



Republic of the Philippines
NATIONAL POLICE COMMISSION
PHILIPPINE NATIONAL POLICE
POLICE REGIONAL OFFICE CALABARZON
Camp BGen Vicente P Lim, Calamba City



Philippine National Police,
Complainant,

Administrative Case No.
PRO4A-AC-622-0712-19-LAGRIAS

-versus-

for:

**PCpl Anthony DC De Guzman and
Pat Rogel S Antioquia,**

Grave Misconduct (Violation of
Article 249 of the Revised Penal
Code-Homicide) and **Grave
Irregularity in the Performance of
Duty** (Violation of Rule 7.1 of PNP
Operational Procedures Manual
2013)

Respondents.

X-----X

DECISION

This resolves the administrative cases filed by the Philippine National Police through the Regional Internal Affairs Service (RIAS) against the herein respondents, PCpl Anthony Dela Cruz De Guzman 210239 and Pat Rogel Salazar Antioquia 238158, both members of Sta. Cruz Municipal Police Station, Laguna PPO, PRO CALABARZON, for **Grave Misconduct** (Homicide, Violation of Article 249 of the Revised Penal Code) and **Grave Irregularity in the Performance of Duty** (Violation of Rule 7.1 of PNP Operational Procedures Manual 2013) docketed under Administrative Case No. PRO4A-AC-622-0712-19-LAGRIAS.

ANTECEDENT FACTS

A Motu Proprio Investigation ensued at the Regional Internal Affairs Service (RIAS) after which probable cause was determined. Hence, the filing of the Formal Charge dated April 8, 2019 which read as follows:

"That at about 10:00 PM of February 20, 2019 in Brgy. Labuin, Municipality of Sta. Cruz, Province of Laguna and within the administrative disciplinary jurisdiction of this Service, the above-named respondents, being members of the Philippine National Police and assigned to Sta. Cruz MPS, Laguna PPO, PRO CALABARZON, did then and there, willfully, unlawfully and feloniously failed to observe PNP Operational Procedure during the conduct of police operation against "ARGIN MENDOZA DIMACULANGAN" with the use

Grave Irregularities in the Performance of Duty (Violation of PNPOP Manual 2013)."

Investigation disclosed that at about 11:00 PM of February 23, 2019, an information was received from a Confidential Informant (CI) that Argin Dimaculangan Mendoza was selling illegal drugs in Barangay Labuin, Sta. Cruz, Laguna and other nearby areas. Said information was relayed to PLTCOL ARMIE S AGBUYA, Acting Chief of Police of Sta. Cruz MPS who directed PCpl Anthony Dela Cruz De Guzman and Pat Rogel Salazar Antioquia to conduct casing and surveillance on the reported illegal activity of the suspect.

After verification, they found out that Dimaculangan is indeed a drug pusher. A briefing ensued and PCpl De Guzman was designated as posuer buyer and Pat Antioquia as the backup security. Prior to the operation, they prepared the necessary documentation and coordination to PDEA 4A was made under PDEA control number 10005-022019-1242.

Afterwhich, the team together with the CI, Brgy. Kagawad Jerwin Delos Reyes and media representative Roderick Palatino moved to Sitio, Yakal, Barangay Labuin, Sta. Cruz, Laguna for the transaction.

At about 10:50 PM of February 20, 2019, Dimaculangan arrived and approached for the deal. PCpl De Guzman the poseur-buyer asked of how much to buy. After brief conversation, Dimaculangan handed to PCpl De Guzman one (1) piece of small heat-sealed transparent plastic sachet containing white crystalline substance suspected as "SHABU" in consideration of five-hundred peso bill marked money. However, after the transaction, the suspect sensed that he was dealing with a police officer when the latter gave his pre-arranged signal. The suspect drew a firearm from his sling bag and fired at the the latter (poseur buyer) who ran for his safety. When the suspect missed his shot, the back-up police officers returned fire at the suspect resulting in his untimely death

SOCO Team from Laguna PCLO led by PMAJ ROBBIE CHARLES P VILLAGEN arrived, processed the crime scene and recovered the following pieces of evidence, one (1) Smith and Wesson .357 Magnum revolver with serial number 35009 loaded with three (3) .357 Magnum fired cartridge cases, three (3) .357 Magnum cartridges, seven, five (5) 9mm fired cartridge cases, one (1) fired bullet of caliber .357, and seven (7) heat sealed transparent plastic sachets containing suspected shabu.

The Summary Hearing Proceeding against respondents, PCpl De Guzman and Pat Antioquia pursued and was conducted by PMAJ KARL JEREMIAH DANGO, Summary Hearing Officer (SHO). The respondents were found not culpable from the offense charged and recommended to be exonerated.

ISSUES/FINDINGS

The issue of the case is whether or not the respondents are guilty of Grave Misconduct and Grave Irregularity in the Performance of Duty in neutralizing the suspect under the given circumstances.

Anent on the charge of Grave Misconduct:

Under Article 249 of the Revised Penal Code. Homicide - *Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.* Based on the provisions of law, the requisites are the following: 1.) a person was killed, 2.) the respondents killed the suspect without the attendance of any of justifying circumstance; 3.) the respondents had the intention to kill, which is presumed, 4.) the killing was not attended by any of the qualifying circumstances of Murder, or that of Parricide or Infanticide.

Based on the records, the first element is present in the instant case, however, all the pieces of evidence only point to a legitimate police operation. It is presumed that their duty as police officers was regularly performed. In order to overcome the presumption of regularity, there must be a clear and convincing evidence that the police operatives had been improperly or maliciously motivated in killing the suspect. With nothing to substantiate the prosecution's accusation, credence shall be given to the narration of the incident by the respondents themselves, being police officers. As such, they are presumed to have performed their duty in a regular manner. Certainly, the presumption of regularity must prevail over prosecution's unfounded allegation.

In justifying circumstances which exempt from criminal liability under article 11 of the Revised Penal Code, paragraph 5 provides that any person who acts in the fulfillment of a duty or in a lawful exercise of a right or office shall not be held criminally liable. Also in grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must manifest." (Landrito vs Civil Service Commission, 223 SCRA 551).

Nevertheless, in the case of Homicide, the killing, was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Applying this legal pronouncement, it is apparent that the second, third and fourth elements are wanting to consider the predicate offense of Homicide.

With regard to the charge of Irregularity in the Performance of Duty:

The second issue is the irregularity in the performance of their duty. There is irregularity if there is excessive use of force but in this case it is obvious that the

suspect was armed with a firearm and fired shots against police officers, thus the use of firearms of the respondent police officers were justified.

Rule 7.1 of PNP Operational Procedures Manual 2013, Use of Force provides for the following provisions:

The excessive use of force during police operation is prohibited. However, in the lawful performance of duty, a police officer may use the necessary force to accomplish his mandated tasks of enforcing the law and maintaining peace and order.

Moreover, the respondents are bound by the "Stand on your Ground Principle" in dealing against any actions of alleged suspect. In the instant case, the police officers were deprived of any possible options but to shoot the suspect in order to countermand from sudden aggression as a form of self-preservation and in furtherance of their police duties.

CONCLUSION

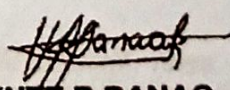
This Disciplinary Authority after careful review of the Report of Investigation submitted by RIAS 4A agreed with the findings of Summary Hearing Officer that there is **NO SUBSTANTIAL EVIDENCE** to hold the respondents liable for Grave Misconduct and Grave Irregularity in the Performance of Duty.

DISPOSITIVE PORTION

WHEREFORE, premises considered, this Disciplinary Authority finds the herein respondents, PCpl Anthony Dela Cruz De Guzman and Pat Rogel Salazar Antioquia **NOT GUILTY**, and hereby **EXONERATED** from the charges of **Grave Misconduct** (Violation of Article 249 of the Revised Penal Code- Homicide) and **Grave Irregularity in the Performance of Duty** (Violation of Rule 7.1 of the PNP Operational Procedures Manual 2013 - Prohibited Used of Excessive Force).

SO ORDERED.

Done this AUG 04 2020 at Police Regional Office CALABARZON, Camp BGen Vicente P Lim, Calamba City, Laguna.


VICENTE D DANA0, JR
Police Brigadier General
Regional Director