

## SECOND DIVISION

[ G.R. No. 132023, October 12, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY SABEROLA Y LOQUENARIO, ACCUSED-APPELLANT.**

### DECISION

**PUNO, J.:**

Accused-appellant Larry Saberola y Loquenario, together with his brothers, Benjamin Saberola y Loquenario (a.k.a. Bensot) and Jaime Saberola y Loquenario (a.k.a. Bontoy), were charged before the Regional Trial Court of Kalookan City with the crime of murder. The amended information dated June 17, 1993 reads:

"That on or about the 14th day of June 1993, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping one another, with deliberate intent to kill, with the use of their superior strength, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, maul and stab on the different parts of the body one FERNANDO PENALOSA Y BULAN a.k.a. "Nanding," thereby causing serious physical injuries, which cause(d) the latter's death on the above-specified date.

"Contrary to law."<sup>[1]</sup>

Among the three accused, only Larry Saberola was apprehended by the police. Benjamin Saberola and Jaime Saberola still remain at large.

Accused-appellant was arraigned on June 28, 1993 where he pleaded "not guilty."<sup>[2]</sup> Hence, trial ensued.

The prosecution established the following facts:

At about 4:00 in the afternoon of June 14, 1993, Fernando Penalosa went to the house of Recenti Bertos at Barrio Sta. Rita, Tala, Kalookan City to engage his game cock in a "*pakahig*." An hour later, accused-appellant arrived and invited Penalosa to a drinking spree at his brothers' place located in the same neighborhood. Penalosa initially declined as he was not in the mood to drink at the time. Due to accused-appellant's insistence, however, he reluctantly acceded to the invitation.<sup>[3]</sup>

At 10:00 in the evening of the same day, a commotion erupted at Jaime Saberola's yard, which led to the killing of Penalosa. This was witnessed by the neighbors, among them, Recenti Bertos and Alfredo Rebamonte. Bertos stood 40 meters away from the crime scene<sup>[4]</sup> while Rebamonte stood 12 meters away.<sup>[5]</sup>

Bertos and Rebamonte testified that they were inside their respective homes when they heard shouts and wails coming from the direction of Jaime Saberola's house. They went out of their houses and witnessed accused-appellant and Penalosa in a tussle. They saw accused-appellant stab Penalosa on the left portion of the chest while holding the neckline of his sando shirt. Immediately, Jaime Saberola approached Penalosa and stabbed him on the left side of his body. Benjamin Saberola then struck Penalosa with a piece of wood. Accused-appellant released his hold of the victim and left him crawling on the ground. The assailants fled to their houses.<sup>[6]</sup>

Bertos called Penalosa's brother who brought the victim to the hospital.<sup>[7]</sup> Penalosa died the following morning.<sup>[8]</sup>

The defense presented a different version of the circumstances surrounding Penalosa's death. Zenaida Nanta testified that she was at Benjamin Saberola's house on June 14, 1993. At around 5:00 in the afternoon, accused-appellant and Penalosa came by. They were looking for Penalosa's brother-in-law who was helping in the construction of the house. Accused-appellant went home at 7:00 in the evening, leaving Penalosa and his brother-in-law. Later, Nanta heard Penalosa and his brother-in-law having a heated argument. Benjamin Saberola advised them to go home. They left at around 9:00 in the evening. The following morning, Nanta learned from their neighbors that Penalosa had been stabbed.<sup>[9]</sup>

Accused-appellant denied any involvement in the killing of Penalosa. He testified that in the afternoon of June 14, 1993, he went on a drinking spree with his neighbors, Totoy Nizare, Renato Dizon and Penalosa, at the house of his brother, Benjamin. While they were drinking, Nizare had an altercation with Penalosa, his brother-in-law, about the burial of his wife. Benjamin pacified them, after which they continued to drink. Accused-appellant and Dizon departed before 6:00 in the evening. Penalosa and Nizare were left behind.<sup>[10]</sup>

Accused-appellant further testified that he went to sleep upon reaching his house which was also located at Barrio Sta. Rita, Tala, Kalookan City. His wife tried to wake him up for supper but he was too sleepy to get up. He awoke at 6:00 in the morning the following day and learned about the death of Penalosa.<sup>[11]</sup>

The testimony of accused-appellant was corroborated by his wife, Elvira Saberola.<sup>[12]</sup>

The trial court held accused-appellant guilty of murder. It found that there was conspiracy among the Saberola brothers to kill Penalosa and that the killing was aggravated by treachery and abuse of superior strength. It sentenced accused-appellant to suffer an indeterminate penalty of twelve (12) years of prision mayor as minimum to eighteen (18) years of reclusion temporal as maximum, and to pay the victim's father the amount of P51, 377.00 as actual damages and P50,000.00 as consequential damages plus cost.<sup>[13]</sup> The dispositive portion of the decision reads:

"WHEREFORE, in view of all the foregoing, this Court finds accused Larry Saberola y Loquenario guilty beyond reasonable doubt of Murder as charged and hereby sentences said accused to suffer imprisonment of TWELVE (12) YEARS of Prision Mayor as minimum to EIGHTEEN (18)

YEARS of Reclusion Temporal, as maximum, taking into consideration the Indeterminate Sentence Law; to pay Potenciano Penalosa, the father of the victim, the amount of P51,377.00 representing the expenses incurred for the last hospitalization of the victim and the expenses incurred during the wake and for the burial of the same and the additional amount of P50,000.00 as consequential damages, as well as to pay the cost.

"This offense was committed before the passage of R.A. 7659.

"The accused shall be credited with the full period of time he has undergone preventive imprisonment pursuant to Art. 29 of the Revised Penal Code provided the conditions enumerated therein, have been complied with.

"SO ORDERED."<sup>[14]</sup>

On appeal, the Court of Appeals modified the judgment of the trial court although it affirmed accused-appellant's conviction. First, it found that the prosecution failed to establish conspiracy among the three accused. Second, it found that the felony was not attended by treachery and evident premeditation. The appellate court, however, appreciated the aggravating circumstance of abuse of superior strength. It held:

"While We agree with the trial court as to the culpability of the accused-appellant, We are not convinced that treachery and evident premeditation attended the commission of the crime. Treachery or alevosia may be appreciated when the following requisites are present: 1.) the employment of the means, method and manner of execution which will ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate and 2.) deliberate or conscious adoption of such means, method or manner of execution. On the other hand, the following requisites must concur before evident premeditation may be considered: a.) the time when the accused determined to commit the crime; b.) an act manifestly indicating that the accused had clung to his determination and c.) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.

"Well-settled is the rule that the circumstances which would qualify the killing to murder must be proved as indubitably as the crime itself. There has been no such showing in this case other than the unpersuasive disquisition of the lower court that:

'The qualifying circumstance of treachery was present in the commission of the crime as charged. The accused Larry Saberola and his two brothers were all armed with deadly weapon (sic) while the victim was unarmed. They made use of their superior strength. The victim did not have any opportunity to repel the aggression or to escape. xxx'

"Neither are we convinced that the killing of the victim was the product of a conspiracy between accused-appellant and his brothers. Conspiracy exists when two or more persons come to an agreement concerning a