

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TEOFILO GANDE, ET AL., DEFENDANTS, TEOFILO GANDE,
DEFENDANT-APPELLANT.**

G.R. No. L-28163. January 30, 1970

Ponente: REYES, J. B. L. J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2b886e593681/>

REYES, J. B. L. J.:

Appeal by the accused-appellant, Teofilo Gande, from a conviction by the Court of First Instance of Misamis Occidental, in its Criminal Case No. OZ-383, for robbery with quadruple homicide. Meted to the appellant was the penalty of reclusion perpetua and the indemnification of the heirs of the four (4) deceased victims at P6,000.00 for each victim, aside from the restoration of the amount of P2,000.00 which the court found to have been the object of the robbery. The appellant's co-accused, Victoriano Gande, his brother, was acquitted on reasonable doubt.

The evidence for the prosecution showed the following:

Sayawon Lumigaw and his wife, Dagaw Sumingit, lived in Barrio Tuno, Tudela, Misamis Occidental, where they owned lands planted to abaca, coconut, corn and rice. The barrio of Tuno is remote and mountainous and inhabited mostly by a cultural minority known as "Subanos". Sayawon's house, which was built atop a hill, had an attic; there, according to prosecution witness Biato Mapon, widowed son-in-law of Sayawon, the couple kept two (2) jars of money, in coins, amounting to P2,000.00; Biato had carried these jars himself when they transferred from the old house (T. s. n., 13 June 1967, page 10). Dana, the wife of Biato, and Amping, a son of Sayawon, also lived in the same dwelling.

Along a trail leading to Sayawon's house is the house of Bastiana Soling. Prosecution witness Anselmo Gumalay testified that he was there on 25 September 1965, at around 4:00 o'clock in the afternoon (to judge from the position of the sun), and while grinding corn by the doorway he saw three (3) persons pass by; he recognized one of them to be the accused Teofilo Gande. The witness did not recognize the other two because their hats were tilted, covering their eyes (T. s. n., 13 June 1967, pages 12-13).

The principal witness of the prosecution, Teofilo Sandalan, who did not know his age, was estimated to be 14 years old at the time he testified in 1967. This witness declared that he and his uncle, Sayawon Lumigaw, went to the "pari-an" on 25 September 1965; Sayawon won a cock there and, on their way home, Sayawon invited Teofilo to drop by his house as he wanted to give him half of the cock. They arrived at Sayawon's house at about 5:00 o'clock in the afternoon, reckoned by the position of the sun; they found three (3) men already in the house, armed with long boloes. Sandalan recognized two of them as Teofilo Gande and Victoriano Gande, because they were abaca strippers in the plantation of Sayawon; he did not know the third man. Teofilo Gande requested that he and his two companions be allowed to pass the night in the house, as it was already getting dark. After witness Teofilo Sandalan had received his share of the cock, he left and proceeded home. When he was some 70 to 80 meters away, by a brook where he had defecated, he heard a woman's shout for help. He returned to Sayawon's house; he

did not go up but went underneath the house and, through the split-bamboo flooring and by the dim light of a "gota-percha" lamp (it was already twilight), he saw the accused Teofilo Gande cutting the neck of Sayawon who lay upon a mortar. Witness Sandalan did not tarry but rushed home and told his parents what he saw; they did not believe him, as he had been wont to lie to them. But when they went to Sayawon's house the following morning to verify what their son had related they found the four (4) occupants of the house dead: Sayawon's body was on top of a mortar, his head almost severed at the neck; Dagaw, hacked at the back of the neck, lay on the floor near the stove; Amping lay face downward where he used to sleep, hacked at the nape and on the arm; and Dana was sprawled flat on her stomach at the attic, injured at the epigastric region (T.s.n., 23 February 1967, pages 32-42; 24 February 1967, pages 2, 8 and 27; 13 June 1967, page 6).

PC Sgt. Cleofe Jonco testified that he had Teofilo Gande investigated on 9 October 1965; that he propounded the questions and Gande supplied the answers which were reduced to writing' (T. s. n., 23 February 1967, pages 2-3); that thereafter, on 11 October 1965, Sgt. Alberto Orquillas brought Teofilo Gande to the municipal judge to swear to the truth of his statements but, according to Orquillas, after talking to a certain person Gande refused to sign the statement for no reason at all (T.s.n., 23 February 1967, page 8). The unsigned statement, Exhibit "A", purported to confess Teofilo Gande's participation in a conspiracy to rob the household of Sayawon; his presence there during the killing of the four victims, not by him but by his brother, Victoriano, and one Malcolm; and his confessing to the Philippine Constabulary officers because he was not given a share of the booty that Malcolm had taken from a jar in the attic.

On the side of the defense, accused-appellant Teofilo Gande, testifying in his behalf, claimed that during the whole day of 25 September 1965 he, together with eight (8) other persons, including his brother Victoriano, worked "bayanihan" style in the farm of Rosario Limbaring in Barrio Lalud until sundown; when they stopped working, they took their "merienda" and then Teofilo Gande went home (T.s. n., 12 July 1967, pages 30-34). This alibi deserves no credit for the supporting witnesses, Abdul and Sofronio Lumbay, were vague and uncertain in their statements. The only circumstance of which they were positive was of Gande's presence at the "songlo" (cooperative work) on 25 June, but could not supply details about the work on the other days of the week. We conclude that no error was committed by the court in rejecting the alibi of appellant.

Nevertheless, We agree with counsel de oficio that appellant Teofilo Gande cannot be held guilty of robbery with quadruple homicide, but only of homicide.

Appellant testified that three (3) PC soldiers manhandled him, one after the other, to compel him to sign Exhibit "A"; that he was shown the said exhibit already prepared but did not see how it was prepared; that, as a result of the maltreatment, he suffered injuries, which he had shown to the judge of Tudela and to a friend, Abdul Lumbay, who visited him in jail; that he did not recognize his torturers because it was nighttime; and that he is illiterate and belongs to the Subano tribe (T. s. n., 12 July 1967, pages 2-4, 10).

The version of the appellant is supported by Judge Solidario Agot of Tudela, who testified that Exhibit "A" was presented to him but that the supposed affiant, appellant Teofilo Gande, "disagreed on all the statement of that affidavit" and "refused to sign because it was not voluntarily made by him"; and that he saw a fresh contusion on the lower part of Gande's right eye but the latter did not complain that he was maltreated by the PC (T. s. n., 19 July 1967, pages 3-4, 8). It is regrettable that the judge did not examine the rest of the body of appellant to ascertain whether he suffered other injuries. However, the circumstances sufficiently infirm the reliability of the purported confession, particularly since there is no independent evidence of the alleged robbery; no proof exists on the record that the coins asserted by witness Biato Mapon to have been kept in two jars placed in the attic were still there when the crime was committed. That the accused did not complain of torture to Judge Agot is not to be wondered at, for being in the custody of his torturers he was reasonably apprehensive of further maltreatment if he

complained. In view of the circumstances of record, the alleged statements of appellant are rejected as of no probative value.

With the alleged confession (Exhibit "A") aside, the evidence on the alleged conspiracy consists of the testimony of Anselmo Gumalay, to the effect that he saw Teofilo Gande, with two companions, pass by the house of Bastiana Soling towards the house of Sayawon Lumigaw while said witness was grinding corn, and the testimony of Teofilo Sandalan that he saw the Gande brothers and a third man armed with long boloes when he and Sayawon came from the "pari-an" and that he saw Gande cutting the neck of Sayawon. Sandalan had vacillated in his testimony, or was unsure of what Victoriano Gande and the third man did or were doing when Gande was cutting Sayawon's neck, and it was on account of this uncertainty that the lower court acquitted Victoriano Gande (the third man was not charged in the information). Such actions of the appellant and his brother and even of the non-accused third man do not warrant a finding of the existence of a conspiracy. Just because they were seen together draws no inference of a common plan to commit a crime. There is no convincing evidence that Victoriano and the third man committed any overt act or actively participated in concert with appellant's act of killing Sayawon, or in connection with the death of the other victims, as to deduce a unity of action and purpose among themselves (Article 8, Revised Penal Code; *People vs. Asaad*, 55 Phil. 697; *People vs. Wong*, L-22130-32, 29 April 1968; *People vs. Vicente*, L-26241, 21 May 1969).

Nor is there evidence that the money, testified to by Mapon as having been kept in the attic, was still there or that it was taken away by the accused after the death of the four (4) victims. None of the witnesses for the prosecution who went to the house after the commission of the crime testified as to the absence or loss of the money; not even Sgt. Manuel Muñoz, who went there precisely to investigate and even drew a sketch of the house and the respective positions of the victims. Obviously, the taking of the money cannot be presumed; it must be proved.

Since the loss or disappearance of the money was not proved, two essential elements of robbery are missing, namely: intent to gain (*animus lucrandi*) and unlawful taking or asportation (*Padilla*, *Criminal Law*, Vol. II, page 635). In view thereof, We can not declare that there was robbery.

While appellant's defense of alibi, as previously discussed, cannot prevail over his positive identification by witness Sandalan as the one who cut the neck of Sayawon (*People vs. Estrada* (1968), 22 SCRA 112; *People vs. Catalino* (1968), 22 SCRA 1091), there is no proof, nor can it be presumed, that appellant also killed Dagaw, Dana and Amping.

Thus, the crime committed by appellant is only a single homicide, aggravated by its commission in the victim's dwelling, a circumstance balanced by appellant's being illiterate and dissociated from the civilized community.[1] Having taken lack of instruction into account, application of Section 106 of the Administrative Code of Mindanao and Sulu is no longer warranted,[2] specially since the provisions of the Indeterminate Sentence law also apply to reduce the penalty.

The proper punishment should be a minimum within the range of prision mayor in its medium degree and a maximum of reclusion temporal, also in the medium degree.

WHEREFORE, the appealed judgment is hereby modified, finding appellant Teofilo Ganda guilty of a single homicide and imposing upon him the penalty of not less than 10 years of prision mayor and not more than 17 years of reclusion temporal. Appellant is further sentenced to indemnify the heirs of Sayawon Lumigaw in the amount of P12,000.00 and to pay the costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Teehankee, JJ., concur. Barredo, J., did not take part.

[1] People vs. Talok, et al., 65 Phil. 696; People vs. Limaco, 88 Phil. 35.

[2] Cf. People vs. Aranas, L-27851, 28 October 1969; and People vs. Salazar, 105 Phil. 1058, 1064-1065.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.