



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

SHERWIN DELA CRUZ,  
Petitioner,

G.R. No. 189405

Present:

- versus -

VELASCO, JR., J., Chairperson,  
PERALTA,  
VILLARAMA, JR.,  
REYES, and  
JARDELEZA, JJ.

PEOPLE OF THE PHILIPPINES  
and CARLOS ALBERTO L.  
GONZALES, in behalf of his  
deceased brother, JEFFREY  
WERNHER L. GONZALES,  
Respondents.

Promulgated:

November 19, 2014

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DECISION

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to annul and set aside the May 7, 2009 Decision<sup>1</sup> of the Court of Appeals, in CA-G.R. CV No. 89257, finding petitioner Sherwin Dela Cruz guilty beyond reasonable doubt of the crime of Homicide, and its August 19, 2009 Resolution<sup>2</sup> denying his motion for reconsideration.

Petitioner was charged with the crime of Homicide in an Information<sup>3</sup> dated March 2, 2005, which alleged:

<sup>1</sup> Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Edgardo P. Cruz and Isaias P. Dicdican, concurring; Annex "A" to Petition, *rollo*, pp. 55-74.

<sup>2</sup> *Id.* at 75-76.

<sup>3</sup> Annex "C" to Petition, *id.* at 114.

That on or about the 1<sup>st</sup> day of January 2005, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and ***with the use of an unlicensed firearm***, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one JEFFREY WERNHER GONZALES Y LIM on the head, thereby inflicting upon the latter serious and mortal gunshot wound which directly caused his death.

CONTRARY TO LAW.<sup>4</sup>

According to the prosecution, on January 1, 2005, at around 2:30 in the afternoon, petitioner went to the office of Sykes Asia Inc. located at the 25<sup>th</sup> Floor of Robinson's Summit Center, Ayala Avenue, Makati City. When petitioner was already inside the building, he went to the work station of the deceased victim, Jeffrey Wernher L. Gonzales (*Jeffrey*), who, by the configuration of the eyewitness Antonette Managbanag's sketch, was seated fronting his computer terminal, with his back towards the aisle. As petitioner approached Jeffrey from the back, petitioner was already holding a gun pointed at the back of Jeffrey's head. At the last second, Jeffrey managed to deflect the hand of petitioner holding the gun, and a short struggle for the possession of the gun ensued thereafter. Petitioner won the struggle and remained in possession of the said gun.

Petitioner then pointed the gun at Jeffrey's face, pulled the trigger four (4) times, the fourth shot finally discharging the bullet that hit Jeffrey in the forehead, eventually killing him. Finally, after shooting Jeffrey, petitioner fled the office.

The defense recounted a different version of the facts.

Petitioner claimed that on January 1, 2005, at around 2:30 in the afternoon, more or less, petitioner, together with his children, went to Sykes Asia, the workplace of his wife, Darlene Dela Cruz (*Darlene*), located at the 25<sup>th</sup> Floor of Robinson's Summit Building in Makati City, to fetch the latter so that their family could spend time and celebrate together the New Year's Day.

Before entering the Robinson's Summit Building, petitioner underwent the regular security check-up/procedures. He was frisked by the guards-on-duty manning the main entrance of said building and no firearm was found in his possession. He registered his name at the security logbook and surrendered a valid I.D.

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<sup>4</sup>

Emphasis supplied.

Upon reaching the 25<sup>th</sup> Floor of the same building, a security guard manning the entrance once again frisked petitioner and, likewise, found no gun in his possession; hence, he was allowed to enter the premises of Sykes Asia. The security guard also pointed to him the direction towards his wife's table.

However, as Darlene was then not on her table, petitioner approached a certain man and asked the latter as to the possible whereabouts of Darlene. The person whom petitioner had talked to was the deceased-victim, Jeffrey. After casually introducing himself as the husband of Darlene, Jeffrey curtly told him, "*Bakit mo hinahanap si Darlene?*" to which he answered, "*Nagpapasundo kasi sa akin.*" The response given by Jeffrey shocked and appalled petitioner: "*Ayaw na nga ng asawa mo sayo sinusundo mo pa!*"

Shocked by the words and reaction of Jeffrey, petitioner tried to inquire from Jeffrey who he was. But Jeffrey suddenly cursed petitioner. Then, Jeffrey suddenly picked up something in his chair which happened to be a gun and pointed the same at petitioner's face followed by a clicking sound. The gun, however, did not fire.

Seeing imminent danger to his life, petitioner grappled with Jeffrey for the possession of the gun. While grappling, the gun clicked for two (2) to three (3) more times. Again, the gun did not fire.

Petitioner was able to wrest away the gun from Jeffrey and tried to run away to avoid any further confrontation with the latter. However, Jeffrey immediately blocked petitioner's path and shouted, "*Guard! Guard!*" Immediately then, Jeffrey took hold of a big fire extinguisher, aimed and was about to smash the same on petitioner's head.

Acting instinctively, petitioner parried the attack while still holding the gun. While in the act of parrying, the gun accidentally fired due to the reasonable force and contact that his parrying hand had made with the fire extinguisher and the single bullet discharged hit the forehead of Jeffrey, which caused the latter to fall on the floor and die.

Petitioner left the gun and went out of the premises of Sykes Asia and proceeded towards the elevator. On his way to the elevator, he heard Darlene shout, "*Sherwin anong nangyari?*", but he was not able to answer.

After said incident, Darlene abandoned petitioner and brought with her their two (2) young children. Petitioner later learned that Darlene and Jeffrey had an illicit relationship when he received a copy of the blog of Darlene, dated January 30, 2005, sent by his friend.

During his arraignment, on August 22, 2005, petitioner, with the assistance of counsel, pleaded “Not Guilty” to the charge. Thereafter, pre-trial conference was conducted on even date and trial on the merits ensued thereafter.

During the trial of the case, the prosecution presented the oral testimonies of Marie Antonette Managbanag (*Managbanag*), Maria Angelina Pelaez (*Pelaez*) and Carlos Alberto Lim Gonzales (*Gonzales*), respectively. The prosecution likewise formally offered several pieces of documentary evidence to support its claim.

For its part, the defense presented as witnesses, petitioner himself; his brother, Simeon Sander Dela Cruz III (*Cruz*), Greg Lasmarias Elbanvuena (*Elbanvuena*) and Managbanag, who was recalled to the witness stand as witness for the defense.

On February 26, 2007, the Regional Trial Court (*RTC*) of Makati City, Branch 147, rendered a Decision<sup>5</sup> finding petitioner guilty beyond reasonable doubt of the crime of Homicide, as defined and penalized under Article 249 of the Revised Penal Code (*RPC*), the *fallo* thereof reads:

WHEREFORE, Judgment is rendered finding herein accused Sherwin Dela Cruz y Gloria Guilty beyond reasonable doubt of the crime of Homicide as defined and penalized under Art. 249 of the Revised Penal Code, and sentencing him to suffer the indeterminate penalty of Eight (8) years and One (1) day of *prision mayor* medium as Minimum to Fourteen (14) years eight (8) months and one (1) day of *reclusion temporal* medium as Maximum; to indemnify the Heirs of Jeffrey Wernher Gonzales y Lim in the amount of ₱50,000.00 plus moral damages in the amount of ₱1 Million, and to pay the costs.

SO ORDERED.<sup>6</sup>

On March 28, 2007, petitioner filed a Notice of Appeal, while private respondent, through the private prosecutor, filed a Notice of Appeal on April 11, 2007 insofar as the sentence rendered against petitioner is concerned and the civil damages awarded.

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<sup>5</sup> Annex “P” to Petition, *rollo*, pp. 236-242.

<sup>6</sup> *Id* at 242.

After the denial of their motion for reconsideration, petitioner elevated the case to the Court of Appeals (CA). However, the latter denied their appeal and affirmed the RTC decision with modification on the civil liability of petitioner. The decretal portion of the Decision<sup>7</sup> reads:

**WHEREFORE**, we hereby **AFFIRM** the Decision of the Regional Trial Court of Makati, Branch 147 dated 26 February 2007 finding accused-appellant Sherwin Dela Cruz y Gloria **GUILTY** beyond reasonable doubt of the crime of Homicide with the following **MODIFICATIONS**:

- (1) to pay the heirs of the victim the amount of ₱50,000.00 as civil indemnity;
- (2) the amount of ₱50,000.00 as moral damages;
- (3) the amount of ₱25,000.00 as temperate damages;
- (4) the amount of ₱3,022,641.71 as damages for loss of earning capacity.
- (5) to pay the costs of the litigation.

**SO ORDERED.**<sup>8</sup>

Petitioner's motion for reconsideration was denied. Hence, the present petition.

Raised are the following issues for resolution:

1. WHETHER ALL THE REQUISITES OF THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE, AS PROVIDED FOR BY LAW AND SETTLED JURISPRUDENCE, ARE PRESENT IN THIS CASE.
2. WHETHER THE FIRING OF THE GUN WHEREIN ONLY A SINGLE BULLET WAS DISCHARGED THEREFROM WAS MERELY ACCIDENTAL WHICH OCCURRED DURING THE TIME THAT THE PETITIONER-APPELLANT WAS STILL IN THE ACT OF DEFENDING HIMSELF FROM THE CONTINUOUS UNLAWFUL AGGRESSION OF THE DECEASED VICTIM.
3. WHETHER THE PROSECUTION WAS ABLE TO PROVE ALL THE ESSENTIAL ELEMENTS CONSTITUTING THE CRIME OF HOMICIDE.
4. WHETHER THE PRIVILEGED MITIGATING CIRCUMSTANCE OF SELF-DEFENSE IS APPLICABLE IN THIS CASE.

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<sup>7</sup> *Supra* note 1.

<sup>8</sup> *Id.* at 73.

5. WHETHER PETITIONER-APPELLANT MAY BE HELD CIVILLY  
LIABLE FOR THE DEATH OF THE VICTIM ARISING FROM  
THE ACCIDENT THAT TRANSPIRED.<sup>9</sup>

There is no question that petitioner authored the death of the deceased-victim, Jeffrey. What is left for determination by this Court is whether the elements of self-defense exist to exculpate petitioner from the criminal liability for Homicide.

The essential requisites of self-defense are the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.<sup>10</sup> In other words, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.<sup>11</sup>

Considering that self-defense totally exonerates the accused from any criminal liability, it is well settled that when he invokes the same, it becomes incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself.<sup>12</sup> The burden of proving that the killing was justified and that he incurred no criminal liability therefor shifts upon him.<sup>13</sup> As such, he must rely on the strength of his own evidence and not on the weakness of the prosecution for, even if the prosecution evidence is weak, it cannot be disbelieved after the accused himself has admitted the killing.<sup>14</sup>

Measured against this criteria, we find that petitioner's defense is sorely wanting. Hence, his petition must be denied.

*First.* The evidence on record does not support petitioner's contention that unlawful aggression was employed by the deceased-victim, Jeffrey, against him.

Unlawful aggression is the most essential element of self-defense. It presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action.<sup>15</sup> There is aggression, only when the one

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<sup>9</sup> *Id.* at 24.

<sup>10</sup> *People v. Escarlos*, 457 Phil. 580, 595 (2003).

<sup>11</sup> *Id.* at 594-595.

<sup>12</sup> *Jacobo v. Court of Appeals*, 337 Phil. 7, 18 (1997).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Supra* note 10, at 596.

attacked faces real and immediate threat to his life.<sup>16</sup> The peril sought to be avoided must be imminent and actual, not merely speculative.<sup>17</sup> In the case at bar, other than petitioner's testimony, the defense did not adduce evidence to show that Jeffrey condescendingly responded to petitioner's questions or initiated the confrontation before the shooting incident; that Jeffrey pulled a gun from his chair and tried to shoot petitioner but failed — an assault which may have caused petitioner to fear for his life.

Even assuming *arguendo* that the gun originated from Jeffrey and an altercation transpired, and therefore, danger may have in fact existed, **the imminence of that danger had already ceased the moment petitioner disarmed Jeffrey by wresting the gun from the latter.** After petitioner had successfully seized it, there was no longer any unlawful aggression to speak of that would have necessitated the need to kill Jeffrey. As aptly observed by the RTC, petitioner had every opportunity to run away from the scene and seek help but refused to do so, thus:

In this case, accused and the victim grappled for possession of the gun. Accused admitted that he wrested the gun from the victim. *From that point in time until the victim shouted "guard, guard", then took the fire extinguisher, there was no unlawful aggression coming from the victim. Accused had the opportunity to run away.* Therefore, *even assuming that the aggression with use of the gun initially came from the victim, the fact remains that it ceased when the gun was wrested away by the accused from the victim.* It is settled that when unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor, otherwise, retaliation and not self-defense is committed (Peo Vs. Tagana, 424 SCRA 620). *A person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased* (PeoVs. Pateo, 430 SCRA 609).

Accused alleged that the victim was about to smash the fire extinguisher on his (accused's) head but he parried it with his hand holding the gun. This is doubtful as nothing in the records is or would be corroborative of it. In contrast, *the two (2) Prosecution witnesses whose credibility was not impeached, both gave the impression that the victim got the fire extinguisher to shield himself from the accused who was then already in possession of the gun.*<sup>18</sup>

Thus, when an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even wound the former aggressor.<sup>19</sup> To be sure, when the present victim no longer persisted in his purpose or action to the extent that the object of his attack was no longer in peril, there was no more unlawful aggression that would warrant

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Supra* note 5, at 240-241. (Emphasis supplied)

<sup>19</sup> *Supra* note 10, at 597.

legal self-defense on the part of the offender.<sup>20</sup> Undoubtedly, petitioner went beyond the call of self-preservation when he proceeded to inflict excessive, atrocious and fatal injuries on Jeffrey, even when the allegedly unlawful aggression had already ceased.

More, a review of the testimony of the prosecution witness, Pelaez, will show that if there was unlawful aggression in the instant case, the same rather emanated from petitioner, thus:

DIRECT EXAMINATION

Atty. Mariano:

Q: Can you relate to the Court, Ms. Witness, how did this incident happen?

A: We were still at work, we were expecting calls but there were no calls at the moment and I was standing at my work station and then ***Sherwin approached Jeff and he pointed a gun at the back of the head of Jeff.***

Q: And then what happened?

A: And then Jeff parried the gun and they started struggling for the possession of the gun.

Q: How far were you from this struggle when you witnessed it?

A: Probably 10 to 12 feet.

Q: Going back to your story, Ms. Witness, you mentioned that after Jeffrey warded off the gun, they started to struggle, what happened after that, if any?

A: After they struggled, the gun clicked three times and then after that Jeff tried to get hold of the fire extinguisher and the fourth shot went off and then Jeffrey fell down.

Q: And who was holding the gun?

A: Sherwin was holding the gun.

*(TSN, Oct. 17, 2005, pp. 12-14)*

CROSS-EXAMINATION:

Atty. Agoot:

Q: So you did not see when Sherwin approached Jeffrey because he came from the other side?

Atty. Mariano:

Objection, your Honor, witness already answered that.

Atty. Agoot:

I am on cross examination, your Honor.

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<sup>20</sup>

*Id.*



COURT

You didn't not see when he approached Jeffrey?

A: No, as I said, I saw him point the gun at the back of Jeff and he did not come from my side so that means...

COURT

No, the question is, You did not actually see Sherwin approached Jeffrey?

A: I saw him already at the back of Jeffrey.

Atty. Agoot

He was already at the back of Jeffrey when you saw him?

A: Yes, Sir.

*(TSN, Oct. 17, 2005, pp. 26-27)*<sup>21</sup>

Clearly, petitioner's allegation that when he approached Jeffrey, the latter pulled a gun from his chair and tried to shoot him, is not corroborated by separate competent evidence. Pitted against the testimony of prosecution witnesses, Managbanag and Pelaez, it pales in comparison and loses probative value. We have, on more than one occasion, ruled that the plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but also extremely doubtful in itself.<sup>22</sup>

In addition, other than petitioner's testimony, there is dearth of evidence showing that the alleged unlawful aggression on the part of Jeffrey continued when he blocked the path of petitioner while the latter tried to run away to avoid further confrontation with Jeffrey. We also agree with the findings of the RTC that there was no proof evincing that Jeffrey aimed and intended to smash the big fire extinguisher on petitioner's head. Alternatively, the prosecution witnesses maintained an impression that Jeffrey used the same to shield himself from petitioner who was then in possession of the gun, a deadly weapon. An excerpt of the testimony of Managbanag bares just that, to wit:

Atty. Agoot

Q: And then after pulling the fire extinguisher from the wall Jeffrey again faced the person who was holding the gun already?

**Witness:**

**A: He was holding the fire extinguisher like this.**

COURT

**For the record.**

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<sup>21</sup> Comment on Petition, *id.* at 385-386. (Emphasis supplied)

<sup>22</sup> *Supra* note 12, at 22.

**Atty. Mariano:**

**Witness demonstrating how the victim Jeffrey Gonzales was holding the fire extinguisher upright with his right hand above the fire extinguisher and his left hand below the fire extinguisher.**

**Witness:**

**The left hand would support the weight basically.**

**Atty. Agoot**

**Q: And then he used that fire extinguisher to protect himself from the slapping of that person who was in possession of the gun?**

**Witness**

**A: Yes, sir.**

**Atty. Agoot**

**Q: And then after that there was again a grappling?**

**Witness**

**A: No more grappling for possession. Because Jeffrey was still holding the fire extinguisher at that time. And then he fell holding on to the fire extinguisher.**

**Atty. Agoot**

**Q: You said here which I quote “binaril siya ng lalaki ng sunod-sunod pero hindi pumutok” Do you affirm and confirm this statement?**

**Witness**

**A: Yes, sir. They were pushing each other. The other person was trying to point the gun at Jeffrey and Jeffrey was trying to cover himself with the fire extinguisher so nagkakatulakan sila at the same time.**

**Atty. Agoot**

**Q: You said that the gun clicked, how many times did the gun click without firing?**

**Witness**

**A: Three (3) times, sir.**

**Atty. Agoot**

**Q: And what did the late Jeffrey do when the gun clicked but did not fire?**

**Witness**

**A: They were still pushing each other at that time.**

**Atty. Agoot**

**Q: Using the fire extinguisher, he used that to push against the person...**

**Witness**

**A: Basically trying to cover himself and trying to push away the person who was pointing the gun at him.**

**Atty. Agoot**

**Q: And why do you know that Jeffrey was trying hard to push the fire extinguisher?**

**Witness**

**A: Because I was seated roughly about 5 to 6 feet away from them. So I clearly saw what was going on at that time.**

(Direct Examination of Marie Antonette Managbanag for the Defense, TSN dated 04 September 2006, pp. 12-17, emphasis supplied)<sup>23</sup>

Petitioner's contention that Jeffrey's unlawful aggression was continuous and imminent is, therefore, devoid of merit.

Given that the criteria of unlawful aggression is indubitably absent in the instant case, the severe wounds inflicted by petitioner upon Jeffrey was unwarranted and, therefore, cannot be considered a justifying circumstance under pertinent laws and jurisprudence.

*Second.* Even assuming that the unlawful aggression emanated from the deceased victim, Jeffrey, the means employed by petitioner was not reasonably commensurate to the nature and extent of the alleged attack, which he sought to avert. As held by the Court in *People v. Obordo*:<sup>24</sup>

Even assuming *arguendo* that there was unlawful aggression on the part of the victim, accused-appellant likewise failed to prove that the means he employed to repel Homer's punch was reasonable. The means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense. Accused-appellant claimed that the victim punched him and was trying to get something from his waist, so he (accused-appellant) stabbed the victim with his hunting knife. His act of immediately stabbing Homer and inflicting a wound on a vital part of the victim's body was unreasonable and unnecessary considering that, as alleged by accused-appellant himself, the victim used his bare fist in throwing a punch at him.<sup>25</sup>

Indeed, the means employed by a person resorting to self-defense must be rationally necessary to prevent or repel an unlawful aggression. The opposite was, however, employed by petitioner, as correctly pointed out by the RTC, thus:

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<sup>23</sup> Annex "N" to Petition, *rollo*, pp. 172-173.

<sup>24</sup> 431 Phil. 691 (2002).

<sup>25</sup> *People v. Obordo*, *supra*, at 712.

The victim was holding the fire extinguisher while the second was holding the gun. *The gun and the discharge thereof was unnecessary and disproportionate to repel the alleged aggression with the use of fire extinguisher.* The rule is that the means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense (Peo vs. Obordo, 382 SCRA 98).

*It was the accused who was in a vantage position as he was armed with a gun, as against the victim who was armed, so to speak, with a fire extinguisher, which is not a deadly weapon.* Under the circumstances, accused's alleged fear was unfounded. The Supreme Court has ruled that neither an imagined impending attack nor an impending or threatening attitude is sufficient to constitute unlawful aggression (Catalina Security Agency Vs. Gonzales-Decano, 429 SCRA 628). It is a settled rule that to constitute aggression, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided is imminent and actual, not merely imaginary (Senoja v. Peo., 440 SCRA 695).<sup>26</sup>

If petitioner had honestly believed that Jeffrey was trying to kill him, he should have just run, despite any obstruction, considering that he was already in possession of the gun. He could have also immediately sought help from the people around him, specifically the guard stationed at the floor where the shooting incident happened. In fact, he could have reported the incident to the authorities as soon as he had opportunity to do so, if it was indeed an accident or a cry of self-preservation. Yet, petitioner never did any of that.

We find it highly specious for petitioner to go through the process of tussling and hassling with Jeffrey, and in the end, shooting the latter on the forehead, **not only once, but four times**, the last shot finally killing him, if he had no intention to hurt Jeffrey. Thus:

Moreover, the Prosecution's eyewitnesses were consistent in declaring that while there was prior struggle for the possession of the gun, it was nevertheless accused who was holding the gun at the time of the actual firing thereof (TSN, p. 30, October 10, 2005; TSN, p. 14, October 17, 2005). Witness Managbanag even alleged that while the victim (Jeffrey), who was in possession of the fire extinguisher, and the accused were pushing each other, *accused pointed the gun at the victim. She heard three (3) clicks and on the 4<sup>th</sup>, the gun fired* (TSN, p. 12, October 10, 2005). *Under the circumstances, it cannot be safely said that the gun was or could have been fired accidentally. The discharge of the gun which led to the victim's death was no longer made in the course of the grapple and/or struggle for the possession of the gun.*<sup>27</sup>

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<sup>26</sup> *Supra* note 5, at 241. (Emphasis supplied)

<sup>27</sup> *Id.* at 240. (Emphasis supplied)

The observation of the RTC dispels any doubt that the gun may have been shot accidentally to the detriment of Jeffrey. The fire was neither a disaster nor a misfortune of sorts. While petitioner may not have intended to kill Jeffrey at the onset, at the time he clicked the trigger thrice consecutively, his intent to hurt (or even kill) Jeffrey was too plain to be disregarded. We have held in the past that the nature and number of wounds are constantly and unremittingly considered important indicia which disprove a plea of self-defense.<sup>28</sup> Thus, petitioner's contention that an accident simultaneously occurred while he was in the act of self-defense is simply absurd and preposterous at best. There could not have been an accident because the victim herein suffered a gunshot wound on his head, a vital part of the body and, thus, demonstrates a criminal mind resolved to end the life of the victim.

Besides, petitioner's failure to inform the police of the unlawful aggression on the part of Jeffrey and to surrender the gun that he used to kill the victim militates against his claim of self-defense.<sup>29</sup>

In view of the foregoing, we find it illogical to discuss further the third element of self-defense since it is recognized that unlawful aggression is a *conditio sine qua non* for upholding the justifying circumstance of self-defense.<sup>30</sup> If there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.<sup>31</sup> Hence, there is no basis to entertain petitioner's argument that a privileged mitigating circumstance of self-defense is applicable in this case, because unless the victim has committed unlawful aggression against the other, there can be no self-defense, complete or incomplete, on the part of the latter.<sup>32</sup>

Anent petitioner's argument that the RTC erred when it failed to consider as suppression of evidence the prosecution's alleged deliberate omission to present the testimonies of the security guards-on-duty at the time of the shooting incident, the same fails to persuade. We concur with the decision of the CA on this point, to wit:

Having admitted the killing of the victim, the burden of evidence that he acted in self-defense, shifted to accused-appellant Dela Cruz. He must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence, for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing.

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<sup>28</sup> *People v. Figuracion*, 415 Phil. 12, 26 (2001).

<sup>29</sup> *Id.* at 28.

<sup>30</sup> *Supra* note 12, at 598.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

The security guards on duty at the time of the subject incident were at the disposal of both the prosecution and the defense. The defense did not proffer proof that the prosecution prevented the security guards from testifying. There is therefore no basis for it to conclude that the prosecution is guilty of suppression of evidence.

*The defense could have easily presented the security guards if it is of the opinion that their [the security guards] testimonies were vital and material to the case of the defense.* It could have compelled the security guards on duty to appear before the court. xxx.<sup>33</sup>

It is worthy to note that the question of whether petitioner acted in self-defense is essentially a question of fact.<sup>34</sup> It is the peculiar province of the trial court to determine the credibility of witnesses and related questions of fact because of its superior advantage in observing the conduct and demeanor of witnesses while testifying.<sup>35</sup> This being so and in the absence of a showing that the CA and the RTC failed to appreciate facts or circumstances of such weight and substance that would have merited petitioner's acquittal, this Court finds no compelling reason to disturb the ruling of the CA that petitioner did not act in self-defense.<sup>36</sup>

In this regard, we do not subscribe to petitioner's contention that since the incident transpired in Jeffrey's office, and the witnesses presented by the prosecution are known officemates of Jeffrey, the witnesses are expected to testify in favor of Jeffrey and against petitioner. As correctly pointed out by respondent, there appears no motive on the part of the prosecution witnesses to falsely testify against petitioner.<sup>37</sup> The fact that they are officemates of Jeffrey does not justify a conclusion that Managbanag and Pelaez would concoct or fabricate stories in favor of Jeffrey for the mere purpose of implicating petitioner with such a serious crime, especially since they are testifying under oath.

All told, we find no basis to doubt or dispute, much less overturn, the findings of the RTC and the CA that the elements of homicide are present in the instant case as amply shown by the testimonies of the prosecution eyewitnesses, and they constitute sufficient proof of the guilt of petitioner beyond cavil or doubt.

Nevertheless, with regard to the appreciation of the aggravating circumstance of use of an unlicensed firearm, we deviate from the findings of the CA. A perusal of the Information will show that the use of unlicensed firearm was expressly alleged in the killing of Jeffrey. This allegation was

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<sup>33</sup> *Supra* note 1, at 69. (Emphasis supplied)

<sup>34</sup> *Supra* note 12, at 22.

<sup>35</sup> *Id.* at 18.

<sup>36</sup> *Id.* at 22-23.

<sup>37</sup> *Supra* note 21, at 390.

further proved during trial by the presentation of the Certification from the PNP Firearms and Explosives Division, dated November 11, 2005, certifying that petitioner is not a licensed/registered firearm holder of any kind and calibre, per verification from the records of the said Division. Accordingly, under Paragraph 3 of Section 1 of Republic Act (R.A.) No. 8294, amending Section 1 of Presidential Decree (P.D.) No. 1866, such use of an unlicensed firearm shall be considered as an aggravating circumstance, to wit:

X X X X

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

X X X X.

Under Article 249 of the RPC, the penalty for homicide is *reclusion temporal*. There being an aggravating circumstance of use of unlicensed firearm, the penalty imposable on petitioner should be in its maximum period.<sup>38</sup> Applying the Indeterminate Sentence Law, the petitioner shall be sentenced to an indeterminate penalty of from ten (10) years and one (1) day of *prision mayor* maximum, as the minimum penalty, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* maximum, as the maximum penalty.

As to the award of civil indemnity, moral damages, and damages for loss of earning capacity in favor of private respondent, we sustain the findings of the CA in so far as they are in accordance with prevailing jurisprudence. In addition, we find the grant of exemplary damages in the present case in order, since the presence of special aggravating circumstance of use of unlicensed firearm has been established.<sup>39</sup> Based on current jurisprudence, the award of exemplary damages for homicide is ₱30,000.00.<sup>40</sup>

Finally, pursuant to this Court's ruling in *Nacar v. Gallery Frames*,<sup>41</sup> an interest of six percent (6%) per annum on the aggregate amount awarded for civil indemnity and damages for loss of earning capacity shall be imposed, computed from the time of finality of this Decision until full payment thereof.

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<sup>38</sup> Revised Penal Code, Art. 64, par. 3.

<sup>39</sup> *Palaganas v. People*, 533 Phil. 169, 198 (2006).


<sup>40</sup> *Id.*

<sup>41</sup> G.R. No. 189871, August 13, 2013, 7903 SCRA 439 (2013).


**WHEREFORE**, the petition is **DENIED**. The May 7, 2009 Decision and August 19, 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 89257, finding petitioner Sherwin Dela Cruz guilty beyond reasonable doubt of the crime of Homicide, are hereby **AFFIRMED** with **MODIFICATIONS**, to wit:

- (1) Petitioner shall be sentenced to an indeterminate penalty of from ten (10) years and one (1) day of *prision mayor* maximum, as the minimum penalty, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* maximum, as the maximum penalty;
- (2) Petitioner is likewise **ORDERED** to pay the heirs of the victim the following:
  - a. the amount of ₱50,000.00 as civil indemnity;
  - b. the amount of ₱50,000.00 as moral damages;
  - c. the amount of ₱25,000.00 as temperate damages;
  - d. the amount of ₱30,000.00 as exemplary damages;
  - e. the amount of ₱3,022,641.71 as damages for loss of earning capacity;
  - f. for the civil indemnity and the damages for loss of earning capacity, an interest of six percent (6%) per annum, computed from the time of finality of this Decision until full payment thereof; and
  - g. the costs of the litigation.

**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

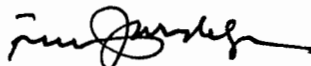
**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



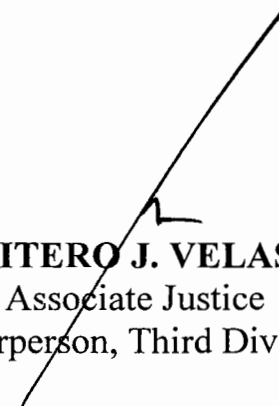
  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

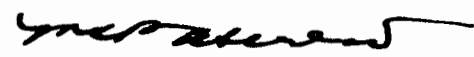
### ATTESTATION

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