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at ₱180.00 monthly from November, 1975 until they shall have vacated the premises, and to pay costs of suit in all instances. Said petitioner is hereby authorized to withdraw the rentals deposited with the Court of First Instance of Rizal at Caloocan City in the amount of ₱2,280.00 under official receipt No. 3002990 (corresponding allegedly to the rentals from November, 1975 to December, 1976, but with a shortage of ₱240.00) and ₱5,400.00 under official receipt No. 1606599 (corresponding to the rentals from January, 1977 to June, 1979).

This decision shall be immediately executory upon its promulgation. To obviate any further delay in its enforcement, the Division Clerk of Court is directed to issue the corresponding writ of execution of the Court's judgment, directly returnable to this Court.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *Melencio-Herrera JJ.*, concur.

FIRST DIVISION

[G.R. No. L-46485. November 21, 1979]

NORMAN LACSON, *petitioner*, *vs.* **THE HONORABLE COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES**, *respondents*.

SYLLABUS

CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REASONABLE NECESSITY OF THE MEANS EMPLOYED BY ACCUSED TO PREVENT OR REPEL THE

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UNLAWFUL AGGRESSION, EXPLAINED; CASE AT BAR.— This Court explained the meaning of reasonable means employed thus: "That there is reasonable necessity of the means employed by herein appellant to prevent or repel the unlawful aggression cannot seriously be disputed. '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 as 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 x x x' As WE stated in the case of *People vs. Lara*, 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 sanction the act and hold the act irresponsible in law for the consequences." In the instant case, there was an imminent danger of the lives of the petitioner and of his wife from the unlawful attack of an enraged, drunken, and armed Pitalio. The gun in the bag of his wife, who was beside him, afforded the petitioner the only reasonable means to ward off the attack.

APPEARANCES OF COUNSEL

Coronel Law Office for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

FERNANDEZ, *J.*:

This is a petition for *certiorari* to review the decision of the Court of Appeals,[1] promulgated on April 26, 1977, affirming the judgment of the Court of First Instance of Bulacan, Branch VIII, in Criminal Case No. 0429-V, entitled "*People of the*

[1] Annex "A". Petition. *Rollo*. pp. 30-35.

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Philippines vs. Norman Lacson" convicting the accused, petitioner herein, of the crime of frustrated homicide penalized under Art. 249, in connection with Art. 50 of the Revised Penal Code, but declaring him entitled to the privileged mitigating circumstance of incomplete self-defense considering that two of the three requisites mentioned in Art. 11, No. 1 of the Revised Penal Code are present, namely, unlawful aggression and lack of sufficient provocation on the part of the person defending himself and, taking into consideration the provisions of Art. 13, No. 1 and Art. 69, both of the said Revised Penal Code, imposed upon him a straight penalty of imprisonment of Four (4) Months of *arresto mayor*, and ordered the said accused to indemnify the offended party, Jimmy Pitalio, in the amount of ₱500.00, and to pay the costs of the suit.[2]

The petitioner was originally charged under two (2) informations. In Criminal Case No. 0429-V,[3] he was accused of frustrated homicide for having shot one Jimmy Pitalio on January 23, 1972 in the municipality of Valenzuela, province of Bulacan. The petitioner was charged in Criminal Case No. 0430-V[4] with illegal possession of firearm and ammunition for having in his possession a Commanche Chief Caliber .22 Magnum revolver which was not licensed in his name. This was the same gun he used in shooting Jimmy Pitalio.

The two criminal cases were tried jointly. Thereafter the trial court rendered judgment acquitting the petitioner of the crime of illegal possession of firearm and ammunition in Criminal Case No. 0430-V and convicting said petitioner of the crime of frustrated homicide in Criminal Case No. 0429-V.[5]

The petitioner appealed to the Court of Appeals assigning the following errors allegedly committed by the trial court:[6]

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[2] Record of Criminal Case No. 0429-V, p. 132.

[3] *Ibid.*, p. 27.

[4] *Ibid.*, p. 124.

[5] *Ibid.*, pp. 131-132.

[6] *Rollo*, p. 37; Brief for accused-appellant, pp. 1-2.

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"ASSIGNMENT OF ERRORS

I

THE LOWER COURT ERRED IN HOLDING THAT THE OFFENDED PARTY WAS NOT ARMED WHEN HE ATTACKED APPELLANT.

II

THE LOWER COURT ERRED IN HOLDING THAT THERE WAS NO REASONABLE NECESSITY OF THE MEANS EMPLOYED BY APPELLANT TO DEFEND HIMSELF.

III

THE LOWER COURT ERRED IN NOT ACQUITTING APPELLANT ON THE GROUND OF LEGITIMATE SELF-DEFENSES."

The Court of Appeals affirmed the judgment of the trial court *in toto*[7] and denied the petitioner's motion for reconsideration of said decision in a resolution dated June 20, 1977.[8]

The petitioner contends that the Court of Appeals committed the following errors:[9]

"ASSIGNMENT OF ERRORS

I

RESPONDENT COURT OF APPEALS ERRED IN SUSTAINING THE UNWARRANTED CONCLUSION OF THE TRIAL COURT THAT THE OFFENDED PARTY WAS NOT ARMED WITH A KNIFE WHEN HE ATTACKED THE PETITIONER.

II

RESPONDENT COURT OF APPEALS ERRED IN SUSTAINING THE UNWARRANTED CONCLUSION OF THE TRIAL COURT THAT THE FAILURE OF THE PETITIONER TO PRESENT AS WITNESSES HIS MAID, HIS HELPER AND HIS WIFE TO CORROBORATE HIS TESTIMONY RENDERS THE DEFENSE VERSION UNWORTHY OF CREDENCE.

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[7] *Ibid.*, pp. 39-46.

[8] *Ibid.*, p. 120, as stated in Respondent's Brief, p. 3.

[9] *Ibid.*, pp. 79-80.

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III

RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT BECAUSE THE OFFENDED PARTY WAS NOT ARMED WITH A KNIFE WHEN HE ATTACKED THE PETITIONER, THERE WAS NO REASONABLE NECESSITY FOR THE LATTER TO USE HIS WIFE'S GUN TO DEFEND HIMSELF AND HIS WIFE.

IV

ASSUMING FOR THE SAKE OF ARGUMENT THAT PETITIONER CANNOT CLAIM COMPLETE SELF-DEFENSE, RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT THE CRIME COMMITTED IS SERIOUS PHYSICAL INJURIES ONLY AND NOT FRUSTRATED HOMICIDE."

The facts, as found by the Court of Appeals, are:[10]

"Norman Lacson, Jimmy Pitalio, Carlos Tan and Enrique Masacote were neighbors in General Tiburcio de Leon, Valenzuela, Bulacan. At about noon on January 23, 1972, Carlos Tan invited Masacote and Pitalio to the birthday party of his son in their house. While they were eating and drinking in the yard, Tan told Pitalio that the laborers of Lacson were leaving their work. Tan also asked Pitalio to find out whether the latter could get the balance of his unpaid wages from Lacson. Pitalio went to Lacson's residence, kicked open the gate of appellant's residence, and forced his way inside the yard. Appellant and his wife had just arrived and were alighting from their car when Pitalio, under the influence of liquor, confronted Mrs. Lacson and asked her to produce their truck driver named Serafica, saying: '*Pag hindi mo siya hinarap sa akin ay may mangyayari.*' Appellant remonstrated with Pitalio to abide by the law. This enraged Pitalio who replied: '*Ano ang batas, ito ang batas!*' Taking the Magnum .22 caliber pistol of his wife from her handbag, the appellant then fired it once at Pitalio's chest."

"Thereafter Mrs. Lacson brought Pitalio to the hospital. There Pitalio's gunshot wound was treated and operated on (Exhibit 'A'). Pitalio's confinement in the Jose R. Reyes Memorial Hospital lasted from January 23 to February 2, 1972. The medical certificate issued unto him stated that his injury would incapacitate him for more than thirty (30) days."

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[10] Decision, CA, pp. 1-2, *Rollo*, pp. 39-40.

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In its analysis of the evidence for the prosecution and for the defense, the trial court found that:[11]

"Jimmy Pitalio, on the witness stand, admitted that at the time of the incident he had drunk beer in the house of Carlos Tan but denied being drunk. The Court believes, however, that at the time he was under the influence of liquor so much so that although he knew that the balance of his salary which was a measly ₱1.00 in amount was due to him from the driver, he pressed Mrs. Lacson for the nonpayment and as a matter of fact, according to him, he told Mrs. Lacson 'Never mind, Mrs. Lacson, *alam kong ginigipit ninyo ako.*' Again, the fact that Jimmy Pitalio was known as a person of bad character in the locality is shown by the uncontradicted testimony of the accused who testified that Carlos Tan and Masacote warned him about Jimmy Pitalio and, by the fact that Jimmy Pitalio was convicted of serious physical injuries against his own uncle (Exhibit 4), and likewise by the fact that he admitted having stoned the house of accused Norman Lacson together with other companions."

The petitioner invoked self-defense. His evidence is that Jimmy Pitalio attacked him with a knife, and in order to prevent or repel the aggression he took the gun of his wife from her handbag and shot at the offended party.

The trial court rejected petitioner's theory of complete self-defense. However, it ruled that there was unlawful aggression on the part of the offended party, Jimmy Pitalio, stating thus:[12]

"Considering, therefore, the fact that at the time of the incident the offended party, Jimmy Pitalio, was drunk and considering his bad character, the Court believes, therefore, that there was unlawful aggression on the part of Jimmy Pitalio. It was Jimmy Pitalio who provoked the incident by going in a drunken condition to the house of the accused. The fact that Pitalio was of a violent temperament, strong and aggressive, previously convicted of serious physical injuries against his own uncle, plus the fact that he entered the residence of the accused in this case, makes the Court conclude that

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[11] Decision, CFI-Bulacan, pp. 79, Record of Criminal Case No. 0429-V, pp. 129-130.

[12] Decision, CFI, p. 8; *Ibid.*, p. 130.

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there was unlawful aggression on the part of the offended party in this case."

The trial court held that there was no reasonable necessity of the means employed to repel the unlawful aggression but found that there was lack of sufficient provocation on the part of the accused because:[13]

"That there was lack of sufficient provocation on the part of the accused in this case is very clear because it was Jimmy Pitalio who himself provoked the incident by accusing the wife of the accused of depriving him of his wages. The Court therefore finds that although there was no reasonable necessity of the means employed to prevent or repel, the first requisite of unlawful aggression was present, as well as the third requisite of lack of sufficient provocation on the part of the person defending himself."

The main issue raised by the petitioner is whether or not he is entitled to acquittal on the ground of complete self-defense. The trial court and the Court of Appeals found the presence of unlawful aggression on the part of the offended party and lack of sufficient provocation on the part of the petitioner. Both said courts, however, found the use of the gun by the petitioner as an unreasonable means to repel the unlawful aggression of the offended party, Jimmy Pitalio, apparently on the belief that the latter did not have any weapon.

The petitioner testified that the offended party was armed with a "kris-like" knife when he confronted Mrs. Lacson and the accused. The trial court found that when the petitioner remonstrated with Pitalio to abide by the law, Pitalio was enraged and replied "*Ano ang batas, ito ang batas!*" Implicit in this statement of Pitalio is that he was referring to something as "*ito ang batas.*" This statement of Pitalio tends to corroborate the testimony of the petitioner that the offended party was armed with a "kris-like" knife. The trial court did not state to what Pitalio, the offended party, referred when he said "x x x *ito ang batas!*" before he was fired at by the petitioner. The

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[13] Decision, CFI, pp. 8-9; *Ibid.*, p. 131.

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statement could not have simply referred to the fists of the offended party. It is contrary to normal human behavior for the petitioner to have taken the pistol of his wife from her handbag and fired at Pitalio if Pitalio did not have any weapon at all. The only logical conclusion is that Pitalio had a knife when he said "*Ano ang batas, ito ang batas!*" The phrase "*ito ang batas*" could only have referred to a weapon.

In *People vs. Boholst-Caballero*,[14] this Court said:

"In cases such as the one now before Us where there are directly conflicting versions of the incident object of the accusation, the Court in its search for the truth perforce has to look for some facts or circumstances which can be used as valuable aids in evaluating the probability or improbability of a testimony, for after all the element of probability is always involved in weighing testimonial evidence, so much so that when a court as a judicial fact-finder pronounces judgment that a set of facts constitute the true happening it does so not of its own personal knowledge but as the result of an evaluating process of the probability or improbability of a fact sought to be proved."

Considering the findings of the trial court and the Court of Appeals that Jimmy Pitalio, the offended party, was drunk at the time he was shot; that Pitalio was known as a person of bad character in the locality; that Pitalio had been convicted of serious physical injuries committed against his own uncle; that on a previous occasion, Pitalio admitted having stoned the house of petitioner, Norman Lacson; and the fact that Pitalio had intruded into the residence of the accused, the use by the petitioner of a gun as the only available weapon to repel the aggression cannot be considered as an unreasonable means of defending himself and his wife from the offended party.

This Court explained the meaning of reasonable means employed thus:

"That there is reasonable necessity of the means employed by herein appellant to prevent or repel the unlawful aggression cannot

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[14] 61 SCRA 180, 191.

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seriously be disputed. '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 as principal factors the emergency, the imminent danger to which the person attacked is exposed, 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 x x x.' As WE stated in the case of *People vs. Lara*, 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 sanction the act and hold the act irresponsible in law for the consequences."[15]

In the instant case, there was an imminent danger to the lives of the petitioner and of his wife from the unlawful attack of an enraged, drunken, and armed Pitalio. The gun in the bag of his wife, who was beside him, afforded the petitioner the only reasonable means to ward off the attack.

The petitioner is entitled to acquittal on the ground of complete self-defense. It is no longer necessary to discuss the other errors assigned by him.

WHEREFORE, the decision of the Court of Appeals sought to be reviewed is hereby set aside and the petitioner is ACQUITTED of the crime charged in the information in Criminal Case No. 0429-V of the Court of First Instance of Bulacan, with costs *de oficio*.

SO ORDERED.

Makasiar, Guerrero, De Castro, and *Melencio-Herrera JJ.*, concur.

Teehankee (Chairman), J., concurs in the result.

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[15] *People vs. Encomienda*, 46 SCRA 522, 534-535.