

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JONATHAN PADUA Y LLENADO, JOHN DOE AND PETER DOE,
ACCUSED, JONATHAN PADUA Y LLENADO, DEFENDANT-APPELLANT.**

G.R. No. 100916. October 29, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The issue in this case is the consequence of the positive identification of the accused made by the lone prosecution eyewitness (complainant herself) on which the trial court's judgment of conviction mainly rested.

This appeal prays for a reversal of the decision of the Regional Trial Court, Fifth Judicial Region, Branch 28, Naga City in Criminal Case No. RTC 90-3138, the dispositive portion of which reads:

“WHEREFORE, in view of the foregoing findings that the prosecution was able to prove beyond reasonable doubt the guilt of the accused Jonathan Padua y Llenado of the crime of kidnapping with serious illegal detention of which he is presently charged, judgment is hereby rendered whereby said accused is hereby sentenced to suffer the penalty of life imprisonment and to pay the complaining witness TEN THOUSAND (P10,000.00) PESOS representing moral damages. With costs de oficio.

SO ORDERED.” (RTC Decision, p. 21; Rollo, p. 44)

The information filed against the accused-appellant with two others who remain at large up to this time alleges:

“That on or about April 14, 1990, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did, then and there, wilfully, unlawfully and feloniously kidnap the herein complainant DIANA CASTILLO Y BRIONES, a female, 15 years of age and detained (sic) her from April 24, 1990 up to and until June 16, 1990, against her will and consent.” (Rollo, p. 10)

Upon arraignment, the accused-appellant, with the assistance of counsel, pleaded not guilty.

The people's version of the antecedent facts is summarized by the Solicitor-General in his brief, as follows:

“On April 24, 1990, at about six o'clock to seven o'clock in the evening, complainant Diana Castillo, fifteen years of age, was at her residence in Naga City. Her mother then asked her to buy food at a nearby store (pp. 3-4, TSN, September 4, 1990).

“Obeying her mother's request, complainant went out to buy some food. On her way to the store, she saw a car running towards her direction. Inside the car were three persons, two of whom were wearing a nun's dress. The car then stopped and the two men in nun's uniform alighted and stood in front of the Triangulo Elementary School. When complainant passed by the school, the two men pulled her into the car that was driven by appellant. They then inserted a handkerchief in her mouth and she lost consciousness (pp. 5-6, *ibid.*).

“When complainant woke up, she found herself inside a cage with other children. The boys were placed in one cage while the girls were placed in another. The building where they were housed was made of concrete and

they were not allowed to get out. Three guards were watching them and one of them was appellant. In the course of complainant's detention, she was injected with drugs at least three times a week. Everytime she was injected, she would pass out (pp. 7-11, *ibid.*).

"After being detained for quite sometime, she decided to escape. She made a hole on the wall with the use of an ice pick that was left in her room. On June 14, 1990, she was able to escape by going through the wall (*sic*) she created and descended (*sic*) by climbing down the tree. She ran (*sic*) for approximately 400 to 500 meters when she heard the barking of a dog. She got scared and climbed another tree. She then came down and continued running. When she felt exhausted, she climbed a tree to rest for fear of snakes and ants that might bite her (pp. 18-23, TSN, *ibid.*).

"The following day, she came down the tree and continued her escape. She then saw a house and decided to seek assistance there. Inside the house was an old woman who allowed her to eat and she was also provided with some clothing. Thereafter, the old woman accompanied her to the town of Sta. Elena, Naga City. Upon reaching there, she took a bus bound for Naga City leaving behind the old woman (pp. 24-29, TSN, *ibid.*).

"When she reached Naga City, she went to Rotary Hall in Barangay Triangulo where she wrote her mother. But before her mother could pick her up at the Hall, she left home already with her nephew Jose. When she reached the house, she narrated everything to her mother (pp. 28-31, TSN, *ibid.*).

"The following morning, complainant was brought to the Bicol Regional Training Hospital for treatment and thereafter she was brought to the Police Headquarters to report the incident (pp. 31-32, *ibid.*).

"Several days thereafter, complainant was invited by the police to identify a suspect who was arrested in front of the Regional Hospital. When she saw appellant in the police headquarters, she became so afraid and positively identified appellant as one of her kidnappers (pp. 34-35, TSN, *ibid.*).

"Subsequently, appellant was charged with Kidnapping with Serious Illegal Detention." (Appellee's Brief, pp. 3-6; Rollo, p. 74)

On the other hand, a different version is presented by the accused-appellant, to wit:

"On June 21, 1990, a 15-year old girl by the name of Diana Castillo, accompanied by her mother, showed up at the police headquarters in Naga City and reported that she was abducted by some unknown persons on April 24, 1990 while she was walking along Diversion Road in Triangulo, Naga City (pp. 4-6 and 32, TSN, 4 Sept. 1990). She further said that she was forcibly kept in detention in an undisclosed place somewhere in Camarines Norte until she was able to escape on June 16, 1990. She told the police that her abductors looked like Chinese (Exh. 2; pp. 19-20, TSN, 6 Sept. 1990).

"The girl also said that while she was in detention, she was injected several times with an unknown liquid. She said that there were other children being kept in that place where she was detained (Exh. 2, pp. 19-20, TSN, *id.*).

"An investigation of the report of Diana Castillo was conducted by the police, but nothing came out of it until about two months later, or on August 9, 1990, when a man was arrested near the Camarines Sur Regional Hospital in Naga City while allegedly in the act of taking forcibly an infant girl from her mother (Exh. C; p. 32, TSN, *id.*).

"Diana Castillo was then brought by the police investigators to the police station where she was made to see the man who was arrested. The man, who turned out to be the accused Jonathan Padua, had Chinese features; and he was not among those who participated in her abduction and illegal detention (pp. 34-35, TSN, 4 Sept. 1990; pp. 34-35, TSN, 6 Sept. 1990).

The Accused

“Jonathan Padua y Llenado is a resident of Meycauayan, Bulacan, married with 2 children (p. 29, TSN, 16 Oct. 1990; p. 4, TSN, 6 Nov. 1990). He earns his living as a tricycle driver, while his wife operates a carenderia beside a tannery factory (p. 31, TSN, 16 Oct. 1990; p. 3, TSN, 6 Nov. 1990).

“Prospecting on profiting from supplying the leather factory with raw animal skin, the couple decided to sell their tricycle, with the proceeds of the sale to be used as their capital. The accused intended to get the animal hide from a cousin in Antipolo, Buhi, Camarines Sur (p. 32, TSN, 16 Oct. 1990; pp. 13 and 25, TSN, 17 Oct. 1990; p. 4, TSN, 6 Nov. 1990).

“On August 7, 1990, Jonathan Padua sold his tricycle for P39,000.00 (Exh. 4; p. 7, 16 Oct. 1990). He deposited P30,000.00 in a bank (Exh. 5; p. 35, TSN, id.); gave P3 000.00 to his wife (p. 41, TSN, 16 Oct. 1990; p. 11, TSN, 6 Nov. 1990); and kept the remaining amount which he intended to use for his expenses in Bicol (p. 16, TSN, 17 Oct. 1990).

“Before leaving Meycauayan, however, he invited a friend to a drinking binge, which then ended up with both of them taking a drug known as ‘shabu’ (pp. 37-38, TSN, 16 Oct. 1990). In the morning of the following day, he went to the Philtranco terminal in Pasay City and boarded a bus to Bicol (pp. 39-40, TSN, id.).

“While on the bus, the accused began experiencing symptoms of paranoia -- that people were after him and his money. He transferred to another bus then got off in Labo when he noticed that four persons were following him (pp. 40-42, TSN, id.).

“A policeman accompanied him to Daet, Camarines Norte and he was made to pay for the food taken by the policeman in a restaurant. He was allowed to board a mini-bus bound for Naga City. With the drug having taken hold of him, he again felt that he was being followed, this time by a man whom he saw talking with the policeman in the restaurant. He got off the mini-bus when he saw a military detachment (pp. 43-47, TSN, id.).

“Instead of being given assistance, the soldiers at the detachment took his money and left him with P500.00 only. He was made to board a bus back to Daet with two soldiers accompanying him. The bus stopped at a canteen and the two soldiers left him. He boarded a bus bound for Sorsogon (pp. 47-49, TSN, id.; pp. 2-3, TSN, 17 Oct. 1990).

“On the bus, a man took his wallet and his travelling bag. He got off when the bus reached a place somewhere in Naga City. Desperate he walked purposeless until he saw a small store where he bought a blade with the remaining change in his pocket. He slashed his wrist with the blade. Two uniformed policemen found him sprawled on the ground in front of an Iglesia ni Kristo Church (pp. 3-5, TSN, 17 Oct. 1990; p. 15, TSN, 23 Oct. 1990).

“The two policemen brought him to the Camarines Sur Regional Hospital. The policemen noticed that he was high on drugs since he was saying that it was raining when the day was bright and fair. The policemen left him at the hospital after they were assured by the doctor of the condition of the patient. (pp. 15-16, TSN, 23 Oct. 1990).

“After being treated of his wound, the accused began to walk out of the hospital compound; and he then noticed that there were around fifteen persons near two passenger jeepneys staring at him. He saw two women and he approached them requesting that he be allowed to walk with them. One of the two women was carrying a child and the accused asked her if he can hold the child for her. The woman consented; but when the accused got hold of the child, the woman screamed (pp. 6-7, TSN, 17 Oct. 1990).

“The men near the passenger jeepneys surrounded the accused. One of them asked him to hand over the child to him and the accused complied. A police car then arrived and he was brought to the police station where, about two hours later, a girl accompanied by a policeman arrived. The girl was Diana Castillo (pp. 7-8, TSN, 17 Oct. 1990; p. 35, TSN, 6 Sept. 1990).

“Without the accused being placed in a line-up, Diana Castillo then pointed at him as one of those who abducted her two months before (p. 8, TSN, 17 Oct. 1990; p. 35, TSN, 6 Sept. 1990; p. 36, TSN, 4 Sept. 1990).

“The effects of shabu to a user, among other varied reactions, are irrational behavior, visual and auditory hallucinations, depression and suicidal tendencies, and paranoia. The effects are recurring and are manifest for no less than 48 hours from intake of the drug (pp. 6-8 & 12, TSN, 23 Nov. 1990); pp. 41-42, TSN, 16 Oct. 1990; Exhs. 9 and 10).” (Appellant's Brief, pp. 3-8; Rollo, p. 61)

After trial on the merits and the judgment of conviction on April 19, 1991, the accused-appellant filed a motion for new trial on May 3, 1991 which was denied by the trial court on June 27, 1991.

On appeal, the accused-appellant raises the following assigned errors:

“The trial court erred:

1. In failing to apply the most careful scrutiny of the prosecution's testimony, instead giving undue consideration to every circumstance of guilt and thus losing sight of those that favor innocence:

a. It misrepresented the actual deportment of the complainant on the witness stand;

b. It misstated a material fact and made illogical inferences unsupported by the evidence on record;

2. In misjudging the defense of the accused as consisting of alibi and good character when in fact, the defenses raised were alibi and mistaken identity;

3. In rigidly applying the principle that positive identification is all-prevailing without, however, analyzing the varying circumstances of its certainty;

4. In denying the accused's motion for new trial and thus failing to consider that character evidence is essential when credibility is placed in issue.” (Appellant's Brief, pp. 1-2; Rollo, p. 61)

The vital issue presented by the above assigned errors questions the trial court's appreciation of the evidence in favor of the prosecution which anchored its case against the accused-appellant on the “positive identification” made by the complainant herself as the lone eyewitness imputing the crime charged to the accused-appellant.

The well-entrenched rule that the trial court's findings of fact are accorded great weight on appeal is not without exceptions. Hence, among the recognized exceptions are:

“(1) When the conclusion is a finding based entirely on speculation;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts; and

(5) When the court, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both the appellant and the appellee.” (See *People v. Ernesto Yabut y Torres*, G.R. No. 82263, June 26, 1992 citing *People v. Taruc*, 157 SCRA 178 [1988])

The case at bar falls under the fourth exception aforementioned.

The trial court, in appreciating the evidence on record, committed reversible error in dismissing the defense of alibi and ruling that the positive identification of the accused-appellant by the complainant as the lone eyewitness presented by the prosecution established his guilt to a moral certainty.

In the case of *People v. Acosta* (187 SCRA 39 [1990]), we stated that:

“The identification of the offender is crucial in every criminal prosecution where the defense pleads alibi. Unless the identity of the culprit is established beyond reasonable doubt, the charge against the accused must be dismissed on the ground that the constitutional presumption of innocence has not been overcome.” (At. p. 42)

The attendant circumstances regarding the manner by which the complainant in this case pinpointed the accused-appellant as the culprit at the police station strongly indicate that the identification was improperly suggested by the police.

It is an undisputed fact that the accused-appellant in the case at bar was not identified in a police line-up. Considering that a positive identification in which only the accused is presented to the witness is, more often than not, as tainted as an uncounselled confession (See *People v. Hassan*, 157 SCRA 261 [1988]), courts, in such instances, must be the bulwark against a blatant miscarriage of justice.

On direct examination, the accused-appellant recounted how he was identified by the complainant at the police station after he was arrested for the attempted kidnapping of a one-month old baby as alleged in an information dated August 10, 1990 (Exhibit “C”). Thus, he testified as follows:

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“Q. And at the police station what happened?

A. While at the police station I was investigated, they asked for my name, from where I was, and and I told my name and the place where I came from.

Q. Now what else happened at the Police Station?

A. While I was at the Police station for around two (2) hours or more already ‘a girl arrived with a man with his arm on the shoulder of the girl and this man was in civilian clothes but I noticed he had a gun on his waist, sir.

Q. And what happened next?

A. They were conversing on one side of the police station while I was also seated beside the table, sir.

Q. And what did the girl do after talking with the man with a gun?

A. After they finished conversing the girl approached me and suddenly pointed at me.

Q. After the girl pointed at you, what happened next?

A. I was placed inside the jail sir.” (TSN; October 17, 1990, pp. 7-8)

Moreover, the complainant herself, on cross-examination, stated that:

“Q. Now, do you remember the Police Officer fetching you in your house telling you that the person who kidnapped you was caught?

“There is no law requiring a police line-up as essential to a proper identification. (*People v. Espiritu*, 191 SCRA 503 [1990]). Thus, even if there was no police line-up, there could still be proper identification as long as such identification was not suggested to the witnesses by the police.” (At p. 362)

The complainant was summoned to the police station on account of the accused-appellant's arrest for attempted kidnapping. The police officer who fetched the complainant banked on the possibility that the person arrested was the suspect they were looking for in the case of kidnapping with serious illegal detention filed at the instance of the complainant two months before.

On the other hand, the complainant, upon seeing that the said suspect was chinky-eyed and on the basis of her recollection that one of her alleged kidnappers had Chinese features, readily pointed at the accused-appellant at the police station for purposes of positive identification after she was apprised by the police of the circumstances of the accused-appellant's arrest.

The probability that the positive identification was not influenced by the police would not have existed had the complainant's bases thereof been free from uncertainty and incredulity as disclosed by her testimony in court.

As pointed out by the accused-appellant in his brief:

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"3. On a very significant fact, as it would lay the basis for her identification of the accused, Diana Castillo first declared that the accused got off from the car and opened the door while her 2 companions pushed her into the car (pp. 56, TSN, 4 September 1990). However, after admitting that she was pushed into the car beside the driver's seat, and perhaps realizing the absurdity of the accused getting off from the car and opening the door on the opposite side, she then said that the accused did not get off from the car anymore but merely stretched his hand to open the door. (pp. 59-60, TSN, 4 September 1990);

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"8. Another glaring contradiction on the vital subject of identification is when she declared that she was 'positive' she saw the accused only seven times during her entire period of detention (p. 34, TSN, 4 September 1990). But later she said that she was injected with an unknown liquid twenty-six times, (pp. 14-15, 6 September 1990), and in all those 26 occasions the accused was always with the two other guards doing the injections (pp. 32-33, TSN, id.).

"9. On the subject of identification again, she first admitted that the three guards who were doing the injections did not look like Chinese (p. 19, TSN, 6 September 1990). Pressed further on this point, and after pondering on the question for some time and after looking at the fiscal for some clues (please see pp. 23-24, TSN, id.), she backtracked and said that one of the guards looked like a Chinese (p. 23, TSN, id.). She described the other guards as 'Malays' although she said that they had fair complexion and 'tall noses' and their faces 'reddish' in color (pp. 29-32, TSN, id.). Obviously, she was rectifying her previous statement that the 3 guards making the injections did not look like Chinese, which would exculpate the accused who had distinct Chinese features.

"10. Thus, she contradicted her police statement (Exh. 2) on the physical appearance of the guards who were injecting her whom she described as having Chinese features (answer to question no. 8, Exh. 2)." (Appellant's Brief, pp. 11-14; Rollo, p. 61)

The aforequoted inconsistencies are inexplicable and cast doubt on whether the complainant had the full opportunity to recognize her alleged kidnapper or that the kidnapper was the appellant. The Court is not persuaded that the positive identification in this case meets the test of moral certainty. As we held in the case of *People v. Nicolas* (204 SCRA 191 [1991]):

"x x x Mere speculations and probabilities cannot substitute for the proof required by law to establish the guilt of the accused beyond reasonable doubt inasmuch as the conviction for a criminal offense must be based on clear and positive evidence. (*Gaerlan v. Court of Appeals and People*, 179 SCRA 20 [1989]; *Macadangdang v. Sandiganbayan*, 170 SCRA 308 [1989]). (At p. 202)

The prosecution evidence on the details of the crime as introduced by the lone eyewitness is replete with irreconcilable self-contradictions and inconsistencies sufficient to shatter the said victim's credibility. As contained in the accused-appellant's brief, the discrepancies in the victim's oral testimony are as follows:

"1. She testified that she was placed inside a cage together with some children (p. 7, TSN, 4 September 1990).

Finding this perhaps as too over-imaginatively bizarre, she revised her story by changing the primitive cage into a high-tech room with glass walls and partitions complete with video sets (pp. 3-4, TSN, 6 September 1990);

"2. She declared that she made a hole out of the same hole where she used to peep and that this was the hole she used in escaping (pp. 18-19, TSN, 4 September 1990). On cross-examination, she made a different story by saying that she made another hole since the old peep hole could be seen from the ship (pp. 17-18, TSN, 6 September 1990);

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"4. She also said that in the area where she was abducted, there were people around as there were a row of houses lined along the highway (p. 43, TSN, 4 September 1990) as, in fact, just beside the school were a wielding (sic) shop (Exh. 1-b) and a vulcanizing shop (Exh. 4-c). Yet later she said that, aside from her abductors, she did not see any persons around as the residents in the area were all 'inside their houses' when the incident occurred between 6:00 to 7:00 in the evening (p. 58, TSN, id.), which was also rather odd as people, especially in the urban areas, do not retire at that early hour;

"5. She categorically said that she entered first the Triangulo Elementary School compound in going to the store of Tiang Rosa (pp. 41-42, TSN, 4 September 1990). Later admitting that the store of Tiang Rosa was not at the back of the school, she then said that she did not enter anymore the school compound (pp. 44-45, TSN, id.);

"6. She first declared that, while on her way home, she was on the left side of the highway going to Mabulo bridge (p. 44, TSN, 4 September 1990), but then later said that she was on the right side (pp. 45-46, TSN, id.);

"7. She said that on the third day of her detention, she was transferred to another room when two more children, who were also apparently kidnapped, arrived (p. 11, TSN, 4 September 1990); but she again changed her mind by later saying that only one girl arrived (p. 11, TSN, 6 September 1990). (Appellant's Brief, pp. 10-12; Rollo, p. 61)

Inasmuch as the victim's credibility is tainted by virtue of her own vacillating and confusing declarations, corroborative evidence should have been adduced by the prosecution. The prosecution presented the victim herself and the two physicians who prepared the medical certificate dated August 10, 1990 (Exhibit "B") on the physical examination conducted on the victim on June 21, 1990.

The trial court summarized the testimonies of the said medical officers as follows:

"Dr. Ma. Victoria Alvaro who was qualified as an expert on obstetrics and gynecology cases declared that on June 21, 1990 she examined the complainant for gynecologic clearance. She identified a medical certificate she issued on August 10, 1990 (Exhs. B and B-1). In findings No. 4 and 5 stated in her medical certificate, she explained that said finding of incomplete healed hymenal lacerations mean that the hymen was lacerated. The whole width of the hymen, however, was not lacerated, so it is an incomplete heal or supervision. If the whole width was lacerated, it is called complete hymenal laceration and it is found at the 9:00 o'clock and 3:00 o'clock position and the same could have been caused by many factors such as sexual intercourse, jumping running, etc.

"In his testimony also, Dr. Rogerio Reyes who was, asked questions to qualify him as an expert witness, declared that on June 21, 1990 he examined the complainant and his findings were those listed in the medical certificate (Exhs. B and B-2; Exhs. 3, 3--A, 3-B). In explaining his findings, he declared that usually hematoma is an accumulation of blood under the skin usually as a result of fracture of blood vessel which is secondary to trauma. In his finding number 1, he found hematoma, 1 x 1 cm. at the right side of the back of the complainant, around two (2) inches from the shoulder and the same probably as a trauma, or when hit by a bad

object such as wood or a fist blow.

“The injury listed in number 2’ of the medical certificate is a healed punctured wound at the lateral aspect of the upper portion of the right arm about 3 to 4 inches above the elbow and the same was probably caused by a pointed sharp instrument. Injury number 3 listed in the medical certificate was located in the inner side of the left arm about 1 1/2 inches from the elbow and could have been probably caused by needle marks, though the Doctor could not determine anymore the proximate time the same was inflicted as the wound was already healed. It was probable, however, that the injuries listed in the medical certificate could have probably (sic) been inflicted one (1) month before the complainant was examined. On cross?examination, Dr. Reyes declared, among others, that it takes only five (5) to seven (7) days for a needle injection because it completely disappears. An injection will completely heal in five (5) days to one (1) week.” (RTC Decision, p. 7; Rollo, p. 31)

A careful perusal of the above testimonies readily discloses that they are inconclusive and, therefore, serve no probative value as regards the implication that the accused-appellant is the culprit in this case. Hence, the Court is not persuaded that the prosecution presented the required quantum of proof in criminal cases. Our ruling in the case of *People v. Viray* (202 SCRA 320 [1991]) bears reiteration:

“Under the Constitution, the accused has in his favor the presumption of innocence. Unless his guilt is demonstrated beyond reasonable doubt, he is entitled to an acquittal. The requirement of proof beyond reasonable doubt requires moral certainty of guilt, ‘a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.’ In the present case, the requirement of moral certainty has not been met.” (At p. 332)

The trial court, in ruling that the inconsistencies and contradictions cited by the accused-appellant referred only to minor details, paralleled the instant case with the inconsistencies and contradictions in the case of *People v. Barcelona* (191 SCRA 100 [1990]). We disagree with the correlation made by the trial court simply because in the *Barcelona* case which involved the crime of rape the complainant therein positively identified the accused as the person who raped her and the trial court made a finding that she had no doubts nor second thoughts about her identification of the accused-appellant. The inconsistencies mentioned therein did not change the fact that the complainant was raped by the accused--appellant as they merely touched on relatively minor details as where the latter bit him while she tried to repel his advances; how long the sexual act took place; whether she reported the incident to her uncle; or whether she felt any ejaculation.

In the instant case, the trial court failed to notice that the discrepancies in the complainant's testimony border on significant details particularly on the identity of the kidnappers involved and the manner of execution of the alleged crime. Hence, although generally, we accord utmost respect for the factual findings of the trial court, this is an occasion where we are constrained to set aside such findings inasmuch as the evidence on record shows that the trial court did not take into account significant circumstances in arriving at its findings.

In the light of the weakness of the prosecution evidence in the present case, the accused-appellant's defense of alibi assumes importance. Although the defense of alibi is inherently weak, this does not allow the prosecution to renege on its duty to prove the accused's guilt beyond reasonable doubt so as to obtain a judgment of conviction. (See *People v. De Leon*, 193 SCRA 511 [1991])

The accused-appellant's claim that he was at his place of residence in Meycauayan, Bulacan from April to August 1990 plying his route as a tricycle driver and left for Bicol on August 7, 1990 to canvass leather in order to engage in the leather business is corroborated by the testimonies of his wife, Lorna Lim-Padua (TSN, November 6, 1990, pp. 2-5); Fr. Juanito L. Oliva, a Catholic Priest who saw the accused-appellant on April 29, 1990 at the baptism of his last child and who declared having seen the accused-appellant at least three times a week during the months of

May until sometime in July 1990 (TSN, November 15, 1990, pp. 8-10); and Tomas Rosales, a municipal councilor of Meycauayan, Bulacan who attested to the fact that before the baptism aforementioned he used to see the accused-appellant three to four times a week either on his trimobile or in their store, that from May to June 1990, he had seen the accused-appellant two or three times a day driving his trimobile and that in August 1990, he did not see the accused-appellant anymore the way he used to. (TSN, November 15, 1990, pp. 15-17)

In rejecting the defense of alibi, the trial court ruled that the element of physical impossibility for such a defense to prosper was not established.

We rule otherwise. While it is true that there is no concrete and definite proof that the accused-appellant was in Meycauayan, Bulacan on the very day of the crime in question, i.e., on April 14, 1990 so that it was possible for him to have been at the scene of the crime in Naga City on that date, yet, the possibility becomes remote, if not wanting, when we consider it in juxtaposition with the victim's claim that during the two-month period of her alleged illegal detention, the accused-appellant who, being one of those who kidnapped him, was also one of the three persons who injected her three times a week with a drug that made her fall asleep for seven hours. How can the accused-appellant be seen in Meycauayan three or four times a week as a tricycle driver and still manage to be part of the three-men team that administered the injections on the victim three times a week during her illegal detention? As between the accused-appellant's corroborated allegation and that of the victim's self-declarations, we lend more credence to the former's. Besides, it was error on the part of the trial court to hold that one can cover the distance between Meycauayan, Bulacan and Camarines Norte (where the victim was purportedly detained) in just a couple of hours. On the contrary, the trip alone from Meycauayan, Bulacan to Pasay City (where the buses bound for the Bicol Region are) via public transportation takes no less than two hours. The bus ride from the station to Camarines Norte using the National Highway along Quezon Province takes seven to eight hours on a night trip where the traffic is light. Hence, the accused-appellant could not have assumed two different lives during the months of April until June as postulated by the trial court's ruling.

Kidnapping and serious illegal detention are serious crimes that cause the police force some major headaches at present. The courts recognize the earnest efforts to apprehend the perpetrators but are not wont to convict in cases where the only clear evidence offered is the victim's act of pointing an uncertain finger at the suspect whose constitutional right to be presumed innocent until proven guilty must be safeguarded at all times. In the absence of evidence to overturn the presumption of innocence obtaining in this case, a judgment of acquittal is inevitable.

WHEREFORE, the appealed decision dated April 11, 1991 is REVERSED and SET ASIDE. The accused-appellant is ACQUITTED. His immediate release from detention is hereby ORDERED, unless he is being held for another lawful cause. With costs de oficio.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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