

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
KAPONAN GANI (MORO) ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-1504. May 28, 1948*

Ponente: PERFECTO, J.

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Kaponan, Dandulit, Ammad, Bariwa and Madoh, all Moros, are charged with the crime of robbery with multiple homicide committed on October 23, 1940, alleged in the information which reads as follows:

"That on or about the 23rd day of October, 1940. in the sitio of Banting, Municipal District of Tapul, Province of Sulu, Philippines, the herein defendants armed with barongs, creese and spears, conspiring together and helping one another, did then and there, with intent of gain by the use of force and violence upon persons, willfully, unlawfully and feloniously take and carry away from Ah Hang, Ah Pieu. Ah Tang and Ah Lok, who were riding in a vinta in the marine waters near said sitio, the following: P929 in cash, checks in the amount of P333.27, 450 empty sacks worth P67.50 and clothes, against the will of said owners and to their damage and prejudice in the total amount of P1,329.77; and that in the commission of the crime of robbery above mentioned and in furtherance of the same, the herein defendants with evident premeditation and with abuse of superior strength, attacked and assaulted with their blade weapons the said Ah Hang, Ah Pieu, Ah Tang, Ah Lok and also their vinta paddlers Lutln and Mani, thereby inflicting upon them numerous mortal wounds after which they (defendants) threw the bodies into the sea thus causing the death of said six persons instantly."

The lower court acquitted the last two accused, but found Kaponan, Dandulit, and Ammad guilty, and sentenced the first two as principals to *reclusión temporal*, and the third, as accomplice, to imprisonment from 12 to 17 years.

Ensail Asari, 26, married, MPC, testified that at 4 o'clock in the morning of October 23, 1940, he went to the sea accompanied by Ulao, to buy fish. He saw a vinta passing by from which he heard voices talking in Chinese. There were six persons, but he recognized only Ah Hang. The vinta was 40 meters away. Another vinta, from which a call to wait for a letter was made overtook it. He heard the Chinese shouting, and the witness made the remark that they are being killed, and it was necessary to get away from the place. "That sis all I know of the incident." At that time Ulao and the witness were on a vinta. There were three persons in the vinta which overtook the vinta of Ah Hang. The three persons in the second vinta were Kaponan, Dandulit and Ammad. The witness happened to recognize the three persons when he arrived at the shore. "We came to know later the names when we arrived at the shore." On that morning the moon was coming out from the horizon, "I have redognized them (the accused) while still at sea." But the witness knew their names when he was "already on land" because he has never seen them before. "I came to know their faces and names when I went to spend my vacation in Tapul."

Ulao Hadjula, 28, married, farmer, testified that on October 23, 1940, he went with Ensail to buy fish. When they were out on the sea, they saw a big vinta 50 meters away. He did not recognise the persons in the vinta "because they were very far away." There was another vinta "but it was very far from us." The second vinta, smaller, was following the first towards the Sea. "I only saw that they were following the big vinta. I do not remember what

happened because it was quite a long time ago." Upon being shown Exhibit A, his affidavit, he said: "I do not remember what is written in there."

Bidawia, 60, widow, testified that Lepte, her husband, and Imlani, her uncle, were requested by four Chinese to conduct them from Tapul to Parang and it was on a Vinta from Tapul where she saw them for the last time. "I was in the sitio of Halo on the day when they left when I was informed that my husband has already left. Somebody wrote me a letter and in that letter it was said that my husband has not yet returned."

Kwan Miow, 54, widow, testified that her husband was Ah Tang who left Siasi on October 20, 1940, at about 12 noon, and disappeared. He went with Ah Lok bring with him personal goods such as clothing. From then on he never returned. Her husband told her that he was going to Jolo passing by Tapul.

Kwan Chiong, 24, single, baker, testified that on October 23, 1940, he accompanied to the vinta when they left Ah Hang, Ah Tang, Ah Lok and Ah Pio who left with two Samals for Parang. Ah Hang had P759 in cash, P333.27 in checks and treasury warrants, one table, ono trunk, eight handkerchiefs and 450 empty sacks. All of them are dead, and the last time that the witness saw them was on October 23, 1940. The witness testified at the first trial of this case during which were exhibited a pair of earrings, one wooden trunk, one wooden table, eight handkerchiefs and about fifteen empty sacks, together with the bones of Ah Hang. "Kaponan told me that Ah Hang died because he told me that he wanted to get back his earring which he has given to Ah Hang before-" Kaponan went to the sari sari store of the witness on October 28, 1940. He went to redeem the earring which he gave to Ah Hang as security for a loan of P10. At that time a lieutenant from Siasi was already in Banting investigating the case about the disappearance of Ah Hang. It was already rumored that Ah Hang and companions disappeared.

Giokbeng Que, 32, married, deputy clerk of Court, testified that he was present during the first trial and the court was presided over by Judge P. Pecson. There were many exhibits presented during the trial. There were two vintas, one big and another small. There were 450 empty sacks, a pair of earrings, pieces of board taken from the vinta stained with blood, a leg of a table, police blotter from Banting, skull and bones, pictures of Ah Hang and Ah Pio, photostatic picture of the school, photostatic picture in life size of Ah Hang's bust. "Only the skull and the bones and the pair of earrings were recovered."

Alfredo C. Benedicto, 45, married, practicing attorney, testified that Exhibit C is a letter he received from the Director of Prisons, attached to which is a copy of the sentence rendered by the lower court in the original trial, which is marked as Exhibit D. Also attached is the commitment Exhibit E signed by Judge Enrique Fernandez. Exhibit A is the statement made in writing by witness Ulao when the witness investigated him.

Sabida Mora, 33, widow, testified that her husband Ah Lok, left Siasi on October 20 and she came to know on October 23 that he died. He was going to Jolo via Tapul. He went accompanied by Ah Hang, She learned about the death of her husband from the wife of Ah Tang. "She told me all about it." Her husband brought with him a round table, one box and ono big bundle of clothes. Her husband never returned.

Six witnesses testified for the defense but, in view of the conclusion we arrived at, it is not necessary to consider their testimonies any more.

Of the eight witnesses who testified for the prosecution, only one, Ensail Asari, has given a declaration that may inculcate the three appellants. But his testimony about having identified the three appellants is the ones aboard the small vinta which followed and jvertook the big vinta where the four Chinese and Lepte and Imlani were, is not reliable because of his contradictions on two important points, as to whether it was in the morning of the incident when he saw appellants for the first time and as to whether he happened to learn of their names only ashore. If we have to believe what Ensail Asari wants to convey, there is no explanation whatsoever why he failed to report to

the authorities the fact that appellants committed the crime, as, according to one of the witnesses for the prosecution, Kaponan was still at large on October 28, five days after the crime, and went to a sari-sari store intending to redeem a pair of earrings he pawned, after a lieutenant had already been investigating the case of the disappearance of the Chinese.

Ulaio Hadjula, who was the companion of Asari and had the same opportunities to see the two vintas and the persons boarding them, testified that he was not able to identify any one of those persons, because the vintas were "very far." There is no reason to believe that Hadjula did not have a good eyesight, because at the time he was a youth of about 22, only two years older than Asari. There is no conclusive evidence upon which to base a finding of guilt. The Solicitor General himself recommends that the appellants be acquitted.

The appealed decision is reversed, and the three appellants are acquitted. Upon promulgation of this decision, they should be immediately released from confinement.

Parás, Actg. C. J., Feria, and Tuason, JJ., concur.

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