

## SECOND DIVISION

[ G.R. No. 112924, October 20, 2000 ]

**EDUARDO P. BALANAY, PETITIONER, VS. SANDIGANBAYAN AND  
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**DE LEON, JR., J.:**

Before us is a petition for review on *certiorari* of the Decision<sup>[1]</sup> dated September 7, 1993, as well as the Resolution<sup>[2]</sup> dated November 9, 1993, of the Sandiganbayan<sup>[3]</sup> finding herein petitioner PO1 Eduardo P. Balanay of the Philippine National Police (PNP), guilty beyond reasonable doubt of homicide in the killing of Diomercio Antabo.

On September 26, 1991, Special Prosecution Officer Gregorio G. Pimentel filed with the Sandiganbayan an Information<sup>[4]</sup> charging petitioner Eduardo Balanay with murder committed as follows:

That on or about the 12th day of June, 1991, in the Municipality of Leon B. Postigo, Zamboanga del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Philippine National Police (PNP) and assigned as Station Guard in the Municipal Building of Leon B. Postigo, Zamboanga del Norte, thus committing the offense in relation to his office, armed with his issued firearm and with intent to kill by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Diomercio Candes Antabo, a detention prisoner, thereby inflicting upon him gunshot wound on the vital part of his body which caused his instantaneous death, to the damage and prejudice of the heirs of the victim in such amount as will be proven during the trial of the above-entitled case.

Contrary to law.

Duly arraigned on November 25, 1991, petitioner Eduardo Balanay pleaded "Not Guilty" to the charge.<sup>[5]</sup>

When the court heard the case, the prosecution presented only one witness in the person of Dr. Proceso L. Benlot, who at the time material to the case was the Municipal Health Officer of Leon Postigo and Siayan, Zamboanga del Norte. He declared that after medical school, he did not take any special training in medico legal examination although he attended several seminars conducted by their chief of office; and that he had also examined about 50 cadavers for medico legal purposes.

Dr. Benlot testified that on June 12, 1991 at about 1:00 o'clock in the afternoon, he conducted a post mortem examination on the dead body of Diomercio C. Antabo,

upon the request of the PNP Station Commander, Pedro Bao, of the Municipality of Leon B. Postigo, Zamboanga del Norte. According to Dr. Benlot, Bao identified the cadaver as that of Diomercio C. Antabo.

When the cadaver was found, the deceased was wearing a dark blue T-shirt and maong pants. He was lying on his chest, with his right face on the ground. Because the area was sloping downward, his feet were elevated towards the municipal building. Blood was mostly found on the area where his head laid. The blood was still fresh, as his body was still soft. [6]

Dr. Benlot found the following wounds on the cadaver of Antabo:

1. Old scald area at the lateral side of the arm near the elbow joint. Must have been sustained by the deceased about 24 hours before he conducted the examination. [7]
2. Old scald area on the right chest, which might have been inflicted at the time, more, or less, the injury on the right elbow was suffered. [8]
3. Linear abrasion at the edge of the right eyebrow. [9]
4. Fresh gunshot wound of entry, more or less half an inch in diameter, and about 1 inch above the right eyebrow, lateral end. [10]
5. Exit wound about 3-4 inches in diameter, at the back of the head, behind the left ear and above the lobe, particularly on the temporo occipital area. [11]

Based on Dr. Benlot's assessment, the immediate cause of death of the victim was cerebral injury and acute blood loss. The gunshot entry wound was about half an inch in diameter, approximately one inch above the lateral end of the right eyebrow, and the gunshot exit wound was about three to four inches in diameter behind and above the left ear lobe. Dr. Benlot further declared that in his opinion, the trajectory of the bullet was going downwards. [12]

On cross-examination, Dr. Benlot testified that under normal condition, and considering the location of the gunshot entry wound, his opinion was that the assailant, at the time he pulled the trigger, was in front of the deceased, or if not directly in front, somewhere in front. [13]

Dr. Benlot also declared that the information given him by Bao was that the deceased Antabo a detention prisoner, was shot in order to stop him from escaping. Dr. Benlot stated that if this information was true, there was a great possibility that the deceased, when shouted at, turned his back and faced the assailant, and at that moment, was fired upon. Hence, the gunshot entry wound was on the right side of the head of the victim and the exit wound was at the left side of the back of the head. [14]

Dr. Benlot likewise declared it was impossible that while Antabo was moving downward, he must have turned his back partially when he heard somebody shouting and at that precise moment, he was hit. In that instant, the trajectory of the bullet would somewhat be parallel to the shoulder of the deceased and in line with the assailant. [15]

Defense witness Casiano Dagayluan testified that he is a PNP member assigned to the Investigation Section of the Municipality of Leon B. Postigo, Zamboanga del Norte Police Station; that the Investigation Section was located at the ground floor of the municipal building; and that at the back of the said office is a window.

On June 12, 1991 at around 8:00 to 12:00 o'clock in the morning, Dagayluan reported for work. Petitioner Balanay, a fellow PNP member, also reported for work and was assigned to the detention cell which was just beside his office. He overheard Antabo, the lone detention prisoner, asking Balanay for permission to go to the comfort room. Since the comfort room inside the municipal building was out of order, petitioner Balanay escorted Antabo to the back of the municipal building where he could answer the call of nature. While passing his office, Dagayluan heard Balanay saying "Do not run away if you want to move your bowel outside".<sup>[16]</sup>

When Antabo and Balanay were already outside the building, Dagayluan heard a burst of shots. Dagayluan was then at his desk doing some paper work when he heard the first shot. After the first shot, he looked at the window and saw Balanay about 10 meters away from him while Antabo was about 20 meters away from Balanay. He saw Balanay aimed his armalite rifle and fired the third shot, but he did not see Antabo fall to the ground. Thereafter, he saw Balanay, together with Eyas, verifying the dead body. Dagayluan informed Station Commander Bao about the incident upon arrival of the latter and they immediately went to the crime scene.<sup>[17]</sup>

Defense witness PO1 Julito Eyas testified that he is also a member of the PNP stationed at Leon B. Postigo Police Station, Zamboanga del Norte; and that on June 12, 1991, he reported for duty as a radio operator. Only three policemen reported for work on that day; the two others were Dagayluan and Balanay who was detailed as jail guard. Station Commander Bao was then at the gym, watching the program in connection with the Independence Day's celebration.<sup>[18]</sup>

Defense witness Eyas testified that he is also a policeman assigned in the said Police Station of Leon B. Postigo; that at about 11:00 o'clock in the morning of June 12, 1991, Antabo pretended to defecate. While outside, at the back portion of the municipal building, he saw Antabo ran away until he reached the sloping area. Balanay fired a warning shot and he heard Balanay saying "Stop, don't run" but Antabo continued running. Upon reaching the sloping area, Balanay fired another shot and hit the victim. At that time, he (Eyas) was about 10 meters from Balanay and 30 meters from the victim.<sup>[19]</sup>

On cross-examination, Eyas stated that he was in his office when he heard the three shots. After hearing the two shots, he looked at the window and saw Antabo lying on the ground.<sup>[20]</sup> Responding to clarificatory questions from the court, Eyas declared that three warning shots were fired in succession. He was already at the window when the second shot was fired. It was then that he saw Antabo running toward the sloping area. Between the time he first saw Antabo to the time the latter was hit, Antabo was able to run about 40 meters.<sup>[21]</sup>

Eyas likewise stated that, as police officer, he underwent training on how to handle prisoners and use a gun, and that if he were to disable a person, he would aim just at the foot or leg.<sup>[22]</sup>

Petitioner Eduardo Balanay testified that at the time material to the case, he was a Private First Class of the PNP, and stationed at the municipal jail of Leon B. Postigo, Zamboanga del Norte.<sup>[23]</sup> In his entire career as a police officer, he served as jail guard several times inasmuch as their post were rotated. When the shooting incident happened, he served as a jail guard for seven days because on the 13th of June, the day after he shot the victim, he was relieved from his duty.<sup>[24]</sup>

From June 7 to 12, 1991, he was detailed as building and jail guard at the Leon B. Postigo Municipal Building. During that period, Diomercio C. Antabo was already a detention prisoner and accused of robbery with homicide before Municipal Circuit Trial Court of Sindangan, Siayan and Leon B. Postigo, Zamboanga del Norte.<sup>[25]</sup>

On June 12, 1991, at around 11:40 in the morning, Antabo asked permission from petitioner to defecate. The comfort room inside the municipal building was out of order, thus petitioner escorted Antabo to the rear of the municipal building. Upon reaching that area, Antabo walked fast. Balanay fired a warning shot with his M-16 rifle because the place where Antabo passed was sloping downward and there were plenty of tall grasses. Antabo ran away from Balanay, moved towards his left and looked back at him by glancing to the right. Balanay told him not to run, but Antabo continued running towards the sloping area where tall grasses grew. Balanay fired a second warning shot, but Antabo did not heed his warning. Antabo merely looked back at him while running fast, and while doing so, the petitioner fired the third shot, and hit Antabo, causing him to fall down. The distance between the place where the petitioner fired his M-16 rifle and the spot where Antabo was hit was about 30 to 40 meters, more or less. Balanay claimed that he merely intended to hit Antabo on the left leg to stop him from running, but Antabo was instead hit on the head.<sup>[26]</sup>

After Antabo fell, Eyas accompanied a frightened Balanay to check on the victim but found the latter already dead. Dagayluan and other PNP went to the rear portion of the municipal building and saw the deceased. Eyas and Dagayluan brought cameras to take pictures.<sup>[27]</sup>

Petitioner Balanay also declared that, in connection with the shooting incident, Carmelita Antabo, wife of the victim, filed a complaint against him. The People's Law Enforcement Board (PLEB) investigated the complaint and on the basis of the evidence presented, the PLEB found him not guilty of the administrative charge. Likewise, the Sangguniang Bayan of Leon B. Postigo passed a resolution on July 8, 1991, commending him for "his act of courage to prevent a prisoner [Antabo] to escape." The resolution expressly stated that the members of the Sangguniang Bayan support the petitioner against the criminal complaint filed by the family of Antabo.<sup>[28]</sup>

On cross-examination, petitioner stated that he received his M-16 rifle only on the first week of May 1991. He did not undergo any training on how to operate the same. However, on clarificatory questions asked by the Court, petitioner stated that he had training in using a .38 caliber handgun and M-16 rifle.<sup>[29]</sup>

On September 7, 1993, the Sandiganbayan rendered its decision, convicting petitioner Balanay of Homicide, the dispositive portion of which reads:

WHEREFORE, the Court finds EDUARDO BALANAY Y PENADOS guilty beyond reasonable doubt as principal of the crime of homicide defined in Art. 249 of the Revised Penal Code and included in the offense charged in the Information and, there being the aggravating circumstance of taking advantage of public position without any mitigating circumstance in offset, imposes upon him the indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal, as maximum.

He is ordered to indemnify the heirs of Diomercio Antabo y Candes in the amount of P50,000.00, Philippine Currency.

On September 21, 1993, petitioner filed a Motion for Reconsideration and/or New Trial but the Sandiganbayan in its Resolution dated November 9, 1993 denied it.

Hence, this appeal.

Petitioner faults the Sandiganbayan in holding that:

1. The victim was shot in front;
2. The accused was guilty of the crime of homicide; and
3. There was suppression of evidence.

Petitioner contends that he should not have been required to present his evidence and that the case should have been dismissed outright because the testimony of the lone prosecution witness, Dr. Benlot, does not prove his alleged guilt beyond reasonable doubt.

Petitioner likewise contends that the evidence of the prosecution is weak because Dr. Benlot testified only on his post-mortem examination of the cadaver of Antabo and not on the circumstances leading to the shooting of the victim. He argues that the prosecution had no testimonial evidence from an eyewitness that he (petitioner) was allegedly in front of the victim when he shot the latter. On the other hand, defense witness Dagayluan testified that while the victim was running, petitioner fired two warning shots which the victim ignored, thereby forcing the petitioner to fire the third and fatal shot. Defense witness Eyas testified that the victim was shot while trying to escape. In other words, petitioner argues that he should not be held accountable for his act of shooting the detention prisoner, Antabo, as it was done in the lawful discharge of his official duty.

The appeal, not being meritorious, must fail.

It is a settled jurisprudence that in criminal cases the prosecution has the *onus probandi* in establishing the guilt of the accused. *Ei incumbit probatio qui dicit, non que negat.*, i.e., he who asserts, not he who denies, must prove.<sup>[30]</sup> However, once the defendant admits the crime charged but raises a justification for its commission, the burden of proof is shifted to him to prove justification to relieve himself of any criminal liability or mitigate its gravity.<sup>[31]</sup> To prove justification, the defendant must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if it were weak, it could not be disbelieved after the accused had admitted the killing.<sup>[32]</sup> In the instant case, by invoking the justifying