

SECOND DIVISION

[G.R. No. 109814, July 08, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. FERNANDO MAALAT Y FAJARDO, ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

"Vengeance is sweet," some aver. But when it results in death, perpetrated upon an unsuspecting person, in his own house, in full view of his son and wife, such sweetness must perforce turn bitter. Once accused who deserves conviction reflects on his fate in his prison cell, he may realize that the more prudent philosophy is that advocated in the Holy Writ, thus: "It is mine to avenge; I will repay," says the Lord. (Romans 12:19)

At about 1 to 2 o'clock in the afternoon of the fateful day of March 23, 1986, the accused, Fernando Maalat alias "Boy Tachi," suddenly entered the house of Roberto Cruz and, without a word of warning, stabbed him while sleeping on the floor of the living room beside the television set. This was witnessed by Roberto's son Berniel, who was watching a television show in the same room. The boy shouted "Nanay" thrice, after which Roberto's wife Imelda came rushing in from the kitchen which was only about two steps away. She saw her husband push the accused when he was about to be stabbed again and run towards the door. The accused, still holding on to the "balisong" he initially used in stabbing the victim gave chase. Roberto ran to the house of his mother-in-law which was about three houses away and was able to lock the door behind him. While the accused was not able to enter and later left the house, the victim, nevertheless, died there.

On April 29, 1986, the accused was surrendered by his uncle-in-law to police investigator Amado Regalado.^[1]

Dr. Marcial Cenido, who performed an autopsy on the body of Roberto Cruz on March 23, 1986, testified that the cause of death was a penetrating perforating stab wound on the left antero lateral thorax. The instrument used was a pointed bladed weapon.^[2]

The accused claims that he acted in self-defense. His version of the incident is as follows:

Accused was informed by one Edmund Carayat, whose brother was stabbed by Roberto Cruz, that he was also being hunted by the latter.^[3] Accused then went to Roberto's house to clarify the said information. He asked Roberto what he had done and why he was being hunted. Roberto's answer was that accused might retaliate against him due to the

stabbing of Edmund Carayat's brother, Edwin. Accused then told Roberto that he could not retaliate against him because they are "compadres." Whereupon, Roberto then branded accused a "traitor" and proceeded to strangle him with his left hand while pulling a knife with the right.^[4] The accused parried the arm that was strangling him with his left arm and kicked the right hand of the victim holding the knife with his left leg. Roberto dropped the knife which the accused immediately picked up to stab him with. Poised to stab Roberto again, the accused, nonetheless desisted when he saw the victim's son who was a witness to the whole incident.^[5] The accused then gave chase to the victim who ran out of the house. He again decided not to stab the victim a second time because the latter's wife might get hurt as she came out of the house to intervene.^[6] The accused went into hiding for a month in Pampanga and surrendered to the uncle of his wife when he was told by his wife that the police were gunning for him and he might be killed.

For the death of Roberto Cruz, Fernando Maalat was charged with murder before the Regional Trial Court of Manila, Branch VII. On February 24, 1993, Judge Ed Vincent Albano rendered judgment, the dispositive portion of which reads as follows:

"WHEREFORE, the accused Fernando Maalat is hereby found guilty beyond reasonable doubt as principal of the crime of Murder, defined by Article 248 of the Penal Code qualified by treachery and dwelling and there being no mitigating circumstances, the accused is hereby sentenced to suffer the penalty of reclusion perpetua; to pay the heirs of the deceased the sum of P50,000.00 by way of compensatory damages pursuant to Article 2206 of the Civil Code; and to pay the costs of suit.

SO ORDERED."^[7]

Hence this appeal.

In his Brief, accused-appellant challenges the above decision, alleging that:

I THE LOWER COURT ERRED IN FAILING TO CONSIDER THAT ACCUSED-APPELLANT ACTED IN SELF-DEFENSE; AND

II ASSUMING ARGUENDO BUT WITHOUT ADMITTING THAT THE ACT OF THE ACCUSED DOES NOT JUSTIFY ACQUITTAL, STILL THE LOWER COURT ERRED IN CONVICTING THE ACCUSED FOR MURDER INSTEAD OF HOMICIDE AND IN NOT CONSIDERING THE MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE AND VOLUNTARY SURRENDER IN FAVOR OF THE ACCUSED.

The appeal is devoid of merit.

This Court in *People vs. Tuson*^[8] has stated that self-defense is a time-worn excuse resorted to by assailants in appealed criminal cases. "However, the rule consistently adhered to in this jurisdiction is that it is incumbent upon the accused to prove the justifying circumstance of self-defense to the satisfaction of the court in order to be relieved of any criminal liability. In such instance, the accused must proffer strong, clear and convincing evidence and depend not on the infirmity of the prosecution,

for even if the latter was weak, the plea of self-defense cannot prosper especially where the accused himself has admitted the killing.”^[9]

To successfully posit the theory of self-defense, the trial court must be satisfied that the three elements necessary to justify the acts complained of attended their commission. First, there must be unlawful aggression on the part of the victim. Second, the means employed to prevent or repel such aggression must be reasonably necessary. Finally, the person defending himself must not have provoked the victim into committing the act of aggression.^[10]

The first requisite is indispensable. Unless it is proven that there has been unlawful aggression on the part of the person injured or killed by the assailant, there can be no self-defense. If there is no unlawful aggression, there is nothing to prevent or repel.^[11] “In addition, for unlawful aggression to be appreciated, there must be an actual, sudden, unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude^[12] and the accused must present proof of positively strong act of real aggression.”^[13]

The trial court correctly pointed out that there was no unlawful aggression in this case. The accused would want this Court to believe that he stabbed the victim in self-defense because he was about to be stabbed himself. There is, however, no testimony to that effect. He only stated that he saw the right hand of the victim holding a “balisong.” The accused also testified that he was about to be strangled. This is not sufficient provocation to merit killing another person. Such act is not deemed sufficiently threatening to subject him to imminent danger which must be repelled by an equal or reasonable force. What further militates against the theory of self-defense is the fact that the accused wanted to stab the victim twice after the first attack. Only his supposed concern for the victim’s son and wife stopped him from doing so. If he truly acted in self-defense then he should have no desire left to inflict mortal injury after the aggression or the imminent danger to his person had ceased.

The version of the defense that the victim suddenly strangled the accused with one hand while holding a “balisong” with the other is not credible. The accused supposedly parried the hand strangling him with his left hand and kicked the hand holding the “balisong” with his left leg. This seems to be contrary to human experience as the rule of survival would impel a person being attacked to parry the hand holding the more dangerous weapon first, especially when the aggressor and the victim are of similar build. It is also improbable for a person to strangle another person similarly built with only one hand.

The second assignment of error is likewise bereft of merit.

For incomplete self-defense to be invoked, there must necessarily be unlawful aggression on the part of the victim.^[14] As earlier discussed, there was no unlawful aggression in the case at bar. Even assuming, arguendo, that the version of the accused is true, that there was an altercation first before the stabbing incident, the moment the victim was disarmed, the imminent danger to the life of the accused ceased. Hence, when accused stabbed the victim, he became the unlawful aggressor.