

SECOND DIVISION

G.R. No. 265481 – THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, v. XXX265481, PANFILO DELGADO LADE, JR., REYNALDO LOGRONIO DELA TORRE, JR., and YYY265481, Accused; PANFILO DELGADO LADE, JR. and REYNALDO LOGRONIO DELA TORRE, JR., Accused-appellants.

Promulgated:

JUL 29 2024

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DISSENTING OPINION

LEONEN, J.:

Criminal prosecution built solely on eyewitness identification should be handled with great care, given the natural limitations of human memory.¹ An anomalous out-of-court identification taints any subsequent identification made in court. This becomes particularly relevant when prosecution witnesses provide conflicting accounts of the events that transpired during the out-of-court identification.

Here, the impermissibly suggestive procedure of the out-of-court identification violates the due process rights of accused-appellants Panfilo Delgado Lade, Jr. (Lade) and Reynaldo Logronio Dela Torre, Jr. (Dela Torre). They must, therefore, be acquitted.

This controversy centers on the out-of-court identification by Normel Lapinig (Lapinig) of the four men who had allegedly stabbed his cousin to death, resulting in charges of murder and slight physical injuries.²

Lapinig testified that on the late night of October 20, 2007, he was out with his cousin Julius Bacolod Caramonte (Caramonte), drinking beer at a *videoke* bar along [REDACTED], [REDACTED], Davao City. They left around midnight and were waiting for a ride home when four men approached them. As Lapinig was boarding a passenger jeepney, two of the men blocked Caramonte's way. Lapinig tried to help, but the same men punched him twice. As the jeepney was slowly moving, Lapinig witnessed one of the men stab Caramonte while being restrained by another. Attempting to flee, Caramonte stumbled and fell by the roadside where he was stabbed once more, this time in the neck.³

¹ *People v. Nuñez*, 819 Phil. 406, 408 (2017) [Per J. Leonen, Third Division].

² *Rollo*, p. 31.

³ *Id.* at 16.

Lapinig alighted the jeepney in [REDACTED], [REDACTED] in search of police but failed to find one. He then took a motorcycle back to his boarding house. The next day, around 10:00 a.m., accompanied by his lessor, Lapinig went to [REDACTED] Police Station where he learned that his cousin had died.⁴ Upon police inquiry, Lapinig confirmed that he could identify the perpetrators. Subsequently, a police officer showed him a single photograph, from which he identified the four people as the perpetrators.⁵ These four men were Lade, Dela Torre, and their co-accused XXX265481 and YYY265481.⁶

Contrary to the testimony of Lapinig, Senior Police Officer IV Ernesto A. Ayop (SPO4 Ayop) testified that Lapinig had been presented with a photo gallery at the police station. According to him, Lapinig skimmed through the photo gallery before isolating the photographs of the four men.⁷

Meanwhile, the defense claimed that on the night of the incident, Lade, Dela Torre, XXX265481, and YYY265481 had been commissioned to post campaign materials for a barangay election, though XXX265481 and YYY265481 did not show up. Later that night, Lade and Dela Torre attended a meeting at the candidate's residence. They went home around 10:00 p.m. and stayed in their respective houses until 6:00 a.m. the next day. The relatives of Panfilo, Reynaldo, and YYY265481 supported their testimonies.⁸

Cristito Buta (Buta) testified to corroborate the alibi, saying he was the one who hired the three men. He added that around 7:00 a.m. the next day, Lade and Dela Torre arrived at his house and, together, they put up more campaign posters. By 10:00 a.m., two persons arrested Lade and Dela Torre.⁹

On arraignment, XXX265481 admitted to the crime while the other three denied any participation. The trial court convicted him while trial for the rest proceeded. Eventually, the trial court found the three others guilty of both the murder of Caramonte and slight physical injuries inflicted on Lapinig.¹⁰ Pending the Court of Appeals decision, YYY265481 withdrew his appeal, prompting the issuance of a Partial Entry of Judgment as to him. Meanwhile, the Court of Appeals affirmed the convictions of Lade and Dela Torre, who in turn appealed to this Court.¹¹

⁴ *Id.*

⁵ *Id.* at 16, 23.

⁶ *Id.* at 16.

⁷ *Id.* at 16, 23.

⁸ *Id.* at 17. *See also ponencia*, p. 3.

⁹ *Id.* at 87-88.

¹⁰ *Ponencia*, p. 3.

¹¹ *Rollo*, p. 20.

The majority, in sustaining the conviction of accused-appellants, ruled that Lapinig's out-of-court identification satisfied the totality-of-circumstances test.¹² It further ruled that, in any case, "a defective out-of-court identification may be cured by subsequent in-court identification[.]"¹³

I dissent.

I

The frailty and malleability of human memory are scientifically proven. Contrary to the common belief that memory is like a video recorder, it may be distorted, contaminated, compromised, and even fabricated.¹⁴

The "belief that a confident memory is always highly accurate and resistant to distortion or loss"¹⁵ may carry grave consequences. Eyewitness testimonies, heavily influenced by distorted memories, can result in wrongful convictions—allowing innocent individuals to lose their life and liberty, while the real perpetrators evade justice.

Several factors shape the level of a witness's attentiveness when observing an event, including the duration and frequency of exposure, the level of violence during the event, the witness's stress levels and expectations, and their actions during the incident.¹⁶ These factors affect the encoding, storage, and retrieval process of memory construction:

Consider a distracted witness who only briefly views three strangers wearing dark glasses and hats under conditions of poor lighting at a substantial distance. Research supports common-sense assumptions that short crime duration, greater distance, poor illumination, offender disguises, and distractions from full attention will diminish the quality of eyewitness memory.

Research has also uncovered influences on memory that may not always be common knowledge. Three examples from the eyewitness literature illustrate this point. First, witness fear and stress are likely to diminish, rather than aid, the quality of memory, contrary to common wisdom. The human "fight or flight" physiological response to threat—that mobilizes energy for the physical action of fighting hard or running

¹² *Id.* at 8.

¹³ *Id.* at 10. (Citation omitted)

¹⁴ Mark W. Bennett, *Unspringing the Witness Memory and Demeanor Trap: What Every Judge and Juror Needs to Know about Cognitive Psychology and Witness Credibility*, 64 AM. U.L. REV. 1331, 1345 (2015).

¹⁵ Joyce W. Lacy & Craig E. L. Stark, *The Neuroscience of Memory: Implications for the Courtroom*, 14 NAT REV NEUROSCI, 649 (2013).

¹⁶ See J. Leonen, Dissenting Opinion in *People v. Pepino*, 777 Phil. 29, 73 (2016) [Per J. Brion, *En Banc*].

fast—is geared toward enhancing prospects of survival, not memory. While the gist of the frightening experience is not easily forgotten, details are often not encoded correctly, if at all.

A second well-documented phenomenon is the “weapon focus effect.” Research shows that a weapon is likely to draw the attention of the witness, reducing time for attention directed to facial features. Lab studies indicate that presence (versus absence) of a weapon reduces accuracy of later lineup identifications.

A third example is that identification errors are significantly more likely when the event is “cross-race.” Most people are much better at encoding facial details for members of their own race than other races. A meta-analysis of studies spanning thirty years and encompassing the laboratory experiences of nearly 5000 research participants found that witnesses were 1.40 times more likely to correctly identify a previously-seen face of their own race compared to a face of another race, and 1.56 times more likely to falsely identify an other-race face never seen before.¹⁷ (Citations omitted)

Once law enforcement steps in, investigators further regulate and influence the witness’s memory. Suggestive identification procedures cause witnesses to misrepresent, albeit unconsciously, their accounts of the observed events:

In practice, suggestion can enter the identification process in two ways. First, law enforcement officers or other observers can confirm a witness’s identification, whether at the time of the identification procedure or at any point before in-court identification. This can be as subtle as an officer praising the witness for a “good job” in her identification or as overt as a detective thanking the witness “for confirming our suspicion.” The problem with such suggestions is that they can give witnesses false confidence in their identifications, even if the witnesses are mistaken. Moreover, witnesses too rarely recognize that a reinforcing comment inflated their confidence.

Law enforcement officers may also employ suggestive identification procedures that make the suspect stand out from others. For example, in the case of Marvin Anderson, Anderson’s photograph appeared in color while the other photographs in the array were black-and-white. A further example is lineups, in which problems have arisen when the suspect is the only person presented of a particular height, hair color, or complexion among a group of six or more. These frailties may lead witnesses to make “relative judgments,” subtly encouraging them to select the individual in an identification procedure who looks most like the offender rather than employing independent judgment to ensure that the individual identified is the actual perpetrator.¹⁸ (Citations omitted)

Moreover, “eyewitness memory . . . can err through commission,

¹⁷ Nancy K. Steblay, *Scientific Advances in Eyewitness Identification Evidence*, 41 WM. MITCHELL L. REV. 1090, 1104–1105 (2015).

¹⁸ Jon B. Gould & Richard A. Leo, *One Hundred Years Later: Wrongful Convictions After A Century Of Research*, 100 THE JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, 825, 842–843 (1973).

incorporating new information that may seemingly sharpen the experience or shape the narrative for the witness[.]”¹⁹ which in turn no longer represents a truthful report of the initial experience. For example, an eyewitness may confuse, or worse, replace a perpetrator’s face just by viewing an innocent person in a line-up, a show-up, a mugshot, or even in photographs.

After exposure to new information, the subsequent memory is often compelling to the eyewitness, increasing their confidence in its accuracy despite it being highly compromised. Yet, studies show limited to inverse correlations between one’s confidence in the accuracy of a memory and the memory’s actual accuracy.²⁰

II

Law enforcers use several modes of out-of-court identification to aid their investigations. One mode is a police line-up, where the witness selects a “suspect from a group of persons lined up[.]”²¹ Another mode is the show-up, where “the suspect alone is brought face to face with the witness for identification.”²² Both are types of corporeal identification, where the suspect is physically present for the witness to identify.²³ Aside from these, law enforcers also use photographs or mugshots to facilitate witness identification of the perpetrator.²⁴

Jurisprudence acknowledges that human errors and suggestive influences heavily influence out-of-court identifications. First adopted in *People v. Teehanke, Jr.*,²⁵ courts have since used the totality-of-circumstances test to determine the reliability and admissibility of an out-of-court identification:

(1) the witness’[s] opportunity to view the criminal at the time of the crime; (2) the witness’[s] 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.²⁶ (Citation omitted)

¹⁹ Nancy K. Steblay, *Scientific Advances in Eyewitness Identification Evidence*, 41 WM. MITCHELL L. REV. 1090, 1107 (2015).

²⁰ Mark W. Bennett, *Unspringing the Witness Memory and Demeanor Trap: What Every Judge and Juror Needs to Know about Cognitive Psychology and Witness Credibility*, 64 AM. U.L. REV. 1331, 1345 (2015).

²¹ *People v. Teehanke, Jr.*, 319 Phil. 128, 180 (1995) [Per J. Puno, Second Division].

²² *Id.*

²³ See J. Leonen, Dissenting Opinion in *People v. Pepino*, 777 Phil. 29, 69 (2016) [Per J. Brion, En Banc].

²⁴ *People v. Teehanke, Jr.*, 319 Phil. 128, 180 (1995) [Per J. Puno, Second Division].

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

²⁶ *Id.* at 180.

In *People v. Timon*,²⁷ this Court went further and ruled:

Even assuming *arguendo* that the appellants' out-of-court identification was defective, their subsequent identification in court cured any flaw that may have initially attended it. We emphasize that the "inadmissibility of a police line-up identification . . . should not necessarily foreclose the admissibility of an independent in-court identification." We also stress that all the accused-appellants were positively identified by the prosecution eyewitnesses during the trial.²⁸

(Citation omitted)

*People v. Sabangan*²⁹ involved the murder of a barangay captain. Three witnesses identified the accused from several pictures shown by the police, subsequently confirmed through a police show-up.³⁰ In applying the totality-of-circumstances test, this Court sustained the accused's conviction, emphasizing that the witnesses, during the shooting, "had the opportunity to clearly view [his] face."³¹ Despite the irregularities in the out-of-court identifications, this Court ruled that the subsequent in-court identification "cured any flaw that may have attended it."³²

On the other hand, this Court has considered prior or contemporaneous actions of law enforcers, prosecutors, the media, or even other witnesses to show the suggestive nature of identification procedures, ultimately resulting in an acquittal.³³

In *People v. Pineda*,³⁴ six perpetrators were involved in a robbery with homicide on a passenger bus. The police admitted that they only showed two photos to the witness—that of Pineda and his co-accused.³⁵ This Court found the identification procedure unacceptable for being tainted with impermissible suggestion.³⁶ It provided two rules for out-of-court identifications done 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. Thus:

[W]here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness's

²⁷ 346 Phil. 572 (1997) [Per J. Panganiban, Third Division].

²⁸ *Id.* at 588–589.

²⁹ 723 Phil. 591 (2013) [Per J. Leonardo-De Castro, First Division].

³⁰ *Id.* at 614.

³¹ *Id.*

³² *Id.* (Citation omitted)

³³ *People v. Nuñez*, 819 Phil. 406, 429 (2017) [Per J. Leonen, Third Division].

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

³⁵ *Id.* at 539.

³⁶ *Id.* at 540.

recollection of the features of the guilty party, but upon his recollection of the photograph. Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified."

....

A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph.³⁷ (Citations omitted)

Pineda also identified 12 danger signals that operate independently from identification procedures used by investigators. These signals indicate that the identification may be inaccurate despite the appropriate method being used:

- (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'[s] 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'[s] 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.³⁸

Pineda also emphasized that the prosecution must prove the identity of the perpetrator apart from establishing the existence of the crime.³⁹

*People v. Rodrigo*⁴⁰ similarly involved a case of robbery with homicide. The accused was identified through a lone photograph shown to the witness, and subsequently through a show-up where the witness and the

³⁷ *Id.*

³⁸ *Id.* at 547-548.

³⁹ *Id.* at 548.

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

accused had a personal confrontation in the police station.⁴¹ This Court acquitted the accused and explained how a suggestive identification procedure violates the right of the accused to due process:

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.⁴²

*People v. Nuñez*⁴³ involved yet another case of robbery with homicide. The first witness identified the accused after almost eight years, and the second witness after almost nine years, from the time the offense was committed.⁴⁴ Despite previously admitting that they could not remember any features of the robber, they contradicted themselves years later after undergoing a highly suggestive process.⁴⁵ This Court, in acquitting the accused, emphasized the inherent frailty of human memory:

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.⁴⁶

Excessive reliance on testimonial evidence to prove the identity of the perpetrator, preceded by improper suggestions, violates the fundamental right of the accused to due process.⁴⁷ Moreso, an initial out-of-court identification done through a photograph without strictly following the rules laid down in *Pineda* undermines the credibility, reliability, and accuracy of any corporeal identification subsequently made in court.

⁴¹ *Id.* at 529.

⁴² *Id.* at 529–530.

⁴³ 819 Phil. 406 (2017) [Per J. Leonen, Third Division].

⁴⁴ *Id.* at 415.

⁴⁵ *Id.*

⁴⁶ *Id.* at 408.

⁴⁷ *People v. Rodrigo*, 586 Phil. 515, 529 (2008) [Per J. Brion, Second Division].

III

Here, the prosecution banks on the testimony of Lapinig, the sole eyewitness to the crime, to establish the identity of the assailants. In his Affidavit-Complaint taken by the investigating officer a day after the incident, he claimed that the police officers showed him a single picture for him to identify and that he was surprised that the four persons appearing in the picture were the same persons who attacked him and his cousin.⁴⁸

During his cross-examination, Lapinig consistently said that he was only shown one picture. He testified:

ATTY. CAGATIN:

Q It was the policeman who showed you pictures, or only one picture with four persons?

A Yes, when I told him that I could recognize their faces. So, I was shown that picture.

ATTY. CAGATIN:

Q Only one picture?

A Yes, one picture.

Q Did the policeman show you other pictures at the police station?

A No more, sir.

Q Was there a gallery of persons inside the office of the police more particularly pictures of other persons shown to you?

A None, sir.

COURT:

Q What about other pictures of other people?

A: No, Your Honor.⁴⁹

In a later hearing, he testified:

[ATTY. TA-ASAN:]

Q The policeman did not show you any pictures?

A I was shown a picture.

Q How many pictures?

A Only one.

Q And who were in the pictures? [sic]

A The one who stabbed my cousins and the one who blocked me and the one who held my cousin.

⁴⁸ See Record of Documentary Evidence (Regional Trial Court), p. 4.

⁴⁹ TSN, Normel Lapinig, March 4, 2008, pp. 43–44. Atty. Leopoldo L. Cagatin is a defense counsel.

Q No other pictures were shown to you except the pictures [sic] with the 4 persons were [sic] shown to you by the policemen?

A Yes, sir.

Q Were there other persons shown to you?

A None sir.⁵⁰

The prosecution's second witness, SPO4 Ayop, presented a conflicting account. Seemingly deliberate, perhaps in an attempt to eliminate any suspicion of impermissible and suggestive tactics, SPO4 Ayop asserted that Lapinig had been shown a photo gallery.⁵¹ He emphasized that Lapinig himself had browsed through the photos before singling out the photograph of accused-appellants and their co-accused.⁵²

However, a closer look at SPO4 Ayop's testimony reveals that he was incompetent to testify as to what transpired during the out-of-court identification. On cross-examination, he said that he was not the person who allegedly showed Lapinig the photo gallery, but one Raul Tonzo:

[ATTY. LARGO:]

Q According to you somebody showed some pictures to Normel Lapinig?

A Yes, sir.

Q Was it you who showed the pictures to him?

A It was my companion, Raul Tonzo.

Q Whose pictures were shown to Normel Lapinig?

A The group picture of these four (4) suspects.⁵³

We can thus conclude that the officers did not show Lapinig a series of photographs, violating the *Pineda* rules for out-of-court identification through photographs. Thus, any subsequent corporeal identification of the accused may not be based on Lapinig's recollection of the features of the assailants, but on his memory of the single photograph shown to him, which coincidentally depicted all four accused together.

Oddly enough, SPO4 Ayop also failed to clarify why the police possessed only a single photograph showing all four accused together, which they claimed was part of their photo gallery:

[ATTY. LARGO:]

Q Tell us why did you have the group picture of all the accused?

⁵⁰ TSN, Normel Lapinig, April 17, 2008, pp. 22–23. Atty. Lorenzo B. Ta-asan is a defense counsel.

⁵¹ *Rollo*, p. 23.

⁵² *Id.*

⁵³ TSN, SPO4 Ernesto Ayop, September 26, 2011, p. 22. Atty. Rogelio G. Largo is a defense counsel.

A I do not know why their picture was in our photo gallery, sir. Maybe they have also visited our police station for another case.

Q So, you would not be able to tell us why their picture was in your photo gallery and for what reason that picture was taken?

A Yes, sir.

....

Q And the picture that you showed was taken when? How many months or days before October 21, 2007?

A I don't know, sir.

Q Did you not bother knowing the date?

A No, sir.

Q Was it on the same day of October 21, 2007?

A No, sir.

Q Did it not occur to you to investigate?

A No, sir.

Q Did it not surprise you why all of those in one picture taken previously were pointed out by the complainant to be the assailants of that crime that took place hours before?

A It doesn't matter, sir.

Q It doesn't matter to you?

A Yes, sir.

....

Q Did it not warrant further investigation that the complainant Lapinig said that all of those persons in one picture were the assailants of the alleged crime that took place hours before the same was recorded to your office?

A No, sir.

Q You did not find it surprising?

A Because it was the complainant himself who pointed the same group who assailed his cousin.

Q So, on that basis alone, you conducted a follow-up operation to arrest these four persons whose faces were in that picture?

A Yes, sir.

Q No other basis was looked into or taken into consideration by you or your companions; is that correct?

A At that time, we have no other basis except the identity in the picture.⁵⁴

The lack of explanation from the police conveniently implies the collective guilt of all four individuals in committing the crime. They prompted a signal for Lapinig to think that there were at least four accused

⁵⁴ *Id.* at 23–24, 26–28.

and that those four in the photograph were the ones responsible to the exclusion of any other assailants. The single photograph shown to Lapinig during the out-of-court identification was egregiously tainted with impermissible suggestion, creating false evidence of identification.

All told, the prosecution did not offer any justifiable explanation for the crucial discrepancies between the testimonies of their witnesses. Therefore, they failed to prove beyond reasonable doubt the identities of accused-appellants as the perpetrators.

IV

The out-of-court identification also crumbles under the totality-of-circumstances test.

First, Lapinig himself admitted that he was intoxicated during the incident,⁵⁵ which diminished his degree of attention at the time of the incident. His opportunity to view the assailants at the time of the crime was also poorly established. The prosecution claimed that around 11:00 p.m. on October 20, 2007, the four accused were present at the *videoke* bar,⁵⁶ presumably to establish that Lapinig had become familiar with their faces prior to the incident. The majority emphasized:

Normel had become familiar to Panfilo, Reynaldo, [XXX265481], and [YYY265481] before the incidents. Normel saw the four accused at the *videoke* bar and could recall their time of arrival, clothing, and distance when they sat near their table.⁵⁷

However, during Lapinig's direct examination, he never mentioned seeing the four accused in the *videoke* bar before the altercation that occurred outside. Furthermore, his Affidavit-Complaint failed to provide any detail regarding a prior confrontation between Lapinig and Caramonte and the four accused inside the *videoke* bar.

Only during his cross-examination did Lapinig suddenly mention that he saw the four accused arrive at the *videoke* bar.⁵⁸ Yet, right before saying this, upon the court's inquiry, he claimed that he was not aware of the other people that were inside the *videoke* bar:

COURT:

Q Would you still remember the faces of the people who were on the

⁵⁵ *Rollo*, p. 16.

⁵⁶ *Id.*

⁵⁷ *Ponencia*, p. 8.

⁵⁸ TSN, Normel Lapinig, March 4, 2008, p. 12.

other tables when you were there?

A I cannot remember them, Your Honor, because I did not mind them.⁵⁹

Second, during his cross-examination, Lapinig also admitted that he could not recall what the four accused wore during the incident, including the exact time he saw them:

[ATTY. TA-ASAN:]

Q You said you have seen the accused in this case, can you tell us what he was wearing at that time?

A I can't recall what color of the shirt he was wearing at that time.

Q How about his pants what was he wearing at that time?

A I can't recall but what I can remember one of them was wearing shorts at that time.

Q When was the first time that you saw the accused?

A That was the first time I saw them.

Q In fact you saw them for the first time that night?

A What I can recall was that I saw them but I'm not sure of the time.

Q You could not also recall whether you have seen them at 12 midnight?

A No.⁶⁰

Prior descriptions from eyewitnesses are crucial because they assist the police in verifying the accuracy of the identification made by such eyewitnesses. However, the case records fail to show that Lapinig provided any prior descriptions of the assailants, either to the police or to his lessor. Without such descriptions, the police could not have verified the accuracy of Lapinig's identification.

Most important, Lapinig's level of certainty during the out-of-court identification was preceded by a suggestive procedure. Again, the single photograph shown to Lapinig was contrary to the *Pineda* rules, which require a series of photographs, not merely that of the suspect, to be shown to the witness. *Nuñez* teaches that not complying with the 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."⁶¹

Notably, the first, third, and eleventh danger signals discussed in *Pineda* were present in the out-of-court identification. Lapinig admitted that

⁵⁹ *Id.*

⁶⁰ TSN, Normel Lapinig, April 17, 2008, p. 11.

⁶¹ *People v. Nuñez*, 819 Phil. 406, 432 (2017) [Per J. Leonen, Third Division].

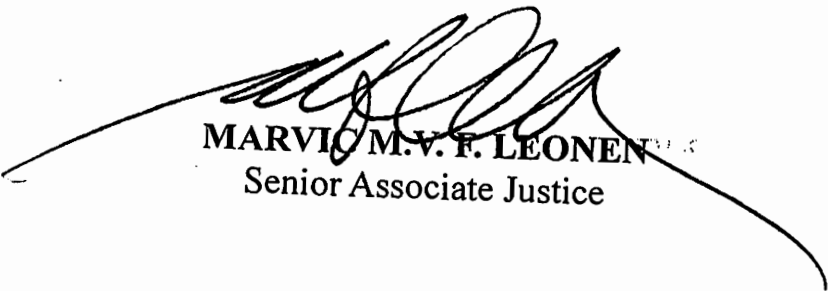
he could not remember any of the faces of the people present in the *videoke* bar at the time of the incident.⁶² He failed to describe any of the four accused prior to his exposure to the photograph shown by the police. Last, several persons committed the crime, and they were unknown or unfamiliar to Lapinig beforehand.⁶³

Given the highly suggestive and problematic out-of-court identification in this case, the prosecution utterly failed to prove beyond reasonable doubt accused-appellants' identities as the perpetrators of the crime. They must, therefore, be acquitted.

For these reasons, I dissent.

On the other hand, Lapinig's medical certificate documenting his injury, along with Caramonte's death certificate confirming his demise, effectively establishes the occurrence of the crimes.⁶⁴ XXX265481's admission of guilt and YYY265481's withdrawal of appeal render it unnecessary for this Court to pass upon their culpability. Their individual admissions alone are ample evidence to uphold their convictions.

ACCORDINGLY, I vote to **GRANT** the appeal and **ACQUIT** accused-appellants Panfilo Delgado Lade, Jr. and Reynaldo Logronio Dela Torre, Jr. of the crimes charged against each of them.



MARVIC M. V. F. LEONEN
Senior Associate Justice

⁶² TSN, Normel Lapinig, March 4, 2008, p. 12.

⁶³ TSN, Normel Lapinig, April 17, 2008, p. 11.

⁶⁴ *Rollo*, pp. 15–16.