Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 232455**
- versus -	Present: PERALTA, *C.J.*, *Chairperson*, CAGUIOA, CARANDANG, ZALAMEDA, and
TEODORO ANSANO y CALLEJA, Accused-Appellant.	GAERLAN, *JJ.*
	Promulgated: DEC 02 2020

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DECISION

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Teodoro Ansano y Calleja (Ansano) assailing the Decision[2] dated February 20, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08223, which affirmed the Decision[3] dated November 16, 2015 of the Regional Trial Court of YYY, ZZZ[4], Branch 26 (RTC) in Criminal Case No. SC-12326, finding Ansano guilty beyond reasonable doubt of rape.

The Facts

An Information was filed against Ansano for the rape of minor AAA,[5] which read:

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1 *See* Notice of Appeal dated March 10. 2017; *rollo*, pp. 111-112.

2 *Rollo*, pp. 2-16. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting (now a Member of this Court) concurring.

3 CA *rollo*, pp. 12-15. Penned by Pairing Judge Cynthia R. Mariño-Ricablanca.

4 The names of the City and the Province are replaced with fictitious initials pursuant to SC Adm. Cir. No. 83-15 dated July 27, 2015.

5 The name of the victim is replaced with fictitious initials pursuant to SC Adm. Cir. No. 83-15 dated July 27, 2015.

> That on or about April 6, 2005, in the Municipality of [XXX], Province of [ZZZ] and within the jurisdiction of this Honorable Court, the above-named accused, while conveniently armed and provided with a bolo, with lewd design and with force and intimidation, did then and there [willfully], unlawfully and feloniously have carnal knowledge of one [AAA], a minor who at the time was only fifteen (15) years of age, against her will and consent, the act of the accused being prejudicial to the psychological development of the said minor.
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> CONTRARY TO LAW.[6]

Upon arraignment, Ansano entered a plea of not guilty. Pre-trial and trial on the merits then ensued.

The version of the prosecution, as summarized by the trial court and affirmed by the CA, is as follows:

> The complaining witness is AAA, 15 years old, student and a resident of XXX. She testified that she filed this case of rape against accused Teodoro Ansano, whom she pointed to and identified in open court. She stated that she did not know him at first, but when she went to the Municipal Building, she came to know him because of his niece who is her friend. On April 6, 2005, at about 5:00 o'clock in the afternoon, she was going to fetch her father at Narra, where he was then selling goods at the river. This was at [GGG][7] near the river. Accused Ansano was then carrying a bolo, wearing a long-sleeved shirt and long pants used in the farm; while she was wearing red t-shirt and school uniform skirt. Ansano poked his bolo at her and told her to go with him to the falls near the Narra tree. Because she was afraid and he threatened to kill her if she does not go with him, she went along. When they were nearing the falls, he turned the other way. He held her tightly by the shoulder, dragged her to a secluded area with bamboo trees and coconuts and told her to sit down and not to shout, still poking the bolo at her. He then removed his clothes, undressed her, laid her down, kissed her neck and placed his penis into her mouth. She cried very hard and vomited at that time. Thereafter, accused inserted his penis into her vagina. It was painful. Accused rested for a while, and then did it again. Thereafter, accused put on his clothes and directed her to remain lying down until he left the place. He also told her not to tell anyone about the incident because he knew her and her parents, he knew what time she went to church, what time she went to bed and that she was always with her cousin. He then left and proceeded to the direction going to Narra. After he left, she put on her clothes and went home. She proceeded to bed and cried. Her mother asked her why she was crying and she told her that she was raped. She could hardly speak because she was still crying. Her father went to the place of the incident but the person who abused her was no longer there, so her father reported the incident to the police station.
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> She came to know the name and identity of the accused on March 19, 2006 at 8:00 o'clock in the evening, when she saw him in their house

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6 CA *rollo*, p. 11.

7 The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and Amended Administrative Circular No. 83-2015 dated September 5, 2017

having a drinking spree with her father. She was able to recognize him ("namumukhaan"); he has a scar and "butil-butil" on his face; he has a moustache and "medyo singkit". She came to know his name for the first time when she went to the XXX Municipal Hall, where accused was detained because of the case filed by BBB. She was shown a picture of the accused, which she examined clearly, and she was sure that he was the one who raped her.

Because she was raped, she went to [ZZZ] Provincial Hospital for a medical examination. At the time of the incident on April 6, 2005, she was [just] thirteen (13) years old. She presented her Certificate of Baptism issued by Santo Cristo of Bulacan, Valenzuela, Metro Manila, showing that she was born on September 14, 1991 and baptized on September 25, 1991. She does not have a Certificate of Live Birth, as her birth was not registered because the midwife who attended to the delivery of her mother went abroad.

Upon cross-examination, she stated that she had been residing in XXX, since the year 2005, and that she had not known the accused, even by face, before April 6, 2005. She came to know him through BBB who was then living in their house, when accused had a drinking spree with her father on March 19, 2006.

x x x x

The next prosecution witness was Dr. Maria Cheryl Obcemea x x x [and] [h]er qualification as an expert witness was admitted by the defense. She testified that according to their records, she examined the patient AAA on April 7, 2005 at [ZZZ] Provincial Hospital. She was the one who physically examined AAA and her findings was reduced into writing in a Medico-Legal Report. Said findings indicate "Perineum: hymen-multiple fresh laceration 7 and 5 o'clock position; minimal bleeding."[8]

On the other hand, the accused relied on denial and alibi to establish his innocence. The version of the defense was summarized by the RTC, again as affirmed by the CA, as follows:

The defense presented accused himself, Teodoro Calleja Ansano, 45 years old, single, slipper maker and residing at XXX. He stated that he does not personally know AAA. On April 6, 2005, at around 5:00 o'clock in the afternoon, he was at Villa Pokan with his friends Rudy Monfero, Albert Concordia and Nick Esmejarda. They arrived at 4:00 o'clock in the afternoon at Villa Pokan to go swimming there and left at around 5:00 o'clock. They went home going their separate ways: Rudy and Albert to Ilayang Taykin, Nick to Poblacion and he (Ansano) to XXX. Upon reaching his house, he immediately went to sleep and woke up the next morning, April 7 at around 6:00 o'clock. On his way home to XXX, he did not meet AAA, nor did he poke a bolo on her neck and rape her.

The Court noted the manifestation of defense counsel that Ansano has no scar on his face at the time he testified in court.

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8 Id. at 3-5.

> When cross-examined, he stated that he does not know AAA and her father CCC; that he came to know in court that their house is more or less one kilometer away from his house; that on April 6, 2005, he and his friends Rudy, Albert and Nick left at around 5:00 o'clock in the afternoon; that [Villa Pokan] is more or less one kilometer away from his house; that upon reaching his house, he immediately went to sleep and woke up the following day.[9]

Ruling of the RTC

After trial on the merits, in its Decision[10] dated November 16, 2015, the RTC convicted Ansano of the crime charged. The dispositive portion of the said Decision reads:

> WHEREFORE, this court finds accused Teodoro Ansano y Calleja GUILTY beyond reasonable doubt of the crime of Rape, defined and penalized under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 or the Rape Law of 1997. Thus, he is sentenced to suffer the penalty of RECLUSION PERPETUA. In addition thereto, he is ordered to pay AAA the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) by way of moral damages, and Thirty Thousand Pesos (P30,000.00) as exemplary damages.
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> SO ORDERED.[11]

The RTC was convinced by the testimony of AAA identifying Ansano as the one who sexually abused her. It found such testimony to be clear, consistent, spontaneous, and unrelenting, thus establishing that it was Ansano who sexually abused her on April 6, 2005. The RTC likewise found her testimony to be corroborated through the testimony of the medico-legal who conducted a medical examination on AAA. Thus, as between her credible testimony and Ansano's bare denial, the RTC ruled that the evidence at hand established Ansano's guilt beyond reasonable doubt.

Aggrieved, Ansano appealed to the CA.[12]

Ruling of the CA

In the questioned Decision[13] dated February 20, 2017, the CA affirmed Ansano's conviction, and held that the prosecution was able to sufficiently prove the elements of the crime charged. The dispositive portion of the Decision reads:

> **WHEREFORE,** the appeal is **DENIED.** The Judgment dated November 16, 2015 of the Regional Trial Court, 4th Judicial Region, Branch 26, [XXX], [ZZZ], in Criminal Case No. SC-12326 finding accused-

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9 Id. at 5-6.
10 Supra note 3.
11 CA *rollo*, pp. 14-15.
12 Supra note 1.
13 Supra note 2.

> appellant **TEODORO ANSANO y CALLEJA GUILTY** beyond reasonable doubt of rape, is hereby **AFFIRMED,** with **MODIFICATION.** The Court sentences accused-appellant to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay AAA the amount of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, and another Php75,000.00 as exemplary damages, all with interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.
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> **SO ORDERED.**[14]

The CA noted that AAA's testimony was clear, consistent, and spontaneous, and that she positively identified Ansano as the perpetrator.[15] Moreover, her claim that she was assaulted was supported by the medico-legal examination, which found multiple fresh lacerations on her hymen. The CA held that there was therefore no doubt that AAA was indeed assaulted.

As to the identification of Ansano as the perpetrator of the crime, the CA explained:

> The alleged inconsistency of AAA's testimony with regard to the time she first saw the accused-appellant face to face only on March 19, 2006 was properly explained during her re-direct examination. Again, there is no inconsistency as to having known accused-appellant's name only on May 15, 2006. That is different from having to see the accused-appellant again for the first time on March 19, 2006 after the rape incident that occurred on April 6, 2005.
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> Accused-appellant's claim of the absence of scar on his face may be true. However, AAA also identified accused-appellant through his other physical features such as, "*butil-butil sa mukha*," "*medyo singkit*," and his moustache. In this case, AAA consistently testified that she was able to see and recognize accused-appellant as her rapist.[16]

Finally, the CA also ruled that Ansano's alibi cannot be given probative value, as AAA's positive identification, which was clear and credible, has destroyed Ansano's alibi which, in turn, was unsupported by evidence. The CA thus affirmed Ansano's conviction.

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting the accused-appellant.

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14 *Rollo*, p. 15.
15 Id. at 11.
16 Id. at 14..

The Court's Ruling

The appeal is meritorious. The Court acquits Ansano on the ground of reasonable doubt.

At the outset, it bears emphasis that "the Court, in the course of its review of criminal cases elevated to it, still commences its analysis from the fundamental principle that the accused before it is presumed innocent."[17] This presumption continues although the accused had been convicted in the trial court, as long as such conviction is still pending appeal. As the Court explained in *Polangcos v. People*:[18]

> Article III, Section 14 (2) of the 1987 Constitution provides that every accused is presumed innocent unless his guilt is proven beyond reasonable doubt. It is "a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense."
>
> This presumption in favor of the accused remains until the judgment of conviction becomes final and executory. Borrowing the words of the Court in *Mangubat, et al. v. Sandiganbayan, et al.*, "[u]ntil a promulgation of final conviction is made, this constitutional mandate prevails." **Hence, even if a judgment of conviction exists, as long as the same remains pending appeal, the accused is still presumed to be innocent until his guilt is proved beyond reasonable doubt.** Thus, in *People v. Mingming*, the Court outlined what the prosecution must do to hurdle the presumption and secure a conviction:
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> > *First*, the accused enjoys the constitutional presumption of innocence until final conviction; conviction requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime.
> >
> > *Second*, the prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense.[19] (Emphasis supplied)

Corollary to such principle, the Court has also laid down the following guidelines in its review of rape cases:

> (a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge;[20]

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17 *Polangcos v. People*, G.R. No. 239866, September 11, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65740>.

18 Id.

19 Id.

20 *People v. Sta. Ana*, 353 Phil. 388, 402 (1998).

> (b) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution;[21] and
>
> (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[22]

From these principles, and based on its own careful review of the records of the case, the Court rules that a reasonable doubt exists as to Ansano's culpability. While the Court does not doubt AAA's claim that she had been raped, the Court does not, however, have moral certainty that it was Ansano who committed the dastardly act.

Verily, 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.[23]

The Court has always been mindful that "[t]he 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."[24] This stems from the recognition that testimonial evidence, unlike other forensic evidence such as fingerprint and DNA testing which are real or object evidence, are subject to human errors which may be intentional or unintentional. In *People v. Nuñez*[25] (*Nuñez*), the Court elucidated:

> The frailty of human memory is a scientific fact. The danger of inordinate reliance on human memory in criminal proceedings, where conviction results in the possible deprivation of liberty, property, and even life, is equally established.
>
> > Human memory does not record events like a video recorder. In the first place, human memory is more selective than a video camera. The sensory environment contains a vast amount of information, but the memory process perceives and accurately records only a very small percentage of that information. Second, because the act of remembering is reconstructive, akin to putting puzzle pieces together, human memory can change in dramatic and unexpected ways because of the passage of time or

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21 Id.
22 Id.
23 *People v. Tumambing*, 659 Phil. 544, 547 (2011).
24 *People v. Rodrigo*, 586 Phil. 515, 528 (2008).
25 819 Phil. 406 (2017).

> subsequent events, such as exposure to "postevent" information like conversations with other witnesses or media reports. Third, memory can also be altered through the reconstruction process. Questioning a witness about what he or she perceived and requiring the witness to reconstruct the experience can cause the witness' memory to change by unconsciously blending the actual fragments of memory of the event with information provided during the memory retrieval process.
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> Eyewitness identification, or what our jurisprudence commendably refers to as "positive identification," is the bedrock of many pronouncements of guilt. — However, eyewitness identification is but a product of flawed human memory. In an expansive examination of 250 cases of wrongful convictions where convicts were subsequently exonerated by DNA testing, Professor Brandon Garett (Professor Garett) noted that as much as 190 or 76% of these wrongful convictions were occasioned by flawed eyewitness identifications. Another observer has more starkly characterized eyewitness identifications as "the leading cause of wrongful convictions."
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> x x x x
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> The bifurcated difficulty of misplaced reliance on eyewitness identification is borne not only by the intrinsic limitations of human memory as the basic apparatus on which the entire exercise of identification operates. It is as much the result of and is exacerbated by extrinsic factors such as environmental factors, flawed procedures, or the mere passage of time.[26]

In another case, the Court acknowledged that:

> Identification testimony has at least three components. First, witnessing a crime, whether as a victim or a bystander, involves perception of an event actually occurring. Second, the witness must memorize details of the event. Third, the witness must be able to recall and communicate accurately. **Dangers of unreliability in eyewitness testimony arise at each of these three stages, for whenever people attempt to acquire, retain, and retrieve information accurately, they are limited by normal human fallibilities and suggestive influences.**[27]

Thus, American jurisprudence has followed — and local jurisprudence later on adopted — a "*totality of circumstances test*" in determining the reliability, or at times even the admissibility, of a witness' out-of-court identification of the accused.

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[26] Id. at 415-417.

[27] *People v. Teehankee, Jr.*, 319 Phil. 128, 179 (1995), citing LAFAVE AND ISRAEL, CRIMINAL PROCEDURE, HORNBOOK SERIES 353 (1992 Ed.).

The jurisprudential test of "totality of circumstances"

The *totality of circumstances test* was first applied by the Court in *People v. Teehankee*[28] (*Teehankee*), wherein it applied the test as laid down by the Supreme Court of the United States (SCOTUS) in *Neil v. Biggers*[29] (*Biggers*) and *Manson v. Brathwaite*[30] (*Brathwaite*):

> Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. **Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process.** In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.[31] (Emphasis supplied)

Essentially, the problem with eyewitness testimony is that the human mind is not just limited in terms of perception, but that human memory is also highly susceptible to suggestion. Hence, the jurisprudence on the matter, like *Biggers* and *Brathwaite,* dealt with the propriety of police procedures employed to arrive at the identification of the accused. The rule that was thereafter adopted was that "convictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the **photographic identification procedure was so impermissibly suggestive** as to give rise to **a very substantial likelihood of irreparable misidentification.**"[32] It was explained that "[s]uggestive confrontations are disapproved because they increase the likelihood of misidentification, and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous."[33]

In the case of *Foster v. California*,[34] the accused was initially put in a line-up of three men, with the accused being almost six feet in height while the other two men in the line-up were just 5'5" and 5'6." The eyewitness was unable to identify the accused as the perpetrator, but asked for a one-on-one confrontation with the accused. Even with this, the eyewitness was still

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28 Id.
29 409 U.S. 188 (1972)
30 432 U.S. 98 (1977)
31 *People v. Teehankee, Jr.*, supra note 27 at 180.
32 *Simmons v. United States,* 390 U.S. 377, 384 (1968).
33 *Neil v. Biggers*, supra note 29 at 198.
34 394 U.S. 440 (1969)

uncertain that it was indeed the accused who committed the crime. A week or more later, the same eyewitness was shown another line-up of five men. Only the accused was present in both the first and second line-ups. After having been shown the second line-up, the eyewitness became "sure" that the accused was the perpetrator. Applying the *totality of circumstances test* and the standard of "likelihood of irreparable misidentification," the SCOTUS set aside the out-of-court identification of the accused for having violated the latter's right to due process. The SCOTUS explained:

> Judged by that standard, this case presents a compelling example of unfair lineup procedures. In the first lineup arranged by the police, petitioner stood out from the other two men by the contrast of his height and by the fact that he was wearing a leather jacket similar to that worn by the robber. See *United States v. Wade*, *supra*, at 388 U. S. 233. When this did not lead to positive identification, the police permitted a one-to-one confrontation between petitioner and the witness. This Court pointed out in *Stovall* that
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> > "[t]he practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned."
>
> Even after this, the witness' identification of petitioner was tentative. So, some days later, another lineup was arranged. Petitioner was the only person in this lineup who had also participated in the first lineup. See Wall, *supra*, at 64. This finally produced a definite identification.
>
> The suggestive elements in this identification procedure made it all but inevitable that David would identify petitioner whether or not he was, in fact, "the man." In effect, the police repeatedly said to the witness, "This is the man." See *Biggers v. Tennessee*, 390 U. S. 404, 407 (dissenting opinion). **This procedure so undermined the reliability of the eyewitness identification as to violate due process.**[35] (Emphasis supplied)

The SCOTUS clarified, however, that the presence of suggestive elements in the identification process adopted by the police officers, on its own, would not automatically result in the inadmissibility of the out-of-court identification. In *Brathwaite,* the SCOTUS emphasized that "reliability is the linchpin in determining the admissibility of identification testimony"[36] and that the "factors to be considered x x x include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. **Against these factors is to be weighed the corrupting effect of the suggestive identification itself.**"[37]

This was the context of the *totality of circumstances test* adopted by the Court in *Teehankee.* Years after *Teehankee*, the Court would adopt additional guidelines for police officers, and safeguards for the accused, in the conduct

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35 Id. at 442-443.

36 *Manson v. Braithwaite*, supra note 30 at 114.

37 Id.

of out-of-court identification. In *People v. Villena*,[38] the Court said that "to avoid charges of impermissible suggestion, there should be nothing in the photograph that would focus attention on a single person."[39] Subsequently, in *People v. Pineda*,[40] the Court added that:

> [t]he 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**.[41]

The Court in *Pineda* applied the *totality of circumstances test*, but also added that the following factors may be considered in determining the reliability of the out-of-court identification:

> A well-known authority in eyewitness identification made a list of 12 danger signals that exist independently of the identification procedures investigators use. These signals give warning that the identification may be erroneous even though the method used is proper. The list is not exhaustive. The facts of a particular case may contain a warning not in the list. The list is as follows:
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> (1) the witness originally stated that he could not identify anyone;
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> (2) the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;
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> (3) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;
>
> (4) before identifying the accused at the trial, the witness erroneously identified some other person;
>
> (5) other witnesses to the crime fail to identify the accused;
>
> (6) before trial, the witness sees the accused but fails to identify him;
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> (7) before the commission of the crime, the witness had limited opportunity to see the accused;
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> (8) the witness and the person identified are of different racial groups;

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38 439 Phil. 509 (2002).
39 Id. at 524-525.
40 473 Phil. 517 (2004).
41 Id. at 540.

> (9) during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;
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> (10) a considerable time elapsed between the witness' view of the criminal and his identification of the accused;
>
> (11) several persons committed the crime; and
>
> (12) the witness fails to make a positive trial identification.[42]

From the foregoing jurisprudential tests and guidelines, the Court finds in this case that the out-of-court identification by AAA failed to pass the test of reliability to establish the identity of the accused as the perpetrator beyond reasonable doubt.

Application of the totality of circumstances test in the present case

To reiterate, the *totality of circumstances test* requires the Court to look at the following factors in weighing the reliability of the out-of-court identification: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the length of time between the crime and the identification; (5) the level of certainty demonstrated by the witness at the identification; and (6) the suggestiveness of the identification procedure.

(a) The first two factors: opportunity to view, and degree of attention.

Discussions relating to these factors include, for example, the duration of the commission of the crime, the lighting conditions, and whether the eyewitness was put on alert that he or she must remember the identity of the particular person, among others.

In the present case, the Court recognizes that the witness had a good **opportunity to view** the criminal at the time of the crime, given that they spent considerable time together during the commission of the crime. The witness also said that the crime happened around 5:00 in the afternoon, thus the lighting conditions were well enough for her to see the face of her assailant. As well, it could be said that AAA had a **high degree of attention**, especially on the identity of her assailant, during this time as they were the only people in the crime scene.

Despite these, however, AAA's identification of Ansano as the assailant fails the rest of the other factors to be considered.

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[42] Id. at 547-548.

(b) Accuracy of any prior description.

AAA's description of her attacker was general and related mostly to, not her assailant's physical features, but what he was wearing at the time of the crime. In her direct testimony, the only descriptions that she gave were that: "*[h]e is taller than I am; he was carrying a bolo; he was wearing a long-sleeved shirt; he was wearing long pants he used in the farm, sir.*"[43] These were her only descriptions of her assailant as she was narrating the rape incident. The description that her assailant had a scar on his face and that it had "*butil-butil*" came after, when she saw Ansano on March 19, 2006.

More importantly, however, the records show that the additional description **did not match Ansano**. She testified as follows:

> Q Can you please tell to the Honorable Court, how were you able to come to know the name and identity of the accused?
> A I was able to recognized (*sic*) his face at the time of the incident on March 19, 2006 at 8 o'clock in the evening. I saw him in our house having a drinking spree with my father, sir.
>
> Q And while the accused was having a drinking spree with your father at that night, where were you at that time?
> A I was in our house, playing with my cousins, sir.
>
> Q How far were you to the place of your father and the accused were there (*sic*) having a drinking spree?
> A Our house is near the road and my father and the accused having a drinking spree beside the road, sir.
>
> Q What happened next after their having a drinking spree?
> A I felt nervous, Sir.
>
> Q Why?
> A Because I was able to recognized (*sic*) his face, sir.
>
> ATTY. ANONUEVO I would like to quote in vernacular "*namumukhaan*"
>
> COURT Put it on the record.
>
> WITNESS Because "*namumukhaan ko po siya*"
>
> Q And when you say "*namumukhaan*", what do you mean by that?
> A Because in my mind, I was able to recall his face that he is the one who abuse[d] me, sir.
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> Q Now, you said that you were able to recall that the accused was the one who abuse[d] you because of his face, what are those identifying [marks] to his face?

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[43] TSN dated April 23, 2007, p. 5.

A He has a scar in [his] face, sir.

INTERPRETER Witness pointing on her left cheek with her finger.

FISCAL What else, if any?

WITNESS And he has "*butil-butil sa mukha*", sir.

Q Aside from those, what else, if any?
A He has a moustache, he has an eye which is "*medyo singkit*", sir.[44]

However, on another hearing date, before the prosecution cross-examined Ansano, the defense made the following manifestation which was duly noted by the trial court:

ATTY. ANONUEVO Before the public prosecutor conduct[s] his cross-examination, I am requesting the witness, the accused, to please face the Honorable Presiding Judge. I just want to make it of record that the face of the witness has no scar whatsoever which will be verified by the Honorable Court.

COURT Verified.

ATTY. ANONUEVO I would like to make it of record that the Honorable Presiding Judge has confirmed that the accused has no scar whatsoever on his face.[45]

The prosecution made a counter-manifestation that the scar may have been gone since it had been four years between AAA's identification and the time the accused took the witness stand.[46] However,

> [t]he Court has, time and again, declared that if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction.[47]

In other words, doubts — no matter how slight, as long as they are reasonable — created in the identity of the perpetrator of the crime, should be resolved in favor of the accused.[48]

(c) The length of time between the crime and the identification

The Court also held in *Nuñez* that:

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44 TSN dated June 25, 2008, pp. 13-15.
45 TSN dated February 10, 2010, p. 3.
46 Id.
47 *Franco v. People*, 780 Phil. 36, 50 (2016).
48 *People v. Vargas*, 784 Phil. 144, 156 (2016).

> The totality of circumstances test also requires a consideration of the length of time between the crime and the identification made by the witness. 'It is by now a well-established fact that people are less accurate and complete in their eyewitness accounts after a long retention interval than after a short one.' Ideally then, a prosecution witness must identify the suspect immediately after the incident.[49]

In the present case, AAA was raped in April 2005. She supposedly saw her assailant again in March 2006, and was finally able to definitively point to Ansano as her assailant in May 2006. There was thus, more or less, one year between the time the crime was committed to the time of the identification.

In *People v. Rodrigo*[50] (*Rodrigo*) a time lapse of 5 ½ months between the commission of the crime and the out-of-court identification was one of the factors that led the Court to hold that the identification of the accused was unreliable. The present case, in comparison, even involves a longer passage of time. While a longer passage of time *per se* will not automatically make an eyewitness recollection unreliable, it certainly impacts its overall reliability when considered along with the other factors in the *totality of circumstances test.*

(d) The last two factors: the level of certainty demonstrated by the witness at the identification, and the suggestiveness of the identification procedure.

The Court notes that AAA did not show a high level of certainty in her initial identification of Ansano. For instance, in her testimony quoted above, she used the word "*namumukhaan*" instead of "*nakilala*" when she saw Ansano on March 19, 2006. More glaring, however, was that she needed a second look for her to be able to ascertain that Ansano was her assailant — this time, through a photograph while Ansano was detained for another charge. AAA testified as follows:

> Q Now, Madam Witness, you stated that, that was the time on March 19, 2006 were able to identify the face of the accused, the one who raped you that afternoon of April 6, 2005, when for the first time did you come to know his name?
> A When I went to the Municipal Hall, sir.
>
> Q Where specifically in Municipal Hall?
> A In Municipal Hall of [ZZZ], sir.
>
> Q What office?
> A In the office of the police, sir.
>
> Q Were you able to know his name at the Police Station?

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[49] *People v. Nuñez*, supra note 25 at 428.
[50] Supra note 24.

A I was then asking if the accused was still at the Municipal Jail because he was then detained because of the case filed by [BBB],[51] sir.

Q And the policemen told you the name of the accused?
A Yes and he shown (*sic*) the picture of the accused, sir.

Q And after that what did you do?
A. I examine the picture clearly and I am sure that he is the one who raped me, sir.[52] (Emphasis supplied)

The foregoing testimony, apart from being an indication of AAA's level of uncertainty as to her identification of Ansano, is more importantly an indication that the identification was marred by improper suggestion.

To recall, the Court has already said in *Pineda* that:

> [t]he 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.[53]

This is so because:

> [w]here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness's recollection of the features of the guilty party, but upon his recollection of the photograph. *Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified."*
>
> x x x x
>
> 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.[54]

Pineda itself involved an acquittal of the accused on the ground that, among others, the eyewitness was shown only two photographs of suspected highway robbers while there were a total of six perpetrators to be identified, thereby effectively suggesting to the eyewitness that the men in both photos belonged to the group of the perpetrators. Similarly, in *Rodrigo*, the

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51 Supra note 7.
52 TSN dated June 25, 2008, p. 16.
53 *People v. Pineda*, supra note 40.
54 Id. at 540, citing PATRICK M. WALL, EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES 68-69 (1965).

eyewitness was shown only one photo before making the identification. In finding this out-of-court identification unreliable, the Court explained:

> 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.**[55] (Emphasis supplied)

The same thing can be said about AAA's identification of Ansano in this case. That she was shown only one photograph, when considered with the other factual circumstances of this case, only leads to the logical conclusion that the identification might have been marred by improper suggestions.

Again, the circumstances of AAA's identification of Ansano were that almost a year after the rape incident, she supposedly recognized him as her assailant as he was having a drinking spree with her father. She, however, only knew of his name two months after, or on March 19, 2006, when she went to the municipal hall to inquire if Ansano was still detained for the case filed by her best friend, BBB, who was also Ansano's niece. Incidentally, BBB was also present when AAA first "recognized" Ansano in the drinking spree with her father. She narrated:

> Q How did you come to know that he is indeed a resident of [GGG, XXX, ZZZ]?
> A Because of my best friend [BBB] and she is his niece, sir.
>
> Q You mean to say that, through [BBB], you came to know that the accused is from [GGG, XXX, ZZZ]?
> A Yes, sir.
>
> x x x x
>
> Q And you were able to see him face to face through [BBB]?
> A No, sir, he had a drinking spree with my father.
>
> Q You were with [BBB] when that incident happened?
> A Yes, sir.
>
> Q That was March 19, 2006?
> A Yes, sir.

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[55] *People v. Rodrigo*, supra note 24 at 529-530.

Q What time more or less was that, when you were able to meet face to face the accused?
A More or less 8 o'clock in the evening, sir.

Q March 19, 2006?
A Yes, sir.

Q And you were with [BBB]?
A Yes, sir.

Q In what particular place, you were (*sic*) then with [BBB] on that date?
A In our house, sir.

Q Your house is near the house of [BBB]?
A No, sir. [BBB] once live[d] in our house.

Q You want you (*sic*) tell the court that, on that day, March 19, 2006 that was the very first time that you came face to face [with] the accused?
A Yes, sir.[56]

It is important to note that the records reflect that the present charge was once consolidated with a case filed by BBB against Ansano, but BBB eventually decided to not pursue the case and this case thus proceeded on its own. While the records do not reflect the exact nature of the case filed by BBB, it could reasonably be inferred that it was likewise a rape or sexual assault charge for it to have been initially consolidated with this case.

To the mind of the Court, there is a reasonable possibility that the confluence of these circumstances may have, albeit inadvertently, improperly suggested to the mind of AAA that Ansano was her assailant. It is true that the latter finding — on the possible effect of BBB on the identification — did not arise from State action; thus, this finding would not amount to a violation of Ansano's right to due process that would render the identification inadmissible. This does not, however, preclude the courts from taking the said finding into consideration as evidentiary inquiries do not end on questions of admissibility. "Admissibility of evidence should not be equated with weight of evidence."[57] Hearsay evidence, for instance, cannot be given credence whether objected to or not for it has no probative value.[58] Eyewitness testimony, like all other evidence, must not only be admissible — it must be able to convince.

Ultimately, the Court's independent assessment of the reliability of the out-of-court identification when the *totality of circumstances test* is applied resulted in reasonable doubt on the said identification. All told, the foregoing findings ultimately impressed upon the mind of the Court a reasonable doubt

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56 TSN dated December 10, 2008, pp. 5-7.
57 *People v. Parungao*, 332 Phil. 917, 924 (1996).
58 Id.

— to reiterate, not on the fact that the crime happened, but rather — on the identity of the accused. Acquittal must perforce follow.

The Court's reminders

The Court laments that neither the RTC nor the CA was able to discuss the doubt on Ansano's identity as the perpetrator of the crime even though the issue was glaring in the records of the case. Both the RTC and the CA focused on *whether the crime indeed happened* and examined AAA's testimony only through that lens. The RTC simply said that "[t]he clear, consistent and spontaneous testimony of [AAA] unrelentingly established how Ansano sexually [assaulted] her on April 6, 2005 with the use of force, threat and intimidation."[59] The CA was unfortunately as terse, as it held that: "AAA positively identified accused-appellant as the perpetrator. The clear, consistent and spontaneous testimony of AAA established that accused-appellant committed rape against the victim,"[60] adding that Ansano's defense of alibi and denial simply failed to stand in light of AAA's positive identification.[61]

The Court thus takes this opportunity to remind courts that "[a] conviction for a crime rests on two bases: (1) credible and convincing testimony establishing the **identity** of the accused as the perpetrator of the crime; and (2) the prosecution proving beyond reasonable doubt that all elements of the crime **are attributable to the accused**."[62] "Proving the identity of the accused as the malefactor is the prosecution's primary responsibility. Thus, in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for **even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt**."[63]

Also, while the defenses of denial and alibi are inherently weak, they are only so in the face of an effective identification[64] which, as discussed, was not present in this case.

Lastly, while it was true, as the CA noted, that "no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter testify about her ordeal in a public trial if she had not been impelled to seek justice for the wrong done to her,"[65] this does not mean that the said testimony should be accepted wholesale. It bears stressing that:

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59 CA *rollo* p. 14.
60 *Rollo*, p. 11.
61 Id. at 13.
62 *People v. Pineda*, supra note 40 at 537.
63 *People v. Espera*, 718 Phil. 680, 694 (2013).
64 See *People v. Pineda*, supra note 40 at 548.
65 *Rollo*, p. 11.

> the testimonies from aggrieved parties should not simplistically be equated to or treated as testimonies from detached parties. Their testimonies should be handled with the realistic thought that they come from parties with material and emotional ties to the subject of the litigation so that they cannot be accepted and held as credible simply because the defense has not adduced evidence of ill-motivation.[66]

Like all other evidence, they must be independently assessed.

As a final note, the Court ends with the following discussion in *People v. Fernandez*:[67]

> Given the foregoing findings, we are not concluding that complainant has not been a victim of rape, or that appellant's defense of alibi and denial can be given full faith and credence. We only stress that her testimony was unable to pass the exacting test of moral certainty that the law demands and the rules require to satisfy the prosecution's burden of overcoming appellant's presumption of innocence.
>
> A conviction in a criminal case must be supported by proof beyond reasonable doubt — moral certainty that the accused is guilty. The defense may be weak, but the prosecution is even weaker. As a result of this finding, it will be unnecessary to discuss the other issues raised.
>
> The Court has aptly said: "It is better to liberate a guilty man than to unjustly keep in prison one whose guilt has not been proved by the required quantum of evidence. Hence, despite the Court's support of ardent crusaders waging all-out war against felons on the loose, when the People's evidence fails to prove indubitably the accused's authorship of the crime of which they stand accused, it is the Court's duty — and the accused's right — to proclaim their innocence. Acquittal, therefore, is in order.[68]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated February 20, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08223 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Teodoro Ansano y Calleja is **ACQUITTED** of the crime charged on the ground of 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 Superintendent of New Bilibid Prisons for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

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66 *People v. Rodrigo*, supra note 24 at 539.
67 434 Phil. 435 (2002).
68 Id. at 455.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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