



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

RECEIVED
 APR 20 2022

BY: _____
 TIME: _____

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 238341

Present:

- versus -

GESMUNDO, C.J.; Chairperson,
 CAGUIOA,
 CARANDANG,
 ZALAMEDA, and
 GAERLAN, JJ.

MICHAEL TORRES y NATIVIDAD,
 Accused-Appellant.

Promulgated:

JUL 14 2021

x- - - - -

DECISION

CAGUIOA, J.:

Before the Court is an appeal¹ from the Court of Appeals (CA) Decision² dated October 26, 2017 in CA-G.R. CR-HC No. 08841, which affirmed the judgment³ of conviction of the Regional Trial Court (RTC) of Quezon City, Branch 216, finding accused-appellant Michael Torres y Natividad (Torres) guilty of Robbery with Homicide.

The Facts

In an Information⁴ dated April 3, 2013, Torres was charged with the crime of Robbery with Homicide, punishable under Article 294(1)⁵ of the

¹ CA rollo, pp. 107-110.

² Rollo, pp. 2-11. Penned by Associate Justice Mario V. Lopez (now a Member of the Court), with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Ramon Paul L. Hernando (now a Member of the Court).

³ CA rollo, pp. 41-47. Decision dated November 24, 2016 in Crim. Case No. GL-Q-13-181437, penned by Presiding Judge Alfonso C. Ruiz II.

⁴ Records, pp. 1-2.

⁵ ART. 294. *Robbery with violence against or intimidation of persons – Penalties.* – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

x x x x

Revised Penal Code. During the arraignment, Torres, with the assistance of his counsel from the Public Attorney's Office, pleaded not guilty.⁶

The prosecution later filed a Motion to Amend Information As To Form,⁷ to clarify that the victim, Ramon Mallari, Jr. (Mallari), was shot first and thereafter robbed. The defense opposed⁸ the motion, arguing that the amendment sought was substantial and prejudices the right of Torres. As such, the defense argued that it should not be allowed as Torres had already been arraigned.

The RTC issued an Order⁹ dated July 31, 2013, granting the motion to amend the Information. The RTC held that the amendments do not change the nature of the offense charged against Torres, and as such, the Amended Information did not adversely affect his substantial rights.¹⁰

The Amended Information¹¹ dated August 12, 2013 reads:

[Criminal Case No. GL-Q-13-181437]

That on or about the 28th day of March 2013, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with other persons whose true names, identities and whereabouts have not as yet been ascertained, and mutually helping one another, with intent to gain and by means of violence against and intimidation of persons, did then and there willfully and unlawfully take the personal property from the offended party, RAMON MALLARI, JR. y REYES, in the following manner, to wit: while said offended party was having a conversation with Tobias Felices along Mabituan St., Brgy. Masambong, [Quezon] City, said accused on board a motorcycle suddenly appeared from behind and shot the offended party several times, and immediately thereafter forcibly took, grabbed and carried away a gold necklace worth P120,000.00 and bracelet worth P80,000.00 in the total amount of P200,000.00, Philippine Currency, belonging to the said offended party; that the shooting of the offended party by the above-named accused on the occasion of the Robbery, was with intent to kill, by then and there willfully, unlawfully and feloniously attacking, assaulting, and employing personal violence upon said person of said Ramon Mallari, Jr. y Reyes by repeatedly shooting him thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the said offended party and of his heirs.

CONTRARY TO LAW.¹²

The case thereafter proceeded to trial.

⁶ Records, pp. 34, 36.

⁷ Id. at 40-48.

⁸ Comment/Opposition to the Motion to Amend Information filed by the Prosecution; id. at 53-56.

⁹ Id. at 58-61.

¹⁰ Id. at 60.

¹¹ Id. at 69-70.

¹² Id. at 69. Underscoring in the original.

The evidence for the prosecution was summarized by the CA as follows:

On March 28, 2013, between 10:00 o'clock and 11:00 o'clock in the morning, [Ace Obedo (Obedo)] was smoking along the sidewalk of Mabituan Street, Barangay Masambong, Quezon City. In front of him to his right were Tobias Felices and Ramon Mallari, Jr. [(Mallari)] talking with each other. Suddenly, a red Honda Wave motorcycle stopped in front of Obedo. The driver of the motorcycle was wearing a helmet while his passenger, who was later identified as the accused, was not. The accused, alighted from the motorcycle and shot Mallari who instantly fell on the ground. Felices backed away in fear. The accused then took Mallari's bracelet and necklace, and shot him for the second time. Obedo was about 3.5 meters from the accused. Immediately after the shooting, a second motorcycle carrying two other men, both wearing a helmet, arrived. The passenger, carrying a gun, approached Obedo from his right side and told him not to look. Terrified, Obedo ran to the nearest compound and asked for help. Accompanied by other persons, he returned to the place of the incident and saw Mallari, bloodied but still breathing. They carried and brought him to St. Luke's Medical Center around 10:45 in the morning. Dr. Siozon attended Mallari, who, despite medical attention, later expired at 4:20 in the afternoon. The cause of death was cardiopulmonary arrest, probably secondary to hypovolemic shock secondary to massive blood loss to multiple gunshot wounds.¹³

On the other hand, Torres disputed the charges. The version of the defense was summarized by the CA in this wise:

Accused denied the accusation against him. He claimed that, on March 29, 2013, at about 4:30 in the morning, he was at the covered court at San Antonio Street, San Francisco Del Monte, Quezon City making a float for the Poong Nazareno, together with his *kapatiran*. He left the covered court to buy something from a bakery which is about 10 to 15 meters away. While walking, he noticed Mr. Chris, a police officer, behind him. When he reached the bakery, Mr. Chris asked him what he was holding. At that time, accused was holding some pieces of bamboo and a *balisong* which he used to cut the materials for the float. Mr. Chris asked to give him the *balisong*, but the accused refused, reasoning that he was using it to make the float. Mr. Chris then asked him to come with him to the barangay outpost. The accused obliged, and together they went to the barangay outpost, and then to Station 2 where he was detained. Mr. Chris informed him that a case will be filed against him for possession of *balisong*. After 2 days at the cell, 2 police officers came and brought him to a room located in the same building. Inside the room, he was asked to sit in front of 2 male individuals. He heard one of them saying, "Ano, Pre, ito na lang?," to which the other responded, "Sige, okay na iyan." Afterwards, accused was brought back to his cell. The following day, he was surprised that he was under inquest for robbery with homicide.¹⁴

¹³ Rollo, pp. 3-4.

¹⁴ Id. at 4-5.

Ruling of the RTC

The RTC found Torres guilty of Robbery with Homicide, *viz*:

WHEREFORE, the accused Michael Torres y Natividad is found GUILTY beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized under Article 294 of the Revised Penal Code. He is hereby sentenced to suffer the penalty of *reclusion perpetua*.

For the death of Ramon Mallari, the accused is ordered to pay the heirs of the victim the following:

- a) P75,000 as civil indemnity;
- b) P75,000 as moral damages;
- c) P30,000 as exemplary damages; and,
- d) P1,185,865.18 as actual damages.

The monetary awards for damages shall earn interest at the rate of 6% per annum from the finality of this judgment until said amounts are fully paid.

SO ORDERED.¹⁵

The RTC held that the prosecution was able to establish all the elements of the crime by virtue of the testimonies of the two eyewitnesses, Ace Obeda (Obeda) and Tobias Felices (Felices).¹⁶ Obeda was smoking outside his house in Masambong, Quezon City. A few meters in front of him were Felices and Mallari, talking with each other. All of a sudden, two persons on board a motorcycle stopped near Mallari and Felices. The passenger disembarked from the back of the motorcycle and without saying a word, shot Mallari in the chest and snatched the gold bracelet and necklace worn by the victim.¹⁷ The back rider was later identified by both eyewitnesses as Torres.¹⁸

The RTC also found the prosecution witnesses credible. In particular, the testimonies of Obeda and Felices, both of whom witnessed the commission of the crime, were straightforward and unwavering. They both pointed to Torres as the person responsible for shooting and robbing Mallari of his belongings. This positive identification of Torres cannot be overcome by his mere alibi. Torres was found guilty and the heirs of Mallari were awarded civil indemnity, and moral, exemplary, and actual damages. The award of actual damages was based on the receipts presented during trial.¹⁹

Aggrieved, Torres appealed to the CA.

¹⁵ CA *rollo*, p. 46.

¹⁶ Id. at 44.

¹⁷ See *rollo*, p. 3; id. at 41-42.

¹⁸ See id.; id. at 42.

¹⁹ CA *rollo*, pp. 44-45.

Ruling of the CA

In the assailed Decision²⁰ dated October 26, 2017, the CA sustained Torres' conviction for Robbery with Homicide, with modification as to the award of exemplary damages following *People v. Jugueta*,²¹ viz.:

Accordingly, consistent with law and jurisprudence, We sustain the penalty of *reclusion perpetua* imposed by the RTC, including the award of civil indemnity, moral and actual damages. With regard to exemplary damages, the award is increased from P30,000.00 to P75,000.00 to conform with recent jurisprudence.

FOR THE STATED REASONS, the appeal is DENIED.

SO ORDERED.²²

The CA affirmed the findings of the RTC that the prosecution was able to establish the elements of Robbery with Homicide. The personal belongings of Mallari were taken by Torres with violence and intimidation. Torres shot the victim in the chest before taking his bracelet and necklace, and thereafter, shot him again before taking off. The CA thus concluded that homicide was committed on the occasion of the robbery since Torres had to kill Mallari to accomplish his objective of taking his jewelry.²³

The eyewitnesses' identification of Torres was also deemed credible. Torres was not concealing his face at that time, and the crime was committed in broad daylight. The CA also ruled that despite the lapse of five (5) days from the commission of the crime, there is no reason to doubt the out-of-court identification of Torres.²⁴

Lastly, the CA found the defenses of Torres unmeritorious. The supposed inconsistencies in the testimony of Obeda — that there were two (2) motorcycles involved in the incident — were clarified during cross-examination. Meanwhile, Torres' alibi only referred to his whereabouts on March 29, 2013, not on March 28, 2013, the date when the crime was committed.²⁵

Hence, this appeal.

Issue

The issue before the Court is whether the CA erred in finding Torres guilty beyond reasonable doubt for the crime of Robbery with Homicide.

²⁰ Supra note 2.

²¹ G.R. No. 202124, April 5, 2016, 788 SCRA 331.

²² *Rollo*, p. 10.

²³ Id. at 8.

²⁴ Id. at 9.

²⁵ Id. at 8-9, 10.

The Court's Ruling

The Court finds the appeal meritorious and acquits Torres on the ground of reasonable doubt.

The principle that a criminal case rises and falls on the strength of the prosecution's evidence and not on the weakness of the defense is well-entrenched in our legal system.²⁶ Even on appeals from criminal convictions, the Court is not precluded from overturning the factual findings of the trial court when it has been established that the trial court overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance.²⁷

In assessing whether the accused-appellant's judgment of conviction should be sustained, the Court held in *People v. Rodrigo*²⁸ that the following must be considered: "**first, the identification of the accused** as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and **second**, all the elements constituting the crime were duly proven by the prosecution to be present."²⁹

Accordingly, while the prosecution may successfully establish that all the elements for the crime of Robbery with Homicide are present in this case, the Court cannot affirm the trial court's finding of guilt when the identity of the perpetrator of the crime is doubtful. The prosecution bears this burden — and, its failure to discharge this burden justifies a judgment of acquittal. In the end, the constitutional presumption of innocence takes precedence over the uncertain identification of the alleged author of the crime. The Court's ruling in *People v. Arapok*³⁰ (*Arapok*) explains:

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.³¹ (Emphasis supplied)

²⁶ *People v. Ansano*, G.R. No. 232455, December 2, 2020, p. 6, citing *Polangcos v. People*, G.R. No. 239866, September 11, 2019, 919 SCRA 324, 339.

²⁷ *People v. Pineda*, G.R. No. 141644, May 27, 2004, 429 SCRA 478, 495.

²⁸ G.R. No. 176159, September 11, 2008, 564 SCRA 584.

²⁹ Id. at 597. Additional emphasis supplied.

³⁰ G.R. No. 134974, December 8, 2000, 347 SCRA 479.

³¹ Id. at 498. Citations omitted.

There were instances when the Court upheld the conviction of an accused on the basis of a witness' "positive identification" of the perpetrator.³² It should be borne in mind, however, that in assigning values to these testimonies, the Court recognizes the fallibility of the human memory and its susceptibility to suggestive influences, which may, in turn, affect the reliability and accuracy of a witness' recollection. As held in *People v. Ansano*³³ (*Ansano*):

The Court has always been mindful that "[t]he greatest care should be taken in considering the identification of the accused, especially when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification." **This stems from the recognition that testimonial evidence, unlike other forensic evidence such as fingerprint and DNA testing which are real or object evidence, are subject to human errors which may be intentional or unintentional.** In *People v. Nuñez* (*Nuñez*), the Court elucidated:

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

³² See *People v. Orosco*, G.R. No. 209227, March 25, 2015, 754 SCRA 214, 229; *People v. Manigo*, G.R. No. 194612, January 27, 2014, 714 SCRA 551, 560-561; *People v. Jalbonian*, G.R. No. 180281, July 1, 2013, 700 SCRA 280, 291-292.

³³ *Supra* note 27.

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.”

x x x x

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.**

In another case, the Court acknowledged that:

Identification testimony has at least three components. First, witnessing a crime, whether as a victim or a bystander, involves perception of an event actually occurring. Second, the witness must memorize details of the event. Third, the witness must be able to recall and communicate accurately. **Dangers of unreliability in eyewitness testimony arise at each of these three stages, for whenever people attempt to acquire, retain, and retrieve information accurately, they are limited by normal human fallibilities and suggestive influences.**³⁴
(Additional emphasis supplied)

For this purpose, the Court adopted the *totality of circumstances test*, which considers the following in the assessment of the reliability and admissibility of an out-of-court identification: (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.³⁵

In this case, the Court notes that Torres’ conviction rests primarily on the identification made by the two (2) eyewitnesses to the crime, Obeda and Felices. The defense of alibi, as against the supposed positive identification of Torres as the perpetrator of the crime, was considered unconvincing and tersely set aside.³⁶ But while denial and alibi are indeed inherently weak defenses, these cannot be simply rejected when the peculiar circumstances of

³⁴ Id. at 7-8. Citations omitted.

³⁵ *People v. Teehankee, Jr.*, G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 95.

³⁶ See CA Decision, pp. 8-9, *rollo*, pp. 8-10 and RTC Decision, pp. 4-5, CA *rollo*, pp. 44-45.

Torres' arrest and his out-of-court identification cast serious doubts on the reliability of the eyewitnesses' testimonies.

Applying the totality of circumstances test, there is reasonable doubt on the identification of Torres

The first and second factors: the witness' opportunity to view the criminal and their degree of attention at the time of the commission of the crime

A careful scrutiny of the statements of Obeda and Felices would reveal that, under the circumstances obtaining during the commission of the crime, they had a limited view of the perpetrator. In particular, Felices narrated in his sworn statement³⁷ on April 1, 2013, that while he was talking to the victim, a person riding on the back of a motorcycle suddenly got off in front of them and pulled out a gun. The gunman fired at the victim and Felices instinctively crouched down and crawled away from the scene of the crime.³⁸

06. T : *Sa ikalilinaw ng pag-iimbestiga na ito, maari mo bang isalaysay ang buod ng pangyayari?*
 S : *Bale po habang nagkukwentuhan kami ni RAMON MALLARI[,] JR.[.] ay may biglang humintong motor sa harap ng tinukoy kong bahay nang biglang bumaba yung nakaangkas sa motor at biglang bumunot ng baril ng walang sabi-sabi at biglang pinutukan ang biktima. Pagtapos ay may narinig ako na "Aray ko!" at nakita ko na bumagsak si MALLARI at **agad akong napayuko at gumapang papalayo sa pinangyarihan.**³⁹
 (Emphasis and italics supplied)*

Likewise, Obeda stated in his sworn statement⁴⁰ that after the victim was shot, the perpetrator's companions arrived, pointed the gun at him and told him not to look. He also immediately ran away upon hearing a gun being fired.⁴¹

05. T : *Maaari mo bang sabihin ang buod ng pangyayari?*
 S : *Bale po nakatayo po ako malapit kay RAMON MALLARI[,] JR. nang biglang may pumaradang nakamotorsiklo na kulay pula na may guhit na puti na Honda Wave. Pagkatapos ay bumaba ang angkas ng motor at bumunot ng baril at agad na ipinutok kay MALLARI at napansin ko po na **may gumilid na kasama rin nila at nanutok ng baril at sinabihan ako na huwag titingin, kaya agad akong napayuko.***

³⁷ Records, pp. 7-8.

³⁸ Id. at 7.

³⁹ Id.

⁴⁰ Id. at 11-12.

⁴¹ Id. at 11.

06. T: *Ano pang sumunod na nangyari?*
 S: *Bale po napansin ko na nilapitan ng bumaril si RAMON MALLARI at kinukuha na po ang kwintas at bracelet, pagtapos kunin ay may narinig pa akong pumutok at doon ay agad akong napatakbo papalayo sa pinangyarihan at humingi ng saklolo.*
07. T: *Nakilala mo ba ang bumaril kay RAMON MALLARI?*
 S: *Bale po hindi ko po nakilala ang bumaril pero nakita ko po ang sinakyang motor na kulay pula na may guhit na puti sa gilid na Honda Wave at napansin ko rin yung isa pang kasama na nakamotor pero hindi ko na nakita kung anong klase ng motor at kulay.⁴² (Emphasis and italics supplied)*

Felices and Obeda reiterated the narrations in their sworn statements during their respective testimonies before the trial court.⁴³

The witnesses' testimonies explicitly reveal that their immediate reaction to the crime was to avert their eyes, crouch down, and distance themselves from the victim. The Court, in *People v. Nuñez*⁴⁴ (*Nuñez*), significantly noted that various conditions surrounding the commission of the crime, such as in this case, could affect the witness' degree of attention:

A witness' credibility is ascertained by considering the first two factors, i.e., the witness' opportunity to view the malefactor at the time of the crime and the witness' degree of attention at that time, based on conditions of visibility and the extent of time, little and fleeting as it may have been, for the witness to be exposed to the perpetrators, peruse their features, and ascertain their identity. In *People v. Pavillare*:

Both witnesses had ample opportunity to observe the kidnapers and to remember their faces. The complainant had close contact with the kidnapers when he was abducted and beaten up, and later when the kidnapers haggled on the amount of the ransom money. His cousin met Pavillare face to face and actually dealt with him when he paid the ransom money. The two-hour period that the complainant was in close contact with his abductors was sufficient for him to have a recollection of their physical appearance. Complainant admitted in court that he would recognize his abductors if he s[aw] them again and upon seeing Pavillare he immediately recognized him as one of the malefactors as he remember[ed] him as the one who blocked his way, beat him up, haggled with the complainant's cousin and received the ransom money. As an indicium of candor the private complainant admitted that he d[id] not recognize the co-accused, Sotero Santos for which reason the case was dismissed against him.

X X X X

⁴² Id.

⁴³ TSN, May 15, 2014, p. 6; TSN, November 21, 2013, pp. 11-13.

⁴⁴ G.R. No. 209342, October 4, 2017, 842 SCRA 97.

The degree of a witness' attentiveness is the result of many factors, among others: exposure time, frequency of exposure, the criminal incident's degree of violence, the witness' stress levels and expectations, and the witness' activity during the commission of the crime.⁴⁵ (Emphasis supplied)

Under the circumstances obtaining in this case, it is improbable that Obeda and Felices were able to quickly observe and memorize the physical features of the gunman, even if the crime was committed during the day and the assailant's face was uncovered. Their limited degree of attention to the identity of the perpetrator, taken together with the swift and sudden manner by which the crime was committed, cloud the reliability of the eyewitnesses' recollection of the identity of the gunman and his companions.

The third and fourth factors: the accuracy of any prior description and the level of certainty demonstrated by the witness at the identification

The only prior description of the assailant, in terms of his facial or physical features, was provided by Obeda and Felices on April 1, 2013, when they assisted in the preparation of the composite illustration.⁴⁶ Apart from the sketch, the records do not show that the witnesses provided a physical description of the assailant, which could point to Torres as the assailant. In their subsequent accounts of the assailant's identity, the eyewitnesses' recollections only pertain to general descriptions of the assailant's clothing and the motorcycle on which he rode. They did not also testify on how the illustration was able to capture the characteristics of the assailant, or identify the specific facial features that resemble Torres. For these reasons, the Court has no means of determining the accuracy or reliability of the cartographic sketch.

Notably, in the sworn statement of Obeda, which he executed on the same day as the cartographic sketch, he admitted: "*hindi ko po nakilala ang bumaril.*" He further stated that he was only able to recall the motorcycle on which the assailant rode, describing it as a red Honda Wave with a white stripe.⁴⁷ However, the cartographic sketch indicates that the assailant was "riding on a white motorcycle [with] red line."⁴⁸ When the defense counsel confronted Obeda with his inconsistent descriptions of the motorcycle, Obeda admitted that his memory failed him:

[Cross-examination of Ace Obeda:]

[Atty. Josefina Fe Bea-Punsalan (Counsel for Torres)]-

I am showing to you a cartographic sketch marked as Exhibit "2" for the defense and Exhibit "E" for the prosecution and when you were

⁴⁵ Id. at 116-118. Citations omitted.

⁴⁶ Records, p. 14.

⁴⁷ Id. at 11.

⁴⁸ Id. at 14.

asked other information as indicated here you mentioned that the assailant were riding a white motorcycle with red line, so which is true now, is it a red motorcycle with white line or white motorcycle with red line showing to the witness the cartographic sketch marked as Exhibit "E", your Honor.

[Ace Obeda]-

Sa alam ko sa testimony ko kasi red motorcycle na may puting line.

Q- Which is true, Mr. Witness? You do not recall, Mr. Witness.

A- *Hindi ko na po maalala.*⁴⁹ (Emphasis and italics supplied)

Meanwhile, Felices only recalled that the gunman wore a black shirt and a pair of shorts.⁵⁰ When the certainty of his description was tested during cross-examination, Felices was no longer able to confidently recall the details:

[Cross-examination of Tobias Felices:]

[Atty. Josefina Fe Bea-Punsalan (Counsel for Torres)]-

Could you clarify, Mr. Witness, how many persons or gunman were present on that date and time at around 10:50 in the morning?

[Tobias Felices]- *Nakita ko po dalawa (2).*

x x x x

Q- And you said that one of these two (2) persons who has no helmet was the one who shot, Mr. Ramon Mallari, Jr[.]?

A- *Opo.*

Q- And you likewise mentioned that you were able to [recognize] his face?

A- *Opo.*

Q- **Is this person you identified personally known to you, Mr. Witness?**

A- *Hindi po.*

Q- Aside from his face what else do you remember him wearing, what was he wearing at that time, Mr. Witness?

A- *Yung T-shirt niya kulay itim po.*

Q- It was a black t-sh[i]rt, Mr. Witness?

A- *Opo.*

Q- **Could you recall the design of the t-shirt?**

A- *Hindi [na po], basta ang naalala ko kulay itim po.*

Q- Was he wearing pants or shorts?

A- *Shorts po.*

Q- **What is the color of the shorts he was wearing?**

A- *Hindi ko na po maalala.*

⁴⁹ TSN, February 13, 2014, p. 16.

⁵⁰ TSN, August 12, 2014, p. 6.

- Q- How about the motorcycle, what kind of motorcycle were they riding?
A- Single *lang po*, ma'am.
- Q- **What color?**
A- ***Hindi ko na po maalala.***
- Q- **How about the brand, Mr. Witness?**
A- ***Hindi ko na rin po maalala.***⁵¹ (Emphasis and italics supplied)

As in Obeda's description of the motorcycle, the testimony of Felices also does not conform with the description of the assailant's clothing in the cartographic sketch. The cartographic sketch indicates that the suspect was wearing a t-shirt "[with] arm cover use[d] by motorcycle rider" and "dark pants,"⁵² while Felices claimed that he was wearing a black t-shirt with a pair of shorts. Worse, it appears that the identification of Torres relied on these generic descriptions of the assailant's clothing. In fact, Obeda stated that he was able to recognize Torres during the show-up because "*naka suot na damit na kulay itim.*"⁵³

The eyewitnesses' vague recollections are sorely lacking in details. As such, it is highly unlikely that the actual perpetrator can be singled out with reasonable accuracy from any other person wearing a dark or black shirt. Moreover, the conflicting statements of the witnesses and their uncertain testimonies diminish the reliability of their identification of the assailant. While the Court often holds that inconsistencies in the testimonies of the prosecution witnesses are not necessarily fatal to the case, this principle pertains only to trivial or inconsequential matters.⁵⁴ Surely, the identity of the assailant is a material issue that requires credible evidence. The Court cannot rely on varying descriptions of the assailant to ultimately convict Torres for the crime.

The fifth and sixth factors: the length of time between the crime and identification, and the suggestiveness of the identification procedure

To recall, Obeda and Felices went to Camp Karingal, Quezon City on April 1, 2013, to give their statements to the police about the events that transpired at the time of the commission of the crime on March 28, 2013.⁵⁵ They assisted in the preparation of the assailant's composite illustration, and thereafter executed their respective sworn statements.⁵⁶ The following day, or

⁵¹ Id. at 4-7.

⁵² Records, p. 14.

⁵³ Id. at 13. Italics supplied.

⁵⁴ *People v. Nuñez*, supra note 45, at 139.

⁵⁵ TSN, November 21, 2013, p. 15; TSN, August 12, 2014, pp. 7-8.

⁵⁶ Id. at 15-16.

on April 2, 2013, Obeda and Felices were invited by police officers to the Masambong Police Station 2 to identify a possible suspect.⁵⁷

While the length of time between the identification of Torres and the crime is relatively short, there are significant concerns as to the suggestibility of the witnesses during the show-up. Obeda and Felices were explicitly told beforehand that they would be identifying a suspect. Upon arriving at the station, they were only shown Torres as he was being taken out of the detention cell:

[Direct examination of Ace Obeda:]

[Atty. Arno V. Sanidad (Private Prosecutor)]-

Why was it necessary for you to give the statement about the identification of this person who killed Mr. Mallari on April 2?

[Ace Obeda]- *Nuong April 2, bandang hapon pinuntahan po kami ng Police Station 2 para po mayroon daw po silang ipapapuntang tao sa amin at kami po ay pumunta sa police station 2.*

Q- Just to clarify, which came first your going to station 2 or your going to Camp Sikatuna on April 2?

A- *Nauna po yung pagpunta namin sa Station 2 sa Barangay Masambong.*

Q- Now, you said you were called to Station Police 2 of Brgy. Masambong prior to your going to Camp Sikatuna, what exactly happened or what did you do at Station 2, Masambong Police Station?

A- *Pagpunta po namin duon pumasok po kami sa isang kuwarta na salamin po siya na pag anduon ka sa labas hindi mo po makikita sa loob, pumasok po ako duon kasama ko po si Mr. Tobias Felices at yung police po may kinuha sa loob ng bilangguan at mayroon po siyan[g] inilabas na tao.*

Q- And what was asked of you about this person at the other side of the mirror?

A- *Pagkatapos po nuon ng makita namin pinaharap po siya, pinatagilid, at nakilala po namin ang taong ito ay siyang bumaril kay Mr. Ramon Mallari.⁵⁸ (Emphasis and italics supplied)*

The Court has recognized in the past that a line-up is unnecessary for the identification to be valid. Nonetheless, the Court has similarly acknowledged that a show-up is highly suggestive in nature. In *People v. Niño*,⁵⁹ the Court described the presentation of a single person in the out-of-court identification as “pointedly suggestive, generated confidence where there was none, activated visual imagination, and, all told, subverted their reliability as eyewitnesses.”⁶⁰ Also, in *People v. Baconguis*⁶¹ (*Baconguis*), the

⁵⁷ Id. at 21-22; TSN, February 13, 2014, pp. 26-27.

⁵⁸ Id. at 21-23.

⁵⁹ G.R. No. 121629, May 19, 1998, 290 SCRA 155.

⁶⁰ Id. at 162, citing *People v. Cruz*, No. L-24424, March 30, 1970, 32 SCRA 181, 186.

⁶¹ G.R. No. 149889, December 2, 2003, 417 SCRA 66.

Court reiterated that a show-up is more susceptible to external influences and a witness could be more inclined to positively identify a suspect who was shown detained alone inside his cell.

In the more recent case of *Concha v. People*⁶² (*Concha*), the Court considered the line-up of four (4) suspects, when there were only four (4) perpetrators, as a mode of identification that was “tainted with apparent suggestiveness,”⁶³ thus:

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 showup, 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.⁶⁴

As in *Baconguis* and *Concha*, the Court finds the conduct of the show-up in this case impermissibly suggestive. Having been informed beforehand that they would be identifying a suspect, Obeda and Felices were likely predisposed to confirming that Torres was indeed the gunman — especially since Torres was the only person showed to them for identification.

The suspicious circumstances of Torres’ arrest further deepen the doubts on his identification, and bolster his defense of denial and alibi

It is no less significant that Torres was arrested under dubious circumstances.

On March 29, 2013, one day after the occurrence of the crime, Torres was arrested for a traffic violation. According to the arresting officers, Torres was flagged down for not wearing a helmet while driving a motorcycle. When Torres was unable to present his license and the motorcycle’s registration documents, the arresting officers decided to take him into custody. Torres was frisked before boarding the police vehicle, which resulted in the discovery of a fan knife in one of Torres’ pockets. Torres was placed under arrest for violation of a Quezon City ordinance prohibiting the possession of a fan knife.⁶⁵

The endorsement letter of the Philippine National Police Masambong Police Station 2 dated March 29, 2013, which referred the case of Torres to

⁶² G.R. No. 208114, October 3, 2018, 881 SCRA 556.

⁶³ Id. at 580.

⁶⁴ Id.

⁶⁵ Records, p. 18.

the prosecutor, states that he violated “City Ordinance 5121 in Relation to Omnibus Election Code, RA 4136 (No drivers [*sic*] license and No registration).”⁶⁶ The letter also stated that a bladed weapon was recovered, as well as a Honda motorcycle bearing Plate No. 3811 PT.⁶⁷

Despite the supposed seizure of the motorcycle when Torres was arrested for these traffic violations, the police officers did not include the motorcycle in the list of evidence when Torres was eventually referred to the prosecutor for the crime of Robbery with Homicide.⁶⁸ Neither does the record show that the prosecution endeavored to present the motorcycle during trial.⁶⁹ The Court is therefore confounded given that the only physical evidence, which could tie Torres’ presence to the crime scene, was glaringly absent from the prosecution’s formal offer of evidence.

These circumstances tend to lend credence to Torres’ version of events, particularly with respect to his claim that the crime was falsely attributed to him simply by virtue of his detention:

[Direct examination of Michael Torres:]

[Atty. Gladys U. Paganaje (Counsel for Torres)]- When the case was dismissed against you for ... and the case for Driving without License, you were acquitted there?

[Michael Torres]- *Opo.*

Q- Were you still in detention at the Police Station during that time?

A- *Hindi na po kasi...*

Q- For how many days were you detained at the Police Station?

A- Three (3) days.

Q- After three (3) days that you were detained at the Police Station where were you transferred?

A- *Trinansper po nila ako sa Karingal...*

Q- By the way, when you were still at the Police Station 2, do you recall any other incidents that happened during that time?

A- *Pagkalipas po ng dalawang araw, inaayos na po sana ng mama ko iyong papel ko para makapag-piyansa eh may dumating pong dalawang pulis. Palabasin na daw po iyong sinabit sa pangalan ko. Inilabas po nila ako sa selda saka ipinasok sa isang kuwarta.*

Q- When you said that you were brought to a room, where was that room located?

A- *Paglabas po ng selda, sa kabila lang.*

x x x x

⁶⁶ Id. at 17. Emphasis omitted.

⁶⁷ Id.

⁶⁸ Id. at 4.

⁶⁹ See Formal Offer of Documentary Exhibits and Manifestation with Motion, records, pp. 124-140.

Q- What happened when you were brought to that room?
A- *Pagdating ko po dun sa kuwarto, meron pong dalawang lalaki.*

Q- Do you happened (*sic*) to know the names of these persons?
A- *Hindi ko po sila kilala.*

Q- What did they do when you were brought to that room?
A- *Pinaupo po ako nung pulis sa harapan ng dalawang lalaki.*

x x x x

Q- When you were seated in front of those persons, what happened next, if any?

A- *Nadinig ko po dun sa dalawang lalaking nag-uusap.*

Q- What were they talking about?

A- *Ang sabi eh: "Ano, Pre, ito na lang."*

x x x x

Q- How many minutes were you seated in front of the two (2) persons?

A- *Mga 10 to 15 minutes po.*

Q- What happened during that 10 to 15 minutes that you were there seated?

A- *Pimupunto po nung lalaki na ito na lang. Sinabi naman po nung isa, "Sige, okay na iyan."⁷⁰ (Italics supplied)*

All told, the Court does not doubt the eyewitnesses' perceptions that Mallari was indeed killed and robbed of his belongings. They could have honestly believed that Torres was the culprit, and indeed, they may have no motive to falsely accuse Torres of committing the crime.⁷¹ But the absence of ill-will does not necessarily preclude the Court from assessing the reliability and admissibility of their testimonies – more so in the present case where the evidence for the prosecution is entirely anchored on the testimonies of eyewitnesses. As the Court held in *Ansano*: "Eyewitness testimony, like all other evidence, must not only be admissible — it must be able to convince."⁷²

Applying the totality of circumstances test, and taking into consideration the arguments of the prosecution and defense, the Court finds that there is no positive identification of Torres as the perpetrator of the crime. The identification made by the eyewitnesses in this case is unreliable, and as such, it should not be given full weight and credence. Not only were their descriptions of the assailant limited to general characteristics of his clothing and vehicle, but they were unable to categorically confirm the correctness of their prior identification. The prosecution also failed to justify the inconsistencies in the eyewitnesses' testimonies. All of these circumstances engender doubts that Torres is indeed the gunman responsible for the crime.

⁷⁰ TSN, August 16, 2016, pp. 12-15.

⁷¹ See *CA rollo*, p. 44.

⁷² *People v. Ansano*, supra note 27, at 18.

The Court, therefore, cannot sustain the conviction of Torres on the basis of reasonable doubt.

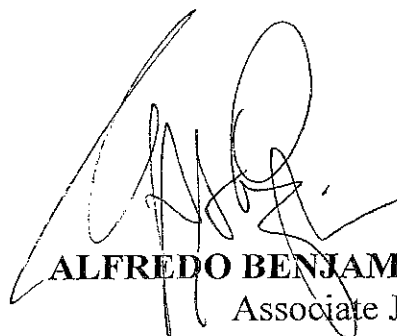
Courts are invariably called upon to judge the prosecution's case on its own merits however weak the defense may be. While denial and alibi cannot prevail over the positive and categorical identification of the accused, the identity of the criminal must be based on credible evidence and surmount the threshold of reasonable doubt. The Court's reminder in *Ansano* warrants another mention:

The Court thus takes this opportunity to remind courts that “[a] conviction for a crime rests on two bases: (1) credible and convincing testimony establishing the **identity** of the accused as the perpetrator of the crime; and (2) the prosecution proving beyond reasonable doubt that all elements of the crime **are attributable to the accused.**” “Proving the identity of the accused as the malefactor is the prosecution's primary responsibility. Thus, in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. **Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.**”⁷³
(Additional emphasis supplied)

WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The Decision dated October 26, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08841, is **REVERSED** and **SET ASIDE**. Accused-appellant Michael Torres y Natividad is **ACQUITTED** of the crime of Robbery with Homicide punishable under Article 294(1) of the Revised Penal Code, on the basis of reasonable doubt. Accused-appellant is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

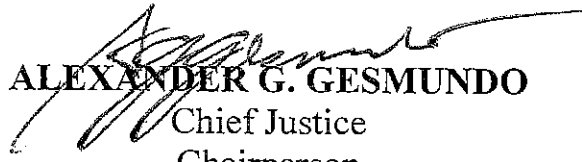
Let a copy of this Decision be furnished the Director General of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Director General is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

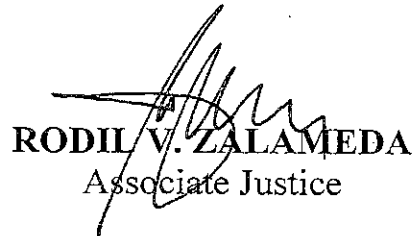

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

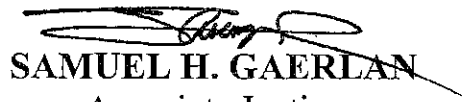
⁷³ Id. at 19. Citations omitted.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson


ROSMARI D. CARANDANG
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice



