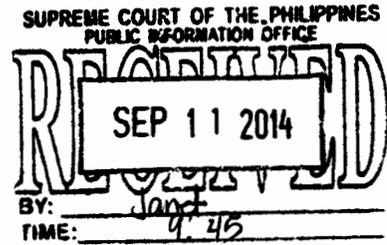




REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **20 August 2014** which reads as follows:*

G.R. No. 192909 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* versus **FREDDIE CASERO y LIMPOT**, *defendant-appellant*).

X-----X

For review is the conviction of accused-appellant Freddie Casero y Limpot for the crime of murder for the killing of Raul Sacro, by the Regional Trial Court (RTC)¹ in Criminal Case No. B-1976, entitled "*People of the Philippines v. Freddie Casero*", which was affirmed by the Court of Appeals (CA)².

The Information

The Information, charging the accused with the crime of murder for the killing of Raul Sacro (Sacro/victim)³, alleged the following:

The undersigned Assistant Prosecutor, accused Freddie Casero of the crime of murder, committed as follows:

At about 10:00 o'clock in the evening of September 10, 1996 or thereabout, in Baybay, Leyte, and within the jurisdiction of this Honorable Court, the above-named accused, a PNB Security Guard and on duty at the (sic) time, with deliberate intent to kill, with treachery and evident premeditation, and with the use of his issued firearm, a Cal. .357 Magnum revolver which he provided himself for the purpose, shot at one Raul

¹ Penned by Judge Absalon U. Fulache; 22 March 2005, RTC-Branch 14, Baybay, Leyte; Promulgated on 22 March 2005; records, pp. 376-385.

² Penned by Associate Justice Francisco P. Acosta with Amy C. Lazaro-Javier and Rodil V. Zalameda concurring; Promulgated on 10 June 2009; CA *rollo*, pp. 89-109.

³ Art. 294. *Robbery with violence against or intimidation of persons; Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
 1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed. x x x x

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Sacro, also a PNB Security Guard but who was not on duty at the (sic) time, hitting the latter on the head which caused his instantaneous death.⁴

When arraigned, the accused entered a plea of not guilty. Thereafter, trial on the merits ensued.

The prosecution presented Emilio Montesa y Paredes, the branch manager of PNB. He identified the accused as the one who shot the victim while the victim was eating. He also pointed the weapon used. Joanis Alfafara y Fulanqui (Alfafara), former cashier of PNB, corroborated the testimony of Emilio Montesa and attested that prior to the shooting incident, the accused told him, "*Wa na gyoy molaban nako dinhi, Sir*" ("Nobody will defend me here anymore, Sir"),⁵ and after the shooting incident, the accused, while surrendering to him the gun used to shoot the victim, stated, "*Gipakauwawan man god ko, Sir*" ("He put me into shame, Sir");⁶ The prosecution also presented SPO1 Socrates Datahan y Piquiro (SPO1 Datahan), who arrested the accused and to whom accused voluntarily surrendered. Pablita Moyalde Sacro, testified on the civil indemnity and exemplary damages, which were stipulated.

Invoking the justifying circumstance of self-defense, the evidence of the defense, as synthesized by the trial court is as follows:

x x x He (accused) attempted to prove that there was some kind of an irritant between him and the deceased because of a missing firearm under his custody. He testified that on September 10, 1996 he relieved the guard on the second shift a little bit earlier than what was customary. As standard operating procedure all the weapons were turned over to him and he put in a drawer. Shortly thereafter, he discovered that one of the weapons was missing, a .38 caliber revolver snub nose thus he confronted Garjas, the outgoing guard as to its whereabouts. Garjas told him that the firearm is with Raul Sacro. Consequently, he asked Raul Sacro about the weapon but he was angry instead. He further made insinuations that Sacro was drunk during the party. When he demanded for the return of the firearm he noticed that Sacro was about to pull his gun so he was quick to draw his weapon, aimed it to the victim but it fired. He claimed that his intention was only to fire a warning shot but the gun went off hitting Sacro in the process. Said incident had taken place inside the bank premises in

⁴ CA rollo, p. 90.

⁵ TSN, Joanis Alfafara, 24 February 1997, p. 44.

⁶ Id. at 45.

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the presence of the prosecution witnesses, Alfafara and Montesa. He further testified in direct examination that Sacro in fact drew his weapon.⁷ x x x

The Ruling of the Regional Trial Court

The RTC rejected the accused's claim of self-defense since there was no unlawful aggression or provocation on the part of the victim, as in fact the killing was done in such a manner that deprived the victim the opportunity to defend himself. The attack was swift and unexpected that the victim, who was unarmed, had no chance to protect his life and limb from the imminent attack of the accused.

The RTC considered the mitigating circumstance of voluntary surrender. According to the RTC, shortly after the incident, the accused voluntarily surrendered himself to SPO1 Datahan and the firearm he used to Alfafara, which is indicative of remorse. Thus, the dispositive portion of the RTC Decision reads:

WHEREFORE, in view of the foregoing, this Court finds accused Freddie Casero, guilty beyond doubt of the crime of Murder. Accordingly, sentenced (sic) is hereby imposed against him to suffer the penalty of reclusion perpetua and he is further ordered to pay the sum of ₱50,000.00 to the heirs of Raul Sacro as civil indemnity.

Considering that accused is a detention prisoner, the period of his detention shall be credited in full if he has signified his conformity in writing with respect to the rules concerning convicted prisoners, otherwise only four-fifths (4/5) thereof.

SO ORDERED.⁸

The Ruling of the Court of Appeals

The Court of Appeals upheld the conviction of the accused. According to the CA, as the accused admitted his participation in the shooting of the victim, he has the burden of proof to show that it was unintentionally done. Accused failed to do so. Contrary to the accused's

⁷ Records, p. 384.

⁸ Id. at 385.

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claim, there was no provocation by the victim or an altercation between him and the victim previous to or immediately prior to the shooting incident.

Our Ruling

Well-entrenched is the rule that where the accused invokes self-defense, the accused in effect admits killing the victim, thus, it is incumbent upon the accused to prove by clear and convincing evidence that he indeed acted in defense.⁹ In a justifying circumstance of self-defense, the element of unlawful aggression is a condition *sine qua non*;¹⁰ without unlawful aggression, complete or incomplete, there can be no self-defense.¹¹

There are two (2) kinds of unlawful aggression: (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. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot."¹²

That the accused killed the victim is undisputed. Thus, what is left for the defense is to discharge the burden of proof, by clear and convincing evidence, the presence of unlawful aggression.

The records belie the presence of unlawful aggression on the part of the victim—the defense's evidence on self-defense is uncorroborated and self-serving. As correctly ruled by the lower courts, (1) there was no provocation on the part of the victim and no altercation between the accused and the victim previous to or immediately prior to the shooting incident; (2) the victim, being off-duty at the time of the shooting, was unarmed when he

⁹ *People v. Sazon*, G.R. No. 89684, 18 September 1990, 189 SCRA 700, 704.

¹⁰ *Id.*

¹¹ *Id.*

¹² *People v. Nugas*, G.R. No. 172606, 23 November 2011, 661 SCRA 159, 168.

was shot; and (3) the victim was eating and was reaching for food on the table when he was shot.

In the case at bar, the allegation that the victim tried to draw his gun is a mere speculation. As borne by the records, the victim's act of eating and reaching for food laid on the table cannot amount to imminent unlawful aggression, much less, actual or material aggression. Assuming *arguendo* that the allegation of the prosecution that the victim was eating and reaching for food during the shooting incident is false, the defense still failed to establish the presence of unlawful aggression. During his cross-examination, the accused admitted to the victim's unlawful aggression, which is more imagined than real:

Q: I would like to recall that an occasion dated September 10, 1996, was the despedida party of Mr. Alfara, is that correct?

A: Yes sir.

Q: And you were on duty at that time?

A: Yes sir.

Q: While the victim was not on duty?

A: Yes sir.

Q: Because you were on duty, you were armed with the firearm of the PNB?

A: Yes sir, armed with service pistol.

Q: **While the victim was unarmed?**

A: **I'm not sure.**

Q: **But you did not physically saw (sic) any firearm from the left side or right side of the victim?**

A: **I saw that there was bulging at his side.**

Q: **I am not asking you whether his waist is bulging or not, my question is, you did not physically see any firearm from the body of the victim?**

A: **None.**

Q: **And you did not actually saw (sic) firearm at (sic) left or right side of his body?**

A: **None sir.**¹³ (Emphasis and underscoring supplied)

¹³ TSN, Freddie Casero, 18 June 2001, pp. 2-3.

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Based on the foregoing, there was neither an attack with physical force nor offensive and positively strong impending attack by the victim. A simple bulge at the side of the victim, *sans* offensive and positive attack on the accused, does not pose any threat, fear or danger. Therefore, the accused having failed to prove by clear and convincing evidence the presence of unlawful aggression on the part of the victim, We find the accused guilty beyond reasonable doubt of the crime of murder for intentionally, willfully and unlawfully killing the victim, Raul Sacro.

WHEREFORE, the Decision of the RTC of Baybay, Leyte, finding accused Freddie Casero y Limpot guilty beyond reasonable doubt of the crime of murder, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay ₱50,000.00 as civil indemnity to the heirs of the victim, as modified by the Court of Appeals, ordering accused to pay an additional amount of ₱50,000.00 as moral damages is **AFFIRMED**. (As per Special Order No. 1757 dated 20 August 2014, Associate Justice Presbitero J. Velasco, Jr. is designated as Acting Member of the Second Division in view of Associate Justice Arturo D. Brion leave of absence).

SO ORDERED.

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court *by 9K*

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Regional Trial Court, Branch 14
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Crim. Case No. B-1976

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