



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

ERWIN PASCUAL y FRANCISO **G.R. No. 241901**
and WILBERT SARMIENTO y
MUÑOZ a.k.a. "Boyet",* Present:
Petitioners,

- versus -

LEONEN, J., *Chairperson,*
 HERNANDO,
 INTING,
 DELOS SANTOS,** and
 ROSARIO, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

November 25, 2020

Michael DeBatt

X-----X

DECISION

INTING, J.:

This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated January 18, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 35927. The assailed CA Decision affirmed the Joint Decision³ dated July 29, 2013 Branch 41, Regional Trial Court (RTC), Manila finding Erwin Pascual y Francisco (Pascual) guilty beyond reasonable doubt as an accomplice in the crime of Homicide in Criminal Case No. 98-163621; and further finding both Pascual and Wilbert Sarmiento y Muñoz a.k.a "Boyet" (Sarmiento) guilty beyond reasonable doubt of the crime of Frustrated Homicide in Criminal Case No. 98-163622.

* Spelled as Munoz in some parts of the *rollo*.

** On official leave.

¹ *Rollo*, pp. 11-32.

² *Id.* at 38-67; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Ramon R. Garcia and Germano Francisco D. Legaspi, concurring.

³ *Id.* at 90-140; penned by Presiding Judge Rosalyn D. Mislos-Loja.

The Antecedents

On February 24, 1998, Pascual and Sarmiento (collectively, petitioners), together with their co-accused *a quo* Joel Ceasico, Jr. (Ceasico) and Bartolome Glicerio, Jr. (Glicerio), were charged under two separate Informations:⁴ (1) Murder for the killing of Ernanie Rabang y Laquindanum (Rabang); and (2) Frustrated Murder for inflicting fatal injuries on the person of Joel Deang y Sese (Deang), to wit:

Criminal Case Nos. 98-163621(Murder)

“That on or about October 29, 1996 in the City of Manila, Philippines the said accused conspiring and confederating together and helping one another did then and there willfully, unlawfully and feloniously, with intent to kill, treachery and evident premeditation, attack, assault and use personal violence upon the person of ERNANIE RABANG y LAQUINDANUM, by then and there stabbing the latter on the chest with a bladed instrument, thereby inflicting upon said ERNANIE RABANG y LAQUINDANUM stab wound which is the direct and immediate cause of his death thereafter.

Contrary to law.”⁵

Criminal Case Nos. 98-163622 (Frustrated Murder)

“That on or about October 29, 1996 in the City of Manila, Philippines the said accused conspiring and confederating together and helping one another did then and there willfully, unlawfully and feloniously, with intent to kill and with abuse of superior strength, attack, assault and use personal violence upon the person of JOEL DEANG y SESE, by then and there mauling and stabbing the latter on the different parts of the body with knives, ice pick and broken bottles, thereby inflicting upon said JOEL DEANG y SESE stab wounds which are necessarily fatal and mortal, thus performing all the acts of execution which should have produced the crime of murder, as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to JOEL DEANG y SESE which prevented his death thereafter.

Contrary to law.”⁶

⁴ Records, Vol.1, pp. 2-3, 112-113.

⁵ *Id.* at 2.

⁶ *Id.* at 112.

On April 1, 1998, a warrant of arrest was issued against all four accused. Despite the warrant, all four remained at large. Thus, on April 5, 1999, the RTC issued an order archiving the cases subject to revival upon the arrest of the accused. Meanwhile, an alias warrant of arrest was issued against them. Thereafter, the prosecution filed a motion to set the cases for arraignment after the motion for reconsideration of the accused was denied. After the setting of the arraignment, the RTC again sent the cases to the archives as all accused still remained at large.⁷

On August 30, 2000, Pascual filed a motion for voluntary surrender; hence, he was committed to the Manila City Jail on the same day. On his arraignment on September 6, 2000, he pleaded “not guilty” to both charges.⁸

On July 29, 2008, Sarmiento was arrested and committed to the Manila City Jail. On his arraignment on August 24, 2008, he entered a plea of “not guilty” to the charges.⁹

In the course of the prosecution’s presentation of evidence, the following incidents occurred: (1) Pascual filed a Petition for Bail¹⁰ on December 7, 2000 which the RTC granted on April 24, 2001;¹¹ and (2) Sarmiento filed a Petition for Bail¹² on December 8, 2008 which the RTC deemed as mooted after it dismissed on September 20, 2010 the case for Murder in so far as Sarmiento was concerned for failure of the prosecution to prosecute the case.¹³

Glicerio and Ceasico remained at large.¹⁴

⁷ *Id.* at 39-40, 91-92.

⁸ *Id.* at 40

⁹ *Id.*

¹⁰ Records, Vol. I, pp. 182-183.

¹¹ See Order dated April 24, 2001 penned by Judge Rodolfo A. Ponferrada, *id.* at 269.

¹² Records, Vol. II, pp. 620-621.

¹³ *Rollo*, p. 95.

¹⁴ *Id.* at 96.

Version of the Prosecution

The murder of Rabang.

The prosecution alleged that on October 29, 1996 at around 2:00 a.m., Richard Apostol (Apostol) was on his way to the house of his friend, Alan Palad (Palad), located along Zamora Street, Tondo, Manila. While walking along Mejorada Street near Sande Street, Apostol met Rabang, who asked him if he saw Palad. Apostol then told Rabang to go with him instead as he was going to Palad's house. When they reached the corner of Sande and Mejorada Streets, they met another friend named Rodel Robles (Robles). After an exchange of pleasantries, Apostol left Robles and Rabang to call Palad.¹⁵

Thereafter, Apostol, who was already with Palad, returned to Sande Street where Rabang and Robles were waiting. While the four were conversing among themselves, Apostol noticed four men coming from Perla Street heading their way. Three of the four men crossed Sande Street, while the other one remained on the other side of the street. One of the three men who crossed the street walked to the opposite side to urinate. The one who urinated was later identified as Glicerio and the other three were identified as petitioners and Ceasico.¹⁶

After the group of Pascual approached the group of Apostol, Glicerio suddenly asked Apostol's group: "*ano iyon?*" to which Rabang responded, "*anong ano rin iyon?*" Pascual replied, "*tang-ina mo, ang yabang mo ha!*" and suddenly hit Rabang. Apostol backed off due to the ensuing altercation. Pascual chased Apostol leaving Rabang and Glicerio behind. As Apostol sensed that Pascual had a bladed weapon, he picked up a piece of wood from a nearby backyard. When Pascual saw that Apostol was holding a wood, he withdrew and returned to the spot where Rabang and Glicerio were standing.¹⁷

On the other hand, Sarmiento ran after Palad, who was then able to seek refuge in his house and asked help from his brother. While at his house, Palad saw petitioners and Ceasico proceed to the place where Rabang and Glicerio were having an altercation. From his window,

¹⁵ *Id.* at 41. See also TSN, December 14, 2000, pp. 40-43.

¹⁶ *Id.*

¹⁷ *Id.* at 42.

Palad saw petitioners, Ceasico, and Glicerio (petitioners' group) surround Rabang. When Rabang was cornered, petitioners aided Glicerio in stabbing Rabang. Rabang desperately parried all the blows delivered by petitioners' group, but he was unsuccessful.¹⁸

Apostol, who was near the crime scene, threw a piece of wood towards petitioners' group to distract them. As a result, Rabang was able to move away from petitioners' group, walked towards Apostol, and uttered, "*may tama ako.*" At that point, Apostol saw Rabang on the verge of death. Rabang's relatives and neighbors rushed him to the hospital. Unfortunately, Rabang was pronounced dead on arrival.¹⁹

Apparently, petitioners' group was not yet done wreaking havoc in their community after the stabbing incident. They were seen kicking an old man who was then riding on his bicycle along Sande Street which prompted a Security Guard nearby to fire a warning shot to divert their attention. Petitioners' group walked casually towards Pavia Street to Divisoria.²⁰

*The inflicting of fatal wounds
on the person of Deang.*

On the same day of October 29, 1996, Deang, who was a *barangay tanod* of Divisoria, alighted from a jeepney along Pavia Street when he saw petitioners' group mauling an old man at a nearby bakery. Deang shouted at them. This prompted petitioners' group to proceed to the corner across the street. This time, they turned their ire on Christopher Lising (Christopher), a 15-year-old son of Norma Lising (Norma), who was selling *puto-bumbong* in the area. Petitioners' group surrounded Christopher and threatened to stab him, but Norma protected her son. Deang intervened, introduced himself as a *barangay tanod*, and told petitioners' group to stop making trouble. Instead of heeding Deang's warning, Pascual swiftly punched Deang's back causing Deang to run towards the *barangay* hall to ask for help. As he could not find anyone to assist him, Deang picked up a bamboo stick and returned to Norma's stall. When Deang confronted petitioners' group again, they surrounded him and threatened to stab him with their knives. Deang ran

¹⁸ *Id.* See also TSN, February 21, 2001, pp. 44-73.

¹⁹ *Id.*

²⁰ *Id.* at 43.

towards Moriones Street, but petitioners' group chased him and eventually caught up with him.²¹

Deang tripped on a drainage pipe and fell to the ground. Petitioners' group surrounded him and began hitting him simultaneously while he was lying on the ground. Pascual stabbed Deang with a knife; Sarmiento grabbed Deang's bamboo stick and struck him several times on the head; Ceasico hit Deang's face with a broken bottle; and Glicerio attacked Deang with an ice pick. Deang tried to parry the attacks, but to no avail. Due to the severity of his injuries, Deang lost consciousness. Later, he was taken to a hospital where he survived the fatal wounds and injuries inflicted on him.²²

Dr. Policarpio Santos, Jr., the attending physician, noted that if it were not for the timely medical intervention, Deang would have died from his injuries.²³

Version of the Defense

Petitioners raised self-defense and denied the allegations hurled against them.

The testimony of Pascual:

Pascual narrated that on October 29, 1996, he invited his friends to go to a wake in Caloocan. Sarmiento, Ceasico, and Glicerio joined him. They took a jeepney ride, but did not make it to Caloocan because Glicerio asked them instead to go to his girlfriend's house in Delpa. Before reaching Delpa, they alighted from the jeepney on Moriones Street to take another ride to Divisoria. While inside the second jeepney, Glicerio asked its driver to stop along Juan Luna Street or Sande Street, because he wanted to urinate. While Glicerio was urinating, a man approached him.

²¹ *Id.*

²² *Id.* at 43-44.

²³ *Id.* at 44-45.

Petitioners, and Ceasico went near Glicerio and heard the latter arguing with the man. Pascual pleaded with the man to pardon them because they were just passing through, but the man suddenly punched him. Another man who was holding a piece of wood hit Glicerio. When the man was about to hit him also, he ran towards Moriones Street. When he noticed that he was not being followed by anybody, he returned to his friends.

Thereafter, Deang arrived and introduced himself as the *barangay* chairman and told them to go home. Sarmiento told the *barangay* chairman that he has a high school classmate who lives in the vicinity. Then, they proceeded to Sarmiento's classmate, but no one came out when they knocked on the door. Thus, they decided to go home.

While passing along Moriones Street, they saw two men; one of them shouted, "*ayun yung mga tarantado!*". Pascual recognized one of them as the man who introduced himself as the *barangay* chairman of the area. Suddenly, the *barangay* chairman attacked them, while the other men threw bottles at them. His friends wrestled with the *barangay* chairman, while he just stood and watched them. After the incident, they all went home.²⁴

Sarmiento corroborated the statements of Pascual. He likewise denied the allegations against them.

The Ruling of the RTC

In its Decision dated July 29, 2013, the RTC found Pascual guilty beyond reasonable doubt as an accomplice in the crime of Homicide in Criminal Case No. 98-163621 and sentenced him to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. The RTC further ordered Pascual to pay the heirs of Rabang ₱50,000.00 as civil indemnity, ₱100,000.00 as actual damages, ₱25,000.00 as moral damages, and ₱2,004,000.00 as compensation for loss of earning capacity.

²⁴ *Id.* at 50. See also TSN, August 1, 2012, pp. 4-44; TSN, August 29, 2012, pp. 3-22.

The RTC likewise found both petitioners guilty beyond reasonable doubt of Frustrated Homicide in Criminal Case No. 98-163622 and sentenced them to four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. It ordered both to jointly pay Deang the sum of ₱400,000.00 as temperate damages and ₱25,000.00 each as moral damages.

The Ruling of the CA

On January 18, 2018, the CA affirmed petitioners' conviction with modifications as to the monetary awards.

In Criminal Case No. 98-163621, the CA ordered Pascual to pay the heirs of Rabang ₱50,000.00 as civil indemnity, ₱100,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱2,004,000.00 representing loss of earning capacity. In Criminal Case No. 98-163622, the CA ordered both petitioners to pay Deang ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱25,000.00 as temperate damages. The CA likewise imposed interest at the rate of 6% *per annum* to all monetary awards from the date of the finality of the decision until fully paid.

Hence, the instant petition.


Petitioners raise the following issues:

I.

WHETHER OR NOT THE [CA] GRAVELY ERRED IN FINDING THE PETITIONERS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE PETITIONER [PASCUAL'S] PARTICIPATION IN HOMICIDE AND FRUSTRATED HOMICIDE.

II.

WHETHER OR NOT THE [CA] GRAVELY ERRED IN FINDING THE PETITIONERS GUILTY OF THE CRIME CHARGED



DESPITE THE JUSTIFYING CIRCUMSTANCE OF SELF—
DEFENSE IN FAVOR OF PETITIONER [SARMIENTO].²⁵

The Ruling of the Court

The petition has no merit.

Well settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect.²⁶ Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings.²⁷ The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial.²⁸ The task of taking on the issue of credibility is a function properly lodged with the trial court. Thus, generally, the Court will not reexamine or reevaluate evidence that had been analyzed and ruled upon by the trial court.²⁹

After a judicious perusal of the records of the instant petition, the Court finds no compelling reason to depart from the RTC and the CA's factual findings. The Court affirms petitioners' conviction.

In Criminal Case No. 98-163621, the CA correctly affirmed the RTC's ruling that Pascual is liable as an accomplice.

In the case at bench, the following factual findings of the CA were duly established:

²⁵ Rollo, p. 23.

²⁶ *Estrella v. People*, G.R. No. 212942, June 17, 2020.

²⁷ *People v. Aspa, Jr.*, G.R. No. 229507, August 6, 2018, 876 SCRA 330, 338, citing *People v. De Guzman*, 564 Phil. 282, 290 (2007).

²⁸ *Id.*, citing *People v. Villamin*, 625 Phil. 698, 713 (2010).

²⁹ *Estrella v. People*, *supra*.

x x x Although there was no evidence showing a prior agreement among the two accused-appellants and the two accused, the following chain of events however show their commonality of purpose: *first*, accused-appellant [Pascual] chased [Apostol] but when he failed to catch up with the latter, he returned to the place where the victim [Rabang] and accused Bartolome were left; *second*, accused Ceasico and accused-appellant [Sarmiento] ran after [Robles] and [Palad], but they also returned to where Ernanie was left when they also failed to catch [Robles] and [Palad]; *third*, [Palad] testified that from his house, he could see that victim [Rabang] was surrounded by Bartolome, Ceasico, and accused-appellants [Pascual] and [Sarmiento]; and *fourth*, [Apostol] testified that he saw Glicerio stab [Rabang]. At this point, there could be no other conclusion except that accused-appellant Pascual was fully aware of accused Bartolome's intent to kill the victim, and that he assented to, and cooperated in the accomplishment of the crime. It is an essential condition to the existence of complicity, not only that there should be a relation between the acts done by the principal and those attributed to the person charged as accomplice, but it is furthermore necessary that the latter, with knowledge of the criminal intent, should cooperate with the intention of supplying material or moral aid in the execution of the crime in an efficacious way. In cases of doubt as to whether persons acted as principals or accomplices, the doubt must be resolved in their favor and they should be held guilty as accomplices. Based on the foregoing, accused-appellant Pascual is guilty as an accomplice of the crime of homicide.³⁰

It was proven during trial that prior to the fatal stabbing of Rabang, Alan and Richard saw Pascual hitting Rabang after cursing him. When Glicerio stabbed Rabang, Pascual was likewise seen together with Sarmiento, Ceasico, and Glicerio cornering Rabang and preventing the latter's escape. Pascual, fully aware of the criminal design of his cohorts, cooperated in the execution of acts which led to the death of Rabang. He was not an innocent spectator; he was at the *locus criminis* to aid or abet the commission of the crime. These facts, however, did not make him a conspirator; at most he was only an accomplice. Indeed, the line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is slight.³¹ Accomplices do not decide whether the crime should be committed, but they assent to the plan and cooperate in its accomplishment.³²

³⁰ Rollo, p. 62.

³¹ *Saldua v. People*, G.R. No. 210920, December 10, 2018, 889 SCRA 1, 16-17, citing *People v. Eusebio*, 704 Phil. 569, 576 (2013).

³² *Id.*

The Revised Penal Code (RPC) provides that a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.³³ To prove conspiracy, the prosecution must establish the following three requisites: (1) that two or more persons came to an agreement; (2) that the agreement concerned the commission of a crime; and (3) that the execution of the felony was decided upon.³⁴ Except in the case of the mastermind of a crime, it must also be shown that the accused performed an overt act in furtherance of the conspiracy.³⁵ The Court has held that in most instances, direct proof of a previous agreement need not be established, for conspiracy may be deduced from the acts of the accused pointing to a joint purpose, concerted action and community of interest.³⁶ The rule is that the existence of conspiracy cannot be presumed.³⁷ Just like the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.³⁸

On the other hand, the RPC defines accomplices as those persons who, not being included in Article 17 of the RPC,³⁹ cooperate in the execution of the offense by previous or simultaneous acts.⁴⁰ The Court has held that an accomplice is one who knows the criminal design of the principal and cooperates knowingly or intentionally by supplying material or moral aid for the efficacious execution of the crime.⁴¹ In order that a person may be considered as an accomplice in the

³³ Article 8 of the Revised Penal Code (RPC).

ART. 8. *Conspiracy and proposal to commit felony.* — Conspiracy and proposal to commit felony are punishable only in the cases in which the law specifically provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

³⁴ *People v. De Vera, et al.*, 371 Phil 563, 583-584 (1999), citing Reyes, *The Revised Penal Code*, 12th ed., p. 133.

³⁵ *Id.*, citing *People v. Alilio*, 311 Phil 395, 405 (1995).

³⁶ *Id.*, citing *People v. Cawaling*, 355 Phil 1, 39 (1998); *People v. Andres*, 357 Phil. 321, 343 (1998); *People v. Sumalpong*, 348 Phil. 501, 524-525 (1998); *People v. Leangsiri*, 322 Phil. 226, 242 (1996); *People v. Salison, Jr.*, 324 Phil. 131, 146 (1996).

³⁷ *Saldua v. People*, *supra* note 31 at 16, citing *Garcia, Jr. v. Court of Appeals*, 394 Phil. 890, 905 (2000).

³⁸ *Id.*

³⁹ Article 17 of the RPC reads:

ART. 17. *Principals.* — The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

⁴⁰ Article 18 of the RPC reads:

ART. 18. *Accomplices.* — Accomplices are persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.

⁴¹ *People v. Fronza*, 294 Phil. 80, 90 (1993)

commission of an offense, the following requisites must concur: (a) community of design, *i.e.*, knowing the criminal design of the principal by direct participation, he or she concurs the latter in his/her purpose; (b) he or she cooperates in the execution of the offense by previous or simultaneous acts; and (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice.⁴²

Pascual could not be held as principal by direct participation as there were doubts whether there was a prior agreement or community of intention among petitioners' group in killing Rabang. In case of doubt as to the accused's participation, the doubt should be resolved in his favor. The rationale for this is that where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether accused acted as principal or accomplice will always be resolved in favor of the milder form of criminal liability, that of a mere accomplice.⁴³ Besides, in several cases wherein the Court confirmed the existence of conspiracy, some accused were held liable as mere accomplices only because their role in the commission of the crime was not indispensable; in other words, minor.⁴⁴

It must be emphasized that the incident started after Glicerio had a verbal altercation with Rabang and his companions. Then, Ceasico and petitioners crossed the street to know why Glicerio was having a verbal altercation with Rabang. When Rabang cursed Glicerio, Pascual punched him and immediately chased Apostol. Thereafter, a brawl ensued between petitioners' group and Rabang's group.

When Pascual retreated because Apostol was already holding a piece of wood, he returned to where Glicerio and Rabang were standing. It was when Rabang was cornered that petitioners aided Glicerio in stabbing him. From this unexpected scuffle between the two groups, it cannot be concluded that petitioners' group had a previous agreement or community of intention to kill Rabang. The incident was a result of a sudden burst of emotions which led to the killing of Rabang. In other words, Pascual, knowing the criminal design of Glicerio, cooperated by supplying material or moral aid for the efficacious execution of the

⁴² *People v. Eljorde*, 365 Phil 640, 650 (1999).

⁴³ See *People v. Flores*, 389 Phil 532 (2000).

⁴⁴ *People v. Corbes*, 337 Phil 190, 197-198 (1997). Citations omitted.

crime. As can be gleaned from the records, the crime might still have been consummated even without the participation of Pascual. His role in the perpetration of the crime is of a minor character and not indispensable in its consummation.

The factual backdrop impels the Court to affirm the findings of the CA and the RTC that Pascual should only be held liable as an accomplice in killing Rabang.

Moreover, the CA correctly affirmed the RTC's finding that petitioners failed to prove the presence of the justifying circumstance of self-defense in the crime of Frustrated Homicide.

For self-defense to be appreciated, petitioners need to prove by clear and convincing evidence the following elements: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself or herself.⁴⁵ In self-defense, unlawful aggression is the primordial element, a condition *sine qua non*. If no unlawful aggression attributed to the victim is established, self-defense is unavailing because there would be nothing to repel.⁴⁶

The CA and the RTC correctly found that petitioners failed to discharge the burden of proving unlawful aggression on the part of Deang. Petitioners failed to present corroborating evidence other than their self-serving statements that it was Deang who was the unlawful aggressor. Petitioners' bare claim fell short of being clear and convincing.

On the contrary, the prosecution was able to prove through the testimonies of several witnesses that it was petitioners' group who was the unlawful aggressor when they first attacked an old man, then an innocent *puto-bumbong* vendor and her son, and finally Deang, who was merely performing his job as a *barangay tanod* in the area. As a *barangay tanod*, Deang had the duty to maintain peace and order in the area and to apprehend petitioners for attacking innocent persons.

⁴⁵ See *People v. Villanueva*, 822 Phil. 821, 833 (2017), citing Section 1, Article 11, REVISED PENAL CODE.

⁴⁶ *Id.*, citing *People v. Del Castillo*, 679 Phil. 233, 250 (2012).

Petitioners did not act in self-defense; their intent to kill Deang was evident from the extent of his injuries. Dr. Santos noted that were it not for the timely medical attention, Deang would have died from his injuries. Records reveal that Deang sustained five incised wounds on his face, and a fatal stab wound on his chest wall which severed a rib vessel and a stab wound at the side of his right arm.⁴⁷ Obviously, petitioners' claim of self-defense, which remains unsubstantiated, is nothing more than a clear last-ditch effort to exonerate themselves.

As regards the penalties, the CA correctly affirmed the RTC's ruling.

In Criminal Case No. 98-163621.

The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. Because Pascual is only an accomplice, the penalty to be imposed is one degree lower than that imposed for the principal, *i.e.*, *prision mayor*. There being neither aggravating nor mitigating circumstances, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, Pascual is accordingly sentenced to suffer the prison term of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

In Criminal Case No. 98-163622.

As aforesaid, under Article 249 of the RPC, the penalty imposed for homicide is *reclusion temporal*. However, considering that the crime committed is merely Frustrated Homicide, the penalty to be imposed shall be the penalty next lower in degree than *reclusion temporal*, which is *prision mayor*. Applying the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstances present, the minimum penalty to be meted out on petitioners should be anywhere within the range of six (6) months and one (1) day to six (6) years of *prision correccional*, as minimum, to anywhere between the medium period of *prision mayor* ranging from eight (8) years and one (1) day to ten (10) years. Thus, the RTC correctly imposed the penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

⁴⁷ *Rollo*, p. 107.

It should be emphasized that the RTC and the CA correctly disregarded Pascual's plea for voluntary surrender as a mitigating circumstance. For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself/herself to a person in authority or the latter's agent; and (3) the surrender was voluntary.⁴⁸ The essence of voluntary surrender is spontaneity and the intent of the accused is give oneself up and submit to the authorities either because he/she acknowledges his/her guilt or he/she wishes to save the authorities the trouble and expense that may be incurred for his/her search and capture.⁴⁹ Without these elements, and where the clear reason for the supposed surrender is the inevitability of arrest and the need to ensure his/her safety, the surrender is not spontaneous and therefore, cannot be characterized as "voluntary surrender" to serve as mitigating circumstance.⁵⁰

Here, a warrant of arrest had been issued on April 1, 1998 against all four accused, but they remained at large. This prompted the trial judge to archive the cases subject to revival upon the arrest of the accused. It was only on August 30, 2000 that Pascual filed a motion for voluntary surrender. Evidently, the surrender cannot be regarded as voluntary or spontaneous.

As to the monetary awards, the Court modifies them to conform to jurisprudence. The Court's ruling in the case of *Saldua v. People*⁵¹ (*Saldua*), citing *People v. Tampus, et al.*⁵² (*Tampus*) is instructive. In *Tampus*, the Court stressed that the courts' discretion in awarding civil liability in criminal cases should not be untrammelled and must be guided by the principle behind differing liabilities for persons with varying roles in the commission of the crime.⁵³ The Court explained in *Tampus*:

The entire amount of the civil indemnity, together with the moral and actual damages, should be apportioned among the persons who cooperated in the commission of the crime according to the

⁴⁸ *Tadena v. People*, G.R. No. 228610, March 20, 2019, citing *Belbis, Jr. v. People*, 698 Phil. 706, 724 (2012).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Saldua v. People*, *supra* note 31.

⁵² 607 Phil. 296 (2009).

⁵³ *Id.* at 330.

degree of their liability, respective responsibilities and actual participation in the criminal act. Salvador Viada, an authority in criminal law, is of the opinion that there are no fixed rules which are applicable in all cases in order to determine the apportionment of civil liability among two or more persons civilly liable for a felony, either because there are different degrees of culpability of offenders, or because of the inequality of their financial capabilities. On this note, he states in his commentaries on the 1870 Penal Code of Spain that the law should leave the determination of the amount of respective liabilities to the discretion of the courts. The courts have the competence to determine the exact participation of the principal, accomplice, and accessory in the commission of the crime relative to the other classes because they are able to directly consider the evidence presented and the unique opportunity to observe the witnesses.

We must stress, however, that the courts' discretion should not be untrammelled and must be guided by the principle behind differing liabilities for persons with varying roles in the commission of the crime. The person with greater participation in the commission of the crime should have a greater share in the civil liability than those who played a minor role in the crime or those who had no participation in the crime but merely profited from its effects. Each principal should shoulder a greater share in the total amount of indemnity and damages than every accomplice, and each accomplice should also be liable for a greater amount as against every accessory. Care should also be taken in considering the number of principals versus that of accomplices and accessories. If for instance, there are four principals and only one accomplice and the total of the civil indemnity and damages is P6,000.00, the court cannot assign two-thirds ($2/3$) of the indemnity and damages to the principals and one-third ($1/3$) to the accomplice. Even though the principals, as a class, have a greater share in the liability as against the accomplice — since one-third ($1/3$) of P6,000.00 is P2,000.00, while two-thirds ($2/3$) of P6,000.00 is P4,000.00 — when the civil liability of every person is computed, the share of the accomplice ends up to be greater than that of each principal. This is so because the two-thirds ($2/3$) share of the principals — or P4,000.00 — is still divided among all the four principals, and thus every principal is liable for only P1,000.00.⁵⁴

In *Saldua*, the Court likewise emphasized that the penalty and civil liability imposed upon the accused must be commensurate to the degree of his/her participation in the commission of the crime.⁵⁵ The Court held in *Saldua* that an accomplice, like Pascual, should pay lesser civil liability than the principal. Thus, the Court pronounced that the principal must be adjudged liable to pay two-thirds of the civil indemnity

⁵⁴ *Id.* at 329-330.

⁵⁵ *Saldua v. People*, *supra* note 31.

and moral damages, while the accomplice should pay one-third portion thereof.⁵⁶ As held in *Tampus*, the number of principals and accomplices should likewise be taken into consideration in determining civil liability. Clearly, the imposition of two-thirds of the civil liability to principals and one-third of the civil liability to the accomplices is applicable in cases wherein there is one principal and two or more accomplices, or in a situation wherein the number of the accomplices exceeds that of the principals. To stress, it is crucial to remember, as held in *Tampus*, that each principal should shoulder a greater share in the total amount of indemnity and damages than every accomplice and each accomplice should also be liable for a greater amount as against every accessory.

In *People vs. Jugueta*⁵⁷ (*Jugueta*) the Court ruled that the amount of damages to be paid by the principal for consummated homicide are as follows: (1) ₱50,000.00, as civil indemnity; (2) ₱50,000.00, as moral damages without exemplary damages being awarded; and (3) ₱50,000.00 as temperate damages when no documentary evidence of burial or funeral expenses is presented in court.

In Criminal Case No. 98-163621, the CA ordered Pascual to pay the heirs of Rabang ₱50,000.00 as civil indemnity, ₱100,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱2,004,000.00 representing loss of earning capacity. Pursuant to *Tampus* and *Saldua*, in relation to *Jugueta*, Pascual, as accomplice in the crime of homicide, is liable to pay one-third of each civil liability or ₱16,667.67 as civil indemnity, ₱16,667.67 as moral damages, and ₱33,333.33 as actual damages. This apportionment is based on the interpretation that there is only one principal who is liable in the case at bench, similar to *Saldua*. Unfortunately, however, Glicerio and Ceasico remain at large. Evidently, the above-mentioned apportionment of civil liability is more favorable to Pascual.

Furthermore, as to the amount of loss of earning capacity, the Court finds that although the RTC's computation, as affirmed by the CA, is in accordance with jurisprudence,⁵⁸ there is necessity to reduce it to one-third to conform with the rationale in *Tampus* and *Saldua*. Article

⁵⁶ *Id.*

⁵⁷ *People v. Jugueta*, 783 Phil. 806 (2016).

⁵⁸ See *People v. Wahiman*, 750 Phil. 368 (2015).

2206⁵⁹ of the Civil Code of the Philippines provides that the heirs of the victim are entitled to be indemnified for loss of earning capacity.⁶⁰

The parties stipulated that Rabang was earning an income of ₱10,000.00 a month at the time of his death.⁶¹

Based on the formula laid down in the case of *People v. Wahiman*,⁶² the computation of the loss of earning capacity should be as follows:

$$\begin{aligned} \text{Net Earning Capacity} &= \text{life expectancy} \times [\text{gross annual income} - \\ &\quad \text{living expenses}] \\ &= 2/3 [80 - \text{age at time of death}] \times [\text{gross} \\ &\quad \text{annual income} - 50\% \text{ of gross annual income}] \end{aligned}$$

With the established facts that Rabang was 30 years old at the time he was killed by petitioners, and that he was earning ₱10,000 monthly, the compensation for loss of earning capacity is computed as follows:

$$\begin{aligned} \text{Net Earning Capacity} &= \text{life expectancy} \times [\text{gross annual} \\ \text{income} &\quad \text{- living expenses}] \\ &= 2/3 [80 - 30] \times [\text{Php}120,000 - \text{Php}60,000] \\ &= 33.4 \times \text{Php}60,000 \\ &= \text{₱}2,004,000.00 \end{aligned}$$

Since Pascual's civil liability is reduced to conform to *Tampus* and *Saldua*, in relation to *Jugueta*, the Court deems it logical to likewise reduce the amount of loss of earning capacity to be paid by Pascual. Pascual is liable to pay only one-third of ₱2,004,000.00 as he merely

⁵⁹ Article 2206 of the Civil Code of the Philippines provides:

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

⁶⁰ *People v. Advincula*, 829 Phil. 516, 534 (2018)

⁶¹ *Rollo*, p. 138.

⁶² *People v. Wahiman*, *supra* note 64.

acted as an accomplice in the killing of Rabang. Thus, he is only liable for the amount of ₱668,000.00 as compensation for Rabang's loss of earning capacity.

Finally, in Criminal Case No. 98-163622, the CA aptly ordered both petitioners to pay Deang the amounts of ₱30,000.00 as civil indemnity and ₱30,000.00 as moral damages in line with *Jugueta*. The CA was also correct in reducing the amount of temperate damages from ₱400,000.00 to ₱25,000.00 to be awarded to Deang. While it cannot be denied that Deang suffered pecuniary loss, he failed to offer in evidence statements of accounts to prove actual damages. Thus, in conformity with prevailing jurisprudence, the award of temperate damages of ₱25,000.00 is sufficient.⁶³

All monetary awards shall earn interest at the rate of 6% *per annum* from the finality of this Decision until full payment.


WHEREFORE, the petition is **DENIED**. The Decision dated January 18, 2018 of the Court of Appeals in CA-G.R. CR No. 35927 is **AFFIRMED** with **MODIFICATIONS**.

In Criminal Case No. 98-163621, petitioner Erwin Pascual y Francisco is guilty as an accomplice in the crime of Homicide. He is hereby **ORDERED** to pay the heirs of Ermanie L. Rabang the following:

- (1) ₱16,667.67 as civil indemnity;
- (2) ₱16,667.67 as moral damages;
- (3) ₱33,333.33 as actual damages;
- (4) ₱668,000.00 as compensation for Ermanie L. Rabang's loss of earning capacity; and

In Criminal Case No. 98-163622, petitioners Erwin Pascual y Francisco and Wilbert Sarmiento y Muñoz a.k.a "Boyot" are guilty of Frustrated Homicide and ordered to jointly pay Joel Deang y Sese the following:

⁶³ *Id.* at 377.




- (1) ₱30,000.00 as civil indemnity;
- (2) ₱30,000.00 as moral damages; and
- (3) ₱25,000.00 as temperate damages.

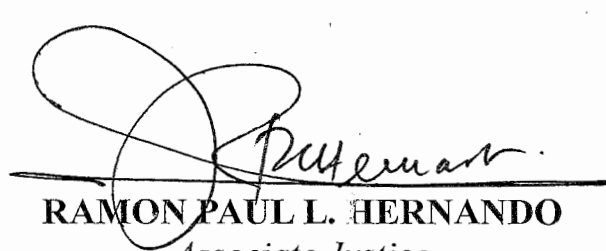
All monetary awards shall earn interest at the rate of 6% *per annum* from the finality of decision until full payment.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice

(On official leave)
EDGARDO L. DELOS SANTOS
Associate Justice


RICARDO R. ROSARIO
Associate Justice

ATTESTATION

I attest 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.

**MARVIC M.V.F. LEONEN***Associate Justice**Chairperson***CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**DIOSDADO M. PERALTA***Chief Justice*