

SECOND DIVISION

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

**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.**

D E C I S I O N

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.