

SECOND DIVISION

[G.R. No. 134563, October 28, 2003]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FRANCISCO DALA, APPELLANT.

D E C I S I O N

CALLEJO, SR., J.:

Early in the evening of November 25, 1996, Julio Clapano and Absalon Tedlos attended the double wedding of Catalino Wario and his son Simeon at Sitio Bandera, Barangay Oguis, Initao, Misamis Oriental. Francisco Dala cooked food for the occasion. Julio, Absalon and Francisco drank tuba with the guests. Francisco even served food to Julio and Absalon.

At about 7:00 p.m., Julio and Absalon decided to go home, and so did Francisco and his wife Rotelia. Francisco held a kitchen knife in its scabbard on his left hand and a flashlight on his right hand. He and his wife Rotelia were quarreling as they walked. Francisco cursed his wife, thus: "You devil wife, beware if I catch you." Rotelia left her husband and walked past Julio and Absalon. Francisco was then behind Julio and Absalon by about seven arms' length.

Julio and Absalon were in high spirits as they crossed the creek, and held each other's hand as they walked. Momentarily, Francisco told Julio and Absalon to stop. They did so and faced Francisco. The latter directed his flashlight towards the two. Absalon greeted Francisco, "Brade." Julio followed suit and greeted Francisco, "Noy." Francisco suddenly unsheathed the kitchen knife he was holding and stabbed Absalon on the right side of the chest. Absalon fled to a distance of about ten meters and then fell to the ground. Julio fled for his life, leaving Francisco behind in hot pursuit. Julio managed to elude Francisco and rushed to the house of Absalon's brother and narrated the incident.

Dr. Concepcion Banogon, Senior Resident Physician of the Initao District Hospital, signed Absalon's certificate of death, where she stated that the victim died of cardio-respiratory arrest due to a stab wound on the right armpit and anterior chest.

[1]

Francisco was charged with murder in an Information filed with the Regional Trial Court of Cagayan de Oro City, Branch 25, the accusatory portion of which reads:

That on or about 7:00 o'clock in the evening of November 25, 1996, in Bandera, Oguis, Initao, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, evident premeditation and taking advantage of darkness, did then and there, willfully, unlawfully and feloniously attack, assault, stab and wounded one ABSALON TEDLOS, thereby inflicting stab wound right armpit and anterior chest, causing his

instantaneous death.

CONTARY TO and in violation of Article 248 of the Revised Penal Code in relation to R.A. 7659.^[2]

On his arraignment, Francisco assisted by counsel, pleaded not guilty.

Francisco admitted killing his second cousin Absalon but claimed that he did so in self-defense. He testified that he and his wife Rotelia were on their way home. Francisco walked ahead, carrying a flashlight, a ramie bag and a bolo which he used to butcher pigs. Momentarily, he saw Absalon and Julio hiding behind banana plants. Absalon was holding a pocket-sized bottle of tanduay rum, while Julio was holding a stick. When Francisco walked past them, he heard Julio say: "Here comes the toughie, Noy." Absalon suddenly emerged from the shrubs and attempted to hit Francisco on the head, even as Absalon muttered: "you are a tough animal." Francisco moved backwards, and was able to evade the thrust. When Absalon attempted to hit Francisco anew with the same bottle, Francisco stabbed Absalon with his bolo on the left nipple. Julio attempted to strike Francisco with the wooden stick but ran away when Francisco faced him. Julio stumbled three times as he fled.

Francisco passed by the house of the barangay captain and proceeded to the house of Absalon where he told the latter's wife to retrieve the body of her husband from the creek because he, Francisco, had just stabbed him. The next day, he surrendered to the police authorities at Initao in the company of the barangay captain and a *kagawad*.

After due proceedings, the trial court rendered judgment finding Francisco guilty beyond reasonable doubt of murder and sentenced him to suffer the penalty of *reclusion perpetua*. The decretal portion of the decision reads:

Wherefore, premises considered, this Court hereby finds the accused Francisco Dala GUILTY beyond reasonable doubt of the crime of murder as principal with the qualifying circumstance of treachery without any aggravating circumstances but with the attendance of the mitigating circumstances of voluntary surrender and plea of guilt and sentences the accused to a penalty of *RECLUSION PERPETUA* pursuant to Article 248 of the Revised Penal Code as amended by R.A. 7659 in relation to Article 63 of the Revised Penal Code and to indemnify Antonina Tiglos (sic) and Rufino Tiglos (sic) the sum of Fifty Thousand Pesos (P50,000.00) and to pay moral damages in the amount of Fifty Thousand Pesos (P50,000.00) and to pay Twenty Thousand Pesos (P20,000.00) as burial expenses and costs.

SO ORDERED.^[3]

Aggrieved, Francisco appealed from the decision.^[4] He asserts in this Court that the trial court erred in not acquitting him on his plea of self-defense. He contends that he adduced sufficient proof that he acted in self-defense when he stabbed Absalon. He avers that even on the assumption that he is criminally liable for Absalon's death, he is guilty only of homicide and not of murder, absent proof of treachery.

The appeal is without merit.