took place on August 30, 1950, when the new Civil Code went into effect, that is, one year after its publication in the Official Gazette. The alleged termination of services of the plaintiffs by the defendant took place according to the complaint on September 4, 1950, that is to say, after the repeal of Article 302 which they invoke. Moreover, said Article 302 of the Code of Commerce, assuming that it were still in force, speaks of "salary corresponding to said month," commonly known as "mesada." If the plaintiffs herein had no fixed salary whether by the day, week or the month, then computation of the month's salary payable would be impossible. Article 302 refers to employees receiving a fixed salary. Dr. Arturo M. Tolentino in his book entitled "Commentaries and Jurisprudence on the Commercial Laws of the Philippines," Vol. I. 4th edition, p. 160, says that Article 302 is not applicable to employees without fixed salary. We quote —

> *"Employees not entitled to indemnity.*—This article refers only to those who are engaged under salary basis, and not to those who only receive compensation equivalent to whatever service they may render. (1 Malagarriga 314, citing decision of Argentina Court of Appeals on Commercial Matters.)"

In view of the foregoing, the order appealed from is hereby affirmed, with costs against appellants.

*Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion* and *Diokno, J. J.* concur.

In the result.—*Paras*

X

*Pedro Calano, Petitioner-Appellant vs. Pedro Cruz, Respondent-Appellee, G. R. No. L-6404, January* 12, 1954.

1. ELECTION; PETITION FOR QUO WARRANTO; DISMISSAL THEREOF FOR FAILURE TO STATE SUFFICIENT CAUSE OF ACTION; APPEAL.—In the past we had occasion to rule upon a similar point of law. In the case of Marquez v. Prodigalidad, 46 O. G. Supp. No. 11, p. 264, we held that Section 178 of the Revised Election Code limiting appeals from decisions of Courts of First Instance in election contests over the offices of Provincial Governor, Members of the Provincial Board, City Councilors and City Mayors, did not intend to prohibit or prevent the appeal to the Supreme Court in protests involving purely questions of law, that is to say, that protests involving other offices such as municipal councilor may be appealed provided that only legal questions are involved in the appeal. Consequently, the appeal in the present case involving as it does purely questions of law is proper.

2. ID.; ID.; CONTESTANT CANNOT BE PROCLAIMED ELECTED; OFFICE SHOULD BE DECLARED VACANT.—In the case of Llamoso vs. Ferrer, 47 O. G. No. 2p, p. 727, wherein petitioner Llamoso who claimed to have received the next highest number of votes for the post of Mayor, contested the right of respondent Ferrer to the office for which he was proclaimed elected, on the ground of ineligibility, we held that Section 173 of the Revised Election Code while providing that any registered candidate may contest the right of one elected to any provincial or municipal office on the ground of ineligibility, it does not provide that if the contestee is later declared ineligible, the contestant will be proclaimed elected.

*J. R. Nuguid* for petitioner-appellant.

*Emilio A. Gangcayco* for respondent-appellee.

DECISION

MONTEMAYOR, *J.*:

For purposes of the present appeal the following facts, not disputed, may be briefly stated. As a result of the 1951 elections respondent PEDRO CRUZ was proclaimed a councilor-elect in the municipality of Orion, Bataan, by the Municipal Board of Canvassers. Petitioner Pedro Calano filed a complaint or petition for quo warranto under Section 173 of the Revised Election Code (Republic Act No. 180) contesting the right of Cruz to the office on the ground that Cruz was not eligible for the office of municipal councilor. In his prayer petitioner besides asking for other remedies which in law and equity he is entitled to, asked that after declaring null and void the proclamation made by the Municipal Board of Canvasser in November, 1951, to the effect that Cruz was councilor-elect, he (Calano) be declared the councilor elected in respondent's place.

Acting upon a motion to dismiss the petition, the Court of First Instance of Bataan issued an order of December 27, 1951, dismissing the petition for quo warranto on the ground that it was filed out of time, and also because petitioner had no legal capacity to sue as contended by respondent. On appeal to this Court by petitioner from the order of dismissal, in a decision promulgated on May 7, 1952, we held that the petition was filed within the period prescribed by law; and that although the petition might be regarded as somewhat defective for failure to state a sufficient cause of action, said question was not raised in the motion to dismiss because the ground relied upon, namely, that petitioner had no legal capacity to sue, did not refer to the failure to state a sufficient cause of action but rather to minority, insanity, coverture, lack of juridical personality, or any other disqualification of a party. As a result, the order of dismissal was reversed and the case was remanded to the court of origin for further proceedings.

Upon the return of the case to the trial court, respondent again moved for dismissal on the ground that the petition failed to state a sufficient cause of action, presumably relying upon the observation made by us in our decision. Further elaborating on our observation that the petition did not state a sufficient cause of action, we said that paragraph 3 and 8 of the petition which read thus —

> "8. Que el recurrente tenia y tiene derecho a acupar el cargo de concejal de Orion, Bataan, si no habia sido proclamado electo concejal de Orion, Bataan, al aqui recurrido.
>
> "3. Que el recurrente era candidato a concejal del municipio de Orion, Bataan con el Certificado de candidatura debidamente presentado, y registrado asi como tambien fue votado *y elegido* para dicho cargo, en la eleccion del 13 de Noviembre de 1951." (Underscoring ours)

were conclusions of law and not statement of facts.

The trial court sustained the second motion to dismiss in its order of September 30, 1952, on the ground that the petition failed to state a sufficient cause of action. Again petitioner has appealed from that order to this Court.

Appellant urges that the trial court erred not only in not holding that the motion to dismiss was filed out of time but also in declaring that the complaint failed to state a sufficient cause of action. In answer respondent-appellee contends that the appeal should not have been given due course by the trial court because under the law there is no appeal from a decision of a Court of First Instance in protests against the eligibility or election of a municipal councilor, the appeal being limited to election contests involving the offices of Provincial Governor, Members of the Provincial Board, City Councilors and City Mayors, this under Section 178 of the Revised Election Code.

In the past we had occasion to rule upon a similar point of law. In the case of Marquez v. Prodigalidad, 46 O. G. Supp. No. 11, p. 264, we held that Section 178 of the Revised Election Code limiting appeals from decisions of Courts of First Instance in electoin contests over the offices of Provincial Governor, Members of the Provincial Board, City Councilors and City Mayors, did not intend to prohibit or prevent the appeal to the Supreme Court in protests involving purely questions of law, that is to say, that protests involving other offices such as municipal councilor may be appealed provided that only legal questions are involved in the appeal. Consequently, the appeal in the present case involving as it does purely questions of law is proper.

Going to the question of sufficiency of cause of action, it should be stated that our observation when the case came up for the first time on appeal was neither meant nor intended as a rule or doc-

trine. We were merely considering the main prayer contained in appellant's petition, namely, that he be declared councilor-elect in the place of the respondent-appellee. In other words, we only observed that petitioner could not properly ask for his proclamation as councilor elect without alleging and stating not mere conclusions of law but facts showing that he had the right and was entitled to the granting of his main prayer.

Considering the subject of cause of action in its entirety, it will be noticed that Section 173 of the Revised Election Code provides that when a person who is not eligible is elected, any registered candidate for the same office like the petitioner-appellant in this case, may contest his right to the office by filing a petition for quo warranto. To legalize the contest this section just mentioned does not require that the contestant prove that he is entitled to the office. In the case of Llamson v. Ferrer, 47 O. G. No. 2, p. 727, wherein petitioner Llamoso who claimed to have received the next highest number of votes for the post of Mayor, contested the right of respondent Ferrer to the office for which he was proclaimed elected, on the ground of ineligibility, we held that Section 173 of the Revised Election Code while providing that any registered candidate may contest the right of one elected to any provincial or municipal office on the ground of ineligibility, it does not provide that if the contestee is later declared ineligible, the contestant will be proclaimed elected. In other words, in that case, we practically declared that under Section 173, any registered candidtae may file a petition for quo warranto on the ground of ineligibility, and that would constitute a sufficient cause of action. It is not necessary for the contestant to claim that if the contestee is declared ineligible, he (contestant) be declared entitled to the office. As a matter of fact, in the case of Llamoso v. Ferrer, we declared the office vacant.

In view of the foregoing, the failure of Calano to allege that he is entitled to the office of councilor now occupied by the respondent Cruz does not affect the sufficiency of his cause of action. Reversing the order of dismissal, the case is hereby remnaded to the trial court for further proceedings. No costs.

*Paras, Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo* and *Labrador, J. J.*, concur.

XI

*People of the Philippines, Plaintiff-Appellee, vs. Motin Cocoy, et al., Defendants, Motin Cocoy and Apolonio Cocoy, Defendants-Appellatns, G. R. No. L-6019, Dec. 15, 1953.*

CRIMINAL LAW; COMPLEX CRIME OF ROBBERY WITH HOMICIDE. — A, B and C went to the house of D, and there boloed to death D's wife, daughter and son. Afterwards, they ransacked the house and left it clean of its contents. *Held*: The crime committed is the complex crime of robbery with homicide, not robbery with triple murder.

*Herminio P. Villanayor* for appellants.

*Solicitor General Juan R. Liwag* and *Solicitor Jose G. Bautista* for appellee.

DECISION

MONTEMAYOR, *J.*:

MOTIN 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 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 ₱3,000.00 plus ₱273.60 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 1-1/2 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 ₱210.00, jewelry valued at ₱50.00, clothes costing ₱40.00 and one cavan of rice worth ₱10.00. 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 his home where they arrived two or three days later.

We agreed with the trial court and the Solicitor General that the evidence adduced during the trial is conclusive that Martin 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 boloing 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 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