

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDGAR LUGTO Y VELASCO, NICANOR NIERVO Y DEUDOR, JOHN
DOE, JAMES DOE, PETER DOE AND OSCAR DOE, DEFENDANTS,
EDGAR LUGTO Y VE...**

G.R. No. 89214. October 18, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Sometime on April 17, 1986 at about 4:00 o'clock P.M., Zosimo Perez y Ilaw was in his house at Block No. 34 Manunggal Street, Barangay Tatalon, Quezon City when suddenly six men barged inside his house and stabbed Zosimo with bladed weapons on different parts of the body. Thereafter, the assailants calmly walked out of the house. The incident was witnessed by his mother Diosdada Perez and brother Manuel Perez, Jr., who were able to positively identify Edgar Lugtu and Nicanor Niervo as two of the six assailants.

Zosimo was rushed to the National Orthopedic Hospital (NOH) where he was pronounced dead on arrival.[1] A post mortem examination of the cadaver of Zosimo showed that the cause of his death was "hemorrhage, severe secondary stab wounds." [2] Upon their apprehension by police officers, Lugto and Niervo verbally admitted their participation in the killing of Zosimo but refused to give a sworn statement.

In due course an information was filed against them and several John Does, accusing them of murder for the killing of Zosimo Perez y Ilaw. Upon their arraignment, Lugto and Niervo pleaded not guilty. Thereafter, they waived the pre-trial.

On April 10, 1987, the trial court was informed by the city jail warden of the death of the accused Niervo in a rumble that erupted among the "Bahala na Gang" inside the Quezon City Jail. Thus, the case against Niervo was dismissed.[3]

After trial on the merits a decision was rendered by the Regional Trial Court of Quezon City, convicting Edgar Lugto y Velasco of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

Not satisfied therewith, the accused interposed this appeal alleging the following errors on the part of the trial court:

"I

THE LOWER COURT ERRED IN FINDING THE ACCUSED EDGAR LUGTO y VELASCO GUILTY
BEYOND REASONABLE DOUBT;

"II

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF DIOSDADA PEREZ AND MANUEL PEREZ;

"III

GRANTING ARGUENDO THAT THE ACCUSED EDGAR LUGTO y VELASCO IS GUILTY OF THE OFFENSE OF MURDER AS CHARGED, THE LOWER COURT ERRED IN FAILING TO APPRECIATE THE MINORITY IN AGE OF THE FORMER AS A MITIGATING CIRCUMSTANCE."[4]

The appeal is devoid of merit.

The appellant does not question the factual finding of the trial court that the crime committed against the victim, Zosimo Perez was murder qualified by treachery. However, appellant interposes the defense of alibi alleging that on April 17, 1986, the day when Zosimo was stabbed to death, he was at home at Manunggal street, Tatalon, Quezon City and he does not know Zosimo or any of the latter's relatives. Appellant, however, did not present any witness to corroborate his alibi.

On the other hand, Zosimo's mother, Diosdada Perez, and his brother Manuel, categorically identified the appellant as one of the six men who brutally murdered Zosimo. Appellant's claim that the testimony of said witnesses suffer from material inconsistencies is untenable. Although it is true that Diosdada testified that she and a nephew were the only persons present in the house when Zosimo was killed, it does not necessarily follow that Manuel, the victim's brother, could not have witnessed the incident when in fact he was also attacked by one of the assailants. Indeed, due to the excitement attendant to the incident, it is not unusual if the witnesses overlooked such details or remembered the events differently. At any rate, the alleged inconsistencies are on a minor matter. The inconsistencies are in fact badges of truthfulness and candor.

Moreover, appellant has not shown any ill-will or any motive on the part of the prosecution witnesses which could have motivated them to perjure their testimonies to implicate the appellant in the murder.

The defense of alibi cannot prevail over the positive identification of the accused as the assailant by the witnesses. Assuming the appellant was at home on or about the time of the alleged incident, it appears that he was living in the same street and barangay where the victim lived so that it was not physically impossible for him to have gone to the house of Zosimo, to have participated in the collective assault against Zosimo, and to have returned to his house.

The plea of the appellant that he should be extended the mitigating circumstance of minority is likewise without merit. Other than his bare statement he did not present any evidence to this effect. The burden of proof that he was a minor at the time of the commission of the offense is on the appellant.

No doubt the appellant committed the crime of murder. However, the indemnity to the heirs of the victim should be raised to P50,000.00.[5].

WHEREFORE, with the above modification as to the indemnity, the judgment appealed from is **AFFIRMED** in all other respects with costs against the defendant-appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibits D and H.

[2] Exhibits K and L.

[3] Page 40, Rollo.

[4] Page 35, Rollo.

[5] In accordance with the resolution of the Court en banc dated August 30, 1990.

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