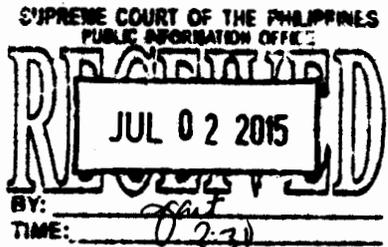




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **17 June 2015** which reads as follows:

**G.R. No. 215626 (NOLI UBALDO y MUYOT v. PEOPLE OF THE PHILIPPINES.)** – This is a petition for review on *certiorari* filed by petitioner Noli Ubaldo (*petitioner*) assailing the March 5, 2014 decision (*penned by Associate Justice Jane Aurora Lantion, and concurred in by Associate Justices Vicente Veloso and Nina Antonio-Valenzuela*) and the November 27, 2014 resolution of the Court of Appeals (CA) in CA-G.R. CR No. 34595.

The evidence for the prosecution showed that at around 10 p.m. on January 12, 2000, Ronald Guevarra and Simeon Garcis entered a videoke bar in *Barangay Caloocan, Matnog, Sorsogon*. Once inside the bar, Simeon ordered some drinks, and then went to the table of the petitioner and the latter's companions.

Afterwards, the petitioner and Simeon had an argument. The petitioner went out of the videoke bar, but returned inside after five minutes to talk to Simeon. The petitioner and Simeon then went out of the videoke bar where they had another altercation. The petitioner punched Simeon who retaliated. The petitioner at that point picked up a pipe, and hit Simeon on the head numerous times. Simeon fell on the pavement, with the petitioner continuing to strike him. Simeon's numerous head injuries led to his death.

The prosecution charged the petitioner with the crime of murder before the Regional Trial Court (RTC), Branch 55, Irosin. In its decision dated June 21, 2011, the RTC convicted the petitioner of homicide, and sentenced him to suffer the indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, and eights (8) months of *reclusion temporal*, as maximum. It also ordered him to pay Simeon's heirs the amounts of ₱65,192.00 as actual damages; ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱312,000.000 for the loss of earning capacity.

On appeal, the CA affirmed the RTC decision, but increased the awarded civil indemnity from ₱50,000.00 to ₱75,000.00. The CA held that the petitioner failed to prove that he acted in self-defense. It explained that the eyewitnesses' testimonies pointed to him as the unlawful aggressor. The CA added that the weapon used and the nature and location of the victim's injuries further negated the petitioner's claim of self-defense.

The CA also agreed with the RTC's finding that the prosecution failed to establish any circumstance to qualify the killing to murder.

The petitioner moved to reconsider this decision, but the CA denied his motion in its resolution of November 27, 2014.

### The Petition for Review on *Certiorari*

In the present petition, the petitioner argues that he should be acquitted because he merely acted in self-defense. He maintains that the victim was the unlawful aggressor since he threw the first punch him. The petitioner also argues that he is entitled to the mitigating circumstance of voluntary surrender.

### The Court's Ruling

#### **The petitioner's conviction stands.**

We point out at the outset that the petitioner does not deny that he hit Simeon with a metal pipe, although he maintains that he merely defended himself from the victim's unlawful aggression.

When an accused invokes self-defense, the burden of proof is shifted from the prosecution to the defense. The burden is on the accused to prove the existence, by clear and convincing evidence, of the essential requisites of self-defense, namely: (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.

Unlawful aggression is 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.

In the present case, both the RTC and the CA ruled that the petitioner was the unlawful aggressor. The courts *a quo* held that based on eyewitnesses' account, it was the petitioner who punched Simeon first. When Simeon retaliated, the petitioner picked up a steel pipe and struck the victim numerous times on the head.

We defer to the factual findings of the lower courts, in the absence of any circumstance showing that their conclusions had been arbitrarily arrived at. The findings of the trial court on the credibility of witnesses, especially when affirmed by the CA, are accorded great weight and respect. **Where unlawful aggression on the part of the victim is not proven, there can be no self-defense.**

Even if we assume, for the sake of argument, that Simeon threw the first punch, the means the petitioner employed – *i.e.*, repeatedly hitting the victim with a steel pipe on the head and continuing to do so even when the latter was already lying on the pavement – to repel this initial aggression was

not reasonable. We point out that Dr. Rosana Galeria found that the victim suffered a total of seven (7) wounds in the head, five (5) of which were fatal. Thus, no rational parity existed between the means of attack and the defense. The location and gravity of these wounds show that the petitioner's strikes were all meant to kill, not merely to disable the victim and/or neutralize his fist blows.

Finally, we find the petitioner's claim to the mitigating circumstance of voluntary surrender to be misplaced. A reading of the RTC decision shows that the court already appreciated this circumstance in imposing the penalty. According to the RTC, the petitioner "immediately surrendered himself to the police together with the weapon used right after the incident. The mitigating circumstance of voluntary surrender should be appreciated therefore in his favor."<sup>1</sup>

**WHEREFORE**, premises considered, we **DENY** petitioner Noli Ubaldo's petition for review on *certiorari* for raising substantially factual issues, and for failing to show that the Court of Appeals committed any reversible error in the assailed decision and resolution.

**SO ORDERED.**"

Very truly yours,

  
MA. LOURDES C. PERFECTO  
Division Clerk of Court *by G/ra*

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\* Leonen, J., on leave; Jardeleza, J., designated as Acting Member, per Special Order No. 2056 dated June 10, 2015.  
<sup>1</sup> Rollo, p. 71.

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