

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEORGE DECENA Y ROCABERTE, ACCUSED-APPELLANT.***G.R. No. 107874. August 04, 1994*

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-107874/>**REGALADO, J.:**

It is said that a fool shows his annoyance at once, but a prudent man overlooks an insult.[1] Had herein accused-appellant George Decena reflected upon and hearkened to this biblical precept, he would not have found himself charged with murder for allegedly stabbing to death one Jaime Ballesteros in San Fabian, Pangasinan on -- of all dates -- December 25, 1990.[2]

Appellant thereafter stood trial on a plea of not guilty. On September 20, 1991, judgment was rendered by the trial court convicting him of murder, imposing on him the penalty of reclusion perpetua, and ordering him to indemnify the heirs of the deceased in the amount of P50,000.00, plus the additional amounts of P4,500.00 and P2,300.00 representing the funeral expenses for the victim, with costs.[3]

A motion for reconsideration filed by appellant was denied on August 26, 1992 for lack of merit,[4] hence this appellate review wherein appellant contends, in his assigned errors, that the lower court blundered in disregarding his claim of self-defense, and in not appreciating the mitigating circumstance of voluntary surrender in his favor, granting arguendo that he is guilty.[5]

The case for the prosecution, anchored mainly on the testimony of Luzviminda Ballesteros, a 14-year old daughter of the victim, is to the effect that on Christmas Day of 1990, at around 4:00 P.M., said Luzviminda was playing with her siblings at home. She recalled being asked by her mother, Teresita Ballesteros, to fetch her father, Jaime Ballesteros, who was then watching a game in the basketball court. On her way to the hardcourt, Luzviminda met her father walking home in an intoxicated state. Suddenly, she saw appellant rushing towards her father with a long bladed weapon, prompting Luzviminda to warn her father to run for safety by shouting in the vernacular "Batik kila, Tatay!" Instead, Jaime simply raised his hand, thus allowing appellant to stab him on the right chest just below the nipple. Appellant then fled from the crime scene, while the victim also managed to run but stumbled and fell to the ground.[6]

Finding that her father was too heavy for her to carry, Luzviminda called for her mother at their house, which was only fifteen meters away from the scene of the crime, saying: "Mother, come! My father has been stabbed by George Decena." Her mother immediately called for a tricycle and rushed Jaime to the Provincial Hospital where, however, the victim was declared dead on arrival.[7]

A different account of the incident was presented by the defense. It was claimed that at about 4:00 P.M. of that day, appellant was watching a basketball game. The victim, Jaime Ballesteros, went around the basketball court, walking in a wobbly manner due to drunkenness. Jaime stopped near the place where appellant was sitting and, for no apparent reason, held the latter by the neck with one arm and, at the same time, poking a fork against it with the other arm. Barangay Tanod Romeo Decena who was also watching the basketball game, intervened. He

took the fork from Jaime and advised appellant to go home. The latter left and was followed later by Jaime.

Fernando Biala, an uncle of appellant, additionally testified that while he was walking on the barangay road of Longos-Patalan, he chanced upon Jaime attacking appellant with a balisong. Fortunately, he claims, appellant was able to parry the stabbing blow and a struggle ensued between them. Appellant overpowered Jaime and succeeded in twisting the wrist of the victim and thrusting the knife into the latter's body.[8]

In criminal cases, the burden of proof is, of course, on the prosecution which must rely on the strength of its evidence and not on the weakness of the defense. Herein appellant, however, invokes self-defense, thereby shifting the burden of evidence to him and the onus of which he must satisfactorily discharge, otherwise conviction would follow from his admission that he killed the victim.[9] Furthermore, appellant must this time rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if that was weak, it cannot be disbelieved after appellant himself admitted the killing.[10]

The basic requirement for self-defense, as a justifying circumstance, is that there was an unlawful aggression against the person defending himself. It must be positively shown that there was a previous unlawful and unprovoked attack that placed the life of the accused in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist said attack.[11] The primal issue in this case, therefore, is whether or not appellant acted in complete self-defense in killing Jaime Ballesteros, as claimed, thus absolving him from criminal liability.

Long has it been accepted that for the right of defense to exist, it is necessary that one be assaulted or that he be attacked, or at least that he be threatened with an attack in an immediate manner, as, for example, brandishing a knife with which to stab him or pointing a gun to be discharged against him.[12] So indispensable is unlawful aggression in self-defense that, without it, there is no occasion to speak of the other two requisites for such a defense because both circumstances presuppose an unlawful aggression.

The theory of the defense is that the unlawful aggression started in the basketball court, when the victim tried to poke a fork on the neck of appellant, and continued thereafter. Even on the elementary rule that when the aggressor leaves, the unlawful aggression ceases, it follows that when appellant and Jaime heeded the advice of the barangay tanod for them to go home, the unlawful aggression had ended. Consequently, since unlawful aggression no longer existed, appellant had no right whatsoever to kill or even wound the former aggressor. The supposed continuation of the unlawful aggression which could have justified self-defense would have been the circumstance that Jaime persisted in his design to attack appellant while the latter was already in front of his house. This fact, however, the defense ruefully failed to establish.

It is an old but a respected and consistent rule that courts must determine by a balance of probabilities who of the participants in a fight had, in the natural order of things, the reason to commence the aggression.[13] When appellant claimed that Jaime suddenly and without any provocation tried to strangle him and poked a fork against his neck, in front of so many people in the basketball court,[14] then he must necessarily have been deeply offended, if not insulted, and this fact undoubtedly fired him with a desire to get even with the deceased.

The case at bar calls to mind the scenario and logical view that when a person had inflicted slight physical injuries on another, without any intention to inflict other injuries, and the latter attacked the former, the one making the attack was an unlawful aggressor. The attack made was evidently a retaliation. And, we find this an opportune occasion to emphasize that retaliation is different from an act of self-defense. In retaliation, the aggression that was begun by the injured party already ceased to exist when the accused attacked him. In self-defense, the aggression was still existing when the aggressor was injured or disabled by the person making a defense.[15] We find these observations appropos to the situation presented by the instant case.

It will be recalled that, as claimed by appellant, the unlawful aggression complained of also took place in front of his house, where Jaime allegedly tried to attack him with a balisong, and not only in the basketball court. To support his theory of continuing aggression, appellant alleged that whenever the victim was drunk, he would look for trouble. Again, the defense utterly failed to prove this hypothesis. On the contrary, the wife of the victim testified that the latter has no such record in their barangay[16] and, significantly, her said testimony was never refuted nor objected to by appellant.

Witnesses for and against the appellant testified that throughout the incident Jaime was inebriated and that he was staggering or wobbling as he walked.[17] If he had such difficulty even in performing the normal bodily function of locomotion, it could not be expected that he would muster enough courage to persist in attacking and attempting to kill appellant, as posited by the defense, considering that the latter was decidedly stronger than him.

Essentially involved, in view of the conflicting submissions of the parties, is the matter of the credibility of their respective witnesses. Accordingly, we are constrained to once again advert to the jurisprudential rule that the evaluation of the credibility of witnesses is within the province of the trial court which is better circumstanced because of its direct role in the reception of the testimonial evidence.[18] After examining and evaluating the conflicting versions of the prosecution and the defense, we agree with the court a quo that the prosecution's account is deserving of more credence. On the other hand, we note grave inconsistencies in the declarations of the defense witnesses.

First. Appellant, in his direct examination, testified that a fork was poked at his neck but, on cross-examination, he vacillated and testified that it was a knife instead.[19] Surely, appellant must know the difference between a fork and a knife.

Second. Appellant insisted that after the stabbing incident in the late afternoon of December 25, 1990 and until his surrender early next morning, he never went out of his house. This is contradicted by the unchallenged Entry No. 173 of the local police blotter, especially its follow-up entry which the court below quoted in its decision:

"Relative entry no. 173, elements of this station proceeded to Barangay Longos this town to locate the suspect and returned station with the information that said suspect fled after the incident. One deformed fork submitted by the father of the suspect Francisco Decena to Sgt. R.B. Diagan allegedly owned by the victim. Under follow-up Sgd. Ricardo Abrio, Pfc/PNP." [20]

Third. Appellant's smug excuse for not immediately divulging to Sgt. Romeo Diagan that he was not at fault for the death of Jaime was that he was terribly afraid to do so. Strangely, however, this was not his demeanor and attitude when he boldly professed and contended that it was Jaime who first poked a fork against his neck while he was watching a basketball game. Parenthetically, the other half of the story was deliberately not narrated.[21] Be that as it may, the Court has heretofore noted that a righteous individual will not cower but would readily admit the killing at the earliest opportunity if he were legally and morally justified in doing so. A belated plea or denial suggests that it is false and only an afterthought made as a last ditch effort to avoid the consequences of the crime.[22]

Fourth. The supposed eyewitness of the defense who is appellant's uncle, Fernando Biala, impresses us as either an imaginative or a coached witness. He avowed that he saw the stabbing incident, but shock and surprise allegedly prevented him from going near Jaime or appellant, when he saw Jaime about to stab appellant. However, on cross-examination, he said that he merely chanced on them at the time when Jaime was already actually stabbing appellant, for the reason that he did not see where appellant or Jaime came from before the incident. When asked how long the fight transpired, he vaguely answered that he could not tell because when he went up the road, the two were already fighting. However, he again vacillated by saying that when Jaime was

about to deliver the stabbing blow, appellant caught the hand of Jaime "squeezed and pushed it forward and Jaime Ballesteros hit himself." [23] This is a mercurial account since, to repeat, this witness categorically admitted that even as he was still going up the road, the supposed combatants were already fighting and that fight actually lasted only a few seconds.

Appellant declared that he is related to the victim's wife, that they are neighbors, and that there was no grudge between him and the victim, nor with any member of the family of the latter. [24] This was apparently to bolster his theory that he had no motive to assault the victim. His assertions, however, work both ways for it also established the fact that Luzviminda would likewise not just indiscriminately and improvidently point her finger at anybody but to the culprit himself, in order to obtain justice for the death of her father.

That the principal witness is the victim's daughter even lends more credence to her testimony as her natural interest in securing the conviction of the guilty would deter her from implicating persons other than the culprits, for otherwise the latter would thereby gain immunity. [25] This observation, however, could not be said for the defense witnesses who are all relatives of appellant. As such, they may be expected to cover up for the crime. While relationship between the accused and his witnesses is not necessarily detrimental to the former's line of defense, this relationship, taken together with the want of logic (of) in the declarations of said witnesses, yields the conclusion that their testimonies lack credibility. [26]

In contrast, and further reinforcing the case for the People, is the fact that when Luzviminda shouted, "Mother, come! My father has been stabbed by George Decena," that outcry and the identification of the culprit were unrehearsed and spontaneously made at the spur of the moment. Having been given shortly after a startling occurrence took place before the eyes of Luzviminda, who had thereby no opportunity to concoct or contrive a story, that statement has all the earmarks of the truth of what she said. Under the environmental circumstances hereinbefore related, it easily passes the tests not only of admissibility in evidence but also of weight in its veracity.

We, however, reject the trial court's holding that the killing of the victim was attended by treachery. Any circumstance which would qualify a killing to murder must be proven as indubitably as the crime itself. [27] Here, the qualifying circumstance of treachery cannot be appreciated, for none of the prosecution's arguments can uphold its allegation that, in the language of the law, appellant committed the crime by employing means, methods or forms in the execution thereof which tended directly and especially to insure its execution, without risk to himself arising from the defense which the offended party might make. It is true that the attack was sudden, but that fact per se does not bespeak the circumstance of *alevosia*. [28] It is further required that the means, methods or forms were deliberated upon or consciously adopted by the offender. [29] The crime committed, therefore, was simple homicide.

The reasons advanced by the lower court for appreciating the aggravating circumstance of disregard of age are not persuasive. There was no showing that appellant deliberately intended to insult the age of Jaime. We hold that for this circumstance to constitute an aggravation of criminal liability, it is necessary to prove the specific fact or circumstance, other than that the victim is an old man, showing insult or disregard of age in order that it may be considered as an aggravating circumstance. [30] In the case at bar, that consideration does not obtain, aside from the fact that while the victim was forty-three years of age, he was not necessarily old, nor was there a radical disparity between his age and that of appellant who was twenty-five years old.

The rule is that the mitigating circumstance of voluntary surrender may properly be appreciated if the following requisites concur: (a) the offender had not actually been arrested; (b) the offender surrendered himself to a person in authority or to an agent of a person in authority; and (c) the surrender was voluntary. We believe that the

mitigating circumstance of voluntary surrender may be awarded to appellant. The records disclose that appellant was, evidently with his concurrence, accompanied and surrendered by his father to a person in authority, Sgt. Romeo Diagan, early in the morning after the incident and before he could actually be arrested. That mitigating circumstance can, therefore, be properly considered in his favor to impose the penalty in its minimum period.

WHEREFORE, the appealed judgment of the court a quo is hereby MODIFIED by finding accused-appellant George Decena y Rocaberte guilty of the crime of homicide, and imposing upon him an indeterminate sentence of eight (8) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum. In all other respects, the said judgment is hereby AFFIRMED.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Padilla, Puno, and Mendoza, JJ., concur.

[1] Proverbs, 12:16.

[2] Criminal Case No. D-10303, Regional Trial Court, Branch 44, Dagupan City; Judge Crispin C. Laron, presiding; Original Record, 1.

[3] Original Record, 90.

[4] Ibid., 103-104.

[5] Brief for the Appellant, 3; Rollo, 30.

[6] TSN, April 10, 1991, 4-9; Exhibit E, Original Record, 9.

[7] Ibid., April 3, 1991, 5-7; April 10, 1991, 12-13.

[8] TSN, May 2, 1991, 4-6; June 10, 1991, 4-5.

[9] People vs. Uribe, G.R. Nos. 76493-94, February 26, 1990, 182 SCRA 624; People vs. Amania, et al., G.R. No. 97612, March 23, 1993, 220 SCRA 347.

[10] People vs. Ansoyon, 75 Phil. 772 (1946); People vs. Caparas, et al., L-47411, February 20, 1981, 102 SCRA 781; People vs. Gadiano, L-31818, July 30, 1982, 115 SCRA 559; People vs. Amania, et al., ante.

[11] People vs. Madali, et al., G.R. Nos. 67803-04, July 30, 1990, 188 SCRA 69.

[12] 1 Viada, Codigo Penal Reformado de 1870, Quinta Edicion, 173.

[13] U.S. vs. Laurel, 22 Phil. 252 (1912); People vs. Berio, 59 Phil. 533 (1934); People vs. Dofilez, L-35103, July 25, 1984, 130 SCRA 603; Borguilla vs. Court of Appeals, et al., L-47286 January 7, 1987, 147 SCRA 9.

[14] TSN, June 10, 1991, 8.

[15] See Reyes, L.B. The Revised Penal Code, 13th ed. (1993); Book One, 153-54.

[16] TSN, June 10, 1991, 7-8, 11; June 24, 1991, 7.

[17] TSN, June 24, 1991, 8; June 10, 1991, 7; Exhibit E, Original Record, 13.

[18] People vs. Gargoles, L-40885, May 18, 1978, 83 SCRA 282; People vs. Ancheta, et al., L-29581-82, October 30, 1974, 60 SCRA 333; People vs. Magallanes, G.R. No. 89036, January 29, 1993, 218 SCRA 109.

- [19] TSN, June 10, 1991, 4, 14.
- [20] Original Record, 86-87.
- [21] TSN, June 10, 1991, 14.
- [22] *People vs. Manlulu*, G.R. No. 102140, April 22, 1994.
- [23] TSN, May 2, 1991, 5-11.
- [24] TSN, June 10, 1991, 7, 12.
- [25] *People vs. Villalobos, et al.*, G.R. No. 71526, May 27, 1992, 209 SCRA 304.
- [26] *People vs. Alfonso*, G.R. No. 78954, June 18, 1990, 186 SCRA 576.
- [27] *People vs. Tiongson*, L-35123-24, July 25, 1984, 130 SCRA 614; *People vs. Manalo*, G.R. No. 55177, February 27, 1987, 148 SCRA 98; *People vs. Atienza*, G.R. No. 68481, February 27, 1987, 148 SCRA 147.
- [28] *People vs. Young*, 83 Phil. 702 (1949); *People vs. Talay, et al.*, L-24852, November 28, 1980, 101 SCRA 332; *People vs. Ruiz*, L-33609, December 14, 1981, 110 SCRA 155.
- [29] *People vs. Tumaob*, 83 Phil. 738, 742 (1949); *People vs. Tugbo, Jr.*, G.R. No. 75894, April 22, 1991, 196 SCRA 133.
- [30] *People vs. Berbal, et al.*, G.R. No. 71527, August 10, 1989, 176 SCRA 202; Cf. *People vs. Mangsant*, 65 Phil. 548 (1938); *People vs. Ursal, et al.*, L-33768, April 20, 1983, 121 SCRA 409.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.