

**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 ...**

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

Ponente: PADILLA, J.

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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 Gullós. He heard Gullós 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 Gullós, 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 Gullós, 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:

"I

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT IT HAS BEEN ADMITTED THAT THE PETITIONERS SHOT AND STABBED TO DEATH BERNARDITO VENCER;

II

THAT THE HONORABLE SANDIGANBAYAN ERRED IN GIVING CREDENCE TO THE TESTIMONY OF FRANCISCO AGUASA AND EDMUNDO EVANGELIO;

III

THAT THE HONORABLE SANDIGANBAYAN ERRED IN NOT ACCEPTING THE JUSTIFYING CIRCUMSTANCES WHICH THE PETITIONERS, EXCEPT ZALDY ARCENO, RELIED UPON AS DEFENSE;

IV

THAT THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT THE PETITIONERS CONSPIRED TO KILL BERNARDITO VENCER;

V

THAT THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT BERNARDITO VENCER WAS MISTAKEN FOR SEAMAN BERNARDO VENCER, THE REAL OBJECT OF ARREST IN THE FINDINGS OF THE HONORABLE COURT;

VI

THAT THE HONORABLE SANDIGANBAYAN ERRED IN NOT ACCEPTING THE DEFENSE OF ALIBI PUT UP BY PETITIONER ZALDY ARCENO; and

VII

THE HONORABLE SANDIGANBAYAN ERRED IN CONVICTING THE PETITIONERS."[4]

It is at once evident that the main thrust of petitioners' assignment of error is to discredit the witnesses for the prosecution, particularly the testimonies of Fernando Aguasa and Edmundo Evangelio.

Petitioners contend that the testimonies of said witnesses for the prosecution are contradicting. They aver that while Aguasa testified that it was drizzling and cloudy that night of the incident, Evangelio, the eyewitness, in turn testified that the moon was brightly shining. Moreover, they assert that while Aguasa stated that the accused (petitioners) took Bernardito Vencer from the house of Bernardino Vencer before they proceeded to the hut, Evangelio testified that the accused (petitioners) came from the direction of the town.

We find such inconsistencies minor in character. Besides, it was established that while there was a drizzle in the evening of 25 April 1986, the moon had already come out before midnight of the same day.

We reiterate that minor inconsistencies or contradictions in the declarations of witnesses do not destroy their credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[5] The fact has been established that the victim was taken by the petitioners and brought to the hut/shed owned by Evangelio and thereat shot and stabbed. Moreover, the unbending jurisprudence is that the trial court's findings on the matter of credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that it had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[6] And even if, as pointed out by the petitioners, the ponente of the decision (Justice Minita V. Chico-Nazario) did not have the fullest opportunity to weigh conflicting testimonies, not having heard the witnesses testify and observed their deportment and manner of

testifying, the Court finds no such misapprehension or misappreciation of facts committed by public respondent.

The fact that the judge who heard the evidence is not the one who rendered the judgment but merely relied on the records of the case does not render the judgment erroneous.[7] We are not convinced either that Evangelio falsely testified against the petitioners as no evil motive was attributed to him. A simple man, a farmer, like him could not have concocted a tale as detailed as his account of how the petitioners killed the victim. According to the Sandiganbayan, not an iota of evidence was adduced by the defense which would impress the court (Sandiganbayan) as to any bias on the part of Evangelio. Detailed testimony about a murder which could not have been concocted is highly qualitative.[8]

As stated by public respondent -

"Evangelio's account as to how the victim was killed was compatible with the kind of wound and their relative positions found in the latter's remains. The Necropsy Report (Exh. "A") of NBI Medico-Legal Officer Dr. Ricardo H. Jaboneta, reveals that Bernardito sustained seven (7) gunshot wounds and three (3) stab wounds. Anent the gunshot wounds; one was located at the front, the six(6) others were located at the back of the victim. The gunshot wound at the front, which Dr. Jaboneta described as Gunshot wound No. 1, was located just below the clavicle, coincided with the declaration of Evangelio that George Arceno shot Bernardito, who was then facing him (George). The six (6) others gunshot wounds located at the back were sustained by Bernardito when he stood up after he was shot by George Arceno. Evangelio explained that after the first shot, Bernardito fell but was able to stand up. He was ordered to run but refused and remained standing. Moments after, he was fired at by Samson Arceno, Zaldy Arceno, and George Arceno who were then surrounding him. He struggled to his knees and held the thigh of Samson Arceno begging for mercy. In the process, the thigh of Samson Arceno was hit. He subsequently heard the group blaming Ecoy for having fired the shot while Bernardo was clinging to the thigh of Samson Arceno. It is not improbable that all those subsequent shots hit Bernardito at the back. Evangelio was corroborated by Bernardino Vencer, the victim's uncle, whose house was located approximately 200 meters away and by Fernando Aguasa, an 'herbulario' who slept at Bernardo's house that evening of April 26, 1986. The two asserted that about twenty minutes after the group, together with Bernardito, left the house of Bernardino, they heard a single shot. Afterwards, they heard successive shots from the direction where the group went.

With respect to the stab wounds, Dr. Ricardo Jaboneta narrated that Bernardito suffered three (3) stab wounds, two (2) were located at the back portion of the left shoulder and one (1) at the right scapular region. While Evangelio declared that he saw Pablo Bornaes (upon the order of George Arceno) stab Bernardito on the head who was then lying prostrate on the ground, not on the shoulders (the wounds' actual location), it will not invalidate or nullify his testimony. The Court considers the fact that the witness was then in a squatting position, 6½ to 15 meters away from the hut and observing the incident by peeping through the tall 'talahib' grasses, parting them away from his face. Since the victim was then lying on the ground, while Pablo Bornaes was in a squatting position, and the other accused crowded the victim, it would appear from where Evangelio was, that Bornaes was stabbing the victim on the head." [9]

We likewise find the story of the accused (petitioners) to be incredible, absurd and repulsive to logic and reason. Thus, the Sandiganbayan declared:

"1. The accused alleged that the hut at Brgy. Calangag, Batad, was the hideout of Bernardo Vencer (or Bernardito) and his armed cohorts (p. 27, TSN of June 23, 1992). Testimonial and documentary evidence presented by both the prosecution and the defense disclosed that with its physical condition, the hut could hardly be considered as a hide out. It measured about 2 ½ by 3 ½ meters only, no walls on all sides, thatched cogon roof, bamboo slats floor at knee high from the ground. While the accused made it to appear that the hut was hidden, evidence reveals that it was located at the edge of the promontory of a rolling hill, overlooking the wide expanse of ricefield some meters away. No fugitive in his right mind would dare make such an open,

unwalled, fragile shack to be his hiding place, as he can easily be detected therein and it can never serve its purpose.

Apparently, as Edmundo Evangelio, the owner of the hut, testified, it was only his resting place where he spent his time after a hard work on his ricefield (pp. 6, 8, TSN of April 29, 1992).

2. Accused's version of self-defense is, to say the least, self-defeating. Accused's theory of self-defense is primarily anchored on the sole fact that Samson Arceno was hit on the thigh, thus necessitating them to hit, eventually killing the victim.

A. The accused particularly Samson Arceno and Marcelino Palma, Jr., contended that as they crawled towards the hut, they were fired upon by Bernardito, hitting Samson on the thigh, which prompted them to retaliate, so that there was an exchange of fire that ensued.

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The scenario depicted by the accused can only be described as absurd and ridiculous. We cannot comprehend how it is possible for a person in the lower elevation to be shot at by another person in higher elevation, in prone position, less than a meter away (although later on Palma conceded to the Court that the distance was 1 ½ meters away), to be hit on the thigh.

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Upon the other hand, it was the testimony of witness Evangelio that it was while Bernardito was embracing the thigh of Samson Arceno and pleading for mercy, that Igmedio Ecoy, Jr. fired his gun, which hit Samson on the thigh which is compatible with the findings of Dr. Edwin Figura.

B. Accused averred that they cordoned the area by posting themselves in three (3) directions, Marcelino Palma and Samson Arceno on the western portion; George Arceno and Roberto Jino-o on the southern portion; and Noel Banico on the northern portion; that after Samson Arceno was shot, there was an exchange of fire between their group and Bernardito's group; that after the firing had ceased, they found one person dead which turned out to be Bernardito (pp. 25-26, TSN of June 22, 1994; p. 22-24, TSN of Feb. 15, 1993; pp. 13-17, TSN of Feb. 16, 1993).

The Court finds it incredible and highly unbelievable that the team composed of five (5) military men, four (4) were armed with armalites, one (1) with a .38 caliber revolver, surrounded the hut with allegedly four persons inside (this aspect, it is noticed, has not been seriously pursued) and would hit only one person, while the others fled away unharmed.

C. Team leader Marcelino S. Palma, Jr., declared that after he identified themselves as PC and police, the person inside the hut who turned out to be Bernardito shot him; that he was about two meters away from him (Bernardito) who was then already standing; that for almost five (5) minutes, there was an exchange of fire between his team and Bernardito's group (pp. 13-14, TSN of June 23, 1992).

Again this statement is absurd, and it is obvious that accused is telling a lie. We find it hard to believe that for such a very short distance between him and his assailant, and for five (5) minutes of exchanging fire, Palma was not hit. He did not even describe how he was able to avoid the bullets. In the exchange of fire that lasted for almost five minutes, and at a distance of about two (2) meters, how was it made possible that not one from his team men was hit, nay, even suffered a scratch?

D. Accused also maintained that they recovered from the body of Bernardito, one pistolized shot gun homemade, 12 gauge, and a double-bladed knife. We find it strange that they failed to present these items in evidence. Macelino S. Palma, Jr. declared that he turned over the recovered items to Station Commander of Batad Police Station Franklin Catequista and a corresponding receipt was issued, which he allegedly presented before the NAPOLCOM. The Court, however, doubts about the existence of said recovered items. If what

witness said was true, they should have presented them as evidence in Court or at least, the receipt indicating their existence.

3. The team effected their mission to arrest Bernardo (or Bernardito) at night from 10:00 o'clock to 12:00 o'clock midnight. If, indeed, the purpose of the accused was only to apprehend Bernardo Vencer (or Bernardito), the Court finds it highly suspicious why they had done it at night time. Accused alleged that Bernardo Vencer (or Bernardito) was maintaining an armed group, all of them being notorious criminals. With this premise, why did they choose to arrest him at night, in a place where they were not so familiar, and heavy encounter was inevitable?

4. Lastly, the evidence adduced by the defense suffered from one material and harmful contradiction, among other, inconsistencies. While in all the testimonies of the accused, they stressed that Bernardo and Bernardito were one and the same person, they presented as their sur-rebuttal evidence, the documents which, and in effect, ironically supported the posture of the prosecution that they were two different persons. In a certification dated June 8, 1987 of Engr. Ben Lim, Jr., Vice President of RBL Fishing Corporation (Exh. "12"), and other papers related thereto (Exhs. "13" & "14"), it was stated that Bernardo Vencer died on November 6, 1979 when the vessel where he was employed as a seaman, sank in the high seas. This piece of information clearly established the theory that the accused were actually running after Bernardo Vencer, and not Bernardito Vencer, who, as shown by documentary evidence, was much different from Bernardo, in parentage, in birth dates in educational attainment, in background and in physical attributes (Exhs. "K" to "Q" and submarkings) but whom they believed to be one and the same person."^[10]

Accused (petitioner) Zaldy Arceno asserts that he was not with the team that night as he was on guard duty at the headquarters of the 321st PC Company at Sara, Iloilo from 9:00 a.m., 25 April 1986, to 9:00 a.m. the following day, 26 April 1986.

The defense of alibi, being admittedly the weakest defense, cannot prevail over the positive identification of the accused by prosecution witnesses. Positive identification prevails over the alibi of the accused, unless the latter can establish the physical impossibility of his presence at the place and time of the commission of the crime, either before, during, or after he was at such other place.^[11]

Accused Zaldy Arceno was positively identified by eyewitness Edmundo Evangelio to be one of the persons who brought Bernardito to his hut and later killed him. Zaldy was also positively identified by the victim's uncle Bernardino Vencer to be in the group which picked up his nephew at his house in the evening of 25 April 1986 allegedly to be investigated at the Headquarters. Zaldy was also recognized by Fernando Aguasa, the "herbolario" who slept that night of 25 April 1986 at the house of Bernardino Vencer. As correctly appreciated by public respondent, Zaldy's defense of alibi, apart from being uncorroborated, is unavailing against the positive identification made of him by the prosecution witnesses and the absence of physical impossibility of his being at the scene of the crime when it was committed.

We agree with public respondent that conspiracy was present in this case. Conspiracy need not be proved by direct evidence of prior agreement on the commission of the crime. It can be inferred from the conduct of the accused before, during, and after the commission of the crime, showing that they acted in unison with each other, evincing a common purpose or design.^[12]

The presence of the accused as a group, each of them armed, unquestionably gave encouragement and a sense of security among themselves. Where conspiracy is established, the act of one is the act of all.

It is evident that petitioners have sought a review by the Court of the factual findings of the Sandiganbayan, which essentially involve the credibility of the testimonies of the witnesses. As the issue of credibility is to be resolved primarily by the trial court, we see no reason to reverse the findings and conclusions made by the Sandiganbayan

as they are supported by the testimonial and documentary evidence on record.

The prosecution evidence has proved beyond reasonable doubt that the accused (petitioners) indeed committed the crime of murder as charged.

WHEREFORE, finding no reversible error committed by the Sandiganbayan in its judgments of conviction rendered against the accused (petitioners), the same is hereby AFFIRMED and the petition DENIED. Costs against petitioners.

SO ORDERED.

Bellosillo, Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Criminal Case No. 16191, penned by Justice Minita V. Chico-Nazario with Presiding Justice Francis E. Garchitorena and Justice Jose S. Balajadia, concurring.

[2] Rollo, pp. 37-38.

[3] Rollo, pp. 100-101.

[4] Rollo, p. 115.

[5] *People vs. Mauyao*, 207 SCRA 732.

[6] *People vs. Alapide*, G.R. No. 104276, 20 September 1994, 236 SCRA 555; *People vs. Mauyao*, *supra*.

[7] *People vs. Ramos, Jr.*, 203 SCRA 237.

[8] *People vs. Espinosa*, 228 SCRA 143.

[9] Rollo, pp. 78-80.

[10] Rollo, pp. 82-84; 85-89.

[11] *People vs. Talaver*, G.R. No. 105390, 23 February 1994, 230 SCRA 281.

[12] *People vs. Dalanon*, 237 SCRA 607; *People vs. Zafra*, 237 SCRA 669.

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