

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PABLO SAMONTE, JR., DEFENDANT-APPELLANT.***G.R. No. L-31225. June 11, 1975*

Ponente: MAKASIAR, J.

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Sentenced to death for murder by the Circuit Criminal Court of the Seventh Judicial District, accused-appellant Pablo Samonte, Jr., a member of the Metrocom detailed with the CAA, insists in his invocation of the justifying circumstance of self-defense. The Solicitor General submits that appellant is guilty only of homicide (pp. 8-10, Appellee's brief, p. 145, rec.).

There is no dispute as to the fact that the deceased Agustin Santiago, Jr., was fatally shot by the appellant Pablo Samonte, Jr. at about 11:30 in the evening of July 25, 1969, during a wake being held at 5 Ventanilla Street, Pasay City, for the death of Pablo Samonte, Sr., father of herein defendant-appellant.

At about the aforementioned time and date, the deceased, in the company of Jesus Dy, David Pagulayan, Angelito Caras and others, agreed to attend the wake and to extend their condolences to the family of the departed father of defendant-appellant (pp. 3-4, 22, T.s.n., October 6, 1969).

Upon arrival at the house where the wake was being held, the group seated themselves outside the house and did not bother to go upstairs in order to view the remains then lying in state (p. 17, rec.). The group stayed within the premises of the wake for about thirty minutes and after extending their sympathies with the brother of defendant-appellant, they started to leave (p. 12, T.s.n., October 6, 1969). Jesus Dy, who walked ahead of the group, suddenly heard somebody shouting, "Ambot, huwag, Ambot, huwag." (Ambot is the nickname of appellant Pablo Samonte, Jr.) and then a gunshot followed. When he turned around to see what the commotion was all about, he saw Agustin Santiago, Jr. fall (p. 5, T.s.n., October 6, 1969). He further saw defendant-appellant Pablo Samonte, Jr. holding a .45 caliber pistol (pp. 6-7, T.s.n., October 6, 1969). Defendant-appellant, after having fired the shot, ran away (p. 7, T.s.n., October 6, 1969). Thereafter, Jesus Dy and his friends brought to the Philippine General Hospital the bleeding Agustin Santiago, Jr., who was pronounced dead on arrival (pp. 6-8, T.s.n., October 6, 1969).

The shooting incident was reported that same night to the Pasay City Police Department (p. 32, T.s.n., October 6, 1969). Police Sergeant Calderon, Patrolman Leyba and Patrolman Morales, assigned to the case, proceeded to the scene of the crime about 1:00 in the morning and talked to the brother of herein defendant-appellant, who confirmed the shooting thus reported. They were likewise informed that the victim was brought to the Philippine General Hospital. They also gathered from witnesses that one Pablo Samonte, Jr. was the one who shot the victim (pp. 32-33, T.s.n., October 6, 1969). At the scene of the incident, the police officers were able to recover an empty .45 caliber shell and a .22 caliber paltik beside it (p. 34, T.s.n., October 6, 1969). The investigators then proceeded to the Philippine General Hospital and to the funeral parlor, where they viewed the remains of the deceased (pp. 6-7, T.s.n., October 13, 1969). Later, the police officers located the companions of the deceased that fateful night,

namely, Jesus Dy, David Pagulayan and Angelito Caras, all of whom executed their sworn statements before Sgt. Calderon, the Fiscal and Pat. Leyba (pp. 7-9, T.s.n., Oct. 13, 1969; Exhibits "C", "D" and "E", pp. 85-87, CCC rec.).

The following day, July 26, 1969, the body of the deceased Agustin Santiago, Jr. was brought to the National Bureau of Investigation for autopsy. Dr. Jesus Crisostomo, NBI Medical Supervisor, conducted the autopsy on the body of the deceased and thereafter executed a necropsy report which contained the following findings:

"Gunshot wound:

"1. Entry - left mammary region, 6.5 cms. left of anterior median line and 125.0 cms. above left heel; roughly oval, 1.5 x 1.1 cms. including contusion collar; directed to the right almost horizontally and very slightly backward; involving the left 4th intercostal space, the right ventricle of the heart; right dome of the diaphragm and lower lobe of right lung before making an exit, at the right infra-axillary region, roughly stellate, 1.9 x 1.5 cms.

"Re-entry, medial aspect, middle, third arm right, 2 x 1.5 cms. with muscular involvement only.

"Visceral organs - pale.

"Heart and stomach empty.

xxx xxx xxx

"Cause of death – Gunshot wound perforating the chest and right arm.

xxx xxx xxx

(Exh. "I", p. 91, CCC rec.).

Dr. Jesus Crisostomo testified that the gunshot wound found on the body of the deceased was caused by a .45 caliber bullet; that the shot must have been fired at a distance beyond 24 inches and less than 34 inches from the person of the deceased; and that the assailant was probably on the left side of the deceased (pp. 7-9, T.s.n., October 16, 1969).

In order to effect the arrest of the accused, the police officers, informed that defendant-appellant was a member of the Metrocom on detail with the CAA proceeded to the office of the CAA to inquire as to the whereabouts of the accused. They were however told that the accused had previously applied for a leave of absence and that despite the expiration thereof, he failed to report for duty (pp. 37-38, T.s.n., October 6, 1969). They were also able to elicit from Major Custodio of the CAA that the accused left the CAA three (3) days after the shooting incident and was reportedly given a mission order (p. 14, T.s.n., October 13, 1969). Unable to contact the accused the police filed the case before the Fiscal's Office (p. 15, T.s.n., October 13, 1969).

On September 16, 1969, a warrant of arrest was issued for the apprehension of the accused (p. 6, CCC rec.). However, no earnest efforts were exerted to enforce the aforesaid warrant of arrest. Indignant over the delay, Judge Onofre Villaluz ordered the Chief of Metrocom to explain why he should not be declared in contempt of court for delaying the administration of justice (p. 4, CCC rec.). An explanation satisfactory to the Court was eventually made by the chief of Metrocom (p. 29, CCC rec.), who was however "advised to be more obedient to the lawful orders of this Court . . .", for the Metrocom could have effected the immediate arrest of the accused had it exerted efforts to do so, "considering the vast manpower and the adequate facilities given the Metrocom Command" (p. 45, CCC rec.).

On September 25, 1969, defendant-appellant returned to Manila from Baguio City where he allegedly undertook

the mission assigned to him and thereafter surrendered to a certain Lt. Caballo of the Philippine Constabulary on detail with the CAA (pp. 30-31, T.s.n., October 27, 1969). On September 26, 1969, the person of the accused was turned over to the Metrocom by the CAA, after which the accused was brought immediately before the trial court (p. 30, CCC rec.). At the arraignment held the following morning, defendant-appellant, duly assisted by counsel de officio, Atty. Francisco Salva, entered a plea of not guilty (p. 44, CCC rec.).

Defendant-appellant Pablo Samonte, Jr. testified thus: that he is 30 years old, a staff sergeant in the Philippine Air Force, detailed with the Metrocom, and a veteran of the Vietnam war; that in the evening of July 25, 1969, he was in the house of his late father at No. 5 Ventanilla St., Pasay City, attending the wake for his deceased father (p. 3, T.s.n., October 27, 1969); that while he was in the upper story of the house, attending to the condolers and sympathizers, one Fernando Cabardo came up and asked him to come down because somebody was trying to create trouble by breaking a domino piece used by the condolers playing domino and threatening to break the guitar of another mourner who refused to give it to him; that he went down and saw the deceased brandishing a gun; that a companion was trying to persuade the deceased to give him his gun; that that was the first time he saw the deceased; that when he approached the deceased, he smelled of liquor and that he requested the latter to put away his gun since the guests might be scared; that the deceased pushed him; uttered the words, "putang ina mo", pointed the gun at him; that he (appellant) heard the click of its trigger, but the gun however, misfired; that as he was the sole support of his seriously ailing mother and fearing for his own life if the deceased were to fire again, he pulled his own gun and shot the deceased (pp. 4-5, T.s.n., October 27, 1969); that his distance from the deceased at the time he fired was about two (2) feet and that he and the deceased were facing each other (pp. 19-20, T.s.n., October 27, 1969); that he did not remember having thrown his gun; that he just ran away from the scene of the shooting to his house at Nichols Air Base (p. 21, T.s.n., October 27, 1969); that on the following day, he returned to the house of his deceased father to confer with his brothers and sisters with respect to the burial arrangements and two days thereafter, he again went back to attend the interment (p. 23, T.s.n., October 27, 1969); that during all these visits, his brothers and sisters never informed him that he was wanted by the police nor did they discuss the matter at all (pp. 23-24, T.s.n., October 27, 1969); that he was not able to report the loss of his service pistol because he was given a mission order to check the smuggling of blue seal cigarettes in the City of Baguio (pp. 24-30, T.s.n., October 27, 1969); that he returned to Manila upon the completion of his mission on September 25, 1969, and thereafter, surrendered to a Lt. Caballo (pp. 30-31, T.s.n., October 27, 1969); and that he did not immediately surrender to the authorities, "because there were many people around the vicinity and I am quite sure that one of the crowd will report the matter . . ." (p. 31, T.s.n. October 27, 1969).

WE find merit in defendant-appellant's submission that the trial court erred in convicting him of the crime of murder. As correctly pointed out by the Solicitor General, "treachery cannot be presumed. It must be established beyond reasonable doubt. Treachery cannot be deduced from indicia nor from presumption. It must be proven by convincing evidence. When the manner of attack was not proven, the defendant should be given the benefit of the doubt and the crime should be considered homicide only" (People vs. Carpio, 83 Phil. 509, 512; People vs. Amansec, 80 Phil. 424, 435).

It should be borne in mind that the attendance of treachery as a qualifying circumstance is found in the concurrence of two conditions: (1) the employment of means, method or manner of execution which would insure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate (People vs. Casalme, 17 SCRA 717, 720; People vs. Ramos, 20 SCRA 1109, 1112-1113; People vs. Pengzon, 44 Phil. 224, 232; People vs. Lagayano, L-15961-62, October 31, 1963; People vs. Glore, 87 Phil. 739, 742); and (2) that such means, method or manner of execution was deliberately or consciously chosen (People vs. Dadis, 18 SCRA 699, 701-702; People vs. Clemente, 21 SCRA 261, 270).

Thus, it is not enough that the means, method or form of execution tends directly and specially to facilitate the commission of the offense without danger to the offender arising from the defense or retaliation that might be made by the offended party. It is further required, for treachery to be appreciable, that such means, method or form was deliberated upon or consciously adopted by the offender (*People vs. Tumaob*, 83 Phil. 738, 742). As in the case at bar, such deliberate and conscious choice was held non-existent where the attack was the product of an impulse of the moment (*People vs. Macalisang*, 22 SCRA 699, 704).

Likewise, the qualifying circumstance of evident premeditation is not present in the case under review. For evident premeditation must have been manifest and must have been planted in the mind of the offender in order that it may change the nature of the killing into murder. It cannot be appreciated in the absence of reflection and persistence in the criminal intent (*People vs. Cadag*, 2 SCRA 388,-393).

The records of the case contain no evidence showing that the accused had, prior to the killing, resolved to commit the same, nor is there proof that the shooting of the victim was the result of meditation, calculation or resolution. He did not know the deceased before the incident. On the contrary, a perusal of the testimonies of both prosecution and defense witnesses lead to the conclusion that the shooting incident was, more or less, spontaneous.

The only issue here is whether accused-appellant Pablo Samonte, Jr. acted in legitimate self-defense. Since the appellant unequivocally admitted in open court that he fatally shot the deceased Agustin Santiago, Jr., the onus of proving with clear and convincing proof the concurrence of all the elements of lawful self-defense is thus shifted to him. (*People vs. Quintab*, 16 SCRA 146).

The evidence presented by the defense does not adequately meet this burden.

Defendant-appellant claims that after he had requested the deceased to put away his gun in order not to scare away the guests at the wake, the deceased uttered the insulting as well as libelous words, "putang ina mo", pointed the gun at him, which, however, did not fire, although he heard its trigger click; and since he was afraid that he might be killed if he allowed the deceased to fire a second time, he pulled his own gun and fired at the latter (pp. 4-5, T.s.n., October 27, 1969.)

This version of defendant-appellant is incredible. State witness David Pagulayan, the victim's companion that night, declared that the victim did not carry a gun at the wake. Even defense witness Ricardo Peralta never stated that the deceased pointed his gun at defendant-appellant, but merely testified that he "saw Agustin Santiago, Jr. pull a gun and then he heard a gunshot and because of the shot, he ran away." (p. 7, T.s.n., October 29, 1969).

If, as he claims, he was facing the victim who was just about two feet away from him, the bullet would have entered frontally the chest and would have come out of the back of the victim and would not have entered the left side of the chest and would not have come out of the right side of the breast and through the right arm.

As a peace officer, his duty was to identify himself and to tell the trouble-maker to desist and to surrender his unlicensed firearm. He should and could have arrested the victim for illegal possession of firearm since it is very patent that the .22 caliber (Exh. 1) gun allegedly held by the victim is home-made or a paltik.

If defendant-appellant, by his own testimony, was only about two feet away from the deceased, he could have easily disarmed the deceased, who, while taller than he is, had a smaller build than his (p. 15, T.s.n., October 13, 1969) and was only 21 years old – 9 years his junior (p. 12, T.s.n., October 16, 1969) and whose reflexes were slow as he was then drunk (pp. 5-6, T.s.n., October 28, 1969). Being a member of the Armed Forces and a Vietnam veteran, the accused must have been fully trained in the art of disarming an adversary. As a professional soldier with combat experience, he could have overpowered the inebriated victim who was towards his right as

testified to by the NBI doctor and as confirmed by the trajectory and direction of the bullet which hit the victim.

Even assuming that the victim was already pointing a gun at appellant, WE are not persuaded that appellant, who had his gun still tucked in his waist, could fire at the victim before the latter could squeeze the trigger of his own gun. There is no showing that the paltik gun (Exh. 1) was loaded when found by the policemen that night of the incident. Neither was a fingerprint expert presented to testify as to whether the fingerprints, if any, on the paltik gun, were those of the victim.

Defendant-appellant's failure to report the incident and to surrender to the Metrocom to which he belongs or to his superior officer in the CAA or to any other law enforcement agency, likewise belies his claim of self-defense; because if the killing was justified, he would have lost no time in so reporting and so surrendering, so that the alleged paltik gun allegedly held by the victim could be subjected to ballistic and fingerprint examination, before the same could be tampered with or before the fingerprints thereon could be erased, to corroborate his claim of self-defense. Such omission is in direct contrast to his having twice returned to the place of the incident to make arrangements for the burial of his father and to attend his funeral before going on an alleged mission against smuggling. Even this alleged anti-smuggling mission defies belief and appears as a convenient accommodation by his superior officer to him; because the ASAC, not the Metrocom nor the CAA, is the agency specially created for this specific task.

The killing of a civilian by a law enforcer like appellant is disgusting enough. But for him to fail to report the same and to surrender to the authorities, deserves condemnation. He should set the example for the ordinary citizen to emulate. And the failure of the Metrocom to effect his immediate apprehension earlier than the maximum fifteen (15) days given by the court (p. 35, CCC rec.), after it was informed by the CAA that appellant was allegedly sent on a mission to Baguio City, invites the unflattering suspicion that it was trying to shield one of its men from prosecution. The Metrocom has all the communication facilities to recall appellant from his alleged mission. This suspicion is strengthened by the fact that on September 26, 1969 appellant was apprehended by the Metrocom and turned over to judicial custody only two (2) days after the court directed on September 24, 1969 the chief of the Metrocom to show cause why he should not be punished for contempt for delaying the administration of justice (pp. 4-5, 12-15, rec. of CCC).

Appellant's remaining a fugitive from justice for about two months from July 25, 1969 to September 25, 1969 when he allegedly surrendered to a certain PC Lt. Caballo also detailed with the CAA (pp. 30-31, T.s.n., October 27, 1969), necessarily carries the earmarks of guilt. (People vs. Talumpa, 3 SCRA 71, 75; People vs. Sibayan, 31 SCRA 246, 249; People vs. Balongcas, 1 SCRA 727, 731).

As above intimated, defendant-appellant had sufficient opportunity to give himself up if he so desired. He stated that after the killing, he spent his leave of absence of five days in his house at Nichols Air Base (p. 25, T.s.n., October 27, 1969). Furthermore, appellant likewise testified that after the shooting incident, he went back to his father's house to confer with his brothers and sisters about the burial arrangements and attended the funeral. During all these visits, he claimed that his own brothers and sisters never informed him that he was wanted by the law (p. 23, T.s.n., October 27, 1969) in the face of the testimony of the police officers that they questioned the persons present at the time of the incident and thereafter looked for him at the CAA.

Defendant-appellant, in his vain attempt to fortify his plea of self-defense, presented as evidence the paltik gun (Exh. 1) allegedly pointed to him by the deceased. And to show how his own life allegedly hung in the balance that tragic night, he demonstrated that a paltik gun must be half-cocked before it is set for firing (p. 17, T.s.n., October 27, 1969). If that were so, then he had time to disarm the victim who was drunk and who was obliquely towards his right and not directly facing him, without need of shooting the victim. And no person acquainted or

experienced with firearms, especially with a paltik gun, was ever presented by appellant to strengthen his bid for acquittal. Needless to say, in a trial, it is necessary that the weapon involved in a crime, be tested and demonstrated by one who has clearly shown that he is qualified to give such testimony (Francisco, Evidence, pp. 652-653).

Thus, his plea of self-defense is not supported by clear and convincing proof (People vs. Berio, 59 Phil. 533, 536). And the accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution (People vs. Solana, 6 SCRA 60, 66).

However, the circumstances under which the crime was committed serve to attenuate the liability of defendant-appellant. The demise of a loved one brings sorrow to each and every member of the family. And the wake which precedes the burial is one solemn occasion that evokes respect and sympathy from those who share the feeling of emptiness which death usually brings. The act of the deceased in creating trouble during the wake of the departed father of defendant-appellant, while it does not fully justify the tragedy that has befallen him, cannot likewise be condoned. Many traditions are less venerated by our people than a wake. Stirring trouble during a wake scandalizes the mourners and offends the sensibilities of the grieving family.

That the deceased was then drunk has been testified to by Andres Santiago, a chemist of the National Bureau of Investigation. Santiago declared, as confirmed by his own toxicology report, that he found the presence of ethyl alcohol in the amount of 0.145 in the blood of the deceased. He further opined that one who is not accustomed to drinking and who takes such amount of alcohol would tend to be a little bit unruly (p. 5, T.s.n., October 28, 1969).

Therefore, considering that the trouble created by the deceased was both unlawful and sufficient to infuriate accused-appellant, his guilt is mitigated by passion or obfuscation (People vs. Gervacio, 24 SCRA 960, 977; People vs. Layson, 30 SCRA 92, 95-96), which warrants the imposition of the applicable penalty for homicide in the minimum period.

WHEREFORE, WE FIND THE APPELLANT PABLO SAMONTE, JR. GUILTY BEYOND REASONABLE DOUBT OF HOMICIDE, FOR WHICH HE IS HEREBY SENTENCED TO SUFFER AN INDETERMINATE TERM OF IMPRISONMENT RANGING FROM SIX (6) YEARS AND ONE (1) DAY OF PRISION MAYOR, AS MINIMUM, TO TWELVE (12) YEARS AND ONE (1) DAY OF RECLUSION TEMPORAL, AS MAXIMUM, WITH THE ACCESSORIES OF THE LAW, CREDITING HIM HOWEVER WITH HIS PREVENTIVE IMPRISONMENT IN ACCORDANCE WITH REPUBLIC ACT NO. 6127, TO INDEMNIFY THE HEIRS OF THE DECEASED AGUSTIN SANTIAGO, JR. IN THE AMOUNT OF TWELVE THOUSAND PESOS (P12,000.00) WITHOUT SUBSIDIARY IMPRISONMENT IN CASE OF INSOLVENCY.

THUS MODIFIED, THE JUDGMENT UNDER REVIEW IS HEREBY AFFIRMED IN ALL OTHER ASPECTS.

SO ORDERED.

Makalintal, C.J., Castro, Fernando, Teehankee, Barredo, Antonio, Esguerra, Muñoz Palma, Aquino, Concepcion, Jr., and Martin, JJ., concur.

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