

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LAMBERTO ANTONIO (ALIAS BITONG), DEFENDANT AND APPELLANT.*G. R. No. 10562. August 03, 1915*

Ponente: TORRES, J.

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This case has been brought up for a review of the judgment dated October 8, 1914, whereby the Honorable Higinio Benitez found Lamberto Antonio guilty of the complex crime of robbery with quadruple homicide and sentenced him to the penalty of death, with the accessories of article 53 of the Code, an indemnity of P5,000 to the surviving girl, Consolacion Dagojoy, or her legal guardian, and payment of one-half of the costs; and acquitted Eulogio Bait (alias Oloy), with his share of the costs de officio, ordering his immediate release.

FACTS OF THE CASE.

Late on the afternoon of June 9, 1914, Lamberto Antonio (alias Bitong) accompanied by his brothers called Bado and Martiniano and by another individual who proved to be Eulogio Bait (alias Oloy) entered the house of Feliciano Dagojoy situated in the place called Catuguesan of the barrio of Valderrama, municipality of Culasi, Province of Antique. As night had already fallen these four individuals asked for lodging in the house the owner whereof is the brother-in-law of Lamberto who is married to. Isabel Dagojoy, sister of the householder Feliciano. They then had supper therein with Feliciano Dagojoy and his wife, Matea Gante; and while the spouses Feliciano and Matea after supper were engaged in shelling corn, and while the said Lamberto Antonio (alias Bitong) and Bado were still awake, the boy Martiniano, about 12 years of age, and Eulogio (alias Oloy), being worn out with fatigue, went to sleep. But in the small hours of the night or early the next morning Eulogio awoke and saw his companions Lamberto and Bado standing up, blood-stained bolos in hand, and in the front room of the house Feliciano Dagojoy and his son of tender age, called Fortunato, dead. In the bedroom Matea Gante and her daughter Teopista were also dead, and the girl Consolacion wounded was stretched out between her mother and her sister Teopista so that she was taken for dead. Thereupon Bado and Bitong forced open two trunks that were in the house, and also two bamboo money boxes, the cash wherein they seized, as well as the clothing in the trunk, putting it in a palm-leaf sack. Then they went away, taking the trunks and one of the bamboo money boxes which they later left in the road. Oloy thereupon awoke Martiniano and they also went away. The two first-named kept the money, clothing, and other effects belonging to the deceased spouses who, on the previous afternoon, had hospitably received them as persons known and trusted.

The house with the four corpses and the severely wounded girl Consolacion remained abandoned until the next afternoon, June 10, when Macaria Tañongon, mother of the deceased Matea Gante, went to her daughter's house to see her, and upon making her way inside found said four corpses and also the girl Consolacion, about 5 years of age, who was still alive despite her various wounds and was then asking for a drink of water; Macaria having picked her up, took her along and forthwith reported the matter to the local authorities. It is worthy of note that when Macaria Tanongon was in the house where the crime occurred, Lamberto Antonio (alias Bitong) called to

her from some distance asking if there were any wounded persons in the house, to which she replied affirmatively, saying that the little girl Consolacion was wounded, and that thereupon Lamberto, without approaching the house where Macaria Tanongon was and without having ascertained the reason for the occurrence, went toward his own.

On the same date, June 10, when the Constabulary lieutenant Tañedo and various policemen attempted to arrest the so-called Bado, he started to run, whereupon he was shot dead.

For the purpose of making the proper investigation, the justice of the peace of Culasi went on the night of the said date, June 10 of the year just past, to the house of the deceased persons, which was composed of three compartments—that is, front room, bedroom, and kitchen—its floor being raised three spans above the ground. In the front room was found the boy Fortunato Dagojoy with one wound in his chest from which a portion of his lungs protruded, two wounds in his back, and two more at his waist. Near him was found the corpse of Feliciano Dagojoy, stretched out face downwards, with one wound in his left side, another at the base of his left arm toward his back, another in the same arm extending to the bone, and another at the back of his head so that his neck was almost severed. In the bedroom of the house was found the corpse of the woman Matea Gante with one wound on the left side of her neck, which was almost severed, another on the upper part of her ear, another on the left side of her head, and another in her right forearm—it being worthy of note that the wound in her neck showed signs of having been inflicted by three different blows the nicks from which showed on the bone. Near this corpse was likewise found that of Teopista Dagojoy, a girl of about 8 years of age, with a wound at the base of her left arm, which was severed, and two wounds, almost together, in her head. There was also found in the house an empty bamboo money box with its opening bloodstained.

The surviving girl Consolacion Dagojoy was found to have one wound in her left arm, another at the base of the same, another in her left shoulder, another in her left side, and the fifth in her left leg; all of these wounds were cured by July 20 following, through the ministration of the physician Doctor Asuncion.

The facts set forth were fully proved at the trial, not only by the testimony of the girl Consolacion about 5 years of age, the sole survivor of the slaughter of which her parents and her minor-brother and sister were the victims, and by the testimony of the boy Martiniano, 12 years of age, who had accompanied the murderers (all of which statements are corroborated by another one of their companions, Eulogio Oloy, the defendant acquitted in this case), but also by the result of the investigation made by the justice of the peace of Culasi on the night following the one when said crimes were committed; which facts served to confirm the statement of Macaria Tanoñgon, mother of the deceased Matea Gante, who was the first to go to and to discover in the afternoon of that date, June 10, in her daughter's house the corpses of her daughter, her son-in-law Feliciano Dagojoy, and her minor grandchildren Teopista and Fortunato Dagojoy, with various severe and fatal wounds, as well as to find the 5-year-old girl, Consolacion Dagojoy, with five wounds, stretched out on the floor beside her mother's corpse.

After perpetrating this crime in a savage and ruthless manner, without the least pity upon near relatives of the wife of one of the malefactors, Lamberto Antonio, brother-in-law of the unfortunate Feliciano Dagojoy, they proceeded to carry out the criminal purpose they had formed by breaking open two trunks and two bamboo money boxes wherein the deceased spouses had kept their scanty savings and by taking possession of the money in those boxes and of the trunks that held their clothes, which articles of furniture were thrown away in the road after they had taken possession of the effects and the clothes therein by putting them in a palm-leaf sack.

The facts stated undoubtedly constitute the complex crime of robbery with quadruple homicide and lesiones graves, provided for and penalized in articles 502 and 503, No. 1 of the Penal Code, for with the undeniable intention of stealing and taking possession of the money, clothes, and other effects belonging to the spouses Dagojoy and Gante, the defendant Lamberto and his brother Gado, now dead, attacked and killed the owners of

the house and their children, excepting one girl who, through mere accident and notwithstanding the number and severity of her wounds, did not die, but was pronounced cured after forty-one days of treatment.

In order to accomplish the definite act of robbery of the money, clothes, and effects in the house they had to get rid of and kill all of its inmates who, if they could not offer resistance, might at least see and witness that violation of property rights; consequently it cannot be denied that the complex crime under prosecution was consummated.

The robbery was perfectly proven by the statements of the robbers' two companions, Eulogio and Martiniano (the latter their brother), by the finding of the trunks and one of the money boxes empty in the road outside the house robbed, by the finding of the other money box, also empty, inside the same house, and likewise by the finding of clothing, worn both by the two dead spouses as well as by their children, and the personal cedula of the husband Dagojoy in the house of the so-called Bad6, one of the murderers, after he had been killed in attempting to escape. Moreover, there is evidence in the case tending to show that the defendant Lamberto owed various sums to his brother-in-law, the deceased Dagojoy, but as it does not appear that trouble and ill will existed between the two—for the Dagojoy spouses received the robbers with amiability and pleasure that night some hours before the commission of the horrible crimes, furnishing them supper and even lodging in their house—there is no ground for the presumption that the defendant Lamberto and his brother proceeded to kill the Dagojoy couple and their children for the sole purpose of avoiding the payment of Lamberto's debt, nor are there any data in the case from which it can be asserted that they acted on the impulse of any feeling of resentment or revenge. Therefore it must be held that the murderers, Lamberto and Bad6, killed said couple and two of their children with unusual cruelty for the sole purpose of robbing them and of taking whatever they possessed, consequently the facts under consideration must be classified as robbery with homicide.

The defendant at bar, Lamberto Antonio (alias Bitong) pleaded not guilty and set up an alibi, which was not absolutely proved, for his only witness, who is his wife Isabel Dagojoy, was not called to the stand. This is easily explained by the fact that she is a sister of the deceased Feliciano Dagojoy, and, aside from the fact that the defendant Lamberto lived in the place where the crime occurred and near the house robbed, it would not have been impossible for him to have committed it during a brief absence from his house. To this effect his companions Eulogio and Martiniano state in their testimony that they assembled in Lamberto's house to go over to the house robbed, and that after the crimes had been committed Lamberto returned to his house, not very far from there, while Bado and his two companions went back to their home on Mount Lacauon. The case, therefore, affords conclusive evidence that Lamberto Antonio directly participated not only in causing the violent deaths of the Dagojoy couple and two of their children, as well as the serious wounds of the little girl Consolacion, (for the defendant in order to make sure whether she was dead or alive even pinched her nose before leaving the house robbed, as appears from the trial) but also in the robbery that has been described.

In the commission of said crime of robbery with quadruple homicide various aggravating circumstances defined in article 10 of the Penal Code must be held to have concurred: No. 1, because the defendant Lamberto was the brother-in-law of the deceased Feliciano Dagojoy; No. 10, because there was abuse of the confidence that said couple undoubtedly reposed in him as a near relative; No. 20, because the crime was committed in the dwelling of the victims; No. 15, because it was committed at night and by taking advantage of the time when the victims were tired and sleepy; and No. 2, because the deed was committed with treachery, which circumstance is held to include the abuse of superior force. The circumstance of treachery in the killing of the two children Teopista and Fortunato is found to exist because, whether they were awake or asleep at the moment of the crime, the killing of a child of tender age, defenseless and unprotected, must always be classified as murder. Even though the deceased children had been awake they could not have defended themselves or have fled or escaped from the attack of their assailants. As for the violent deaths of the spouses Dagojoy and Gante, in view of the location and nature of their

wounds the presumption is that they were attacked treacherously and without risk while they were lying down and asleep so that they could not have defended themselves or escape from the attack of which they were the victims. This circumstance of treachery, when it concurs in the crime of homicide, fixes the classification as murder; but when it concurs in the complex crime of robbery with homicide it is only to be regarded as a generic aggravating circumstance, for this is a case of a complex crime which has its own definition and special penalty in the Penal Code.

On account of deficient instruction and lack of education on the defendant's part, the special circumstance established by article 11 of the Code, as amended by Act No. 2142, must be applied in his favor; but even holding the concurrence of this special circumstance to offset one or several of the aggravating circumstances mentioned, from the nature of the penalty fixed in said article 503, No. 1, of the Penal Code, the final and extreme penalty fixed by the law must still be imposed upon the offender in view of the large number of aggravating circumstances, the greater portion of which are interrelated and lack other mitigating circumstances to offset them. (Penal Code, art. 80, Rule 4.)

For the foregoing reasons the judgment under review must be affirmed, with the costs of this instance against the defendant Lamberto Antonio, the penalty imposed to be executed at the date and hour the trial court fixes and in accordance with the provisions of Act No. 1577. So ordered.

Johnson, Carson, Trent, and Araullo, JJ., concur.

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