

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EUSEBIO MOLIJON, ET AL., DEFENDANTS, EUSEBIO MOLIJON, DEFENDANT AND APPELLANT.

G.R. No. L-7031. May 14, 1956

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PER CURIAM:

This is an appeal by Eusebio Molijon from a judgment of the Court of First Instance of Cebu, finding him and his co-accused Gervasio Flores, Corhelio Hernando and Marcelo Hernando, guilty of the crime of attempted robbery with multiple murder for the killing of Nicanor Cantay, his wife and five children, and sentencing him to death as instigator of the crime, and jointly with his three co-accused to indemnify the heirs of the deceased in the sum of P6,000. His co-accused did not appeal from the judgment, which sentenced them to reclusion perpetua only.

The evidence submitted at his trial proves the following: On or about July 13, 1950, Nicanor Cantay, a farmer, his wife Lucia Frias, and their five children, Sabino, 9 years, Paulino, 8 years, Jose, 4 years, Timoteo, 3 years, and Juanito, 1 1/2 years, lived in their house in barrio Lugo, municipality of Borbon, province of Cebu. At around 7:00 o'clock in the morning of that day, which was Wednesday, Nicanor's sister, Epifania, went to their house to help her sister-in-law in her farm work. As Epifania approached the house, she called for her sister-in-law, but nobody answered, so she thought that they had already gone to work. But upon approaching the house and reaching the stairs, she was surprised to find blood stains around. As she went inside, she also found blood stains from the door to the kitchen, and upon going in further, she found all the members of the family lying on the floor, all smeared with blood, with wounds in their persons. Nicanor Cantay, his wife and three of the boys were already dead and only two were still alive. So she headed back home and reported the matter to her father, Anastacio Cantay. Anastacio and some of the relatives, among whom was Celedonio Hortezano, immediately proceeded to the house of Nicanor Cantay. The two boys who were still alive were brought by Hortezano to Cebu City for treatment, but one of them died before reaching the hospital. The other also died in Cebu City.

When the authorities came to the house of the unfortunate family, they began to investigate who the probable authors of the horrible crime could have been. Anastacio Cantay, father of the deceased Nicanor Cantay, promptly disclosed that the Sunday before, some four days before the incident, he witnessed an altercation between the deceased and appellant Molijon. He stated that on that occasion and in the special market place of Lugo, Nicanor Cantay demanded from Molijon the payment of the latter's debt of P4 to him; that Molijon offered to pay the debt with corn, but Nicanor refused; and that upon Nicanor's refusal, Molijon said to Nicanor, "Wait for me till next Wednesday."

Celedonio Hortezano also told the authorities that early at dawn on that Wednesday, he had gone to a place where he had tied his carabao; that just as he was untying the rope of the animal, four persons suddenly passed by in a hurry; and that one of them he recognized as appellant Molijon, another, as Gervasio Flores, and the two others, as Marcelo Hernando and Cornelio Hernando. Flores, Marcelo Hernando and Cornelio Hernando were living at about one-half kilometer away from the house of Nicanor Cantay, while Molijon lived 8 kilometers away.

Suspicious having been directed against Molijon, steps were taken to locate him. So some soldiers went to his house. But upon reaching it, his wife informed the soldiers that Molijon had gone away four days before. Upon learning that Molijon had a sister in Udlot, a barrio of Bogoto, Cpl. Capanang of the Philippine Constabulary was sent there on July 19, 1950. Capanang was not able to reach Molijon there as the latter's sister said that Molijon had gone to Cantubao, where Molijon's mother was living. But as Capanang remembered that Molijon's wife had told that she had a relative in barrio, Maitom Bogoto, they went to said barrio. There they met the barrio lieutenant, who, upon inquiry, informed them that a few days before a person was hired by Nicolas Catana to clean his farm. They went to the house of Catana and there found Molijon working. At that time, he was wearing a reddish undershirt, a blue denim pant and a buri hat. When asked if he had clothes other than those he wore, he answered that he had some in the house of one Simeona Catadnan where he slept the night before. There Molijon produced from a corner of the house a bundle of clothing. Upon being opened it was found to contain a pair of pants, Exhibit C, and a shirt, Exhibit D. The said clothes had stains, which Cpl. Capanang suspected to be human blood. From this place Molijon was brought to the Constabulary headquarters and there subjected to examination by a certain Sergeant Ceferino Cuevas. Molijon admitted that he had participated in the commission of the murders of Nicanor Cantay, his wife and children, and disclosed that his companions were Gervasio Flores and two others whom he did not know.

Thereupon Cuevas reported the matter to his Commanding Officer, who caused Flores to be apprehended. Flores was arrested that same day, July 20, 1950. Flores also admitted participation in the crime and disclosed that the two other companions of theirs were Cornelio Hernando and Marcelo Hernando. So the arrest of the other two was also ordered. The statements of all the four accused, Molijon, Flores, Cornelio Hernando and Marcelo Hernando, were taken down in writing on July 21. That of Molijon was introduced as Exhibit A, translation is Exhibit A-1.

In his confession, Molijon stated he had used a hunting knife, which he threw away after the commission of the crime. He said that he remembered the place where it was thrown away, and so two soldiers accompanied him there to and they were able to find the hunting knife, which was presented as Exhibit G. This knife was identified during the trial as a bolo belonging to the deceased.

In his confession, Exhibit A, Molijon further states that their intention in killing Nicanor Cantay and his family was to rob him of his money; that they had agreed to commit the robbery at about 7:00 o'clock in the evening of July 12, but that they went to Cantay's place at early dawn of July 18, 1950; that upon reaching the house of Cantay, he and his companions promptly went up and then inside, and immediately started stabbing all the occupants, who were then asleep; that he himself stabbed the wife of Nicanor Cantay with the hunting knife which he later threw away as they ran away from the place; and that after they had finished hacking all the members of the family inside the house, they were suddenly seized with a terrible fright and ran away, without carrying out their original intent of robbing Cantay.

At the time of the trial, Molijon denied having been indebted to Nicanor Cantay, or that he had any altercation with him about the said indebtedness. He also denied that he had ever confessed participation in the crime to the policeman who had investigated him, and explained that he gave the answers contained in Exhibit A because he was maltreated and boxed at the stomach, and threatened to be beaten with a piece of wood, for which reason he was forced to tell lies. But when, questioned by the presiding judge, Molijon admitted having gone to the house of the deceased on the night in question, but shifted the blame to Flores, stating that it was Flores who first entered the house and after passing the door took the bolo of the deceased from a place where it was hanging in the wall; that once inside Flores hacked the wife of Cantay with the said bolo; that the house was lighted with a kerosene lamp at that time, so he could see Nicanor Cantay with his wife and children; that when they were hacked, Cantay

and the members of his family were asleep and so they were not able to defend themselves; that when Flores tried to attack the wife, he (Molijon) tried to block him, but was pushed away by his companions and he fell down near Cantay's wife; and that thereafter, he stood up and jumped out through the door and ran away, while Flores and his companions followed him.

After disclosing the above facts and upon being further questioned by his counsel, he again explained that he made the declarations in his confession because he was being maltreated; but upon being asked by the judge, again, he again admitted having accompanied Flores and his companions because he feared they might kill him; and that: it was Flores and his companions who compelled him to go with them to rob the deceased Nicanor Cantay.

It is also important to note the the clothes, Exhibits C and D, were admitted by Molijon to be his own clothing on the morning of the incident in question. These were subjected to a scientific examination by a chemist of the National Bureau of Investigation, and the stains contained therein were found to be human blood.

The trial court found the accused guilty of the offense charged. It also found that appellant Molijon was the instigator of the crime, and that the crime is attended by the aggravating circumstances of nighttime, dwelling of the offended party and treachery, because the deceased were killed while they were asleep. Counsel de oficio for the appellant states in his brief that, after a conscientious study of the case, he is led to the belief that the conclusions of the trial court are correct and that all that he, as an officer of the court, could in conscience do is to ask mercy from this court. The Solicitor General, in view of this statement of counsel for the appellant, has made no analysis of the evidence submitted, or of the facts proved therefrom, and his brief is limited to asking that the sentence of death be affirmed in view of the aggravating circumstances attending the commission of the crime. We desire to invite attention to the fact that the conformity of counsel for the appellant with the decision of the trial judge does no relieve the Solicitor General from the obligation of setting forth the facts proved, and upon which he bases his recommendations. An appeal in criminal cases throws the whole case open to review, whether errors of fact are raised in the appeal or not. (Rule 120, section 11; *Lontac vs. People*, 74 Phil., 513.) Especially is this true in capital cases, for the reason that they are automatically transmitted to this court for review, without need of appeal by the accused. Under the old procedure, from which the nature of appeal in capital cases is derived, the decisions of the trial judge is merely a sort of recommendation and does not relieve the court from the obligation of reviewing the evidence to find out if the capital punishment recommended is or is not to be imposed. (Section 50, Off. Gaz., No. 58; *U. S. vs. Kepner*, 1 Phil., 397; *U. S. vs. Laguna*, 17 Phil, 532; Rule 118, section 9, Rules of Court.) Consequent with this duty of the court to review the evidence, the duty is also imposed upon the Solicitor General in capital cases to submit his analysis i of the facts as supported by the evidence, so we may be enlightened thereon and be helped in the performance of our duty. However, the absence of any assignment of error in appellant's brief or of any similar brief by the Solicitor General has not deterred us from going over the evidence, or analyzing the facts proved. We have carefully examined the confessions of the appellant and the testimonies of the witnesses and the documentary evidence presented which fully corroborate said confessions, and we find these to support the findings of the trial court.

We find that the guilt of the appellant Eusebio Molijon, as a co-principal in the commission of the crime of attempted robbery with multiple murder, has been proved beyond reasonable doubt. While we believe that there is no sufficient evidence to support the finding of the trial court that he was the instigator of the crime, we are satisfied that he voluntarily participated in its commission, and was not, as he claims at the trial, forced to participate therein as an unwilling participant compelled by fear of his co-conspirators. We do not agree with the trial court that evident premeditation was proved beyond reasonable doubt. But treachery was conclusively shown, because opportunity was taken of the fact that the victims were fast asleep when they were mercilessly

stabbed to death, and this qualifies the crime as murder, instead of evident premeditation. And as to aggravating circumstances two have attended the commission of the crime, namely, nighttime, which was taken advantage of, and dwelling. Even if nighttime be considered included in that of treachery, one aggravating circumstance would still be present and this is sufficient to authorize the imposition of the maximum of the penalty prescribed by law for the offense, which is death.

Counsel for appellant invokes mercy for the appellant. No reason has, however, been adduced for the appeal for mercy. Anyway, petition for mercy can not be addressed to us. Our duty and our power is to enforce the law as justice demands. Petitions for mercy are to be addressed to the President of the Philippines, and not to this court.

With the two aggravating circumstances found to have attended the commission of the crime, we have sufficient grounds and reasons for confirming the capital punishment imposed upon the appellant. We also feel justified in doing so, in view of the brazen cruelty and depravity of the appellant manifested by the unnecessary murder of innocent and defenseless children. Justice would be a mockery were we to allow the appellant a reduction of the penalty meted out to him by the trial court.

The judgment of the court below with respect to appellant Eusebio Molijon is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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