

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

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

Ponente: CALLEJO, SR., J.

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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:

No basis, Your Honor.

COURT:

He was there. I will allow the question. Answer the question.

WITNESS:

A

He was seated.

PROSECUTOR ABUGHO:

Q

When he was shot four (4) times by Toto Badajos, what did Alfredo Dunque (sic) do?

A

He ran away.

Q

How about you, what did you do?

A

I was unable to run because Toto Badajos held me.

Q

What else did Toto Badajos do to you?

A

He pointed his gun at me.

Q

What happened when he pointed his gun at you?

A

Fretchie wrested the gun from him.

Q

Who is this Fretchie?

A

The companion of Toto Badajos.

Q

What happened when Fretchie grabbed the gun of Toto Badajos? What happened to you?

A

After he wrested the gun from Toto Badajos I was able to free myself so I ran away.

Q

Where did you go?

A

I went to the house of Mamer.

Q

What is the family name of this Mamer?

A

I do not know his family name, sir.

Q

From the place where you were previously held by Toto Badajos to the house of Mamer, can you determine the distance, Mr. Witness?

(Witness indicating the distance from the witness stand to the building under construction of the GSIS.)

PROSECUTOR ABUGHO:

Which we estimate, Your Honor, to be more or less sixty (60) meters.

ATTY. ROSALES:

I cannot estimate.

COURT:

How far is that?

ATTY. ROSALES:

To be sure he was referring to the building under construction of the GSIS.

WITNESS:

Up to that coconut tree there.

(Witness referring to the perimeter fence of the Hall of Justice.)

COURT:

About twenty-five (25) meters, more or less.

PROSECUTOR ABUGHO:

Q

Now, you said you ran to the house of Mamer.

What did you do in the house of Mamer?

A

I roused them up.

Q

For what purpose?

A

I roused them up because I wanted to ask help from them.

Q

Did Mamer help you?

A

Yes, sir.

Q

How did Mamer help you?

A

He let me in in his house.

Q

What, if any, did you tell to Mamer?

A

I told him, "Nong, my companion was shot."

Q

When you told that to Mamer, what did he do?

A

We peeped through the window and looked at Toto Badajos.

Q

Did you still see Toto Badajos?

ATTY. ROSALES:

Leading question, Your Honor.

COURT:

Leading.

PROSECUTOR ABUGHO:

Q

What happened when you and Mamer peeped through the window looking for Badajos?

A

We saw that they left the place.

Q

When they left the place, what did you do?

A

We looked for Alfredo Dunque (sic).

Q

Did you find Alfredo Dunque (sic)?

A

Yes, sir.

Q

Where?

A

In the ricefield.

Q

What happened to him?

A

He was already dead.

Q

After finding Dunque (sic), what did you do thereafter?

A

I got a bike and immediately went to the house of his parents-in-law.

Q

What was your purpose?

A

To inform them.[9]

When the public prosecutor asked him to point to and identify the perpetrator of the crime, Matinig spontaneously and unerringly pointed to the appellant.

PROSECUTOR ABUGHO:

Q

How did he die?

A

He was shot.

Q

Who shot him?

A

Toto Badajos.

Q

If this Toto Badajos is in the courtroom, can you identify him?

A

Yes, sir. I can identify him.

Q

Will point him before the Court?

(Witness was allowed to get down from the witness chair to tap the should [sic] of the person alleged to be Toto Badajos.)

A

This is Toto Badajos.

(Witness patting the shoulder of accused Jessielito Badajos y Sumbidan.)

COURT:

Q

Are you Jessielito Badajos y Sumbidan?

ACCUSED:

A

Yes, sir.[10]

It bears stressing that the trial court gave credence and full probative weight to Matinig's testimony. The settled rule is that the Court will not interfere with the findings of the trial court and its judgment in determining the credibility of the witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[11] We have painstakingly reviewed the records and we find no reason to deviate from the findings of the trial court and its assessment of the probative weight of Matinig's testimony.

The fact that the prosecution did not call Lamosao to testify is of no moment. The public prosecutor has the discretion as to the witnesses he will present as well as the course of presenting the case for the prosecution. The prosecution is not burdened to present all eyewitnesses of the crime on the witness stand during the trial. The testimony of only one eyewitness may suffice so long as it is credible and trustworthy. On the other hand, if Lamosao's testimony would corroborate the appellant's version of the story, considering that the latter was present when Donque was shot, it was the appellant who should have called him to the witness stand.

With regard to the absence of motive, well-entrenched in our jurisprudence is the rule that where there is no evidence that the principal witnesses of the prosecution were actuated by ill-motives, their testimony is entitled to full faith and credit.[12] The appellant admitted testifying that he has no axe to grind against Matinig, who was a mere worker employed by Donque. Matinig testified that he was initially afraid to testify for the prosecution because he was afraid of Sanchez, who was still at large, thus:

ATTY. ROSALES:

...

Q

Now, you know that this person whom you said you were told was Fretchie was a companion of yours, or co-resident of yours in Los Angeles, is that correct?

A

No, sir. He is not our companion.

Q

But he is residing in Los Angeles?

A

Yes, sir.

Q

And you know that he is at large, not yet arrested?

A

That is correct, sir.

Q

And you know that he is holding a gun?

A

Yes, sir.

Q

And, of course, you are afraid of Fretchie?

A

Yes, sir, I'm afraid.

Q

And that is the reason why you were reluctant to come to this Honorable Court when you were subpoenaed to come, is that correct?

PROSECUTOR ABUGHO:

We object, Your Honor, again, the same ground, and this is a new matter, Your Honor.

COURT:

As the Court said, that was not brought out in the direct, in the re-direct and therefore that question will have no basis.

ATTY. ROSALES:

Okay, we have no further question, Your Honor.[13]

The credibility of Matinig's testimony, that he saw the appellant shoot the victim to death, and the probative weight thereof were not denigrated by his answers to the questions of the appellant's counsel on cross-examination, thus:

PROSECUTOR ABUGHO:

Your Honor, can we approach the Bench?

(Counsel approaching the Bench)

COURT:

After all, it would mislead the Court also on how to appreciate the testimony.

What was the question that he answered by "wala"?

(Stenographer reading the question:)

"Q You answered awhile ago that you said "yes" when you were asked or when you were sworn as a witness because you were told. Do I understand that you were told about the incidents involving the matters you are testifying about now?"

(After the Court's interpretation)

WITNESS:

A

I was told.

ATTY. ROSALES:

Q

In other words, it is now clear that you were only told on what you are about to tell the Court this morning?

A

Yes, sir.

ATTY. ROSALES:

In view of the answer of this witness, Your Honor please, we terminate our cross-examination.[14]

The appellant would like the Court to believe that by answering “Yes, sir,” Matinig admitted that he was merely told about the matters he testified on before the trial court; hence, did not testify on matters of his personal knowledge. We are not convinced.

Obviously, Matinig misunderstood the questions of the appellant’s counsel. The first question was premised on and had reference to Matinig’s answers to the previous questions of said counsel, that he was told of the nature and importance of an oath before he testified. Matinig was questioned, thus:

Q

Whether or not this witness is unschooled, is illiterate, is young, it will be the Court who will assess the weight of his testimony taking into account those circumstances.

PROSECUTOR ABUGHO:

Thank you, Your Honor.

COURT:

But then, when there is an objectionable question you should rise and make your objection so that the Court can make its ruling.

ATTY. ROSALES:

May I continue, Your Honor.

COURT:

Continue.

ATTY. ROSALES:

Q

You answered awhile ago that you said “yes” when you were asked or when you were sworn as a witness because you were told. Do I understand that you were told about the incidents involving the matters you are testifying about now?

PROSECUTOR ABUGHO:

Objection, Your Honor. And, I am now objecting because the phrase “you were told” is not relevant to the question that is asked. It is misleading.

ATTY. ROSALES:

It is not misleading, your honor. It is a clarificatory question of the answer of the witness.

PROSECUTOR ABUGHO:

Because the question is phrased that way that this witness was told of what happened to him, Your Honor, which is very vague.

ATTY. ROSALES:

No. What had happened to him. He was told of the incidents that he is now about to testify.

COURT:

But you are assuming there, pañero.

ATTY. ROSALES:

Yes, Your Honor.

COURT:

You are assuming there, pañero, you are assuming that that is his meaning. So, we will ask him.

Q

What do you mean by that phrase?

That question will be more in consonance with justice.

This is a young fellow, this is unschooled.

ATTY. ROSALES:

Yes, Your Honor. But we must consider the duties of a defense or a cross-examiner.

COURT:

Exactly.[15]

Matinig answered the question: "I was not told what to say." [16] However, when the counsel of the appellant objected to the translation made by the interpreter, the trial court allowed the question to be propounded anew to Matinig, and this time he answered that he was so told. The confusion was exacerbated by the difficulty of the public prosecutor and the counsel of the appellant in framing their questions, and by the fact that the next question of the latter was based on the wrong premise, that Matinig was merely told of what he was about to narrate before the court.

PROSECUTOR ABUGHO:

Your Honor, can we approach the Bench?

(Counsel approaching the Bench)

COURT:

After all, it would mislead the Court also on how to appreciate the testimony.

What was the question that he answered by "wala"?

(Stenographer reading the question:)

“Q You answered awhile ago that you said “yes” when you were asked or when you were sworn as a witness because you were told. Do I understand that you were told about the incidents involving the matters you are testifying about now?”

(After the Court’s interpretation)

WITNESS:

A

I was told.

ATTY. ROSALES:

Q

In other words, it is now clear that you were only told on what you are about to tell the Court this morning?

A

Yes, sir.

ATTY. ROSALES:

In view of the answer of this witness, Your Honor please, we terminate our cross-examination.[17]

Matinig clarified his answer to the question of the counsel for the appellant on cross-examination when he testified:

COURT:

Your duty in redirect is to reconcile what apparently are conflicting testimonies of the witness. You frame your question in that –

PROSECUTOR ABUGHO:

Q

Mr. Witness, awhile ago, you testified that you saw Toto Badajos shot Alfredo Dunque (sic). My question is, did somebody tell you that you have to testify that Toto Badajos shot Alfredo Dunque (sic)?

ATTY. ROSALES:

We object to the question, Your Honor please. The question is improper. That is not the issue in the case.

COURT:

It may not be well-framed but it is not improper.

Allowed. Answer the question.

WITNESS:

A

No one.

PROSECUTOR ABUGHO:

Q

So, can you explain to us when you say that somebody told you?

COURT:

You know, your witness is not intelligent.

PROSECUTOR ABUGHO:

That's why, Your Honor.

COURT:

And you try to frame your question in a way that you are just confusing him. Anyway, the court is after the truth.

Q

When you testified that Toto Badajos shot Alfredo Dunque (sic), were you telling a lie or were you telling the truth?

A

It was the truth.

PROSECUTOR ABUGHO:

That is all, Your Honor.[18]

The appellant's denial of the crime charged and pointing to Sanchez as the culprit cannot prevail over the positive and credible testimony of Matinig that it was the appellant who shot the victim.[19]

The trial court cannot be faulted for not giving credence and full probative weight to the testimony of the appellant and Carlito Dumas. The appellant fled from the scene and left his residence after the killing. He did not receive the notice to file his counter-affidavit during the preliminary investigation because he was nowhere to be found.[20] It was only on September 22, 1997 that the appellant finally surrendered to the Butuan City police station.[21] Moreover, it was only when he testified that the appellant claimed for the first time that Sanchez killed Donque.

The trial court erred in holding that treachery was attendant in the commission of the crime. For treachery to be appreciated, there must be proof beyond reasonable doubt of the concurrence of the following: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution was deliberately or consciously adopted.[22] While the first condition is attendant in this case, the second condition was not proven by the prosecution. There is no evidence that the appellant made some preparation to kill the victim in such a manner as to insure the execution of the crime or to make it impossible or difficult for Donque to defend himself or retaliate.[23] The appellant shot the victim when he was peeved by Donque's failure to give him duck eggs. In fine, the shooting was perpetrated at the spur of the moment. Jurisprudence has it that a killing done at the spur of the moment is not treacherous.[24] Hence, absent clear and convincing proof of treachery, the appellant can only be convicted of homicide.[25]

Under Republic Act No. 8294, the use of an unlicensed gun to commit homicide is a special aggravating circumstance. The culprit's lack of a license for the gun is an essential element of such circumstance, which must be alleged in the Information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure.[26] However, there is no allegation in the Information that the appellant had no license to possess the firearm he used to kill Donque. Thus, the appellant's use of an unlicensed firearm cannot be considered against

him. On record, the appellant voluntarily surrendered to the Butuan City police station. Hence, he is entitled to the mitigating circumstance of voluntary surrender.

Under Article 249 of the Revised Penal Code, homicide is punishable by reclusion temporal. Taking into account the mitigating circumstance of voluntary surrender, and that no aggravating circumstance was attendant to the commission of the crime, the maximum penalty of the Indeterminate Sentence Law should be imposed in its minimum period. Applying the Indeterminate Sentence Law, the minimum of the imposable penalty shall be taken from the full range of the penalty next lower in degree, or more specifically, prision mayor.

The Court awarded P144,000.00 for actual damages, P12,000.00 for his lost earnings and P9,326.00 for the burial and wake despite the absence of any documentary evidence to prove the same. The award shall be deleted. However, the heirs are entitled to temperate damages in the amount of P25,000.00 in lieu of actual damages for burial and wake expenses.[27] The award of P50,000.00 for civil indemnity is in accord with existing jurisprudence.[28] As to the award of moral damages, the same is increased to P50,000.00, conformably to current jurisprudence.[29] The heirs are entitled to P25,000.00 as exemplary damages.[30]

IN THE LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court, Branch 4, Butuan City, is **AFFIRMED** with the **MODIFICATION** that instead of murder, this Court finds appellant Jessielito “Toto” Badajos, guilty beyond reasonable doubt of **HOMICIDE**. There being a mitigating circumstance in favor of the appellant and no aggravating circumstance, an indeterminate penalty of from eight (8) years of prision mayor, in its medium period as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, in its minimum period, as maximum is imposed upon him. He is ordered to pay to the heirs of the victim Alfredo Donque P50,000.00 as civil indemnity; P50,000.00 as moral damages; P25,000.00 as temperate damages; and P25,000.00 as exemplary damages.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Cipriano B. Alvizo, Jr.

[2] Records, p. 1.

[3] Exhibit “C,” Folder of Exhibits.

[4] Exhibit “B,” id.

[5] Exhibits “A,” “A-1” and “A-2,” id.

[6] Records, pp. 79-80.

[7] Rollo, pp. 44-45.

[8] See *People v. Pascual*, 331 SCRA 252 (2000).

[9] TSN, 2 March 1998, pp. 8-11.

[10] Id. at 7.

[11] See *People v. Mustapa*, 352 SCRA 252 (2001).

[12] *People v. Nicholas*, 370 SCRA 473 (2001).

[13] TSN, 2 March 1998, p. 33.

[14] Id. at 26.

[15] Id. at 21-22.

[16] Id. at 23.

[17] Id. at 26.

[18] Id. at 28-29.

[19] *People v. Toledo, Sr.*, 357 SCRA 649 (2001).

[20] Records, pp. 3-4.

[21] Id. at 14.

[22] *People v. Enriquez*, 357 SCRA 269 (2001).

[23] *People v. Mazo*, 367 SCRA 462 (2001).

[24] Ibid.

[25] See *People v. Doctolero, Sr.*, 363 SCRA 404 (2001).

[26] SEC. 8. Designation of the offense.-The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[27] *People v. Abrazaldo*, G.R. 124392, February 7, 2003.

[28] *People v. Delim*, G.R. No. 142773, January 28, 2003.

[29] *People v. Caballero*, G.R. Nos. 149028-30, April 2, 2003.

[30] *Talay, et al. v. People*, G.R. No. 119477, February 27, 2003.

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