

## FIRST DIVISION

[ G.R. No. 149152, February 02, 2007 ]

**RUFINO S. MAMANGUN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**GARCIA, J.:**

In this petition for review under Rule 45 of the Rules of Court, petitioner Rufino Mamangun y Silverio seeks the reversal of the Decision<sup>[1]</sup> dated January 19, 2001 (promulgated on February 13, 2001) of the Sandiganbayan in its *Criminal Case No. 21131*, convicting him of the crime of Homicide.

The factual backdrop:

On September 12, 1994, herein petitioner, then a police officer, was charged before the Sandiganbayan with the crime of Murder, allegedly committed, per the indicting Information,<sup>[2]</sup> docketed as Criminal Case No. 21131, as follows:

That on or about the 31<sup>st</sup> day of July 1992, in the Municipality of Meycauyan, (sic) Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Rufino S. Mamangun, a public officer, being then a Police Officer (PO2), duly appointed as such and acting in relation to his office, armed with a gun, with intent to kill, did then and there willfully, unlawfully and feloniously, with treachery, evident premeditation and abuse of superior strength, attack, assault and shoot one Gener M. Contreras with the said gun, hitting the latter on his body, thereby inflicting (sic) him serious physical injuries which directly cause (sic) his death.

CONTRARY TO LAW.

On arraignment, petitioner, as accused below, duly assisted by a counsel *de officio*, entered a plea of "Not Guilty."

In the ensuing trial, the prosecution presented in evidence the testimonies of Crisanto Ayson (Ayson), an alleged eyewitness, and Dr. Benito Caballero, then the designated Medico-Legal Officer of Bulacan who performed an autopsy on the cadaver of the victim.

For its part, the defense adduced in evidence the testimonies of the accused himself, Rufino Mamangun, his co-policemen at the Philippine National Police (PNP), namely, PO2 Carlito Cruz, PO4 Hobert O. Diaz and Police Investigator SPO-1 Hernando B. Banez, all assigned at the Meycauyan Police Station; and those of Lorenzo S. Abacan and Rogelio Ingco, son and son-in-law, respectively, of Antonio Abacan,

owner of the house on which rooftop the shooting of the victim took place.

It is not disputed that on July 31, 1992, at about 8:00 in the evening, in Brgy. Calvario, Meycauayan, Bulacan a certain Liberty Contreras was heard shouting, "*Magnanakaw...Magnanakaw.*" Several residents responded and thereupon chased the suspect who entered the yard of Antonio Abacan and proceeded to the rooftop of Abacan's house.

At about 9:00 o'clock that same evening, the desk officer of the Meycauayan PNP Police Station, upon receiving a telephone call that a robbery-holdup was in progress in Brgy. Calvario, immediately contacted and dispatched to the scene the crew of Patrol Car No. 601 composed of Team Leader SPO1 Andres Legaspi, with PO2 Eugenio Aminas and herein petitioner PO2 Rufino S. Mamangun; and Patrol Car No. 602 composed of Team Leader PO3 Sandiego San Gabriel, with PO2 Carlito Cruz and PO2 Hobert Diaz. With the permission of Abacan, petitioner Mamangun, PO2 Diaz and PO2 Cruz went to the rooftop of the house whereat the suspect was allegedly taking refuge.

The three policemen, *i.e.*, petitioner, Diaz and Cruz, each armed with a drawn handgun, searched the rooftop. There, they saw a man whom they thought was the robbery suspect. At that instance, petitioner Mamangun, who was walking ahead of the group, fired his handgun once, hitting the man. The man turned out to be Gener Contreras (Contreras) who was not the robbery suspect.

Contreras died from the gunshot wound. The autopsy conducted by Dr. Benito B. Caballero yielded the following findings:

The cause of death was "Shock due to massive external and internal hemorrhage due to multiple gunshot wounds in the left arm side of the thorax, penetrating the left lung and vertebral column." There were several wounds caused by one (1) bullet.

As shown on the sketch of human body attached to the Certificate of Death, and as testified on by Dr. Caballero, the bullet entered through the "lower third of the left arm, left side of the thorax and it penetrated the left lung and vertebral column and that is where the slug was found." From a layman's appreciation of the sketch, the bullet entered the outer, upper left arm of the victim, exited through the inner side of the said upper left arm, a little lower than the left armpit and the slug lodging on the victim's back where it was recovered at the vertebral column.<sup>[3]</sup>

From the foregoing admitted or undisputed facts, the prosecution and the defense presented conflicting versions as to how the fatal shooting of Contreras by petitioner Mamangun actually happened.

According to Ayson, the lone eyewitness for the prosecution, he accompanied the three policemen (Mamangun, Diaz and Cruz) to the rooftop of Abacan's house. He was following petitioner Mamangun who was ahead of the group. They passed through the second-floor door of the house to the rooftop. The roof was lighted by an incandescent bulb from an adjacent house. He was beside Mamangun when they saw, some four to five arms-length away, a man whom he (witness) recognized as

Gener Contreras. Mamangun pointed his .45 cal. pistol at the man, who instantly exclaimed, "*Hindi ako, hindi ako!*," to which Mamangun replied, "*Anong hindi ako?*" Before he (Ayson) could say anything, Mamangun fired his gun, hitting the man who turned out to be Contreras. He (witness) approached the victim who was then lying on his left side unconscious. He brought down the victim and they rushed him to the hospital where he died at about 10:00 o'clock that same evening.

The defense has its own account of what purportedly actually transpired.

PO2 Mamangun, along with PO2 Cruz and PO2Diaz, denied the presence of Ayson at the rooftop during the shooting incident. Corroborating one another, the three testified that they were the only ones at the scene of the shooting, and that it was dark. They claimed that each of them, with Mamangun on the lead, went on separate directions around a water tank. As they met each other at the other side of the tank, PO2 Cruz pointed to a person crouching at the edge of the roof of the garage. Thinking that the person was the suspect they were looking for, Mamangun chased said person. They announced that they were police officers but the person continued to run in a crouching position until Mamangun caught up with him and shouted, "*Pulis. Tigil,*" whereupon the person suddenly stopped, turned around, faced Mamangun, and raised a stainless steel pipe towards the latter's head but Mamangun was able to evade the attack. This prompted Mamangun to shoot the person on the left arm. All three claimed that it was only at this point that PO2 Cruz and Diaz approached Contreras who told them, "*Hindi ako. Hindi ako.*" Mamangun went near Contreras and asked, "*Why did you go to the rooftop? You know there are policemen here.*" Contreras was thereafter brought to the hospital where he died. After the shooting incident, Mamangun reported the same to the desk officer, POI Filomeno de Luna, who advised him to remain in the police station. De Luna directed Police Investigator Hernando Banez to investigate the incident. That same evening, Investigator Banez went to the place where the shooting happened. Banez allegedly found a steel pipe about three (3) feet long on the depressed portion of the roof.

On January 19, 2001, after due proceedings, the Sandiganbayan came out with its decision<sup>[4]</sup> finding the petitioner guilty beyond reasonable doubt of only the crime of Homicide. In so finding, the Sandiganbayan did not appreciate the presence of the aggravating circumstances of treachery, evident premeditation and abuse of superior strength to qualify the killing to Murder. But even as the said court rejected the petitioner's claim that the shooting was justified by self-defense, it nonetheless ruled that the crime of Homicide was attended by an incomplete justifying circumstance of the petitioner having acted in the performance of his duty as a policeman, and also appreciated in his favor the generic mitigating circumstance of voluntary surrender. Dispositively, the decision reads:

WHEREFORE, the accused, RUFINO S. MAMANGUN, is hereby found GUILTY beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249, Revised Penal Code, and taking into account the attendance of one (1) privileged mitigation (sic) circumstance, one generic circumstance and no aggravating circumstance, he is hereby sentenced under the Indeterminate Sentence Law, to suffer the penalty of imprisonment of from Three (3) Years and Three (3) Months of *prision correctional* as minimum, to Seven (7) years of *prision mayor*, as maximum, to indemnify the heirs (parents) of Gener Contreras in the total amount of P352,025.00, and to past the costs.