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We are satisfied that the guilt of the appellants was proven beyond reasonable doubt. As they were co-conspirators, they are each liable for the two murders. There being no modifying circumstances concomitant with the commission of the two assassinations, the trial court properly penalized each murder with *reclusion perpetua* (Arts. 64[1] and 248, Revised Penal Code).

The trial court's judgment is affirmed with the sole modification that the two appellants should be held *solidarily* liable for the two indemnities of ₱12,000 each. In the service of the two *reclusion perpetuas*, the forty-year limit filed in Article 70 of the Revised Penal Code should be observed. Costs against the appellants.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-37401. January 9, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **DANILO LLANTO, BENJAMIN PAULINO and COSME ERISPE**, *accused.* **COSME ERISPE**, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; LOCATION AND NATURE OF WOUNDS MAY INDICATE THE NUMBER OF ASSAILANTS. — The circumstance that the victim sustained four stab wounds which penetrated his lung and liver: one on the left side of the

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chest, another on the right side of the chest, a third on the front part of the chest, and the fourth on the back of the chest, may imply that there were more than one assailant.

2. **ID; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED.** — Appellant's alibi, that at the time of the incident he was in another province working as a *cargador*, cannot prevail over his positive identification by the prosecution eyewitnesses who were acquainted with him and who had no possible motive to impute to him a capital offense which he did not commit.

3. **ID; ID.; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY MINOR INCONSISTENCIES.** — Inconsistencies and contradictions on minor details in the testimonies of persecution witnesses do not impair their credibility and would not justify the exoneration of the accused.

4. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIORITY; WHEN APPRECIATED.** — The killing is murder qualified by abuse of superiority where the assault was perpetrated by five armed assailants who simultaneously attacked the victim.

APPEARANCES OF COUNSEL

Florante A. Miano for appellant.

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Vicente V. Mendoza and Solicitor Pio C. Guerrero for the plaintiff.

D E C I S I O N

AQUINO, *J.*:

The Circuit Criminal Court of Manila convicted Cosme Erispe, Benjamin Paulino and Danilo Llanto of murder, sentenced Erispe and Paulino to *reclusion perpetua* and Llanto to an indeterminate penalty of six years and one day of *prision mayor* to twelve years and one day of *reclusion temporal* and ordered them to pay solidarily to the heirs of Felix Ortega ₱12,000 as indemnity plus ₱20,000 as moral and exemplary damages (Criminal Case No. 1318). Only Erispe appealed from that judgment which was based on the following facts:

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At around ten-thirty in the evening of September 22, 1972, Felix Ortega, 38, married to Patricia Dilabahan, a security guard of the Lainez Security Guard Agency at Pier 2, and a resident of Isla Puting Bato, Tondo, was surrounded and assaulted by Erispe, 19; Paulino, *alias* Boy Gaya, 22; Llanto, *alias* Boy Kalbo, 17; Boy Oxo Tangkad, and one named Nestor.

The assault was perpetrated near the outpost and Caltex gas station at Pier 4, North Harbor, Tondo, Manila. That place was illuminated by electric lamps on the street and in the outpost. The five assailants were armed with bladed weapons. Ortega tried to evade their blows by stooping. He reminded his attackers that he was their comrade. The record does not show the motive for the assault and how it started.

After the assault, Ortega, who was mortally wounded, was brought to the Mary Johnston Hospital where he died upon arrival at about ten-fifty-five on that same night. The medico-legal officer of the Manila Metropolitan Police performed an autopsy on his body at two-quarter in the morning of the following day. The corpse was identified by the victim's sister, Fely Arabihan.

The autopsy disclosed that Ortega sustained four stab wounds which penetrated his lung and liver. The location of the stab wounds implies that there was more than one assailant. One fatal stab was on the *left side* of the chest; another was on the *right side* of the chest; a third was on the *front part* of the chest, and the fourth on the *back* of the chest (lateral *posterior* left chest). The victim also had a lacerated wound on the chin and an abrasion on the lower lip.

The stabbing was witnessed at close range by Vicky Agaton Derima, 30, married, and a vendor of crabs at the Asuncion market in Tondo. (She sold in that market the catch of the fishing boat owned by her and her husband, Rudy Derima, a jeepney driver.) She was allegedly at Pier 4 at past ten o'clock on that night of September 22, 1972 because she was waiting for a jeepney to take her to her residence at 156 Dulo Street, Isla Puting Bato.

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She was acquainted with the victim and with three of his assailants, namely, Erispe, Llanto and Paulino. She was a member of the Manila Citizens' Police which was under the supervision of a certain Major Adolfo of Precinct 1 of the Manila Metropolitan Police located at North Bay Boulevard, Balut, Tondo.

It should be noted that Erispe was a resident of 93 Dulo Street, the same street where Vicky resided. Llanto was a resident of Breakwater, Isla Puting Bato, while Paulino was a resident of 630 Pitong Gatang Street, Tondo. Boy Oxo was killed later by a member of the Metropolitan Police Command. Nestor went into hiding and had not been apprehended. Erispe, Llanto and Paulino were members of the citizens' police patrol which was organized to maintain peace and order in Isla Puting Bato. As noted above, Vicky was also a member of that organization.

After witnessing the assault, Vicky rushed home. She was confused and gripped with fear. She did not notice what the assailants did after the assault. She told a friend named Elsie about the incident. Elsie reported the matter to the police. On that same night, Vicky was questioned by the police but she did not sign any statement.

Her statement was taken on October 8, 1972 by an investigator of the homicide division of the Manila police force. During the investigation, she identified Erispe, Llanto and Paulino as three of the five assailants whom she saw stabbing Ortega. The three were arrested by operatives of Precinct 1 on the preceeding day, October 7.

The other prosecution witness, Aniano Austria, 21, a resident of breakwater, Isla Puting Bato, Tondo, saw the assault upon Ortega because, like Vicky Agaton Derima, he happened to be at Pier 4, the scene of the crime, waiting to board a jeepney which would take him to Isla Puting Bato. While Vicky was near the assailants, Austria was on the other side of the street about eight meters away. He saw Vicky witnessing the assault.

Austria was acquainted with Vicky and with the assailants. Erispe used to frequent his place. In fact, the next day Erispe

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went to his place and said that, although Ortega was wounded, he fought back. Austria was a member of the assailants' gang But he did not join them in staging hold-ups.

Austria, who also knew the victim, Ortega, and his family, was investigated by the police after the incident. He told the policemen that Erispe, Llanto and Paulino wounded Ortega. He was not able to give any statement because he was under protective custody at Camp Crame since he was being molested by the assailants of Ortega.

On October 9, 1972, or one day after Vicky's statement was taken (Exh. 2), an information for murder was filed against Erispe, Llanto and Paulino. During the trial, Paulino and Erispe pleaded the same alibi, which was that at the time the incident happened, they were in Mariveles, Bataan working as *cargadores* in the branch office of the Rice and Corn Administration. Their alibi was confirmed by their alleged foreman, Francisco Duero, 29, who presented a notebook allegedly containing the *vales* or petty loans obtained by Erispe, Paulino and other laborers.

But, as correctly pointed out by the trial court, the said notebook does not exculpate Erispe and Paulino because it was not properly kept and it contains many missing pages. Besides, the entries were not made by Duero but by an unnamed person who did not testify in court.

Llanto's alibi was that when the incident occurred, he was in his house at Breakwater, Isla Puting Bato. The trial court did not give credence to the alibis of the three accused. Llanto and Paulino did not appeal from the judgment of conviction.

Erispe in this appeal contends that the trial court erred in believing the testimonies of Austria and Vicky Agaton Derima, in not sustaining his alibi, and in not acquitting him on the ground of reasonable doubt.

Erispe admitted that he was acquainted with his co-accused, Paulino and Llanto. Asked to explain why Vicky implicated him in the killing of Ortega, Erispe declared that Vicky had a grudge against him because he was a member of the Zoto Organization and Vicky was a former member thereof. She was allegedly expelled because she spent its money.

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In rebuttal, Vicky denied Erispe's imputation. She explained that she resigned from the Zoto organization because of its bad practices such as selling the land of the government for ₱200. She surmised that the accused smeared her character because she did not cooperate with them in implementing their nefarious enterprises. She disclosed that Erispe's brother-in-law offered to pay her any amount if she would desist from testifying against him.

Appellant's counsel, with much zeal and diligence, subjected the testimonies of Austria and Mrs. Derima to a painstaking scrutiny. He noted some contradictions or inconsistencies therein. He vehemently contends that those discrepancies impaired the credibility of the two prosecution witnesses. However, the Solicitor General in his brief competently refuted appellant's arguments and conclusions.

We hold that the alleged contradictions do not destroy the probative value of the testimonies of Austria and Mrs. Derima. They did not wilfully pervert the truth nor perpetrate deliberate lies. The decisive fact is that they were present when the accused ganged up on Ortega and made a concerted effort to injure and kill him. The inconsistencies pertained to minor details which would not justify the exoneration of the accused. Moreover, the record does not show any reason or motive as to why Mrs. Derima and Austria would frame up appellant Erispe and impute to him a capital offense which he did not commit. His alibi is not credible.

The killing is murder qualified by abuse of superiority, a circumstance alleged in the information. The penalty of *reclusion perpetua* was correctly imposed.

WHEREFORE, the trial court's judgment against appellant Erispe is affirmed. Costs against the appellant.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., and *Santos, JJ.*, concur.