

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL MAGAYAC, DEFENDANT-APPELLANT.*G.R. No. 126043. April 19, 2000*

Ponente: BELLOSILLO, J.

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MANUEL MAGAYAC, a member of the CAFGU, was found guilty of MURDER and sentenced to DEATH by the court a quo. His conviction is the subject of this automatic review.[1]

The records show that on 11 February 1994 at around 9:00 o'clock in the evening Jiminardo Jimmy Lumague, Edwin Lumague, Tino Magayac, Manuel Magayac and other menfolk of Barangay Paraiso, Pinamalayan, Oriental Mindoro, were on the shore preparing for night fishing.[2] Jimmy was sitting on the kamarote when Tino Magayac, father of the accused, pushed Jimmy for no apparent reason. When Jimmy asked, "Bakit mo ako tinabig (Why did you push me)?" Tino answered, "Bakit, lalaban ka бага (Why, do you want to fight)?" Tino then hit Jimmy at the back (dinagukan). Before they could come to blows, cooler heads intervened.

Two (2) hours later, as the group was already at sea and the Lumague brothers were pulling the fishnet for the night catch, Tino once more approached Jimmy and without any preliminaries hit him at the collar and at the stomach. Accused Manuel Magayac also advanced towards Jimmy and tried to box him with his right hand.[3] Again, the fight was averted with the captain threatening to drop them into the sea if they did not stop. When Jimmy's Uncle Kanuto asked, "Why are you ganging up on my nephew?" the accused answered, "Bakit, lalaban ba kayo, bukas lagot kayo sa akin. (Why, do you want to fight? Tomorrow, you will see)."[4]

At about 7:00 o'clock early next morning, Jimmy Lumague and the accused met again and exchanged blows.[5] In this one-on-one fight, it seemed that Jimmy was the better fighter.[6] The protagonist were once more separated; it was however apparent that the accused was furious for having obviously been beaten.

At about 6:00 o'clock the following evening, 12 February 1994, Eliza Lumague, Jimmy's mother, was at home with her husband and Edwin when they saw the accused carrying a long rifle pass by the store of Pikong Paez.[7] Advised by her husband to follow the accused and warn Jimmy of possible reprisal, Eliza looked for her son at Nestor Balana's house near the beach. She found him there sitting on a bench talking with Nicanor Jack Balana at the balisbisan of Balana's house.[8] Eliza warned Jimmy of the accused's impending arrival and urged him to go home. But he replied, "Inay, mang na na po kayo at ako ay susunod" (Mother, please go ahead, I'll follow you). As Eliza turned to go, she saw the accused approach Jimmy, the former saying to the latter, "Huwag kang tumakbo, hinde kita aanuhin" (Don't run, I won't do anything to you). Jimmy who was about to run, upon hearing the remark, stopped.[9]

The accused then turned to Nicanor and said, "Jack, umalis ka na baka mapadamay ka pa" (Go, Jack, you might get involved).[10] Nicanor immediately retreated to his brother's house, a distance of two (2) to five (5) meters away. Jimmy was trying to leave the place when he was shot by the accused and hit on his right stomach. Jimmy fell down on his knees and collapsed on the ground, face down. Manuel cocked his gun again and shot at Jimmy's

back several times. Manuel then went to the 262nd PC Mobile Force where he surrendered.[11]

Jimmy's body was autopsied by Dr. Rosalinda Baldos at 9:00 o' clock that same evening who reported: "FINDINGS: General Physical Appearance shows a sthenic body with Multiple Gunshot Wounds described as follows: (1) Four (4) Gunshot Wounds 0.5 CM in diameter at the Left Posterior Chest with exit wounds (9 lacerated) at the Anterior Chest Left; (2) Two (2) Gunshot Wounds Right Posterior Chest measuring 0.5 CM; (3) Gunshot Wound Hip Anterior left 0.5 CM in diameter with exit wound at the Right Buttocks; and, (4) Two (2) Gunshot Wounds Arm Posterior with exit wound at the Anterior Portion with Complete Fracture of the Humerus. CONCLUSION: The cause of death is Cardiorespiratory Failure due to Shock due to Severe External and Internal Hemorrhages due to Multiple Gunshot Wounds Body and Extremities." [12]

In an Information dated 4 March 1994 the accused was charged with Murder for feloniously shooting to death Jiminardo Jimmy Lumague with the qualifying circumstances of treachery and evident premeditation and generic aggravating circumstance of taking advantage of public position as a member of the CAFGU.[13]

The accused invoked self-defense. With himself as sole witness in his behalf he asserted that between 5:30 and 6:00 o' clock in the afternoon of 12 February 1994 he was walking to the PC Camp to report for duty as CAFGU when Jimmy suddenly appeared about four (4) armslength away. Jimmy was holding a balisong (fan- knife) on his right hand. He rushed towards him (Manuel) so he had to fire his gun as he could no longer retreat. His back was already against a housewall. He shot Jimmy on the front right side above his right thigh and then promptly surrendered to Sgt. Martin Calingasan at the PC Camp.[14]

The accused failed to persuade the court to lean to his side. It found him guilty of murder qualified by treachery or evident premeditation and aggravated by cruelty and taking advantage of his public position as member of the CAFGU. His voluntary surrender was appreciated as a mitigating circumstance. Nevertheless, he was sentenced to death. He was also ordered to indemnify the heirs of Jiminardo Jimmy Lumague with P50,000.00 for loss of life and P20,000.00 for funeral expenses.[15]

The accused now contends that the trial court erred in not acquitting him on the ground of self-defense, and for appreciating treachery and evident premeditation as qualifying aggravating circumstances along with the generic aggravating circumstances of cruelty and taking advantage of public position in the commission of the crime.

The invocation of self-defense is an admission of the killing and of its authorship. By this admission, the burden of proof shifts to the accused who must now establish with clear and convincing evidence all the elements of this justifying circumstance, to wit: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and, (c) lack of sufficient provocation on the part of the person resorting to self- defense.[16] In proving these elements, the accused must rely on the strength of his own evidence. He can no longer assail the weakness of the evidence against him simply because it cannot be disbelieve after his open admission of responsibility for the killing.[17]

Neither are we convinced of the accused's theory of self-defense. There was no unlawful aggression on the part of the victim to speak of. Contrary to his story, the prosecution had established through its eyewitnesses that it was he and not the victim who was constantly making unlawful aggressive moves.

It was the accused who boxed and threatened Jimmy the day previous to the incident. The accused was the one who challenged the victim to a fight that morning of the incident. He was the one who approached the unarmed Jimmy and pumped nine (9) bullets into the hapless victim, causing his instantaneous death.

We quote with approval the following findings of the trial court - [18]

This (theory of accused) was simply unbelievable and very far-fetched. In the first place, it was shown during

his cross-examination that from his (accused's) house going to the PC Camp where accused was supposed to report, one does not have to pass by the seashore where the victim and his friend were chatting. The accused could simply walk straight from his house to his Camp which was only a short distance away without taking a longer and more cumbersome way passing by the seashore. And in the second place, the Court finds it hard to believe that the victim would be stupid enough to attack a member of the dreaded CAFGU who was armed with a long rifle, even admitting *arguendo* that the victim had a knife in his right hand. It is simply against human behaviour. And besides, there was no evidence showing the existence of any knife whatsoever. Immediately after the killing, comrades in arms of the accused (the PC) came to the place of the incident to investigate and there was no report regarding the presence of any knife whatsoever or any bladed instrument for that matter.

Indeed, a plea of self-defense cannot be justifiably appreciated where it is not only uncorroborated by independent and competent evidence, but also extremely doubtful by itself.[19] We have ruled in *People v. Gil Tadeje*[20] that in the absence of any other proof presented showing unlawful aggression on the part of the victim, there can be no self-defense, complete or incomplete.

More so will the plea be disregarded when we take into account the number of wounds on Jimmy's body -four (4) simultaneous gunshot wounds at the back, two (2) gunshot wounds at the upper back, two (2) gunshot wounds at the back of arms and only one (1) gunshot wound at the front left hip. It is an oft-repeated rule that the nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important indicia which disprove a plea for self-defense because they demonstrate a determined effort to kill the victim and not just defend oneself.[21]

However, there is need to reexamine the appreciation by the trial court of the qualifying and aggravating circumstances.

Treachery is considered present when there is the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate and the method of execution was deliberately or consciously adopted.[22] In this case, there is no showing that the accused employed means to ensure execution of the crime without any risk to himself, more so that he did it deliberately.

The prosecution showed that Jimmy was amply warned by his mother of Magayac's possible murderous intention, a warning that he at first ignored but later heeded when he saw the accused walking towards him with a gun. That Jimmy was put on guard was gleaned from his immediate reaction of trying to run away at the sight of the accused. Even when he was becalmed by the assuring words of the accused that he would not hurt him, the deceased was again alerted on the real intentions of the accused when the latter warned Jack Balana, "Jack, umalis ka na, baka mapadamay ka pa." [23] Also, that Jimmy had deduced the subsequent actions of the accused was shown by his second attempt to run just before he was hit on the hip. Thus, far from being caught unaware by any act of the accused, Jimmy was given every opportunity to avoid the danger he was in.

Not even the fact that the victim was shot repeatedly on the back while he was kneeling on the ground with hands upraised and begging for his life be considered as treacherous. The subsequent firing was a mere continuation of the assault in which the deceased was wounded as no appreciable time intervened in-between the successive firing of the rifle.[24]

It is also for this reason that the eight (8) shots on the victim's back cannot ipso facto be considered as cruelty or ignominy. For cruelty to be appreciated against the accused, it must be shown that the accused, for his pleasure and satisfaction, caused the victim to suffer slowly and painfully as he inflicted on him unnecessary physical and moral pain. The crime is aggravated because by deliberately increasing the suffering of the victim the offender denotes sadism and consequently a marked degree of malice and perversity. The mere fact of inflicting various

successive wounds upon a person in order to cause his death, no appreciable time intervening between the infliction of one (1) wound and that of another to show that he had wanted to prolong the suffering of his victim, is not sufficient for taking this aggravating circumstance into consideration.[25]

But the lower court correctly concluded that there was evident premeditation, and it was this aggravating circumstance, not treachery, which qualified the killing to murder. To recall, prior to the shooting, the following transpired: (a) Jimmy and the father of accused-appellant almost came to blows while fishing in the open sea on 11 February 1994 at 9:00 o'clock in the evening after the latter hit Jimmy for no apparent reason at all; (b) two (2) hours later, while Jimmy was on board the banca and pulling the fishnet, accused-appellant and his father pounced on Jimmy. When asked by his uncle why they were ganging up on his nephew, accused-appellant retorted, *Bakit, lalaban ba kayo, bukas lagot kayo sa akin*; and, (c) at 7:00 o'clock in the morning of that fateful day, Jimmy and accused-appellant had a fistfight where Jimmy supposedly won.

It is not difficult to conclude that the above circumstances fuelled the resentment felt by accused-appellant which culminated in his predetermined plan to spite and kill Jimmy. There is no ambiguity in those ominous words directed at Jimmy and his uncle, *Bakit, lalaban ba kayo, bukas lagot kayo sa akin*. Here was a man bent on requital, vengeance. And between those threatening utterances and the one-on-one confrontation where the victim emerged as the victor, and the actual gunning down of the victim, more than eleven (11) hours intervened thus giving accused-appellant sufficient time to ponder on the consequences of his malevolent plan.

As the trial court aptly observed, "Smarting from the licking he received the accused carefully planned his revenge and some eleven (11) hours thereafter, somehow learning that the victim was somewhere near the seashore, the accused armed with an M-14 rifle issued to him by the Government as a member of the CAFGU, purposely sought the victim out and immediately shot him after tricking the latter into believing that he (accused) would not harm him (victim)."[26]

To establish premeditation, it must be shown that there was a period sufficient to afford full opportunity for reflection and a time adequate to allow the conscience of the actor to overcome the resolution of his will. The circumstances shown herein are more than enough to convince this Court that prior to the killing accused-appellant had resolved to exact his pound of flesh and the rain of bullets from the M-14 rifle which snuffed out the life of Jimmy was the result of a cold and dispassionate calculation on the part of accused-appellant.

As to abuse of public position, the essential question is whether the accused abused his office in order to commit the crime.[27] That accused-appellant was a member of the dreaded CAFGU and used his government issued M-14 rifle to kill Jimmy does not necessarily prove that he took advantage of his public position to commit the crime.

The penalty for murder under Art. 248 of the Revised Penal Code, as amended by RA 7659, is reclusion perpetua to death. When the commission of the offense is attended by a mitigating circumstance, in this case voluntary surrender, and there is no other aggravating circumstance, the lesser penalty shall be applied. Hence, the imposable penalty in the case at bar is reclusion perpetua and not death.

As no evidence, testimonial or documentary, was presented as proof, the award of P20,000.00 for funeral expenses should be deleted.

WHEREFORE, the Decision of the trial court finding accused-appellant MANUEL MAGAYAC guilty of murder and ordering him to pay the heirs of JIMINARDO Jimmy LUMAGUE P50,000.00 is AFFIRMED, with the modification that he is sentenced to suffer the lesser penalty of reclusion perpetua. The award of funeral expenses

is DELETED for lack of factual basis.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Vitug, J., on leave.

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- [1] Decision penned by Judge Antonio R. Quizon, RTC-BR. 41, Oriental Mindoro; Rollo, pp. 18-23.
[2] TSN, 19 October 1994, pp. 14-15.
[3] Ibid.
[4] See Note 2, p. 16.
[5] TSN, 14 June 1995, p. 6.
[6] TSN, 19 October 1994, p. 18.
[7] TSN, 24 January 1995, p. 2.
[8] Id., pp. 8-13.
[9] See Note 7, p. 3.
[10] TSN, 14 July 1994, p. 4.
[11] Id., pp. 5-8.
[12] Records, p. 11.
[13] Id., p. 1.
[14] TSN, 14 June 1995, pp. 2-4.
[15] See Note 1.
[16] People v. Janairo, G.R. No. 129254, 22 July 1999.
[17] People v. Tan, G.R. No. 132324, 28 September 1999.
[18] Rollo, pp. 20-21.
[19] See Note 16.
[20] G.R. No. 123143, 19 July 1999.
[21] People v. Bitoon, G.R. No. 112451, 28 June 1999; People v. De la Cruz, G.R. No. 130608, 26 August 1999.
[22] People v. Bernas, G.R. Nos. 76416 and 94372, 5 July 1999.
[23] See Note 10.
[24] People v. Badon, G.R. No. 126143, 10 June 1999; People v. Manlapaz, G.R. No. 129033, 25 June 1999.
[25] People v. Dayug, et al., 49 Phil. 423 (1926). See also People v. Basao, G.R. No. 128286, 20 July 1999.
[26] Rollo, pp. 21-22.
[27] U.S. v. Rodriguez, 19 Phil. 150 (1911)

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