

SECOND DIVISION

[G.R. No. 124809, December 19, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO SAUL AND ELMER AVENUE, ACCUSED-APPELLANTS.**

DECISION

QUISUMBING, J.:

This is an appeal from the decision^[1] dated November 29, 1995, of the Court of Appeals in CA-G.R. CR No. 15294, affirming the decision^[2] dated July 13, 1993, of the Regional Trial Court of Iloilo City, Branch 37, in Criminal Cases Nos. 39360 and 39361, finding both appellants Roberto Saul and Elmer Avenue guilty of the crimes of homicide and frustrated homicide.

The informations filed against the appellants read:

Criminal Case No. 39360

That on or about the 5th day of October 1992, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused Roberto Saul, armed with a bladed instrument provided by his co-accused Elmer Avenue, conspiring and confederating between themselves, working together and helping one another, did then and there willfully (sic), unlawfully and criminally stab John Serojo with the said bladed instrument with which the accused Roberto Saul was wielding at the time, thereby causing upon the latter stab wound in the abdomen, which resulted in his death few moments thereafter.

CONTRARY TO LAW.^[3]

Criminal Case No. 39361

That on or about the 5th day of October 1992, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused Roberto Saul, armed with a bladed instrument provided by his co-accused Elmer Avenue, conspiring and confederating between themselves, working together and helping one another, did then and there willfully, unlawfully and criminally stab Rodrigo Serojo with the said bladed instrument with which the accused Roberto Saul was wielding at the time, thereby inflicting upon the latter stab wound near the abdomen; thus the accused had performed all the acts of execution which could have produced the crime of Homicide as a consequence but which nevertheless did not produce it by reason of the causes independent of the will of the said accused, that is by the timely intervention of the third person and medical attention afforded to the said victim.

CONTRARY TO LAW.^[4]

Upon arraignment, both appellants pleaded not guilty to both crimes charged. Trial ensued.

The facts according to the prosecution, on one hand, are as follows:

On the evening of October 5, 1992, in Brgy. Sinikway, Iloilo City, Sipil Delotavo hosted a drinking spree at his house to celebrate his birthday. Among the guests were the appellants Roberto and Elmer, and the brothers Rodrigo and John Serojo. At about 10:00 o'clock while the celebration was in full swing, Rodrigo took a nap on a long bench. He dozed off immediately. In jest, Roberto, alias "Ganzon", slapped him on the face. Rodrigo awakened and instinctively threw an empty whiskey bottle at Roberto. Fortunately, the bottle did not hit the latter as it was parried by one of their companions. Instead, it hit a boy named Danny. Obviously irked, Roberto and Elmer left the house in a huff. Moments later, Rodrigo told his younger brother John that they were also going home. Accompanied by Sidney Sindin, one of the guests, the brothers left. Just outside the gate, the trio saw Roberto and Elmer standing a few meters away. As they approached the pair, Sidney saw Elmer hand a knife to Roberto, who in turn suddenly stabbed John. John fell and pleaded with Sidney to take him to the hospital. While Sidney was bent over John, he looked at the direction where Rodrigo was and saw that Roberto was likewise stabbing Rodrigo. Sidney hurriedly ran to the house of the Serojos and informed the mother about the incident. Thereafter, he got a pedicab and drove back to the scene. He noticed that the Serojo brothers were no longer there. A sister of the Serojos asked him to look for Rodrigo. He found the latter lying wounded on the pavement at the plaza. He brought him to the hospital. On their way, they caught up with the jeep where John was, and together, the brothers were taken to St. Paul's Hospital in Iloilo City. John was pronounced dead on arrival while Rodrigo survived.

On the other hand, the defense presented the following version of the incident.

At around 11:00 P.M., October 5, 1992, during a drinking spree, Sipil Delotavo, the celebrant, played a joke on Rodrigo Serojo, who was asleep on a wooden bench near the table where the others were gathered. Sipil threw a fishhead at Rodrigo's face. The latter was awakened and simply mumbled words of warning, then went back to sleep. Sipil threw another fishhead at Rodrigo's face. Rodrigo retaliated and threw an empty whiskey bottle at Roberto, hitting and wounding the latter on the head. Roberto covered his bleeding wound with his left hand but Rodrigo's brother, John, suddenly ran towards him and started punching him in the stomach. Helpless, all Roberto could do was lean on the wall. At this point, Elmer intervened and separated the two. Elmer told Roberto to run, which the latter did. However, John chased Roberto. Sensing trouble, Elmer followed the two and upon reaching the gate of the compound, he saw John delivering fist blows at Roberto. He also noticed a certain Nestor Eufan standing nearby, looking at the hapless Roberto. Elmer then placed himself between John and Roberto and tried to stop John. John just brushed him aside and at that moment, he saw Rodrigo break an empty long-neck whiskey bottle. He handed Roberto a knife he claimed he picked from the table in Sipil's house. Roberto took the knife and tried to run, but John, armed with a knife drawn from his hip, chased Roberto. Rodrigo with the broken bottle in hand, also ran after John and Roberto. At this point, Elmer and Nestor left the scene in haste.

A few meters away, John caught up with Roberto, grabbed him by the jacket and lunged at the latter with a knife. Roberto parried the knife with his hand, resulting to a wound between the ring and the middle fingers of his left hand. Cornered, Roberto stabbed John in the stomach. Roberto then saw Rodrigo about to strike him with the broken whiskey bottle, so he also stabbed Rodrigo. Thereafter, he ran home.

The following morning, at about 9:00 o'clock, Roberto had his wound treated and later in the afternoon, he surrendered to the police.

After trial, the RTC rendered judgment^[5] as follows:

WHEREFORE, Premises Considered, this Court finds the accused ROBERTO SAUL and ELMER AVENUE, in Criminal Case No. 39360 GUILTY beyond reasonable doubt for the crime of HOMICIDE, and are hereby both sentenced to an Indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* as Minimum to FOURTEEN (14) YEARS of *Prision Mayor* as Maximum;

In Criminal Case No. 39361, GUILTY beyond reasonable doubt of the crime of FRUSTRATED HOMICIDE, and are hereby both sentenced to an indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *Prision Correccional* as Minimum to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* as Maximum.

Both accused are ordered to indemnify the heirs of the victim, John Serojo, the amount of P50,000.00; actual damages for the victim Rodrigo Serojo in the amount of P20,000.00, and to pay the costs.^[6]

On appeal, the CA affirmed the trial court's decision, with the sole modification such that the penalty imposed in Crim. Case No. 39360 is "EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* as Minimum to FOURTEEN (14) YEARS of RECLUSION TEMPORAL as Maximum."^[7]

Appellants come to this Court seeking reversal or modification of the RTC and CA decisions. They allege that the Court of Appeals erred,

- A. ... IN NOT HOLDING THAT IT WAS RODRIGO SEROJO AND JOHN SEROJO WHO WERE THE UNLAWFUL AGGRESSORS, CONSIDERING THAT, THEY WERE THE ONES EVEN CHASING RODRIGO SAUL;
- B. ... IN NOT HOLDING THAT THE ACCUSED, ROBERTO SAUL, ACTED IN SELF-DEFENSE WHEN HE STABBED RODRIGO SEROJO AND JOHN SEROJO;
- C. ... IN HOLDING THE OTHER ACCUSED ELMER AVENUE, LIABLE AS PRINCIPAL, NOTWITHSTANDING THE ABSENCE OF CONSPIRACY; and
- D. ... IN NOT CREDITING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER ON THE PART OF ROBERTO SAUL, WHEN HE SURRENDERED TO THE POLICE AUTHORITIES.

Three issues require resolution by this Court: (1) whether or not the justifying circumstance of self-defense is present; (2) whether or not there was conspiracy between the appellants; and (3) Whether or not the mitigating circumstance of voluntary surrender should be appreciated in favor of appellant Roberto Saul.

Considering that accounts of the events leading to the alleged crimes are contradictory, the resolution of the first issue essentially hinges on a review of the factual findings of the trial and appellate courts.

Appellants claim that the victims were the unlawful aggressors in this case. They say that Rodrigo Serojo vented his anger at appellant Roberto Saul, despite the fact that it was not Roberto who played the prank at Rodrigo. They add that although John Serojo saw that it was Sipil Delotavo who threw the fishhead at his brother, still John attacked Roberto with his fists. Appellants contend that the brothers Serojo chased appellant Roberto, with the obvious intention of hurting him further, forcing Roberto to act in self-defense by stabbing the Serojos.

For the appellee, the Office of the Solicitor General (OSG) maintains that the unlawful aggressor in this case was appellant Roberto Saul, who purposely waited for the Serojo brothers to come out to inflict harm upon them because appellants felt aggrieved at the bottle-throwing incident at the party. The OSG contends that by the time the Serojo brothers left the party, they had no intention of inflicting any harm on appellants and in fact did not expect to see the latter waiting by the gate, as Roberto had already left ahead of them.

After a careful examination of the testimonies of the witnesses for the prosecution as well as those of the defense, we find appellants' version less than convincing. According to the defense, it was Sipil Delotavo who played a prank on Rodrigo, and Rodrigo saw him do it. If so, then Rodrigo had no reason to be angry with Roberto. The defense also claim that Rodrigo's brother, John witnessed all that had transpired and knew Roberto had no hand in disturbing his brother's sleep. If so, why did John punch Roberto? According to the defense, Roberto did not fight back and was even against the wall.^[8] Again, if true, why did John act the way he did, to the extent of hitting Roberto? Appellants' action belie the defense's version of events. It is not logical for the two brothers to be angry with the appellants for no apparent reason. Testimonies for appellants' defense lack the ring of truth. Evidence should first be believable and logical before it could be accorded any weight.^[9]

For a plea of self-defense to prosper, the following requisites must be present: (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 defending himself.^[10]

Unlawful aggression is the essential and primary element of self-defense. Its presence is a condition *sine qua non* if it is to be successfully invoked. It must be positively shown that there was a previous unlawful and unprovoked attack that placed the defendant's life in danger and forced him to inflict more or less reasonable means to resist the said attack.^[11]

In this case, appellants Roberto Saul and Elmer Avenue waited for the brothers Serojo outside of the gate of Sipil Delotavo's house. Any hostility shown by Rodrigo