

EN BANC

[G.R. No.126043, April 19, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL MAGAYAC, DEFENDANT-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

MANUEL MAGAYAC, a member of the CAFGU, was found guilty of MURDER and sentenced to DEATH by the court *a quo*. His conviction is the subject of this automatic review.^[1]

The records show that on 11 February 1994 at around 9:00 o'clock in the evening Jiminardo *Jimmy* Lumague, Edwin Lumague, Tino Magayac, Manuel Magayac and other menfolk of Barangay Paraiso, Pinamalayan, Oriental Mindoro, were on the shore preparing for night fishing.^[2] *Jimmy* was sitting on the kamarote when Tino Magayac, father of the accused, pushed *Jimmy* for no apparent reason. When *Jimmy* asked, "*Bakit mo ako tinabig* (Why did you push me)?" Tino answered, "*Bakit, lalaban ka бага* (Why, do you want to fight)?" Tino then hit *Jimmy* at the back (*dinagukan*). Before they could come to blows, cooler heads intervened.

Two (2) hours later, as the group was already at sea and the Lumague brothers were pulling the fishnet for the night catch, Tino once more approached *Jimmy* and without any preliminaries hit him at the collar and at the stomach. Accused Manuel Magayac also advanced towards *Jimmy* and tried to box him with his right hand.^[3] Again, the fight was averted with the captain threatening to drop them into the sea if they did not stop. When *Jimmy's* Uncle Kanuto asked, "Why are you ganging up on my nephew?" the accused answered, "*Bakit, lalaban ba kayo, bukas lagot kayo sa akin*. (Why, do you want to fight? Tomorrow, you will see)."^[4]

At about 7:00 o'clock early next morning, *Jimmy* Lumague and the accused met again and exchanged blows.^[5] In this one-on-one fight, it seemed that *Jimmy* was the better fighter.^[6] The protagonist were once more separated; it was however apparent that the accused was furious for having obviously been beaten.

At about 6:00 o'clock the following evening, 12 February 1994, Eliza Lumague, *Jimmy's* mother, was at home with her husband and Edwin when they saw the accused carrying a long rifle pass by the store of *Pikong Paez*.^[7] Advised by her husband to follow the accused and warn *Jimmy* of possible reprisal, Eliza looked for her son at Nestor Balana's house near the beach. She found him there sitting on a bench talking with Nicanor Jack Balana at the balisbisan of Balana's house.^[8] Eliza warned *Jimmy* of the accused's impending arrival and urged him to go home. But he replied, "*Inay, mang na na po kayo at ako ay susunod*" (Mother, please go ahead,

I'll follow you). As Eliza turned to go, she saw the accused approach Jimmy, the former saying to the latter, "*Huwag kang tumakbo, hinde kita aanuhin*" (Don't run, I won't do anything to you). *Jimmy* who as about to run, upon hearing the remark, stopped.^[9]

The accused then turned to Nicanor and said, "*Jack, umalis ka na baka mapadamay ka pa*" (Go, Jack, you might get involved).^[10] Nicanor immediately retreated to his brother's house, a distance of two (2) to five (5) meters away. *Jimmy* was trying to leave the place when he was shot by the accused and hit on his right stomach. *Jimmy* fell down on his knees and collapsed on the ground, face down. Manuel cocked his gun again and shot at *Jimmy's* back several times. Manuel then went to the 262nd PC Mobile Force where he surrendered.^[11]

Jimmy's body was autopsied by Dr. Rosalinda Baldos at 9:00 o' clock that same evening who reported: "FINDINGS: General Physical Appearance shows a sthenic body with Multiple Gunshot Wounds described as follows: (1) Four (4) Gunshot Wounds 0.5 CM in diameter at the Left Posterior Chest with exit wounds (9 lacerated) at the Anterior Chest Left; (2) Two (2) Gunshot Wounds Right Posterior Chest measuring 0.5 CM; (3) Gunshot Wound Hip Anterior left 0.5 CM in diameter with exit wound at the Right Buttocks; and, (4) Two (2) Gunshot Wounds Arm Posterior with exit wound at the Anterior Portion with Complete Fracture of the Humerus. CONCLUSION: The cause of death is Cardiorespiratory Failure due to Shock due to Severe External and Internal Hemorrhages due to Multiple Gunshot Wounds Body and Extremities."^[12]

In an Information dated 4 March 1994 the accused was charged with Murder for feloniously shooting to death Jiminardo *Jimmy* Lumague with the qualifying circumstances of treachery and evident premeditation and generic aggravating circumstance of taking advantage of public position as a member of the CAFGU.^[13]

The accused invoked self-defense. With himself as sole witness in his behalf he asserted that between 5:30 and 6:00 o' clock in the afternoon of 12 February 1994 he was walking to the PC Camp to report for duty as CAFGU when *Jimmy* suddenly appeared about four (4) armslength away. *Jimmy* was holding a *balisong* (fan-knife) on his right hand. He rushed towards him (Manuel) so he had to fire his gun as he could no longer retreat. His back was already against a housewall. He shot *Jimmy* on the front right side above his right thigh and then promptly surrendered to Sgt. Martin Calingasan at the PC Camp.^[14]

The accused failed to persuade the court to lean to his side. It found him guilty of murder qualified by treachery or evident premeditation and aggravated by cruelty and taking advantage of his public position as member of the CAFGU. His voluntary surrender was appreciated as a mitigating circumstance. Nevertheless, he was sentenced to death. He was also ordered to indemnify the heirs of Jiminardo *Jimmy* Lumague with P50,000.00 for loss of life and P20,000.00 for funeral expenses.^[15]

The accused now contends that the trial court erred in not acquitting him on the ground of self-defense, and for appreciating treachery and evident premeditation as qualifying aggravating circumstances along with the generic aggravating circumstances of cruelty and taking advantage of public position in the commission

of the crime.

The invocation of self-defense is an admission of the killing and of its authorship. By this admission, the burden of proof shifts to the accused who must now establish with clear and convincing evidence all the elements of this justifying circumstance, to wit: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and, (c) lack of sufficient provocation on the part of the person resorting to self- defense.^[16] In proving these elements, the accused must rely on the strength of his own evidence. He can no longer assail the weakness of the evidence against him simply because it cannot be disbelieve after his open admission of responsibility for the killing.^[17]

Neither are we convinced of the accused's theory of self-defense. There was no unlawful aggression on the part of the victim to speak of. Contrary to his story, the prosecution had established through its eyewitnesses that it was he and not the victim who was constantly making unlawful aggressive moves.

It was the accused who boxed and threatened *Jimmy* the day previous to the incident. The accused was the one who challenged the victim to a fight that morning of the incident. He was the one who approached the unarmed *Jimmy* and pumped nine (9) bullets into the hapless victim, causing his instantaneous death.

We quote with approval the following findings of the trial court - ^[18]

This (theory of accused) was simply unbelievable and very far-fetched. In the first place, it was shown during his cross-examination that from his (accused's) house going to the PC Camp where accused was supposed to report, one does not have to pass by the seashore where the victim and his friend were chatting. The accused could simply walk straight from his house to his Camp which was only a short distance away without taking a longer and more cumbersome way passing by the seashore. And in the second place, the Court finds it hard to believe that the victim would be stupid enough to attack a member of the dreaded CAGU who was armed with a long rifle, even admitting *arguendo* that the victim had a knife in his right hand. It is simply against human behaviour. And besides, there was no evidence showing the existence of any knife whatsoever. Immediately after the killing, comrades in arms of the accused (the PC) came to the place of the incident to investigate and there was no report regarding the presence of any knife whatsoever or any bladed instrument for that matter.

Indeed, a plea of self-defense cannot be justifiably appreciated where it is not only uncorroborated by independent and competent evidence, but also extremely doubtful by itself.^[19] We have ruled in *People v. Gil Tadeje*^[20] that in the absence of any other proof presented showing unlawful aggression on the part of the victim, there can be no self-defense, complete or incomplete.

More so will the plea be disregarded when we take into account the number of wounds on *Jimmy's* body -four (4) simultaneous gunshot wounds at the back, two (2) gunshot wounds at the upper back, two (2) gunshot wounds at the back of arms and only one (1) gunshot wound at the front left hip. It is an oft- repeated rule that the nature and number of wounds inflicted by the accused are constantly and