

## THIRD DIVISION

[ G.R. No. 143071, August 06, 2002 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SPO2 JOSE  
MAGNABE JR., APPELLANT.**

### D E C I S I O N

**PANGANIBAN, J.:**

By invoking self-defense, the accused admits killing the victim. Hence, the constitutional presumption of innocence is effectively waived, and the burden of proof shifts to the appellant. Where aggression on the part of the victim is not proved, the prayer for acquittal collapses and conviction becomes inevitable. Notwithstanding the foregoing, we clarify that the implied admission of a killing does not include that of the qualifying circumstance of treachery. When the prosecution fails to prove treachery, the accused may be held liable only for homicide, not murder.

**The Case**

SPO2 Jose T. Magnabe Jr. appeals the March 30, 2000 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 219, in Criminal Case No. Q95-63296. The RTC found him guilty of murder beyond reasonable doubt and sentenced him to reclusion perpetua, as follows:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime charged in the Information, the Court hereby sentences the accused:

- a] to suffer the penalty of Reclusion Perpetua;
- b] to pay the heirs of Sgt. Cajucom the amount of P50,000.00 as actual damages; P50,000.00 as moral damages; P75,000.00 as indemnity for his death; P50,000.00 as exemplary damages; and P863,452.80 for the loss of his earning capacity plus interest from the date of his death at the rate of six (6%) percent per annum; and
- c] to pay the costs."<sup>[2]</sup>

In an Information dated October 2, 1995, Assistant City Prosecutor Restituto A. Sevilla charged appellant in these words:

"That on or about the 17th day of September 1995, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill and by means of treachery, evident premeditation and taking advantage of superior strength, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence

upon the person of SPO2 PERFECTO CAJUCOM Y CUYA, by then and there, shooting him with a gun several times, hitting him on different parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the late SPO2 PERFECTO CAJUCOM Y CUYA.”

[3]

Upon his arraignment on March 20, 1996,<sup>[4]</sup> appellant, assisted by his counsel,<sup>[5]</sup> pleaded not guilty. After trial in due course, the court a quo rendered the assailed Decision.

## The Facts

### *Version of the Prosecution*

In its Brief,<sup>[6]</sup> the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts as follows:

“About 10:30 p.m. of September 17, 1995, Emilio Andan, a Barangay Kagawad, together with a certain Delmo, Popoy Ortega and Jose Manabo, another Kagawad, went to Tyler’s Videoke Bar located at the corner of E. Rodriguez Blvd. and Lopez Jaena St., Quezon City. They each ordered a bottle of beer.

“About five (5) minutes later, a certain Noel, a friend of Kagawad Manabo, joined the group. About twenty (20) minutes later, a group of five (5) youngsters, including Jomel Magnabe, son of appellant, arrived.

“Almost an hour later, the group of the youngsters started making trouble inside Tyler’s. They kicked, punched and hit with bottles of beer the group of Kagawad Andan.

“Kagawad Andan, not knowing that his side was hit with a dart by a member of Jomel Magnabe’s group rushed out of the bar. Outside, he chanced upon SPO2 Perfecto Cajucum and asked for help.

“SPO2 Cajucum was then with Ma. Cristina Crisanta Manabo, his teammate in bowling. The two had just finished taking a snack at the Goodies Carinderia along Sto. Tomas Street. They were on their way to visit Ms. Manabo’s friend.

“As soon as Kagawad Andan informed SPO2 Cajucum of the commotion, the former pointed to two (2) malefactors standing some fifteen (15) meters away. The two (2) immediately ran and SPO2 Cajucum shouted ‘Tigil, pulis ako!’. The latter then pulled out his gun, fired a warning shot and ran after the two (2).

“Kagawad Andan, on the other hand, looked for a tricycle and proceeded to the Jose Reyes Memorial Hospital for treatment.

“Ms. Manabo followed SPO2 Cajucum when he ran after the two. Said police officer was able to catch up with one of them at the door of a house selling La Paz Batchoy, along Cordillera Street.

“Ms. Manabo was then beside a lam[p]post just opposite said house selling La Paz Batchoy. The area was well lighted, there being many lights

and a night club adjacent to said house.

"SPO2 Cajucom told the one he caught, 'Halika, sumama ka!'. However, the latter refused to go with the former. Besides, the people inside the house were trying to pull him away from SPO2 Cajucom who refused to let go of his hold.

"While the tagging and dragging was going on, a taxicab arrived bearing herein appellant SPO2 Jose Magnabe. He alighted, watched what was happening, pulled a gun and, while at the back of SPO2 Cajucom, pointed the same at the latter's neck.

"Barely five (5) meters away, Ms. Manabo was able to recognize SPO2 Magnabe who is familiar with the latter, being assigned in Galas, Quezon City where she lives.

"When SPO2 Cajucom turned his head and shoulder to his right, appellant immediately shot him on the clavicle. Said victim was then no longer holding his gun, being preoccupied with pulling with both his hand[s] Jomel Magnabe the person he caught.

"After the shot, appellant pushed SPO2 Cajucom inside the house. The man the latter caught then pulled him inside, and appellant closed the door. Thereafter, Ms. Manabo heard gunshots, and shouts of women.

"When appellant later came out, Ms. Manabo immediately ran to him, told him what she saw, and asked where SPO2 Cajucom was. SPO2 Magnabe answered 'Anong sinasabi mo, wala akong alam sa sinasabi mo'. And when told that she witnessed him shoot SPO2 Cajucom, SPO2 Magnabe just stared at Ms. Manabo.

"Ms. Manabo got scared and immediately ran away. Along E. Rodriguez Avenue, she met a mobile patrol car and briefly related what she witnessed. She then pointed to appellant who was still staring at her.

"When confronted by the responding police officers, appellant uttered 'Walang papasok. Wala munang makikialam. Hintayin natin ang imbestigador'.

"Despite the arrival of another mobile car, appellant continued to refuse to allow entry inside the house.

"On the other hand, still afraid, Ms. Manabo ran and went home.

"The body of said victim was later autopsied by Dr. Ma. Cristina Freyra, a medico-legal officer who issued Medico-Legal Report No. M-1443-95 wherein it was stated that SPO2 Cajucom died of 'multiple gunshot wounds'.

"During the autopsy, Dr. Freyra found that SPO2 Cajucom [sustained] five (5) wounds, four (4) of which were gunshot wounds and one (1) lacerated wound. Wound No. 1 was located on the left supraclavicular region and had tattooing near it. Wound No. 2 was a lacerated wound on the left parietal region. Wound No. 3 was a gunshot wound in the epigastric region which went through and through. Wound No. 4 was a

gunshot wound on the left anterior lumbar region. Wound No. 5 was a gunshot wound on the left coastal region.

"Dr. Freyra declared that all the gunshot wounds were fatal because they penetrated the vital organs. The first gunshot wound penetrated the upper lobe of the liver and the lungs. The second wound reached the left dome of the diaphragm and the left lobe of the liver and the pancreas. The third wound found its way up to the loops and mesentery of the large intestine. The fourth wound slipped up to the left dome of the diaphragm, loops of the large intestine, and both kidneys."<sup>[7]</sup> (Citations omitted)

### *Version of the Defense*

Invoking self-defense, appellant narrates his version of the facts in the following manner:<sup>[8]</sup>

"On September 17, 1995, an advance birthday party was given to the grandson of accused. After Rodnel had helped in the preparation of the food at about 5:00 in the afternoon, Rodnel sought x x x permission from accused's wife, Teresita, to leave the house. When he failed to see the person he would meet he proceeded to a carinderia named Foodchow located just near the accused's house at the other side of E. Rodriguez Street. He just sat there until [his] brother, Roger Padilla, with three (3) friends, namely: Edgar, Lloyd and Roland, arrived at about 11:30 in the evening.

"Meantime, at x x x Magnabe's birthday, the visitors started to go home and among them were Josephine Moreno and her son. Since it was already late in the evening, accused and his sons, upon the request of Josephine accompanied the latter to Novaliches on board a taxicab.

"On the other hand, brothers Rodnel and Roger Padilla, in the company of Edgar, Lloyd and Roland went to Tyler's Videoke-Bar (Tyler's for short)[.] They sat at the table located at the right side of the door and ordered only five (5) bottles of beer. Thereafter, one of his companions, Roland, caused a loud sound with the use of a Humpty-Dumpty, chichiria wrapper. It immediately caught the attention of the group of eight (8) persons, one of them later identified as the deceased Sgt. Cajucom, who [was] seated at the other table. One of them remarked: 'Pare, HAPPY NEW YEAR, para sa ating lahat iyan' - After two of Rodnel's companions left the place, five (5) persons stood up from the other table and approached Rodnel's group and asked 'Pare, ano ba'ng problema ninyo?' Rodnel answered: 'Wala, pare . . . walang problema sa amin!'

"Trouble then ensued. Lloyd and Roland were hit with bottles and a chair while Rodnel was punched by one of the five (5) men on his right cheek. Rodnel ran out and he was pursued by the other three (3) persons, namely, the deceased [Sgt.] Cajucom who was in civilian clothes, wearing a white T-shirt; and Kagawads Andan and Manabo. While he was at the vicinity of [F]oodchow, he saw that the two kagawads still pursued him while [Sgt.] Cajucom had stayed in the middle of the road.

"Then a fistfight ensued between Rodnel and the two kagawads and Rodnel having been able to subdue his two attackers tried to run towards

the accused's house whereupon he was accosted by Sgt. Cajucom who said: 'Huwag kang tatakbo, pulis ako!' which the former answered back, saying: 'Pulis ka pala, kanina pa kami nagsusuntukan, hindi mo kami inawat[,] and continued running towards his house[.] Sgt. Cajucom followed him and when he turned his head back he saw [Sgt.] Cajucom pulling a gun from his belt bag strapped in his waist[.] Then Rodnel felt pains at his right leg as he was hit at his right ankle.

"Despite his injury, Rodnel was able to reach the accused's house but Sgt. Cajucom followed him. Inside the house, Sgt. Cajucom held Rodnel by his waist and pointed his gun, a .38 caliber revolver, at his head. Surprised by what was happening inside the house, the wife of the accused pleaded 'Sandali . . . sandali baka pwede nating pag-usapan ito . . . ano bang nangyari? . . . Pulis din naman ang asawa ko . . . baka pwede nating hintayin ang asawa ko at pag-usapan natin?' But the gun-wielding man reasoned out: 'Ayoko . . . hindi pwede . . . pulis pa rin ako!' and continued pulling Rodnel outside. While the pleadings of the accused's wife were being made, Sgt. Cajucom was pointing his gun to those inside the sala at that time so no one could approach him.

"At that moment, the accused was coming home and while still on board the taxicab, he noticed many people milling in front of their house and one was shouting to him, saying 'Mang Jun . . . Mang Jun . . . may tao sa loob ng bahay ninyo, may baril!' By police instinct, the accused walked cautiously towards the door and saw at their sala, Sgt. Cajucom pointing his gun at the head of his nephew Rodnel.

"The accused asked Sgt. Cajucom: 'Pare, ibaba mo iyang baril mo baka may matamaan dito sa pamilya ko' or words of similar [import]. But Sgt. Cajucom who appeared to be not in his senses 'parang wala sa sarili . . . lasing' ignored him. The accused continued to approach Sgt. Cajucom and [pleaded] with him to put his gun down, afraid that his family might be hurt. Accused's wife introduced him to Sgt. Cajucom and told him that he was also a policeman. Accused also introduced himself pleading 'Brod, baka puwedeng ibaba mo 'yang baril mo at pag-usapan natin ito dahil pulis din naman ako[,] and, further, saying 'Pareho tayong pulis.' [B]ut the latter answered back, in hostile language saying, 'Eh ano kung pulis ka!' and/or 'Hindi kita kilala! and/or 'Wala akong pakialam kung pulis ka!' The accused continued pleading, saying: 'Hindi . . . pag-usapan na lang natin ito . . . pulis Galas ako . . . hindi mo ako kilala.' which was answered by Sgt. Cajucom in this wise 'Ah . . . basta hindi kita kilala.'

"After saying those words, Sgt. Cajucom let go of Rodnel and thereafter, faced the accused, and [pointed] his gun at him. The accused instinctively grabbed and raised the left hand of Sgt. Cajucom which held the gun and parried it assuring himself that if it would go off it would not hit any member of his family. As it happened, the gun held by Sgt. Cajucom went off hitting the ceiling of their house. Accused at once brought down the left hand of Sgt. Cajucom which still held the gun and signaled his family to move out of the way.

"The accused tried to shove his wife, and turned to his right towards his wife but the gun went off for the second time hitting his left buttock.