

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEORGE ERIC DEL ROSARIO, ACCUSED-APPELLANT.[1]

CR No. 32175, September 17, 2010

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Court of Appeals

Before this Court is an appeal[1] seeking to reverse and set aside the Consolidated Decision[2] dated November 20, 2007 of the Regional Trial Court, National Capital Judicial Region, Branch 54, Manila, in Criminal Cases Nos. 01-190068 and 01-190069, both entitled "People of the Philippines, Plaintiff, vs. George Eric Del Rosario y Alcaide, Accused," the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. In Criminal Case No. 01-190068, finding accused George Eric del Rosario GUILTY BEYOND REASONABLE DOUBT of the crime of Homicide, and hereby sentences him to suffer the indeterminate penalty of fourteen (14) years, eight (8) months, and one (1) day of Reclusion Temporal Medium as the maximum, and ten (10) years of Prison Mayor Medium as the minimum, and to indemnify the Heirs of Lauro Buluran in the amount of Fifty Thousand (P50,000.00) Pesos as compensatory damages and the further sum of Fifty Thousand (P50,000.00) Pesos as moral damages;

2. In Criminal Case No. 01-190069, finding accused George Eric del Rosario GUILTY BEYOND REASONABLE DOUBT of the crime of Homicide, and hereby sentences him to suffer the indeterminate penalty of fourteen (14) years, eight (8) months, one (1) day of Reclusion Temporal Medium as the MAXIMUM and ten (10) years of Prison Mayor Medium as the MINIMUM, and to indemnify the Heirs of Rodelio Buluran in the amount of Fifty Thousand (P50,000.00) Pesos as compensatory damages and the further sum of Fifty Thousand (P50,000.00) Pesos as moral damages.

Being a detention prisoner, said accused shall be credited with the duration of his preventive imprisonment under the conditions of Article 29 of the Penal Code.

SO ORDERED".[3]

The facts are:

On March 2, 2001, two separate Informations for Murder were filed against accused-appellant George Eric del Rosario y Alcaide (del Rosario for brevity) the accusatory portions of which read:

Criminal Case No. 01-190068[4]

That on or about October 15, 2000 in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation attack, assault and use personal violence upon the person of LAURO BULURAN y CAPILI, by then and there shooting the latter several times on the different parts of his body with a gun, thereby inflicting upon said LAURO BULURAN y CAPILI gun shot wounds which are the direct and immediate cause of his death thereafter.

Contrary to law."

Criminal Case No. 01-190069[5]

That on or about October 15, 2000, in the City of Manila, Philippines the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of RODELIO BULURAN y CAPILI, by then and there shooting the latter on the chest with a gun, thereby inflicting upon said RODELIO BULURAN y CAPILI gun shot wound which is the direct and immediate cause of his death thereafter.

Contrary to law."

On December 11, 2001, accused-appellant del Rosario assisted by counsel pleaded not guilty to both charges.[6] After the pre-trial conference, trial ensued.[7]

The prosecution presented Perlita Buluran, Mercedita Buluran, Marilyn Buluran-Andrada, Danilo Manalo, SPO2 Diomedes Labarda, P. Insp. Mario Prado and PNP Medico-Legal Officer Dr. Romeo Salen.

Perlita Buluran (Perlita for brevity) testified that: she is the widow of the victim Lauro Buluran (Lauro for brevity); on October 15, 2000 at around 7:00 o'clock in the evening, she and her husband Lauro were conversing outside their house together with their son her brother-in-law Ernesto Buluran (Ernesto for brevity); after a while, she and her sister-in-law Marilyn saw accused-appellant del Rosario at the corner of Mata St. holding a gun, shouting and challenging anyone to a fight by saying "Whoever is brave enough, get out of the house!"; Ernesto told his brother Lauro to go inside and call for police assistance which the latter did; when Lauro went back, Ernesto asked him if he called the police and the former just nodded and went back to his seat while accused-appellant del Rosario continued with his actions; however, no police arrived; Ernesto asked accuse-appellant del Rosario who his enemy was and why was he cursing; accused-appellant del Rosario went near them and poked a gun at them; however, her "kumpare" Danilo Manalo (Mang Danny for brevity) tried to pacify accused-appellant del Rosario and said, "Erie, I am your Mang Danny, what is your problem?"; thereafter, they all stood up and she gave her son to her sister-in-law because accused-appellant del Rosario was pointing his gun at them while her husband went inside the house of his brother Pedro Buluran; they all went inside the house, but her husband took a pail and went to the rear side of a parked jeepney to seek cover; when accused-appellant del Rosario saw her husband, he shot him four (4) times; the first shot hit her husband in the chest so her husband crawled under the jeep to seek cover, but accused-appellant Eric approached him and shot him several times more; at that time, her sister-in-law was clutching her while she was trying to escape from her grasp; her sister-in-law told her not to go near Lauro but she went to her husband anyway; she held Lauro and glanced at her back and saw accused-appellant del Rosario still holding his gun; she got really scared and just sat on the-ground; at that time, she saw her brother-in-law Rodelio Buluran (Rodelio for brevity) hiding at the back of a drum beside their house; Rodelio stood up and tried to go inside the house, at that precised moment he was also shot by accused-appellant del Rosario.[8]

On cross-examination, she stated that: her husband was a TV and beta technician and had a shop inside their house; it was already 7:00 o'clock in the evening when the incident happened; she was with her sister-in-law, Marilyn, brother-in-law Ernesto and Mang Danny when the incident happened; Mang Danny was a close friend of her husband; they had just started drinking when they saw accused-appellant del Rosario challenging anybody to a fight; they saw him cock his gun three times so Ernesto told her husband Lauro to call for police assistance; Lauro went inside the house of Ernesto to call for police assistance, after which, he went back and rejoined their group; accused-appellant del Rosario was then still at the street corner and continuously challenging anyone to a fight, so Mang Danny tried to pacify accused-appellant del Rosario by saying "I am your Mang Danny, what is your problem?"; Ernesto asked accused-appellant del Rosario, "Eric, who is your enemy? Whom are you quarreling? Why are you cursing?"; accused-appellant del Rosario did not answer, instead he went near them and poked a gun

at them; Lauro stood up, went beside the house to get a pail and hid at the back of the jeep; and, he used the pail as a shield.[9]

Mercedita Buluran testified that: she is the wife of the victim Rodelio Buluran; on the night of October 15, 2000, she and her husband were cleaning their house when all of a sudden, they heard gunshots; they went outside to find out what was happening; they saw accused-appellant del Rosario shooting her brother-in-law-Lauro; Rodelio hid beside a drum and saw accused-appellant del Rosario still shooting Lauro even when the latter was already under the jeepney; when Rodelio stood up, he was also shot by accused-appellant del Rosario in the throat which caused his death; they were able to bring Rodelio to the hospital but he was already dead; and Lauro also died.[10]

Marlyn Buluran-Andrada testified that: on October 15, 2000 at around 7:00 o'clock in the evening she was in front of her brother Lauro's house located at 1685 Panday Pira, Tondo, Manila; she, together with her brothers Larry, Bernie, Ernesto and the wife of her nephew were conversing with each other when suddenly, they saw accused-appellant del Rosario holding a gun, cursing and looking for trouble; her elder brother asked accused-appellant del Rosario "Who are you fighting?"; accused-appellant del Rosario immediately approached them and pointed the gun at them so she stood up and brought their nephews and nieces and her children inside the house; when they were inside, she heard several gunshots; she cried because her sister-in-law Perly, brother Lauro and Mang Danny were left outside while her brother Rodelio was inside his own house, cleaning; after more than a minute, and when it was already silent, she went outside the house and saw accused-appellant del Rosario, who was only three (3) steps away from her, shooting Rodelio at the neck; her brother Lauro was already sprawled near the jeepney; she was hysterical and kept on crying, so she went again inside the house; after regaining her composure, she went outside and saw her brother Rodelio's blood in front of their house; on the other hand, her brother Lauro was being lifted and placed inside the jeepney; both of her brothers were brought to the hospital in different vehicles; she followed them and when she arrived at the hospital, her brothers were already dead and placed in the morgue.[11]

On cross-examination, she testified that: on the night of October 15, 2000, she, together with her brothers Lauro and Ernesto, Danny Manalo, Ate Perly, her nephews Ranel and Mamer and her cousin's wife Apple were talking with each other outside their house; her nephews were from Bulacan.on vacation her brothers and Mang Danny started drinking at around 6:00 o'clock in the evening when the incident happened after an hour, and her brothers just consumed one bottle of beer each; at past 7:00 o'clock in the evening, accused-appellant del Rosario went berserk at the store of Enyang Fortun; he was cursing everyone when his brother Ernesto asked him "Who are you shouting at and why are you cursing?"; accused-appellant del Rosario ran towards them and pointed his gun and yelled "Ano, ano, putang ina mo!"; her brother Ernesto stood up and also cursed accused-appellant del Rosario by saying "Tarantado!"; Mang Danny tried to pacify accused-appellant del Rosario by saying "Eric, ako si Mang Danny mo."; her sister-in-law Perlita embraced her brother Ernesto and asked him to go inside the house; she brought her children and her nephews inside the house; she did not see the actual shooting of his brother Lauro; she can no longer recall how many shots were fired because she was so afraid; not long after she heard continuous gunfire, she went out to see what happened and saw her brother Rodelio hiding at the back of a drum; accused-appellant del Rosario shot her brother Rodelio only once.[12]

Danilo Manalo testified that: on October 15, 2000, at around 6:15 o'clock in the evening, he visited his relatives in Panday Pira St., Tondo, Manila, and his friends including Lauro who was the godfather of his child; they were together at around 6:00 to 7:00 o'clock in the evening having a conversation and laughing at the same time when suddenly, accused-appellant del Rosario went outside his house challenged them; he knows accused-appellant del Rosario because he is the son of his "kumpadre"; accused-appellant del Rosario always carries a gun because he is

a police officer, and at that time he was carrying a gun; accused-appellant del Rosario was shouting and saying "Lumabas kayo dyan kung sino man ang matapang!"; Ernesto Buiuran, brother of Lauro, told the latter to call the police from Precinct 1; Lauro stood up and went inside the house of his brother who had a telephone, but he does not know if he was able to call the police; Lauro returned and sat in front; accused-appellant del Rosario continued shouting prompting Ernesto to react and told accused-appellant del Rosario, "Eric, what's your problem? Why are you making trouble here?"; accused-appellant del Rosario pointed the gun at them but did not direct it to any person in particular; he stood up and approached accused-appellant del Rosario in order to pacify him; he told him "Eric, si Mang Danny mo ito.", but accused-appellant del Rosario told him not to meddle; his companions already scampered while accused-appellant del Rosario kept parrying him; he saw Lauro beside the jeepney and he was the first one who got shot by accused-appellant del Rosario; he was only a meter away from accused-appellant del Rosario when the latter shot Lauro who also about one meter from him; when he heard the gunshot, he shouted and told accused-appellant del Rosario to stop; his brother who was in the store at the time told him, "Danny, layo diyan, huwag kang umawat, huwag kang makialam diyan, baril yan."; he stepped aside near the door and stayed there; he heard several gunshots more and there was shouting, screaming, throwing of stones, and commotion; there were at least eight (8) gunshots; later, the mother of accused-appellant del Rosario came because there was nobody who had the guts pacify him; he was at his brother's store when the mother arrived and he could not do anything because he was shocked; he heard that his friend Lauro was lying on the ground and must be brought to the hospital so he boarded the jeepney and asked the people to bring the victim to Mary Johnston Hospital; and, it was only in the hospital where he learned that his friend was already dead.[13]

On cross-examination, he stated that: Lauro was the godfather of his son; he executed a statement and gave the same to the former lawyer of the victim's family but he did not sign the same; part of his statement reads: "Ay sumigaw din si Onyo Buluran sa mga wikang "HOY PUTANG INA MO ERIC, HUWAG KANG MAGPAANDAR DITO."; when accused-appellant del Rosario was shouting, cursing and challenging everybody to a fight, he was not directing the same to any person in particular; however, when Onyo Buluran shouted back, that was the time that accused-appellant del Rosario pointed his gun at them; he raised his hand and tried to pacify accused-appellant del Rosario, however, there was already an exchange of heated words and throwing of bottles, but there was no physical fighting yet; and, it was only after the shooting incident that he saw the mother of accused-appellant del Rosario.[14]

SPO2 Diomedes Labarda testified that: he has been with the Western Police District since 1989; on October 15, 2000, he was on duty when at around 7:15 o'clock in the evening a guard of Mary Johnston Hospital called to report about a shooting incident and the victims were brought there; he went to the hospital to investigate the case; when he arrived at the hospital, the guard told him that the victims were already in the morgue; the guard also said that one of the victims of the shooting incident, a certain Dan Christopher Mejia, was in the emergency room; he was not able to talk to Mejia because he was in critical condition; however, he examined the bodies of the victims, Lauro Buluran and Rodelio Buluran; Lauro sustained gunshot wounds on the abdomen while Rodelio sustained gunshot wounds on the right eye, two on the left arm and one in the abdomen; after the examination, at around 7:30 p.m., he went to the crime scene; there were splotches of blood but there was no evidence recovered like slugs of the bullet shells used; some of the bystanders told him that some of the evidence were allegedly taken by a policeman; however, upon investigation at the police station, the police officers told him they did not recover any evidence; he also talked to some of the witnesses at the crime scene and Barangay Chairman Espiritu told him that the suspect was accused-appellant Eric del Rosario; when they went to the house of accused-appellant del Rosario, it was closed and they were not certain if he was there; they knocked at the door but no one answered; the Barangay Chairman told him that one of the victims was brought to the Jose Reyes Hospital, so, he proceeded there and found one of the victims, Rodolfo Danan, who could not talk because he was also in critical condition;

based on his investigation, the suspect, allegedly high on drugs and drunk, was seen bystanders at around 7:15 o'clock in the evening having an argument with his brother; somebody told them "Hoy, wag kayong maingay!", afterwhich, he shot the victims, Buluran brothers, and fired indiscriminately hitting bystanders Christopher Mejia and Rodolfo Danan; after going to the Jose Reyes Hospital, he went back to the office and prepared his report; Chief Inspector Juanito Taluban instructed them to verify the identity of accused-appellant del Rosario if he is indeed a policeman, so they went to the PNP SAF Headquarters at Camp Bagong Diwa; one of the personnel at the HRD told them that indeed accused-appellant del Rosario was a policeman but was dismissed from the service on March 27, 2000 under SO No. 232 dated April 3, 2000; he made a follow-up investigation and when accused-appellant del Rosario can no longer be found, he filed the case at the Prosecutor's Office; he did not return to accused-appellant del Rosario's house because confidential agents told him that he was already in the province.[15]

On cross-examination, he stated that: he was not an eyewitness to the incident and he based his report on his investigation; he did not receive information that there were throwing of bottles and a fight before the actual shooting took place; what he learned was that accused-appellant del Rosario had an argument with his brother prior to the shooting and somebody told them to keep quiet; he talked to the families of the victims and it was they who furnished him with sworn statements and he took their statements; the allegations that accused-appellant del Rosario was drunk and high on drugs were the result of his investigation and informations given by the witnesses; he tried to convince the witnesses to put their statements in writing but they were hesitant; some of the people said that there were slugs recovered from the scene but when he went to the police station which has jurisdiction over the area and asked if the policemen recovered the slugs, they told him that they did not recover anything.[16]

Police Inspector Mario Prado testified that: he is assigned at the Crime Laboratory and Chief of the Firearms Section of the Western Police District since June 20, 2002; he was formerly assigned at the CPD Crime Lab Office from April 16, 1997 up to December 5, 2001; he was the one who conducted the ballistic examination on the submitted slugs by the Medico-Legal Chief of the Western Police District; based on his findings, the slugs came from a .45 caliber firearm and he made a report on his findings.[17]

On cross-examination, he stated that: the slugs were referred to him on July 18, 2003; he examined the slugs and compared them with the standard .45 caliber bullet; he did not examine the firearm used; and, he cannot be sure if the slugs he examined came from the gun of accused-appellant del Rosario.[18]

Dr. Romeo B. Salen conducted the autopsy on the bodies of the two victims and filed the following Medico Legal Reports:

Medico-Legal Report No. W-732-2000 [19]

SPECIMEN SUBMITTED:

Cadaver of Lauro C. Buluran (sic), 40 years old male, 167 cms. in height and a resident of 1685 Panday Pira St., Tondo, Manila.

Findings: ***

- Grazed wound, sternal region, measuring 8x2 cm., along the anterior midline.

- Gunshot wound, thru and thru, point of entry, middle 3[rd] of the left arm, measuring .9x6cm., 4cm. medial to its anterior midline, with an abraded collar measuring .3cm inferiorly, directed anteriorward, downward and to the right, passing thru the 2nd left intercostal space, lacerating the upper lobe of the left lung, the arch of the aorta, and the lower lobe of the right lung, making a point of exit at the right paraaxillary region, measuring

1.5x.8cm 22 cms. from the anterior midline.

- Gunshot wound, hypogastric region, measuring 1.5x1.2 cm. along the anterior midline, with an abraded collar measuring .3cm, superiorly directed posteriorwards, downwards and lateralwards fracturing the symphysis pubis, lacerating the right common iliac artery, and the deep muscles of the right thigh, with a deformed slug recovered embedded thereat.

- Gunshot wound, thru and thru, point of entry, middle third of the left arm, measuring 1x.6cms, 5cm medial to its anterior midline, with a uniform collar measuring .2cm., directed posteriorwards, downwards and lateralwards, lacerating the underlying tissues, making a point of exit at the distal 3rd of the left arm, measuring 1.5x1cm, 2cm, medial to its posterior midline.

- Gunshot wound, thru and thru, point of entry, middle third of the right thigh, measuring 2x2cm, 4cm. lateral to its anterior midline, with an abraded collar measuring .3cm. medially, directed posteriorwards, upwards and lateralwards, lacerating the underlying soft tissues, making a point of exit at the middle third of the right thigh, measuring 2.8x1.5cm, 7cm. lateral to its anterior midline.

There are about 1,500 cc of fluid and clotted blood recovered at the thoracic cavity.

Stomach is 1/2 full of partially digested food particles, rice and meat, ***"

MEDICO-LEGAL REPORT NO. W-733-2000[20]

Cadaver of Rodelio C. Buluran, 36 years old, male, 163 cms. in height and a resident of 1685 Panday Pira St., Tondo, Manila.

- Abrasion, frontal region, measuring 1.2x6cm. left of the anterior midline.

- Gunshot wound, thru and thru, point of entry, left clavicular region, measuring 1x.8cm., 6cm. from the anterior midline, with a uniform collar measuring .2cm., directed posteriorwards and lateralwards, fracturing the left clavicle, the first and the third left thoracic ribs, lacerating the left subclavian artery, the upper and lower lobes of the left lung, making a point of exit at the left scapular region, measuring 1.3x8cm. from the posterior midline.

- Gunshot wound, thru and thru, point of entry left gluteal region, measuring 1x1cm., 10 cm. from the posterior midline, with an abraded collar measuring 0.3 cm. superiorly, directed downward and medialward, lacerating the underlying soft tissue, making a point of exit at the left gluteal region measuring 2x1.2 cm., 10 cm. from the posterior midline.

- Grazed wound, middle third of the left thigh, measuring 13x1 cm. along its posterior midline.

The defense presented Emma Tolentino as its first witness who testified that: On October 15, 2000, she was the caretaker of the "video karera" of Lauro Buluran; she was at Mata St. and Panday Pira St. waiting for her work time; Lauro, Rodelio, Onyo and Danny Manalo were drinking in front of the house of Onyo; they started drinking at around 5:00 to 6:00 o'clock in the afternoon; at about that time, accused-appellant del Rosario was also standing along the street talking to his friends; she was standing between accused-appellant del Rosario and Buluran's group; accused-appellant del Rosario' voice was a little louder than usual and he seemed agitated, however, he was not holding any gun; Onyo Buluran told accused-appellant del Rosario, "Tama na Eric. Puro ka dada, puro ka salita, kulang ka naman sa gawa."; Onyo Buluran shouted at accused-appellant del Rosario two or three times; when Rodelio heard his brother shouting, he came out of his house and picked up two bottles of beer and threw

them at accused-appellant del Rosario but the latter was not hit; Lauro, on the other hand, went inside their comfort room and when he came back, he was holding a pail and a jungle bolo; Lauro was about to attack accused-appellant del Rosario who was hiding at the side of the jeepney, while Rodelio was also about to attack accused-appellant del Rosario; the Buluran brothers were cornering accused-appellant del Rosario who was hiding; she did not see nor hear accused-appellant del Rosario fire a gun; and, she immediately left the place to look for her child because what was happening was no longer a joke.[21]

On cross-examination, she stated that: the drinking spree of the Buluran brothers was finished when Onyo Buluran shouted at accused-appellant del Rosario; she did not see Mang Danny with the Bulurans; when Onyo Buluran shouted at accused-appellant del Rosario, Rodelio went out of his house; when the Buluran brothers were approaching accused-appellant del Rosario she left because she got scared and she went to look for her daughter.[22]

Amelia del Rosario testified that: accused-appellant del Rosario is her son; on October 15, 2000 at about 7:00 o'clock in the evening someone called her and told her that her son Eric was being mobbed by the Buluran brothers; she immediately proceeded to Panday Pira St. going to Mata St.; when she reached the place, she saw spouses Ernesto and Erlinda Buluran and that there were bottles being thrown and a trash can being hurled at her son; Erlinda Buluran was embracing her husband and pulling him inside their house; she did not see who threw the bottles, but she assumed that they were relatives of the Bulurans; she also saw Rodelio holding a long thing which she thought was an ice pick; Rodelio was about to attack her son with the said ice pick; on the other hand, Lauro who was holding a pail and a jungle bolo, went around the jeep and moved towards her son who was then at the side of the near the driver's side; Rodelio was in front of her son; she went beside her son and stretched her arms and told the Buluran brothers to stop; the latter did not heed her pleas and continued approaching her son; her son pushed her aside and told her to go away because they will be killed; her son had a gun at that time he was pointing it downwards; it was only when her son pushed her away that he pointed the gun to the Lauro and shot the latter; she did not see if her son shot Rodelio; and, she was already confused and he told her son "Halika na Eric, halika na, umalis ka na", and his son left the place.[23]

On cross-examination, she stated that: when she proceeded at Panday Pira St. on the night of the incident, she saw spouses Ernesto and Erlinda Buluran and many others including Lauro and Rodelio Buluran; she approached her son Eric when she saw him at the intersection; she bent beside her son and she told Lauro and Rodelio to "Stop it, stop it" because they were approaching; however, Lauro was not able to approach them and was only a meter away from them while Rodelio was only able to reach the middle of Panday Pira St.; her son pushed him a little towards Mata St. and fired an upward warning shot; her son saw that Lauro and Rodelio still approaching her son, Lauro coming from the rear while Rodelio was coming from the side; she heard several intermittent gunshots; after the gunshots she can no longer see Lauro and Rodelio because she was already in shock; she called her son and asked him to leave; and, they got separated when they reached the other street and she did not know where her son went.[24]

Accused-appellant del Rosario testified that: on October 15, 2000 between 6:00 and 7:00 o'clock in the evening, he arrived at their house located at 1201 Sea Gull St., Tondo, Manila; he and his brother Iveen had an argument because he changed the television channel; he got mad so he went outside and proceeded to a store near Panday Pira St. where he saw his friends; he talked to his friends to release his anger at his brother; his voice was a little loud so that people looked at him; he knows the Buluran brothers since childhood because his father and their father are "Compadres"; he also knows Danny Manalo; he noticed the Buluran brothers in front of their house having a drinking spree with Mang Danny; his friends advised him not to mind his brother for the sake of their relationship; as he was talking angrily and a little bit loud, somebody shouted at him, saying, "Hoy, huwag kang

magpaandar sa amin diyan, baka mapalaban ka sa amin; he saw that it was Ernesto Buluran who shouted at him; when he heard this, he went near the middle of Mata St. and asked Ernesto what his problem was; he had a gun which was tucked to his back; Ernesto answered, "Huwag kang magpaandar dito. Walang pulis, pulis sa amin. Baka mapalaban ka. Baka hindi mo kami kilala."; he answered back, "I know you and even your illegal activities here in this place."; Mang Danny approached him, put his arms around his shoulders and told him, "Ric, do not mind them. You know me, I'm your Mang Danny."; Mang Danny guided him near the jeep and away from where Ernesto was standing; while they were walking towards the store, something hard hit him on his back; this happened several times and the next thing he knew, there were broken bottles hitting him two times; he then heard someone saying "Tirahin mo na, tirahin mo na!", so he turned and he saw them approaching him; he pushed Mang Danny with his left arm and told him, "Mang Danny, tabi, ayan na sila.!", he was referring to Lauro, Ernesto and Rodelio Buluran; he saw Ernesto tucking something from behind while being restrained by his wife; he also saw Rodelio approaching him and holding a knife; Lauro was also approaching him carrying a pail with something hidden inside it; he saw that it was a jungle bolo with its handle and part of the blade sticking out; after pushing Mang Danny, he drew his firearm and pointed it at them in order to scare them; if he pointed the gun to one of them, he would surely back-off while the others will approach him; he was in front of the jeep along Panday Pira St. such that if he pointed the gun at Lauro, he could just hide behind the jeep; he had no intention of killing them; he noticed that his mother was embracing him and telling him to stop what he was doing; he then saw Rodelio still approaching him so he pushed his mother and fired his gun upwards to scare them; Rodelio moved back but just hid behind a drum while Lauro also backed off but he was at the side of the jeep; he ran to Mata St. to get away from them; Lauro tried to go around him and when he saw him, Lauro tried to hack him with the jungle bolo so he fired his gun at him; he was not sure if he hit Lauro at the first shot but he saw Lauro still approaching him so he fired another shot; he was not himself at that time because he was rattled, but he can remember that he fired a third shot; he felt that he was being hit by beer bottles so he turned around and saw Rodelio approaching him carrying a long bladed weapon forcing him to shoot him once; he did not see the reaction of Rodelio because he ran to Panday Pira St. going to Lacson after firing the shot; before the incident, he had no bad blood nor quarrel with the Bulurans; however, when the Bulurans were drunk, they would hurt other people by slapping and boxing them, and he was a witness to one of these incidents.[25]

On cross-examination, he stated that: he is a former policeman and was dismissed from the service; at the time of the incident, he was waiting for his reinstatement; he owns the licensed firearm which he used; his disagreement with his brother was because of the changing of the television channel which happened inside their house; however, during the preliminary investigation, he was confused and he did not read what was written in his counter-affidavit which stated that his argument with his brother was due to his inability to find his gun; when Ernesto shouted at him, he went to them and asked them what their problem was; when Mang Danny approached him, put his arms on his shoulders and led him to the store, he suddenly felt that something hit him on his nape; he turned and saw the Buluran brothers approaching him; he pushed Mang Danny and said "Ayan na sila."; he felt afraid because that was the first time he experienced that kind of situation; he was not able to run because they were already approaching him; he was in the middle of the street when he fired a warning shot; Rodelio hid behind a drum, Ernesto moved backward, while Lauro hid at the side of the jeep; however, the three did not run away; after the incident, he went to Jolibee Monumento and did not go home because he was confused; he threw away the gun while walking away from the scene; on November 18, 2001, he was arrested at Orani, Bataan by the virtue of a warrant of arrest; he knew that there were charges against him and he even attended the preliminary investigation before his arrest.[26]

On re-direct examination, he stated that: after he attended the preliminary investigation, he went back to Orani, Bataan and did not go home because he was afraid of the brothers of the victims, besides, during that time, his

family was receiving death threats and a letter from the relatives of the victims saying that they will make a move; and, his mother however told him that the letter came from a leftist group.[27]

On March 5, 2007, prosecution witness Mercedita Buluran turned hostile and testified that: she executed an Affidavit of Desistance for the reason that she got angry with her brother-in-law Ernesto because even though she lost her husband, Ernesto still wanted to get a part of her house; she executed the said affidavit of desistance on August 26, 2002 and even before the date, the father of accused-appellant del Rosario went to her mother's house in order to settle the case amicably; and, she was paid in exchange for the execution of the said affidavit.[28]

On November 20, 2007, the lower court rendered the assailed decision. Hence, this appeal with the following assignment of errors:[29]

I.

THAT THE LOWER COURT SERIOUSLY ERRED IN FINDING THAT THE ACCUSED-APPELLANT DID NOT ACT IN LAWFUL SELF-DEFENSE OR THAT, AT THE VERY LEAST, THE UNLAWFUL AGGRESSION DID NOT COME FROM HIM THEREBY ENTITLING THE ACCUSED-APPELLANT TO THE BENEFIT OF ART. 69 OF THE REVISED PENAL CODE OR INCOMPLETE SELF-DEFENSE;

II

THAT THE LOWER COURT SERIOUSLY ERRED IN DISREGARDING THE TESTIMONY OF THE HOSTILE WITNESS, MERCEDITA BULURAN AND HER "SINUMPAANG SALAYSAY NANG PAG-UURONG NG SAKDAL" WHICH SHE AFFIRMED, RATIFIED AND CONFIRMED ON THE WITNESS STAND AND IN HER ANSWERS TO THE QUESTIONS PROPOUNDED BY THE LOWER COURT ITSELF; MERCEDITA BULURAN IS THE WIDOW OF THE VICTIM, RODELIO BULURAN AND HAD PREVIOUSLY TESTIFIED FOR THE PROSECUTION;

III

THAT THE LOWER COURT SERIOUSLY ERRED AND COMMITTED A GRAVE ABUSE OF DISCRETION IN WHOLLY DISREGARDING THE TESTIMONY OF THE ACCUSED-APPELLANT, THE DEFENSE WITNESS EMMA TOLENTINO, AMELIA DEL ROSARIO AND THE OTHER TESTIMONIES/ EVIDENCE IN FAVOR OF ACCUSED-APPELLANT.

The appeal lacks merit.

Accused-appellant del Rosario argues that: the lower court erred in finding him not to have acted in lawful self-defense; the lower court should have been more discerning in accepting the testimony of Danny Manalo and its findings that it was unlikely for the Bulurans to initiate the trouble for they were in a jovial mood; the lower court erred in giving undue weight and credence on Danny Manalo's testimonies; there is a reasonable doubt as to where the unlawful aggression came from considering the atmosphere of anger, animosity and belligerence then prevailing between the Bulurans and accused-appellant del Rosario; the truth of the matter is that the unlawful aggression came from the Bulurans when Ernesto Buluran insulted accused-appellant del Rosario; Perlita Buluran even testified that accused-appellant del Rosario pointed the gun at her group only after Ernesto Buluran asked accused-appellant del Rosario who his enemy was and why was he cursing.

These arguments are untenable.

Case law has established that in invoking self-defense, whether complete or incomplete, the onus probandi is shifted to the accused to prove by clear and convincing evidence all the elements of justifying circumstance, namely: a) unlawful aggression on the part of the victim; b) the reasonable necessity of the means employed to prevent or repel it; and c) lack of sufficient provocation on the part of the person defending himself.[30]

The lower court did not err in convicting accused-appellant del Rosario. From the testimonies of Danny Manalo,

it is very clear that unlawful aggression really came from accused-appellant del Rosario, thus:

"The Court gives credence to the narration of Danilo Manalo that Ernesto Buluran had admonished the accused by saying: "Eric, what is your problem? Why are you making trouble here?"; and it was that exhortation which triggered the shooting rampage of the accused that left the two brothers dead. Incidentally, the court gathered from the police investigation report that there were two (2) other victims of the shooting, namely: Dan Christopher Mejia, an 11 year old student, and Rodolfo Danan, a sidecar driver; but who however desisted from pursuing the charge against herein accused. This circumstance indicate that numerous shots were actually fired by the accused, which negate the theory that he fired only to defend himself."[31]

While it may be argued that there may have been some throwing of bottles that occurred and that accused-appellant del Rosario was hit by the same, still, this Court is not convinced of his self-defense theory. Accused-appellant del Rosario even testified that he was already angry when he went out of their house because of his recent argument with his brother regarding the changing of television channel. From his testimony, it is very clear that he was already in a state of agitation when he went to a nearby store.

Furthermore, the testimony of Danny Manalo is more credible considering that Manalo was known to both accused-appellant del Rosario and the Buluran brothers because it negates any doubt as to Manalo's intention in testifying against accused-appellant del Rosario. There is an absence of ill motive on Manalo's part when he testified against accused-appellant del Rosario.

Accused-appellant del Rosario's contention that he did not intend to shoot anyone is belied by the fact that he did not only shoot the Buluran brothers but fired his gun indiscriminately. From the lower court's appreciation of the facts, it appears that there were two (2) other victims of that shooting incident, namely: Dan Christopher Mejia and Rodolfo Danan.

Appellate courts will not disturb the credibility accorded by trial courts to the witnesses and their testimonies, unless certain facts and circumstances of significance have been overlooked or arbitrarily disregarded.[32]

Accused-appellant del Rosario further argues that the lower court erred in disregarding the testimony of hostile witness Mercedita Buluran and her "Sinumpaang Salaysay sa Pag-uurong ng Sakdal" which she affirmed, ratified and confirmed on the witness stand.

This argument deserves scant consideration.

The lower court correctly disregarded the recantation made by hostile witness Mercedita Buluran. For one, she readily admitted in open court that she made her sworn statement due to the fact that she got angry with his brother-in-law, Ernesto Buluran, when the latter wanted to get a part of their house. Furthermore, she also reluctantly admitted during the cross-examination that she was assisted financially by accused-appellant del Rosario's father for her husband's funeral expenses in exchange for executing the said affidavit of desistance.

Retractions are generally unreliable and are looked upon with considerable disfavor by the courts. A retraction of a witness does not necessarily negate an original testimony. Affidavits of retraction can easily be secured from poor and ignorant witnesses usually for a monetary consideration. Like any other testimony, recantations are subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[33]

Thus, in the case of *Balderama vs. People of the Philippines*[34] and *Nagal vs. Armamento*[35], it was held that:

"A recantation or an affidavit of desistance is viewed with suspicion and reservation. The Court looks with disfavor upon retractions of testimonies previously given in court. It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The

rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated. Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld. As found by the Sandiganbyan, "(t)here is indubitably nothing in the affidavit which creates doubts on the guilt of accused Balderama and Nagal."

Accused-appellant del Rosario further argues that the lower court erred in wholly disregarding the testimonies of accused-appellant, Emma Tolentino, Amelia del Rosario and other testimonies/evidence in his favor.

This argument is untenable.

It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings.[36]

Appellate courts will generally not disturb factual findings of the trial court since the latter had the unique opportunity to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying.[37] The findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect.[38]

In this case, the lower court's assessment of the testimonies of the prosecution's witnesses should be accorded respect considering that it had the unique opportunity to observe the deportment and manner of testifying by the said witnesses which the appellate court has no such opportunity. Considering that the lower court found that accused-appellant del Rosario did not act in self-defense, his conviction is therefore in order.

WHEREFORE, in view of the foregoing, the assailed Consolidated Decision dated November 20, 2007 in Criminal Case Nos. 01-190068 and 01-190069 of the Regional Trial Court, Branch 54, Manila is hereby AFFIRMED.

SO ORDERED.

Librea-Leagogo and Elbinias, JJ., concur.

Consolidated decisions affirmed.

[*]Court of Appeals Reports Annotated, Vol. 49.

[1] Rollo pp. 132-205

[2] Records pp. 459-465 (Penned by former Honorable Judge Manuel M. Barrios who is now a Justice of this Court)

[3] Ibid.

[4] Records p. 2

[5] Records p. 3

[6] Records p. 38

[7] Records p. 42

- [8] TSN, dated March 5, 2002, pp. 7-19; TSN, dated May 14, 2002, pp. 4-12
- [9] TSN, May 14, 2002, pp. 20-51; TSN, dated June 4, 2002, pp. 3-7
- [10] TSN, dated June 26, 2002, pp. 5-20
- [11] TSN, dated June 26, 2002, pp. 23-30; TSN, dated October 1, 2002, pp. 2-41
- [12] TSN, December 12, 2002, pp. 3-35
- [13] TSN, dated February 17, 2003, pp. 4-21; pp. 22-39
- [14] TSN, dated February 17, 2003, pp. 22-29
- [15] TSN, dated June 23, 2003, pp. 4-27
- [16] *Id.*, pp. 28-38
- [17] TSN, dated July 28, 2003, pp. 6-22
- [18] TSN, July 28, 2003, pp. 25-29
- [19] Exhibit L. (Folder of Exhibits)
- [20] Exhibit O (Folder of Exhibits)
- [21] TSN, dated August 30, 2005, pp. 5-63
- [22] *Id.*, pp. 65-89
- [23] TSN, dated September 23, 2005, pp. 2-13
- [24] TSN, dated November 11, 2005, pp. 3-41
- [30] *People vs. Concepcion*, 514 SCRA 660, *Beninsig vs. People*, 524 SCRA 320, *Razon vs. People*, 525 SCRA 284
- [31] Records pp. 463B to 464 (p. 6 of the assailed decision)
- [32] *People vs. Gregorio, Jr.*, 523 SCRA 216
- [33] *People of the Philippines vs. Pili*, G.R. No. 181255. October 16, 2009.
- [34] G.R. Nos. 147578-85. January 28, 2008.
- [35] G.R. Nos. 147578-605. January 28, 2008
- [36] *People vs. Pringas*, 531 SCRA 828
- [37] *People vs. Tuazon*, 532 SCRA 152
- [38] *People vs. Santiago*, 539 SCRA 198

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