

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

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

Ponente: PUNO, J.

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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."[1]

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." [2] 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.[3]

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[4] while Rebamonte stood 12 meters away.[5]

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.[6]

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

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.[9]

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.[10]

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.[11]

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

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.[13] 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." [14]

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 felony and decide to commit it. Conspiracy, like the crime itself, must be proven beyond reasonable doubt - and one's mere presence in the crime scene, by itself, does not make him a conspirator. There, likewise, has been no such showing in the case at bench other than the bare pronouncement on the court a quo that 'Larry Saberola acted in concert with his two brothers helping and cooperating with one another by simultaneous acts in pursuant (sic) to a common objective.'

"However, there has been a clear showing of abuse of superior strength which qualifies the killing to murder where, as in this case, three assailants utilized their superiority in numbers and employed deadly weapons in assaulting an unarmed victim. xxx"[15]

The Court of Appeals then increased the prison penalty of accused-appellant to reclusion perpetua, thus:

"xxx The penalty for murder under Article 248 of the Revised Penal Code is reclusion temporal in its maximum period to death. Clearly, therefore, the trial court erred in imposing an indeterminate penalty of imprisonment of Twelve (12) Years of Prison Mayor as minimum to Eighteen (18) Years of Reclusion Temporal as maximum.

"The crime was committed on June 14, 1993 prior to the effectivity of R.A. No. 7659 which imposes the death penalty on certain heinous crimes. The said statute xxx took effect on December 31, 1993, and thus, will not be applied. There being no aggravating or mitigating circumstance, the penalty should be imposed in its medium period which is the indivisible penalty of Reclusion Perpetua."[16] (citations omitted)

In view of the imposition of reclusion perpetua upon the accused-appellant, the Court of Appeals certified the case to this Court, in accordance with Section 13 Rule 124 of the Revised Rules of Court.[17]

On February 16, 1998, the Court accepted the case and informed the accused-appellant that he may file an additional brief.[18] However, on April 22, 1998, accused-appellant manifested that he is adopting his brief filed in the Court of Appeals.[19]

After a thorough study of the records, we find no reason to disturb the ruling of the Court of Appeals.

The guilt of accused-appellant has been proven beyond reasonable doubt. Two eyewitnesses, Bertos and Rebamonte, positively identified accused-appellant as one of the assailants. Accused-appellant's alibi cannot

overcome their eyeball testimonies, especially since it has not been shown that it was impossible for him to be at the scene of the crime at the time of its commission. Accused-appellant claimed that he was sleeping in his house when the crime happened. The records, however, show that his house was only a few meters away from the crime scene.

To be sure, the defense tried to impute ill motive on the part of Bertos and Rebamonte in testifying against accused-appellant. The effort, however, is futile for the imputation is not supported by any evidence other than the bare allegations of accused-appellant himself and other persons related to him.

Besides, the testimonies of Bertos and Rebamonte were corroborated by the autopsy report made by Dr. Florante M. Baltazar, Medico-Legal Officer and Chief of the PNP Crime Laboratory, National Capital Region, Northern Police District Command. The autopsy report shows that Penalosa sustained two stab wounds "one on the anterior left infraclavicular region (near the left shoulder) and another at the posterior left lumbar region (left lower back)" and two abrasions and an incised wound. Dr. Baltazar testified that based on the measurement of the stab wounds, it is possible to conclude that more than one weapon was used to inflict them. He also said that the abrasions could have been caused by friction from a rough object like a piece of wood.[20] Clearly, the narration of events by Bertos and Rebamonte jibed with the result of the autopsy on the victim's body.

The Court affirms the finding that accused-appellant committed murder and the imposition of reclusion perpetua upon him.

At the time of the commission of the crime, the penalty for Murder was reclusion temporal in its maximum period to death. Article 64 of the Revised Penal Code provides the rules for the determination of the appropriate penalty in such case, thus:

Art. 64. Rules for the application of penalties which contain three periods."In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or not mitigating or aggravating circumstances:

1. Where there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.
2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.
3. When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.
4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.
5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it deems applicable, according to the number and nature of such circumstances.
6. Whatever may be the number and nature of the aggravating circumstances, the court shall not impose a greater penalty than that prescribed by law, in its maximum period.
7. Within the limits of each period, the court shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

In the case at bar, since there was no further aggravating nor mitigating circumstance, the penalty should be imposed in its medium period, that is, reclusion perpetua.

Accused-appellant is not entitled to the benefits of Indeterminate Sentence Law because Section 2 of said law provides that the Act shall not apply to persons convicted of offenses punished with death penalty or life imprisonment. The term "life imprisonment" has been construed to include reclusion perpetua.[21]

IN VIEW WHEREOF, we AFFIRM the decision of the Court of Appeals. Costs against accused-appellant.

Regalado, Acting C.J., (Chairman), Melo, Mendoza, and Martinez, JJ., concur.

[1] Original Records, p. 13.

[2] Original Records, p. 5.

[3] TSN, September 20, 1993, pp. 3-6.

[4] TSN, September 20, 1993, p. 9.

[5] TSN, September 6, 1993, p. 11.

[6] TSN, September 6, 1993, pp. 6-13; TSN, September 20, 1993, pp. 7-14.

[7] TSN, September 20, 1993, p. 14

[8] Exhibit "I".

[9] TSN, April 20, 1994, pp. 2-10.

[10] TSN, March 2, 1995, pp. 3-9.

[11] TSN, March 2, 1995, pp. 10-11.

[12] TSN, November 3, 1994, pp. 3-5.

[13] CA Rollo, pp. 22-28.

[14] CA Rollo, p. 28.

[15] CA Rollo, pp. 150-152.

[16] CA Rollo, p. 152.

[17] CA Rollo, p. 153.

[18] Rollo, p. 2.

[19] Rollo, p. 4.

[20] TSN, December 10, 1993, pp. 6-9; Exhibits "G" and "H".

[21] Serrano vs. Court of Appeals, 247 SCRA 203 (1995); People vs. Bahuyan, 238 SCRA 330 (1994); People vs. Asturias, 134 SCRA 405 (1985).

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