

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FILOMENO DALIGDIG, ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. L-2432. July 31, 1951*

Ponente: MONTEMAYOR, J.

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Several years before the last world war Nicasio Layaoen, the central figure in this case, was a farmer in Ilocos Norte. Enterprising, adventurous and capable, and undoubtedly desiring to improve his lot and realize his dream of carving out a landed estate from the virgin lands of the Subprovince of Apayao, he emigrated there, taking with him as tenants and helpers a number of his province and townmates, and leaving behind in Ilocos Norte, a son Alfredo and a daughter Mercedes by a former marriage. Thus in January, 1945, we find Nicasio, whom we may call Nic for short, in the barrio of Tanglangan, municipal district of Bayag, Apayao, living with his common-law wife Trinidad (Trining) Ventura and their two daughters Charing and Silao, aged ten and eight, respectively. In his house were also living Teodoro Oana, a farm helper and his wife Magdalena Tolentino and a maid named Magdalena Agcaoli. With the help of his tenants and helpers, he had cleared and was cultivating, evidently with success and profit a more or less extensive tract of land which he had previously solicited from the Government as homesteads—one for himself, one for his son Alfredo, another for his daughter Mercedes and still another for one named Marcos Vital. If we bear in mind that the regular area of a homestead is twenty-four hectares, we may have an idea of the extent of his landholding.

Sad to say, however, about the middle of January, 1945, all his dream which he had thus far carried out to reality, was cut short and shattered. He and his entire family in Tanglangan, composed of his common-law wife and two children were liquidated in a most cowardly manner, which, for sheer cold bloodedness and ruthlessness, is truly shocking. Not only this, but not long after being murdered, his extensive landholdings were parceled out among and appropriated by the killers, many of whom were his very tenants.

From what we can gather from the evidence, one reason behind his untimely and premature death was that some people in his barrio, possibly viewed his success and watched his prosperity with envy, and wanted to appropriate to themselves the fruits of his labor. Another possible reason was because Nic was said to have forgotten and failed to live up to the promise he had made to his tenants that after clearing the land and putting it in a state of cultivation, he would give them a part of it. Whether or not the time had come for said tenants to receive their share of the land, or whether they were merely getting impatient and suspicious that they may not be given any share at all, or whether they just wanted to eliminate their landlord and his heirs so that they would no longer be tenants but become landowners in their own right, the fact is that they killed Nicasio Layaoen and his whole family in Tanlangan, Bayag,

Eleven persons were charged with quadruple murder for these killings. They are Jose de Ocampo and his three sons Maximiano, Ripan and Mauro, all surnamed de Ocampo, Filomeno Daligdig, the school teacher in the barrio, his nephew Blacio Daligdig, Roberto Solmayor, the two brothers Cenon Cascayan and Maximo Cascayan, Simeon Prudenciano and Aburan Kalingay. All these eleven defendants with the exception of Filomeno Daligdig,

Blacio Daligdig and Roberto Solmayor, were tenants of Nic in January, 1945. Justo Tolentino another tenant who according to the evidence took a direct part in the killing, was not included as a defendant because when the charge was filed in court he was already dead. Extensive testimony was presented both for the prosecution and for the defense, and after trial the Court of First Instance of the Mountain Province presided over by Judge Hermogenes Concepcion, found all the eleven defendants guilty of quadruple murder; but instead of treating the four killings as four separate murders, it considered them as constituting one single but complex crime under Art. 48 of the Revised Penal Code, and imposed on each and everyone of the accused, the death penalty, at the same time sentencing them to jointly and severally indemnify the heirs of the victims in the sum of P20,000, and to pay costs. This sentence was immediately amended so as to commute or reduce the penalty of defendants Mauro Ocampo and Blacio Daligdig to reclusion perpetua because the trial court found that they were less than eighteen years of age when the crime was committed. The case is now before us on appeal by Mauro de Ocampo and Blacio Daligdig and for automatic review of the case as regard the accused sentenced to death.

In determining the guilt or innocence of the accused the problem confronting the trial court and this appellate tribunal is principally one of credibility of witnesses, particularly of those for the prosecution, as well as their motive for testifying as they did during the trial, assuming that they were actuated or impelled by any desire other than to tell the truth. The probability or improbability of the stories of the prosecution and of the defense also play a major role in the solution of the case. The lower court which had the opportunity to observe the demeanor of the witnesses on the witness stand, and their reactions to direct and cross examination in which the trial court took an active part, finally gave more credence to those for the Government, accepted their version of the manner the killings were perpetrated, and found all the eleven defendants guilty. Because of the seriousness of the offenses and the nature of the penalties attached to them, we have devoted considerable time, attention and extreme care in going over the record, reading every line of every page of the transcript of the testimony, mulling over the meaning and significance of every statement of each witness, and from it all, we are in substantial agreement with the trial court that Nicasio Layaoen and the members of his family had been killed in the brutal and merciless manner described by the witnesses for the Government, and that consequently, the defendants are guilty, though in varying degrees of guilt and responsibility.

About January 16, 1954, Filomeno Daligdig, a Normal School graduate and school teacher; Roberto Solmayor, a high school graduate and formerly a clerk in the office of the Municipal District Treasurer of Bayag; and Jose de Ocampo, one of the tenants of Nic and probably the most intelligent among the said tenants, called a meeting at the schoolhouse in barrio Tanglangan where Nic's family and they (defendants) resided. Before that meeting, there must have been a preliminary talk or agreement not only between these three leaders (Filomeno Daligdig, Roberto Solmayor and Jose de Ocampo) but also between them and some of the tenants of Nic regarding his being disposed of. This meeting was attended by all the defendants including other tenants of Nic as well as other residents of Tanglangan. The proposition to kill Nicasio was formally presented at the meeting by the three who called it. Some of those present, particularly the defendants, readily agreed to the proposition. Others due to pressure exerted upon them and because of fear of punishment and reprisal also assented though reluctantly. Among the latter group are some of the witnesses for the prosecution. To carry out the idea and the decision to kill Nicasio, that same evening all the eleven defendants, including Justo Tolentino (now dead) and his son Estanislao Tolentino, one of the principal witnesses for the prosecution, proceeded to the house of Nic, then occupied by himself, his wife Trining, their two children Charing and Silao, Teodoro Oana, and his wife Magdalena Tolentino, and the maid Magdalena Agcaoili. Because he and the members of his household closed all the doors and windows of the house and barricaded themselves inside, and in view of their determined resistance, the raiders as a preliminary step to soften resistance, brought stones from a nearby brook and stoned the house. Toward midnight the raiders surrounded the house and Mauro de Ocampo sneaked under it, and through an aperture or

crevice in the floor, he shot an arrow into the body of Nic, the arrow lodging in his mid section. Because of its barbed head the arrow could not be removed from his body until after his death. Then Ripan de Ocampo succeeded in tearing or breaking down one of the walls of the house and through this opening the raiders entered the building. The inmates to avoid capture and possible death, jumped out of the windows and by hiding in the bushes, were able to evade the raiders. Finding the house apparently empty, the defendants left. Solmayor told his co-conspirators that Nic would probably escape to Ilocos Norte, and that since the road thereto passed by his (Solmayor's) house, he would go there in a hurry and try to intercept Nic, which he did.

The following morning some of the members of the household of Nic composed of Teodoro Oaria, his wife Magdalena Tolentino and the maid servant Magdalena Agcaoili, ventured into the house, seeing that all was quite within. Inside the house they found the two girls Silao and Charing, huddled together and hiding on a platform near the roof, where household articles and equipment like bedding, etc. are usually kept. The girls were naturally frightened and were crying.

Not long thereafter, five of the defendants who had previously raided the house the night before, named Filomeno Daligdig, Jose de Ocampo, his two sons Mauro and Ripan, and Aburan Kalingay, returned and proceeded to tie up said inmates of the house, namely, Teodoro Oana, the two Magdalenas and the two children. Thus tied and strung together, they were marched toward the house of Solmayor in Japanese fashion, reminiscent of the manner and practice of Japanese soldiers who took their Filipino prisoners to town. On the way, and in the middle of a field they came upon Canuta Domingo, an elderly woman carrying a baby, walking toward her home, followed by Trining Ventura, the commonlaw wife of Nicasio. It seems that Trining after jumping from her house the night before, had hidden herself from the raiders, and now she had found and implored Canuta to take her to her house and hide her there. Unfortunately, before they could reach the house of refuge, they were overtaken by these five defendants. Jose de Ocampo with his long bolo chased Trining and on overtaking her, he struck her on the waist. She continued running and he gave her a blow in the neck, cutting off her head or almost severing it from the body. It is said that Filomeno, Mauro, Ripan and Kalingay then struck the dead body of Trining with their head axes. This beheading of Trining Ventura was clearly described in court by Teodoro Oana and Canuta Domingo. The two girls Silao and Charing threw themselves to the ground to hold the head of their dead mother but they were rudely dragged away by the rope with which they were tied. Kalingay by order of his companions cut some bamboo branches and leaves with which he covered the dead body. Jose de Ocampo followed Canuta to her house where he enjoined her to keep silent as to what she had seen, under penalty of death.

The group composed of the five defendants and their five prisoners proceeded to the house of Solmayor and from a distance they saw Solmayor at the door of his house making a sign to the rest of the defendants, namely, Blacio Daligdig, the Cascayan brothers, Simeon Prudenciano and Maximiano de Ocampo that Nic was inside. The defendants then surrounded the house. Solmayor forthwith ran away from the house leaving Nic at the door. Picking up a stout piece of bamboo, he hurled it at Nic, hitting him on the chest, but this blow did not down him. Like a wounded lion, with the arrow still sticking in his body, he kept his post at the door and, bolo in hand he dotted his enemies. There is something impressive and admirable in this spectacle of a brave man driven away from his home and hounded like a wild animal, who tho seriously if not mortally wounded with an arrow, and surrounded by eleven assailants all thirsting for his blood and his lands, stood at bay and dared them to approach, altho from sheer exhaustion and loss of blood he was slowly dying on his feet. But said assailants wanting to play safe merely stoned him, perchance waiting for him to collapse. Filomeno, on seeing the ineffectiveness of the tactics employed by his co-defendants told them that he had a bright idea; that they would wait for him because he was going to get his gun. He went to his house, returned with his pistol and taking careful aim fired at Nic, hitting him between the eyes. Nic fell down and Jose de Ocampo immediately rushed at him and with his long bolo struck him in the mouth. The other defendants crowded around the dead man and struck him with their bladed

weapons.

Then Ripan de Ocampo and his brother Mauro turned their attention to their prisoners and approaching the two girls Charing and Silao whose hands were still tied, took turns in boloing the two sisters to death. Then Jose de Ocampo asked Teodoro Oana and the two Magdalenas with him on which side they stood, whether on the side of the defendants or on that of the dead people. Upon being assured that they (prisoners) would follow the defendants without question, they were untied from the rope connecting them with the two dead girls and were taken to the house of Justo Tolentino where they were later untied and released.

The next morning Filomeno Daligdig and Solmayor called another meeting at the schoolhouse attended by all the defendants including Justo Tolentino, Estanislao Tolentino, Pedro Gaor, Felix Maltizo and Teodoro Oana, all witnesses for the prosecution. In that meeting Solmayor, Jose de Ocampo and Filomeno Daligdig admonished everyone not to say anything about the killing, under penalty of the squealer and his entire family being liquidated. Then Solmayor wrote on a piece of paper saying that it was a report to the Mayor of Bayag of what had happened. Mauro de Ocampo took the letter or document to Bayag. On his return to Tanglangan, Filomeno Daligdig, Solmayor and Mauro went to the house of Justo Tolentino where Teodoro Oaiia was and told the latter that he was being called by Mayor Bonot. Oaiia obeyed the summons and went to Bayag accompanied by Filomeno Daligdig, Solmayor, Jose and Mauro de Ocampo. On the way Oana was instructed to tell Mayor Bonot that he had conducted Nicasio Layaoen and his family to Nagsangalan on their way to Laoag. He obeyed the instructions and so informed Bonot who then brought out a typewritten document which he was made to thumbmark. On their return to Tanglangan, at the suggestion of Solmayor, the group went to the house of Nic where with a crowbar a trunk was forced open and its contents ransacked. They burned all the papers found inside except a thick roll of genuine Philippine paper currency and some clothing which the defendants appropriated to themselves. Oana's companions also got palay from Nic's granary.

About a week or two after the killing of Nic and his family Mayor Bonot came to the barrio of Tanglangan on the occasion of which, another meeting was called in the schoolhouse. At the meeting Mayor Bonot himself enjoined those present not to tell anyone about the killing of Nic and his family, at the same time informing them that the lands of Nic will be surveyed and distributed among the residents of the barrio, which was in fact done. Said lands were surveyed in the presence of Mayor Bonot into small lots, Filomeno Daligdig and Solmayor holding both ends of the rope used in measuring each parcel, Jose de Ocampo putting up the stakes at the corners and Mayor Bonot listing down the share corresponding to each barrio resident. Everyone in the barrio received a share, including the witnesses for the prosecution. But whether the latter were agreeable to the distribution or whether they received the share given to them, reluctantly, and only to show agreement to and compliance with the desires of the defendants, including Mayor Bonot, is not known. But it is a fact as stated by the Government witnesses that the shares received by the defendants were larger than those given to the other residents of the barrio.

The appellants do not deny the liquidation of Nic and his whole family. Some of them even admitted taking part in the raid and stoning of Nic's house on the evening that its inmates were driven away from it and also in being present at least when Nic was surrounded in the house of Solmayor and later killed. But these defendants claim that they were threatened, manhandled and compelled by Justo Tolentino upon whom they all heap the blame and responsibility for the quadruple murder.

The theory of the defense is that the first meeting held at the schoolhouse about the middle of January, 1945, was not as claimed by the prosecution, called to propose the killing of Nic but to solicit supplies for the guerrillas then operating in the province of Cagayan, the meeting being sponsored by the Women Auxiliary Service (WAS). It is said that while the meeting was in progress Justo Tolentino whose daughter Magdalena Tolentino had a few days before eloped with Teodoro Oaiia, had inquired about her whereabouts from Nic, charging him with having

connived with and aided Oana in the elopement; that when Nic professed ignorance of the elopement, Justo became furious and chased him with a bolo but was prevented from pursuing and doing him any harm; that as a result of this disturbance, the people left the meeting, which naturally was a failure; that in order to punish Nic for his alleged participation in the elopement of Magdalena, Justo decided to kill Nic, even going to the extent of threatening, punching, kicking and otherwise maltreating the defendants to help him carry out his evil design; that it was Justo and not Jose de Ocampo who boloed Trining Ventura to death; that under threats of Justo, many of the defendants helped him raid the house of Nic and drive him out of it; that it was Justo who really shot Nic to death with a pistol given him by Maltizo; and, finally, that the two girls Charing and Silao were killed by Justo, not on the day that their father and mother were killed but about two weeks thereafter. Defendants deny that after the death of Nic his lands were appropriated by the defendants, the truth being that what was surveyed and divided into small lots and later distributed among the barrio residents were not the lands of Nic but public lands, idle and unoccupied, so that the people receiving them could put them under cultivation and pay taxes on them, which in fact they did.

Examining this theory of the defense we find several valid reasons, as did the trial court, in rejecting it. It is all very well and now easy to lay all the blame and responsibility on Justo Tolentino and point to him as the leader behind the scheme to dispose of Nic and the man who single-handed actually carried the scheme into execution. Justo is now dead and cannot deny or refute this posthumous accusation. However, his son Estanislao Tolentino while admitting the participation of his father in the raid on the house of Nic and later his presence when Nic was killed, nevertheless emphatically denies that his father Justo was the leader in the plot and the actual killing; on the contrary, he was said to be a mere follower, perhaps acting under pressure and threats by the real leaders (Filomeno Daligdig, Solmayor and Jose de Ocampo). There is reason to believe that Justo as a tenant of Nic may have had a motive and reason for desiring the death of his landlord as did other tenants who are defendants in this case; but from being a mere follower to being a leader and author of the conspiracy and sole perpetrator of the actual killings, is a far cry. Justo was a mere farmhand and tenant, perhaps unlettered and far from being intelligent. He neither had the gifts of leadership nor possessed the influence which could transform him into a leader sufficient for his co-defendants to respect and follow him, especially to commit a foul deed. Jose de Ocampo as already stated, was about the most intelligent of the tenants of Nic. After his death it was Jose de Ocampo who pretending to be the administrator of Nic's estate in Tanglangan, and leading Nic's son, Alfredo Layaoen, who was then living in Ilocos Norte to believe that his father was still alive but was stranded somewhere between Tanglangan and Laoag, on several occasions delivered to him some palay, making it appear as Nic's share in the harvests. As to defendant Solmayor, as we have already said, he was a high school graduate and former clerk in the office of the Municipal District Treasurer of Bayag. According to the trial court, he testified in flawless English during the trial and before that, had tried to persuade or convince the Fiscal to utilize him as a Government witness against his co-defendants. As regards Filomeno Daligdig, one of the leaders, if not the head of the conspiracy, he was a Normal graduate and at the time a teacher in the barrio school of Tanglangan. According to his admission, he was a member of the Bolo Unit in the resistance movement, in charge of supplies in that region, and that Justo had asked him to command the Bolo Unit to help him, but he (Filomeno) had refused. Filomeno further said that no meeting whatsoever could be held in Tanglangan without his knowledge and consent. In other words, it is plain that he was not only the most intelligent resident of that community to whom the residents looked up to for leadership, but he was the leading citizen. He even had a gun with a permit. How can we then believe that Justo could order men like Jose de Ocampo, Solmayor and Filomeno around to do his bidding? How could we accept the theory that these three prominent and influential residents had so much respect for and fear of Justo Tolentino that in silence and without protest, they suffered indignities and physical punishment at his hands and without question followed him in carrying out the scheme to kill an innocent man? This theory becomes more unbelievable when we remember that because of Justo's lowly station and lack of

instruction he was not then occupying any public position either in the local Government such as a barrio lieutenant or in the resistant movement.

Again, as observed by the trial court, to shoot straight and actually hit Nic in the forehead, between the eyes, implied mastery of a pistol and high marksmanship, possible only to a military man or an active member of the resistance movement, possessing a gun. For the defense to persuade us to believe that it was Justo who performed the near miraculous performance, that is, to shoot at the victim from a distance and hit him between the eyes, and with a pistol not his own but hastily handed to him by another, there being no evidence or pretense that he (Justo) ever handled, much less, possessed a gun before, is to unduly tax our credulity. Furthermore, as also pointed out by the trial court, it is highly improbable as claimed by Jose de Ocampo that he could have been severely manhandled, even tortured by Justo for his refusal to follow him and take part in the stoning and raiding of Nic's house as well as in surrounding him (Nic) in the house of Solmayor and chasing him out of it until he was finally shot and killed. All this maltreatment and torture was said to have been done in the very presence of Jose's sons, grown up, farmers and able bodied, without any attempt on the part of any of them to defend their father and prevent or repel the abuse. The trial court said it was unnatural and unbelievable.

As to the theory of the defense that what was surveyed and distributed among the residents of Tanglangan was not the land of Nic but idle and unoccupied public lands, and only for the purpose of collecting taxes from those who received them, we have the admission of the defense through Mayor Bonot himself that subsequently, these parcels which had been distributed were claimed by Alfredo Layaoen, the son of Nic and they were restored to him. This is proof that those lands were the holdings of Nicasio Layaoen.

As to the credibility of the witnesses for the prosecution, as observed by the Solicitor-General, the defense failed to adduce any reason or motive for the said Government witnesses to testify falsely against the accused and impute to them the commission of such serious crimes. On the contrary, we note that some of these Government witnesses are closely related to the defendants so that because of that close relationship by blood or affinity, they should have been more inclined and disposed to testify in favor instead of against the appellants. For instance, Estanislao Tolentino, one of the principal witnesses for the prosecution and who pointed to Jose de Ocampo as one of the leaders of the conspiracy to kill Nic, is a nephew of Jose for the reason that Jose de Ocampo's wife was a sister of Estanislao's mother. In other words, defendant Jose de Ocampo is an uncle, and his sons defendants Ripan, Mauro and Maximiano surnamed de Ocampo, are cousins, of Estanislao. The same thing may be said of defendant Simeon Prudenciano who is a brother of the mother of Estanislao Tolentino, thereby making the latter Prudenciano's nephew. Despite this relationship Estanislao pointed to Prudenciano as one of the conspirators who took part in the raid made on the house of Nic, and was at least present when Nic was killed. Defendant Cenon Cascayan married a sister of Estanislao Tolentino. That makes Estanislao and Cenon brothers-in-law. Teodoro Oafia also married another sister of Estanislao. In other words, Oafia and Cenon married two sisters. That makes Oafia and Cenon coneunos, having married into the same family. And yet Estanislao and Oafia testified against their brother-in-law and concuno, respectively. In this connection, it may be stated that these two principal Government witnesses also testified against Maximo Cascayan, brother of Cenon. According to Maximo Cascayan, Felix Maltizo was his cousin and yet Maltizo as a Government witness testified against Maximo and his brother Cenon. There is no reason to believe that the Government witnesses testified falsely against the defendants.

Coming to the alleged motive behind the killings, the defense contends that it was the resentment harbored by Justo against Nic for the latter's supposed connivance and help in the elopement of his farmhand and helper Teodoro Oafia with Magdalena Tolentino, Justo's daughter. There is every reason to reject this theory. The weight of evidence is to the effect that there had been no elopement, and that Oafia and Magdalena had been married

with the knowledge and consent of Justo about one year before the killings, and that the celebration of the marriage was held in the house of Nic in the morning and continued in the house of Justo in the afternoon. This story of the marriage given by the prosecution is rendered more probable by the fact that according to Oana himself, when Nic was killed Magdalena Tolentino whom he had married a year before was on the family way and gave birth about two months after Nic's death, she, dying as a result of the delivery, and her baby dying about five days after. Furthermore, if the motive behind the killings were the supposed resentment of Justo for Nic's suspected participation and connivance in the alleged elopement of Justo's daughter Magdalena, why in the world were the other members of the family—his wife Trining and their two young innocent daughters Charing and Silao—made to grievously answer and pay for the fault of the husband and father? On the other hand, Teodoro Oafia, the person naturally most responsible for the alleged elopement and the one who should have incurred the ire and resentment of Justo, was never punished, not even reprimanded by the latter, but on the contrary, was received in Justo's house where he lived after the killing. It is therefore more reasonable and more logical to find and to hold as we do that the reasons behind the killing was the feeling of disappointment and disgust of the defendants over Nic's alleged failure to live up to his promise to give them part of the land after they had cleared it and put it under cultivation, as well as greed—the desire to appropriate said lands for themselves—and that in order to attain their object, Nic and all his heirs in Tanglangan had to be disposed of so as to eliminate all possible adverse claim to said lands.

As we had occasion to state at the beginning of this decision, we devoted considerable time, attention and care to studying the evidence in the case. We also said that the manner in which the victims were killed, especially of the two innocent and defenseless young girls, was shocking. It seems that the trial court was also prompted by the same considerations and experienced the same reaction, as indicated by a portion of its decision which we reproduce below:

"This crime is so horrible and so repugnant that the feeling" of any one who hears this tragedy narrated will be shocked. In cruelty, it is comparable only to the Japanese atrocities. The authors of this crime show extreme blood-thirstiness. Not content with the killing of an innocent man and woman including their helpless children, they even cut the necks of their victims even if they were already dead. They bled the heads, faces, and bodies of their dead victims, all for their uncontrolled desire to get their victim's property. They received no offense from this family for which they should be obfuscated. They simply are pitiless killers. The Judge who pens this decision is not in favor of capital punishment. Yet, considering all the circumstances of the commission of this dastardly act, he cannot shrink from his duty as the law orders him to do. Usually, as the records of this Court will bear this out, cases submitted to him for decision are immediately decided. In this case, however, it took him almost a month to decide it from the time it was submitted to him. He pondered hard and studied thoroughly the evidence of both parties. He implored the help of the Almighty God to give him more light. He has practically memorized all the details of the testimonies of the witnesses trying to avoid imposing the extreme penalty. But all his efforts were in vain. There is no way out. He must apply the law faithfully and to the best of his understanding."

For the death of Nicasio Layaoen, all the eleven defendants are criminally responsible. It matters little that all of them may not have actually participated in the killing. The previous agreement and conspiracy binds and holds them all liable. They commenced executing the conspiracy by stoning the victim's house, later entering it and driving its inmates out, later finding Nic in the house of Solmayor, surrounding him, stoning him and later having him shot to death by Filomeno Daligdig in their presence, the rest of the defendants with their bladed weapons inflicting blows on the lifeless body to show their participation in and consent to the killing. Mauro de Ocampo was the one who had shot the arrow into Nic's body resulting in an injury which if we are to believe the evidence on the point, must necessarily and eventually have caused death. The killing of Nicasio Layaoen accompanied by the qualifying circumstance of premeditation, was murder, attended by the aggravating circumstance of either

superior strength or treachery. Altho all eleven defendants are liable, it is evident that Filomeno Daligdig, Roberto Solmayor and Jose de Ocampo are the most guilty. They were the ring leaders and the spirit behind the conspiracy, this to say nothing of Filomeno being the one who fired the fatal shot that finally brought the life of Nic to a tragic end. Of course, the collective responsibility of Mauro de Ocampo is heightened by his inflicting a fatal wound on Nic with his arrow. In this connection we wish to say that a reading of the entire record, leaves us with the impression that defendant Aburan Kalingay is not as guilty in degree as his co-defendants. He seems to be a native of the Mountain Province, and from all indications, unlettered and ignorant. He could not have had a motive for killing Nic, much less, the members of his family. He was not a tenant of the deceased. He had, according to him, his own plantation or kaingin up in the mountain, and we have the suspicion that he was merely made an instrument and unsuspecting tool of his co-defendants whom he blindly obeyed. He took no direct or effective part in the killing of anyone of the four victims. He was made and ordered merely to accompany his codefendants. We feel that he should receive a lighter penalty. We find him liable only as an accomplice in the killing of Nicasio Layaoen.

For the death of Trining Ventura, taking the view most favorable to the accused, we are inclined to find and to hold that only Jose de Ocampo is responsible. It will be remembered that the conspiracy between the defendants, including the proposition made at the meeting at the schoolhouse, to which all the defendants assented, was to kill Nic. Nothing appears to have been said, much less agreed upon about the members of his family. It seems that the idea of killing Trining Ventura occurred and only to Jose de Ocampo when he saw her in the fields following Canuta Domingo to her home, and it was he alone who boloed her to death. There is no question that the killing of Trining was qualified by treachery. Defenseless as she was and a woman at that, she was mercilessly attacked with a long bolo by Jose de Ocampo. She was in no position to defend or save herself from the sudden bolo attack even by her futile attempt to run from a stronger and faster aggressor who incurred no risk whatsoever to himself. For this, we find Jose de Ocampo guilty of murder.

As regards the killing of the two girls Charing and Silao, for the same consideration made with respect to the death of Trining Ventura, we find and hold only Mauro de Ocampo and his brother Ripan responsible. They were the ones who attacked and boloed to death the two helpless victims. The attacks were also treacherous considering that the two defenseless girls aged eight and ten, were boloed to death while their hands were still tied behind their backs. For this, Mauro and Ripan are guilty of two murders each.

We agree with the Solicitor-General that the trial court erred in considering the four separate killings as one single complex crime of quadruple murder. The four victims were not killed by a single act but by various acts committed on different occasions and by different parties. Consequently, they may not be regarded as constituting one single crime, tho complex. They should be held as separate and distinct crimes.

For each of these four murders, the defendants we have found responsible as principals with the exception of Mauro de Ocampo and Blacio Daligdig who were less than eighteen years of age at the time of the commission of the crimes, deserve the death penalty. However, for lack of sufficient votes, said penalty is commuted to life imprisonment.

For the death of Trinidad Ventura, defendant Jose de Ocampo is sentenced to reclusion perpetua with the accessories of the law, and to indemnify her heirs in the sum of Six Thousand Pesos.

For the death of Charing Layaoen, Mauro de Ocampo is hereby sentenced to not less than ten (10) years of prision mayor and not more than seventeen (17) years and four (4) months of 4, and Ripan de Ocampo to reclusion perpetua, with the accessories of the law. Both will jointly and severally indemnify her heirs in the sum of Six Thousand Pesos.

For the death of Silao Layaoen, Mauro de Ocampo is hereby sentenced to not less than ten (10) years of prison mayor and not more than seventeen (17) years and four (4) months of reclusion temporal, and Ripan de Ocampo to reclusion perpetui, with the accessories of the law. Both will jointly and severally indemnify her heirs in the sum of Six Thousand Pesos.

For the death of Nicasio Layaoen, Glacio Daligdig and Mauro de Ocampo are hereby sentenced each to not less than ten (10) years of prison mayor and not more than seventeen (17) years and four (4) months of reclusion temporal, with the accessories of the law. Aburan Kalingay is hereby sentenced to not less than six (6) years and one (1) day of prison mayor and not more than twelve (12) years and one (1) day of reclusion temporal, with the accessories of the law. The other defendants, Filomeno Daligdig, Roberto Solmayor, Jose de Ocampo, Ripan de Ocampo, Maximiano de Ocampo, Cenon Cascayan, Maximo Cascayan, and Simeon Prudenciano are sentenced each to reclusion perpetua, with the accessories of the law. All eleven defendants will jointly and severally indemnify the heirs of Nicasio Layaoen in the amount of Six Thousand Pesos.

With the modifications above stated, the decision appealed from is hereby affirmed, with costs. So ordered.

Feria, Pablo, Bengzon, Padilla, Tuason, Reyes and Jugo, JJ., concur.

DISSENTING

PARAS, C. J.,

The majority, by sustaining the judgment of conviction of the appellants, necessarily have accepted the following theory of the prosecution:

(1) That at a meeting in a public school building attended by some one hundred persons, the three principal defendants (Filomeno Daligdig, Roberto Solmayor and Jose de Ocampo) proposed that Nicasio Layaoen be killed, without any preliminary talk, and without any question having been asked nor any reason given for the plot.

(2) That from dusk until after midnight at least thirteen persons, all armed with bolos, surrounded the small house of Nicasio Layaoen inhabited at most by five adults and two little girls. The house was continuously stoned, and at midnight one of the besiegers shot an arrow which pierced the body of Nicasio from the lower part of the left side of the abdomen to the right clavicle. Another was able to make an opening through which some entered the house, but all the inmates, with the exception of the two children, were still able to jump out and escape.

(3) That the next day, when Nicasio Layaoen was finally detected, he was again surrounded by all the eleven defendants. Notwithstanding his physical condition, with an arrow still piercing his body, Nicasio had a bolo in hand, and all the defendants could not approach him because of visible resistance, merely contenting themselves with throwing stones at Nicasio until it occurred to Filomeno Daligdig to get a gun from his house with which he was able to shoot down Nicasio. It was only after the latter had fallen to the ground, that the defendants approached and boloed his body.

In my humble opinion, these patently exaggerated allegations tend to create a doubt as to the guilt of the appellants. The story is so inherently incredible and unnatural that if this dissenting vote were the only reason for saving the eleven appellants from the penalty of death by electrocution, I should feel satisfied in conscience. I cannot imagine a plot being concocted in public by the most intelligent persons in the barrio, like Filomeno Daligdig, a normal school graduate and a teacher, and Roberto Solmayor, a high school graduate and former clerk in the municipal treasury, to kill a person and much less without giving any motive therefor. That would be digging their own graves and burying their own coffins, which is contrary to humanways. I cannot believe that the

inmates of a small house could escape therefrom while being surrounded by some thirteen armed assailants. I cannot believe that it would be necessary to use a gun to end the life of an already dying man. If Filomeno Daligdig had really wanted to use his gun, he would have carried and used it during the night when he and twelve companions allegedly besieged Nicasio Layaoen's house and attacked him, with intent to kill. He should not have waited until after other twelve assailants with bolos had found Nicasio already impotent and dying.

Upon the other hand, I find the theory of the defense to be tenable, because it is more probable. The possible motive for the crime, as merely conjectured by the majority, is that, after the death of Nicasio Layaoen and his commonlaw wife and two children, their homesteads could be partitioned among the appellants and their men. It is admitted, however, that the appellants knew that Nicasio Layaoen had other children and legitimate at that, namely, Alfredo and Mercedes, living in the province of Ilocos Norte. Besides, contrary to the allegation of the prosecution, there was never a complaint as to the partition of the products or of the land among some of the appellants (who were tenants) and their landlord, Nicasio. On the contrary there is uncontradicted testimony that their relationship was cordial and satisfactory. There was never any division of the homestead of Nicasio Layaoen as found by the majority, for the reason that the only purpose of cultivation of the land left by the deceased was to encourage production and to pay taxes. As a matter of fact, the former tenants continued sending palay to Alfredo Layaoen, legitimate son of Nicasio.

According to the defense, it is true that a meeting was held in the schoolhouse, but its purpose was to urge the people of the barrio to contribute supplies for the army of the guerrillas. In said meeting, Justo Tolentino, well built, aggressive and domineering, met Nicasio Layaoen and inquired from the latter the whereabouts of Magdalena Tolentino, the former's daughter, who eloped with Teodoro Oana (a farm hand of Nicasio) two days before. When Nicasio denied any knowledge of the matter, and suspecting that he had induced or had been in connivance with the couple, Justo with a bolo ran to assault Nicasio who, however, was able to escape after the others, like Filomeno Daligdig and Roberto Solmayor, had impeded the aggression. Justo Tolentino was so mad at the time as to have threatened to kill Layaoen. The meeting was dissolved, but immediately thereafter Justo, with the help of his son Estanislao Tolentino, Felix Maltizo, Pedro Gaor, and Manuel Ravelo (all witnesses for the prosecution), and some of the appellants, marched in search of Nicasio Layaoen. The first to be found in the field was his paramour, Trinidad Ventura, who was thereupon hacked to death. Nicasio, fleeing from his house, went to the place of Roberto Solmayor and then to the house of Elpidio Camao, in which place he was detected. When he jumped out, an arrow had already pierced his body. On the ground he was surrounded by the same group and immediately shot and boloed to death. The children were likewise killed later by the Tolentino family.

The elopement was proven to have occurred two days before the massacre not only by those who were present at the meeting, but by the appellants Cenon Cascayan and Simeon Prudenciano who are respectively the brother-in-law and uncle of Magdalena Tolentino. Teodoro Oana in his direct testimony said that his wife Magdalena died about a year after the killing of Nicasio Layaoen. But in another portion of his testimony he said that his wife's death occurred two months after the death of Layaoen on account of abortion. Since his first testimony corroborates the evidence for the defense, Teodoro Oafia in his redirect testimony after the defendants had closed their evidence, testified that his wife died immediately or a few days after the death of Layaoen and on account of that very occurrence and that in fact he and Magdalena had been married a year before. The Court of First Instance accepted the last testimony; the majority of this Court, however, accepts the second version, that is, two months on account of abortion. It is clear to me that Teodoro's first testimony is correct, namely, that his wife died one year after the death of Nicasio Layaoen, and this fits the theory that the elopement really took place immediately before, and became the motive for the slaying of Nicasio Layaoen.

The evidence for the defense shows clearly how Simeon Prudenciano and Cenon Cascayan, brother-in-law and

son-in-law respectively of Justo Tolentino had been looking for the elopers Teodoro Oafia and Magdalena Tolentino. There is no explanation in the record why, Estanislao Tolentino, who, according to the evidence for the prosecution, was as guilty as the appellants, was never included as a co-defendant although his whereabouts is known. If there was really a raid in the house of Nacasio Layaoen from dusk until midnight, the best witness should be Magdalena Agcaoili, the only survivor who lived in his house; and yet she was not presented in court and her absence was not explained. Teodoro Oafia was the cause of the heinous crime, and yet was made a witness for the prosecution, his testimony covering eighty-five pages of the transcript. He narrated the minutest details of the search in the house and the killing of the family of Nicasio Layaoen, but in a manner which is wholly and conspicuously absurd and unworthy of credence. My conviction is that the witnesses for the prosecution had tried hard, and even to the point of extreme exaggeration, to incriminate the defendants in order to evade responsibility in the crime, Justo Tolentino being the principal author and his son Estanislao as well as witnesses Felix Maltizo, Pedro Gaor and Manuel Ravelo having been his companions.

There is, furthermore, uncontradicted testimony showing that Blacio Daligdig was only 16 years old and Mauro de Ocampo was only 13 years old in January, 1945. I cannot therefore see the reason for convicting them even if they were really guilty.

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