

SECOND DIVISION

[G.R. No. 239032, June 17, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GILBERT FLORESTA Y SELENCIO, ACCUSED-APPELLANT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal^[1] filed by accused-appellant Gilbert Floresta y Selencio (Gilbert) assailing the Decision^[2] dated April 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 08103, which affirmed with modifications the Decision^[3] dated November 23, 2015 of the Regional Trial Court of Masbate City, Branch 44 (RTC) in Criminal Case No. 15733 finding Gilbert guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code (RPC).

The Facts

This case stemmed from an Information^[4] filed before the RTC, charging Gilbert of the crime of Murder, the accusatory portion of which reads:

That on or about the 28th day of December, 2012, in the evening thereof, at Sitio Calumpang, Brgy. Malinta, Masbate City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one JAY LOURD BONES y ZURBITO, with the use of a firearm of an unknown caliber, hitting him on the left upper chest, thereby inflicting upon him mortal wounds which were the direct cause of his death.

CONTRARY TO LAW.^[5]

The prosecution alleged that at around 8:00 in the evening of December 28, 2012, Jay Lourd Bones y Zurbito (Jay Lourd) was having a drinking session with his friend Allan Andaya (Allan) and a certain Benjie at the kitchen of his house. After drinking two (2) shots of gin, Jay Lourd suddenly stood up and said to Allan, "*Pare, I was hit, may tama ako.*" As Allan was about to hug Jay Lourd, he heard a cracking sound behind him, causing him to run away. Meanwhile, Jay Lourd's wife, Jennifer Bones (Jennifer), was breastfeeding their youngest child when she heard the gunshot coming from the kitchen. She hurriedly went to the kitchen and saw Jay Lourd bloodied on the floor, prompting her to cover his wound with a piece of cloth. At that moment, he told her, "*Panggay, you see if Gilbert is still there?*" Subsequently, she hid in a room with her elder child until her uncle and sister-in-law arrived to bring Jay Lourd to the hospital. She then decided to stay behind and wait for the police officers to arrive. However, when they informed her that they would

continue the investigation the following day, she proceeded to the hospital where she was informed that Jay Lourd was already dead. Thereafter, she went to the Masbate City Police Station to tell the authorities that it was Gilbert who shot Jay Lourd. Consequently, Gilbert was apprehended by the police.^[6]

For his part, Gilbert interposed the defense of alibi, alleging that from 12:30 until 3:00 in the afternoon of December 28, 2012, he was watching a cockfight in Purok Casili, Barangay Igang, Masbate City. Afterwards, he proceeded to play *cara y cruz* with Rico Adovas (Rico), Rely^[7] Dinglasan (Rely), Soy Tugbo, and Linkoy Lorenzo until 9:00 in the evening. Subsequently, he went back to Barangay Malinta and saw a crowd near the house of Jay Lourd. Upon asking the people what happened, he learned that Jay Lourd was shot to death. Thereafter, he went home and had dinner. After having dinner, the police officers arrived at his house, and then, he was investigated, examined, and detained. During trial, Gilbert's averments were corroborated by the testimonies of Rico and Rely.^[8]

The RTC Ruling

In a Decision ^[9] dated November 23, 2015, the RTC found Gilbert guilty beyond reasonable doubt of the crime of Murder, and accordingly, sentenced him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Jay Lourd the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages.^[10] It rejected Gilbert's claim that the declaration made by Jay Lourd to Jennifer was a mere afterthought, as the same was considered part of the *res gestae*. It explained that when Jay Lourd asked Jennifer about the presence of Gilbert right after he was shot, he simply relayed to her what he saw and observed. Likewise, his statement was reliable as part of the *res gestae* for being spontaneously uttered in reaction to a startling occurrence, *i.e.*, the shooting of Jay Lourd.^[11] Moreover, the RTC found the killing to have been attended by treachery, as the prosecution was able to establish that: (a) at the time of the incident, Jay Lourd was drinking with his friends and had no inkling that anyone would shoot him; and (b) the shooting took place in which he could not properly defend himself.^[12] On the other hand, it discredited Gilbert's defense of alibi, since he failed to show that it was physically impossible for him to be at the vicinity of the crime. ^[13]

Aggrieved, Gilbert appealed^[14] to the CA.

The CA Ruling

In a Decision^[15] dated April 21, 2017, the CA affirmed Gilbert's conviction with modifications, increasing the awards of civil indemnity and moral damages to P75,000.00 each; awarding P75,000.00 as exemplary damages and P50,000.00 as temperate damages; and imposing on all monetary awards interest at the rate of six percent (6%) per annum from the date of finality of its decision until fully paid.^[16] Ultimately, it ruled that the prosecution was able to prove all the elements of the crime of Murder in light of the *res gestae* declaration of Jay Lourd who positively identified Gilbert as his assailant.^[17]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Gilbert's conviction should be upheld.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.^[18] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."^[19]

To successfully prosecute the crime of Murder, the following elements must be established: (a) that a person was killed; (b) the accused killed him or her; (c) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (d) the killing is not parricide or infanticide.^[20]

Proceeding from the foregoing considerations, the Court rules that the prosecution failed to establish with proof beyond reasonable doubt that Gilbert is the perpetrator who shot and killed Jay Lourd.

To recount, the prosecution built its case primarily on Jay Lourd's *res gestae* declaration that it was Gilbert who shot and killed him, *i.e.*, shortly after he was shot, he uttered to Jennifer, "*Panggay, you see if Gilbert is still there?*" Consequently, the RTC and the CA afforded the same with full evidentiary weight and treated it as direct evidence in convicting Gilbert of the crime charged. Under the Revised Rules on Evidence, a declaration is deemed part of the *res gestae* and admissible in evidence as an exception to the hearsay rule when the following requisites concur: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statements were made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances.^[21]

Tested against these considerations, the Court agrees with the findings of the RTC and the CA that Jay Lourd's utterance is admissible in evidence as it formed part of the *res gestae*, given that: (a) there was a startling occurrence, that is, he was mortally shot; (b) the declaration was spontaneously done without an opportunity to concoct or contrive a story, since it was done shortly after such shooting; and (c) it concerned the shooting in question and its immediately attending circumstances.

At this point, however, it is well to clarify that admissibility of evidence should not be equated with weight of evidence.^[22] Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular