

TWELFTH DIVISION

[CA–G.R. CR No. 35122, March 31, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO BURGOS Y SILVA @ TONY, ACCUSED-APPELLANT.**

D E C I S I O N

DICDICAN, J.:

Before this Court is an appeal seeking the reversal of the Decision dated January 11, 2012^[1] rendered by the Regional Trial Court (RTC) of Tanauan City, Branch 83, finding accused-appellant Antonio Burgos y Silva guilty beyond reasonable doubt of the crime of homicide. The dispositive part of the said Decision stated as follows:

"WHEREFORE, in the light of the foregoing, judgment is hereby rendered against accused ANTONIO BURGOS y SILVA, finding him GUILTY beyond reasonable doubt, for the crime of homicide, punishable under Article 249 of the Revised Penal Code.

"Taking into consideration the ordinary mitigating circumstance of voluntary surrender in favor of the accused, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of seven (7) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years, six months and one (1) day of *reclusion temporal* as maximum.

"Further, said accused is directed to pay the heirs of the deceased-victim Eleuterio B. Burgos, the amount of FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity, FIFTY THOUSAND PESOS (P50,000.00) as moral damages, and TWENTY FIVE THOUSAND PESOS (P25,000.00), as temperate damages, with interest, at the rate of six percent (6%) per annum, from the finality of judgment until fully paid.

"Finally, said accused is likewise directed to pay the costs of suit.

"SO ORDERED."

The facts, as condensed from the findings of the lower court are as follows:

In the afternoon of October 23, 2004, the now deceased Eleuterio Burgos flagged down the jeepney of accused-appellant's father and poked a gun at accused-appellant's brother who happened to be driving the jeepney. In the same afternoon, the accused-appellant filed a blotter report regarding the incident.

In the evening of even date, accused-appellant was inside his house in Barangay Boot in Tanauan City, with his wife and children, when he suddenly heard a sound coming from the roof. The nervous accused-appellant, still shaken up from the gun-poking incident, went outside his house carrying a licensed 12-gauge shotgun (also called "de sabog"). While outside, with the aid of a flashlight, accused-appellant saw

a person carrying a .38 caliber gun. Soon enough, the said person fired his first shot on accused-appellant. Accused-appellant then ran to the house of his father, seven (7) meters away, to take cover at the side of said house. When accused-appellant slightly exposed himself from his cover, a second shot was again fired by the same person whom the accused-appellant then discovered to be Eleuterio Burgos. The accused-appellant however was not hit by both shots fired by Eleuterio Burgos.

Thereafter, Eleuterio Burgos shot accused-appellant for the third time but again missed. Afraid, the accused-appellant returned fire almost simultaneously.

Accused-appellant then saw Eleuterio Burgos slumped near the side of the house of his father. Accused-appellant thus approached Eleuterio Burgos, fired another shot at him and left. The second shot fired by the accused-appellant was witnessed by Teodoro Burgos, a common relative of accused-appellant and Eleuterio Burgos.

Accused-appellant then went to the house of Barangay Captain Antonio Carandang to report that he was shot by Eleuterio Burgos and thus he returned fire, resulting to the death of Eleuterio Burgos. The 12-gauge shotgun that accused-appellant used was then turned over to the barangay captain who subsequently called the police authorities.

Nine police officers arrived at the scene of the crime. The accused-appellant then surrendered to one of the policemen named PO3 Arnold Dimapilis who then apprised the accused-appellant of his constitutional rights. The accused-appellant also entrusted to the custody of the said policeman his shotgun.

In the course of his investigation, PO3 Arnold Dimpilis found a .38 caliber firearm, one to two feet away from Eleuterio Burgos, whose body was found almost within the premises of the accused-appellant's house. Likewise recovered were three (3) empty shells inside the chamber of the .38 caliber firearm. PO3 Arnold Dimapilis likewise noticed the bullet slugs on the walls of the house of the accused-appellant's father.

On October 25, 2004, accused-appellant was presented for inquest proceedings before the City Prosecutor of Tanauan City. In a Resolution^[2] of even date, the City Prosecutor found that probable cause existed that accused-appellant committed homicide. Hence, in an Information dated October 25, 2004,^[3] accused-appellant was charged of homicide, committed as follows:

"That on or about the 23th day of October 2004, at about 9:00 o'clock in the evening, at Barangay Boot, City of Tanauan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a licensed firearm Armscor twelve (12) gauge shot gun, with intent to kill and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm one Eleuterio Burgos y Burgos, thereby inflicting upon the latter gunshot wounds on the head, trunk and left upper extremity, which directly caused his instantaneous death.

"CONTRARY TO LAW."

Upon learning of the Information, the accused-appellant filed a Motion for Preliminary Investigation and Reduction of Bail^[4] which motion was grated by the

lower court.^[5] The Public Prosecutor, after conducting a preliminary investigation and finding the presence of a *prima facie* case of homicide against accused-appellant, filed a Motion to Set Case for Arraignment and Trial.^[6] On April 25, 2005, accused-appellant pleaded not guilty during the arraignment.^[7] A pre-trial^[8] was then conducted by the trial court, after which, trial on the merits ensued.

During the trial, the prosecution adduced in evidence the testimonies of Teodoro Burgos and Loreta Burgos (the supposed eye-witnesses), Antonio Plete Carandang (a barangay captain) and PO3 Arnold Dimapilis (a police officer).^[9] The Public Prosecutor then formally offered his evidence^[10] which includes a death certificate^[11] of Eleuterio Burgos stating the cause of his death as follows:

"HEMORRHAGIC SHOCK DUE TO OR AS A CONSEQUENCE OF SHOTGUN WOUNDS OF THE HEAD, TRUNK & LEFT UPPER EXTREMITY".

Thereafter, accused-appellant Antonio Burgos was called to the witness stand.^[12] The testimonies of Brgy Captain Antonio Carandang and SPO3 Arnold Dimapilis were thereafter adopted '*in toto*' by the accused-appellant's counsel as part of the defense evidence. On September 14, 2011, the accused-appellant's counsel made an oral formal offer of evidence.^[13]

After the accused-appellant submitted his Memorandum dated October 17, 2011, the lower court rendered its challenged Decision dated January 11, 2012 finding accused-appellant guilty beyond reasonable doubt of the crime of homicide.

Accused-appellant timely filed a Motion for Reconsideration^[14] dated January 17, 2012. A Supplemental Motion for Reconsideration^[15] dated January 31, 2011, mainly harping on the elements of self-defense, was later filed by accused-appellant as he changed his counsel.

After the Public Prosecutor filed her Comment/Opposition^[16] to the motion for reconsideration, the lower court issued an Order dated May 16, 2012,^[17] denying accused-appellant's motion for reconsideration for lack of merit.

Hence, this appeal wherein the accused-appellant submits the following assignment of errors for resolution:

I.

THE TRIAL COURT ERRED WHEN IT FAILED TO APPRECIATE THE FACT THAT THE VICTIM WAS ALREADY DEAD WHEN THE ACCUSED FIRED THE SECOND GUNSHOT

II.

THE COURT ERRED WHEN IT RULED THAT THE DEFENSE FAILED TO DISCHARGE THE BURDEN OF PROVING SELF-DEFENSE.^[18]

The appeal is unmeritorious.

In a nutshell, the contention of the accused-appellant is that the requisites of a complete self defense existed at the time that he fired his first gunshot which

allegedly killed Eleuterio Burgos. By the second gunshot, Eleuterio Burgos was already dead and consequently, accused-appellant incurred no criminal liability.

It is well entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would affect the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, it was in a better position to decide the question of credibility.^[19]

We find no cogent reason to disturb the findings of fact of the lower court.

Even with the testimony of Teodoro Burgos, which testimony is herein relied on by the accused-appellant to support his theory that Eleuterio Burgos died due to the first gunshot, we still find that there is an utter lack of evidence to support a finding that Eleuterio Burgos truly died when hit by the first gunshot. The testimony of Teodoro Burgos on direct examination, conducted by Prosecutor Marcelo Cuevas, is mirrored in the transcript of stenographic notes dated February 7, 2006, which partly states as follows:

“Q: Paano mo nakilala na siya ang bumaril?

A: Dahil nilapitan pa po niya ang bangkay.

Q: So noong lumapit siya ay patay na ang tao?

A: Opo.

Q: So iyong nakita mo ay noong paputukan niya ng isa?

A: Opo, noong lapitan niya ang bangkay.

Q: Na noong panahong iyon ayon sa iyo ay patay na ang tao?

A: Opo.

Q: Paano mo nasabi na patay na?

A: Gawa po sumandig na siya sa pader at bumagsak sa lupa at doon po niya nilapitan.

Q: Eh bakit mo nasabi na patay na?

A: Hindi na po naibo.”^[20]

Prescinding from the foregoing, the only reason that the witness declared that Eleuterio Burgos was dead by the first shot is because he was not moving (“*hindi na po naibo*”). Aside from such a casual observation, no scientific evaluation or verification transpired. In fact, the witness never even went near or touched Eleuterio Burgos. It is herein moreover noted that Teodoro Burgos was never even alleged to be a doctor or presented as an expert witness on the matter.