

EN BANC

G.R. No. 182555: LENIDO LUMANOG and AUGUSTO SANTOS, petitioners, v. PEOPLE OF THE PHILIPPINES, respondent.

G.R. No. 185123: CESAR FORTUNA, petitioner, v. PEOPLE OF THE PHILIPPINES, respondent.

G.R. No. 187745: PEOPLE OF THE PHILIPPINES, plaintiff-appellee, v. SPO2 CESAR FORTUNA y ABUDO, RAMESES DE JESUS y CALMA, LENIDO LUMANOG y LUISTRO, JOEL DE JESUS y VALDEZ and AUGUSTO SANTOS y GALANG, accused, RAMESES DE JESUS y CALMA and JOEL DE JESUS y VALDEZ, accused-appellants.

Promulgated:

September 7, 2010

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DISSENTING OPINION

CARPIO, J.:

An accused has the right to be presumed innocent unless proven guilty beyond reasonable doubt. No less than the fundamental law guarantees such human right.

Section 14(2), Article III of the Constitution mandates that “In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.” Reinforcing this right, Section 2, Rule 134 of the Rules of Court specifically provides that “In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt.”

The “presumption of innocence” serves to emphasize that the prosecution has the obligation to prove not only each element of the offense beyond reasonable doubt^[1] but also the identity of the accused as the perpetrator. The accused, on the other hand, bears no burden of proof.^[2] The prosecution evidence must stand or fall on its own weight and cannot draw strength from the weakness of the defense.^[3]

The present consolidated cases involve the ambush-killing of former Metropolitan Command Intelligence and Security Group of the Philippine Constabulary Colonel Rolando N. Abadilla (Abadilla) on 13 June 1996 by several men while he was stuck in traffic along Katipunan Avenue, Quezon City.

Accused of being the killers of Abadilla, Lenido Lumanog (Lumanog), Augusto Santos (Santos), Cesar Fortuna (Fortuna), Rameses De Jesus (Rameses), Lorenzo Delos Santos (Delos Santos), Joel De Jesus (Joel), and Arturo Napolitano (Napolitano) were charged with murder, aggravated by treachery, evident premeditation, and taking advantage of superior strength. The trial court convicted Lumanog, Santos, Fortuna, Rameses, and Joel, while it acquitted Delos Santos and Napolitano. The Court of Appeals affirmed the conviction.

The majority sees no reason to disturb the verdict. The majority discards the extrajudicial confession extracted from the accused for being violative of the accused’s constitutional rights. Nevertheless, the majority affirms the trial and appellate courts’ finding of guilt, which was basically anchored on the alleged positive identification of the accused as gunmen and lookouts by a lone eyewitness, Freddie Alejo (Alejo). The majority gives credence to the prosecution’s eyewitness, and disbelieves the defense’s eyewitness. For these reasons, the majority finds that the prosecution has sufficiently overthrown the presumption of innocence which the accused enjoy and has proved beyond reasonable doubt the accused’s guilt for the crime of murder.

I dissent.

I. The photographic identification of Joel De Jesus is tainted with impermissible suggestion, violating the accused's due process rights.

As the majority found, "when appellants (accused) were arrested they were already considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, x x x." In other words, insofar as the police was concerned, Joel was already a suspect even before Alejo went with them to "identify" Joel. In fact, before Alejo pinpointed Joel as one of the suspects, the police showed Alejo a photograph of Joel, supporting the fact that the police focused on Joel as a suspect in the Abadilla killing. Alejo testified:

ATTY. BAGATSING:

Q Prior to 3:00 o'clock PM of June 19, 1996 on or about 2:00 o'clock PM where were you?

A Perhaps I was on my way I was fetched by the policeman from our agency in Monumento, sir.

Q Who was that police officer who fetched you?

A I can't recall his name which was placed on his name plate, sir.

Q How many were they?

A They were four (4) of them, sir.

Q After you were fetched from your post or agency in Monumento, where did you go?

A The police officers told me we were going to Fairview, sir.

Q While you were with these police officers on the way to Fairview, did you have any conversation with them?

A This was what happened. On the 18th of June in the afternoon of June 18, 1996, they showed me a picture of a man wearing eyeglasses but I told them I will not point a man in photographs I would like to see him in person.[4] (Emphasis supplied)

In *People v. Teehanke*,^[5] the Court laid down the guidelines to determine the admissibility and reliability of an out-of-court identification, thus:

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 the 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. (Emphasis supplied)

Hence, in an out-of-court identification, among the factors to be considered is the suggestiveness of the procedure. In this case, the police resorted to a photographic identification of Joel, who was the first suspect to be apprehended and who provided the identities of the other accused.

In *People v. Pineda*,^[6] the Court explained the rules in proper photographic identification procedure, to wit:

Although showing mug shots of suspects is one of the established methods of identifying criminals, the procedure used in this case is unacceptable. 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 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

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. (Emphasis supplied)

In Pineda, the Court rejected the out-of-court identification of the accused, since only the photographs of the two accused, Pineda and Sison, were shown to the witnesses, contrary to the recognized rules in photographic identification. Finding the identification of appellant therein tainted with impermissible suggestion, the Court held the identification failed the totality of circumstances test, thus:

In the present case, there was impermissible suggestion because the photographs were only of appellant and Sison, focusing attention on the two accused. The police obviously suggested the identity of the accused by showing only appellant and Sison's photographs to Ferrer and Ramos.

The testimonies of Ferrer and Ramos show that their identification of appellant fails the totality of circumstances test. The out-of-court identification of appellant casts doubt on the testimonies of Ferrer and Ramos in court.[7]

Similarly, in this case, Alejo was first shown a photograph of Joel before Alejo pinpointed Joel as one of the suspects. The police showed only one photograph, that of Joel's, highlighting the fact that the police primed and conditioned Alejo to identify Joel as one of the murderers of Abadilla. The police focused on Joel as one of the suspects, prior to Alejo's identification. The police did not show Alejo any other photograph, only

that of Joel's. Assuming Alejo refused to glance at Joel's photograph, which is quite unbelievable, the fact that he was shown only one photograph violates standard operating procedures in criminal investigations. Clearly, the police, in showing Alejo only a photograph of Joel, instead of a series of photographs arranged in an unsuspecting manner, breached the recognized rules in photographic identification. Undoubtedly, this procedure seriously corrupted the identification process with impermissible suggestion.

In *People v. Rodrigo*,^[8] the Court, speaking through Justice Arturo Brion, acquitted the accused for failure of the prosecution to identify the accused as the perpetrator of the crime, which identification is extremely crucial to the prosecution's burden of proof. Stressing the importance of a proper identification of the accused, most especially "when the identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification," just like in this case, the Court held:

The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.

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That a single photograph, not a series, was shown to Rosita is admitted by Rosita herself in her testimony.

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We hold it highly likely, based on the above considerations, that Rosita's photographic identification was attended by an impermissible suggestion that tainted her in-court identification of Rodrigo as one of the three robbers. We rule too that based on

the other indicators of unreliability we discussed above, Rosita's identification cannot be considered as proof beyond reasonable doubt of the identity of Rodrigo as one of the perpetrators of the crime.

A first significant point to us is that Rosita did not identify a person whom she had known or seen in the past. The robbers were total strangers whom she saw very briefly. It is unfortunate that there is no direct evidence of how long the actual robbery and the accompanying homicide lasted. But the crime, as described, could not have taken long, certainly not more than a quarter of an hour at its longest. This time element alone raises the question of whether Rosita had sufficiently focused on Rodrigo to remember him, and whether there could have been a reliable independent recall of Rodrigo's identity.

We also find it significant that three robbers were involved, all three brandishing guns, who immediately announced a holdup. This is an unusual event that ordinarily would have left a person in the scene nervous, confused, or in common parlance, "rattled." To this already uncommon event was added the shooting of Rosita's husband who charged the robbers with a "bangko" and was promptly shot, not once but three times. These factors add up to our conclusion of the unlikelihood of an independent and reliable identification. (Emphasis supplied)

The clear import of Rodrigo is that an out-of-court identification, made by the lone witness, who was subjected to impermissible photographic suggestion, fatally tainted the subsequent in-court identification made by the same witness. Accordingly, the testimony of such witness on the identification of the accused, by itself, cannot be considered as proof beyond reasonable doubt of the identity of the perpetrator of the crime. Without proof beyond reasonable doubt of the identity of the perpetrator, the accused deserves an acquittal.

Inasmuch as the present case involves the alleged positive identification by a lone eyewitness and the entire case depends on such identification, the Rodrigo case squarely applies here. Moreover, similar to this case, the witness in Rodrigo was initially shown a single photograph of the accused.

Applying Rodrigo to this case, the sole eyewitness Alejo's out-of-court

identification which proceeded from impermissible suggestion tainted his in-court identification of Joel as one of the perpetrators of the crime. As a result, Alejo's corrupted testimony on the identification of Joel cannot be considered as proof beyond reasonable doubt of the identity of Joel as one of the perpetrators. Without such proof, Joel must be acquitted.

In his Separate Concurring Opinion, Justice Lucas P. Bersamin distinguishes Rodrigo from the instant case. Indeed, Rodrigo involved a robbery with homicide while this case is for murder. Notwithstanding the dissimilarity in the factual milieu, Rodrigo similarly dealt with the admissibility and reliability of the identification made by a sole witness and the judgment in the case totally depends on such identification. In this case, Alejo is the sole eyewitness whose identification of the perpetrators is determinative of the final outcome of this case.

Justice Bersamin errs in concluding that Alejo's alleged act of "categorically declining to identify any suspect from mere looking at a photograph" removes any taint of impermissible suggestion from the out-of-court identification. This does not detract from the fact that the police showed Alejo no other photograph, except that of Joel's. Moreover, to repeat the majority's finding: "when appellants (accused) were arrested they were already considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, x x x." Moreover, the fact remains that Joel testified that the police "showed me a picture of a man wearing eyeglasses."

Further, it must be emphasized that a highly suggestive identification results in a denial of the accused's right to due process since it effectively and necessarily deprives the accused of a fair trial. In Rodrigo, the Court stated:

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.[9]

In *Pineda*, the Court pointed out the dangers a photographic identification spawns: an impermissible suggestion and the risk that the eyewitness would identify the person he saw in the photograph and not the person he saw actually committing the crime. Citing Patrick M. Wall, the Court stated:

[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' 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."

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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.[10]

Due process dictates that the photographic identification must be devoid of any impermissible suggestions in order to prevent a miscarriage of justice. In *People v. Alcantara*, the Court declared:

Due process demands that identification procedure of criminal suspects must be free from impermissible suggestions. As appropriately held in *US vs. Wade*, "the influence of improper suggestion upon identifying witness probably accounts for more miscarriages of justice than any other single factor." [11] (Emphasis supplied)

Therefore, the police's act of showing a single photograph to Alejo, prior to "identifying" Joel as a suspect, corrupted the identification procedure with impermissible suggestion. Through this illegal procedure, the police, purposely or otherwise, suggested and implanted on Alejo's mind that Joel was one of the perpetrators, thereby violating Joel's right as an accused to due process. Not only did the police disregard recognized and accepted rules in photographic identification, they likewise transgressed the clear mandate of the Constitution that "No person shall be deprived of life, liberty, or property without due process of law." More particularly, the police violated Section 14(1) of the Constitution which provides: "No person shall be held to answer for a criminal offense without due process of law."

II. The accused was not assisted by counsel

during the police line-up, violating the accused's

right to counsel in a custodial investigation.

The second out-of-court identification of Joel was made by Alejo when Joel and Delos Santos were presented in a police line-up conducted at the Criminal Investigation Division in Camp Karingal on 21 June 1996, two days after the first out-of-court identification of Joel. As stated above, Alejo was shown a picture of Joel prior to the latter's arrest on 19 June 1996. Similar to the first out-of-court identification, the identification of Joel in a police line-up likewise proceeded from impermissible suggestion. Alejo already saw Joel's photograph and had seen Joel in person when Alejo pinpointed Joel as a suspect. The necessity for the police line-up was doubtful and the conduct thereof suspicious considering that Joel was already identified by Alejo when the latter went with the police to Fairview to "pinpoint the suspect."

More importantly, the police denied Joel his right to counsel during the line-up, contrary to Section 12(1) of the Constitution which provides:

Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

In *People v. Escordial*,^[12] the Court pertinently ruled:

As a rule, an accused is not entitled to the assistance of counsel in a police line-up considering that such is usually not a part of the custodial inquest. However, the cases at bar are different inasmuch as accused-appellant, having been the focus of attention by the police after he had been pointed to by a certain Ramie as the possible perpetrator of the crime, was already under custodial investigation when these out-of-court identifications were conducted by the police.

An out-of-court identification of an accused can be made in various ways. In a show-up, the accused alone is brought face to face with the witness for identification, while in a police line-up, the suspect is identified by a witness from a group of persons gathered for that purpose. During custodial investigation, these types of identification have been recognized as “critical confrontations of the accused by the prosecution” which necessitate the presence of counsel for the accused. This is because the results of these pre-trial proceedings “might well settle the accused’s fate and reduce the trial itself to a mere formality.” We have thus ruled that any identification of an uncounseled accused made in a police line-up, or in a show-up for that matter, after the start of the custodial investigation is inadmissible as evidence against him. (Emphasis supplied)

As stated in *Escordial*, generally, an accused is not entitled to the assistance of counsel in a police line-up considering that such is usually not a part of custodial investigation. An exception to this rule is when the accused had been the focus of police attention at the start of the investigation. The line-up in this case squarely falls under this exception. It was established that Joel was already a suspect prior to the police line-up. In fact, even before Joel’s apprehension, the police had already zeroed in on Joel as one of Abadilla’s killers. As such, Joel was entitled to counsel during the police line-up.

However, there is no question that Joel was not assisted by counsel, whether of his own choice or provided by the police, during the line up. As Joel’s identification was uncounseled, it cannot be admitted in evidence for grossly violating Joel’s right to counsel under Section 12(1) of the Constitution.

Further, the Court held in *Escordial* that the testimony of the witness regarding the inadmissible identification cannot be admitted as well, thus:

Here, accused-appellant was identified by Michelle Darunda in a show-up on

January 3, 1997 and by Erma Blanca, Ma. Teresa Gellaver, Jason Joniega, and Mark Esmeralda in a police line-up on various dates after his arrest. Having been made when accused-appellant did not have the assistance of counsel, these out-of-court identifications are inadmissible in evidence against him. Consequently, the testimonies of these witnesses regarding these identifications should have been held inadmissible for being “the direct result of the illegal lineup ‘come at by exploitation of [the primary] illegality.’”[13]

III. The in-court identification of the accused

did not cure the flawed out-of-court identification.

Citing Patrick M. Wall,[14] the majority enumerated the danger signals which give warning that the identification may be erroneous even though the method used is proper. Contrary to the majority, some of these danger signals are present in this case: (1) a serious discrepancy exists between the identifying witness’ original description and the actual description of the accused; (2) the limited opportunity on the part of the witness to see the accused before the commission of the crime; (3) a considerable time elapsed between the witness’ view of the criminal and his identification of the accused; and (4) several persons committed the crime.

A. Discrepancy between original description and actual description

In his sworn statement, which was executed barely five hours after the commission of the crime, Alejo was able to recall the features of only two suspects, those of one of the gunmen and one of the lookouts. Significantly, Alejo failed to remember the physical attributes of the rest of the suspects. Alejo described the two suspects as follows:

20. T – Kung makita mo bang muli ang mga suspect, makikilala mo ba sila?

S – Maaari, sir.

21. T – Ano ba ang itsura ng mga suspect?

S – Iyong tumutok sa akin ay naka-asul na t-shirt, edad 30-35, 5’5” - 5’6” ang taas, maikli ang buhok, kayumanggi. xxx Iyong sumakal sa biktima at nang-agaw ng clutch bag nito ay 25-30 ang edad, payat, mahaba ang buhok na nakatali, maitim, may taas na 5’5”-5’6”, maiksi din ang baril niya at nakaputing polo. xxx

22. T – Ang sabi mo, pagbangon mo sa pagkadapa sa guardhouse ay wala na ang mga suspect, may napansin ka bang sasakyan man sila sa pagtakas?

S – Mabilis nga sir ang pangyayari. Wala din akong napansin kung may sasakyan man sila sa pagtakas. (Emphasis supplied)

In his in-court identification of the suspects, two months after the crime, Alejo identified Lumanog as Suspect No. 1, who allegedly took the clutch bag of the victim, “sinakal ang biktima, inilabas ng kotse at nang bagsak sa kalsada ay binaril pa uli.”

However, Lumanog’s actual age and physical features are nowhere close to Alejo’s description of the gunman in his sworn statement. In a newspaper article, it was reported that the “police sketch of killer bore no resemblance to any of the Abadilla 5 (referring to the five accused).”[15] Lumanog is fair complexioned, definitely not “maitim;” 40 years old, not 25 to 30 years of age; and sported a short, not long, hair. The grave disparity between the description of the gunman in Alejo’s sworn statement and in his testimony greatly undermines Alejo’s credibility in identifying the perpetrators of the gruesome crime.

Yet, the majority brushed aside Alejo’s inconsistencies, justifying the same, thus:

Alejo’s description of Lumanog as dark-skinned was made two (2) months prior to the dates of trial when he was again asked to identify him in court. When defense counsel posed the question of the discrepancy in Alejo’s description of Lumanog who was then presented as having fair complexion and 40 years old, the private prosecutor manifested the possible effect of Lumanog’s incarceration for such length of time as to make his appearance different at the time of the trial.[16]

Notably, the majority failed to consider the disparity in the suspect's estimated age and Lumanog's actual age. Alejo described the gunman as between 25-30 years old, while Lumanog was actually 40 years old. Certainly, a 40 year old man could not be mistaken for a 25 or 30 year old male, unless the prosecution had shown that Lumanog, despite his age, looked quite young, or that Lumanog underwent facial surgery before he supposedly shot the victim to appear as a 25-30 year old male.

With respect to one of the lookouts, who pointed a gun at him, Alejo described him in his sworn statement as "edad 30-35, 5'5"-5'6" ang taas, maikli ang buhok, kayumanggi." It must be pointed out that Alejo was only able to give a prior description of one of the lookouts who pointed a gun at him, despite his later testimony that there were two lookouts who threatened his life and were walking to and fro in front of his guardpost prior to the killing, suggesting Alejo had ample time to see and familiarize himself with the faces of these two lookouts.

Considering that in open court, Alejo testified that there were two suspects who each pointed a gun at him, whom he identified as Joel and Delos Santos, the prosecution must sufficiently and clearly establish as to who between these two accused would the description in Alejo's sworn statement be used as basis for identification. This the prosecution gravely failed to do.

With respect to Joel, Alejo's prior description given before the police did not match Joel's physical features. Joel was only 22 years old then, leaving at least an 8-year difference as to the age of the lookout who was described by Alejo as 30-35 years old. The majority explained the difference in the age by stating, thus:

Though his estimate of Joel's age was not precise, it is not far from his true age, especially if we consider that being a tricycle driver who is exposed daily to sunlight, Joel's looks may give a first impression that he is older than his actual age.[17]

The majority's explanation is purely speculative. There was no evidence presented to prove (1) that Joel plied his tricycle everyday during daytime; (2) the amount of Joel's exposure to sunlight; and (3) such exposure was excessive as to result to premature aging of the facial skin.

Moreover, Joel's height is 5'9" whereas the man whom Alejo described as lookout was about 5'5"-5'6" tall. There was no explanation offered as to the disparity in the height.

To repeat, Alejo described only one lookout in his sworn statement, contrary to his testimony that there were two lookouts. For such conflicting statements, the trial court acquitted Delos Santos, thus:

The typewriter recording at 1:55 in the afternoon of SG Alejo's salaysay is but the culmination of a long process of oral interviews and conversation so that the results thereof can be put in systematic order. Additionally, at that period in time, SG Alejo's recollection is still very recent and fresh and he appears to be solely in touch with police investigators who came to know of the ambush that same morning. His court testimony, therefore, given at a much later date (August 1996) after the arrest of Lorenzo delos Santos wherein SG Alejo narrated that there were two (2) men loitering about near his post and that one after the other those two men barked at or ordered him is weakened by what he had earlier told police investigators disclosing that only one (1) person shouted orders at him. In view of this, the court finds the alibi of Lorenzo to have been correspondingly strengthened as to put in doubt the prosecution's case against this particular accused.

The trial court disbelieved Alejo's testimony wherein he pinned Joel and Delos Santos as the suspects who were walking to and fro and threatened him at his guard post. Despite the fact that in terms of proximity to Alejo, these two suspects were nearest him, and would most likely be recognized, if seen again, the trial court doubted Alejo's identification of Delos Santos. Alejo's testimony is fatally inconsistent with his earlier

claim that there was only one lookout who twice ordered him to lie down (“baba”).

Considering there was sufficient reason to doubt Delos Santos’ culpability based on Alejo’s conflicting statements, there is more reason to doubt Joel’s participation in the crime. The discrepancy between Alejo’s description given before the police and the actual physical appearance of Joel, and the inconsistency in the number of lookouts, severely weakened the credibility of Alejo in identifying the real culprits.

B. Limited opportunity for Alejo to see the criminals

There is no dispute that Alejo does not know the murderers. Neither does he know the accused. Alejo saw the gunmen and lookouts for the first time during the killing. In Rodrigo, the Court observed:

This fact can make a lot of difference as human experience tells us: in the recognition of faces, the mind is more certain when the faces relate to those already in the mind’s memory bank; conversely, it is not easy to recall or identify someone we have met only once or whose appearance we have not fixed in our mind.[18]

Aside from the fact that Alejo did not know the killers, Alejo saw them very briefly. In fact, in his own words, he admitted this to the police investigators when he answered “mabilis ang mga pangyayari, sir.” Likewise, in his testimony, Alejo stated:

ATTY. AZARCON

Q And how long a time when the first suspect poked the gun at you and the time you faced the other suspect?

A I faced the man who poked a gun at me for about 5 seconds and then I looked back towards the four suspects.

Q How long a time were you facing the four suspects?

A Less than a minute, sir.[19]

We agree with the accused that the swiftness by which the crime was committed and the physical impossibility of memorizing the faces of all the perpetrators of the crime whom the witness saw for the first time and only for a brief moment under life-threatening and stressful circumstances incite disturbing doubts as to whether the witness could accurately remember the identity of the perpetrators of the crime.

C. A considerable time elapsed between the witness' view of the criminal and his identification of the accused.

Except for Joel and Delos Santos, the rest of the accused were identified for the first time in open court when Alejo testified during the trial. It must be stressed that there was neither any prior identification nor prior description of Lumanog, Santos, Rameses, and Fortuna as murder suspects in this case.

The crime took place on 13 June 1996, while Alejo testified in August 1996. Alejo was never made to identify Lumanog, Santos, Rameses, and Fortuna prior to their arrest until their in-court identification was made. Two months had elapsed between Alejo's view of the criminals and his identification of the accused in open court. Alejo's memory, just like any other human's, is frail. In fact, as noted by the trial court, Alejo's recollection at the time he gave his statement before the police investigators was more recent and fresher than when Alejo testified in court. Accordingly, the trial court gave more credence to Alejo's sworn statement than his testimony in acquitting Delos Santos.

Considering Alejo's weak recollection of the incident, it is quite incredible that Alejo, at the time he identified the accused in open court, had perfect memory as to the identity of the five accused, who were complete strangers allegedly seen by Alejo for the first time on 13 June 1996 in a very fleeting and extremely stressful moment.

D. Several persons committed the crime.

According to Alejo, six men perpetrated the crime. He saw these six male adults, all complete strangers, for the very first time in a matter of seconds. It is quite unbelievable that Alejo, whose life was threatened by at least one of the suspects, focused his attention on all six suspects, looked at them at the same time, and memorized their faces and features in less than a minute. In fact, he did not witness the entire incident as it unfolded. Alejo did not even see the suspects flee the crime scene in a white Kia Pride car as he was ordered to lie down by one of the lookouts. The physical impossibility of looking at the faces of six different men at the same time points to the incredibility of Alejo's testimony, certain details of which clearly run counter to human nature and experience.

IV. Alejo's in-court identification of the accused

proceeded from illegal police activities.

As discussed earlier, Alejo's in-court identification of Joel proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. As a consequence, Alejo's testimony based on such fatally defective identification cannot be considered as proof beyond reasonable doubt of the identity of the perpetrators, warranting Joel's acquittal.

As regards Lumanog, Fortuna, Santos and Rameses, it was Joel, through a coerced confession, who supplied the police investigators with the identities of his supposed cohorts and their whereabouts. The majority notes that "Police officers claimed that

appellants were apprehended as a result of “hot pursuit” activities on the days following the ambush-slay of Abadilla. There is no question, however, that when appellants were arrested they were already considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, while the rest of appellants were taken by the same operatives in follow-up operations after Joel provided them with identities of his conspirators and where they could be found.”

The police did not possess any description or prior identification of these accused. There was no leading information, or any piece of reliable information for that matter, on the identity of the killers, except Joel’s illegally extracted extrajudicial confession. Neither did the police have any evidence linking the other accused to the crime. To repeat, Joel provided the police, through a coerced confession, with the identities of his supposed co-conspirators and where they could be found. Clearly, “the police investigators are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists.”[20]

The majority strikes down “the extrajudicial confession [which were] extracted in violation of constitutional enshrined rights and declares it inadmissible in evidence.” Since Joel’s coerced extrajudicial confession is inadmissible, the contents of which, specifically the identities of the supposed killers, are unreliable and inadmissible as well.

In Escordial, the Court stated that the testimonies of the witnesses on the identification of the accused should be held inadmissible for being “the direct result of the illegal lineup ‘come at by exploitation of [the primary] illegality.’”[21] Here, being a direct result of an illegal police activity, that is the coerced extraction of a confession from Joel, the subsequent in-court identification by Alejo of Lumanog, Rameses, Fortuna and Santos must be rejected. The testimony of Alejo on the identification of the accused as perpetrators of the crime cannot be given any weight. Alejo’s in-court identification of Lumanog, Rameses, Fortuna, and Santos was fatally tainted because the identity of the suspects came from a coerced confession of Joel, who himself was identified as a suspect through a fatally defective impermissible suggestion to Alejo. In short, Alejo’s identification of Joel was fatally defective; Alejo’s identification of Lumanog, Rameses, Fortuna and Santos was also fatally defective. Both identification directly emanated from illegal police activities – impermissible suggestion and coerced confession.

Without any credible evidence of their identification as the perpetrators of the crime, Lumanog, Rameses, Fortuna, Santos, and Joel must therefore be acquitted.

V. Alejo's familiarity with the faces of the accused,
due to media exposure of the identities of the accused
extracted from a coerced confession,
impaired his in-court identification.

After the police investigators had illegally extracted from Joel the identities and locations of the other suspects, and after they had arrested Lumanog, Rameses, Fortuna and Santos, the police proudly declared: "crime solved" and "case closed." With this remarkable development, the accused were presented before the media in a press conference in Camp Crame on 24 June 1996 or 11 days after the killing. The accused were photographed by mediamen and interviewed by members of the press. During the press conference, the accused were made to squat on the floor, their names written on boards dangling from their necks.[22]

Indisputably, the police extracted the identities of the accused from a coerced confession of Joel. Then the police arrested the accused, and allowed the media to take their pictures with their names written on boards around their necks. The media promptly published these pictures in several newspapers. Thus, at that time, the faces of the accused were regularly splashed all over the newspapers and on television screens in news reports. Alejo could not have missed seeing the faces of the accused before he identified them in court. To rule otherwise strains credulity.

Alejo, as the star witness in this case, must naturally be interested to look, or even stare, at the faces of the alleged killers to make sure he identifies them in court. Assuming Alejo failed to personally see the faces of the accused in the newspapers or television, which is highly improbable, if not totally impossible, his family and friends, if not the police, would have provided him with photographs of the accused from the newspapers for easier identification later in court. Surely, Alejo had ample time to memorize and familiarize himself with the faces of the accused before he testified in court and identified Lumanog, Santos, Rameses, Joel, and Fortuna as the killers of Abadilla.

To give credence to Alejo's in-court identification of the accused is to admit and

give probative value to the coerced confession of Joel. Clearly, the publication of the pictures of the accused in the newspapers and television came directly from the coerced confession of Joel. Alejo would not have been able to identify the accused without the pictures of the accused that were taken by media as a result of the coerced confession of Joel.

Inexplicably, the majority fails to consider this extensive media exposure of the accused in ascertaining the reliability and admissibility of Alejo's testimony on the identities of the accused. The majority ignores the fact that Alejo had seen the accused in print and on television, guaranteeing Alejo's in-court identification of the accused as the perpetrators of the crime. The media exposure of the accused casts serious doubts on the integrity of Alejo's testimony on the identification of the murderers. Such doubts are sufficient to rule that Alejo's in-court identification of the accused as the perpetrators of the crime is neither positive nor credible. "It is not merely any identification which would suffice for conviction of the accused. It must be positive identification made by a credible witness, in order to attain the level of acceptability and credibility to sustain moral certainty concerning the person of the offender." [23]

VI. The police investigation and apprehension

of the accused violated the accused's rights

against warrantless arrest

and against any form of torture.

The police arrested Joel, without any warrant, on 19 June 1996 or six days after the killing. Six days is definitely more than enough to secure an arrest warrant, and yet the police opted to arrest Joel and the other accused, without any warrant, claiming that it was conducted in "hot pursuit." In law enforcement, "hot pursuit" can refer to an immediate pursuit by the police such as a car chase. [24] Certainly, the warrantless arrest of Joel, made six days after the murder, does not fall within the ambit of "hot pursuit."

The question now is whether the successive warrantless arrests of the accused are legal. The pertinent provisions of Rule 113 of the Rules on Criminal Procedure on warrantless arrest provide:

Sec. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

None of the above instances is present in this case: (1) the accused were not arrested in flagrante delicto; (2) the arrest was not based on personal knowledge of the arresting officers that there is probable cause that the accused were the authors of the crime which had just been committed; (3) the accused were not prisoners who have escaped from custody serving final judgment or temporarily confined while their case is pending. There is no question that all the accused were apprehended several days after the crime while doing ordinary and unsuspecting activities. There is also no question that the police had no personal knowledge of probable cause that the accused were responsible for the crime which had been committed. The third situation is inapplicable since the accused are not prison escapees. Considering these facts, there is indeed no justification for the warrantless arrests effected by the police in their so-called "hot pursuit." Such warrantless arrest, therefore, amounts to a violation of Section 2, Article III of the Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The police investigation work in this case, which led to the unlawful warrantless arrest of the accused, is nothing but sloppy: (1) they chose to rely solely on the sworn statement of one eyewitness (Alejo); (2) they failed to obtain any description of the suspects from other eyewitnesses, including the owner of the Kia Pride which was forcefully obtained by the suspects as a get-away car; (3) they showed Alejo a picture of Joel to assist him in identifying the “suspect”; and (4) they arrested the other accused based entirely on the illegally extracted extrajudicial confession of Joel.

Worse than their illegal warrantless arrest, the accused reportedly underwent unspeakable torture in the hands of the police. While the Commission on Human Rights, “in its Resolution dated July 16, 1996, did not make any categorical finding of physical violence inflicted on the appellants by the police authorities, the CHR found prima facie evidence that the police officers could have violated Republic Act No. 7438, particularly on visitorial rights and the right to counsel, including the law on arbitrary detention, x x x.”

The majority also finds that “P/Insp. Castillo admitted that the initial questioning of Joel began in the morning of June 20, 1996, the first time said suspect was presented to him at the CPDC station, even before he was brought to the IBP Office for the taking of his formal statement. Thus, the possibility of appellant Joel having been subjected to intimidation or violence in the hands of police investigators as he claims cannot be discounted.” During the trial, the police miserably failed to explain Joel’s whereabouts from the time he was arrested on 19 June 1996 until he was interrogated the next day. Further, there were sufficient evidence that Joel and the other accused suffered physical injuries consistent with torture bruises.

The speedy resolution of a crime is never a license for the police to apprehend any person and beat him to admit his participation in a gruesome crime. In this case, without any credible evidence linking the accused to the murder, the police blindly resorted to

careless investigation and unlawful apprehension of innocent men. Worse, the police apparently tortured the accused to answer for the brutal slaying of Abadilla.

Indisputably, torturing the accused to extract incriminating confessions is repugnant to the Constitution. Section 12(2), Article III of the Constitution expressly provides “[n]o torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against [an accused].” The blatant and unacceptable transgression of the accused’s constitutional rights, for the sake of delivering speedy, but false, justice to the aggrieved, can never be countenanced. This Court can never tolerate official abuses and perpetuate the gross violation of these rights. The presumption that a public officer had regularly performed his official duty can at no instance prevail over the presumption of innocence.

VII. Conclusion

In reviewing criminal cases, the Court must carefully determine and establish “first, the identification of the accused as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution’s compliance with legal and constitutional standards; and second, all the elements constituting the crime were duly proven by the prosecution to be present.”[25] The inexistence of any of these two factors compels us to acquit the accused.[26]

In this case, the identification of the accused as the perpetrators of the crime was not clearly and convincingly established raising reasonable doubt on the accused’s guilt for the crime charged.

Apart from breaching established rules on photographic identification, the out-of-court identification of the accused Joel De Jesus infringes upon his fundamental Constitutional rights (1) to due process; and (2) to counsel. Specifically, the highly suggestive photographic identification of Joel made by Alejo violated Joel’s due process rights under Section 1, Article III and Section 14(1) of the Constitution. Meanwhile, the failure of the police to provide Joel with the assistance of counsel during the police lineup, regarded as a part of custodial investigation, violated Section 12(1) of the Constitution.

On the other hand, the in-court identification of Joel and the rest of the accused did not cure the flawed out-of-court identification. Contrary to the majority's view, various circumstances signal an erroneous identification: (1) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused; (2) the limited opportunity on the part of the witness to see the accused before the commission of the crime; (3) a considerable time elapsed between the witness' view of the criminal and his identification of the accused; and (4) several persons committed the crime.

Moreover, it was clearly established that Joel was tortured in admitting his participation in the crime and in providing the identities of his supposed co-conspirators. Such despicable act violated the accused's right under Section 12 (2) of the Constitution. The torture, aside from the failure of the police to provide Joel with counsel, renders his extrajudicial confession inadmissible. Significantly, without such coerced confession, the police had nothing to implicate the other accused to the murder.

Further, the police arrested the accused without warrant contrary to Section 2, Article III of the Constitution. Also, none of the instances under Rule 113 of the Rules on Criminal Procedure exists to justify the accused's warrantless arrest.

It devolves upon the police authorities, as law enforcers, to ensure the proper and strict implementation of the laws, most specially, the fundamental law of the land. Lamentably, the present case showcases the dark reality in our country, where the police at times assumes the role of law offenders. The policemen, boasting of solving a highly sensationalized crime, flagrantly disregarded the accused's constitutional rights. These men in uniform openly defiled the Constitution, which they are bound to observe and respect, by infringing upon the accused's rights guaranteed under (1) Section 1, Article III; (2) Section 14(1); (3) Section 12(1); (4) Section 12 (2); and (5) Section 2, Article III of the Constitution. Such violations simply cannot be countenanced. Instead, they deserve utmost condemnation. As the Court declared emphatically in *Alcantara*:

The records show that [the police] illegally arrested appellant, arbitrarily detained, physically abused and coerced him to confess to a crime penalized by nothing less than

reclusion perpetua. Too often, our law enforcers, in their haste to solve crimes, strip people accused of serious offenses of the sanctity of their constitutional rights. It is again time to pound on these law enforcers with the crania of cavern men that the guarantees of the rights of an accused in the Constitution are not mere saccharine statements but the bedrock of our liberty. If we allow a meltdown of these guarantees, our democracy will be a delusion. (Emphasis supplied)

In view of the gross violations of the accused's constitutional rights as well as the seriously flawed identification of the accused as the perpetrators of the crime, there is sufficient reason to doubt the accused's guilt for the crime charged. To repeat, the prosecution failed to discharge its burden of proof, specifically to prove the identity of the perpetrators of the crime beyond reasonable doubt. Accordingly, the presumption of innocence in favor of the accused prevails. The accused need not even raise the defenses of denial and alibi as the burden of proof never shifted to the defense. "Any consideration of the merits of these defenses is rendered moot and will serve no useful purpose."^[27] Therefore, the accused are entitled to an acquittal.

Accordingly, I vote to GRANT the appeals and ACQUIT all the accused.

ANTONIO T. CARPIO

Associate Justice

[1] http://en.wikipedia.org/wiki/Presumption_of_innocence

[2] Id.

[3] People v. Ulpindo, G.R. No. 115983, 12 April 1996; People v. Subido, G.R. No. 115004, 5 February 1996; People v. Payawal, G.R. No. 113995, 16 August 1995.

[4] TSN, 3 September 1996, pp. 21-22.

[5] G.R. Nos. 111206-08, 6 October 1995, 249 SCRA 54.

[6] G.R. No. 141644, 27 May 2004, 429 SCRA 478, 497-498.

[7] Id. at 498.

- [8] G.R. No. 176159, 11 September 2008, 564 SCRA 584, 597, 600, 609-610.
- [9] Id. at 598-599.
- [10] People v. Pineda, supra at 498.
- [11] G.R. No. 91283, 17 January 1995, 240 SCRA 122, 135.
- [12] G.R. Nos. 139834-35, 16 January 2002, 373 SCRA 585, 607.
- [13] Id. at 607-608.
- [14] A well-known authority in eyewitness identification (see People v. Pineda, supra).
- [15] <http://news.google.com/newspapers?nid=2479&dat=20021210&id=Alk1AAAAIIBAJ&sjid=iyUMAAAAIIBAJ&pg=3075,32965267>
- [16] Decision, p. 68.
- [17] Decision, p. 68.
- [18] Supra at 604.
- [19] TSN, 4 September 1996, p. 28.
- [20] People v. Rodrigo, supra at 599.
- [21] People v. Escordial, supra at 608 citing Gilbert v. California, 388 U.S. 263, 272-273, 18 L.Ed.2d 1178 (1967).
- [22] <http://news.google.com/newspapers?nid=2479&dat=20021210&id=Alk1AAAAIIBAJ&sjid=iyUMAAAAIIBAJ&pg=3075,32965267>
- [23] People v. Gamer, 383 Phil. 557, 570 (2000).
- [24] http://en.wikipedia.org/wiki/Hot_pursuit. See People v. Bati, G.R. No. 87429, 27 August 1990, where the two accused were pursued and arrested a few minutes after consummating the sale of marijuana.
- [25] People v. Rodrigo, supra at 597.
- [26] Id.

[27] People v. Rodrigo, *supra* at 611-612.