



SUPREME COURT OF THE PHILIPPINES  
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**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,** **G.R. No. 239032**  
Plaintiff-Appellee, Present:

- versus -

**GILBERT FLORESTA y SELENCIO,**  
Accused-Appellant.

CARPIO, J., Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
J. REYES, JR., and  
LAZARO-JAVIER, JJ.

Promulgated:

**17 JUN 2019**

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**DECISION**

**PERLAS-BERNABE, J.:**

Before the Court is an ordinary appeal<sup>1</sup> filed by accused-appellant Gilbert Floresta y Selencio (Gilbert) assailing the Decision<sup>2</sup> 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<sup>3</sup> 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<sup>4</sup> filed before the RTC, charging Gilbert of the crime of Murder, the accusatory portion of which reads:

<sup>1</sup> See Notice of Appeal dated December 1, 2017; *rollo*, pp. 16-18.  
<sup>2</sup> Id. at 2-15. Penned by Associate Justice Florito S. Macalino with Associate Justices Mariflor P. Punzalan Castillo and Maria Elisa Sempio Diy, concurring.  
<sup>3</sup> CA *rollo*, pp. 15-25. Penned by Judge Designate Arturo Clemente B. Revil.  
<sup>4</sup> Dated December 29, 2012; records, pp. 1-2.

*N*

That on or about the 28<sup>th</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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<sup>7</sup> 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.<sup>8</sup>

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<sup>5</sup> Id. at 1.

<sup>6</sup> See *rollo*, pp. 4-6.

<sup>7</sup> "Rellie" or "Rilly" in some parts of the records.

<sup>8</sup> See *rollo*, p. 6.

### The RTC Ruling

In a Decision<sup>9</sup> 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 ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

Aggrieved, Gilbert appealed<sup>14</sup> to the CA.

### The CA Ruling

In a Decision<sup>15</sup> dated April 21, 2017, the CA affirmed Gilbert's conviction with modifications, increasing the awards of civil indemnity and moral damages to ₱75,000.00 each; awarding ₱75,000.00 as exemplary damages and ₱50,000.00 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.<sup>16</sup> 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.<sup>17</sup>

Hence, the instant appeal.

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<sup>9</sup> CA *rollo*, pp. 15-25.

<sup>10</sup> Id. at 24.

<sup>11</sup> See id. at 20-21.

<sup>12</sup> See id. at 24.

<sup>13</sup> See id. at 19-20.

<sup>14</sup> See Notice of Appeal dated December 9, 2015; id. at 26-29.

<sup>15</sup> *Rollo*, pp. 2-15.

<sup>16</sup> Id. at 14-15.

<sup>17</sup> See id. at 7-13.

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### 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.<sup>18</sup> "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."<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup>

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<sup>18</sup> See *People v. Dahil*, 750 Phil. 212, 225 (2015).

<sup>19</sup> *People v. Comboy*, 782 Phil. 187, 196 (2016).

<sup>20</sup> *Ramos v. People*, 803 Phil. 775, 783 (2017).

<sup>21</sup> *People v. Sace*, 631 Phil. 335, 348 (2010).

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.<sup>22</sup> 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 item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.<sup>23</sup>

Here, while the Court agrees that Jay Lourd's utterance – "*Panggay, you see if Gilbert is still there?*" – should be admitted in evidence as part of the *res gestae*, the courts *a quo* erred in considering the same as direct evidence of the killing and that Gilbert was the perpetrator thereof. Plainly, Jay Lourd's utterance did not contain any positive and categorical identification of Gilbert as his assailant. While it may be argued that, from the utterance, Gilbert had something to do with his mortal wounds, such utterance is ultimately inconclusive evidence to prove that Gilbert was identified by Jay Lourd as his assailant. Faced with conflicting interpretations as to the nature of Jay Lourd's statement, the Court must be guided by the equipoise rule, which instructs that where inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.<sup>24</sup> Applying this rule to the present case would properly lead the Court to conclude that Jay Lourd's utterance cannot be treated as direct evidence to positively and categorically implicate Gilbert of the crime charged.

Be that as it may, the Court is aware that in certain instances, the prosecution may still sustain a conviction despite the absence of direct evidence, provided that it is able to present circumstantial evidence that would establish an accused's guilt beyond reasonable doubt. Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. It is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a

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<sup>22</sup> *Republic v. Galeno*, 803 Phil. 742, 750 (2017), citing *People v. Parungao*, 332 Phil. 917, 924 (1996).

<sup>23</sup> *Heirs of Sabanpan v. Comorposa*, 456 Phil. 161, 172 (2003).

<sup>24</sup> *People v. Librias*, 795 Phil. 334, 344 (2016).

conviction beyond reasonable doubt. To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Stated differently, the test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proven must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.<sup>25</sup>

Applying these principles to the evidence that appear on record, the Court finds that the prosecution had likewise failed to present sufficient circumstantial evidence to establish Gilbert's guilt beyond reasonable doubt. Records show that aside from Jay Lourd's utterance, there is only one (1) other circumstance that could possibly point to Gilbert as the assailant, and that is their previous quarrel with one another.<sup>26</sup> However, the totality of these circumstances is insufficient to produce a moral certainty that it was indeed Gilbert who shot and killed Jay Lourd.

Finally, the Court also notes that the testimony of Allan who was with Jay Lourd when the latter was killed, further cast doubt on the real identity of the perpetrator. On cross-examination, Allan admitted that it was improbable to see who the shooter was and where the gunshot came from "because it was very dark." Moreover, he opined that he was not sure if Jay Lourd was able to see the shooter, as he already ran away. Pertinent portions of his testimony read:

[Atty. John Martin Sese]: But of course, before that Mr. Witness you will agree with me that you heard a gun shot?

[Allan]: Yes, sir.

Q: And you will also agree with me Mr. Witness, that when you heard that gun shot, you look (sic) at the direction where that gunshot came from?

A: **Yes sir, I looked back but I did not see anybody because it was very dark. "madulom-dulom"**

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Q: Mr. Witness, you said that when you look (sic) back you cannot (sic) see anybody because it was very dark, correct?

A: Yes, sir.

Q: Since it was very dark, Jay Lourd could not have (sic) also possibly seen the person who fired the gun, is that correct?

A: **I do not know if Jay Lourd was able to see because I already ran away.**

<sup>25</sup> *Atienza v. People*, 726 Phil. 570, 582-583 (2014).

<sup>26</sup> See TSN, February 14, 2014, p. 4; TSN, July 4, 2014, pp. 6-8; and TSN, June 26, 2015, pp. 7-10.

Q: But immediately after the firing of the gun Mr. Witness, you looked at the direction from where it came from, is that correct?

A: Yes, sir.


Q: **And personally, you did not see that any person was there because it was very dark?**

A: **Yes, sir.**<sup>27</sup> (emphases and underscoring supplied)


In conclusion, the Court finds that the prosecution failed to establish with proof beyond reasonable doubt the identity of Jay Lourd's killer. It is elementary\*that in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.<sup>28</sup> Accordingly, there being no evidence sufficient to support a conviction, the Court hereby acquits Gilbert of the crime charged.

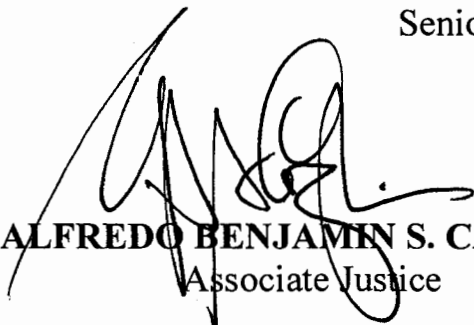
**WHEREFORE**, the appeal is **GRANTED**. The Decision dated April 21, 2017 of the Court of Appeals in CA-G.R. CR H.C. No. 08103 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Gilbert Floresta y Selencio is **ACQUITTED** of the crime of Murder. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.


**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
 Senior Associate Justice  
 Chairperson

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

  
**JOSE C. REYES, JR.**  
 Associate Justice

<sup>27</sup> TSN, August 8, 2014, pp. 7-8.


<sup>28</sup> See *People v. Caliso*, 675 Phil. 742, 752 (2011).



**AMY C. LAZARO-JAVIER**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**LUCAS P. BERSAMIN**  
Chief Justice