

THIRD DIVISION

[G.R. Nos. 120744-46, June 25, 2012]

**SALVADOR YAPYUCO Y ENRIQUEZ, PETITIONER, VS.
HONORABLE SANDIGANBAYAN AND THE PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

[G.R. NO. 122677]

**MARIO D. REYES, ANDRES S. REYES AND VIRGILIO A.
MANGUERRA, PETITIONERS, VS. HONORABLE SANDIGANBAYAN
AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

[G.R. NO. 122776]

**GERVACIO B. CUNANAN, JR. AND ERNESTO PUNO, PETITIONERS,
VS. HONORABLE SANDIGANBAYAN AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Law enforcers thrust their lives in unimaginable zones of peril. Yet resort to wanton violence is never justified when their duty could be performed otherwise. A “shoot first, think later” disposition occupies no decent place in a civilized society. Never has homicide or murder been a function of law enforcement. The public peace is never predicated on the cost of human life.

These are petitions for review on *certiorari* under Rule 45 of the Rules of Court assailing the June 30, 1995 Decision^[1] of the Sandiganbayan in Criminal Case Nos. 16612, 16613 and 16614 – cases for murder, frustrated murder and multiple counts of attempted murder, respectively. The cases are predicated on a shooting incident on April 5, 1988 in Barangay Quebiawan, San Fernando, Pampanga which caused the death of Leodevince Licup (Licup) and injured Noel Villanueva (Villanueva). Accused were petitioners Salvador Yapyuco, Jr. (Yapyuco) and Generoso Cunanan, Jr. (Cunanan) and Ernesto Puno (Puno) who were members of the Integrated National Police (INP)^[2] stationed at the Sindalan Substation in San Fernando, Pampanga; Jose Pamintuan (Pamintuan) and Mario Reyes, who were barangay captains of Quebiawan and Del Carmen, respectively; Ernesto Puno, Andres Reyes and Virgilio Manguerra (Manguerra), Carlos David, Ruben Lugtu, Moises Lacson (Lacson), Renato Yu, Jaime Pabalan (Pabalan) and Carlos David (David), who were either members of the Civil Home Defense Force (CHDF) or civilian volunteer officers in Barangays Quebiawan, Del Carmen and Telebastagan. They were all charged with murder, multiple attempted murder and frustrated murder in three Informations, the inculpatory portions of which read:

Criminal Case No. 16612:

That on or about the 5th day of April 1988, in Barangay Quebiawan, San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then policemen, Brgy. Captains, Brgy. Tanod and members of the Civil Home Defense Force (CHDF), respectively, confederating and mutually helping one another, and while responding to information about the presence of armed men in said barangay and conducting surveillance thereof, thus committing the offense in relation to their office, did then and there, with treachery and evident premeditation, willfully, unlawfully and feloniously, and with deliberate intent to take the life of Leodevince S. Licup, attack the latter with automatic weapons by firing directly at the green Toyota Tamaraw jitney ridden by Leodevince S. Licup and inflicting multiple gunshot wounds which are necessarily mortal on the different parts of the body, thereby causing the direct and immediate death of the latter.

CONTRARY TO LAW.^[3]

Criminal Case No. 16613:

That on or about the 5th day of April 1988, in Barangay Quebiawan, San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then policemen, Brgy. Captains, Brgy. Tanod and members of the Civil Home Defense Force (CHDF), respectively, confederating and mutually helping one another, and while responding to information about the presence of armed men in said barangay and conducting surveillance thereof, thus committing the offense in relation to their office, did then and there, with treachery and evident premeditation, willfully, unlawfully and feloniously, and with intent to kill, attack Eduardo S. Flores, Alejandro R. de Vera, Restituto G. Calma and Raul V. Panlican with automatic weapons by firing directly at the green Toyota Tamaraw jitney ridden by said Eduardo S. Flores, Alejandro R. de Vera, Restituto G. Calma and Raul V. Panlican, having commenced the commission of murder directly by overt acts of execution which should produce the murder by reason of some cause or accident other than their own spontaneous desistance.

CONTRARY TO LAW.^[4]

Criminal Case No. 16614:

That on or about the 5th day of April 1988, in Barangay Quebiawan, San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then policemen, Brgy. Captains, Brgy. Tanod and members of the Civil Home Defense Force (CHDF), respectively, confederating and mutually helping one another, and while responding to information about the presence of armed men in said barangay and conducting surveillance

thereof, thus committing the offense in relation to their office, did then and there, with treachery and evident premeditation, willfully, unlawfully and feloniously, and with intent of taking the life of Noel C. Villanueva, attack the latter with automatic weapons by firing directly at the green Toyota Tamaraw jitney driven by said Noel C. Villanueva and inflicting multiple gunshot wounds which are necessarily mortal and having performed all the acts which would have produced the crime of murder, but which did not, by reason of causes independent of the defendants' will, namely, the able and timely medical assistance given to said Noel C. Villanueva, which prevented his death.

CONTRARY TO LAW.^[5]

Hailed to court on April 30, 1991 after having voluntarily surrendered to the authorities,^[6] the accused – except Pabalan who died earlier on June 12, 1990,^[7] and Yapyuco who was then allegedly indisposed^[8] – entered individual pleas of not guilty.^[9] A month later, Yapyuco voluntarily surrendered to the authorities, and at his arraignment likewise entered a negative plea.^[10] In the meantime, Mario Reyes, Andres Reyes, David, Lugtu, Lacson, Yu and Manguerra jointly filed a Motion for Bail relative to Criminal Case No. 16612.^[11] Said motion was heard on the premise, as previously agreed upon by both the prosecution and the defense, that these cases would be jointly tried and that the evidence adduced at said hearing would automatically constitute evidence at the trial on the merits.^[12] On May 10, 1991, the Sandiganbayan granted bail in Criminal Case No. 16612.^[13] Yapyuco likewise applied for bail on May 15, 1991 and the same was also granted on May 21, 1991.^[14] Pamintuan died on November 21, 1992,^[15] and accordingly, the charges against him were dismissed.

At the July 4, 1991 pre-trial conference, the remaining accused waived the pre-trial inquest.^[16] Hence, joint trial on the merits ensued and picked up from where the presentation of evidence left off at the hearing on the bail applications.

The prosecution established that in the evening of April 5, 1988, Villanueva, Flores, Calma, De Vera, Panlican and Licup were at the residence of Salangsang as guests at the barrio fiesta celebrations between 5:00 and 7:30 p.m.. The company decided to leave at around 7:30 p.m., shortly after the religious procession had passed. As they were all inebriated, Salangsang reminded Villanueva, who was on the wheel, to drive carefully and watch out for potholes and open canals on the road. With Licup in the passenger seat and the rest of his companions at the back of his Tamaraw jeepney, Villanueva allegedly proceeded at 5-10 kph with headlights dimmed. Suddenly, as they were approaching a curve on the road, they met a burst of gunfire and instantly, Villanueva and Licup were both wounded and bleeding profusely.^[17]

Both Flores and Villanueva, contrary to what the defense would claim, allegedly did not see any one on the road flag them down.^[18] In open court, Flores executed a sketch^[19] depicting the relative location of the Tamaraw jeepney on the road, the residence of Salangsang where they had come from and the house situated on the

right side of the road right after the curve where the jeepney had taken a left turn; he identified said house to be that of a certain Lenlen Naron where the gunmen allegedly took post and opened fire at him and his companions. He could not tell how many firearms were used. He recounted that after the shooting, he, unaware that Licup and Villanueva were wounded, jumped out of the jeepney when he saw from behind them Pamintuan emerging from the yard of Naron's house. Frantic and shaken, he instantaneously introduced himself and his companions to be employees of San Miguel Corporation but instead, Pamintuan reproved them for not stopping when flagged. At this point, he was distracted when Villanueva cried out and told him to summon Salangsang for help as he (Villanueva) and Licup were wounded. He dashed back to Salangsang's house as instructed and, returning to the scene, he observed that petitioner Yu was also there, and Villanueva and Licup were being loaded into a Sarao jeepney to be taken to the hospital.^[20] This was corroborated by Villanueva who stated that as soon as the firing had ceased, two armed men, together with Pamintuan, approached them and transferred him and Licup to another jeepney and taken to the nearby St. Francis Hospital.^[21]

Flores remembered that there were two sudden bursts of gunfire which very rapidly succeeded each other, and that they were given no warning shot at all contrary to what the defense would say.^[22] He professed that he, together with his co-passengers, were also aboard the Sarao jeepney on its way to the hospital and inside it he observed two men, each holding long firearms, seated beside the driver. He continued that as soon as he and his companions had been dropped off at the hospital, the driver of the Sarao jeepney immediately drove off together with his two armed companions.^[23] He further narrated that the day after the shooting, he brought Licup to the Makati Medical Center where the latter expired on April 7, 1988.^[24] He claimed that all the accused in the case had not been known to him prior to the incident, except for Pamintuan whom he identified to be his wife's uncle and with whom he denied having had any rift nor with the other accused for that matter, which would have otherwise inspired ill motives. ^[25] He claimed the bullet holes on the Tamaraw jeepney were on the passenger side and that there were no other bullet holes at the back or in any other portion of the vehicle.^[26]

Salangsang, also an electrician at the San Miguel Corporation plant, affirmed the presence of his companions at his residence on the subject date and time, and corroborated Villanueva's and Flores' narration of the events immediately preceding the shooting. He recounted that after seeing off his guests shortly after the procession had passed his house and reminding them to proceed carefully on the pothole-studded roads, he was alarmed when moments later, he heard a volley of gunfire from a distance which was shortly followed by Flores' frantic call for help. He immediately proceeded to the scene on his bicycle and saw Pamintuan by the lamppost just outside the gate of Naron's house where, inside, he noticed a congregation of more or less six people whom he could not recognize. ^[27] At this point, he witnessed Licup and Villanueva being loaded into another jeepney occupied by three men who appeared to be in uniform. He then retrieved the keys of the Tamaraw jeepney from Villanueva and decided to deliver it to his mother's house, but before driving off, he allegedly caught a glance of Mario Reyes on the wheel of an owner-type jeepney idling in front of the ill-fated Tamaraw; it was the same jeepney which he remembered to be that frequently used by Yapyuco in patrolling the barangay. He claimed he spent the night at his mother's house and in the

morning, a policeman came looking for him with whom, however, he was not able to talk.^[28]

Salangsang observed that the scene of the incident was dark because the electric post in front of Naron's house was strangely not lit when he arrived, and that none of the neighboring houses was illuminated. He admitted his uncertainty as to whether it was Yapyuco's group or the group of Pamintuan that brought his injured companions to the hospital, but he could tell with certainty that it was the Sarao jeepney previously identified by Villanueva and Flores that brought his injured companions to the hospital.^[29]

Daisy Dabor, forensic chemist at the Philippine National Police Crime Laboratory in Camp Olivas, affirmed that she had previously examined the firearms suspected to have been used by petitioners in the shooting and found them positive for gunpowder residue. She could not, however, determine exactly when the firearms were discharged; neither could she tell how many firearms were discharged that night nor the relative positions of the gunmen. She admitted having declined to administer paraffin test on petitioners and on the other accused because the opportunity therefor came only 72 hours after the incident. She affirmed having also examined the Tamaraw jeepney and found eleven (11) bullet holes on it, most of which had punctured the door at the passenger side of the vehicle at oblique and perpendicular directions. She explained, rather inconclusively, that the bullets that hit at an angle might have been fired while the jeepney was either at a standstill or moving forward in a straight line, or gradually making a turn at the curve on the road.^[30] Additionally, Silvestre Lapitan, administrative and supply officer of the INP-Pampanga Provincial Command tasked with the issuance of firearms and ammunitions to members of the local police force and CHDF and CVO members, identified in court the memorandum receipts for the firearms he had issued to Mario Reyes, Andres Reyes, Manguerra, Pabalan and Yapyuco.^[31]

Dr. Pedro Solis, Jr., medico-legal consultant at the Makati Medical Center, examined the injuries of Villanueva and Licup on April 6, 1988. He recovered multiple metal shrapnel from the occipital region of Villanueva's head as well as from the posterior aspect of his chest; he noted nothing serious in these wounds in that the incapacity would last between 10 and 30 days only. He also located a bullet wound on the front lateral portion of the right thigh, and he theorized that this wound would be caused by a firearm discharged in front of the victim, assuming the assailant and the victim were both standing upright on the ground and the firearm was fired from the level of the assailant's waist; but if the victim was seated, the position of his thigh must be horizontal so that with the shot coming from his front, the trajectory of the bullet would be upward. He hypothesized that if the shot would come behind Villanueva, the bullet would enter the thigh of the seated victim and exit at a lower level.^[32]

With respect to Licup, Dr. Solis declared he was still alive when examined. On the patient, he noted a lacerated wound at the right temporal region of the head – one consistent with being hit by a hard and blunt object and not a bullet. He noted three (3) gunshot wounds the locations of which suggested that Licup was upright when fired upon from the front: one is a through-and-through wound in the middle lateral aspect of the middle portion of the right leg; another, through-and-through wound at the middle portion of the right forearm; and third one, a wound in the abdomen which critically and fatally involved the stomach and the intestines. He hypothesized