



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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SECOND DIVISION

HILARIO B. ALILING,  
Petitioner,

G.R. No. 230991

Present:

- versus -

CARPIO, J., Chairperson,  
PERALTA,  
PERLAS-BERNABE,  
CAGUIOA, and  
REYES, JR., JJ.

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:

11 JUN 2018

[Signature]

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review<sup>1</sup> (Petition) under Rule 45 of the Rules of Court, assailing the Decision<sup>2</sup> dated November 24, 2016 (Assailed Decision) and Resolution<sup>3</sup> dated March 30, 2017 (Assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CR No. 38335, which affirmed the Decision<sup>4</sup> dated November 25, 2015 of the Regional Trial Court (RTC), Branch 5, Lemery, Batangas (RTC Decision), finding petitioner Hilario B. Aliling *alias* "Larry" (Aliling), guilty of Frustrated Murder and sentencing him to suffer imprisonment of eight (8) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* as maximum.

The Facts

Aliling was charged under the following Information:

That on or about the 18<sup>th</sup> day of April, 2010, at about 10:00 o'clock in the evening, at Barangay Matingain 1, Municipality of Lemery,

<sup>1</sup> Rollo, pp. 3-40.

<sup>2</sup> Id. at 42-53. Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Francisco P. Acosta and Stephen C. Cruz concurring.

<sup>3</sup> Id. at 54-55.

<sup>4</sup> Id. at 104-109. Penned by Acting Presiding Judge Eleuterio Larisma Bathan.

[Signature]

Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed short firearm, with intent to kill and with the qualifying circumstances of treachery and evident premeditation, without any justifiable cause, did then and there [willfully], unlawfully and feloniously attack, assault, and shoot with the said firearm one Jerry Tumbaga y Marasigan, suddenly and without warning, thereby inflicting upon the latter 0.5 cm Gun Shot Wound L1-L2 Paravertebral Area, Left and 0.5 cm.[ gunshot wound], Infrascapular Area, Right which required medical attendance and incapacitated him from performing his customary work for a period of more than three (3) months, the said accused having performed all the acts of execution which should have produced the crime of murder as a consequence, but which nevertheless was not produced by reason of some cause independent of the will of the perpetrator, that is because of the timely and able medical attendance rendered to the said Jerry Tumbaga y Marasigan, which prevented his death.

Contrary to law.<sup>5</sup>

Aliling filed a Motion for Bail which was approved by the RTC in its Order<sup>6</sup> dated August 24, 2010. Upon arraignment, Aliling pleaded “not guilty.”<sup>7</sup>

The RTC summarized the facts for both the prosecution and the defense, as follows:

#### VERSION OF THE PROSECUTION

The prosecution first presented the alleged victim in this case, Jerry Tumbaga y Marasigan. The witness testified that on April 18, 2010, at 10:00 o'clock in the evening, he was watching a basketball game in Barangay Matingain, together with his uncle Jesus Marasigan. [He] then left the place and proceeded to his motorcycle which was then parked at about 7-8 meters away. When he was about to board his motorcycle, he was shot at the back and when he looked back, he recognized accused Hilario Aliling as the one firing. The accused then fired again, and the victim was again hit at the back. The witness ran away, felt dizzy and subsequently fell down near the basketball court. The witness further testified that he was brought to Metro Lemery Hospital and after about an hour, he was transferred to Batangas Regional Hospital where he underwent surgery.

The second prosecution witness is Jesus Marasigan y Camson, uncle of the private complainant. The witness testified that on the date and time alleged in the Information, he was at a basketball court in Matingain I, Lemery, Batangas together with Jerry Tumbaga. The private complainant then asked permission to leave. The private complainant then went towards his parked motorcycle in front of the basketball court. The witness saw Jerry Tumbaga [ride] his motorcycle and then suddenly, accused Hilario Aliling arrived and fired twice at the private complainant. The private complainant ran away and then fell down while the accused

<sup>5</sup> Records, pp. 1-2.

<sup>6</sup> Id. at 35.

<sup>7</sup> Minutes dated November 9, 2010, id. at 63.

[likewise] ran, rode a motorcycle and escaped. Thereafter, the witness, together with other persons brought Jerry Tumbaga to Metro Lemery Hospital.

The third prosecution witness was Dr. Mark Louie M. Lanting x x x who conducted the operation on Jerry Tumbaga x x x and [issued] the medico[-]legal certificate x x x dated April 29, 2010.

#### VERSION OF THE [DEFENSE]

The first [defense] witness is Hilario Aliling y Bathan. The accused testified that on April 18, 2010, between 7:00 o'clock and 8:00 o'clock in the morning, he was at Barangay Masalisi together with Annie, Tessie, Janno, Piolo[,] Coring and Melody. They were campaigning for a certain Apacible. According to the accused, they finished campaigning at around 6:00 o'clock in the evening of the same day and waited for the start of the "[*miting de avance*]". They left the "[*miting de avance*]" at around 12:00 midnight and proceeded to the house of Annie, their coordinator, at Barangay Matingain and arrived there at around 1:00 o'clock in the morning. Thereafter, he took his motorcycle and went home. The accused arrived at his house at around 1:30 o'clock. The next day, he went campaigning again.

The accused further testified that he first learned that he was a suspect on June 22 when he received a subpoena. The accused went further on testifying that the private complainant [was] probably mad at him due to their previous confrontation that happened in Barangay Butong.

The next defense witness was Adrian Cabral Atienza. The witness testified that on April 18, 2010, from 8:00 o'clock in the morning up to 1:00 o'clock of the following day, he was with the accused, together with several others, at Barangay Masalisi. He likewise testified that they were campaigning that day for candidate Apacible.

The last defense witness was Michael Perez Bathan. [The] witness testified that he was at the basketball court in Barangay Matingain on April 18, 2010. He was then watching the basketball game when he heard two gunshots. He testified further that the private complainant was about to ride his motorcycle when he was shot. The private complainant ran and then fell to the ground. The witness also testified that he did not see accused Hilario Aliling at the place when the shooting happened and instead saw an unidentified man shot the private complainant.<sup>8</sup>

On November 25, 2015, the RTC rendered its Decision finding Aliling guilty beyond reasonable doubt of Frustrated Murder. The trial court gave more credence to the testimonies of the victim, Jerry M. Tumbaga (Tumbaga) and the other eyewitness Jesus C. Marasigan (Marasigan) who both identified Aliling as the gunman, as against Aliling's defense of alibi. The RTC noted that there was an inconsistency in Aliling's testimony when he stated that he used his motorcycle on the day of the incident but then on cross-examination, he stated that he left his motorcycle at the house of their coordinator. The lower court further held that the positive allegations of the

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<sup>8</sup> Rollo, pp. 105-106.

prosecution witnesses prevailed over the negative assertions of the defense witnesses.

Thus, Aliling filed a Notice of Appeal<sup>9</sup> which was given due course by the RTC in its Order dated December 10, 2015. Aliling's Motion for Bail pending appeal was also granted.<sup>10</sup> The CA affirmed the RTC Decision in its Assailed Decision. On the alibi, the appellate court noted that the corroborative witness testified that he did not know Aliling's whereabouts at the time of the incident.<sup>11</sup> Aliling's Motion for Reconsideration<sup>12</sup> was subsequently denied by the CA in its Assailed Resolution. Thus, he elevated the case before the Court through this Petition.

### ***The Petition***

Aliling contends that the CA committed reversible error in affirming the judgment of the RTC. He maintains his innocence and alleges that the prosecution was not able to discharge the burden of proving his guilt beyond reasonable doubt. Aliling claims that the testimonial evidence of the prosecution cannot be relied on as they were inconsistent and incredible.

Aliling also alleges that the CA failed to properly consider the defense's evidence. According to him, the defense was able to present and submit unbiased testimonies of credible witnesses who supported his alibi that he was in *Barangay (Brgy.) Masalisi* doing campaign activities until 1:00 o'clock in the morning on the day of the shooting. The eyewitness, Michael P. Bathan (Bathan), friend of both Aliling and Tumbaga, also testified that he witnessed the shooting incident and saw that the gunman was not Aliling but an unidentified person.

### **Issue**

Whether the CA erred in affirming the RTC's judgment of conviction.

### **The Court's Ruling**

The Petition is meritorious.

In criminal prosecutions, a person who stands charged of a crime enjoys the presumption of innocence, as enshrined in the Bill of Rights.<sup>13</sup>

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<sup>9</sup> Records, pp. 315-316.

<sup>10</sup> See RTC Order dated November 27, 2015, *id.* at 310.

<sup>11</sup> *Rollo*, p. 52.

<sup>12</sup> *CA rollo*, pp. 137-148.

<sup>13</sup> CONSTITUTION, Art. III, Sec. 14 states:

(1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy,

He is designated as the *accused* precisely because the allegations against him have to be proven beyond reasonable doubt. Due process dictates that an accused is entitled to a fair trial where both the prosecution and defense can present their respective versions of the events, and submit proof thereof. Accusation does not amount to conviction. Only when the prosecution has established guilt beyond reasonable doubt shall the presumption of innocence be overturned. In this case, the prosecution did not overcome the burden of proof.

It has been consistently held that a petition for review on certiorari under Rule 45 shall only raise questions of law as the Court is not a trier of facts. A factual question would necessitate the reevaluation of the evidence submitted before the trial court. This is allowed in the exceptional circumstance where the judgment is based on a misapprehension of the facts.<sup>14</sup> Such is the situation in this case.

***Positive identification versus denial  
and alibi***

Positive testimony is generally given more weight than the defenses of denial and alibi which are held to be inherently weak defenses because they can be easily fabricated.<sup>15</sup> However, the defenses of denial and alibi should not be so easily dismissed by the Court as untrue. While, indeed, the defense of denial or alibi can be easily fabricated, the same can be said of untruthful accusations, in that they can be as easily concocted.

In considering the defenses of denial and alibi, the Court held in *Lejano v. People*<sup>16</sup>:

But not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman's noose in the face of a witness positively swearing, "I saw him do it."? Most judges believe that such assertion automatically dooms an alibi which is so easy to fabricate. This quick stereotype thinking, however, is distressing. For how else can the truth that the accused is really innocent have any chance of prevailing over such a stone-cast tenet?

There is only one way. A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not

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impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

<sup>14</sup> See *Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016).

<sup>15</sup> *Crisostomo v. People*, 644 Phil. 53, 65 (2010).

<sup>16</sup> 652 Phil. 512 (2010).

automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, "He did it!" without blinking an eye.<sup>17</sup>

Thus, if found credible, the defenses of denial and alibi may be considered complete and legitimate defenses. The burden of proof does not shift by the mere invocation of said defenses; the presumption of innocence remains in favor of the accused.

In alibi, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise physically impossible for him to be at the scene of the crime at the time thereof.<sup>18</sup> Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.<sup>19</sup>

***Purported inconsistencies in defense's evidence***

In the instant case, the RTC and CA did not give credence to the defense's testimonial evidence based on the alleged inconsistencies of the witnesses' statements. However, the Court finds that Aliling's alibi was straightforward, credible, **and corroborated by an impartial witness. Furthermore, there was eyewitness testimony to the effect that Aliling was not the gunman.**

Contrary to the findings of the RTC, there was no inconsistency in Aliling's testimony as regards his use of his motorcycle. Thus, a reexamination of his testimony is necessary to clarify the alleged inconsistency. Aliling testified as follows:

[*Direct examination of Aliling by Atty. Myla Magsombol*<sup>20</sup> (*Atty. Magsombol*)]

Q Can you recall where were you on April 18, 2010?

A Yes, ma'am.

Q Where were you?

A I was at Brgy. Masalisi, ma'am.

Q What were you doing in Brgy. Masalisi?

A I was campaigning, ma'am.

Q Do you recall what time you arrived in Brgy. Masalisi on April 18, 2010?

A Between 7:00 o'clock and 8:00 o'clock, ma'am.

<sup>17</sup> Id. at 581.

<sup>18</sup> *People v. Agcanas*, 674 Phil. 626, 632 (2011).

<sup>19</sup> *People v. Anticamara*, 666 Phil. 484, 507-508 (2011).

<sup>20</sup> Also spelled as "Magsumbol" in other parts of the TSNs.

Q In the morning or in the evening?

A In the morning, ma'am.

Q When you arrived at 7:00 o'clock in the morning in Brgy. Masalisi on April 18, 2010, what did you do?

A I proceeded campaigning by posting the flyers of candidate Apacible, ma'am.

x x x x

Q What time did you finish with the campaigning?

A At 6:00 o'clock, ma'am.

x x x x

Q [What did you do next?]

A We waited for the 'meeting de avance' (*sic*), ma'am.

Q How long did you wait for the meeting de avance?

A For almost one (1) hour, ma'am.

Q After you have waited at about one (1) hour, what next did you do?

A We attended the 'meeting de avance' (*sic*), ma'am.

Q And who were with you during the 'meeting de avance' (*sic*)?

A Ate Annie, Melody, ate Fe, Piolo and Janno, ma'am.

Q Who is this ate Annie that you keep mentioning?

A Our coordinator, ma'am.

Q Okay, in what time this meeting de avance (*sic*) ended?

A We left the place at around 12:00 o'clock in the evening although the meeting is not yet through, ma'am.

Q And when you left the meeting de avance (*sic*), where did you proceed?

A In Brgy. Matingain at the house of the coordinator, ma'am.

Q The house of this ate Annie?

A Yes, ma'am.

Q What time did you arrive at ate Annie's place?

A At 1:00 o'clock, ma'am.

Q In the morning?

A Yes, ma'am.

Q And after that, what did you do next?

A **I took my motorcycle and ate Dang went home, ma'am.**

Q Who is this ate Dang?

A My sister-in-law, ma'am.

Q What time did you arrive at your house?

A Around 1:30 o'clock, ma'am.<sup>21</sup> (Emphasis supplied)

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<sup>21</sup> TSN, June 19, 2012, pp. 4-5.

[Cross-examination of Aliling by Atty. Hermogenes De Castro (Atty. De Castro)]

Q Mr. Aliling, you stated on direct examination that on April 18, 2010 during the daytime you were in Barangay Masalisi, Lemery, Batangas?

A Yes, sir.

x x x x

Q During that time in the evening of that day, April 18, 2010 you were (*sic*) with your motorcycle, is that correct?

A No, sir.

Q How did you go home that evening?

A I rode in our service vehicle, sir.

Q Your service vehicle was a motorcycle?

A No, sir.

Q What was your service vehicle?

A A pick up, sir.

Q What time did you leave that place?

A Around 1:00 o'clock in the morning, sir.

Q **Did you say on direct examination that you have your motorcycle with you in that evening?**

A **I used it only up to the house of our coordinator, sir.**

Q Where is the house of your coordinator?

A In Matingain II, sir.<sup>22</sup> (Emphasis supplied)

There is no inconsistency in the above testimony. In sum, Aliling testified that on April 18, 2010, he drove his motorcycle to the house of their campaign coordinator "Ate Annie" in *Brgy.* Matingain II. He left his motorcycle there. Together with a group of campaigners, he proceeded to *Brgy.* Masalisi between 7:00 a.m. and 8:00 a.m. on board their service vehicle, a pick-up truck. Their group finished campaigning at 6:00 p.m. They stayed in *Brgy.* Masalisi until the *miting de avance* which started at around 7:00 p.m. They left the *miting de avance* at around 12:00 midnight and went back to the house of "Ate Annie," using again their service vehicle. Their group arrived thereat around 1:00 a.m. Using his motorcycle, which he had left earlier, Aliling went home with his sister-in-law, and arrived at his house at 1:30 a.m.

Aliling's testimony as to his whereabouts is corroborated by Adrian C. Atienza (Atienza), who testified that he was with Aliling from 8:00 a.m. on April 18, 2010 until the early morning hours of April 19, 2010:

<sup>22</sup> TSN, August 22, 2013, pp. 2-3.



[Direct examination of Atienza by Atty. Magsombol]

Q Mr. Witness, can you recall where were you on April 18, 2010, if you can?

A Yes, ma'am, I was at Barangay Masalisi.

Q What were you doing at Barangay Masalisi?

A I was attending a meeting de abanse (*sic*), ma'am.

Q Who were with you during that time at Barangay Masalisi, if you can recall?

A Many, ma'am.

Q Mention some?

A Larry, Ate Annie Razon Mendoza, ma'am.

Q Who else?

A Ate Fe Reyes, Marie Jameson Razon, ma'am.

Q Can you state what time you arrived in Masalisi on April 18, 2010?

A At around 8:00 o'clock in the morning, ma'am.

Q When you arrived at Barangay Masalisi, at 8:00 o'clock in the morning, who were with you?

A The same persons I mentioned earlier, ma'am.

Q What time did you leave Barangay Masalisi?

A At around 1:00 o'clock in the morning ma'am.

Q The next day?

A Yes, ma'am.

Q Who were your companions when you left Barangay Masalisi?

A The same persons I mentioned, ma'am.

Q x x x [W]here did you proceed?

A In the house of Annie Mendoza, ma'am.

Q Where was that?

A In Matinggain, ma'am.

Q x x x [W]ho were your companion[s] again, if any?

A **The same persons, we used only one vehicle at that time so we have only one group, ma'am.**<sup>23</sup> (Emphasis supplied)

The above testimony of Atienza corroborates the testimony of Aliling as to his whereabouts at the time of the incident and as to the use of their service vehicle. Contrary to the findings of the CA,<sup>24</sup> Atienza did not state that he did not know the whereabouts of his companions at the time of the incident. He stated that the whole day of April 18, 2010, he was with Aliling as they were partners in the posting of campaign materials. He also testified that he was beside Aliling during the *miting de avance* which

<sup>23</sup> TSN, October 30, 2014, pp. 6-7.

<sup>24</sup> *Rollo*, p. 52.

coincided with the time of the shooting incident. On this point, Atienza testified as follows:

*[Clarificatory questions by the Court for Atienza]*

Q You were in the group of campaigners?

A Yes, your honor.

Q Your boss was?

A Tom Apacible, your honor.

Q Your duty that time was as a tacker?

A Yes, your honor.

Q Where was Hilario at the time when you were tacking posters of Apacible?

A I and Larry were partners, your honor.

Q What was he doing that time while you were tacking posters?

A He was the one folding the posters I was tacking that time, your honor.

x x x x

Q Where were you at exactly 10:00 in the evening of April 18, 2010?

A We were watching and listening to the meeting de abanse (*sic*), your honor.

x x x x

Q What was the purpose of being there?

A To support the candidacy of Tom Apacible, your honor.

Q While you were acting as supporters what were you doing at that time?

A We were the one tasked to clap hands for him (tagapalakpak), your honor.

Q Where were you positioned that time while according to you tagapalakpak?

A At the side, your honor.

Q **How about the other members of the group where were they?**

A **I do not know, your honor.**

Q **You do not know where the others, you were referring to whom?**

A **Melody Razon, Fe Reyes, Marie Razon, Felix Collado, your honor.**

x x x x

Q x x x **[W]ho were the persons according to you they were scattered when you were tagapalakpak?**

A We were beside each other, your honor. I, ate Annie, and Larry [the accused] were beside each other, your honor.<sup>25</sup>  
(Emphasis supplied)

Thus, when Atienza stated that he did not know where his companions were during the *miting de avance*, he was referring to Melody Razon, Fe Reyes, Marie Razon, and Felix Collado. With regard to his position in relation to Aliling, Atienza testified that he was beside Aliling and their coordinator, "Ate Annie."

It is also worthy to note that among the witnesses, Atienza is the only one without any familial relationship with Aliling or to the victim, Tumbaga. Atienza testified that he met Aliling only during the campaign period. On the other hand, he had known Tumbaga for a long time because they lived in the same *barangay* and Tumbaga's grandmother was their former neighbor.<sup>26</sup> Hence, Atienza's status as an impartial witness is beyond dispute, having no relationship with either the accused or the victim. Atienza's testimony, on this score, is straightforward, credible, and unbiased as, indeed, he has no reason to lie.

Bolstering the alibi of Aliling is the eyewitness account of Bathan who positively testified that he witnessed the shooting incident and saw that the culprit was not Aliling. He testified as follows:

[Direct examination of Bathan by Atty. Magsombol]

Q Mr. Witness, do you remember where you were on the date April 18, 2010?

A Yes, ma'am.

Q Where were you?

A I was in Barangay Matingain near the basketball court, ma'am.

x x x x

Q Mr. Witness, do you know the private complainant, Jerry Tumbaga?

A Yes, ma'am.

Q How long x x x?

A For a long time already, ma'am.

Q How about the accused, Hilario Aliling?

A Yes, ma'am.

Q How long?

A Since birth because he is a relative of mine, ma'am.

x x x x

Q Did you actually see Jerry Tumbaga shot?

A Yes, ma'am.

<sup>25</sup> TSN, October 30, 2014, pp. 11-13.

<sup>26</sup> Id. at 5-6, 10.

- Q How far x x x were you from Jerry Tumbaga when he was shot?  
A From the place where I was seated up to the door of this courtroom, ma'am, which is estimated to be 10 to 15 meters.
- Q **How many shots did you hear?**  
A **Two (2), ma'am.**
- Q **x x x Those shots that you heard, were they immediately one after the other x x x?**  
A **One after the other, ma'am.**
- Q When Jerry Tumbaga was shot, what happened next?  
A He was riding in (*sic*) his motorcycle and about to leave when he was shot. As the motorcycle dropped he ran to the other ring of the basket[ball court] and he fell to the ground.
- Q After that, what happened next?  
A The players present brought him to the hospital, ma'am.
- Q **Having witnessed the incident, did you see the accused Larry Aliling?**  
A **No, ma'am.**
- Q **How about the person whom you said who shot Jerry Tumbaga, did you see him?**  
A **I saw the person whom I do not know shot Jerry Tumbaga, ma'am.**
- Q Do you know Jesus Marasigan?  
A Yes, ma'am.
- Q Who is he?  
A He is the uncle of Jerry Tumbaga, ma'am.
- Q Was he there when the incident transpired?  
A Yes, ma'am.
- Q What was he doing?  
A He was beside us, ma'am.<sup>27</sup> (Emphasis supplied)

Eyewitness Bathan testified that he saw the shooting incident and categorically stated that the shooter was not Aliling. Bathan is familiar with the features of Aliling, having known him for a long time as they are relatives. Thus, the eyewitness account of the shooting bolsters Aliling's denial that he was not the gunman.

### ***Testimonial evidence for the prosecution***

The Court has held that "[s]elf-contradictions and inconsistencies on a very material and substantial matter seriously erodes the credibility of a witness."<sup>28</sup> As the Court further held in *People v. Amon*<sup>29</sup>:

<sup>27</sup> TSN, April 8, 2015, pp. 2-4.

<sup>28</sup> *People v. Amon*, 218 Phil. 355, 361 (1984).

<sup>29</sup> *Id.*

For evidence to be believed “must not only proceed from the mouth of a credible witness, but must be *credible in itself* — such as the *common experience* and *observation* of mankind can approve as *probable* under the circumstances. There is no test of the truth of human testimony, except its *conformity to our knowledge, observation and experience*. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.”<sup>30</sup>

In the instant case, the testimonies of the prosecution witnesses are contradictory on a material point. Marasigan claimed that the gunshots were successively fired. He testified as follows:

[*Cross-examination of Marasigan by Atty. Magsombol*]

Q You said that you witnessed the shooting of your nephew, do you recall how were the shots fired against (*sic*) your nephew?

A He took his gun from his pocket. Witness pointing to his right pocket. Then he fired shots at my nephew.

Q **Were the shots fired one after the other?**

A **Yes ma'am.**

Q **It was one shot right after the other?**

A **Yes ma'am.**<sup>31</sup> (Emphasis supplied)

However, the victim, Tumbaga testified that there was a pause between the shots:

[*Cross-examination of Tumbaga by Atty. Magsombol*]

Q You also testified before that your position was your back was facing the assailant, correct?

A Yes, ma'am.

Q Incidentally, how were the shots fired, one after the other?

A The first shot hit me at the back and when I turned my back I saw the accused firing at me, ma'am.

Q **Not immediately one after the other?**

A **Yes ma'am. There was a pause.**

x x x x

Q **You said that you were shot for the first time and you turned your back, how did you turn your back?**

A **Like this ma'am.**

COURT INTERPRETER

(Witness demonstrating by turning right his head towards his back)

<sup>30</sup> Id. at 361.

<sup>31</sup> TSN, August 22, 2011, pp. 8-9.

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Q **Then the second shot was fired?**

A **When I was about to descend or alight from the motorcycle he again fired at me, ma'am.**

COURT

Q **Were you hit by the second fire?**

A **Yes, Your Honor.**

Q Where, what part of your body?

A Here, Your Honor.

COURT INTERPRETER

(Witness pointing to his back.)

Q So, both gunshots hit you at the back?

A Yes, Your Honor.<sup>32</sup> (Emphasis supplied)

At first glance, it would seem that the succession of the gunshots is not a material point. However, the manner of execution of the crime is of prime significance especially in the testimony of Tumbaga, the victim himself, as he testified that the pause between shots supposedly gave him the opportunity to turn his head and see the culprit after he was shot for the first time in the back. However, this testimony is contradicted by Marasigan who testified that the shots were successive. Notably, the testimony of Marasigan as to the continuous succession of shots is corroborated by the testimony of defense witness Bathan, who also testified that the shots were fired one after another.<sup>33</sup>

Furthermore, in his *Sinumpaang Salaysay*<sup>34</sup> dated April 22, 2010, which he identified and authenticated before the RTC, Tumbaga attested that Aliling had a companion that night at the basketball court. However, during his cross-examination, he denied his statement:

[*Cross-examination of Tumbaga by Atty. Magsombol*]

Q When you said that it was the accused who shot you, can you describe his attire that night?

A He was wearing a jacket, ma'am.

Q What kind?

A A black jacket, ma'am.

Q **You also said that he was with somebody?**

A **I do not know whether he has a companion during that time, ma'am.**

Q **You do not know?**

A **I saw him only, ma'am.**<sup>35</sup> (Emphasis supplied)

<sup>32</sup> TSN, June 6, 2011, pp. 7-9.

<sup>33</sup> TSN, April 8, 2015, p. 4.

<sup>34</sup> Exhibit "A," Folder and Index of Exhibits.

<sup>35</sup> TSN, June 6, 2011, p. 10.

The Court has previously held that minor inconsistent statements in a witness' affidavit and in his testimony in court do not necessarily affect his credibility.<sup>36</sup> However, in this case, the detail as to whether the victim had seen the accused with or without a companion is a material detail as it goes into the very execution of the crime.

The inconsistency in the statements of the prosecution witnesses on material points significantly erodes the credibility of their testimonies, juxtaposed against the forthright and consistent testimonies of the defense witnesses. With the probative value of the prosecution witnesses' testimony greatly diminished, the alibi of the accused is given credence. In the instant case, the prosecution failed to overcome the burden of proving the accused's guilt beyond reasonable doubt. Acquittal, therefore, is in order.

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 even a scintilla of doubt, the Court must acquit.<sup>37</sup>

As the Court succinctly held in *People v. Erguiza*<sup>38</sup>:

It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion. What is required of it is to justify the conviction of the accused with moral certainty. Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.<sup>39</sup>

**WHEREFORE**, the Decision dated November 24, 2016 and Resolution dated March 30, 2017 of the Court of Appeals in CA-G.R. CR No. 38335 are **REVERSED** and **SET ASIDE**. Hilario B. Aliling is **ACQUITTED** of the crime of Frustrated Murder in Criminal Case No. 57-2010 as his guilt was not proven beyond reasonable doubt. The Regional Trial Court, Branch 5, Lemery, Batangas is **ORDERED** to **CANCEL** the cash bail bond and **RETURN** the same to Aliling.

**SO ORDERED.**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

<sup>36</sup> *Sarabia v. People*, 414 Phil. 189, 198 (2001).

<sup>37</sup> *Caunan v. People and Sandiganbayan*, 614 Phil. 179, 194 (2009).

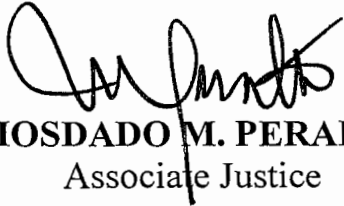
<sup>38</sup> 592 Phil. 363 (2008).

<sup>39</sup> *Id.* at 388.

WE CONCUR:



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



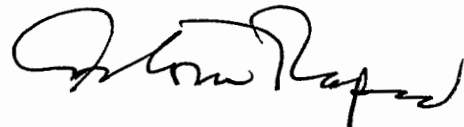
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**ANDRES B. REYES, JR.**  
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.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)

