

SECOND DIVISION

[G.R. No. 120898-99, May 14, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFONSO BAUTISTA, ACCUSED-APPELLANT.**

D E C I S I O N

REGALADO, J.:

In a joint decision, the Regional Trial Court, Branch 48, of Urdaneta, Pangasinan rendered two verdicts of conviction in Criminal Cases Nos. U-8191 and U-8192, finding accused-appellant Alfonso Bautista, alias "Poldo," guilty of the charge of illegal possession of firearm and ammunition and of the complex crime of murder with frustrated murder and attempted murder, respectively. Appellant insists in this present appellate review that the trial court should not have granted affirmative weight to the testimonies of prosecution witnesses Ferdinand Datario and Rolando Nagsagaray as the bases for his conviction, considering that, *inter alia*, after they allegedly caught a glimpse of appellant at the scene of the crime, they broke their silence about his supposed participation only after more than sixteen months and under dubious circumstances.

The initiatory criminal information in Criminal Case No. U-8191 was lodged on June 13, 1994 with Branch 48 of the Regional Trial Court of Urdaneta, Pangasinan,^[1] while that in Criminal Case No. U-8192, dated June 16, 1994, was assigned to Branch 49 of said court. On motion of the Office of the Provincial Prosecutor, these cases were subsequently consolidated and assigned to Branch 48 for trial.^[2] Appellant was indicted for the commission of the aforestated crimes, as follows:

Criminal Case No. U-8191

That on or about the 18th day of May, 1992, at Barangay Dilan, municipality of Pozorrubio, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully feloniously have in his possession, control and custody one (1) long firearm of unknown caliber or make, without authority of law, and which he used in shooting Barangay Captain Eduardo Datario, Bernabe Bayona and Cinderella Estrella^[3]

Criminal Case No. U-8192

That on or about the 18th day of May, 1992, at Barangay Dilan, municipality of Pozorrubio, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there wilfully,

unlawfully and feloniously, attack and sho(o)t on(e) Eduardo Datario hitting the latter's face with the bullet exiting through his neck, which wound caused his death, and further hitting the ear of Bernabe Bayona and bullet exiting through his mouth, which wound would have caused the death of said Bernabe Bayona had it not been for the timely medical assistance rendered to him, and the bullet finally hitting (the) right leg of Cinderella Estrella, (through) which wound accused commenced the commission of the crime of Murder directly by overt act but did not produce it by reason of some cause other than his spontaneous resistance, all to the damage and prejudice of the heirs of the deceased and the two other victims^[4] (Corrections Supplied).

At the arraignment of appellant on November 10, 1994 wherein he was duly assisted by counsel, negative pleas to the charges were entered for him pursuant to his indication in open court.^[5] Pre-trial having been waived by appellant, trial proceeded thereafter with the presentation of several prosecution witnesses, particularly the alleged eyewitnesses Ferdinand Datario and Rolando Nagsagaray on whose testimonies the court below principally anchored its judgement of conviction. On the other hand, appellant himself appeared in his defense, and one Norma Reyes, a neighbor, partly corroborated this assertions.

Professedly convinced by the evidence for the prosecution, the trial court found appellant guilty as charged and imposed on him the penalty of life imprisonment, with costs, in Criminal Case No. U-8191. In Criminal Case No. U-8192, appellant was sentenced to suffer the penalty of *reclusion perpetua* and to pay civil indemnity of P50,000.00 actual damages in the sum of P20,000.00, and the prescribed costs.^[6]

According to the evidence of the prosecution,^[7] Eduardo Datario, *Barangay* Captain of Dilan in Pozorrubio, Pangasinan, was fatally shot by an assassin on the night of May 18 1992 at around ten o' clock. At the time of the treacherous assault, the victim was watching the sideshows of their *barangay* fiesta which were being held within the school campus of the Dilan Elementary School. Ferdinand Datario, younger brother of the deceased, recounted that when he arrived and took his place beside his brother at the school premises, the latter was with Rolando Nagsagaray, Bernabe Bayona and Cinderella Estrella, among others, watching a sideshow game.

Shortly thereafter, a gun report caused the people around to scamper in different directions. In the few seconds prior to the ensuing melee, the deceased slumped to the ground with a gunshot wound in the area of his chin which proved to be lethal. Bernabe Bayona and Cinderella Estrella, who were beside the victim, were likewise hit apparently by the same bullet in succession, but they fortunately survived. Bayona sustained only a wound on the left ear followed by a grazing wound on his left upper lip, and the bullet thereafter lodge in the left thigh of Estrella.

The same prosecution eyewitness recalled that as soon as the long gun shot rang out, he instinctively turned toward its source, and it was at the point that he saw the assailant, at an approximate distance of ten meters, holding a long firearm aimed towards their group. That assailant, according to this witness, was herein appellant who was then on the other side of a concrete fence which was more than five feet high. The witness then turned his attention to his brother and with the help of other persons, they brought him to a hospital where the victim expired.^[8] Rolando

Nagsagaray, the other key prosecution eyewitness, testified along the same lines. He likewise claimed to have seen appellant standing at the other side of the concrete fence and holding a long firearm.^[9] Both of them admittedly did not call the attention of the people around them or those near the fence to the fact of the presence of appellant, either for his identification or apprehension.

Appellant, a farm helper and resident of Lipit, Manaoag, Pangasinan, vehemently denied any involvement in the shooting incident. He asserted in court that he never knew personally the victims and, although he himself could not specifically recall where he was at the time of the killing on May 18, 1992, his neighbor, Norma Reyes, testified that he was then at their house as a guest at the birthday celebration of her husband. Appellant also recalled that when he was arrested in September, 1993 in San Fabian, Pangasinan, reportedly in connection with another case, he was actually waiting for one Francisco Periamil at the latter's house to collect payment of his tobacco produce. However, Periamil instead arrived with two law enforcers who promptly arrested appellant. He was then brought to Lingayen, Pangasinan where he was detained and it was there where he was tortured and forced to admit participation in some unsolved killings, one of which was the murder of Eduardo Datario.^[10] It was also at the time of his arrest that the two prosecution eyewitnesses, Ferdinand Datario and Rolando Nagsagaray, came out into the open to announce what they allegedly witnessed on the night of May 18, 1992.^[11]

Appellant faults the trial court for its unwarranted acceptance of the version of prosecution. He argues that the very long delay, which took all of sixteen months, on the part of Ferdinand Datario and Rolando Nagsagaray in reporting to the authorities what they allegedly saw has definitely placed the stamp of doubt, if not incredibility, on their testimonies. On top of that, there are inherent improbabilities and inconsistencies in their declarations in court and which, according to appellant, are factors obviously corrosive of the prosecution's cause. With the facts in this hypothesis, the Court is inclined to agree. For, while it is true that the matter of assigning values and weight to the testimonies of witnesses is at best the province of the trial court, it is equally the province of appellate courts to disregard factual findings of the former where certain facts of substance have been plainly overlooked and misappreciated by the said lower courts.^[12]

In the case at bar, the aforesaid two eyewitnesses both averred that they feared for their lives, hence they kept silent for sixteen months. It was only after appellant had been apprehended and had allegedly owned up to the killing of the victim that they decided to speak and execute sworn affidavits on the matter. The trouble with their posturing is that they had all the opportunity to pinpoint appellant as the malefactor without having to necessarily place their lives, or of those of their families, in danger. Thus, as pointedly noted by the defense, both these witnesses could very well have revealed what they supposedly knew to the town mayor who took a hand in the investigation of the case, or any of the police investigators or the barangay officials, some of whom in fact were their personal friends, but they did not. An anonymous tip to these authorities would also have been a convenient and effective course of action.

Witness these admission in the testimony of Ferdinand Datario:

Q When was the first time that

you reveal(ed) the identity of the accused Alfonso Bautista to the authorities or did you reveal to anybody the identity of the person who shot your brother Eduardo Dat(a)rio?

A Only to my father, sir.

Q And when did you tell your father that it was Alfonso Bautista who shot your brother Eduardo Datario?

A On the fourth day after the incident, sir.

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Q Why did you not tell your father immediately that Alfonso Bautista shot your brother?

A Because my father might get shock(ed), Ma'am.

Q Why did you not reveal immediately that Alfonso Bautista was the one who shot your brother?

A We were afraid because Alfonso Bautista usually roams around, Ma'am.

Q When did the police go to your house?

A Before we brought home my brother, it was the 19th of May, the day after my brother died, Ma'am.

x x x

Q When the policeman went to your house on May 19, 1992, you have not seen Alfonso Bautista yet and yet did not tell the police that Alfonso Bautista was the one who shot your brother?

A Yes, Ma'am.

Q Why?

A We were afraid to tell, Ma'am.

x x x

Q You never made any attempt to report what you saw who killed your brother on May 18, 1992?

A No, sir.

Q Now, do you know the Mayor of Pozorrubio at that time in 1992?

A Yes, sir.

Q Considering the fact that you are a barangay captain's brother you are very close to him, am I right?

A Yes, sir.

Q In spite of that, you never attempt(ed) even to whisper to him what you allegedly saw on May 18, 1992?

A No, sir.

Q Now, at that time, 1992, do you personally know any policeman in the municipality of Pozorrubio?

A Yes, sir.

Q Who were they, could you please inform us?

A Investigator Balelo, Pat. Fernandez, sir.

Q You were very close to these policemen, am I right?

A Yes, sir.

Q And in spite of that you never attempted even to whisper to them that it was Alfonso Bautista alias Poldo who allegedly shot your brother?

A I did not, sir.

x x x

Q Who called you at the police headquarters at Lingayen, Pangasinan?

A SPO 1 Jaime Fernandez went to our house, sir.