

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TANJALALI GAJALI ALIAS TANJA AND GOLDAM TOTO ALIAS PABLO,
DEFENDANTS; TANJALALI GAJALI ALIAS TANJA,
DEFENDANT-APPELLANT.**

G.R. No. L-28534. July 31, 1972

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

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REYES, J.B.L, J.:

Review of a life sentence meted out to the accused Tanjalali Gajali, alias Tanja, and Goldam Toto, alias Pablo (who did not appeal), for the crime of "robbery in band with homicide and frustrated homicide", in Criminal Case No. 1827 of the Court of First Instance of Basilan City.

The amended information filed against the two (2) above-named appellants, to which they pleaded not guilty,[1] included five (5) other persons, namely, Saham Muldam, Usman Muldam, Moro Sakam and two (2) John Does, but these five other accused have not been apprehended.[2]

We find the judgment of conviction by the trial court well-supported by the evidence, and it should, therefore, be affirmed; nor did the court err in rejecting the appellant's defenses of alibi, absence of conspiracy and insufficient identification of the appellants as participants in the commission of the crime.

The evidence for the prosecution commences with an agreement between prosecution witness Alih Batoto, alias Ulang, a driver of a jeepney named "Hermax II", in the Maluso-Isabela line, and the accused Saham Muldam, for the former to transport the latter and his companions in the jeepney, on a special trip to a show for the agreed fare of P4.00. It was about 5:00 o'clock in the afternoon of 28 February 1967 at kilometer 9, Maligue, Isabela, Basilan City, while the former was fixing a flat tire, that the said agreement was made but the trip actually started at about an hour later because driver Alih had to convey first his other passengers to Isabela and then return to kilometer 9 to pick up Saham and his companions. In the special trip, Alih at first had five (5) passengers only, but at a junction going to Isabela, he picked up two (2) more. Among these passengers, Alih recognized Usman Muldam and Goldam Toto aside from Saham Muldam; he did not know the others. The jeep's conductor, Antonio Sumilang, however, identified Tanjalali Gajali as also in the group. They carried a bag 2 1/2 feet long. On the way, Saham asked the driver to bring them not to their previously agreed destination but to barrio Busay instead, to which driver Alih agreed, but for an additional consideration of P2.00. The group alighted near the bridge in Busay at about 7:00 o'clock that evening.[3]

In Busay, Isabela, Basilan City, Esteban Maningo operated a store. It was open and lighted with a petromax lamp at about 7:25 o'clock in the evening of 28 February 1967 while Esteban Maningo, seated on a shelf, his driver Jesus Angeles, seated on top of a can of sugar near the door, and Epifanio Maquilan, seated on a bench, were engaged in conversation in the store. Unexpectedly, Tanjalali and other persons swooped upon the store through the first door facing the Isabela-Lamitan road. Tanjalali aimed or poked a gun at the stomach of Epifanio Maquilan, even as he shouted to his companions, "Sa itaas, sa itaas" (upstairs!). One of the intruders tried to hack

Jesus Angeles with a barong but the latter was able to run away towards the back door and the barong wielder did not pursue him. Another intruder hacked Epifanio Maquilan twice in the left supra-orbital area to the postero-infra-auricular area, and also over the left supra-scapular area (Exhibit "E"), and Maquilan fell on the cement floor, unconscious. On regaining consciousness and strength, he slowly walked home, and from there he was brought by his wife in a tricycle to the Infante Clinic, where he received medical treatment.[4]

While the assault in the store was taking place, in the upper story, Basilisa Maningo was in her room praying before an altar when she was disturbed by footsteps of men rushing upstairs. One of the men kicked open the door to Basilisa's room and two (2) men entered. One of them held her by the hair and demanded to know where her money was, at the same time holding a barong at her neck. She got the key to her aparador (wardrobe) but she could not insert it into the keyhole of the wardrobe because her hands were trembling with fright; so, she gave the key to one of the men, who opened the cupboard and divested it of money, watches, jewelry, eyeglasses, etc. The value of the money and articles, including a radio, taken by the robbers, exceeds P5,000.00.[5]

At the same time another man (later identified as appellant Goldam Toto) went to the dining room where Mercedes Jalon, a helper in the house, and Emerita Uyao were. He also held a barong and peremptorily asked where the "old man" kept his pistol. Mercedes answered that there was no pistol in the house.[6]

Half an hour after his escape, Jesus Angeles returned to the store with policemen. When they arrived, they found the petromax lamp destroyed and that the malefactors had left. Many things were scattered in the store and drawers were opened. Esteban Maningo lay sprawled under the stairs, butchered to death with eleven (11) slash wounds.[7] There is no evidence that other persons intervened after Gajali's gang left the premises, which could not have been very much before the arrival of the police, considering the time spent in the attack and the robbery.

The existence of a conspiracy in the commission of the crime is clear. That the malefactors had an agreement concerning said commission and had decided to commit it is inferable from their acts, namely: they hired together a jeep for the purpose of bringing them close to the place of their intended victim; Saham attempted to hide from driver Alih Batoto their true destination by telling him that they would go to a show (where the supposed show was to be held is not indicated in the evidence) but had to ask him, while already on the way, to bring them to Busay upon paying additional transportation fare, without objection from Saham's companions as to the change of destination; they took the same jeep and alighted from it in the same place; their acts while in the store and house of Esteban Maningo indicate concerted action, even to the execution of the command by Tanjalali to his other companions to go upstairs while he held Maquilan and the deceased Maningo at bay, and another of his companions slashed Maquilan into unconsciousness.

Since conspiracy was established, the criminal act of one is the act of all. Therefore, even if there is no direct evidence as to who of the accused hacked and killed Esteban Maningo, and the widow, Basilisa, did not recognize the person who forcibly took from her the money and articles mentioned in the information, the killing of Esteban and the asportation of the money and other articles are as chargeable to the present appellants as to those who actually performed the criminal acts.

The appellants were positively identified by the prosecution witnesses. These witnesses were in a position to recognize them. Antonio Sumalinog, the conductor of the jeep and who stood at the rear thereof, recognized Tanjalali as one of their passengers seated behind the driver during the special trip.[8] Epifanio Maquilan, the hacking victim who survived, recognized Tanjalali as the one who thrust a gun at his stomach.[9] He also identified Tanjalali at the Infante Clinic when policemen brought him there.[10] Jesus Angeles pointed to Tanjalali as one of the men who entered the store and pointed a gun at Maquilan and who gave the command for his fellows to go upstairs;[11] he also testified (and was corroborated by detective Alberto) that even while he was

outside the police station, he already recognized the voice of Tanjalali when the latter was inside the station.[12]

Goldam Toto was also a passenger in the special trip, as testified to by driver Alih.[13] It was easy for Mercedes Jalon to recognize Goldam Toto because he was the one who guarded her at the dining room, which was lighted by a kerosene lamp;[14] and she had noticed that he had a gold tooth when he was questioning her about her master's pistol.[15]

The 28th of February 1967 was a Tuesday. Tanjalali does not know about dates but his alibi is that that week he worked as a coconut husker at the Sumagdang Plantation of the Basilan Industrial, Inc. from Monday to Thursday (corresponding to the period from 27 February to 2 March); that he worked and slept with Arakani and Melanio in the plantation quarters of Melanio; that at 7:00 o'clock in the evening of Tuesday, he took his supper and then slept from 8:00 o'clock.[16] A record of Tanjalali's working days in the plantation covering the period from 27 February to 4 March 1967 and prepared by Vicente Cabato, field manager of the company was presented as Exhibit "5". Unfortunately, no credence can be attached to Exhibit "5" because while it shows that Tanjalali worked from 27 February to 4 March, Tanjalali himself testified that he went home to Panagaraan on Thursday afternoon (2 March) and on Friday (3 March) he went with the police.[17]

Tanjalali's alibi cannot prevail against his positive identification by three prosecution witnesses.

As to Goldam Toto, who was allegedly at home during the commission of the crime, we agree on the following observations of the trial court:

"The declaration of the accused Goldam Toto has instead convinced the Court of his participation in the crime. He admitted that he saw the accused Usman, Saham Muldam, Sakam Muldam and Ujaman in Maligue, the place where the accused planned and started on their venture. He was allegedly called by Usman Muldam and invited to join them in the robbery. By his own declaration, it was a fact that Usman and he were not in good terms. Why should Usman call him then? If he were an enemy of Usman, why should he go near him and approach the group? Is it logical for a group of persons planning a robbery to confide to a non-participant, an enemy no less and particularly one who refuses to join them, to thus reveal their plans, even before the deed were accomplished? The accused Goldam Toto had every opportunity to join the accused and we are convinced that he did thus participate in the crime charged." (Decision, pages 12-13)

The dispositive portion of the decision under review decrees the following:

"WHEREFORE, the Court finds the accused, Tanjalali Gajali alias Tanja and Goldam Toto, guilty beyond reasonable doubt of the crime of robbery with homicide as described in the aforequoted information. While the aid of more than four (4) armed persons to insure or afford impunity in the commission of the crime may be considered as an aggravating circumstance as against the accused, the fact that the accused are illiterate Moslems, Section 106 of the Administrative Code of Mindanao and Sulu may be invoked in their favor to mitigate the crime. The accused Tanjalali and Goldam Toto should therefore be, as they are, hereby sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties of the law, and to pay the costs; to indemnify the heirs of Esteban Maningo in the sum of P6,000.00 and to return to Basilisa Vda. de Maningo the articles robbed from her as enumerated in the information or to reimburse the value thereof in the sum of P5,295.00.

"The Court further finds the accused, Tanjalali Gajali alias Tanja and Goldam Toto, guilty likewise of the crime of frustrated homicide as described in the aforequoted information. They should be, as they are, hereby sentenced to the indeterminate penalty of from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as minimum, to TEN (10) YEARS of prision mayor, as maximum, with the accessory penalties of the law; and to indemnify Epifanio Maquilan in the sum of P2,000.00."

Certain errors, legal in nature, in the foregoing dispositive portion of the decision need to be corrected.

The amount of indemnification to the heirs of Esteban Maningo should be increased to P12,000.00. [18] This sum of P12,000.00, the reimbursable value of the money and articles robbed in the amount of P5,295.00, and the indemnification to Epifanio Maquilan for his injuries in the sum of P2,000.00 should be joint and several liabilities of the herein appellants, in view of the presence of conspiracy.[19]

WHEREFORE, with the foregoing modification, the decision under review is hereby affirmed, with costs against the appellant, Tanjalali Gajali.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Antonio, and Esguerra, JJ., concur.

Makasiar, J., took no part.

[1] Certificate of Arraignment, Criminal Case Record Wrapper, page 31.

[2] According to the decision under review, "Usman Muldam was shot and killed in an encounter with PC authorities". (On page 4)

[3] T.s.n., pages 5-30, 39 -- Manzanaris.

[4] T.s.n., pages 78-94 -- Manzanaris; pages 2-12- Faustino.

[5] T.s.n., pages 164-179 - Manzanaris; Exhibit "D".

[6] T.s.n., pages 44-51 Faustino.

[7] Exhibits "A" & "B"; t.s.n., pages 2-44 Faustino.

[8] T.s.n., pages 30-46, Manzanaris.

[9] T.s.n., page 79, Manzanaris.

[10] T.s.n., page 120, Manzanaris.

[11] T.s.n., pages 6-8, Faustino.

[12] T.s.n., page 33, Faustino.

[13] T.s.n., page 9, Manzanaris.

[14] T.s.n.. page 51, Faustino.

[15] T.s.n., page 63, Faustino.

[16] T.s.n., pages 367-397, Manzanaris.

[17] T.s.n., pages 370-371, Manzanaris.

[18] People vs. Pantoja, L-18793, 11 October 1968, 25 SCRA 468.

[19] People vs. Lumantas, L-28355, 17 July 1969, 28 SCRA 764.

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