

The Benjamin Bayles Case - by Atty. Ben Ramos, September 21 Movement - KARAPATAN

I. Case Summary:

On June 14, 2010, at around 4:30 p.m., Benjamin Bayles was shot to death at Himamaylan City, Negros Occidental by two men wearing helmets and sweatshirts on board a black Honda TMX 155cc motorcycle with no license plate. When the perpetrators left the crime scene on board the motorcycle going towards the next city (Kabankalan), a bystander immediately reported the incident to the Himamaylan Police who, in turn, alerted the Kabankalan City Police.

At around 5:20 in the afternoon of the same day, members of the Kabankalan Police saw an approaching motorcycle resembling the description. After a few minutes of chasing, they were able to stop the suspects and frisked them. The police officers recovered from one suspect (who identified himself as Ronnie Lizada Caurino) one STI Custom Shop caliber .45 pistol bearing serial number 129528 with one empty magazine, and from the other suspect (who identified himself as Roger Mareza Bajon), one Colt caliber .45 pistol bearing serial number 195879 with one magazine containing two live ammunitions.

The arresting police officers immediately brought the suspects and the seized objects to the Kabankalan Police Station and recorded the incident in the police blotter. A few minutes later, the police officers of Himamaylan City arrived and brought the suspects and the seized objects to the Himamaylan police station.

II. DEFICITS in Investigation

A. Before the arrest:

Immediately after the killing, the police conducted a hot pursuit operation resulting to the arrest of the suspects about an hour after the killing. However, within that hour, the other police officers limited themselves to visiting the crime scene, gathering only two (out of 19) empty shells of ammunition, and interviewing bystanders. They did not cordon the crime scene nor did they conduct thorough crime scene investigation to gather more object evidence, such as measuring distances, taking blood stains, finding all empty shells of ammunition, finding slugs, taking pictures and records, etc.

The police officers were informed as to who were around during the killing but they did not immediately pursue and interview possible witnesses.

B. After the arrest:

When the suspects were arrested and put in jail, the police showed reluctance in further investigating and gathering evidence.

1. The police investigators did not find willing witnesses who could identify the suspects in a police line-up.

2. Considering that the perpetrators were wearing helmets at the time of the killing, hence quite impossible to be identified through their faces, the police did not bother to immediately take pictures of the arrested suspects in order to preserve or document how they looked when arrested. They did not even, at least, record the clothes worn by the suspects when arrested, as witnesses may be able to remember the clothes worn by the perpetrators at the time of the killing.

(Note: In the evening of the killing, it was the members of September 21 Movement-KARAPATAN who looked for and secured an eyewitness and brought him to the police station. Among the eight male detainees at that time, the witness was able to identify the two suspects and he was very sure that the suspects were the perpetrators based on their body build, complexion and the short pants they were wearing.)

3. In the following days, the police facilitated the paraffin testing on the suspects and the ballistic examination on the recovered firearms. The result of the ballistic examination is particularly crucial in this case. It could directly link the arrested suspects to the murder of Benjamin Bayles as it could be established whether the slugs taken from his cadaver (which caused his death) were fired from the firearms taken from the suspects during their arrest. The slugs and the firearms were turned over to the custody and control of the police crime laboratory which conducted the ballistic examination. There was no way of independently ensuring, for example, that the barrels of the firearms were not changed prior to the examination, or that the result would not be “doctored”. Surprisingly, both paraffin testing and ballistic examination returned negative results, according to the police.

4. On the part of the medico-legal officer, he recovered only 3 slugs from the victim’s cadaver. He did not bother to recover more despite his findings that there were 11 gunshot wounds without exit point, strongly indicating that eight other slugs remained somewhere in the cadaver. He did not even put identifying marks on the recovered slugs to preserve their integrity.

5. The police investigators did not actively seek for any willing witness despite being informed that there were several eyewitnesses to the killing. They were practically merely waiting at the police station for witnesses to come out and testify. Also, they did not bother to investigate on the circumstances surrounding the killing and on the possible motive of the killing. (*Note: Members of the September 21 Movement-KARAPATAN were the ones who found, encouraged and supported all 3 civilian witnesses and brought them to the police station to make their respective sworn statements.*)

6. Despite the availability of the serial numbers of the firearms taken from both suspects and the engine and chassis serial numbers of the motorcycle they used, the police investigators did not follow such leads.

*(Note: By means of the engine serial number and chassis serial number, members of September 21 Movement-KARAPATAN and allied organizations were able to trace that the motorcycle used by the suspects was last registered on August 19, 2009 at the Land Transportation Office (LTO) in Bayawan City, Negros Oriental in the name of **Reygine Laus**. The LTO issued the plate number 7BD718. At the LTO, the registrant’s address is (Barangay) Manlucahoc, Sipalay (City), Negros Occidental.*

Based on the above information, it was confirmed that the motorcycle was purchased by Reygine Laus from DUEK SAM outlet at Sipalay City good as cash. At the DUEK SAM outlet, the buyer is registered as a resident of Barangay Manlucahoc, Sipalay City.

*Based on interviews with Manlucahoc residents and Barangay officials, **Reygine Laus** is a member of the 61st IB, PA, formerly assigned at the detachment of 61st IB, PA at Sitio Baras-Barasan (sub-village of Barangay Manlucahoc). **A resident confirmed that Reygine Laus is the true identity of the suspect Ronnie Caurino.***

7. The above-shown reluctance of the police to further investigate and to follow leads, as well as the negative results of the paraffin test and the ballistic examination, may be explained as follows:

a. In a Spot Report made by the Chief of Police of Himamaylan City, he stated that at about 5:25 p.m. of June 14, 2010, the Kabankalan City Police Station informed the Himamaylan City Police Station that the arrested suspects claimed to be members of the Philippine Army.

On the same date, the Kabankalan City police, in their statement to radio station DYEZ “Aksyon Radyo” Bacolod City, confirmed that the arrested suspects confessed to be “organic” members of the 61st Infantry Battalion, Philippine Army (IBPA).

However, in the morning of June 15, 2010, the Chief of Police of Himamaylan City claimed before the same radio station that the suspects are not connected with the

military. In short, after knowing that the suspects are military men, the Himamaylan police started to cover up for them.

b. In his 16 April 2008 Report to the UN General Assembly, Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston stated:

“Over the past six years, there have been many extrajudicial executions of leftist activists in the Philippines. These killings have eliminated civil society leaders, including human rights defenders, trade unionists and land reform advocates, intimidated a vast number of civil society actors, and narrowed the country’s political discourse. Xxx... Counter-insurgency strategy and recent changes in the priorities of the criminal justice system are of special importance to understanding why the killings continue.

Many in the Government have concluded that numerous civil society organizations are “fronts” for the Communist Party of the Philippines (CPP) and its armed group, the New People’s Army (NPA). One response has been counter-insurgency operations that result in the extrajudicial execution of leftist activists. In some areas, the leaders of leftist organizations are systematically hunted down by interrogating and torturing those who may know their whereabouts, and they are often killed following a campaign of individual vilification designed to instil fear into the community. The priorities of the criminal justice system have also been distorted, and it has increasingly focused on prosecuting civil society leaders rather than their killers.”

c. Thus, after the arrest, when the police realized that the suspects are members of the Philippine Army and that Bayles was a victim of extrajudicial execution pursuant to the counter-insurgency program of the government, the police became reluctant to further investigate and to work on the case. On the contrary, the police officers denied over the radio that the suspects are members of the military and they worked to suppress and destroy the evidence, hence, the negative results of the paraffin test and the ballistic examination.

III. Deficits in Criminal Procedure

1. In criminal cases, the government has the obligation to investigate the crime, gather evidence and to act as the prosecutor to the end that the guilt of the person responsible of the crime is proved beyond reasonable doubt and he is punished accordingly, thereby attaining justice for the victim and the society at large. Under normal circumstances, the present criminal procedure in the country seems to be sufficient for the purpose.

However, in this particular case which is apparently an extrajudicial execution pursuant to the counter-insurgency program of the government itself as pointed out by Alston, the investigating and prosecuting arms of the government are not working at all, and this is the very reason why impunity prevails in the country. Hence, it may be of no use to talk about the present criminal procedure when it comes to extrajudicial execution and enforced disappearances as the same procedure presupposes investigating and prosecuting arms of the government which are working. The same procedure is designed for ordinary crimes only and not for crimes committed by state security forces in furtherance of the counter-insurgency program of the government, such as extrajudicial killing and disappearance (EJK and ED). In fact, the crimes of EJK and ED are not even defined and covered by the Revised Penal Code, that is why the suspects in the Bayles case are being charged of murder, not EJK.

2. Under the criminal law and procedure, the prosecution has the burden of proving the guilt of the accused beyond reasonable doubt. Failing in this, the case must be dismissed as the accused is entitled to be presumed innocent.

In the Bayles case, considering that there was no thorough investigation and gathering of evidence conducted by the police as above shown, and there was even an indication of suppression or destruction of evidence as shown in the doubtful negative results of the paraffin test and ballistic examination, such burden of proving the guilt of the accused has become a lot heavier, if not nearly impossible. This concern refers more to the

deficiency in the performance of investigation and gathering of evidence rather than in the criminal procedure itself, but it does have a very significant bearing on the evidence in this case.

3. There seems to be a necessity for a special procedure to prosecute EJKs, EDs and other crimes committed by state security forces in furtherance of counter-insurgency program or operations of the government. Such special procedure may provide, among others, for the following:

a) Creating a special court for the purpose (similar to the DAR Adjudication Board and Special Agrarian Courts for agrarian cases; and National Labor Relations Commission for labor cases), as the present court tends to regard this case as an ordinary crime of murder, not properly appreciating and accounting for the political aspect or nature of the case;

b) Allowing local private, or foreign private or government experts (e.g., ballistic or forensic) to investigate the crime, as a matter of right and without need of any approval by the government, and to present their findings in court, such findings to be accorded by the court similar weight as those of the government investigators. In the present case, we requested the Department of Justice to tap the pool of experts of EPJUST (who was willing) to do an independent ballistic examination but there was no reply;

c) Creating a special prosecutor's office, and allowing the Commission on Human Rights and private lawyers to prosecute the crime without need of approval and supervision by the government. Generally, the present prosecutors lack the proper appreciation/perspective for EJKs and other crimes of this nature.

IV. HANDLING of Witnesses

Given that this case involves an extrajudicial execution pursuant to the counter-insurgency program of the government itself and that the suspects are members of the military, it is normal that the witnesses would shirk from testifying for fear of their own safety and lives. In fact, the witnesses in this case, as well as the private prosecutor, were already subjected to heightened surveillance, harassment, intimidation and even direct threats by the members of the military in order to discourage them from further prosecuting the case.

Also, it is normal that the witnesses would distrust the witness protection program of the government. Moreover, the witness protection program of the government would dislocate the witnesses from their normal lives with their own families and from their livelihood.

Under these circumstances, human rights and religious groups have contributed resources and capabilities to encourage, support, hide and protect (provide sanctuary to) witnesses, at the same time making arrangements to minimize dislocation of witnesses from their normal lives and livelihood.

Since the day of the killing (June 14, 2010) until now, the only eyewitness who is willing to take the risk to testify, Johnrey Mayongue, has been provided sanctuary by the September 21 Movement-KARAPATAN, with the financial support from the Philippine Independent Church-UCCP.

Also, when military surveillance and harassment heightened in the first week of November 2010 against her to discourage her from testifying in the case, Vilma E. Tejada, together with her husband and eight children, have been provided sanctuary by the same group until after she was presented in court on March 23 and 30, 2011. Now she is back in her usual life.

Without such sanctuary and support provided by human rights groups, the witnesses could have been very vulnerable to pressures, threats and harassments which could have discouraged them from testifying in the case.