



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-177-0423-19-LAGRIAS**

-versus-

for:

**PSSg Camilo Ausena Pulgar, Jr and  
PCpl Anthony Dela Cruz De Guzman,**  
Laguna PPO

**Grave Misconduct (Violation of Art  
249 of RPC, Homicide)**

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, PSSg Camilo Ausena Pulgar, Jr 183863 and PCpl Anthony Dela Cruz De Guzman 210239, both members of Sta Cruz Municipal Police Station, Laguna PPO, for **Grave Misconduct** (Violation of Art 249 of RPC, Homicide). This case is docketed as Administrative Case No. PRO4A-AC-177-0423-19-LAGRIAS.

## ANTECEDENT FACTS

On this reason, Motu Proprio Investigation ensued at the Laguna Provincial Internal Affairs Service (LAGPIAS) after which probable cause was found. Hence the filing of the formal charge dated January 17, 2019 read as follows:

*That on or about 2:00 AM of October 28, 2018 at Sitio Asana 1, Brgy. Santissima Cruz, Sta Cruz, Province of Laguna and within the administrative jurisdiction of this Service, above-named respondents, being members of PHILIPPINE NATIONAL POLICE and assigned to Sta Cruz MPS, Laguna PPO, PRO CALABARZON did then and there, willfully, unlawfully and feloniously shot suspect identified as "CARLOS DELA PEÑA NANSON a.k.a. NONOY/BAKA" with the use of firearm/s that caused of his untimely death, amounting to administrative offense of Grave Misconduct Violation of Article 249 of RPC (Homicide).*

*Act of respondents in violation of NAPOLCOM rules and regulation, prejudicial to the police service and subject to disciplinary sanction.*



In the Investigation Report dated November 4, 2019 revealed that at around 2:00 AM of October 28, 2018, elements of Drug Enforcement Unit (DEU) Sta Cruz Municipal Police Station, in coordination with PDEA 4A with control number 10005-102018-1498, conducted anti-illegal drugs operation in Sitio Asana 1, Brgy Santisima Cruz, Sta Cruz, Province of Laguna. PCpl De Guzman bought one (1) heat sealed transparent plastic sachet containing shabu from Nanson in exchange of PHP 2000 marked money. The latter then made a phone call as a signal to confirm the transaction. However, the suspect sensed that he was dealing with a Police Officer, he immediately drew a firearm from his sling bag and aimed towards PCpl De Guzman but failed to discharge, while running away from danger of gunshot, PSSg Pulgar, Jr left with no other recourse but to retaliate hitting the suspect resulting in his untimely death.

Investigation disclosed that the circumstances reveals that there was an imminent danger post by the suspect on the lives of the PNP operatives of Sta Cruz MPS who were only performing their police duties. The suspect's neutralization was a result of a legitimate police operation and no violation of the Police Operational Procedure had been committed.

Upon the Summary Hearing Proceedings and the recommendation of Laguna PIAS, against PSSg Pulgar, Jr and PCpl De Guzman, conducted by PMAJ DENNIS A VARGAS, Summary Hearing Officer (SHO), who recommended the case against respondents be dismissed for lack of probable cause.

### ISSUES/FINDINGS

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

Anent of the charge of Grave Misconduct:

**Article 249. Homicide.** - Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

Jurisprudence is replete in the pronouncement that there must be clear and convincing evidence that the police operatives had been improperly or maliciously motivated in taking the life of the suspect. With nothing to substantiate the allegations that the respondent were moved by ill intent, credence shall be given to



the narrations of the incident by the respondents, being police officers. As such, they are presumed to have performed their duties in a regular manner. Their acts were justified that they are engaged in the lawful performance of duty. Such force was necessary as would be sufficient to overcome resistance put up by the offender.

Had respondents failed to retaliate the lawless shooting of the suspect, respondents could have been hit by bullets and died as a consequence. More so, they are police officers. They were not required to desist from performing their duty as state's agents by enforcing the planned drug buy-bust operation although resulted to the death of another person. Having met the requisite, respondents cannot be held liable as they were justified under the law due to the Doctrine of Fulfillment of Duty.

There are three (3) requisites for a valid Self-Defence under Article 11 of the Revised Penal Code, namely:

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it; and
3. Lack of sufficient provocation on the part of the person defending himself.

In the instant case, there was an unlawful aggression from Nanson who immediately shot at PCpl De Guzman when he sensed that he has transacted with a police officer. As regard to the second requisite, it is reasonably necessary for PSSg Pulgar, Jr to use his service firearm because that the suspect was shooting at them requiring sudden decision to retreat but must stand their ground by fighting back consistent with the principle of: "*STAND GROUND WHEN IN THE RIGHT*". The third requisite is also present. Respondents never made any provocation against Nonoy before the latter launched attack at him. Buy-bust operation by police officers and its constitutive transactions do not amount to sufficient provocation. The presence of the three (3) requisites necessary results to the respondent's valid self-defense which makes their act justified and beyond the ambit of the law.

Under the general rules of 2013 PNP Operational Procedures, the use of force should be applied only as a last resort when all other peaceful and non-violent means have been exhausted. Such necessary and reasonable force should be applied as would be sufficient to conduct self-defense or in defense of a stranger, to subdue the clear and imminent danger posed.

Thus, it is presumed in the eyes of the law that respondents have performed their function lawfully and in the regular manner. This well-known legal presumption is found in Section 3(m) of Rule 131 of the *Philippine Rules of Court* (That official duty has been regularly performed;) and the same cannot be overcome by mere conjectures of surmises but by clear and independent evidence to the contrary.



It is provided in Rule 8 of the PNP Police Operational Procedure that the use of firearm is justified if the offender poses imminent danger causing death or injury to the officer or other person.

### CONCLUSION

This Disciplinary Authority, after assiduous review of the Report of Investigation submitted by RIAS 4A, agreed with the findings of the SHO that there is **NO SUBSTANTIAL EVIDENCE** to hold the respondents liable for Grave Misconduct.

### DISPOSITIVE PORTION

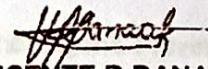
**WHEREFORE**, premises considered, this Disciplinary Authority finds the herein respondents, PSSg Camilo A Pulgar, Jr and PCpl Anthony DC De Guzman, **NOT GUILTY**, and they are hereby **EXONERATED** from the charge of **Grave Misconduct** (Violation of Article 249 of the Revised Penal Code-Homicide).

### SO ORDERED.

Done this MAR 21 2020 at Police Regional Office CALABARZON, Camp BGen Vicente P Lim, Calamba City, Laguna.

### ANTECEDENT FACTS

A Show Proprio Investigation ensued by the Regional Office of the Bureau (PRO) after which probable cause was found for the charge of Grave Misconduct dated February 7, 2019 issued by the Regional Director.

  
**VICENTE D DANA0, JR**  
Police Brigadier General  
Regional Director