

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PALA, CAWI (ALIAS SINADCUP), AND DUMACOG, DEFENDANTS AND APPELLANTS.*G.R. No. 5815. March 24, 1911*

Ponente: MORELAND, J.

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This is a review, en consulta, of a judgment of the Court of First Instance of the subprovince of Bontoc, Mountain Province, Hon. Isidro Paredes presiding, convicting Dumacog, Pala, and Cawi of the crime of murder, the two former as principals and the latter as accomplice, and sentencing the principals to death and the accomplice to eighteen years eight months and twenty-one days of cadena temporal.

On or about the 27th day of March, 1909, the authorities of the above-named sub-province were notified of the disappearance of an Igorot called Pagsangao, a resident of the rancheria of Tucucan, from the place where he was working as a Government employee in the town of Bontoc. The provincial authorities and the Constabulary of Bontoc at once instituted a search for the missing man, and, as a result of their efficient efforts, they not only found the body of the missing Igorot but also laid hands upon the persons who had been instrumental in his disappearance. The head of Pagsangao was first found; and later the headless body was discovered at an out-of-the-way place about two hours' walk from the town of Bontoc. While the head and body were in a condition considerably decayed, they were easily recognized as those of the missing Igorot by his relatives and friends, and especially by his brother, Saquian.

The body, aside from the wound made by severing the head from the trunk, disclosed two wounds, one on the left side just below the armpit, and the other on the shoulder blade, made from the rear. The hair of the head appeared to have been scorched and burned.

Two different versions were given as to how the deceased Igorot met his death. One was that offered by the accused Dumacog, who testified as a witness in his own behalf and in behalf of the accused Pala and Cawi. The other was that presented by the accused Puki, who, after the action against him had been dismissed in order that he might be used as a Government witness, gave what he asserted to be a complete and accurate history of the affair.

Dumacog, in his testimony, assumed by far the greater part of the responsibility for the death of Pagsangao. He included, however, in his history of the case, as an equal participant in the actual killing, the Government witness Puki, and fully acquitted of all responsibility the accused Pala. Dumacog testified in effect that on or about the 18th day of March, 1909, he heard that a brother of his had been killed by the deceased Pagsangao, who had cut off his head after first treacherously wounding and disabling him; that, on hearing of the murder of his brother, he decided to be avenged against his murderer by dealing with him as he had dealt with his brother; that, in pursuance of this scheme of vengeance, he, in company with Puki, on the afternoon of the 21st of March, 1909, went to a place on the banks of the river Samuqui, about one-half mile from the plaza of the town of Bontoc; that while there they saw the deceased walking along the trail, returning from his day's work for the Government; that

when he saw Pagsangao his anger flamed up and his desire for revenge was suddenly increased to such an extent that it overpowered him and, inducing Puki to join him, they made an attack upon the deceased, inflicting upon him various wounds with their aliwas; that after he was disabled they cut off his head; that they then called the accused Pala to show him the body and to take his advice as to the manner of disposing of it; that Pala went with them to look at the body and, upon seeing it, said to them, "You be careful."

Testifying for the Government, Puki stated that, on the afternoon of the 21st day of March, 1909, he was in his house in the rancheria of Bontoc, when the three accused, Dumacog, Pala, and Cawi, all armed with aliwas, together came to his house and invited him to go with them to a specified place, saying that they were there going to lie in wait for and kill a certain man from Tucucan; that, accepting their invitation, he armed himself with his aliwa and went forth with them; that, arriving at the river Samuqui, which is a very narrow stream, they divided themselves into two parties, Pala and Dumacog taking a position on the bank of the river next to the road, while Puki and Cawi crossed the stream and took a position on the other bank; that they took said positions about the time that the deceased Pagsangao would be traveling that way, going home from his work; that they had been stationed thus but a few minutes when the deceased was seen approaching; that Pala and Dumacog remained concealed and allowed him to pass them without disclosing their whereabouts; that just after he had passed they arose stealthily and running quickly up behind him attacked him with their aliwas, wounding him so badly that he fell to the ground almost lifeless; that Pala then cut his head from his body with two blows of his aliwa; that immediately after the killing Puki and Cawi joined their companions; that Pala took the head of Pagsangao and delivered it to Dumacog, who carried it to his own house and burned it; that the four together buried the body near the place where the killing occurred.

Concerning the conflicting stories of Dumacog and Puki, the learned trial court said:

"If the court in taking into consideration these two versions of the killing of Pagsangao believes the testimony of Dumacog to be true then it would be compelled to convict him and also Puki, if the case against Puki had not been dismissed. But on the other hand if the court believes the testimony of Puki as against the testimony of Dumacog then there would be nothing left for the court to do except to convict Pala as well as Dumacog and Cawi.

"After the court has duly and carefully considered and examined the proofs adduced at the trial of this case it comes to the conclusion not to accept the testimony of Dumacog in so far as it relates to the two accused, Pala and Cawi, but to accept it in so far as it relates to his own participation in the crime. His testimony appears to be very suspicious and it may be said was inspired by his codefendant Pala, who while they were in jail together proposed to Dumacog that if he would testify in such a manner as would exempt him, Pala, from all responsibility he would recompense him by taking care of his (Dumacog's) family by giving them food and attending to their rice fields. Not only for the reasons above expressed does his testimony appear to be very suspicious but also from the fact that Pala not only exerts a great influence over Dumacog but also over the entire rancheria of Bontoc. It appears from the testimony adduced at this trial that because of the reputation of Pala as a fighting man he is not only feared in Bontoc but in all the surrounding rancherias, and because of his character he is one of the principal chiefs and wields more influence over the Igorots of Bontoc than any other one chief. But the most fatal defect which appears in Dumacog's testimony is that he has made several contradictory statements under oath in regard to this crime. When he first testified before the lieutenant-governor of Bontoc acting as ex officio justice of the peace, he then did not assume all the responsibility for the crime but also implicated Pala, his coaccused in this case. He at that time did not make any attempt to save Pala, his chief, from all responsibility by swearing falsely, as he has on this trial, and it was not until after he had been placed in prison with Pala that he changed his attitude toward Pala and began to make contradictory statements in regard to this crime. When a witness makes two statements, both being sworn to as a witness in one case, and these statements incur in the gravest contradictions then the court can not accept either the first or second statements as proof. He himself by his own act of giving false testimony

impeaches his own testimony and the court is compelled to exclude it from all consideration. On the other hand the testimony of Puki is much more acceptable and credible and also much more reasonable; it being the testimony of a disinterested witness, and it further being corroborated by certain facts which will be set forth later on in this decision."

Referring to certain contradictions into which it is alleged the witness Puki fell, the learned trial court said:

"It is not important as having any bearing on the case at bar the fact that Puki testified that Auiden was present at the jail here in Bontoc when Pala made the proposition to Dumacog that if he, Dumacog, would testify in such a manner as to shift all responsibility from him (Pala) to Dumacog he (Pala) would look out for the family of Dumacog and that he would provide for the caring of Dumacog's rice fields and that in his testimony before this court Auiden did not fully sustain the testimony of Puki in regard to the said proposition made by Pala to Dumacog, because he did not in any manner contradict the testimony of Puki upon this particular point, but simply said that he, Auiden, was walking: up and down in front of the jail at the time Puki testified that Pala was engaged in making his said proposition to Dumacog, and it is reasonable to believe that it is possible that Auiden did not really hear the conversation. Auiden was present at the jail, as Puki testified, because he was in charge of the prisoners at the time Pala made his alleged proposition to Dumacog, but because of the fact of the walking of his post it is possible that he did not hear the alleged proposition. It is also natural and reasonable for Puki to have thought that Auiden did hear the proposition of Pala and his conversation with Puki and Dumacog on this point. Neither was the testimony of Puki contradicted in regard to the place where the murder of Pagsangao was committed not having large stones or trees. Puki states that the place was devoid of large stones and large trees, that is, the place along which the deceased Pagsangao passed on that fatal afternoon, but he testified in his direct examination, that they hid themselves behind stones from Pagsangao's view and there awaited his arrival and that when he arrived there Pala and Dumacog pursued him and attacked him. In answer to the questions of the defense on his cross-examination he testified that there were no large stones or large trees there where they might hide themselves, but that there were sufficient depressions and stones which offered them sufficient cover whereby they might keep, their persons from being seen from the road. This part of Puki's testimony does not affect to any great extent the main question at issue in this case. The fact is that in the place or sitio where the crime was committed these four people, Pala, Dumacog, Cawi, and Puki were there in hiding and waiting for the deceased to pass along so that they might surprise their intended victim at the psychological moment without placing their own persons at any risk. This is exactly what Puki meant when he said that they went there and divided themselves into two groups of two persons to each group in order that they might cut off any retreat or escape of their victim and enemy. And besides there occur many other contradictions in the testimony of Dumacog which make his entire testimony utterly incredible."

Summing up the case in favor of the credibility of the witness, Puki, the learned court said:

"The following facts corroborate and establish the veracity of Puki's testimony:

"First. Puki confessed always to his participation in the crime in almost the same terms each time, or that is, as nearly in the same terms and words as a man of his education and intelligence might be expected to do, and also as to the participation of each of the other accused.

"Second. Puki, himself, was the person who indicated to the authorities the place where the remains of Pagsangao were interred, and it was Puki who indicated to Lieutenant Nicolas of the Constabulary and others, that the head of Pagsangao was buried in the house of Dumacog, and there is where the head in fact was discovered.

"Third. The details set forth in his testimony in regard to the wounds which were inflicted upon the body of Pagsangao and their number and location upon the body was clearly and fully corroborated by other witnesses and by the accused Dumacog. Puki said that besides the decapitation of the head, Pagsangao's body had two other wounds on it, and it appears that the wounds described by him were in the exact location on the body as the locations described in his testimony; and not only these facts but also the manner in which Puki testified

before this court more thoroughly convinces the court of the veracity of his testimony. He testified in a straightforward manner without incurring in any grave contradictions or confusion, and he had the heroism to testify face to face to his coaccused and especially did he face the mighty Pala who was able to hold in abject fear the people of the rancheriy of Bontoc and its surrounding rancherias. This mighty influence of the accused Pala was impressed upon the mind of the court during the two times that Puki was called to testify, and especially during the examination of the witness Caslangan who at first utterly refused, in open court, to take the oath administered by the clerk of the court because as he stated for fear not only of the accused Pala and his coaccused but also of all the people of the rancheria of Bontoc, and, especially of the family of Pala.

"The facts as testified to by Puki which are sufficiently corroborated by other witnesses, and which are accepted by the court as the true facts in the case at bar, establish and constitute the crime of *asesinato* as charged in the complaint, in which there are present the attendant circumstances of treachery which is clearly established by the fact proved that the aggressors of Pagsangao attacked him from the rear without any risk whatsoever to their own persons."

We have read the evidence adduced in this case with great care and given it most thorough consideration. The learned trial court in the opinion which forms the basis of his judgment presented the facts with great clearness and thoroughness. We have been unable to discover in his discussion of the facts anything which warrants criticism or requires any comment other than favorable. Through the maze of contradictions he threaded his way with perspicacity and arrived at a conclusion which we deem eminently fair and sound. We find it necessary to make only one modification of the judgment before us. The learned trial court found that the aggravating circumstances of *alevosia* and *en cuadrilla* were present in the commission of the crime, which crime was qualified by deliberate premeditation, and sentenced Dumacog and Pala to death and Cawi to eighteen years eight months and twenty-one day of *cadena temporal*. We are of the opinion that article 11 of the Penal Code ought to have been invoked in favor of the accused. These accused were all members of a savage tribe, densely ignorant and deeply superstitious. They are creatures of custom and tradition. The act of taking the head of Pagsangao appealed to them not only as a right but as a duty which they owed to the deceased brother of Dumacog.

The judgment of the court below is modified and the accused Dumacog and Pala are each sentenced to *cadena perpetua*. The accused Cawi is sentenced to twelve years and one day of *cadena temporal*. The said three accused are hereby sentenced and required to indemnify the heirs of the deceased Pagsangao in the sum of P500, and to pay three-fourths of the cost of the trial below.

As so modified, the judgment is affirmed, with costs against the appellants.

Arellano, C. J., Mapa, Carson, and Trent, JJ., concur.

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