

MELKY CONCHA AND ROMEO MANAGUELOD, PETITIONERS, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 208114. October 03, 2018

Ponente: LEONEN, J.

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LEONEN, J.:

An out-of-court identification such as a police show-up is inadmissible if it is tainted with improper suggestions by police officers.

This is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the January 31, 2013 Decision[2] and the July 5, 2013 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 33806 be reversed and set aside.[4] The Court of Appeals affirmed the 2010 Joint Decision[5] of the Regional Trial Court of Cabagan, Isabela, finding Melky Concha (Concha) and Romeo Managuelod (Managuelod) guilty beyond reasonable doubt of the crime of carnapping.[6]

The Office of the Provincial Prosecutor of Isabela filed two (2) criminal Informations against Marlon Caliguiran (Caliguiran),[7] Alvin Tamang,[8] Concha, and Managuelod, charging them with two (2) counts of carnapping under Republic Act No. 6539 or the Anti-Carnapping Act of 1972.[9] Both Informations, docketed as Criminal Case Nos. 22-2219 and 22-2220, were stated exactly as follows:

That on or about the 15[th] day of February, 2006, in the municipality of Tumauni, Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confeder[at]ing together and helping one another, armed with assorted firearms, and by means of force and intimidation, that is by pointing their firearms towards Michael Macutay who was the driver and in possession of a Honda Wave 100 cc motorcycle owned by one Eugenio Cacho, and at gunpoint, did then and there, willfully and feloniously, take, steal and bring away the said Honda Wave 100 cc motorcycle bearing Plate No. BI-8085 valued at PhP 44,000.00 against the will and consent to (sic) the said Mic[ha]el Macutay, to the damage and prejudice of the said owner, in the aforesaid amount of PhP 44,000.00.[10]

On January 21, 2009, Concha and Managuelod were arraigned and both pleaded not guilty. Thereafter, trial ensued.[11]

The prosecution presented Michael Macutay (Macutay), Eugenio Cacho (Cacho), and SPO4 Juan C. Anapi (SPO4 Anapi) as its witnesses, whose testimonies corroborated as follows:[12]

A Honda Wave motorcycle with plate number BI-8085 owned by Cacho was forcibly taken by the four (4) accused from his nephew, Macutay, who was then driving it. The prosecution narrated that on February 15, 2006, Macutay parked the passenger van owned by one Aileen Cacho at Cacho's house in Centro, Tumauni. Cacho thereafter lent the motorcycle with sidecar to Macutay to go home to Liwanag, Tumauni. Macutay drove the motorcycle, while his uncle, Junior, and his cousins, Jayson and Jake, were aboard the sidecar.[13]

At about 11:00 p.m., as Macutay's group was traversing the road between Lallauanan and Liwanag, the

motorcycle had a flat tire. The group decided to push the motorcycle. While doing so, they chanced upon a parked white car on the highway. As they got near the car, four (4) armed persons emerged from it and one of them pointed a gun at Macutay and declared "holdup." The armed men then took his Seiko watch, t-shirt, and wallet, which contained P400.00 in cash and his license. They told Macutay to run. When Macutay was near the edge of the road, he jumped. Macutay and his group then hid as the armed men took his motorcycle and left the sidecar behind. One of the armed men drove the motorcycle while the others returned to the white car and left.[14]

Subsequently, around 1:00 a.m. or 2:00 a.m. of February 16, 2006, Macutay reported the incident to the Philippine National Police stationed at Tumauni. Macutay and the police went to the location of the incident. He showed them where the motorcycle was taken, their positions when it was taken, and the place where he jumped.[15]

On February 20, 2006, the Tumauni police received information from the police station at Cabagan, Isabela that they had recovered a white Mitsubishi Lancer with plate number PYT 415. Tumauni police SPO4 Anapi went to Cabagan to inspect and verify the white car since he had been previously informed that a white car was missing. Upon arrival, SPO4 Anapi asked permission from Chief of Police Juancho Alobba (Chief Alobba) of the Cabagan Police Station to open the white car. Chief Alobba gave his consent. When SPO4 Anapi opened the car's trunk, he and Chief Alobba discovered Plate No. BI-8085, the plate of Cacho's Honda Wave motorcycle. This discovery was also witnessed by a certain PO3 Bautista, a certain PO1 Albano, a certain Police Officer Paguirigan, and other police officers; and also by Macutay and a person named Arnold Balabbo (Balabbo).[16]

On February 21, 2006, the Tumauni police proceeded to Macutay's house in Liwanag and asked him to accompany them to Cabagan Police Station to identify the persons suspected to be responsible for the crime.[17] At the police station, the police presented to Macutay five (5) persons[18] that they had apprehended. Macutay pointed to Managuelod, Concha, and Caliguiran as the persons who robbed him. He claimed that Managuelod was the one who declared "holdup" and drove the motorcycle, while Concha wore the t-shirt they got from him.[19]

On the other hand, the defense presented Concha and Managuelod as its witnesses.[20]

Concha testified that on February 19, 2006, at around 10:00 a.m., he was walking alone on his way home from the field when police officers in a van stopped him near a bridge at the highway. They told him to board the van and invited him to Cabagan Police Station. On the way to Cabagan, they met some Tumauni police officers. When they reached Cabagan Police Station, they locked him inside a cell and intimidated him to sign a document. Despite not knowing what was written in the document, he signed it for fear that the police would pour hot water on him. After a few minutes, the police also detained Managuelod in the cell. From February 19, 2006 to February 22, 2006, Concha was detained at Cabagan Police Station. On February 22, 2006, Concha was transferred to the Provincial Jail. Concha claimed that he came to know Managuelod only when they were already detained at the Provincial Jail.[21]

Concha denied involvement in the carnapping. He asserted that Macutay could not have identified him as he could not recall that Macutay went to Cabagan Police Station on February 21, 2006. Although he was detained for several days at the police station, he did not see Macutay on February 21, 2006. He added that aside from him and Managuelod, Caliguiran and Balabbo were likewise detained at Cabagan Police Station.[22]

Meanwhile, Managuelod testified that on February 19, 2006, around 12:00 p.m., a certain Tumauni Police Officer Baquiran arrested him at his house in Balug, Tumauni, Isabela. At the time of his arrest, he was then helping his younger brother with farm work. He was invited by Police Officer Baquiran to go to Tumauni Police Station. However, he was brought to Cabagan Police Station instead, where he was detained from February 19, 2006 to February 21, 2006. He claimed that he did not know why he was locked up by the police. He alleged that SPO4 Anapi mauled him and boxed him each day of his incarceration. SPO4 Anapi allegedly hit him on the

forehead with a vehicle plate when he was transferred to another cell. According to Managuelod, SPO4 Anapi asked him if he was the one who took the motorcycle.[23] He answered, "I do not know that." [24]

Managuelod also denied being involved in the crime. Like Concha, he averred that Macutay could not have identified him considering that "he did not see the person of Michael Macutay on February 21, 2006, when he was brought together with his companions to the Provincial Jail where they were detained." [25]

On rebuttal, SPO4 Anapi denied striking Concha with the vehicle plate and mauling him. He likewise denied assaulting, boxing, or mauling Managuelod during the police lineup. He contended that Concha and Managuelod's allegations could not have happened since he was not inside the police station then and the police were trained to conduct investigations, not maul persons. [26]

On November 10, 2010, the Regional Trial Court rendered a Joint Decision [27] finding both Concha and Managuelod guilty beyond reasonable doubt of carnapping. [28] Before going to the merits of the case, the Regional Trial Court noted that the two (2) criminal Informations were filed "against the same accused for the same alleged criminal act of taking away forcibl[y] the same subject matter property, a Honda Wave Motorcycle with Plate No. BI-8085." [29] Thus, in view of the accused's right against double jeopardy, it dismissed Criminal Case No. 22-2220 and proceeded with Criminal Case No. 22-2219. [30]

The Regional Trial Court did not give weight to the prosecution's evidence, Plate No. BI-8085, to the extent that it was offered to establish that the accused took the motorcycle. It held that the prosecution failed to prove that any or all of the accused possessed Plate No. BI-8085 before it was discovered by the police in the trunk of the white Mitsubishi Lancer car. Since it was not established that the accused possessed the vehicle plate, the presumption that they took it or the vehicle to which the plate was appended did not arise. [31]

Nonetheless, the Regional Trial Court found Concha and Managuelod guilty of carnapping based on Macutay's testimony. [32] It held that Macutay "was able to identify the culprits who committed the robbery in the lineup at the Philippine National Police Station at Cabagan, Isabela." [33] It stated:

Upon the testimony of the witness Michael Macutay, it is sufficiently proven that at about 11:00 o'clock in the evening of February 15, 2006, the accused Romeo Managuelod and Melky Concha, together with their companions Alvin Tamang and Romeo Caliguiran, held at gun point Michael Macutay and took away from the latter the Honda Wave Motorcycle of Eugenio Cacho which [was] valued at Forty[-]Five Thousand (PhP 45,000.00) Pesos. It is also shown that Romeo Managuelod pointed a gun at Michael Macutay into giving to Romeo Managuelod his Seiko 5 watch, T-shirt and wallet. The Court had carefully studied the testimony of Michael Macutay who himself witnessed the incident complained of and it is of the firm belief that the evidence [proffered] therein is credible evidence by reason of the natural, straightforward, spontaneous, consistent and frank manner in which the witness testified before the Court. In the view of [the] Court, Michael Macutay is a credible witness whose testimony is worthy of credence. [34]

The Regional Trial Court also held that since the prosecution was able to prove that the value of the motorcycle was P44,000.00, Concha and Managuelod were liable to Eugenio for that amount. [35]

The dispositive portion of the Regional Trial Court November 10, 2010 Joint Decision provided:

WHEREFORE, premises considered, the Court finds the accused Melky Concha and Romeo Managuelod GUILTY beyond reasonable doubt of the crime of Carnapping pursuant to Republic Act No. 6539 and accordingly sentences them to an indeterminate prison term of Eighteen (18) Years as minimum to Thirty (30) Years as maximum.

Additionally, the accused Melky Concha and Romeo Managuelod are hereby ordered to pay to Eugenio Cacho the amount of Forty[-]Four Thousand (PhP 44,000.00) Pesos, jointly and severally, by way of actual damage.

The case docketed as Criminal Case No. 22-2220 is hereby ordered dismissed on the ground of double jeopardy.

SO DECIDED.[36] (Emphasis in the original)

On June 30, 2011, Concha and Managuelod filed an appeal[37] before the Court of Appeals and prayed for the reversal of the Regional Trial Court November 10, 2010 Joint Decision.[38] They argued that the out-of-court identification was not valid as it was conducted through a police show-up, not a lineup, since only the four (4) suspects were presented to Macutay for identification.[39]

On January 31, 2013, the Court of Appeals promulgated a Decision,[40] affirming the Regional Trial Court November 10, 2010 Joint Decision.[41] It held that, contrary to Concha and Managuelod's allegations, there was no impermissible suggestion when Macutay positively identified them in the police lineup. They were identified as the perpetrators since Macutay recognized them as part of the group that aimed a gun at him and coercively took the Honda Wave motorcycle.[42] It stated:

Moreover, the Court has held that there is no law requiring a police line-up as essential to a proper identification. Even without a police line-up, there could still be a proper identification as long as the police did not suggest such identification to the witnesses. The records are bereft of any indication that the police suggested to Macutay to identify the accused-appellants as the carnappers.

Furthermore, Macutay's identification in open court of the appellants as the carnappers dispels any doubt as to their proper identification. We are satisfied that Macutay's testimony, by itself, is sufficient identification of the accused-appellants.[43]

The Court of Appeals did not give merit to Concha's and Managuelod's defense of alibi considering that they did not present any testimonial or documentary evidence that could have corroborated their claims. Between their uncorroborated alibi and Macutay's positive identification, the Court of Appeals found the latter more credible.[44]

Since the prosecution was able to establish the existence of all the elements of carnapping through the testimonies of its witnesses,[45] the Court of Appeals ruled that the appeal before it should be dismissed. The dispositive portion of the Court of Appeals January 31, 2013 Decision provided:

WHEREFORE, premises considered, the appeal is DISMISSED for lack of merit. The challenged joint decision of the trial court in Criminal Case No. 22-2219 is hereby AFFIRMED.

Costs against the accused-appellants.

SO ORDERED.[46] (Emphasis in the original)

On March 5, 2013, Concha and Managuelod moved for reconsideration,[47] but it was denied by the Court of Appeals in its July 5, 2013 Resolution.[48]

On July 30, 2013, Concha and Managuelod filed a Petition for Review[49] before this Court, praying that the Court of Appeals January 31, 2013 Decision and the July 5, 2013 Resolution be reversed and set aside, and that a new one be rendered acquitting them of the crime charged.[50] Respondent People of the Philippines, through the Office of the Solicitor General, filed its Comment[51] on February 20, 2014, while petitioners filed their Reply[52] on June 20, 2014.

On July 9, 2014, this Court issued a Resolution,[53] giving due course to the Petition and requiring the parties to submit their respective memoranda. Respondent filed a Manifestation[54] on September 22, 2014, praying that this Court consider its Comment as its Memorandum. Meanwhile, petitioners filed their Memorandum[55] on October

7, 2014.

Petitioners justify their filing of a Rule 45 Petition by stating that the Court of Appeals based its judgment on a misapprehension of facts and that it failed to consider relevant facts, which if taken into account, could sustain a different conclusion.[56]

Petitioners emphasize that SPO4 Anapi's testimony revealed that only the four (4) accused were presented to Macutay for identification.[57] By doing so, the police "grossly suggested to the witness that the persons shown to him were the perpetrators of the crime charged." [58] In effect, no police lineup was conducted.[59] Thus:

[T]he procedure conducted by the police officers in identifying the perpetrators of the crime charged is seriously flawed and gravely violated the petitioners' right to due process, as it denied them their right to a fair trial to the extent that their in-court identification proceeded from and was influenced by impermissible suggestions.

22) Otherwise stated, the police officers were not fair to the petitioners as they have already convinced the mind of the witness that the petitioners were indeed the robbers. Effectively, this act is no different from coercing a witness in identifying a suspect, varying only with respect to the means used. Either way, the police officers are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists.[60] (Citations omitted)

Moreover, Macutay supposedly failed the totality of circumstances test, which is used to determine if an out-of-court identification is admissible.[61] The prosecution allegedly "failed to establish that [Macutay] had the opportunity to view the faces of the perpetrators." [62] He was not even sure if the object used to intimidate him during the carnapping incident was a gun. Also, his disposition during the ordeal—scared and confused—could have diminished his degree of attention.[63]

Petitioners add that there was no proof that Macutay described the perpetrators to the police when he reported the incident on February 16, 2006. He was only able to identify them during the out-of-court identification on February 21, 2006. The significant lapse of time from the day of the incident to the day of identification makes the authenticity and accuracy of the carnappers' description open to question.[64] Therefore, his identification of the supposed carnappers "could in no way be considered as positive and credible." [65]

Since Macutay's out-of-court identification was tainted with impermissible suggestion, it follows then that his in-court identification was tainted as well. For failing to prove the accused's guilt beyond reasonable doubt, petitioners should be acquitted.[66]

Respondent counters that there was no alleged misapprehension of facts. Contrary to petitioners' claims, there was a valid show-up and they were positively identified by Macutay as the culprits. The show-up was valid since it passed the totality of circumstances test.[67] Respondent posits that:

Michael had ample opportunity to see, observe and recognize petitioners on the night in question and thereafter. At the time of the incident, the place was sufficiently illuminated by the full moon. Both petitioners approached Michael and his companions. Petitioner Managuelod announced the hold-up which prompted Michael to divest himself of his watch, shirt and wallet. Michael, after being directed to run, jumped by the road side and watched petitioner Managuelod ride his motorcycle. At the time of the show-up, petitioner Concha was wearing Michael's shirt.

Moreover, the out of court identification by Michael was done just a few days, or specifically six (6) days, after the incident. Hence, he could still vividly remember what happened.[68] (Citations omitted)

Respondent further argues that assuming that there was a defective out-of-court identification, the defect was

cured when Macutay subsequently identified petitioners in court. In sum, there is no doubt that "[Macutay] was able to establish that petitioners are the perpetrators of the crime." [69]

Respondent adds that the evidence of the prosecution proved all the elements of the crime of carnapping. Aside from quoting the Court of Appeals' ruling, respondent also cites Macutay's testimony to demonstrate its point: [70]

Q:

Single, your Honor. While pushing the single motorcycle which you claim that its tire was flat and you saw a white car parked on the right side of the highway, what happened next if any?

A:

When we were near them, sir, there were persons who went near us, Sir.

Q:

Now, what happened next, Mr. Witness?

A:

He pointed me something, sir. I think it was a gun and they said "holdup".

Q:

All these four (4) persons poked a gun to (sic) you, Mr. Witness?

A:

Yes, sir, one of them went near me and said "holdup".

Q:

Now, what did you do if any, Mr. Witness?

A:

Because I was confused and afraid, sir, I gave my t-shirt, I gave my gold watch, my wallet with my license.

....

Q:

What happened to the single motorcycle, Mr. Witness?

A:

They got the single motorcycle, sir.

Q:

How did they get the single motorcycle, Mr. Witness?

A:

They rode on it, sir.

Q:

SINAKYAN DA. You mean to say all of them, the four (4) persons rode on the single motorcycle?

A:

Only one of them rode on the single motorcycle, sir, followed by the car.

Q:

Now, Mr. Witness, at that time, what happened to your cousins?

A:

All of us hid, sir.

Q:

Now, at the time you were divested with your wearing apparel and accessories, what happened to the tricycle where your cousins rode, in the sidecar which your cousins rode, Mr. Witness?

A:

The sidecar they tried to carry it but they could not.[71]

The two (2) issues for this Court's resolution are:

First, whether or not the out-of-court identification of Melky Concha and Romeo Managuelod is admissible; and

Second, whether or not petitioners Melky Concha and Romeo Managuelod are guilty beyond reasonable doubt of the crime of carnapping.

I

It is a settled doctrine that this Court will only entertain questions of law in a Petition for Review on Certiorari.[72] Under Rule 45, Section 1 of the Rules of Court:

Section 1. Filing of Petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Emphasis supplied)

Nonetheless, this Court admits certain exceptions to this rule, upon a showing of the existence of any of the following circumstances:

(1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[73] (Emphasis supplied)

Admittedly, petitioners raise questions of fact in their Petition for Review on Certiorari.[74] They want this Court to examine the validity of the out-of-court identification conducted by the police—the main reason why they were found guilty of carnapping.

A careful scrutiny of the records shows that both the Regional Trial Court and the Court of Appeals misapprehended the facts of this case. This Court hereby takes cognizance of their Petition.

II

Before the prosecution concerns itself with the existence of the elements of a crime, it must first discharge the burden of proving that an accused is correctly identified. In *People v. Arapok*,[75] this Court held:

Once again we stress that the correct identification of the author of a crime should be the primal concern of criminal prosecution in any civilized legal system. Corollary to this is the actuality of the commission of the offense with the participation of the accused. All these must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. Thus, even if the defense of the accused may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus on his identity and culpability. The presumption of innocence dictates that it is for the people to demonstrate guilt and not for the accused to establish innocence.[76] (Emphasis supplied, citations omitted)

The out-of-court identification of petitioners could have been disregarded altogether since it was not shown that they were assisted by counsel.[77] However, this Court recognizes that the "probative weight of an in-court identification is largely dependent upon an out-of-court identification." [78] Thus, it is necessary to determine if the conduct of the latter is above suspicion. *People v. Teehankee, Jr.*[79] enumerated the ways on how the police may conduct out-of-court identification and provided guidance on its admissibility, thus:

Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.[80] (Emphasis supplied, citation omitted)

At the outset, this Court finds that the Court of Appeals erred in declaring that the out-of-court identification conducted by the police was a police lineup. What was conducted was a police show-up, since only four (4)

persons were shown to the prosecution's witness for the purpose of identifying his four (4) assailants. This was stated by SPO4 Anapi in his testimony[81] and admitted by respondent in its Comment.[82]

As to whether the out-of-court identification of petitioners satisfied the totality of circumstances test, this Court finds that it did not. Although there was no significant lapse of time from the day of the incident up to the day when Macutay identified his supposed assailants, his identification fell short on the remaining factors.

First, Macutay failed to provide descriptions of his attackers when he reported the incident to the police. In *People v. Martinez*,[83] this Court held:

Common human experience tells us that when extraordinary circumstances take place, it is natural for persons to remember many of the important details. This Court has held that the most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed.. . . All too often, the face of the assailant and his [or her] body movements create a lasting impression on the victim's mind and cannot thus be easily erased from his [or her] memory.[84]

Despite insisting that the place was illuminated at the time of the carjacking and claiming that he was able to observe his assailants when he hid after jumping from the edge of the road, Macutay did not describe them as to their height, skin color, clothes, or any distinguishing mark that could have made them stand out. Without any of these descriptions, any group of four (4) men is susceptible of being identified as the perpetrators.

Second, Macutay was admittedly scared and confused, which reduced his degree of attention. His disorientation was apparent when he gave his watch, wallet, and even his t-shirt to his assailants as soon as he heard "holdup." He did not even wait for them to tell him what they needed from him.

Third, it was not shown how certain Macutay was in his identification of petitioners. Without any prior description, the basis of his identification is questionable. It also remains uncertain whether the t-shirt that petitioner Concha wore during the police show-up was the same t-shirt that Macutay gave to his assailants, since he failed to describe that piece of clothing in his report before the police.

Finally, the out-of-court identification was tainted with improper suggestion. To reiterate, the police in Cabagan Police Station showed Macutay only four (4) persons to be identified. The testimony of SPO4 Anapi provided:

"Court

Q. That police lineup which was conducted on that February 21, 2006, transpired with the accused Melky Concha and Romeo Managuelod inside the room and you and the witnesses outside the room?

A. Yes, sir, including the Chief of Police of Cabagan.

Q. Can you tell us how many persons were lined up in that room in the conduct of your police lineup?

A. Four (4), sir.

Q. So aside from the two (2) accused Melky Concha and Romeo Managuelod, there were two (2) other persons who were lined up?

A. Yes, sir, I remember one of which is Alvin Tamang who is already dead and the other one is certain Maiko.

Q. All of these persons who were there in the lineup were the subject matter of the investigation that the police authorities were conducting at the time?

A. Yes, sir.

Q. So you said that only those who were suspected of having participated in the incident that you were investigating were in the lineup?

A. Yes, sir.

Q. There were no other persons who were not suspects who were these (sic) in your lineup?

A. There were no other detained prisoners, sir.

Q. So only the four (4) detainees in connection with the incident were there who were made to lineup for identification by the witnesses?

A. Yes, sir."^[85] (Emphasis supplied)

When Macutay, the sole witness, was invited by the police to identify his assailants, his mind was already conditioned that he would come face-to-face with the persons who robbed him. He knew that the group that attacked him consisted of four (4) persons. Consequently, when he was shown four (4) persons in the police show-up, it registered to him that they were the perpetrators. With no prior description of his assailants, it was highly likely that Macutay's identification was tainted with apparent suggestiveness. Therefore, there was no positive and credible identification made by the prosecution's witness.

In *People v. Gamer*,^[86] this Court stressed:

[I]t is not merely any identification which would suffice for conviction of the accused. It must be positive identification made by a credible witness or witnesses, in order to attain the level of acceptability and credibility to sustain moral certainty concerning the person of the offender.^[87]

The importance of positive identification has been thoroughly, if not exhaustively, discussed in *People v. Nuñez*:^[88]

To convict an accused, it is not sufficient for the prosecution to present a positive identification by a witness during trial due to the frailty of human memory. It must also show that the identified person matches the original description made by that witness when initially reporting the crime. The unbiased character of the process of identification by witnesses must likewise be shown.

Criminal prosecution may result in the severe consequences of deprivation of liberty, property, and, where capital punishment is imposed, life. Prosecution that relies solely on eyewitness identification must be approached meticulously, cognizant of the inherent frailty of human memory. Eyewitnesses who have previously made admissions that they could not identify the perpetrators of a crime but, years later and after a highly suggestive process of presenting suspects, contradict themselves and claim that they can identify the perpetrator with certainty are grossly wanting in credibility. Prosecution that relies solely on these eyewitnesses' testimonies fails to discharge its burden of proving an accused's guilt beyond reasonable doubt.

....

The frailty of human memory is a scientific fact. The danger of inordinate reliance on human memory in criminal proceedings, where conviction results in the possible deprivation of liberty, property, and even life, is equally established.

Human memory does not record events like a video recorder. In the first place, human memory is more selective than a video camera. The sensory environment contains a vast amount of information, but the memory process perceives and accurately records only a very small percentage of that information. Second, because the act of remembering is reconstructive, akin to putting puzzle pieces together, human memory can change in dramatic and unexpected ways because of the passage of time or subsequent events, such as exposure to "postevent" information like conversations with other witnesses or media reports. Third, memory can also be altered through the reconstruction process. Questioning a witness about what he or she perceived and requiring the witness to reconstruct the experience can cause the witness' memory to change by unconsciously blending the actual fragments of memory of the event with information provided during the memory retrieval process.

Eyewitness identification, or what our jurisprudence commendably refers to as "positive identification," is the bedrock of many pronouncements of guilt. However, eyewitness identification is but a product of flawed human memory. In an expansive examination of 250 cases of wrongful convictions where convicts were subsequently exonerated by DNA testing, Professor Brandon Garrett (Professor Garrett) noted that as much as 190 or 76% of these wrongful convictions were occasioned by flawed eyewitness identifications. Another observer has more starkly characterized eyewitness identifications as "the leading cause of wrongful convictions."

Yet, even Professor Garrett's findings are not novel. The fallibility of eyewitness identification has been recognized and has been the subject of concerted scientific study for more than a century:

This seemingly staggering rate of involvement of eyewitness errors in wrongful convictions is, unfortunately, no surprise. Previous studies have likewise found eyewitness errors to be implicated in the majority of cases of wrongful conviction. But Garrett's analysis went farther than these previous studies. He not only documented that eyewitness errors occurred in his cases. He also tried to determine why they occurred — an issue eyewitness science has investigated for over 100 years.

The dangers of the misplaced primacy of eyewitness identification are two (2)-pronged: on one level, eyewitness identifications are inherently prone to error; on another level, the appreciation by observers, such as jurors, judges, and law enforcement officers of how an eyewitness identifies supposed culprits is just as prone to error:

The problem of eyewitness reliability could not be more clearly documented. The painstaking work of the Innocence Project, Brandon Garrett, and others who have documented wrongful convictions, participated in the exonerations of the victims, and documented the role of flawed evidence of all sorts has clearly and repeatedly revealed the two-pronged problem of unreliability for eyewitness evidence: (1) eyewitness identifications are subject to substantial error, and (2) observer judgments of witness accuracy are likewise subject to substantial error.

The bifurcated difficulty of misplaced reliance on eyewitness identification is borne not only by the intrinsic limitations of human memory as the basic apparatus on which the entire exercise of identification operates. It is as much the result of and is exacerbated by extrinsic factors such as environmental factors, flawed procedures, or the mere passage of time:

More than 100 years of eyewitness science has supported other conclusions as well. First, the ability to match faces to photographs (even when the target is present while the witness inspects the lineup or comparison photo) is poor and peaks at levels far below what might be considered reasonable doubt. Second, eyewitness accuracy is further degraded by pervasive environmental characteristics typical of many criminal cases such as: suboptimal lighting; distance; angle of view; disguise; witness distress; and many other encoding conditions. Third, memory is subject to distortion due to a variety of influences not under the control of law enforcement that occur between the criminal event and identification procedures and during such procedures. Fourth, the ability of those who must assess the accuracy of eyewitness testimony is poor for a variety of reasons. Witnesses' ability to report on many issues affecting or reflecting accuracy is flawed and subject to distortion (e.g., reports of duration of observation, distance, attention, confidence, and others), thereby providing a flawed basis for others' judgments of accuracy.

Likewise, decision-makers such as jurists and judges, who are experts in law, procedure, and logic, may simply not know better than what their backgrounds and acquired inclinations permit:

Additionally, the limits and determinants of performance for facial recognition are beyond the knowledge of attorneys, judges, and jurors. The traditional safeguards such as cross-examination are not effective and cannot be effective in the absence of accurate knowledge of the limits and determinants of witness performance among both the cross-examiners and the jurors who must judge the witness. Likewise, cross-examination cannot be effective if the witness reports elicited by cross-examination are flawed: for example, with respect to

factors such as original witnessing conditions (e.g., duration of exposure), post- event influences (e.g., conversations with co-witnesses), or police suggestion (e.g., reports of police comments or behaviors during identification procedures).[89] (Citations omitted)

III

This Court does not discount the pronouncement it made in *People v. Rivera*:^[90]

We ruled that a police line-up is not essential in identification and upheld the identification of the accused through a show-up. We also held that even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the "inadmissibility of a police line-up identification . . . should not necessarily foreclose the admissibility of an independent in-court identification."^[91] (Citation omitted)

Even so, given the peculiar circumstances of this case, this Court holds that the gross corruption of Macutay's out-of-court identification through the improper suggestion of police officers affected the admissibility of his in-court identification. In *Arapok*, this Court rendered a similar ruling:

We find that the out-of-court identification of accused-appellant, which is a show-up, falls short of "totality of circumstances" test. Specifically, there was no prior description given by the witness to the police at any time after the incident; and we cannot discount the possibility that the police may have influenced the identification under the circumstances by which accused-appellant was presented to him. This Court has held in *People vs. Salguero* that this kind of identification, where the attention of the witness is directed to a lone suspect, is suggestive. Also, in *People vs. Niño*, this Court described this type of out-of-court identification as being "pointedly suggestive, generated confidence where there was none, activated visual imagination, and, all told, subverted their reliability as eye-witnesses."^[92] (Emphasis supplied, citations omitted)

On a final note, this Court reminds the members of the bar and bench that:

Conviction in criminal cases demands proof beyond reasonable doubt. While this does not require absolute certainty, it calls for moral certainty. It is the degree of proof that appeals to a magistrate's conscience:

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.^[93] (Citation omitted)

WHEREFORE, premises considered, the Court of Appeals January 31, 2013 Decision and July 5, 2013 Resolution in CA-G.R. CR No. 33806 are REVERSED and SET ASIDE. Petitioners Melky Concha and Romeo Managuelod are ACQUITTED for reasonable doubt. They are ordered immediately RELEASED from detention, unless confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from receipt of this Decision the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

Let entry of judgment be issued immediately.

SO ORDERED.

Peralta (Chairperson), A. Reyes, Jr.,[*] and J. Reyes, Jr., JJ., concur.
Gesmundo, J., on official business.

[*] Designated Acting Member per Special Order No. 2588 dated August 28, 2018.

[1] Rollo, pp. 2-20.

[2] Id. at 22-31. The Decision was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[3] Id. at 33-34. The Resolution was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[4] Id. at 15.

[5] Id. at 55-63. The Joint Decision, docketed as Crim. Case Nos. 22-2219 and 2220, was penned by Judge Felipe Jesus Torio II, Branch 22, Regional Trial Court, Cabagan, Isabela.

[6] Id. at 63.

[7] In petitioners' Memorandum, Marlon Caliguiran was allegedly dropped from the complaint (see rollo, p. 160, footnote 2). However, in respondent's Comment, he allegedly died during the pendency of the case before the Regional Trial Court (see rollo, p. 116, footnote 11). Neither the Regional Trial Court November 10, 2010 Joint Decision nor the Court of Appeals January 31, 2013 Decision mentioned his status with respect to the case.

[8] Petitioners' Memorandum stated that Alvin Tamang died while the case was pending before the Regional Trial Court (see rollo, p. 160, footnote 3). Meanwhile, respondent stated in its Comment that a warrant of arrest was issued against him but it did not appear from the case records whether he was arrested. (see rollo, p. 116, footnote 12). Neither the Regional Trial Court November 10, 2010 Joint Decision nor the Court of Appeals January 31, 2013 Decision mentioned his status with respect to the case.

[9] Rollo, pp. 23 and 55.

[10] Id. at 55.

[11] Id. at 56-59.

[12] Id. at 56-57.

[13] Id. at 24 and 56-57.

[14] Id. at 24 and 56.

[15] Id. at 24-25.

[16] Id. at 57.

[17] Id.

[18] Id. In its Joint Decision, the trial court summarized the prosecution's evidence. It stated that the police showed Macutay five (5) persons to be identified and that Macutay told the police that "they were the ones that robbed him."

[19] Id. at 25 and 57.

[20] Id. at 58-59.

[21] Id. at 58.

[22] Id.

[23] Id. at 58-59.

[24] Id. at 59.

[25] Id.

[26] Id.

[27] Id. at 55-63.

[28] Id. at 63.

[29] Id. at 59-60.

[30] Id. at 60.

[31] Id. at 60-61.

[32] Id. at 61-62.

[33] Id.

[34] Id. at 62.

[35] Id.

[36] Id. at 63.

[37] Id. at 35-54.

[38] Id. at 52.

[39] Id. at 46-47.

[40] Id. at 22-31.

[41] Id. at 31.

[42] Id. at 29-30.

[43] Id. at 30.

[44] Id.

[45] Id. at 28.

[46] Id. at 31.

[47] Id. at 81-89.

[48] Id. at 33-34.

[49] Id. at 2-20.

[50] Id. at 15.

[51] Id. at 114-128.

[52] Id. at 140-147.

[53] Id. at 148-149.

[54] Id. at 151-154.

[55] Id. at 160-174.

[56] Id. at 7-8.

[57] Id. at 166-167.

[58] Id. at 166.

[59] Id. at 167.

[60] Id. at 165-166.

[61] Id. at 168-170.

[62] Id. at 169.

[63] Id. at 169-170.

[64] Id. at 170.

[65] Id.

[66] Id. at 170-171.

[67] Id. at 120-122.

[68] Id. at 122.

[69] Id. at 123.

[70] Id. at 124-126.

[71] Id. at 124-125, citing TSN, March 25, 2009, pp. 7-9.

[72] See *Benito v. People*, 753 Phil. 616, 625-626 (2015) [Per J. Leonen, Second Division], *Villamor, Jr. v. Umale*, 744 Phil. 31, 44 (2014) [Per J. Leonen, Second Division], and *DST Movers Corporation v. Peoples General Insurance Corporation*, 778 Phil. 235, 244-245 (2016) [Per J. Leonen, Second Division].

[73] *Benito v. People*, 753 Phil. 616, 625-626 (2015) [Per J. Leonen, Second Division], citing *Pagsibigan v. People, et al.*, 606 Phil. 233, 241-242 (2009) [Per J. Carpio, First Division]. See also *Medina v. Asistio, Jr.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223 [Per J. Bidin, Third Division].

[74] Rollo, pp. 7-8. Petitioners pray that this Court give due course to their petition on the ground that the Court of Appeals based its judgment on a misapprehension of facts and that it failed to consider certain relevant facts.

[75] 400 Phil. 1277 (2000) [Per J. Gonzaga-Reyes, Third Division].

[76] Id. at 1301.

[77] In *People v. Escordial* (424 Phil. 627, 653 (2002) [Per J. Mendoza, En Banc]), this Court held: During custodial investigation, these types of [out-of-court] identification [pertaining to show-up and line-up] have been recognized as "critical confrontations of the accused by the prosecution" which necessitate the presence of counsel for the accused. This is because the results of these pre-trial proceedings "might well settle the accused's fate and reduce the trial itself to a mere formality." We have thus ruled that any identification of an uncounseled accused made in a police line-up, or in a show-up for that matter, after the start of the custodial investigation is inadmissible as evidence against him. (Citations omitted)

[78] *People v. Calica*, 471 Phil. 270, 285 (2004) [Per J. Callejo, Sr., Second Division].

[79] 319 Phil. 128 (1995) [Per J. Puno, Second Division].

[80] *Id.* at 180.

[81] *Rollo*, pp. 166-167.

[82] *Id.* at 122.

[83] 469 Phil. 558 (2004) [Per Curiam, En Banc].

[84] *Id.* at 570-571.

[85] *Rollo*, pp. 166-167, citing TSN, August 10, 2010, pp. 8-9.

[86] 383 Phil. 557 (2000) [Per J. Quisumbing, Second Division].

[87] *Id.* at 570.

[88] G.R. No. 209342, October 4, 2017 <
<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/209342.pdf> > [Per J. Leonen, Third Division].

[89] *Id.* at 1-9.

[90] 458 Phil. 856 (2003) [Per J. Puno, En Banc].

[91] *Id.* at 876-877.

[92] *People v. Arapok*, 400 Phil. 1277, 1300 (2000) [Per J. Gonzaga-Reyes, Third Division].

[93] *People v. Nuñez*, G.R. No. 209342, October 4, 2017 <
<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/209342.pdf> > 29 [Per J. Leonen, Third Division].

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