Wrongful Conviction and the Case for Forensic Evidence in the Philippine Criminal Justice System

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> *Acquitting the guilty and condemning the innocent — the LORD detests them both.*
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> — Proverbs 17:15[1]

I. WRONGFUL CONVICTIONS IN THE PHILIPPINES

The actual occurrence of wrongful convictions[2] in the Philippines may have been memorialized in our case law when the Supreme Court, expressing its concern on the implications of the imposition of capital punishment,

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1. *Proverbs* 17:15 (New International Version).
2. Wrongful conviction may be viewed in at least two ways: *firstly*, an innocent person is convicted, and *secondly*, a person is convicted without observing the proper procedure and violating his rights. John Roman, et al., Post-Conviction DNA Testing and Wrongful Conviction (A Research Report for the Urban Institute Justice Policy Center) 8, *available at* http://www.urban.org/UploadedPDF/412589-Post-Conviction-DNA-Testing-and-Wrongful-Conviction.pdf (last accessed Feb. 28, 2013).

acknowledged in *People v. Mateo*[3] that 71.77% of the death penalty cases elevated to it on automatic review were either modified or vacated, and that as a result, a total of 651 out of 907 lined up in death row were saved from lethal injection.[4]

Another case was added to the statistics in 2010 when the Supreme Court reversed a judgment of conviction in the highly publicized case of *Lejano v. People*[5] and directed the immediate release of the accused who had been wrongly detained for 14 years.[6] Note, however, that even before the exposé in 2004 and the consolidated cases of *Lejano* and *Webb* in 2010, there had already been a concern and an admonition to be circumspect to protect the rights of the innocent and to prevent wrongful convictions.[7]

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3. People v. Mateo, 433 SCRA 640 (2004).

4. *Id.* at 656-57. The Supreme Court discussed:

> Statistics would disclose that within the [11]-year period since the re-imposition of the death penalty law in 1993 until June 2004, the trial courts have imposed capital punishment in approximately 1,493, out of which, 907 cases have been passed upon in review by the Court. In the Supreme Court, where these staggering numbers find their way on automatic review, the penalty has been affirmed in only 230 cases comprising but 25.36% of the total number. Significantly, in more than half or 64.61% of the cases, the judgment has been modified through an order of remand for further proceedings, by the application of the Indeterminate Sentence Law or by a reduction of the sentence. Indeed, the reduction by the Court of the death penalty to *reclusion perpetua* has been made in no less than 483 cases or 53.25% of the total number. The Court has also rendered a judgment of acquittal in [ ] 65 cases. In sum, the cases where the judgment of death has either been modified or vacated consist of an astounding 71.77% of the total of death penalty cases directly elevated before the Court on automatic review that translates to a total of [ ] 651 out of [ ] 907 appellants saved from lethal injection.

   Id.

5. Lejano v. People, 638 SCRA 104 (2010).

6. *Id.* at 155-56.

7. *See* People v. Velasco, 340 SCRA 207 (2000). In *Velasco*, the Court said that "[t]he philosophy underlying this rule establishing the absolute nature of acquittals is 'part of the paramount importance [that] criminal justice system attaches to the protection of the innocent against wrongful conviction.'" *Id.* at 240. *See also* Dimatulac v. Villon, 297 SCRA 679 (1998). The Supreme Court said,

> Prosecutors are charged with the defense of the community aggrieved by a crime, and are expected to prosecute the public action with such zeal and vigor as if they were the ones personally aggrieved, but at all

Reported cases of wrongful convictions in the country had even been brought to the United Nations (U.N.),[8] and at least two of which generated significant public attention: *Francisco Juan Larrañaga v. Philippines*[9] and *Albert Wilson v. Philippines.*[10]

A case involving kidnapping and serious illegal detention with homicide and rape of the Chiong Sisters, and once dubbed as the "trial of the century,"[11] *Larrañaga* stemmed from a judgment of conviction affirmed in 2004 (ironically, the same year that *People v. Mateo* was rendered) by the Supreme Court in *People v. Larrañaga.*[12] On the other hand, *Wilson* originated from an acquittal from the charge of consummated rape handed down in *People v. Wilson*[13] in 1999. It is nonetheless the case of *Larrañaga*, heard before the U.N. Human Rights Committee, that has sustained interests and advocacy, which even included a documentary[14] accessible to

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times cautious that they refrain from improper methods designed to secure a wrongful conviction.

Id. at 713 (citing United States v. Mamintud, 6 Phil. 374, 376 (1906); Suarez v. Platon, 69 Phil. 556, 565 (1940); People v. Esquivel, 82 Phil. 453, 459 (1948); Crespo v. Mogul, 151 SCRA 462 (1987); & Allado v. Diokno, 232 SCRA 192, 206 & 210 (1994)). *See also* Suarez v. Platon, et al., 69 Phil. 556 (1940). In *Suarez*, it was opined that

> [the prosecuting officer] may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Suarez, 556 Phil. at 565.

8. REDRESS, The Failure of the Philippines to Implement Views in Individual Communications (A Shadow Report Submitted to the 106th Session of the United Nations Human Rights Committee (U.N.H.R.C.)) 5, *available at* http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Redress1_PhilippinesHRC106.pdf (last accessed Feb. 28, 2013).
9. U.N.H.R.C., *Francisco Juan Larrañaga v. Philippines*, Communication No. 1421/2005, U.N. Doc. CCPR/C/87/D/1421/2005 (Sep. 14, 2006).
10. U.N.H.R.C., *Albert Wilson v. Philippines*, Communication No. 868/1999, U.N. Doc. CCPR/C/79/D/868/1999 (Nov. 11, 2003).
11. People v. Larrañaga, 421 SCRA 530, 541 (2004).
12. *Id.*
13. People v. Wilson, 321 SCRA 409 (1999).
14. Michael Collins & Marty Syjuco, *Give Up Tomorrow — Trailer 2*, *available at* http://pacodocu.com/ (last accessed Feb. 28, 2013).

viewers worldwide. To this date, accused Larrañaga, who was extradited to Spain in 2009,[15] has maintained his innocence.[16]

Presently, there are two pending bills in Congress that seek to address the problem of wrongful convictions. These are House Bill No. 2938 (An Act Providing Compensation for Persons Wrongfully Convicted of a Crime and for Other Purposes),[17] authored by Representatives Rufus B. Rodriguez and Maximo B. Rodriguez, Jr., and Senate Bill No. 2687 (An Act Creating a Commission on Criminal Justice Reform),[18] introduced by Senator Miriam Defensor-Santiago.[19]

II. FORENSIC EVIDENCE AND WRONGFUL CONVICTION

According to the Innocence Project, an organization "dedicated to exonerating wrongfully convicted people through deoxyribonucleic acid (DNA) testing and reforming the criminal justice system[,]"[20] wrongful convictions may be caused by the following factors: eyewitness

15. Timi Nubla, Larrañaga turned over to Spain, *available at* http://www.abs-cbnnews.com/nation/10/06/09/larrañaga-turned-over-spain (last accessed Feb. 28, 2013). *See also* Maricar Bautista & Timi Nubla, No Spanish revision, DOJ chief says on Larrañaga jail term, *available at* http://rp3.abs-cbnnews.com/nation/10/07/09/no-spanish-revision-doj-chief-says-larra%C3%B1aga-jail-term (last accessed Feb. 28, 2013).

16. Ria Limjap, Give Up Tomorrow: Never Give Up, *available at* http://www.spot.ph/blog/52112/never-give-up (last accessed Feb. 28, 2013).

17. An Act Providing Compensation for Persons Wrongfully Convicted of a Crime and for Other Purposes, H.B. No. 2938, 15th Cong., 1st Reg. Sess. (2010).

18. An Act Creating a Commission on Criminal Justice Reform, S.B. No. 2687, 15th Cong., 1st Reg. Sess. (2010).

19. Senator Santiago was emphatic in her explanatory note:

> Whenever a person convicted of a crime is found, through post-conviction DNA testing or the discovery of other new evidence, to have been innocent of that crime, a failure has occurred in the criminal justice system[,] which wrongly convicted an innocent person and allowed the real perpetrator to remain undetected.

Id. at explan. n.

20. *See* Innocence Project, About the organization, *available at* http://www.innocenceproject.org/Content/What_is_the_Innocence_Project_How_did_it_get_started.php (last accessed Feb. 28, 2013) [hereinafter About the Innocence Project]. This was the basis of Senate Bill No. 2687. *See* S.B. No. 2687, explan. n. *See also* Oxford Dictionaries, DNA, *available* at http://oxforddictionaries.com/definition/ english/DNA (last accessed Feb. 28, 2013). DNA or deoxyribonucleic acid is defined as a "self-replicating material which is present in nearly all living organisms as the main constituent of chromosomes. It is the carrier of genetic information." *Id.*

misidentification, unvalidated or improper forensics, false confessions or admissions, forensic science misconduct, government misconduct, informants, and bad lawyering.[21] The organization however acknowledges the significance of DNA results, particularly those relating to post-conviction DNA testing, in securing exonerations of wrongfully convicted people.[22]

Forensic evidence "includes such clues as fingerprints, blood and blood stains, drug and alcohol, hairs and fibers, and firearms and toolmarks."[23] In a courtroom set-up, it however usually consists of laboratory analysis or reports (e.g., ballistic, blood spatter analysis, serology, dactyloscopy, DNA, gait analysis reports, etc.) coupled by an expert witness to interpret and explain results before a judge.[24] This actually distinguishes it from other physical evidence or other objects recovered from the crime scene,[25] which need not be subjected to tests to determine exactly what their value is.

The importance of forensic evidence in establishing proof beyond reasonable doubt was emphasized in the consolidated cases of *Lejano* and *Webb*, where two justices of the Supreme Court strongly expressed their opinion on the absence of the results of the DNA analysis and the failure of the prosecution to produce the semen specimen.

Justice Conchita Carpio-Morales asserted that the results could have dissipated "nagging doubts" on the culpability of the accused.[26] Now Chief Justice Maria Lourdes P.A. Sereno was even more emphatic when she observed that "there was little objective forensic evidence obtained from the crime scene."[27] She also questioned the seeming indifference to DNA results, stressed its importance, and affirmed the right of the accused to access such evidence, thus:

> Meanwhile, the idea that a negative DNA test result would not have necessarily exculpated Webb, because previous sexual congress by Carmela with another man prior to the crime could not be discounted, would unrealistically raise the bar of evidence — and for the wrong party, [i.e.,] for the part of the defense, instead of for the prosecution. If a negative DNA test result could not be considered as providing certainty that Webb

21. Innocence Project, The Causes of Wrongful Conviction, *available at* http://www.innocenceproject.org/understand/ (last accessed Feb. 28, 2013).

22. *See* Innocence Project, Access to Post-Conviction DNA Testing, *available at* http://www.innocenceproject.org/Content/Access_To_PostConviction_DNA_Testing.php (last accessed Feb. 28, 2013).

23. Joseph L. Peterson, *Use of Forensic Evidence by the Police and Courts*, *Research in Brief,* NAT'L. INST. OF JUSTICE, Oct. 1987, at 2.

24. *Id.* at 1.

25. *Id.* at 2.

26. *Lejano*, 638 SCRA at 189 (2010) (J. Carpio-Morales, concurring opinion).

27. *Lejano*, 638 SCRA at 293 (2010) (J. Sereno, separate concurring opinion).

> did not commit the crime, would it not have at least cast a reasonable doubt that he committed it?
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> Moreover, the argument against the relevance of the semen sample — that the presence of semen was not necessary to prove that rape was committed — is not in point. What the defense was after[,] when it sought DNA testing[,] was neither to prove nor to disprove the commission of rape, but to pinpoint the identity of the assailant. In this case, semen with spermatozoa was in fact obtained, and it did possess exculpatory potential that might be beneficial to the accused. In *Tijing v. Court of Appeals*, [it was] held that 'courts should apply the results of science when competently obtained in aid of situations presented, since to reject said result is to deny progress.' Hence, it is the constitutional duty of the trial judge to afford all possible means to both the NBI and the counsel for accused, in order that such evidence may be scrutinized in open court.[28]

Forensic evidence is also physical evidence[29] that is important in proving the commission of crime, reconstructing the crime scene, providing links, identifying perpetrators, and testing the truth of a matter asserted by a witness.[30] Courts have therefore relied on it, and it has been observed that juries, in criminal cases, have already expected that some piece of it will be presented to them during trial.[31] This kind of evidence, when collected properly and interpreted correctly, catalyzes what may seem to be independent circumstances to recreate a reliable depiction of how a criminal activity was carried out.[32] As it may not be changed by opinion or perspective, it can provide a strong foundation — one that may even be universally acceptable, for a conclusion upon which the life and liberty of a person may have to actually rest.

The opinions are so far two of the most potent ones that appreciate the use and implications of forensic evidence in criminal trials. Nevertheless, their effects as to how they will impact the conduct of judges in resolving criminal cases before them have yet to be seen. They do, however, provide authorities that can support demands for the eventual and more aggressive

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28. *Id.* at 308-09 (citing Tijing v. Court of Appeals, 354 SCRA 17, 26 (2001)).

29. PETER P. NG & PHILIPP U. PO, FORENSIC SCIENCE 25 (2007). *See also* Oregon State Police Forensic Services Division, Physical Evidence Manual intro., *available at* http://www.oregon.gov/osp/FORENSICS/docs/physevidence manual.pdf (last accessed Feb. 28, 2013).

30. *See* National Institute of Justice, Forensic Sciences: Type of Evidence, *available at* http://www.nij.gov/nij/topics/forensics/evidence/welcome.htm (last accessed Feb. 28, 2013).

31. NG & PO, *supra* note 31, at 26-28. *See also* Donald E. Shelton, et. al., *A Study of Juror Expectations and Demands Concerning Scientific Evidence: Does the "CSI Effect" exist?*, 9 VAND. J. ENT. & TECH. L. 331, 357 (2006).

32. Peterson, *supra* note 25, at 2.

use and application of forensic evidence. In the meantime, traditional doctrines on physical evidence, although rendered unstable by case law acknowledging the adequacy of testimonial evidence in clinching conviction, may serve the purpose.

III. FORENSIC EVIDENCE AS PHYSICAL EVIDENCE

There are facts that may be argued differently. As a result of which, a mistaken conclusion may be reached. However, the use of forensic evidence, at the very least, minimizes such occasions and brings certainty to criminal proceedings.[33] For example, it may clarify or prevent further controversy arising from conflicting observations or interpretations of other physical evidence.[34]

Nevertheless, presentation of physical evidence is only required in cases where testimonial evidence is inherently weak and no other physical evidence was offered by the prosecution to prove the crime charged.[35] In other words, failure to present it does not automatically mean that the prosecution will be deemed not to have satisfied its burden of proof. In fact, in *Suerte-Felipe v. People*,[36] the Supreme Court held:

> At the outset, [it] must [be] stress[ed] that while physical evidence ranks very high in [the] hierarchy of trustworthy evidence and can be relied upon principally to ascertain the truth, presentation thereof is not absolutely indispensable to sustain a conviction. Petitioner's stance[,] that the insufficiency of physical evidence inevitably leads to acquittal[,] is flawed, as [the Supreme Court has], on several occasions, sustained convictions based on purely testimonial evidence. In the same manner, guilt beyond reasonable doubt may be produced by the amalgamation of certain physical

33. *See* LEO O. OLARTE, LEGAL MEDICINE (VOLUME II) 80–84 (2006).

34. *See* People v. Visperas, Jr., 395 SCRA 128 (2003). In this case, the accused and the trial court had diverging interpretations of the physical evidence. The Supreme Court said,

> > The theories of appellant and the court *a quo* may not be clear as to some of the circumstances surrounding the killing. [It is] certain, however, that the victim had been shot on the head, and that appellant was positively identified as the culprit who had fired the fatal shot at close range. These facts remain steadfast and are not by any means diminished by the differing theories discussed.
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> *Id.* at 141.

35. People v. Caraang, 418 SCRA 321, 354–57 (2003).

36. Suerte-Felipe v. People, 547 SCRA 462 (2008).

> and testimonial evidence which, when taken separately, would have been insufficient to sustain a conviction.[37]

This pronouncement is quite odd and confusing. To ascertain the truthfulness of testimonial evidence, the only benchmark is its conformity to the trier's knowledge, observation, and experience,[38] which in itself is subjective. Note, however, that the general rule is still that there is no test of truth for human testimony.[39] In fact, our law even requires that the testimony of a victim must find support in physical evidence.[40] The Supreme Court even ruled that the testimony of the complainant in a case of rape committed through force must be corroborated by physical evidence showing use of force.[41]

Despite *Suerte-Felipe*, however, physical evidence is still regarded as the most trustworthy of all evidence and will prevail in case it conflicts with testimonial evidence,[42] even when it comes from 100 witnesses.[43] In the realm of evidence, it occupies a distinct position. Thus, in *Jose v. Court of Appeals*,[44] the Supreme Court chose to rely more on photographs than on the testimony of a witness:

> The trial court was justified in relying on the photographs rather than on Rommel Abraham's testimony which was obviously biased and unsupported by any other evidence. Physical evidence is a mute but an eloquent manifestation of truth, and it ranks high in our hierarchy of trustworthy evidence. In criminal cases such as murder or rape[,] where the accused stands to lose his liberty if found guilty, [the] Court has, in many occasions, relied principally upon physical evidence in ascertaining the truth.[45]

In *People v. Carillo*,[46] even in the presence of direct evidence consisting of eyewitness accounts as to who inflicted injuries on whom, the Supreme

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37. *Id.* at 469.

38. People v. Atadero, 387 SCRA 179, 193-94 (2002).

39. *Id.*

40. People v. Ombreso, 372 SCRA 675, 711 (2001) (*Per curiam*, dissenting opinion).

41. People v. Ganduma, 160 SCRA 799, 805 (1988).

42. Senoja v. People, 440 SCRA 695, 709 (2004); People v. Asuncion, 364 SCRA 703, 715 (2001); People v. Roche, 330 SCRA 91, 109 (2000); & People v. Vasquez, 280 SCRA 160, 175 (1997).

43. Tangan v. Court of Appeals, 373 SCRA 119, 123 (2002) & People v. Jervoso, 124 SCRA 765, 770 (1983).

44. Jose v. Court of Appeals, 322 SCRA 25 (2000).

45. *Id.* at 31.

46. People v. Carillo, 333 SCRA 338 (2000).

Court sided on physical evidence and disregarded the testimonies of defense witnesses, thus:

> [T]he defense presented no less than five alleged eyewitnesses to the stabbing, including accused-appellant himself, who claimed that only Eduardo Candare inflicted wounds on the victim.
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> Witnesses, however, are weighed and not counted by numbers. In this case, the testimonies of the witnesses for the defense appear contrary to the physical evidence. As shown by the medical examination, the two stab wounds sustained by the victim ... were caused by two different weapons, one probably an ice pick and the other a hunting knife.
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> ...
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> Mute but eloquent testimony to the manifestation of truth, physical evidence ranks high in the hierarchy of evidence.[47]

Notwithstanding the recognized value of forensic evidence (as physical evidence), cases are still decided on the basis of other physical evidence which may not even have gone through forensic examination. Note, however, that this is actually not the norm. Commonly still, convictions are secured only with the use of testimonies of who a judge will consider credible witnesses. The Supreme Court has even declared that the testimony of one, for as long as positive and credible, is already sufficient to support a conviction,[48] and especially so when it "bears the earmarks of truth and sincerity."[49] This is true even though there is "no test of the truth of human testimony."[50]

IV. FORENSIC EVIDENCE IN JUDICIAL DECISION-MAKING

For well-funded defense cases, the practice may not be much of a problem as contrary physical evidence to prove the falsity of a witness' testimony, which may be financially difficult to secure, may nevertheless be obtained. This does not mean of course that this happens all the time. For instance, in high-profile cases generating significant media hype and thus receiving wide public attention, testimonies of witnesses are almost always readily accepted without due regard to what physical evidence actually suggests. This may be in large part caused by the consideration accorded by case law to testimonial evidence.

However, for those whose resources are already drained or those who do not even have any to begin with, they will have no other choice but to turn to the courts for succor. If they are not even aware that there is a way

47. *Id.* at 346–47 & 349.

48. People v. Mamarion, 412 SCRA 438, 459 (2003).

49. People v. Bulan, 459 SCRA 550, 563 (2005).

50. *Atadero*, 387 SCRA at 193.

by which their innocence may be shielded from fabricated or false evidence, their problem worsens.

Ideally, it is at this point that judges should come in and perform their roles as vanguards of justice and remember that, if they can direct the prosecution to present additional evidence to establish probable cause for the issuance of a warrant of arrest,[51] then there is certainly more reason why they should so direct the same thing if they find that the evidence submitted, considering established evidentiary rules and developments in forensic science, may not be sufficient to justify facts, which may have already been established by other forms of evidence such as testimonies. They must understand that an accused, at the commencement of trial, immediately finds himself in a disadvantaged position.[52] It has been observed that

> in a criminal prosecution, the State is arrayed against the subject; it enters the contest with a prior inculpatory finding in its hands; with unlimited means of command; with counsel usually of authority and capacity, who are regarded as public officers, and therefore as speaking semi-judicially, and with an attitude of tranquil majesty often in striking contrast to that of defendant engaged in a perturbed and distracting struggle for liberty if not for life. These inequalities of position, the law strives to meet by the rule that there is to be no conviction when there is a reasonable doubt of guilt.[53]

While authorities recognize that this is the reason why proof beyond reasonable doubt is required to secure conviction of an accused,[54] it must not be forgotten that such quantum of proof will only remain a mere legal construct void of any practical meaning if not enforced. Judges must operationalize this, and not just in the way that they were accustomed to. As there is no exact test that such proof already does exist and must depend upon moral certainty,[55] which not to mention, is a very subjective term, the manner by which it is established must necessarily have to change, not only on a case to case basis, but also as time passes by and technology for criminal investigation and detection develops.

While judges in the past, who did not have access to the technology available presently and who may have decided criminal cases without any aid from forensic evidence, may be excused, those tasked to administer justice now simply have no reason to be nonchalant and not to be vigilant in securing the best evidence obtainable just so they can be "more" morally

51. Tolentino v. Malanyaon, 337 SCRA 162, 167 (2000).

52. *See* People v. Berroya, 283 SCRA 111 (1997).

53. *Berroya*, 283 SCRA at 122 (citing RICARDO J. FRANCISCO, EVIDENCE 576 (3d ed.)).

54. *Id.*

55. *Id.*

certain about their decision to acquit or convict. It is only through this that proof beyond reasonable doubt will not be diluted and the confidence in the criminal justice system will be preserved. Thus, it has been observed:

> Moreover, use of the reasonable doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.[56]

Judges must realize the potential impact of forensic evidence especially in terms of preventing wrongful conviction. If a judge must indeed remain an impartial trier of fact, he must, first and foremost, have access to materials that can actually lead him to the truth.[57] His goal must be accuracy and he should not be compromising, as it is no less than the life and liberty of an accused (and those of his family members) that is at stake. Physical evidence, under which forensic evidence falls, is an unbiased body of evidence.[58] Paul Leland Kirk described it, thus:

> Wherever he steps, whatever he touches, whatever he leaves even unconsciously, will serve as silent evidence against him. Not only his fingerprints or his footprints, but his hair, the fibers from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen he deposits or collects — all these and more bear mute witness against him. This is evidence that does not forget. It is not confused by the excitement of the moment. It is not absent because human witnesses are. It is factual evidence. Physical evidence cannot be wrong; it cannot perjure itself; it cannot be wholly absent. Only interpretation can err. Only human failure to find it, study and understand it, can diminish its value.[59]

Understanding the urgency and the burden that the judge has on his shoulders, he must search for the best possible evidence obtainable, and this

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56. People v. Garcia, 215 SCRA 349, 359-60 (1992) (citing In the Matter of Samuel Winship, 397 U.S. 358 (1970)).

57. *See* Science and Technology in Judicial Decision: Making Creating Opportunities and Meeting Challenges (A Report of the Carnegie Commission on Science, Technology, and Government) 23, *available at* http://www.ccstg.org/pdfs/JudicialDecisionMaking0393.pdf (last accessed Feb. 28, 2013).

58. *See* National Forensic Science Technology Center, Types of Evidence, *available at* http://www.nfstc.org/pdi/Subject01/pdi_s01_m01_01.htm (last accessed Feb. 28, 2013).

59. UNITED NATIONS OFFICE ON DRUGS AND CRIME, CRIME SCENE AND PHYSICAL EVIDENCE AWARENESS FOR NON-FORENSIC PERSONNEL intro. (2009) (citing PAUL L. KIRK, CRIME INVESTIGATION: PHYSICAL EVIDENCE AND THE POLICE LABORATORY (1953)).

is where forensic evidence comes in. The judge must internalize this as technology has already evolved to the extent that it now allows several methods[60] by which evidence may be examined, which are not even known or accessible years ago. The results that may be obtained are promising as they facilitate fact-finding with at least a considerable degree of accuracy, which for the longest time had only remained an aspiration. With this, and as he is also aware that the prosecution has all the backing of the government and police investigators to run after offenders, the judge must, at the very least, frown upon any failure to submit pertinent and sufficient forensic evidence, either voluntarily or as directed, or form reasonable doubts to the evidence presented.

The effect of forensic evidence in criminal litigation was a subject of a study conducted by the National Criminal Justice Reference Service of the Unites States Department of Justice.[61] It was observed that juries treated scientific evidence as "trustworthy, not subject to human emotion and distortion,"[62] and resultantly, prosecutors felt the need to produce such kind of evidence and to explain whenever they could not offer any.[63] It was also found out that

> [w]hile the presence of forensic evidence tends to help yield a conviction primarily when cases are otherwise weak (e.g., no incriminating statements), the *absence* of such evidence leads to lower conviction rates. Prosecutors in our hypothetical case reviews believe it is principally the absence of forensic evidence — usually in combination with the absence of confession or other strong evidence — which pushes cases toward dismissal or acquittal. In rape cases, the lack of a laboratory report leads to significantly *lower* conviction rates when defendants have offered alibis.[64]

Acknowledging the potential of scientific (forensic) evidence, prosecutors were also recommended to use it as its impact on criminal justice process was noted to be "limited by the extent to which it [was] used."[65]

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60. *See* Erie County Central Police Services Forensic Laboratory, Methods Used for Examination of Evidence, *available at* http://www2.erie.gov/cps/sites/www2.erie.gov.cps/files/uploads/pdfs/Methods%20Used%20for%20Examination%20of%20Evidence.pdf (last accessed Feb. 28, 2013).

61. *See* Joseph Peterson, et al., The Role and Impact of Forensic Evidence in the Criminal Justice Process (A Research Report Submitted to the United States Department of Justice), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/231977.pdf (last accessed Feb. 28, 2013).

62. Peterson, *supra* note 25, at 3.

63. *Id.*

64. *Id.* at 4. Note that while the year that the research was conducted was before 1987, the same findings may still be applicable to the Philippines, where the use of forensic evidence in court has not evolved that much.

65. *Id.* at 5.

V. FORENSIC EVIDENCE AND INFERENCE NETWORKS

To convict an accused, his guilt must be established by proof beyond reasonable doubt. This refers to "that degree of proof which produces conviction in an unprejudiced mind."[66] It does not require absolute certainty of guilt but "[o]nly moral certainty as to the presence of the elements constituting the offense, as well as to the identity of the offender[.]"[67] Note that this certainty does not even "exclude the possibility of error."[68] It is that which "convinces and satisfies the reason and conscience of those who are to act upon a given matter."[69]

For a judge to conclude and be morally certain that proof beyond reasonable doubt exists, he must act upon a given matter, which of course consists in evidence to be submitted by both the prosecution and the defense, unrebutted presumptions and facts which may be taken judicial notice of. For certain, there is an intellectual process that at least an impartial judge must go through to arrive at a conclusion.

Judges may differ in the techniques employed, but the safest assumption, of course, is that there must still be some sort of an exercise where they consider each piece of evidence, relate one to the other, analyze facts which may be inferred from them and the soundness of the relationship, until they are finally convinced that the evidence establishes only one thing and no other. This is best described in what David A. Schum referred to as "inference networks."[70] According to him,

> [o]ne feature shared by all inference networks known to me is that there are no 'uniquely correct' forms these networks can take. Different persons may be able to construct quite different networks from the same evidence or for the same processes. All inference networks involve chains of reasoning having various numbers of links and various linkage patterns. I know of no inference network that can be regarded as 'final' or 'uniquely correct.' Someone can always either find a missing link or identify a linkage pattern not discerned by the person originally constructing the network.[71]

Arguments can be sourced from a mass of evidence. However, as Schum explained, they cannot be exactly considered as "final" or "uniquely

66. Alejo v. People, 550 SCRA 326, 346 (2008).

67. People v. Casinillo, 213 SCRA 777, 788 (1992).

68. Mendoza v. People, 356 SCRA 525, 537 (2001) (citing People v. Esquila, 254 SCRA 140, 147 (1996)).

69. Formilleza v. Sandiganbayan, 159 SCRA 1, 11 (1988).

70. David A. Schum, *Alternative Views of Argument Construction from a Mass of Evidence*, 22 CARDOZO L. REV. 1461, 1461 (2001).

71. *Id.* at 1463.

correct,"[72] as others coming from another vantage point may have a different interpretation, which often results in confusion.[73] He also identified what he considered an "important technology gap"[74] arising from the problem of drawing conclusions from masses of evidence.[75] Aptly, he observed, "We are still far better at gathering, transmitting, storing[,] and retrieving information than we are at drawing defensible conclusions from this information."[76]

This is true. For example, a witness may testify that he saw the accused coming out of the room where a woman was stabbed to death. There was blood on his hands. The police investigators thereafter presented photographs of the crime scene showing the room in disarray, the woman sprawled on the floor with the knife still stabbed in her nape, blood marks and stains on the wall and beddings. Another witness said that he found no other person within the immediate vicinity, and he saw the accused roaming around the area for around two hours before the killing was discovered. Two more testified that he harbored ill will against the victim as the latter humiliated him in public.

An inference that the accused killed the victim would seem sound, as he had access to, went inside the room, and was seen having blood on his hands. However, another inference is also likely. He wanted to confront the victim and was thinking about it while walking within the area for two hours. When he finally decided to talk to her, he discovered the crime, went in to touch and check the body of the victim, and decided to leave.

Normally, the judge will consider which of the two versions is consistent with human nature and experience and will, of course, choose the theory which is more expected and logical. Nevertheless, the fact that a course of action may seem odd should never be considered enough to brand a story as untrue, because the account of the accused may be just as true.

Forensic evidence has the potential to fill in the gap created by these two interpretations or missing links between other physical or testimonial evidence. Had reports on *post-mortem* lividity, *rigor mortis*, blood spatter analysis, dactyloscopy, DNA results, or other forensic examination been presented, the judge may not even be forced to choose which of the two versions he must adopt. He can rely on the scientific evidence before him, which can afford him to reconstruct the crime scene and make conclusions of his own which are not dependent on experience, which in itself is very relative. The same may also be said for criminal cases where direct

72. *Id.*

73. *Id.* at 1462.

74. *Id.* at 1461.

75. *Id.*

76. Schum, *supra* note 73, at 1461.

evidence[77] is available. Forensic evidence is very important in providing details needed to establish mitigating, aggravating, justifying, and qualifying circumstances.[78] The specific information that may be derived from this kind of evidence may determine whether an accused may be entitled to bail or not, especially in instances where there is dispute as to whether he committed murder or homicide.[79]

However, apparently, this is not so much the case in the Philippines where presentation of physical evidence (and thus forensic evidence) is not required. The 2004 statistics[80] provided by the Supreme Court should therefore come as no surprise. This is actually problematic. Settled case law does not even demand that judges look farther than testimonial evidence whenever they perceive that this is enough.[81] They are not duty bound to search for ties that will hold the pieces of evidence together. This is dangerous as the inference networks may lack depth insofar as the quality of evidence adduced and considered. Worse, the consequences of this inadequacy affect real lives, people who may have absolutely known nothing about the charge, but are nevertheless sent to prison.

VI. FORENSIC EVIDENCE AND OUR CRIMINAL JUSTICE SYSTEM

Every one charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.[82] In our jurisdiction, the law requires that all reasonable intendment must be made to support such presumption,[83] which is even treated as a conclusion of law.[84] For this reason, courts are required to "put prosecution evidence under

77. This is on the assumption, of course, that the evidence of an act is clear and cannot be interpreted any other way.

78. *See generally* Peterson, et al., *supra* note 63, at 3–7.

79. *See* PHIL. CONST. art. III, § 13. *See also* An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, arts. 248 & 249 (1932).

80. *Mateo*, 433 SCRA at 656–57.

81. *See Suerte-Felipe*, 547 SCRA at 469.

82. *See* PHIL. CONST. art. III, § 14 (2) & International Covenant on Civil and Political Rights art. 14 (2), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

83. *See* People v. Lagramada, 388 SCRA 173, 193 (2002); People v. Villaflores, 371 SCRA 429, 437 (2001); People v. Sahagun, 182 SCRA 91, 94 (1990); & People v. Castelo, 133 SCRA 667, 684 (1984). *Compare* People v. Court of Appeals, 626 SCRA 352, 370 (2010) (discussing the "equipoise rule"), *with* De Guzman v. Sandiganbayan, 231 SCRA 627, 632 (1994) (asserting that the presumption of innocence, being only a presumption that may yield to contrary evidence of guilt, should not be stretched beyond its reasonable intendment).

84. People v. Clores, 125 SCRA 67, 75 (1983).

severe testing,"[85] and "to take 'a more than casual consideration' of every circumstance or doubt favoring the innocence of the accused."[86]

The Supreme Court, considering the effect of conviction upon an accused and the implication of the inadequacy of the details in the prosecution's evidence, held in *People v. Baro*:[87]

> In order to convict the accused of a crime, the prosecution must produce evidence showing guilt beyond reasonable doubt. A person charged with a serious crime stands to lose not only reputation, but also liberty and maybe even life. Because of the gravity of the charge and the great loss involved in the present case, the prosecution should not have rested easy on haphazard facts and hastily thrown-in principles, forgetting in the process their duty of overcoming the presumption of innocence of the accused in a criminal action.
>
> The prosecution should take an active and direct part in the trial of the case, since it has the *onus probandi* of showing the guilt of the accused. Even if it is, perhaps, the inadequacy of details in the prosecution's evidence rather than the actual facts themselves that makes it difficult for [the] Court to arrive at definite conclusions, still [responsibility cannot be pinned] on appellant. The moral conviction that may serve as basis for a finding of guilt in a criminal case should be that which is the logical and inevitable result of the evidence on record, exclusive of any other consideration. Short of this minimum requirement, it is not only the right of the accused to be freed; it is, even more, [the] Court's constitutional duty to acquit them. Only then may there be fealty to the constitutional presumption of innocence.[88]

To overcome the presumption, the prosecution must establish the guilt of an accused beyond reasonable doubt[89] which presents an even more exacting test. It calls for moral certainty, which has been defined as a "certainty that convinces and satisfies the reason and conscience of those who are to act upon it."[90] It has even been once said that "[e]very vestige of doubt having a rational basis must be removed" if only to accord full respect to said constitutional right.[91] Every hypothesis except guilt must be excluded.[92] This is the function of forensic evidence.

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85. People v. Dilamanta, 440 SCRA 55, 65 (2004).

86. *Id.* (citing People v. Ratunil, 334 SCRA 721, 737 (2000)).

87. People v. Baro, 383 SCRA 75 (2002).

88. *Id.* at 91 (citing United States v. Navarro, 3 Phil. 143 (1904); People v. Barrera de Reyes, 82 Phil. 130 (1948); & People v. Nazareno, 80 SCRA 484 (1977)).

89. People v. Asis, 391 SCRA 108, 112 (2002).

90. People v. Dagdagan, 220 SCRA 308, 312 (1993) & People v. De la Cruz, 200 SCRA 379, 389 (1991).

91. People v. Joven, 64 SCRA 126, 129 (1975). *See also* People v. Mirantes, 209 SCRA 179, 188 (1992). In *Mirantes*, the Court said that "[t]he *onus probandi* on

Unfortunately, despite the affirmed rights of an accused[93] and the seemingly strict directive to prosecutors to prove cases with the amount of evidence that can satisfy the "exacting test" of proof beyond reasonable doubt, in Philippine jurisdiction, save for the Rule on DNA Evidence[94] and the general provisions of the Rules of Court on documentary and object evidence,[95] no rule or case law, as would prop up the case for its use in criminal litigation, specifically deals with forensic evidence.[96]

As explained earlier, it is not even required. For as long as the *corpus delicti* is proved by "credible" testimonial evidence (even of one witness), conviction may still be had.[97] This kind of legal treatment accorded to forensic evidence may be indicative of either lack of its use in criminal prosecution or just plain indifference towards it. In fact, the Philippine National Police (PNP) adopted the findings of the European Union–Philippines Justice Support Program (EPJUST) as to the status of forensic examinations in the country:

> (2) This pertains to the pieces of evidence collected by the SOCO Team that are subjected to forensic examination. The European Union (EU) experts thru the EPJUST program observed that not all available and applicable forensic examinations are being performed on the pieces of evidence collected at the crime scene. Consequently, when the need for another forensic examination arises, the same can no longer be made since such evidence is no longer available or was already contaminated.[98]

In another Memorandum, the PNP also affirmed the finding of the EPJUST insofar as digital forensic examination:

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the prosecution is not discharged by casting doubts upon the innocence of an accused, but by eliminating all reasonable doubts as to his guilt." *Id.*

92. *Lagramada*, 388 SCRA at 193.

93. *See* 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 115.

94. RULE ON DNA EVIDENCE, A.M. No. 06-11-5-SC, Oct. 2, 2007.

95. REVISED RULES ON EVIDENCE, rule 130.

96. New South Wales has a law entitled "Crimes (Forensic Procedures) Act 2000." *Crimes (Forensic Procedures) Act* 2000 (N.S.W.) (Austl.).

97. *Mamarion*, 412 SCRA at 459.

98. Philippine National Police Directorate for Investigation and Detective Management, Mandatory Conduct of All Applicable and Available Forensic Examination on the Collected Evidence by SOCO Team in All Cases Handled by Special Investigation Task Group (SITG) (May 22, 2012), *available at* http://didm.pnp.gov.ph/Memoranda/USIG/Mandatory%20Conduct%20of%20all%20Applicable%20and%20Available%20Forensic%20Examination%20on%20the%20Collected%20Evidence%20by%20SOCO%20Team%20in%20All%20Cases%20Handled%20by%20SITG%20dtd%20May%2022,%202012.pdf (last accessed Feb. 28, 2013).

> (3) Considering that not all investigators are aware of the capability of your Digital Forensic Laboratory to retrieve deleted messages, documents, pictures, etc.[,] which might be used as possible leads in the investigation of cases, this Directorate plans to issue a memo-directive that will make the conduct of digital forensic examinations on the recovered CPs, laptops[,] and other electronic digital storage devices mandatory [ ].[99]

From the above discussion, the problem is two-pronged: the use and presentation of forensic evidence by lawyers, particularly prosecutors, and their use by judges in their role as triers of facts. Cases are decided even without them, albeit authorities agree that they are helpful insofar as reconstructing the crime scene is concerned. The failure to procure and introduce them in trial does not even have a consequence. Jurisprudence even points to other means to prove the *corpus delicti* and relies on some nebulous concepts of experience and credibility to check their efficacy. While there is also recognition of its potential in criminal investigation and detection, its unique place in evidence has not been firmly entrenched.[100]

As a result, one can safely conclude that a person can actually be sent to prison, even for life, if there will only be witnesses who are willing, intelligent, decent, and bold enough to lie in a court of law and who can withstand intensive cross-examination and even questioning from a judge.[101] For as long as there is a semblance of reality in the story, then there is enough reason for a judge to conclude that a fact does exist and is sufficient to convict. For as long as facts derived from the mass of evidence are capable of making up a theory that is consistent with ordinary experience, regardless of any possible deviation in the normal course of human conduct, which ironically characterizes a criminal act, an accused totally innocent of a crime charged can actually be robbed of his liberty.

Thus, the incidence of wrongful convictions in the country.

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99. Philippine National Police Directorate for Investigation and Detective Management, Proposed Mandatory Conduct of Digital Forensic Examination on the Recovered Cellular Phones, Laptops and Other Electronic Digital Storage Devices in All Cases Handled by SITG (May 24, 2012), *available at* http://didm.pnp.gov.ph/Memoranda/USIG/Mandatory%20Conduct%20of%20Digital%20Forensic%20Examination%20on%20the%20Recovered%20Cellular%20Phones,%20Computers,%20Digital%20Storage%20Media%20and%20other%20Electronic%20Digital%20Storage%20Devices%20in%20All%20Cases%20Handled%20dtd%20June%2013,%202012.pdf (last accessed Feb. 28, 2013).

100. Note that DNA evidence is primarily helpful in identification and not in reconstruction of crime scene.

101. *See generally Lejano*, 638 SCRA at 170-75.

VII. FINAL NOTE

The Innocence Project listed unvalidated or improper forensics as one of the reasons for wrongful convictions.[102] It must be remembered nonetheless that this identified cause essentially refers to wrong testimonies, exaggerated assessments, or errors in analysis, which may nevertheless be verified with a correct evaluation or a retesting[103] and which, when compared to unverifiable testimonies of witnesses whose credibility and capability for honesty may be too difficult to check, are still more credible evidence.

While the policy thrust discussed above seems to be towards preventing the occurrence of and addressing wrongful convictions, there is certainly much to be said in the way the problem is handled by the judiciary. The problem may be multi-faceted or even arguably cultural, so to speak, but there is one obvious indication why the problem persists. This can be traced to the seeming disregard of the value of forensic evidence in shedding light to factual controversies, the resolution of which may be determinative of whether a conviction or acquittal is justified or not.

In one case that the author had the opportunity to participate in, the judge was confronted with a medico-legal finding on the time since death which was based on recovered undigested food particles from the stomach of the victims. The medico-legal expert testified that digestion normally takes about four hours and the fact that he was able to still retrieve food from the corpses means that they could have been killed within four hours after they were last seen to have taken their meals. For this reason, he concluded the time frame within which the crime was committed which coincided with the time when the accused was present in the scene. The defense nevertheless presented a foremost authority in forensic pathology who testified and presented recent literature explaining that the determination of time since death based on digestion lacks scientific basis and has long been rejected by the forensic scientific community. As expected, the judge found himself in a dilemma. However, as he expressed his opinions and asked clarificatory questions, the problem seemed to be not so much with how he would treat the two different facts to prove one important issue before him, but with having found himself in perhaps a moral predicament of having decided similar criminal cases in the past on the basis of a method that had already been considered obsolete and unreliable.

In a larger context, the case also shows that in terms of forensic evidence, which our system has not even widely used and patronized or much less started to develop, our use of it, if cannot be considered backwards, has stagnated by relying on antiquated principles. This is quite

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102. About the Innocence Project, *supra* note 22.

103. *See* Brandon L. Garrett & Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 VA. L. REV. 1, 79 (2009).

unfortunate because *first*, while there may be an impression of use of forensic evidence in the country, it is nevertheless unscientific and thus incorrect, and *second*, it only shows that our system has not progressed and findings of guilt or innocence may have been made improvidently – and not to mention, unjustly. This has been going on for a long time and the sad part is, authorities are either not aware of it or are just plain indifferent. For certain, however, there are instances — and they are not few, that people hailed to courts to answer a charge are wrongly detained and eventually convicted.

Over-patronizing forensic evidence is not advocated. The suggestion is only made in view of a perceived problem — an acknowledged status as early as 2004 — [104] that has been affecting lives and depriving the innocent of their liberties, and that has been allowed to persist just because the system has some principles that have been long institutionalized and has not openly welcomed or begun absorbing new techniques and realities to curb the occurrence of wrongful conviction. Incidentally, in capital cases, the prospect of provisional liberty may not be considered enough to curb this problem or to address the consequences arising from this lack. It is not even a promising consolation as there are instances where bail proceedings may even take years before a petition is finally resolved. The pendency of a criminal case furthermore already has an effect on the psychological well-being not only of an accused, but also of his family. Social stigma also attaches to them.

Forensic evidence has the capacity to minimize such occurrences.[105] If it will be further considered that the justice system has already ingrained and welcomed authorities and springboards for much needed reforms in judicial decision-making, the case for the use of forensic evidence is even more fortified. In reality, it is only a matter of using it and allowing this aspect of the system of evidence to start evolving into something more reliable, solid and fundamentally potent — one that rightfully, and not wrongfully, convicts.

104. *Mateo*, 433 SCRA at 657.

105. *See generally Lejano*, 638 SCRA at 189 (2010) (J. Carpio-Morales, concurring opinion) & *Lejano*, 638 SCRA at 293 (2010) (J. Sereno, separate concurring opinion).