



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SIMON A. FLORES,

Petitioner,

G.R. No. 181354

Present:

VELASCO, JR., J., *Chairperson*,
ABAD,

VILLARAMA, JR.,*

MENDOZA, and

LEONEN, JJ.

- versus -

PEOPLE OF THE
PHILIPPINES,

Respondent.

Promulgated:

February 27, 2013

X

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DECISION

MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking to annul and set aside the August 27, 2004 Decision¹ of the Sandiganbayan, First Division (*Sandiganbayan*), in Criminal Case No. 16946, finding petitioner Simon A. Flores (*Flores*) guilty beyond reasonable doubt of the crime of Homicide, and its November 29, 2007 Resolution² denying his motion for reconsideration.

Flores was charged with the crime of Homicide in an *Information*, dated July 9, 1991, filed before the Sandiganbayan which reads:

* Designated additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated February 20, 2013.

¹ Annex "A" of Petition, *rollo*, pp. 36-47. Penned by Associate Justice Teresita J. Leonardo-De Castro (now Associate Justice of the Supreme Court) with Associate Justice Diosdado M. Peralta (now Associate Justice of the Supreme Court) and Associate Justice Roland B. Jurado, concurring.

² Annex "B" of Petition, *id.* at 48-49.

That on or about the 15th day of August, 1989, at nighttime, in the Municipality of Alaminos, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Barangay Chairman of San Roque, Alaminos, Laguna, while in the performance of his official functions and committing the offense in relation to his office, did then and there willfully, unlawfully, feloniously and with intent to kill, shoot one JESUS AVENIDO with an M-16 Armalite Rifle, thereby inflicting upon him several gunshot wounds in different parts of his body, which caused his instantaneous death, to the damage and prejudice of the heirs of said JESUS AVENIDO.

CONTRARY TO LAW.³

During his arraignment, on August 26, 1991, Flores pleaded “Not Guilty” and waived the pre-trial. Thereafter, the prosecution presented four (4) witnesses, namely: Paulito Duran, one of the visitors (*Duran*); Gerry Avenido (*Gerry*), son of the victim; Elisa Avenido (*Elisa*), wife of the victim; and Dr. Ruben Escueta, the physician who performed the autopsy on the cadaver of the victim, Jesus Avenido (*Jesus*).

For its part, the defense presented as witnesses, the accused Flores himself; his companion-members of the Civilian Action Force Group Unit (CAFGU), Romulo Alquizar and Maximo H. Manalo; and Dr. Rene Bagamasbad, resident physician of San Pablo City District Hospital.

The Version of the Prosecution

On August 15, 1989, on the eve of the barangay fiesta in San Roque, Alaminos, Laguna, certain visitors, Ronnie de Mesa, Noli de Mesa, Marvin Avenido, and Duran, were drinking at the terrace of the house of Jesus. They started drinking at 8:30 o'clock in the evening. Jesus, however, joined his visitors only at around 11:00 o'clock after he and his wife arrived from Sta. Rosa, Laguna, where they tried to settle a problem regarding a vehicular accident involving one of their children. The drinking at the terrace was ongoing when Flores arrived with an M-16 armalite rifle.⁴

Duran testified that Jesus stood up from his seat and met Flores who was heading towards the terrace. After glancing at the two, who began talking to each other near the terrace, Duran focused his attention back to the table. Suddenly, he heard several gunshots prompting him to duck under the

³ Records, p. 20-21.

⁴ *Rollo*, pp. 36-37.

table. Right after the shooting, he looked around and saw the bloodied body of Jesus lying on the ground. By then, Flores was no longer in sight.⁵

Duran immediately helped board Jesus in an owner-type jeep to be brought to a hospital. Thereafter, Duran, Ronnie de Mesa and Noli de Mesa went home. Jesus was brought to the hospital by his wife and children. Duran did not, at any time during the occasion, notice the victim carrying a gun with him.⁶

Gerry narrated that he was going in and out of their house before the shooting incident took place, anxiously waiting for the arrival of his parents from Sta. Rosa, Laguna. His parents were then attending to his problem regarding a vehicular accident. When they arrived, Gerry had a short conversation with his father, who later joined their visitors at the terrace.⁷

Gerry was outside their house when he saw Flores across the street in the company of some members of the CAFGU. He was on his way back to the house when he saw Flores and his father talking to each other from a distance of about six (6) meters. Suddenly, Flores shot his father, hitting him on the right shoulder. Flores continued shooting even as Jesus was already lying flat on the ground. Gerry testified that he felt hurt to have lost his father.⁸

Elisa related that she was on her way from the kitchen to serve “pulutan” to their visitors when she saw Flores, from their window, approaching the terrace. By the time she reached the terrace, her husband was already lying on the ground and still being shot by Flores. After the latter had left, she and her children rushed him to the hospital where he was pronounced dead on arrival.⁹

As a consequence of her husband’s untimely demise, she suffered emotionally. She testified that Jesus had an average monthly income of Twenty Thousand Pesos (₱20,000.00) before he died at the age of forty-one (41). He left four (4) children. Although she had no receipt, Elisa asked for actual damages consisting of lawyer’s fees in the amount of Fifteen Thousand Pesos (₱15,000.00) plus Five Hundred Pesos (₱500.00) for every hearing, and Six Thousand Five Hundred Pesos (₱6,500.00) for the funeral expenses.¹⁰

⁵ Id. at 37.

⁶ Id.

⁷ Id.

⁸ Id. at 37-38.

⁹ Id. at 38.

¹⁰ Id.

Dr. Ruben Escueta (*Dr. Escueta*) testified that on August 17, 1989, he conducted an autopsy on the cadaver of Jesus, whom he assessed to have died at least six (6) hours before his body was brought to him.¹¹

Based on the Autopsy Report,¹² it appeared that the victim suffered four gunshot wounds in the different parts of his body, specifically: on the medial portion of the left shoulder, between the clavicle and the first rib; on the left hypogastric region through the upper right quadrant of the abdomen; on the tip of the left buttocks to the tip of the sacral bone or hip bone; and on the right flank towards the umbilicus. The victim died of massive intra-abdominal hemorrhage due to laceration of the liver.

The Version of the Defense

To avoid criminal liability, Flores interposed self-defense.

Flores claimed that in the evening of August 15, 1989, he, together with four members of the CAFGU and Civil Service Unit (CSU), Maximo Manalo, Maximo Latayan (*Latayan*), Ronilo Haballa, and Romulo Alquizar, upon the instructions of Mayor Samuel Bueser of Alaminos, Laguna, conducted a *ronda* in Barangay San Roque which was celebrating the eve of its fiesta.¹³

At around midnight, the group was about 15 meters from the house of Jesus, who had earlier invited them for some “bisperas” snacks, when they heard gunshots seemingly emanating from his house. Flores asked the group to stay behind as he would try to talk to Jesus, his cousin, to spare the shooting practice for the fiesta celebration the following day. As he started walking towards the house, he was stopped by Latayan and handed him a baby armalite. He initially refused but was prevailed upon by Latayan who placed the weapon over his right shoulder, with its barrel or nozzle pointed to the ground. Latayan convinced Flores that such posture would gain respect from the people in the house of Jesus.¹⁴

Flores then proceeded to the terrace of the house of Jesus, who was having a drinking spree with four others. In a calm and courteous manner, Flores asked Jesus and his guests to cease firing their guns as it was already late at night and to save their shots for the following day’s fiesta procession. Flores claimed that despite his polite, unprovocative request and the fact that he was a relative of Jesus and the barangay chairman, a person in authority performing a regular routine duty, he was met with hostility by Jesus and his

¹¹ Id.

¹² Exhibit “A” for the Prosecution.

¹³ *Rollo*, pp. 10-11.

¹⁴ Id. at 11.

guests. Jesus, who appeared drunk, immediately stood up and approached him as he was standing near the entrance of the terrace. Jesus abruptly drew his magnum pistol and poked it directly at his chest and then fired it. By a twist of fate, he was able to partially parry Jesus' right hand, which was holding the pistol, and was hit on his upper right shoulder.¹⁵

With fierce determination, however, Jesus again aimed his gun at Flores, but the latter was able to instinctively take hold of Jesus' right hand, which was holding the gun. As they wrestled, Jesus again fired his gun, hitting Flores' left hand.¹⁶

Twice hit by bullets from Jesus' magnum pistol and profusely bleeding from his two wounds, Flores, with his life and limb at great peril, instinctively swung with his right hand the baby armalite dangling on his right shoulder towards Jesus and squeezed its trigger. When he noticed Jesus already lying prostrate on the floor, he immediately withdrew from the house. As he ran towards the coconut groves, bleeding and utterly bewildered over the unfortunate incident that just transpired between him and his cousin Jesus, he heard more gunshots. Thus, he continued running for fear of more untoward incidents that could follow. He proceeded to the Mayor's house in Barangay San Gregorio, Alaminos, Laguna, to report what had happened. There, he found his *ronda* groupmates.¹⁷

The incident was also reported the following day to the CAFGU Superior, Sgt. Alfredo Sta. Ana.

Decision of the Sandiganbayan

On August 27, 2004, after due proceedings, the Sandiganbayan issued the assailed decision¹⁸ finding Flores guilty of the offense charged. The Sandiganbayan rejected Flores' claim that the shooting was justified for failure to prove self-defense. It gave credence to the consistent testimonies of the prosecution witnesses that Flores shot Jesus with an armalite rifle (M16) which resulted in his death. According to the Sandiganbayan, there was no reason to doubt the testimonies of the said witnesses who appeared to have no ill motive to falsely testify against Flores. The dispositive portion of the said decision reads:

WHEREFORE, judgment is hereby rendered in Criminal Case No. 16946 finding the accused Simon A. Flores GUILTY beyond reasonable doubt of the crime of homicide and to suffer the penalty of 10 years and 1 day of *prision mayor* maximum, as

¹⁵ Id. at 11-12.

¹⁶ Id. at 12.

¹⁷ Id.

¹⁸ Id. at 36-47.

minimum, to 17 years, and 4 months of *reclusion temporal* medium, as maximum. The accused is hereby ordered to pay the heirs of the victim Fifty Thousand Pesos (₱50,000.00) as civil indemnity for the death of Jesus Avenido, another Fifty Thousand Pesos (₱50,000.00) as moral damages, and Six Thousand Five Hundred Pesos (₱6,500.00) as actual or compensatory damages.

SO ORDERED.¹⁹

Flores filed a motion for the reconsideration. As the motion did not contain any notice of hearing, the Prosecution filed its Motion to Expunge from the Records Accused's Motion for Reconsideration.²⁰

In its Resolution, dated November 29, 2007, the Sandiganbayan denied the motion for being a mere scrap of paper as it did not contain a notice of hearing and disposed as follows:

WHEREFORE, in view of the foregoing, *the Motion for Reconsideration* of accused Flores is considered pro forma which did not toll the running of the period to appeal, and thus, the assailed judgment of this Court has become **FINAL** and **EXECUTORY**.

SO ORDERED.²¹

Hence, Flores filed the present petition before this Court on the ground that the Sandiganbayan committed reversible errors involving questions of substantive and procedural laws and jurisprudence. Specifically, Flores raises the following

ISSUES

(I)

WHETHER THE SANDIGANBAYAN, FIRST DIVISION, GRAVELY ERRED IN NOT GIVING DUE CREDIT TO PETITIONER'S CLAIM OF SELF-DEFENSE

¹⁹ Id. at 46-47.

²⁰ Annex "D" of Petition, id. at 71-74.

²¹ Id. at 49.

(II)

WHETHER THE SANDIGANBAYAN, FIRST DIVISION, COMMITTED SERIOUS BUT REVERSIBLE ERRORS IN ARRIVING AT ITS FINDINGS AND CONCLUSIONS

(III)

WHETHER THE SANDIGANBAYAN, FIRST DIVISION, COMMITTED A GRAVE ERROR IN NOT ACQUITTING PETITIONER OF THE CRIME CHARGED²²

The Court will first resolve the procedural issue raised by Flores in this petition.

Flores claims that the outright denial of his motion for reconsideration by the Sandiganbayan on a mere technicality amounts to a violation of his right to due process. The dismissal rendered final and executory the assailed decision which was replete with baseless conjectures and conclusions that were contrary to the evidence on record. He points out that a relaxation of procedural rules is justified by the merits of this case as the facts, viewed from the proper and objective perspective, indubitably demonstrate self-defense on his part.

Flores argues that he fully complied with the requirements of Section 2 of Rule 37 and Section 4 of Rule 121 of the Rules of Court when the motion itself was served upon the prosecution and the latter, in fact, admitted receiving a copy. For Flores, such judicial admission amounts to giving due notice of the motion which is the intent behind the said rules. He further argues that a hearing on a motion for reconsideration is not necessary as no further proceeding, such as a hearing, is required under Section 3 of Rule 121.

Flores' argument fails to persuade this Court.

Section 5, Rule 15 of the Rules of Court reads:

SECTION 5. *Notice of hearing.* – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

²² Id. at 14; see also p. 127.

Section 2, Rule 37 provides:

SEC. 2. Contents of motion for new trial or reconsideration and notice thereof. – The motion shall be made in writing stating the ground or grounds therefore, a written notice of which shall be served by the movant on the adverse party.

x x x x

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.

Section 4, Rule 121 states:

SEC. 4. Form of motion and notice to the prosecutor. – The motion for a new trial or reconsideration shall be in writing and shall state the grounds on which it is based. X x x. Notice of the motion for new trial or reconsideration shall be given to the prosecutor.

As correctly stated by the Office of the Special Prosecutor (*OSP*), Sec. 2 of Rule 37 and Sec. 4 of Rule 121 should be read in conjunction with Sec. 5 of Rule 15 of the Rules of Court. Basic is the rule that every motion must be set for hearing by the movant except for those motions which the court may act upon without prejudice to the rights of the adverse party.²³ The notice of hearing must be addressed to all parties and must specify the time and date of the hearing, with proof of service.

This Court has indeed held, time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, the requirement is mandatory. Failure to comply with the requirement renders the motion defective. “As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading.”²⁴

In this case, as Flores committed a procedural lapse in failing to include a notice of hearing, his motion was a worthless piece of paper with no legal effect whatsoever. Thus, his motion was properly dismissed by the Sandiganbayan.

Flores invokes the exercise by the Court of its discretionary power to review the factual findings of the Sandiganbayan. He avers that the *ponente*

²³ Section 4, Rule 15 of the Rules of Court.

²⁴ *Preysler, Jr. v. Manila Southcoast Development Corporation*, G.R. No. 171872, June 28, 2010, 621 SCRA 636, 643.

as well as the other members of the First Division who rendered the assailed decision, were not able to observe the witnesses or their manner of testifying as they were not present during the trial.²⁵ He, thus, argues that there was palpable misapprehension of the facts that led to wrong conclusions of law resulting in his unfounded conviction.

His contention is likewise devoid of merit.

“It is often held that the validity of a decision is not necessarily impaired by the fact that the *ponente* only took over from a colleague who had earlier presided at the trial, unless there is a showing of grave abuse of discretion in the factual findings reached by him.”²⁶

“Moreover, it should be stressed that the Sandiganbayan, which functions in divisions of three Justices each, is a collegial body which arrives at its decisions only after deliberation, the exchange of view and ideas, and the concurrence of the required majority vote.”²⁷

In the present case, Flores has not convinced the Court that there was misapprehension or misinterpretation of the material facts nor was the defense able to adduce evidence to establish that the factual findings were arrived at with grave abuse of discretion. Thus, the Court sustains the Sandiganbayan’s conclusion that Flores shot Jesus and continued riddling his body with bullets even after he was already lying helpless on the ground.

Flores insists that the evidence of this case clearly established all the elements of self-defense. According to him, there was an unlawful aggression on the part of Jesus. He was just at the entrance of Jesus’ terrace merely advising him and his guests to reserve their shooting for the fiesta when Jesus approached him, drew a magnum pistol and fired at him. The attack by Jesus was sudden, unexpected and instantaneous. The intent to kill was present because Jesus kept pointing the gun directly at him. As he tried to parry Jesus’ hand, which was holding the gun, the latter kept firing. Left with no choice, he was compelled to use the baby armalite he was carrying to repel the attack. He asserts that there was lack of sufficient provocation on his part as he merely requested Jesus and his drinking buddies to reserve their shooting for the following day as it was already late at night and the neighbors were already asleep.

²⁵ *Rollo*, p. 17.

²⁶ *People v. Radam, Jr.*, 434 Phil. 87, 99 (2002), citing *Quinao v. People*, 390 Phil. 1092, 1100 (2000).

²⁷ *Cabuslay v. People*, 508 Phil. 236, 250 (2005), citing *Mejorada v. Sandiganbayan*, 235 Phil. 400, 410 (1987); *Consing v. Court of Appeals*, 257 Phil. 851, 859 (1989).

In effect, Flores faults the Sandiganbayan in not giving weight to the justifying circumstance of self-defense interposed by him and in relying on the testimonies of the prosecution witnesses instead.

His argument deserves scant consideration.

The issue of whether Flores indeed acted in self-defense is basically a question of fact. In appeals to this Court, only questions of law may be raised and not issues of fact. The factual findings of the Sandiganbayan are, thus, binding upon this Court.²⁸ This Court, nevertheless, finds no reason to disturb the finding of the Sandiganbayan that Flores utterly failed to prove the existence of self-defense.

Generally, "the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent." If the accused, however, admits killing the victim, but pleads self-defense, the burden of evidence is shifted to him to prove such defense by clear, satisfactory and convincing evidence that excludes any vestige of criminal aggression on his part. To escape liability, it now becomes incumbent upon the accused to prove by clear and convincing evidence all the elements of that justifying circumstance.²⁹

In this case, Flores does not dispute that he perpetrated the killing of Jesus by shooting him with an M16 armalite rifle. To justify his shooting of Jesus, he invoked self-defense. By interposing self-defense, Flores, in effect, admits the authorship of the crime. Thus, it was incumbent upon him to prove that the killing was legally justified under the circumstances.

To successfully claim self-defense, the accused must satisfactorily prove the concurrence of the elements of self-defense. Under Article 11 of the Revised Penal Code, any person who acts in defense of his person or rights does not incur any criminal liability provided that the following circumstances concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

The most important among all the elements is unlawful aggression. "There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense."³⁰ "Unlawful aggression is defined as an actual physical

²⁸ *Sazon v. Sandiganbayan, (Fourth Division)*, G.R. No. 150873, February 10, 2009, 578 SCRA 211, 219, citing *Baldebrin v. Sandiganbayan*, 547 Phil. 522, 533 (2007).

²⁹ *Galang v. Court of Appeals*, 381 Phil. 145, 150-151 (2000).

³⁰ *People of the Philippines v. Dolorido*, G.R. No. 191721, January 12, 2011, 639 SCRA 496, 503, citing *People v. Catbagan*, 467 Phil. 1044, 1054 (2004).

assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life."³¹ "Aggression, if not continuous, does not constitute aggression warranting self-defense."³²

In this case, Flores failed to discharge his burden.

The Court agrees with the Sandiganbayan's assessment of the credibility of witnesses and the probative value of evidence on record. As correctly noted by the Sandiganbayan, the defense evidence, both testimonial and documentary, were crowded with flaws which raised serious doubt as to its credibility, to wit:

First, the accused claims that Jesus Avenido shot him on his right shoulder with a magnum handgun from a distance of about one (1) meter. With such a powerful weapon, at such close range, and without hitting any hard portion of his body, it is quite incredible that the bullet did not exit through the accused's shoulder. On the contrary, if he were hit on the part where the ball and socket were located, as he tried to make it appear later in the trial, it would be very impossible for the bullet not to have hit any of the bones located in that area of his shoulder.

Second, Simon Flores executed an affidavit on September 2, 1989. Significantly, he did not mention anything about a bullet remaining on his shoulder. If indeed a bullet remained lodged in his shoulder at the time he executed his affidavit, it defies logic why he kept mum during the preliminary investigation when it was crucial to divulge such fact if only to avoid the trouble of going through litigation. To wait for trial before finally divulging such a very material information, as he claimed, simply stretches credulity.

Third, in his feverish effort of gathering evidence to establish medical treatment on his right shoulder, the accused surprisingly did not bother to secure the x-ray plate or any medical records from the hospital. Such valuable pieces of evidence would have most likely supported his case of self-defense, even during the preliminary investigation, if they actually existed and had he properly presented them. The utter lack of interest of the accused in retrieving the alleged x-ray plate or any medical record from the hospital militate against the veracity of his version of the incident.

³¹ *People of the Philippines v. Maningding*, G.R. No. 195665, September 14, 2011, 657 SCRA 804, 814, citing *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187, 201.

³² *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 195, citing *People of the Philippines v. Saul*, 423 Phil. 924, 934 (2001).

Fourth, the T-shirt presented by the accused in court had a hole, apparently from a hard object, such as a bullet, that pierced through the same. However, the blood stain is visibly concentrated only on the area around the hole forming a circular shape. Within five (5) hours and a half from 12:00 o'clock midnight when he was allegedly shot, to 5:35 a.m. in the early morning of August 16, 1989, when his wounds were treated, the blood would naturally have dripped down to the hem. The blood on the shirt was not even definitively shown to be human blood.

Fifth, Jesus Avenido arrived at his house and joined his visitors who were drinking only at 11:00 o'clock in the evening. Both parties claim that the shooting incident happened more or less 12:00 midnight. Hence, it is very possible that Jesus Avenido was not yet drunk when the incident in question occurred. Defense witnesses themselves noted that the victim Jesus Avenido was bigger in built and taller than the accused. Moreover, the victim was familiar and very much experienced with guns, having previously worked as a policeman. In addition, the latter was relatively young, at the age of 41, when the incident happened. The Court therefore finds it difficult to accept how the victim could miss when he allegedly shot the accused at such close range if, indeed, he really had a gun and intended to harm the accused. We find it much less acceptable to believe how the accused allegedly overpowered the victim so easily and wrestled the gun from the latter, despite allegedly having been hit earlier on his right shoulder.

Finally, it hardly inspires belief for the accused to have allegedly unlocked, with such ease, the armalite rifle (M16) he held with one hand, over which he claims to have no experience handling, while his right shoulder was wounded and he was grappling with the victim.³³ (Underscoring supplied citations omitted)

The foregoing circumstances indeed tainted Flores' credibility and reliability, his story being contrary to ordinary human experience. "Settled is the rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself. Hence, the test to determine the value or credibility of the testimony of a witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind."³⁴

The Court also sustains the finding that the testimony of Dr. Bagamasbad, adduced to prove that Flores was shot by Jesus, has no probative weight for being hearsay. As correctly found by the Sandiganbayan:

³³ *Rollo*, pp. 42-44.

³⁴ *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 427.

The testimony of defense witness Dr. Bagamasbad, cannot be of any help either since the same is in the nature of hearsay evidence. Dr. Bagamasbad's testimony was a mere re-statement of what appeared as entries in the hospital logbook (EXH. "8-a"), over which he admitted to possess no personal knowledge. The photocopy of the logbook itself does not possess any evidentiary value since it was not established by the defense that such evidence falls under any of the exceptions enumerated in Section 3, Rule 130, which pertain to the rules on the admissibility of evidence.³⁵ x x x

Granting for the sake of argument that unlawful aggression was initially staged by Jesus, the same ceased to exist when Jesus was first shot on the shoulder and fell to the ground. At that point, the perceived threat to Flores' life was no longer attendant. The latter had no reason to pump more bullets on Jesus' abdomen and buttocks.

Indeed, the nature and number of the gunshot wounds inflicted upon Jesus further negate the claim of self-defense by the accused. Records show that Jesus suffered four (4) gunshot wounds in the different parts of his body, specifically: on the medial portion of the left shoulder, between the clavicle and the first rib; on the left hypogastric region through the upper right quadrant of the abdomen; on the tip of the left buttocks to the tip of the sacral bone or hip bone; and on the right flank towards the umbilicus. According to Dr. Ruben Escueta, who performed the autopsy on the victim, the latter died of massive intra-abdominal hemorrhage due to laceration of the liver.³⁶ If there was any truth to Flores' claim that he merely acted in self-defense, his first shot on Jesus' shoulder, which already caused the latter to fall on the ground, would have been sufficient to repel the attack allegedly initiated by the latter. But Flores continued shooting Jesus. Considering the number of gunshot wounds sustained by the victim, the Court finds it difficult to believe that Flores acted to defend himself to preserve his own life. "It has been held in this regard that the location and presence of several wounds on the body of the victim provide physical evidence that eloquently refutes allegations of self-defense."³⁷

"When unlawful aggression ceases, the defender no longer has any justification to kill or wound the original aggressor. The assailant is no longer acting in self-defense but in retaliation against the original aggressor."³⁸ Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the

³⁵ *Rollo*, p. 44.

³⁶ *Id.* at 38-39.

³⁷ *People of the Philippines v. Villa, Jr.*, G.R. No. 179278, March 28, 2008, 550 SCRA 480, 498, citing *People v. Saragina*, 388 Phil. 1, 23-24 (2000).

³⁸ *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 195, citing *People of the Philippines v. Tagana*, 468 Phil. 784, 802 (2004).

accused attacked him, while in self-defense the aggression still existed when the aggressor was injured by the accused.³⁹

The Court quotes with approval the following findings of the Sandiganbayan, thus:

x x x. The difference in the location of the entry and exit points of this bullet wound was about two to three inches. From the entry point of the bullet, the shooting could not have taken place when accused and his victim were standing and facing each other. Another bullet entered through the medial portion of the victim's buttocks and exited through his abdominal cavity. A third bullet entered through the left hypogastric region and exited at the upper right quadrant of the victim's abdomen. The respective trajectory of these wounds are consistent with the testimony of prosecution witnesses Elisa B. Avenido and Arvin B. Avenido that the accused shot Jesus Avenido while the latter was already lying on the ground. Moreover, according to Arvin Avenido, the first shot hit his father on the right shoulder making him fall to the ground. **Hence, even on the assumption that unlawful aggression initially existed, the same had effectively ceased after the victim was first shot and fell to the ground.** There was no more reason for the accused to pull the trigger, at least three times more, and continue shooting at the victim.⁴⁰ (Emphasis in the original)

The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression.⁴¹ In this case, the continuous shooting by Flores which caused the fatal gunshot wounds were not necessary and reasonable to prevent the claimed unlawful aggression from Jesus as the latter was already lying flat on the ground after he was first shot on the shoulder.

In fine, the Sandiganbayan committed no reversible error in finding accused Flores guilty beyond reasonable doubt of the crime of homicide.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

³⁹ *Belbis, Jr. v. People of the Philippines*, G.R. No. 181052, November 14, 2012, citing *People v. Vicente*, 452 Phil. 986, 998 (2003).

⁴⁰ *Rollo*, pp. 44-45.

⁴¹ *Belbis, Jr. v. People of the Philippines*, supra note 39.

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



ROBERTO A. ABAD
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice