



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 224498**

Present:

SERENO, C.J.,  
*Chairperson,*

- versus -

\*VELASCO, JR.,  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO, and  
 TIJAM, JJ.

**PFC ENRIQUE REYES,**  
 Accused-Appellant.

Promulgated:

**JAN 11 2018**

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**DECISION**

**TIJAM, J.:**

This is an appeal from the June 10, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05671, which affirmed with modification the June 25, 2012 Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 54, Manila, in Criminal Case No. 91-97103, modifying accused-appellant PFC Enrique Reyes' conviction from Murder to Homicide, and the CA's February 3, 2016 Resolution<sup>3</sup> which denied his Motion for Reconsideration.

<sup>1</sup>Designated additional Member as per Raffle dated October 24, 2017.

<sup>2</sup>Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda; *Rollo*, pp. 2-17.

<sup>3</sup>Penned by Presiding Judge Maria Paz R. Reyes-Yson; *CA rollo*, pp. 46-62.

<sup>4</sup>*Id.* at 473-477.

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### The Facts

Accused-appellant was charged with the murder of Danilo Estrella y Sanchez (Danilo) in an Information dated August 1, 1991, the accusatory portion of which reads as follows:

That on or about August 13, 1990, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with treachery and evident premeditation and with intent to kill, attack, assault and use personal violence upon C<sub>2</sub>C DANILO ESTRELLA Y SANCHEZ by then and there firing his armalite rifle at said C<sub>2</sub>C Danilo Estrella y Sanchez who was then walking home and hitting him on different parts of the body, depriving the latter of a chance to defend himself from the attack thereby inflicting upon him mortal gunshot wounds in the different parts of his body which wounds were the direct and immediate cause of his death thereafter.<sup>4</sup>

On accused-appellant's motion for the determination of probable cause, the RTC, in its July 23, 1992 Order, found probable cause to hold accused-appellant for trial and ordered his arrest. Finding, however, that the evidence of guilt was not strong, the RTC allowed accused-appellant to post bail in the amount of ₱150,000.00. Upon arraignment, accused-appellant entered a plea of "not guilty."<sup>5</sup>

Based on the testimonies of its three eyewitnesses, namely, Eliseo de Castro (Eliseo), Apolonio Gaza, Jr. (Apolonio) and Rolando Quintos (Rolando), the prosecution sought to prove that around 7:00 in the morning of August 13, 1990, Eliseo and several others were in the basketball court along Francisco Street, Tondo, Manila, in front of Danilo's house, while Rolando was cleaning his truck parked in the same basketball court. Eliseo and Rolando saw accused-appellant fire his Armalite rifle upwards while his nephews, Rey Buenaflor, a certain Al and Bernie, picked up the empty slugs. Danilo was then walking towards his house after tending to his fighting cock, and was three steps away from his residence when accused-appellant suddenly fired at him from behind, causing him to fall on the ground. Accused-appellant then approached Danilo. Hearing the gunshots from his house prompted Apolonio to go to nearby Francisco Street where he saw Danilo's body on the ground, bathing in blood, while accused-appellant, who was wearing only a pair of camouflage pants and holding an Armalite rifle in his right hand, stood in front of Danilo. Accused-appellant took the .38 caliber firearm tucked in Danilo's waist, and fired the same upwards thrice. Afterwards, he placed the gun on Danilo's right hand and turned the latter's body on a lying position. Out of fear, Eliseo and the others hid behind Rolando's truck, and when the firing stopped, they tried to get Danilo's body. Accused-appellant, however, fired his Armalite upwards,

<sup>4</sup>Rollo, p. 4.

<sup>5</sup>Id. at 4.

saying “*walang kukuha nito,*” and then walked to his house. When the policemen later arrived, they went into accused-appellant’s house. The policemen, together with accused-appellant, subsequently boarded the mobile car.<sup>6</sup>

Dr. Emmanuel Lagonera took the witness stand for the prosecution to identify the certificate of identification of dead body as well as the medico-legal report executed by the National Bureau of Investigation’s Dr. Marcial Cenido who passed away before he could testify in court.<sup>7</sup> Based on said report, Danilo died from multiple gunshot wounds.<sup>8</sup>

The report listed the following injuries to Danilo’s body:

1. Gunshot wound, right clavicular region, 8.5 cm. From the anterior midline, measuring 13 cm[.] 8 cm., directed obli-backwards, slightly upwards and towards the middle fracturing the clavicle, middle 3<sup>rd</sup>, right and 6<sup>th</sup> cervical vertebra lacerating the spinal cord, and with the recovery of a markedly deformed copper jacket and lead fragments embedded in the muscle tissue at the left lower nape and a lead splinter at the left upper nape;
2. Gunshot wound, thru and thru, point of entry at the left temporal region, 2.3 cm. above the left ear, measuring 1.5 cm. x 0.5 cm., directed obliquely backwards, downwards and slightly towards the midline penetrating the cranial cavity and lacerating the left temporal and occipital lobes and left cerebellar hemisphere and the slug exiting behind the left ear and which measures 7 cm. x 6 cm.;
3. Gunshot wound, thru and thru, right ring finger, point of entry at the dorsal surface measuring 1 cm. x 0.6 cm., directed obliquely forwards, very slightly upwards and towards the small finger fracturing and dislocating the proximal interphalangeal joint, slug exiting anteriorly measuring 3 m. 1.2 cm., and lacerating the palmar surface of the right small finger and which measures 5.5 cm. x 1.5 cm.;
4. Lacerated wound, proximal 3<sup>rd</sup>, right arm, antero-lateral surface measuring 4 cm. x 3 cm. thru the subcutaneous tissue;
5. Lacerated wound, right arm, middle 3<sup>rd</sup>, antero-medial surface measuring 7.5 cm x 4.5 cm. thru the subcutaneous tissue;
6. Splinter wounds, right and left thigh, anterior; and
7. Abrasion, upper distal 3<sup>rd</sup>, right leg, antero-medial surface measuring 2 cm. x 0.2 cm.<sup>9</sup>

Testifying as the prosecution’s rebuttal witness, P/Sr. Insp. Joseph

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<sup>6</sup>Id. at 5-6; *CA rollo*, pp. 50-51.

<sup>7</sup>Id. at 5. Id. at 53.

<sup>8</sup>Id. at 2-4.

<sup>9</sup>Id. at 3.

Torcita of the Philippine National Police Crime Laboratory identified a Chemistry Report by which the prosecution sought to prove that a paraffin examination of Danilo's hands yielded a negative result for the existence of gunpowder nitrates.<sup>10</sup>

With his nephews Adelardo Buenaflor III (Adelardo) and P/Insp. Gary Reyes (P/Inp. Gary), his neighbors Celia Rodriguez (Celia) and Ernesto Galvez (Ernesto), police officer Felizardo Ellano (Ellano) and retired police ballisticsian Nelson Fuggan (Nelson), as his witnesses,<sup>11</sup> accused-appellant invoked self-defense. He claimed that even before the incident, he was already receiving death threats from Danilo's uncle, Manuel Sanchez (Manuel), who was a suspected member of the "*Bawas Gang*" whose activities he had a hand in exposing as an Investigator of the Theft and Robbery Section of the Manila Police Department.<sup>12</sup>

According to accused-appellant, he was on his way home in the morning of August 13, 1990, after preparing his son's wake, when he was met by Adelardo who informed him that he had overheard Danilo and four other men talking on board an owner-type jeep parked along Velasquez Street, Tondo, Manila. One of them remarked "*Itumba na natin iyan puede na kahit anong mangyari,*" to which Danilo replied "*Hagisan ng granada kahit sa bahay.*" Fearing for his family's safety, accused-appellant prepared his Armalite rifle and called for assistance from the Police Station 1, Theft and Robbery Section, and the SWAT. After a while, someone outside the house shouted that there were policemen in civilian clothes. Hearing this, accused-appellant stood from a rocking chair, got his Armalite rifle and told Gary and his other companions not to leave the house. Accused-appellant then proceeded towards Francisco Street going to Velasquez Street, thinking that the police he called had arrived. At that time, Celia, who was on her way to accused-appellant's house, saw a man holding a gun approaching accused-appellant from behind. When Celia shouted "Ricky," accused-appellant turned towards Celia and saw Danilo holding a gun in the act of shooting him. Accused-appellant drew and fired his Armalite rifle, hitting Danilo who fell on the ground. He took Danilo's gun for his safety. He was about to lift Danilo to bring him to the hospital, when he heard gunfire and the cocking of a gun from a container van parked nearby. Fearful of a possible ambush, he fired Danilo's .38 caliber revolver as well as his Armalite rifle at the direction of the container van, taking cover behind a ten-wheeler truck parked on the street until the police patrol car arrived. He proceeded to his house through the backdoor. When he heard Ellano call his name, he surrendered himself as well as his Armalite rifle and Danilo's gun.<sup>13</sup>

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<sup>10</sup>Id. at 5; Id. at 50.

<sup>11</sup>Id.

<sup>12</sup>Id. at 6.

<sup>13</sup>Id. at 6-7; Id. at 54.

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On June 25, 2012, the RTC rendered its Decision<sup>14</sup> convicting accused-appellant of murder. The dispositive portion of the Decision reads:

**WHEREFORE, all premises considered**, accused Enrique Reyes is hereby found guilty beyond reasonable doubt of the offense of **Murder** and is hereby sentenced to suffer the [sic] imprisonment of *reclusion perpetua*. Accordingly, the surety bond posted by the accused for his provisional liberty is hereby cancelled and the accused is hereby ordered to be committed at the National Bilibid Prison.

He is, further, sentenced to compensate the Heirs of Danny Estrella the following amounts consistent with law and jurisprudence relating to an accused adjudged guilty of a crime covered by Republic Act No. 7659: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages and ₱30,000 as exemplary damages.

Furnish the Public Prosecutor, the private complainants, the accused, his counsel and the Warden of the Manila City Jail copies of this decision.

Given in open court this 25th day of June 2012 in the City of Manila, Philippines.<sup>15</sup>

The RTC gave more weight to the testimonies of the prosecution witnesses and rejected accused-appellant's claim of self-defense, finding no clear and convincing proof that Danilo had assaulted him or posed an imminent threat to him. The RTC held that the killing was attended by treachery because accused-appellant fired at Danilo suddenly and without giving him the chance to run or defend himself. The trial court likewise appreciated the qualifying circumstance of evident premeditation, holding that accused-appellant had sufficient time to contemplate his actions while sitting in his rocking chair before emerging from his house armed with a rifle, ready to kill.<sup>16</sup>

On appeal, the CA sustained the RTC's finding that the killing was not done in self-defense in the absence of unlawful aggression. However, finding no sufficient evidence that would establish the aggravating circumstances of treachery and evident premeditation, the appellate court downgraded accused-appellant's conviction from murder to homicide. The dispositive portion of the CA's June 10, 2015 Decision<sup>17</sup> reads:

**WHEREFORE**, the appeal is **PARTIALLY GRANTED**. The June 25, 2012 Decision of the Regional Trial Court, Branch 54, Manila in Criminal Case No. 91-97103 is **AFFIRMED** with **MODIFICATIONS**. As modified, accused-appellant PFC ENRIQUE REYES is found **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE**. He is

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<sup>14</sup>Supra note 2.

<sup>15</sup>Id. at 61.

<sup>16</sup>Id. at 7.

<sup>17</sup>Supra note 1, id. at 16-17.



hereby sentenced to suffer the indeterminate penalty of twelve (12) years of *prision mayor* as minimum to fourteen (14) years and eight (8) months of *reclusion temporal* minimum as maximum, and to pay civil indemnity and moral damages of ₱50,000.00 each. The award of exemplary damages is hereby deleted. Further, all the monetary awards for damages are subject to a 6% interest *per annum* from date of finality of this decision until fully paid.

**SO ORDERED.**

Accused-appellant moved for reconsideration, assailing both his conviction and the penalty imposed on him by the appellate court.<sup>18</sup> Accused-appellant also moved to post bail in view of the downgrading of the offense from murder to homicide.<sup>19</sup> Both motions were denied in the CA's Resolution dated February 3, 2016.<sup>20</sup>

In the instant appeal, accused-appellant insists that he acted in complete self-defense and, thus, prays for an acquittal.

**The Court's Ruling**

The appeal lacks merit.

By invoking self-defense, accused-appellant admitted inflicting the fatal injuries that caused Danilo's death, albeit under circumstances that, if proven, would have exculpated him. With this admission, the burden of proof shifted to him to show that the killing was attended by the following circumstances: (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 invoking self-defense.<sup>21</sup>

Considering that self-defense totally exonerates the accused from criminal responsibility, it is incumbent upon him who invokes the same to prove by clear, satisfactory and convincing evidence that he indeed acted in defense of his life or personal safety.<sup>22</sup> When successful, an otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused.<sup>23</sup>

Unlawful aggression is the indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense

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<sup>18</sup>CA rollo, p. 474.

<sup>19</sup>Id.

<sup>20</sup>Supra note 3, id. at 474.

<sup>21</sup>*Guevarra, et al. v. People*, 726 Phil. 183, 194 (2014); *People v. Fontanilla*, 680 Phil. 155, 165 (2012).

<sup>22</sup>*Dela Cruz v. People, et al.*, 747 Phil. 376, 384-385 (2014); *People v. Fontanilla*, id.

<sup>23</sup>*Oriente v. People*, 542 Phil. 335, 347 (2007).

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is unavailing for there is nothing to repel.<sup>24</sup> Verily, there can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person invoking it as a justifying circumstance.<sup>25</sup>

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.<sup>26</sup> The test for the presence of unlawful aggression is whether the victim's aggression placed in real peril the life or personal safety of the person defending himself. The danger must not be an imagined or imaginary threat. Accordingly, the confluence of these elements of unlawful aggression must be established by the accused, to wit: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or at least imminent; and (c) the attack or assault must be unlawful.<sup>27</sup>

As the second element of unlawful aggression will show, it is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury.<sup>28</sup> Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening or intimidating attitude, nor must it be merely imaginary, but must be offensive, menacing and positively strong, manifestly showing the wrongful intent to cause injury (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack).<sup>29</sup> There must be an actual, sudden, unexpected attack or imminent danger thereof, which puts the accused's life in real peril.<sup>30</sup>

Tested against the foregoing criteria, the Court finds the element of unlawful aggression to be wanting in this case. As the CA succinctly held:

There is nothing in the records which would clearly and convincingly prove Enrique's claim that his life was in danger when he saw Danilo. Enrique claimed that when Celia shouted his name, he saw Danilo who was about to shoot him. However, based on Celia's testimony, Danilo was only approaching Enrique while holding a gun. Celia did not witness any positive act showing the actual and material unlawful aggression on the part of the victim. Even P/Insp. Gary, whom Enrique presented as an alleged eyewitness, only testified that he saw a man carrying a small firearm approaching Enrique and when the latter turned to his right, a volley of gunshots followed. Evidently, the records of this case are bereft of any indication of unlawful aggression that would

<sup>24</sup>*People v. Fontanilla*, supra note 21, id at 165.

<sup>25</sup>*Guevarra, et al. v. People*, supra at 194-195.

<sup>26</sup>Id.

<sup>27</sup>*People v. Fontanilla*, supra note 21, id.

<sup>28</sup>*People v. Nugas*, 677 Phil. 168, 177-178 (2011).

<sup>29</sup>*People v. Fontanilla*, supra note 21, id. at 166; *People v. Nugas*, supra at 177; *Manaban v. Court of Appeals*, 527 Phil. 84, 99 (2006).

<sup>30</sup>*Oriente v. People*, supra note 23, at 347; *Manaban v. People*, supra at 99.

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justify a finding of self-defense.<sup>31</sup>

Indeed, accused-appellant failed to show an attack so offensive, menacing and strongly indicative of an intent to cause injury, as to justify the killing of Danilo. In *People v. Rubiso*<sup>32</sup>, the Court held:

Assuming that Hubines had a gun and pulled it, however, records show that he did not manifest any aggressive act which may have imperiled the life and limb of herein appellant. It is axiomatic that the mere thrusting of one's hand into his pocket as if for the purpose of drawing a weapon is not unlawful aggression. **Even the cocking of a rifle without aiming the firearm at any particular target is not sufficient to conclude that one's life was in imminent danger. Hence, a threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression.**<sup>33</sup>  
(Emphasis ours)

Furthermore, the prosecution's eyewitnesses have established that Danilo was on his way home after tending to his fighting cock, and was three steps away from his house, when accused-appellant suddenly fired his Armalite at him. They also testified that Danilo's gun was tucked in his waist (or his right side), repudiating accused-appellant's claim that the victim had been holding a gun when accused-appellant shot him.

Both the RTC and the CA gave weight and credence to the testimonies of said eyewitnesses. The CA noted that they were "made in a clear, positive, straightforward and consistent manner that inspire(s) belief, unwavering even under cross-examination by the defense."<sup>34</sup> The appellate court further observed that the testimonies were "replete with details that could not easily be concocted by prevaricating witnesses."<sup>35</sup>

The trial court's assessment of the facts, as affirmed by the CA, is entitled to great weight and respect.<sup>36</sup> Absent any clear disregard of evidence, We find no reason to deviate from such finding.<sup>37</sup>

The records also show no evidence of any dubious or improper motive on the part of the prosecution's eyewitnesses to falsely testify against accused-appellant.<sup>38</sup> It is settled that where there is nothing to indicate that witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are

<sup>31</sup>*Rollo*, p. 10.

<sup>32</sup>447 Phil. 374, 381 (2003).

<sup>33</sup>*Id.* at 381.

<sup>34</sup>*Rollo*, p. 11.

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

<sup>36</sup>*Almojuela v. People*, 734 Phil. 636, 651 (2014).

<sup>37</sup>*Id.*

<sup>38</sup>*Rollo*, p. 11.

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entitled to full faith and credit.<sup>39</sup>

Accused-appellant harps on the alleged inconsistencies in the prosecution witnesses' testimonies. He points to the supposed disparity between Rolando's testimony that accused-appellant got Danilo's gun from his waist and Apolonio's account that accused-appellant took it from the right side of Danilo's chest. Accused-appellant likewise impugns Rolando's testimony that accused-appellant shot Danilo six times, which allegedly conflicts with the three gunshot wounds indicated in the medico-legal report.<sup>40</sup>

However, after having owned the crime, the burden of proof has been shifted to accused-appellant to establish self-defense. He, therefore, cannot simply protest that the prosecution's evidence is weak. He must rely on the strength of his own evidence because even if weak, the prosecution's evidence cannot be disbelieved after the accused himself has admitted to the killing. His failure to adduce clear and convincing evidence of self-defense will accordingly result in his conviction.<sup>41</sup>

In any event, as the CA correctly found, the inconsistencies thus cited refer to minor matters.

Inconsistencies in the witnesses' testimonies referring to minor details do not destroy their credibility.<sup>42</sup> Such minor inconsistencies even manifest truthfulness and candor and remove any suspicion of a rehearsed testimony.<sup>43</sup> Different persons have different reflexes which may produce varying reactions, impressions, perceptions and recollections.<sup>44</sup> Considering the natural frailties of the human mind and its capacity to assimilate all material details of a given incident, slight variances in the declarations of witnesses hardly weaken their probative value.<sup>45</sup> As long as the testimonies of the witnesses corroborate one another on material points, particularly in relating the principal occurrence and in the positive identification of the assailant, minor inconsistencies therein will not impair their credibility.<sup>46</sup>

The alleged inconsistencies aside, the testimonies of the prosecution's eyewitnesses concur on material points.<sup>47</sup> Taken as a whole,<sup>48</sup> they clearly

<sup>39</sup>*People v. Aquino*, 724 Phil. 739, 755 (2014); *People v. Dadao, et al.*, 725 Phil. 298, 310-311 (2014).

<sup>40</sup>*Rollo*, pp. 11-12 and 40; *CA rollo*, p. 301.

<sup>41</sup>*Dela Cruz v. People, et al.*, supra note 22, id. at 385; *People v. Fontanilla*, supra note 21, id. at 166-167; *Oriente v. People*, supra note 30, id. at 346.

<sup>42</sup>*People v. Pidoy*, 453 Phil. 221, 229 (2003).

<sup>43</sup>*Id.*

<sup>44</sup>*People v. Zamora*, 343 Phil. 574, 584 (1997).

<sup>45</sup>*People v. Dadao*, supra note 39, id. at 311.

<sup>46</sup>*People v. Calara*, 710 Phil. 477, 484 (2013).

<sup>47</sup>*Rollo*, p. 12.

<sup>48</sup>In *People v. Zamora*, supra at 584, the Court held: "Each (witness) may give a different account of what transpired. One testimony may be replete with details not found in the other. But taken as a whole,

establish that Danilo was neither holding nor pointing a gun at accused-appellant, and was in fact on his way home, when accused-appellant shot him with an Armalite rifle.

Besides, whether Danilo's gun was taken by accused-appellant from his waist or from the right side of his chest, the testimonies of Apolonio and Rolando are consistent in showing that the gun was tucked close to the victim's body, negating accused-appellant's claim that Danilo was pointing the same at him.

Furthermore, in *People v. Joel Tañeza y Dacal*,<sup>49</sup> the Court held:

Accused-appellant points to the fact that Esgrina's testimony conflicts with the medico-legal report of Dr. Figuracion as well as the physical evidence, for while Esgrina stated that the victim was shot four times, the autopsy indicated at least five gunshot wounds and only four empty shells were submitted in evidence by the prosecution. Furthermore, there is no indication of head bruises in the autopsy report as to coincide with Esgrina's representation that she saw accused-appellant strike Umandam on the head with the gun.

Even as Esgrina's eyewitness account does not tally to the last detail with the findings in the medico-legal report, we do not perceive such inconsistencies as materially affecting the substance of her testimony. Inconsistencies such as these in the testimonies of prosecution witnesses have been known to happen, and indeed acquittals have been the result where the inconsistencies and self-contradictions dealt with material points as to altogether erode the credibility of the witness. On the other hand, discrepancies which are minor in character may also serve to add credence and veracity to a witness' testimony, and enhance her credibility in the process. The latter rule we find applicable to the instant case, for the inconsistencies pointed out by the defense do not alter the substance of Esgrina's testimony – which is that accused-appellant attacked a defenseless Emersion Umandam.<sup>50</sup>

Accused-appellant contends that the "looming" death threat from Manuel's group, owing to his exposure of the latter's alleged illegal activities, became real and evident when his nephew, Adelardo, overheard Danilo's plan to kill him. Thus, he submits that Danilo's remarks were "more than enough to show the imminent and real danger" to his life.<sup>51</sup>

The jurisprudential standards for a finding of unlawful aggression clearly negate accused-appellant's argument. Granting they were true, neither the "looming" threat perceived by accused-appellant nor the remarks overheard by his nephew satisfies the requirement of an actual, menacing, sudden and unexpected danger to accused-appellant's life. To constitute

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the versions must concur on material points."

<sup>49</sup>389 Phil. 398 (2000).

<sup>50</sup>Id. at 409.

<sup>51</sup>CA rollo, pp. 434-435.

imminent unlawful aggression, the attack must be at the point of happening and must not be imaginary or consist in a mere threatening attitude.<sup>52</sup> Furthermore, as the trial court found, the supposed threat overheard by Adelardo actually made “no specific or definite reference to (accused-appellant).”<sup>53</sup> The Court is thus unconvinced that there was a real peril to accused-appellant’s life when he killed Danilo.

Accused-appellant avers that in self-defense, he fired shots at Danilo, hitting the ring finger of the latter’s right hand which supposedly held a gun pointed at him. Accused-appellant thus argues that the gunshot wound through Danilo’s right ring finger as well as the lacerated wounds on his right arm prove that Danilo was in the act of shooting and guilty of unlawful aggression.

We are not persuaded. Said injuries do not conclusively prove accused-appellant’s theory of unlawful aggression, and accused-appellant has offered no credible evidence to convince the Court otherwise. The testimonies of accused-appellant’s own witnesses failed to establish that the victim was aiming a gun at him. Furthermore, the testimonies of the prosecution witnesses consistently showed that the victim was neither holding a gun nor pointing one at accused-appellant. Plainly taken, therefore, the argument is baseless and self-serving. Besides, accused-appellant’s contention only serves to prove that the other gunshots, to the victim’s head and clavicle, both fatal,<sup>54</sup> were neither necessary nor justified in the name of self-defense.

Verily, accused-appellant failed to discharge his burden of proving unlawful aggression by clear and convincing evidence. Unlawful aggression on the part of the victim is a statutory and doctrinal requirement for the justifying circumstance of self-defense to be appreciated. Without it, there can be no self-defense, complete or incomplete.<sup>55</sup>

In fact, evidence clearly establishes that accused-appellant was the aggressor. As the RTC found, Eliseo and Rolando positively and categorically stated that even before Danilo was shot, accused-appellant was already firing his Armalite rifle upwards and as Danilo was walking towards his house, accused-appellant suddenly fired at him, causing him to fall on the ground. Eyewitnesses also saw accused-appellant then take the firearm tucked in Danilo’s waist and fire it thrice in an upward direction, placing the gun thereafter on Danilo’s right hand and turning his body in a lying position. When Eliseo and others tried to get Danilo’s body, accused-appellant fired his Armalite upward, telling them “*walang kukuha nito.*”

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<sup>52</sup>*People v. Fontanilla*, supra note 21, id. at 166; *People v. Nugas*, supra note 28, id. at 178; *Manaban v. Court of Appeals*, supra note 29, id. at 99.

<sup>53</sup>CA rollo, p. 323.

<sup>54</sup>Rollo, pp. 10-11.

<sup>55</sup>*People v. Boniao*, 291 Phil. 684, 701 (1993).



Considering that accused-appellant was the aggressor, his employment of any means in furtherance of the aggression cannot be considered as the rational means to repel an illegal aggression.<sup>56</sup>

Furthermore, accused-appellant's plea of self-defense is belied by the nature and number of wounds suffered by Danilo which reveal an intent to kill and not merely an effort to prevent or repel an attack.<sup>57</sup>

The autopsy report shows that the victim died from multiple gunshot wounds, including one on the left temple and another on the right collarbone, both of which proved fatal. The gunshot wound on the victim's head, a vital part of the body, demonstrates a mind resolved to end the life of the victim.<sup>58</sup> The multiple shots which accused-appellant fired at the victim unmistakably manifested an irrevocable decision to kill.<sup>59</sup> It has been held in this regard that the location, gravity and presence of several wounds on the victim's body provide physical evidence that eloquently refutes allegations of self-defense.<sup>60</sup> Physical evidence is evidence of the highest order; it speaks more eloquently than a hundred witnesses.<sup>61</sup>

Granting the victim was indeed holding a gun, as defense witnesses Celia and Gary portrayed him, accused-appellant's infliction of multiple gunshot wounds on the victim, including one on the victim's head, is neither commensurate nor reasonable. The second element of self-defense is thus clearly absent.

The last element of self-defense is also wanting. As the clear aggressor, accused-appellant cannot successfully argue that there was no sufficient provocation on his part.

Another factor that militates against accused-appellant's defense lies in the incredulous aspects of his version of the incident.

It is settled that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself. Accordingly, the test to determine the value or credibility of a witness' testimony is whether the same is in conformity with common knowledge and is consistent with the experience of mankind.<sup>62</sup>

Accused-appellant alleged that minutes after calling the police station

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<sup>56</sup>*People v. Boniao*, supra note 55, id at 701.

<sup>57</sup>*People v. Fontanilla*, supra note 21, id. at 167; *People v. Rubiso*, supra note 32, id. at 382; *Guevarra, et al. v. People*, supra note 21, id. at 191.

<sup>58</sup>*Dela Cruz v. People*, supra note 22, id. at 393.

<sup>59</sup>*People v. Boniao*, id.

<sup>60</sup>*Flores v. People*, 705 Phil. 119, 137 (2013), citing *People v. Villa, Jr.*, 573 Phil. 592, 610 (2008).

<sup>61</sup>*People v. Boniao*, supra at 702.

<sup>62</sup>*Flores v. People*, supra at 136.

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for assistance, “somebody shouted coming from the outside that there were policemen who were in civilian clothes outside [sic],” which prompted him to go out of the house with his Armalite rifle.<sup>63</sup> It is, however, against common experience for someone to shout the arrival of the police and in the same breath describe their attire. It appears that accused-appellant had to add that sartorial detail if only to justify his leaving the house when no policemen were visibly outside. The excuse proffered, indeed, hardly inspires belief. Furthermore, as it would have been readily apparent that the police, whose protection accused-appellant allegedly sought, were not in fact present, the most natural and logical reaction was for him to have immediately returned to the safety of his house.

Accused-appellant also alleged that when he shot Danilo, he was merely defending himself from the unlawful aggression of the latter and his group who were armed.<sup>64</sup> He averred that after he shot Danilo in self-defense, he tried to lift Danilo so he could bring him to the hospital but he was fired upon, allegedly by Danilo’s group, until the police arrived.<sup>65</sup> However, it taxes credulity how the victim’s group would not have immediately fired at him the moment he shot Danilo. It is implausible that they would wait until he has fired several shots, taken Danilo’s revolver and tried to lift him, before commencing fire either to protect their own or to execute the purported plan to kill him.

In fine, the Court agrees with both the trial and appellate courts that accused-appellant failed to discharge his burden of proving self-defense.

Contrary to accused-appellant’s assertion, the Court cannot disregard the trial court’s findings or reverse its decision on the ground that it has been reached by a trial judge who merely took over the case and did not hear or observe the deponent of the witnesses. While the trial judge who presided over the trial of the case would be in a better position to determine the truth or falsity of the witnesses’ testimonies, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision, as he could rely on the transcribed stenographic notes taken during the trial as the basis for his decision. This is the main reason for the mandatory requirement that all trial courts be courts of record.<sup>66</sup>

The Court agrees with the CA that the qualifying circumstance of evident premeditation was not sufficiently proved.

The elements of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating

<sup>63</sup>CA *rollo*, p. 290.

<sup>64</sup>Id. at 295 and 297.

<sup>65</sup>Id. at 290 and 295.

<sup>66</sup>*People v. Rabutin*, 338 Phil. 705, 712 (1997).

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that the accused has clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.<sup>67</sup> Every element of the circumstance must be shown to exist beyond reasonable doubt.<sup>68</sup> To be considered an aggravation of the offense, the circumstance must not merely be premeditation but must be evident premeditation.<sup>69</sup>

The foregoing elements have not been established beyond reasonable doubt.

In finding the existence of evident premeditation, the trial court observed that there existed an animosity between accused-appellant and Danilo's uncle and close ally, Manuel, after he exposed Manuel's alleged illegal activities and the latter filed a libel case against him. The RTC concluded that accused-appellant, who had a grudge against Manuel, had sufficient time to ponder his feelings for Danilo and his uncle as he "waited several minutes to lapse while sitting in a rocking chair inside his house before he went out of the house carrying a loaded assault rifle."<sup>70</sup>

It is settled, however, that mere existence of ill feelings or grudges between the parties is not sufficient to sustain a conclusion of premeditated killing.<sup>71</sup> Furthermore, it cannot be said that enough time has passed to allow accused-appellant to reflect upon the consequences of his act.<sup>72</sup> "It has been held in one case that even the lapse of 30 minutes between the determination to commit a crime and the execution thereof is insufficient for full meditation on the consequences of the act."<sup>73</sup>

The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during an interval of time sufficient to arrive at a calm judgment.<sup>74</sup> There is no evident premeditation when the attack was the result of rising tempers or made in the heat of anger.<sup>75</sup>

The Court, however, disagrees with the CA's finding that the qualifying circumstance of treachery was absent.

There is treachery when the offender, in committing any of the crimes against persons, employs means or methods which tend to directly and specially ensure its execution, without risk to himself arising from the

<sup>67</sup>*People v. Alvarez, et al.*, 752 Phil. 451, 459 (2015).

<sup>68</sup>*People v. Dativo*, 434 Phil. 684, 689 (2002).

<sup>69</sup>*People v. Tigue*, 465 Phil. 368, 382 (2004).

<sup>70</sup>CA rollo, p. 58.

<sup>71</sup>*People v. Aposaga*, 460 Phil. 178, 191-192 (2003).

<sup>72</sup>*People v. Medina*, 349 Phil. 718, 734 (1998); *People v. Nalangan*, 336 Phil. 970, 976 (1997).

<sup>73</sup>*People v. Illescas*, 396 Phil. 200, 210 (2000), citing *People v. Rabanillo*, 367 Phil. 114, 124 (1999).

<sup>74</sup>*People v. Aposaga*, supra at 190; *People v. Alinao*, 718 Phil. 133, 151 (2013).

<sup>75</sup>*People v. Torpio*, 474 Phil. 752, 761 (2004).

defense which the offended party might make. When alleged in the information and clearly proved, treachery qualifies the killing and elevates it to the crime of murder.<sup>76</sup>

Treachery was established in this case. Prosecution witnesses Eliseo and Rolando, whose testimonies were found to be credible by both the RTC and the CA, showed that Danilo was walking towards his house after tending to his fighting cock, and was three steps away from his residence when accused-appellant suddenly rushed towards his direction and shot him.<sup>77</sup> Accused-appellant's shots, fired from an assault rifle, were multiple and successive, depriving Danilo of any chance to run or to defend himself and repel the attack. The foregoing circumstances are manifestly indicative of the presence of the conditions under which treachery may be appreciated.<sup>78</sup>

In finding that the killing was not attended by treachery, the CA reasoned that "(the) bad blood between Enrique and Danilo, taken together with the fact that accused-appellant was firing an assault rifle while walking towards Francisco St. and the victim attempted to retreat to the comfort of his residence militate against the prosecution's claim that the attack was sudden and unexpected."<sup>79</sup>

It has been held, however, that treachery may still be appreciated even when the victim was forewarned of the danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to retaliate or defend himself,<sup>80</sup> as in this case. Furthermore, that Danilo did not find it necessary to pull out his gun and prepare to defend himself against a possible assault from accused-appellant, underscores the fact that he did not expect the attack.

Even if the Court were to consider accused-appellant's contention, supposedly based on the autopsy report, that Danilo was shot frontally, it is settled that the essence of treachery is the unexpected and sudden attack on the victim that renders the latter unable and unprepared to defend himself because of the suddenness and severity of the attack. This criterion applies whether the attack is frontal or from behind. Thus, a frontal attack could still be deemed treacherous when unexpected and on an unarmed victim who would not be in a position to repel the attack or avoid it.<sup>81</sup> It has been sufficiently established by the prosecution that accused-appellant's attack on

<sup>76</sup>*People v. Dulin*, 762 Phil. 24, 40 (2015).

<sup>77</sup>CA rollo, p. 325.

<sup>78</sup>*People v. Caseta*, 547 Phil. 690, 705 (2007).

<sup>79</sup>*Rollo*, p. 15.

<sup>80</sup>*People v. Pidoy*, supra note 42, id. at 230; *People v. Nasayao, Sr.*, 437 Phil. 806, 815 (2002); *People v. Tanoy*, 387 Phil. 750, 759 (2000).

<sup>81</sup>*People v. Alfon*, 447 Phil. 138, 148 (2003).

Danilo was unexpected and executed in a manner that deprived the latter of a chance to put up a defense.

The killing having been committed with *alevosia*, accused-appellant's conviction for homicide, as determined by the CA, must be modified to one for murder. It must be stressed that an appeal in a criminal case throws the entire case wide open for review, and it becomes the duty of this Court to correct any error in the appealed judgment, whether or not raised by the parties.<sup>82</sup> The appeal confers on the reviewing tribunal full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, and increase the penalty.<sup>83</sup>

On the strength of defense witness Ellano's testimony, the CA appreciated the mitigating circumstance of voluntary surrender. To be considered a mitigating circumstance, voluntary surrender must be spontaneous and made in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or wishes to save them the trouble and expense that will be incurred in his search and capture.<sup>84</sup>

Ellano's testimony indicates that around 6:30 in the morning on August 13, 1990, before the shooting incident, he received a call from accused-appellant asking for police assistance as his family was reportedly in danger.<sup>85</sup> The prosecution's evidence showed that after the incident, accused-appellant went back to his house and the policemen later on arrived.<sup>86</sup> Ellano confirmed that as he and his team of policemen approached the gate of accused-appellant's residence, the latter appeared and surrendered himself, his firearm and Danilo's revolver.<sup>87</sup>

The confluence of the foregoing circumstances justifies the appreciation of a mitigating circumstance of a similar nature or analogous to voluntary surrender, under number 10, Article 13<sup>88</sup> of the Revised Penal Code.<sup>89</sup> Indeed, it would appear that accused-appellant returned home following the incident and resolved to remain there, knowing that the police

<sup>82</sup>*Ramos v. People*, G.R. No. 218466, January 23, 2017; *Esqueda v. People*, 607 Phil. 480, 501 (2009); *People v. Buban*, 551 Phil. 120, 134 (2007).

<sup>83</sup>*Ramos v. People*, *id.*

<sup>84</sup>*People v. Aquino*, 475 Phil. 447, 453 (2004).

<sup>85</sup>CA rollo, p. 55.

<sup>86</sup>Rollo, p. 6.

<sup>87</sup>CA rollo, p. 55.

<sup>88</sup>Article 13. *Mitigating circumstances*. - The following are mitigating circumstances:

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7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;

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10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

<sup>89</sup>See *Eduarte v. People*, 617 Phil. 661, 668 (2009).

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was on its way to his house. And as the policemen approached his home, he directly gave himself up to them. If accused-appellant wanted to abscond, he could have readily done so but this, he did not do.<sup>90</sup>

The crime was committed prior to the effectivity of Republic Act (RA) No. 7659,<sup>91</sup> during the suspension of the death penalty.<sup>92</sup> Before RA No. 7659 took effect on December 31, 1993 reimposing the death penalty, the penalty for murder was *reclusion temporal*, in its maximum period, to death.<sup>93</sup> Since the crime in this case was not attended by the generic aggravating circumstance of evident premeditation, and the mitigating circumstance analogous to voluntary surrender is credited in accused-appellant's favor, the minimum penalty for murder, i.e., *reclusion temporal* in its maximum period, shall be imposed pursuant to Article 64(2) of the Revised Penal Code.<sup>94</sup> Applying the Indeterminate Sentence Law, accused-appellant is sentenced to ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.<sup>95</sup>

In keeping with prevailing jurisprudence on damages to be awarded when murder is committed,<sup>96</sup> the civil indemnity and moral damages awarded by the CA are each increased to ₱100,000.00. Exemplary damages in the amount of ₱100,000.00 are also awarded. Accused-appellant shall additionally pay temperate damages in the amount of ₱50,000.00 as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved.<sup>97</sup> All monetary awards are subject to interest at the rate of six percent (6%) *per annum* from the finality of this decision until fully paid.<sup>98</sup>

**WHEREFORE**, the Decision of the Court of Appeals dated June 10, 2015 in CA-G.R. CR-HC No. 05671 is **MODIFIED** in that accused-appellant is held guilty of murder and sentenced to a penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. Furthermore, accused-appellant shall pay civil indemnity, moral damages and exemplary damages, each in the amount of ₱100,000.00, as well as

<sup>90</sup>*Eduarte v. People*, supra note 89, id. at 668.

<sup>91</sup>An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as amended, other Special Penal Laws, and for Other Purposes.

<sup>92</sup>Section 19(1) of the 1987 Constitution provides: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*."

<sup>93</sup>*People v. Tortosa*, 391 Phil. 497, 508 (2000).

<sup>94</sup>*People v. Sol*, 338 Phil. 896, 911 (1997).

<sup>95</sup>*People v. Sol*, Id.; *People v. Tumaob, Jr.*, 353 Phil. 331, 340 (1998); *People v. Unarce*, 338 Phil. 826 (1997); *People v. Tortosa*, supra at 508.


<sup>96</sup>*People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 336.

<sup>97</sup>Id., citing Article 2224 of the Civil Code.


<sup>98</sup>*People v. Veloso*, 703 Phil. 541, 556 (2013).

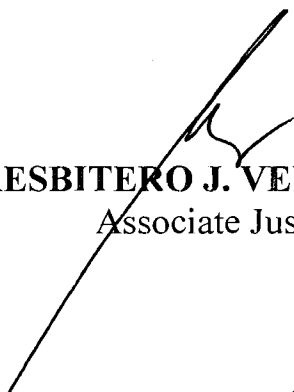
temperate damages in the amount of ₱50,000.00. The civil indemnity and all damages payable by accused-appellant are subject to interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

**SO ORDERED.**

  
**NOEL GIMENEZ TIJAM**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson


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

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

**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