

## THIRD DIVISION

[ G.R. No. 120853, March 13, 1997 ]

**PAT. RUDY ALMEDA, PETITIONER, VS. COURT OF APPEALS AND  
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**FRANCISCO, J.:**

This is a case of homicide.

Petitioner Rudy Almeda was charged with murder before the Regional Trial Court (RTC) of Tandag, Surigao del Sur in an information which reads as follows:

"That on the 29th day of November 1988, at about 7:30 o'clock in the evening, more or less, inside Bautista's Food and Snack Inn at Capitol Hills, Tandag, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named, with intent to kill, treachery and evident premeditation, did, then and there, willfully, unlawfully and feloniously shoot several times one, CBL Leo Pilapil Selabao, PC Member, with the use of a caliber 45 nickled pistol, thereby inflicting upon the latter the following wounds, to wit:

1. Gunshot wound 1 cm. in diameter with point of entry 1 cm. lateral to the 6th thoracic cavity, penetrating lung thru and thru, with point of exit 2 cm. below the left nipple.
2. Gunshot wound 1 cm. in diameter with point of entry at midscapular area left at the level of 4th thoracic vertebra, penetrating the thoracic cavity, penetrating the heart thru and thru, with point of exit at level of xiphoid process.
3. Gunshot wound 1 cm. in diameter with point of entry 3 cm. left lateral to the 3rd thoracic vertebra, posterior chest wall penetrating the thoracic cavity, penetrating the mediastinum thru and thru. Slug lodged skin deep.
4. Gunshot wound 1 cm. in diameter with point of entry 4 cm. from midline right occipital area thru and thru with point of exit preauricular area right.
5. Gunshot wound 1 cm. in diameter with gunpowder tattooing (sic) left infra auricular area thru and thru with point of exit at the right side of the neck 2 cm. beside the oricoid cartilage.
6. Gunshot wound 1 cm. in diameter with gunpowder tattooing (sic) with point of entry at left side of neck at level of 4th cervical vertebra, tangential with point of exit at left side of the neck at the level of 5th cervical vertebra (about 4 cm. from point of entry), which wounds have caused the instantaneous death of CBL Leo P. Salabao, to the damage and prejudice of his heirs in the following amounts:

P50,000.00 — as life indemnity of the victim;  
10,000.00 — as moral damages; and  
10,000.00 — as exemplary damages.

CONTRARY TO LAW. (In violation of Art. 248 of the Revised Penal Code.)"<sup>[1]</sup>

During arraignment, petitioner pleaded not guilty. After trial, the lower court<sup>[2]</sup> convicted petitioner of homicide only and appreciated in his favor two mitigating circumstances.<sup>[3]</sup> The prosecution filed a motion for reconsideration with regard to the appreciation of the mitigating circumstances. On July 23, 1992, the lower court granted the motion and modified its earlier decision. The dispositive portion of the modified judgment reads:

WHEREFORE, finding accused Rudy Almeda GUILTY beyond reasonable doubt of HOMICIDE, and there being neither mitigating nor aggravating circumstances which attended the commission of the offense, but applying the Indeterminate Sentence law, the Court hereby sentences him to suffer the indeterminate penalty of imprisonment ranging 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; to pay the heirs of the deceased victim PC Cbl. Leo Salabao the sum of Fifty Thousand (50,000) Pesos as life indemnity and ten thousand (10, 000) Pesos as moral damages, without subsidiary imprisonment in case of insolvency; and to pay the cost.

The bail bond put up by the accused for his provisional liberty is ordered cancelled.

SO ORDERED.<sup>[4]</sup>

On appeal, the Court of Appeals (CA) affirmed the modified judgment.<sup>[5]</sup> Hence this petition where petitioner imputes error to the appellate court in (1) not finding that he acted in defense of strangers, and (2) in failing to appreciate in his favor the mitigating circumstances of sufficient provocation and voluntary surrender.

The anterior facts ably supported by evidence on record are summarized by the CA as follows:

On November 29, 1988, at approximately 5:00 o'clock in the afternoon, Julian Herrera, Jr., together with his two nephews Donato Salabao and PC Constable Leo Salabao arrived at the Bautista's Snack Inn to fetch Susonte Montero who lived in the same town with Herrera. (TSN, January 22, 1992, p. 6) Herrera asked Donato to enter the snack inn and inform Montero that they were ready to head home. However, Montero was in the middle of a drinking spree with Vice Governor Acosta and the latter's companions, one of whom was Almeda who was the Vice Governor's bodyguard. Upon the invitation of Vice Governor Acosta, Herrera joined the drinking session and left his nephews in the service jeep. (TSN Jan. 23, 1992, p. 5)

After about an hour, the Salabao brothers alighted and sought shelter in the covered porch of the Bautista's Snack Inn. (TSN, Jan. 23, 1992, p. 6) Shortly thereafter, Felix Amora, who was among the drinking companions of the Vice Governor and the then Community Development Officer and Civil Defense Coordinator, stepped out of the inn and saw the Salabao brothers. Irked because Cbl. Leo Salabao failed to salute him, Amora confronted the former and ordered Cbl. Salabao to salute him. Cbl. Salabao countered that since Amora was not known to him as a PC officer and was in civilian clothes he was not compelled to salute him. (Ibid.) Their argument got the attention of Herrera who went out to pacify them. He then asked Amora and the Salabao brothers to get inside. (TSN, Jan. 22, 1992, p. 10) Once inside, Cbl. Salabao sat at the right side of Almeda while Amora sat opposite Almeda at the left side of Herrera. (TSN, Jan. 22, 1992, p. 12-14) Donato Salabao, on the other hand, sat near the counter. (TSN, Jan. 23, 1992, p. 7)

Unknown to the Salabao brothers, during the past hour, Herrera had himself been arguing with Vice Governor Acosta because of the latter's accusation that Herrera was involved in anomalous transactions. (TSN, Jan. 22, 1992, p. 7-9)

A short time after the Salabao brothers had seated themselves, Herrera's argument with Acosta resumed. At this juncture Acosta stood up, presumably to pay for the beer he had ordered, and whispered something to Almeda. Almeda promptly grabbed the barrel of the armalite rifle which Cbl. Salabao carried with him and pushed it down. (TSN, Jan. 22, 1992, p. 16; TSN, Jan. 23, 1992, p. 8) Simultaneously, Almeda pulled out his .45 caliber pistol pointed it at Cbl. Salabao's head and shot the latter in the left temple. As Cbl. Salabao staggered Almeda fired five more shots felling (sic) the former. (TSN, Jan. 22, 1992, p. 20-21; TSN, Jan. 23, 1992 p. 12) After which Almeda picked up Cbl. Salabao's armalite, cocked it and than (sic) pointed it at Donato Salabao who immediately raised his hands. (TSN, Jan. 23, 1992 p. 13) Almeda then left along with the Vice Governor and his companions. The following day, at approximately 7:00 o'clock in the morning, Almeda was arrested by a group of PC Constables. (TSN, Feb. 18, 1992 p. 3-4)<sup>[6]</sup>

The petition is not impressed with merit. A party who invokes the justifying circumstance of defense of strangers has the burden of proving by clear and convincing evidence the exculpatory cause<sup>[7]</sup> that would save him from conviction. He must rely on the strength of his own evidence and not on the weakness of the evidence for the prosecution for even if the latter's evidence is weak, it cannot be disbelieved<sup>[8]</sup> and will not exculpate the former from his categorical admission as the author of the killing. The Court is convinced upon scrutiny of the evidence that petitioner failed to discharge this burden.

Article 11 (3) of the Revised Penal Code provides: