Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

-versus-

CRISENTE PEPAÑO NUÑEZ,
Accused-Appellant.

G.R. No.209342

Present:

VELASCO, JR., *J.*, *Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:
October 4, 2017

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DECISION

LEONEN, *J.*:

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

Criminal prosecution may result in the severe consequences of deprivation of liberty, property, and, where capital punishment is imposed, life. Prosecution that relies solely on eyewitness identification must be approached meticulously, cognizant of the inherent frailty of human memory. Eyewitnesses who have previously made admissions that they could not identify the perpetrators of a crime but, years later and after a highly suggestive process of presenting suspects, contradict themselves and claim that they can identify the perpetrator with certainty are grossly

wanting in credibility. Prosecution that relies solely on these eyewitnesses' testimonies fails to discharge its burden of proving an accused's guilt beyond reasonable doubt.

This resolves an appeal from the assailed June 26, 2013 Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 04474, which affirmed with modification the February 24, 2010 Decision[2] of Branch 67, Regional Trial Court, Binangonan, Rizal. This Regional Trial Court Decision found accused-appellant Crisente Pepaño Nuñez (Nuñez) guilty beyond reasonable doubt of robbery with homicide.

In an Information, George Marciales (Marciales), Orly Nabia (Nabia), Paul Pobre (Pobre), and a certain alias "Jun" (Jun) were charged with robbery with homicide, under Article 294(1) of the Revised Penal Code,[3] as follows:

> That on or about the 22nd of June 2000, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, armed with handguns, by means of violence against or intimidation of the persons of Felix V. Regencia, Alexander C. Diaz and Byron G. Dimatulac, with intent to gain, did then and there, willfully, unlawfully and feloniously take and carry away the money amounting to P5,000.00 belonging to the Caltex gasoline station owned by the family of Felix V. Regencia to their damage and prejudice; that on the occasion of the said robbery and to insure their purpose, the said accused, conspiring, confederating and mutually helping and aiding one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot said Felix V. Regencia, Alexander C. Diaz and Byron G. Dimatulac on the different parts of their bodies, thereby inflicting gunshot wounds which directly caused their deaths.[4]

At first, only Marciales and Nabia were arrested, arraigned, and tried. In its December 9, 2005 Decision,[5] the Regional Trial Court found the offense of robbery with homicide as alleged in the Information, along with Marciales and Nabia's conspiracy with Pobre and Jun to commit this offense, to have been established. Thus, it pronounced Marciales and Nabia

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1 *Rollo*, pp. 2–17. The Decision was penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Noel G. Tijam and Romeo F. Barza of the Seventh Division, Court of Appeals, Manila.

2 CA *rollo*, pp. 18–21. The Decision, docketed as Crim. Case No. 00-473, was penned by Presiding Judge Dennis Patrick Z. Perez.

3 REV. PEN. CODE, art. 294(1) provides:
Article 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 *reclusión perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

4 *Rollo*, p. 3.

5 CA *rollo*, p. 73.

guilty beyond reasonable doubt and sentenced them to death.[6] The case against Pobre and Jun was archived subject to revival upon their apprehension.[7]

On July 2, 2006, accused-appellant Nuñez was apprehended by the Philippine National Police Regional Intelligence Office on the premise that he was the same "Paul Pobre" identified in the Information. Upon arraignment, Nuñez moved that the case against him be dismissed as he was not the "Paul Pobre" charged in the Information. However, prosecution witnesses identified him as one (1) of the alleged robbers and his motion to dismiss was denied. The information was then amended to state Nuñez's name in lieu of "Paul Pobre."[8]

During trial, the prosecution manifested that it would be adopting the evidence already presented in the course of Marciales and Nabia's trial. Apart from this, it also recalled prosecution witnesses Ronalyn Cruz (Cruz) and Relen Perez (Perez). In their testimonies, they both positively identified Nuñez as among the perpetrators of the crime.[9]

Cruz's testimony recounted that in the evening of June 22, 2000, she was working as an attendant at the Caltex gasoline station mentioned in the Information. She was then sitting near the gasoline pumps with her co-employees, the deceased Byron G. Dimatulac (Dimatulac) and prosecution witness Perez. They noticed that the station's office was being held up. There were two (2) persons poking guns at and asking for money from the deceased Alex Diaz (Diaz) and Felix Regencia (Regencia). Regencia handed money to one (1) of the robbers while the other robber reached for a can of oil. Regencia considered this as enough of a distraction to put up a fight. Regencia and Diaz grappled with the robbers. In the scuffle, Diaz shouted. At the sound of this, two (2) men ran to the office. The first was identified to be Marciales and the second, according to Cruz, was Nuñez. Dimatulac also ran to the office to assist Regencia and Diaz. Marciales then shot Dimatulac while Nuñez shot Diaz. Cruz and Perez sought refuge in a computer shop. About 10 to 15 minutes later, they returned to the gasoline station where they found Diaz already dead, Dimatulac gasping for breath, and Regencia wounded and crawling. By then, the robbers were rushing towards the highway.[10]

Perez's testimony recounted that in the evening of June 22, 2000, she was working as a sales clerk in the Caltex gasoline station adverted to in the Information. While seated with Cruz near the gasoline pumps, she saw

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6 Id. at 108 and *rollo*, pp. 3–4.
7 *Rollo*, pp. 3–4.
8 CA *rollo*, pp. 108–109.
9 *Rollo*, pp. 4–5.
10 Id. and CA *rollo*, pp. 111–113.

Nuñez, who was pointing a gun at Diaz, and another man who was pointing a gun at Regencia, inside the gasoline station's office. Diaz shouted that they were being robbed. Another man then rushed to the gasoline station's office, as did her co-employee Dimatulac. A commotion ensued where the robber identified as Marciales shot Dimatulac, Diaz, and Regencia. They then ran to their employer's house.[11]

Nuñez testified in his own defense and recalled the circumstances of his apprehension. He stated that when he was apprehended on July 2, 2006, he was on his way to his aunt's fish store where he was helping since 1999 when a man approached him. He was then dragged and mauled. With his face covered, he was boarded on a vehicle and brought to Camp Vicente Lim in Laguna. He further claimed that on June 22, 2000, he was in Muzon, Taytay, Rizal with his aunt at her fish store until about 5:00 p.m. before going home. At home, his aunt's son fetched him to get pails from the store and bring them to his aunt's house.[12]

On February 24, 2010, the Regional Trial Court rendered a Decision[13] finding Nuñez guilty beyond reasonable doubt of robbery with homicide. This four (4)-page Decision incorporated the original Regional Trial Court December 9, 2005 Decision and added the following singular paragraph in explaining Nuñez's supposed complicity:

> To convict Nuñez of robbery with homicide requires proof beyond reasonable doubt that he: (1) took personal property which belongs to another; (2) the taking is unlawful; (3) the taking is done with intent to gain; and (4) the taking was accomplished with the use of violence against or intimidation of persons or by using force upon things. Article 294(1) of the Revised Penal Code and (5) when by reason or on occasion of the robbery, the crime of homicide shall have been committed[.] The facts are simple. Nuñez along with Marciales and Nabia robbed the Tayuman Caltex gas station of P5,000.00 and some cans of oil. For such booty, he[,] along with his fellow thieves[,] shot and killed Felix Regencia, Alexander C. Diaz and Byron G. Dimatulac. He was positively and unequivocally identified by Renel Cruz and Ronalyn Perez as [one] of the perpetrators even as he tried to hide behind another name and was arrested later. He ran but could not hide as the long arm of the law finally caught up with him. As a defense, he can only offer his weak alibi which cannot offset the positive identification of the prosecution witnesses. His guilt was proven beyond reasonable doubt.[14]

The Regional Trial Court rendered judgment, as follows:

> Based on the foregoing, we find accused Crisente Pepaño Nuñez

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11 Id. at 5 and CA *rollo*, pp. 114–116.
12 Id. at 5–6.
13 CA *rollo*, pp. 18–21.
14 Id. at 19.

> GUILTY beyond reasonable doubt of the crime of Robbery with Homicide under Article 294 (1) of the Revised Penal Code and sentences (sic) him to suffer the penalty of *Reclusión Perpetua* and order him to pay:
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> 1. The heirs of Felix Regencia Php. 151,630.00 expenses for the wake, burial lot and funeral service; Php. 75,000.00 death indemnity; Php. 5,000.00 money stolen from the victim; exemplary damages of Php. 50,000.00; and Php. 2,214,000.00 unearned income;
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> 2. The heirs of Alexander Diaz Php. 20,000.00 expenses for funeral service; Php. 75,000.00 death indemnity; Php. 50,000.00 exemplary damages; and Php. 1,774,080.00 unearned income;
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> 3. The heirs of Byron Dimatulac Php. 18,000.00 for funeral service; Php. 75,000.00 death indemnity; Php. 50,000.00 exemplary damages; and Php. 966,240.00 unearned income[;] and
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> 4. The costs.
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> Let the case against alias "Jun" who remains at large be archived.
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> SO ORDERED.[15]

On March 5, 2010, Nuñez filed his Notice of Appeal.[16]

On June 26, 2013, the Court of Appeals rendered its assailed Decision[17] affirming Nuñez's conviction, with modification to the awards of moral and exemplary damages, as follows:

> WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED for lack of merit. The Decision dated February 24, 2010 of the Regional Trial Court of Binangonan, Rizal, Branch 67, in Criminal Case No. 00-473 is hereby AFFIRMED with MODIFICATION. Accused-appellant Crisente Pepaño Nuñez is ordered to pay P75,000.00 as moral damages and P30,000.00 as exemplary damages each to the heirs of Felix Regencia, the heirs of Alexander Diaz and the heirs of Byron Dimatulac.
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> SO ORDERED.[18]

Nuñez then filed his Notice of Appeal.[19]

The Court of Appeals elevated the records of this case to this Court on October 22, 2013 pursuant to its Resolution dated July 23, 2013. The Resolution gave due course to Nuñez's Notice of Appeal.[20]

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15 Id. at 21.
16 *Rollo*, p. 6.
17 Id. at 2–17.
18 Id. at 16.
19 Id. at 19–20.
20 Id. at 1.

In its Resolution[21] dated December 4, 2013, this Court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs. However, both parties manifested that they would no longer do so.[22]

The occurrence of the robbery occasioned by the killing of Regencia, Diaz, and Dimatulac is no longer in issue as it has been established in the original proceedings which resulted in the conviction of Marciales and Nabia.

All that remains in issue for this Court's resolution is whether or not accused-appellant Crisente Pepaño Nuñez is the same person, earlier identified as Paul Pobre, who acted in conspiracy with Marciales and Nabia.

Contrary to the conclusions of the Court of Appeals and Regional Trial Court, this Court finds that it has not been established beyond reasonable doubt that accused-appellant Crisente Pepaño Nuñez is the same person identified as Paul Pobre. Thus, this Court reverses the courts *a quo* and acquits accused-appellant Crisente Pepaño Nuñez.

The prosecution's case rises and falls on the testimonies of eyewitnesses Cruz and Perez. The necessity of their identification of Nuñez is so manifest that the prosecution saw it fit to recall them to the stand, even as it merely adopted the evidence already presented in the trial of Marciales and Nabia. Cruz's and Perez's testimonies centered on their supposed certainty as to how it was Nuñez himself, excluding any other person, who participated in the robbery and homicide.

This Court finds this supposed certainty and the premium placed on it by the Court of Appeals and the Regional Trial Court to be misplaced.

I

There are two (2) principal witnesses who allegedly identified accused-appellant as the same Pobre who participated in the robbery hold-up. When Cruz, the first witness, was initially put on the witness stand, she asserted that she could not recall any of the features of Pobre. After many years, with the police presenting her with accused-appellant, she positively identified him as the missing perpetrator. The second principal witness' testimony on the alleged participation of accused-appellant is so fundamentally at variance with that of the other principal witness. The

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21 Id. at 24.

22 Id. at 27–30, Manifestation of the Office of the Solicitor General on behalf of the People of the Philippines, and *rollo*, pp. 31–34, Manifestation of Nuñez.

prosecution did not account for the details of the presentation of accused-appellant to the two (2) witnesses after he was arrested. Finally, these witnesses' alleged positive identification occurred almost eight (8) years, for the first witness, and almost nine (9) years, for the second witness, from the time of the commission of the offense.

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.[23]

Eyewitness identification, or what our jurisprudence commendably refers to as "positive identification," is the bedrock of many pronouncements of guilt. However, eyewitness identification is but a product of flawed human memory. In an expansive examination of 250 cases of wrongful convictions where convicts were subsequently exonerated by DNA testing, Professor Brandon Garett (Professor Garett) noted that as much as 190 or 76% of these wrongful convictions were occasioned by flawed eyewitness identifications.[24] Another observer has more starkly characterized eyewitness identifications as "the leading cause of wrongful convictions."[25]

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

> This seemingly staggering rate of involvement of eyewitness errors in wrongful convictions is, unfortunately, no surprise. Previous studies have likewise found eyewitness errors to be implicated in the majority of

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23 Elizabeth F. Loftus, et al., *Beyond the Ken - Testing Jurors' Understanding of Eyewitness Reliability Evidence*, 46 JURIMETRICS 177 (2005).

24 Deborah Davis and Elizabeth F. Loftus, *Dangers of Eyewitnesses for the Innocent: Learning from the Past and Projecting into the Age of Social Media*, 46 NEW ENG. L. REV. 769, 769 (2012).

25 Sandra Guerra Thompson, *Daubert Gatekeeping for Eyewitness Identifications*, 65 S.M.U. L. Rev. 593, 596 (2012).

> cases of wrongful conviction. But Garrett's analysis went farther than these previous studies. He not only documented that eyewitness errors occurred in his cases. He also tried to determine why they occurred – an issue eyewitness science has investigated for over 100 years.[26]

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

> The problem of eyewitness reliability could not be more clearly documented. The painstaking work of the Innocence Project, Brandon Garrett, and others who have documented wrongful convictions, participated in the exonerations of the victims, and documented the role of flawed evidence of all sorts has clearly and repeatedly revealed the two–pronged problem of unreliability for eyewitness evidence: (1) eyewitness identifications are subject to substantial error, and (2) observer judgments of witness accuracy are likewise subject to substantial error.[27]

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

> More than 100 years of eyewitness science has supported other conclusions as well. First, the ability to match faces to photographs (even when the target is present while the witness inspects the lineup or comparison photo) is poor and peaks at levels far below what might be considered reasonable doubt. Second, eyewitness accuracy is further degraded by pervasive environmental characteristics typical of many criminal cases such as: suboptimal lighting; distance; angle of view; disguise; witness distress; and many other encoding conditions. Third, memory is subject to distortion due to a variety of influences not under the control of law enforcement that occur between the criminal event and identification procedures and during such procedures. Fourth, the ability of those who must assess the accuracy of eyewitness testimony is poor for a variety of reasons. Witnesses' ability to report on many issues affecting or reflecting accuracy is flawed and subject to distortion (e.g., reports of duration of observation, distance, attention, confidence, and others), thereby providing a flawed basis for others' judgments of accuracy.[28]

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

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[26] Deborah Davis and Elizabeth F. Loftus, *Dangers of Eyewitnesses for the Innocent: Learning from the Past and Projecting into the Age of Social Media*, 46 NEW ENG. L. REV. 769, 770 (2012).

[27] Id. at 808.

[28] Id.

> Additionally, the limits and determinants of performance for facial recognition are beyond the knowledge of attorneys, judges, and jurors. The traditional safeguards such as cross-examination are not effective and cannot be effective in the absence of accurate knowledge of the limits and determinants of witness performance among both the cross-examiners and the jurors who must judge the witness. Likewise, cross-examination cannot be effective if the witness reports elicited by cross-examination are flawed: for example, with respect to factors such as original witnessing conditions (e.g., duration of exposure), post-event influences (e.g., conversations with co-witnesses), or police suggestion (e.g., reports of police comments or behaviors during identification procedures).[29]

II

Legal traditions in various jurisdictions have been responsive to the scientific reality of the frailty of eyewitness identification.

In the United States, the Supreme Court "ruled for the first time that the Constitution requires suppression of some identification evidence"[30] in three (3) of its decisions, all rendered on June 12, 1967—*United States v. Wade*,[31] *Gilbert v. California*,[32] and *Stovall v. Denno*.[33] *Stovall* emphasized that such suppression, when appropriate, was "a matter of due process."[34]

> Until the latter half of the twentieth century, the general rule in the United States was that any problems with the quality of eyewitness identification evidence went to the weight, not the admissibility, of that evidence and that the jury bore the ultimate responsibility for assessing the credibility and reliability of an eyewitness's identification. In a trilogy of landmark cases released on the same day in 1967, however, the Supreme Court ruled for the first time that the Constitution requires suppression of some identification evidence. In *United States v. Wade* and *Gilbert v. California*, the Court held that a post-indictment lineup is a critical stage in a criminal prosecution, and, unless the defendant waives his Sixth Amendment rights, defense counsel's absence from such a procedure requires suppression of evidence from the lineup. The court also ruled, however, that even when the lineup evidence itself must be suppressed, a witness would be permitted to identify the defendant in court if the prosecution could prove the witness had an independent source for his identification . . .
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> . . . .
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> In *Stovall v. Denno*, the Court held that, regardless of whether a defendant's Sixth Amendment rights were implicated or violated, some identification procedures are "so unnecessarily suggestive and conducive

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29 Id.

30 Nicholas A. Kahn-Fogel, *The Promises and Pitfalls of State Eyewitness Identification Reforms*, 104 KY. L.J. 99 (2016).

31 388 U.S. 218 (1967).

32 388 U.S. 263 (1967).

33 388 U.S. 293 (1967).

34 Id.

> to irreparable mistaken identification" that eyewitness evidence must be suppressed as a matter of due process.[35] (Citations omitted)

In *Wade*, the United States Supreme Court noted that the factors judges should evaluate in deciding the independent source question include:

> [T]he prior opportunity to observe the alleged criminal act, the existence of any discrepancy between any pre-lineup description and the defendant's actual description, any identification prior to lineup of another person, the identification by picture of the defendant prior to the lineup, failure to identify the defendant on a prior occasion, and the lapse of time between the alleged act and the lineup identification."[36]

Nine (9) months later, in *Simmons v. United States*, the United States Supreme Court calibrated its approach by "focusing in that case on the overall reliability of the identification evidence rather than merely the flaws in the identification procedure."

> Ultimately, the Court concluded there was no due process violation in admitting the evidence because there was little doubt that the witnesses were actually correct in their identification of Simmons. Scholars have frequently characterized *Simmons* as the beginning of the Court's unraveling of the robust protection it had offered in *Stovall*; while *Stovall* provided a per se rule of exclusion for evidence derived from flawed procedures, *Simmons* rejected this categorical approach in favor of a reliability analysis that would often allow admission of eyewitness evidence even when an identification procedure was unnecessarily suggestive.[37]

In more recent Supreme Court decisions, the United States has "reaffirmed its shift toward a reliability analysis, as opposed to a focus merely on problematic identification procedures" beginning in 1972 through *Neil v. Biggers*:[38]

> The *Biggers* Court stated that, at least in a case in which the confrontation and trial had taken place before *Stovall*, identification evidence would be admissible, even if there had been an unnecessarily suggestive procedure, so long as the evidence was reliable under the totality of the circumstances. To inform its reliability analysis, the *Biggers* Court articulated five factors it considered relevant to the inquiry:
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> > [(1)] the opportunity of the witness to view the criminal at the time of the crime, [(2)] the witness' degree of attention, [(3)] the accuracy of the witness' prior description of the criminal, [(4)] the level of certainty demonstrated by the

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35 Nicholas A. Kahn-Fogel, *The Promises and Pitfalls of State Eyewitness Identification Reforms*, 104 KY. L.J. 99, 104–105 (2016).

36 *United States v. Wade*, 388 U.S. at 241 (1967).

37 Id.

38 409 U.S. 188 (1972).

> witness at the confrontation, and [(5)] the length of time between the crime and the confrontation.
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> The *Biggers* Court clearly proclaimed that the "likelihood of misidentification," rather than a suggestive procedure in and of itself, is what violates a defendant's due process rights. However, the *Biggers* Court left open the possibility that per se exclusion of evidence derived from unnecessarily suggestive confrontations might be available to defendants whose confrontations and trials took place after Stovall.[39]

The *Biggers* standard was further affirmed in 1977 in *Manson v. Brathwaite*:[40]

> The *Manson* Court made clear that the standard from *Biggers* would govern all due process challenges to eyewitness evidence, stating that judges should weigh the five factors against the "corrupting effect of the suggestive identification." Ultimately, the Court affirmed that "reliability is the linchpin in determining the admissibility of identification testimony." In rejecting the per se exclusionary rule, the Court acknowledged that such a rule would promote greater deterrence against the use of suggestive procedures, and it noted a "surprising unanimity among scholars" that the per se approach was "essential to avoid serious risk of miscarriage of justice." However, the Court concluded the cost to society of not being able to use reliable evidence of guilt in criminal prosecutions would be too high. The *Manson* Court also made clear that its new standard would apply to both pre-trial and in-court identification evidence, thus resulting in a unified analysis of all identification evidence in the wake of suggestive procedures. In contrast, the *Stovall* Court had not specified whether unnecessarily suggestive procedures would require per se exclusion of both pre-trial identification evidence and any in-court identification, or alternatively, whether witnesses who had viewed unnecessarily suggestive procedures might nonetheless be allowed to identify defendants in court after an independent source determination.[41]

A 2016 article notes that *Manson* "remains the federal constitutional standard."[42] It also notes that "[t]he vast majority of states have also followed *Manson* in interpreting the requirements of their own constitutions."[43]

The United Kingdom has adopted the Code of Practice for the Identification of Persons by Police Officers.[44] It "concerns the principal methods used by police to identify people in connection with the

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39 Nicholas A. Kahn-Fogel, *The Promises and Pitfalls of State Eyewitness Identification Reforms*, 104 KY. L.J. 99 (2016).

40 432 U.S. 98, 114 (1977).

41 Nicholas A. Kahn-Fogel, *The Promises and Pitfalls of State Eyewitness Identification Reforms*, 104 KY. L.J. 99 (2016).

42 Id.

43 Id.

44 Code of Practice for the Identification of Persons by Police Officers, available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

investigation of offences and the keeping of accurate and reliable criminal records" and covers eyewitness identifications. This Code puts in place measures advanced by the corpus of research in enhancing the reliability of eyewitness identification, specifically by impairing the suggestive tendencies of conventional procedures. Notable measures include having a parade of at least nine (9) people, when one (1) suspect is included, to at least 14 people, when two (2) suspects are included[45] and forewarning the witness that he or she may or may not actually see the suspect in the line-up.[46] Additionally, there should be a careful recording of the witness' pre-identification description of the perpetrator[47] and explicit instructions for police officers to not "direct the witness' attention to any individual."[48]

III

Domestic jurisprudence recognizes that eyewitness identification is affected by "normal human fallibilities and suggestive influences."[49] *People v. Teehankee, Jr.*[50] introduced in this jurisdiction the totality of circumstances test, which relies on factors already identified by the United States Supreme Court in *Neil v. Biggers*:[51]

> (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.[52]

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

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45 Code of Practice for the Identification of Persons by Police Officers, Annex B, par. 9. Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

46 Code of Practice for the Identification of Persons by Police Officers, Annex B, par. 16. Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

47 Code of Practice for the Identification of Persons by Police Officers, sec. 3.2(a). Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

48 Code of Practice for the Identification of Persons by Police Officers, sec. 3.2(b). Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

49 *People v. Teehankee, Jr.*, 319 Phil. 128, 179 (1995) [Per J. Puno, Second Division]. *See also* Dissenting Opinion of J. Leonen in *People v. Pepino,* G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per J. Brion, En Banc].

50 319 Phil. 128 (1995) [Per J.Puno, Second Division].

51 409 U.S. 188 (1972).

52 *People v. Teehankee, Jr.*, 319 Phil. 128, 180, *citing Neil v. Biggers*, 409 US 188 (1973); *Manson v. Brathwaite*, 432 US 98 (1977); DEL CARMEN, CRIMINAL PROCEDURE, LAW AND PRACTICE 346 (3rd ed.) [Per J. Puno, Second Division].

the witness to be exposed to the perpetrators, peruse their features, and ascertain their identity.[53] In *People v. Pavillare*:[54]

> Both witnesses had ample opportunity to observe the kidnappers and to remember their faces. The complainant had close contact with the kidnappers when he was abducted and beaten up, and later when the kidnappers 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.[55]

Apart from extent or degree of exposure, this Court has also appreciated a witness' specialized skills or extraordinary capabilities.[56] *People v. Sanchez*[57] concerned the theft of an armored car. The witness, a trained guard, was taken by this Court as being particularly alert about his surroundings during the attack.

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.[58]

The degree of the crime's violence affects a witness' stress levels. 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.[59] Research on this has

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53 *See* Dissenting Opinion of J. Leonen in People v. Pepino, G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per J. Brion, En Banc].

54 386 Phil. 126 (2000) [Per Curiam, En Banc].

55 Id. at 144.

56 *See* Dissenting Opinion of J. Leonen in *People v. Pepino*, G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per J. Brion, En Banc].

57 318 Phil. 547 (1995) [Per Kapunan, First Division].

58 ELIZABETH F. LOFTUS, EYEWITNESS TESTIMONY 23–51 (1996). *See also* Dissenting Opinion of J. Leonen in *People v. Pepino*, G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per J. Brion, En Banc].

59 Nancy Mehrkens Steblay, *A Meta-Analytic Review of the Weapon Focus Effect*, 16 LAW AND HUMAN BEHAVIOR 413, 414 (1992).

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:[60]

> [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.[61]

Our jurisprudence has yet to give due appreciation to scientific data on weapon focus. Instead, what is prevalent is the contrary view which empirical studies discredit.[62] For instance, in *People v. Sartagoda*:

> [T]he most natural reaction for victims of criminal violence [is] to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot easily be erased from their memory.[63]

Rather than a sweeping approbation of a supposed natural propensity for remembering the faces of assailants, this Court now emphasizes the need for courts to appreciate the totality of circumstances in the identification of perpetrators of crimes.

Apart from the witness' opportunity to view the perpetrator during the commission of the crime and the witness' degree of attention at that time, the accuracy of any prior description given by the witness is equally vital. Logically, a witness' credibility is enhanced by the extent to which his or her initial description of the perpetrator matches the actual appearance of the person ultimately prosecuted for the offense.

Nevertheless, discrepancies, when properly accounted for, should not be fatal to the prosecution's case. For instance, in *Lumanog v. People*,[64] this

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60 Id. at 420.

61 Id. at 421.

62 *See* Dissenting Opinion of J. Leonen in *People v. Pepino*, G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per J. Brion, En Banc].

63 *People v. Sartagoda* 293 Phil. 259, (1993) [Per J. Campos, Jr., Second Division].

64 644 Phil. 296 (2010) [Per J. Villarama, Jr., En Banc].

Court recognized that age estimates cannot be made accurately:

> Though his estimate of Joel's age was not precise, it was not that far from his true age, especially if we consider that being a tricycle driver who was exposed daily to sunlight, Joel's looks may give a first impression that he is older than his actual age. Moreover Alejo's description of Lumanog as dark-skinned was made two (2) months prior to the dates of the trial when he was again asked to identify him in court. When defense counsel posed the question of the discrepancy in Alejo's description of Lumanog who was then presented as having a fair complexion and was 40 years old, the private prosecutor manifested the possible effect of Lumanog's incarceration for such length of time as to make his appearance different at the time of trial.[65]

The totality of circumstances test also requires a consideration of the degree of certainty demonstrated by the witness at the moment of identification. What is most critical here is the initial identification made by the witness during investigation and case build-up, not identification during trial.[66]

A witness' certainty is tested in court during cross-examination. In several instances, this Court has considered a witness' straight and candid recollection of the incident, undiminished by the rigors of cross-examination as an indicator of credibility.[67]

Still, certainty on the witness stand is by no means conclusive. By the time a witness takes the stand, he or she shall have likely made narrations to investigators, to responding police or barangay officers, to the public prosecutor, to any possible private prosecutors, to the families of the victims, other sympathizers, and even to the media. The witness, then, may have established certainty, not because of a foolproof cognitive perception and recollection of events but because of consistent reinforcement borne by becoming an experienced narrator. Repeated narrations before different audiences may also prepare a witness for the same kind of scrutiny that he or she will encounter during cross-examination. Again, what is more crucial is certainty at the onset or on initial identification, not in a relatively belated stage of criminal proceedings.

The totality of circumstances test also requires a consideration of the length of time between the crime and the identification made by the witness. "It is by now a well-established fact that people are less accurate and complete in their eyewitness accounts after a long retention interval than

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65 Id. at 400–401.

66 *See also* Dissenting Opinion of J. Leonen in *People v. Pepino*, G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per J. Brion, En Banc].

67 *See People v. Ramos*, 371 Phil. 66, 76 (1999) [Per Curiam, En Banc]; and *People v. Guevarra*, 258-A Phil. 909, 916–918 (1989) [Per J. Sarmiento, Second Division].

after a short one."[68] Ideally then, a prosecution witness must identify the suspect immediately after the incident. This Court has considered acceptable an identification made two (2) days after the commission of a crime,[69] not so one that had an interval of five and a half (5 ½) months.[70]

The passage of time is not the only factor that diminishes memory. Equally jeopardizing is a witness' interactions with other individuals involved in the event.[71] As noted by cognitive psychologist Elizabeth F. Loftus, "[p]ost[-]event information can not only enhance existing memories but also change a witness's memory and even cause nonexistent details to become incorporated into a previously acquired memory."[72]

Thus, the totality of circumstances test also requires a consideration of the suggestiveness of the identification procedure undergone by a witness. Both verbal and non-verbal information might become inappropriate cues or suggestions to a witness:

> A police officer may tell a witness that a suspect has been caught and the witness should look at some photographs or come to view a lineup and make an identification. Even if the policeman does not explicitly mention a suspect, it is likely that the witness will believe he is being asked to identify a good suspect who will be one of the members of the lineup or set of photos . . . If the officer should unintentionally stare a bit longer at the suspect, or change his tone of voice when he says, "Tell us whether you think it is number one, two, THREE, four, five, or six," the witness's opinion might be swayed.[73]

In appraising the suggestiveness of identification procedures, this Court has previously considered prior or contemporaneous[74] actions of law enforcers, prosecutors, media, or even fellow witnesses.

In *People v. Baconguis*,[75] this Court acquitted the accused, whose identification was tainted by an improper suggestion.[76] There, the witness was made to identify the suspect inside a detention cell which contained only the suspect.[77]

People v. Escordial[78] involved robbery with rape. Throughout their

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68 ELIZABETH F. LOFTUS, EYEWITNESS TESTIMONY 53 (1996).
69 *People v. Teehankee, Jr.*, 319 Phil. 128, 152 (1995) [Per J. Puno, Second Division].
70 *People v. Rodrigo*, 586 Phil. 515, 536 (2008) [Per J. Brion, Second Division].
71 ELIZABETH F. LOFTUS, EYEWITNESS TESTIMONY 54–55 (1996).
72 Id. at 55.
73 ELIZABETH F. LOFTUS, EYEWITNESS TESTIMONY 73-74 (1996).
74 *People v. Algarme, et al.*, 598 Phil. 423, 444 (2009) [Per J. Brion, Second Division].
75 462 Phil. 480 (2003) [Per J. Carpio Morales, En Banc].
76 Id. at 495 to 496.
77 Id. at 494.
78 424 Phil. 627 (2002) [Per J. Mendoza, En Banc].

ordeal, the victim and her companions were blindfolded.[79] The victim, however, felt a "rough projection"[80] on the back of the perpetrator. The perpetrator also spoke, thereby familiarizing the victim with his voice.[81] *Escordial* recounted the investigative process which resulted in bringing the alleged perpetrator into custody. After several individuals were interviewed, the investigating officer had an inkling of who to look for. He "found accused-appellant [in a] basketball court and 'invited' him to go to the police station for questioning."[82] When the suspect was brought to the police station, the rape victim was already there. Upon seeing the suspect enter, the rape victim requested to see the suspect's back. The suspect removed his shirt. When the victim saw a "rough projection" on the suspect's back, she spoke to the police and stated that the suspect was the perpetrator. The police then brought in the other witnesses to identify the suspect. Four (4) witnesses were taken to the cell containing the accused and they consistently pointed to the suspect even as four (4) other individuals were with him in the cell.[83]

This Court found the show-up, with respect to the rape victim, and the lineup, with respect to the four (4) other witnesses, to have been tainted with irregularities. It also noted that the out-of-court identification could have been the subject of objections to its admissibility as evidence although these objections were never raised during trial.[84]

Although these objections were not timely raised, this Court found that the prosecution failed to establish the accused's guilt beyond reasonable doubt and acquitted the accused.[85] It noted that the victim was blindfolded throughout her ordeal. Her identification was rendered unreliable by her own admission that she could only recognize her perpetrator through his eyes and his voice. It reasoned that, given the limited exposure of the rape victim to the perpetrator, it was difficult for her to immediately identify the perpetrator. It found the improper suggestion made by the police officer as having possibly aided in the identification of the suspect.[86] The Court cited with approval the following excerpt from an academic journal:

> *Social psychological influences.* Various social psychological factors also increase the danger of suggestibility in a lineup confrontation. Witnesses, like other people, are motivated by a desire to be correct and to avoid looking foolish. By arranging a lineup, the police have evidenced their belief that they have caught the criminal; witnesses, realizing this, probably will feel foolish if they cannot identify anyone and therefore may choose someone despite residual uncertainty. Moreover, the need to

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79 Id. at 633.
80 Id. at 635.
81 Id. at 639.
82 Id.
83 Id.
84 Id. at 652–654.
85 Id. at 665.
86 Id at 659–662.

> reduce psychological discomfort often motivates the victim of a crime to find a likely target for feelings of hostility.
>
> Finally, witnesses are highly motivated to behave like those around them. This desire to conform produces an increased need to identify someone in order to show the police that they, too, feel that the criminal is in the lineup, and makes the witnesses particularly vulnerable to any clues conveyed by the police or other witnesses as to whom they suspect of the crime.[87] (Emphasis in the original)

People v. Pineda,[88] involved six (6) perpetrators committing robbery with homicide aboard a passenger bus.[89] A passenger recalled that one (1) of the perpetrators was referred to as "Totie" by his companions. The police previously knew that a certain Totie Jacob belonged to the robbery gang of Rolando Pineda (Pineda). At that time also, Pineda and another companion were in detention for another robbery. The police presented photographs of Pineda and his companion to the witness, who positively identified the two (2) as among the perpetrators.[90]

This Court found the identification procedure unacceptable.[91] It then articulated two (2) rules for out-of-court identifications through 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 arrangement and display should in no way suggest which one of the pictures pertains to the suspect.[92]

Non-compliance with these rules suggests that any subsequent corporeal identification made by a witness may not actually be the result of a reliable recollection of the criminal incident. Instead, it will simply confirm false confidence induced by the suggestive presentation of photographs to a witness.

Pineda further identified 12 danger signals that might indicate erroneous identification. Its list is by no means exhaustive, but it identifies benchmarks which may complement the application of the totality of circumstances rule. These danger signals are:

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87 Id. at 659, *citing* Frederic D. Woocher, *Did Your Eyes Deceive You? Expert Psychological Testimony on the Unreliability of Eyewitness Identification*, 29 STAN L. REV 969 (1977).

88 473 Phil. 517 (2004) [Per J. Carpio, En Banc].

89 Id. at 522.

90 Id. at 536.

91 Id. at 540.

92 Id. at 540, *citing* PATRICK M. WALL, EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES 74 and 81 (1965).

(1) the witness originally stated that he could not identify anyone;

(2) the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;

(3) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;

(4) before identifying the accused at the trial, the witness erroneously identified some other person;

(5) other witnesses to the crime fail to identify the accused;

(6) before trial, the witness sees the accused but fails to identify him;

(7) before the commission of the crime, the witness had limited opportunity to see the accused;

(8) the witness and the person identified are of different racial groups;

(9) during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;

(10) a considerable time elapsed between the witness' view of the criminal and his identification of the accused;

(11) several persons committed the crime; and

(12) the witness fails to make a positive trial identification.[93]

Pineda underscored that "[t]he more important duty of the prosecution is to prove the identity of the perpetrator and not to establish the existence of the crime."[94] Establishing the identity of perpetrators is a difficult task because of this jurisdiction's tendency to rely more on testimonial evidence rather than on physical evidence. Unlike the latter, testimonial evidence can be swayed by improper suggestions. Legal scholar Patrick M. Wall notes that improper suggestion "probably accounts for more miscarriages of justice than any other single factor[.]"[95] Marshall Houts, who served the Federal Bureau of Investigation and the American judiciary, concurs and considers eyewitness identification as "the most unreliable form of evidence[.]"[96]

People v. Rodrigo[97] involved the same circumstances as *Pineda*. The police presented a singular photograph for the eyewitness to identify the person responsible for a robbery with homicide. The witness identified the person in the photograph as among the perpetrators. This Court stated that,

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93 Id. at 547–548, *citing* PATRICK M. WALL, EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES 90–130 (1965).

94 Id. at 548.

95 PATRICK M. WALL, EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES 26 (1965).

96 MARSHALL HOUTS, FROM EVIDENCE TO PROOF 10–11 (1956).

97 586 Phil. 515 (2008) [Per J. Brion, Second Division].

even as the witness subsequently identified the suspect in court, such identification only followed an impermissible suggestion in the course of the photographic identification. This Court specifically stated that a suggestive identification violates the right of the accused to due process, denying him or her of a fair trial:[98]

> The 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 level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.
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> . . . .
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> *The initial photographic identification in this case carries serious constitutional law implications in terms of the possible violation of the due process rights of the accused as it may deny him his rights to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification.* In the context of this case, the investigators might not have been fair to Rodrigo if they themselves, purposely or unwittingly, fixed in the mind of Rosita, or at least actively prepared her mind to, the thought that Rodrigo was one of the robbers. Effectively, this act is no different from coercing a witness in identifying an accused, varying only with respect to the means used. Either way, the police investigators are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists.[99] (Emphasis supplied)

IV

Applying these standards, this Court finds the identification made by prosecution witnesses Cruz and Perez unreliable. Despite their identification, there remains reasonable doubt if accused-appellant Nuñez is the same Pobre who supposedly committed the robbery with homicide along with Marciales and Nabia.

The prosecution banks on the following portion of Cruz's testimony.[100] The Court of Appeals heavily relies on the same portion, reproducing parts of it in its Decision:[101]

> Q: Madam Witness, where were you on June 22, 2000 in the afternoon?
> A: I was on duty at Tayuman Caltex station, Ma'am.
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> Q: And while you were on duty, what happened if any?

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98 Id. at 529.
99 Id. at 528–530.
100 CA *rollo*, pp. 111–113.
101 *Rollo*, pp. 9–10.

A: While we were on duty there was a pick-up which was getting gas and a person was in front and we were joking baka kami mahold-up yun pala, hinoholdup na kami sa opisina.

Q: You mentioned that there was already hold-up happening?
A: Yes, Ma'am.

Q: What time was that when you noticed that holdup?
A: Around 8:00p.m.

Q: Where was the hold-up going on?
A: In the office, Ma'am.

Q: And how far is that office from where you were at that time, how many meters?
A: From here to the wall of the court.

Court:
Anyway, I have the reference.

Prosecutor Aragones:

Q: What happened after you saw that there was [a] hold[-up] going on inside the office of the Caltex Station?
A: After that me and my companions ran to the computer shop which is beside the office.

Q: By the way, why were you at the Caltex gasoline station?
A: I was an attendant, Ma'am.

Q: You mentioned that you proceeded to the computer shop which is beside the office?
A: Yes, Ma'am.

Q: Where did you run, inside or outside the computer shop?
A: Inside, Ma'am.

Q: Before you went inside, what did you witness after you saw that there was hold-up inside the office?
A: I saw that one of our companions, a gun was pointed to him and also to our employer.

Q: Who was your companion you saw who was pointed with a gun?
A: Alex Diaz, and Kuya Alex my employer.

Q: Who were those persons who pointed guns to your co-worker and to your employer?
A: The two accused who were first arrested.

Q: Aside from the two accused, do they have other companions?
A: Yes, Ma'am.

Q: Who was that person who was also with the two accused?
A: Paul Pobre.

Q: By the way, who were those two accused you are referring to according

to you were arrested?
A: George Marciales and I cannot remember the other one.

Q: You mentioned of the name Paul Pobre, kindly look around if there is any Paul Pobre in court?
A: Yes, Ma'am, he is here.

Q: Can you point to him?
A: He is that one (pointing)

INTERPRETER:
Witness is pointing to a person wearing yellow shirt who when asked gave his name as Crisanto Pepaño.

PROSECUTOR ARAGONES:
Q: Who told you that the name of that person is Paul Pobre?
A: Kuya Rommel

Q: Who is Kuya Rommel?
A: Brother of my employer Kuya Alex.

Q: Who was apprehended in Laguna?
A: He is the one, Paul Pobre.

Q: What was the participation of that person you pointed to as being the companion of accused George Marciales and the other one?
A: He was the one who entered last and who shot.

COURT:
Q: Who did he shoot?
A: Kuya Alex.[102]

The prosecution similarly banks on the narration and identification made by Perez:

Q: Madam Witness when Alex, the accused you pointed a while ago, the other accused Marciales and your boss, all of them were inside the computer shop, the office of Caltex?
A: At first no[,] ma'am[.] Nagsimula po kasi andoon po kami sa labas may lalaking nakatayo po doon sa malapit sa road, sya po yung na[-]identify before as George Marciales. Ang nakita po lang naming una sa loob apat po sila si boss, si Alex, that man (Nuñez) and the man identified before as Orly Nabia.

Q: Where were you at that time when these four persons were inside the office?
A: We were sitting in an island near the three pumps in front of the gas station[,] ma'am.

Q: The office in relation to that island is at the back, is that correct?
A: Yes[,] ma'am.

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[102] CA *rollo*, pp. 111–113.

Q: There were no customers at that time?
A: None[,] ma'am.

Q: The cashier were (sic) Alex is positioned is facing you[.] [I]s that correct?
A: Yes[,] ma'am.

Q: So it was the back of the accused that you saw, is that correct?
A: No[,] ma'am. Sa pinto po kasi yung register namin e. So andito po si Alex nakatungo po sya andito po yung accused naka[-]ganito po sya, nakatutok pos a (sic) kanya. (Witness was standing while demonstrating the incident between the accused and Alex inside the office) very clear po yung itsura nya nung nakita po namin sya.

Q: How far is that island from the cashier, from the place you were seated right now?
A: Around 4 to 5 meters[,] ma'am.

Q: Were you able to hear the conversation considering that distance of 4 to 5 meters?
A: I heard nothing[,] ma'am[,] except when Alex shouted[,] "Byron tulong, hinoholdap tayo[.]"

Q: Alex was shouting while he was still inside the office?
A: Yes[,] ma'am.

Q: And it was Byron who ran towards the office?
A: The first one was George Marciales, Byron only followed him.

Q: Where was George Marciales before he entered that office?
A: He was near the road[,] ma'am.

Q: But that is not within the gas station's premises?
A: Bali eto po yung pinaka sementado, andito sya.
(Witness referring to the place where Marciales is)

Q: When you said the cemented area, you were referring to the National road?
A: Yes[,] ma'am.

Q: After Byron went inside the said office, were you able to see what happened inside?
A: Yes[,] ma'am. Nakasuntok po sya ng isa kay George tapos tinadyakan po siya sa tagiliran tsaka binaril po sya. Tapos bumagsak nap o (sic) sya.

Q: You were still outside your office at that time?
A: Yes[,] ma'am.

Q: Nobody was with you at that time aside from your co-employees, only the accused was inside at that time?
A: Yes[,] ma'am.

Q: You did not run or ask for help considering that that Caltex is along the National road?
A: Honestly speaking[,] we were not able to say anything at that time[,]

ma'am.

Q: Were you able to know how the accused went out of the office?

A: After po ng pag shoot sa kanila tumakbo po kami ni Rona doon sa may computer shop, sa bahay po nila. Pagkaraan po ng ilang minuto lumabas kami nakita po naming sila na nagtatakbuhan together with Kuya Lawrence. Nakita po naming (sic) sila na tumatakbo, yung dalawa papuntang Angono, yung isa hindi ko na po alam kung [saan] nagpunta. Nakita na lang po naming si boss na gumagapang asking for help.[103]

The Court of Appeals also favorably cited the following identification made by Perez:

Prosecutor Aragones

Q : Now can you look inside the court and tell us if there is anybody here who took part in that incident or involved in that incident?

Relen Perez

A : Him[,] ma'am. (witness pointing to the accused)

Q : What was the participation of that man whom you pointed today in that robbery with homicide incident in Caltex gasoline station?

A : He was the one who was pointing a gun to my co-employee Alexander Diaz[,] ma'am.[104]

V

These identifications are but two (2) of a multitude of circumstances that the Regional Trial Court and the Court of Appeals should have considered in determining whether or not the prosecution has surmounted the threshold of proof beyond reasonable doubt. Lamentably, they failed to give due recognition to several other factors that raise serious doubts on the soundness of the identification made by prosecution witnesses Cruz and Perez.

First and most glaringly, Cruz had previously admitted to not remembering the appearance of the fourth robber, the same person she would later claim with supposed certainty as Nuñez. In the original testimony she made in Marciales and Nabia's trial in 2002, she admitted to her inability to identify the fourth robber:

Fiscal Dela Cuesta

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[103] CA *Rollo*, pp. 114–116.
[104] *Rollo*, p. 10.

Q : *Can you describe the other holdupper during that date and time who were the companions of George Marciales?*

Ronalyn Cruz

A : *I cannot describe them[,] ma'am.*

Q : *Why can you not describe the appearance of the other holdupper?*

A : *I cannot remember their appearances, ma'am.*

. . . .

Fiscal Dela Cuesta

Q : At what particular point in time that the 4th holdupper went inside the office?

Ronalyn Cruz

A : When they were wrestling with each other, ma'am.

Q : Was that before the shooting or after?
A : Before the shooting[,] ma'am.[105]

Second, by the time Cruz and Perez stood at the witness stand and identified Nuñez, roughly eight (8) years had passed since the robbery incident.

Third, as the People's Appellee's Brief concedes, witnesses' identification of Nuñez did not come until after he had been arrested. In fact, it was not until the occasion of his arraignment.[106] Nuñez was the sole object of identification, in an identification process that had all but pinned him as the perpetrator.

VI

Cruz's admission that she could not identify the fourth robber anathemized any subsequent identification. Moreover, the prosecution, the Court of Appeals, and the Regional Trial Court all failed to account for any intervening occurrence that explains why and how Cruz shifted from complete confusion to absolute certainty. Instead, they merely took her and Perez's subsequent identification as unassailable and trustworthy because of a demeanor apparently indicating certitude.

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[105] Id. at 7.
[106] CA *rollo*, pp. 108–109.

The conviction of an accused must hinge less on the certainty displayed by a witness when he or she has already taken the stand but more on the certainty he or she displayed and the accuracy he or she manifested at the initial and original opportunity to identify the perpetrator. Cruz had originally admitted to not having an iota of certainty, only to make an unexplained complete reversal and implicate Nuñez as among the perpetrators. She jeopardized her own credibility.

Cruz's and Perez's predicaments are not aided by the sheer length of time that had lapsed from the criminal incident until the time they made their identifications. By the time Cruz made the identification, seven (7) years and eight (8) months had lapsed since June 22, 2000. As for Perez, eight (8) years and nine (9) months had already lapsed.

In *People v. Rodrigo*,[107] this Court considered a lapse of five and a half (5 ½) months as unreliable. Hence, there is greater reason that this Court must exercise extreme caution for identifications made many years later. This is consistent with the healthy sense of incredulity expected of courts in criminal cases, where the prosecution is tasked with surmounting the utmost threshold of proof beyond reasonable doubt.

It is not disputed that Nuñez's identification by Cruz and Perez was borne only by Nuñez's arrest on July 2, 2006. The prosecution even acknowledged that his identification was initially done only to defeat his motion to have the case against him dismissed.[108] Evidently, Nuñez's identification before trial proper was made in a context which had practically induced witnesses to identify Nuñez as a culprit. Not only was there no effort to countervail the likelihood of him being identified, it even seemed that the prosecution and others that had acted in its behalf such as the apprehending officers, had actively designed a situation where there would be no other possibility than for him to be identified as the perpetrator of the crime.

The dubiousness of Nuñez's presentation for identification is further exacerbated by the circumstances of his apprehension. In a Manifestation filed with the Court of Appeals, and which, quite notably, the prosecution never bothered repudiating, Nuñez recounted how his apprehension appeared to have been borne by nothing more than the crudeness and sloth of police officers:

> 6). That, the truth of the matter as far as the offended charged against me, I ha[ve] no any truthfulness (sic) nor having any reality as it was indeed only a mere strong manufactured, fabricated and unfounded allegations against me just to get even with me of my [untolerable]

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[107] 586 Phil. 515, 536 (2008) [Per J. Brion, Second Division].
[108] CA *rollo*, p. 109.

> disciplinary actions of some individuals who had a personal grudge against me.
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> . . . .
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> 9). That, with all due respect, I ha[ve] nothing to do with the offensed (sic) charged and it is not true that the case was done was charged against me *it is Paul Borbe y Pipano it was wrong person pick-up by the police officer*, because the said Paul Borbe y [P]ipano was charged of several crimes, while me my record has no single offense against me.
>
> 10). That, with due respect, there was no truthfulness that I was the one who committed the said crime, *it was a big mistake because we have the [same] family name* they just pick up the wrong person which is innocent to the said crime.
>
> 11). That, with all due respect, it was not true, also that it was me who committed the said crime, it was Paul Borbe y Pipano is the one because he was habitual in doing crime in our community, in fact my record is clean never been committed any crime in my life, I am a concern citizen who can help our community well.[109] (Emphasis supplied)

The identification made during Nuñez's trial, where eyewitnesses vaunted certainty, was but an offshoot of tainted processes that preceded his trial. This Court finds Nuñez's identification prior to trial bothersome and his subsequent and contingent identification on the stand more problematic.

Nuñez's identification, therefore, fails to withstand the rigors of the totality of circumstances test. First, the witnesses failed to even give any prior description of him. Second, a prosecution witness failed to exhibit even the slightest degree of certainty when originally given the chance to identify him as the supposed fourth robber. Third, a significantly long amount of time had lapsed since the criminal incident; the original witness' statement that none of his features were seen as to enable his identification; and the positive identification made of him when the case was re-opened. And finally, his presentation for identification before and during trial was peculiarly, even worrisomely, suggestive as to practically induce in prosecution witnesses the belief that he, to the exclusion of any other person, must have been the supposed fourth robber.

These deficiencies and the doubts over Cruz's and Perez's opportunity to peruse the fourth robber's features and their degree of attentiveness during the crime clearly show that this case does not manage to satisfy even one (1) of the six (6) factors that impel consideration under the totality of circumstances test.

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[109] CA *rollo*, pp. 78–79.

VII

Recall that both prosecution witnesses Cruz and Perez acknowledged the extreme stress and fright that they experienced on the evening of June 22, 2000. As both Cruz and Perez recalled, it was enough for them to run and seek refuge in a computer shop. Their tension was so palpable that even Cruz's and Perez's recollections of what transpired and of how Nuñez supposedly participated in the crime are so glaringly different.

According to Cruz, two (2) other persons initiated the robbery, by pointing guns at Regencia and Diaz inside the gasoline station's office. It was supposedly only later, when Diaz shouted, that a third robber, Marciales, and a fourth robber, allegedly Nuñez, ran in, to assist the first two (2) robbers. In contrast, Perez claimed that Nuñez was one (1) of the two (2) robbers who were initially already in the office. Nuñez was then supposedly pointing a gun at Diaz while the other robber was pointing a gun at Regencia.

They both claim that after Diaz shouted, the first two (2) robbers received assistance. Cruz, however, claims that two (2) additional robbers came to the aid of the first two (2), while Perez claims that there was only one (1) additional robber.

In the scuffle that ensued in the office, Cruz claims that Marciales shot Dimatulac while Nuñez shot Diaz. For her part, Perez claims that Marciales was the only one who fired shots at Regencia, Diaz, and Dimatulac.

Jurisprudence holds that inconsistencies in the testimonies of prosecution witnesses do not necessarily jeopardize the prosecution's case.[110] This, however, is only true of minor inconsistencies that are ultimately inconsequential or merely incidental to the overarching narrative of what crime was committed; how, when, and where it was committed; and who committed it. "It is well-settled that inconsistencies on minor details do not affect credibility as they only refer to collateral matters which do not touch upon the commission of the crime itself."[111]

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[110] Jurisprudence even holds that "minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility, but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony." *People v. Arcega*, G.R. No. 96319, March 31, 1992, 207 SCRA 681, 687 [Per J. Melencio-Herrera, Second Division], citing *People v. Payumo*, 265 Phil. 65 (1990) [Per J. Cortes, Third Division].

[111] *People v. Canada*, 228 Phil. 121, 128 (1986) [Per J. Gutierrez, Jr., Second Division] *citing People v. Pelias Jones*, 221 Phil. 535 (1985) [Per J. Gutierrez, Jr., First Division]; *People v. Balane*, 208 Phil. 537 (1983) [Per J. Gutierrez, Jr., En Banc]; *People v. Alcantara*, 144 Phil. 623 (1970) [Per J. Castro, En Banc]; *People v. Escoltero*, 223 Phil. 430 (1985) [Per J. Gutierrez, Jr., First Division].

The inconsistencies here between Cruz and Perez are far from trivial. At issue is precisely the participation of an alleged conspirator whose name the prosecution did not even know for proper indictment. Yet, where the prosecution witnesses cannot agree is also precisely how the person who now stands accused actually participated in the commission of the offense. Their divergences are so glaring that they demonstrate the prosecution's failure to establish Nuñez's complicity.

VIII

These failings by the prosecution vis-à-vis the totality of circumstances test are also indicative of many of the 12 danger signals identified in *People v. Pineda*[112] to be present in this case. On the first, fifth, and twelfth danger signals, prosecution witness Cruz originally made an unqualified admission that she could not identify the fourth robber. On the third danger signal, there is not even an initial description with which to match or counter-check Nuñez. On the tenth danger signal, a considerable amount of time had passed since Cruz and Perez witnessed the crime and their identification of Nuñez. On the eleventh danger signal, several perpetrators committed the crime.

IX

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

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[113]

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[112] 473 Phil. 517 (2004) [Per J. Carpio, En Banc].

[113] *People v. Ganguso*, 320 Phil. 324, 335 (1995) [Per J. Davide, Jr., First Division], *citing* CONST., art. III, sec. 14(2); RULES OF COURT, Rule 133, sec. 2; *People vs. Garcia*, 284-A Phil. 614 (1992) [Per J. Davide, Jr., Third Division]; *People vs. Aguilar*, 294 Phil. 389 (1993) [Per J. Davide, Jr., Third Division]; *People vs. Dramayo*, 149 Phil. 107 (1971) [Per J. Fernando, En Banc]; *People vs. Matrimonio*, 290 Phil. 96 (1992) [Per J. Davide, Jr., Third Division]; and *People vs. Casinillo*, 288 Phil. 688 (1992) [Per J. Davide, Jr., Third Division].

This Court is unable to come to a conscientious satisfaction as to Nuñez's guilt. On the contrary, this Court finds it bothersome that a man of humble means appears to have been wrongly implicated, not least because of lackadaisical law enforcement tactics, and has been made to suffer the severity and ignominy of protracted prosecution, intervening detention, and potential conviction. Here, this Court puts an end to this travesty of justice. This Court acquits accused-appellant.

WHEREFORE, premises considered, the Decision dated June 26, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 04474 is **REVERSED and SET ASIDE**. Accused-appellant Crisente Pepaño Nuñez is **ACQUITTED** for 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 of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from receipt of this Decision the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

Let entry of judgment be issued immediately.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 05 2017