

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINADOR PAY-AN, ACCUSED-APPELLANT.***G.R. Nos. L-39089-90. July 31, 1978*

Ponente: ANTONIO, J.

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Appeal from the decision of the Court of First Instance of Baguio and Benguet finding appellant Dominador Pay-an guilty beyond reasonable doubt of the crimes of Murder and Frustrated Homicide in Criminal Cases Nos. 601 and 602, respectively, and sentencing him in Criminal Case No. 601 to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased Ernesto Chan in the amount of P2,000.00 as actual damages; P18,000.00 for his death; P68,000.00 for loss of earning capacity; and P10,000.00 for moral damages; and in Criminal Case No. 602, to suffer an indeterminate penalty ranging from two (2) years, four (4) months and one (1) day of prison correccional as minimum, to eight (8) years and one (1) day of prison mayor as maximum, to indemnify the offended party, Benjamin Chan, in the amount of P13,725.81 for actual damages and to pay the costs. He was further sentenced to suffer the accessory penalties in both cases. The following facts were established by the prosecution:

Arcadia Nacionales is a rice dealer with a store located at 33 Lakandula Street, Baguio City and at the time of the incident in question was assisted in the administration of her business by her sons, Benjamin, Ernesto and Eduardo, all surnamed Chan. The deceased Ernesto Chan, at the date of the incident, was about twenty-eight (28) years old, having been born on February 8, 1944. He graduated in 1968 from the St. Louis University, Baguio City, obtaining the degree of Bachelor of Science in Industrial Engineering. He was at the time connected with the Philusa as a detailman receiving a monthly salary of P305.00 and a monthly allowance of P345.00. He appeared to be closest to his mother at least in the management of their business.

Between 1:30 and 2:00 o'clock in the afternoon of July 15, 1972, in Baguio City, Eduardo Chan was supervising the loading of twenty (20) sacks of rice in a blue panel truck in front of their store for immediate delivery to the Philippine Military Academy. Although the Chans usually used an open delivery truck for delivery purposes, since it was raining that afternoon, the blue panel truck belonging to the "Associated Anglo-American Tobacco Corporation" where Eduardo Chan was employed as promotional salesman had to be used in loading the rice. After completing the loading, Eduardo Chan boarded the panel truck and the helper, Alfredo Sarget, sat beside him. As Eduardo was starting the engine of the truck, two men in civilian clothes approached him. One of them, who turned out to be appellant Dominador Pay-an, a member of the Baguio City Police Department, inquired who was the owner of the cargo. Eduardo answered: "This belongs to the Chans." Eduardo asked why he was inquiring and appellant replied: "You are overloaded." Eduardo asked for their identities and the two men identified themselves as policemen but, however, they did not show their badges. The other man was later known as Celestino Guzman, another member of the Baguio City Police Force. Suspicious, Eduardo alighted from the panel and returned to their store which was about twenty (20) meters away. At the store, his mother, Arcadia Nacionales, and his brothers, Benjamin and Ernesto, were attending to some customers. He informed his brother

Ernesto about the presence of two persons who were inquiring about their cargo. Together Ernesto and Eduardo went out of the store and went to the place where the panel truck was parked. Arcadia Nacionales, having overheard the conversation of her sons, also followed them and saw the two men referred to by Eduardo.

Upon reaching the panel truck, Eduardo pointed out the two men to Ernesto. Ernesto asked from his brother the purpose of the two men and Eduardo answered: "These two persons are questioning our cargo." Eduardo was then holding the receipts for the rice cargo. As he was about to hand the receipts over to Ernesto, appellant grabbed the receipts. After appellant had taken the receipts, he remarked: "I don't believe that your cargo is only twenty sacks of rice." Ernesto replied: "If you don't believe that our cargo is twenty sacks of rice, I will open the back of the panel and it is up to you to count them." Ernesto and the appellant then proceeded to the back of the panel truck.

Alfredo Sarget alighted from the panel and went to the sidewalk behind the panel and stood there about four (4) meters away from Ernesto and the appellant. Arcadia Nacionales was already near the two, about a meter away. Before opening the back door of the panel, Ernesto, however, asked the appellant: "Sino cay nga agsit-sitar?" (What right have you to check our cargo?) The appellant, apparently irked by Ernesto's remarks, answered that they were policemen and further said: "Lastog ka, lumaban ka? (Boastful! Are you challenging us?) and immediately, appellant drew his gun and fired downwards, hitting the left leg of Ernesto. Stunned by the unexpected denouement, Ernesto limped backwards to the sidewalk with both hands raised above his head. But appellant again fired, the bullet hitting Ernesto on the head, causing the victim to fall on the sidewalk. Shocked and confused, Arcadia Nacionales ran to her store shouting for help.

Benjamin Chan, who was then selling rice, heard the gun reports and his mother's shouts for help. Instinctively, he ran out of the store towards the panel truck carrying with him a "pongki" (a sort of container he was using to scoop rice.) As he went out, he heard another shot. Upon seeing his fallen brother, Ernesto, and the appellant standing in front of the prostrate victim, he swang wildly the "pongki" hitting appellant on the face. Upon hitting appellant, Benjamin ran away. He slipped, however, and fell on the sidewalk. As he was getting up and was still in a crouching position, appellant fired at him. The bullet hit Benjamin on the abdomen. Benjamin then rolled under a parked truck where he lost consciousness. Arcadia Nacionales, who came running to her store, heard a third gun report even as people shouted: "Ay, ni Ben napaltugan manen." (Ay, Ben was also shot.) Arcadia loudly said: "Ay, Apo, natay gayam daguitoy anak ko. Arayatn da kami." (My God, my son has been killed. God help me.)

Pat. Sergio Galpo, another member of the Baguio City Police Department, who was at a nearby store at Lakandula Street, Baguio City, heard the gun reports. Upon hearing them, he ran out of the store to verify. He saw appellant holding a gun with his right hand, standing and facing the fallen body of Ernesto Chan. Pat. Galpo approached appellant from behind and apprehending that he might not be recognized, he immediately held appellant's right hand, saying: "Doming, this is your 'Manong' Sergio. Surrender your firearm." Appellant gave the gun to him. After having been informed that another person was shot, he went to the place where the person was lying under an open cargo truck. Eduardo Chan approached and informed Pat. Galpo that the two persons who were shot were his brothers and that he was bringing them to the hospital. Thereafter, the injured Benjamin and the cadaver of Ernesto were carried to a vehicle and brought to the Baguio General Hospital. Upon seeing that the face of appellant was also injured, Pat. Galpo took a mobile car and brought appellant to the Baguio General Hospital. He later proceeded to the City Hall where he gave appellant's firearm to the Desk Sergeant.

Benjamin Chan was hospitalized at the Baguio General Hospital and later at the University of the East Ramon Magsaysay Memorial Hospital in Manila. Dr. Antonio Pavia, who operated on Benjamin Chan, testified that Benjamin sustained the following injuries: gunshot wound, right hypochondrium, penetrating, through and through liver perforating through and through stomach lesser to greater, with laceration left gastro-epiploic artery

3, through and through, perforating jejunum through and through sigmoid with hematoma left colic gutter and penetrating left gluteal region. He categorically stated that Benjamin Chan might have succumbed to his serious abdominal injuries had the operation been delayed for about ten (10) minutes. Arcadia Nacionales spent P13,725.81 for his treatment which consists of doctor's fees, hospital bills, medicines, etc..

Ernesto Chan died of intracranial hemorrhage, lacerations of cerebellum and mid brain, shock, traumatic severe, or due to a gunshot through the head. The post-mortem examination was conducted by Dr. Perfecto D. Micu, Medico-Legal Officer of the Baguio City Police Department. Arcadia Nacionales spent P2,000.00 for Ernesto's funeral services and burial and other incidental expenses.

The theory of the defense is that appellant Dominador Pay-an shot and killed Ernesto Chan and seriously injured Benjamin Chan in self-defense. According to appellant, when he and his co-policeman, Celestino Guzman, noticed a blue panel truck labeled "Anglo-American Tobacco Corporation" being loaded with rice coming across the street, he remembered the directive of the City Mayor to investigate trucks loaded with rice to see if they had proper receipts therefor. It was for this reason that he requested the driver, Eduardo Chan, to show the receipts of the rice cargo. After the receipts were given, appellant went to the rear of the panel and Eduardo followed him. Eduardo inquired who the appellant was and the latter brought out his badge, informing him that he was a member of the Baguio City Police Force. Appellant inquired who the owner of the rice cargo was and Eduardo informed him that it belongs to the Chans. Eduardo then left. Scrutinizing the receipts, the appellant noticed that the owner named therein is one Mrs. Arcadia Nacionales. Thereupon, he heard the footsteps of people approaching them. He heard someone say: "Yes, this is RCA rice. What is your business anyway. You are boastful. You are just men of Major Mandapat." Appellant then turned his face and saw five persons rushing towards him. One was holding a shiny pointed object and two were armed with knives. Alarmed, he drew his gun and immediately fired by way of warning. Despite this, the five persons continued to rush him. One of the men was Benjamin Chan who was holding the shiny object. Benjamin hit the appellant with it and the latter evaded the blow and the attack continued until appellant was hit above the right eyebrow. As Benjamin positioned again to attack him in a crouching position, the appellant fired his gun at him. Benjamin was hit by the second shot.

Immediately after the second shot, appellant saw another person rushing towards his back, holding a knife with his right hand. Appellant turned and faced him. The person moved nearer and as he made an attempt to grab the gun of appellant with his left hand and at the same time thrusting the knife against appellant, he (Pay-an) fired the third shot hitting the person who fell on his back to the pavement. This victim was Ernesto Chan.

After a careful analysis of the entire evidence and recalling the demeanors of all the witnesses and the demonstrations vividly made by some of them during the several days of trial, the trial court concluded that the version of the prosecution was more worthy of credence. Ernesto Ananayo, a student, 17 years of age, positively declared that after Ernesto Chan went to the pavement, appellant fired at Ernesto again causing the victim to fall on the sidewalk. Another eyewitness, Alfredo Sarget, categorically testified that after the first shot, Ernesto Chan retreated limping backwards to the sidewalk and that was the time appellant fired towards the direction of the head of Ernesto. We find no fact or circumstance in the record which would impair the credibility of the testimony of these witnesses.

Upon the other hand, appellant never narrated the fatal incident formally in writing to any of his superior officers immediately after the incident. He did not even care to give his version of the incident during the two occasions of the preliminary investigations. He never attempted to identify the three persons who were supposed to be in company with Ernesto and Benjamin Chan when they allegedly attacked him. It was certainly unnatural for a policeman who has killed a person and injured another allegedly in self-defense and in the performance of his official duty, to refrain or avoid divulging the killing to his superior officers. The natural promptings of a heart,

stirred by the consciousness of innocence and a natural feeling of regret, would have impelled appellant to declare at the earliest opportunity the exigency which made it necessary for him to kill a young businessman and seriously injure the latter's brother. As police officer, it was his duty and obligation to report the incident to his headquarters. It is significant to note that although appellant was detained for the crime, he "waived his right to cross-examine witnesses against him and to adduce evidence in his behalf" during the preliminary investigation. Moreover, appellant's story is not sufficiently corroborated. His colleague, Celestino Guzman, adds nothing in his testimony to bolster the defense's theory. This witness, at the time he testified before the trial court on June 8, 1973, has been under suspension since August 1972 because of a criminal charge of infidelity in the custody of prisoners thru negligence against him. It must also be recalled that this policeman never reported immediately this incident to police headquarters. It was only when he was required by the Chief of Police to give his explanation on the case against Pat. Dominador Pay-an as embodied under Complaint No. 5206 (Case No. 72-3672) that he revealed for the first time on July 25, 1972 that during the incident, he tried his very best to take the appropriate police action by means of the following: "1. I tried to prevent the attackers of Pat. Dominador Pay-an by holding Eduardo Chan under the collar." But apart from this, he never elaborated on said statement, as to the manner and form in which the alleged attack was made, or the names of the supposed attackers. Although he witnessed the incident in question, the circumstance that he never made officially any detailed report on the matter is a circumstance that would indicate that his testimony later in court that his co-policeman acted in self-defense is a mere afterthought, tailored to suit the appellant's theory.

Upon the other hand, Guzman's testimony corroborates that of the prosecution to the effect that the second shot hit the deceased Ernesto Chan. Gregorio Genova's testimony likewise confirms the fact that the second shot (not the third) hit the deceased Ernesto Chan who fell prostrate right in front of Genova's store (Nene's Little Store) while the third shot was directed towards the place where Benjamin was later found under the truck with gunshot wound. It is only Pedro Alsati who mentioned about the alleged presence of two men holding knives and the person carrying a shiny sharp object with two other companions, one of whom was holding a "pongki". But the trial court noted that Alsati's testimony was incoherent and illogical. Indeed, why would a Chinese holding a "pongki" attempt to thrust the wooden spoon downwards at a policeman armed with a revolver ready to fire at the former? His demeanor and facial expression on the witness stand, according to the trial court, betrayed his lack of sincerity and his narration of the fatal incident revealed that he was a "tutored witness".

As the trial court noted, it is unbelievable that the Chan family, who were reputable businessmen, would have attacked a police officer in the presence of another officer, both of whom were armed with firearms, in the absence of any sufficient provocation or any act of aggression on the part of said officers. No deadly weapon of any sort was presented by the appellant in support of his theory.[1]

To prove self-defense, the accused must show with clear and convincing evidence, that: (1) he is not the unlawful aggressor; (2) there was lack of sufficient provocation on his part; and (3) he employed reasonable means to prevent or repel the aggression.[2] Self-defense, like alibi, is a defense which can easily be concocted. It is well-settled in this jurisdiction that once an accused had admitted that he inflicted the fatal injuries on the deceased, it was incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence. He cannot rely on the weakness of the prosecution but on the strength of his own evidence, "for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself had admitted the killing." [3]

As correctly found by the trial court, the killing of the deceased was qualified by treachery. The appellant, without warning, immediately fired upon the victim twice in succession, giving him no time for preparation, resistance or escape. Indeed, if the slayer makes a sudden and unexpected attack with a deadly weapon on an unarmed and

unsuspecting victim under conditions which make it impossible for the party assailed to flee or make defense before the fatal blow is delivered, the act should be qualified as alevosia.[4]

WHEREFORE, the judgment appealed from is hereby AFFIRMED.

Fernando, (Chairman), Barredo, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] People v. Constantino, L-23558, August 10, 1967, 20 SCRA 940.

[2] People v. Bautista, L-17772, October 21, 1962, 6 SCRA 522.

[3] People v. Davis, L-13337, February 16, 1961, 1 SCRA 473; People v. Solaña, L-13967, September 29, 1962, 6 SCRA 60; People v. Mendoza, L-16392, January 30, 1965, 13 SCRA 11; People v. Libed, L-20431, June 23, 1965, 14 SCRA 410; People v. Llamera, L-21604-06, May 25, 1973, 51 SCRA 48.

[4] People v. Barba, L-7136, September 30, 1955, 97 Phil. 991.

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