Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **September 28, 2022**, *which reads as follows:*

"G.R. No. 232944 ***(Lexlie Hermoso, Jr. y De Leon v. People of the Philippines)***. — Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the February 13, 2017 Decision[2] and the July 13, 2017 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 37460.[4]

Petitioner Lexlie Hermoso, Jr. (Lexlie) is challenging his conviction for Carnapping as defined under Republic Act No. (RA) 6539,[5] also known as the "Anti-Carnapping Act of 1972," as amended. He is essentially arguing that his identity as the perpetrator and the fact of the loss of the motorcycle involved were not properly proven.

The facts, based on the testimonies of the prosecution's and defense's witnesses, as found by the lower courts, are as follows:

On July 13, 2010, at around 2:30 p.m., Emerson Loria (Emerson) and his wife Maricel Loria (Maricel) went to the Vizcaya Prime Care Clinic in Solano, Nueva Vizcaya, for the latter's regular check-up.[6] Emerson rode their motorcycle, a Yamaha MIO, while Maricel took a tricycle because she could not ride with Emerson on their motorcycle as she was pregnant at the time.[7]

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1 *Rollo*, pp. 14-37.
2 Id. at 33-48. Penned by Associate Justice Ricardo R. Rosario (now a Member of this Court) and concurred in by Associate Justices Edwin D. Sorongon and Marie Christine Azcarraga-Jacob.
3 Id. at 50. Penned by Associate Justice Ricardo R. Rosario (now a Member of this Court) and concurred in by Associate Justices Edwin D. Sorongon and Marie Christine Azcarraga-Jacob.
4 *Rollo*, p. 50.
5 Entitled "AN ACT PREVENTING AND PENALIZING CARNAPPING." Approved: August 26, 1972.
6 *Rollo*, pp. 40-42.
7 Id.

When the check-up was finished, Emerson went out of the clinic in order to withdraw money to pay their medical bill.[8] Upon reaching his motorcycle and opening the "U-Box" to get his helmet, he realized he forgot his cellphone in the clinic and hence, he went back inside the clinic.[9] However, as he was about to open the door of the clinic, around eight meters away from the motorcycle, he heard his motorcycle's engine starting. Apparently, he forgot to remove his motorcycle key when he opened the "U-box" earlier.[10] He looked back and saw someone on board his motorcycle proceeding to the direction of another town, Bayombong.[11] He ran after the motorcycle while shouting in the vernacular that his motorcycle was being stolen.[12]

Emerson then boarded a nearby tricycle driven by Dionisio Galamay (Dionisio), and the two tried to chase the stolen motorcycle to no avail.[13] The two then reported the incident to the police.[14]

On August 4, 2010, Emerson received a call from the police, informing him that they have a lead on a suspect.[15] Hence, at around 11:00 a.m., Emerson together with Dionisio went to the police station.[16] The two were shown a picture of a person and they both identified that the person in the picture was the one who stole the motorcycle.[17] The person in the picture was later identified as Lexlie.[18]

An Information dated March 8, 2011 was filed,[19] charging Lexlie with a violation of RA 6539, as amended. The accusatory portion thereof reads:[20]

> That on or about the July 13, 2010, at about 2:30 p.m., in the Municipality of Solano, Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, with intent to gain, but without violence against or intimidation of persons, take, steal and cart away a Yamaha Mio Soul motorcycle with plate number 4564BK belonging to EMERSON LORIA y JAVIER, without his consent, which taking has resulted to the damage and prejudice of said Emerson J. Loria.
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> CONTRARY TO LAW.[21]

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8 Id.
9 Id.
10 Id.
11 Id.
12 Id.
13 Id.
14 Id.
15 Id.
16 Id.
17 Id.
18 Id.
19 Records, p. 1.
20 Id.
21 Id.

Upon his arraignment on October 14, 2011, Lexlie pleaded not guilty to the offense charged against him.[22]

He denied committing the offense and asserted that on the day of the incident, he was in his parents' house from morning until around 5:00 p.m., when he left for his friend's house.[23] He claimed that while in his parents' house, he helped clean the house and prepare the "*kakanins*" that were to be sold.[24] To support his defenses of denial and alibi, he presented the testimonies of his parents, who gave a similar account of what happened on the day of the incident: that Lexlie was at their house from morning until around 5:00 p.m., helping them prepare and cook "*kakanins*."[25]

For the prosecution, aside from the testimonies of Emerson, Maricel, and Dionisio, the testimony of Carlito Langui (Carlito) was also presented. Like Dionisio, Carlito is a tricycle driver who was lined up in front of the clinic where the incident took place.[26] At the time of the incident, he claimed to have seen a Yamaha MIO motorcycle, which is the same brand and make as Emerson's stolen motorcycle, almost tipped over because of a bump.[27] Shortly after, he heard Emerson, who came from the clinic, shouting for help as his motorcycle was stolen.[28] However, Carlito was not able to see the person driving the motorcycle that almost tipped over.[29]

Ruling of the Regional Trial Court

After trial, the RTC rendered a Decision dated February 6, 2015,[30] finding Lexlie guilty beyond reasonable doubt of Carnapping. The RTC ruled that the defenses of alibi and denial are the weakest of defenses, and in this case, the defense of alibi invoked by Lexlie must fail because it was found that it was not physically impossible for Lexlie to go to Prime Care Clinic in Solano, Nueva Vizcaya from his residence in Bayombong, Nueva Vizcaya, which is a distance of less than four kilometers, on the day the incident happened.[31] The dispositive portion of the RTC Decision reads:[32]

> WHEREFORE, for all the foregoing, this court finds the accused LEXLIE HERMOSO, JR. y DE LEON GUILTY beyond reasonable doubt of the offense charged of Violation of R.A. No, 6539 (Carnapping) and accordingly sentences him to suffer the indeterminate penalty of FOURTEEN

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22 Id. at 19.
23 *Rollo*, pp. 42-43.
24 Id.
25 Id.
26 Id. at 41-42
27 Id.
28 Id.
29 Id.
30 Records, pp. 99-104.
31 Id.
32 Id.

(14) YEARS and EIGHT (8) MONTHS, as minimum to SIXTEEN (16) YEARS as maximum.

The accused shall likewise pay the amount of P26,396.00, as actual damages, to the owner Maricel Loria.

SO ORDERED.[33]

Aggrieved, Lexlie appealed to the CA claiming that the RTC erred in convicting him despite the failure of the prosecution to prove his identity as the perpetrator and the fact of loss of the motorcycle, among others.

Ruling of the Court of Appeals

On February 13, 2017, the CA rendered a Decision denying Lexlie's appeal and affirming the RTC Decision.[34] The CA held that after evaluating the evidence on record, it is not inclined to disturb the findings and conclusions of the RTC.[35] The fact that Lexlie was seen by Dionisio on board the missing motorcycle trying to start its engine and flee with it leads to the conclusion that Lexlie was indeed the perpetrator of the crime.[36] A conviction may rest purely on circumstantial evidence, provided that the pertinent requisites concur, which the CA ruled to be present in this case.[37] Lexlie's defenses of denial and alibi, supported by mere self-serving testimony, cannot be given credence over the positive assertions of the prosecution witnesses, especially since the records are barren of any unworthy or evil motive on the part of such witnesses.[38] The dispositive portion reads as follows:[39]

WHEREFORE, the appeal is hereby DISMISSED and the assailed Decision AFFIRMED *in toto*.

SO ORDERED.[40]

Hence, the present petition before this Court.

Our Ruling

There is merit in this petition.

As a rule, questions of fact cannot be entertained by the Court; exceptions

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33 Id. at 104.
34 *Rollo*, pp. 33-48.
35 Id. at 44.
36 Id. at 44-45.
37 Id. at 45
38 Id. at 45-46.
39 Id. at 47.
40 Id.

Petitioner essentially assails that the evidence presented by the prosecution was not enough to identify him as the perpetrator of the crime with moral certainty. This question is evidently factual because it requires compromised examination of the evidence on record. Well settled is the rule that the Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.[41]

Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[42]

Here, two of the exceptions exist — that the judgment is based on a misapprehension of facts and the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion. As will be discussed *infra*, the CA and the RTC gravely erred in ignoring the utter failure of the prosecution to properly identify Lexlie as the perpetrator. To finally resolve the factual dispute, the Court deems it proper to tackle the factual questions presented.

Under the scrutiny of the totality of circumstances test as established by jurisprudence, the records have shown that Lexlie was not properly identified by the prosecution as the perpetrator

Primarily, it must be made clear that in order for an accused to be convicted, the prosecution has the twin burden: 1) to prove the commission of the crime; and 2) the positive identification with moral certainty of the accused as the perpetrator thereof.[43] Thus, there can be no conviction if the prosecution failed to positively identify the accused with moral certainty, even if the elements of the crime were already proven.

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41 *Ramos v. People*, 826 Phil. 663 (2018).
42 Id. at 674-675.
43 *People v. Caliso*, 675 Phil. 742, 752 (2011).

In *People v. Caliso*,[44] the Court expounded on what constitutes moral certainty in the identification of the accused, to wit:

> In every criminal prosecution, no less than moral certainty is required in establishing the identity of the accused as the perpetrator of the crime. x x x The test to determine the moral certainty of an identification is its imperviousness to skepticism on account of its distinctiveness. To achieve such distinctiveness, the identification evidence should encompass unique physical features or characteristics, like the face, the voice, the dentures, the distinguishing marks or tattoos on the body, fingerprints, DNA, or any other physical facts that set the individual apart from the rest of humanity.[45] (Underscoring supplied)

Applying the foregoing to the instant case, it is evident that the prosecution had failed to identify Lexlie with moral certainty as the perpetrator of the subject offense. The records would show that both the out-of-court and in-court identification of Lexlie was tainted with fatal infirmities that violate due process and is contrary to the standard of moral certainty required by law.

Out-of-court identification

With regard to the out-of-court identification, records show that Lexlie was first identified as the suspect of the alleged carnapping of Emerson's motorcycle after about three weeks from the incident or on August 4, 2010, when the Solano Police Station called Emerson to inform the latter that they have a lead on a suspect.[46] Dionisio accompanied Emerson to the police station where the police showed them a picture of a lone suspect, despite there being no prior description of the carnapper provided to the police.[47] Without showing pictures of other possible suspects, the police then asked Emerson and Dionisio if the person in the picture was the one who stole Emerson's motorcycle on July 13, 2010, to which they responded in the affirmative.[48]

In the case of *People v. Rodrigo*,[49] this Court acknowledged the importance of out-of-court identification and even enumerated some established procedures to catch criminals, to wit:

> The aspect of this case that remains unexplored, despite the availability of supporting evidence, is Rosita's out-of-court identification of Rodrigo, done for the first time through a lone photograph shown to her at the police station, and subsequently, by personal confrontation at the same police station at an undisclosed time (presumably, soon after Rodrigo's arrest). Jurisprudence has

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[44] Id.
[45] Id. at 756.
[46] *Rollo*, p. 41.
[47] Id.
[48] Id.
[49] *People v. Rodrigo*, 586 Phil. 515 (2008).

> acknowledged that out-of-court identification of an accused through photographs or mug shots is one of the established procedures in pinning down criminals. Other procedures for out-of-court identifications may be conducted through show-ups where the suspect alone is brought face to face with the witness (a procedure that appears to have been done in the present case as admitted by Rosita and noted in the decision, or through line-ups where a witness identifies the suspect from a group of persons lined up for the purpose.[50] (Underscoring supplied)

In *People v. Gamer*,[51] this Court held that in order for an out-of-court identification to be valid it must pass the totality of circumstances test, the criteria of which was explained as follows:

> It may be noted, further, that appellant was convicted by the trial court upon the identification of appellant made by Corazon Loremas and her sister, Zenaida Nazal, during the trial. As evidence, the value of the in-court identification, however, is here largely dependent upon an out-of-court identification made during an alleged police line-up. Both appellant and Siron, consistently denied that a line-up was conducted by the police, thus directly controverting the testimony of the prosecutions witnesses.
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> In *People v. Verzosa*, the Court enumerated factors to be considered, following the totality of circumstances test, in order to resolve the admissibility of an out-of-court identification of suspects, viz:
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> > (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.[52] (Emphasis supplied)

As applied in this case, it is evident that the out-of-court identification done by the police does not pass the totality of circumstances test and is constitutionally infirm.

First, as correctly observed by Lexlie, there was no opportunity for the witness, in this case Emerson, to see the face of the accused.[53] The relevant testimony of Carlito, the bystander tricycle driver who saw the stolen motorcycle almost tipping over because of a bump, is as follows:

Q: You mentioned of an owner. Where did that owner come from?
A: Inside the Prime Care, sir.

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[50] Id. at 529.
[51] 383 Phil. 557 (2000).
[52] Id. at 568.
[53] *Rollo*, p. 26.

Q: What did that owner do when the person drove the motorcycle and almost fell down because of the hump?
A: He did not see that, sir.

Q: Why did the owner not(sic) able to see that?
A: Because when the owner was coming out, the driver of the MIO (motorcycle) was already speeding away, sir.[54]

This testimony was corroborated by his fellow tricycle driver, Dionisio, to the extent that Emerson was just coming out of the clinic when his motorcycle was already speeding away.[55] Contradictorily, Emerson maintains that he was just about to open the clinic door (to recover his mobile phone inside) when he looked back upon hearing his motorcycle's engine get started.[56]

In either case, since the suspect was already speeding away when Emerson noticed his motorcycle being stolen, it would be highly improbable for the latter to have a good look at the former's face and thus, it would almost be impossible for Emerson to remember the suspect's face after three weeks to the extent that he would be able to identify said suspect when shown a picture of the latter.

If only for future guidance, it must be noted that while a witness could not have seen the face of the accused, it is still possible for a witness to view the perpetrator of the crime and identify the latter through other means, such as his built, height, skin tone, tattoos, birthmarks, etc. However, in the instant case, the witnesses did not even have the opportunity to view the perpetrator or any of his features due to the sudden and quick escape.

In sum, while the opportunity to view the suspect is not limited to viewing his face, the out-of-court identification procedure done by the police in this case, which was to merely show a picture of the suspect's face to Emerson, is invalid as the latter clearly had no opportunity to look at the former's face at the time when the motorcycle was speeding away.

For the second criterium, which is the witness's degree of attention at that time, the records show that Emerson was focused on recovering his mobile phone which he left inside the clinic and this appears to be the reason why he forgot to remove his motorcycle keys from the "U-Box" of his motorcycle.[57] Hence, from the time that he initially went out to get his helmet from his motorcycle's "U-Box" up until the moment when he noticed that his motorcycle was already being ridden away, it is reasonable to infer that Emerson was focused on his mobile phone and not paying any attention to his surroundings or any people near the vicinity of his motorcycle.

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[54] TSN, December 2, 2013, p. 4.
[55] *Rollo*, p. 41.
[56] Id. at 42.
[57] Id.

Therefore, considering that Emerson's attention only shifted to the suspect when the latter was already escaping, Emerson's degree of attention at this time is irrelevant, considering that he did not even have the opportunity to see the suspect's face or observe any of the latter's traits that would later lead to his identification.

As to the third criterium, which is the accuracy of any prior description given by the witness/es, the records are bereft of anything that would show that either Emerson or Dionisio, the two witnesses who identified Lexlie as the perpetrator of the crime, provided any prior description of the said perpetrator.[58] In fact, even during the time when Emerson allegedly reported the incident, there was no mention of the police asking for a description of the suspect, which could have been useful in identifying him, *i.e.,* sketching a facial composite. Moreover, neither Emerson nor Dionisio knew Lexlie personally, and it was only the police who identified the suspect in the picture as Lexlie.[59]

With regard to the fourth criterium, which is the level of certainty demonstrated by the witnesses at the identification, there is nothing in the body of evidence that would show the level of certainty when Emerson or Dionisio identified the person in the picture shown to them by the police as the same person as the perpetrator of the motorcycle theft. In fact, it seems that there was no actual "identification;" Emerson and Dionisio merely confirmed that the person in the lone picture shown to them by the police was the same person as the motorcycle thief despite having no opportunity to view the thief's face; it was only the police who identified the suspect in the picture as Lexlie, to wit:

> Q: When did you come to know the name of that person?
> A: The police [officer] called me. Then they showed me a picture and I identified him as Lexlie Hermoso, sir.
>
> Q: What police station, Bayombong, Solano or Bagabag?
> A: Solano police station, sir.
>
> Continue.
>
> PROS. TURINGAN
>
> Q: Whose picture was that?
> A: Lexlie Hermoso, sir.
>
> Q: Who told you the name Lexlie Hermoso?
> A: The police [officer], sir.[60]

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[58] Id. at 41-42.
[59] TSN, February 17, 2014, p. 5.
[60] Id.

Fifth, there was a sufficient lapse of time from the moment of the crime up to the time when the criminal was identified. It was only after three weeks after the incident, or on August 4, 2010, that Emerson and Dionisio allegedly identified the suspect.[61] This is a substantial amount of time, especially considering that neither Emerson nor Dionisio provided any prior description of the perpetrator as they were not even able to have an opportunity to see the suspect's face. Given this, it is absurd that they would suddenly remember the suspect's face after three weeks; one cannot remember something that one has not even seen.

Lastly, as to the suggestiveness of the procedure, there is no doubt that the procedure used by the police in identifying the suspect out-of-court is violative of due process and the Constitution. To reiterate, the police merely showed Emerson and Dionisio one picture of the suspect; no other pictures were shown and no police lineups were done.[62] There was also nothing that would indicate that the police asked for any prior description of the suspect before suddenly getting a lead two weeks later. Simply put, the procedure done by the police appears to be a targeted move rather than an investigation.

Moreover, the records are bereft of any explanation by the prosecution as to why or how Lexlie was pinpointed by the police as the sole suspect.

Given the totality of these circumstances, this Court is constrained to rule against the validity of the out-of-court identification given the unconstitutional methods used in its conduct.

In-court identification

Now, with regard to the in-court identification of Lexlie, it must be made clear that while the same can indeed remedy the invalid out-of-court identification,[63] there are certain conditions laid down by jurisprudence that have to be met before invoking this doctrine. The aforementioned case of *People v. Rodrigo*[64] held that the invalid out-of-court identification of a suspect tainted and consequently invalidated the subsequent in-court identification, to wit:

> 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

[61] *Rollo*, pp. 41-42.
[62] TSN, February 17, 2014, p. 5.
[63] *People v. Sabangan*, 723 Phil. 591, 614 (2013).
[64] Supra note 49.

> 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.[65]

As applied in this case, the procedure adopted by the police in the out-of-court identification of Lexlie grossly violated due process and should be discarded and given no value. The method of merely showing a picture of a specific person, for the purpose of identifying a suspect at large, without asking for any prior description, and without giving any explanation as to why that person's picture was shown, is definitely not what the law contemplates to be a valid out-of-court identification. Taking into consideration that no other pictures of other possible suspects were shown despite the amount of time that has lapsed, and the fact that the person shown (Lexlie) already has a pending case at the time and is currently serving sentence, this would lead this Court to believe that the police's method was not only highly suggestive but appears to be a calculated and targeted move to incriminate Lexlie.

The police investigators were the real actors in identifying the accused as the criminal since, in effect, the witnesses were not actually able to positively "identify" the perpetrator of the crime as they were already unduly influenced by the impermissible suggestions in the out-of-court photographic identification done at the police station.

Therefore, in line with prevailing jurisprudence, this Court is behooved to declare that the in-court identification failed to validate the out-of-court identification because the former was fatally tainted by the impermissible suggestiveness of the method used in the latter.

The other issues raised by the petition, such as whether the crime actually happened in the first place, are moot and academic as Lexlie was never identified as the perpetrator of the crime

The petition also raised several other issues such as the failure to prove the fact of loss of the motorcycle, defective information, inconsistencies in the prosecution's witnesses, and Lexlie's defenses of denial and alibi.[66] However, since Lexlie was not properly identified to be the perpetrator of the crime as extensively discussed earlier, these other issues are already moot.

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[65] Id. at 529-530. Underscoring supplied.
[66] *Rollo*, pp. 21-22.

Nevertheless, if only for academic purposes, this Court shall discuss each issue briefly.

The fact of motorcycle loss was sufficiently established

As to the claim that the prosecution failed to establish the fact of motorcycle loss since there was allegedly no documentary evidence, and that no other witnesses corroborated Emerson's testimony, this Court finds that this argument holds no water. While the lack of documentary evidence such as a police blotter or incident report is strange, the presence of such evidence is not essential in proving that a crime happened as testimonial and even circumstantial evidence may suffice to establish facts in certain cases. In this case, contrary to Lexlie's claim, Emerson's testimony, while containing some inconsistencies, was corroborated by the other prosecution witnesses as to the loss of his motorcycle. In any event, this Court finds it unlikely that Emerson would falsely report that his motorcycle was stolen, seek the help of two tricycle drivers, and go to the rigors of pursuing the case (at the risk of perjuring himself), without any apparent benefit to him.

The information was not fatally defective as to violate due process since it sufficiently provided the opportunity for the accused to pose an intelligent defense against the charge against him

Carnapping is defined and penalized under Section 2 of RA 6539, or the Anti-Carnapping Act of 1972, as amended, as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things."[67]

Notably, the elements of carnapping are: (i) the taking of a motor vehicle which belongs to another; (ii) the taking is without the consent of the owner or by means of violence against or intimidation of persons, or by using force upon things; and (iii) the taking is done with intent to gain.[68] Essentially, carnapping is the robbery or theft of a motorized vehicle.[69]

Given the above elements, it is clear that while there seems to be a mistake in the Information filed, which named Emerson as the owner of the stolen motorcycle instead of his wife, Maricel, who is the registered owner,

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67 *People v. Cariño*, 835 Phil. 1041, 1057 (2018).
68 Id. at 1057-1058.
69 Id. at 1058.

such mistake was not so substantial to the extent that due process was violated.

The essence of carnapping is the taking, without consent and with intent to gain, of a motor vehicle belonging to another. Upon perusal of the assailed information, the element of "taking a motor vehicle belonging to another" is still reflected in it, regardless of whether the motorcycle belonged to Maricel or Emerson. This means that even if the information was amended to show that Maricel owned the motorcycle, there would be no difference in the crime charged against Lexlie, and consequently, there would be no difference in Lexlie's main defense theory, which is that he was not properly identified as the perpetrator of the crime.

Moreover, Emerson and Maricel are spouses, and thus, barring any pre-nuptial agreement or other legal reasons, it is highly likely that the motorcycle is their conjugal property, and thus, technically belongs to them both.

In any event, the Information is substantially compliant in informing the accused of the charges against him, and in fact, Lexlie was still able to pose an intelligent defense against the charges against him based on the assailed information.

There is no need for the defenses of denial and alibi as the identification of the accused has been fatally tainted by irregularity and attendant inconsistences

As we have discussed earlier, the prosecution failed to positively identify with moral certainty that Lexlie was the perpetrator of the crime. Hence, there is no need for Lexlie to even avail of the defenses of denial and alibi. The case of *People v. Rodrigo*[70] explains:

> While the defenses of denial and alibi are inherently weak, they are only so in the face of an effective identification. Where, as in the present case, the identification has been fatally tainted by irregularity and attendant inconsistencies, doubt on the culpability of the accused, at the very least, has been established without need to avail of the defenses of denial and alibi. In constitutional law and criminal procedure terms, the prosecution never overcame the presumption of innocence that the accused enjoyed so that the burden of evidence never shifted to the defense. Thus, any consideration of the merits of these defenses is rendered moot and will serve no useful purpose.[71] (Emphasis supplied)

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[70] Supra note 49.
[71] Id. 541-542.

Conclusion

Given the above, it is evident that the identity of Lexlie as the perpetrator of the offense charged against him was not established with moral certainty by the prosecution, and thus, he cannot be convicted for the offense charged against him in this case.

WHEREFORE, the petition is hereby **GRANTED**. The assailed February 13, 2017 Decision and the July 13, 2017 Resolution of the Court of Appeals in CA-G.R. CR No. 37460 are **REVERSED** and **SET ASIDE**. Petitioner Lexlie Hermoso, Jr. *y* De Leon is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director General of the Bureau of Corrections, Muntinlupa City is **DIRECTED** to release petitioner from confinement unless he is being held for other lawful cause and to report the action taken hereon within five days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED." ***Kho, Jr., J.,*** *designated additional Member per Raffle dated August 23, 2022 vice* ***Rosario, J.,*** *who recused due to prior participation in the CA.*

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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2022

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