

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO POLUTAN AND RUPERTO DAPOGO, DEFENDANTS AND APPELLANTS.

*G.R. No. L-6195. June 30, 1954*

Ponente: REYES, J.

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### REYES, J.:

The appellants Ruperto Dapogo and Francisco Polutan were, together with Cenon Pama, charged in the Court of First Instance of Iloilo with the crime of murder for the killing of Manuel Francisco, which took place in Barrio Tagubong in the municipality of Passi, Iloilo Province, on August 6, 1949. Pama was acquitted, but Dapogo and Polutan were found guilty as charged and sentenced to reclusion perpetua, to indemnify the heirs of the deceased in the sum of P4,000, to suffer the accessory penalties prescribed by law and to pay proportionate costs. From this sentence, Dapogo and Polutan appealed.

The evidence shows that in the morning of August 6, 1949, the appellant Dapogo fetched Manuel Francisco from his house in barrio Losot, Dumarao, Capiz, telling him that he was being sent for by the accused Cenon Pama who was in Barrio Tagubong, Passi, Iloilo. Francisco told his wife Adelina Sialvo where he was going, but as he did not return Adelina asked Beltran Detalban, who happened to pass by the following day, whether he knew where her husband was, and Beltahan informed her that her husband was in the uplands of Barrio Tagubong, already dead. Taking her baby along, Adelina went to the place indicated and was there informed by one Marta that the body of her husband was in the house of Roman Polutan, father of the appellant Francisco Polutan. Adelina proceeded to said house, but before she got there she was met by the herein appellants who, on learning that she wanted to see her husband's body, warned her not to do so, telling her that they had orders from the accused Cenon Pama to kill her if she went near the cadaver. Adelina then looked for her father-in-law, Eugenio Francisco, whom she found on the road to Barbaranan, Dumarao, Capiz, talking with Cenon Pama, the latter having, it appears, sent for Eugenio earlier that day. Pama was then informing Eugenio that the deceased was killed by appellants "because of his foolishness" and that if Eugenio insisted in reporting the case to the authorities, he would have appellants file charges against him and see to it that he was put in jail. Pama even dissuaded Eugenio from viewing the remains of his son with the threat that, should he go where the cadaver was, "instead of one there would be more dead." Then turning to Adelina, who was introduced to him as the widow of the deceased, Pama told her not to make a fuss, for he would take care of everything, and also warned her not to tell anybody what had happened for otherwise she would also be killed. Thus threatened by Pama, who boasted that he had "authority both in the mountains and in the town," being an "inspector and secret detective of the whole island of Panay," Adelina and Eugenio kept their peace and did not complain to the authorities until they learned that Pama did not have the power or authority he claimed he had. That was in March, 1952.

Arrested and investigated by the police, the appellants Dapogo and Polutan admitted having participated in the killing of the deceased and each signed a sworn confession before the justice of the peace. According to their confession, appellants, one afternoon in August, 1949, had a drinking spree with their co-accused Cenon Pama

and the deceased Manuel Francisco. As Pama became drunk they took him to the house of the appellant Polutan where they all slept. At about midnight Pama woke them up and told them to bind Francisco and hang him from the truss. Once this was done Pama ordered the appellant Dapogo to stab Francisco with a bolo. Unwilling to do so at first because of his relationship with Francisco, Dapogo had to obey when Pama threatened to shoot him and so he stabbed Francisco below the armpit. Thereafter, the appellant, Polutan, who was ordered by Pama to take his turn, also stabbed Francisco, first below the armpit and then in the middle of the breast. Fatally wounded, Francisco died shortly thereafter.

At the trial appellants repudiated their confession, alleging that they had been starved and intimidated into signing the same. The appellant Dapogo denied having participated in the killing, while the appellant Polutan admitted killing the deceased but alleged self-defense.

According to the version of the defense what happened is that in the evening of August 6, 1949, the appellant Polutan, after taking a walk with his co-appellant Dapogo, invited the latter to pass the night with him in the house of his father Roman Polutan. At around midnight Manuel Francisco went up the house to rob and, after getting some money and clothing, still threatened Roman with a bolo if he did not give more, whereupon Roman grabbed his wife, made a dash for the kitchen door and jumped with her, followed by his son Juan. While fleeing through the kitchen, Roman happened to step on appellant Polutan when he awakened and asked why he was trying to sleep when they were being robbed. Aroused, the appellant Polutan grabbed a bolo from the wall and went to the living room and there came face to face with Francisco who struck at him with a bolo and hit him in the right forearm. Polutan stepped back, but as he did so, he bumped against a post and caused a lamp hanging thereon to fall, with the result that its light went out. Polutan also fell, and while he was in a squatting position Francisco struck him another blow which though aimed at his head landed on his thigh because he leaned back. Retaliating, Polutan got up and stabbed Francisco with his bolo. Mortally wounded, Francisco fell and shouted to his brother Bernardo, who was downstairs, to inform him of his plight. Appraised that Francisco had a companion, Polutan made for the door and there saw Bernardo standing. But Bernardo fled on seeing him. According to this version the appellant Dapogo did not take part in the fight for he fled when the light went out.

The defense tried to prove that the incident was reported to Doroteo Idombingo, barrio lieutenant of Tagubong, to Ramon Aguilar barrio Lieutenant of Lamonan, and to Sergeant Serafin Palmes of the municipal police of Passi, and that it was investigated and settled by Ramon Aguilar and no prosecution resulted because the father, brother, and widow of the deceased were satisfied that the latter was the one at fault. This is, however, denied by Ramon Aguilar and Sergeant Serafin Palmes, and indeed it is odd that a matter of such gravity should be settled by a mere barrio lieutenant. In the circumstances we cannot say that the trial court erred in finding that the appellant Polutan did not report the killing to the authorities.

The version of the killing as given by the witnesses for the defense is hard to believe. If it is true as claimed by the appellant Polutan that he fell when he bumped against a post while the deceased was attacking him with a bolo it is not likely that he would come out winner in the fight. And, if the alleged robbery were true, appellants would undoubtedly have reported what had happened to the authorities instead of fleeing to a distant town where they were later arrested. The fact is that appellants have both made a confession admitting their participation in the killing without any mention of the alleged robbery, and while they claim that they have been starved and intimidated into signing the confession, the claim is denied by the justice of the peace before whom the confession was sworn to and signed as well as by the chief of police and the person who furnished them food during their detention.

It is true that in their confession appellants claim that they were compelled by their co-accused Cenon Pama to stab the deceased. But exculpatory statements of this nature often found in confessions of guilt, are not necessarily

to be believed, more so when, as in the present case, the conduct of the appellants after the commission of the offense was inconsistent with their innocence.

Cenon Pama's responsibility for the crime need not be discussed because, as already stated, he was acquitted by the trial court.

With the evidence on record, we think appellants' guilt has been established beyond reasonable doubt and, as the penalty imposed is in accordance with law, the sentence appealed from is affirmed, with costs against the appellants.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.

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