

FIRST DIVISION

[G.R. Nos. 149430-32, February 23, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CARMELO
CATBAGAN, APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.

The Case

Carmelo Catbagan appeals the May 19, 1999 Decision^[1] of the Regional Trial Court (RTC) of Malolos, Bulacan (Branch 21), in Criminal Case Nos. 1082-M-98, 1083-M-98 and 1099-M-98. In these cases, he was convicted of homicide, murder and frustrated murder, respectively.

The decretal portion of the RTC Decision reads as follows:

"In sum and considering the foregoing findings, the Court hereby resolves and so states that the defense has not been able to overcome the moral certainty established upon the accused's culpability. Stated otherwise, the prosecution has successfully discharged its undertaking herein. Accordingly, this Court finds and so holds that accused Carmelo Catbagan is GUILTY beyond reasonable doubt of the crimes of Homicide in Crim. Case No. 1082-M-98, Murder in Crim. Case No. 10^[8]3-M-98 and Frustrated Murder in Crim. Case No. 1099-M-98.

"In Criminal Case No. 1082-M-98, the Court hereby credits the accused with the mitigating circumstance of incomplete self-defense pursuant to Article 13, paragraph 1 of the Revised Penal Code. In which event, what should be imposable as penalty is the minimum of Reclusion Temporal. Considering the application of the Indeterminate Sentence Law, accused Carmelo Catbagan is hereby sentenced to suffer the indeterminate prison term of ten (10) years and one (1) day of Prision Mayor maximum to fourteen (14) years of Reclusion Temporal minimum.

"In Criminal Case No. 1083-M-98, absent any circumstance that would aggravate the commission of the crime, the accused is sentenced to suffer the penalty of Reclusion Perpetua together with the accessory penalties.

"In Criminal Case No. 1099-M-98, since the crime committed is Murder in its frustrated stage, it is the penalty next lower in degree that should be

imposed, which is Reclusion Temporal. However, with the application of the Indeterminate Sentence Law, accused Carmelo Catbagan is hereby sentenced to suffer the indeterminate prison term of ten (10) years of Prision Mayor medium to fifteen (15) years of Reclusion Temporal medium.

"In addition to the foregoing, the accused is also directed to pay the heirs of deceased Celso Suico the sum of P500,000.00 in loss of earning capacity, P50,000.00 as indemnity for Suico's death, and the further sum of P100,000.00 as and for moral damages. With respect to deceased Danilo Lapidante, the accused is ordered to pay his heirs the sum P400,000.00 in loss of earning capacity, the sum of P50,000.00 as indemnity for Lapidante's death, the sum of P100,000.00 as moral damages, and also the amount of P50,000.00 x x x for actual damages. Finally, respecting complainant Ernesto Lacaden, the accused is directed to pay him the sum of P50,000.00 as and for moral damages and the sum of P6,400.86 as actual damages.

"With costs against the accused."^[2]

Except for the names of the victims, two (2) similarly worded criminal Informations^[3] in Criminal Case Nos. 1082-M-98^[4] and 1083-M-98,^[5] both dated July 21, 1998, charged appellant as follows:

"That on or about the 15th day of March, 1998, in the [M]unicipality of San Jose del Monte, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, caliber .9MM pistol, and with intent to kill one x x x, did then and there wilfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault and shoot with the said caliber .9MM pistol said x x x, hitting the latter on the different parts of his body, thereby inflicting upon him mortal wounds which directly caused the death of the said x x x."^[6]

For the third crime, the Information,^[7] also dated July 21, 1998, charged appellant with frustrated murder allegedly committed in this manner:

"That on or about the 15th day of March, 1998, in the [M]unicipality of San Jose del Monte, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .9MM pistol, did then and there wilfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery, attack, assault and shoot with the said caliber .9MM pistol one Ernesto Lacaden y Tacata, thereby inflicting upon him physical injuries, which ordinarily would have caused the death of the said Ernesto Lacaden y Tacata, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to said Ernesto Lacaden y Tacata which prevented his death."^[8]

Appellant was arraigned on August 26, 1998 in Criminal Case Nos. 1082-M-98 and 1083-M-98. With the assistance of counsel *de oficio*,^[9] he pleaded not guilty to both charges.^[10] Thereafter, he was arraigned in Criminal Case No. 1099-M-98, in which, with the assistance of his counsel *de oficio*,^[11] he also pleaded not guilty.^[12]

Upon motion of appellant, the three cases were consolidated. After pretrial, trial on the merits ensued, and the lower court eventually promulgated its assailed Decision. Counsel^[13] for appellant filed the Notice of Appeal^[14] on July 5, 1999, but upon discovering that it contained an error in the designation of the court to which the case was being appealed, he filed an amended Notice of Appeal on September 10, 1999.^[15]

The Facts

Version of the Prosecution

In its Brief,^[16] the Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

"Danilo Lapidante, an employee of the Manila Water Company, held his birthday party on March 15, 1998, one day in advance of his actual birthdate. That was intended to accommodate his many relatives and friends who trooped to his residence that Sunday at Block 5, Lot 28, Phase C-1 Francisco Homes, Barangay Mulawin, San Jose del Monte, Bulacan Province. As it was already summertime, and on account of the big attendance, the party had to be held in a vacant space within the fenced perimeter, with vehicular and pedestrian steel gates. In front thereof was a narrow concrete street.

"Inasmuch as Lapidante saw to it that drinks like gin and beer and appetizers were plenty, even before 10:00 A.M., inevitably, the revelers were already displaying excitement. Some were engaged in singing over a 'karaoke,' while one Sgt. Celso Suico of the Philippine Air Force and of the elite Presidential Security Group, who lived in another phase of the subdivision, demonstrated his exuberance by firing shots into the air with his Armalite rifle. Since the gunshots continued to ring out, and election gun ban was then in effect, the attention of Carmelo Catbagan, an investigator of the Criminal Investigation Service, Philippine National Police, whose residential unit was just one block away south of the Lapidantes, was called.

"When, by 5:00 p.m., Catbagan went there to verify from the group who among them had been firing the rifle, no one of those within the fenced area gave a positive answer. The embar[r]assed Catbagan left the place. Coincidentally, some minutes before that, Lapidante, driving his owner-type jeep, conducted home some of his guests. Accompanying him were Sgt. Suico and his companion Ernesto 'Jun' Lacaden. Even as they returned the Armalite to the PSG's residence at Phase M, Suico substituted it with a government-issued Springfield .45 caliber pistol which he tucked to his waistband as they went back to rejoin the party.

"By about 5:30 p.m., while the celebrants were being entertained with a

song by the eldest daughter of Lapidante, Catbagan with [Zosimo] (Jess) Fababier returned to Lapidante's place on board a motorized tricycle. This time, after he alighted on the street in front, when Catbagan inquired about the gunshots of the Armalite, Sgt. Suico answered that 'It's nothing; it's just a part of the celebration'. Suddenly, a piece of stone hurled from the direction of the celebrant's house landed on a tree and thence to the body of Catbagan. Irritated and reacting thereto, the CIS agent directed Fababier to look for the one who threw the stone.

"At that moment, Sgt. Suico got out of the pedestrian steel gate and extended his hand towards Catbagan in the street as he introduced himself as being a PSG. Completely ignoring the gesture of the latter, Catbagan drew out his .9mm automatic pistol and with both hands holding the gun, fired successively at Suico, who when hit stretched out his hand, shouting 'Huwag (Don't) Pare.' Despite this Catbagan fired more shots at the victim who fell on the pavement, bloodied and dying from mortal wounds.

"As the shots were fired, Jun Lacaden who was taking a nap on the front seat of the owner-type jeep parked on the other side of the street, in front of the residential unit of Aida Villanueva, was abruptly awakened. Not fully aware of what happened, he disembarked therefrom without knowing what to do. Unexpectedly, two shots were also fired at him by Catbagan. One bullet found its mark in the body of Jun Lacaden who then fell down.

"Almost simultaneously, Catbagan directed his attention to Lapidante who was then inside their compound in the vicinity of their steel main gate. Upon the prompting of his wife Rosita for him to run and evade the assailant, the celebrant turned towards the main door of their house. But before he could reach the safety of their abode, two rapid shots were aimed by Catbagan at him, one of which hit him in the upper part of his body.

"After causing the mayhem, Catbagan then proceeded eastward to the main road. Thereupon, Charles Lacaden picked up the weapon of the PSG man and threw it to a vacant lot somewhere at the rear of the house and lot of Lapidante. As a consequence of the injuries they sustained, Sgt. Suico died on the spot; Lapidante later died in the hospital in Lagro, Quezon City; whereas Jun Lacaden had to be treated and confined at the East Avenue Medical Center, Quezon City.

"Police investigators went to the scene and there recovered some pieces of evidence.

The .45 caliber Springfield pistol of Suico was retrieved in a place at the back of the Lapidante residence. With a bullet vertically standing on the chamber, it had misfired due to some vital defects. There were six (6) live ammunitions of the .45 caliber pistol excluding the vertical one. No empty shell of .45 caliber pistol were recovered. There were nine (9) empty shells of the .9 mm pistol; and a deformed slug of the same weapon, aside from many shells from the Armalite rifle.

"Upon examination of Sgt. Suico's body, Dr. Dominic Aguda of the National Bureau of Investigation found four (4) gunshot wounds, to wit:

- No. 1 - left upper chest;
- No. 2 - left chest above left nipple;
- No. 3 - left anterior portion of forearm;
- No. 4 - right palm (inside)

"Dr. Aguda concluded that the victim died from massive bleeding of the four injuries. The most fatal was wound No. 1 as it perforated the aorta and the right upper lung. Death therefrom was instantaneous. He opined that this wound was inflicted in a level from a higher plane, whereas the others may have been inflicted on some level with the victim. Suico died of massive bleeding.

"As regards the victim Lapidante, as shown by Dr. Aguda's schematic sketch and the post-mortem autopsy report, the entry wound was at the left side of the back, exiting at the right anterior portion of the chest in a forward and upward trajectory. The bullet hit the upper left tube of the left lung and then penetrated the upper lobe of the right lung. The victim also died from massive bleeding.

"From the shapes and measurement of the wound of entry, Dr. Aguda stated that the (weapon) firearm used in the shooting of the two victims were probably the same, they being approximately 1 x 1 cm.

"With respect to Jun Lacaden, Dr. Cristina Atienza of the East Avenue Medical Center found that he was hit at the right side of the back, the scapular and the bullet exited at the uppermost part of the left arm, near the armpit. She said that as the slug entered the thoracic cavity, they had to insert a tube to evacuate blood. Said victim was confined for more than one week, and it would have taken another 30 days for the victim to resume his usual activity."^[17]

Version of the Defense

Appellant argues that he was justified in shooting the victims, as he was merely defending himself and fulfilling his sworn duties. On the basis of these justifying circumstances, he insists on his acquittal. In his Brief,^[18] he summarizes his version of the facts as follows:

"The defense had a different version of the circumstances that led to the shooting incident on March 15, 1998. On said date, between 9:00 and 11:00 in the morning, **ERNESTO PURBOS** heard successive gunshots coming from the residence of Danilo Lapidante at San Francisco Homes, San Jose del Monte, Bulacan. The gunshots numbered about ten (10) in the span of two (2) hours. Alarmed and scared, as there were children then playing in the vicinity, he went to the house of Carmelo Catbagan to report the gun firing incident. He pleaded Catbagan, known in their place as a policeman, to maintain the peace in the neighborhood. He was worried that the children might be hit accidentally by the revelry. Catbagan retorted not to mind the revelers, as they were just drinking.