangay Captain Ruben Bernales and Rolly Geller a PC member. They hid the motorcycles in a cogonal area at Brgy. Cabaguhan before proceeding to Brgy. Calangag.

The group just walked towards the nipa hut, the hideout of Bernardo Vencer, passing rice paddies, dikes and a creek. Upon reaching a hill about 100 meters away from the hut, Palma stopped the group and briefed his men on their respective positions in approaching the hut. Then the men positioned themselves as instructed in different directions approaching the hut. They reached the hut at about 10:30 p.m.

The hut was situated at the slope a rolling hill. While at the top of the hill, Samson Arceño noticed that there were lighted cigarettes inside the hut which led them to presume that there were persons inside. Upon nearing the place, they confirmed that there were about four (4) persons inside the hut.

They crawled towards the hut and when they reached the edge of the hut, Samson Arceño stood up. They were caught by surprise when a person, in a prone position inside the hut which was 1 1/2 meters away, fired at Samson. Seeing Samson fall down, Marcelino Palma shouted and identified themselves as PC and police officers. Thereafter, Palma shot Samson's assailant who, in turn, stood up and shot back at him. The other persons inside the hut fled firing their guns at the PC and police officers. For almost five (5) minutes, there was an exchange of gun fire between Palma's team and the group of Bernardito Vencer.

In the aftermath of the shooting, Samson found Bernardito Vencer dead. They recovered a pistolized shotgun and a double-bladed weapon from the victim's body.

Marcelino Palma instructed George Arceño and Roberto Jino-o to watch over the cadaver and to wait for reinforcement and a medico-legal officer while he and Noel Banico brought Samson Arceno to the hospital for treatment. George testified that while he and Banico were watching over Bernardito's cadaver, the latter's relatives came weeping and they took the body of Bernardito. He and Banico then left and proceeded to their headquarters at Sara, Iloilo.

In an attempt to exculpate himself, Zaldy Arceno put up alibi as defense. He alleged that per Guard Detail Order, he was assigned to be one of the guards on duty from 9:00 a.m. on 25 April 1986 to 9:00 a.m. of 26 April 1986, at their headquarters at 321st PC Co. at Sara, Iloilo; that there was specific instruction in the said Order for

the guards on duty to stay in camp during their guard duty so that during the period material to the case, it was impossible for him to be present at the scene of the incident. Moreover, he asserted that the distance between Sara, Iloilo and Brgy. Calangag is 20 kilometers.

After trial, the Sandiganbayan rendered the now appealed judgment, the decretal part of which reads as follows:

"WHEREFORE, judgment is hereby rendered finding Marcelino S. Palma, Jr., George C. Arceno, Samson C. Arceno, Zaldy C. Arceno, Noel A. Banico and Roberto P. Jino-o GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Art. 248 of the Revised Penal Code, qualified by superior strength. Absent any modifying circumstance attending the commission of the crime, each of the accused is hereby sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties provided for by law. They are ordered to pay, jointly and severally, the heirs of Bernardito P. Vencer in the amount of FIFTY THOUSAND (P50,000.00) PESOS as indemnity for death; TWENTY THOUSAND (20,000.00) PESOS as actual or compensatory damages, TWO HUNDRED EIGHTEEN THOUSAND (P218,000.00) PESOS by way of loss of earning capacity; and to pay the costs of this action proportionately.

Conformably to Supreme Court Circular No. 2-92, dated January 20, 1992, No. 3, 4th paragraph thereof which states that:

'When an accused is charged with a capital offense or an offense which under the law at the time of its commission and at the time of the application for bail is punishable by *reclusion perpetua* and is out on bail and after trial is convicted by the trial court of the offense charged, his bond shall be cancelled and the accused shall be placed in confinement pending resolution of his appeal.'

the property bonds of the accused are hereby cancelled and said accused are thereby ordered confined at the National Bureau of Prisons.

Thereafter, the Clerk of Court is directed to return all the documents relative to the property bonds posted by said accused's bondsmen, upon receipt therefor.

SO ORDERED."^[3]

Petitioners moved for reconsideration but the motion was denied.

Hence, this petition for review, assigning the following errors to public respondent: