NOTE

UNLAWFUL AGGRESSION IN SELF-DEFENSE: PERSON ATTACKED TEST

*Rodolfo U. Jimenez**

No question, perhaps, in the law of self-defense[1] is more difficult than the determination of the existence of unlawful aggression at the time of the defense. This is apparent when we consider that the law contemplates not only actual but imminent[2] aggression. Add to this the failure of the Code[3] to define unlawful aggression and the answer becomes as moot as the question is perplexing. Indeed, conflicting decisions or, at least, with hair-splitting distinctions have been rendered.[4]

According to the Supreme Court, unlawful aggression is equivalent to assault or at least threatened assault of immediate and imminent kind.[5] It is an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury.[6] And as already indicated, it may be actual or imminent.

Unlawful aggression is actual when there is actual physical assault,[7] as when the accused is hit with a cane or club,[8] a piece of wood about a bara

* PH. B., U.S.T., 1955; LL. B., ATENEO DE MANILA, 1960. Editor-in-Chief, Ateneo Law Journal, 1959-60.

[1] In this jurisdiction, Art. 11 (1) REVISED PENAL CODE.

[2] Art. 11 (1) (Second) REVISED PENAL CODE. The second requisite of fense presupposes the existence of unlawful aggression, which is either **imminent** or **actual**. Hence, in stating the second requisite, two phrases are used, namely, (1) "to prevent" and (2) "to repel". I REYES, REVISED PENAL CODE 106 (1958 Rev. Ed.).

The law protects not only the person who **repels** an aggression, but even the person who tries to **prevent** an **expected** aggrssion. U. S. v. Batungbacal, 37 Phil. 382, 368 (1918). The aggression must be **real** or at least **imminent**. People v. De la Cruz, 61 Phil. 422, 427 (1935).

[3] See Art. 11 REVISED PENAL CODE.

[4] **E.g.**, see rulings in U.S. v. Ah Chong, 15 Phil. 488 (1910); U.S. v. Apego, 23 Phil. 391 (1912); People v. Jaurigue, 76 Phil. 174 (1946).

[5] People v. Alconga, 78 Phil. 366 (1947).

[6] U.S. v. Guy-Sayco, **supra.**

[7] I REYES, **op cit. supra** note 2, at 90.

[8] People v. Pangan, 56 Phil. 728 (1932); U.S. v. Macasaet, 35 Phil. 226 (1916); U.S. v. Laurel, 22 Phil. 252 (1912); U.S. v. Brello, 9 Phil. 424 (1907).

in length,[9] a wooden pestle,[10] a calicut,[11] or bottles and blunt objects,[12] or attacked with a bolo,[31] a knife[14] or a bow and arrow,[15] or given a fist blow,[16] or slapped on the face,[17] or kicked;[18] and it is imminent when there is threat, offensive and positively strong, to inflict real injury,[19] as when the deceased, brandishing a formidable-looking bolo, advanced upon the accused within striking distance,[20] or persisted on entering a room on a dark night despite the warning of the accused-occupant, alone and fearful of bad elements, that he would kill him if he entered,[21] or, known to be a notorious criminal of unusual physical strength, tried to wrest the revolver of one of his accused-captors,[22] or surprised the accused from behind and attempted to disposses him of his pistol,[23] or embraced the accused, held her private parts and tried to throw her down,[24] or, upon reaching a place of great depth, rocked the banca on which were the accused, his wife and children and several others, causing it to take water,[25] or was seen pursuing the wife and children of the accused, bolo in hand and raised as if ready to strike,[26] or held down the accused, his hands on the handle of his bolo ready to draw.[27] Imminent means at hand, mediate rather than immediate, close rather than touching.[28]

Brandishing a knife and raising it during a dispute;[29] opening a knife and making a motion indicating an attack;[30] and retreating two steps placing hand in pocket with a motion indicating a purpose to assault with a weapon[31] have likewise been held indicative of threat to inflict real injury constituting imminent danger. So is the act of aiming a

[9] U.S. v. Domen, 37 Phil. 57 (1917).

[10] People v. Ramilo (CA) 44 O.G., No. 4, April 1948, p. 1255 (1947).

[11] U.S. v. Mendoza, 2 Phil. 109 (1903).

[12] People v. Garcia, CA-GR No. 13262-R, Aug. 9, 1955.

[13] People v .Balansag, 60 Phil. 266 (1934); People v. Rabandaban, 47 O.G., No. 8, Aug. 1951, p. 4176 (1950); People v. Gomez, 49 Phil. 201 (1926); U.S. v. Molina, 19 Phil. 227 (1911); People v. Del Pilar, CA-GR No. 147-R, Aug. 5, 1947.

[14] U.S. v. Mojica, 42 Phil. 784 (1922); U.S. v. Dinola, 37 Phil. 797 (1918).

[15] People v. Parbo, CA-GR No. 11935-R, Feb. 25, 1955.

[16] People v. Ignacio, 58 Phil. 858 (1933); People v. Sumicad, 56 Phil. 643 (1932); People v. Montalbo, 56 Phil. 443 (1931); U.S. v. Paras, 9 Phil. 367 (1907).

[17] See People v. Roxas, 58 Phil. 733 (1933).

[18] People v. Orpiano, 70 Phil. 522 (1940); People v. Bergaño, 52 Phil. 313 (1928).

[19] I REYES, **op. cit. supra** note 2, at 90.

[20] U.S. v. Mack, 8 Phil. 701 (1907).

[21] U.S. v. Ah Chong, 15 Phil. 488 (1910).

[22] U.S. v. Salazar, 15 Phil. 315 (1910).

[23] People v. Lara, 48 Phil. 153 (1925).

[24] People v. De la Cruz, 61 Phil. 344 (1935).

[25] People v. Cabuncal, 51 Phil. 802 (1928).

[26] U.S. v. Batungbacal, **supra.**

[27] People v. Fajardo, CA-GR Nos. 4679-4680, June 30, 1950.

[28] Scholl v. State, 94 Fla. 1138, 115 So. 43 (1928).

[29] Decision of Feb. 16, 1905.

[30] Decision of Oct. 24, 1895.

[31] Decision of June 26, 1891.

revolver at another with the intention of shooting.[32] In the language of some courts, one is not bound to wait until his assailant gets the drop on him.[33] A person may act on reasonable appearance of danger without waiting for an attack.[34] If it reasonably appears to him, from his standpoint, that his assailant is about to attack with a weapon, he has the right of self-defense.[35] To require that an actual assault must be committed when firearms are used would render almost unavailable, if not take away, the right of self-defense.[36] Presenting, drawing or attempting to draw such weapons furnishes appearance of necessity sufficient to give rise to legitimate self-defense.[37]

However, mere insult, affront or threat uncorroborated by some external and material attack does not constitute unlawful aggression.[38] Nor are a slight push on the head with the hand,[39] the act of pressing one against the stump of a coconut tree without the least intention of harming,[40] the mere touching of a sleeping girl's arm at night,[41] the mere holding of dynamite coupled with another's warning to look out,[42] and the act of throwing stones at a fleeing fugitive for the purpose of capturing him[43] properly repellable on the ground of self-defense. The reason of the Court is there is no danger, real or apparent, to defend against. Newspaper articles, letters and conversations showing a bitter newspaper rivalry,[43a] and insulting words[43b] have likewise been held insufficiently provocative to justify homicide. But words, threats, menaces, or contemptuous gestures may amount to a complete justification under certain circumstances, as where they are sufficient to excite the fears of a reasonable man that his life is in immediate danger.[43c]

Aggression arising from a mutual agreement to fight also precludes self-defense.[44] As explained by the high court, where the fight is agreed

[32] Decision of Sept. 29, 1905.
[33] Bohannon v. Com., 8 Bush. (Ky) 481, 8 Am. Rep. 474 (1871); State v. Shockley, 28 Utah. 25, 80 P 856 (1905).
[34] Gillest v. State, 114 Tex. Cr. R. 532, 26 SW2d 644 (1930).
[35] Robidoux v. State, 116 Tex. Cr. R. 432, 34 SW2d 863 (1931).
[36] 13 RCL 820.
[37] **Ibid.**
[38] U.S. v. Santos, 17 Phil. 87 (1910); U.S. v. Guy-Sayco, **supra**; U.S. v. Carrero, 9 Phil. 544 (1908).
[39] People v. Yuman, 61 Phil. 786 (1935).
[40] People v. Yncierto, CA-GR No. 1905-R, Oct. 9, 1947.
[41] U.S. v. Apego, 23 Phil. 391 (1912).
[42] People v. Into, CA-GR No. 2312, Jan. 5, 1949.
[43] People v. Gayrama, 60 Phil. 796 (1924).
[43a] People v. French, 12 Cal. 2d 720, 87 P2d 1014 (1939).
[43b] Gooslin v. Com., 283 Ky. 665, 142 SW24 989 (1941).
[43c] 26 Am. Jur. 256.
[44] People v. Sayson, 43 O. G., No. 7, p. 3219 (1947); People v. Bauden, 77 Phil. 105 (1946); People v. Quinto, 55 Phil. 116 (1930); People v. Monteroso, 51 Phil. 815 (1928); People v. Marasigan, 51 Phil. 701 (1928); People v. Mercado, 43 Phil. 950 (1922)); U.S. v. Cortes, 36 Phil. 837 (1917); U.S. v. Navarro, 7 Phil. 713 (1907).

upon, each of the protagonists is at once assailant and assaulted, and neither can invoke the right of self-defense, because the aggression incident in the fight is bound to arise from either of them.[45] The aggression is reciprocal,[46] both are placed in an unlawful status.[47] Thus, the Supreme Court has ruled out unlawful aggression where the combatants following an altercation went to a store, purchased two knives and fought,[48] where the accused, after a discussion, penknife open, descended from his house and the deceased picked up a club and prepared for combat,[49] and where the accused, pursued by the deceased, on reaching his house picked up a pestle and turning towards the deceased said: "Come on if you are brave" and forthwith attacked and killed the deceased,[50] the fight being viewed as a concerted one. But the challenge must be accepted before combat. Where the deceased challenged the accused and forthwith rushed towards the latter, self-defense will lie.[51] The same rule applies where the time of combat is agreed upon, because the agreement does not place upon either combatant the burden of preparing to meet an assault at any time even before the appointed time for the agreed encounter.[52]

Unlawful aggression also disappears where subsequent thereto the aggressor flees. An aggressed person who pursues his defense at this stage becomes the aggressor.[53] So also where the deceased though originally the unlawful aggressor, retreats,[54] or falls down in the face of accused's defense,[55] or is disarmed,[56] unless he struggles to regain possession of the weapon,[57] or where the aggressed party is able to escape after the aggression,[58] or where after the struggle he finds himself on top of the aggressor,[59] or kills him after dropping his weapon.[60] The reason is there no longer exists danger to defend against, the same having already ceased. The law of self-defense is based upon reasonable appea-

[45] People v. Quinto, 55 Phil. 116 (1930).
[46] People v. Marasigan, **supra**; U.S. v. Navarro, **supra**.
[47] People v. Bauden, **supra**.
[48] U.S. v. Navarro, **supra**.
[49] People v .Marasigan, **supra**.
[50] People v. Monteroso, **supra**.
[51] People v. Del Pilar, 44 O.G., No. 2, Feb. 1948 p. 596 (1947).
[52] Justo v. Court of Appeals, 53 O.G., No. 13, July 15, 1957, p. 4083, 4085 (1956).
[53] People v. Alconga, **supra**.
[54] U.S. v. Dimitillo, 7 Phil. 475 (1907); People v. Alvarez, CA-GR No. 435-R, May 6, 1947.
[55] People v. Martinez, CA-GR No. 1669-R, March 4, 1948.
[56] People v. Alviar, 56 Phil. 98 (1931).
[57] People v. Rabandaban, **supra**; People v. Datinguinoo, 47 O.G., No. 2, Feb. 1951, p. 765 (1949).
[58] People v. Pisangan, G.R. No. L-8726, Oct. 31, 1957.
[59] People v. Catindog, CA-GR No. 15079-R, Aug. 9, 1956.
[60] People v. Mirabiles, 45 O.G., Supp. 5, p. 277.

rance of imminent peril of death or serious bodily injury to the party assailed and, when that danger has passed and the attacker has withdrawn, accused is not justified in pursuing and killing the attacker.[61]

The withdrawal from the aggression must be in good faith, and with notice to the adversary of the desire for peace.[62] A retreat by the one who provoked the affray, without more, which retreat may have been for the purpose of placing himself in a more advantageous position to continue hostilities, is not such an abandonment as would exempt from all responsibility in provoking the fight.[63] The unlawful aggression is considered still continuing, and the one making a defense has a right to pursue him in his retreat and to disable him.[64] But once the conditions of withdrawal are fulfilled, the right of self-defense forfeited by the original aggressor revives. The originally aggressed party who strikes a fatal blow during the withdrawal becomes barred from pleading self-defense. On the contrary, malice will be imputed to him. Which brings us to the question:

From whose standpoint or by what standard should the imminence of unlawfull aggression be determined? The rule is uniform that for the slayer to successfully plead self-defense, he must have reasonable grounds to believe that he is in imminent danger of death or serious bodily harm in the hands of the slain. Reasonable in the belief of the slayer, reasonable from the viewpoint of the court, or reasonable by the standard of a reasonable man?

In the United States, the Federal Supreme Court[65] and the majority of state jurisdictions[66] have asserted the reasonable man standard. Reasonableness of belief is determined from the standpoint of a man of average or ordinary caution, courage and prudence. Under this rule, if, in determining the necessity of resorting to self-defense, from appearances and the actual state of things around him, he acts from honest and reasonable convictions, the person threatened will not be held criminally responsible for a mistake as to his appraisal of the actual danger, where other judicious men would, alike, er..[67] But exception must be made of error arising

[61] People v. Calavagan, CA-GR No. 12952-R, Aug. 10, 1955; People v. Keys, 62 Cal. App. 2d 903, 145 P2d 589 (1944).

[62] State v. Gadwood, 342 Mo. 466, 116 SW2d 42 (1938); State v. Stroud, 198 La. 841, 5 So. 2d 125 (1942); State v. Davis, 225 N. C. 117, 33 SE2d 623 (1945); Coleman v. Com., 184 Va. 197, 35 SE2d 96 (1945).

[63] Coleman v. Com., **supra.**

[64] I REYES, **op. cit. supra** note 2, at 103.

[65] Allen v. U.S., 164 US 492 (1896).

[66] **E.g.,** Alabama, Arizona, California, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Louisiana, Mississippi, Montana, Nebraska, New Mexico, Oregon, and Wyoming.

[67] Foster v. Shepherd, 258 Ill. 164, 101 NW 411 (1913).

from the slayer's own fault and negligence, for, in that event, no belief, however honest, will excuse his act.[68] Thus, if, for example, misapprehension of the hostile intentions of another or unjustified or exaggerated belief of the necessity of taking another's life in self-defense is induced by voluntary intoxication, the slaying of such other person cannot be justified on the theory of self-defense.[69]

The rule adopted by a number of the states[70] is the reasonable belief of the person assaulted. According to this rule, the question is whether, under all the circumstances as they appear to the aggressed, he honestly believes his life in imminent danger and that his defense to save himself from such apparent threatened danger is necessary, and not whether a man of reasonable courage believes so. A person's right to kill in self-defense arises from his belief in necessity and reasonableness of belief as judged by danger as it appears to him, regardless of others' belief.[71]

Still, a minority of decisions[72] have placed the determination upon the court. This rule, however, has been much criticized. It is argued that this test is not proper, for the defendant at the time he is defending himself cannot know what the court knows after all the facts have been proved to it. An unloaded pistol is an apparent danger to one who does not know that fact, but to a court which knows it, it ceases to be a source of danger.[73]

In this jurisdiction, the question seems equally moot. It seems that in the case of *U. S. v. Salazar*,[74] our Supreme Court applied the majority rule obtaining in the United States. In that case, the deceased, a prisoner, assaulted a policeman conducting him to the office of the justice of the peace and attempted to wrest the latter's revolver. The accused, a constabulary soldier who accompanied the policeman, seeing the latter in danger of being overcome by his quarry, caught hold of the latter in an attempt to break his hold. The prisoner persisted in wresting the revolver, and the accused, believing he might succeed in disarming the policeman, knowing the prisoner to be a notorious criminal of unusual physical strength, fired at him. Said the Court in acquitting the accused soldier: in order to justify the plea of self-defense to the charge of murder, it is not essential that there should be absolute and positive danger to the party making the plea. If there was a well-grounded and reasonable belief that he

[68] O'Steen v. State, 92 Fla. 1062, 111 So. 725 (1927); Atkins v. State, 119 Tenn. 458, 105 SW 353 (1907).

[69] Springfield v. State, 96 Ala. 81, 11 So. 250 (1892); Atkins v. State, **supra.**

[70] **E.g.,** Arkansas, Indiana, Kentucky, Michigan, Missouri, North Dakota, Ohio, Tennessee, and Texas.

[71] Lewis v. Co., 224 Ky. 502, 6 SW2d 502 (1928); Gillest v. State, 114 Tex. Cr. Rep. 532, 26 SW2d 644 (1930).

[72] Wesley v. State, 37 Miss. 327, 75 Am. Dec. 62 (1852); State v. Thornhill, 188 La. 762, 178 So. 343 (1938); Hood v. State, 70 Okl. Cr. 334, 106 P2d 271 (1940); State v. Ellerbe, 223 N. C. 770, 28 SE2d 519 (1944).

[73] 13 R.C.L. 819.

[74] **Supra.**

was in imminent danger of death or great bodily harm, an attempt to defend himself by means which appeared reasonably necessary is justifiable. *If he acted as an ordinarily prudent and reasonable man would have acted under the same circumstances, his plea is justified.*[75]

On the other hand, in the later case of *People v. De la Cruz,*[76] the same Court seems to have adopted, as the test, the belief of the accused without reference to belief generated by ordinary prudence and reason. In this case, the deceased, who turned out to be the suitor of the accused, grabbed the latter from behind one dark night, touched her private parts, and, asked who he was, did not answer. Instead, he persisted and tried to throw the accused down. In the struggle, the accused stabbed him with a pocket knife as a result of which he died. Prosecuted for homicide, the Court acquitted her saying she "was justified in making use of the pocket knife in repelling what *she believed to be an attack upon her honor.*"[77] The Court made no mention whatever, nor did it even intimate, that such belief was of a kind as emanates from a person of ordinary reason and prudence. To the same effect may be said of the holding in the earlier case of *U. S. v. Ah Chong,*[78] where the Court in acquitting the defendant held: a careful examination of the facts as disclosed in the case at bar convinces us that the defendant Chinaman struck the fatal blow *in the firm belief that the intruder was a thief, from whose assault he was in imminent peril.*[79]

Like the United States, this jurisdiction appears unsettled on the question.

The importance of committing to but one of the afore-discussed theories, on the determination of the imminence of unlawful aggression, cannot be overly underscored. To borrow the apt language of Mr. Justice Sanchez of the Court of Appeals, "uniformity and consistency have always been among the hallmarks of a good legal system."[80]

With that end in view, we submit that the "person attacked test" is the better theory to adopt. We believe that his rule will afford more protection to the party aggressed, disrobe a would-be aggressor of his homicidal tendencies, and lend more meaning to the law of self-defense. Above all, it is more consistent with the administration of practical justice which, after all, we believe, is the rock-bottom of the law on self-defense.

In the hierarchy of human rights, the right to life undoubtedly ranks highest. This must be as it is for life is humanity itself. The right to life deserves the greatest protection the law can afford. Indeed, the Legislature was not behind in recognizing this necessity. The Revised Penal

[75] Emphasis supplied.
[76] **Supra.**
[77] At 349, emphasis supplied.
[78] **Supra,** at 506.
[79] Emphasis supplied.
[80] Sanchez, **Involuntary Confessions: Theory of Confirmation by Subsequent Facts,** 9 ATENEO L. J. 1, 3 (1959).

Code punishes not only the killing of a person by another, but also giving assistance to suicide.[81] In the vigilance over this high degree of protection to human life, the Judiciary can share its part by adopting the proposed test.

When a person is threatened with death or serious bodily injury, whatever defense he may put up to avert the impending harm arises more instinctively. This is natural. When mere ordinary disturbances distort the mental processes, a shocking experience such as suddenly finding one's self in the threshold of certain injury and, possibly, death, inevitably suspends such processes. In the face, and for the duration, of the excitement, the assailed is, just as well, a cornered beast. By force of circumstances, not of his own undoing, he could not simply discriminate on the measure of his defense. He has no time to think, there is no room for deliberate and calm judgment. Certainly, he cannot be held to the "nice calculations" of a person of ordinary prudence and caution.

Particular situations into which aggressed parties are thrown are not uniform. Variations occur as to circumstances of person, time and place. Of person, the difference may lie in the physical condition, character and size of the protagonists, particularly the aggressor; of time, in the reduction of the efficacy of defense to a minimum; and of place, in the remoteness of possible succor. To an assailant's physical inferior, to one attacked at nighttime, or at a forsaken place, the imminence of danger can easily magnify into terrifying proportions than to another placed in opposite situations. Obviously, the appreciation of apparent danger is a matter of individual equation in the perception of the individual attacked. Not in the opinion of a reasonable man, because in the face of danger even the bold appreciably loses soundness of discretion, and, absolutely, not in the judgment of the court, because it acts from an enlightened perspective. In making his defense, the accused does not know exactly the intentions of his adversary, while the court, when it steps in, is made aware thereof.

Even when there is equality of conditions between the parties, and no apparent advantage is taken of the contingencies of time and place of attack, as when the threat takes place in broad daylight and in a public place, the wisdom of the "reasonable man standard" remains doubtful. The rule proceeds on the assumption that under such conditions a reasonable man would not expect the offense feared to be committed. The potency of the defense that may be put up, the publicity of its commission, and the proximity of possible help provide ample deterrents. We believe the assumption is unwarranted. In fact, it is subversive of the law on self-defense. Instead of discouraging attempts against human life, it showers undue protection upon would-be aggressors by shifting the burden of caution on the unsuspecting victim. In bringing on the conflict, the aggressor forfeits his right to self-defense. As such, he must be denied all latitude,

[81] Art. 253.

and the assailed, accorded the widest freedom of action, or the law would be entering into a dangerous compromise. To require the assailed to exercise any due care or circumspection might as well be a fatal risk.

Where the aggressor withdraws with notice of such intention, the jurisprudence is non-pleadability of self-defense, on the supposition that the aggression has ceased. That is the reasonable appreciation of an ordinarily cautious and prudent person. We say that here, also, the standard fails, even where the abandonment is express. For, what guarantee is there that the withdrawal is in good faith? That it is so is arrived at only after trial, when the facts are proved, which in all probability can very well be attributed to the fine marks and trial ability of a good counsel. The accused, on the other hand, in the course of the affray, cannot draw the good from the bad, his mind warped as it is by the fear for his life into which the aggressor has brought him.

Under our law,[82] a legally married person who surprises his spouse in the act of infidelity may kill her and her paramour, or any of them, without incurring the punishment provided for killing a person. If he kills them *in the act* or *immediately thereafter*, he suffers only *destierro*, which is intended more for his protection than as a penalty.[83] Although, in effect, it confers upon the offended spouse the power to impose the capital penalty of death, this provision has been justified in that the law, under such circumstances, considers the spouse as acting in a justified burst of passion.[84] Of passion as a mitigating circumstance, it has been said that it mitigates liability, because one who acts with passion suffers a diminution of his freedom and intelligence.[85] Now, in the thick of a fight where one may probably die for the other to survive, it is quite exceptional to find a protagonist devoid of passion amounting to a diminution of his freedom and intelligence. To paraphrase Mr. Justice Perfecto, "to judge, however, the conduct of appellant during the whole incident, it is necessary to consider the psychology of a person engaged in a life or death struggle, acting under the irresistible impulses of self-preservation and blinded by anger and indignation for the illegal aggression of which he was the victim. A person placed in such a crucial situation must have to summon all his physiological resources and physical forces to rally to the one and indivisible aim of survival and, to that end, place his energies on the level of highest pitch. In that moment of physical and spiritual hypertension, to ask that a man should measure his acts as an architect would make measurements to achieve proportion and symmetry in a proposed building or a scientist would make a calibration, so that his acts of self-defense should

[82] Art. 247 REVISED PENAL CODE.
[83] People v. Coricor, 79 Phil. 672 (1947).
[84] People v. Gonzales, 69 Phil. 66 (1939).
[85] I REYES, **op. cit. supra** note 2, at 177.

stop precisely at the undeterminable border line when the aggressor ceases to be dangerous, is to ask the impossible."[86]

Life takes precedence over honor. The mantle of protection spread over the offended spouse in death under exceptional circumstances covers not only the moment of actual coition, but also *immediately thereafter*. That a different standard should be observed by a person under attack in pursuing his aggressor-adversary seems therefore inconceivable. To our mind, a withdrawing aggressor is no less than a fleeing paramour.

To conclude, we note with special interest the holding in the case of *U. S. v. Esmedia*,[87] on defense of relatives, to the effect that unlawful aggression need not exist as a matter of fact, because it can be made to depend upon the honest belief of the one defending.

[86] People v. Alconga, 78 Phil. 366, 386, **dissenting** (1947).
[87] 17 Phil. 260 (1910).