

SPO2 RUPERTO CABANLIG, PETITIONER, VS. SANDIGANBAYAN AND OFFICE OF THE SPECIAL PROSECUTOR, RESPONDENTS,

G.R. No. 148431. July 28, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] seeks to reverse the Decision[2] of the Fifth Division of the Sandiganbayan dated 11 May 1999 and Resolution[3] dated 2 May 2001 affirming the conviction of SPO2 Ruperto Cabanlig ("Cabanlig") in Criminal Case No. 19436 for homicide. The Sandiganbayan sentenced Cabanlig to suffer the indeterminate penalty of four months of arresto mayor as minimum to two years and four months of prision correctional as maximum and to pay P50,000 to the heirs of Jimmy Valino ("Valino"). Cabanlig shot Valino after Valino grabbed the M16 Armalite of another policeman and tried to escape from the custody of the police. The Sandiganbayan acquitted Cabanlig's co-accused, SPO1 Carlos Padilla ("Padilla"), PO2 Meinhart Abesamis ("Abesamis"), SPO2 Lucio Mercado ("Mercado") and SPO1 Rady Esteban ("Esteban").

The Charge

Cabanlig, Padilla, Abesamis, Mercado and Esteban were charged with murder in an amended information that reads as follows:

That on or about September 28, 1992, in the Municipality of Penaranda, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, SPO[2] Ruperto C. Cabanlig, SPO1 Carlos E. Padilla, PO2 Meinhart C. Abesamis, SPO2 Lucio L. Mercado and SPO1 Rady S. Esteban, all public officers being members of the Philippine National Police, conspiring and confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, taking advantage of nighttime and uninhabited place to facilitate the execution of the crime, with use of firearms and without justifiable cause, did then and there, wilfully, unlawfully and feloniously attack, assault and shoot one Jimmy Valino, hitting him several times at the vital parts of his body, thereby inflicting upon the latter, serious and mortal wounds which were the direct and immediate cause of his death, which crime was committed by the accused in relation to their office as members of the Philippine National Police of Penaranda, Nueva Ecija, the deceased, who was then detained for robbery and under the custody of the accused, having been killed while being taken to the place where he allegedly concealed the effects of the crime, to the damage and prejudice of the heirs of said victim, in such amount as may be awarded under the provisions of the New Civil Code.

CONTRARY TO LAW.[4]

Arraignment and Plea

On 15 December 1993, the accused police officers Cabanlig, Padilla, Abesamis, Mercado and Esteban pleaded not guilty.

Version of the Prosecution

On 24 September 1992 a robbery occurred in the Municipality of Penaranda, Nueva Ecija. Four days later or on 28 September 1992, the investigating authorities apprehended three suspects: Jordan Magat ("Magat"), Randy Reyes ("Reyes") and Valino. The police recovered most of the stolen items. However, a flower vase and a small radio were still missing. Cabanlig asked the three suspects where these two items were. Reyes replied that the items were at his house.

Cabanlig asked his colleagues, Padilla, Mercado, Abesamis and Esteban, to accompany him in retrieving the flower vase and radio. Cabanlig then brought out Reyes and Magat from their cell, intending to bring the two during the retrieval operation. It was at this point that Valino informed Cabanlig that he had moved the vase and radio to another location without the knowledge of his two cohorts. Cabanlig decided instead to bring along Valino, leaving behind Magat and Reyes.

Around 6:30 p.m., five fully armed policemen in uniform - Cabanlig, Padilla, Mercado, Abesamis and Esteban - escorted Valino to Barangay Sinasahan, Nueva Ecija to recover the missing flower vase and radio. The policemen and Valino were aboard a police vehicle, an Isuzu pick-up jeep. The jeep was built like an ordinary jeepney. The rear end of the jeep had no enclosure. A metal covering separated the driver's compartment and main body of the jeep. There was no opening or door between the two compartments of the jeep. Inside the main body of the jeep, were two long benches, each of which was located at the left and right side of the jeep.

Cabanlig, Mercado and Esteban were seated with Valino inside the main body of the jeep. Esteban was right behind Abesamis at the left bench. Valino, who was not handcuffed, was between Cabanlig and Mercado at the right bench. Valino was seated at Cabanlig's left and at Mercado's right. Mercado was seated nearest to the opening of the rear of the jeep.

Just after the jeep had crossed the Philippine National Railway bridge and while the jeep was slowly negotiating a bumpy and potholed road, Valino suddenly grabbed Mercado's M16 Armalite and jumped out of the jeep. Valino was able to grab Mercado's M16 Armalite when Mercado scratched his head and tried to reach his back because some flying insects were pestering Mercado. Mercado shouted "hoy!" when Valino suddenly took the M16 Armalite. Cabanlig, who was then facing the rear of the vehicle, saw Valino's act of taking away the M16 Armalite. Cabanlig acted immediately. Without issuing any warning of any sort, and with still one foot on the running board, Cabanlig fired one shot at Valino, and after two to three seconds, Cabanlig fired four more successive shots. Valino did not fire any shot.

The shooting happened around 7:00 p.m., at dusk or "nag-aagaw ang dilim at liwanag." Cabanlig approached Valino's body to check its pulse. Finding none, Cabanlig declared Valino dead. Valino sustained three mortal wounds - one at the back of the head, one at the left side of the chest, and one at the left lower back. Padilla and Esteban remained with the body. The other three policemen, including Cabanlig, went to a funeral parlor.

The following morning, 29 September 1992, a certain SPO4 Segismundo Lacanilao ("Lacanilao") of the Cabanatuan Police went to Barangay Sinasahan, Nueva Ecija to investigate a case. Lacanilao met Mercado who gave him instructions on how to settle the case that he was handling. During their conversation, Mercado related that he and his fellow policemen "salvaged" (summarily executed) a person the night before. Lacanilao asked who was "salvaged." Mercado answered that it was "Jimmy Valino." Mercado then asked Lacanilao why he was interested in the identity of the person who was "salvaged." Lacanilao then answered that "Jimmy Valino" was his cousin. Mercado immediately turned around and left.

Version of the Defense

Cabanlig admitted shooting Valino. However, Cabanlig justified the shooting as an act of self-defense and performance of duty. Mercado denied that he told Lacanilao that he and his co-accused "salvaged" Valino. Cabanlig, Mercado, Abesamis, Padilla, and Esteban denied that they conspired to kill Valino.

The Sandiganbayan's Ruling

The Sandiganbayan acquitted Padilla, Abesamis, Mercado and Esteban as the court found no evidence that the policemen conspired to kill or summarily execute Valino. Since Cabanlig admitted shooting Valino, the burden is on Cabanlig to establish the presence of any circumstance that would relieve him of responsibility or mitigate the offense committed.

The Sandiganbayan held that Cabanlig could not invoke self-defense or defense of a stranger. The only defense that Cabanlig could properly invoke in this case is fulfillment of duty. Cabanlig, however, failed to show that the shooting of Valino was the necessary consequence of the due performance of duty. The Sandiganbayan pointed out that while it was the duty of the policemen to stop the escaping detainee, Cabanlig exceeded the proper bounds of performing this duty when he shot Valino without warning.

The Sandiganbayan found no circumstance that would qualify the crime to murder. Thus, the Sandiganbayan convicted Cabanlig only of homicide. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused CARLOS ESTOQUE PADILLA, MEINHART CRUZ ABESAMIS, LUCIO LADIGNON MERCADO and RADY SALAZAR ESTEBAN are hereby ACQUITTED of the crime charged. Accused RUPERTO CONCEPCION CABANLIG is found GUILTY beyond reasonable doubt of the crime of Homicide and is hereby sentenced to suffer the indeterminate sentence of FOUR (4) MONTHS of arresto mayor, as minimum, to TWO (2) YEARS and FOUR (4) MONTHS of prision correccional, as maximum. He is further ordered to pay the heirs of Jimmy Valino the amount of FIFTY THOUSAND (P50,000.00) PESOS, and the costs.

SO ORDERED.[5]

On motion for reconsideration, Associate Justice Anacleto D. Badoy Jr. ("Associate Justice Badoy") dissented from the decision. Associate Justice Badoy pointed out that there was imminent danger on the lives of the policemen when Valino grabbed the "infallible Armalite"[6] from Mercado and jumped out from the rear of the jeep. At a distance of only three feet from Cabanlig, Valino could have sprayed the policemen with bullets. The firing of a warning shot from Cabanlig was no longer necessary. Associate Justice Badoy thus argued for Cabanlig's acquittal.

In a vote of four to one, the Sandiganbayan affirmed the decision.[7] The dispositive portion of the Resolution reads:

WHEREFORE, for lack of merit, the motion for reconsideration is hereby DENIED.[8]

The Issues

Cabanlig raises the following issues in his Memorandum:

WHETHER THE SANDIGANBAYAN ERRED IN RULING THAT THE DEFENSE OF FULFILLMENT OF DUTY PUT UP BY CABANLIG WAS INCOMPLETE

WHETHER THE SANDIGANBAYAN ERRED IN RULING THAT CABANLIG COULD NOT INVOKE SELF-DEFENSE/DEFENSE OF STRANGER TO JUSTIFY HIS ACTIONS

WHETHER THE SANDIGANBAYAN ERRED IN SENTENCING CABANLIG TO SUFFER IMPRISONMENT AND IN ORDERING HIM TO PAY THE AMOUNT OF P 50,000 TO THE HEIRS OF

VALINO[9]

The Court's Ruling

The petition has merit. We rule for Cabanlig's acquittal.

Applicable Defense is Fulfillment of Duty

We first pass upon the issue of whether Cabanlig can invoke two or more justifying circumstances. While there is nothing in the law that prevents an accused from invoking the justifying circumstances or defenses in his favor, it is still up to the court to determine which justifying circumstance is applicable to the circumstances of a particular case.

Self-defense and fulfillment of duty operate on different principles.[10] Self-defense is based on the principle of self-preservation from mortal harm, while fulfillment of duty is premised on the due performance of duty. The difference between the two justifying circumstances is clear, as the requisites of self-defense and fulfillment of duty are different.

The elements of self-defense are as follows:

- a) Unlawful Aggression;
- b) Reasonable necessity of the means employed to prevent or repel it;
- c) Lack of sufficient provocation on the part of the person defending himself.[11]

On the other hand, the requisites of fulfillment of duty are:

- The accused acted in the performance of a duty or in the lawful exercise of a right or office;
- The injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office.[12]

A policeman in the performance of duty is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm.[13] In case injury or death results from the policeman's exercise of such force, the policeman could be justified in inflicting the injury or causing the death of the offender if the policeman had used necessary force. Since a policeman's duty requires him to overcome the offender, the force exerted by the policeman may therefore differ from that which ordinarily may be offered in self-defense.[14] However, a policeman is never justified in using unnecessary force or in treating the offender with wanton violence, or in resorting to dangerous means when the arrest could be affected otherwise.[15]

Unlike in self-defense where unlawful aggression is an element, in performance of duty, unlawful aggression from the victim is not a requisite. In *People v. Delima*,[16] a policeman was looking for a fugitive who had several days earlier escaped from prison. When the policeman found the fugitive, the fugitive was armed with a pointed piece of bamboo in the shape of a lance. The policeman demanded the surrender of the fugitive. The fugitive lunged at the policeman with his bamboo lance. The policeman dodged the lance and fired his revolver at the fugitive. The policeman missed. The fugitive ran away still holding the bamboo lance. The policeman pursued the fugitive and again fired his revolver, hitting and killing the fugitive. The Court acquitted the policeman on the ground that the killing was done in the fulfillment of duty.

The fugitive's unlawful aggression in *People v. Delima* had already ceased when the policeman killed him. The fugitive was running away from the policeman when he was shot. If the policeman were a private person, not in the performance of duty, there would be no self-defense because there would be no unlawful aggression on the

part of the deceased.[17] It may even appear that the public officer acting in the fulfillment of duty is the aggressor, but his aggression is not unlawful, it being necessary to fulfill his duty.[18]

While self-defense and performance of duty are two distinct justifying circumstances, self-defense or defense of a stranger may still be relevant even if the proper justifying circumstance in a given case is fulfillment of duty. For example, a policeman's use of what appears to be excessive force could be justified if there was imminent danger to the policeman's life or to that of a stranger. If the policeman used force to protect his life or that of a stranger, then the defense of fulfillment of duty would be complete, the second requisite being present.

In *People v. Lagata*,^[19] a jail guard shot to death a prisoner whom he thought was attempting to escape. The Court convicted the jail guard of homicide because the facts showed that the prisoner was not at all trying to escape. The Court declared that the jail guard could only fire at the prisoner in self-defense or if absolutely necessary to avoid the prisoner's escape.

In this case, Cabanlig, Padilla, Abesamis, Mercado and Esteban were in the performance of duty as policemen when they escorted Valino, an arrested robber, to retrieve some stolen items. We uphold the finding of the Sandiganbayan that there is no evidence that the policemen conspired to kill or summarily execute Valino. In fact, it was not Valino who was supposed to go with the policemen in the retrieval operations but his two other cohorts, Magat and Reyes. Had the policemen staged the escape to justify the killing of Valino, the M16 Armalite taken by Valino would not have been loaded with bullets.^[20] Moreover, the alleged summary execution of Valino must be based on evidence and not on hearsay.

Undoubtedly, the policemen were in the legitimate performance of their duty when Cabanlig shot Valino. Thus, fulfillment of duty is the justifying circumstance that is applicable to this case. To determine if this defense is complete, we have to examine if Cabanlig used necessary force to prevent Valino from escaping and in protecting himself and his co-accused policemen from imminent danger.

Fulfillment of Duty was Complete, Killing was Justified

The Sandiganbayan convicted Cabanlig because his defense of fulfillment of duty was found to be incomplete. The Sandiganbayan believed that Cabanlig "exceeded the fulfillment of his duty when he immediately shot Valino without issuing a warning so that the latter would stop."^[21]

We disagree with the Sandiganbayan.

Certainly, an M16 Armalite is a far more powerful and deadly weapon than the bamboo lance that the fugitive had run away with in *People v. Delima*. The policeman in *People v. Delima* was held to have been justified in shooting to death the escaping fugitive because the policeman was merely performing his duty.

In this case, Valino was committing an offense in the presence of the policemen when Valino grabbed the M16 Armalite from Mercado and jumped from the jeep to escape. The policemen would have been justified in shooting Valino if the use of force was absolutely necessary to prevent his escape.^[22] But Valino was not only an escaping detainee. Valino had also stolen the M16 Armalite of a policeman. The policemen had the duty not only to recapture Valino but also to recover the loose firearm. By grabbing Mercado's M16 Armalite, which is a formidable firearm, Valino had placed the lives of the policemen in grave danger.

Had Cabanlig failed to shoot Valino immediately, the policemen would have been sitting ducks. All of the policemen were still inside the jeep when Valino suddenly grabbed the M16 Armalite. Cabanlig, Mercado and Esteban were hemmed in inside the main body of the jeep, in the direct line of fire had Valino used the M16 Armalite. There would have been no way for Cabanlig, Mercado and Esteban to secure their safety, as there were

no doors on the sides of the jeep. The only way out of the jeep was from its rear from which Valino had jumped. Abesamis and Padilla who were in the driver's compartment were not aware that Valino had grabbed Mercado's M16 Armalite. Abesamis and Padilla would have been unprepared for Valino's attack.

By suddenly grabbing the M16 Armalite from his unsuspecting police guard, Valino certainly did not intend merely to escape and run away as far and fast as possible from the policemen. Valino did not have to grab the M16 Armalite if his sole intention was only to flee from the policemen. If he had no intention to engage the policemen in a firefight, Valino could simply have jumped from the jeep without grabbing the M16 Armalite. Valino's chances of escaping unhurt would have been far better had he not grabbed the M16 Armalite which only provoked the policemen to recapture him and recover the M16 Armalite with greater vigor. Valino's act of grabbing the M16 Armalite clearly showed a hostile intention and even constituted unlawful aggression.

Facing imminent danger, the policemen had to act swiftly. Time was of the essence. It would have been foolhardy for the policemen to assume that Valino grabbed the M16 Armalite merely as a souvenir of a successful escape. As we have pointed out in *Pomoy v. People*[23]:

Again, it was in the lawful performance of his duty as a law enforcer that petitioner tried to defend his possession of the weapon when the victim suddenly tried to remove it from his holster. As an enforcer of the law, petitioner was duty-bound to prevent the snatching of his service weapon by anyone, especially by a detained person in his custody. Such weapon was likely to be used to facilitate escape and to kill or maim persons in the vicinity, including petitioner himself.

The Sandiganbayan, however, ruled that despite Valino's possession of a deadly firearm, Cabanlig had no right to shoot Valino without giving Valino the opportunity to surrender. The Sandiganbayan pointed out that under the General Rules of Engagement, the use of force should be applied only as a last resort when all other peaceful and non-violent means have been exhausted. The Sandiganbayan held that only such necessary and reasonable force should be applied as would be sufficient to conduct self-defense of a stranger, to subdue the clear and imminent danger posed, or to overcome resistance put up by an offender.

The Sandiganbayan had very good reasons in steadfastly adhering to the policy that a law enforcer must first issue a warning before he could use force against an offender. A law enforcer's overzealous performance of his duty could violate the rights of a citizen and worse cost the citizen's life. We have always maintained that the judgment and discretion of public officers, in the performance of their duties, must be exercised neither capriciously nor oppressively, but within the limits of the law.[24] The issuance of a warning before a law enforcer could use force would prevent unnecessary bloodshed. Thus, whenever possible, a law enforcer should employ force only as a last resort and only after issuing a warning.

However, the duty to issue a warning is not absolutely mandated at all times and at all cost, to the detriment of the life of law enforcers. The directive to issue a warning contemplates a situation where several options are still available to the law enforcers. In exceptional circumstances such as this case, where the threat to the life of a law enforcer is already imminent, and there is no other option but to use force to subdue the offender, the law enforcer's failure to issue a warning is excusable.

In this case, the embattled policemen did not have the luxury of time. Neither did they have much choice. Cabanlig's shooting of Valino was an immediate and spontaneous reaction to imminent danger. The weapon grabbed by Valino was not just any firearm. It was an M16 Armalite.

The M16 Armalite is an assault rifle adopted by the United States ("US") Army as a standard weapon in 1967 during the Vietnam War.[25] The M16 Armalite is still a general-issue rifle with the US Armed Forces and US law enforcement agencies.[26] The M16 Armalite has both semiautomatic and automatic capabilities.[27] It is 39

inches long, has a 30-round magazine and fires high-velocity .223-inch (5.56-mm) bullets.[28] The M16 Armalite is most effective at a range of 200 meters[29] but its maximum effective range could extend as far as 400 meters.[30] As a high velocity firearm, the M16 Armalite could be fired at close range rapidly or with much volume of fire.[31] These features make the M16 Armalite and its variants well suited for urban and jungle warfare.[32]

The M16 Armalite whether on automatic or semiautomatic setting is a lethal weapon. This high-powered firearm was in the hands of an escaping detainee, who had sprung a surprise on his police escorts bottled inside the jeep. A warning from the policemen would have been pointless and would have cost them their lives.

For what is the purpose of a warning? A warning is issued when policemen have to identify themselves as such and to give opportunity to an offender to surrender. A warning in this case was dispensable. Valino knew that he was in the custody of policemen. Valino was also very well aware that even the mere act of escaping could injure or kill him. The policemen were fully armed and they could use force to recapture him. By grabbing the M16 Armalite of his police escort, Valino assumed the consequences of his brazen and determined act. Surrendering was clearly far from Valino's mind.

At any rate, Valino was amply warned. Mercado shouted "hoy" when Valino grabbed the M16 Armalite. Although Cabanlig admitted that he did not hear Mercado shout "hoy", Mercado's shout should have served as a warning to Valino. The verbal warning need not come from Cabanlig himself.

The records also show that Cabanlig first fired one shot. After a few seconds, Cabanlig fired four more shots. Cabanlig had to shoot Valino because Valino at one point was facing the police officers. The exigency of the situation warranted a quick response from the policemen.

According to the Sandiganbayan, Valino was not turning around to shoot because two of the three gunshot wounds were on Valino's back. Indeed, two of the three gunshot wounds were on Valino's back: one at the back of the head and the other at the left lower back. The Sandiganbayan, however, overlooked the location of the third gunshot wound. It was three inches below the left clavicle or on the left top most part of the chest area based on the Medico Legal Sketch showing the entrances and exits of the three gunshot wounds.[33]

The Autopsy Report[34] confirms the location of the gunshot wounds, as follows:

GUNSHOT WOUNDS - modified by embalming.

- ENTRANCE - ovaloid, 1.6 x 1.5 cms; with area of tattooing around the entrance, 4.0 x 3.0 cms.; located at the right postauricular region, 5.5 cms. behind and 1.5 cms. above the right external auditory meatus, directed forward downward fracturing the occipital bone, lacerating the right occipital portion of the brain and fracturing the right cheek bone and making an EXIT wound, 1.5 x 2.0 cms. located on right cheek, 4.0 cms. below and 3.0 cms.. in front of right external auditory meatus.

- ENTRANCE - ovaloid, 0.7 x 0.5 cms., located at the left chest; 6.5 cms. from the anterior median line, 136.5 cms. from the left heel directed backward, downward and to the right, involving soft tissues, fracturing the 3rd rib, left, lacerating the left upper lobe and the right lower lobe and finally making an EXIT wound at the back, right side, 1.4 x 0.8 cms., 19.0 cms. from the posterior median line and 132.0 cms. from the right heel and grazing the medial aspect of the right arm.

- ENTRANCE - ovaloid, 0.6 x 0.5 located at the back, left side, 9.0 cms. from the posterior median line; 119.5 cms. from the left heel; directed forward, downward involving the soft tissues, lacerating the liver; and bullet was recovered on the right anterior chest wall, 9.0 cms. form the anterior median line, 112.0 cms. from the right heel.

The Necropsy Report[35] also reveals the following:

- Gunshot Wound, entrance, 0.5 cm X 1.5 cms in size, located at the left side of the back of the head. The left parietal bone is fractured. The left temporal bone is also fractured. A wound of exit measuring 2 cms X 3 cms in size is located at the left temporal aspect of the head.
- Gunshot [W]ound, entrance, 0.5 cm in diameter, located at the left side of the chest about three inches below the left clavicle. The wound is directed medially and made an exit wound at the right axilla measuring 2 X 2 cms in size.
- Gunshot Wound, entrance, 0.5 cm in diameter located at the left lower back above the left lumbar. The left lung is collapsed and the liver is lacerated. Particles of lead [were] recovered in the liver tissues. No wound of exit.

Cause of Death:

Cerebral Hemorrhage Secondary To Gunshot Wound In The Head

The doctors who testified on the Autopsy[36] and Necropsy[37] Reports admitted that they could not determine which of the three gunshot wounds was first inflicted. However, we cannot disregard the significance of the gunshot wound on Valino's chest. Valino could not have been hit on the chest if he were not at one point facing the policemen.

If the first shot were on the back of Valino's head, Valino would have immediately fallen to the ground as the bullet from Cabanlig's M16 Armalite almost shattered Valino's skull. It would have been impossible for Valino to still turn and face the policemen in such a way that Cabanlig could still shoot Valino on the chest if the first shot was on the back of Valino's head.

The most probable and logical scenario: Valino was somewhat facing the policemen when he was shot, hence, the entry wound on Valino's chest. On being hit, Valino could have turned to his left almost falling, when two more bullets felled Valino. The two bullets then hit Valino on his lower left back and on the left side of the back of his head, in what sequence, we could not speculate on. At the very least, the gunshot wound on Valino's chest should have raised doubt in Cabanlig's favor.

Cabanlig is thus not guilty of homicide. At most, Cabanlig, Padilla, Abesamis, Mercado and Esteban are guilty only of gross negligence. The policemen transported Valino, an arrested robber, to a retrieval operation without handcuffing Valino. That no handcuffs were available in the police precinct is a very flimsy excuse. The policemen should have tightly bound Valino's hands with rope or some other sturdy material. Valino's cooperative demeanor should not have lulled the policemen to complacency. As it turned out, Valino was merely keeping up the appearance of good behavior as a prelude to a planned escape. We therefore recommend the filing of an administrative case against Cabanlig, Padilla, Abesamis, Mercado and Esteban for gross negligence.

WHEREFORE, we REVERSE the decision of the Sandiganbayan in Criminal Case No. 19436 convicting accused RUPERTO CONCEPCION CABANLIG of the crime of homicide. We ACQUIT RUPERTO CONCEPCION CABANLIG of the crime of homicide and ORDER his immediate release from prison, unless there are other lawful grounds to hold him. We DIRECT the Director of Prisons to report to this Court compliance within five (5) days from receipt of this Decision. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, and Azcuna, JJ., concur.
Ynares-Santiago, J., see dissenting opinion.

- [1] Under Rule 45 of the Rules of Court.
- [2] Penned by Associate Justice Minita V. Chico-Nazario with Associate Justices Anacleto D. Badoy, Jr. and Ma. Cristina Cortez-Estrada, concurring.
- [3] Penned by Associate Justice Minita V. Chico-Nazario with Associate Justices Ma. Cristina Cortez-Estrada, Raoul V. Victorino, Nicodemo T. Ferrer, concurring. Associate Justice Anacleto D. Badoy, Jr. dissented.
- [4] Records, pp. 29-30.
- [5] Rollo, p. 56.
- [6] Ibid., p. 90.
- [7] See note 3.
- [8] Rollo, p. 84.
- [9] Ibid., p. 161.
- [10] LUIS B. REYES, THE REVISED PENAL CODE, 15[th] ED., 2001, BOOK ONE, p. 202.
- [11] Paragraph 1, Article 11 of the Revised Penal Code.
- [12] *People v. Oanis*, 74 Phil. 257 (1943).
- [13] Ibid..
- [14] RAMON C. AQUINO AND CAROLINA C. GRIÑO-AQUINO, THE REVISED PENAL CODE, 1997 ED., VOL. I, p. 205, citing *United States v. Mojica*, 42 Phil. 784 (1922).
- [15] Supra note 12.
- [16] 46 Phil. 738 (1922).
- [17] LUIS B. REYES, THE REVISED PENAL CODE, supra note 10, p. 203.
- [18] Ibid., p. 202.
- [19] 83 Phil. 150 (1949).
- [20] TSN, 11 July 1996, p. 21.
- [21] Rollo, p. 47.
- [22] LUIS B. REYES, THE REVISED PENAL CODE, supra note 10, p. 198.
- [23] G.R. No. 150647, 29 September 2004, 439 SCRA 439.
- [24] *Calderon v. People and Court of Appeals*, 96 Phil. 216 (1954).
- [25] <http://concise.britannica.com/ebc/article?tocId=9370808>, 19 May 2005.
- [26] <http://world.guns.ru/assault/as18-e.htm>, 19 May 2005.
- [27] <http://concise.britannica.com/ebc/article?tocId=9370808>, 19 May 2005.
- [28] Ibid.

[29] http://www.olive-drab.com/od_other_firearms_rifle_m16.php3, 19 May 2005.

[30] <http://world.guns.ru/assault/as18-e.htm>, 19 May 2005.

[31] <http://www.answer.com>, 19 May 2005.

[32] Ibid.

[33] Exhibit "B-1."

[34] Exhibit "A."

[35] Exhibit "B."

[36] Testimony of Dr. Dominic L. Aguda, TSN, 28 July 1994, p. 26.

[37] Testimony of Dr. Marcelo H. Gallardo Jr., TSN, 27 July 1994, pp. 19-20.

DISSENTING OPINION

YNARES-SANTIAGO, J.:

Cabanlig was convicted of homicide based on the findings of the Sandiganbayan that he exceeded his duty when he shot Valino without warning.[1] Since Cabanlig saw Valino grab Mercado's armalite rifle, the Sandiganbayan ruled that he had no right to shoot Valino without giving him the opportunity to surrender.[2] Citing the General Rules of Engagement of the PNP, the Sandiganbayan held that force and firearms shall be used as a last resort, and only when necessary and reasonable to subdue or overcome the clear and imminent danger posed, or the resistance being put up by the malefactor.[3] It disregarded Cabanlig's claim that Valino was turning around when shot as it was not in accordance with the wounds suffered by Valino.[4] It also found that Valino was shot at close range, not more than three feet, because of the tattooing around the entrance of the gunshot wound on the head.[5]

The ponencia however, finds that Cabanlig was justified in killing Valino because he placed the lives of the policemen in grave danger when he grabbed the armalite rifle of Mercado.[6] It declares that the policemen would have been sitting ducks inside the jeep had Cabanlig not immediately shot Valino.[7] Cabanlig was reacting to imminent danger[8] and a warning from him would have been pointless and would have cost their lives.[9] It points out the Valino was sufficiently warned when Mercado shouted "hoy" when his rifle was grabbed.[10] Also, Cabanlig fired one shot first followed by four more.[11] The ponencia declares that at one point Valino was facing the police officers,[12] as shown by the location of his chest wound,[13] thus warranting a quick response.

With due respect, we cannot subscribe to the conclusion that the policemen would have been "sitting ducks" or easy targets if Cabanlig did not immediately gun down Valino. It is well to note that Valino who was a suspected robber was being escorted by five heavily armed policemen on their way to retrieve the stolen items consisting of a flower vase and a clock. Three of the policemen were armed with M-16 rifles while two were equipped with .38 pistols.[14]

The conclusion that warning Valino would cost the lives of the policemen lacks basis and purely speculative. There were five police officers guarding Valino and four of them were armed with high powered guns. The five policemen were up against a lone malefactor who was not even shown to be adept in handling an M-16 armalite rifle. Besides, Cabanlig was aware when Valino grabbed Mercado's rifle. He was thus prepared to repel or overcome any threat posed by Valino. As the records show, Valino ran away from the vehicle after he grabbed the armalite rifle. There was no evidence that it was aimed at the police officers hence there is no imminent danger to

speak of.

We take exception to the claim that Valino faced the police officers during the encounter. Dr. Marcelo Gallardo, Jr. testified that the chest wound did not indicate that Valino faced the police officers during the shooting. On the contrary, he said that the assailant was either at the back or the side of the victim, thus:

PROS. TABANGUIL

Q.

Doctor, in your findings there are three (3) gunshots wound, numbered 1, 2 and 3, is that correct?

A.

Yes, sir.

Q.

Now, we go to gunshot wound no. 1. "Gunshot Wound, entrance, 0.5 cm x 1.5 cms in size, located at the left side of the back of the head. The left parietal bone is fractured. The left temporal bone is also fractured. A wound of exit measuring 2 cms x 3 cms in size is located at the left temporal aspect of the head." Now, will you demonstrate to the Honorable court where is this wound located?

A.

The wound of entrance is located at the top of the head. In this part of the head.

PJ GARCHITORENA

Witness is indicating a position above his left temple of his forehead.

PROS TABANGUIL

Q:

In that wound, will you please tell the Honorable Court the position of the assailant in relation to the victim?

A:

The assailant must be at the back of the victim in order to produce the entrance at the back of the head, sir.

Q:

Would you consider that wound a fatal wound?

A:

Yes, sir.

Q:

Now, Gunshot Wound No. 2: entrance 0.5 cm in diameter, located at the left side of the chest about three inches below the left clavicle. The wound is directed medially and made an exit wound at the right axilla measuring 2x2 cms in size." Will you demonstrate to the Court the location of this wound, the entrance and the exit?

A:

The wound of entrance is located here below the clavicle then made an exit wound on his right side, right

axilla.

PROS TABAGUIL

Witness demonstrating using his body as a demonstration, your Honor.

Q:

Now, in this wound, what would be the position of the assailant in relation to the victim?

A:

The assailant must be on the left side of the victim in order to produce that wound, sir.

PJ GARCHITORENA

Q:

Before it exit is that the front part of the armpit or the rare part of the armpit?

A:

In the middle, sir.

Q:

But the way you are pointing it, it seems to be closer to the chest rather than the shoulder?

A:

It is a little bet front of the oxilla, your Honor.

PROS TABANGUIL

Q:

So in that case the assailant must be a little bet backward to the victim?

A:

No, on the lateral side.

Q:

"Gunshot Wound No. 3, entrance, 0.5 cm in diameter located at the left lower back above the left lumbar. The left lung is collapsed and the liver is lacerated. Particles of lead was recovered in the liver tissues. No wound of exit." Will you demonstrate to this Honorable Court where is that wound?

...

PROS TABANGUIL

Q:

In the case of this wound no. 3, what would be the position of the assailant to the victim?

A:

The assailant must have been at the left side but a little bit at the back.

Q.

Now, these wounds, 2 and 3, would you consider these wounds a fatal wound?

A:

Yes, sir.[15]

...

ATTY. JACOBA

Q:

You stated also Doctor, that the possible position of the assailant as regards gunshot wound no. 1 was behind the victim a little to the left, is that correct?

A:

No, I did not say that it was a little to the left. Its just at the back.[16]

We concede that the police officers were in danger after Valino grabbed the rifle although the same was not imminent. It appears that Valino was running away from the jeep and there is no proof that he, even at one point, faced the police officers and aimed his rifle towards them. Even Cabanlig testified that:

Q:

When you fired the first shot, what was the position of Jimmy Baleno?

A:

He was running away from us, sir and he was in a position of about to rotate "umikot".

JUSTICE SANDOVAL:

Q:

What do you mean by "umikot"?

A:

He would be turning towards my direction, sir.

Q:

But he was not able to face you, is that correct?

A:

Yes, sir.

PJ:

Q:

Was he able to face you?

A:

No, sir.[17]

SPO2 Mendoza's testimony that he warned Valino by shouting "hoy" deserves no consideration. Assuming that it

was uttered, there is no proof that it was heard by Valino. It appears that it was more of a reflex reaction from Mendoza when his rifle was grabbed rather than a warning issued to Valino.

The testimony of Mendoza is incredible, if not absurd to pretend to be unaware of what transpired after his gun was allegedly taken by Valino, or that there appears to be no struggle between him and Valino when the latter attempted to grab his weapon. As a police officer, Mendoza offered no resistance when Valino stole his gun. Thus:

Atty. Jacoba:

Q:

But when Jimmy Valino grabbed your gun, was it with the left or right hand?

A:

I do not know which hand he used, sir.

Q:

Do you remember if you were pushed by Jimmy Valino before grabbing your gun?

A:

No, sir.

Q:

So Jimmy Valino was able to jump out of the vehicle with your gun?

A:

Yes, Your Honor.

Q:

Did he point the gun towards your direction?

A:

I did not notice, sir.

Q:

Did you notice if Jimmy Valino was trying to cock the gun?

A:

I did not notice, sir.

Q:

Did you notice when Ruperto Cabanlig fired the first shot on Jimmy Valino whether Jimmy Valino was facing the vehicle or his back was towards the vehicle?

A:

I did not notice whether he was facing us, sir.[18]

...

Q:

Now, did you notice what was the position of Jimmy Valino when he was first shot by Ruperto Cabanlig, was he running away from the jeep or was he facing the jeep?

A:

I do not know what his position, Your Honor.[19]

That Cabanlig first fired a shot followed by four more shots could not be considered sufficient warning. The succession of the shots was a mere one or two seconds thus giving no ample time for Valino to surrender. Besides, as testified to by Cabanlig, he was giving no warning at all because the shots were directly aimed at Valino.

ATTY. FAJARDO:

Q:

Could you tell more details on that how this incident happened?

A:

We had just crossed the PNR bridge, the road was in a very bad way at that time, the driver was driving slowly and that is where he took the gun away from Mercado and jumped out of the vehicle and that is the time I was compelled to shoot him.

Q:

How many shots did you fire?

A:

Five (5) shots, sir.

Q:

What weapon?

A:

M-16, sir.

Q:

The first five (5) shots that you fired where did you aim?

A:

It was toward him, sir.

Q:

And you were not sure whether you hit him or not or you do not know where you hit him?

A:

I am not sure exactly where I had hit him, sir but I got the impression that he was turning around to shoot me (witness making a gesture as if somebody is holding a firearm) so I fired some more shots at him.

JUSTICE SANDOVAL:

Q:

What was the weapon grabbed by Baleno?

A:

M-16, Your Honor.

Q:

How about your other police companions what kind of weapons were they carrying at that time?

A:

Abesamis and Esteban were carrying 38 caliber, Mercado had an M-16 rifle and the rest of us were carrying M-16. Your Honor.

ATTY. FAJARDO:

Q:

You said that you fired several shots, how did you fire, did you aim it to the victim?

A:

Yes, sir the second shot was aimed at him, sir.

JUSTICE SANDOVAL:

Q:

Why did you aim at him?

A:

Because he had grabbed the weapon sir, and he could kill anyone of us.[20]

The sequence of events adverted to by the ponencia is not supported by the records. Since the examining physician could not even determine which of the three wounds was inflicted first, there is no basis to conclude that this is "the most probable and logical scenario" -

"Valino was somewhat facing the policemen when he was shot, hence, the entry wound on Valino's chest. On being hit, Valino could have turned to his left almost falling, when two more bullets felled Valino. The two bullets then hit Valino on his lower left back and on the left side of the back of his head, in what sequence, we could not speculate on. At the very least, the gunshot wound on Valino's chest should have raised doubt in Cabanlig's favor." [21]

As Dr. Gallardo had testified:

ATTY. JACOBA

Q:

Doctor, you are not in a position to state which of these wounds were inflicted first?

A:

I am not sure, sir.

Q:

In other words you cannot tell which wound was inflicted first?

A:

No sir.[22]

In *Escara v. People*,^[23] we declared that factual questions are not reviewable by the Supreme Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Civil Procedure. There is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. In appeals to this Court from the Sandiganbayan only questions of law may be raised, not issues of fact.

The issues raised by petitioner, to wit: whether or not he issued warnings before shooting Valino and whether the latter was facing him when shot, are issues of fact and not of law.

It is an established doctrine of long standing that factual findings of the trial court on the credibility of witnesses are accorded great weight and respect and will not be disturbed on appeal. The trial court is in a unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh or the scant or full realization of an oath - all of which are useful for an accurate determination of a witness' honesty and sincerity.^[24]

In *People v. Lagata*,^[25] we held that:

While custodians of prisoners should take all care to avoid the latter's escape, only absolute necessity would authorize them to fire against them. Theirs is the burden of proof as to such necessity. The summary liquidation of prisoners, under flimsy pretexts of attempts of escape, which has been and is being practiced in dictatorial systems of government, has always been and is shocking to the universal conscience of humanity.

Human life is valuable, albeit, sacred. Cain has been the object of unrelentless curse for centuries and millennia and his name will always be remembered in shame as long as there are human generations able to read the Genesis. Twenty centuries of Cristianity have not been enough to make less imperative the admonition that "Thou shalt not kill," uttered by the greatest pundit and prophet of Israel. Laws, constitutions, world charters have been written to protect human life. Still it is imperative that all men be imbued with the spirit of the Sermon on the Mount that the words of the gospels be translated into reality, and that their meaning fill all horizons with the eternal aroma of encyclic love of mankind. [Emphasis supplied]^[26]

Cabanlig admitting killing Valino. Therefore, the burden of proving that the killing was reasonable and necessary rests on him. To our mind, Cabanlig failed to discharge this burden. He also failed to convincingly show that there was a misapprehension of facts by the Sandiganbayan, hence, its findings must be accorded respect and weight.

ACCORDINGLY, I vote to DISMISS the petition and AFFIRM the decision of the Sandiganbayan finding Cabanlig guilty of homicide.

[1] Rollo, p. 47.

[2] Id.

[3] Id. at 48.

[4] Id. at 49.

[5] Id. at 51.

- [6] Draft Decision, p. 14.
- [7] Id. at 15.
- [8] Id. at 18.
- [9] Id. at 19.
- [10] Id.
- [11] Id.
- [12] Id.
- [13] Id. at 22.
- [14] TSN, Testimony of SPO2 Cabanlig, February 10, 1997, p. 27.
- [15] TSN, Testimony of Dr. Gallardo, July 27, 1994, pp. 12-15.
- [16] Id. at 18.
- [17] TSN, Testimony of SPO2 Cabanlig, February 10, 1997, p. 54.
- [18] TSN, Testimony of SPO2 Mercado, July 11, 1996, pp. 39-40.
- [19] Id. at 41.
- [20] TSN, Testimony of SPO2 Cabanlig, February 10, 1997, pp. 26-27.
- [21] Draft Decision, p. 22.
- [22] TSN, Testimony of Dr. Gallardo, July 27, 1994, pp. 19-20.
- [23] G.R. No. 164921, 6 July 2005.
- [24] Id.
- [25] 83 Phil. 150 (1949).
- [26] Id. at 161.

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