

## THIRD DIVISION

[ G.R. Nos. 147814-15, September 16, 2003 ]

**RAUL ZAPATOS Y LEGASPI, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Since the olden times, no impulse has been proven so powerful than that of self-preservation. Thus, the law, out of tenderness for humanity, permits the taking of life of another in defense of one's person in times of necessity. In the words of the Romans of ancient history: *Quod quisque ob tutelam corporis sui fecerit, jure suo fecisse existimetur.*<sup>[1]</sup>

Assailed in this petition for review on certiorari is the Decision<sup>[2]</sup> dated March 27, 2001 of the Sandiganbayan in Criminal Cases Nos. 17015 and 17016 finding Raul Zapatos, petitioner herein, guilty beyond reasonable doubt of the crimes of murder and frustrated murder and sentencing him as follows:

"**WHEREFORE**, under Criminal Case No. 17015, the accused **RAUL ZAPATOS**, is hereby found **GUILTY** beyond reasonable doubt of the crime of **MURDER**, defined and penalized under Article 248, Revised Penal Code and, considering the presence of one (1) mitigating circumstance with no generic aggravating circumstance, he is hereby sentenced to suffer the penalty of imprisonment of **RECLUSION PERPETUA** and to indemnify the heirs of the late Mayor Leonardo Cortez in the amount of P50,000.00;

"Under Criminal Case No. 17016, the same accused, **RAUL ZAPATOS**, is hereby found **GUILTY** beyond reasonable doubt of the crime of **FRUSTRATED MURDER**, defined and penalized under Article 248 in relation to Article 6 of the Revised Penal Code, and, considering the presence of one (1) ordinary mitigating circumstance of voluntary surrender which is not offset by any generic aggravating circumstance, applying the Indeterminate Sentence Law he is hereby sentenced to suffer the penalty of from Six (6) Years and One (1) day of **prision mayor**, as minimum to Twelve (12) Years and One (1) day to Fourteen (14) years and Eight (8) Months of **reclusion temporal**, as maximum, and to indemnify **SOCRATES PLATERO** in the amount of P25,000.00 by way of civil indemnity.

"The accused shall pay the costs.

"**SO ORDERED.**" (Emphases supplied)

In two separate Informations, Special Prosecution Officer Gualberto J. Dela Llana charged both petitioner and Victoriano Vidal<sup>[3]</sup> with murder and frustrated murder, committed as follows:

#### **Criminal Case No. 17015 (Murder)**

"That on or about January 14, 1990, at Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, being then an employee and Community Environment Natural Resources Officer, respectively of the Department of Environment and Natural Resources, assigned at Bayugan, Agusan del Sur, and committing the crime herein charged **in relation to their office, with treachery and evident premeditation** and with intent to kill and with the use of firearm, did then and there willfully, unlawfully and feloniously attack and shoot **Leonardo Cortez**, Municipal Mayor of Bayugan, Agusan del Sur, hitting him at the vital parts of his body and inflicting upon said Leonardo Cortez mortal wounds which caused his instantaneous death, to the damage and prejudice of the victim's heirs.

**"CONTRARY TO LAW."**<sup>[4]</sup>

#### **Criminal Case No. 17016 (Frustrated Murder)**

"That on or about January 14, 1990, at Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, being then an employee and Community Environment Natural Resources Officer, respectively of the Department of Environment and Natural Resources, assigned at Bayugan, Agusan del Sur and committing the crime herein charged **in relation to their office**, with intent to kill and with the use of firearm, did then and there willfully, unlawfully and feloniously attack and shoot one **Socrates Platero**, hitting him at his left leg and inflicting upon said Socrates Platero mortal wound which could have caused his death had it not been for the timely medical assistance given him to the damage and prejudice of said victim.

**"CONTRARY TO LAW."**

On arraignment, petitioner pleaded "not guilty."<sup>[5]</sup> Forthwith, trial ensued.<sup>[6]</sup>

The case for the prosecution is woven basically on the testimony of Socrates Platero as follows: On January 14, 1990, at 8:00 o'clock in the evening, witness Platero and Mayor Leonardo Cortez of Bayugan, Agusan Del Sur were on their way home from Butuan City.<sup>[7]</sup> En route, the patrol car they were riding ran out of gasoline, prompting them to stop at the Bureau of Internal Revenue (BIR) Monitoring Station, Barangay Maygatasan, Bayugan. With no gasoline to spare, Station Guard Pfc. Michael Gatillo accompanied them to the nearby Department of Environment and Natural Resources (DENR) checkpoint.<sup>[8]</sup> There, they found Pacheco Tan. **Pfc. Gatillo approached Tan and requested for extra gasoline.** Suddenly, Tan ran towards the guardhouse.<sup>[9]</sup> After "a few seconds," Platero heard a gunshot

originating therefrom. The bullet hit Mayor Cortez, causing him to collapse to the ground.<sup>[10]</sup> Thereupon, Platero saw petitioner Raul Zapatos, "*holding an armalite in a firing position.*" Platero immediately retaliated and an exchange of gunfire ensued. During this time, Platero tried to pull Mayor Cortez away from the crossfire. Platero's foot was hit.<sup>[11]</sup> He did not see who shot him.<sup>[12]</sup> He then took cover on the other side of the highway.

Pfc. Gatillo testified that he was the policeman assigned at the BIR Monitoring Station on January 14, 1990.<sup>[13]</sup> At about 8:00 o'clock in the evening, he accompanied Platero and Mayor Cortez to the DENR checkpoint to ask for some gasoline.<sup>[14]</sup> **Upon seeing Tan, he asked him about petitioner's whereabouts. Tan replied that petitioner was sleeping inside the guardhouse.**<sup>[15]</sup> **Mayor Cortez also inquired from Tan where petitioner was. Tan merely reiterated his answer.**<sup>[16]</sup> Then Tan walked towards the guardhouse and "*in a matter of seconds,*" he (witness Gatillo) saw petitioner firing his gun at Mayor Cortez.<sup>[17]</sup> Mayor Cortez fell to the ground with blood oozing from his mouth.<sup>[18]</sup> Platero attempted to pull Mayor Cortez but another shot was fired and this time, the Mayor was hit on the leg. While running across the highway to take cover, Platero was also hit on the leg.<sup>[19]</sup> When the shooting stopped, he (Gatillo) brought Platero and Mayor Cortez to Bayugan Community Hospital.<sup>[20]</sup>

Dr. Romeo Cedeño, Chief of the Bayugan Community Hospital, declared that when he attended to Mayor Cortez on January 14, 1990,<sup>[21]</sup> the latter was already dead. He did not conduct an autopsy or examine the wounds. He merely conducted a superficial examination which showed that four (4) wounds had been inflicted upon Mayor Cortez – one in the vicinity of the left nipple, one on the right axillary region, one on the right knee, and another on the left iliac region.<sup>[22]</sup>

Building his case on the justifying circumstance of self-defense, petitioner presented a different version. He testified that he was the Team Leader of the DENR Sentro Striking Force whose primary duty is to seize illegally-cut forest products.<sup>[23]</sup> He held office at the DENR checkpoint, Barangay Maygatasan, Bayugan, Agusan del Sur. On January 14, 1990, at about 7:00 o'clock in the evening, he instructed Pacheco Tan, his co-worker, to man the checkpoint as he was sleepy. **He also directed Tan to wake him up should there be any problem.**<sup>[24]</sup> While sleeping, a burst of gunshots awakened him. He saw that the guardhouse was being riddled with bullets,<sup>[25]</sup> piercing the walls and hitting some objects inside. Immediately he dropped to the floor and took the armalite rifle from the locker located under his bed.<sup>[26]</sup> Hiding behind a barricade, he fired at his attackers. Thereafter, fearing for his life, he broke the flooring of the guardhouse and crawled through the hollow portion underneath to reach its back door.<sup>[27]</sup> He walked away until he reached Nilo Libres' house where he stayed overnight.<sup>[28]</sup> The next day, he heard the news that Mayor Cortez was killed.<sup>[29]</sup> He immediately surrendered himself and his armalite rifle to Sgt. Benjamin Amorio of the Philippine Army Brigade, Prosperidad, Agusan del Sur.<sup>[30]</sup>

Pacheco Tan corroborated petitioner's testimony. On the same date and time, petitioner, who was about to sleep, instructed Tan to take the first shift. While

petitioner was sleeping, Pfc. Gatillo, Mayor Cortez and Platero arrived.<sup>[31]</sup> **Pfc. Gatillo approached Tan and inquired where petitioner was. He replied that petitioner was sleeping inside the guardhouse.**<sup>[32]</sup> Pfc. Gatillo returned to the parked patrol car where Mayor Cortez and Platero were waiting. **Tan noticed that there were other policemen within the vicinity.**<sup>[33]</sup> Then, Mayor Cortez and Platero, each carrying an M-16 rifle, alighted from the vehicle and approached the guardhouse. **Again, Mayor Cortez asked Tan where petitioner was. Again Tan gave him the same answer.**<sup>[34]</sup> Mayor Cortez reacted in disbelief, saying "ah." Suddenly, Tan heard a burst of gunshots directed at the guardhouse. He immediately ducked on the ground and then ran towards the *pasillo* leading to the back of the guardhouse.<sup>[35]</sup> Seized by fear, he was not able to wake petitioner.<sup>[36]</sup> He ran away and, upon reaching a banana plantation, stayed there until morning.<sup>[37]</sup> The next day, he went to the Chief of Police of Sibagat, Agusan del Sur.<sup>[38]</sup> He was brought to the Bayugan Police Station so that he could give a statement regarding the incident. But he refused to sign the typewritten statement prepared by the Bayugan Police because it pinpoints to petitioner as the killer of Mayor Cortez. He was against such statement because he did not see petitioner shot Mayor Cortez.<sup>[39]</sup>

NBI Agent Virgilio Decasa testified that upon inspecting the DENR checkpoint at Maygatasan, Bayugan, he observed that it was riddled with bullets.<sup>[40]</sup> The locations of the bullet holes showed that those responsible surrounded the building.<sup>[41]</sup> From his investigation, it was Mayor Cortez, together with Platero and Pfc. Gatillo, who approached the DENR checkpoint. They were followed by several policemen who were instructed by Mayor Cortez "*to prepare for any eventuality.*"<sup>[42]</sup> He was not able to collect the guns and have them tested by the NBI's ballistic technician because the policemen refused to submit themselves to an investigation.<sup>[43]</sup> He recommended that the cases filed against petitioner be reviewed and/or investigated to prevent injustice.<sup>[44]</sup>

Lazarito Estorque recounted that on January 14, 1990, at about 5:30 o'clock in the afternoon, he and Mayor Cortez were having a "drinking session" at the house of his *compadre* Bong Kadao. Mayor Cortez, together with his three (3) policemen, left Kadao's house at 7:00 o'clock in the evening.<sup>[45]</sup>

Consequently, two Informations for frustrated murder and murder, docketed as Criminal Cases Nos. 414 and 415, were filed with the Regional Trial Court (RTC), Branch VII, Bayugan Agusan del Sur. Pursuant to this Court's Resolution dated August 2, 1990, the venue was transferred to the **RTC, Branch V, Butuan City** where the cases were docketed as Criminal Cases Nos. 4194 and 4195. Before petitioner could be arraigned, the private prosecutor filed with the RTC a motion to refer the cases to the Sandiganbayan but it was denied in an Order dated March 11, 1991.<sup>[46]</sup> **Petitioner was then arraigned and pleaded not guilty to both charges.**<sup>[47]</sup>

The private prosecutor filed with this Court a petition for certiorari questioning the order of the RTC, but the same was dismissed.<sup>[48]</sup> This time, the public prosecutor filed with the RTC an Omnibus Motion to Dismiss<sup>[49]</sup> on the ground of lack of

jurisdiction. On August 9, 1991, the RTC issued an Omnibus Order<sup>[50]</sup> granting the motion and dismissing Criminal Cases Nos. 4194 and 4195. This prompted Special Prosecution Officer Dela Llana to file with the Sandiganbayan the two Informations quoted above.

In this petition, petitioner ascribes to the Sandiganbayan the following errors:

- "A. THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN NOT FINDING THAT DOUBLE JEOPARDY HAS ALREADY ATTACHED AND THAT IT HAD NO JURISDICTION OVER THE CASES;**
- B. THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT PETITIONER IS GUILTY OF THE CRIMES CHARGED DESPITE OVERWHELMING ABSENCE OF PHYSICAL EVIDENCE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT;**
- C. THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN NOT GIVING DUE CREDENCE TO THE FINDINGS OF THE NATIONAL BUREAU OF INVESTIGATION AS WELL AS THE TESTIMONY OF NBI INVESTIGATING AGENT VIRGILIO M. DECASA;**
- D. THE HONORABLE SANDIGANBAYAN ERRED IN GIVING FULL FAITH AND CREDENCE TO THE CONTRADICTING TESTIMONIES OF PROSECUTION WITNESSES SOCRATES PLATERO AND MICHAEL GATILLO;**
- E. THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN FINDING THAT THERE EXISTS PROOF BEYOND REASONABLE DOUBT THAT PETITIONER IS GUILTY OF THE CRIMES CHARGED;**
- F. GRANTING WITHOUT ADMITTING LIABILITY FOR THE CRIMES CHARGED, THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN NOT FINDING THAT PETITIONER ACTED IN SELF-DEFENSE; AND**
- G. GRANTING WITHOUT ADMITTING GUILT FOR THE CRIMES CHARGED, THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN FINDING THE EXISTENCE OF TREACHERY."**

The People counters that since petitioner was on a 24-hour duty as Team Leader of the DENR Sentro Striking Force when the crimes took place, it follows that his acts were committed in relation to his office. Necessarily, the previous dismissal of his cases by the RTC could not result in double jeopardy.<sup>[51]</sup> The presentation of petitioner's weapon or the autopsy report is immaterial considering that both Pfc. Gatillo and Platero positively identified petitioner as the culprit.<sup>[52]</sup> Moreover, the inconsistencies in the testimonies of the prosecution witnesses do not in any manner affect their credibility for they merely involve immaterial matters.<sup>[53]</sup> Lastly,