

## FIRST DIVISION

[ G.R. No. 122109, June 25, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JESUS TORIO,  
APPELLANT.**

### DECISION

**AZCUNA, J.:**

For review is the decision<sup>[1]</sup> of the Regional Trial Court of Pangasinan, Branch 38, in Criminal Cases Nos. L-5188 and L-5189, finding herein appellant, Jesus Torio, alias "Tigno," guilty of murder and illegal possession of firearm and ammunition.

On October 25, 1994, two (2) informations against appellant were filed:

*Criminal Case No. L-5188*

That on or about the 12<sup>th</sup> day of August 1994 in the evening, in barangay Bolaoen, municipality of Bugallon, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a long firearm, with intent to kill and with treachery, did the[n] and there, willfully, unlawfully and feloniously attack, shoot and hit Brgy. Capt. Ramon Paulo, inflicting upon him the following injuries:

Gunshot wounds:

1. ENTRANCE: irregular, edges inverted, also modified by incision and fracture of the bone, occipital area, 17.0 cms. directed forwards, upwards and to the left, involving the skin and underlying soft tissues, fracturing the occipital bones into 2 halves, into the cranial cavity, ploughing through the occipital and parietal lobes of the left brain, shattering the temporo-parietal bone and subsequently making an EXIT; 20.0 cms. X 18.0 cms. irregular at the left side of the ear, where brain tissues also eviscerated.
2. ENTRANCE: 0.8 cms. X 0.6 cms. ovaloid, edges inverted, chest, posterior, level of the 2<sup>nd</sup> ICS, subscapular line, left, 34.0 cms. above the left heel and 13.0 cms. from the posterior median line, directed forwards and downwards, involving the skin and underlying soft tissues, into the left thoracic cavity, puncturing the upper lobe of the left lung, fracturing the 2<sup>nd</sup> rib, left and finally making an EXIT; 1.0 cm. x 1.0

cm. irregular, edges everted, at the anterior chest wall, left, level of the 2<sup>nd</sup> ICS, anterior axillary line, 129.0 cms. above the left heel and 13.0 cms. from the anterior median line.

3. ENTRANCE: 0.9 cms. X 0.5 cms. ovaloid, edges inverted, Chest, posterior, level of the 9<sup>th</sup> ICS, posterior axillary line, left, 133.0 cms. above the left heel, and 19.0 cms. from the posterior median line, directed forwards, downwards and medially, involving the skin and underlying soft tissues, into the left thoracic cavity, nicking the lower lobe of the left lung, bursting the diaphragm, into the abdominal cavity, lacerating the stomach and finally making an EXIT; 1.0 cm. x 1.0 cm. anterior abdominal wall, left, 103.0 cms. above the left heel and 17.0 cms. from the anterior median line.

4. ENTRANCE: 0.7 cms. X 0.6 cms. ovaloid, edges inverted, buttocks, left, 97.0 cms. above the left heel, and 15.0 cms. from the posterior median line, directed forward, involving the skin and underlying soft tissues, punching a hole thru the hip bone, left, into the abdominal cavity, nicking a part of the small intestine and finally making an EXIT; 1.0 cm. x 1.0 cm. lumbar area, left, 97.0 cms. above the left heel and 15.0 cms. from the anterior median line.

5. ENTRANCE: 0.8 cm. x 0.6 cm., ovaloid, edges inverted, popliteal area, left, leg, directed forward, involving the skin and underlying soft tissues, fracturing the left tibia and finally making an EXIT; modified by incision just below the left knee.

6. ENTRANCE: posterior surface, lower leg, left, edges inverted, directed downward, involving the skin and underlying soft tissues and then making an EXIT; plantar surface, left foot.

COMMUNUTED FRACTURE, left skull.

HOMOTHORAX, Moderate, left

CAUSE OF DEATH: Multiple gunshot wounds, head and trunk.

which injuries directly cause[d] his death, to the damage and prejudice of the heirs of the said Brgy. Capt. Ramon Paulo.

CONTRARY to Art. 248 of the Revised Penal Code.<sup>[2]</sup>

That on or about the 12<sup>th</sup> day of August 1994 in the evening, in barangay Bolaoen, municipality of Bugallon, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) long firearm without first securing the necessary permit and or licensing from the lawful authorities to possess the same which he used in shooting to death Barangay Captain Ramon Paulo.

Contrary to Presidential Decree No. 1866.<sup>[3]</sup>

When arraigned on November 23, 1994, appellant pleaded not guilty to both informations.<sup>[4]</sup> Trial then ensued.

The first witness for the prosecution was **Amalia (Alma) Paulo**, the victim's daughter, who testified mainly on the aspect of damages.<sup>[5]</sup> Alma Paulo testified that the victim was forty-five years old at the time of his death, was the incumbent barangay captain of Barangay Bolaoen, Bagallon, Pangasinan and was a driver by occupation earning P1,000 per week, or P4,000 per month.

Alma Paulo also testified that, in connection with her father's death, the victim's heirs spent P16,000 for the eight days of vigil, P9,500 for funeral services, P2,600 for the tomb, P600 for the church rites and P7,000 for *lompos*.<sup>[6]</sup> In connection with the prosecution of the cases, the victim's heirs spent P1,000 for exhuming the victim's cadaver and P15,000 for obtaining the services of a private prosecutor, plus P500 per appearance fee.

In addition, Alma Paulo testified that the heirs suffered moral damages, which she quantified at P100,000.

The second witness for the prosecution was **John Paulo**, half-brother of the victim on his father's side.<sup>[7]</sup>

John Paulo testified that around 11:00 p.m. on August 12, 1994, he, together with Marlon Cagaoan, were on their way to the house of the victim. They had just come from a wake, attended also by the victim, who instructed them to spend the night at the latter's house, as they were supposed to erect electric posts along the barangay road the following morning. He narrated that while they were walking on top of a dike, fifty meters from the house of the victim, a motorcycle passed by headed in the same direction. Astride the motorcycle was the victim, riding in tandem with the driver, Alex Torio.

When the motorcycle was about six meters in front of them, John Paulo suddenly saw appellant stand up and shoot the victim from behind, using a long firearm. Thereafter, appellant ran towards the north. John Paulo also described the scene stating that at the time of the shooting, appellant was on the left side of the dike about four meters in front of them and two meters behind the motorcycle. He was able to identify appellant because of the illumination coming from the headlight of the motorcycle.

After the shooting, John Paulo and Marlon Cagaoan immediately returned to the

wake to inform everyone about the incident. However, John Paulo refrained from divulging the identity of the assailant because he was afraid of the relatives of appellant. He revealed the identity of the assailant the following day only to his father, who advised him to keep quiet. It was only on August 22, 1994, or ten days after the incident, did John Paulo, accompanied by his father, make a statement to the National Bureau of Investigation (NBI) implicating assailant.

The prosecution next presented **SPO1 Bernardo Cerezo**, the Philippine National Police investigator who conducted a spot investigation of the crime scene.<sup>[8]</sup>

Bernardo Cerezo testified that he was on duty on the night of August 12, 1995 when he received a report that Barangay Captain Ramon Paulo had been shot and killed. Upon receipt of the report, he and four other police officers proceeded to the crime scene. He described how he found the victim's body in a kneeling position on top of a fallen motorcycle and that he found six empty M-16 shells about two meters away from the body. He also identified several photographs taken at the crime scene showing the body of the victim and the empty shells.<sup>[9]</sup>

On cross-examination, Bernardo Cerezo admitted that their initial investigation yielded seven other suspects and that Alex Torio, the driver of the motorcycle, was questioned but did not identify the assailant. He also admitted having investigated John Paulo the day after the shooting but that the latter claimed not to know the assailant.

The fourth witness for the prosecution was **Marlon Cagaoan**, who corroborated the testimony of John Paulo.<sup>[10]</sup>

Marlon Cagaoan testified that in the evening of August 12, 1994, he and John Paulo were walking on top of the dike going westward. They had just come from a wake, attended also by the victim who told them to go ahead as he will be riding a motorcycle driven by Alex Torio. While walking, the victim and Alex Torio, on the motorcycle, eventually caught up with them. When they were side by side with the motorcycle, the headlight of the motorcycle revealed appellant in front holding a gun. Seeing this, Marlon Cagaoan and John Paulo quickly hid on the slope of the dike. From a distance of about six meters from the motorcycle, they saw appellant shoot the victim. The motorcycle, together with the victim, fell while Alex Torio was able to run away. After the shooting, appellant first approached the victim and then ran away towards the north.

As soon as appellant left, Marlon Cagaoan and John Paulo got up from the slope and went back to the wake where they informed everyone about the shooting. They, however, withheld the identity of the assailant. The following day Marlon Cagaoan disclosed the identity of the assailant only to Alma Paulo, who advised him to keep quiet while she reports the matter to the NBI. On August 24, 1994, or twelve days after the shooting, Marlon Cagaoan, accompanied by Alma Paulo, gave his statement to the NBI implicating appellant as the assailant.

Marlon Cagaoan further testified that several persons, namely: 1) Evelyn Fernandez, 2) Carlos Jimenez, an ex-barangay captain of barangay Balococ, Lingayen, Pangasinan, 3) Carlos Jimenez's wife, Carmen and 4) a certain Lilia paid him a visit in the house of his uncle and asked him not to testify against appellant. In

consideration for his silence, he was given P250 and a half cavan of rice. Marlon Cagaoan took the money and the rice and went to Manila. However, his conscience bothered him and so he decided to testify.

Marlon Cagaoan also testified that sometime in October 1994, he met with Joel Torio, brother of appellant, at the Farmers Market in Cubao, Quezon City. In the meeting, he was offered P15,000 as consideration for not testifying against appellant. Marlon Cagaoan refused to accept the money, saying that he wanted to give justice to the victim.

**Orlando Concepcion** was the prosecution's fifth witness.<sup>[11]</sup> His testimony was offered to prove that appellant knows how to shoot a firearm. Orlando Concepcion testified that he had been accidentally shot in the leg by appellant on April 20, 1988, causing it to be amputated. However, he admitted not having filed a case against appellant.

The sixth witness for the prosecution was **Daido Ferrer**.<sup>[12]</sup> Daido Ferrer testified that he was a cell mate of appellant at the provincial jail and that, while in jail, appellant admitted to him that he killed the victim as an act of revenge against the Paulos for the killing of his father.

The seventh witness for the prosecution was **Dr. Ronaldo Bandonill**, the NBI medico-legal officer who exhumed the body of the victim and conducted an autopsy.<sup>[13]</sup> He testified that the victim suffered six gunshot wounds. The wounds were found at the back of the left side of the head, on the left side of the back, on the left side of the back near the waist, on the left buttock, on the back of the left leg and on the heel of the left leg. Dr. Ronaldo Bandonill stated that the entrances of the gunshot wounds indicated that the assailant was behind the victim and on the same ground level.

Appellant's defense is alibi and he presented four witnesses, including himself, to prove this defense.

The first witness was **Carlos Jimenez** who testified<sup>[14]</sup> that in the evening of August 12, 1994, he hosted a birthday party in his house for his 12-year-old daughter. His house is located in Barangay Balococ, Lingayen, Pangasinan, some seven kilometers from where the crime was committed. Among the guests in attendance was appellant, who was his neighbor. Furthermore, he stated that appellant does not own a motorcycle which could have been used to travel to barangay Bolaoen.

Carlos Jimenez testified that appellant arrived in his house at about 7:00 p.m. and left at around 11:45 p.m., and that while at the party, appellant played *tong-its*.<sup>[15]</sup> To substantiate his testimony, Carlos Jimenez presented photographs of appellant that were taken during the birthday party.<sup>[16]</sup>

The second witness for the defense was **Bernardo Sabangan** who testified that he was one of the invited guests who attended the birthday party of Carlos Jimenez's daughter on August 12, 1994.<sup>[17]</sup> He declared that he was in the house of Carlos Jimenez with appellant from 7:00 p.m. until 11:45 p.m. To prove his statements,