



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **07 March 2022** which reads as follows:*

**“G.R. No. 231438 (*Benjamin Polinas y Candelario v. People of the Philippines*).** — The invocation of the justifying circumstance of self-defense is not an easy ticket to evade criminal liability. It results to the prosecution being freed from the duty and burden of proving that the accused committed the offense charged, and consequently, shifts to the accused the burden to prove self-defense with clear and convincing evidence.<sup>1</sup>

This petition assails the November 10, 2016 Decision of the Court of Appeals (CA) in CA-G.R. CR No. 02318 affirming the September 3, 2013 Decision of the Regional Trial Court of Catarman, Northern Samar, Branch 19, in Criminal Case No. C-4218 convicting petitioner Benjamin Polinas y Candelario (Polinas) of the crime of Homicide.

**The Facts of the Case**

The Information<sup>2</sup> charging Polinas with Homicide alleges as follows:

That on or about the 10th day of April, 2007 at about 7:00 o'clock in the evening, at Purok 1, Brgy. Cervantes, Municipality of Catarman, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long bolo, with deliberate intent to kill without justifiable cause, did then and there, wilfully, unlawfully and feloniously attack, assault and hack RAFAEL C. POLINAS, SR. with the use of said weapon, which the accused had provided himself for the purpose, thereby inflicting upon

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<sup>1</sup> *People v. Antonio*, G.R. No. 229349, January 29, 2020.

<sup>2</sup> Records, pp. 15-16.

said Rafael Polinas, Sr. mortal wounds which caused the instant death of the said victim.

The accused is already detained in the prison cell of Catarman Police Station, Catarman Northern Samar, hence the immediate filing of this information in court.

CONTRARY TO LAW.<sup>3</sup>

During his arraignment, Polinas pleaded not guilty.<sup>4</sup>

Trial ensued. The prosecution presented four witnesses - the daughter of the victim Rafael Polinas, Sr. (Rafael), Mercy Polinas-Tonog (Mercy); Dr. Joseph Estanislao (Dr. Estanislao); Jose Rubenacio (Jose), the neighbor of Rafael and Polinas; and Sgt. Eduardo Dolero, a member of the Philippine Army. On the other hand, the defense presented Polinas himself, his wife Imelda Polinas (Imelda); and Barangay Kagawad Reynaldo Dante (Reynaldo).

#### **Version of the Prosecution:**

Mercy recalled that on April 10, 2007, at about 7:00 p.m., she heard her father, Rafael, having an argument with her uncle, Polinas, about their mother's pension.<sup>5</sup> Rafael confronted Polinas regarding their mother's woes and how, despite having her pension she did not have enough to eat.<sup>6</sup> Their confrontation resulted in a heated exchange of words, when suddenly Polinas stabbed Rafael on the left portion of his stomach with a bolo.<sup>7</sup> Rafael attempted to run despite his wound, however, Polinas caught up with him and hacked Rafael two more times.<sup>8</sup>

Corroborating the testimony of Mercy, Jose averred that in the evening of April 10, 2007, he heard a commotion outside his house. When he checked to see what it was about, he saw Polinas holding a *bolo*. He later learned that Polinas stabbed Rafael. Jose also saw Rafael who was already wounded as he lived five meters from Rafael's residence.<sup>9</sup>

Dr. Estanislao interpreted the medico-legal certificate issued by Dr. Victor Salvador Dato stating that Rafael sustained a stab and hack wound. The stab wound was 4-5 cm. in length, 4-finger breath located on the left portion of the victim's navel. The hack wound, on the other hand, is 30 cm. in length, bone deep at the level 4<sup>th</sup> ICS posterior axillary line extending to superior boarder iliac crest.<sup>10</sup>

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<sup>3</sup> Id. at 15.

<sup>4</sup> Id. at 29.

<sup>5</sup> TSN, June 15, 2009, pp. 5-6.

<sup>6</sup> Id.

<sup>7</sup> Id. at 3-5.

<sup>8</sup> *Rollo*, p. 70.

<sup>9</sup> Id.

<sup>10</sup> TSN, February 9, 2011, pp. 3-7.

**Version of the Defense:**

Polinas recounted that in the afternoon of April 10, 2007, while preparing for dinner, he heard his brother Rafael challenging him to come out of their house. Rafael even threw stones at the house of Polinas but Polinas just ignored Rafael. Nevertheless, Polinas armed himself with a hard wood.<sup>11</sup> When Rafael attempted to enter Polinas' abode, Polinas hit Rafael's hand which caused the *bolo* to fall. Polinas then picked up the *bolo* and stabbed Rafael's abdomen.<sup>12</sup>

After the stabbing incident, Polinas surrendered himself as well as the *bolo* before Kagawad Reynaldo. They went to Barangay Cervantes Detachment.<sup>13</sup>

**Ruling of the Regional Trial Court:**

The RTC found Polinas guilty beyond reasonable doubt of the crime of Homicide.<sup>14</sup> The RTC gave more weight to the testimonies of the prosecution witnesses, in particular Mercy's, who positively identified Polinas as the one who hacked her father, Rafael, causing the latter's death.

The RTC also disregarded Polinas' invocation of self-defense there being no unlawful aggression on the part of Rafael.<sup>15</sup>

The dispositive portion of the RTC Decision reads as follows:

WHEREFORE, from all the foregoing, the Court finds the accused BENJAMIN POLINAS y CANDELARIO, GUILTY of the crime of Homicide, penalized under Art. 249 of the RPC and is sentenced to suffer the penalty of TEN (10) YEARS of prision mayor as minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of reclusion temporal as maximum and to pay the amount of P50,000.00 as civil indemnity, P50,000.00 moral damages and P25,000.00 exemplary damages.

SO ORDERED<sup>16</sup>

Polinas elevated his case before the CA.

**Ruling of the Court of Appeals:**

In its assailed November 10, 2016 Decision, the CA adopted the findings of the RTC and affirmed Polinas' conviction for the crime of Homicide.

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<sup>11</sup> *Rollo*, pp. 71.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Records*, pp. 349-356.

<sup>15</sup> *Id.*

<sup>16</sup> *Rollo*, p. 50.

The *fallo* of the CA Decision reads as follows:

WHEREFORE, the Appeal is DENIED and the assailed Decision dated September 3, 2013 of the Regional Trial Court (RTC), Branch 19, Catarman Northern Samar is hereby AFFIRMED.

SO ORDERED.<sup>17</sup>

Hence, this petition.

### Issue

The sole issue for this Court's resolution is whether the CA correctly affirmed the conviction of Polinas for the crime of Homicide.

### Our Ruling

**Self-defense cannot be appreciated in favor of Polinas.**

In his attempt to evade his criminal liability, Polinas avers that he was acting in self-defense after Rafael approached and assaulted him.<sup>18</sup> Polinas described the confrontation that resulted to the death of Rafael as follows:

Q: You made mention that on April 10, 2007 at around 5:00 o'clock you heard this Rafael Polinas challenging you, what happened next after that?

A: After that, he stoned my shop and then I went out.

Q: After that, what did you do?

A: I asked him what wrong did I do to you?

Q: To whom were you asking that question?

A: To Rafael Polinas.

Q: Where was he when you asked that question?

A: On the street that was about 6:00 o'clock in the evening.

Q: After asking that question to Rafael Polinas, can you tell the Court what was his answer to you?

A: He said, you step down there or else I will kill you all.

Q: What did you do after you heard that answer of Rafael Polinas?

A: After that, I was hit here with something pointed (*witness pointing to his left wrist*) and then I went to my kitchen to get hold of the hard wood (*bahi*) and I prepared myself if ever he enters the tailoring shop.

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<sup>17</sup> Id. at 80.

<sup>18</sup> Id. at 74.

Q: You mentioned that you were hit by something pointed to your wrist, what is that something that were (*sic*) hit your wrist?

A: A broken bottle.

Q: You said that you prepared yourself of a hard wood if ever Rafael Polinas would enter your house, what happened next after that?

A: He attempted to enter with a bolo, so, I have nothing left to defend my family.

Q: So, what happened after that?

A: When he attempted to step on the ladder of my house, I hit him to his right hand and the bolo fell and when I attempted to pick up the bolo, he held me on my collar and attempted to box me so I thrust the bolo to his abdomen and I said, go down to the cemented road, and then I locked my house; and I noticed that my mother and my daughter were no longer there.<sup>19</sup>

An admission of self-defense frees the prosecution from the burden of proving that the accused committed the act charged against him or her.<sup>20</sup> The burden is shifted to the accused to prove that his or her act was justified.<sup>21</sup> When an accused admits an act attributed to him, but invokes self-defense to evade criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise conviction is proper pursuant to his admission that he harmed the victim.<sup>22</sup> We note that, it is only when independent and competent evidence is adduced can self-defense be appreciated as a mitigating or justifying circumstance.

To fully consider and appreciate self-defense as a justifying circumstance, Polinas must prove 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.”<sup>23</sup>

Unlawful aggression against the accused is an indispensable requisite of self-defense. The essence of unlawful aggression in self-defense has been extensively discussed in *People v. Olarbe*.<sup>24</sup>

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

<sup>19</sup> TSN, January 11, 2013, pp. 6-8.

<sup>20</sup> *People v. Antonio*, supra note 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, citing *Belbis v. People*, 698 Phil. 706, 719 (2012).

<sup>23</sup> *Id.*, at 719-720.

<sup>24</sup> 836 Phil. 1015 (2018).

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.<sup>25</sup>

According to Polinas, Rafael started to challenge him at about 5:00 p.m. Polinas did not mind Rafael when he first heard him as it was always the habit of Rafael to challenge Polinas to a fight.<sup>26</sup> After issuing his challenge, Rafael threw stones at the shop of Polinas, prompting Polinas to come out and confront Rafael. Polinas asked Rafael ‘what did I do to you,’<sup>27</sup> to which Rafael replied “you step down there or else I will kill you all.”<sup>28</sup> After hearing such, Polinas was hit with a shard of a broken bottle in his left wrist. Polinas then went inside his kitchen and armed himself with *bahi* (hard wood).<sup>29</sup> Thereafter, Rafael attempted to enter inside Polinas’ shop while armed with a bolo, leaving Polinas with no choice but to defend his family. When Rafael attempted to step on the ladder of Polinas’ house, Polinas hit his right hand, causing the bolo to fall. Polinas attempted to pick up the bolo, but Rafael held his collar and attempted to box him. Polinas then stabbed Rafael on the abdomen.<sup>30</sup>

Mercy testified having witnessed the hacking and stabbing of his father by her uncle.<sup>31</sup> According to Mercy, Polinas stabbed Rafael first and retrieved the *bolo*. Rafael was then able to run away, however Polinas chased Rafael and hacked him.<sup>32</sup>

Clearly, the RTC and the CA correctly disregarded the claim of self-defense of Polinas.<sup>33</sup>

First, there was no unlawful aggression as contemplated by law on the part of the victim. A belief that one is about to be attacked is not sufficient. Unlawful aggression presupposes an actual or imminent danger on the life or limb of a

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<sup>25</sup> Id. at 1025-1026.

<sup>26</sup> TSN, January 11, 2013, pp. 5.

<sup>27</sup> Id. at 6.

<sup>28</sup> Id. at 7.

<sup>29</sup> Id.

<sup>30</sup> Id. at 8.

<sup>31</sup> TSN, January 15 2009, p. 3.

<sup>32</sup> Id. at 4.

<sup>33</sup> *Rollo*, pp. 75-76.

person.<sup>34</sup> As narrated by Polinas himself, Rafael would always challenge him to a fight. Thus, Rafael's invitation to fight could not be considered as tantamount to an actual or imminent danger on the life or limb of Polinas.

Second, as correctly noted by the CA:

But even assuming the existence of unlawful aggression by Rafael, there was no reasonable necessity in the means employed to prevent or repel the unlawful aggression of Rafael. The testimony of Mercy Polinas-Tonog suffices to establish accused-appellant's culpability for the crime charged:

Q: On April 10, 2007 at about 7 o'clock in the evening, can you still recall where were you at that time?

A: Yes, sir.

x x x x

Q: While you were outside of your house at that particular date and time, can you recall of any untoward incident that transpired?

A: Yes, sir

Q: What was the incident about that you are telling the Honorable Court?

A: During that incident I saw my father being hacked and stabber, sir.

Q: Who hacked and stab your father?

A: My uncle Benjamin Polinas, sir.

Q: You said that you were there outside and witnessed the stabbing of your father by the accused, how many meters were you from the place where your father Rafael was hacked by his brother Benjamin?

A: I think only 3 meters, sir.

Q: You said that you were only 3 meters away from your father and your Uncle Benjamin at the time when the incident happened. How were you able to identify Benjamin Polinas considering that it was already 7:00 o'clock in the evening?

A: Because it was bright because there was a light in our yard, sir.

x x x x

Q: You said you personally witnessed the hacking and stabbing of your father by your Uncle Benjamin, what was the weapon used by Benjamin when he hacked and stabbed your father?

A: **Long bolo**, sir.

Q: Can you demonstrate before this Honorable Court how long was that bolo used by the accused in this case?

A: Like this, sir (witness demonstrating the size of the *(sic)* bolo by stretching her arms which when measured, **30 inches long**)

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<sup>34</sup> Id.

Q: Including the handle?

A: Yes, sir

Q: You said you were there[,] present and witnessed the hacking and stabbing incident, which was ahead, the hacking or the stabbing?

A: Stabbing first and he retrieved the bolo and my father was able to run away and he chased my father and he hacked my father, sir.

Q: How many times?

A: Twice, sir,

Q: And after the hacking and stabbing, what happened to your father?

A: He was able to run for another 5 meters and he fell, sir

Q: When your father was already down what did you do?

A: I ran to the camp but I was not able to reach the camp because I fell and I don't know what happened, sir. [Underscoring supplied]

Even if we assume that there was initially an unlawful aggression on the part of Rafael, still, it is elementary in criminal law that the moment the first aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist; and when unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor.<sup>35</sup>

Records show that Polinas stabbed Rafael after Rafael has ran away.<sup>36</sup> At that moment, the victim Rafael did not anymore pose any imminent threat against Polinas.<sup>37</sup>

Further, the means employed by a person to defend himself must be commensurate to the nature and the extent of the attack sought to be averted, and must be necessary to prevent or repel the unlawful aggression.<sup>38</sup> In this case, the circumstances show that Polinas armed himself with a *bahi* to counter any attack coming from Rafael who was armed with a broken bottle. The scene quickly escalated to Polinas armed with a long bolo versus an unarmed Rafael, which then resulted to Polinas killing Rafael by inflicting a fatal wound.<sup>39</sup> Taking all these circumstances together clearly negates self-defense.

In fine, We hold that Polinas was correctly found guilty of the crime of Homicide. However, the penalty imposed by the CA, which is, ten (10) years of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum, needs to be modified to ten (10) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. As regards the damages awarded,

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<sup>35</sup> *People v. Guarin*, G.R. No. 245306, December 2, 2020.

<sup>36</sup> *Rollo*, pp. 78.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

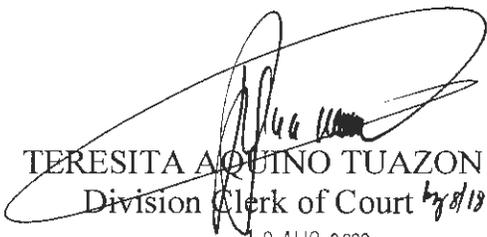
<sup>39</sup> *Id.* at 78-79.

*People v. Jugueta*<sup>40</sup> teaches that the following damages are awarded in Homicide: ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. In addition, temperate damages in the amount of ₱50,000.00 is awarded in lieu of actual damages, if no actual damages has been established, or if the amount supported by receipts is below the sum allowed by the Court or ₱50,000.00.<sup>41</sup>

**WHEREFORE**, the petition is hereby **DENIED**. The assailed November 10, 2016 Decision of the Court of Appeals in CA-G.R. CR No. 02318 finding petitioner Benjamin Polinas y Candelario **GUILTY** beyond reasonable of the crime of Homicide is **AFFIRMED** with **MODIFICATION** in that petitioner is sentenced to suffer the indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and the amounts of civil indemnity, moral damages, and temperate damages shall be ₱50,000.00 each. The award of ₱25,000.00 as exemplary damages is **DELETED**. An interest of six percent (6%) per *annum* from the time of the finality of this Resolution until fully paid shall also be imposed on said amounts.

**SO ORDERED.**” (*Perlas-Bernabe, S.A.J., on official business; Hernando, J., Acting Chairperson per Special Order No. 2872 dated March 4, 2022*).

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court *by of 19*  
19 AUG 2022

<sup>40</sup> 783 Phil. 806, 852 (2016).

<sup>41</sup> *People v. Moreno*, G.R. No. 191759, March 2, 2020.

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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 19  
Catarman, Northern Samar  
(Crim. Case No. C-4218)

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\*with copy of the CA Decision dated November 10, 2016

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GR231438. 3/07/2022(112)URES *MS/1*