

SECOND DIVISION

[G.R. No. 139692, January 15, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JESSIELITO BADAJOS Y SUMBIDAN ALIAS "TOTO" AND FRETCHIE SANCHEZ Y AMPARO (AT LARGE), ACCUSED.

JESSIELITO BADAJOS Y SUMBIDAN ALIAS "TOTO", APPELLANT.

DECISION

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court, Branch 4, Butuan City, convicting the appellant Jessielito Badajos of murder, sentencing him to suffer *reclusion perpetua* and directing him to pay damages to the heirs of the victim Alfredo Donque.

The Indictment

On September 8, 1997, an Information was filed charging Jessielito Badajos and Fretchie Sanchez y Amparo of murder. The accusatory portion reads:

That at more or less 12:00 o'clock in the evening of July 21, 1997 at P-12, Brgy. Los Angeles, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, taking advantage of their superior strength and with treachery, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot one Alfredo Donque hitting the latter on his neck, right hand and right shoulder which caused his instantaneous death.^[2]

On November 12, 1997, the accused, assisted by counsel, was arraigned and entered a plea of not guilty. Sanchez remained at large.

The Case for the Prosecution

The first and principal witness of the prosecution was Rodolfo Matinig, a 14-year-old out-of-school youth. He testified that he finished only Grade III and stopped attending school in 1998. In the meantime, Alfredo Donque hired him as caretaker of the duck farm owned by Marcelino Ipes located at Purok II, Barangay Los Angeles, Butuan City.

At about 12:00 midnight on July 21, 1997, Matinig and Donque went to the small hut in the duck farm. While they were watching the ducks, Jessielito "Toto" Badajos, Fretchie Sanchez and Jerry Lamosao arrived. At that time, Matinig did not know Sanchez and Jerry Lamosao. Badajos then asked Donque for duck eggs, but

the latter replied that there were none. He explained that he had already sold the duck eggs he had collected earlier that afternoon. The three men then left. When they returned, Badajos was already armed with a gun. Donque was seated about two-and-a-half meters away from him. Badajos then shot Donque four times. Donque, despite his wounds, still managed to flee towards the ricefield. Matinig attempted to escape, but Badajos pointed the gun at him and grabbed him. Sanchez forthwith wrested the gun from Badajos, and Matinig managed to free himself. He ran and rode on his bicycle, rushing to the house of Mamer Pandac, about 25 meters away from the place where Donque was shot. He told Pandac, "Donque, my companion was shot." The two of them peeped through the window and saw Badajos, Sanchez and their companion leave the scene. Matinig and Pandac found Donque sprawled on the ricefield, already dead. Matinig then reported the incident to Donque's parents-in-law. He testified that he came to know Sanchez' name when he was interviewed by an announcer of the "Bombo Radio."

Madelyn Donque, the victim's widow, testified that it was Rodolfo who informed her that her husband was already dead. When she asked Matinig who killed her husband, he replied that it was Badajos. Madelyn also testified that she and her husband had a nine-year-old son. She spent P5,000 for the embalment and the coffin; P9,000 for the niche; P400.00 for flowers; and P3,000 for the wake. They also spent money for transportation. Madelyn also testified that the victim had a monthly salary of P1,000.00.

City Health Medical Officer Dr. Jesus Chin Chiu testified that he performed an autopsy on Donque's cadaver. He prepared and signed a Necropsy Report containing the following findings:

FINDINGS:

- Entrance wound measuring 1 inch by $\frac{3}{4}$ inch at (R) side of anterior neck about 2 inches from the midline, no exit wound.
- Entrance wound (R) upper arm $\frac{1}{2}$ inch by $\frac{1}{2}$ inch in measurement.
- Slug recovered embedded above the left clavicle.

CAUSE OF DEATH:

Shock due to gunshot wound.^[3]

Dr. Chiu noticed gunpowder burns on the victim's body. He also signed the victim's death certificate.^[4]

Cyrille Konahap testified that he took pictures of the victim, sprawled in the ricefield already dead.^[5]

The Case for the Accused

Badajos denied shooting and killing Donque. He claimed that Fretchie Sanchez was the culprit. He testified that he made a living as a farmer. At 6:00 p.m. on July 21, 1997, he, along with Sanchez and Jerry Lamosao had a drinking spree in the

Palaca's Store at Sitio Dumognay, Los Angeles, Butuan City. By 7:00 p.m., after they had already drank several bottles of beer, they went to their respective houses to have dinner. They agreed to go back to Palaca's Store to continue their drinking spree.

At about midnight, Sanchez decided to buy "cracked duck eggs" from Donque. Sanchez and Lamosao entered the hut which was covered with empty sacks on its sides. He waited for his companions by the roadside, about 8 meters away from the hut. However, Sanchez failed to get any duck eggs from Donque. He grabbed Donque by the collar and pulled him outside the hut. Lamosao followed. Sanchez then shot Donque four (4) times. Two other male persons fled from the scene. Sanchez reported the incident to SPO2 Benjamin Liwanag, a policeman of the RTR Station. At 8:00 p.m. on July 22, 1997, Badajos reported the shooting to Mario Romero, a policeman of Ampaoan. Both policemen conducted an investigation at the scene of the shooting.

Carlito Dumas, also a farmer, corroborated Badajos' testimony. He testified that on July 19, 1997 Donque had agreed to sell 500 duck eggs to him for P2.00 a piece. The duck eggs were for his son, Benjamin, who was engaged in the business of raising ducks in Gigaquit, Surigao. On July 20, 1997, a Saturday, he paid Donque for the eggs and was to take delivery thereof at 11:00 p.m. the next day. On July 21, 1997, he and his friend Rolando Tiape slept in the house of his cousin, Godoberto Dumas until 9:00 p.m. They had agreed to leave together for Gigaquit the next day. At 11:00 p.m., they proceeded to Donque's hut, but were told that there were only 250 eggs available. Donque advised him to wait until 4:00 a.m. as the ducks would lay more eggs. He agreed and waited at Donque's hut. Carlito, Tiape and Donque, were the only persons in the hut.

Sanchez and Lamosao arrived. The appellant stood by the roadside, about 8 meters away. Lamosao asked Donque for duck eggs but he told Lamosao that he had already sold the available duck eggs to Dumas. Sanchez then asked Donque for the live ducks but Donque refused to give them up. Sanchez grabbed Donque by the shirt collar and pulled him outside the hut. Lamosao followed suit. The appellant shouted, "Don't touch him!" Nevertheless, Sanchez shot Donque four (4) times. Petrified, he and Tiape fled from the scene and rushed back to the house of Godoberto, leaving the 250 duck eggs he had bought from Donque in the hut. He told Godoberto that Sanchez had shot Donque to death.

The next day, July 22, 1997, Carlito Dumas left for Gigaquit. He told his son that the duck eggs were unavailable. He remained in Gigaquit until the fiesta on August 28, 1997. When his wife arrived for the fiesta, he asked if charges were filed against anyone for the death of Donque. His wife replied that Badajos was charged for the crime. When he expressed disgust, his wife told him that he cannot do anything because Badajos was already in the custody of SPO2 Benjamin Liwanag. When his wife returned to Butuan City, he remained in Gigaquit until July 2, 1998 when Victorio, Badajos' father, fetched him to testify. He did not report the incident to the police authorities because he did not want to get involved in the killing.

The trial court thereafter rendered judgment convicting Badajos. The decretal portion of the decision reads:

WHEREFORE, the Court finds accused JESSIELITO BADAJOS Y SUMBIDAN, ALIAS "TOTO" guilty beyond reasonable doubt of the crime of Murder and is sentenced to the penalty of *reclusion perpetua* together with the accessory penalties provided by law. He shall be entitled with the full time during which he has undergone preventive imprisonment, if he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited in the service thereof with four-fifths of the time during which he has undergone preventive imprisonment.

Accused Badajos is ordered to indemnify the heirs of the deceased the amount of Fifty Thousand (P50,000.00) Pesos. In addition, he is also ordered to pay the heirs of the deceased the amount of One Hundred Forty-Four Thousand P144,000.00) Pesos representing loss of earnings and the amount of Twelve Thousand (P12,000.00) Pesos representing his regular monthly commission for every egg sold as well as the sum of Nine Thousand Three Hundred Twenty-Six (P9,326.00) Pesos representing actual damages. The accused is also ordered to pay moral damages in the sum of Twenty Thousand Pesos (P20,000.00).

On the other hand, it is not imperative that the case against accused Fretchie Sanchez be sent to the files to await for his arrest. There is nothing in the evidence adduced by the prosecution to implicate him. On the contrary, he prevented the possible death of prosecution witness Rodolfo Matinig by taking away the gun from Badajos who was at the time already pointing it to the head of Matinig.

IT IS SO ORDERED.^[6]

On appeal, Badajos, now the appellant, insists that the trial court should have acquitted him for the prosecution's failure to prove his guilt for the crime charged beyond reasonable doubt. He concluded that:

. . .

THE COURT A QUO GRAVELY ERRED IN ENTIRELY RELYING UPON THE UNCORROBORATED AND CONTRADICTED TESTIMONY OF PROSECUTION WITNESS RODOLFO MATINIG Y CUTAO FOR THE CONVICTION OF THE ACCUSED-APPELLANT.

. . .

THE COURT A QUO GRAVELY ERRED IN TOTALLY IGNORING THE UNREBUTTED TESTIMONY OF DEFENSE WITNESS CARLITO DUMAS Y ATA.

. . .

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THAT THE PEOPLE'S EVIDENCE FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE OF THE ACCUSED-APPELLANT.^[7]

Anent the first assigned error, the appellant posits that the testimony of the prosecution witness, Rodolfo Matinig is uncorroborated. Furthermore, the appellant asserts, despite the fact that Lamosao was listed in the Information, the prosecution failed to present him as a witness. This gave rise to the presumption that his testimony would have been adverse to the prosecution had he testified.

The appellant insists that Matinig admitted on cross-examination that he implicated the appellant for the killing of Donque because (a) he was told to testify against the appellant; and (b) he was afraid to implicate the real killer –Fretchie Sanchez – because the latter was at large.

We are not impressed by the appellant's arguments. The fact that Matinig's testimony was not corroborated by any other witness is of no moment. It is axiomatic that the testimonies of witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if found trustworthy and reliable.^[8] There is no law which requires that the testimony of a single witness needs corroboration except where the law expressly mandates such corroboration. In this case, Matinig, who was barely 14 years old and had finished only the third grade, testified how the appellant shot the victim four times. He narrated how the appellant, after shooting and killing the victim, held him and poked a gun at him when he attempted to flee from the scene, thus:

PROSECUTOR ABUGHO:

Q Dolfo, you said that Toto Badajos shot Alfredo Dunque (sic). Where were you when Toto Badajos shot Alfredo Dunque (sic)?

A I was there with him.

COURT:

Q You mean you were with Alfredo Dunque (sic) at the time he was shot by Toto Badajos? Is that what you mean?

A Yes, sir.

PROSECUTOR ABUGHO:

Q How many times did Toto Badajos shoot Alfredo Dunque (sic)?

A Four (4) times.

Q How far were you from Toto Badajos when he shot Alfredo Dunque (sic)?
(Witness indicating the distance between him and Fiscal Abugho which is about two and one-half (2-1/2 meters.)

Q What was the position of Alfredo Dunque (sic) when he was shot by Toto Badajos?

ATTY. ROSALES:

No basis, Your Honor.

PROSECUTOR ABUGHO:

He was there, Your Honor.

ATTY. ROSALES: