

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CIRILO ESTANTE, JR., ET AL., DEFENDANTS, CIRILO ESTANTE, JR.,
DEFENDANT-APPELLANT.**

G.R. No. L-30354. July 30, 1979

Ponente: DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/209224865b0b/>

DE CASTRO, J.:

Cirilo Estante, Jr. is one of four persons charged with robbery with homicide in the Court of First Instance of Iloilo. Only two were convicted; namely, Cirilo Estante, Jr. who was meted the death penalty, and Cesar Montaña who was sentenced to reclusion perpetua. Delfin Destuir was acquitted, while Rogito Leyso jumped bail before the prosecution rested, and has not yet been brought back to trial.

The death sentence of Cirilo Estante, Jr. (hereinafter referred to as appellant) is before this Court for automatic review.

Appellant's main defense in the trial court was alibi, and corrolarily thereto, that he had not been sufficiently identified as one of the participis criminis. He, therefore, does not dispute the facts as established by the evidence of the prosecution, except only to deny that the acts imputed to him in the narration of the details of the commission of the crime were his acts, in line with his aforementioned defense. The recital of the facts in the People's Brief may, therefore, be quoted, and on the basis thereof, the veracity of appellant's defense will be properly evaluated. Thus:

"At about 10:00 o'clock in the morning of June 12, 1967, the deceased Vicente Forro and his wife Lydia Forro, boarded a passenger bus, Mercedes-Benz No. 56, at Iloilo City, bound for their hometown, Janiuay, and seated themselves behind the driver, Miguel Argente (pp. 2, 4, 18, t.s.n., Pagunsan; pp. 2, 3, t.s.n., Nobleza; pp. 5, 6, 12, 16, 22, t.s.n., Tabares). Along the way, at about 11:00 o'clock that same morning, at Gines Patag, Cabatuan, Iloilo, the appellant Cirilo Estante, Jr., alias Jimmy, who was at the roadside, signalled the bus to stop (pp. 2, 3, 9, 13, t.s.n., Pagunsan; pp. 3, 4, 12, t.s.n., Nobleza; pp. 6, 17, t.s.n., Tabares). The bus stopped (p. 3, t.s.n., Pagunsan; p. 5, t.s.n., Nobleza; p. 7, t.s.n., Tabares). The appellant then posted himself in front of the bus, aimed his revolver at the driver, and said, "This is a holdup" (pp. 3, 4, t.s.n., Pagunsan; pp. 4-6, t.s.n., Nobleza; pp. 7, 22, 29, t.s.n., Tabares). Simultaneously, the accused Cesar Montaña sprang out from a bamboo grove, approached the left side of the bus, and aimed his pugak-hang, a home-made gun, at the passengers (pp. 5, 22, t.s.n., Nobleza; pp. 8, 9, 26, 30, 31, t.s.n., Tabares). At that same time, the accused Rogito Leyso and Delfin Destuir, also sprang out from bushes of agoho trees on the right, approached the bus, and aimed their guns at the passengers (pp. 5, 6, t.s.n., Nobleza; pp. 9, 10, 30, 31, t.s.n., Tabares). The appellant then went to the door on the right side of the bus, boarded it, and said, "If you have the money give them all to us so that nobody will get killed" (pp. 4, 5, t.s.n., Pagunsan; pp. 5, 6, t.s.n., Nobleza; pp. 18, 30, 31, t.s.n., Tabares). After that terse announcement, the appellant, with his left hand collected from the conductor and passengers their money, wrist watches, rings and necklaces, while his right hand held his gun (pp. 5, 8, 12, 13, t.s.n., Tabares). From Lydia Forro, the appellant took a solitaire worth P85.00 (p. 8, t.s.n., Pagunsan; p. 12, t.s.n., Tabares), and from the deceased the amount of P25.00 (p. 5, t.s.n., Pagunsan; p. 7, t.s.n., Tabares). The appellant also felt the waist of

the deceased, and finding a revolver, took it (pp. 5, 6, 17, t.s.n., Pagunsan; pp. 8, 9, t.s.n., Nobleza). While the appellant was thus collecting the loot, his aforesaid three cohorts stood about the bus with their pugak-hangs aimed at the passengers (p. 11, t.s.n., Nobleza; p. 10, t.s.n., Tabares).

"After taking the revolver of the deceased, the appellant alighted but turned about, and with one foot on the running board and the other on the ground, shot the deceased inside the bus, hitting him on the right temple (pp. 6, 7, t.s.n., Pagunsan; p. 10, t.s.n., Tabares). After shooting the deceased, the appellant ran away into the bushes of agoho trees, followed by his said cohorts (Exhs. F, F-1 to F-3, pp. 393-396, rec.; p. 8, t.s.n., Pagunsan; p. 10, t.s.n., Nobleza). The shooting of the deceased shocked his wife Lydia, and she screamed (p. 8, t.s.n., Pagunsan; p. 11, t.s.n., Nobleza; p. 14, t.s.n., Tabares).

"The bus then continued on its way to Janiuay, whereat the deceased was brought to the clinic of Dr. Rosendo Catedral, who gave him emergency treatment, then rushed him to the Iloilo Mission Hospital, at Iloilo City (pp. 6, 7, 17, t.s.n., Pagunsan; pp. 11, 163-168, t.s.n., Nobleza). The deceased died that same day at said hospital (Exhs. B, C, pp. 8, 13, rec.).

"Dr. Mariano D. Torre Franca, Rural Health Officer of Zarraga, Iloilo, autopsied the body of the deceased on June 13, 1967, at the Funeraria Sola Mia, at Janiuay, Iloilo, after which he submitted a report of his findings, viz:

'POSTMORTEM FINDINGS. Deceased naked on the autopsy table with rigor mortis.

'1. Gunshot wound, right temporal oval, 1.5 cm. by 0.5 cm., 7.5 cms. above the right external auditory meatus, but 19 cms. from chin; transverse measurement bigger than perpendicular measurement, with no exit on the skull; hemorrhage over the right side of the scalp; perforation of the brain substance, right lateral hemisphere, where the slug was recovered in the right occipital region, 3.5 cms. above the external occipital protuberance with bone indentation.

'CAUSE OF DEATH: Shock and hemorrhage secondary to gunshot wound of the right temporal region, and perforation of brain substance, right lateral hemisphere.'

Exhs. C, D, E, pp. 8, 9, 211, rec.; pp. 9-13, t.s.n., Pagunsan; p. 33, t.s.n., Nobleza).

"The PC and the police of Cabatuan investigated the incident (Exhs. F, F-1 to F-3, pp. 393-396, rec.; pp. 14, 19-20, t.s.n., Pagunsan; pp. 168-174, t.s.n., Nobleza; pp. 24, 27, 28, 32-37, t.s.n., Tabares).

"The total loot taken, including the revolver of the deceased, amounted to P1,506.00 (Exh. A, p. 210, rec.; p. 6, t.s.n., Pagunsan; p. 32, t.s.n., Nobleza; pp. 71, 72, rec.)."[1]

In pleading his defense of alibi, appellant denies being the person pointed to by the state witnesses as having given the signal to the bus to stop, collected cash and other valuables from the passengers, particularly from the spouses, Vicente Forro and Lydia Forro, including a revolver which he grabbed from Vicente Forro's waist, and shot to death the latter after divesting him of his firearm. He contends, in his lone assignment of error,[2] that his identity as the villain that he had been so portrayed has not been established to warrant his conviction.

It is now firmly established in our jurisprudence, by a long line of decisions, that alibi is unavailing once the accused is positively identified by one without motive to charge falsely said accused, specially with a grave offense that could bring death by execution on the culprit. Appellant having been identified by three prosecution witnesses as having had not only participation but the leading role in the commission of the dastardly crime, We have only to examine and scrutinize the testimony of said witnesses for truth and veracity to assess the worth of appellant's alibi. The latter's efforts have, in fact, been directed mainly, if not solely, at an attempt to show the lack of trustworthiness of his identification by the prosecution witnesses.

Thus, appellant tries to discredit the testimony of Lydia Forro by showing supposedly glaring and irreconcilable contradictions between her sworn statement during the preliminary investigation conducted on June 19, 1967, and her affidavit executed on June 17, 1967. He quotes from the first statement before the Municipal Judge, the following:

"7. Q - Can you recognize those persons who went up the bus?

A - I cannot recognize them but the one who shot Vicente Forro was wearing a mask, slender in built with stooping posture."[3]

From her affidavit, appellant also quotes the following:

"that while we were near Km. 30 at Tigbuan Road we were held up by six persons armed with guns whose appearance I could identify if I have the chance to see them again. That one person took TWENTY FIVE PESOS (P25.00), from my husband and a ring from me worth EIGHTY FIVE PESOS (P85.00). That after he took those from us they grabbed the .38 Cal. Revolver of my husband and after taking it by force one person shot my husband and he was hit on the right side of his head which cause the death of my husband."[4]

First of all, appellant calls attention to the fact that what was marked as Exhibits 1 and 1-A for appellant is not the affidavit of July 17, 1967, but the sworn statement during the preliminary investigation of June 19, 1967. He, therefore, charged the trial court with error in considering the affidavit as the evidence offered by appellant and marked Exhibits 1 and 1-A, instead of the sworn statement given during the preliminary investigation, and citing in its decision what was stated in the affidavit, not what was stated in the sworn statement above referred to.

What appellant seems to have overlooked is that Lydia Forro, testifying as a witness for the defense, identified and affirmed her affidavit.[5] In said affidavit, she declared that she could identify the appearance of the hold uppers "if I have the chance to see them again," as she did actually identify and point to the appellant during the investigation by the police and during the trial.[6] As a defense witness, she also testified that she saw the face of the person who shot her husband, because the former was not wearing a mask. She pointed at appellant as the gunwielder.[7] Presented as a defense witness, Lydia's testimony as such may not be repudiated by appellant, for he is supposed to vouch for the credibility of any witnesses he offers.

Aside from Lydia Forro, two other passengers of the bus, Juan Aldabon and Servillano Compañia, both of whom knew appellant, specially the first of these two witnesses who had known appellant for quite a long time, identified appellant as the one who signalled the bus to stop, pointing a revolver at the driver, collected cash and other valuables from the passengers, took forcibly the gun of Vicente Forro, and shot the latter.[8] Significantly, appellant did not take the witness stand to refute the positive identification of him as one of the four armed participants in the commission of the crime, with the most heinous act of them all, that of shooting a man in coldblood, a clear act of treachery. Band and treachery were thus present to aggravate the crime committed, as found by the court a quo.

With appellant having been so positively identified as the actual killer of the deceased by witnesses not shown to have any improper motive to charge him falsely with so grave an offense as that with which he was indicted, his defense of alibi is totally shattered.[9] His claim of being in Sta. Barbara in the morning of June 12, 1967 when the crime was committed towards noon of that day cannot fortify his alibi, considering that the distance of only about 13 kilometers to the scene of the crime, as admitted by defense witness Nicolas Camora,[10] can easily be negotiated by a motor vehicle ride, in time for appellant to be at the scene, and during the commission of the crime at bar.[11]

WHEREFORE, the Court is constrained to affirm, as it hereby affirms, the judgment of conviction appealed from.

However, for lack of the necessary votes, the death penalty imposed therein is hereby reduced to reclusion perpetua, with costs.

SO ORDERED.

Fernando, C.J., Teehankee, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.
 Barredo and Makasiar, JJ., concur with the concurring opinion of JJ. Aquino and Abad Santos.
 Concepcion, Jr., J., votes for the penalty of reclusion perpetua.
 Antonio, J., no part.
 Santos, J., on official leave.

[1] Pages 2-5, Appellee's Brief.

[2] Page 8, Appellant's Brief.

[3] Page 62, Rollo.

[4] Page 63, Rollo.

[5] Exhibit 1, Page 5, Record; pp. 35-41, t.s.n., Nobleza.

[6] Pages 4, 14, 15, t.s.n., Pagunsan.

[7] Pages 37, 38, t.s.n., Nobleza.

[8] The testimony of Juan Aldabon is found on pages 2-17, t.s.n., Nobleza; that of Servillano Compañá, pp. 5, 6, 7, 13, 14, 15, 17, 18, and 39, Tabares.

[9] People vs. Tizon, 66 SCRA 372; People vs. Moises, 66 SCRA 151; People vs. Barut, L-4266, March 13, 1979; People vs. Artieda, L-38725, May 15, 1979.

[10] Page 108, t.s.n., Nobleza.

[11] People vs. De Villa, 16 SCRA 419.

Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */
 table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0;
 mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in;
 mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New
 Roman";}

SEPARATE OPINION

ABAD SANTOS, J.:

The Court a quo found "that the commission of the crime charged herein was attended by several aggravating circumstances having been committed by a band with the use of unlicensed firearms thereby violating another law and stopping a public vehicle in an uninhabited place. Another circumstance is treachery when one of their victims was shot on his right temple resulting into his death (People vs. Bautil, et al., G.R. No. L-18997, Jan. 31, 1966, Advance Decision)." But I do not believe that this is supported by the evidence.

(a) Band. Although it is alleged that all four defendants were armed, yet one of them, Delfin Destuir was acquitted. This leaves only three of the defendants. But a band is defined as more than three armed malefactors (Art. 14, par. 6, R.P.C.) The resulting number, therefore, falls short of the definition.

(b) Uninhabited place. The record is bereft of any evidence to show that the situs of the crime was an uninhabited place.

(c) Treachery. The mere act of shooting a person does not constitute treachery. In such a case the mode of attack, among other factors, must be consciously adopted. There is no such evidence in this case. (People vs. Tumaob, 83 Phil. 742; People vs. Saez, 1 SCRA 937; People vs. Abalos, 84 Phil. 771)

For the above reasons, I believe the appropriate penalty is reclusion perpetua.

Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:{behavior:url(#ieooui) } /* Style Definitions */
table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0;
mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in;
mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New
Roman";}

CONCURRING AND DISSENTING OPINION

AQUINO, J.:

I concur in the judgment convicting Cirilo Estante, Jr. of robbery with homicide but I dissent as to the imposition of the death penalty.

I concur in the opinion of Justice Abad Santos that the imposable penalty is reclusion perpetua because the aggravating circumstances of treachery, band, and desoblado were not proven.

In this case, the robbery with homicide, which is punished by reclusion perpetua to death, was not attended by any mitigating and aggravating circumstances. Consequently, the lesser penalty should be imposed (Arts. 63[2] and 294[1], Revised Penal Code).

In the two briefs filed for Cirilo Estante, Jr., the principal argument of his two lawyers is that he was not identified with certitude as the person who shot the victim, Vicente Forro.

The victim's wife, Lydia Mallada Forro, in her affidavit declared that she would be able to identify the person who shot her husband if she saw him again (Exh. 1-Estante, p. 3, Record).

However, at the preliminary examination conducted by the municipal judge, she declared that she could not recognize the persons who held up the bus and that the malefactor who shot her husband was wearing a mask (Exh. 2-Estante, p. 18, Record).

Cirilo Montaño, in his statement to the police, did not implicate Estante in the robbery with homicide (Exh. F).

At the trial, three eyewitnesses, Lydia M. Forro, Juan Aldabon and Serviliano Campania, all bus passengers, identified Estante as the gunwielder who robbed and shot Vicente Forro.

When Aldabon testified at the preliminary examination, he declared that Estante, alias Jimmy, got the revolver of Vicente Forro and with his (Estante's) revolver shot Forro (pp. 11-12, Record).

Lydia M. Forro was called by the defense as a hostile witness and was confronted with the statement in her

affidavit that the person who shot her husband was wearing a mask. Mrs. Forro categorically declared that that statement in her affidavit was a mistake (37 tsn January 30, 1968).

She said that the person who shot her husband was not wearing a mask. She clarified that when she signed her statement given at the preliminary examination, she did not read it (37, 39-40, January 30, 1968).

The complicity of Estante in the robbery with homicide (in fact, he was the author of that crime) was proven beyond reasonable doubt.

Estante did not testify to refute the testimonies of Mrs. Forro, Aldabon and Campania. To prove his alibi, Estante presented a witness who declared that he (Estante) was in the plaza of Sta. Barbara, Iloilo when the shooting at Barrio Gines Patag, Cabatuan, Iloilo occurred.

Another witness, Vicente Ramos, testified that he was a passenger in the bus that was held up and that Estante was not among the group of malefactors who robbed the passengers.

The trial court held that Estante's alibi was a pure fabrication. Estante's lawyers did not even bother to discuss his defense of alibi in their briefs.

However, the evidence of the prosecution does not establish the aggravating circumstances of band, treachery and despoblado.

In the information, band and abuse of superiority were alleged. Treachery and despoblado were not alleged. As correctly rationalized by Justice Abad Santos, band, despoblado and treachery cannot be appreciated in this case.

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.