

94 Phil. 118

[ G.R. No. L-5385. December 28, 1953 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FILEMON CAGGAUAN, VICENTE ORPILLA, FEDERICO VALENDIA, ESTANISLAO VIDAD, CALIXTO GARMA AND EMITERIO VIDAD, DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**LABRADOR, J.:**

This

is an appeal from a judgment of the Court of First Instance of Cagayan, finding appellants Filemon Caggauan, Vicente Orpilla, Federico Valendia, Estanislao Vidad, Calixto Garma and Emitterio Vidad guilty of multiple murder, attended with the qualifying circumstance of evident premeditation and the aggravating circumstances of treachery, superior strength, with the aid of armed men, by a band, and uninhabited place, and sentencing each and every one of them to be electrocuted to death, and jointly and severally to indemnify the heirs of each of their victims, namely, Mariano Adviento, Onofre Adviento, Ernesto Adviento, Herminia Adviento, Radifura Adviento, Silvestra de la Cruz and Mauro Santos in the sum of P6,000, and to pay the costs. The information upon which they were tried charged seven accused with the crime, the appellants herein and Vensiodor Guiyab, but the latter was excluded from the charge upon motion of the fiscal and by order of the trial court, on the ground that his testimony was necessary to secure the conviction of the accused.

It appears that in the latter part of the year 1945, the spouses Mariano Adviento and Silvestra de la Cruz were living in the sitio of Yagaoyan, barrio of Mabono, municipality of Gattaran, Cagayan. That they were living at that time

in that place is shown by the fact that their son, Gomez Adviento, became a teacher of Capissayan, Gattaran in the month of September, 1945, and he used to visit them in that place. Those who lived with the spouses were their sons Onofre and Ernesto, their daughters Herminia and Radifura, and a companion named Mauro Santos. About two months thereafter, Gomez Adviento went to Laoag to study, but before he proceeded, he visited his parents and brothers and sisters in their place, and saw them there in Yagaoyan, Mabono still alive. When he went back on Christmas to his place in Capissayan, he learned that all of them had been killed. He made inquiries about their lot but to no avail, as the people were afraid to talk and would not help him in his inquiries.

The matter (of their killing) seems to have been forgotten until the month of February, 1950, when Sgt. Lucio Banan was ordered to proceed to the barrios of Mabono and Pinacpac, Gattaran, to investigate the strange disappearance of the whole family. Sgt. Banan found Formoso Siazon and Domingo Cinco, who gave information that Mariano Adviento and his wife and children had been brought to the Agnaoan forest by a group of bolomen headed by Filemon Caggauan. A request for the exhumation of the remains was made on the President of the Sanitary Division (Exhibit A), and the latter, on March 14, 1950, proceeded to the supposed place where the victims had been buried, accompanied by Sgt. Banan. Formoso Siazon and Domingo Cinco directed their way thru the forest to the scene of the crime. When they reached the place indicated by Siazon and Cinco, which was near the top of Mt. Agnaoan and a few meters away from the Agnaoan River, and at the foot of a big tree, Siazon and Cinco immediately pointed to two supposed graves where the bodies of the victims were supposed to have been buried. Three meters from the graves, the party found a skull and two femur bones strewn around with the leaves of trees. When the two places indicated were dug, many human bones were found. In one of them, a human skull and a locket were found. Thirty seven bones identified to be those of human beings were found in both graves, besides other forty which could not be identified (Exhibit B.)

The evidence

submitted by the prosecution to sustain the charge against the appellants consists of the testimony of Vensiador Guiyab, former accused turned into state witness, and of those of Formoso Siazon and Domingo Cinco, which may be briefly stated as follows:

Vensiador Guiyab—The appellants and he and Formoso Siazon were all bolomen under the leadership of appellant Caggauan, with headquarters at Annipan, Mabono, Gattaran. One morning appellant Demetrio Vidad (Emiterio Vidad) called him to their headquarters. Upon reaching it, he found that six of the accused were already there. Mariano Adviento, his wife Silvestra de la Cruz, his sons Onofre and Ernesto, his daughters Herminia and Radifura, and their boy, Mauro Santos, were already detained, with their hands tied at their backs. He asked Caggauan what offense they had committed, and he (Caggauan) replied that Mariano Adviento was a Japanese spy. As to the members of Adviento's family, Caggauan explained that they would be of utmost damage to them after the times were settled.

The victims were then brought to the middle of the forest, and on their way, they passed by the house of Formoso Siazon, whom Caggauan ordered to join the group. At that time Cinco happened to be in Siazon's house and Caggauan also called him to go with them. Upon reaching a certain place in the middle of the forest, Vicente Orpilla and Ricardo Alupay stopped with the girls Herminia and Radifura, while the rest of the bolomen and their victims proceeded on. About ten meters away from the place where Orpilla and Alupay and the girls stopped, the party stopped, and Caggauan ordered three of the party, Calixto Garma, Federico Valendia and Emiterio Vidad to dig graves. Two graves were dug by them ten meters from where the party stopped. As the digging proceeded, the girls who had stopped behind were heard screaming "please do not rape us". When the digging was finished the party, the bolomen and their victims came near the graves, and Caggauan ordered that the ropes tied around the hands of the victims be untied. The bolomen then surrounded the victims, and Caggauan fired at Mariano Adviento with his pistol, and ordered his companions to hack their victims. As Adviento fell down, Caggauan thrust his sharp pointed bolo thru Adviento's body, and the surrounded

victims were hacked to death by the bolomen indiscriminately, as Siazon and Cinco stood by. After they were all killed, Caggauan ordered that their bodies be thrown in the two graves. After the victims had been thrown into the graves and covered with earth, the bolomen came together and Caggauan ordered them to swear that no one should squeal, otherwise he and his family would be killed by him. After this they went away and upon reaching the outskirts of the forest, each went his own way.

Guiyab also declared that the killing took place between October and December, 1945; that Caggauan had also killed Manoling Espejo and Fortunato Vallangca; that the edge of the forest was near the headquarters, but they had to pass by the house of Siazon upon instructions of Caggauan; that as the victims were being hacked to death, Mauro Santos tried to run away, but that Caggauan ordered him (Guiyab) to stab him, which he did, hitting Santos on the arms.

An affidavit, Exhibit 4, purporting to be signed by Guiyab and Eusebio Villanueva and dated March 5, 1950 was presented to impeach him, as the affidavit states that Mariano Adviento and Mauro Santos were killed by Domingo Cinco and Mateo Gilo in the presence of Japanese soldiers, but Guiyab explained that he signed it when drunk, upon request of Caggauan, without understanding its contents even if it was read to him; that Caggauan had asked him to sign the document to show their unity and companionship, etc.

Formoso Siazon and Domingo

Cinco—They confirm all of the incidents in the killing of the Adviento family: the identity of the appellants as the killers, with Caggauan giving the orders, and the identity of their victims; the fact that Orpilla stopped at a place with the girls while the others proceeded on till they were around ten meters away from them; that while the digging of graves proceeded the girls were heard screaming, “please do not rape us”; the killing of Adviento by a shot from Caggauan’s pistol, followed by a bolo thrust at the victim’s body, and the subsequent free-for-all killing of the victims who had been surrounded by the bolomen; the dumping of their bodies into the graves; and the warning given by

Caggauan that any one who would squeal would be killed as well as his family. Both Siazon and Cinco stated further that Juan Reves and Ricardo Alupay also formed part of the group led by Caggauan.

Siazon also declared that that December morning, Caggauan, accompanied by Reves, came to his home, and ordered him to come down. He tried to be excused from going with them because he had an ulcer on the foot, but Caggauan insisted, threatening him with his revolver, so he had to go down and join them.

On his part, Cinco further declared that he happened to go to the house of Siazon that morning and while there Caggauan and Reves came calling for Siazon. Siazon was ordered to go down and join them. Cinco peeped out of the window and was seen by Caggauan. After the party had gone away with Siazon, Caggauan came back and ordered him also to join the group, which he did for fear.

The theory of the defense is that it was the Japanese, and not the appellants, who had killed the Adviento family. To sustain this theory, they introduced two witnesses, namely, Catalino Ocampo and Tomas Agustin. Ocampo testified that in September, 1944 he went to Cumaog to see his parents, who had been detained by the Japanese. It so happened that the house where he slept was near the house where the Adviento family was concentrated. At about midnight, he saw six men and women brought down to the river by the Japanese. He followed the Japanese and their victims, peeping thru *talahib* grass. The following morning, he went to the place beside the river where the six were brought, to see if his father was one of them, and found out that those killed were the Adviento family and one other whom he did not know.

The story is, however, inherently weak and difficult to believe. Ocampo could not tell the specific place where the incident occurred, nor the owner of the house where he supposedly stayed for the night. It is also strange that when he went to see the dead early in the morning, he did not see anyone on the scene. Besides, Gomez Adviento positively declared that his parents and brothers and sisters were seen by him as late as September, 1945 at their place in Mabono. And certainly, the

above testimony (of Ocampo) can not overcome the positive testimony of the three witnesses of the prosecution who testified to having actually witnessed the murder.

All the appellants, with the exception of Calixto Garma, admitted being bolomen, an organization of about 20 members in the barrio of Mabono, Gattaran, but they claim that the organization existed only for a period of three months from February, 1945, and that by the time the crime imputed to them was supposedly committed in December, 1945, they had returned to their respective barrios. A close analysis of their testimonies, however, belies their claim. Thus appellant Estanislao Vidad testified that he crossed the Cagayan River and returned to his place in Palagao Bato at a time when American and Filipino soldiers were searching the whereabouts of the Japanese soldiers (t. s. n., p. 241.) The fall of Manila did not occur till February 1945, and it is impossible that by April, 1945 the Americans were already in Cagayan and had hunted down the Japanese stragglers. If he returned after the Americans and Filipinos had hunted the Japanese in the forests, he must have returned to his barrio in the latter part of the year 1945 or early in 1946.

#### Appellant

Emiterio Vidad also states that he went back to Mabono, the barrio where the murder took place, when there were already American and Filipino soldiers, presumably searching for the Japanese (t. s. n., p. 199.) As the Americans could not have been in Cagayan before March, 1945, but about June of that year, because Cagayan was one of the last places cleared of Japanese, said witness must have already been in Mabono by the end of 1945. Still another circumstance that there were Japanese still in the month of October, 1945 and, therefore, the bolo organization still existed, is the finding of the justice of the peace court in the case of *People vs. Indong, et al.*, (Exhibit 7; Exhibit U) that Miguel Vidad was killed by the Japanese stragglers in October, 1945. If there were still stragglers in October, 1945, the bolo organization to which appellants belonged must still have been in existence, as its purpose was to warn the residents of the coming of the Japanese.

The insignificant circumstances pointed to above, which appellants must have overlooked in the preparation of their defense and as to which they must have told the truth, because they are apparently minor and unimportant details, disprove appellant's claim that their organization had already ceased to exist and were no longer at Mabono when the murder for which they are prosecuted took place. But there is still more persuasive evidence to disprove their defense. This is an admission of Delfino Liban, Mayor of Gattaran, that the Americans appeared in June, 1945, that Gattaran was liberated in October, 1945, and that even after that time there was an open order to catch all persons suspected of spying on guerrilla activities (Exhibit V-1; t.s.n., p. 166). The defense of alibi submitted must, therefore, be dismissed.

Let us now consider the evidence submitted by the prosecution, first the apparent incongruities. The most important one is the declaration of witnesses Formoso Siazon and Domingo Cinco that Juan Reves and Ricardo Alupay, both deceased at the time of the trial, participated in the mass murder. It is claimed on behalf of the defense that as Juan Reves appears to have died three days after September 25, 1945, as per affidavit of his wife on October 29, 1945 and the complaint therefor (Exhibits 9-a and 9), the testimonies of Siazon and Cinco should be given no credence at all, since they asserted the presence at the murder of Reves, who was already dead at the time of the commission of the offense. It should be noted, however, that while Exhibits 9 and 9-A are admissible as public records, the statements contained therein, as to the date of the supposed death of Juan Reves, are hearsay, because the declarants were not subjected to the test of cross-examination. The date, September 25, set forth in the said exhibits is the date fixed by calculation of the affiants or of the one who prepared the statements. It is true that the statements made in the complaint are inadmissible *per se* as hearsay, but the making of the statement in the complaint or its presentation is circumstantial evidence to the effect that Juan Reves had already been killed. But the information is not conclusive as to the time of Reves' death. It is also possible and probable that the murder charged in the

information may have been actually committed in the month of October 1945, while Juan Reves may have been still alive. Guiyab, apparently the most intelligent witness, said that the killing must have taken place between October and December, 1945 (t. s. n., p. 65) when Reves was still alive. But admitting that Siazon and Cinco made a mistake in declaring that Reves was among the bolomen that participated in the group that committed the murder, that fact does not make their testimonies as to the other facts necessarily incredible. The fact that Siazon's house is near the scene of the murder and he and Cinco were able to point out to the place where the murder victims were buried, the existence of two graves, the bones found, etc.—all convince us that in fact they must have actually witnessed the commission of the crime, especially if we consider in relation thereto the testimony of Vensiador Guiyab corroborating the fact that they were present at the scene of the murder, and which testimony is natural, clear, logical, free from the incongruities with which those of Siazon and Cinco may have been attended.

It is claimed that Siazon and Cinco testified against Caggauan and his companions because they had been accused of killing Miguel Vidad by Estanislao Vidad, Vicente Orpilla and Vensiador Guiyab. In answer to this claim, Siazon and Cinco explained that this accusation against them was concocted by the appellants to gag them and frighten them so that they would not testify against the appellants in this case. The accusation against Cinco, Siazon and others is dated March 5, 1950, while the investigation by the Constabulary of the murder took place much earlier, as proved by the fact that the request for exhumation of the remains of the murder victims is dated February 21 (Exhibit A.) So that Siazon and Cinco had made their declarations implicating the appellants before Siazon and Cinco were charged in the complaint with the death of Miguel Vidad. This shows that their testimonies were not in retaliation of the charge against them. The complaint against Siazon and Cinco was dismissed, and this shows that said accusation must have been inspired by an ulterior motive, which may be no other than to frighten them.

Another

contention on behalf of the defense is that the bones actually found in the graves could not have been those of the supposed seven victims because the bones were very few. It is argued that the finding of the trial court that the bones might have been brought out by wild animals or by erosion is not justified by the depth of the graves, which is supposed to have been 1 meter. In the first place, the graves were not 1 meter deep as claimed. It was the president of the sanitary division that ordered the graves to be dug as deep as 1 meter (t. s. n., p. 6.) But he said that as soon as they had gone as deep as 1 foot more or less, bones of human beings began to be found (Id.). On the other hand, Siazon declared that the holes dug were only 2 feet (t. s. n., p. 95,) while Guiyab saw the depth was 28 inches (t. s. n., p. 74.) As three or four corpses were dumped into each grave, it is clear that the thickness of the dirt or soil covering the graves must have been less than a foot deep, and therefore easily dug by wild animals. The explanation of the trial court for the fact that there were but two skulls and few bones found is, therefore, justified.

#### Claim

is also made that the story given by the three prosecution witnesses is improbable in the following respects: (1) that the murder victims were brought to a place 6 kilometers distant from the headquarters, when they could have been buried in the forest near the headquarters ; (2) that they yet had to pass by the house of Siazon, when there was no need; (3) and that there was no need to call for Guiyab because the bolomen already present were more than enough to put the victims to death. The objections do not appear to us of any weight or value at all. It would seem to have been the plan for the victims to be killed in a place far from the headquarters. Certainly it would have been difficult for the bolomen to cut their way thru the forest, thick as it appears to have been, directly from the headquarters. Passing through the fringes of the forest was certainly much easier, and this is what was done. There was, therefore, nothing incongruous in this portion of the testimony.

The house of Siazon was on the fringe of the forest and must have been connected with the headquarters by trail.

They evidently took the trail, to get far away from the headquarters more easily, and they had to call Siazon and Cinco, who happened to be their companions, to join the party in order that they may become co-responsible for the crime and thus be prevented from squealing because they would be implicated thereby. As to Guiyab, it appears that he must have been an important member of the group, as he had the nerve to ask their leader the why and wherefore of the killing, and this evidently was the reason why he was called from a distant place.

It is also contended that there was no sufficient evidence of the motive that may have impelled the killing. We note that Gomez Adviento expressly declared that during the first days of December, appellant Caggauan's father had a quarrel with his own father about the land in Yagaoyan that his father was occupying, and which was claimed by Caggauan's father, on which occasion also appellant Caggauan made threat that if they did not leave the place something will happen to Adviento's son (t. s. n., p. 143-144). Appellant Caggauan's father testified that he had no land in Yagaoyan. This does not prevent him, however, from having wanted to get for himself that which the deceased Adviento had occupied.

Assuming, however, that the existence of the motive testified to by Adviento's son is not to be believed, this circumstance is no reason for not finding the appellants guilty. Proof of motive is necessary when a doubt exists as to whether a crime has been committed by a person, or by another, or not: but it is not necessary when, as in this case, three eye witnesses declared to have actually witnessed the commission of the offense. Whatever the cause of the killing, it is not absolutely necessary to find a motive therefor. The question of motive is of course very important in cases where there is doubt as to whether the defendant is or is not the person who committed the act, but when there is no doubt, as in the case at bar, that the defendant was the one who caused the death of the deceased, it is not so important to know the exact reason for the deed (U. S. vs. McMann, 4 Phil. 561; See also People vs. Ragsac, 61 Phil. 146; People vs. Bastatas and Bastatas, 65 Phil. 543 and People vs. Tagasa, 68 Phil. 147.)

Another argument raised is that it was difficult for the bolomen to have joined in the killing as they would not profit thereby, as they had no interest in the land, cause of Caggauan's resentment against the Advientos. It must be noted, however, that Caggauan did not state his real motive to his henchmen; he justified the killing by claiming that Adviento was a Japanese spy, and further justified the murder of Advientos family by saying that they would be of damage to them when peace had been reestablished.

The gist of the claim of the defense is, in general, that the theory of the prosecution is improbable and unworthy of belief. We have carefully examined the evidence and we find that the story given by the three witnesses Guiyab, Siazon and Cinco, is indeed coherent, natural and logical in every respect. They testified in a direct convincing manner, and nothing in the record belies their sincerity or truthfulness. This is especially so with respect to Vensador Guiyab, who appears to be the most intelligent of the three. The apparent incongruities in the testimonies of the other two have been explained. The trial judge, who saw them testify, believed them and their story; we have found nothing to justify us in arriving at a different conclusion. On the other hand, the mere protestations of denial by the appellants can avail nothing against the direct and positive evidence submitted by the prosecution. We are constrained to find, therefore, that the guilt of the appellants has been established beyond reasonable doubt and that it was they, under the leadership of Filemon Caggauan, that had committed the heinous crime that caused the disappearance of the family of Mariano Adviento towards the end of the year, 1945.

The crime committed by the appellants is multiple murder, qualified by evident premeditation and attended by the aggravating circumstances of treachery and uninhabited place. The penalty provided by law for the offense committed is death, but as no sufficient number among the justices of the Court agree thereto, the capital penalty can not be imposed. The appellants are, therefore, sentenced to *reclusion perpetua*, instead of death. With this modification, the judgment appealed from is in all other respects affirmed. So

ordered.

*Pablo, Padilla, Tuazon, Montemayor, Reyes and Bautista Angelo, JJ., concur.*

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*DISSENTING*

**PARAS, C. J.:**

This case is before us on review of the judgment of the Court of First Instance of Cagayan finding the defendants, Filemon Caggauan, Vicente Orpilla, Federico Valencia, Estanislao Vidad, Calixto Garma and Emitterio Vidad guilty of multiple murder and sentencing each of them to death penalty, to indemnify jointly and severally the heirs of each of the deceased Mariano Adviento, Onofre Adviento, Ernesto Adviento, Herminia Adviento, Radifura Adviento, Silvestra de la Cruz and Mauro Santos in the sum of P6,000, and each to pay 1/7 of the costs.

According to the evidence for the prosecution, one day in December, 1945, Filemon Caggauan, head of a bolo unit in barrio Mabono, Gattaran, Cagayan, detained in his headquarters in Anipan Mariano Adviento, his wife Silvestra de la Cruz, his children Onofre Adviento, Ernesto Adviento, Herminia Adviento and Radifura Adviento, and an old man named Mauro Santos. In the morning of that day Caggauan asked Emitterio Vidad to call for Vensiyador Guiyab who lived in Capissayan about 8 kilometers from Caggauan's headquarters. Thereafter Caggauan, together with Guiyab and Vicente Orpilla, Federico Valencia, Estanislao Vidad, Emitterio Vidad, Calixto Garma, Juan Reyes and Ricardo Alupay, proceeded to Agnacan forest located about 6 kilometers from the Anipan headquarters of Caggauan, bringing with them Mariano Adviento, Silvestra de la Cruz, Onofre Adviento, Ernesto Adviento, Herminia Adviento, Radifura Adviento and Mauro Santos. The party, however, stopped at the house of Formoso Siazon located about 5 kilometers from Caggauan's headquarters. Caggauan called Siazon and asked him to come down, otherwise he would

be shot. Siazon had to join the company of Caggauan in the same way that Domingo Cinco, who was then at Siazon's house, followed because the latter was also threatened with being shot if he would not follow. Upon reaching the Agnacan fastness, Vicente Orpilla and Ricardo Alupay stopped at a certain point retaining Herminia Adviento and Radifura Adviento, while the others proceeded. After a while, Guiyab, Siazon and Cinco heard the girls cry, "Please do not rape us." After Caggauan and his men, together with the Adviento family and Mauro Santos, had reached the place near a creek, Caggauan ordered Estanislao Vidad, Federico Valendia and Calixto Garma to dig two graves. At this juncture Orpilla and Alupay arrived with Herminia and Radifura. Caggauan ordered his men to surround the Adviento family and Mauro Santos, at the same time telling Siazon and Cinco to untie their hands. Whereupon, Caggauan shot Mariano Adviento whose abdomen was also boloed by the former. Simultaneously Caggauan ordered his companions to kill the other members of the Adviento family and Mauro Santos, an order which was carried out by all, except Calixto Garma, Siazon and Cinco who were not armed. It was Guiyab himself who killed his father-in-law Mauro Santos, under the directive of Caggauan which Guiyab could not disobey. After all the victims had been liquidated, Caggauan instructed his men to bury their bodies in the two graves already prepared, about two feet deep, two meters long and one meter wide. Although the graves were afterwards covered with earth, the head and feet of some of the victims protruded. After the fatal ceremony, Caggauan and his companions left, but only after being warned by Caggauan not to squeal; otherwise they and their families would be killed.

In 1950, Sergeant Lucio Banan, one of the witnesses for the prosecution, upon revelations made by Siazon and Cinco, made certain investigations of the killing, with the result that on March 14, 1950, Sergeant Banan and Dr. Antonio Nolasco led a party to Agnacan forest and excavated the graves indicated by Siazon and Cinco. One skull and some bones were found scattered on the ground near the graves, and other bones, another skull and a locket were recovered after the excavation.

According

to the evidence for the defense, the Adviento family and Mauro Santos were killed by the Japanese soldiers in or about the month of September, 1944, in the barrio of Cumaog, Gattaran, Cagayan. This is testified to by Sergeant Catalino Ocampo of the ground forces of the Philippines, and by Tomas Agustin, a resident of Mabono, Gattaran. The defendant Filemon Caggauan admitted that he was the commander of company "A" of the bolo unit for the barrio of Mabono, municipality of Gattaran, but alleged that his unit no longer existed in June, 1945, after the American bombing had started, because the inhabitants of the place evacuated to the eastern side of Gattaran, across the river. Caggauan denied having killed or participated in the killing of the Adviento family and Mauro Santos and imputed to prosecution witnesses Formoso Siazon, Domingo Cinco and Vensiador Guiyab a motive for testifying against Caggauan, arising from the existence between them of bad blood. The defense also presented in evidence the record of criminal case No. 13 of the justice of the peace of Gattaran, showing that Juan Reyes, alleged by the prosecution witnesses to be among the killers of the Adviento family and Mauro Santos, was already dead on September 25, 1945.

We have examined the evidence thoroughly and found several circumstances that necessarily create grave doubts in our minds as to the guilt of the defendants. It is significant that, although prosecution witnesses Formoso Siazon and Domingo Cinco, through their own testimony,—and it is not pretended that they gave a different version when first investigated,—were participants in the alleged crime, they were not included in the indictment, and no satisfactory explanation appears to have been offered for the omission. Said witnesses should have been included in the information and later excluded, in the same way that Vensiador Guiyab was excluded, in order to be utilized as government witnesses.

The crime is alleged to have been committed in the Agnacan forest, about 6 kilometers from the headquarters of Filemon Caggauan in Anipan. This is rather unnatural for if the purpose—as it should be—in choosing a forest for the commission of the unlawful act was to avoid detection and insure

its perpetration, the Anipan forest, which was close to the headquarters of Caggauan, could have served well, with even less effort for the malefactors.

From the very evidence introduced by the prosecution, it appears that Caggauan had already a sufficient number of armed men when they started the journey towards the Agnacan forest, with the alleged victims; and it is not easily understandable why Caggauan had to pass by the house of Formoso Siazon and compel the latter and Domingo Cinco to join his band. Neither is it understandable why Caggauan, with already at least six bolo men as his companions, would still need Vensiador Guiyab who lived about 8 kilometers away from Caggauan's headquarters in Anipan, especially considering that one of the would-be victims was Mauro Santos, father-in-law of Guiyab. The only explanation would seem to be merely to supply witnesses to the projected crime, something which naturally would be the last thing Caggauan would do, assuming, as it is fair to assume, that Caggauan was in his right senses. The improbability becomes more patent if we recall that the alleged participation of Siazon and Cinco was to be limited to the task of releasing the hands of the victims from their ties. In this connection it is not amiss to mention another inherent improbability inferable from the allegation that the hands of the victims were first untied before they were killed. In the usual course, one bent on killing another would not go to the trouble of that unnecessary formality, as this may even give the intended victim a chance to repulse the attack.

It is true that two skulls and a number of bones were found at the graves or in the vicinity thereof in 1950, about five years after the commission of the alleged crime, but a doubt must arise from the obvious fact that the number of skulls falls far short of the alleged number of victims. The explanation attempted to be put up, that some of the skulls and bones might have been washed away by water or lost through the action of boars and lizards, is based on conjectures not positively established by the evidence. If such conjectures may be allowed, it is also probable that the skulls and bones thus found might have pertained to other persons killed during

the Japanese occupation.

Prosecution witnesses Siazon and Cinco positively testified that Juan Reves took part in the multiple murder conceived and engineered by Caggauan in December, 1945. However, according to the record of criminal case No. 13, identified by the justice of the peace of Gattaran, Juan Reves was already dead on September 25, 1945. The prosecution alleges that the best evidence of the death of Juan Reves is the death certificate, and the trial court in its decision ruled out the admissibility of the record of criminal case No. 13. The probative value of said record as an impeaching evidence cannot be doubted, however, especially because the complaint filed in the justice of the peace court of Gattaran was subscribed and sworn to by the chief of police on November 2, 1945, while the supporting affidavit was subscribed and sworn to by the wife of Juan Reves and his daughter on October 29, 1945, or long before the filing of this case on March 28, 1950. Moreover, no attempt has been made to show that Juan Reves was still alive on the date of the filing of the information in this case.

We cannot also overlook the circumstance that the alleged crime took place in December, 1945, and the prosecution of this case was started only in 1950; and no plausible explanation for the delay appears in the record.

The evidence for the prosecution tends to show on the one hand that Mariano Adviento was killed by Caggauan for being a Japanese spy and, upon the other hand, that Caggauan liquidated the Adviento family because of a certain dispute over a piece of land in Yagaoyan held by Mariano Adviento in 1941. The trial court rejected the first motive, and found that Caggauan was perhaps induced to commit the alleged crime because of his claim over the parcel of land held by Mariano Adviento. We have also our doubts on this point, since the record shows that the alleged dispute was between the father of Caggauan and Mariano Adviento and dated as far back as 1941, and since even after the Adviento family had been killed, Caggauan never attempted to take possession of the

controverted land in Yagaoyan.

The foregoing circumstance, taken in conjunction with the theory of the defense that the Adviento family and Mauro Santos were killed by the Japanese soldiers in 1944, as testified to by no less than Sergeant Catalino Ocampo of the ground forces of the Philippines, and that by the middle of the year 1945 the bolo unit headed by Caggauan was already dissolved in view of the American bombing which caused the mass evacuation of the inhabitants of Gattaran to different places on the other side of the river, cannot but lead to the conclusion that the defendants are entitled to acquittal at least on the ground of reasonable doubt.

Wherefore, the appealed decision should be reversed and the defendants acquitted, with costs *de officio*.

*Jugo, J.*, concurs.

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