

FIRST DIVISION

[G.R. No. 148431, July 28, 2005]

**SPO2 RUPERTO CABANLIG, PETITIONER, VS. SANDIGANBAYAN
AND OFFICE OF THE SPECIAL PROSECUTOR, RESPONDENTS,**

DECISION

CARPIO, J.:

The Case

This petition for review^[1] seeks to reverse the Decision^[2] of the Fifth Division of the Sandiganbayan dated 11 May 1999 and Resolution^[3] dated 2 May 2001 affirming the conviction of SPO2 Ruperto Cabanlig ("Cabanlig") in Criminal Case No. 19436 for homicide. The Sandiganbayan sentenced Cabanlig to suffer the indeterminate penalty of four months of *arresto mayor* as minimum to two years and four months of *prision correccional* as maximum and to pay P50,000 to the heirs of Jimmy Valino ("Valino"). Cabanlig shot Valino after Valino grabbed the M16 Armalite of another policeman and tried to escape from the custody of the police. The Sandiganbayan acquitted Cabanlig's co-accused, SPO1 Carlos Padilla ("Padilla"), PO2 Meinhardt Abesamis ("Abesamis"), SPO2 Lucio Mercado ("Mercado") and SPO1 Rady Esteban ("Esteban").

The Charge

Cabanlig, Padilla, Abesamis, Mercado and Esteban were charged with murder in an amended information that reads as follows:

That on or about September 28, 1992, in the Municipality of Penaranda, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, SPO^[2] Ruperto C. Cabanlig, SPO1 Carlos E. Padilla, PO2 Meinhardt C. Abesamis, SPO2 Lucio L. Mercado and SPO1 Rady S. Esteban, all public officers being members of the Philippine National Police, conspiring and confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, taking advantage of nighttime and uninhabited place to facilitate the execution of the crime, with use of firearms and without justifiable cause, did then and there, wilfully, unlawfully and feloniously attack, assault and shoot one Jimmy Valino, hitting him several times at the vital parts of his body, thereby inflicting upon the latter, serious and mortal wounds which were the direct and immediate cause of his death, which crime was committed by the accused in relation to their office as members of the Philippine National Police of Penaranda, Nueva Ecija, the deceased, who was then detained for robbery and under the custody of the accused, having been killed while being taken to the place where he allegedly concealed the effects of the crime, to the damage and prejudice

of the heirs of said victim, in such amount as may be awarded under the provisions of the New Civil Code.

CONTRARY TO LAW.^[4]

Arraignment and Plea

On 15 December 1993, the accused police officers Cabanlig, Padilla, Abesamis, Mercado and Esteban pleaded not guilty.

Version of the Prosecution

On 24 September 1992 a robbery occurred in the Municipality of Penaranda, Nueva Ecija. Four days later or on 28 September 1992, the investigating authorities apprehended three suspects: Jordan Magat ("Magat"), Randy Reyes ("Reyes") and Valino. The police recovered most of the stolen items. However, a flower vase and a small radio were still missing. Cabanlig asked the three suspects where these two items were. Reyes replied that the items were at his house.

Cabanlig asked his colleagues, Padilla, Mercado, Abesamis and Esteban, to accompany him in retrieving the flower vase and radio. Cabanlig then brought out Reyes and Magat from their cell, intending to bring the two during the retrieval operation. It was at this point that Valino informed Cabanlig that he had moved the vase and radio to another location without the knowledge of his two cohorts. Cabanlig decided instead to bring along Valino, leaving behind Magat and Reyes.

Around 6:30 p.m., five fully armed policemen in uniform - Cabanlig, Padilla, Mercado, Abesamis and Esteban - escorted Valino to Barangay Sinasahan, Nueva Ecija to recover the missing flower vase and radio. The policemen and Valino were aboard a police vehicle, an Isuzu pick-up jeep. The jeep was built like an ordinary jeepney. The rear end of the jeep had no enclosure. A metal covering separated the driver's compartment and main body of the jeep. There was no opening or door between the two compartments of the jeep. Inside the main body of the jeep, were two long benches, each of which was located at the left and right side of the jeep.

Cabanlig, Mercado and Esteban were seated with Valino inside the main body of the jeep. Esteban was right behind Abesamis at the left bench. Valino, who was not handcuffed, was between Cabanlig and Mercado at the right bench. Valino was seated at Cabanlig's left and at Mercado's right. Mercado was seated nearest to the opening of the rear of the jeep.

Just after the jeep had crossed the Philippine National Railway bridge and while the jeep was slowly negotiating a bumpy and potholed road, Valino suddenly grabbed Mercado's M16 Armalite and jumped out of the jeep. Valino was able to grab Mercado's M16 Armalite when Mercado scratched his head and tried to reach his back because some flying insects were pestering Mercado. Mercado shouted "*hoy!*" when Valino suddenly took the M16 Armalite. Cabanlig, who was then facing the rear of the vehicle, saw Valino's act of taking away the M16 Armalite. Cabanlig acted immediately. Without issuing any warning of any sort, and with still one foot on the running board, Cabanlig fired one shot at Valino, and after two to three seconds, Cabanlig fired four more successive shots. Valino did not fire any shot.

The shooting happened around 7:00 p.m., at dusk or "*nag-aagaw ang dilim at liwanag*." Cabanlig approached Valino's body to check its pulse. Finding none, Cabanlig declared Valino dead. Valino sustained three mortal wounds - one at the back of the head, one at the left side of the chest, and one at the left lower back. Padilla and Esteban remained with the body. The other three policemen, including Cabanlig, went to a funeral parlor.

The following morning, 29 September 1992, a certain SPO4 Segismundo Lacanilao ("Lacanilao") of the Cabanatuan Police went to Barangay Sinasahan, Nueva Ecija to investigate a case. Lacanilao met Mercado who gave him instructions on how to settle the case that he was handling. During their conversation, Mercado related that he and his fellow policemen "salvaged" (summarily executed) a person the night before. Lacanilao asked who was "salvaged." Mercado answered that it was "Jimmy Valino." Mercado then asked Lacanilao why he was interested in the identity of the person who was "salvaged." Lacanilao then answered that "Jimmy Valino" was his cousin. Mercado immediately turned around and left.

Version of the Defense

Cabanlig admitted shooting Valino. However, Cabanlig justified the shooting as an act of self-defense and performance of duty. Mercado denied that he told Lacanilao that he and his co-accused "salvaged" Valino. Cabanlig, Mercado, Abesamis, Padilla, and Esteban denied that they conspired to kill Valino.

The Sandiganbayan's Ruling

The Sandiganbayan acquitted Padilla, Abesamis, Mercado and Esteban as the court found no evidence that the policemen conspired to kill or summarily execute Valino. Since Cabanlig admitted shooting Valino, the burden is on Cabanlig to establish the presence of any circumstance that would relieve him of responsibility or mitigate the offense committed.

The Sandiganbayan held that Cabanlig could not invoke self-defense or defense of a stranger. The only defense that Cabanlig could properly invoke in this case is fulfillment of duty. Cabanlig, however, failed to show that the shooting of Valino was the necessary consequence of the due performance of duty. The Sandiganbayan pointed out that while it was the duty of the policemen to stop the escaping detainee, Cabanlig exceeded the proper bounds of performing this duty when he shot Valino without warning.

The Sandiganbayan found no circumstance that would qualify the crime to murder. Thus, the Sandiganbayan convicted Cabanlig only of homicide. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused CARLOS ESTOQUE PADILLA, MEINHART CRUZ ABESAMIS, LUCIO LADIGNON MERCADO and RADY SALAZAR ESTEBAN are hereby ACQUITTED of the crime charged. Accused RUPERTO CONCEPCION CABANLIG is found GUILTY beyond reasonable doubt of the crime of Homicide and is hereby sentenced to suffer the indeterminate sentence of FOUR (4) MONTHS of arresto mayor, as minimum, to TWO (2) YEARS and FOUR (4) MONTHS of prision correccional, as maximum. He is further ordered to pay the heirs of

Jimmy Valino the amount of FIFTY THOUSAND (P50,000.00) PESOS, and the costs.

SO ORDERED.^[5]

On motion for reconsideration, Associate Justice Anacleto D. Badoy Jr. ("Associate Justice Badoy") dissented from the decision. Associate Justice Badoy pointed out that there was imminent danger on the lives of the policemen when Valino grabbed the "infallible Armalite"^[6] from Mercado and jumped out from the rear of the jeep. At a distance of only three feet from Cabanlig, Valino could have sprayed the policemen with bullets. The firing of a warning shot from Cabanlig was no longer necessary. Associate Justice Badoy thus argued for Cabanlig's acquittal.

In a vote of four to one, the Sandiganbayan affirmed the decision.^[7] The dispositive portion of the Resolution reads:

WHEREFORE, for lack of merit, the motion for reconsideration is hereby DENIED.^[8]

The Issues

Cabanlig raises the following issues in his Memorandum:

WHETHER THE SANDIGANBAYAN ERRED IN RULING THAT THE DEFENSE OF FULFILLMENT OF DUTY PUT UP BY CABANLIG WAS INCOMPLETE

WHETHER THE SANDIGANBAYAN ERRED IN RULING THAT CABANLIG COULD NOT INVOKE SELF-DEFENSE/DEFENSE OF STRANGER TO JUSTIFY HIS ACTIONS

WHETHER THE SANDIGANBAYAN ERRED IN SENTENCING CABANLIG TO SUFFER IMPRISONMENT AND IN ORDERING HIM TO PAY THE AMOUNT OF P 50,000 TO THE HEIRS OF VALINO^[9]

The Court's Ruling

The petition has merit. We rule for Cabanlig's acquittal.

Applicable Defense is Fulfillment of Duty

We first pass upon the issue of whether Cabanlig can invoke two or more justifying circumstances. While there is nothing in the law that prevents an accused from invoking the justifying circumstances or defenses in his favor, it is still up to the court to determine which justifying circumstance is applicable to the circumstances of a particular case.

Self-defense and fulfillment of duty operate on different principles.^[10] Self-defense is based on the principle of self-preservation from mortal harm, while fulfillment of duty is premised on the due performance of duty. The difference between the two justifying circumstances is clear, as the requisites of self-defense and fulfillment of duty are different.

The elements of self-defense are as follows:

- a) Unlawful Aggression;
- b) Reasonable necessity of the means employed to prevent or repel it;
- c) Lack of sufficient provocation on the part of the person defending himself.^[11]

On the other hand, the requisites of fulfillment of duty are:

- 1. The accused acted in the performance of a duty or in the lawful exercise of a right or office;
- 2. The injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office.^[12]

A policeman in the performance of duty is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm.^[13] In case injury or death results from the policeman's exercise of such force, the policeman could be justified in inflicting the injury or causing the death of the offender if the policeman had used necessary force. Since a policeman's duty requires him to overcome the offender, the force exerted by the policeman may therefore differ from that which ordinarily may be offered in self-defense.^[14] However, a policeman is never justified in using unnecessary force or in treating the offender with wanton violence, or in resorting to dangerous means when the arrest could be affected otherwise.^[15]

Unlike in self-defense where unlawful aggression is an element, in performance of duty, unlawful aggression from the victim is not a requisite. In ***People v. Delima***,^[16] a policeman was looking for a fugitive who had several days earlier escaped from prison. When the policeman found the fugitive, the fugitive was armed with a pointed piece of bamboo in the shape of a lance. The policeman demanded the surrender of the fugitive. The fugitive lunged at the policeman with his bamboo lance. The policeman dodged the lance and fired his revolver at the fugitive. The policeman missed. The fugitive ran away still holding the bamboo lance. The policeman pursued the fugitive and again fired his revolver, hitting and killing the fugitive. The Court acquitted the policeman on the ground that the killing was done in the fulfillment of duty.

The fugitive's unlawful aggression in ***People v. Delima*** had already ceased when the policeman killed him. The fugitive was running away from the policeman when he was shot. If the policeman were a private person, not in the performance of duty, there would be no self-defense because there would be no unlawful aggression on the part of the deceased.^[17] It may even appear that the public officer acting in the fulfillment of duty is the aggressor, but his aggression is not unlawful, it being necessary to fulfill his duty.^[18]

While self-defense and performance of duty are two distinct justifying circumstances, self-defense or defense of a stranger may still be relevant even if the