



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TOMMY CARIÑO
"TOMMY ECHAVEZ,"
Petitioner,

a.k.a. G.R. No. 256856

Present:

LEONEN, J., *Chairperson*,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

AUG 12 2024

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DECISION

LEONEN, J.:

An out-of-court identification made through a cartographic sketch based on the description of another person is unreliable, uncertain, impaired with suggestiveness, and insufficient to rebut the presumption of the innocence of the accused.

This Petition for Review on Certiorari¹ seeks to reverse and set aside the: Court of Appeals' (1) Decision,² which affirmed with modification the Joint Decision³ of Branch 17, Regional Trial Court, Cebu City convicting petitioner Tommy Cariño (Cariño) of three counts of homicide; and (2)

¹ Filed under Rule 45.

² *Rollo*, pp. 110–125. The Decision dated January 31, 2020 in CA-G.R. CR No. 03133 was penned by Associate Justice Dorothy P. Montejo-Gonzaga and concurred in by Associate Justices Pamela Ann Abella Maxino (Chair, Nineteenth Division) and Carlito B. Calpatura.

³ *Id.* at 51–59. The November 17, 2017 Joint Decision was penned by Presiding Judge Anacleto G. Debalucos of Branch 17; Regional Trial Court of Cebu City.

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Resolution⁴ denying Cariño's motion for reconsideration.

In three separate Informations, Cariño and his co-accused, Junefer Mahilum (Mahilum), were charged with three counts of murder for the deaths of Marlon Joshua Layno Young (Young), Solidad Ypanto (Ypanto), and Virginia Lim Sesbreño (Sesbreño).⁵ The Informations, which were similarly worded except for the names of the deceased, read:

CBU-95873

That on or about the 1st day of February 2012 at about 3:25 [p.m.], more or less, at Cansojong, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, armed with a firearm of unknown caliber, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there attack, assault and shot one Marlon Joshua Layno Young, with the said firearm, thereby inflicting upon him gunshot wounds, which directly caused his instantaneous death.

CBU-95874

That on or about the 1st day of February 2012 at about 3:25 [p.m.], more or less, at Cansojong, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, armed with a firearm of unknown caliber, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there attack, assault and shot one Solidad Ypanto y Amarillo, with the said firearm, thereby inflicting upon him gunshot wounds, which directly caused his instantaneous death.

CBU-9587[5]

That on or about the 1st day of February 2012 at about 3:25 [p.m.], more or less, at Cansojong, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, armed with a firearm of unknown caliber, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there attack, assault and shot one Virginia Lim Sesbreño, with the said firearm, thereby inflicting upon him gunshot wounds, which directly caused his instantaneous death.⁶

Cariño pleaded not guilty to all the charges, while Mahilum remained at large.⁷ Trial on the merits then ensued.⁸

⁴ *Id.* at 137–141. The Resolution dated January 26, 2021 was penned by Associate Justice Dorothy P. Montejo-Gonzaga and concurred in by Associate Justices Pamela Ann Abella Maxino and Lorenzo Redulla Bordios.

⁵ *Id.* at p. 51.

⁶ *Id.* at 51–52.

⁷ *Id.* at 52.

⁸ *Id.*

The prosecution presented the following witnesses: (1) Rafael Chan, Jr. (Chan), Barangay Councilor of Barangay San Roque, Talisay City;⁹ (2) Atty. Raul H. Sesbreño, one of the victim's husband; and (3) Senior Police Officer I Mikie Espina (SPO1 Espina), Philippine National Police (PNP) member assigned at Talisay City Police Office.¹⁰ It also offered the following documentary evidence: (1) Chan's Joint Affidavit;¹¹ (2) Sesbreno's Complaint Affidavit; (3) death certificates of the victims; (4) SPO1 Espina's Joint Affidavit; (5) Physical Identification Report (trajectory report); (6) pictures of the Isuzu DMAX, the accused, and the five witnesses; and (7) Firearm Identification Report.¹²

The testimonies of Chan and SPO1 Espina narrate the following version of events:

At around 3:25 p.m. on February 1, 2012, Chan and barangay tanods Crisanto Labajo (Labajo), Mario Constantino (Constantino), and Glicerio Icot (Icot)¹³ were travelling along SRP Road in Talisay City onboard the barangay multicab driven by Bartolome Teo (Teo). Chan was seated with Labajo on the left side behind the driver, near the multicab's step board; Constantino and Icot were seated on the right side.¹⁴

At the corner of SRP Road and Rabaya Street, while the multicab temporarily stopped at the rightmost lane beside the sidewalk due to a red light traffic signal, Chan, Labajo, Constantino, Icot, and Teo heard around eight successive gunshots from behind.¹⁵

Chan turned to his right side and saw two men riding in tandem without helmets on a motorcycle without a plate number.¹⁶ The motorcycle was coming towards their direction. Chan also saw a white Isuzu DMAX pick-up truck about 20 feet away behind them.¹⁷

Afterwards, the motorcycle stopped behind the barangay multicab, swerved to the sidewalk, and sped off. Chan saw the backrider change the magazine of his gun as their eyes met.¹⁸

Chan, Labajo, Constantino, Icot, and Teo tried to chase the motorcycle but they retracted upon reaching Evergreen Memorial Park, past Barangay Laray, when the backrider pointed the gun at them. The motorcycle was

⁹ *Id.* at 53.

¹⁰ *Id.* at 54.

¹¹ *Id.* at 23. Rafael Chan, Jr.'s Joint Affidavit executed together with Labajo, Constantino, Icot and Teo.

¹² *Id.*

¹³ Spelled as "Licot" in other parts of the *rollo*. See *rollo*, pp. 112, 114.

¹⁴ *Rollo*, pp. 112, 114.

¹⁵ *Id.*

¹⁶ *Id.* at 53.

¹⁷ *Id.* at 52.

¹⁸ *Id.* at 53.

heading towards Cebu City.¹⁹

Subsequently, Chan, Labajo, Constantino, Icot, and Teo went back to the junction of SRP Road and Rabaya Street where they found the victims onboard the Isuzu DMAX pick-up.²⁰ The victims were identified as Ypanto, Sesbreño, and Young (the driver).²¹

Recovered from the crime scene were six empty shells of caliber .45, one deformed slug, one caliber .40 pistol, two magazines, and a cellular phone. The police officers then turned over the six empty shells and slug to the crime laboratory for examination.²² The ballistic examination revealed that these were from the same firearm.²³

On February 2, 2012, SPO1 Espina invited Chan and his co-passengers to the police station.²⁴ Icot gave a description of the backrider for cartographic sketching because Chan arrived late.²⁵ Then, SPO1 Espina and PO2 Stephen Sefuesca showed the cartographic sketch, together with more than a hundred pictures of arrested persons from the police station's rogue gallery, to Chan and his co-passengers.²⁶ They pointed to Cariño (Picture No. 11) as the backrider and Mahilum (Picture No. 26) as the driver of the motorcycle.²⁷

Chan identified Cariño as the backrider who was only about a meter away from the back of their multicab when he saw him.²⁸ Cariño was wearing a hat and a pair of Ray Ban sun glasses at that time.²⁹ Chan said he could not forget Cariño's face because he was a shooter and member of Aqua City Gun Club, same with the victim Young. The next time he saw Cariño was when he was arrested on February 26, 2012 in a separate case for illegal possession of firearm. Cariño was confined then at the hospital for treatment and it was hard to identify him because his face was bloated.³⁰

For his part, Cariño denied being involved in the shooting incident that happened in the afternoon of February 1, 2012. He said he did not know who shot the victims and testified that in the early morning of the said date, he was in his house attending to his children. When his mother arrived in the afternoon, Cariño went out to buy cigarette and loitered along the street in Barangay Lagtang, Talisay City. After, he met Mark Ferdinand Bas (Bas),

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 54.

²² *Id.*

²³ *Id.* at 18. Petition for Review on Certiorari.

²⁴ *Id.* at 53, 54.

²⁵ *Id.* at 53.

²⁶ *Id.* at 53, 54.

²⁷ *Id.* at 54.

²⁸ *Id.* at 53.

²⁹ *Id.* However, in the narration of facts in the Petition, it was the motorcycle driver who was wearing a hat and Ray Ban sunglasses.

³⁰ *Id.* at 53.

barangay captain of Barangay Lagtang, Talisay City, who just passed by and invited him for a drinking session at 6:00 p.m. Cariño then went to the house of Bas where they had a drinking spree until evening. Cariño said he just learned that he has a case for multiple murder when he was already imprisoned. He also claimed that he does not know Chan and the barangay tanods.³¹

Meanwhile, Bas testified that he was the barangay captain of Barangay Lagtang, Talisay City. He said Cariño is his childhood friend and third degree cousin of his mother. In the afternoon of February 1, 2012, Bas was in his house in corner Krishanta and Lagtang roads, Talisay City when he saw Cariño sitting and smoking in the store at the lower ground of their house at 1:00 p.m. An hour later, Bas and his group started their drinking session; Cariño joined them until past 7:00 p.m.³²

In a Joint Decision³³ dated November 17, 2017, the Branch 17, Regional Trial Court of Cebu City found Cariño guilty only of homicide instead of murder. It gave credence to the testimony of Chan who identified Cariño as the assailant³⁴ and disbelieved his denial and alibi for his failure to show the physical impossibility of being at the crime scene.³⁵ However, it held that the qualifying circumstances of treachery and evident premeditation were not sufficiently proven by the prosecution.³⁶ The dispositive portion reads:

IN VIEW OF ALL THE FOREGOING, the Court finds the accused Tommy Carino a.k.a. Tommy Echavez, GUILTY beyond reasonable doubt of three (3) counts of homicide as defined and penalized under Article 249 of the Revised Penal Code and hereby sentences to suffer the indeterminate sentence of EIGHT (8) YEARS of *prision mayor* as minimum up to FIFTEEN (15) YEARS of *reclusion temporal* as maximum for each case. He is also ordered to pay the respective heirs of the late Malon Joshua Young, the late Solidad Ypanto and the late Virginia Sesbreño the amounts of FIFTY THOUSAND PESOS (P[HP] 50,000.00) as civil indemnity, another FIFTY THOUSAND PESOS (P[HP] 50,000.00) as moral damages and TWENTY FIVE THOUSAND PESOS (P[HP] 25,000.00) as temperate damages for each count.

As regards co-accused Junefer Mahilum who is still at large, these cases are ordered archived.

SO ORDERED.³⁷ (Emphasis in the original)

³¹ *Id.* at 54–55.

³² *Id.* at 55.

³³ *Id.* at 51–59.

³⁴ *Id.* at 56, 58.

³⁵ *Id.* at 58.

³⁶ *Id.* at 57.

³⁷ *Id.* at 59.

Cariño appealed, arguing that the trial court gravely erred in relying on Chan's testimony and in convicting him based on circumstantial evidence.³⁸ He averred that Chan's testimony was riddled with material inconsistencies³⁹ and his identification is highly dubious.⁴⁰

The Court of Appeals affirmed⁴¹ the Joint Decision of the Regional Trial Court with modification on the amount of damages. It held that the prosecution presented sufficient and reliable circumstantial evidence to establish Cariño's guilt. In upholding Chan's credibility, it held that: (i) factual findings of the trial court have conclusive effect because of its unique opportunity to observe the witnesses as they testify;⁴² (ii) the contradiction between the testimonies of Chan and SPO1 Espina is minor and insignificant, which has no bearing on the elements of the crime or the assailant's identity and do not detract from the fact that Chan positively identified Cariño as the author of the killing;⁴³ and (iii) the discrepancies between Chan's affidavit and oral testimony are not fatal because *ex parte* affidavits are almost always incomplete and considered inferior to the testimony in open court.⁴⁴ The Court of Appeals further held that Cariño's alibi and denial were intrinsically weak.⁴⁵ Thus, it disposed the case as follows:

WHEREFORE, premises considered, the present appeal is **DISMISSED**, and the *Joint Decision* of the Regional Trial Court of Cebu City, 7th Judicial Region, Branch 17, in Criminal Case Nos. CBU-95873, CBU-95874 and CBU-95875 is **AFFIRMED with MODIFICATION**.

As modified, the accused-appellant Tommy Cariño a.k.a. Tommy Echavez is **ORDERED** to pay each of the heirs of Marlon Joshua Layno Young, Solidad Ypanto and Virginia Sesbreno the amounts of P[HP] 50,000.00 as civil indemnity, P[HP] 50,000.00 as moral damages, and P[HP] 50,000.00 as temperate damages. Interest is imposed on all damages awarded at the rate of 6% *per annum* from the date of finality of this decision until fully paid.

SO ORDERED.⁴⁶ (Emphasis in the original)

Cariño then filed a Motion for Reconsideration,⁴⁷ arguing that the identity of the assailant was not established beyond reasonable doubt. He reiterated that Chan's identification of him "was tainted with notable suggestiveness and therefore unreliable and ineffective."⁴⁸

³⁸ *Id.* at 79.

³⁹ *Id.* at 71–75.

⁴⁰ *Id.* at 76–79.

⁴¹ *Id.* at 110–124. The Court of Appeals Nineteenth Division Decision dated January 31, 2020.

⁴² *Id.* at 120.

⁴³ *Id.* at 120–121.

⁴⁴ *Id.* at 121.

⁴⁵ *Id.* at 121–122.

⁴⁶ *Id.* at 124.

⁴⁷ *Id.* at 126. Accused-Appellant's Motion for Reconsideration.

⁴⁸ *Id.* at 127.

The Court of Appeals denied Cariño's Motion for Reconsideration on the ground that the arguments raised were considered and resolved in its Decision.⁴⁹

Hence, Cariño filed the present petition.

Petitioner contends that a review of the factual questions is warranted as the Court of Appeals manifestly overlooked certain relevant and undisputed facts, which if considered, would justify a different conclusion.⁵⁰ He adds that the rule that the trial court's findings on credibility of witnesses are accorded great weight and respect admits of exception, as in this case, where: (1) the Regional Trial Court failed to consider significant facts and circumstances that weigh heavily against the guilt of the petitioner; and (2) the presiding judge who rendered the decision was different from the presiding judge who heard the case during trial.⁵¹

Petitioner reprises that the Court of Appeals erred in giving credence to Chan's testimony who pointed to him as the assailant because it is not credible and is riddled with material inconsistencies.⁵² *First*, Chan's statement in his Affidavit that he saw the suspect shoot the victims and board a motorcycle is inconsistent with his direct testimony that he just heard the gunshots and did not know where they were coming from or where they were directed at.⁵³ *Second*, Chan's statement during cross-examination that they failed to find the picture of the motorcycle driver from the rogues' gallery contradicts witness SPO1 Espina's declaration that Chan and his companions identified not only the backrider, but also the driver of the motorcycle from the rogues' gallery.⁵⁴

Further, petitioner submits that Chan's claim of having seen the assailant's face is highly incredible. *First*, considering that petitioner is a resident of the city where the crime was committed, it is highly impossible that he was not wearing any helmet as he would naturally cover his face to prevent identification. It also defeats the purpose of the assailant in utilizing a motorcycle without any plate number.⁵⁵ *Second*, Chan's attention on the firearm and the backrider's act of changing the magazine reduced his ability to pay attention to the facial features of the said backrider. To add, the assertion of an eye-to-eye contact with the backrider is unbelievable, given the quick turn of events and the pre-occupation of the backrider with changing

⁴⁹ *Id.* at 139.

⁵⁰ *Id.* at 24.

⁵¹ *Id.* at 25. (Citation omitted)

⁵² *Id.* at 26.

⁵³ *Id.* at p. 26-27. The pertinent portion of the Joint Affidavit reads: "That we immediately focused our attentions to the suspects who were not wearing helmets, who gun fired and boarded a motorcycle with the color combination red and white and no plate number attached. Said suspects fired gunshots at the victims who were on board their private vehicle, Isuzu D-max color white bearing with plate number YHT517."

⁵⁴ *Id.* at 28-29.

⁵⁵ *Id.* at 30-31.

the magazine of his gun.⁵⁶ *Third*, considering it was Chan's first time to see the backrider's face, the danger of identification error is highly probable. Moreover, worth noting is the fact that Chan never provided a description of both the driver and backrider to the police officers despite his claim of having seen their faces.⁵⁷

Petitioner also adds that Chan's out-of-court identification was seriously flawed as it was attended by impermissible suggestion.⁵⁸ He points out that Chan admitted that he identified the petitioner through a cartographic sketch, which was never presented in court. Although he claimed that the cartographic sketch was based on the description provided by Icot, the latter was also never presented in court; so the basis for the sketch was not established. The possibility that such sketch was merely produced by the police officers cannot be discounted, especially since SPO1 Espina said that the cartographic sketch had a semblance of the petitioner's photograph that was already on file at the police station.⁵⁹

Finally, petitioner asserts that the circumstantial evidence of the prosecution was insufficient to convict him,⁶⁰ and was sourced from the uncorroborated, self-serving, and incredulous testimony of Chan.⁶¹ Moreover, the trial court's conclusion that the eight successive gunshots tallied to the number of ammunitions inside a fully loaded magazine of .45 caliber is baseless and purely conjectural.⁶² Too, the cited circumstances are capable of at least two interpretations: one consistent with the guilt and the other, consistent with the innocence of the accused.⁶³

Petitioner thus contends that his acquittal is warranted in view of the prosecution's failure to prove his guilt beyond reasonable doubt.⁶⁴

In its Comment,⁶⁵ the People of the Philippines, through the Office of the Solicitor General (OSG), counters that the trial court's assessment of the credibility of witnesses is accorded great respect unless there are facts and circumstances that were overlooked, which do not avail in this case. There was no inconsistency in Chan's testimony because he did not claim that he saw the actual shooting. Moreover, Chan identified petitioner because their eyes interlocked. Also, the inconsistencies between the testimonies of Chan and SPO1 Espina are trivial and do not impair their credibility. As to the alleged inconsistency on Chan's affidavit and testimony in court, the latter

⁵⁶ *Id.* at 31.

⁵⁷ *Id.* at 32-33.

⁵⁸ *Id.* at 33-34.

⁵⁹ *Id.* at 34.

⁶⁰ *Id.* at 37.

⁶¹ *Id.* at 40-41.

⁶² *Id.* at 42.

⁶³ *Id.* at 45.

⁶⁴ *Id.*

⁶⁵ *Id.* at 154-167.

prevails as affidavits are *ex parte* and almost always incomplete.⁶⁶

The OSG further argues that there was sufficient circumstantial evidence to prove petitioner's guilt beyond reasonable doubt. As summarized by the Court of Appeals, these circumstances were: (1) Chan saw a motorcycle going in their direction with Cariño riding on it right after the successive gunshots were heard; (2) Cariño was reloading the firearm he was carrying; (3) the motorcycle was obviously in a hurry as it disregarded the traffic light and passed through the sidewalk just to overtake the multicab; (4) the motorcycle boarded by Cariño had no plate number, which was clearly done to avoid identification; (5) petitioner pointed the gun at Chan and his companions when they were chasing the motorcycle; and (6) the eight successive gunshots tallied the number of ammunitions in a fully loaded caliber .45.⁶⁷ Tied together, these circumstances, proven by Chan's testimony, points to petitioner's participation in the killing of the three victims.⁶⁸

The issues to be resolved by this Court are:

First, whether the Court of Appeals reversibly erred in giving credence to the testimony of Barangay Councilor Chan, the prosecution's primary witness who pointed to the petitioner as the assailant; and

Second, whether the Court of Appeals reversibly erred in affirming the trial court's ruling that there was sufficient circumstantial evidence to convict petitioner Tommy Cariño a.k.a. "Tommy Echavez" of three counts of homicide.

The petition is meritorious. The Court finds reasonable doubt that petitioner is the assailant who killed the three victims.

I

The issues presented essentially question the trial court's appreciation of the evidence in favor of the prosecution—a factual question that is improper in a Rule 45 Petition.⁶⁹ However, this Court has recognized certain exceptions⁷⁰ justifying factual review. One of these obtains in this case, where

⁶⁶ *Id.*

⁶⁷ *Id.* at 164–165.

⁶⁸ *Id.* at 165.

⁶⁹ RULES OF COURT, Rule 45, sec. 1 states:

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

⁷⁰ *Concha v. People*, 841 Phil. 214, 228 (2018) [Per J. Leonen, Third Division] enumerates the following exceptions: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court

the Court of Appeals and the Regional Trial Court overlooked certain facts of substance and value, which if considered, could alter the result of the case.

Moreover, it was erroneous for the Court of Appeals to rely on the rule that the Regional Trial Court's findings on the credibility of witnesses are conclusive.⁷¹ As pointed out by the petitioner, the presiding judge who rendered the decision was different from the presiding judge who heard the case during trial. Thus, the former did not have the opportunity to observe the demeanor of the witnesses.⁷²

As will be explained later, we find palpable error in the lower courts' findings of facts and consequently give due course to the Petition.

II

In every criminal case, the identity of the offender must first be established beyond reasonable doubt.⁷³ In this case, the Court of Appeals and the Regional Trial Court convicted petitioner principally based on the testimony of Chan—the prosecution witness who identified petitioner as the person who shot the three victims.

We consider this identification by a sole witness with greatest care and circumspection, especially as the judgment totally depends on the reliability of this identification.⁷⁴ As evidence, the probative weight of the in-court identification largely depends on the integrity of the out-of-court identification.⁷⁵

To determine the reliability of the out-of-court identification, this Court has applied the totality of circumstances test introduced in *People v. Teehankee, Jr.*:⁷⁶

In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances test* where

of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

⁷¹ *People v. Escalante*, 308 Phil. 577, 585 (1994) [Per J. Padilla, First Division].

⁷² *Rollo*, p. 25.

⁷³ *Concha v. People*, 841 Phil. 214, 229 (2018) [Per J. Leonen, Third Division]; *People v. Arapok*, 400 Phil. 1277, 1292 (2000) [Per J. Gonzaga-Reyes, Third Division].

⁷⁴ *People v. Rodrigo*, 586 Phil. 521, 528 (2008) [Per J. Brion, Second Division].

⁷⁵ *Concha v. People*, 841 Phil. 214, 229 (2018) [Per J. Leonen, Third Division]; *People v. Gamer*, 383 Phil. 557, 568 (2000) [Per J. Quisumbing, Second Division].

⁷⁶ 319 Phil. 137 (1995) [Per J. Puno, Second Division].

they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.⁷⁷

These factors in the totality of circumstances test were fashioned to assure fundamental fairness and protection of the accused's due process rights, in light of the normal human fallibilities and suggestive influences affecting eyewitness identification.⁷⁸

Applying the above factors, we find that the identity of the petitioner as the perpetrator of the crime was not clearly and convincingly established raising reasonable doubt. Chan's out-of-court identification fell short of the required standards, which renders his identification of petitioner unreliable, inconclusive, uncertain, and not free from possible error.

The lower courts overlooked the fact that Chan did not provide a description of the backrider but rather, identified him from mug shots through a cartographic sketch shown to him by the police officers. Also, the prosecution did not present the cartographic sketch as evidence for the appreciation of the trial court if indeed it matches with the appearance of petitioner or has some semblance to the photograph of petitioner in the rouges' gallery. To add, it was also not shown whether the cartographic sketch was a reasonable representation of the description given by barangay tanod Icot, as the latter was not presented to testify in court.

We have emphasized in *People v. Nuñez*⁷⁹ that:

To convict an accused, it is not sufficient for the prosecution to present a positive identification by a witness during trial due to frailty of human memory. **It must also show that the identified person matches the original description made by that witness when initially reporting the crime.** The unbiased character of the process of identification by witnesses must likewise be shown.⁸⁰ (Emphasis supplied)

In *People v. Pineda*,⁸¹ the Court explained the proper procedure for out-of-court identification using photographs:

The first rule in proper photographic identification procedure is that a series of photographs must be shown, and not merely that of the suspect. The second rule directs that when a witness is shown a group of pictures, their

⁷⁷ *Id.* at 180.

⁷⁸ *Id.*

⁷⁹ 819 Phil. 408 (2017) [Per J. Leonen, Third Division].

⁸⁰ *Id.*

⁸¹ 473 Phil. 522 (2004) [Per J. Carpio, *En Banc*].



arrangement and display should in no way suggest which one of the pictures pertains to the suspect.⁸²

The identification procedure should proceed without potentially suggestive influences that might jeopardize the *independent* identification by the witness. Otherwise, irreversible prejudice to an accused may result.

While SPO1 Espina claimed that there were more than a hundred pictures in the rogue's gallery, his testimony was short of any details of how these pictures were arranged or shown to the witness. Neither were these pictures presented in evidence. It also does not clearly appear whether the photographs were presented to Chan and his companions at the same time, or one by one. This is material because of the danger of suggestion from one witness to another in a situation where the witnesses view the photographs together. Further, this gives the opportunity for discussion between the persons examining the photographs and there is a possibility that the one who is uncertain in his identification may be influenced by what appears to be confidence or certainty of the other.

The dubiety of the identification process is made more manifest by the material contradiction between SPO1 Espina's and Chan's testimony. While SPO1 Espina declared that Chan and his companions identified not only the backrider but also the driver of the motorcycle from the rogues' gallery,⁸³ Chan testified that they did not find the picture of the motorcycle driver in the rogues' gallery.⁸⁴ To emphasize, none of the four other companions of Chan were called upon to testify.

This unexplained discrepancy in the testimonies of Chan and SPO1 Espina assume significant materiality in considering the reliability of petitioner's identification.

While the inconsistency pertains to the identification of the motorcycle driver, this puts to question the veracity of Chan's and SPO1 Espina's claims and shows at the very least, Chan's probability of making a mistake in the identification of the assailant.

There was no indication of the degree of certainty with which Chan originally identified the accused. Rather, it was established from the testimonies of Chan and SPO1 Espina that Chan's identification was made based on the semblance of petitioner's photograph to the cartographic sketch, which was in turn, based on the description made by another person. This renders his identification questionable. At this point, it is impossible to determine whether Chan's identification was based on his own independent

⁸² *Id.* at 540. (Citations omitted)

⁸³ *Rollo*, p. 29.

⁸⁴ *Id.* at 28.

recollection or to what degree the cartographic sketch has interfered or influenced his memory of the perpetrator's face.


Being confronted with the image of petitioner as depicted in the cartographic sketch, Chan's mind may have already been conditioned that the image depicted and the photograph was the perpetrator.

The Court noted the susceptibility of the human memory to various forms of influence in *Nuñez*:

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.⁸⁵

The danger of Chan's susceptibility to suggestion is compounded when we consider the swiftness of the incident, which could have provided him a limited opportunity to observe the backrider's facial appearance sufficient to retain it in memory. Chan testified that the backrider was holding a firearm with one hand and changing the magazine with the other; the replaced magazine fell on the backrider's lap and eventually to the ground. His attention on the firearm and the magazine inevitably reduced his ability to pay attention to peripheral details such as the facial features of the backrider. Considering the very brief time when the motorcycle was right behind the multicab as the motorcycle driver was in a haste to escape, Chan's opportunity to observe the face of the backrider was certainly diminished when his attention was centered on the firearm and the magazine.



⁸⁵ 819 Phil. 408, 415-416 (2017) [Per J. Leonen, Third Division].

In *Nuñez*, the Court discussed the relevance of the presence or absence of a weapon to a witness' attention and consequently to identification accuracy:

A focal point of psychological studies has been the effect of the presence of a weapon on a witness' attentiveness. Since the 1970s, it has been hypothesized that the presence of a weapon captures a witness' attention, thereby reducing his or her attentiveness to other details such as the perpetrator's facial and other identifying features. Research on this has involved an enactment model involving two (2) groups: first, an enactment with a gun; and second, an enactment of the same incident using an implement like a pencil or a syringe as substitute for an actual gun. Both groups are then asked to identify the culprit in a lineup. Results reveal a statistically significant difference in the accuracy of eyewitness identification between the two (2) groups:

[T]he influence of [a weapon focus] variable on an eyewitness's performance can only be estimated post hoc. Yet the data here do offer a rather strong statement: To not consider a weapon's effect on eyewitness performance is to ignore relevant information. The weapon effect does reliably occur, particularly in crimes of short duration in which a threatening weapon is visible. Identification accuracy and feature accuracy of eyewitnesses are likely to be affected, although, as previous research has noted. . . there is not necessarily a concordance between the two.⁸⁶

The foregoing circumstances weaken the reliability of the in-court identification made by Chan, especially when we consider that Chan briefly saw the petitioner at the time of the incident. Two weeks later, Chan saw petitioner again, but he allegedly could not recognize him because his face was bloated. The third time that Chan saw petitioner was during the trial. As held by this Court:

[W]here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness's recollection of the features of the guilty party, but upon his recollection of the photograph. *Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified."*

....

A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph.⁸⁷ (Emphasis in the original)

⁸⁶ *Id.* at 425. (Citations omitted)

⁸⁷ *People v. Pineda*, 473 Phil. 517, 540 (2004) [Per J. Carpio, *En Banc*].

The Court is unconvinced that the perpetrator's identity was established beyond reasonable doubt. We cannot say that Chan identified the perpetrator based on his own observation and not upon suggestive influences. We are not convinced beyond reasonable doubt that he accurately acquired and retained sufficient information to have properly identified the assailant.

Inasmuch as Chan's identification is tainted with unreliability, corroborative evidence should have been adduced by the prosecution. Curiously, it did not present barangay tanod Icot, who supposedly provided the description for the cartographer. The prosecution rather presented SPO1 Espina, whose testimony was shorn of details and significantly differed with Chan on whether the motorcycle driver was indeed identified in the mug shots. With this unexplained glaring inconsistency, which could have been clarified with the testimony of the other companions of Chan, the Court is not persuaded that the prosecution presented the required quantum of proof.

Absent any other evidence linking petitioner to the crime, the constitutional presumption of innocence must be upheld. This Court explained in *People v. Godoy*:⁸⁸

The presumption of innocence. . . is founded upon the first principles of justice, and is not a mere form but a substantial part of the law. It is not overcome by mere suspicion or conjecture; a probability that the defendant committed the crime; nor by the fact that he had the opportunity to do so. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People 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. This is in consonance with the rule that conflicts in evidence must be resolved upon the theory of innocence rather than upon a theory of guilt when it is possible to do so.⁸⁹

ACCORDINGLY, the Petition is **GRANTED**. The Court of Appeals' January 31, 2020 Decision and January 26, 2021 Resolution in CA-G.R. CR No. 03133 are **REVERSED** and **SET ASIDE**. Petitioner Tommy Cariño a.k.a. Tommy Echavez is **ACQUITTED** on the ground of reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General is **DIRECTED** to report to this Court the action he has taken within five days from notice.

⁸⁸ 321 Phil. 292 [Per J. Regalado, *En Banc*].

⁸⁹ *Id.* at 341. (Citation omitted)

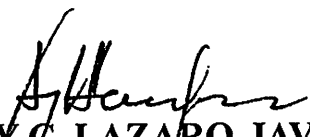
Let entry of judgment be issued immediately.

SO ORDERED.”

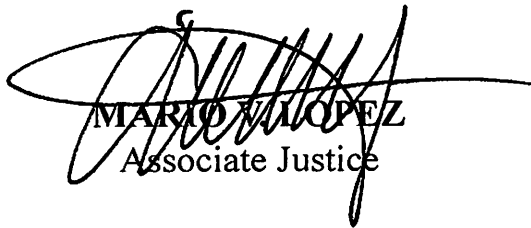


MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:



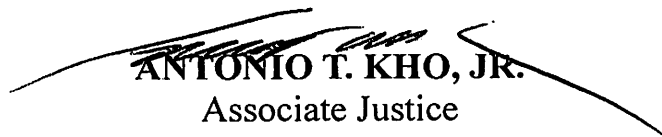
AMY C. LAZARO-JAVIER
Associate Justice



MARIO LOPEZ
Associate Justice



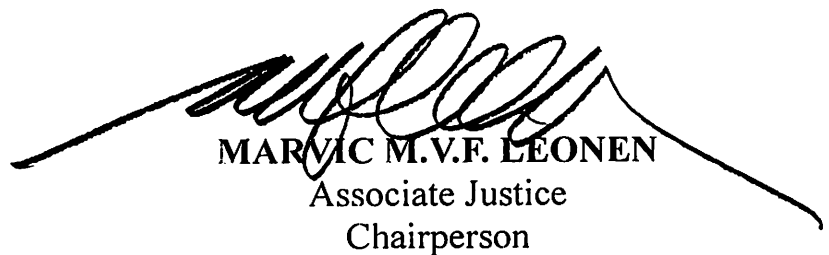
JHOSEP LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

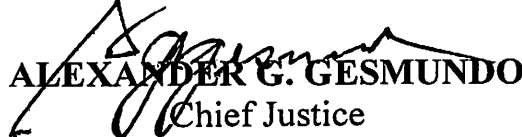
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice