



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-442-0531-19-LAGRIAS

-versus-

for:

PCpl John Ryan S Bernabe and
PCpl Anthony DC De Guzman,

Grave Misconduct (Violation of
Article 249 of RPC-Homicide)

Respondents.

X-----X

DECISION

This resolves the administrative case filed by the Philippine National Police through the Regional Internal Affairs Service (RIAS) against the herein respondents, PCpl John Ryan Sulpico Bernabe 210324 and PCpl Anthony Dela Cruz De Guzman 210239, both members of Sta. Cruz Municipal Police Station, Laguna PPO for **Grave Misconduct** (Violation of Article 249, Revised Penal Code, Homicide) docketed under Administrative Case No. PRO4A-AC-442-0531-19-LAGRIAS.

ANTECEDENT FACTS

A Motu Proprio Investigation ensued at the Laguna Provincial Internal Affairs Service (PIAS) after which probable cause was determined. Hence, the filing of the Formal Charge dated February 7, 2019 read as follows:

"That at 2:00 AM of December 14, 2018 at Sitio 6, Brgy. Bagumbayan, Municipality of Sta. Cruz, Province of Laguna, 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 "JAYSON SARREAL" with the used of firearm/s that caused of his untimely death, amounting to administrative offense of Grave Misconduct (Violation of Article 249 of RPC (Homicide))."

Investigation disclosed that PLTCOL ARMIE AGBUYA, PCMT Ariel Maglipon, PSMS Manolito Binalay, PSSg Ruel Reyes, PSSg Rex Cabrera, Pssg Camilo Pulgar Jr, PSSg Jeson Peñamante, PCpl John Ryan Bernabe, PCpl Anthony De Guzman,

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Pat Blasfil Margate, Pat Algy Riguer, Pat Rogel Antioquia and Pat Paolo Conception received an information from the confidential informant that Jayson Sarreal is selling illegal drugs in Brgy. Bgum Bayan Sta Cruz Laguna. Thus, the operatives planned for a buy-bust operation. Thereafter, at about 2:02 AM of December 14, 2018, PSSg Jesson Peñamante coordinated with PDEA and Agent Kathleen Solomon sent a reply the authority to operate to conduct buy-bust operation with Control Number 10005-122018-0690

Likewise, PCpl De Guzman marked and prepared the Five Hundred peso bill as buy-bust money. At about 12:30 AM of same date, PCpl De Guzman requested PSSg Armando Albay, Desk officer to record on the blotter book the operation indicating that they observed the guidelines set under Section 21 of Republic Act 9165. Likewise, Barangay Official, Media Representative and National Prosecution Service representatives were requested.

In coordination with Councilor Jesus Foronda Jr, Media Representative Roderick Palatino, operatives together with their confidential agent, proceeded to Sitio 6, Brgy. Bagumbayan, Santa Cruz, Laguna to meet Sarreal to buy illegal drugs. PLTCOL AGBUYA, PMSG Maglipon, PSMSBinalay, PSSg Reyes, PSSg Cabrera, PSSg Pulgar Jr, PSSg Peñamante, PCpl Bernabe, PCpl De Guzman, Pat Margate, Pat Riguer, Pat Antioquia and Pat Conception will serve as security hiding nearby. They agreed that PCpl Guzman will dial his cellphone as their pre-arranged signal.

Accordingly, during the actual buy-bust operation, Sarreal alighted from a motorcycle which was driven by another malefactor. The confidential informant approached Sarreal and introduce to PCpl De Guzman as buyer. After their agreement, PCpl De Guzman handed to Sarreal one (1) piece of Five Hundred Peso Bill (Php. 500.00) with serial number RZ727471 with initial RSR as marked money in exchange of one (1) heat sealed transparent plastic sachet containing white crystalline substance known to be shabu. Subsequently, a pre-arranged signal was executed to warn the back-up security that the transaction was already consummated.

After the consummation of the illegal drug transaction, the suspect sensed that he was dealing with a police officer drew his caliber .38 revolver and fired upon the PCpl De Guzman but missed. The other operatives who were hiding at that time responded and returned fire that resulted in the death of Jayson Sarreal. However, during the exchange of gun fire, the companion of the killed suspect fled and evaded arrest.

SOCO Team led by PMAJ ELIZALDE E ODI processed the scene. Pieces of evidence collected were One (1) Caliber .38 revolver Smith and Wesson without serial number loaded with three (3) caliber .38 cartridges in its chamber, Five (5) 9mm fired cartridge cases, Five (5) heat sealed transparent plastic sachet containing

suspected Shabu, Paris. In cast of suspect's hand and Pos. Portem fingerprint of the suspect.

The Summary Hearing Proceeding against respondents, PCpl Bernabe and PCpl De Guzman pursued and was conducted by PLTCOL EVAN R IBAÑEZ, 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 in neutralizing the suspect under the given circumstances.

It is a well-settled rule, that intent to kill is presumed by the fact of death unless the respondents can prove by convincing evidence that any of the justifying circumstances in Article 11 or any of the exempting circumstances in Article 12, both of the Revised Penal Code are present.

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, and 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 is regularly performed. In order to overcome the presumption of regularity, there must be 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 that the respondents were improperly motivated, 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.

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.

DISPOSITIVE PORTION

WHEREFORE, premises considered, this Disciplinary Authority finds the herein respondents, PCpl John Ryan Sulpico Bernabe 210324 and PCpl Anthony Dela Cruz De Guzman **NOT GUILTY**, and hereby **EXONERATED** from the charge of **Grave Misconduct** (Violation of Article 249 of the Revised Penal Code- Homicide).

SO ORDERED.

Done this JUL 15 2020 at Police Regional Office
CALABARZON, Camp BGen Vicente P Lim, Calamba City, Laguna.


VICENTE D. DANA0, JR
Police Brigadier General
Regional Director