



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated February 27, 2023, which reads as follows:

“G.R. No. 264054 (*Frankie Cyril Albano y Agbayani v. People of the Philippines*). – For resolution is a Petition for Review on *Certiorari*¹ seeking to reverse and set aside the Decision² dated May 31, 2022 and the Resolution³ dated October 11, 2022 of the Court of Appeals (CA) in CA-G.R. CR No. 45190. The CA in its assailed rulings affirmed the Decision⁴ dated October 25, 2019 of the Regional Trial Court (RTC) of Quezon City, Branch 219, in Criminal Case No. Q-05-132842, convicting Frankie Cyril Albano y Agbayani (Albano) for Homicide.

An Information dated June 1, 2010 was filed charging Albano with the crime of Homicide for the killing of Brian Pichay (Brian). The accusatory portion of the Information states:⁵

That on or about the 19th day of March, 2005, in Quezon City, Philippines, the said accused, with intent to kill[,] did then and there willfully, unlawfully and feloniously assault, attack and employ personal violence upon the person of one BRIAN PICHAY y PIAMONTE, by then and there shooting him with a TANFOGLIO 9MM Firearm bearing SN AB 18008, hitting him on the head and on other parts of his arms and body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said Brian Pichay.⁶

Albano was arraigned on September 13, 2011, and pleaded not guilty. Trial on the merits ensued.⁷

The CA in its Decision summarized the following statement of facts by the prosecution as alleged by the Office of the Solicitor General:

¹ *Rollo*, pp. 11-34.

² *Id.* at 62-73; penned by Associate Justice Marie Christine Azcarraga-Jacob, with Presiding Justice Remedios A. Salazar-Fernando and Associate Justice Angelene Mary W. Quimpo-Sale, concurring.

³ *Id.* at 74-76.

⁴ *Id.* at 36-61; penned by Presiding Judge Janet Abergos-Samar.

⁵ *Id.* at 36.

⁶ *Id.*

⁷ *Id.* at 65.

On March 18, 2005, at around 7:00 in the evening, appellant [Albano] was at his house located at 40 Scout Santiago, Timog, Quezon City when Brian Pichay arrived to visit him. Brian is employed by appellant as his driver. Appellant and Brian went to the "lanai" of the house to have a drinking spree. After a while, appellant had a heated argument with Brian. Brian brandished a knife at appellant. Appellant had a gun with him and shot Brian several times at the latter's left side and back of the head. Brian suffered a total of eleven (11) gunshot wounds. Brian died on the spot.

Appellant called the Quezon City police to report the incident. Thereafter, the police arrived and appellant was then brought to the Quezon City Police District (QCPD) at Camp Tomas Caringal, Sikatuna Village, Quezon City. Brian's cadaver was brought to the QCPD crime laboratory at Camp Caringal.

At the QCPD crime laboratory, Dr. Felimon Porciuncula, Chief Medico-Legal officer, conducted an autopsy on the cadaver of Brian. Dr. Porciuncula [sic] found a total of eleven (11) gunshot wounds on Brian. Three (3) gunshot wounds were found at the arms and wrists, two (2) at the back of the head, two (2) at the back of the nape and four (4) at the left side of the face. Dr. Porciuncula [sic] concluded that the gunshot wounds on the head is the cause of Brian's death.⁸

Although Albano admitted that he killed Brian, he attempted to evade criminal responsibility by claiming that he only acted in self-defense. The RTC summarized his version of the facts as follows:

Airene is the housemaid of the accused [Albano] at the time of the shooting incident. She recalled that at about 7:00 p.m. of March 18, 2005, the victim arrived at the house of the accused at 40 Scout Santiago, Timog, Quezon City. Knowing him to be the driver of the accused, she allowed him to enter and she called the accused. While the accused and victim were talking at the lanai, she was watching TV at the kitchen, about 3 meters away. Accused and the victim were having a drinking spree when she proceeded to her room to sleep.

About 11:45 p.m. of the same day, accused woke her up and directed her to cook Spam.

She was about to serve the cooked Spam at the lanai when she heard the heated argument of accused and the victim, and saw the victim threatened [sic] (*winawasiwas*) accused, about a meter away, with a 9[-inch] knife. Accused evaded the knife and brought out a gun. When she saw accused pointing a gun upwards, she ran towards her room where she subsequently heard successive shots.

Accused is a gun club member and the owner of a Tanfoglio 9mm semi-automatic firearm with serial no. AB 18008 (Exhibit "K"). He testified that the victim [was] his on-call driver.

That [on] March 18, 2005, he told the victim that it was his last day of employment. The victim told him that he will meet him at his house.

⁸ Id.

When the victim arrived at his house, they had a drinking spree at the lanai. Accused noticed that the latter was angry because of the termination of his employment.

At about midnight, the accused and the victim had a confrontation when the latter refused to leave. The victim hurled a vase towards the accused and swung a knife at his direction. Accused retrieved a gun from one of the rattan chair[s] and warned the victim to cease from attacking him. With the victim unperturbed, accused cocked his gun and fired a warning shot. Still advancing towards him as he (accused) was retreating backwards, the accused repeatedly fired the gun at the victim until all bullets in his magazine were spent.

After the smoke cleared, the accused ran outside the lanai towards the room of AIRENE and woke the latter. He then alternately dialed the numbers of his relatives, the police, and a hospital.⁹

After trial, the RTC rendered its Decision¹⁰ dated October 25, 2019 convicting Albano for the crime of Homicide:

WHEREFORE, premises studiedly considered, accused Frankie Cyril Albano y Agbayani is **GUILTY** beyond reasonable doubt of Homicide for the killing of Brian Pichay y Piamonte. Frankie Cyril Albano y Agbayani is sentenced to suffer the penalty of eight (8) years of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum; and to **PAY** the heirs of the deceased the amounts of (1.) **FIFTY THOUSAND PESOS** (Php50,000.00) as civil indemnity; (2.) **FIFTY THOUSAND PESOS** (Php50,000.00) as moral damages; and **FIFTY THOUSAND PESOS** (Php50,000.00) as temperate damages.

The monetary awards shall earn interest at the rate of six percent (6%) per annum from date of finality of this Decision until fully paid.

SO ORDERED.¹¹ (Emphases and italics in the original)

The RTC held that Albano's claim of self-defense cannot be appreciated since it was uncorroborated and extremely doubtful.¹² The testimony of Airene Clomar (Airene), Albano's household helper, could not support the latter's claim that his life was in danger before he killed Brian. Airene admitted that she ran away after seeing Albano point his gun upwards and was already inside her room when she heard shots fired. She therefore did not see the events that transpired before the shooting.¹³

It further concluded that the claim of self-defense was belied by the evidence. The pictures of the crime scene negated Albano's allegations that there was a scuffle before the shooting and that a vase was thrown at him.¹⁴

⁹ Id. at 65-66.

¹⁰ Id. at 36-61.

¹¹ Id. at 60-61.

¹² Id. at 44.

¹³ Id. at 44-45.

¹⁴ Id. at 47-49.

The gunshot wounds left on Brian's body also disproved Albano's narration that the former was facing him and about to attack from two meters away when he fired his gun to protect himself. On the contrary, the gunshot wounds revealed that Brian was shot from behind and from the side, and at very close range.¹⁵

Lastly, it held that the fact that Brian was shot so many times in the head, face, nape, and arm, clearly showed that Albano had a perverse desire to kill him, and did not act merely for his self-preservation.¹⁶

The special aggravating circumstance of use of unlicensed firearm was proven during trial but was not considered since it was not stated in the Information.¹⁷ The mitigating circumstance of intoxication was likewise not appreciated due to lack of evidence.¹⁸ However, the RTC appreciated the mitigating circumstance of voluntary surrender because Albano called the police after the incident and cooperated with the investigation.¹⁹

Unsatisfied, Albano appealed to the CA.

The CA rendered its Decision²⁰ dated May 31, 2022 denying Albano's appeal and affirming his conviction:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**.

Accordingly, the *Decision dated 25 October 2019* of the Regional Trial Court, Branch 219, National Capital Region, Quezon City, in *Criminal Case No. Q-05-132842* is **AFFIRMED**.

SO ORDERED.²¹ (Emphases and italics in the original)

The CA ruled that Albano failed to present sufficient evidence to prove that there was unlawful aggression on the part of Brian. It also affirmed that the number of gunshot wounds suffered by Brian negated the theory of self-defense.²²

Albano sought reconsideration²³ of the Decision but was denied by the CA in its Resolution²⁴ dated October 11, 2022.

Hence, the instant petition.

¹⁵ Id. at 49-52.
¹⁶ Id. at 52-53.
¹⁷ Id. at 55-57.
¹⁸ Id. at 58-59.
¹⁹ Id. at 57-58.
²⁰ Id. at 62-73.
²¹ Id. at 72-73.
²² Id. at 70-71.
²³ Id. at 77-87.
²⁴ Id. at 74-76.

In his petition, Albano essentially just reiterated his previous assertions that he sufficiently proved all the elements of self-defense.

At the outset, it is stressed that this petition was filed beyond the reglementary period and can no longer be entertained. Acting on the Motion for Extension of Time to File Petition for Review on *Certiorari*²⁵ filed by Albano on November 8, 2022, the Court granted him an extended period of thirty (30) days, or until December 8, 2022, to file his petition for review on *certiorari*. Regrettably, he filed this petition only on December 20, 2022.²⁶ This belated filing already rendered the CA Decision final and executory, and warrants the outright dismissal of this petition.

Moreover, the main issue raised in this petition of whether or not Albano acted in self-defense is a question of fact. The unanimous ruling of the CA and the RTC on this factual issue will no longer be disturbed by this Court considering that factual findings of the trial court, especially when affirmed by the appellate court, are accorded great respect and are deemed binding.²⁷ No compelling reasons were raised to reverse the ruling that Albano did not act in self-defense when he shot and killed Brian.

Nevertheless, even on the substantive merits, the petition must be denied.

It is settled that an accused who pleads self-defense has the burden to prove it with clear and convincing evidence. He/she must rely on the strength of his/her own evidence. The weakness of the prosecution's evidence becomes immaterial since the commission of the act constituting the crime charged was already admitted.²⁸ It is likewise established that self-defense cannot be appreciated if it is uncorroborated by independent and competent evidence, or if it is extremely doubtful by itself.²⁹

The following are the elements of self-defense which must be proved: (1) that the victim mounted an unlawful aggression against the accused; (2) that the means employed by the accused to repel or prevent the aggression were reasonable and necessary; and (3) the accused did not offer any sufficient provocation.³⁰

The most important among these elements is the unlawful aggression from the victim which necessitated the accused's resort to self-defense. Unlawful aggression is defined as "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger—not merely

²⁵ Id. at 3-4.

²⁶ Id. at 11.

²⁷ *People v. Maghuyop*, G.R. No. 242942, October 5, 2020.

²⁸ *People v. Endaya, Jr.*, 826 Phil. 914, 924 (2018).

²⁹ *People v. Rebato*, G.R. No. 242883, September 3, 2020.

³⁰ *People v. Endaya, Jr.*, *supra*.

threatening and intimidating action. It is present only when the one attacked faced real and immediate threat to one's life."³¹

Hence, to sufficiently establish a claim of self-defense, it must be proved that there was an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant through reasonable means to resist such attack. The accused must not have had a deliberate and willful intent to kill the victim.³²

Based on the foregoing, a judicious review of the records shows that Albano failed to establish his claim of self-defense.

Albano's claim of self-defense was utterly unsubstantiated and unbelievable. The RTC correctly ruled that Airene was incompetent to testify on what happened before Albano killed Brian since she admitted that she was already inside her room prior to any shots being fired.³³ Her testimony cannot sufficiently prove that there was unlawful aggression on the part of Brian before being shot. It was also observed that the photos and other evidence of the crime scene tended to negate the claim that Brian attacked Albano and that there was a scuffle before the former was shot.³⁴

Albano's claim of self-defense was also contravened by the physical evidence. To reiterate, Albano alleged that Brian was in front of him and advancing towards him to corner him when he was forced to shoot at the latter's feet from two meters away to defend himself. However, the RTC keenly observed that this claim is highly doubtful because Brian did not suffer any gunshot wounds from his front or on his feet. It pertinently discussed:

As narrated by the accused, the victim was in **front** of him when he fired the warning shot to his right side, the second shot while the gun is directed at the feet of the victim who was two meters away, and the successive shots until all the bullets in the magazine were spent.

With that backdrop, **it is implausible that the victim never sustained a frontal gunshot wound.** The victim **did not suffer any gunshot wound on the leg or feet.** The bullet wounds were at the **left side** of the victim's face (nos. 1 to 4), at the **back of his head** (nos. 5 and 7), at the **nape** (nos. 6 and 8), at the **side** of the left arm and wrist (nos. 14 and 15), and the **back** of left arm (no. 13). Clearly, wound nos. 1 to 4, 14, and 15 were inflicted while the gun is positioned at the **left side** of the victim, while nos. 5 to 8, and 13 were incurred while the gun was at the **back** of the victim. **Accused miserably failed to explain the discrepancy of the gunshot wounds with his alleged frontal position at the time he fired his gun.**³⁵ (Emphases and underscoring supplied)

³¹ *Flores v. People*, 705 Phil. 119 (2013).

³² *People v. Manzano, Jr.*, 827 Phil. 113, 134 (2018).

³³ *Rollo*, p. 45.

³⁴ *Id.* at 47-49.

³⁵ *Id.* at 54-55.

In like manner, the points of entry of wound nos. 1 to 8 is physical evidence that wound nos. 1 to 4 were inflicted when the barrel of the gun is on the **left side** of the victim and wound nos. 5 to 8 were inflicted while the barrel was at the **back** of the victim, and **NOT** while accused was facing the victim as he testified.³⁶ (Emphasis in the original)

The physical evidence also irrefutably proved that Albano did not shoot Brian from two meters away, but instead from a very close distance at point blank range. This was shown through the existence of smoke deposits on Brian's gunshot wound which could only be possible if he was shot from a distance less than 20 inches away. The RTC summarized its relevant findings as follows:

Fifth, the account of the accused that the victim was **2 meters** away and was **facing** him when he fired the successive shots until all his bullets were all spent, run counter to the physical evidence.

x x x x

DR. PORCIUNCULA noticed a smoke deposit or smudging in wound **no. 7**. The Medico-Legal Report No. M-88-05 (Exhibit "S") pertinently reads:

"7. Gunshot wound, thru and thru, point of entry, right post-auricular region... **with an area of smudging measuring 5X3 cm...**making a point of exit at the left ear..."

According to DR. PORCIUNCULA, the smoke deposit or smudging in wound no. 7 is indicative that the barrel of the gun is **less than 20 inches**, distance from the victim, specifically the point of entry of the bullet. This cont[r]adicted the assertion of the accused that he was **2 meters** away when he fired his gun at the victim.

x x x x

The **physical evidence** of deposit or smudging in the victim's wound no. 7, indicating that the barrel of the gun is **less than 20 inches** distance from the victim when fired, **PREVAILS** over the testimony of the accused that he was 2 meters or 78.74 inches away when he shot the victim.³⁷ (Emphases in the original)

Most significantly, the number, nature, and locations of Brian's gunshot wounds undoubtedly proved that Albano killed him deliberately and not merely out of self-defense. The Court has repeatedly recognized that the number and gravity of the wounds inflicted on the victim is indicative of the accused's intent to kill and not just defend oneself.³⁸

In this case, Albano shot Brian eleven (11) times at close range. He shot him eight (8) times in the head, nape, and face, and three (3) times in the arm.

³⁶ Id. at 51-52.

³⁷ Id. at 49-51.

³⁸ *People v. Manzano, Jr.*, supra note 32, at 138; *People v. Zeta*, 431 Phil. 741 (2002); *People v. Macagaling*, 307 Phil. 316 (1994).

The expert testimony elucidated that six (6) of these gunshot wounds would have sufficiently immobilized Brian and caused his instant death.³⁹ The Medico-Legal Report No. M-88-05 enumerated the gunshot wounds:

FINDINGS:

[x x x x]

HEAD:

1. Gunshot wound, thru and thru, point of entry left auricular region... directed posterior ward upwards to the right, making a point of exit at the right temporal region...
2. Gunshot wound, thru and thru, point of entry left auricular region... directed posterior ward upward to the left, making a point of exit at the right temporal region...
3. Gunshot wound, point of entry, left sternocleidomastoid region...
4. Gunshot wound, point of entry, left sternocleidomastoid region...
5. Gunshot wound, thru and thru, point of entry occipital region... making a point of exit at the right parietal region...
6. Gunshot wound, thru and thru, point of entry, nape region...making a point of exit at frontal region...
7. Gunshot wound, thru and thru, point of entry, right post-auricular region... making a point of exit at the left ear...
8. Gunshot wound, thru and thru, point of entry, nape region...making a point of exit at the right maxillary region...

[x x x x]

TRUNK AND EXTREMITIES:

[x x x x]

13. Gunshot wound, thru and thru, point of entry proximal 3rd of the left arm...with p[o]int of exit at the left shoulder...
14. Gunshot wound, thru and thru, point of entry middle third of the left arm...making a point of exit at the middle 3rd of the left dorsum...
15. Gunshot wound, thru and thru, point of entry, distal 3rd of the left forearm... making a point of exit at the distal 3rd of the left forearm...

[x x x x]

CAUSE OF DEATH: MULTIPLE GUNSHOT WOUNDS, HEAD

[x x x x]⁴⁰ (Underscoring in the original)

The degree of such a merciless and abhorrent killing accomplished by Albano certainly showed his deliberate intent and resolve to end Brian's life, and not merely to defend himself. Even assuming *arguendo* that there was unlawful aggression from Brian, the extent of the means exerted by Albano

³⁹ *Rollo*, pp. 53-54.

⁴⁰ *Id.* at 52-53.

cannot possibly be considered reasonable and necessary to repel or prevent such aggression.

Consequently, Albano's petition for review on *certiorari* must be denied for lack of merit. He failed to prove the justifying circumstance of self-defense and is therefore guilty beyond reasonable doubt for the crime of Homicide.

The penalty imposed by the CA is affirmed. Article 249 of the Revised Penal Code (RPC) penalizes the crime of Homicide with *reclusion temporal*, which has three periods. Considering that the mitigating circumstance of voluntary surrender was appreciated, Article 64(2) of the RPC provides that the maximum penalty shall be *reclusion temporal* in its minimum period. The minimum penalty shall then be the penalty next lower in degree, or *prision mayor*, in any of its periods. Guided by the foregoing, the indeterminate sentence imposed by the CA is within the limits provided under the law and is proper.

The Court modifies the damages awarded by the CA to adhere to the doctrinal guidelines in *People v. Jugueta*.⁴¹ The amounts of civil indemnity, moral damages, and temperate damages in the amount of ₱50,000.00 each are all affirmed. However, the Court hereby grants an additional award of exemplary damages in the amount of ₱50,000.00.

It was pronounced in *Jugueta* that if an aggravating circumstance was proven during trial, even if such was not alleged in the Information, the Court should award exemplary damages of ₱50,000.00 in cases when the crime is consummated. In this case, the RTC aptly observed that the special aggravating circumstance of the use of an unlicensed firearm⁴² was proven during trial, though it could not be appreciated since it was not stated in the Information.⁴³ The effect of the existence of this special aggravating circumstance will be the additional grant of exemplary damages.

WHEREFORE, the Decision dated May 31, 2022 and the Resolution dated October 11, 2022 of the Court of Appeals in CA-G.R. CR No. 45190 are **AFFIRMED WITH MODIFICATION**. In Criminal Case No. Q-05-132842, Frankie Cyril Albano y Agbayani is found **GUILTY** beyond reasonable doubt of the crime of Homicide, attended with the mitigating circumstance of voluntary surrender. He is sentenced to suffer the indeterminate penalty of eight (8) years of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum. He is further **ORDERED** to pay the heirs of the deceased Brian Pichay the following: (1) ₱50,000.00 as civil indemnity, (2) ₱50,000.00 as moral damages, (3) ₱50,000.00 as exemplary damages, and (4) ₱50,000.00 as temperate damages.

⁴¹ 783 Phil. 806 (2016).

⁴² PRESIDENTIAL DECREE NO. 1866, Sec. 1, as amended by REPUBLIC ACT NO. 8294.

⁴³ *Rollo*, pp. 55-57.

All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until full payment.

SO ORDERED.”

By authority of the Court:

Mis. PDC Batt
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Division Clerk of Court, per 04-29-23

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