

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 242695

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

PO1 DENNIS JESS ESTEBAN
LUMIKID,

Promulgated:

Accused-Appellant.

JUN 23 2020 *wtf/whls*

X-----X

DECISION

PERALTA, C.J.:

This is an appeal from the September 25, 2017 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01558-MIN, which affirmed with modification the May 26, 2016 Decision² of the Regional Trial Court (RTC), Branch 10, Davao City.

The Facts

Accused-appellant PO1 Dennis Jess Esteban Lumikid was indicted for Murder as defined and penalized under Article 248 of the Revised Penal Code. The accusatory portion of the Information, filed on August 16, 2010, alleged:

That on or about June 14, 2010 in Manay, Davao Oriental, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, while armed with handgun and with deliberate intent to kill Desiderio “Jessie” Camangyan, with treachery, evident premeditation and accused PO1 Lumikid taking advantage of his position as police officer, did then and there willfully, unlawfully, and feloniously attack, assault and

¹ Rollo, pp. 3-21. Penned by Associate Justice Louis P. Acosta., with the concurrence of Associate Justices Oscar V. Badelles and Ronaldo B. Martin.

² CA rollo, pp. 99-153. Penned by Presiding Judge Retrina E. Fuentes.

shoot said Desiderio “Jessie” Camangyan with the use of said firearm, thereby inflicting upon the latter gun shot wound causing his death.³

In his arraignment, PO1 Lumikid pleaded not guilty⁴ to the offense charged in the information. Thereafter, trial on the merits ensued.

The prosecution presented five (5) witnesses, namely, PSI Felino Magbanua, Jr., Ruth Matinong, Alfonso Alcantara, SPO Rodante Palma Gil and Deputy Provincial Director for Operations Nemesio De Quia.⁵ The defense, for its part, presented a total of ten (10) witnesses, namely, SPO3 Juddjit Daculan, PO3 Normel Alan Mabini, SPO1 Roniechito Macadagat, Alvin M. Magdagasang, PSI Arnel Nueva, Editha Andoyo, Jerome Pausta, Aurelio Gonato, Jr., PO3 Normel Alan Mabini, and the accused-appellant himself, PO1 Lumikid.⁶

Version of the Prosecution:

On the evening of June 14, 2010, Desiderio “Jessie” Camangyan and his common-law partner, Ruth Matinong, attended an amateur singing contest in Barangay Old Macopa, Manay, Davao Oriental, to which Jessie was invited by Barangay Captain Romeo Antolin to host the event. Jessie was a media practitioner and a block timer in a local FM radio station in Manay, Davao Oriental. Matinong and her child were seated on one of the benches provided for the audience, located just beside the stairs of the stage.⁷

At one point, Matinong went to the restroom. On her way to the restroom, she observed two (2) men beside the comfort room talking, one of them was wearing a black t-shirt, camouflage pants and combat boots, and was intently watching Jessie with suspicious eyes, twelve (12) meters away from the stage where Jessie was hosting. After she went back to her bench, Jessie went down the stage. During that time, Matinong told Jessie, “Pang, there are two persons talking near the comfort room and their eyes are focused on you and they were looking at you.” Jessie, after looking at the said men, assured Matinong that they were part of Barangay Captain Antolin’s security personnel who were there to guard the event.⁸

At about 10:30 p.m., Matinong heard a single gunshot and allegedly saw one of the two (2) suspicious-looking men shoot Jessie from behind. Matinong ran towards Jessie and still saw the assailant, who was wearing a black t-shirt, camouflage pants and combat boots, allegedly aiming a gun towards Jessie outside the cyclone fence and walked downhill. Matinong

³ Record (Vol. I), p. 1.

⁴ *Id.* at 99.

⁵ *Rollo*, pp. 5-6.

⁶ *Id.* at 6.

⁷ *CA rollo*, p. 99.

⁸ *Id.* at 99-100.

shouted for help and a commotion ensued. The security personnel fired warning shots in the air, while the gunman fled towards a grassy and dark area at the back of the stage. She continued to scream for help but nobody came to her succor. Even Barangay Captain Antolin was seen going back to his house which was fronting the covered court.⁹

It was only at 9:00 a.m. of the following day that Jessie's body was removed and brought to Padilla Funeral Homes in Mati City. In the Medico-Legal Report issued by PSI Felino M. Brunia, Jr., the cause of death of Jessie was a gunshot wound to the head.¹⁰

Thereafter, "Task Force Jessie" was created to investigate Jessie's death. In the course of the investigation, Matinong gave the description of the gunman whom she saw minutes before Jessie was killed. Out of the description given, a cartographic sketch was made. When Matinong was shown the copies of the pictures of seven (7) police personnel assigned in Manay, Davao Oriental, she identified the accused-appellant, PO1 Lumikid, as the one who shot Jessie.¹¹

Version of the Defense:

PO1 Lumikid alleges that in the afternoon of June 14, 2010, he went to the house of Aurelio Gonato, Jr. in Barangay Guza, Manay, Davao Oriental, with Jerome Pausta and Joel Mamparo, where they drank liquor and sang videoke until 1:00 a.m. of June 15, 2010. According to PO1 Lumikid, he slept over at Gonato's house until 9:00 a.m. and left after receiving a text message from PSI Nueva to report immediately at Manay Police Station.¹²

Upon arriving at the Manay Police Station, PO1 Lumikid was instructed to proceed to White Sand Cone Beach Resort, and to report directly to PSI Nueva. Thus, he went immediately to the White Sand Cone Beach Resort and arrived there at around 12 noon of June 15, 2010.¹³

Six (6) days after the shooting incident, or on June 20, 2010, PO1 Lumikid, along with other police officers, was instructed to attend a case conference at the PNP Provincial Headquarters in Mati City, Davao Oriental. During the conference, PO1 Lumikid just sat and listened. No questions were propounded to him. Two (2) days after the conference, or on June 22, 2010, PO1 Lumikid received a text message from PSI Nueva, informing him that he would be disarmed upon orders of the PNP Provincial Director. Upon the instructions of PSI Nueva, PO1 Lumikid complied with the orders and turned

⁹ *Id.* at 100.

¹⁰ *Id.* at 101.

¹¹ *Id.* at 102.

¹² *Id.* at 107-108.

¹³ *Id.* at 108.

over his firearms. At that point, PO1 Lumikid was informed by PSI Nueva that he was to be placed under restricted status, and was to be escorted immediately to the PNP Provincial Headquarters in Mati City upon orders of the PNP Provincial Director.¹⁴

For five (5) months, PO1 Lumikid was confined in the radio room of the PNP Provincial Headquarters in Mati City under restricted status. On November 3, 2010, he was eventually transferred to the Provincial Jail in Mati City.¹⁵

On May 26, 2016, the RTC convicted PO1 Lumikid of the crime charged. The dispositive portion of the Decision states:

WHEREFORE, the Court finds accused Dennis Lumikid guilty of the crime of Murder with treachery as the qualifying circumstance and hereby sentences him to suffer a penalty of reclusion perpetua with the accessory penalties prescribed by law. He is ordered to pay the heirs of the victim the amounts of P75,000.00 for the death of Camangyan, P50,000.00 as moral damages and P30,000.00 as exemplary damages.

SO ORDERED.¹⁶

In concluding that Matinong was able to convince the trial court that PO1 Lumikid indeed committed the killing of Jessie, the RTC ratiocinated:

Ruth Matinong is the only credible eye witness in the killing of Desiderio Camangyan on June 14, 2010. The evidence presented by the accused failed to destroy the credibility of prosecution's lone witness.

Her eyewitness account of what happened is credible compared to the unreliable alibi of the accused conveniently stating that he was in a drinking session with his three close friends, as rain poured out heavily as the reason why he was not able to go home or went to other place which is only 60 kilometers more or less to Barangay Old Macopa.

Such alibi not supported by any reliable evidence, cannot overcome the convincing testimony of Ruth Matinong that accused is the gunman.

Moreover, there is no possible reason why Ruth Matinong would falsely testify against accused and insists on his guilt for such serious and heavy offense as charged.

"It is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law".¹⁷

¹⁴ *Id.* at 108-109.

¹⁵ *Id.* at 110.

¹⁶ *Id.* at 152.

¹⁷ *Id.* at 146-147; citation omitted.

On appeal, the CA agreed with the findings of the trial court that the defense failed to discredit the straightforward, unequivocal and convincing testimony of Matinong who positively identified PO1 Lumikid as the perpetrator of the crime. The appellate court was convinced that there is no showing of any ill or improper motive on the part of Matinong to testify against PO1 Lumikid. Her relationship with the victim even made her testimony more credible and truthful. Likewise, the CA concurred with the RTC that the killing of Jessie was attended with treachery, the prosecution having established that the fatal shooting of the victim was swift and sudden, without any warning, leaving Jessie defenseless. While the judgment of conviction was sustained, the award of damages was modified. The *fallo* of the September 25, 2017 Decision reads:

WHEREFORE, the Decision dated 26 May 2016 of the Regional Trial Court, 11th Judicial Region, Branch 10, Davao City in Criminal Case No. 5630-10 is hereby AFFIRMED with MODIFICATION.

The awards of civil indemnity *ex delicto*, moral and exemplary damages against PO1 Dennis Jess E. Lumikid are hereby increased to Php100,000.00 each. PO1 Dennis Jess E. Lumikid is also ordered to pay interest at the rate of six percent (6%) *per annum* from the time of finality of this decision until fully paid.

SO ORDERED.¹⁸

Now before us, the People manifested that it would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in its appellee's brief before the CA.

Meanwhile, PO1 Lumikid filed his Supplemental Brief, summarizing his arguments raised in his Appellant's Brief, Reply and Motion for Reconsideration which he filed before the CA.

We find the appeal meritorious. The judgment of conviction is reversed and set aside, and PO1 Lumikid should be acquitted based on reasonable doubt.

As a rule, the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal. However, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.¹⁹ After a judicious examination of the records, this Court found material facts and circumstances that the lower courts had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived by the lower courts.

¹⁸ Rollo, p. 20.

¹⁹ *People v. Juan Credo y De Vergara, et al.*, G.R. No. 230778, July 22, 2019.

It is a well-settled rule that factual findings of the trial court involving the credibility of witnesses are accorded utmost respect since trial courts have first-hand account on the witnesses' manner of testifying in court and their demeanor during trial. The Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he is in the best position to determine the issue of credibility.²⁰ However, this rule is not applicable in the present case. In *Garcia v. Court of Appeals*,²¹ this Court stated that:

In general, factual findings of the trial court, when affirmed by the Court of Appeals, are binding and conclusive upon this Court. The rule, however, does not apply in the present case. For one, the judge who penned the trial court's judgment was not the same one who heard the prosecution witnesses testify. For another, our review of the records indicates that both the trial court and the appellate court have overlooked some material facts and circumstances of weight which could materially affect the result of this case.²²

In the instant case, Presiding Judge Retrina E. Fuentes, the *ponente* of the Decision convicting PO1 Lumikid, did not observe or assess the demeanor of the prosecution's material lone witness while testifying as it was another judge who heard and received her testimony. Considering that the Court of Appeals and the Office of the Solicitor General heavily relied on the Decision of the RTC, an extensive review of this Court is proper.

While an accused stands before the court burdened by a previous preliminary investigation finding that there is probable cause to believe that he committed the crime charged, the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces. This principle, a right of the accused, is enshrined no less in our Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was, in fact, committed or that the accused could not have committed or did not commit the imputed crime or, at the very least, by casting doubt on the guilt of the accused.²³

²⁰ *People v. Ramos, et al.*, 715 Phil. 193, 208 (2013).

²¹ 420 Phil. 25 (2001).

²² *Id.* at 36-37; citations omitted.

²³ *People v. Rodrigo*, 586 Phil. 515, 527 (2008).

In every criminal case, the task of the prosecution is always two-fold: (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained.²⁴

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.²⁵

In the present case, the records show that PO1 Lumikid's arrest and eventual conviction were wholly based on the testimony of Matinong who testified as an eyewitness and who identified PO1 Lumikid as the perpetrator of the crime. To the prosecution, the trial court, and the appellate court, an eyewitness identification coming from the common-law partner of the victim appeared to have been enough to qualify the identification as fully positive and credible. Thus, none of them appeared to have fully examined the real evidentiary worth of the identification Matinong made.

The initial photographic identification in this case carries serious constitutional law implications in terms of the possible violation of the due process rights of PO1 Lumikid 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. Here, an impermissible suggestion was made when the photographs of the police officers, except PO1 Lumikid, shown to Matinong, were official photographs showing the police officers in their proper uniform. Likewise, it appears that PO1 Lumikid's photograph was only a cropped image, and not his official and formal picture in the police records. In addition, except for PO1 Lumikid, all other policemen in the pictures are stationed in Baganga, Davao Oriental, while PO1 Lumikid was the only police officer stationed in Manay, Davao Oriental. At this point, the initial photographic identification of PO1 Lumikid already cast a doubt as to the identity of the person who killed Jessie.

Based from the records of the present case, there are three (3) versions as to how Matinong, the prosecution's lone eyewitness, allegedly saw the assailant. *First*, Matinong saw the gunman already running downhill after the shooting.²⁶ *Second*, while hugging Jessie, Matinong saw the gunman glance at her from the cyclone wire near the back of the stage; the gunman then turned

²⁴ *People v. Vargas, et al.*, 784 Phil. 144, 149 (2016).

²⁵ *People v. Rodrigo*, 586 Phil. 515, 528 (2008).

²⁶ Records (Vol. III), pp. 613-614.

his back and casually walked away.²⁷ *Third*, prior to going up the stage, she glanced at the direction where the gunman was positioned at, and she saw the gunman still aiming his gun towards Jessie.²⁸ Also, it must be noted that based on Matinong's Sworn Statement, she averred that in the morning of June 15, 2010, while still in Barangay Old Macopa, she saw Barangay Captain Antolin, together with two (2) camouflaged escorts, who was about to leave the area. She declared under oath that one of the escorts of Barangay Captain Antolin is the same person she saw who shot the victim in the evening of June 14, 2010, herein accused-appellant.²⁹

Generally, whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimonies in court, the former being almost invariably incomplete and oftentimes inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the subject.³⁰

The circumstances surrounding this case militate against the application of the aforecited principle. The inconsistency between the three statements relates to the identification of the assailant. At Matinong's initial interview, she categorically declared that she did not see the actual shooting as the gunman already ran away downhill. On the other hand, in her sworn affidavit, Matinong saw the gunman glance at her from the cyclone wire near the back of the stage, and turned his back and casually walked away.³¹ Meanwhile, during her cross-examination, she stated that after she heard the gunshot, she looked at the direction where the gunshot came from, and saw the gunman still aiming his gun at Jessie. These inconsistencies of the lone witness cannot be taken lightly as it will cast a doubt as to the true identity of the assailant and the credibility of the lone witness.

Another glaring inconsistency in Matinong's declarations was apparent in her sworn statement executed on June 21, 2010. According to her sworn statement, she saw the assailant on June 15, 2010 which is the day after the shooting incident. She declared under oath that the person who shot the victim on the night of June 14, 2010 was the same person she saw in the morning of June 15, 2010 with Barangay Captain Antolin in Barangay Old Macopa. The following are excerpts of the sworn statement:

41. Q - How sure are you that the person in photograph marked with letter "D" was the same person who shot Jessie Camangyan on June 14,

²⁷ Records (Vol. I), p. 20.

²⁸ TSN, May 9, 2012, p. 11.

²⁹ Records (Vol. I), p. 22.

³⁰ *Gonzales, Jr. v. People*, 544 Phil. 409, 417-418 (2007).

³¹ Records (Vol. I), p. 20.

2010 at around 10:30 in the evening at the gym arena of Brgy. Macopa, Manay, Davao Oriental?

(At this moment, witness Ruth Matinong shed tears)

A - I am very sure sir. For I clearly saw him as the very same person who was as if monitoring Jessie Camangyan prior to the shooting, and then again the very same person I saw face to face as he shot Jessie Camangyan, and then again he was also the VERY SAME PERSON who escorted Brgy. Capt. Antoling (*sic*) at the vicinity near the crime scene in the morning of June 15, 2010 at Brgy. Macopa, Manay, Davao Oriental.³²

However, a review of the entire open court testimony of Matinong will reveal that no testimony was made by Matinong that she saw PO1 Lumikid on June 15, 2010. The following are Matinong's testimonial account of the second time she allegedly saw and identified PO1 Lumikid.

Q: By the way Madam witness, after that incident on June 14, 2010, when for the second time have you seen accused Lumikid?

A: June 21, Ma'am.

Q: Where did you see him?

A: At the Barracks of the Police, Police Camp at Dahican, Mati, Davao Oriental.

Q: Are you referring to the conference room of Davao Oriental Police Provincial Office, Mati City?

A: Yes Ma'am.³³

COURT: Just few clarificatory questions from the Court.

Q: From the time you allegedly saw the accused shot your live-in-partner, how many days or months again were you able to see the accused?

A: I saw him again on June 21, 2010 when the PPO had a conference.

Q: How were you able to see the accused?

A: The CIDG made me identify if the accused is present.³⁴

It is clear that Matinong asserted in open court that she saw PO1 Lumikid for the second time only during the case conference. She did not bother to mention that she saw PO1 Lumikid for the second time on June 15, 2010, as reflected in her sworn statement. This fact is crucial in determining the identity of the assailant. The whereabouts of PO1 Lumikid in Barangay Guza, Manay Police Station and eventually at White Sand Cone Beach Resort were all corroborated by several defense witnesses and even by police officials. How could Matinong see PO1 Lumikid in Barangay Old Macopa if he was in another place? Is it possible that the real assailant was the one Matinong saw in the morning of June 15, 2010 and not PO1 Lumikid? There

³² *Id.* at 22.

³³ TSN, December 20, 2011, p. 77.

³⁴ TSN, September 6, 2012, pp. 27-28.

is no other evidence in this case aside from the testimony of the lone eyewitness which directly implicates PO1 Lumikid to the crime. The inconsistent statements could not be dismissed as inconsequential because the inconsistency goes into the very identification of the perpetrator of the crime, which is a crucial aspect in sustaining a conviction.

In *People v. Tumambing*,³⁵ we declared that:

A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.

The inconsistency in the statements of the prosecution's lone witness on material points significantly erodes the credibility of her testimony, juxtaposed against the forthright and consistent testimonies of the defense witnesses. With the probative value of the testimony of the prosecution's lone witness greatly diminished, the alibi of the accused-appellant must be given credence.

In the face of the deficiency in the proof submitted by the prosecution against the identity of the perpetrator of the crime, the alibi of PO1 Lumikid assumes credence and importance. While the defense of alibi is by nature a weak one, it assumes commensurate significance and strength where the evidence for the prosecution is also intrinsically weak. At any rate, even if the defense of the accused may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus of their identity and culpability. Let it be underscored that conviction must be based on the strength of the prosecution evidence and not on the weakness of the evidence for the defense, it is incumbent upon the prosecution to prove the guilt of the accused and not the accused to prove his innocence.³⁶

While judiciously reviewing the Decision of the RTC, this Court noted a statement where the RTC began its disquisition of this case, it stated that:

After going over the evidence presented by both parties in this case, the court finds that the accused has absolutely no solid evidence to rely on for his acquittal.³⁷

³⁵ 659 Phil. 544 (2011); citation omitted.

³⁶ *People v. Ariel Manabat Cadenas, et al.*, G.R. No. 233199, November 5, 2018.

³⁷ Records (Vol. IV), p. 777.

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.³⁸ In the present case, it appears that the trial court brought it upon PO1 Lumikid to produce evidence to prove his innocence rather than the prosecution to do so. The statement made by the trial court is contrary to the fundamental precept of criminal law that the accused is presumed innocent until proven guilty. This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution but, similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted.³⁹

Moreover, the prosecution has not completely ruled out the probability that another person/s may have committed the crime. It is unusual that members of the Philippine Army or CAFGU assigned to secure the area, who were most likely wearing a black t-shirt, camouflage pants and combat boots, were not invited by the task force for questioning. In fact, it was not established that PO1 Lumikid was in Barangay Old Macopa during the time of the killing. Also, it must be emphasized that no physical evidence was presented by the prosecution that will show that PO1 Lumikid was in Barangay Old Macopa before, during and after the shooting. Another strange fact from the instant case was the fact that of the three hundred (300) or more persons in attendance during the time of the shooting, not even one was presented by the prosecution.

It is apparent in this case that the lower courts greatly relied on the testimony of Matinong and disregarded all the witnesses presented by the defense for reasons that the testimonies were mostly immaterial, dealing exclusively on investigations of the incident, without the submission of any strong evidence in favor of the accused-appellant to exculpate him from the crime charged. However, this Court sees the testimony of SPO3 Juddjit Daculan material to the case. He was one who responded first to the crime scene and investigated by gathering information relative to the shooting incident. He was one of the first police officers who interviewed Matinong. Pertinent portions of his testimony are the following:



³⁸ *Daayata, et al. v. People*, 807 Phil. 102, 118 (2017).

³⁹ *Id.*

Q: What are the particular questions you propounded on Ruth Matinong?

A: First question that I asked her what was (*sic*) happened and she said that her live-in-partner Jessie Camangyan was shot by unidentified person. She said he was shot and then after that...

Q: Just a minute. Was shot?

A: Yes, Your Honor.

Q: What was your subsequent question?

A: My second question is did you see the assailant.

Q: And what was the response?

A: She did not answer, Your Honor, in a yes or no but she elaborate[d] to me.

Q: What was the elaboration?

A: When the singing contest started and until 10:30 in the evening, she heard a gun burst. When she heard the gun burst, she immediately looked at her live-in-partner at the stage. She saw her live-in-partner Jessie Camangyan wet with blood and then he fell on the ground of the barangay stage and she immediately ran to her live-in-partner but before she ran, she looked around. She turned her head leftward and she saw a man running at the back of the barangay stage.

X X X X

Q: Did you ask her if she saw the face of the assailant in your investigation?

A: I asked her if she saw the face of the assailant. She could not recognize because the man was already running towards the back portion of the barangay stage.⁴⁰

The following testimony accompanied by the tickler⁴¹ of PO3 Mabini and video footage of the interview of Matinong, where she declared that she only saw the gunman near a “*lubi*” (coconut tree) which is clearly several meters away from where the victim was seated, cast a serious doubt as to her testimony in court identifying PO1 Lumikid as the assailant. Certainly, we can only speculate at this stage on who perpetrated the crime as there is nothing on the records to provide us with any better clue than what has heretofore been surmised. However, the Court is not called upon to speculate on who committed the crime and how it was committed. Our task is confined in resolving whether the prosecution has adduced sufficient evidence to prove that the crime alleged in the Information was committed and that the accused-appellant is the culprit thereof. Regrettably, the prosecution failed to discharge the *onus* of proving the identity of the malefactor.

In this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction. While the law does not require absolute certainty, the evidence presented by the prosecution must produce in the mind of the Court a moral certainty of the accused's guilt. When there is

⁴⁰ TSN, November 14, 2012, 2012, pp. 9-12.

⁴¹ Records (Vol. III), pp. 613-614.

even a scintilla of doubt, the Court must acquit.⁴² Therefore, considering the above circumstances, the acquittal of PO1 Lumikid is called for.

WHEREFORE, premises considered, the September 25, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01558-MIN is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant PO1 Dennis Jess Esteban Lumikid is **ACQUITTED** of the crime charged, based on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Regional Superintendent of the Davao Prison and Penal Farm, for immediate implementation. Said Regional Superintendent is ordered to report to this Court within five (5) working days from receipt of this Decision the action he has taken.

SO ORDERED.

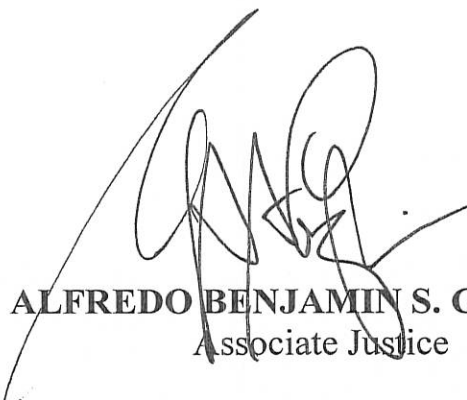


DIOSDADO M. PERALTA
Chief Justice

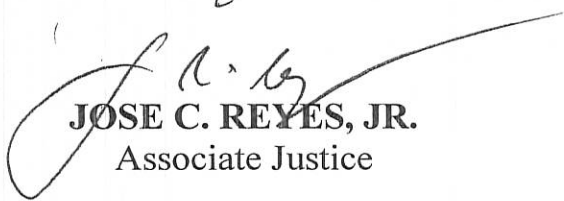
⁴²

Hilario B. Aliling v. People, G.R. No. 230991, June 11, 2018.

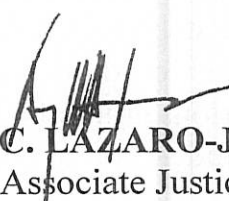
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



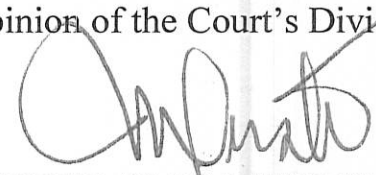
AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice