

RAUL ZAPATOS Y LEGASPI, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. Nos. 147814-15. September 16, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Since the olden times, no impulse has been proven so powerful than that of self-preservation. Thus, the law, out of tenderness for humanity, permits the taking of life of another in defense of one's person in times of necessity. In the words of the Romans of ancient history: Quod quisque ob tutelam corporis sui fecerit, jure suo fecisse existimetur.[1]

Assailed in this petition for review on certiorari is the Decision[2] dated March 27, 2001 of the Sandiganbayan in Criminal Cases Nos. 17015 and 17016 finding Raul Zapatos, petitioner herein, guilty beyond reasonable doubt of the crimes of murder and frustrated murder and sentencing him as follows:

"WHEREFORE, under Criminal Case No. 17015, the accused RAUL ZAPATOS, is hereby found GUILTY beyond reasonable doubt of the crime of MURDER, defined and penalized under Article 248, Revised Penal Code and, considering the presence of one (1) mitigating circumstance with no generic aggravating circumstance, he is hereby sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA and to indemnify the heirs of the late Mayor Leonardo Cortez in the amount of P50,000.00;

"Under Criminal Case No. 17016, the same accused, RAUL ZAPATOS, is hereby found GUILTY beyond reasonable doubt of the crime of FRUSTRATED MURDER, defined and penalized under Article 248 in relation to Article 6 of the Revised Penal Code, and, considering the presence of one (1) ordinary mitigating circumstance of voluntary surrender which is not offset by any generic aggravating circumstance, applying the Indeterminate Sentence Law he is hereby sentenced to suffer the penalty of from Six (6) Years and One (1) day of prision mayor, as minimum to Twelve (12) Years and One (1) day to Fourteen (14) years and Eight (8) Months of reclusion temporal, as maximum, and to indemnify SOCRATES PLATERO in the amount of P25,000.00 by way of civil indemnity.

"The accused shall pay the costs.

"SO ORDERED." (Emphases supplied)

In two separate Informations, Special Prosecution Officer Gualberto J. Dela Llana charged both petitioner and Victoriano Vidal[3] with murder and frustrated murder, committed as follows:

Criminal Case No. 17015 (Murder)

"That on or about January 14, 1990, at Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, being then an employee and Community Environment Natural Resources Officer, respectively of the Department of Environment and Natural Resources, assigned at Bayugan, Agusan del Sur, and committing the crime herein charged in relation to their office, with treachery and evident premeditation and with intent to kill and with the use of firearm, did then

and there willfully, unlawfully and feloniously attack and shoot Leonardo Cortez, Municipal Mayor of Bayugan, Agusan del Sur, hitting him at the vital parts of his body and inflicting upon said Leonardo Cortez mortal wounds which caused his instantaneous death, to the damage and prejudice of the victim's heirs.

"CONTRARY TO LAW.[4]

Criminal Case No. 17016 (Frustrated Murder)

"That on or about January 14, 1990, at Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, being then an employee and Community Environment Natural Resources Officer, respectively of the Department of Environment and Natural Resources, assigned at Bayugan, Agusan del Sur and committing the crime herein charged in relation to their office, with intent to kill and with the use of firearm, did then and there willfully, unlawfully and feloniously attack and shoot one Socrates Platero, hitting him at his left leg and inflicting upon said Socrates Platero mortal wound which could have caused his death had it not been for the timely medical assistance given him to the damage and prejudice of said victim.

"CONTRARY TO LAW."

On arraignment, petitioner pleaded "not guilty." [5] Forthwith, trial ensued. [6]

The case for the prosecution is woven basically on the testimony of Socrates Platero as follows: On January 14, 1990, at 8:00 o'clock in the evening, witness Platero and Mayor Leonardo Cortez of Bayugan, Agusan Del Sur were on their way home from Butuan City. [7] En route, the patrol car they were riding ran out of gasoline, prompting them to stop at the Bureau of Internal Revenue (BIR) Monitoring Station, Barangay Maygatasan, Bayugan. With no gasoline to spare, Station Guard Pfc. Michael Gatillo accompanied them to the nearby Department of Environment and Natural Resources (DENR) checkpoint. [8] There, they found Pacheco Tan. Pfc. Gatillo approached Tan and requested for extra gasoline. Suddenly, Tan ran towards the guardhouse. [9] After "a few seconds," Platero heard a gunshot originating therefrom. The bullet hit Mayor Cortez, causing him to collapse to the ground. [10] Thereupon, Platero saw petitioner Raul Zapatos, "holding an armalite in a firing position." Platero immediately retaliated and an exchange of gunfire ensued. During this time, Platero tried to pull Mayor Cortez away from the crossfire. Platero's foot was hit. [11] He did not see who shot him. [12] He then took cover on the other side of the highway.

Pfc. Gatillo testified that he was the policeman assigned at the BIR Monitoring Station on January 14, 1990. [13] At about 8:00 o'clock in the evening, he accompanied Platero and Mayor Cortez to the DENR checkpoint to ask for some gasoline. [14] Upon seeing Tan, he asked him about petitioner's whereabouts. Tan replied that petitioner was sleeping inside the guardhouse. [15] Mayor Cortez also inquired from Tan where petitioner was. Tan merely reiterated his answer. [16] Then Tan walked towards the guardhouse and "in a matter of seconds," he (witness Gatillo) saw petitioner firing his gun at Mayor Cortez. [17] Mayor Cortez fell to the ground with blood oozing from his mouth. [18] Platero attempted to pull Mayor Cortez but another shot was fired and this time, the Mayor was hit on the leg. While running across the highway to take cover, Platero was also hit on the leg. [19] When the shooting stopped, he (Gatillo) brought Platero and Mayor Cortez to Bayugan Community Hospital. [20]

Dr. Romeo Cedeño, Chief of the Bayugan Community Hospital, declared that when he attended to Mayor Cortez on January 14, 1990, [21] the latter was already dead. He did not conduct an autopsy or examine the wounds. He merely conducted a superficial examination which showed that four (4) wounds had been inflicted upon Mayor Cortez – one in the vicinity of the left nipple, one on the right axillary region, one on the right knee, and another on the left iliac region. [22]

Building his case on the justifying circumstance of self-defense, petitioner presented a different version. He

testified that he was the Team Leader of the DENR Sentro Striking Force whose primary duty is to seize illegally-cut forest products.[23] He held office at the DENR checkpoint, Barangay Maygatasan, Bayugan, Agusan del Sur. On January 14, 1990, at about 7:00 o'clock in the evening, he instructed Pacheco Tan, his co-worker, to man the checkpoint as he was sleepy. He also directed Tan to wake him up should there be any problem.[24] While sleeping, a burst of gunshots awakened him. He saw that the guardhouse was being riddled with bullets,[25] piercing the walls and hitting some objects inside. Immediately he dropped to the floor and took the armalite rifle from the locker located under his bed.[26] Hiding behind a barricade, he fired at his attackers. Thereafter, fearing for his life, he broke the flooring of the guardhouse and crawled through the hollow portion underneath to reach its back door.[27] He walked away until he reached Nilo Libres' house where he stayed overnight.[28] The next day, he heard the news that Mayor Cortez was killed.[29] He immediately surrendered himself and his armalite rifle to Sgt. Benjamin Amorio of the Philippine Army Brigade, Prosperidad, Agusan del Sur.[30]

Pacheco Tan corroborated petitioner's testimony. On the same date and time, petitioner, who was about to sleep, instructed Tan to take the first shift. While petitioner was sleeping, Pfc. Gatillo, Mayor Cortez and Platero arrived.[31] Pfc. Gatillo approached Tan and inquired where petitioner was. He replied that petitioner was sleeping inside the guardhouse.[32] Pfc. Gatillo returned to the parked patrol car where Mayor Cortez and Platero were waiting. Tan noticed that there were other policemen within the vicinity.[33] Then, Mayor Cortez and Platero, each carrying an M-16 rifle, alighted from the vehicle and approached the guardhouse. Again, Mayor Cortez asked Tan where petitioner was. Again Tan gave him the same answer.[34] Mayor Cortez reacted in disbelief, saying "ah." Suddenly, Tan heard a burst of gunshots directed at the guardhouse. He immediately ducked on the ground and then ran towards the pasillo leading to the back of the guardhouse.[35] Seized by fear, he was not able to wake petitioner.[36] He ran away and, upon reaching a banana plantation, stayed there until morning.[37] The next day, he went to the Chief of Police of Sibagat, Agusan del Sur.[38] He was brought to the Bayugan Police Station so that he could give a statement regarding the incident. But he refused to sign the typewritten statement prepared by the Bayugan Police because it pinpoints to petitioner as the killer of Mayor Cortez. He was against such statement because he did not see petitioner shot Mayor Cortez.[39]

NBI Agent Virgilio Decasa testified that upon inspecting the DENR checkpoint at Maygatasan, Bayugan, he observed that it was riddled with bullets.[40] The locations of the bullet holes showed that those responsible surrounded the building.[41] From his investigation, it was Mayor Cortez, together with Platero and Pfc. Gatillo, who approached the DENR checkpoint. They were followed by several policemen who were instructed by Mayor Cortez "to prepare for any eventuality." [42] He was not able to collect the guns and have them tested by the NBI's ballistic technician because the policemen refused to submit themselves to an investigation.[43] He recommended that the cases filed against petitioner be reviewed and/or investigated to prevent injustice.[44]

Lazarito Estorque recounted that on January 14, 1990, at about 5:30 o'clock in the afternoon, he and Mayor Cortez were having a "drinking session" at the house of his compadre Bong Kadao. Mayor Cortez, together with his three (3) policemen, left Kadao's house at 7:00 o'clock in the evening.[45]

Consequently, two Informations for frustrated murder and murder, docketed as Criminal Cases Nos. 414 and 415, were filed with the Regional Trial Court (RTC), Branch VII, Bayugan Agusan del Sur. Pursuant to this Court's Resolution dated August 2, 1990, the venue was transferred to the RTC, Branch V, Butuan City where the cases were docketed as Criminal Cases Nos. 4194 and 4195. Before petitioner could be arraigned, the private prosecutor filed with the RTC a motion to refer the cases to the Sandiganbayan but it was denied in an Order dated March 11, 1991.[46] Petitioner was then arraigned and pleaded not guilty to both charges.[47]

The private prosecutor filed with this Court a petition for certiorari questioning the order of the RTC, but the same

was dismissed.[48] This time, the public prosecutor filed with the RTC an Omnibus Motion to Dismiss[49] on the ground of lack of jurisdiction. On August 9, 1991, the RTC issued an Omnibus Order[50] granting the motion and dismissing Criminal Cases Nos. 4194 and 4195. This prompted Special Prosecution Officer Dela Llana to file with the Sandiganbayan the two Informations quoted above.

In this petition, petitioner ascribes to the Sandiganbayan the following errors:

"A.

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN NOT FINDING THAT DOUBLE JEOPARDY HAS ALREADY ATTACHED AND THAT IT HAD NO JURISDICTION OVER THE CASES;

B.

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT PETITIONER IS GUILTY OF THE CRIMES CHARGED DESPITE OVERWHELMING ABSENCE OF PHYSICAL EVIDENCE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT;

C.

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN NOT GIVING DUE CREDENCE TO THE FINDINGS OF THE NATIONAL BUREAU OF INVESTIGATION AS WELL AS THE TESTIMONY OF NBI INVESTIGATING AGENT VIRGILIO M. DECASA;

D.

THE HONORABLE SANDIGANBAYAN ERRED IN GIVING FULL FAITH AND CREDENCE TO THE CONTRADICTING TESTIMONIES OF PROSECUTION WITNESSES SOCRATES PLATERO AND MICHAEL GATILLO;

E.

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN FINDING THAT THERE EXISTS PROOF BEYOND REASONABLE DOUBT THAT PETITIONER IS GUILTY OF THE CRIMES CHARGED;

F.

GRANTING WITHOUT ADMITTING LIABILITY FOR THE CRIMES CHARGED, THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN NOT FINDING THAT PETITIONER ACTED IN SELF-DEFENSE; AND

G.

GRANTING WITHOUT ADMITTING GUILT FOR THE CRIMES CHARGED, THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN FINDING THE EXISTENCE OF TREACHERY."

The People counters that since petitioner was on a 24-hour duty as Team Leader of the DENR Sentro Striking Force when the crimes took place, it follows that his acts were committed in relation to his office. Necessarily, the previous dismissal of his cases by the RTC could not result in double jeopardy.[51] The presentation of petitioner's weapon or the autopsy report is immaterial considering that both Pfc. Gatillo and Platero positively identified petitioner as the culprit.[52] Moreover, the inconsistencies in the testimonies of the prosecution witnesses do not in any manner affect their credibility for they merely involve immaterial matters.[53] Lastly, petitioner's plea of self-defense cannot be sustained because of the absence of all its requisites.[54]

The petition is impressed with merit.

First, we shall resolve the issues of jurisdiction and double jeopardy. Petitioner assails the jurisdiction of the Sandiganbayan over his cases on the ground that the crimes imputed to him were not committed in relation to his office.

Well-settled is the principle that the jurisdiction of a court to try a criminal case is determined by the law in force at the time of the institution of the action.[55] Here, the applicable law is Presidential Decree (P.D.) No. 1606,[56] as amended by P.D. No. 1861.[57] Section 4, paragraph (a) thereof provides:

"SECTION 4. Jurisdiction. – The Sandiganbayan shall exercise:

a) Exclusive original jurisdiction in all cases involving:

(1) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code;

(2) Other offenses or felonies committed by public officers and employees in relation to their office, including those employed in government-owned or controlled corporations, whether simple or complexed with other crimes, where the penalty prescribed by law is higher than prison correccional or imprisonment for six (6) years, or a fine of P6,000.00 x x x." (Emphasis supplied)

In a catena of cases decided under the aegis of P.D. No. 1606, such as *Aguinaldo vs. Domagas*,[58] *Sanchez vs. Demetriou*,[59] *Natividad vs. Felix*,[60] and *Republic vs. Asuncion*,[61] we ruled that two requirements must concur under Sec. 4 (a) (2) for an offense to fall under the Sandiganbayan's jurisdiction, namely: (1) the offense committed by the public officer must be in relation to his office; and (2) the penalty prescribed must be higher than prison correccional or imprisonment for six (6) years, or a fine of P6,000.00. Obviously, the first requirement is the present cause of discord between petitioner and the People.

An offense is deemed to be committed in relation to the accused's office when such office is an element of the crime charged or when the offense charged is intimately connected with the discharge of the official function of the accused.[62] In *Cunanan vs. Arceo*,[63] we held:

"In *Sanchez vs. Demetriou* [227 SCRA 627 (1993)], the Court elaborated on the scope and reach of the term 'offense committed in relation to [an accused's] office' by referring to the principle laid down in *Montilla vs. Hilario* [90 Phil 49 (1951)], and to an exception to that principle which was recognized in *People vs. Montejo* [108 Phil 613 (1960)]. The principle set out in *Montilla vs. Hilario* is that an offense may be considered as committed in relation to the accused's office if 'the offense cannot exist without the office' such that 'the office [is] a constituent element of the crime x x x.' In *People vs. Montejo*, the Court, through Chief Justice Concepcion, said that 'although public office is not an element of the crime of murder in [the] abstract,' the facts in a particular case may show that 'x x x the offense therein charged is intimately connected with [the accused's] respective offices and was perpetrated while they were in the performance, though improper or irregular, of their official functions. Indeed, [the accused] had no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices. . . .'"

The Informations filed with the Sandiganbayan allege that petitioner, then a "public officer," committed the crimes of murder and frustrated murder "in relation to his office," i.e., as "Community Environment and Natural Resources Officer" of the DENR.[64] It is apparent from this allegation that the offenses charged are intimately connected with petitioner's office and were perpetrated while he was in the performance of his official functions. In its Resolution[65] dated August 25, 1992, the Sandiganbayan held that petitioner was "on duty" during the incident; that the DENR Checkpoint "was put up in order to prevent incursions into the forest and wooded area;" and that petitioner, as a guard, was "precisely furnished with a firearm in order to resist entry by force or intimidation." Indeed, if petitioner was not on duty at the DENR checkpoint on January 14, 1990, he would not have had the bloody encounter with Mayor Cortez and his men.[66] Thus, based on the allegations in the Informations, the Sandiganbayan correctly assumed jurisdiction over the cases.

Significantly, while petitioner had already pleaded "not guilty" before the RTC, jeopardy did not attach as it did not acquire jurisdiction. There can be no double jeopardy where the accused entered a plea in court that had no jurisdiction.[67]

We now go to the substantial merits of the case.

After considering the records very closely, we are constrained to reject the evidence for the prosecution. Jurisprudence is settled that whatever is repugnant to the standards of human knowledge, observation and experience becomes incredible and lies outside judicial cognizance. Consistently, we ruled that evidence, to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind.[68] Here, the prosecution witnesses, Platero and Pfc. Gatillo, are not credible. Indeed, their testimonies bear the earmarks of falsehood.

First, Platero's tale that Pacheco Tan, who was then on "first shift" at the DENR checkpoint that day, suddenly ran towards the DENR Checkpoint when Pfc. Gatillo asked him for some gasoline simply does not make sense. Why would a person run away with fear for such a simple request? Even former Sandiganbayan Justice Regino Hermosisima, Jr.[69] was mystified by such a reaction, constraining him to delve deeper into the matter, thus:

"Q

And you want the Court to understand that immediately after Gatillo asked for gasoline, Pacheco Tan ran towards inside the BFD monitoring center?

A

Yes, he ran away, ran inside.

JUSTICE HERMOSISIMA:

Look, a person would not run away in fear without any reason why he did. Tell me now why did Pacheco Tan run away?

A

I do not know.

x x x x x x x x

Q

Will you tell me whether Cael or you pointed your guns at Pacheco Tan?

A

No.

Q

You did not. You cannot tell me why Pacheco Tan ran inside, why was he scared?

A

I do not know."[70]

Surely, we cannot accept a story that defies reason and leaves much to the imagination. Platero's failure to lend a touch of realism to his tale leads us to the conclusion that he was either withholding an incriminating information or was not telling the truth. As it turned out, Tan rushed towards the back of the guardhouse because of the "sudden burst of gunfire" directed at that place. In short, he fled for his life.

Second, it is highly doubtful that obtaining some gasoline was the real object of Mayor Cortez, Platero and Pfc. Gatillo in going to the DENR checkpoint. Strangely, their conduct, upon arriving at that place, showed their concern more on the whereabouts of petitioner than whether there was gasoline to spare. Pfc. Gatillo, testifying for the prosecution, admitted during cross-examination that he did not hear Mayor Cortez and Platero ask for gasoline. All that he heard was Mayor Cortez' inquiry regarding petitioner's whereabouts, thus:

"Q

You said that Pacheco Tan went inside to get Raul Zapatos, is it not a fact that when Mayor Cortez arrived at the DENR monitoring station, he asked Pacheco Tan where Raul Zapatos was?

A

Yes, sir.

Q

And precisely Pacheco Tan told Mayor Cortez that Raul Zapatos is inside the room sleeping?

A

Yes sir.

x x x x x x x x

Q

But you did not hear at any time the conversation between Pacheco Tan and the late Mayor Cortez, with Mayor Cortez asking Pacheco Tan for gasoline, is that right?

A

No, more Sir.

Q

And at any time before the shooting incident you did not hear Socrates Platero asking Pacheco Tan for gasoline, is that right?

A

No, sir.

x x x x x x x x

Q

As a matter of fact, the only thing you heard in reference to the accused Raul Zapatos was that Mayor Cortez was looking for Zapatos because he wanted to talk with Zapatos, is that right?

A

Yes, sir."^[71]

The above testimony strongly confirms Tan's narration that Pfc. Gatillo and Mayor Cortez only asked him where petitioner was.^[72] Nothing was ever mentioned about the gasoline. Notably, Platero, in his Affidavit executed the day after the incident, stated that he and the Mayor went to the DENR checkpoint because "Mayor Cortez wanted to see Raul Zapatos because he is the team leader of the DENR Monitoring Station." Again, the gasoline was not alluded to.

Corollarily, this brings us into a quandary - what could have been the reason why Mayor Cortez, Platero and Pfc. Gatillo were looking for petitioner on the night of January 14, 1990? The records bear out that the relationship between Mayor Cortez and petitioner was not friendly. There were several occasions when their interests clashed - Mayor Cortez, as the owner of a sawmill, and petitioner, as a forest law enforcer. In his Sworn Statement^[73] dated March 17, 1990, petitioner declared, among others, that previously, he apprehended the Mayor's men several times for illegally cutting and transporting "flitches" belonging to the Mayor and his family, thus:

Q 20:

After realizing that Mayor CORTEZ was the one who led the attack of the DENR CENTRO Strike Force Headquarters, what could be the reason why the Mayor and his men attacked your headquarters?

A 20:

I believe that Mayor CORTEZ became angry with me because of the previous apprehensions of illegally cut

and transported flitches which belonged to them, I mean, to that of Mayor CORTEZ family.

Q 21:

Why, did the then Mayor also engaged (sic) in logging?

A 21:

In one instance, we apprehended a truckload of illegally transported flitches and the document presented showed that they were consigned to the CORTEZ' sawmill in Bayugan, Agusan del Sur.

Q 22:

Are there instances also that the mayor intervened in any way in the apprehensions of these illegally cut and transported logs?

A 22:

Sometime in September, 1989, when we apprehended a truck load of illegally cut and transported flitches, Mayor CORTEZ requested that the truck carrying the flitches be turned over to his custody which truck was the regular carrier of flitches consigned to their sawmill. The request was granted by CENRO VIDAL and the proper documents for the turn over of custody were properly made. After that, during the month of October, 1989, we again apprehended the same truck previously turned over to the custody of Mayor again carrying illegally cut and transported flitches which I believe angered the Mayor.

Also, three (3) days before the incident at the CENRO Strike Force Headquarters in Maygatasan, I also had a confrontation with an Army soldier acting as Security of Mayor CORTEZ, one named DANNY GESTA.

Q 23:

Will you narrate what that confrontation was all about?

A 23:

On January 11, 1990, while I was outside of the DENR CENRO Strike Force Headquarters repairing my motorcycle, a truck loaded with illegally cut flitches just passed our Headquarters without stopping at our headquarters for inspection so when the truck came back, I stopped the same truck and called the driver and asked him who is the owner of the flitches. The driver told me that the flitches belonged to DANNY GESTA and when I asked him where he took the flitches, he told me that he took the flitches to the sawmill of the CORTEZ.' When I asked him who escorted it, the driver told me that it was one named 'NONO' so I told the driver to tell 'NONO' to come to our Headquarters so we could talk. On the following day, when I went to a shop owned by MAWE RABUYA for consultation of my motorcycle, DANNY GESTA was there. I requested MAWE RABUYA to take a look of my motorcycle for any defect and it was at this instance that DANNY GESTA approached me and told me and to quote: 'UNSA MANG KA NGA IMO MANG KONG IPAREPORT-REPORT SA IMO. WALA MANG GANI MAKAPA-REPORT ANG CORONEL SA AKO.' I then told and explained to DANNY GESTA that it was not him whom I wanted to talk and report to me but 'NONO'. DANNY GESTA suddenly stood up and told me and to quote: 'PUTANG INA KA! BUK-ON

NAKO NANG ULO NIMO.' To avoid further argument, I told MAWE that I better go and I left.

Q 24:

What did you do after that confrontation with DANNY GESTA?

A 24:

Because of what DANNY GESTA told me, I stayed at the Headquarters at Maygatasan, Bayugan until the incident on January 14, 1990 when our Headquarters was attacked."

Even NBI Agents Atty. Decasa and Ali C. Vargas found that Mayor Cortez had an "ulterior motive of revenge" against petitioner, thus:

"x x x The investigating agents are inclined to believe that `the late Mayor Cortez must have some ulterior motive of revenge in going to the headquarters at that late hour of the night, armed with high-powered guns, together with policemen and bodyguards, and under the influence of liquor, especially so that it is of public knowledge that he had been harboring hatred towards ZAPATOS who had exhibited antagonism to his illegal activities.'"[74]

Third, the account of Pfc. Gatillo and Platero that petitioner suddenly came out of the guardhouse and shot Mayor Cortez "a matter of seconds" after Tan ran towards the place is incredible.[75] For one, both the prosecution and the defense witnesses testified that petitioner was sleeping inside the guardhouse. For another, Tan did not have the chance to wake petitioner prior to the shoot-out. The prosecution witnesses admitted this fact.

Even before Tan could enter the guardhouse, he already heard the "burst of gunfire coming from outside of the checkpoint," prompting him to immediately run towards the backside of the guardhouse. Now, to say that petitioner suddenly sprang from his slumber and shot Mayor Cortez without any reason is certainly at odds with common experience.

Contrary to the findings of the Sandiganbayan, the totality of the contradictions, inconsistencies and flaws in the declarations of Platero and Pfc. Gatillo does not simply refer to minor or inconsequential details which may be justifiably overlooked, nor are they honest lapses which do not affect or impair the intrinsic value of their testimony. They relate instead to points material and essential to establish petitioner's culpability. The obliquity that pervades the prosecution's account of the incident creates the impression that it was rehearsed and concocted.

In contrast, the consistent testimonies of the defense witnesses, as well as the existing physical evidence, lend strong support to petitioner's plea of self-defense.

It is basic that for self-defense to prosper, the following requisites must concur: (1) there must be unlawful aggression by the victim; (2) that the means employed to prevent or repel such aggression were reasonable; and (3) that there was lack of sufficient provocation on the part of the person defending himself.[76]

All the aforesaid requisites are present in this case. That there was unlawful aggression is clearly shown by the bullet-riddled guardhouse. It speaks eloquently than a hundred witnesses.[77] We are convinced that Mayor Cortez, Platero and Pfc. Gatillo insisted to know petitioner's whereabouts and that upon learning that he was sleeping, executed the tyrannical attack. That they went to the DENR checkpoint with ready police back-up "for any eventuality" was proven not only by Pacheco Tan, but also by Lazarito Estorque and NBI Agent Decasa. Clearly, they proceeded to the checkpoint not on a mission of peace.

Taking into consideration the number of the aggressors, the nature and quality of their weapons, and the manner

of the assault and the fact that petitioner was alone, we believe that petitioner's use of an armalite rifle to defend himself is reasonable.

Finally, that there was lack of sufficient provocation on petitioner's part is evidenced by the testimonies of the defense witnesses that he was sleeping inside the guardhouse prior to the initial shooting. Significantly, no evidence whatsoever was presented showing that he assaulted or provoked his aggressors into attacking him.

Petitioner's act of surrendering himself and his weapon to the authorities immediately the day after the incident dissipates any conjecture that he had a criminal mind when he fired his gun upon the victims. His courage to face his accuser, in spite of the opportunity to flee, indicates his innocence.

Thus, while it is true that the "factual findings of the trial court are entitled to great weight and are even conclusive and binding" to this Court, this principle does not apply here. The findings of facts of the Sandiganbayan are not sufficiently established by evidence, leaving serious doubts in our minds regarding the culpability of petitioner.

In sum, we find that the prosecution failed to prove by evidence beyond reasonable doubt the guilt of herein petitioner for murder and frustrated murder. What is apparent is that Mayor Cortez and his men were the aggressors. Petitioner, who was just awakened by the gunfire, was justified in firing back at them. His act is in accordance with man's natural instinct to save his life from impending danger. We cannot expect him to simply retreat or wait for the bullet to hit and kill him.

WHEREFORE, the Decision dated March 27, 2001 of the Sandiganbayan is REVERSED and petitioner is ACQUITTED of the crimes of murder and frustrated murder.

The Director of Prisons is hereby directed to cause the release of petitioner unless the latter is being lawfully held for another crime and to inform this Court accordingly within ten (10) days from notice.

SO ORDERED.

Puno, (Chairman), Panganiban, Corona, and Carpio-Morales, JJ., concur.

[1] "That which anyone should do for the safety of his own person is to be adjudged as having been done justly in his own favor." See 1 Viada, 172, 5th edition.

[2] Penned by Justice Nicodemo T. Ferrer and concurred in by Associate Justices Narciso S. Nario and Rodolfo G. Palattao, Rollo at 46-81.

[3] In the Sandiganbayan Order dated March 25, 1992, Victoriano Vidal was dropped from the Information upon Motion of the Prosecution, thus:

"Upon motion made in open court by Special Prosecution Officer Robert E. Kallos on the ground that the Ombudsman has approved his finding and recommendation for the dropping of accused Victoriano Vidal from the informations in Criminal Cases Nos. 17015 and 17016, let these cases be provisionally dismissed with the express consent of the accused. x x x." Records at 337.

[4] Records at 1-2.

[5] TSN, March 26, 1992 at 19.

[6] The prosecution presented Socrates Platero, Pfc. Michael Gatillo, Dr. Romeo Cedeño, and Marlyn Cortez as its witnesses. Petitioner himself, Pacheco Tan, Atty. Virgilio Decasa, S/Sgt. Romulo Abelleja, and Lazarito

Estorque took the witness stand for the defense.

[7] TSN, June 9, 1992 at 18.

[8] Id. at 19-20.

[9] Id. at 25.

[10] Id. at 26-27.

[11] Id. at 28.

[12] Id. at 29.

[13] TSN, March 26, 1992 at 20.

[14] Id. at 24. The DENR Checkpoint was just 100 meters away from the BIR Monitoring Station.

[15] Id. at 26-27.

[16] Id. at 44.

[17] Id. at 29.

[18] Id. at 39.

[19] Id. at 39.

[20] Id. at 43-44.

[21] TSN, June 9, 1992 at 7.

[22] Id. at 8.

[23] TSN, November 23, 1993 at 3.

[24] Id. at 6.

[25] Id. at 7.

[26] Id. at 8-9.

[27] Id. at 15.

[28] Id. at 16.

[29] Id. at 18.

[30] Id. at 25.

[31] Id. at 58-59.

[32] Id. at 60.

[33] Id. at 67.

[34] Id. at 61.

[35] Id. at 62.

[36] Id. at 63.

[37] Id. at 64.

[38] Id. at 69.

[39] Id. at 70.

[40] TSN, July 14, 1993 at 7.

[41] Id. at 9-10.

[42] Id. at 11.

[43] Id. at 17-18.

[44] Id. at 21.

[45] TSN, November 22, 1993 at 34-36.

[46] Records at 123-133.

[47] Id. at 137.

[48] Resolution dated April 25, 1991, Records at 140.

[49] Records at 147.

[50] Id. at 149.

[51] Rollo at 145-146.

[52] Id. at 147-148.

[53] Id. at 154.

[54] Id. at 156-158.

[55] *Alarilla vs. Sandiganbayan*, G.R. No. 136806, August 22, 2000, 338 SCRA 485.

Presidential Decree No. 1486 created the Sandiganbayan. It took effect on June 11, 1978. Thereafter, the following laws on the Sandiganbayan, in chronological order, were enacted:

- 1) P.D. No. 1606 which took effect on December 10, 1978.
- 2) Section 20 of Batas Pambansa Bilang 129.
- 3) P.D. No. 1860 which took effect on January 14, 1983.
- 4) P.D. No. 1861 which took effect on March 23, 1983.
- 5) Republic Act No. 7975 which was approved on March 30, 1995 and took effect on May 16, 1995.
- 6) R.A. No. 8249 which was approved on February 5, 1997.

[56] REVISING PRESIDENTIAL DECREE NO. 1486 CREATING A SPECIAL COURT TO BE KNOWN AS "SANDIGANBAYAN" AND FOR OTHER PURPOSES. It took effect on December 10, 1978; See *Republic vs. Asuncion*, G.R. No. 108208, March 11, 1994, 231 SCRA 211.

[57] AMENDING THE PERTINENT PROVISIONS OF PRESIDENTIAL DECREE NO. 1606 AND BATAS PAMBANSA BLG. 129 RELATIVE TO THE JURISDICTION OF THE SANDIGANBAYAN AND FOR

OTHER PURPOSES. It took effect on March 23, 1983.

[58] En Banc Resolution, G.R. No. 98452, September 26, 1991.

[59] G.R. Nos. 111771-77, November 9, 1993, 227 SCRA 627.

[60] G.R. No. 111616, February 4, 1994, 229 SCRA 680.

[61] *Supra*.

[62] *Alarilla vs. Sandiganbayan*, *supra*.

[63] G.R. No. 116615, March 1, 1995, 242 SCRA 88.

[64] The jurisdiction of a court is determined by the allegation in the complaint or information. (*People vs. Cawaling*, G.R. No. 117970, July 28, 1998, 293 SCRA 267, citing *Lim vs. Court of Appeals*, G.R. No. 107898, December 19, 1995, 251 SCRA 408; *Tamano vs. Ortiz*, G.R. No. 126603, June 29, 1998, 291 SCRA 584; *Chico vs. Court of Appeals*, G.R. No. 122704, January 5, 1998, 284 SCRA 33.)

[65] Records at 383-390.

[66] With marked significance is petitioner's revelation to Nilo Libres that the DENR check point was attacked by the NPAs. When asked why he suspected the NPAs as the attackers, he said that "Agusan del Sur was a very critical area" and that "there were already many incidents that the NPAs made several attacks." (TSN, November 23, 1993 at 16) Undoubtedly, even petitioner himself believed that he was firing back at the NPAs in defense of the DENR Checkpoint.

[67] *Binay vs. Sandiganbayan*, G.R. Nos. 120681-83 and 128136, October 1, 1999, 316 SCRA 65.

[68] *People vs. Perez*, G.R. No. 119014, October 15, 1996, 263 SCRA 206.

[69] Now a member of the Judicial and Bar Council.

[70] TSN, June 9, 1992 at 38 and 43.

[71] TSN, March 26, 1992 at 44-45.

[72] TSN, November 22, 1993 at 60-61.

[73] Folder of Exhibits at 201.

[74] Exh. "3", Progress Report dated April 19, 1990 of Agts. Virgilio M. Decasa and Ali C. Vargas at 4.

[75] Pfc. Gatillo testified:

"JUSTICE AMORES:

Q

When Mayor Cortez arrived, did the accused wake up?

A

No, sir, Mayor Cortez and Pacheco Tan were still talking.

Q

And what was Zapatos doing while they were talking?

A

After Mayor Cortez and Pacheco Tan talked and then Pacheco Tan went inside, then suddenly Zapatos came out and shot Mayor Cortez.

Q

How many minutes had elapsed from the time Pacheco Tan entered that place to the time that the accused shot Mayor Cortez?

A

A matter of seconds. As a matter of fact when Pacheco Tan pushed the door opened then I saw the accused holding the gun and shot Mayor Cortez.

Q

When Tan pushed the door what did Tan say if any to Zapatos?

A

None, sir." (TSN, March 26, 1992 at 29.)

[76] *People vs. Bernal*, G.R. No. 101332, March 13, 1996, 254 SCRA 659; *People vs. Gregorio*, G.R. Nos. 109614-15, March 29, 1996, 255 SCRA 380.

[77] *People vs. Sacabin*, G.R. No. L-36638, June 28, 1974, 57 SCRA 707; *People vs. Demeterio*, G.R. No. L-48255, September 30, 1983, 124 SCRA 914.

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