

[G.R. No. L-6019. December 15, 1953]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MOTIN COCOY, ET AL., DEFENDANTS. MOTIN COCOY AND APOLONIO COCOY, DEFENDANTS AND APPELLANTS.

D E C I S I O N

MONTEMAYOR, J.:

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Cocoy, his younger brother Apolonio Cocoy, their father Barhin Cocoy, one named Magdaleno Villorente and another called Abi, were originally charged with robbery with triple murder in the Justice of the Peace Court of Libacao, Capiz. With the exception of Abi, all were arrested and submitted to the preliminary investigation conducted by the Justice of the Peace who later sent the case up to the Court of First Instance. Upon representations of the provincial fiscal that the evidence for the prosecution was not enough to convict Barhin Cocoy and Magdaleno Villorente, the information was dismissed as against the two. Upon arraignment the remaining two accused Motin and Apolonio pleaded guilty. Because of the seriousness of the offense charged and because the two brothers were illiterate non-Christians, instead of thenceforth sentencing them, the trial court presided over by Judge Luis N. de Leon had Motin Cocoy take the witness stand. With his testimony the trial judge had the impression that the two accused might not have understood the meaning and effect of their plea of guilty and so ordered the same to be stricken from the record and substituted with a plea of not guilty. After trial the lower court found them guilty beyond reasonable doubt of robbery with triple murder and sentenced them to suffer the death penalty and to indemnify the heirs of the victims in the sum of P3,000 plus P273.60 for the value of the things taken away, and to pay

one-half of the costs. The case is now here for review under the provisions of Rule 118, section 9, of the Rules of Court providing for the transmission to this Court of all criminal cases where the death penalty is imposed by the trial court.

There is no dispute

as to the following facts. In the month of March, 1952, Jose Leyson, his wife Maria Felix, their daughter Gardenia aged three and their son Golpihan 1½ years old were living in the barrio of Manica, municipality of Libacao, Province of Capiz, in a sort of temporary building commonly known as an evacuation hut, consisting of one single room, including the kitchen, situated near the forest and standing only about two feet from the ground. Their nearest neighbor was about two kilometers away. The hut was a good many miles from the poblacion, requiring many hours hiking over trails and fording streams to negotiate the distance. In the morning of March 12, 1952 (Wednesday) Leyson left his family in the house to go to the poblacion to make purchases the following day (Thursday) which was a market day. That same afternoon Wednesday, several marauders entered his house and after killing Maria and the two children by means of bolo blows, ransacked the house and left it clean of its contents such as plates, kitchen utensils, money amounting to P210, jewelry valued at P50, clothes costing P40 and one cavan of rice worth P10. According to investigation by the police, the body of Maria bore seven wounds, Gardenia—6 wounds and the little boy—3 wounds. The two eyes of the boy were found to have been gouged and extracted from their sockets.

Due to the distance of the poblacion from his house and because upon his return home he could not cross swollen streams, Leyson did not reach his home until Saturday afternoon March 15. We can only imagine the shock that must have stunned him and his reactions to the scene of death and desolation that greeted his eyes,—his dear ones whom only three days before he had left alive and hale, now but corpses scattered on the floor, and the house itself despoiled of all its contents. He notified his relatives and then hurried back to the poblacion to report, and the Libacao police repaired to his home where they arrived two or three days later.

We agree with the trial court and the solicitor general that the evidence adduced during the trial is conclusive that Motin Cocoy and his brother Apolonio Cocoy and according to them one named Abi were responsible for the robbery and the killing of the three victims. According to the testimony of Motin and Apolonio, together with Abi and upon suggestion of the latter they all went to the house of Leyson late in the afternoon of Wednesday. Upon arrival there Abi asked for food telling Maria that they were hungry and the housewife said she would prepare for them. After a long wait Abi impatient asked her about the food promised them and she answered that there was no food in the house, whereupon Abi began boling and otherwise attacking Maria and the two children Golpihan and Gardenia until they were all dead. Motin said that he did not see the killing because at the time he was at the window looking toward the forest. His brother Apolonio equally disclaimed having witnessed the actual killing, because according to him he was at the door looking out and when the two brothers turned around, Maria and her children were already lying dead on the floor. We do not blame the trial court for calling and considering this story of the two brothers "too fantastic, a downright lie." The infliction of the seven wounds on Maria, six wounds on Gardenia and three wounds on the little boy could not have been accomplished in an instant like the explosion of a bomb but must have taken some time, and undoubtedly accompanied by resistance even if ineffective, shouts or even noise and commotion produced by the assault, and yet Motin and Apolonio would have the court believe that all these happened without their knowledge because they were engrossed in contemplating the scenery. There is every reason to believe and to find that there was a previous agreement on the part of the two brothers and Abi to rob the house and to kill the inmates in order to better hide the crime, an agreement which they actually carried out. This is supported not only by the very testimony of the two brothers Motin and Apolonio, admitting that after the killing they took part in ransacking the house and taking away money and articles, but by the testimony of Roque Idala who according to him responded to Maria's shouts for help and witnessed part of the killing by the two brothers from his place of hiding and observation, a distance of several meters from the house. He also saw the killers,

including the two brothers leave the house carrying in bundles what they had taken from Leyson's dwelling. According to Idala after the marauders had left he entered the house and saw the dead bodies on the floor. The participation of Motin and Apolonio in the killing and the robbery is further supported by their own affidavits, Exhibits A-1 and B-1, wherein they admit that once in the house of Leyson and after Maria had told them that there was no food in the house, the two brothers took part in killing the inmates after they saw Abi initiate the murderous assault. This, to say nothing of their spontaneous plea of guilty to the charge of robbery with triple murder, although this plea was subsequently stricken from the record. As to the voluntariness of the affidavits, Exhibits A-1 and B-1, Eufronio A. Escalona, Justice of the Peace of Libacao, before whom they were sworn assured the court that he read to the affiants the contents in the local dialect and told them that they could either affirm or deny the truth thereof, but that they told him that they contained the truth. Even during the trial Motin and Apolonio told the court that they were neither intimidated nor maltreated by the constabulary or the police.

The crime committed by appellants which is the complex crime of robbery with homicide, not robbery with triple murder,^[1] was truly hideous and shocking, not only because of the massacre of three innocent persons but because the killing of two of the victims was clearly unnecessary. Even if the two children had been spared, they were too young (aged 3 and 1½ years) to remember and to relate the occurrence and identify the culprits; and the gouging of the eyes of the little boy as confessed by Apolonio is a manifestation of wanton cruelty and brutality. Ordinarily, this horrifying crime deserves the death penalty imposed by the trial court because of the presence of several aggravating circumstances, such as dwelling, uninhabited place, abuse of superior strength, etc., but some members of this tribunal are inclined to reduce the penalty to life imprisonment not only because of the ignorance and lack of instruction of the defendants but because of their being non-Christians and their lack of association with a civilized community. They lived more or less in isolation in the mountains. Apolonio told the court that he had never been to the

poblacion of Libacao within whose territorial jurisdiction he had been living since birth.

Lacking the necessary number of votes to impose the extreme penalty, the death penalty imposed by the trial court is hereby reduced to life imprisonment; and following the suggestion of the solicitor general, the indemnity to the heirs imposed by the trial court for the killings should be raised to P6,000, and the value of the articles taken away raised from P273.60 to P303.60.

We notice that Abi, the person who according to the two brothers, was the leader, up to now has not yet been arrested despite the issuance of the corresponding warrant against him and although according to the appellants he was still living in the sitio of Taroytoy not far from their home. The authorities should continue or renew their efforts to bring him to justice. We quote with approval a paragraph of the decision appealed from on this point.

“The court notes that Abi was a co-accused in the Justice of the Peace of origin. A warrant was issued for his arrest. The record does not show what happened with the case with respect to Abi after the warrant of arrest was issued. This, in spite of the fact that Abi, according to the herein accused, is not hiding. He is in Taroytoy. This shows reluctance on the part of the peace and prosecuting officers to bring Abi to the bar of justice. Such an attitude cannot fail to create in the minds of many a belief that, at times, the law is not applied equally to all. It cannot fail to create a resentment in the hearts of the herein accused because, whereas they are to suffer the extreme penalty of the law for the crime, Abi, who is as guilty, if not more, as they are, is free. Cases as this is one of the causes of the people’s losing respect for the law and faith in the government. But the non-prosecution of Abi cannot be an impediment to the conviction of the accused if they are really guilty.”

With the modifications above

enumerated, the decision appealed from is hereby affirmed, with costs.
Let a copy of this decision be furnished the Department of Justice and
the Chief, Philippine Constabulary.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ.,
concur.

^[1] U. S. vs. Landasan, 35 Phil., 359; People vs. Manuel, 44 Phil., 333.
