Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MARK ANTHONY PAGTAKHAN *y* FLORES, Petitioner,	**G.R. No. 257702**
	Present:
- versus -	CAGUIOA, *J.*, Chairperson, INTING, GAERLAN, DIMAAMPAO, and SINGH,* *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: February 7, 2024

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D E C I S I O N

GAERLAN, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] that assails both the Decision[2] dated November 10, 2020 and the Resolution[3] dated October 8, 2021 of the Court of Appeals (CA) in CA-G.R. CR No. 43208. Said rulings of the CA affirmed the Decision[4] dated March 13, 2019 of Branch 108, Regional Trial Court (RTC) of Pasay City in Criminal Case No. R-PSY-18-15642-CR, which convicted Mark Anthony Pagtakhan *y* Flores (petitioner) of the crime of robbery as penalized under Article 293, in relation to Article 294, Paragraph 5 of Act No. 3815, otherwise known as the Revised Penal Code.

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* On official business.

1 *Rollo*, pp. 15–34.

2 *Id.* at 35–46; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Rafael Antonio M. Santos and Tita Marilyn B. Payoyo-Villordon of the 10th Division, Court of Appeals, Manila.

3 *Id.* at 48–49; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Tita Marilyn B. Payoyo-Villordon and Angelene Mary W. Quimpo-Sale of the Special Former Tenth Division, Court of Appeals, Manila.

4 *Id.* at 63–67; penned by Presiding Judge Albert T. Cansino.

Factual Antecedents

The Information[5] against petitioner alleged the following:

INFORMATION

The undersigned Assistant City Prosecutor accuses MARK ANTHONY PAGTAKHAN of the crime of ROBBERY (*Violation of Article 294, No. 5 of the Revised Penal Code*), committed as follows:

That on or about the 27th day of August 2017, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, by means of force, violence and intimidation and armed with a gun, did then and there willfully, unlawfully and feloniously take, divest and carry away personal belongings and cash money of the complainant, to wit:

Amerikana (coat & pants)	Php	4,800.00
Clip board		280.00
Cash money		300.00
Umbrella		300.00
Shoes		1,800.00

[Amounting to a] total of Php7,480.00, to the damage and prejudice of said complainant in the amount of Php7,480.00.

Contrary to law.

December 11, 2017, Pasay City, Metro Manila.[6] (Italics in the original)

The said Information is based on the Resolution[7] of even date of the Office of the City Prosecutor (OCP) of Pasay City, which is as follows:

RESOLUTION

For resolution is the complaint for robbery filed against respondent Mark Anthony Pagtakhan.

Complainant avers that on August 27, 2017 at around 4:21 AM, he was walking along the stretch of Villaruel St., in Pasay City when respondent approached him, brought out a gun and then forcibly took his bag containing his coat and pants, clip boar[d], shoes, umbrella, and cash money. **He gave the description of the person who robbed him to the police and when he learned that respondent was held inside the Pasay City police office, he immediately went there to identify respondent**.

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5 Records, pp. 1–2.

6 *Id.* at 1.

7 *Id.* at 8–9; penned by Investigating Prosecutor Redentor E. Esperanza, and approved by City Prosecutor [Officer-in-Charge] Benjamin B. Lanto.

> The undersigned scheduled two preliminary investigation hearings for the aforesaid complaint but respondent failed to submit refuting evidence. The undersigned is therefore constrained to resolve the case base[d] on the evidence on hand.
>
> After reviewing all the evidence on record, this office is inclined to give weight and credence to the allegation of complainant as it is supported by other evidence and it is not refuted by evidence to the contrary. The sworn statement on record suggests that respondent employed violence and intimidation in order to rob complainant of his personal property.
>
> Personal violence was especially employed by respondent in order to consummate the act of taking the bag belonging to complainant. The element of intent to gain was established by complainant's allegation that his bag was taken away by respondent. Moreover, there is no evidence suggesting that complainant has motive to fabricate a story against respondent and his companion, hence, weight and credence must be accorded to his allegations that respondent took his personal belonging[s] against his consent. All the foregoing circumstances establish probable cause against respondent.
>
> WHEREFORE, finding probable cause, the undersigned recommends the indictment of respondent for robbery.
>
> December 11, 2017, Pasay City[,] Metro Manila.[8] (Emphasis supplied)

Both the Information and the Resolution of OCP-Pasay City are in turn based on the *Sinumpaang Salaysay*[9] of Kent Bryan V. Flores (private complainant), which essentially narrated how he was robbed in the early hours of August 27, 2017 along Villaruel Street in Pasay City. Questions 10 to 14 of the said *Sinumpaang Salaysay*, along with the corresponding responses of said private complainant, are as follows:

> 10. TANONG: Ano naman ang ginawa mo matapos kang huldapin nitong taong in[i]rereklamo mo?
>
> SAGOT: **Sir, nagtanong-tanong po ako at doon ay napag[-]alaman ko na itong si Pagtakhan pala ang taong humuldap sa akin**.
>
> 11. TANONG: Papaano ka naman nakasi[si]guro na itong si Pagtakhan ang taong humuldap sa iyo?
>
> SAGOT: **Sir, base sa aking description na ibinigay sa mga pulis, ay nagtutugma na itong si MARK ANTHONY PAGTAKHAN, ang taong humuldap sa akin, dahil sa ilang sunod-sunod na siya mismo ang suspect sa mga huldapan sa nasabing lugar**.
>
> 12. TANONG: Ano pa ang sumunod na pangyayari k[u]ng mayroon man?
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> SAGOT: Sir, kaya't nitong nabalitaan ko na itong si MARK ANTHONY PAGTAKHAN ay nahuli at nakakulong ditto sa intong opisina (SIDMS), ay

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8 *Id.*

9 *Id.* at 11–12.

kaagad akong nagtungo, para malaman kong siya nga itong taong humuldap sa akin.

13. TANONG: Ano naman ang masasabi mo ngayong ikaw ay naririto sa aming tanggapan (SIDMS)?

SAGOT: Sir, siya nga po ang taong humuldap sa akin * Affiant pointed [to] suspect MARK ANTHONY PAGTAKHAN * inside investigation office detained for case of R.A. 9165 as the same person who held him up and divested his personal belongings.

14. TANONG: Nakasi[si]guro ka bang itong si MARK ANTHONY PAGTAKHAN ang taong humuldap sa iyo?

SAGOT: **Sir, siguradong-sigurado ako sa kanya, na siya itong humuldap sa akin.**[10] (Emphases supplied)

Petitioner was eventually arrested and arraigned, and trial thus ensued. The private complainant was the prosecution's sole witness, and cross-examination, the private complainant revealed the following:

ATTY. MALDIS:

Q: Good morning, [M]r. [W]itness. In your sworn affidavit[,] you mentioned that the incident happened on August 27, 2017, is that correct?

THE WITNESS:

A: Yes, ma'am.

Q: And you did not go to the nearest barangay or police station to report the incident, is that correct?

A: Yes, ma'am.

Q: **And you just decided to file this case when somebody told you that your perpetrator was in the police station, is that correct?**

A: **Yes, ma'am.**

Q: **At that time before you went to the police station[,] you d[id] not have any personal knowledge of who was your perpetrator, is that correct?**

A: **Yes, ma'am.**

Q: **But because [sic] you have mentioned [that] people in the area told you that it was Mark Anthony Pagtakhan who robbed you, is that correct?**

A: **Yes, sir** [sic].

Q: And you have mentioned that the incident happened at 4:21 a.m., is that correct?

A: Yes, ma'am.

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[10] *Id.* at 12.

Q: Is the place still dark at that time?
A: No, ma'am.

Q: So[,] it's bright?
A: Yes, ma'am.

Q: **Where there other people present at that time?**
A: **None, ma'am.**

Q: **So[,] nobody saw?**
A: **Yes, ma'am.**[11] (Emphases supplied)

For the defense's part, two witnesses testified: petitioner himself, and his common-law partner Rosalyn Mendoza. Petitioner essentially narrated that at the time of the incident, he was at his home along Facundo Street in Pasay City asleep with his wife and children.[12] He also averred that he had also never seen or met the private complainant until his arrest on September 11, 2017 for a supposed drug offense, when said private complainant appeared at the police precinct where petitioner was being held and processed, and pointed at petitioner as the person who committed the alleged robbery.[13] Petitioner then and there denied the allegation.[14] Petitioner's common-law partner corroborated her husband's alibi on the date of the incident,[15] and even narrated the moment during petitioner's detention and processing at the police station for supposed drug offenses on September 11, 2017, i.e., when two potential complainants arrived thereat and declared that they mistook petitioner as the perpetrator of a supposed robbery.[16] It is unclear from the records if one of the said persons was herein private complainant.

Decision of the Trial Court

In its Decision dated March 13, 2019, the RTC convicted petitioner of the crime charged, viz.:

> **WHEREFORE**, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court hereby finds accused, MARK ANTHONY PAGTAKHAN y FLORES, **GUILTY** of the crime of ROBBERY under Article 293, in relation to Article 294, par. (5), of the Revised Penal Code[,] and he is sentenced to suffer the penalty of imprisonment for FOUR (4) YEARS of *prisión correccional*, as minimum, to EIGHT (8) YEARS of *prisión mayor*, as maximum.

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11 TSN, Kent Bryan Flores, June 22, 2018, pp. 6–7.
12 TSN, Mark Anthony Pagtakhan, September 21, 2018, p. 4.
13 *Id.* at 4–6.
14 *Id.* at 6.
15 TSN, Rosalyn Mendoza, December 12, 2018, p. 4.
16 *Id.* at 4–5.

SO ORDERED.[17] (Emphases and italics in the original)

The trial court basically found that the prosecution was able to prove all the elements of the offense charged here,[18] and that the private complainant's positive identification of petitioner was sufficient for purposes of conviction, viz.:

> The Court sees no reason to doubt the positive testimony of the private complainant, identifying accused as the person who perpetrated the crime against him. Even accused himself admitted that he does not know his herein accuser previous to the time that the latter pointed to him at the police precinct, and so said private complainant would have no reason to perjure himself or falsely testify against the accused in this case.[19]

Additionally, petitioner's alibi was not appreciated by the trial court, viz.:

> On the other hand, the denial proffered by the accused is inherently a weak defense, as it is negative and self-serving. It cannot prevail over the positive testimony of a credible witness who testifies on an affirmative matter.
>
> Similarly, alibi cannot prevail over positive identification. In one case, the Supreme Court even went on further by saying that "the Court gives even less probative weight to a defense of alibi when it is corroborated by friends and relatives. One can easily fabricate an alibi and ask friends and relatives to corroborate it. When a defense witness is a relative of an accused whose defense is alibi, as in this case, courts have more reason to view such testimony with skepticism." The same can be said here on the corroborating testimony of the common-law wife of the accused.
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> To be sure, it has been held that in order for the Court to consider the defense of alibi, it must be shown that it was physically impossible for the accused to have been at the scene of the crime when it was committed (People v. Prodenciado, G.R. No. 192232[,] December 10, 2014). Such is not the case here because the house of accused is located within the same city where the crime was committed. Even assuming that he was indeed in his house moments before, or after, the time of the incident, the same would not necessarily preclude his absence at the crime scene at the time it was committed.[20]

Petitioner accordingly interposed his Notice of Appeal.[21]

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17 *Rollo*, p. 67.
18 *Id.* at 65.
19 *Id.* at 66.
20 *Id.*, *citing Dizon v. People*, 616 Phil. 498, 514–515 (2009) [Per J. Chico-Nazario, Third Division]; *People v. Monticalvo*, 702 Phil. 643, 664 (2013) [Per J. Perez, Second Division]; and *People v. Consorte*, 738 Phil. 723, 734 (2014) [Per J. Perez, Second Division].
21 Records, p. 106.

Ruling of the Appellate Court

In its Decision dated November 10, 2020, the CA 10th Division denied petitioner's appeal in the following manner:

> **FOR THESE REASONS**, the appeal is **DENIED**. The assailed Decision rendered on 13 March 2019 by the Regional Trial Court, Branch 108 of Pasay City in Criminal Case No. R-PSY-18-15642-CR is **AFFIRMED**.
>
> **SO ORDERED**.[22] (Emphases in the original)

Like the trial court below, the appellate court here also ruled that the prosecution below was able to prove all the elements of robbery here,[23] and similarly gave no credence to petitioner's alibi. More importantly, the CA held that the private complainant's positive identification of petitioner as the perpetrator of the robbery was solid and credible, viz.:

> It is established that before the doctrine that positive identification prevails over denial or alibi may apply, it is necessary that the identification must first be shown to be positive and beyond question. It must show that the identified person matches the original description made by the witness when initially reporting the crime. The unbiased character of the process of identification by witnesses must likewise be shown.
>
> **In the present case, private complainant was able to identify the accused-appellant not because of the information given to him by the bystanders but on the physical descriptions he related to them and eventually to the police officers that matched the physical appearance of the accused-appellant. Through the description of the private complainant, the bystanders were able to deduce that it was the accused-appellant who robbed him. The same physical description he related to the police led him to confirm that the accused-appellant who was arrested for another offense was the same person who robbed him**. Moreover, it was not improbable for the private complainant to remember the physical features of his perpetrator because it was proven during his cross-examination that the place of the commission of the crime was well-lit.
>
> At the same time, the delay of the private complainant in reporting a crime to the police officers is irrelevant. It is well-accepted that delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given. No standard form of behavior can be expected from people who had witnesses a strange of frightening experience. **Private complainant sufficiently explained in his sworn statement and testimony that he first asked around the area of the crime about the identity of his perpetrator before proceeding to the police station to report the incident**. This, to Us,

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22 *Rollo*, p. 45.
23 *Id.* at 41–42.

> is sufficient to justify the delay in reporting the incident, more so from the private complainant who was constricted with fear brought by his dreadful experience with the accused-appellant. Needless to state, the consistent and straightforward testimony of the private complainant, who was not motivated with [sic] any ill intent to falsely impute the crime charged against the accused-appellant bears the mark of a credible witness.[24] (Emphases supplied, citations omitted)

Petitioner duly filed his Motion for Reconsideration,[25] but the same was denied in the CA's Resolution dated October 8, 2021, viz.:

> After a careful scrutiny of the arguments raised by the accused-appellant, We see no cogent reason to modify, reverse, or set aside Our Decision, the same being appositely supported by law and jurisprudence. The issues raised in the motion are mere rehash of matters previously considered and found to be without merit in the Decision subject of this recourse.
>
> **WHEREFORE**, the Motion for Reconsideration is hereby **DENIED**.
>
> **SO ORDERED**.[26] (Emphases in the original)

Hence, the instant Petition for Review on *Certiorari*.

Arguments of the Parties

Petitioner puts forth the following in support of his plea to have the rulings of both the CA and RTC-Pasay City reversed and set aside, and to ultimately merit an acquittal of the charges:

1) The CA gravely erred in affirming his conviction despite the unreliable identification made by herein private complainant; and

2) The CA gravely erred in disregarding his defenses of denial and alibi.

In particular, petitioner invokes the precedent of *People v. Teehankee, Jr.*,[27] (*Teehankee, Jr.*) wherein the Court emphasized the various factors to consider when reviewing the totality of circumstances *vis-à-vis* out-of-court identification, especially if the same is the sole basis for conviction. Petitioner thus argues that private complainant's initial description of the perpetrator of the robbery appears nowhere in the records, and that private complainant even admitted under oath that he had no personal knowledge of the perpetrator's

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24 *Id.* at 42–43.
25 *Id.* at 169–175.
26 *Id.* at 49.
27 319 Phil. 128 (1995) [Per J. Puno, Second Division].

physical features and characteristics until he had asked around from bystanders in the neighborhood. With the lack of an accurate description of the perpetrator prior to the likely suggestive identification of petitioner on account of the information relayed to the private complainant by bystanders who did not witness the crime, petitioner thus argues that there exists reasonable doubt as to the identity of the actual perpetrator of the robbery.

In Respondent's Comment,[28] the Office of the Solicitor General (OSG) asserts that, aside from petitioner failing to supposedly raise questions of law and the findings of both the trial and appellate courts as being binding and conclusive, petitioner's guilt here had been established beyond reasonable doubt. In particular, the OSG contends that herein private complainant had described petitioner's features to bystanders in the neighborhood, who thereupon gave him petitioner's name. Petitioner's supposed notoriety as a perpetrator of petty crimes in the area was also noted as why he was easily identified and pinpointed by the said bystanders.

Issues before the Court

For the Court's deliberative consideration are the two following issues:

1) Whether or not the out-of-court identification of petitioner by herein private complainant is an issue properly cognizable by the Court; and

2) Whether or not there is enough evidence on the record to establish petitioner's guilt beyond reasonable doubt.

Ruling of the Court

The instant Petition is impressed with merit, and accordingly, petitioner is entitled to an acquittal.

Preliminarily, the Court is mindful of various exceptions to the general rule that petitions for review on *certiorari* are properly limited to the Court's review of errors of law, and indeed, the findings of fact of trial and appellate courts below relative to the antecedents of such petitions are deemed conclusive. The Court enumerated the said exceptions in *Fuentes v. Court of Appeals*,[29] viz.:

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[28] *Rollo*, pp. 195–212.

[29] 335 Phil. 1163 (1997) [Per J. Panganiban, Third Division].

> (1) [W]hen the factual findings of the Court of Appeals and the trial court are contradictory;
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> **(2) [W]hen the findings are grounded entirely on speculation, surmises, or conjectures;**
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> (3) [W]hen the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
>
> **(4) [W]hen there is grave abuse of discretion in the appreciation of facts;**
>
> (5) [W]hen the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contradictory to the admissions of both appellant and appellee;
>
> **(6) [W]hen the judgment of the Court of Appeals is premised on a misapprehension of facts;**
>
> **(7) [W]hen the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;**
>
> (8) [W]hen the findings of fact are themselves conflicting;
>
> **(9) [W]hen the findings of fact are conclusions without citation of the specific evidence on which they are based**; and
>
> (10) [W]hen the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.[30] (Emphases supplied)

Moreover, the Court reiterated in *Macayan, Jr. v. People*[31] the aforementioned enumeration, which also cited the admonition in *People v. Esteban*[32] when it comes to reviewing findings of fact in criminal cases, to wit:

> It is well-settled that, in criminal cases, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial [*sic*] evidence on record. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the findings of the trial court below.[33]

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30 *Id.* at 1168–1169. *See* also *Salcedo v. People*, 400 Phil. 1302 (2000) [Per J. Panganiban, Third Division]; *Alburo v. People*, 792 Phil. 876 (2016) [Per J. Peralta, Third Division]; and *Tabingo v. People*, G.R. No. 241610, February 1, 2021 [Per C.J. Peralta, First Division].

31 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

32 735 Phil. 663 (2014) [Per J. Reyes, First Division].

33 *Id.* at 670–671, *citing Seguritan v. People*, 632 Phil. 415, 418 (2010) [Per J. Del Castillo, Second Division]: "In a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial [*sic*] evidence on record. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below." *See* also *Benito v. People*, G.R. No. 204644, February 11, 2015 [Per J. Leonen, Second Division]; and *Lee v. Sandiganbayan*, G.R. Nos. 234664–67, January 12, 2021 [Per C.J. Peralta, First Division].

Verily then, the issue of herein private complainant's out-of-court identification of petitioner as the perpetrator of the robbery—which is the fulcrum upon which the ultimate determination of his guilt rests due to the absence of any other evidence presented at trial below—is a question of fact that is cognizable by the Court as an exception, especially if the same was not appreciated or not properly considered by either the trial or the appellate court.

Here, one can easily note that the trial court's Decision merely noted herein private complainant's positive identification of petitioner under oath in open court, without at all discussing the implications of the antecedents of said identification to begin with, such as any details of the initial description of the perpetrator.

As for the appellate court's Decision, the Court regrettably notes that despite noting the paramount importance of matching the identified person with the original description made by the witness who initially reported the crime, as well as the unbiased character of the process of identification by the said witness, the CA did not even bother to mention what the perpetrator's initial description was, and strikingly, the CA somehow made the conclusion that herein private complainant actually related an initial description to bystanders in the neighborhood—without any evidence on the record pointing to such detail. Clearly, this warrants the Court's re-calibration and re-evaluation of the evidence relating to petitioner's identification as the perpetrator of the robbery here.

But before beginning its discussion of the second issue, the Court first must discuss relevant precedents on proper out-of-court identification in criminal cases. In *Teehankee, Jr.*, the Court laid down the "totality-of-circumstances" test when it comes to determining the admissibility and weight of such identifications, to wit:

> Out-of-court identification is conducted by the police in various ways. **It is done thr[ough] show-ups where the suspect alone is brought face[-]to[-]face with the witness for identification.** It is done th[rough] mug shots where photographs are shown to the witness to identify the suspect. It is also done thr[ough] 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 [*sic*] 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.**[34] (Emphasis supplied, citations omitted)

In *People v. Arapok*[35] (*Arapok*), a precedent which bears heavily upon the instant Petition, the Court ruled that the show-up –out-of-court identification prior to trial failed the "totality-of-circumstances" test due to the lack of any prior description given by the prosecution witness to the police at any time after the robbery, viz.:

> We find that the out-of-court identification of accused-appellant, which is a show-up, falls short of [the] "totality of circumstances" test. **Specifically, there was no prior description given by the witness to the police at any time after the incident**; and we cannot discount the possibility that the police may have influenced the identification under the circumstances by which accused-appellant was presented to him. This Court has held in *People v. Salguero* that this kind of identification, where the attention of the witness is directed to a lone suspect, is suggestive. Also, in *People v. Niño*, this Court described this type of out-of-court identification as being "pointedly suggestive, generated confidence where there is none, activated visual imagination, and, all told, subverted their reality as eye-witnesses."[36] (Emphasis supplied, citations omitted)

The Court in *Arapok* also stressed the overarching significance of the correct identification of the perpetrator in criminal proceedings, viz.:

> Once again we stress that the correct identification of the author of a crime should be the primal concern of criminal prosecution in any civilized legal system. Corollary to this is the actuality of the commission of the offense with the participation of the accused. **All these must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. Thus, even if the defense of the accused may be weak, the same is consequential if, in the first place, the prosecution failed to discharge the *onus* on his identity and culpability**. The presumption of innocence dictates that it is for the [P]eople to demonstrate guilt and not for the accused to establish innocence.[37] (Emphasis supplied, citations omitted)

In *People v. Escordial*,[38] the Court made an important ruling when it came to the admissibility of "show-up" identifications during custodial investigation, especially when no counsel for the arrested individual is present, viz.:

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34 319 Phil. 128, 180 (1995) [Per J. Puno, Second Division].
35 400 Phil. 1277 (2000) [Per J. Gonzaga-Reyes, Third Division].
36 *Id.* at 1300.
37 *Id.* at 1301.
38 424 Phil. 627 (2002) [Per J. Mendoza, *En Banc*].

> 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.[39]

The Court, however, noted that the inadmissibility of out-of-court identifications done during custodial investigation and without the presence of counsel did not in turn render inadmissible in-court identifications made by prosecution witnesses. These in-court identifications have to stand on their own merits in meeting the evidential burden in criminal cases, to wit:

> Furthermore, the inadmissibility of these out-of-court identifications does not render the in-court identification of accused-appellant inadmissible for being the "fruits of the poisonous tree." This in-court identification was what formed the basis of the trial court's conviction of accused-appellant. As it was n[either] derived [n]or drawn from the illegal arrest of accused-appellant or as a consequence thereof, it is admissible as evidence against him. However, whether or not such prosecution evidence satisfies the requirement of proof beyond reasonable doubt is another matter altogether.[40] (Citations omitted)

This seems to go contrary to the wording of the Court in *Teehankee, Jr.*, but the reasoning in *Escordial* is nonetheless sound, provided that indeed, the prosecution witness who made the initial out-of-court identification is also a reliable and credible witness on the stand.

In *People v. Baconguis*,[41] the Court declared as invalid the out-of-court identification of therein accused-appellant, which was a show-up tainted with highly improper suggestion on the part of the arresting officers. Said the Court:

> A show[-]up, such as what was undertaken by the police in the identification of appellant by Lydia, has been held to be an underhanded mode of identification for "being pointedly suggestive, generating confidence where there was none, activating visual imagination, and, all told, subverting their reliability as an eyewitness." **Lydia knew that she was going to**

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39 *Id.* at 653.

40 *Id.* at 654. *See People v. Pepino*, 777 Phil. 29 (2016) [Per J. Brion, *En Banc*], *citing People v. Algarme*, 598 Phil. 423 (2009) [Per J. Brion, Second Division]. *See also People v. Lugnasin*, 781 Phil. 701 (2016) [Per J. Leonardo-De Castro, First Division].

41 462 Phil. 480 (2003) [Per J. Carpio-Morales, *En Banc*].

> **identify a suspect, whose name had priorly [*sic*] been furnished by her brother-policeman, when she went to the police station**. And the police pointed appellant to her, and told her that he was the suspect, while he was behind bars, alone.
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> The unusual, coarse and highly singular method of identification, which revolts against accepted principles of scientific crime detection, alienates the esteem of every just man, and commands neither respect nor acceptance.
>
> In *People v. Acosta*, this Court rejected the identification by a witness of the accused while the latter was alone in his detention cell. There, this Court held that the identification of the suspect, which was tainted by the suggestiveness of having the witness identify him while he was incarcerated with no one else with him whom he might be compared to by the witness, was less than objective to thus impair the trustworthiness of their identification.
>
> Under the circumstances attendant to the identification of appellant, this Court is not prepared to hold that the prosecution had established that appellant was the man seen leaving the house-scene of the crime soon after a gunshot was heard.[42] (Emphasis supplied, citations omitted)

In *People v. Nuñez*,[43] the Court highlighted the danger of subsequent in-court identification being tainted by non-compliance with the set standards for proper previous out-of-court identification. Although in relation to photographic lineups, the danger is still clear when there is any element of suggestion on the part of law enforcement officers, since "any subsequent corporeal identification made by a witness may not actually be the result of a reliable recollection of the criminal incident. Instead, it will simply confirm false confidence induced by the suggestive presentation of photographs to a witness."[44] The danger is all the more real when a suspect's name has already been suggested to a prosecution witness before the out-of-court identification, and when the said prosecution witness is already informed that the said suspect had already been arrested. This precedent seems to indicate that there is indeed a link between out-of-court and in-court identifications, in that the former can easily corrupt the latter. In fine, the Court therein explained thus:

> Still, certainty on the witness stand is by no means conclusive. By the time a witness takes the stand, he or she shall have likely made narrations to investigators, to responding police or *barangay* officers, to the public prosecutor, to any possible private prosecutors, to the families of the victims, other sympathizers, and even to the media. **The witness, then, may have established certainty, not because of a foolproof cognitive perception and recollection of events but because of consistent reinforcement borne by becoming an experienced narrator**. Repeated narrations before different audiences may also prepare a witness for the same kind of scrutiny that he or she will encounter during cross-examination. **Again, what is more crucial is**

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42 462 Phil. 480, 493–494 (2003) [Per J. Carpio-Morales, *En Banc*].
43 819 Phil. 406 (2017) [Per J. Leonen, Third Division].
44 *Id.* at 432.

> **certainty at the onset or on the initial identification, not in a relatively belated stage of criminal proceedings.**[45] (Emphasis supplied)

Verily, the Court therein emphasized that "[t]he conviction of an accused must hinge less on the certainty displayed by a witness when he or she has already taken the stand but more on the certainty he or she displayed and the accuracy he or she manifested at the initial and original opportunity to identify the perpetrator."[46]

The Court's crucial ruling in *Concha v. People*[47] also bears heavily on the present Petition. There, the Court noted that the show-up out-of-court identification of the assailants by therein private complainant (who was the sole prosecution witness) was tainted by the lack of any prior description of the said assailants' appearances and the suggestiveness of the circumstances, viz.:

> When Macutay, the sole witness, was invited by the police to identify his assailants, **his mind was already conditioned that he would come face-to-face with the persons who robbed** him. He knew that the group that attacked him consisted of four (4) persons. Consequently, when he was shown four (4) persons in the police show-up, it registered to him that they were the perpetrators. **With no prior description of his assailants, it was highly likely that Macutay's identification was tainted with apparent suggestiveness. Therefore, there was no positive and credible identification made by the prosecution's witnesses.**[48] (Emphasis supplied)

The Court there ultimately ruled that "the gross corruption of Macutay's out-of-court identification through the improper suggestion of police officers affected the admissibility of his in-court identification."[49] The Court therein also reminded the bench and the bar of the importance of moral certainty in criminal case convictions. Interestingly, the Court in *People v. Ansano*[50] also had to reiterate anew the importance of moral certainty with regard to the identity of a crime's perpetrator, since both the trial and appellate courts therein failed to satisfactorily discuss such issue *vis-à-vis* the out-of-court identification in proceedings below.

Finally, in *People v. Torres*,[51] the Court noted that even with composite sketches done by law enforcement that may have aided in the identification of the perpetrator, the lack of any further prior description of the said perpetrator was fatal for the out-of-court identification of the accused-appellant therein, viz.:

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45 *Id.* at 427.
46 *Id.* at 441.
47 841 Phil. 212 (2018) [Per J. Leonen, Third Division].
48 *Id.* at 233.
49 *Id.* at 237, *citing People v. Arapok*, *supra* note 35.
50 891 Phil. 360 (2020) [Per J. Caguioa, First Division].
51 G.R. No. 238341, July 14, 2021 [Per J. Caguioa, First Division].

> The only prior description of the assailant, in terms of his facial or physical features, was provided by Obeda and Felices on April 1, 2013, when they were assisted in the preparation of the composite illustration. Apart from the sketch, **the records do not show that the witnesses provided a physical description of the assailant, which could point to Torres as the assailant. In their subsequent accounts of the assailant's identity, the eyewitnesses' recollections only pertain to general descriptions of the assailant's clothing and the motorcycle on which he rode. They did not also testify on how the illustration was able to capture the characteristics of the assailant, or identify the specific facial features that resemble Torres**. For these reasons, the Court has no means of determining the accuracy or reliability of the cartographic sketch.[52]

Going back to the instant Petition, the Court notes that there exists no prior description of the perpetrator of the robbery at all in the record, despite being mentioned to have been given by herein private respondent to the police in the Resolution dated December 11, 2017 of OCP-Pasay City.[53] Not even the Endorsement/Police Report[54] dated September 15, 2017 of the Pasay City Police Station-Station Investigation & Detective Management Section, which is attached as an integral part of both the Information and the Resolution of OCP-Pasay City, contains any reference to any physical features or attributes of the perpetrator.

In his *Sinumpaang Salaysay*,[55] herein private complainant also did not give mention of any physical features or attributes of the assailant who robbed him of his possessions that fateful morning. In the said *Sinumpaang Salaysay*, herein private complainant already referred to petitioner by his surname as the perpetrator, and even seem to have been somehow knowledgeable of petitioner's specific, private, and personal circumstances and details, viz.:

> 06. TANONG: Sino naman itong taong sinasabi mong nanghuldap sa iyo?
> SAGOT: Sir, MARK ANTHONY PAGTAKHAN y FLORES, 33 taong gulang, may-asawa, walang hanap buhay at nakatira sa no. 578 Facundo St. Brgy. 123, Zone 12, Pasay City, at kasalukuyang nakakulong dito sa inyong opisina sa kasong RA 9165.[56]

Clearly, herein private complainant had been supplied with such information beforehand either by the police, or by the supposed bystanders in the neighborhood after the incident. And with no succeeding physical description of the perpetrator in the *Sinumpaang Salaysay*, the latter is thus actually infirm in its identification of petitioner. As mentioned and quoted previously, herein private complainant averred that he got to know of petitioner's name after making inquiries with the supposed bystanders in the

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52 *Id.* Emphases supplied.
53 *See* records, p. 8.
54 *Id.* at 10.
55 *Id.* at 11–12.
56 *Id.* at 11.

neighborhood after giving them a description—despite no such description appearing in the *Sinumpaang Salaysay*. One should also note that the seemingly easy mention of petitioner's name by the said bystanders due to his supposed reputation as a notorious "holdupper" in the area is a very suspect and unreliable identification and characterization based on dubious surmises and likely biased conclusions, and it becomes evident that the mere mention of petitioner's name—or any name for that matter—had already affected and influenced herein private complainant's memory of the robbery.

On the witness stand, herein private complainant testified on cross-examination that somehow, he did not have personal knowledge of the perpetrator's identity before going to the police station to identify petitioner.[57] But this contradicts his initial statement in his *Sinumpaang Salaysay* that he got to know of the perpetrator's identity through his inquiries to neighborhood bystanders. This also contradicts how he somehow knew of petitioner's specific, private, and personal circumstances and details, which he averred to knowing in the same *Sinumpaang Salaysay*. And again, nowhere in herein private complainant's testimony appears any mention of the perpetrator's physical features or attributes. Verily, herein private complainant already knew that he was going to see petitioner long before he travelled to the police station for purposes of pointing to the latter, and it stands to reason that he was invited to visit the police station precisely because it was petitioner who was recently apprehended at the time.

To the mind of the Court, it is evident here that once herein private complainant got hold of petitioner's name from the neighborhood bystanders, the specificity of said name (without any basis other than the strong suspicions of people from the area) took hold in herein private complainant's mind and thereafter gave him a firm but flawed conviction that petitioner was the man who robbed him. Indeed, one cannot fault herein private complainant for his righteous indignation and his genuine desire for some justice after his ordeal, but this should never be at the expense of established procedures and protocols for proper out-of-court identification.

Thus, while herein private complainant pointed to petitioner to positively identify him,[58] the same is utterly tainted with the insufficiency of his prior out-of-court identification of petitioner even before criminal proceedings began. It is indeed regrettable that there were no other witnesses to the crime, as testified by herein private complainant himself,[59] but with him being the sole witness to his own ordeal, it is even more regrettable to find no physical description at all of the perpetrator anywhere in the records of all proceedings below. And with no items constituting the *corpus delicti* (i.e., either the handgun utilized by the

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57 TSN, Kent Bryan Flores, June 22, 2018, p. 7.
58 *Id.* at 5.
59 *Id.* at 7.

perpetrator or the stolen items themselves) that would have aided the determination of the case, the trial court relied on herein private complainant's identification (both out-of-court and in-court) of petitioner as the sole basis for the latter's conviction. Bearing upon the extensive explanations above, this is a grave and egregious error that the Court must dutifully correct.

With the identification of petitioner tainted due to the lack of any prior description by herein private complainant to either the neighborhood bystanders or to the police here, the Court cannot ignore the serious doubt cast upon the identity of the perpetrator of the robbery that happened on August 27, 2017. Applying the totality-of-circumstances test, the Court finds that the following matters were never even considered by both the trial and appellate courts: 1) there is no indication at all as to whether herein private complainant actually saw the perpetrator's face, after an extensive review of the records; 2) there is no way of knowing the degree of attention of herein private complainant during the actual robbery, and in this, very basic details as to how he exactly was robbed are surprisingly absent from the record; 3) crucially and as previously discussed, there appears no indication of any prior physical description of the perpetrator at all in the record; 4) the sureness and certainty of herein private complainant in his *Sinumpaang Salaysay* and on the witness stand is already tainted due to the lack of said prior description and the contradictory testimony he gave indicating that he did not have prior knowledge as to the perpetrator's identity (despite supposedly knowing petitioner's specific, private, and personal circumstances and details at the time of the execution of the *Sinumpaang Salaysay*); 5) nearly one month had elapsed between the robbery and the out-of-court identification done at the police precinct, which again was already tainted due to herein private complainant's prior knowledge of petitioner's identity and strong belief that the latter was the robber; and 6) again, the suggestiveness of the identification procedure is already evident from the fact that herein private complainant was ready with supplied information relative to petitioner's specific, private, and personal circumstances and details that came from sources independent of herein private complainant's cognition, without any supposed prompting, which ultimately fails to convince the Court of herein private complainant's unprompted certainty as to his recognition of petitioner as the true perpetrator of the crime.

These relevant matters indeed lead to a diametrically different conclusion *vis-à-vis* petitioner's guilt, and also show the regrettable facility with which anyone can condemn another to undergo the harrowing process of a criminal trial in our jurisdiction—just because of a supposedly notorious reputation. A prosecution witness or a private complainant, albeit with good intentions, can indeed and without difficulty cause the unjust conviction and imprisonment of a likely innocent person based solely on mere rumors and gossip from well-meaning but prejudiced strangers. What guards against said unjust conviction and imprisonment, ideally, is the requirement that some form

of identifying features and attributes of a crime's perpetrator must be given by the said witness or complainant at the earliest opportunity to form a solid basis for subsequent identifications (both out-of-court and in-court) that may in turn lead to proper conviction and imprisonment. Absent such prior identification, and despite the severity of the criminal act done to the victim, courts have no choice but to uphold the rights of the accused due to the reasonable doubt cast upon the identity of the actual perpetrator. The presumed innocence of the accused prevails here over the seeming certainty of the prosecution witness, and notwithstanding the appalling nature of the crime committed. As the Court emphasized in *Ansano*, "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."[60] The Court there added:

> 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 the identity of the criminal beyond reasonable doubt.[61]

With the identity of the robbery's perpetrator already cast in serious doubt here, the Court sees no further reason to discuss the issue of petitioner's defense of alibi. Petitioner's exoneration of the crime of robbery here is thus presently warranted and hereby ordered.

ACCORDINGLY, the instant Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision dated November 10, 2020 and the Resolution dated October 8, 2021 of the Court of Appeals in CA-G.R. CR No. 43208, as well as the Decision dated March 13, 2019 of Branch 108, Regional Trial Court of Pasay City *vis-à-vis* Criminal Case No. R-PSY-18-15642-CR, are all hereby **REVERSED and SET ASIDE**. For failure on the part of the prosecution to prove his guilt beyond reasonable doubt, petitioner Mark Anthony Pagtakhan *y* Flores is hereby **ACQUITTED** of the crime charged, and is also hereby **ORDERED** to be **IMMEDIATELY RELEASED** from confinement if he is still so detained, unless he is being held for other lawful cause. Any amount paid by way of bail bond is thus also **ORDERED** to be **IMMEDIATELY RETURNED** to petitioner Mark Anthony Pagtakhan *y* Flores.

Let entry of judgment be issued immediately.

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60 891 Phil. 360, 367 (2020) [Per J. Caguioa, First Division].

61 *Id.* at 384, *citing People v. Espera*, 718 Phil. 680, 694 (2013) [Per J. Leonardo-De Castro, First Division].

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

(Official business)
MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest 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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

ALEXANDER G. GESMUNDO
Chief Justice