

THIRD DIVISION

[G.R. No. 130589, June 29, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PEPE LOZADA, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

Accused-appellant Pepe Lozada interposed an appeal from the decision of the Regional Trial Court of Negros Occidental, Branch 50 stationed at Bacolod City, finding him guilty of murder and imposing upon him the penalty of *reclusion perpetua*.

On 07 July 1993, in Purok Talaba, Bacolod City, Philippines, at around 8:30 in the evening, Danilo Morin y Alisbo was shot to death. On 12 August 1993. Prosecutor Jesus S. Ocdinaria filed the following Information indicting Pepe Lozada for the killing; viz:

"That on or about the 7th day of July, 1993, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, being then armed with a firearm, with intent to kill, and by means of treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously assault, attack and shoot several times one Danilo Morin, thereby inflicting upon the latter the following wounds:

"1. Wound, gunshot: Entrance, ovaloid, 0.8 cm. in diameter with contusion collar, arm, left, proximal third lateral aspect, fracturing the left humerus simple, complete, to run underneath skin and muscle of axilla, to enter the thoracic cavity, left, lacerating the superior lobe of left lung, making no point of exit, two (2) metallic fragments were recovered admixed with blood in the left thoracic cavity.

"2. Wound, gunshot: Entrance, ovaloid, 0.8 cm. in diameter with contusion collar, scapular region (level of axilla), along left posterior axillary line, 17.0 cm. to left mid-vertebral line, 126.0 cm. above left heel, fracturing left scapular bone, to enter thoracic cavity, lacerating the superior lobe of left lung, perforating ventricle of the heart, then lacerating the lower lobe of right lung, making no point of exit, a slug is lodged and recovered underneath the skin, chest, anterior level of the 5th ICS, 15.5 cm. to right of mid-sternal line and 115.0 cm. above right heel.

"CAUSE OF DEATH:Shock and Hemorrhage due Gunshot Wounds.

"which directly caused the death of said victim Danilo Morin, to the damage and prejudice of his heirs, as follows:

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| 1) | As indemnity for the death of the victim | P 50,000.00 |
| 2) | As indemnity for the loss of the earning capacity of the victim | P120,000.00 |
| 3) | As moral damages | P 10,000.00 |

"Act contrary to law.

"Bacolod City, Philippines, August 12, 1993."^[1]

On 09 June 1997, following the arraignment of the accused and the presentation of evidence proffered by the prosecution and the defense, the Honorable Roberto S. Chiongson, presiding judge, found the accused guilty of the offense charged. The trial court adjudged:

"The evidence of the Prosecution clearly and sufficiently established the guilt of the accused beyond reasonable doubt. In view thereof, the Court finds the accused guilty as Principal of the crime of Murder defined and punished under Article 248 of the Revised Penal Code, and there being no modifying circumstance, the accused is sentenced to suffer the penalty of Reclusion Perpetua. The bond of the accused is cancelled and his immediate detention is ordered.

"By way of civil liability, the accused is ordered to pay the heirs of Danilo Morin the sum of P20,000.00 as actual damages and the sum of P50,000.00 as indemnification for his death."^[2]

The Court has gone anew over the evidence adduced by the prosecution which presented six witnesses - Enrique Alisbo, an eyewitness and a first cousin of the deceased; police officers Dennis Versoza, Eduardo Garcia, and Ernesto Cabisag of the homicide section of the Bacolod City police station; medico-legal officer Romeo Gellada; and Susana Morin, mother of the deceased - and by the defense with its own witnesses - Felecito Gulaja, a resident of Purok Sigay which adjoins Purok Talaba; Aniceto Belleza, a construction worker; and Jolly Gomez, a resident of Purok Talaba - including the accused himself, Pepe Lozada.

The Case for the Prosecution. -

Testimony of Enrique Alisbo

At 8:30 in the evening of 07 July 1993, Enrique Alisbo and his cousin, the deceased Danilo Morin y Alisbo, were walking along Purok Talaba, Barangay Airport Singcang, Bacolod City, when Alisbo noticed that someone was directly behind them some meters away. He recognized the person to be Pepe Lozada. Suddenly there was a gunshot. Danilo Morin fell. When Enrique Alisbo instinctively turned around and looked, he saw Pepe Lozada pointing a gun at them. Fearing for his life, Enrique left his fallen cousin and ran. He heard more gunshots. He sought refuge inside a house with an open door. Soon, he reported the incident to her aunt Susana Morin, the mother of the victim, and his brothers who all promptly proceeded to the crime scene. From there, they brought Danilo Morin to the hospital where he was

pronounced dead on arrival. The following day, Alisbo told the police that the assailant of Danilo Morin was Pepe Lozada.

SPO4 Dennis Versoza

At about 8:30 in the evening of 07 July 1993, SPO4 Dennis Versoza, assistant head of the homicide section of the Bacolod City police station, was informed of a shooting incident at Purok Talaba. He and fellow officer, SPO3 Eduardo Garcia, along with medico-legal officer Romeo Gellada, repaired to the crime scene. By the time they arrived, the victim had already been brought to the Bacolod Sanitarium Hospital. At the hospital, the officers saw the victim lying on a stretcher with gunshot wounds at the upper left back portion of his body. Also at the hospital was Morito Lozada, the father of accused-appellant, who was reported to have been hit by a stray bullet. SPO4 Versoza questioned the relatives and those present at the scene of the crime, as well as those at the hospital, but no one dared identify the assailant. He testified that the people at the crime scene, including the relatives of the victim, had appeared to him in a state of shock or fear. The following day, however, Enrique Alisbo and Mary Ann Vidal, went to the police station and reported that it was Pepe Lozada who killed the deceased. The police wanted to investigate Pepe Lozada but he was by then nowhere to be found.

SPO1 Ernesto Cabisag

Police officer Ernesto Cabisag was the desk officer on duty at the Bacolod City Police Department when police officers Versoza and Garcia reported the shooting incident. Contrary to standard procedure, SPO1 Cabisag recorded the murder of Danilo Morin y Alisbo together with two other incidents, also occurring at approximately 8:30 that same evening - the injuries sustained by Morito Lozada from a stray bullet and the arrest of Nori Vidal for illegal possession of firearms - in the same blotter report. When asked to explain why he recorded three incidents in one police blotter report, SPO1 Ernesto Cabisag answered that it was because these incidents appeared to be related to each other.

PO3 Eduardo Garcia

PO3 Eduardo Garcia was with SPO4 Dennis Versoza and Dr. Romeo S. Gellada at the Bacolod Sanitarium Hospital where the body of the victim was brought and identified to be that of Danila Morin. Also at the hospital for treatment at the time was Morito Lozada, the father of the accused, who was hit at the right arm by a stray bullet while sleeping in his house. The following day, Enrique Alisbo and Mary Ann Vidal, the wife of Nori Vidal, went to the police station and executed affidavits stating that the actually saw Pepe Lozada shoot Danilo Morin. PO3 Garcia said that the three incidents contained in the police blotter, *i.e.*, the murder of Danilo Morin, the injuries sustained by Morito Lozada from a stray bullet, and the arrest of Nori Vidal for illegal possession of firearms were all related. Anent the case against Nori Vidal for illegal possession of firearms, Garcia stated that it was PO3 Gayona who recovered the illegal firearm from under the pillow of Nori Vidal. Gayona brought Vidal to the police headquarters for investigation. The charges, notwithstanding, no case for illegal possession of firearm was filed against Vidal.

Dr. Romeo S. Gellada

Dr. Romeo S. Gellada, the medico-legal officer of the Bacolod City police station, conducted an autopsy on the body of deceased Danilo Morin. Introduced as an expert witness, Gellada attributed the cause of death of Danilo Morin to shock and hemorrhage due to gunshot wounds. The first wound, located at the left arm, was a bullet wound on the proximal third left arm, lateral aspect, which, upon entrance, fractured the left humerus, and subsequently penetrated the left thoracic or chest cavity, hitting the superior lobe of the left lung. No point of exit was found. Two metallic fragments of a slug from an unknown caliber stained with blood were lodged inside the chest cavity. The second wound was located at the left upper back at the level of the left axilla. The second bullet fractured the left scapular bone and entered the chest cavity, perforating ventricle of the heart. No point of exit was found. A slug of a .38 caliber firearm was recovered embedded underneath the chest on the level of the fifth intercostal space anterior left chest. From the location of the wounds, Dr. Gellada concluded, that the victim could have been in a standing position when the assailant, positioned at no less than two feet behind him because of lack of powder burns on the victim, fired the shots. On cross-examination, he stated that there could be no certainty that the two wounds were caused by the same firearm.

Susana Morin

Susana Morin, mother of the victim, was at home when Mary Ann Vidal informed her that her son, Danilo, was shot. She immediately repaired to the crime scene and brought her wounded son to the Bacolod Sanitarium Hospital where he was pronounced dead on arrival. Susana Morin said that at the time of his death, Danilo Morin was 33 years old, unmarried, and was hauling sand and gravel earning not less than P200.00 a day. Upon his death, Danilo was the only breadwinner of the family. They spent about P20,000.00 for the funeral.

The Case for the Defense. -

Felicito Gulaja

Felicito Gulaja, a construction worker, would usually leave his work place at 5:00 in the afternoon. To reach home, Gulaja would ride a passenger jeepney and disembark at a junction in front of the Pea store, being the last stop for jeepneys taking that particular route, from where he would then walk the rest of the way home. A few times, he would stay awhile at the Pea store, owned by Pepe Lozada, to drink beer before proceeding home. In the evening of 07 July 1993, Gulaja was at the Pea store drinking beer. Pepe Lozada, who personally served him his drink, did not appear to be armed. Gulaja had just consumed two bottles of beer when he suddenly heard three successive shots. He saw two masked persons whose identities he could not ascertain. He saw the victim, approximately 12-13 armslength from where he was seated, sprawled at the place just across the street. Gulaja did not immediately recognize the victim and only later learned that it was Danilo Morin. Gulaja knew Enrique Alisbo but the witness did not see him in the vicinity when the incident happened.

Aniceto Belleza

Aniceto Belleza, although not a resident of Purok Talaba, happened to be in the vicinity that evening of 07 July 1993 attending the local *fiesta* at the invitation of a

friend, a certain Edgar, whom he had known for about a week before the incident. Belleza decided to drink beer at the Pea store where he got acquainted with Pepe Lozada. The latter served him beer and showed a Betamax tape. After a brief conversation, Lozada left him to look after other customers. A while later, Belleza heard two gunshots. Through a reflection of the light coming from the electric post, he saw a person wearing a bonnet. Belleza was approximately forty meters from the place where the victim fell from gunshot wounds he sustained.

Jolly Gomez

Jolly Gomez, store-owner and a long time resident of Purok Talaba, testified that at the time of the incident, the place was teeming with people since a "carnival" ("fair") was being held in the basketball court of the purok. He was watching a dice game when, suddenly, he saw people running towards the other side of the junction. He was to later learn that Danilo Morin was shot. At that instant, about 8:30 in the evening, he saw Pepe Lozada standing in front of the Pea store. Inside the store was Felecito Gulaja. His store and the Pea store owned by the accused were adjacent to each other. Across the street was the basketball court. A little further down the street, about 50 yards from the basketball court, was a waiting shed where, from a distance of approximately three meters, Morin was shot. The place was well-lighted because a streetlight was located just beside the shed.

Pepe Lozada

In the evening of 07 July 1993, Pepe Lozada was personally serving his customers and operating his "betamax" player when he heard successive gunshots. From his store, he could see the person who was shot, the area being beside a waiting shed which was well-lighted. People were running in different directions, and he heard that two masked persons had been responsible for the shooting. Moments later, his sister, Lilibeth Yuro, came running to him to say that their father, Morito Lozada, was hit by a bullet. His mother, who told him to stay at the store, and his sister brought Morito Lozada to the Hospital. Moments later, several police officers arrived at the scene of the crime, and he saw them arrest Nori Vidal from whom a .38 revolver was recovered. Nobody among those investigated by the police at the scene of the crime pointed to him as being the killer nor did any of the members of the Alisbo and Morin families mentioned his name to be the perpetrator of the crime. Prior to his arrest on 20 August 1993, he was not aware that a case had been filed against him. He claimed that he did not know nor had a grudge against Danilo Morin, Enrique Alisbo or anyone from Purok Neptune where the deceased and members of his family resided. The accused did narrate, however, the incident involving his brother-in-law, Fernando Halaghay, who was accused in the 1991 killing of several members of the Alisbo and the Alvarado families. On 06 June 1993, Jessie Morin, brother of deceased Danilo Morin, in retaliation of the massacre committed by Halaghay, killed the latter's helper, a certain Florencio Incelencia. Pepe Lozada surmised that Florencio Incelencia might have had brothers and sisters, cousins or other relatives who, to avenge his death, could have taken it upon themselves to kill a member of the Alisbo family and to pull the trigger on Danilo Morin that fateful night of 07 July 1993. On cross-examination, Pepe Lozada admitted having been previously charged with, *albeit* acquitted of, the killing of two persons while being a security guard at the Victoria's Milling Company.

The Case according to the Trial Court. -