

SECOND DIVISION

[G.R. No. 121682, April 12, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BEN FRANCISCO Y ARABIANA, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court, Kalookan City, Branch 123, finding accused-appellant Ben Francisco y Arabiana guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim Jeffrey Fernandez y Villamor the amount of P50,000.00 as indemnity and, in addition, the amounts of P50,000.00 as moral damages and P35,000.00 as actual damages.

The information against accused-appellant Ben Francisco y Arabiana and his co-accused Juan Francisco y Arabiana alleged:^[2]

That on or about the 25th day of January, 1992 in Kalookan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring together and mutually helping one another, without any justifiable cause, with treachery and evident premeditation and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack and stab with a bladed instrument one JEFFREY FERNANDEZ y VILLAMOR, thereby inflicting upon the latter serious physical injuries which injuries caused his death upon arrival at the Ospital ng Kalookan, this City.

CONTRARY TO LAW.

Upon arraignment, accused-appellant entered a plea of not guilty. His co-accused Juan Francisco y Arabiana fled and has remained at large to this day. Hence, trial proceeded against accused-appellant alone.

Two witnesses were presented by the prosecution, namely, Arnel Bolda and Edwin Fernandez. Arnel Bolda was a resident of Tagaytay St., Maypajo, Kalookan City from 1985 until 1992. He testified that the victim, Jeffrey Fernandez, was his friend and that he knew the accused-appellant and the latter's brother Juan, alias Boy Francisco, because the latter lived in the same place in Dulo, Maypajo.^[3] Recalling the incident on January 25, 1992, Arnel Bolda said that at around 3:00 a.m. of that day, he was at the wake of his deceased cousin in Maypajo. Also present were the victim, the accused-appellant's brother, Juan Francisco, and two others, namely, Ramil and Gardo. They were playing Lucky "9" with Boy Francisco as the card dealer or "banker." As the group was playing, an altercation arose between Boy and the victim. Boy challenged the victim to a fight, but the latter did not accept the

challenge. Thereafter, Boy and his group left. Arnel and the victim stayed behind. The victim bought a bottle of Red Horse Beer and started drinking it. According to Arnel, after a while Boy and the accused-appellant came. Accused-appellant was holding a knife and had another one tucked at his waist. Boy pointed the victim out to his brother, saying "*Ayan si Jeffrey*." The victim asked for a chance to explain. Instead of heeding his plea, accused-appellant hit him on the head and stabbed him. Arnel testified that he told the brothers "*Tama na yan!*", but accused-appellant answered "*Sino'ng matapang dito?*" even as he stabbed the victim. Seriously wounded, the victim ran away and went to the interior street (*looban*). The brothers then fled in the opposite direction. Arnel said that he and Ronico Magsino rushed the victim to the Kalookan General Hospital, but he was dead on arrival. Arnel gave a statement (Exh. A)^[4] to the police on January 28, 1992. Ronico was also present when the incident happened. He gave a sworn statement on January 25, 1992 to PO3 Antonio Peñaranda.

The second witness for the prosecution was the victim's brother, Edwin Fernandez, who testified that on January 25, 1992, at around 3:00 a.m., several persons went to their house and told them that his brother Jeffrey had been killed.^[5] When they went to the hospital, he was informed that the remains of his brother had been transferred to the morgue. He pointed to Arnel Bolda as the one who told him that accused-appellant stabbed Jeffrey. Everyone in the family, according to him, were aggrieved by the death of his brother.

The prosecution and the defense entered into a stipulation of facts regarding the cause of death of Jeffrey Fernandez, thus dispensing with the testimony of the medico-legal expert Dr. Juan Zaldarriaga,^[6] and the fact that PO3 Peñaranda was the same police officer who investigated and took the statements of Ronico Magsino, Arnel Bolda, and Edwin Fernandez.^[7] Both parties likewise stipulated that the family of the deceased spent P35,000.00 for funeral and incidental expenses.

Accused-appellant Ben Francisco invoked defense of a relative. He testified that on January 25, 1992, he had been residing in Area I, Dagat-dagatan, Kalookan City for about six (6) months. Before that he lived in the house of his brother Boy on J.P. Rizal, Maypajo, Kalookan City. According to him, on the said date, he parked the truck which he was driving near his brother's house.^[8] At about 3:00 a.m., he decided to drop by the wake near his brother's house because the parents of the deceased were his friends. When he arrived at the wake, he saw several men, including the victim, ganging up on his brother Boy. Accused-appellant tried to pacify them, but the victim broke a beer bottle and tried to stab his brother with it. He, therefore, pulled out his knife^[9] and stabbed the victim in defense of his brother. Accused-appellant added that it did not occur to him that his brother could have started the fight. He could not recall how many times he stabbed the victim. According to the accused-appellant, the victim ran away together with the rest of the men, while he pulled his brother Boy away from the place of the incident.

Accused-appellant was arrested only on February 6, 1992 but denied that he escaped after stabbing the victim. He testified that he and his brother did not report the incident to the authorities because he had been sent by his employer to Bulacan to take care of the latter's cocks and mango trees. He stated that he did not know where his brother Boy had gone but denied that the latter was in hiding. Accused-appellant said he did not know why Arnel Bolda testified against him when he

considered the latter his friend and he had no misunderstanding with him.

In its decision, dated July 25, 1995, the trial court held the accused-appellant guilty of murder. The dispositive portion of its decision reads:

WHEREFORE, accused BEN FRANCISCO Y ARABIANA is hereby found GUILTY beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code and hereby sentences him to suffer imprisonment of Reclusion Perpetua and to pay the private complainants the following amounts:

- 1) P50,000.00 - as indemnity for the death of the victim;
- 2) P50,000.00 - as moral damages;
- 3) P35,000.00 - as actual damages.

The accused BEN FRANCISCO Y ARABIANA shall be credited in his favor the period of preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended.

Let an Alias Warrant of Arrest be issued for accused Juan Francisco y Arabiana. Pending the arrest of the said accused, this case is ordered ARCHIVED insofar as said accused is concerned.

SO ORDERED.

Hence, this appeal. Accused-appellant assigns the following errors as having been allegedly committed by the trial court:

- I. THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.
- II. THE LOWER COURT ERRED IN ORDERING ACCUSED-APPELLANT TO PAY PRIVATE COMPLAINANTS THE AMOUNTS OF P50,000.00 AS INDEMNITY FOR DEATH OF THE VICTIM, P50,000.00 AS MORAL DAMAGES, AND P35,000.00 AS ACTUAL DAMAGES.

As already stated, accused-appellant admits killing Jeffrey Fernandez but justifies his act on the ground that it was done in defense of a relative under Art. 11(2) of the Revised Penal Code. The essential elements of this justifying circumstance are the following:

- (1) unlawful aggression;
- (2) reasonable necessity of the means employed to prevent or repel it; and
- (3) in case the provocation was given by the person attacked, the one making the defense had no part therein.

As correctly pointed out by the trial court, anyone who admits the killing of a person but invokes the defense of relative to justify the same has the burden of proving these elements by clear and convincing evidence. The accused must rely on the