

CARLOS CASTAÑARES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. L-41269-70. August 06, 1979

Ponente: GUERRERO, J.

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GUERRERO, J.:

Petitioner Carlos Castañares was charged before the Court of First Instance of Rizal under two separate informations for homicide for the deaths of Manuel Pacheco and Felizardo Pacheco, brothers, on February 7, 1967 between ten o'clock and eleven o'clock in the evening within the Rufina Patis Compound at Calle Pescador, Malabon, Rizal. The accused admitted the fact of killing the two brothers but he interposed as his defense the justifying circumstance of complete self-defense. After trial, the lower court convicted him and imposed the following sentence:

"WHEREFORE, the accused Carlos Castañares, is hereby sentenced in each case to an indeterminate penalty of from EIGHT (8) YEARS AND ONE (1) DAY of prision mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY of reclusion temporal, as maximum, together with all the accessory penalties, to indemnify the heirs of the deceased Manuel Pacheco in the amount of P12,000.00, and the heirs of the late Felizardo Pacheco also in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs."

On appeal, the respondent Court of Appeals[1] modified the judgment of the lower court in that it appreciated in favor of the accused the mitigating circumstance of unlawful aggression on the part of the victims and accordingly rendered the Decision dated February 21, 1975, the pertinent portion of which states:

"Nevertheless, since the mitigating circumstance of unlawful aggression on the part of the victims has been duly established, the appellant is entitled to be credited the same. (Article 13, par. (2), Revised Penal Code). The penalty for homicide under Article 249 of the Revised Penal Code, in relation with Article 64, paragraph (2) of the same Code, should be imposed in its minimum, and applying the Indeterminate Sentence Law, the penalty that should be imposed on the appellant for each of the two homicides charged is that of Six (6) years and one (1) day of prision (sic) mayor as minimum, to Twelve (12) years and one (1) day of reclusion temporal as maximum.

WHEREFORE, with the above modifications as to the penalty, the judgment appealed from is affirmed in all other respects, with costs against appellant."

Accused's motion for reconsideration having been denied, he filed this petition for review seeking the reversal of the above decision and praying that he be acquitted of the crimes charged, with costs de oficio.

The law on self-defense embodied in any penal system in the civilized world finds justification in man's natural instinct to protect, repel, and save his person or rights from impending danger or peril; it is based on that impulse of self-preservation born to man and part of his nature as a human being. x x x. To the Classicists in penal law, lawful defense is grounded on the impossibility on the part of the State to avoid a present unjust aggression and

protect a person unlawfully attacked, and therefore it is inconceivable for the State to require that the innocent succumb to an unlawful aggression without resistance, while to the Positivists, lawful defense is an exercise of a right, an act of social justice done to repel the attack of an aggressor.[2]

Our law on the matter is embodied in Article 11, paragraph 1 of the Revised Penal Code, thus -

"Art. 11. The following do not incur any criminal liability:

(1) Anyone who acts in defense of his person or rights provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself."

X X X

It is further required that the presence of all the abovesited circumstances must be proved clearly and convincingly with the burden of proof on the accused, relying on the strength of his own evidence and not on the weakness of that of the prosecution. The rationale for such requirement proceeds from the admission of the accused that he has killed or wounded another which is a felony for which he should be criminally liable unless he establishes to the satisfaction of the court the fact of legitimate defense.[3]

Based on the above discussion, We are faced with the lone issue presented by the petition at bar: whether or not accused Carlos Castañares acted in complete self-defense in the killing of Manuel Pacheco and Felizardo Pacheco and thus be absolved from any criminal liability thereon.

Witnesses for the prosecution testified that on the evening of February 7, 1967 between ten o'clock and eleven o'clock in the evening, Pablito de Jesus Aquino, Mariano Flores, Felicisimo Fuertes and Felizardo Pacheco were then conversing at the gate of the Rufina Patis Compound at Pescador St., Malabon, Rizal, "when later Felizardo Pacheco left and went towards the riverside about fifteen (15) meters away from the gate where he met the appellant (accused) who boxed him. Felizardo returned to the gate of the compound, his mouth bleeding, and when he was asked by Aquino why he was boxed by the appellant, he did not answer. Manuel Pacheco, brother of Felizardo, arrived and Felizardo told him about the incident with the appellant, so the Pacheco brothers went to the riverside to inquire from the appellant why he boxed Felizardo. The appellant was then on the fishing boat, about 5 meters from the riverbank, when Manuel Pacheco asked him why he boxed Felizardo, but the appellant did not answer. Instead, he went down by the outriggers of the boat and after pulling his gun, fired at Manuel twice, so Manuel fell in a sitting position at the rear of the toilet of the Rufina Patis Factory. When Felizardo saw that Manuel was shot, he ran away but the appellant pursued him, and between a parked truck and the walls of the factory, the appellant fired at him and hit him at the back so the latter fell with his face down. The appellant again fired twice at Felizardo. After the shooting, the appellant scattered a basketful of fishes between the fallen bodies of the Pacheco brothers and went back to the fishing boat. The Pacheco brothers died because of the gunshot wounds." (CA decision, p. 2).

On the other hand, witnesses for the defense, including the accused, testified that "when Felizardo saw the appellant (accused) on that evening, he demanded that he be given fish and the appellant asked him to wait until the fishes falling down from the "canastros" had been gathered. Felizardo was angered, so he asked, "Anong palagay mo sa akin, aso?" The appellant answered that he must wait as he was just asking for fish. Felizardo boxed the appellant who ducked the blow and who instinctively fought back. The two were pacified by the workers loading fishes into the truck. Felizardo left with his lips bleeding but only after he threatened the

appellant "May araw ka rin!" About ten minutes later, Felizardo with the handle of a knife sticking out of his front waist returned with his brother, Manuel, who was armed with a hand gun tucked in his waist. They proceeded to where the appellant was.[4] Manuel stood near the toilet of the compound, about an arm's length from the appellant, while Felizardo went to the rear of the parked truck, about 1-1/2 arm's length from the appellant. Manuel then asked the appellant, "Baket (sic) mo sinuntok ang kapatid ko?" and the appellant answered, "Siya ang nauna." While thus explaining, the appellant slowly approached Manuel, who suddenly warned him, "Huwag kang lalapit, putang-ina mo!" drawing from his waist a halfcocked .45 caliber pistol. The appellant jumped at Manuel and grabbed the gun from him. So Manuel was pushed back on the ground sitting down against the toilet wall. When the appellant saw Manuel pick up something from the ground that appeared to be a piece of broken iron gear and as Manuel stood up, half-crouching charging towards the appellant, the appellant fired at Manuel. At this moment, Felizardo drew his knife from his waist and swung his hand back to stab the appellant but the latter suddenly turned around and evaded the thrust of Felizardo, and the appellant fired at Felizardo. Felizardo must have been hit at the right upper arm above the elbow, as he lost hold of the knife, which was thrown underneath the rear of the parked truck. He tried to grab the knife. The appellant warned Felizardo, "Bitiwan mo iyan" but Felizardo did not release the knife and was about to stand up so the appellant fired at Felizardo. Immediately, after the shooting, two persons scampered from the rear of the parked truck causing a "canastro" of fish to fall down the truck and overturn thus scattering its contents. The appellant returned to the boat where he told his wife about the incident. He showed the gun to his wife but the latter in her excitement brushed the same aside and it fell into the river. After the appellant was detained and upon his release, he looked for a diver to find the gun that fell into the river, but all efforts to locate the same proved futile." (CA decision, pp. 3-4).

Based on the following testimonies, the trial court completely disregarded the theory of self-defense and upheld the prosecution's version of the incident. On appeal, the respondent Court of Appeals, while stating that unlawful aggression on the part of the victims was clearly established, nevertheless concurred in the other factual findings of the trial court. We are constrained, however, to disagree with the court a quo and depart from the rule that appellate courts will generally not disturb the findings of the trial court on facts testified to by the witnesses. After carefully reading and analyzing the whole records of the case including the testimonies of all witnesses, We are unable to admit the guilt of the accused of the crimes charged or to affirm his conviction.

Before discussing at full length the merits of the petition at bar, We must direct attention to certain statements of the respondent court in its Decision subject of review which negate the court's finding the accused guilty as charged. Thus, the court said, "However, the presence of unlawful aggression in the case on the part of the Pacheco brothers has been clearly established. There is no question as to the fact that the Pacheco brothers returned to meet the appellant (accused) because the appellant boxed Felizardo. It is safe to assume that when the Pacheco brothers returned they were prepared, not only to inquire from the appellant why he boxed Felizardo, but that they intended to cause injury to the appellant in return." (CA decision, pp. 9-10). We find Ourselves curious as to how respondent court arrived at the conclusion that unlawful aggression on the part of the victims is present despite its finding that (1) Manuel Pacheco was not armed with a gun (CA Decision, p. 10), and that (2) Felizardo Pacheco, con-ceded to be armed with a knife, was already in flight when the accused fired at him (CA Decision, p. 8). It is well-established in jurisprudence that unlawful aggression is equivalent to an attack; it is necessary that the accused be assaulted or that he be attacked, or at least that he be threatened with an attack in an immediate and imminent manner, such as brandishing the knife with which to stab or pointing the gun to discharge against the accused.[5] A mere threatening or intimidating attitude is not a sufficient equivalence of unlawful aggression as it requires for an offensive act to have been made positively determining the intent of the aggressor to cause an injury.[6] Therefore, with the findings that Manuel was not armed with a gun nor any weapon with which he can cause injury and absent any finding that he made any move to place the accused in actual danger of his life

because as found by the respondent court, the accused shot Manuel who was merely asking why he boxed Felizardo, respondent court cannot assume the fact of unlawful aggression on the part of victim Manuel Pacheco. Likewise, with the finding that Felizardo Pacheco, who was armed with a knife, had no opportunity to stab the accused as he immediately ran away when he saw his brother shot, respondent court erred in holding that victim Felizardo Pacheco was an unlawful aggressor because having fled, he posed no more danger to the accused who would then have no more reason to kill or wound him.[7] The above observations force Us to disregard that particular holding of the questioned decision and review the records in its entirety.

In cases such as the one now before Us where there are directly conflicting versions of the incident object of the accusation, the Court in its search for the truth perforce has to look for some facts or circumstances which can be used as valuable aids in evaluating the probability or improbability of a testimony.[8] We have reviewed the conflicting testimonies of the several witnesses presented by both the defense and prosecution and We are convinced that the testimonies of the two eyewitnesses for the prosecution could not be believed in the face of their statements made in trial court which are at variance with objective physical facts duly established and likewise found improbable, considering the scene or location of the occurrence.

1. Prosecution witness Pablito de Jesus Aquino testified that after the altercation between Felizardo Pacheco and the accused, Felizardo returned to their group conversing at the gate of the compound; that Manuel Pacheco arrived several minutes later and insisted that they (Manuel and Felizardo) ask the accused why he boxed Felizardo; that the brothers went to the riverbank and asked the accused why he boxed Felizardo; that the accused, without answering, went down by the outriggers of his boat and started to shoot at Manuel;[9] that Manuel was shot on the right side of his chest; that the accused shot him from the outriggers of the boat; that immediately after, Felizardo started to run towards Calle Pescador but was pursued by the accused; that the accused shot once at Felizardo who fell face down; that in that position, the accused again shot at him twice; and that he never lost sight of Felizardo from the time Manuel was shot by the accused and Felizardo ran.[10]

The candor and credibility of the witness is very much put in doubt by the following: (a) The necropsy report and the testimony of Dr. Cueva, a medico-legal officer of the NBI who conducted an autopsy on the victims, state that Manuel sustained gunshot wounds behind the left armpit, at the left side of the chest, and on the left arm,[11] and, therefore, belying the claim of the witness that he actually saw Manuel shot at the right side of his chest. (b) Exhibits "F" and "F-1", consisting of pictures of victim Felizardo lying on the ground face up, and Exhibit "F-8", a picture of Felizardo Pacheco lying beneath the truck, face up, show the falsity in the witness' testimony that he saw the accused shoot at Felizardo twice while lying face down after which Felizardo no longer moved. (c) His testimony on cross-examination that he never lost sight of Felizardo and the accused from the time Manuel was killed and Felizardo immediately fled towards Calle Pescador could not be believed without nagging doubts because of the undisputed presence of a fishtruck parked along Calle Pescador near the riverbank. In the course of his testimony, the witness admitted that after the second shot, he immediately crossed Calle Pescador to go to the building on the south, therefore, during those few seconds that he was crossing the street by the front of the fishtruck, he was not able to observe what transpired between the accused and Felizardo, hence destroying his candor in claiming otherwise. (d) If the version of the witness would be believed that the accused was down by the outrigger of his fishing boat moored on the Navotas-Malabon river which on the night in question was on a lower level than Calle Pescador while Manuel, at the time he was shot was facing the accused while leaning against the wall of the toilet, their relative position would, therefore, make it physically impossible to explain the gunshot wound found behind Manuel's left armpit and the other wounds admittedly inflicted by an assailant who stood on a higher elevation than the victim. Aquino's testimony is not only inconsistent with physical facts duly established, but it also destroys the prosecution's own theory that the victim Manuel Pacheco was killed from behind.

2. The prosecution also presented Felicísimo Fuertes as an eye-witness to the incident who testified on direct examination[12] that when Manuel and Felizardo left them, they (the Pachecos) proceeded to the riverbank where the accused's motorboat was docked; that Manuel asked the accused, "Bakit mo naman sinuntok ang utol ko?"; that Manuel was standing by the toilet of the factory, seven meters away from the accused who was on his motorboat and fourteen meters away from where the witness was; that the accused went down from his motorboat and when he was near Manuel, he drew his gun and shot Manuel; that immediately after, Felizardo fled towards the side of the truck pursued by the accused; that the accused shot at Felizardo while he was still running; that Felizardo fell face down when hit and the accused again fired twice at Felizardo; that Felizardo ducked under the truck; that the accused then went the back of the truck, got 2 big fishes and placed them beside Felizardo; that the accused also got a basketful of fish and poured it in-between the brothers; and that the accused finally returned to his motorboat.

Fuertes' detailed testimony regarding Manuel's death appears doubtful considering the following facts: he was conversing with others at the gate of the compound found on the building north of Calle Pescador; the gate was about fourteen meters away from Manuel and seven meters away from the front of a fishtruck parked along Calle Pescador with its rear portion about 1 meter away from the riverbank; he admitted on cross-examination that when the brothers left them, his attention was already diverted to the topic of conversation and that he continued conversing with the group because he found the topic interesting as it was about the forthcoming fiesta of Caloocan and the possibility of Felizardo Pacheco becoming the godfather of his son.[13] Viewing all these facts, We are not ready to admit without caution that Fuertes could describe in detail an incident happening fourteen or fifteen meters away seen through a one meter space (from the wall of the northern building to the high sides of the fish-truck) while he was admittedly actively engaged in a conversation with others. But what convinces Us to regard the testimony of Fuertes as incredulous is the very much more detailed description of the circumstances leading to Felizardo's death. On cross-examination, Fuertes stated that he "did not seek cover when he heard the gunshots"[14] - an implied admission that he did not move from his previous position. He could not, therefore, have seen the accused pursuing Felizardo or that Felizardo fled towards the sides of the truck or that Felizardo fell when hit or that the accused shot twice at Felizardo when he was already down or that the accused afterwards returned to the rear of the truck and got the fish and the basket or that he poured them in between the brothers, the reason being that all of these transpired behind the rear portion and by that side of the fishtruck near the building on the south of Calle Pescador. It is an inhuman feat for Fuertes, undisputedly standing seven meters away from the front of the fishtruck by that side near the building north of Calle Pescador to see through the body of the said truck shown to have very high sides so that a person standing upright can barely touch with his raised hand the upper edge of the sides[15] and observe what transpired behind the rear portion and by that side of the same fishtruck near the building south of Calle Pescador. Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself - such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.[16]

Upon the other hand, without relying on the weakness of prosecution's evidence, the defense has met the requirement of proving by clear and convincing evidence all the justifying circumstances of complete self-defense. Three witnesses corroborated the accused's testimony. There is no reason to disbelieve their testimonies because two of them, Telesforo Andrade and Salvador del Mundo, were on the deck of the fishing boat directly behind the particular area where the shooting took place, and, therefore, in a better position to observe the entire event as there was no obstruction to their lines of vision. The third witness, Romeo Santiago, who testified only to the fact that Manuel had a gun tucked inside his waistband, was in a store closely by-passed

by Manuel when he first approached the group of Aquino. Not only are the witnesses for the defense more credible because of their vantage position, but the facts testified to by the defense are confirmed by objective facts not disputed.

From the facts established by the defense, it is clear that Manuel and Felizardo, and not the accused, initiated the unlawful aggression resulting in their deaths. The fact that the two victims, evidently hostile, placed themselves on either side of the accused who was by the rear of the truck, presumably to cut off venues of escape, coupled with the fact that both were armed with a gun and a knife, weapons ordinarily considered as fatally dangerous, show that the victims were ready and looking for trouble. Even the respondent court is of the impression that "when the Pacheco brothers re-turned they were prepared not only to inquire from the appellant (accused) why he boxed Felizardo, but that they intended to cause injury to the appellant in return." (CA decision, pp. 9-10). So when Manuel drew his halfcocked gun from his waist which the accused successfully wrested from him resulting in Manuel's being pushed against the wall where he fell in a sitting position, and despite this, he picked up what the accused thought to be was an iron gear and moved to charge towards the accused, the only normal conclusion to be derived from such acts of Manuel is his evident intent and persistent determination to harm the accused. The same is true of Felizardo. When he attempted to stab the accused but was frustrated only because the thrust was evaded by the latter, and though hit in the arm he still followed the knife thrown beneath the truck, picked the knife and stood ("akmang tatayo") despite warnings from the accused to release the knife, such acts amount to continuing acts of unlawful aggression showing the victim's determination to persist in his purpose of wounding or killing the accused. In both cases of clear, real, direct and positive aggression, the accused was justified in using the gun, his only means of defense, against his assailants as he was placed in real peril of his life.

In the decision under review, the respondent court made a finding that Manuel was not armed with a gun and that the gun belonged to the accused. One of the reasons intimated by the respondent court is the incredibility for the accused, if truly unarmed, to have had the nerve to wrest the gun from Manuel. The court further stressed that "(T)he natural reaction of any reasoning man under such circumstances, however daring he may be, would be either to retreat or get his own weapon or better still manifest his desire for peace or unwillingness to fight." (CA decision, p. 6). This is mere conjecture and cannot prevail over positive testimonies that Manuel had a gun tucked in his waistband^[17] and that the accused successfully wrested the gun from Manuel.^[18]

Another reason offered by respondent court is the fact that the accused could not produce the gun when asked by the proper authorities. Of course, We have held that the act of throwing away the weapon used in the commission of the crime may be considered a circumstance which negates the plea of self-defense.^[19] However, this is not meant to be an absolute rule precluding the consideration of other factors in determining the probability or improbability of an offered explanation. Herein, the conduct of the accused shortly after the incident impresses upon the Court that the throwing away of the gun was not for the purpose of concealment but did happen as explained. When investigated by the proper authorities immediately after the incident, the accused admitted the killing of the two deceased but that he grabbed the gun from Manuel, and when asked to produce the weapon, the accused declared that the same was grabbed by his wife and was thrown into the river.^[20] Moreover, it also appears as an un rebutted evidence that the accused secured the services of a local diver to help him locate the missing gun so that it could be used in his defense.^[21] All of these factors - the accused's desistance from flight, peaceful surrender, spontaneous and voluntary statements to the proper authorities before he had time to contrive a fabricated defense, and his efforts in locating the missing gun - tend to give credence to his allegations.

The second element of self-defense, that is, reasonable necessity for the means employed in repelling the unlawful aggression, is likewise present. Here, We have an unarmed man assaulted by two armed brothers determined to exact payment for the insult and injury earlier caused by the accused to the younger brother. To require him to

flee or to manifest peace, as would the respondent court require of the accused, would, respectively, require him to run the risk of exposing his back to danger or would force upon him an act that may be repugnant to his sense of values. As it happened, accused chose to stand his ground and moved to take the offensive by attempting to wrest the better weapon from one of his assailants. Having successfully grabbed the gun from Manuel, there was reasonable necessity for the accused to use the gun to disable his assailants because the gun was his only means of defense against two aggressors who by their decidedly aggressive attitude were manifestly determined to consummate their desire to cause injury to the accused. It is not true that after the accused was able to wrest the gun from Manuel, he was no longer in peril of his life because even after Manuel was disarmed, he picked up what the accused thought to be was an iron gear and proceeded to charge against the accused, thus imperiling his life while the other brother was behind ready to attack him. Even at the moment that the accused was repelling the attack of Manuel, the accused was likewise exposed to the danger posed by Felizardo who was behind him and armed with a knife. Necessarily, he had to disable Manuel in order to cope with Felizardo. Neither is it true that after Felizardo lost his knife because he was hit by the accused on the right arm, Felizardo desisted from his attack so that the accused was not justified in killing him. From the facts testified to by the accused, Felizardo even when wounded tried to retrieve the knife and the accused fired the fatal shots only when Felizardo made a move to stand up disregarding the accused's warning to release the knife. If through the various stages of the fight, the accused desisted from using the gun, the result of the combat would have been very different; perhaps, the accused, instead of being the slayer, would himself have been killed. Certainly, the accused was not in duty bound to expose himself to such a contingency, and while the attacks continued, and, consequently, the danger to his person or to his life subsisted, he had a perfect and indisputable right to repel such danger by wounding his adversaries, if necessary, as from the circumstances of the case it was, without any doubt whatever, and even to disable them completely so that they may not continue the assault.[22]

The location of the gunshot wounds found on the bodies of Manuel and Felizardo and the trajectories of the bullets confirm, rather than belie, the theory of the defense. According to Dr. Manuel Cueva, Jr., the following gunshot wounds were found:

(1) On Manuel -

(a) Wound No. 1 with entrance hole, 1.6 x 1.5 cm., oval in shape located at lower armpit region; so that the point of entrance of this gunshot wound was located at a region behind the axillary or the left armpit; it hit the victim at the left axillary bone and travels inside the body going to the front and slightly downwards from left to the right side of the body producing a point of exit at the right chest; that assuming that the victim was standing in upright position, the appellant must probably be in a higher elevation behind and to the left side of the victim at the moment of the infliction of the wound.

(b) Wound No. 2 consists of an entrance wound located at the left side of the chest of an oval shape with a direction from the left to the right side of the body going slightly downwards to the front, and the bullet traveled blindly beneath the skin and in the front portion of the right chest; that there was no point of exit.

(c) Wound No. 3 which is minor in nature at the left arm on the medial aspect that took a short route underneath the skin producing an exit wound on the same armpit very near the same point of entry.

(2) On Felizardo -

(a) Wound No. 1 with an entrance hole of 2.0 x 1.6 cm., roughly oval in shape, located at the right posterior axillary fold near the armpit which has a valid track directed from the right to the left side of the body going slightly downwards, going to the front where they extracted a .45 caliber bullet at the left arm; that the bullet perforated and lacerated at the right lung, the egg (sic) blood vessels of the heart and the left lung before it ended at the muscle of the right forearm; that if the victim and appellant were in standing position at the same

elevation, the appellant must have shot the victim while the appellant was slightly at the back to the right side with the muzzle of the gun at a considerable distance from the point of entrance of the gunshot wound; and that assuming that the appellant and the victim were not on the same level and that the appellant was on a higher level, the latter would also be at the back or behind at an elevated level with the muzzle of the gun aimed downwards.

(b) Wound No. 2 with the point of entry at the back of the chest below the right border blade presenting an oval appearance with a diameter of that of a .45 caliber gun wound and it assumed a tract inside the body from the left side of the body pointing from right to left going upwards and to the front indicating that the gun man was directly behind to the right side of the victim, with the victim in a standing position when he sustained the gunshot wound.

(c) Wound No. 3 found behind the right arm, the bone on the right arm that travels downwards where the bullet was recovered at the middle portion of the right forearm, underneath the skin, and the bullet recovered here was a .45 caliber bullet; that the wound must have been inflicted from behind, as it was located at the back of the right arm.

The wound found behind Manuel's left armpit particularly assumes decisive importance in pointing out which of the conflicting versions is true. Aforestated in this decision is the physical impossibility for Manuel to have sustained this wound if the testimonies of the witnesses for the prosecution would be believed as they put the accused and Manuel facing each other at the time Manuel was shot. On the other hand, this particular wound finds a plausible explanation in the version of the defense that the accused shot Manuel when he saw him picked up something from the ground and then proceeded to charge towards him in a half-crouching position. Manuel must have sustained this particular wound at the very act of picking up what the accused thought to be was an iron gear because then, Manuel, who was slumped against the toilet wall, must have twisted his body towards the right as one is wont to do when one looks for something on the right, and must have stooped a little bit as he picked it up from the ground, leaving therefore the back of his left shoulder exposed as a possible target for the accused who was in front standing over him. The other two gunshot wounds must have been sustained when Manuel proceeded to charge towards the accused as these wounds indicate a frontal confrontation. Moreover, all of these gunshot wounds show a track of left to right, going downwards to the front, indicating that the assailant stood on a higher elevation than the victim, confirming, therefore, the version of the accused. The bullets could not have had these trajectories if the accused were down by the outriggers of his boat moored by the river which, on the night in question, was a lower level than Calle Pescador as testified to by prosecution witness Pablito Aquino.

Again, the location of the wounds sustained by Felizardo confirms the version of the defense. The location of the wound at the back of his right arm (wound no. 3) verified the fact that Felizardo was shot by the accused immediately after evading, by stepping backwards, the thrust of Felizardo's knife, thereby putting the accused behind and to the right side of Felizardo who would not yet have been able to check his forward momentum caused by the force of his thrust. This particular wound also sustained the explanation offered by the defense as to why the knife was released by Felizardo and thrown beneath the rear portion of the truck. Those wounds described as wound no. 1 and wound no. 2 admittedly inflicted from behind do not necessarily negate the plea of self-defense because the accused all along insisted that he followed Felizardo who retrieved the knife from beneath the rear portion of the truck. Wound no. 1 specifically indicated that the assailant was on a higher elevation with the muzzle of the gun aimed downwards. Wound no. 2 indicated that the victim was in a standing position when he sustained the wound. These exactly jibed with the defense that the accused fired the fatal shots during the few seconds that took the victim to retrieve the knife in what would naturally be a bending position (wound no. 1) and then straighten up (wound no. 2) in order to continue his attack.

It is also of record that the investigating authorities found a nickel plated dagger on the ground lying near the right

hip of the body of Felizardo.[23] This fact strongly confirmed that Felizardo had the knife with him when shot and precluded all doubts as to the veracity of the defense evidence.

That leaves Us to the last question of whether or not the accused did not give sufficient provocation for the unlawful aggression. The respondent court maintained, thus, "(T)here was a fist fight between the appellant and the victim Felizardo in which the appellant bested Felizardo by boxing him at the mouth. This provocation, to Our mind, is sufficient to stir Felizardo into returning to even up the score." (CA decision, p. 5). This stance is obviously erroneous. The defense alone presented evidence as to the circumstances leading to the fist fight between the accused and Felizardo. It remains, therefore, unrebutted, and thus from the facts narrated by the witnesses for the defense, Felizardo apparently insulted by the accused's refusal to give him fish immediately and that he should wait until the fish falling from the "canastro" be all gathered, as manifested in his following remarks, "(A)nong palagay mo sa akin, aso?", he struck the first blow which was however evaded by the accused who in turn successfully landed a blow on him. Even at this stage, it was Felizardo who initiated the fight and if he was bested, it would be preposterous to say that he had a right to return and "even up the score" because such a pronouncement erroneously sanctions aggression in return for an insult brought by Felizardo upon himself alone. Moreover, even if We were to disregard the testimonies of the defense witnesses that it was Felizardo who struck the first blow, We would still be convinced that that would be the case because in the nature of the order of things, the person who was deeply offended by the insult was the one who believed he had a right to demand explanation of the perpetrator of that insult, and the one who also struck the first blow when he was not satisfied with the explanation offered.[24]

To Our mind, the first altercation between Felizardo and the accused ended when the former left but not without first uttering a threat "May araw ka rin." This showed that Felizardo had no intention to continue the fight but would wait for a more opportune time. In fact, Felizardo returned to the group with whom he was previously conversing with. It was only upon the order of his older brother, who, it must be noted, arrived only minutes later, that both returned to where the accused was. In other words, We have reason to believe that if Manuel had not arrived right there and then, Felizardo would not have returned alone to make good his threat. Therefore, there were two fights that took place: one, the altercation between the accused and Felizardo, and second, the assault on the accused by both Felizardo and Manuel. Because of the circumstances above discussed, there was no continuity in the fights despite the lapse of only ten minutes so that even if We were to admit, which We do not, that the accused gave sufficient provocation, such provocation was not proximate nor immediate to the aggression and, therefore, should still be disregarded.[25]

The last factor which We took into consideration in finding that the plea of self-defense is more credible is the lack of motive of the accused in attacking and killing the two deceased. We have stated in a recent case[26] that although it is the general rule that the presence of motive in the killing of a person is not indispensable to a conviction especially where the identity of the assailant is duly established by other competent evidence or is not disputed, as in this case, nonetheless, the absence of such motive is important in ascertaining the truth as between two antagonistic theories or versions of the killing. Herein, it was the two victims who had reason to harm the accused. After the altercation between the accused and Felizardo where in the ensuing fistfight the accused bested Felizardo, the latter uttered a threat, "(M)ay araw ka rin." It is natural to assume that Felizardo felt humiliated not only in losing the fight which Felizardo himself had started to the accused but also for having been refused his demand for fish and having been told to wait until all the fish falling from the "canastro" shall have been gathered for which he felt that he was treated like a dog. The opportunity for retaliation arose when his older brother, Manuel, arrived and insisted that they confront the accused.

After a painstaking review of the whole record of the case, We are convinced that all the elements of self-defense

are present. The evidence for the defense has proven clearly that the accused acted reasonably according to his instinct of self-preservation. The necessity of the killings committed by him exempts him from liability thereon. Upon the other hand, the evidence for the prosecution falls short of that requisite sufficiency and certainty which can persuade the human mind to agree with the conclusion of guilt.[27]

WHEREFORE, the decision appealed from is reversed and set aside and another one is entered acquitting the accused, Carlos Castañares, of all the charges against him, with costs de oficio.

SO ORDERED.

Fernandez, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, (Chairman), J., in the result.

Makasiar, J., no part.

[1] Gancayco, J., ponente; Concepcion, J. and Serrano, J., concurring.

[2] *People v. Boholst-Caballero*, 61 SCRA 180, citing Guillermo B. Guevarra's *Penal Science and Criminal Law*, 1974 ed., p. 82.

[3] *People v. Ansoyon*, 75 Phil. 772; *People v. Llamera*, 51 SCRA 48; *People v. Solana*, 6 SCRA 60; *People v. Davis*, 1 SCRA 473; *U.S. v. Coronel*, 30 Phil. 112; *People v. Berio*, 59 Phil. 533; *People v. Talabac, Jr.*, 30 SCRA 87; *People v. Bauden*, 77 Phil. 105.

[4] According to the version of the defense, the accused was by the rear portion of the truck supervising the loading of the fish on the truck, and not on his fishing boat as claimed by the prosecution.

[5] Viada, 5th ed., 173, p. 3725.

[6] *U.S. v. Guysayco*, 13 Phil. 292; *U.S. v. Banzuela*, 31 Phil. 565; *U.S. v. Santos*, 17 Phil. 87.

[7] *People v. Alconga*, 78 Phil. 366.

[8] *Francisco's Evidence*, Vol. VII, Part 1, p. 68, citing *Underhill's Criminal Evidence*, 5th edition, Vol. 1, pp. 2-3.

[9] TSN, Dec. 19, 1967, direct.

[10] TSN, Feb. 21, 1968, cross-examination.

[11] TSN, June 24, 1968, direct.

[12] TSN, April 16, 1968.

[13] TSN, April 16, 1968, cross.

[14] *Ibid.*, p. 50.

[15] Exh. F-7, picture of the fishtruck.

[16] *People v. Alto*, 26 SCRA 342, citing *Daggers v. Van Dyke*, 37 N.J. Eq. 130, 132.

[17] TSN, Romeo Santiago, July 15, 1969, direct.

[18] TSNs, Telesforo Andrade, Dec. 16, 1969, direct; *Salvador del Mundo*, Aug. 26, 1970, direct; and *Carlos Castañares*, Sept. 6, 1971, direct.

[19] *People v. Dorico*, 54 SCRA 172; *People v. Constantino*, 20 SCRA 940.

[20] TSN, Captain Vicente Gonzales, July 2, 1968, cross-examination.

[21] TSN, Jose Lopez, Feb. 4, 1969, direct.

[22] *U.S. v. Molina*, 17 Phil. 227 (1911).

[23] TSN, Jose Lopez, Feb. 4, 1969, direct; Exhibits 1 and 1-A (dagger and tag).

[24] *U.S. v. Laurel*, 22 Phil. 252.

[25] *U.S. v. Laurel*, *supra*.

[26] *People v. Boholst-Caballero*, *supra*; See also *People v. Ramponit*, 62 Phil. 284; *People v. Macabenta*, 106 Phil. 77.

[27] *People v. Maliwanag*, 58 SCRA 323.

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