



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PO2 RANDOLPH CAMBE,¹
Petitioner,

G.R. No. 254269

-versus-

**PEOPLE OF THE
PHILIPPINES,**

Respondent.

X-----X
ANTHONY CACHO,
Petitioner,

G.R. No. 254346

Members:

-versus-

**PEOPLE OF THE
PHILIPPINES,**

Respondent.

GESMUNDO, C.J., *Chairperson,*
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M.,*
LOPEZ, J., JJ.

Promulgated:

OCT 13 2021

X-----X

DECISION

LAZARO-JAVIER, J.:

¹ The name of Anthony Cacho is included as petitioner in G.R. No. 254269, albeit he did not sign the verification therefor. He filed a separate appeal from the Court of Appeals' dispositions *via* G.R. No. 254346 instead.

* On official leave

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The Cases

These Petitions for Review on *Certiorari* assail the following dispositions of the Court of Appeals in CA-G.R. CR No. 42527 entitled *People of the Philippines v. PO2 Anthony Cacho and PO[2] Randolph Cambe*:

1. Decision² dated January 29, 2020 affirming the conviction of petitioners Police Officer Anthony Cacho (PO2 Cacho) and PO2 Randolph Cambe (PO2 Cambe) for Frustrated Murder and Attempted Murder; and

2. Resolution³ dated October 28, 2020 denying their respective motions for reconsideration.

Antecedents

The Charges

Petitioners PO2 Anthony Cacho and PO2 Randolph Cambe⁴ were both charged with two (2) counts of Frustrated Murder under the Informations, *viz.*:

Criminal Case No. RTC-6321-I

That on or about the 11th day of October 2010, at about 9:30 a.m., in Sitio Caarosipan, Brgy. Apostol, Municipality of San Felipe, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together[,] and mutually helping each other, with intent to kill, attended by the qualifying circumstance of abuse of superior strength being armed with guns, did then and there willfully, unlawfully and feloniously attack and shoot Lynyrd S. Cueva with a gun, thereby inflicting upon him gunshot wound at the abdomen, thus performing all the acts of execution which would have produced the crime of Murder as a consequence, but nevertheless, did not produce it by reason of cause/s independent of their will, that is, by the timely and able medical attendance rendered to said Lynyrd S. Cueva, which prevented his death, to the damage and prejudice of the latter.

CONTRARY TO LAW.⁵

² Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Rafael Antonio M. Santos and Gabriel T. Robeniol, *rollo*, pp. 22-34.

³ G.R. No. 254346, *rollo*, pp. 33-34.

⁴ Appears in some part of the records as PO1 Randolph Cambe.

⁵ G.R. No. 254269, *rollo*, p. 23.

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Criminal Case No. RTC-6322-I

“That on or about the 11th day of October 2010, at about 9:30 a.m., in Sitio Caarosipan, Brgy. Apostol, Municipality of San Felipe, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together[,] and mutually helping each other, with intent to kill, attended by the qualifying circumstance of abuse of superior strength being armed with guns, did then and there, willfully, unlawfully and feloniously attack and shoot Paul David Cueva with a gun, thereby inflicting upon him gunshot wound at the left thigh, thus performing all the acts of execution which would have produced the crime of Murder as a consequence, but nevertheless, did not produce it by reason of cause/s independent of their will, that is, by the timely and able medical attendance rendered to said Paul David Cueva, which prevented his death, to the damage and prejudice of the latter.

CONTRARY TO LAW.”⁶

The cases were raffled to the Regional Trial Court (RTC) - Branch 69, Iba, Zambales presided by Acting Presiding Judge Consuelo Amog-Bocar (Judge Amog-Bocar).

On arraignment, petitioners pleaded *not guilty* to both charges. Joint trial ensued.⁷

The victims Lynyrd S. Cueva (Lynyrd) and Paul David S. Cueva (Paul), together with their mother Merlyn S. Cueva (Merlyn), Pablito Duque (Pablito), Dr. Percival Maninang (Dr. Maninang), Dr. Leonardo Toledo (Dr. Toledo), Roberto Dicipulo, Jr. (Roberto) and Royce Rodrigo Esmael (Royce) testified for the prosecution. On the other hand, SPO1 Pablo Aggabao (SPO1 Aggabao), Lalaine Rodriguez (Lalaine), Carlos Sahagun, Jr. (Carlos), Luzviminda Mas Reyes (Luzviminda) and petitioners PO2 Cacho and PO2 Cambe testified for the defense.⁸

The Prosecution’s Version

Brothers **Lynyrd** and **Paul Cueva** testified that on October 11, 2010, around 9:30 in the evening, they went to Sitio Caarosipan, Brgy. Apostol, San Felipe, Zambales together with their mother Merlyn, cousins James Francis Cueva and Roberto, and friend Royce. After dropping off their mother at her friend’s house, they headed to the Bachelor’s Bar, a videoke bar.⁹ There, they

⁶ *Id.* at 23-24.

⁷ *Id.* at 24.

⁸ *Id.*

⁹ G.R. No. 254346, *rollo*, p. 22; see also TSN, November 15, 2011, *id.* at 5-6 and TSN, December 2, 2015, *id.* at 11.

saw two (2) men, herein petitioners PO2 Anthony Cacho and PO2 Randolph Cambe, having a drinking spree inside a nearby hut.¹⁰

About thirty (30) minutes later, Merlyn arrived to fetch them.¹¹ On their way out, however, they caused some noise which irritated petitioners. They were already about to leave on board a tricycle when petitioners blocked their path.¹² PO2 Cacho blurted "*Putang-ina nyo, ang iingay nyo at ang yayabang nyo!*" Lynyrd, thus, alighted from the tricycle and asked PO2 Cacho, "*Sir, ano po ba problema? Pauwi na kami.*" Merlyn also got off the tricycle and asked PO2 Cambe, "*Sir, ano po ba problema, mga anak ko po at pamangkin ko yang mga yan.*" PO2 Cambe replied, "*Wala akong pakialam, putang ina ninyo!*"¹³

PO2 Cambe pushed Merlyn before pointing his gun at her. Paul hurriedly went to his mother and tried to pacify PO2 Cambe but the latter instead shot him in his left leg, causing him to fall on the ground. Holding his hands up, Lynyrd asked why PO2 Cambe shot Paul. Thereupon, PO2 Cambe turned to Lynyrd and also shot the latter in the abdomen.¹⁴

PO2 Cambe once again aimed at Paul and pulled the trigger four (4) more times but the gun jammed. Meanwhile, PO2 Cacho blurted "*Ubusin na ang mga ito.*"¹⁵

Pablito, the bouncer at Bachelor's Bar, testified that he tried to pacify petitioners, but PO2 Cacho threatened "*Putang ina mo [Pablito], umalis ka nga dyan, wag kang makikialam kung hindi papatayin kita!*"¹⁶

PO2 Cambe, thereafter, pointed his gun at Merlyn, pulled the trigger twice but it again failed to fire. He also pointed his gun at Lynyrd, pulled the trigger but it still jammed. Petitioners then fled the scene on board a motorcycle.¹⁷

Meanwhile, the victim's mother **Merlyn**, cousin **Roberto**, and friend **Royce** corroborated Lynyrd and Paul's testimonies.

Notably though, Merlyn gave a different version of the incident in her police blotter report. There, she reported that a commotion ensued between PO2 Cambe and Lynyrd wherein PO2 Cambe pulled his service firearm and shot Lynyrd and Paul *after* he (PO2 Cambe) fell on the ground.¹⁸

¹⁰ TSN, October 22, 2014.

¹¹ TSN, October 22, 2014, p. 7.

¹² TSN, February 13, 2013, pp. 4 and 7.

¹³ G.R. No. 254346, *rollo*, pp. 22-23.

¹⁴ *Id.* at 23.

¹⁵ *Id.* See also TSN, November 8, 2017, p. 20; see also TSN, December 13, 2017, p. 25.

¹⁶ TSN, June 3, 2015, p. 12.

¹⁷ G.R. No. 254346, *rollo*, p. 23; see also TSN, November 8, 2017, p. 20; see also TSN, December 13, 2017, p. 25.

¹⁸ RTC Records, p. 927.

Finally, **Dr. Maninang**, the physician who treated Lynyrd testified that the latter sustained a fatal through and through wound in his abdomen which required surgery. Lynyrd would have died had it not been for the immediate medical intervention given him.¹⁹ Paul, on the other hand, suffered a non-fatal gunshot wound in his left thigh according to **Dr. Toledo**.²⁰

The Defense's Version

PO2 Randolph Cambe admitted shooting the victims but claimed self-defense. He testified that on October 11, 2010, he and PO2 Cacho were conducting surveillance for illegal activities in Brgy. Apostol, San Felipe, Zambales. They were positioned inside a hut in front of Pangga Bar when they saw Merlyn, Lynyrd, Paul, Roberto and others coming out of the adjacent bar. They were very noisy. As they were about to board a tricycle, PO2 Cacho approached and asked them to refrain from shouting.²¹ But someone from the group retorted "*Anong pakialam mo?*"²²

He (PO2 Cambe) introduced himself and his companion PO2 Cacho as police officers as soon as he noticed that a verbal altercation was already ensuing between PO2 Cacho and the group.²³ Merlyn got off the tricycle and repeatedly asked him (PO2 Cambe) "*Ano ba ang problema mo, sir?*" He replied "*wala kaming problema baka kayo meron?*" Meanwhile, Roberto stealthily hit him with a beer bottle in the head, causing him to fall on the ground.²⁴ Before he could even stand up, however, Lynyrd and Paul also got poised to attack him, prompting him to shoot them first with his service firearm.²⁵ Thereafter, he and PO2 Cacho left and reported the incident to the police station.²⁶

He presented a medical certificate showing he sustained shallow abrasion on his left ear. According to him it was caused by Roberto who hit him with a beer bottle.²⁷

PO2 Anthony Cacho²⁸ corroborated PO2 Cambe's testimony. He claimed that on October 11, 2010, he and PO2 Cambe were conducting surveillance operations in civilian clothes. They stayed inside the hut near the Pangga Bar. PO2 Cambe had his service firearm with him while he did not carry a gun. That night, the victims' group came out of the Bachelor Bar shouting. To prevent any disorder in the area, he approached and told the

¹⁹ TSN, September 21, 2016, pp. 10-12, 20-21 and 23.

²⁰ TSN, October 5, 2016, pp. 23-25.

²¹ TSN, November 28, 2017, pp. 21-22.

²² TSN, December 13, 2017, p. 13.

²³ RTC records, p. 930, TSN, December 13, 2017, pp. 13-14.

²⁴ *Id.*

²⁵ *Id.*

²⁶ G.R. No. 254346, *rollo*, pp. 24 and 40; see also TSN, November 8, 2017, pp. 20-21.

²⁷ *Id.* at 33 and 42.

²⁸ TSN, November 8, 2017, pp. 25, 16-17 and 19-26; see also RTC records, p. 933.

group not to shout. But someone from the group arrogantly blurted "*Anong pakialam mo?*"

PO2 Cambe intervened and introduced themselves as police officers. A woman from the group then asked "*Anong problema niyo?*" PO2 Cambe replied "*Kayo ano bang problema niyo?*" Suddenly, Roberto approached and struck PO2 Cambe with a beer bottle causing the latter to fall on the ground wounded. Immediately thereafter, Lynyrd and Paul moved to attack PO2 Cambe. To defend himself, PO2 Cambe shot the victims once each. After the encounter, he helped the wounded PO2 Cambe get up. They left the scene to report the incident to the police authorities.

Pangga Bar waitress **Lalaine** was in front of the Pangga bar when Merlyn's group came out of the Bachelor's Bar. She heard PO2 Cacho telling the group to be quiet. Merlyn, in turn, asked PO2 Cacho "*Ano bang problema mo, sir?*" to which PO2 Cambe replied "*kayo ano bang problema niyo.*" While the two were arguing, Roberto suddenly appeared and stealthily hit PO2 Cambe with a beer bottle, causing the police officer to fall.²⁹ While helpless on the ground, two men from the group attempted to approach and maul PO2 Cambe. At that instance, the latter drew his service firearm and fired upward.

Another Pangga Bar waitress **Luzviminda** testified differently. She said PO2 Cambe shot Lynyrd and Paul first before he got hit by Roberto with a beer bottle.

The Ruling of the Trial Court

By Decision³⁰ dated July 3, 2018, the trial court rendered a verdict of conviction against petitioners for the Frustrated Murder of Lynyrd and Attempted Murder of Paul, *viz.*:

WHEREFORE, in Crim. Case No. RTC-6321-I, accused Anthony Cacho and Randolph Cambe are found **GUILTY** beyond reasonable doubt of the crime of Frustrated Murder and are hereby sentenced to suffer the indeterminate penalty of imprisonment from **EIGHT (8) YEARS and ONE (1) DAY** of prison mayor as minimum to **FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY** of reclusion temporal as maximum.

In addition, accused Cacho and Cambe are likewise ordered to pay jointly and severally complaining witness Lynyrd Cueva civil indemnity, moral damages and exemplary damages each in the amount of ₱50,000.00 and actual damages in the amount of ₱153,316.25.

²⁹ G.R. No. 254346, *rollo*, p. 23.

³⁰ Penned by Acting Presiding Judge Consuelo Amog-Bocar, G.R. No. 254346, *rollo*, pp. 37-48.

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In Crim. Case No. RTC-6322-I, accused Anthony Cacho and Randolph Cambe are found **GUILTY** beyond reasonable doubt of the crime of Attempted Murder and are hereby sentenced to suffer the indeterminate penalty of imprisonment from **FOUR (4) YEARS** and **TWO (2) MONTHS** of prison correccional as minimum to **EIGHT (8) YEARS** of prison mayor as maximum.

In addition, accused Cacho and Cambe are likewise ordered to pay jointly and severally complaining witness Paul David Cueva civil indemnity, moral damages and exemplary damages each in the amount of ₱50,000.00 and actual damages in the amount ₱38,608.00 (sic).

All monetary awards in the above-entitled cases, including civil indemnity, moral damages, exemplary damages and actual damages shall earn interest at the rate of six (6) percent per annum from the time of the finality of this decision until fully paid in consonance with the ruling in Oandasan case.

SO ORDERED.³¹

It essentially rejected PO2 Cambe's claim of self-defense. *First*, the initial aggression came from Roberto, not from the victims themselves. *Second*, PO2 Cambe failed to testify on the manner by which he was allegedly attacked by Lynyrd and Paul who were merely poised to attack. *Third*, PO2 Cambe got hit with a beer bottle only after he shot Lynyrd and Paul. *Lastly*, none of the defense witnesses testified that Lynyrd and Paul were armed during the incident.³²

PO2 Cambe had the intent to kill the victims. After shooting Lynyrd, he pulled the trigger several more times to finish off Lynyrd but the gun malfunctioned. When Paul came to Lynyrd's rescue, PO2 Cambe turned his ire on Paul by shooting him several times, albeit the gun continued to malfunction. PO2 Cacho conspired with PO2 Cambe in the frustrated and attempted killing of the victims. PO2 Cacho urged PO2 Cambe to "*Ubusin na ang mga ito.*" They left the scene together without regard to the condition of Lynyrd and Paul. Their individual and collective acts following the attack on the victims reflected a common design to kill them.³³

Lastly, there was abuse of superior strength. A gross disparity of force existed between the petitioners and the victims; the former being armed with guns while the latter were totally unarmed.³⁴

Petitioners' motion for reconsideration was denied under Resolution dated October 15, 2018.³⁵

³¹ G.R. No. 254346, *rollo*, pp. 47-48.

³² *Id.* at 42-46.

³³ *Id.* at 43-45.

³⁴ *Id.*

³⁵ Penned by Acting Presiding Judge Consuelo Amog-Bocar, G.R. No. 254346, *rollo*, p. 74-77.

The Proceedings before the Court of Appeals

On appeal, PO2 Cambe faulted the trial court for rendering the verdict of conviction despite his plea of self-defense. He insisted that the incident happened as a result of sheer impulse. He did not take advantage of his service firearm. It just so happened that the firearm was then the only weapon available to him to defend himself. The victims and their witnesses misconstrued his act of locking his firearm as another attempt to shoot them.³⁶

On the other hand, PO2 Cacho faulted the trial court for finding that he acted in conspiracy with PO2 Cambe. It cannot be allegedly inferred from their acts that they were animated by one and the same purpose, and that his mere presence at the scene already made him a conspirator to the crimes committed. Abuse of superior strength should not have been appreciated against them since PO2 Cambe did not consciously use the firearm to injure the victims. Their voluntary surrender should have been considered to mitigate their liability.³⁷

The People, through the Office of the Solicitor General (OSG) countered that petitioners failed to prove unlawful aggression on the part of the victims. In contrast, petitioners intended to kill the victims. PO2 Cambe could have just simply fired his gun once. It showed, however, that he tried to further shoot Lynyrd and Paul with the same gun, albeit the gun did not fire anymore. Meanwhile, PO2 Cacho aggravated the situation by urging PO2 Cambe to finish off the victims and the other members of the group.³⁸

Lastly, the trial court correctly appreciated abuse of superior strength as a qualifying circumstance. Petitioners had enough time from the moment they saw the group of Lynyrd and Paul enter the bar to consciously adopt the method of attack using their firearms.³⁹

The Ruling of the Court of Appeals

By Decision⁴⁰ dated January 29, 2020, the Court of Appeals affirmed with modification, *viz.*:

³⁶ G.R. No. 254346, *rollo*, pp. 95 and 99.

³⁷ *Id.* at 83-87.

³⁸ *Id.* at 98-101.

³⁹ *Id.* 101-102.

⁴⁰ Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Rafael Antonio M. Santos and Gabriel T. Robeniol, G.R. No. 254346, *rollo*, pp. 20-32.

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WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated July 3, 2018 of the Iba, Zambales Regional Trial Court, Branch 69, in Criminal Case Nos. 6321-I and 6322-I finding accused-appellants PO2 Anthony Cacho and PO1 Randolph Cambe guilty beyond reasonable doubt of Frustrated Murder and Attempted Murder is **AFFIRMED WITH MODIFICATION**, in that:

- 1) In Crim. Case No. RTC-6321-I, accused-appellants are sentenced to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum;
- 2) In Crim. Case No. RTC-6322-I, accused-appellants are sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years of *prision correccional*, as maximum. They are ordered to pay Paul David Cueva **₱25,000.00** as civil indemnity, **₱25,000.00** as moral and **₱25,000.00** as exemplary damages.

All other aspects of the assailed Decision **STAND**.

SO ORDERED.⁴¹

The Court of Appeals found no unlawful aggression on the part of Lynyrd and Paul. On the contrary, PO2 Cambe's intent to kill was evident when after he had already shot the victims, he once again aimed his gun at them and fired anew, albeit his gun jammed.

There was conspiracy between the two police officers. Although PO2 Cacho did not personally take part in shooting the victims, he urged PO2 Cambe to finish off the group. He also left the scene with PO2 Cambe.

In view of the fact that petitioners attacked the victims, using a weapon which was out of proportion to the defense available to the unarmed victims, the Court of Appeals also appreciated abuse of superior strength to qualify the crime to Frustrated Murder and Attempted Murder.

The Court of Appeals, however, credited petitioners with voluntary surrender.

Lastly, it sustained the award of ₱50,000.00 each for civil indemnity, moral and exemplary damages in favor of Lynyrd but reduced to ₱25,000.00 each the award of civil indemnity, moral and exemplary damages to Paul to conform with prevailing jurisprudence. It also sustained the award of actual damages as the same were supported by receipts on record.

⁴¹ G.R. No. 254346, *rollo*, p. 32.

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Petitioners' respective motions for reconsideration were denied under Resolution⁴² dated October 28, 2020.

The Present Petition

Petitioners now pray anew for their acquittal.

PO2 Cambe reiterates that Lynyrd and Paul's group attacked him first. Though the initial attack came from Roberto who hit him with a bottle, it was Lynyrd and Paul who continued the aggression. The "victims" and their companions were superior in number, hence, using his service handgun to repel the victims who were then poised to attack him was but a necessary means to defend himself. He and PO2 Cacho were at the scene to conduct official police business.⁴³

For his part, PO2 Cacho asserts he did not conspire with PO2 Cacho in shooting the victims.⁴⁴

On the other hand, the OSG maintains that even assuming there was unlawful aggression on the part of Lynyrd and Paul, the means used by PO2 Cambe in repelling the alleged attack was not reasonably necessary. There was abuse of superior strength since petitioners were armed with their service firearms while Lynyrd and Paul were both unarmed.⁴⁵

PO2 Cambe obviously intended to kill Lynyrd and Paul as shown by his attempt to further shoot the victims even after he had already shot them earlier. As for PO2 Cacho's participation, he was a co-conspirator. Through his actions, he showed concurrence in PO2 Cambe's criminal design to kill the victims. He even urged that the group be finished off.⁴⁶

Lastly, petitioners were drinking alcoholic drinks at the time of the incident and were not actually conducting any official police business.⁴⁷

Issue

Did the Court of Appeals err in affirming petitioners' conviction for Frustrated Murder and Attempted Murder?

⁴² Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Rafael Antonio M. Santos and Gabriel T. Robeniol, G.R. No. 254346, *rollo*, pp. 33-34.

⁴³ G.R. No. 254269, *rollo*, pp. 8-16.

⁴⁴ *Id.*

⁴⁵ *Id.* at 59-63.

⁴⁶ *Id.* at 63-66 and 67-70.

⁴⁷ *Id.* at 66-67.

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Ruling

We deny the petitions.

G.R. No. 254269: P02 Randolph Cambe

A. PO2 Cambe did not act in Self-Defense

In criminal cases, the prosecution bears the *onus* to prove beyond reasonable doubt not only the commission of the crime, but to establish as well, with the same quantum of proof, the identity of the person or persons responsible therefor. This burden of proof does not shift to the defense but remains with the prosecution throughout the trial.⁴⁸

When the accused, however, admit to inflicting fatal wounds on the victim but invokes self-defense, the basic rule that the burden of proving the guilt of the accused lies on the prosecution is **reversed** and the burden of proof is shifted to the accused to prove the elements of their defense. It then becomes incumbent upon them to rely on the strength of their own evidence and not on the weakness of the evidence of the prosecution, for even if the latter were weak, it could not be disbelieved after they had admitted inflicting wounds on the victim.⁴⁹

Here, PO2 Cambe invokes self-defense to negate his liability for shooting the victims. By invoking self-defense, therefore, PO2 Cambe assumed the burden to establish the same by credible, clear, and convincing evidence; otherwise, conviction would follow from his admission that he intentionally inflicted fatal wound to Lynyrd and non-fatal wound to Paul.⁵⁰

In particular, PO2 Cambe must establish 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.⁵¹

We find that only the first two elements of self-defense are present here.

i. The initial aggression came from the victims Lynyrd, Paul and their companion Roberto

⁴⁸ *People v. Villanueva*, 536 Phil. 998, 1003 (2006).

⁴⁹ *People v. Damitan*, 423 Phil. 113, 116 (2001).

⁵⁰ See *Belbis, Jr. v. People*, 698 Phil. 706, 719 (2012).

⁵¹ See *Velasquez v. People*, 807 Phil. 438, 450 (2017).

The first element of self-defense is unlawful aggression. This is the most important element because there can be no self-defense unless the victim first committed unlawful aggression against the person who resorted to self-defense.⁵²

*People v. Nugas*⁵³ explains that the unlawful aggression must be actual and material. It pertains to an offensive act of using physical force or weapon which positively determines the intent of the aggressor to cause the injury, thus:⁵⁴

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. **The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat.** Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (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.

Unlawful aggression 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.** 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. (Emphasis supplied)

In determining whether there was unlawful aggression on the part of the victims Lynyrd and Paul, it behooves the Court to sift through the evidence of both the prosecution and the defense and filter which portions to be believed and which ones to be rejected.

Here, the versions of both parties overlap on material points. Indeed, there is no question here that on October 11, 2010, around 9:30 in the evening, Lynyrd and Paul, together with James, Roberto and Royce, were at the Bachelor's Bar in Sitio Caarosipan, Brgy. Apostol, San Felipe, Zambales. Meanwhile, petitioners were at the immediately adjacent Pangga Bar. About thirty (30) minutes later, Merlyn arrived to fetch her sons and their

⁵² See *Guevarra v. People*, 726, Phil. 183, 194 (2014).

⁵³ See 677 Phil. 168, 177-178 (2011).

⁵⁴ See *Ganal. v. People*, G.R. No. 248130, December 2, 2020.

companions who, on their way out of the Bachelor Bar, caused some noise. Thus, petitioners confronted them as the latter were about to leave on board a tricycle. Merlyn asked what the problem was, hence, a verbal altercation ensued. At some point, PO2 Cambe fell on the ground and shot Lynryd and Paul. PO2 Cacho helped PO2 Cambe get up before fleeing on their motorcycle. Meanwhile, Lynryd and Paul were brought to the hospital for medical treatment.

The prosecution and the defense, nevertheless, diverge on several points.⁵⁵ Pivotal to our discussion on the first requisite, though, is the varying claims on who delivered the first blow. Petitioners asserted that Roberto first struck PO2 Cambe with a beer bottle, causing the latter to fall on the ground. When Lynryd and Paul were about to follow up with an attack, he (PO2 Cambe) shot them in self-defense. On the other hand, the prosecution witnesses never mentioned at all that Roberto struck PO2 Cambe with a beer bottle. According to them, PO2 Cambe pushed Merlyn and pointed his gun at her. Paul hurriedly went to his mother and tried to pacify PO2 Cambe but the latter instead shot him in his left leg. Thereupon, PO2 Cambe turned to Lynryd and also shot the latter in the abdomen. Between the conflicting claims of the parties, however, we find the version of the defense on this point to be more credible.

Notably, the victims' mother herself **Merlyn Cueva** caused the entry of the following incident in the police blotter, *viz.*:

One Merlyn Cueva x x x personally reported to this office and requested to put into records that on October 12, 2010 at about 9:30 in the evening, complainant fetched her two sons namely: Lynryd S. Cueva and Paul David Cueva at Bachelor Videoke Bar located at Barangay Apostol, San Felipe, Zambales. While on their way home on board a tricycle, [PO2] Cacho flagged down the said tricycle and uttered unsavory words to wit "*Putang ina niyo.*" Lynryd Cueva replied "*bakit ka nagmumura?*" At that juncture, a heated argument ensued between both of them. Complainant (Mrs. Cueva) alighted from the tricycle to pacify (sic), but [PO2] Cambe pushed her and uttered to wit "*Wag kang makialam putang ina mo.*" **A commotion ensued between [PO2] Cambe and Lynryd wherein [PO2] Cambe fell on the ground and pulled his service firearm shot the victims (Lynryd and Paul David) hitting them in the left abdomen and left knee respectively.** (Emphasis added)

x x x x

⁵⁵ a. According to the prosecution witnesses, petitioners were having a drinking spree inside Pangga Bar. On the other hand, petitioners claimed that they were conducting surveillance operations in the vicinity;
 b. The prosecution witnesses asserted that petitioners repeatedly cursed at them for being noisy. Petitioners countered though that they merely told Lynryd, Paul and their companions to quiet down;
 c. The prosecution alleged that PO2 Cambe tried to shoot Lynryd and Paul several times but his gun malfunctioned. On the contrary, PO2 Cambe claimed that he was merely locking his gun; and
 d. PO2 Cacho denied uttering "*Ubusin na ang mga ito,*" contrary to the prosecution's claim.

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Merlyn's own report, thus, confirmed that PO2 Cambe shot Lynyrd and Paul only **after** he fell on the ground. Though it did not specify the reason why PO2 Cambe fell, the Court finds this corroborative of petitioners' claim that PO2 Cambe actually got hit by Roberto with a beer bottle first.

Though Merlyn later changed her tune during the trial proper, we find her narration in the police blotter immediately following the incident to be more credible as her recollection that time would have been more accurate.

Too, Merlyn's police blotter report conformed with the testimony of **Lalaine Rodriguez**, a waitress at the nearby Pangga Bar, thus:

Q Now, when they were arguing[,] what happened next?

A There was this person who suddenly struck the left ear of [PO2 Cambe] sir.

Q What happened after that when you saw that somebody hit Cambe on his left ear?

A I saw him [fall] down sir.

Q Now did you come to know [of] the name of that person who hit [PO2 Cambe]?

A Yes sir.

Q Will you please tell us the name of the person?

A Roberto Dicipulo sir.

Q And that person came from the group of Merlyn Cueva?

A Yes sir.

x x x x

Q Now, what did the other persons in the group of Merlyn Cueva do when this [Robert] struck [PO2 Cambe] on his left face or on his left ear?

A When [PO2 Cambe] fell down[,] these two men from [the] group attacked him and that was the time [PO2 Cambe] drew his gun and fired upward sir.⁵⁶ (Emphases added)

x x x x

Indeed, Lalaine's testimony and Merlyn's police blotter report jibed with the defense's stance that PO2 Cambe was subjected to the group's hostility and aggression. Initially, Roberto hit PO2 Cambe with a beer bottle in the head, causing the latter to slump on the ground. The aggression continued and this time the attack was going to come from Lynyrd and Paul. The group proved to be determined to cause more injury to PO2 Cambe while the latter was still dazed, bloodied, and helpless on the ground.

⁵⁶ TSN July 5, 2017, pp. 10-12.

The prosecution nevertheless argues that it was PO2 Cambe who was first to attack as he pointed his gun to Merlyn after pushing her. We note, however, that Merlyn's police blotter report made no mention of this circumstance. If it indeed happened, Merlyn would have had it entered in the police blotter, too, but she did not; and the only reason the Court sees for the omission is because it did not actually happen.

We cannot characterize PO2 Cambe's equivocal act of pushing Merlyn as unlawful aggression either. It does not positively determine the intent of the aggressor to cause the injury, nor does it establish that Merlyn's life was put into real peril. A mere push or a shove is insufficient to constitute unlawful aggression.⁵⁷ It nevertheless qualifies as sufficient provocation as will be discussed in further detail elsewhere in this decision.

ii. PO2 Cambe employed reasonable means to defend himself

As for the second element of self-defense, *People v. Olarbe*⁵⁸ extensively discussed how courts may determine the reasonable necessity of the means employed:

In judging pleas of self-defense and defense of stranger, the courts should not demand that the accused conduct himself with the poise of a person not under imminent threat of fatal harm. He had no time to reflect and to reason out his responses. He had to be quick, and his responses should be commensurate to the imminent harm. This is the only way to judge him, for the law of nature — the foundation of the privilege to use all reasonable means to repel an aggression that endangers one's own life and the lives of others — did not require him to use unerring judgment when he had the reasonable grounds to believe himself in apparent danger of losing his life or suffering great bodily injury. The test is whether his subjective belief as to the imminence and seriousness of the danger was reasonable or not, and the reasonableness of his belief must be viewed from his standpoint at the time he acted. The right of a person to take life in self-defense arises from his belief in the necessity for doing so; and his belief and the reasonableness thereof are to be judged in the light of the circumstances as they then appeared to him, not in the light of circumstances as they would appear to others or based on the belief that others may or might entertain as to the nature and imminence of the danger and the necessity to kill.

The remaining elements of the justifying circumstances were likewise established.

⁵⁷ *People v. Sabio*, 126 Phil. 276, 276 (1967).

⁵⁸ 836 Phil. 1015, 1028 (2018).

Reasonable necessity of the means employed to repel the unlawful aggression does not mean absolute necessity. **It must be assumed that one who is assaulted cannot have sufficient tranquility of mind to think, calculate and make comparisons that can easily be made in the calmness of reason. The law requires rational necessity, not indispensable need. In each particular case, it is necessary to judge the relative necessity, whether more or less imperative, in accordance with the rules of rational logic. The accused may be given the benefit of any reasonable doubt as to whether or not he employed rational means to repel the aggression.**

In determining the reasonable necessity of the means employed, the courts may also look at and consider the number of wounds inflicted. A large number of wounds inflicted on the victim can indicate a determined effort on the part of the accused to kill the victim and may belie the reasonableness of the means adopted to prevent or repel an unlawful act of an aggressor. x x x

The courts ought to remember that a person who is assaulted has neither the time nor the sufficient tranquility of mind to think, calculate and choose the weapon to be used. For, in emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to hold the actor not responsible in law for the consequences. Verily, the law requires rational equivalence, not material commensurability, viz.:

It is settled that reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter the principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury. (Emphases supplied)

Here, while PO2 Cambe was already slumped on the ground wounded, Lynyrd and Paul poised to follow up and attack him too. To be sure, his instinct for self-preservation caused him to act fast and repel at once the clear and imminent attack on his life and limbs.⁵⁹ The only available tool of defense for him at that time was his service pistol which he readily drew to shoot Lynyrd and Paul.

The fact that the two were unarmed did not render PO2 Cambe's act of shooting them unnecessary, nay, an unreasonable act of self-defense. Under the perilous situation he found himself, he was not expected to think as clearly, logically, and cautiously as he would have under normal circumstances.

⁵⁹ Supra note 54.

At that moment, there was an actual threat to his life and limbs. Though unarmed with a gun or any lethal weapon, the sheer number of the victims and their companions and their clear capacity to improvise, using bottles for example, to overcome their opponent was a real and imminent danger to reckon with.

In *Ganal, Jr. y Badajos v. People*,⁶⁰ the Court found reasonable necessity of the means employed to repel the aggression although Ganal inflicted five (5) bullet wounds and two (2) lacerations on Julwin who was merely armed with two (2) large stones and a knife, viz.:

Faced by a determined and prepared foe, petitioner, who was simply drinking with his friends, suddenly found himself in a situation where he had to defend himself and his family from serious harm or even death. Notably, petitioner first tried to simply scare off Julwin by firing a warning shot. Julwin was unfazed and still continued to advance toward him with malevolent intent. And even after petitioner shot Julwin, the latter did not even falter but instead threatened to kill petitioner and his family. How does one react to such a terrifying situation? Petitioner must have thought that his actions were so futile because Julwin was still standing there and shouting threats. Petitioner, at that instant, must have felt he had to end it once and for all — kill or be killed. So, he shot Julwin four (4) more times until the latter felt just a meter away from him. To repeat *“the right of a person to take life in self-defense arises from his belief in the necessity for doing so; and his belief and the reasonableness thereof are to be judged in the light of the circumstances as they then appeared to him, not in the light of circumstances as they would appear to others or based on the belief that others may or might entertain as to the nature and imminence of the danger and the necessity to kill.”*

So must it be.

iii. There was sufficient provocation on the part of petitioners

Despite the presence of the first two elements, we cannot acquit PO2 Cambe in the absence of the third one.

To recall, there must be lack of sufficient provocation on the part of the person resorting to self-defense to warrant an acquittal. Provocation is sufficient when it is proportionate to the aggression, that is, adequate enough to impel one to attack the person claiming self-defense.⁶¹

Here, we find that petitioners are not blameless as they in fact provoked the victims.

⁶⁰ *Id.*

⁶¹ *Velasquez v. People*, 807 Phil. 438, 452 (2017).

For perspective, petitioners' first encounter with the victims was when they (petitioners) admonished the latter for being rowdy. A verbal altercation ensued which led PO2 Cambe to push Merlyn and curse at the latter "*Wag kang makialam putang ina mo!*" Thereupon, Roberto struck PO2 Cambe using a beer bottle, causing the latter to slump on the ground. Lynyrd and Paul immediately prepared to follow up on the attack, hence, PO2 Cambe shot each of them once.

The above sequence showed how the verbal altercation escalated into a shooting incident. As it was, PO2 Cambe's act of pushing and cursing Merlyn triggered Lynyrd, Paul and Roberto to assault him. Roberto launched an attack on PO2 Cambe. Lynyrd and Paul were about to follow up on the attack but PO2 Cambe repelled them with his service firearm.

When the law speaks of provocation, the reference is to an unjust or improper conduct of the offended party capable of exciting, inciting, or irritating anyone; it is not enough that the provocative act be unreasonable or annoying; the provocation must be sufficient to excite one to commit the wrongful act and should immediately precede the act.⁶² As it was here, upon seeing their mother/aunt get pushed and cursed by PO2 Cambe, Robert, Lynyrd and Paul got incited to assault the police officer in retaliation.

All told, considering that only the first two elements of self-defense are present here, PO2 Cambe cannot successfully invoke the justifying circumstance. The next question therefore is - what crime or crimes did PO2 Cambe commit in connection with the injuries inflicted on Lynyrd and Paul?

B. PO2 Cambe is guilty of Frustrated and Attempted Homicide

Both PO2 Cambe and PO2 Cacho were convicted of Frustrated Murder and Attempted Murder for the injuries sustained by Lynyrd and Paul, respectively. Article 248 of the Revised Penal Code (RPC), as amended by Republic Act No. 7659⁶³ (RA 7659) defines and penalizes murder, thus:

Article 248. Murder. - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

x x x x

⁶² *Urbano v. People*, 596 Phil. 902, 910 (2009).

⁶³ An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes.

Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is not parricide or infanticide.⁶⁴ In the absence of circumstances which qualify the crime to murder, parricide, or infanticide, the killing would only be classified as homicide under Article 249 of the RPC:

Article 249. Homicide. — Any person who, not falling within the provisions of Article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

On the other hand, Article 6 of the RPC draws the line between felonies in their consummated, frustrated and attempted stages, thus:

Article 6. Consummated, frustrated, and attempted felonies. - Consummated felonies as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than this own spontaneous desistance.

Both murder and homicide, in either their frustrated and attempted stages, require intent to kill. The difference between their frustrated stages, on the one hand, and their attempted stages, on the other, lies on the gravity of the injuries inflicted. The killing is frustrated when the victim sustained fatal or mortal wound but did not die because of timely medical assistance; it is in its attempted stage when the victim sustained only a non-fatal wound because of mere partial execution of the acts necessary to accomplish the killing, provided that the partial execution is not on account of the perpetrator's spontaneous desistance.⁶⁵

When the intent to kill is lacking, however, but wounds are shown to have been inflicted upon the victim, the crime is not frustrated or attempted homicide or murder but physical injuries only.⁶⁶

Thus, in order to determine whether the crime committed is attempted or frustrated murder or homicide, or physical injuries, the crucial points to

⁶⁴ *People v. Charlie Flores*, 838 Phil. 499, 506 (2018).

⁶⁵ See *Etino v. People*, 826 Phil. 32, 42 (2018).

⁶⁶ *Id.*

consider are: **first**, whether there was intent to kill on the part of the accused; **second**, whether there are circumstances present which qualify the crime to murder; and **third**, whether the injury sustained by the victim was fatal.

i. PO2 Cambe intended to kill Lynrd and Paul

Intent to kill is only presumed if the victim dies as a result of a deliberate act of the malefactors. Conversely, it cannot be presumed where the victim survives the injury, as here. Under the latter circumstance, the intent to kill must be proven in a clear and evident manner so as to exclude every possible doubt as to the homicidal intent of the aggressor.⁶⁷

In *Fantastico v. People of the Philippines*,⁶⁸ the Court considered the following determinants of intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused.

Here, PO2 Cambe's intent to kill Lynrd and Paul was clear. **First**, PO2 Cambe used his service firearm to shoot Lynrd and Paul, in the abdomen and thigh, respectively. **Second**, Lynrd sustained a through and through gunshot wound which means he was shot within a close range. **Third**, PO2 Cambe was determined to finish off Lynrd and Paul as he tried to shoot them again albeit the gun jammed. **Lastly**, PO2 Cambe and PO2 Cacho left their bloodied victims and fled the scene.

The foregoing acts of PO2 Cambe clearly establish his intent to kill Lynrd and Paul. There being intent to kill on the part of PO2 Cambe, the crime committed cannot be classified as mere physical injuries. The crimes would then be either homicide or murder, in the frustrated and/or attempted stages, as the case may be, depending on whether a qualifying circumstance attended the commission of the crimes.

ii. Abuse of superior strength did not qualify the offense

The Informations alleged that petitioners injured Lynrd and Paul in abuse of their superior strength, a qualifying circumstance.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, selected or taken advantage of by him in the commission of the crime.⁶⁹ The assailant

⁶⁷ *Id.*

⁶⁸ 750 Phil. 120, 133 (2015), citing *Rivera v. People*, 515 Phil. 824, 833 (2006).

⁶⁹ *People v. Pigar*, G.R. No. 247658, February 17, 2020.

must be shown to have consciously sought the advantage, or to have the deliberate intent to use his or her superior advantage.⁷⁰

Here, the courts below appreciated the qualifying circumstance of abuse of superior strength in view of the disparity of force between petitioners who were armed with their service firearms, and the unarmed victims.

We disagree.

Here, the prosecution failed to establish that PO2 Cambe purposely sought or took advantage of his service firearm in their attempt to kill Lynyrd and Paul.

In *People v. Campit*,⁷¹ the Court ruled that when the quarrel between the victim and his assailants arose unexpectedly, the aggravating circumstance of abuse of superior strength could not be appreciated as the same requires some degree of prior deliberation or meditation.

Applying *Campit*, there can be no abuse of superior strength here. The shooting incident resulted from an altercation between petitioners and the victims' group after the former admonished the latter for being rowdy. PO2 Cambe could not have purposely sought the use of his gun in inflicting injuries on the victims since the crimes were preceded by this unexpected altercation. As earlier discussed, PO2 Cambe was not expected to think as clearly, logically, and cautiously as he would have under normal circumstances since, at that moment, there was an actual threat to his life and limbs.

Absent this alleged qualifying circumstance of abuse of superior strength, PO2 Cambe would have been liable for homicide only and not murder, had he completed all the necessary acts of its execution and produced the desired outcome.

iii. Lynyrd and Paul sustained fatal and non-fatal injuries, respectively

It was already established that PO2 Cambe shot Lynyrd and Paul in the abdomen and thigh, respectively, when he was about to get ganged up by the latter.

In relation to Lynyrd's injury, Dr. Maninang testified that it was fatal, as it was a through and through gunshot wound in his abdomen.⁷² In fact, Lynyrd could have died were it not for the timely medical attention given to

⁷⁰ See *People v. Rodriguez*, G.R. No. 248181, May 5, 2021.

⁷¹ 822 Phil. 448, 459 (2017).

⁷² TSN, September 21, 2016, p. 11.

him.⁷³ Meanwhile, Dr. Toledo testified that Paul suffered a non-fatal gunshot wound in his left thigh.

Consequently, PO2 Cambe is liable for Frustrated Homicide and Attempted Homicide for the injuries sustained by Lynyrd and Paul, respectively. We now go to PO2 Cacho's liability for these crimes.

G.R. No. 254346: PO2 Anthony Cacho

Though PO2 Cacho was not the one who shot the victims, the courts below nevertheless held him liable to the same extent as PO2 Cambe on ground of conspiracy.

Conspiracy exists when "two or more persons come to an agreement concerning the commission of a felony and decide to commit it." In conspiracy, the act of one is the act of all.⁷⁴

In *People v. Evasco*⁷⁵ the Court emphasized the two (2) forms of conspiracy. The first refers to *express conspiracy*. It requires proof of an actual agreement among the co-conspirators to commit the crime. The second pertains to *implied conspiracy*. It exists when two (2) or more persons are shown by their acts to have aimed toward the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiments. This is proved by the mode and manner the offense was committed, or from the acts of the accused *before, during, and after* the commission of the crime, indubitably pointing to a joint purpose, a concert of action, and a community of interest. In fine, even without proof of express agreement among the co-accused, conspiracy may still be held to exist among them.

Here, the prosecution sufficiently established that petitioners acted in concert to achieve one common purpose -- to kill the victims. To be sure: (1) PO2 Cambe tried to further shoot Lynyrd and Paul even after initially hitting them in the abdomen and left thigh, respectively;⁷⁶ (2) PO2 Cacho did not stop PO2 Cambe from shooting Lynyrd and Paul;⁷⁷ (3) PO2 Cacho urged PO2 Cambe "*Ubusin na ang mga ito!*" or to finish off the victims' group;⁷⁸ (4) when Bachelor Bar's bouncer Pablito was about to intervene to pacify the parties, PO2 Cacho threatened him "*Putang ina mo [Pablito], umalis ka nga dyan, wag kang makikialam kung hindi papatayin kita;*"⁷⁹ and (5) PO2 Cacho and PO2 Cambe left the scene together on board the same motorcycle.⁸⁰

⁷³ *Id.*

⁷⁴ *People v. Galam*, G.R. No. 224222, October 9, 2019.

⁷⁵ G.R. No. 213415, September 26, 2018.

⁷⁶ G.R. No. 254346, *rollo*, p. 26.

⁷⁷ *Id.* at 27.

⁷⁸ *Id.* at 23.

⁷⁹ TSN, June 3, 2015, p. 12.

⁸⁰ G.R. No. 254346, *rollo*, p. 23.

Petitioners' collective acts, during and after the commission of crimes indicated a joint purpose and concurrence of sentiments which were all geared toward killing Lynyrd and Paul. And while there was no express agreement between petitioners, their concerted actions indicate that they did conspire with each other for the fulfillment of such common purpose.⁸¹

Indubitably, there was an implied conspiracy here between petitioners. Though PO2 Cacho here did not take direct part in shooting Lynyrd and Paul, he is, nonetheless, found to have joined PO2 Cambe's design to kill them as manifested by his acts during and after the shooting. By his presence and utterances in the scene, he had lent moral support to PO2 Cambe. He did not even exert the slightest effort to prevent the commission of the crimes. On the contrary, he even threatened Pablito who tried to pacify the parties.

In *People v. Pigar*,⁸² citing *People v. Lababo*,⁸³ the Court ruled that one who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator, especially if they did nothing to prevent the commission of the crime, as PO2 Cacho did here.

When conspiracy exists, the courts no longer have to determine the degree of participation of each conspirator because ultimately "the act of one is the act of all" being designed for the same criminal purpose. As such, the law imputes the same criminal liability on the conspirators.⁸⁴ Thus, just as PO2 Cambe is liable for Frustrated Homicide and Attempted Homicide, so too must PO2 Cacho be liable for the same crimes.

Petitioners should not have been credited for voluntary surrender

Before proceeding to the proper imposable penalty, we first determine whether the Court of Appeals correctly appreciated the mitigating circumstance of voluntary surrender.

Voluntary surrender as a mitigating circumstance requires: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he

⁸¹ Supra note 74.

⁸² G.R. No. 247658, February 17, 2020.

⁸³ 832 Phil. 1056, 1076 (2018)

⁸⁴ *People v. Tapay*, G.R. No. 229513 (Notice), February 19, 2020.

acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.⁸⁵

Here, the Court of Appeals credited petitioners for their voluntary surrender in view of their supposed surrender to the police station after the shooting incident. Records reveal, however, that petitioners did **not** actually surrender to the authorities, much less, with voluntariness or spontaneity.

PO2 Cambe stated in his *sinumpaang salaysay* that he and PO2 Cacho proceeded to the police station to report the incident, *viz.*:

*Na pagkatapos ng pangyayaring iyon ay umalis na kami sa nasabing lugar at nagtungo na kami sa aming himpilan **upang iulat ang nasabing pangyayari.***⁸⁶ (Emphasis supplied)

PO2 Cacho affirmed this in open court, *viz.*:

Q and in fact, you fled together with [PO2 Cambe] in your motorcycle?

A No sir, we [did not] flee sir.

Q **Where did you go after that?**

A **We went to the police station.**

Q You went to the police station to report the incident?

A Yes sir.

Q **And you reported that [PO2 Cambe] was [hit] by a bottle?**

A **The whole incident sir [it was] written.**⁸⁷ (Emphases supplied)

Essentially, petitioners went to the police station not to surrender themselves but to report the incident. Unfortunately, this is not the acknowledgement of guilt contemplated by law for purposes of mitigating one's criminal liability.

In *People v. Lagrana*,⁸⁸ Lagrana and Salazar were found liable for the murder of Adarlo, as principal and accomplice, respectively. Although the two reported to the police authorities a day after the commission of the crime, it was not for the purpose of submitting themselves unconditionally; Lagrana claimed self-defense while Salazar did not give any statement at all. Voluntary surrender, therefore, was not credited in their favor.

Similarly here, petitioners did not go to the police authorities to surrender but merely to report the incident. Indeed, they never evinced any

⁸⁵ *People v. Doca*, G.R. No. 233479, October 16, 2019.

⁸⁶ RTC records, p. 935.

⁸⁷ TSN, November 8, 2017, pp. 20-21.

⁸⁸ See 231 Phil. 280, 284 (1987).

desire to own the responsibility for the crimes they had committed. The Court of Appeals, therefore, erred in appreciating voluntary surrender in their favor.

Penalties

A. Prison term

Under Article 249 of the RPC, the impossible penalty for frustrated homicide is *reclusion temporal*. Article 250⁸⁹ of the same law provides that the penalty for frustrated homicide is one degree lower than that prescribed for consummated homicide *i.e.*, *prision mayor*. If the commission of the crime, however, is attended by a privileged mitigating circumstance, *e.g.* incomplete self-defense, as here, Article 69⁹⁰ provides that the penalty may be further reduced by two degrees to *arresto mayor*. In the absence of any modifying circumstance, petitioners are sentenced to four (4) months of *arresto mayor* for the Frustrated Homicide of Lynyrd.

On the other hand, Article 51⁹¹ of the RPC provides that the impossible penalty for an attempted crime shall be lower by two degrees than that prescribed by law for the consummated felony. Two (2) degrees lower of *reclusion temporal*, the prescribed penalty for homicide, is *prision correccional*. In view of PO2 Cambe's incomplete self-defense, however, the penalty is further reduced by two degrees to *arresto menor*. In the absence of any modifying circumstance, petitioners are sentenced to twenty (20) days of *arresto menor* for the Attempted Homicide of Paul.

B. Monetary Awards

The Court reduces the award of actual damages to Lynyrd from ₱153,316.25 to ₱74,682.21 since only this amount was duly substantiated by official receipts; Lynyrd only had sales invoices and statements of account to show his other supposed expenses. The Court also finds it proper to reduce the award of civil indemnity and moral damages to ₱30,000.00 each and

⁸⁹ ARTICLE 250. *Penalty for Frustrated Parricide, Murder or Homicide.* — The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provision of article 50, RPC.

⁹⁰ ARTICLE 69. *Penalty to Be Imposed When the Crime Committed is Not Wholly Excusable.* — A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

⁹¹ ARTICLE 51. *Penalty to Be Imposed Upon Principals of Attempted Crimes.* — The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

delete the award of exemplary damages to conform with our ruling in *People v. Jugueta*.⁹²

For the same reasons, the Court likewise reduces the award of actual damages to Paul from ₱38,608.00 to ₱33,453.00. Similarly, the award of civil indemnity and moral damages is reduced to ₱20,000.00 each.⁹³

All monetary awards shall earn six percent (6%) legal interest *per annum* from finality of this Decision until fully paid.⁹⁴

ACCORDINGLY, the petitions are **DENIED**. The Decision dated January 29, 2020 and Resolution dated October 28, 2020 of the Court of Appeals in CA-G.R. CR No. 42527 are **AFFIRMED** with **MODIFICATION**.

In **Criminal Case No. RTC-6321-I**, petitioners PO2 Anthony Cacho and PO2 Randolph Cambe are **GUILTY** of **FRUSTRATED HOMICIDE** and are each sentenced to four (4) months of *arresto mayor*. Petitioners are held solidarily liable to **PAY** the following amounts:


- a) **₱74,682.21** as actual damages;
- b) **₱30,000.00** as civil indemnity; and
- c) **₱30,000.00** as moral damages;

In **Criminal Case No. RTC-6322-I**, petitioners PO2 Anthony Cacho and PO2 Randolph Cambe are **GUILTY** of **ATTEMPTED HOMICIDE**. They are sentenced to twenty (20) days of *arresto menor*. They are further held solidarily liable to **PAY** the following amounts:

- a) **₱33,453.00** as actual damages;
- b) **₱20,000.00** as civil indemnity; and
- c) **₱20,000.00** as moral damages.

These monetary awards shall earn six percent (6%) legal interest *per annum* from finality of this Decision until fully paid.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

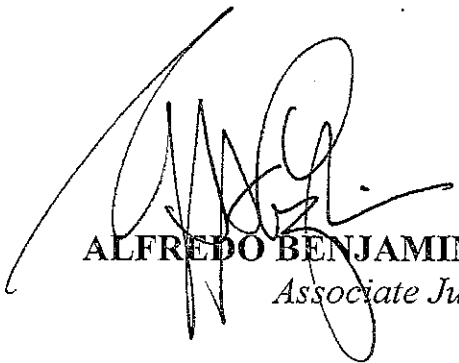
⁹² See 783 Phil. 806, 852 (2016).

⁹³ See *People v. Aquino*, 829 Phil. 477, 484 (2018).

⁹⁴ *Lavador v. People*, G.R. No. 249902 (Notice), February 10, 2020.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


ALFREDO BENJAMIN S. CAGUTOA
Associate Justice

“On official leave”
MARIO V. LOPEZ
Associate Justice


JHOSEPY LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


ALEXANDER G. GESMUNDO
Chief Justice



