

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEVER JAEN Y MORANTE, ACCUSED-APPELLANT.

G.R. No. 241946. July 29, 2019

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this ordinary appeal[1] is the Decision[2] dated January 22, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07970, which affirmed the Decision[3] dated May 14, 2015 of the Regional Trial Court of Pasig City, Branch 160 (RTC) finding accused-appellant Elever Jaen y Morante (Jaen) guilty beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code (RPC).

The Facts

The instant case stemmed from an Information[4] charging Jaen of Murder under Article 248 of the Revised Penal Code, the accusatory portion of which states:

That, on or about the 13[th] day of July, 2013 in San Juan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill with the use of a gun – Beretta Pistol 9mm with Serial No.[JG42306Z, [later marked "FCC-I"], did, then and there [willfully], unlawfully and feloniously shoot the head of one Jacob Eduardo Miguel O. Manzo thereby inflicting upon the latter multiple gun shot wounds on his head that caused his instantaneous death, the said killing having been attended by the qualifying aggravating circumstance of treachery which qualify (sic) the killing to murder.

CONTRARY TO LAW.[5]

The prosecution alleged that on July 13, 2013, SPO3 Freddie Cayot, Jr. (Cayot) together with his distant relative, Jaen, also known as "Shongo," attended a ceremony at Camp Bagong Diwa in Bicutan. Afterwards, Cayot's officemate, victim Jacob Eduardo Miguel O. Manzo (Manzo), approached Cayot to ask if he could give him a ride home, to which Cayot obliged. Upon reaching Manzo's home in San Juan City at around 4:30 in the afternoon, Manzo invited the two to have some drinks since they had not seen each other for a long time. The two agreed and had a drinking session, and they were later joined by Sgt. Rey Banzon (Banzon) and his nephew.

After some time, Manzo invited all of them to go to a resto-bar owned by Banzon in Mandaluyong City, to which they all agreed. They then drove to the resto-bar, with Manzo and Jaen riding with Cayot. Before they all disembarked, Cayot placed his handgun inside his belt bag, and thereafter, tucked it beneath the driver's seat of his car. At around 11:20 in the evening, after having dinner and drinks, they prepared to leave. Cayot asked Jaen to go ahead and start the engine of the car together with Manzo; Cayot joined them a few minutes later. On their way home, Cayot drove the car while Manzo sat in the front passenger seat and Jaen in the back seat. When they were near Manzo's house, Cayot was startled by the sound of a series of gunshots near his ear and the smoke inside the car. He stopped the car and then saw blood dripping from Manzo's head. Cayot asked Jaen what happened and where his gun was, to which the latter responded that Manzo took it. Cayot panicked and cried, believing that Manzo committed suicide.

They then drove straight to Manzo's house and brought him inside, wherein Cayot informed the family of Manzo's alleged suicide. While they were talking, Manzo's niece observed that Jaen was fidgety. Jaen then interrupted them and repeatedly exclaimed, "Aaminin ko lahat. Sasabihin ko sa inyo!" In response, Cayot slapped him to make him stop. After Cayot finished informing the family of what had happened, Jaen excused himself to urinate several times. They observed that he repeatedly rubbed his hands against the concrete wall; he also urinated at the pocket garden in the basement and wiped his hands on the grass and leaves. Thereafter, the family brought Manzo to the hospital. Thereat, Jaen took Cayot aside and confessed to him that he was the one who shot Manzo. Consequently, Cayot arrested him.[6]

The autopsy revealed that Manzo sustained six (6) gunshot wounds, the entry point of which were all at the posterior/occipital region, or at the back of the head.[7] According to the medico-legal examiner, based on the distant gunshot wounds, the assailant would have been approximately two (2) feet away, and possibly seated at the back. During investigation, Cayot's service gun was found at the back of the car, together with five (5) cartridge cases and two (2) deformed jackets. An examination revealed that the bullets were fired from the same gun. Cayot, Jaen, and the cadaver of Manzo were all subjected to a paraffin test which yielded negative results.[8] The forensic chemist who conducted the bullet trajectory examination also noted that there were bullet marks in the glove compartment, on the dashboard, and on the door of the front passenger's side; moreover, the windshield was detached.[9] Based on his examination, he explained that the possible location of the assailant was inside the car, particularly the rear passenger seat.[10]

Although Jaen pleaded not guilty to the charge,[11] he did not present any evidence in his favor.

The RTC Ruling

In a Decision[12] dated May 14, 2015, the RTC found Jaen guilty beyond reasonable doubt of Murder and accordingly, sentenced him to suffer the penalty of reclusion perpetua with its concomitant accessory penalties under Article 41 of the RPC. He was likewise ordered to indemnify Manzo's heirs in the amount of P75,000.00 for the latter's wrongful death, and P50,000.00 in moral damages. The period of his preventive imprisonment was likewise credited to him.[13]

Despite the absence of an eyewitness account, the RTC found that the totality of the circumstantial evidence presented by the prosecution clearly identified Jaen as the gun wielder. Treachery was likewise established by the evidence adduced which indicated that the attack was sudden, with the assailant coming from behind the victim, thereby rendering the latter defenseless. Thus, it held that the prosecution was able to establish all the elements constituting the crime of Murder under Article 248 of the RPC.[14]

Aggrieved, Jaen appealed[15] to the CA.

The CA Ruling

In a Decision[16] dated January 22, 2018, the CA affirmed Jaen's conviction for the crime of Murder, with the following modifications: (a) increasing the award of moral damages to P75,000.00; (b) further awarding to Manzo's heirs exemplary damages in the amount of P75,000.00; and (c) imposing on all monetary damages legal interest at the rate of six percent (6%) from finality of the ruling until fully paid.[17]

The CA concurred with the RTC's findings that the totality of the circumstantial evidence presented was enough to identify Jaen as the gun wielder. As to the argument that treachery was not proven, the CA agreed with the RTC that the evidence presented, including the number of gunshots and the location of the wounds, were enough to show that the attack was sudden which rendered the victim defenseless.[18]

Hence, this appeal.

The Issue Before the Court

The core issue for the Court's resolution is whether or not Jaen is guilty beyond reasonable doubt of the crime of Murder under Article 248 of the RPC.

The Court's Ruling

The appeal has no merit.

Murder is defined and penalized under Article 248 of the RPC as amended by Republic Act No. 7659,[19] to wit:

Article 248. Murder. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

x x x x

Based on the foregoing, the following elements must be established to prosecute the crime of Murder: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[20]

In this case, all of the foregoing elements are present. It is undisputed that Manzo was killed through treacherous means, which killing did not constitute parricide or infanticide. Meanwhile, anent the second element, the Court holds that – contrary to the opinions of Associate Justices Alfredo Benjamin S. Caguioa (Justice Caguioa) and Jose C. Reyes, Jr. (Justice Reyes) – the circumstantial evidence in this case clearly prove that the accused, Jaen, killed the victim.

To expound on this latter point, it must be highlighted that Manzo was shot and killed while seated at the front passenger seat of a moving vehicle being driven by prosecution witness Cayot, with Jaen at the backseat thereof. As suicide had already been ruled out,[21] basic reason and logic dictate that the shooter is either Cayot or Jaen.

Relying on circumstantial evidence, the RTC found Jaen as the guilty party. Notably, the RTC's findings were fully affirmed by the CA. It is well-settled that absent any showing of arbitrariness, capriciousness, or palpable error; the factual findings of the CA, affirming those of the trial court, are binding on the Court,[22] as in this case. However, to be sure, and in light of the dissenting opinions of Justices Caguioa and Reyes, a further discussion on circumstantial evidence is apropos.

It is settled that direct evidence of the commission of a crime is not indispensable to criminal prosecutions as a contrary rule would render convictions virtually impossible given that most crimes, by their nature, are purposely committed in seclusion and away from eyewitnesses.[23] In the absence of such direct evidence, the guilt of an accused may nevertheless be proven through circumstantial evidence if sufficient circumstances, proven and taken together, create an unbroken chain leading to the reasonable conclusion that the accused, to the exclusion of all others, was the author of the crime.[24]

Circumstantial evidence may be characterized as that evidence that proves a fact or series of facts from which the facts in issue may be established by inference.[25] It is not a weaker form of evidence vis-à-vis direct evidence as case law has consistently recognized that it may even surpass the latter in weight and probative force.[26]

Under Section 4, Rule 133 of the Revised Rules on Evidence, circumstantial evidence is sufficient for conviction if: (a) there is more than one (1) circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all these circumstances is such as to produce a conviction beyond reasonable doubt. On this note, the Court, in *Almojuela v. People*,^[27] reiterated the basic guidelines that judges must observe when faced with merely circumstantial evidence in deciding criminal cases, to wit:

- (a) Circumstantial evidence should be acted upon with caution;
- (b) All the essential facts must be consistent with the hypothesis of guilt;
- (c) The facts must exclude every other theory but that of the guilt of the accused; and
- (d) The facts must establish with certainty the guilt of the accused so as to convince beyond reasonable doubt that the accused was the perpetrator of the offense. The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated not singly but collectively. The guilt of the accused cannot be deduced from scrutinizing just one (1) particular piece of evidence. They are like puzzle pieces which when put together reveal a convincing picture pointing to the conclusion that the accused is the author of the crime.^[28] (Emphases and underscoring supplied)

Thus, the determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test and not a quantitative one. The proven circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.^[29] In this wise, the Court has held that "[c]ircumstantial evidence is like a 'tapestry made up of strands which create a pattern when interwoven.' Each strand cannot be plucked out and scrutinized individually because it only forms part of the entire picture."^[30]

As identified by the RTC, and as affirmed by the CA, all of the following circumstances point to the fact that Jaen was clearly responsible for Manzo's murder:

- [Cayot, Jaen, and the victim, Manzo,] were together that fateful night in a drinking session;
- After the said drinking session, they left together in a car. [Cayot] drove, the victim was seated at the front passenger seat, and [Jaen] sat at the back;
- While driving and nearing the house of the victim, [Cayot] heard near his ear a series of gunshots and saw smoke inside the car which caused him to immediately pull over;
- While parked, [Cayot] asked [Jaen] what happened and where his gun was, to which [the latter] replied that the victim took hold of his gun;
- Simultaneously, [Cayot] saw blood dripping from the victim's head and panicked;
- [Cayot and Jaen] brought the victim to the latter's house and informed the family that the victim committed suicide;
- At that time, [Jaen] was fidgety. He suddenly interrupted and repeatedly exclaimed, "Aaminin ko lahat. Sasabihin ko sa inyo";
- When they brought the victim to the hospital, [Jaen] admitted that he was the one who shot the victim;
- The victim's death was caused by gunshot wounds;
- The victim's gunshot wounds were all located at the [posterior occipital region] of his head; and

- The investigation disclosed that the shots were fired inside the vehicle and the assailant was positioned at the back seat and which was two (2) feet away from the victim.[31]

In addition to these circumstances, and in refutation of the points raised by Justices Caguioa and Reyes, the following circumstances further fortify the finding that Jaen was Manzo's killer, viz.:

First,[32] Jaen had knowledge and access to Cayot's handgun. This may be explained through the latter's testimony narrating that: (i) Jaen was inside the car when Cayot placed his handgun inside the bag, and thereafter, tucked said bag under the driver's seat;[33] (ii) Jaen and Manzo went to the car ahead of Cayot in order to start the engine;[34] and (iii) Jaen sat at the backseat, directly behind the driver's seat.[35] Thus, it is completely plausible that at the time Jaen was already positioned at the back of the driver's seat and before Cayot entered the car, Jaen may have already taken the bag containing the handgun which was tucked underneath the driver's seat, thus, giving him access thereto. Moreover, it is believable that neither Manzo nor Cayot discovered that Jaen already had the handgun, since Manzo was at the front passenger seat, and thus, could not see Jaen's actions at the back, while there was no showing that Cayot checked the whereabouts of his gun before driving his car.

Second,[36] the make and model of the firearm in question, i.e., a Beretta 9mm pistol, is a double action, semi-automatic pistol,[37] and has the capability to fire burst consecutive shots without prior need to cock the gun. This corroborates Cayot's testimony where he stated that:

[ACP Formaran]: Prior to the gun shots, did you hear anything from [Jaen] and [Manzo]?

[Cayot]: I didn't hear anything, ma'am.

Q: Be specific Mr. Witness, how many gun shots did you hear?

A: About three (3) burst gun shots, ma'am, it's near my ear.[38] (Emphases supplied)

Thus, it is reasonable to deduce that the gunshots were fired in rapid succession, thereby giving Cayot the smallest of a window of time to immediately react thereto.

Third,[39] the testimonies and reports of the forensic officer conducting the bullet trajectory examination, and the medico-legal officer who conducted the autopsy, cohesively place the assailant at the back seat of the car. While the forensic officer noted that it could be possible that the shooter was at the front, he also mentioned that it was improbable. Particularly, when probed by the trial court as to the likelihood that the shooter was behind the victim, the expert stated that "the possibility was around 80 to 90%" that the shooter was in the rear passenger seat.[40] Moreover, when taken together with the autopsy findings and testimony of the medico-legal forensic officer, this small possibility is obviated completely. Through said testimony; it was established that: (a) there were six (6) entry wounds at the occipital/posterior region (lower back near the nape) of the victim's head, with corresponding exit wounds;[41] and (b) the bullet wounds were "distant wounds," which were approximately two (2) feet away.[42] Taking into consideration the foregoing – and keeping in mind that there were only two (2) other people aside from the victim inside the moving vehicle, namely Cayot who was in the driver's seat, and Jaen who was in the backseat directly behind Cayot – it is highly improbable that a person seated on the driver's seat, i.e., Cayot, would angle the gun in such a way as to shoot Manzo at the latter's nape area, while still driving a moving vehicle. More importantly, assuming *arguendo* that a person seated at the driver's seat is flexible enough to be able to do so, the entry wounds would not be classified as "distant wounds" by the medico-legal officer as it would be difficult for the shooter to create a distance of two (2) feet between the gun and the entry wounds. Moreover, if the entry wounds were not to be classified as "distant" but as "near contact" or "intermediate," they would have the presence of stippling or "powder tattooing" on the skin surrounding the entry wounds, which is due to unburned powder grains exiting from the gun causing pinpoint abrasions on the skin surrounding said entry wounds,[43] which was not the case here. As the foregoing virtually eliminates Cayot as the shooter – coupled

with the finding that Manzo's death was conclusively ruled out as a suicide – the only discernible conclusion is that Jaen was the one who shot and killed Manzo inside the moving vehicle.

On this note, the Court observes that Cayot's act of slapping Jaen every time the latter exclaimed "Aaminin ko lahat. Sasabihin ko sa inyo!" may be construed as the former's initial attempt to cover up the incident in order to make it appear that Manzo committed suicide inside his car. After all, Cayot and Jaen are relatives, albeit distant, and it is only human nature that a person would be partial to a relative and would attempt to cover up the latter's criminal misdeeds should there be a chance to do so. It is thus highly probable that it was only when Cayot had realized that he could no longer contain the truth that he made a turn-around and arrested Jaen, lest he be branded a co-conspirator to the crime.[44]

All told, when all the circumstances and pieces of evidence are taken together and not nitpicked individually, they paint the complete picture that Jaen was indeed the one responsible for Manzo's death, to the exclusion of all others. Besides, the Court has always given the highest respect to the trial court's evaluation of the testimony of the witnesses, "considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses." [45] Since the trial court judge in this case gave full credence to the testimony of Cayot, which was affirmed by the CA, this Court should likewise offer full faith to the same.

Furthermore, it is well to note that Jaen did not offer any defense during trial or any explanation or contrary evidence to dispute the circumstances established by the prosecution's evidence. This is likewise suspect as "[a]n innocent person will normally grasp the first available opportunity to defend himself and assert his innocence." [46]

The constitutional presumption of innocence is not an empty platitude and all doubts should be resolved in favor of the accused if his guilt is not proven beyond a whisper of a doubt. However, the entire point of allowing circumstantial evidence to result in conviction is precisely to avoid setting felons free for mere want of direct evidence. [47] As the Court noted in *People v. Whisenhunt*, [48] "[c]ircumstantial evidence may be resorted to in proving the identity of the accused when direct evidence is not available, otherwise felons would go scot-free and the community would be denied proper protection." [49] This is particularly true in this case. Manzo was shot and there were only two (2) other people in the car with him. Undeniably, one of them must be the killer. To absolve Jaen in this case would be to set a murderer on the streets on the faintest of doubts which have already been contradicted by the totality of the circumstantial evidence. After all, "[p]roof beyond reasonable doubt does not mean such a 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." [50]

In view of the foregoing, the Court affirms the conclusion of the courts a quo that Jaen is guilty beyond reasonable doubt of the crime of Murder. Under Article 248 of the RPC, persons found guilty of Murder shall suffer the penalty of reclusion perpetua to death. There being no modifying circumstances aside from the qualifying circumstance of treachery, the courts a quo correctly sentenced him to suffer the penalty of reclusion perpetua. [51]

Finally, and in accordance with prevailing jurisprudence, [52] the Court deems it proper to adjust the monetary awards due to Manzo's heirs as follows: (a) P75,000.00 as civil indemnity; (b) P75,000.00 as moral damages; (c) P75,000.00 as exemplary damages; and (d) P50,000.00 as temperate damages. Further, the aforesaid monetary awards shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.

WHEREFORE, the appeal is DENIED. The Decision dated January 22, 2018 of the Court of Appeals in CA-G.R.

CR-HC No. 07970 is AFFIRMED. Accused-appellant Elever Jaen y Morante is hereby found GUILTY beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, and accordingly, sentenced to suffer the penalty of reclusion perpetua, with its concomitant accessory penalties under Article 41 of the same Code. He is likewise ordered to indemnify the heirs of Jacob Eduardo Miguel O. Manzo the following amounts: (a) P75,000.00 as civil indemnity; (b) P75,000.00 as moral damages; (c) P75,000.00 as exemplary damages; and (d) P50,000.00 as temperate damages. All monetary awards shall earn legal interest at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

SO ORDERED.

Carpio, (Chairperson), J. Reyes, Jr., and Lazaro-Javier, JJ., concur.
Caguioa, J., see dissenting opinion.

[1] See Notice of Appeal dated February 5, 2018; rollo, pp. 12-13.

[2] Id. at 2-11. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Mariflor P. Punzalan Castillo and Marie Christine Azcarraga Jacob, concurring.

[3] Records, pp. 164-169. Penned by Judge Myrna V. Lim-Verano.

[4] Dated July 16, 2013. Id. at 1-2.

[5] Id. at 1.

[6] See rollo, pp. 3-4.

[7] See Medico-Legal Report No. A13-530 dated July 17, 2013; records, p. 149 and its dorsal portion.

[8] See Initial Laboratory Report with Chemical Report No. C-288-13 dated July 14, 2013 (id. at 12) for the paraffin test done on Cayot and Jaen and Chemical Report No. C-291-13 dated July 15, 2013 (id. at 150) for the paraffin test done on Manzo's cadaver.

[9] See Physical Identification Report No. PI-016-2013E-BT dated July 15, 2013; id. at 137.

[10] See rollo, pp. 4-5.

[11] See Order dated July 26, 2013; records, p. 23.

[12] Id. at 164-169.

[13] Id. at 169.

[14] See id. 168-169.

[15] See Notice of Appeal dated May 14, 2015 (CA rollo, p. 29) and Brief for the Accused-Appellant dated November 22, 2016 (id. at 55-72).

[16] Rollo, pp. 2-11.

[17] Id. at 10-11.

[18] See id. at 6-10.

[19] Entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL

PENAL LAWS, AND FOR OTHER PURPOSES" (December 13, 1993).

[20] *People v. Las Piñas*, 739 Phil. 502, 524 (2014); citations omitted.

[21] The forensic officer subjected Manzo's cadaver to a paraffin test and found no trace of nitrates on it (see Chemistry Report No. C-291-13 dated July 15, 2013 [records, p. 150] and TSN, March 12, 2014, pp. 7-14).

[22] See *People v. Quigod*, 633 Phil. 408, 420 (2010).

[23] *People v. Pentecostes*, G.R. No. 226158, November 8, 2017, 844 SCRA 610, 619, citing *People v. Casitas, Jr.*, 445 Phil. 407, 417-419 (2003).

[24] See *Almojuela v. People*, 734 Phil. 636, 646 (2014), citing *People v. de Quijano*, G.R. No. 102045, March 17, 1993, 220 SCRA 66, 73-74.

[25] *Id.*; citation omitted.

[26] See *People v. Matito*, 468 Phil. 14, 26 (2004); citations omitted.

[27] *Supra* note 24.

[28] *Id.* at 646-647; citing *People v. Galvez*, 548 Phil. 436, 460 (2007).

[29] See *Planteras, Jr. v. People*, G.R. No. 238889, October 3, 2018; citations omitted.

[30] *Bacerra v. People*, G.R. No. 204544, July 3, 2017, 828 SCRA 525, 538-539, citing *People v. Ragon*, 346 Phil. 772, 785 (1997).

[31] *Rollo*, pp. 7-8.

[32] In response to Justice Reyes and Justice Caguioa's point that the gun used was a firearm issued to Cayot, and nothing on record shows he gave Jaen access to the same. (See Dissenting Opinions of Justice Reyes, pp. 5-6 and Justice Caguioa, p. 2.)

[33] See TSN, November 5, 2013, pp. 24-25.

[34] See *id.* at 10.

[35] See *id.* at 11.

[36] In response to Justice Reyes and Justice Caguioa's point that it was unbelievable that Cayot only pulled over after the last shot was fired because a normal person would put the vehicle to an immediate halt after the first shot. (See Dissenting Opinions of Justice Reyes, p. 6 and Justice Caguioa, p. 4.)

[37] See < <http://www.beretta.com/en/pistols/> > (visited August 9, 2019).

[38] TSN dated November 5, 2013, p. 11.

[39] In response to Justice Reyes and Justice Caguioa's point that the bullet trajectory report and the testimony of the expert witness show that it was also possible that the shooter could be positioned at the front. (See Dissenting Opinions of Justice Reyes, p. 5 and Justice Caguioa, p. 7.)

[40] See TSN dated April 29, 2014, pp. 19-20.

[41] See TSN dated December 17, 2013, pp. 9 and 11.

[42] See *id.* at 9-10.

[43] See < <https://www.pathologyoutlines.com/topic/forensicsgunshotwounds.html> > (visited August 9, 2019).

[44] In response to Justice Reyes and Justice Caguioa's point that it was strange that Cayot tried to interrupt Jaen when he exclaimed that "Aaminin ko lahat. Sasabihin ko nasa inyo!" to Manzo's family. (See Dissenting Opinions of Justice Reyes, p. 6 and Justice Caguioa, p. 5.)

[45] *People v. Gaborne*, 791 Phil. 581, 596 (2016); citations omitted.

[46] *Almojuela v. People*, supra note 24, at 649.

[47] See *People v. Casitas*, supra note 23, at 418.

[48] 420 Phil. 677 (2001).

[49] *Id.* at 696.

[50] See Section 2, Rule 133 of the REVISED RULES ON EVIDENCE.

[51] See Article 63 (2) of the RPC.

[52] See *People v. Jugueta*, 783 Phil. 806 (2016).

DISSENTING OPINION

CAGUIOA, J.:

"It is better to risk saving a guilty person than to condemn an innocent one. "

- Francois-Marie Arouet[1]

I respectfully disagree with the ponencia's finding that the accused- appellant Elever Jaen y Morante (Jaen) is guilty beyond reasonable doubt of the crime of Murder.

The conviction of Jaen is almost entirely premised on the statements made by the so-called "sole eyewitness" to the crime, SPO3 Freddie Cayot, Jr. (SPO3 Cayot) and the purported "circumstantial evidence" presented by the prosecution. However, reliance on these is clearly misplaced.

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference.[2] Circumstantial evidence is sufficient for conviction only if the following circumstances are present:

SEC. 4. Circumstantial evidence, when sufficient.— Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstances;

(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 conviction beyond reasonable doubt.[3]

However, it is apparent in this case that the circumstantial evidence presented by the prosecution fails to produce Jaen's conviction beyond reasonable doubt. In *Aoas v. People*,[4] the Court pronounced:

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. 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 proved must be consistent with one other and that each and every circumstance must be consistent with accused's guilt and inconsistent with his innocence. The circumstances must be proved, and not themselves presumed. The circumstantial evidence must exclude the possibility that some other person has committed the offense.[5]

Contrary to the ponencia's view, the exact opposite is established in this case since the circumstances, whether taken in whole or in part, do not definitely point to Jaen as the perpetrator of the crime.[6] In fact, the circumstantial evidence here does not exclude the possibility that SPO3 Cayot had committed the offense.

Moreover, it can even be said that the Court cannot rely on circumstantial evidence in this case. As admitted by the ponencia, "[i]n the absence of such direct evidence, the guilt of an accused may nevertheless be proven through circumstantial evidence if sufficient circumstances, proven and taken together, create an unbroken chain leading to the reasonable conclusion that the accused, to the exclusion of all others, was the author of the crime." [7] In interpreting this in the converse, circumstantial evidence may only be resorted to in the absence of direct evidence.

However, it is clear in the case at bar that there is direct evidence that the prosecution used to prove the guilt of the accused – SPO3 Cayot's testimony as an eyewitness to the crime. Nonetheless, the problem is that SPO3 Cayot is not a reliable or credible witness given the concrete reasons presented below. Again, it is clear that resort to circumstantial evidence is done only in the absence of direct evidence, not simply because the direct evidence available is unreliable or incredible.

Even assuming that the Court considers the circumstantial evidence presented by the prosecution, the following reasons show that the guilt of Jaen was not proven beyond reasonable doubt:

First, it was SPO3 Cayot's gun that was the alleged weapon of the crime. And the evidence on this point shows that the gun was kept inside a belt bag and hidden underneath the driver's seat.[8] The ponencia surmises that it is plausible that Jaen was able to take possession of the gun since he and Jacob Eduardo Miguel O. Manzo (victim) went ahead to the car to start the engine.[9] The ponencia further states that it is believable that the victim could not have seen Jaen take possession of the gun since the former was seated at the front passenger seat.[10] However, since the gun was placed underneath the driver's seat, it would be more logical to conclude that said gun would be nearer the front area of the car than the back. Thus, even if the victim was seated in front, he would have still surely noticed the former reaching for the gun underneath the driver's seat from behind given the fact that they were in a small enclosed space where even the slightest movements would be noticeable.

In addition, there are a number of inconsistencies in SPO3 Cayot's testimony which seriously puts in doubt his version of what transpired, as well as his credibility.

COURT:

[Q :]

You were looking for that gun, were you able to see it?

A :

No, your Honor I wasn't able to see it.

x x x x

[Q :]

Pero hindi mo tingnan doon sailalim ng upuan mo?

A:

No, your Honor because when I asked Shongo [Jaen] where was my gun he told me that Gem took it.

ACP Formaran:

[Q :]

Did you see the victim holding any gun?

A:

No, ma'am, but because Shongo [Jaen] told me that Gem took my gun, I was of the impression that Gem committed suicide.

x x x x

Q :

Let me clarify, Mr. Witness, I asked you earlier if you saw the victim holding the gun?

A:

No, ma'am.

COURT:

[Q :]

Where is the gun now[,],if you know?

A :

It's in the custody of the PNP, your Honor.

x x x x

[Q :]

How was it turned over to the PNP?

A :

I don't know your Honor.

x x x x

[Q :]

Doon sa loob ng kotse mo hindi mona nakita?

A:

No, ma'am, but what I know is it was recovered at the back of my car.

x x x x

Atty. Cabe:

x x x x

Q :

While asking the accused what happened and you answered the victim took the gun where was your focus, was it in front or you were looking at the accused? (sic)

A :

To the victim, sir.

Q:

To the victim, you were not looking at the accused. Was the car still moving or stop? (sic)

A :

Stop, sir.

Q :

Already stop, so while looking at the victim, did you find the whereabouts of the gun inside the car or did you see it?

A :

Hindi ko na po ltinanap.

Q :

You did not even look at the accused whether he was holding a gun or not?

A :

No, sir because I was already panicking.

Q :

Even when you already went out from the car you still did not see where the gun was?

A :

Yes, sir. [11]

As a police officer, one of his first instincts should have been to look for the gun that was used to shoot the victim. It thus strains credulity that he would rely on the alleged statement of Jaen that it was the victim who was holding the gun and then later on say that he did not actually see the victim holding the gun – when, in fact, he was beside the victim inside the car and, at the time he asked Jaen regarding the gun, the car was no longer moving.[12]

Second, the victim was shot six (6) times inside the car. SPO3 Cayot claims that he only heard three (3) gunshots near his ear[13] and realized what had happened only after the last shot had already been fired. This claim is unbelievable since the incident happened in a small enclosed space where even the slightest sounds could be heard. Thus, without a doubt, the sound of six (6) gunshots would be deafening to the ears.

The ponencia posits that the reason why SPO3 Cayot did not immediately pull over at the first shot may be explained by the make and model of the firearm in question, i.e., a Beretta 9mm pistol, which has the capability to fire burst consecutive shots without prior need to cock the gun.[14] The ponencia states that it is reasonable to deduce that the gunshots were fired in rapid succession, thereby giving SPO3 Cayot the smallest of a window of

time to immediately react thereto.[15]

However, I note that a Beretta 9mm pistol is a double action, semi--automatic pistol.[16] Unlike a fully automatic pistol that has the capability to discharge the entire magazine load with a single pull of a trigger and thus its shots are continuous until the triggering device is disengaged,[17] a semi--automatic pistol fires a single bullet each time the trigger is pulled – there is thus a pause in between each shot. Hence, it is highly improbable that SPO3 Cayot did not have any time to immediately react at the first instance since the shots were fired, not in rapid succession, but rather one after another.[18]

In addition, to my mind, if the shot was made by Jaen, then SPO3 Cayot would have immediately stopped the car upon hearing the initial gunshot. And yet, SPO3 Cayot's first reaction, after the 6[th] shot, was to ask Jaen where his gun was, and then drive to the house of the victim. The testimony of SPO3 Cayot that he did not see what transpired in the car because the car was moving is simply incredible. To be sure, SPO3 Cayot's version of the events borders on the absurd because, as he himself admitted, he was driving only at more or less 40 kilometers per hour:[19]

[Atty. Cabe:]

x x x x

Q:

When you heard a gunshot inside the car, did you see who fired the gun?

A:

No, Sir.

COURT:

[Q :]

Sigurado ka? Nandyan lang sa likod mo eh, maski sa salamin hindi mo nakita yan? Tapas ang nakita mo smoke lang? Eh ang liit-liit ng loob ng kotse eh.

A :

Moving kasi your Honor ang sasakyan.

x x x x

[Q :]

Lilingon ka lang at saka andyan ang salamin eh kasi may tungkulin tayo sa katotohanan eh.

A:

Yes, your Honor.[20]

That is not all.

His initial story to the family that the victim had committed suicide is totally bizarre since they were only three (3) people inside the car. Meaning, if he did not do the deed, as claimed by him, then it could only have been Jaen who shot the victim. That he nevertheless told the family that the victim had committed suicide defies rational explanation, and has never been explained.

Third, the exclamation of Jaen "Aaminin ko lahat. Sasabihin ko sa inyo!" in the presence of the family of the

victim, is equivocal. To my mind, this is not necessarily an admission of his guilt. Rather, it could have been the precursor to him telling the family that it was SPO3 Cayot who had shot the victim. This view is supported by the admitted fact that as he was beginning to say what truly happened, SPO3 Cayot immediately slapped him in the face and stopped him from further talking.[21]

The ponencia presumes that the act of SPO3 Cayot slapping Jaen every time the latter tried to speak may be construed as the former's initial attempt to protect Jaen by covering up the incident and making it appear that the victim committed suicide in the car.[22] However, it is beyond cavil that such presumption is unfounded. As I see it, SPO3 Cayot slapped Jaen to protect no one else but himself and to conceal the crime that he committed. It was only when he realized that there was a possibility that his misdeed could be discovered that he pinned the blame on Jaen. The alleged admission of Jaen testified by SPO3 Cayot that Jaen allegedly made in isolation at the hospital that he had shot the victim is self-serving.[23] Indeed, prior to this supposed admission, Jaen was trying to say something in front of everyone had he not been stopped by SPO3 Cayot. Thus, that Jaen suddenly made his admission in isolation simply cannot be believed.

Needless to say, it is evident that the story of what happened that wretched night is based wholly on the testimony of SPO3 Cayot, who, at this point, has been established to be of questionable credibility and who could have been the malefactor himself. Hence, it is highly erroneous for the ponencia to rely and make presumptions based on SPO3 Cayot's narration.

Fourth, the evidence presented by the prosecution shows indubitably that it had been tampered with:

(1)

The paraffin test conducted on both Jaen and SPO3 Cayot yielded negative results for the presence of gunpowder nitrates.[24] This is rather bizarre.

(2)

PO2 Albert Pedrano, the fingerprint examiner, testified that he had no means to determine the fingerprint that was found on the gun because he could not find any fingerprint data in their database of Jaen as the former had no previous criminal record.[25] However, they could have easily verified the fingerprints found on the gun since Jaen was in custody and they could have simply just gotten his fingerprints and compared them to the ones on the gun. However, they did not do so. This again is bewildering.

(3)

The forensic chemist Michael Angelo Tudlong (FC Tudlong), who conducted a bullet trajectory examination to determine the specific location where the shots were fired, concluded that: (1) the front passenger door and the windshield were intentionally detached prior to his investigation, (2) there were bullet marks on the dashboard, glove compartment and front passenger door of the vehicle, (3) since the windshield was already gone, he could no longer accurately determine the specific location where the shooter fired the bullets that hit the dashboard and glove compartment, and (4) as regards the third bullet that hit the front passenger door of the vehicle, he concluded that the shooter was inside the vehicle when he fired the said bullet. On cross-examination, he further added:

Atty. Cabe

Q

But could it be possible that the shooter was also in front?

A

Yes, also possible.[26]

Reasonable doubt as to where the real assailant was seated is further confirmed by FC Tudlong's answer in his re-cross examination:

COURT:

[Q]

What are the probabilities, I mean the degree of probability that he was in the rear passenger seat?

A

Based on the location, Your Honor, the possibility was around 80-90%.

x x x x

Q

80-90% that was at the rear?

A

Yes, ma'am.

x x x x

Q

So, the remaining 10-20%[,] he was in the front seat?

A

Yes, Your Honor.[27]

Based on the testimony of FC Tudlong, it is established that someone had tampered with and manipulated the crime scene. That someone could not have been Jaen since he was brought into custody immediately after his alleged confession in the hospital.

To repeat, FC Tudlong testified that the front passenger door and the windshield were intentionally detached, and had these parts of the car not been detached, he would have been able to accurately determine where the assailant was seated during the incident. It could thus be inferred that the person who detached the front passenger door and windshield has sufficient knowledge and experience to know that removal of said parts would essentially affect the results of the investigation.

Even more telling is the fact that, as admitted by the expert witness, there was a 10-20% chance that the assailant could have been seated in front. That the six (6) entry wounds are at the occipital or posterior region is not conclusive that the shooter was at the back. The victim could have been looking outside the window with his head turned away from SPO3 Cayot when the shots were fired. This would also explain why the victim did not immediately see that a gun was pointed at him. Thus, the entry wounds at the occipital region does not discount the possibility that the assailant may have been seated in the driver's seat.

The guilt of Jaen was not proven
beyond reasonable doubt.

In criminal cases, the quantum of evidence required is proof beyond reasonable doubt in order to justify a verdict of guilt. It is true that the law does not require absolute certainty but only moral certainty. However, if there is a 10-20% doubt, as in this case, in the real identity of the assailant, then there cannot be "proof beyond reasonable doubt." To be sure, the concept of moral certainty is subjective. But, in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains reasonable doubt as to his guilt.[28] Indeed, the conscience must be satisfied that the accused is responsible for the offense charged.[29]

In *United States v. Reyes*,[30] the defendant was acquitted because his guilt was not proven beyond reasonable doubt:

There was no direct proof adduced against the accused. The evidence was wholly circumstantial. It is true that the commission of crime may be proven by circumstantial evidence. In such cases, however, the circumstances must be just as convincing as when the proof is direct and positive. The circumstances must be such as to lead the mind of the judge irresistibly to but one conclusion, namely, the guilt of the person charged. So long as the acts of the accused and the circumstances can be explained upon any other reasonable hypothesis inconsistent with his guilt, he must be acquitted. If the judge, after hearing the proof: is not convinced beyond a reasonable doubt that the accused is guilty, he must dismiss him.

A reasonable doubt in criminal cases must be resolved in favor of the accused. A reasonable doubt has been variously defined. It is most difficult to define. It has been said that a reasonable doubt was the doubt of a reasonable man under all the circumstances of the case. This statement is too general and includes too much. Neither does the rule that the judge (or jury) must be convinced to an absolute certainty. This construction would preclude a conviction based upon circumstantial evidence. Proof "beyond a reasonable doubt" does not mean, upon the other hand, proof beyond all "possible or imaginary" doubt. It means simply such proof, to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.[31]

In the case at bar, the circumstantial evidence presented by the prosecution can be explained upon any other hypothesis inconsistent with Jaen's guilt. The ponencia is riddled with presumptions about what had really transpired that night based only on the narration of SPO3 Cayot, which again, is incredible, to say the least. Supposedly, this fortifies the fact that there remains in the mind of an unprejudiced person enough doubt to hold Jaen guilty. The conviction of an accused should not be based on presumptions and inferences. Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though his innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, presumption of innocence must be favored, and exoneration granted as a matter of right.[32]

Lastly, the ponencia states that since the trial court judge in this case gave full credence to the testimony of SPO3 Cayot, and this was affirmed by the CA, the Court should likewise offer full faith to the same.[33] However, it is crucial to remember that the Supreme Court is a court of last resort-it is the last beacon of hope for those who have been wrongly deprived of their liberty. This impetus for the Court to actively seek to right wrongs that have been committed by the lower courts is manifest in this case, especially, as here, where the presumption of innocence has not been successfully overturned by the prosecution.

In sum, I respectfully disagree with the ponencia that the guilt of Jaen was proven beyond reasonable doubt. If even an iota of doubt about the guilt of an accused is compelling enough to warrant an acquittal, then, with more reason, when uncertainty abounds.

Given the foregoing reasons, I vote to GRANT the instant appeal, and accordingly ACQUIT Jaen.

[1] See Voltaire, "Quotable Quote," accessed at < [https://www.goodreads.com/quotes/75903-it-is-better-to--risk-saving-a-guilty-person-than](https://www.goodreads.com/quotes/75903-it-is-better-to--risk-saving-a-guilty-person-than-) >.

[2] Lozano v. People, 638 Phil. 582, 594 (2010).

[3] RULES OF COURT, Rule 133, Sec. 4; emphasis and underscoring supplied.

[4] 571 Phil. 18 (2008).

[5] Id. at 25; emphasis and underscoring supplied.

[6] Ponencia, p. 7.

[7] Id. at 6; emphasis and underscoring supplied.

[8] TSN, November 5, 2013 (SPO3 Cayot), p. 12.

[9] Ponencia, p. 8.

[10] Id.

[11] TSN, November 5, 2013 (SPO3 Cayot), pp. 13-23; emphasis supplied.

[12] Id. at 21-23.

[13] Id. at 11.

[14] Ponencia, p. 8.

[15] Id.

[16] Id.; see Beretta, Pistols, accessed at < <http://beretta.com/en/pistols/> >.

[17] Section 3.28, Implementing Rules and Regulations of Republic Act No. 10591 otherwise known as the "COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT," May 29, 2013.

[18] Ponencia, p. 8.

[19] TSN, November 5, 2013 (SPO3 Cayot), p. 21.

[20] Id. at 19-20; emphasis supplied.

[21] Rollo, p. 4.

- [22] Ponencia, p. 9.
- [23] Rollo, p. 4.
- [24] TSN, November 20, 2013 (P/Chief Insp. Yellah M. Apostol), p. 9.
- [25] TSN, April 8, 2014 (PO2 Albert Pedrano), pp. 15-16.
- [26] TSN, April 29, 2014 (FC Tudlong), p. 17; emphasis and underscoring supplied.
- [27] Id. at 19-20.
- [28] *People v. Pagaura*, 334 Phil. 683, 690 (1997).
- [29] *Daayata v. People*, 807 Phil. 102, 118 (2017), citing *People v. Ganhuso*, 320 Phil. 324, 335 (1995).
- [30] 3 Phil. 3 (1903).
- [31] Id. at 5-6; emphasis and underscoring supplied.
- [32] *People v. Maraorao*, 688 Phil. 458, 467 (2012).
- [33] Ponencia, p. 10.

DISSENTING OPINION

REYES, J. JR., J.:

The constitutional presumption of innocence is not an empty platitude meant only to embellish the Bill of Rights. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People of the Philippines and all the resources at their command. Its inexorable mandate is that, for all the authority and influence of the prosecution, the accused must be acquitted and set free if his guilt cannot be proved beyond the whisper of a doubt.[1]

I dissent based upon this basic precept.

The underlying shooting mishap unfolded in a drunken stupor, involving accused-appellant Elever Jaen y Morante (accused-appellant); his distant relative SPO3 Freddie Cayot, Jr. (Cayot), who owns the service firearm used in the killing and in whose automobile the tragic event transpired; and the latter's co-worker, Jacob Eduardo Miguel O. Manzo (Manzo), the unfortunate victim who died from bullet wounds in the head. Jaen was arraigned and pleaded not guilty, tried, and convicted both by the trial court and the Court of Appeals (CA) based only on the evidence of the prosecution. The judgment of conviction under review is based purely on circumstantial evidence derived from the testimonies of Cayot, as principal witness, and the rest of the prosecution witnesses – all compounded in a resume adopted by the CA, and affirmed by the ponencia, as follows:

- SPO3 Cayot, Jr., appellant and the victim were together that fateful night in a drinking session;
- After the said drinking session, they left together in a car, SPO3 Cayot, Jr. drove, the victim was seated at the front passenger seat, and the appellant sat at the back;
- While driving and nearing the house of the victim, SPO3 Cayot, Jr. heard near his ear a series of gunshots and saw smoke inside the car which caused him to immediately pull over;
- While parked, SPO3 Cayot, Jr. asked the appellant what happened and where his gun [was] to which

appellant replied that the victim took his gun;

- Simultaneously, SPO3 Cayot, Jr. saw blood dripping from the victim's head and panicked;
- SPO3 Cayot, Jr. and the appellant brought the victim to his house and informed the family that he committed suicide;
- At that time, appellant was fidgety. He suddenly interrupted and repeatedly exclaimed "[Aaminin] ko lahat. Sasabihin ko sa inyo;"
- When they brought the victim [to] the hospital, he admitted that he shot the victim;
- The victim's death was due to the gunshot wounds;
- The gunshot wounds sustained by the victim were all located at the posterior part of his head;
- The investigation disclosed that the shots were fired inside the vehicle and the assailant was positioned at the back seat and which was two (2) feet away from the victim.[2]

I invite attention to the testimonies of Cayot, Mary Rose Garbo (Garbo), and Michael Angelo Tudlong (Tudlong).

At the stand, Cayot, the prosecution's principal witness, gave a narrative of the incident on which much of the above findings were based: In the afternoon of the subject date, he, together with accused- appellant, was departing from a ceremony at Camp Bagong Diwa. On their way out, Manzo, his workmate, asked him for a ride home, and he obliged. Upon reaching Manzo's drop-off point at his residence, the three of them decided to have some drinks.[3] It appears that accused-appellant and Manzo had not met each other before. Moments later, they were joined by two other police officers, one of whom was a certain Sgt. Rey Banzon (Banzon). Banzon owned a restaurant and bar in Mandaluyong City where the group finally decided to eat supper and have more drinks. There, they all proceeded on board Cayot's car and before alighting, Cayot tucked under the driver's seat a belt-bag containing his service firearm. They had been drinking until 11:20 p.m. when Cayot decided to call it a night. On his cue, accused-appellant, joined by Manzo, had gone to the car ahead of him to start the engine. Not long after, Cayot joined the two and drove the car. Cayot claimed that Manzo was on the passenger seat, whereas accused-appellant was at the back.[4] As Cayot was driving, he was startled by gunfire near his ear and by billowing smoke inside the cabin. Panicked and shaken, he asked accused-appellant what happened and where his gun was, and accused-appellant replied that Manzo "took the gun." Cayot, however, did not notice either accused-appellant or the victim in possession of the gun.[5] He instantly pulled over, and saw blood dripping from Manzo's head.[6]

Cayot claimed that he then decided to proceed to Manzo's house because it was already close by. There, he informed the family of Manzo that the latter had committed suicide. The family nevertheless took Manzo to the hospital,[7] and it appears that they were accompanied by both Cayot and accused-appellant. Cayot professed that at the emergency bay of the hospital, he performed the arrest on accused-appellant right after the latter took him aside and admitted to him that it was he who shot Manzo.[8] The admission was made away from the hearing presence of everyone else at the hospital.[9]

Garbo, Manzo's niece, supplied material details on what transpired at their residence before Manzo was taken to the hospital. She recounted that at around 11:00 p.m. on that fateful night, the household was startled when Cayot came in yelling, "Nagpakamatay! Nagpakamatay!" She, with her mother and father, came shuffling downstairs and into the garage to see what was going on.[10] They found accused-appellant and Cayot, and the latter informed them that Manzo had just committed suicide inside his car. As Cayot was explaining the events, Garbo observed that accused- appellant was fidgety. She claimed that in at least two instances, accused- appellant had

tried to interrupt Cayot by exclaiming, "Aaminin ko lahat! Sasabihin ko sa inyo!" In those instances, however, she stated that Cayot had successfully restrained accused-appellant from speaking by slapping him on the face.[11] She likewise recalled that accused-appellant had twice excused himself from the group to urinate not too far from where they were all gathered and, in both instances, he was accompanied by her father. She claims having seen accused-appellant, after relieving himself, wiping and rubbing his hands against the garage wall and the grass on the pocket garden. She remembered that they were able to take Manzo to San Juan Medical Center at 2:00 a.m. the following day.[12]

Forensic chemist Michael Angelo Tudlong testified on the bullet trajectory examination he performed on the bullet holes borne by the subject automobile, two days after the incident. Arriving at the San Juan City Police Station which had since taken custody of the vehicle, he claimed to have immediately noticed the missing door on the passenger side which, he believed, had been intentionally removed. He also noted the missing passenger windshield which, he was told, had been tucked away inside the vehicle's compartment. He failed to inquire why the same was detached from the door.[13]

Tudlong explained that bullet trajectory examination is done to determine the possible location of the gun wielder based on existing bullet holes.[14] On the subject vehicle, he claimed to have found one such hole on the dashboard and another on the glove compartment. However, because the windshield was no longer attached to the vehicle, he could not possibly determine the exact location or position of the shooter. He noted another bullet entry hole on the front passenger door, indicating that the shooter was definitely inside the vehicle when that shot was fired.[15] With respect to the detached windshield, he admitted seeing it, but did not examine it because he assumed that it was the same windshield originally attached to the door.[16]

On cross-examination, Tudlong reiterated that while he was positive that the shooter was inside the vehicle, he nevertheless could not accurately determine the shooter's exact position based only on the three documented bullet holes; also, that while the shooter could possibly have been positioned at the rear passenger seat judging by the bullet hole on the dashboard, there was also a possibility that the shooter was at the front on account of the bullet hole found on the detached passenger door.[17]

Indeed, circumstantial evidence may alone be available in proving the elements of the crime,[18] but before a conviction can be had upon it, the circumstances should constitute an unbroken chain which leads to but one fair and reasonable conclusion, which points to the accused, to the exclusion of all others, as the guilty person.[19]

While direct evidence of the actual killing is not indispensable for convicting an accused especially in the absence of an eyewitness,[20] evidence of circumstances which tend to connect the accused with the commission of the crime may properly be admitted, even though inconclusive in character.[21] The basic distinction between direct and circumstantial evidence is that in the former, the witnesses testify directly of their own knowledge as to the main facts to be proved, while in the latter case, proof is given of facts and circumstances from which the court may infer other connected facts which reasonably follow according to common experience.[22]

Thus, in *People v. Sañez*,[23] this Court declared that circumstantial evidence is adequate for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. *People v. Wai Ming*[24] and *People v. Reyes*[25] instruct that all the evidence must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt. While considerable latitude is allowed in the reception of circumstantial evidence when the necessity therefor arises either from the nature of the inquiry or the failure of direct proof,[26] still, the imperative in *People v. Bato*[27] is that, where the state's evidence does

not constitute an unbroken chain leading beyond reasonable doubt to the guilt of the accused, the constitutional presumption of innocence prevails and the accused is entitled to an acquittal.[28]

Based on the testimonial evidence on record – particularly that pertaining to Cayot, Garbo and Tudlong – I find that the chain of circumstances on which the guilty verdict has been reached is not so unbroken as to now warrant a validation of the verdict below. I harbor serious doubts on the circumstances surrounding the underlying shooting mishap and, hence, hard pressed to find that accused-appellant should be held responsible for the killing.

First, among the physical evidence examined and testified to by expert witnesses, the bullet trajectory examination result authored by Tudlong is most striking. Considering that he admittedly failed to examine the detached windshield of the passenger door, indeed, leaves much to be desired. In all, however, his testimony is clear enough to suggest that he could not establish with absolute certainty the relative position of the gun wielder based only on the bullet holes he found and examined – concluding that by his documented evidence, there could also be a possibility that the gun wielder was positioned at the front.[29]

Second, it bears to stress that the gun used in the killing is a service firearm officially issued to Cayot as a member of the police force.[30] Poring over Cayot's testimony on record, I find no suggestion that he had given accused-appellant access to the said gun at any time before the incident. In fact, he claimed that he had kept it inside a bag and placed it under the driver's seat – away from plain view – before stepping out of the car and into the restaurant-bar where he and his companions decided to eat supper and have more drinks.

Third, the fact that Cayot claimed to have heard three gunshots near his ear and the fact that he, apparently, stopped the car only when the last shot was fired are, to a reasonable mind, unworthy of belief because a normal person in the same situation would have put the car to an almost instantaneous halt at the first shot. Also, a vehicle cabin is a small enclosed space in which any movement within would be visible or, at least, discernible. Hence, Cayot's claim that he did not notice who between accused-appellant and Manzo was in possession of the gun, and his claim that he came to believe Manzo had shot himself in the head multiple times, are equally difficult to surmise.

Fourth, it is hardly strange, considering the gravity of the events that had then just transpired, that accused-appellant was visibly uneasy during the time he and Cayot were reporting to Manzo's family the supposed suicide incident. What I find truly strange, if not beleaguering, is that Cayot, as observed by Garbo, had tried and succeeded at least twice to restrain accused-appellant – by a slap in the face – from interrupting the conversation in an unmistakable attempt to offer Manzo's family crucial information regarding the incident. Accused-appellant's frustrated exclamation "Aaminin ko na. Sasabihin ko sa inyo," is indeed very telling, yet records are bereft of any suggestion that he has – then, or at any point in the proceedings – made an admission to the killing, except at the hospital, but in the absence of any witness as professed by Cayot. Suffice it to say that to my mind, the aforementioned actuation of Cayot has put in doubt his credibility as a prosecution witness.

Fifth, the ponencia attempted to explain the slapping as an attempt on the part of Cayot to prevent accused-appellant from admitting in front of Manzo's family that he himself was the culprit – going as far as surmising that the said actuation of Cayot proceeded from an instinct of a relative to cover up for his own kin. But how come that instinct to protect his kin suddenly waned when he performed the arrest on accused-appellant following a supposed admission to the deed, at the hospital and under circumstances where no one could testify on that regard? I pose this rhetorical question as an allusion to resonating doubts not only on accused-appellant's culpability, but also on the credibility of Cayot's testimony.

The invariable rule, pronounced in acquittal judgments rendered in *People v. SPO1 Leaño*[31] and *People v. Ragon*,[32] is that, like a tapestry, the body of circumstantial evidence is made up of strands that create a pattern

when interwoven, which may not be plucked out and considered one strand at a time independently of the others. I believe that the rule might avail if the testimonial sources of the component circumstances are to be accorded full credibility. It is not so in this case, where the testimony of the principal prosecution witness, who is involved in the incident and who also happens to be the arresting officer who took accused-appellant to custody following a supposed admission, is the source of doubts that are now weighing down on the finding of guilt below. There is no test to find truth in human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of judicial cognizance.[33]

Moreover, *Bacerra v. People*[34] injects as crucial component of the tapestry the material events that transpired prior to the underlying incident.[35] It must be recalled that Manzo and accused-appellant were strangers to each other prior to the incident. Yet the prosecution has failed to offer evidence of what may have transpired from the time the two had met at the first instance, to the time they had started drinking at Manzo's place where they were joined by two other police officers, and the time the group, with Cayot, lingered at the restaurant-bar for more drinks – this, to necessarily establish the possible motive of accused-appellant in killing Manzo. While motive of the accused in a criminal case is generally held to be immaterial because it is not an element of the crime, it becomes important when, as in this case, the evidence of the commission of the crime is purely circumstantial.[36]

In voting to reverse and set aside the judgment of conviction below, I do not thereby put forth the theory that accused-appellant did not kill the unfortunate victim. As the prosecution evidence has failed to piece evidence seamlessly together in a way that identifies accused-appellant as the assailant and no other, I hereby advocate for an acquittal based on reasonable doubt. An acquittal upon this ground will prosper even though accused-appellant's innocence may be doubted, for a criminal conviction rests on the strength of the evidence for the prosecution and not on the weakness of the evidence of the defense.[37] It is when evidence is purely circumstantial that the prosecution is much more obligated to rely on the strength of its own evidence,[38] and all the more where, as in this case, the defense has not offered evidence at the trial.

It is fundamental that in criminal cases, a conviction, whether by direct or circumstantial evidence, must be beyond reasonable doubt.[39] While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience.[40] By constitutional fiat, when moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of fright.[41]

I register this dissent as a testimony that the Court, in this case, has failed to hand down a judgment of conviction beyond reasonable doubt.

I, therefore, vote to GRANT the Petition, and rightly accord accused-appellant his liberty.

[1] *People v. Lagmay*, 365 Phil. 606, 608 (1999), citing *People v. De Guzman*, 272 Phil. 432, 438 (1991).

[2] *Rollo*, pp. 7-8.

[3] *TSN*, November 5, 2013, pp. 4-7.

[4] *Id.* at 7-11.

[5] *Id.* at 11-13, 21, 23.

[6] *Id.* at 11.

- [7] Id. at 14.
- [8] Id. at 15, 18.
- [9] Id. at 17-18.
- [10] TSN, October 28, 2014, pp. 3-4.
- [11] Id. at 5-6.
- [12] Id. at 6-8.
- [13] TSN, April 29, 2014, pp. 8-9, 14.
- [14] Id. at 10.
- [15] Id. at 11.
- [16] Id. at 13.
- [17] Id. at 15-20.
- [18] 29 Am Jur 2d, sec. 315, p. 333, citing McGuire v. State, 288 So 2d 271.
- [19] People v. Wai Ming, 332 Phil. 254, 273 (1996).
- [20] See People v. Bato, 348 Phil. 246, 256, 262 (1998).
- [21] 29 Am Jur 2d, Sec. 315, p. 332, citing Pittman v. State, 51 Fla 94.
- [22] Id. at Sec. 313, p. 329, citing McCoy v. United States (CA9 Mont) 169 F2d 776.
- [23] 378 Phil. 573, 584 (1999).
- [24] Supra note 19.
- [25] 349 Phil. 39 (1998).
- [26] Supra note 22, at 330, citing Thiede v. Utah Territory 159 US 510.
- [27] Supra note 20.
- [28] Id. at 249.
- [29] See note 17.
- [30] TSN, November 5, 2013, p. 14.
- [31] 419 Phil. 241 (2001).
- [32] 346 Phil. 772 (1997).
- [33] People v. SPO1 Leño, supra note 31, at 260.
- [34] 812 Phil. 25 (2017).
- [35] Id. at 39.
- [36] Supra note 33.
- [37] Id. at 261.

[38] *People v. Canlas*, 423 Phil. 665, 682 (2001).

[39] RULES OF COURT, Rule 133, Sec. 2.

[40] *Daayata v. People*, 807 Phil. 102, 117-118 (2017).

[41] *Mallillin v. People*, 576 Phil. 576, 593 (2008).

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