

SECOND DIVISION

[G.R. NO. 129875, September 30, 2005]

**JOVITO CABUSLAY, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND SANDIGANBAYAN (THIRD
DIVISION),RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Assailed in this petition for review^[1] under Rule 45 of the 1997 Rules of Civil Procedure is the *Decision*^[2] dated 25 June 1997 of the Sandiganbayan in Criminal Case No. 19586 finding Jovito Cabuslay, petitioner herein, guilty beyond reasonable doubt of the crime of homicide and sentencing him as follows:

WHEREFORE, accused Celso G. Regencia, Rosello Canoy, Nilo Montebon and Gerry Cane are ACQUITTED on reasonable doubt. Accused Jovito Cabuslay is found GUILTY beyond reasonable doubt of the crime of homicide and is sentenced to an indeterminate penalty of imprisonment of Ten (10) years and One (1) Day of *prision mayor* as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal, as maximum, with all the accessory penalties provided for by law, and to indemnify the heirs of Pacquito Umas-as in the amount of Fifty Thousand Pesos (P50,000.00) for actual damages and Fifty Thousand Pesos (P50,000.00) for moral damages, and to pay the costs.

SO ORDERED.^[3]

In an *Information*^[4] dated 10 August 1993, petitioner SPO2 Jovito Luna Cabuslay, Senior Inspector Celso Gomera Regencia, SPO4 Rosello Rodriguez Canoy, C2C Nilo Rico Montebon and C2C Gerry Orillaneda Cane were charged with murder, committed as follows:

That on or about August 5, 1992, in Kauswagan, Lanao del Norte, Philippines, within the jurisdiction of this Honorable Court, the said accused, SENIOR INSPECTOR CELSO G. REGENCIA, SPO4 ROSELLO CANOY, SPO2 JOVITO CABUSLAY, C2C NILO MONTEBON AND C2C GERRY CANE, all public officers, being then members of the Philippine National Police assigned at the PNP Provincial Headquarters of Lanao del Norte, acting in the capacities aforesaid and conspiring, confederating and helping one another, while manning amobile checkpoint at Libertad, Kauswagan, Lanao del Norte, thus committing the offense in relation to office, and with intent to kill, did then and there wilfully, unlawfully, feloniously and treacherously shoot PAQUITO UMAS-AS, with their firearms, thereby inflicting mortal wounds upon the latter which caused his instantaneous death.^[5]

On arraignment, petitioner and his co-accused all pleaded not guilty. Forthwith, trial ensued with the prosecution presenting as witnesses Dr. Tammy Uy, Bernabe Purificacion Arenga, Leoncio Tagapulot Zaragosa and Generoso Caayao Umas-as.

The prosecution presented evidence proving the following as facts:

Paquito Umas-as, 34, was one of the four children of Generoso Umas-as of Bulua, Cagayan de Oro City. Still single, Paquito earned a living as a collector of payments for assorted articles such as jackets, mats, thermos and plates that he sold on credit. Paquito collected as much as P70,000.00 for a period of four months and the net profit of such collections was divided equally between him and his employer. [6]

In collecting payments, Paquito used a motorcycle he bought on credit from his employer. [7] His collection brought him to such places as Manticao, Iligan and Kolambogan. [8] He rented a house in Iligan City but every fifteenth (15th) day of the month, Paquito would go home to his family to give them a sack of rice. [9]

At around 8:30 in the morning of 5 August 1992, Leoncio Tagapulot Zaragosa, a refrigeration technician helper and resident of Roosevelt Street, Iligan City, was conversing with Felix Lauriana [10] near the school building in Lapayan, Libertad, Kauswagan, Lanao del Norte when a Hammer (Hummer) truck parked in front of them. [11] Four policemen alighted, followed by a driver. The police thereafter halted the collector who was riding a motorcycle from Lapayan. The collector was wearing a blue denim jacket with folded sleeves and blue denim pants. [12]

The police asked the collector to show his identification card (ID). The collector took the ID out of his left pocket and when it reached the "front man," one of the policemen, who Zaragosa later verified as the petitioner, opened fire at the collector whose right hand was then raised. The four other policemen meanwhile had their firearms pointed at the collector. [13]

Petitioner, who was four meters away from the collector, consumed the entire magazine of his M-16 armalite in firing at him. The collector fell to the ground and was still moving when the police placed him on board a vehicle and brought him to Kolambogan. [14] One of the policemen rode on the collector's motorcycle and likewise headed for Kolambogan. [15]

Upon the request of Pedro P. Legaspi, *barangay* captain of Bulua, Cagayan de Oro City, [16] NBI forensic chemist Bernabe P. Arenga examined the victim's body, later identified as Paquito Umas-as, on 10 August 1992 to determine the presence of gunpowder nitrates on his hands. Arenga's report revealed that the victim was negative for gunpowder nitrates. [17] Arenga opined that on the average, nitrates would be lost within a seventy-two (72)-hour period; that there had been instances when the substance would remain on a living person up to nine days; that nitrates could not penetrate rubber gloves; that no amount of washing can remove the nitrates; and that even the application of formalin does not affect the presence of nitrates in the hands of a person. [18]

On 11 August 1992, Dr. Tammy Uy, a medico-legal officer of the NBI in Cagayan de

Oro City, conducted a post-mortem examination on the body of Paquito Umas-as. At the time of examination, the victim's body had already been cleaned and embalmed. Dr. Uy's examination disclosed that the cause of death was severe hemorrhage secondary to multiple gunshot wounds. There were eight (8) gunshot wounds and each wound was considered fatal.^[19]

To prove damages, Generoso Umas-as testified that he lost consciousness upon learning of the death of his son Paquito. Paquito's family spent P8,000.00 for the wake and P10,000.00 for his burial. Paquito had left his father P12,000.00 to pay for some appliances the former had bought; but the latter, to underwrite funeral expenses, still had to sell his land for P100,000.00 only P25,000.00 of which had been paid in advance by the buyer. However, Generoso could not remember where he placed the receipts for the wake and burial expenses.^[20]

The defense presented a different version of the commission of the crime. Petitioner presented as witnesses Julmunier Akbar Jubail, Celso Gomera Regencia and Jovito Luna Cabuslay.

Police Superintendent Julmunier A. Jubail, Provincial Director of the Philippine National Police (PNP), Lanao del Norte Command stated that he had received a reliable intelligence report of a plot to assassinate the Mayor and Vice-Mayor of Kauswagan, Lanao del Norte and Governor Abalos and his family. In response to the intelligence report, he dispatched a team of PNP personnel to conduct mobile checkpoints along the national highways in several municipalities and to check on people who would possibly carry out the plot. Jubail claims that the intelligence report was proven accurate after a few months because the Vice-Mayor of Kauswagan was killed in Samborong, Linamon and in December of the same year, Governor Abalos was assassinated in Iligan City.^[21]

The team headed by Senior Inspector Celso G. Regencia included SPO4 Rosello Canoy, SPO2 Jovito Cabuslay, C2C Nilo Montebon and C2C Gerry Cane. Their area of responsibility consisted of the twenty-two (22) municipalities of Lanao del Norte. In full military outfit, save for Canoy as he was assigned to the Intelligence Operatives Command, the men established a mobile checkpoint on 5 August 1992 at the national highway, Barangay Libertad, Kauswagan, Lanao del Norte for the purpose of intercepting armed men who intend to carry out the assassination plot.^[22]

At about 8:30 in the morning, a man riding on a red Honda motorcycle^[23] going to the direction of Pagadian City approached the mobile checkpoint. The motorcycle rider was allegedly wearing a black bonnet, sunglasses, sweatshirt and gloves that covered the half portion of his fingers.^[24]

Regencia testified that he signaled the motorcycle rider to stop at the right side of the road. He asked for the identification card of the motorcycle rider who pretended to reach for his wallet, but instead pulled out a gun. He heard a shot and his thigh went numb. As he rolled to the ground, he heard a volley of gunshots after which petitioner approached him. Regencia then approached the motorcyclist and removed his bonnet to be able to identify him. Regencia later found out that the motorcycle rider was shot by petitioner.^[25]

Regencia ordered his men to load the motorcycle rider to the truck. The victim later identified as Paquito Umas-as was still alive when he was loaded on the hummer vehicle to be brought to a hospital, but was pronounced dead on arrival by Dr. Caga, the attending physician. Regencia then asked that he be given first-aid treatment for the wounds he sustained. He thereafter turned over the rider's motorcycle, sunglasses and revolver to the police station at Kauswagan. And after bringing the victim's body to a funeral home in Kolambugan, he proceeded to Baroy General Hospital where his wounds were treated by a certain Dr. Fabin.^[26]

To prove that he was wounded during the incident, Regencia showed to the court *a quo* the scars caused by the gunshot wounds. There were three scars, one of which was the entry of the bullet and the other two were splinter wounds. He said that the bullet used was the kind that splinters upon hitting an object. He presented a medical certificate under the signature of Dr. Demterio U. Opamen, Jr.^[27]

For his defense, petitioner confirmed Regencia's testimony that the latter had directed an approaching motorcyclist to stop at the right side of the highway. He heard Regencia ask the motorcycle rider in Visayan dialect to show his identification card. Cabuslay then saw Paquito Umas-as shoot Celso Regencia. This and his belief that he was the next target prompted him to shoot the motorcycle rider with his M-16.^[28]

Police Superintendent Jubail was immediately informed of the incident and on the basis of Regencia's account, he sent out a "Spot Report"^[29] to inform Recon 9 and 13. The report is couched as follows:

"SPOT REPORT x x x CMM SPO2 JOVITO CABUSLAY CMM INSP REGENCIA'S BACK-UP OPEN FIRE (sic) HITTING AND FATTALY (sic) WOUNDING SAID UNIDENT(IFIED) PERSON WWITH (sic) MULTIPLE GUNSHOT WOUNDS IN HIS BODY AND DIED ON THE SPOT PD RESPONDING PNP ELEMETS RECOVERED FROM THE VICTIM'S BODY ALFA CAL. 38 REVOLVER SMITH AND WESSON (HM) SN 236701 WITH ONE (1) EMPTY SHELL AND 5 UNSPENT AMMO x x x "

The incident found its way to the police blotter of the police station of Kauswagan, Lanao del Norte.^[30] It is embodied in a *Certification*^[31] signed by Inspector Fulgencio dela Pena Raguine, Chief of Police, issued at the request of Atty. Arthur Abundiente for trial purposes and formulated in this wise:

Police Blotter Page Nr. 496-Entry Nr. 9187 & 9188=

050810H Aug 1992 – SPO3 Nestor S Ortiz, Intel NOR this station, left stn with elements from Lanao del Norte PNPC under INSPECTOR CELSO G REGENCIA PNP and proceeded to Libertad, Kauswagan, LN to follow-up suspects allegedly hired for killing Mpl Mayor Myron B. Rico of Kaus, LN.

050835H Aug 1992 – SPO3 Nestor Ortiz PNP returned station informed that suspects were intercepted at Libertad, Kaus, LN but when confronted by the PNP team, fired and shot INSPECTOR CELSO G REGENCIA PNP using cal. 38 revolver (sic) (Homemade) hitting on his right thigh prompting SPO3 Cabustay (sic), fired back to the suspect hitting at the chest causing the instantaneous death of the suspect. One cal. 38

revolver (sic) (Homemade) with 5 live ammos and one empty shell at the chamber, one rayban (sunglass) and one motorcycle (Honda-Camel backtype) color red with out plate Nr.

Police Blotter Page Nr. 497- Entry Nr.9191=

081240H Aug 1992 – Romeo Umas-as, 42 years old x x x.

Police Blotter Page Nr. 501-Entry Nr.9228=

251315H Aug 1992 – Impounded Honda Motorcycle x x x.

Police Blotter Page Nr. 508-Entry Nr. 9100=

021130H Oct 1992 – COP Bartolini RD got the one deposited rev. cal. 38 SW S#236701 w/ (4) four live ammo and one empty shell past 30th day of Sep 92 for NBI examination at Cagayan de Oro City.

Petitioner justified the shooting of Paquito Umas-as because he believed that he would be the next person to be shot at by the victim; and having acted in defense of his person and that of his superior officer, he asserted before the court *a quo* that he has no criminal liability because of the attendance of the following circumstances: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the unlawful aggression of the victim; (c) lack of sufficient provocation on his part, and in the case of defense of his superior officer, he was not induced by revenge, resentment, or other evil motives. All of these requisites being present, petitioner claimed there was legal justification for shooting Paquito Umas-as.^[32]

The Sandiganbayan however gave credence to the version of the prosecution and rejected the version of petitioner. So, it found him guilty beyond reasonable doubt of the crime of homicide. It accorded full faith and credence to the testimony of Zaragosa as it was "categorical, straightforward, spontaneous and consistent." Moreover, it observed that no proof was adduced to show that Zaragosa was moved by some evil motive to falsely testify against the accused Cabuslay.^[33]

The Sandiganbayan likewise noted grave deficiencies in the evidence of the defense as follows: (1) The physical existence of the handgun allegedly used by the victim Paquito was not established as the same was not presented before the court during the trial;^[34] (2) The affidavit executed by Gualberto Dayot Pasco—presented by the defense to impeach the credibility of Zaragosa—was taken under intimidating and dubious circumstances, which fact creates doubt as to the affidavit's voluntariness and credibility;^[35] (3) The medical certificate purportedly evidencing that Regencia had been shot has no probative value as the doctor who executed the same did not testify during trial. Notably, the medical certificate was executed by a doctor different from the one who treated Regencia's wound;^[36] (4) The number of gunshot wounds inflicted upon the victim betrays petitioner's claim of reasonable necessity of the means used to repel the unlawful aggression allegedly displayed by the victim.^[37]

Hence, petitioner filed the instant petition before the Court, insisting that the