

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO I. TORRES @ PANG-AE, JOHN DOE AND PETER DOE, ACCUSED. DANILO I. TORRES @ PANG-AE, ACCUSED-APPELLANT.

G.R. No. 130661. June 27, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] rendered on June 20, 1997, by the Regional Trial Court of Kalibo, Aklan, Branch 3, in Criminal Case No. 4843 finding appellant Danilo Torres guilty of the crime of robbery with homicide.

In an information dated January 7, 1997, Assistant Provincial Prosecutor Mirazol Avila-Legaspi charged appellant with robbery with homicide allegedly committed as follows:

That on or about the 21st day of November, 1996, in the morning, in the highway of Barangay Torralba, Municipality of Banga, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another while in camouflage fatigue uniform and while armed with guns, by means of force and violence, and with intent of gain and without the consent of the owner thereof, did then and there wilfully, unlawfully and feloniously take, steal, rob and carry away the following:

Cash money - P500,000.00, more or less;
One (1) gold ring worth - P10,000.00;
One (1) gold necklace worth - P15,000.00;
One (1) gold plated wrist-watch worth - P5,000.00

in the total amount of FIVE HUNDRED THIRTY THOUSAND (P530,000.00) PESOS, more or less, belonging to LORENZO A. ISAGAN, JR. to the damage and prejudice of the owner in the aforesaid amount; that by reason or on the occasion of said robbery, and for the purpose of enabling the accused to take, steal and carry away the aforesaid items, the above-named accused with intent to kill, and conspiring with one another, did then and there wilfully, unlawfully and feloniously, and with evident premeditation and treachery stopped the truck being driven by the said LORENZO A. ISAGAN, JR. and, thereafter, attack, assault and shot LORENZO A. ISAGAN, JR., thereby inflicting upon him mortal wounds, to wit:

x x x

That as a result of the criminal acts of the accused the heirs of the victim suffered actual and compensatory damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS.

CONTRARY TO LAW.[2]

Upon arraignment, Torres entered a plea of not guilty to the charge. Thereafter, trial on the merits ensued.

The facts as presented by the prosecution to the trial court are as follows:

Witness MACKY GALANAO was employed as laborer of Lorenzo A. Isagan, Jr. [aka Boloy, victim herein] since 1992. On November 21, 1996 he reported for work at 6:00 o'clock in the morning at the house of Isagan. He worked in the trucking operation loading copras and abaca. The truck went towards Libacao driven by Isagan. His other companions in the truck were Vicente Galanao, his father, Julian Galanao, his younger brother and Jose Lumio. They did not reach Libacao because a person stopped them in Torralba, Banga, Aklan. That person approached them near the left side of the truck, went up the stepboard of the truck near the door and shot Boloy Isagan once. The truck moved backward about fifteen (15) meters away from the spot where it originally stopped. Then it stopped moving because its tire struck the canal. After the gun burst, two (2) other persons appeared on the scene. One man ran towards them and said "Dapa" (face down) and they obeyed. The men opened the door of the truck. The witness was inside the truck face down so he did not know what the men were doing. After five minutes the men left the truck going towards the mountain. Then Jose Lumio shouted "Nong Boloy, Nong Boloy". The witness also jumped out of the truck and seeing the lifeless body of Boloy he ran towards Torralba with Julian Galanao in order to ask help from Emie Isagan, brother of Boloy who lived there. When he told Emie that Boloy was dead, Emie rode in his truck and went to the crime scene with them. Then they proceeded to the Banga Police Station where they reported that Boloy Isagan was dead. After that, they returned to the crime scene. The witness stated that the man who stopped the truck was dressed in fatigue and he was hiding something. But when he came nearer the witness saw that he had a long firearm. The two (2) companions who later came out were also dressed in fatigue, one armed with a short arm, and the other with a long arm. The witness was four (4) meters away from the man who shot Boloy Isagan who was alone in the front of the truck while his four (4) laborers were at the back of the truck. The following day, they were investigated by the police concerning the incident in the police station of Banga. One week later, they were shown pictures (Exhs. "F" to "F-4") of the suspects in this case by the investigators and from the pictures they recognized the man shown in Exh. "F" as the one who waylaid and shot Boloy Isagan. That man was Danilo Torres, the one who stopped the truck. On the way to Libacao, Boloy Isagan carried a blue bag. The witness did not know the contents of the bag. When he and Emie returned to the truck, the bag was no longer there. He saw the three (3) men carrying that bag when they left going towards the mountain. As he lay flat, inside the truck marked "X" in Exh. "D-3," he tilted his head to the side trying to peep at the direction of the persons going to the mountains. The truck was stopped before they reached the barangay proper and the person who stopped the truck was about four (4) meters away from the edge of the side of the road. He did not see the man carrying anything as he used his left hand in making a sign to stop the truck while his other hand was at his side away from the witness. Boloy Isagan stopped the truck. The witness saw the man as he was standing inside the truck, his head was over the roof. He was at the left side of the truck going to Libacao while the man was at the right side of the road going to Libacao.[3]

Further, the prosecution's version of the killing as summarized by the trial court shows that:

Witness VICENTE GALANAO is a laborer and has stayed in the house of Boloy Isagan in Linabuan Norte for a month now. He started living there about three years ago. On November 21, 1996 he reported for work at 6:00 o'clock in the morning and went to Libacao with Boloy Isagan, his sons Julian and Macky and Jose riding in the back of the truck driven by Boloy. Their purpose was to buy copra and abaca. They did not reach Libacao because in the middle of Barangay Torralba they were stopped by a person who stood at the left side of the road. That man approached the left side of the truck, went up the truck, and shot Boloy once. After shooting, two persons appeared from nowhere and approached the back of the truck and told them to lie face downward. The two persons came from the portion where bamboos grew by the side of the road. The one who shot Boloy had a firearm about 12½ inches long. One companion was armed with a short gun and the other a long gun. They heard the sound of the side door open and afterwards the men ran towards the mountainside. The witness and his companions did not do anything. Macky and Julian went to seek help from Emie, while Jose went back towards the direction of Banga. He remained at the scene, went down the truck and just stood by its side. About five minutes after his companions left, some persons arrived. Later policemen came. They were investigated by the policemen of Banga on November 22 the morning following the incident. When the men stopped the truck the witness was at the left side of the truck. On the right side was Julian. The witness

noticed that the man was dressed in T-shirt and he recognized him to be the accused Danilo Torres.[4]

The body of the victim was later brought to Dr. Rafael Tumbokon Memorial Hospital in Kalibo, Aklan. Dr. Edmundo Reloj, Provincial Health Officer, conducted a post mortem examination on the victim and found the deceased had nine (9) gunshot wounds on the left side of the neck. He declared that the cause of Isagan's death is hemorrhagic shock secondary to multiple gunshot wounds of the left neck.[5]

The following day, PO3 Pedro Jerry Icaay invited the four helpers of Isagan to the police station to shed light on the incident. However, the four could not positively describe the culprits. On follow-up investigation, the police gathered photo files and again summoned the four helpers to the station. At first, they could not identify possible suspects from the pictures. But in the last picture, they identified a suspect who was later known as Danilo I. Torres, appellant herein. The witnesses' sworn statement and complaint were filed before the prosecutor's office.[6]

Only Torres was apprehended while the two other accused remained at large. Torres claimed that he was somewhere else during the incident. His defense's version of the incident at bar is as follows:

DANILO TORRES denied committing the crime charged because he was a resident of Bohol with his wife when the incident happened. They have a marriage contract but it was taken from him by a certain policeman in Banga. He usually came home to Aklan every month of May to attend the fiesta. This year he came home on May 3. Reaching his house, his mother told him that there was a warrant of arrest issued against him and he was surprised why he was implicated in the crime when he was in Bohol at the time. He asked her why she did not send him a letter when she knew of the case against him but she said she did not send back the subpoena and just kept it because Danilo was not there at the time. He wanted to proceed to Malinao and inquire about the case because it was a serious one but he was not able to proceed because it was a Saturday. He was apprehended on Monday, May 5, at the dance hall. He asked why he was apprehended when he was innocent but they informed him that there was a warrant of arrest for the killing of Isagan and he told them that he had no knowledge of the incident. The accused and Porferio Cosmo helped each other in tilling their farms. In November they tilled their farms. On November 21 they weeded. This May he did not bring his wife here because it was hard to travel. The accused denied the testimony of Florephiz Palmon who alleged that he saw the accused with companions in Polocate because he was not here (sic) at that time. There are other persons who had similar appearance like him and he insisted that he is innocent of this case, whatever they will do to him.[7]

Other witnesses were presented to bolster the version of the defense. Lolita Fuentes, Porferio Cosmo and Elizabeth Torres corroborated the testimony of appellant.

The court found Torres guilty as charged.

Expectedly, Torres readily filed his notice of appeal, albeit mistakenly directed to the Court of Appeals. The trial court, nonetheless, elevated the records of this case to this court despite appellant's choice of court in the notice of appeal. In the interest of justice, the error committed by the counsel of the appellant need not deter us from deciding the appeal on the merits. The rule requiring a party to specify the court to which the appeal is being made is merely directory. An error in the court to which an appeal is made is not fatal to the appeal.[8]

In his brief, appellant assigns the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT ACCUSED-APPELLANT WAS POSITIVELY IDENTIFIED AS ONE OF THOSE WHO COMMITTED THE CRIME CHARGED.

II

THE TRIAL COURT UTTERLY FAILED TO FIND THAT THE ROBBERY ASPECT OF THE CRIME CHARGED WAS NOT DULY PROVEN BY THE PROSECUTION.

III

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE AND IN NOT ACQUITTING HIM OF THE CRIME CHARGED.[9]

The primary issue for resolution concerns the credibility of the prosecution and defense witnesses. Secondly, we must also determine whether all the elements of robbery with homicide were proven beyond reasonable doubt.

One of the highly revered dicta in our jurisdiction is that this Court will not interfere with the judgment of the trial court in passing on the credibility of opposing witnesses unless there appear in the record some facts or circumstances of weight and influence that have been overlooked which, if considered, will affect the result of the case. The reason is founded on practical considerations. The trial judge is in a better position to decide questions of credibility since he has personally heard the witnesses and observed their deportment and manner of testifying. Nevertheless, in view of the gravity of the charge and the penalty imposed, we spared no effort to meticulously review the evidence and we are convinced that the trial court had not overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have materially affected the outcome of the case.

In our view, appellant was positively and convincingly identified by Macky and Vicente Galanao. They were standing at the left side of the truck, just behind the driver's seat where the victim was. The roof of the truck was low and so their view of the road in front of the vehicle was unhampered. They were just four meters away from the assailant and the crime was committed in broad daylight. During trial, Macky and Vicente Galanao positively identified appellant as the same person who stopped the truck and shot the victim.[10] Their failure to immediately describe the appearance of the culprits the day following the shooting is understandable. After witnessing the killing of their employer right before their eyes, they were still in shock during the initial investigation the next day. Nevertheless, a week later, when they were shown several pictures of suspects, they recognized the appellant as the man in one picture (Exh. "F-4").

Likewise, there is nothing in the record to show that Macky and Vicente were moved by evil intent to impute the crime on appellant, thus there is the presumption that they were not so actuated and their testimonies are entitled to full faith and credit.[11] Further, we have ruled that where the conditions of visibility are favorable and the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should be accepted.[12]

Now, regarding the alleged inconsistency in the testimonies of prosecution witnesses. Admittedly, Macky declared that appellant was in fatigue outfit while Vicente testified that he was in T-shirt. But this discrepancy is understandable. The crime was executed swiftly for the startled witnesses to remember accurately details in the clothing of the culprits.

Appellant also cites that the testimonies of Macky and Vicente that the victim was shot only once, did not conform with the autopsy report that the victim sustained multiple gunshot wounds. They testified they heard the first volley of gunfire from the assailant's firearm. In our view, their failure to accurately recall the number of gunshots is understandable. Under such scary condition, ordinary men with their own lives under threat, are not expected to count gunshots. Besides, it does not follow that the number of shots would correspond to the number of gunshot wounds. What is material is that they saw appellant shot the victim.

Robbery with homicide is a special complex crime against property. Homicide is incidental to the robbery which is the main purpose of the criminal. In charging robbery with homicide, the onus probandi is to establish: (a) the

taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with animus lucrandi; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is used in the generic sense, was committed.[13] The phrase “by reason” covers homicide committed before or after the taking of personal property of another, as long as the motive of the offender in killing a person before the robbery is to deprive the victim of his personal property which is sought to be accomplished by eliminating an obstacle or opposition or in killing a person after the robbery to do away with a witness or to defend the possession of the stolen property.[14] Thus, it matters not that the victim was killed prior to the taking of the personal properties of the victim. What is essential in robbery with homicide is that there be a direct relation and intimate connection between robbery and killing, whether both crimes be committed at the same time.[15]

The foregoing elements are present in this case. Roselyn Isagan, the victim’s wife, testified that before her husband left their house for his routine business trip, he counted the money amounting to P500,000.00 and then placed it in his bag. Her husband brought that amount because it was market day and would use the money in buying copra and abaca. In addition, her husband wore a necklace, a ring and a wristwatch when he left for the trip.[16]

Galanao categorically stated that after their employer was shot, he saw the culprits flee with the victim’s bag. He and his co-workers were ordered to face down, apparently, in order not to witness the incident. They were not harmed. On the other hand, after flagging down the truck, appellant immediately shot the victim, facilitating the taking of valuables from the latter. While the prosecution witnesses did not categorically state that they saw the accused divest the victim of his property, the victim’s purse containing the money and the pieces of jewelry were missing from his body. As the trial court observed, there is no other known motive for the killing. From these circumstances, the logical conclusion would be that the victim was killed to rob him of valuables.

Appellant’s alibi must also fail. He insists that he was in Catigbian, Bohol working in the farm during the incident. This was corroborated by Elizabeth Torres, his wife; Lolita Fuentes, landlady of appellant’s parents; and Porferio Cosmo, a neighbor of appellant.[17] It is settled that where alibi is established only by the accused, his relatives and associates, such defense deserves scant consideration especially so in the face of affirmative testimony of credible prosecution witnesses as in this case.[18]

The penalty for robbery with homicide is reclusion perpetua to death. There being no evidence of aggravating or mitigating circumstances against or in favor of appellant, the lower of the two indivisible penalties shall be imposed, without the benefit of the Indeterminate Sentence Law.

WHEREFORE, the assailed decision of the Regional Trial Court of Kalibo, Aklan, Branch 3, in Criminal Case No. 4843, dated June 20, 1997, finding appellant, **DANILO TORRES Y IRADIEL**, guilty of **ROBBERY WITH HOMICIDE** as charged; sentencing him to suffer the penalty of **RECLUSION PERPETUA**; ordering him to restitute one (1) gold necklace, one (1) gold ring and one (1) gold-plated wristwatch or their equivalent value of P30,000.00 if restoration can not be made, and the cash amount of P500,000.00 taken from the victim, **Lorenzo A. Isagan, Jr.**, is **AFFIRMED WITH MODIFICATION** that P50,000.00 is hereby awarded to the heirs of the victim not as actual or compensatory damages but as indemnity for wrongful death, conformably with current jurisprudence.

Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

- [1] Rollo, pp. 16-29.
- [2] Id. at 6-7.
- [3] Id. at 62-63.
- [4] Id. at 63-64.
- [5] RTC Records, p. 4; TSN, May 21, 1997, pp. 4-8.
- [6] TSN, May 26, 1997, pp. 2-9.
- [7] Rollo, p. 68.
- [8] Valerio vs. Tan, etc., et al., 97 Phil 558, 560 (1955).
- [9] Rollo, p. 41.
- [10] TSN, May 26, 1997, pp. 18 and 31.
- [11] People vs. Abdul, 310 SCRA 246, 265 (1999).
- [12] People vs. Cogonon, 262 SCRA 693, 703 (1996).
- [13] People vs. Salas, 327 SCRA 319, 333 (2000).
- [14] People vs. Sanchez, 298 SCRA 48, 58 (1998).
- [15] People vs. Cando, GR-128114, October 25, 2000, p. 14.
- [16] TSN, May 27, 1997, pp. 13-14.
- [17] TSN, June 10, 1997, p. 4; TSN, June 9, 1997, p. 12.
- [18] People vs. Badon, 308 SCRA 175, 188 (1999).

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