

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SUPT. REYNALDO BERROYA, SPO4 JOSE VIENES AND FRANCISCO MATEO, ACCUSED-APPELLANTS.

G.R. No. 122487. December 12, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

On May 11, 1993, Chou Cheung Yih, alias “Jack Chou”, a Taiwanese national, was kidnapped in Multinational Village, Parañaque, Metro Manila. He was kept captive for seven days until his family paid a ransom of P10 Million. Only then was he set free.

Thereafter, accused-appellants Reynaldo Berroya, SPO4 Jose Vienes, Francisco “Kit” Mateo and thirteen (13) others, were charged with the crime of kidnapping in an Information dated September 22, 1993 which reads as follows:

“That on or about 11 May 1993 at about 12:30 o’ clock in the afternoon and until 17 May 1993 along Sucat Road near Multinational Village, Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, the above named accused conspiring, confederating, mutually helping one another and grouping themselves together, did then and there, by force, intimidation and the use of firearms, wilfully, unlawfully and feloniously take, carry away, kidnap and deprive Chou Chu (sic) Yih alias “Jack Chou”, a Taiwanese investor, of his liberty and thereafter brought and detained him in a safehouse in Parañaque, Metro Manila, Philippines, against his will and consent for the purpose of extorting ransom for his release which was effected after payment of the amount of HK\$ 2,963,962.00 or its equivalent of P10 M thereafter divided by and among the accused themselves; to the loss, damage and prejudice of said Chou Chu (sic) Yih alias “Jack Chou.”

CONTRARY TO LAW. (Record, p.1)

On July 28, 1993, Branch 148 of the Regional Trial Court of Makati, presided over by the Honorable Oscar B. Pimentel, rendered judgment in this wise, convicting accused-appellants Berroya, Vienes, and Mateo:

“WHEREFORE, premises considered:

1. With respect to accused Chief Superintendent Dictador Alqueza for insufficiency of evidence and serious doubt as to his guilt he is hereby ACQUITTED and his release from confinement is hereby ordered unless he is being detained for some other legal cause or causes or by virtue of a legal order.
2. With respect to Lt. Col. Danilo Sta. Clara likewise for insufficiency of evidence and for reasons of reasonable doubt he is likewise ACQUITTED. His immediate release from confinement is hereby ordered unless he is being detained for some other legal cause or causes or by virtue of a legal order.
3. With respect to accused Lavinia Mateo, for insufficiency of evidence and for reasons of reasonable doubt, she is hereby ACQUITTED and her immediate release from confinement is hereby ordered unless she is being detained for some other legal cause or causes or by virtue of a legal order.

The acquittal of these three (3) accused does not necessarily mean that before their God and their conscience, they have not committed the crime. Only, there is lacking in evidence (sic) to support their convictions. Had there been sufficient evidence against them, they will be convicted.

4. AND FINDING SENIOR SUPERINTENDENT REYNALDO BERROYA, SPO4 JOSE VIENES AND FRANCISCO MATEO guilty beyond reasonable doubt of the crime of kidnapping defined and penalized under Art. 267 of the Revised Penal Code and as the crime was committed prior to the effectivity of Republic Act 7659, the aforesaid accused Senior Superintendent Reynaldo Berroya, SPO4 Jose Vienes and Francisco Mateo alias “Kit” are hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessories of the law.

Further, the three (3) accused are hereby ordered to pay Chou Cheng Yih alias “Jack Chou”, a Taiwanese businessman, jointly and severally

1. TEN MILLION PESOS (P10,000,000.00) which is the unrecovered ransom money.
2. ONE MILLION PESOS (P1,000,000.00) for actual damages.
3. TWO MILLION PESOS (P2,000,000.00) for and as moral damages.
4. The amount of ONE MILLION PESOS (P1,000,000.00) for exemplary damages, and;
5. The amount of P400,000.00 for and as attorney’s fees.

No civil liability is incurred by accused Chief Superintendent Dictador Alqueza, Lt. Col. Danilo Sta. Clara and Lavinia Mateo.

With costs against Senior Superintendent Reynaldo Berroya, SPO4 Jose Vienes and Francisco “Kit” Mateo.

The immediate confinement of Senior Superintendent Reynaldo Berroya, SPO4 Jose Vienes and Francisco “Kit” Mateo to the Bureau of Corrections, Muntinlupa, Metro Manila is hereby ordered.

SO ORDERED.” [1]

Parenthetically, not one of the prosecution witnesses saw the actual abduction. All the evidence concerning accused-appellants’ participation in the crime is circumstantial. The main issue in this appeal is therefore: Whether or not the circumstantial evidence linking the accused-appellants to the kidnapping is sufficient to sustain a judgment of conviction beyond reasonable doubt.

The facts, as culled from the record, are as follows:

Chou Cheung Yih, a Taiwanese national, was abducted by four (4) men in Multinational Village, Parañaque, Metro Manila on May 11, 1993. His abductors seized his cellular phone (No. 3061859) and other personal effects. The following day, his father, Chou Cheng Fu, who was in Taipei City, was reached via telephone by the kidnappers. They demanded a ransom of US\$ 5 Million, but after several phone calls and a protracted negotiation, they agreed upon P10 Million. The money was to be remitted to the Fu Wa San Company, a Hongkong firm, through a jewelry store in Taiwan.

On May 17, 1993, Chou Cheng Fu remitted the money, using a check, to Hongkong through the aforesaid jewelry store. Chou Cheung Yih was consequently released in the afternoon of that same day. When presented on the witness stand, Chou Cheung Yih failed to identify anyone of the accused.

Prescinding from the foregoing, the prosecution presented Chief Inspector Wilfredo Reyes, who testified that on April 21, 1993, an informer of his, a certain Michael Evasco, [2] approached him and informed him of Francisco “Kit” Mateo’s invitation to join a kidnap for ransom operation. Reyes knew Kit as an acquaintance of Col.

Berroya, as the former used to visit the latter at his office in 1992 and 1993. Reyes and Berroya were then assigned to Task Force Gemini and Task Force Lawin. Reyes signifying willingness to join the operation, asked for the name of the possible victim, but Evasco declined.

The next morning, Reyes went to Col. Panfilo Lacson to inform him about the kidnapping scheme. Thereupon, he was designated to go undercover to infiltrate the group of Kit Mateo.

On April 30, 1993, C/Insp. Reyes was introduced by Evasco to Kit Mateo. Kit Mateo told him, “Okey, tatal Sir, pare-pareho naman tayong mga bata ni Berro saka ni Barako, okey lang, sige puwede kang sumama.” It was understood by Reyes that Berro referred to accused-appellant while Barako referred to General Alqueza. Doubtful of Kit Mateo’s sincerity, Evasco told the former, “Pare, itong sa atin ay pera-pera lang, wala tayong hulugan dito.” Kit Mateo responded: “Hindi, totoo ito. Totoo itong gagawin natin. Ang mga taong kasama natin dito ay si Colonel Berroya, si General Alqueza, ang classmate ni Col. Berroya na si Colonel Danilo Sta. Clara...” Again the subject of the kidnap operation remained undivulged.

On May 7, 1993, Reyes together with Evasco, met with Kit Mateo at the latter’s office, Le France, Jovan Condominium, Shaw Boulevard, Mandaluyong, Metro Manila. Several other persons, including appellant Jose Vienes and William Teng, a criminal known to Reyes, were present thereat. Kit Mateo held a meeting where they were given their respective assignments. Michael Evasco was to lead the group who would conduct the actual abduction. Two back-up teams were designated, with SPO4 Vienes heading one of the two teams. Reyes was tasked to remain at Camp Crame to monitor the activities of the operating units. As Evasco still evinced some signs of apprehension, Mateo instructed his wife, Vinia Mateo, to call accused-appellant Berroya. She, in turn, passed it on to Lenny Pagtakhan, one of the persons present, who later informed Kit that “...wala pa si Berro, pero nagpapa return call ako.” Moments later, Pagtakhan advised Kit Mateo that Berroya was already on the line. Kit Mateo talked over the phone and afterwards gave a thumbs up sign saying “Okey na pare, at ito pala ay may clearance na kay Barako.”

On May 10, 1993, Reyes again went to the office of Kit Mateo. It was then that he met and was introduced to accused-appellant Berroya, with Kit Mateo saying to Berroya “Sir, ang bata n’yo ni Barako, kasama rin natin yan.” In response, Berroya said: “Willy, pagbutihin n’yo lang, ito naman ay alam ni Barako.” Thereafter, they talked of other things, allegedly because Reyes was ashamed to discuss the kidnap operation with Berroya, who was his superior.

It was only on May 20, 1993 when Reyes came to know of the Chou kidnapping, when Col. Lacson told him about it and ordered him to verify whether Kit Mateo’s group was responsible. That evening, he met with Evasco, who made known to him how the group kidnapped Chou. Evasco also told him that Berroya sent Kit Mateo and William Teng to Hongkong to collect the ransom money. He was given a black paper bag containing money. That same night, he turned over the money to Sr./Supt. Basilio Lucero, who issued to him an unofficial handwritten receipt for P50,000.00.

In addition to C/Insp. Reyes’ testimony, the prosecution also presented Lenny Pagtakhan, a “comadre” of Kit Mateo and his wife. Pagtakhan testified that she was present the whole day of May 7, 1993 at Kit Mateo’s office. There were several persons present, including appellant Vienes and William Teng. With Kit Mateo presiding, the group had a meeting regarding the intended abduction of a Taiwanese national. Michael Evasco was charged with taking the Taiwanese while SPO4 Jose Vienes and Kit Mateo were to act as back-up. During the meeting, Kit told his wife, Vinia Mateo, to call “Berro”, referring to Sr./Supt. Reynaldo Berroya. She in turn instructed Pagtakhan to call “Berro.” She called “Berro” up but as he was not there at his office, she paged him through his beeper. After a time, Berroya returned the call. Receiving the call, she informed Mateo that “Berro” was on the line. As the two

conversed, she listened through the extension line, thus she overheard Mateo say “Sir, I have already given instructions to the group.” Accused-appellant Berroya told Mateo to call him the next day or that they should meet on Monday. Mateo replied in the affirmative.

On May 10, 1993, the whole group, including Mateo, Vienes and Teng, held another meeting to discuss the plan to kidnap a Taiwanese national. Kit Mateo initially presided over the meeting. However, accused-appellant Berroya took over when he arrived. He was accompanied by C/Insp. Wilfredo Reyes. The meeting lasted until midnight. She overheard Berroya say: “O sige kailangan malinis ang pagkuha ng tao.”

Pagtakhan further testified that in the afternoon of May 11, 1993, Kit Mateo and his group, including appellant Vienes and Teng, but without accused-appellant Berroya and Reyes, arrived at the office. They were excited, with Vinia Mateo telling her that the Taiwanese was already downstairs. She, however, did not get to see the victim.

A week or two later, she was with appellants Mateo and Vienes when the latter distributed the ransom money. They went to an undisclosed motor shop in Quezon City where Mateo and Vienes, after conversing with Berroya, gave several bundles of money to the latter (which as far as she knew was P1 Million).

On the other hand, after the kidnapping incident, an investigation was conducted by the Presidential Anti-Crime Commission, through Col. Panfilo Lacson and C/Insp. Michael Aquino, in coordination with Taiwanese and Hongkong authorities, Piltel and the Philippine Long Distance Telephone Company. Based on the record of phone calls provided by Piltel and the Royal Hongkong Police, a phone call was placed on May 11, 1993 from Chou Cheung Yih’s cellular phone (No. 3061859) to Telephone No. 79-37-85, the telephone number of Mateo’s Le France office. Then, on May 14, 1993, another call was made from the same cellular phone to Telephone No. 78-35-72, a telephone registered under the name of Samuel Abellera, a neighbor of accused-appellant at Masbate Street, Project 4, Quezon City.

On the same day, Telephone No. 882-27-70 (Hongkong), registered under the name of Lee Kim Jok, called 817-20-39, the direct line to the Office of the Chief of Special Operations Group, Southern Police District Command, Fort Bonifacio, Makati, Metro Manila. At that time, the Chief of said office was accused-appellant. On the same day, Cellular Phone No. 305-44-65 registered under accused-appellant Berroya’s name placed a call to Telephone No. 79-37-85, the number of Kit Mateo’s office.

On the other hand, the aforesaid Tel. No. 79-37-85 made nine calls to Tel. No. 882-27-70 (Hongkong); one on May 14; one on May 15; four on May 17; and another three on May 18, 1993 — during the ransom negotiations for the release of Chou Cheung Yih and one day after his release.

Conversely, Tel. No. 882-27-70 (Hongkong) called appellant Mateo’s office on May 14, 15 and 16, 1993 — also during the period of ransom negotiation.

Tel. No. 882-27-70 (Hongkong) also made four calls on May 15, 1993, and three calls on May 17, 1993 to Chou Cheng Fu, father of the kidnap victim.

Tel. No. 882-27-70 (Hongkong) was traced to Flat B, 8th Floor, Hyde Park Mansion, 53 Peterson Street, Hongkong, which apartment was found to be registered in the name of Lee Kim Jok and Emil Ong alias “William Teng” or “Reynaldo Manio.”

On May 14, 1993, appellant Mateo and William Teng went to Hongkong.

On May 17, 1993, William Teng collected in Hongkong the ransom money paid by Chou Cheng Fu. This was evidenced by the fax message of Hung Chee Co. in Taipei, to the Fu Wa San Co. dated May 17, 1993, as well as the check stub dated May 17, 1993 in the name of Reynaldo Manio. The check amounted to HK\$ 2,962,963.00.

Against this factual backdrop, the Court a quo found accused-appellants Berroya, Vienes, and Mateo guilty, as conspirators in the kidnapping of Chou.

Hence, accused-appellants' recourse to this Court, wherein they raise several errors of the lower court, summarized as follows:

1. THAT THE LOWER COURT ERRED IN ACCEPTING THE VERSION OF PROSECUTION WITNESSES LENNY PAGTAKHAN AND CHIEF INSPECTOR WILFREDO REYES, DESPITE THE CLEAR SHOWING THAT THESE WITNESSES ARE NOT POSSESSED OF THE REQUIRED CREDIBILITY AND TRUSTWORTHINESS TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN FAVOR OF ACCUSED-APPELLANTS.
2. THAT THE LOWER COURT ERRED IN HOLDING THAT THERE WAS CONSPIRACY BETWEEN ACCUSED-APPELLANTS.
3. THAT THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANTS DESPITE THE ABSENCE OF SUFFICIENT CIRCUMSTANTIAL EVIDENCE TO ESTABLISH PROOF BEYOND REASONABLE DOUBT OF THE GUILT OF THE ACCUSED-APPELLANTS.

We find the petition to be impressed with merit.

Section 14(2), Article III of the 1987 Constitution provides that "(i)n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved..." Given this presumption, the State must thus prove the guilt of the accused beyond reasonable doubt, and this presumption prevails unless overturned by competent and credible proof. The State is required, in the discharge of the burden imposed upon it, to establish by proof all the essential elements of the crime with which the defendant is charged in the indictment, and to establish beyond a reasonable doubt that the accused is guilty of said crime. In the absence of such a degree of proof of the defendant's guilt, he is entitled to an acquittal, regardless of whether his moral character is good or bad. It is not sufficient that the preponderance or the weight of the evidence points to the guilt of the accused, x x x as evidence showing a mere possibility of guilt is insufficient to warrant a conviction.[3]

The necessity for proof beyond reasonable doubt lies in the fact that "(i)n 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." [4]

However, proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Suffice it to say that the law requires only moral certainty or that degree of proof which produces conviction in an unprejudiced mind.[5]

Granted that the evidence adduced by the State to prove the guilt of the accused is purely circumstantial, would the same amount to such as to prove beyond reasonable doubt that the accused-appellants committed the crime charged?

The following principles must be borne in mind. First, crimes are not usually intended to be accomplished under the direct gaze of witnesses; nor is the planning thereof done in public. Hence, the necessity of circumstantial evidence to prove the same. But for circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with the hypothesis that the accused is guilty and at the same time inconsistent

with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. [6] Thus, for circumstantial evidence to be sufficient for conviction, the following requisites must concur: (i) there must be more than one circumstance to convict; (ii) facts on which the inference of guilt is based must be proved; and (iii) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

While it is true that no general rule has been formulated as to the quantity of circumstantial evidence which will suffice, the Solicitor General believes that in the instant case the prosecution has failed to overthrow the constitutional presumption of innocence in favor of appellant Berroya.

We agree. Furthermore, as regards appellant Vienes, we find that the State has also failed to adduce the quantum of proof necessary to convict him.

We shall discuss the evidence and our findings as the same pertain to each of the appellants.

With respect to accused-appellant Berroya, the trial court implicated him as a principal, allegedly through his conspiracy with the group which kidnapped Chou Cheung Yih. In the words of the trial court:

“Now, with respect to Senior Superintendent Reynaldo Berroya:

The Court is convinced that he indeed presided in the meeting held on May 10, 1993 at Le France, Jovan Condominium, Shaw Boulevard, Mandaluyong, Metro Manila. The act of presiding over a meeting to plan the kidnapping of a person and then the kidnapping took place and ransom was paid is a very conclusive proof that the chain of evidence is complete. It is unbroken. This is further bolstered by the fact that the person tasked to do the actual kidnapping, the back-ups and others who are involved were present during that meeting.

Another evidence that shows the participation of Senior Superintendent Reynaldo Berroya is his call to the office of Francisco Mateo on May 14, 1993, after the kidnapping and the telephone he used is Cellular Phone No. 305-44-65. And also there were other calls made that will show that he is connected with the kidnapping because phone no. 8822770, being used by Reynaldo Manio in Hongkong called Senior Superintendent Reynaldo Berroya at the latter's office at SOG, Southern Police District, Fort Bonifacio, Makati, Metro Manila. This was after the kidnapping and prior to the payment of ransom. As has been stated the ransom has been taken by Reynaldo Manio alias William Teng, one of those present during the meeting of May 10, 1993 which was partly presided by Senior Superintendent Reynaldo Berroya.

The defense of Senior Superintendent Reynaldo Berroya are alibis and denials, the weakest defenses that can be put up by any accused. His defenses failed to overcome the evidence against him.

The fact of his conspiracy with the group who kidnapped Chou Cheng Yih has been established beyond reasonable doubt.

If there is a planning with respect to the commission of the crime and there are subsequent events that will lead to the conclusion that those who attended the meeting to pursue the crime then they become liable not only as accessory or accomplice but as principal.”[7]

The evidence taken against him consists of the testimonies of C/Insp. Reyes and Lenny Pagtakhan, as well as the record of phone calls made from and to him.

However, as regards the testimony of C/Insp. Reyes, a substantial part thereof is inadmissible. It must be stressed that Reyes never learned the identity of the intended victim, but only that a kidnap operation was being planned by Kit Mateo's group. Furthermore, he never participated in the actual kidnapping, but was only told the details thereof by Michael Evasco on May 20, 1993. “A witness can testify only to those facts which he knows of his personal knowledge, that is, which are derived from his own perception... [8] Thus, the same is hearsay which is inadmissible in evidence.

Kit Mateo's statement on April 30, 1993 to the effect that "Okey, tatal Sir, pare-pareho naman tayong mga bata ni Berro saka ni Barako, okey lang, sig pwede kang sumama", as well as Mateo's statement to assuage Evasco's fears in this wise "Hindi, totoo ito. Totoo itong gagawin natin. Ang mga taong kasama natin dito ay si Colonel Berroya, si General Alqueza, ang classmate ni Col. Berroya na si Colonel Danilo Sta. Clara..." are likewise inadmissible against accused-appellant Berroya as "the rights of a party cannot be prejudiced by an act, declaration, or omission of another... [9] Res inter alios acta.

With reference to the May 7, 1993 telephone conversation, Kit Mateo supposedly talked to Berroya in this wise: "Okey na pare, at ito pala ay may clearance na rin kay Barako." There is no showing that it was indeed Berroya that Kit was talking to. And furthermore, even if it was indeed accused-appellant, the same is ambiguous at best. There is no proof as to the exact conversation between Kit and the accused-appellant, nor that the statement alluded to refers to the kidnapping of Chou.

The same observation goes for Berroya's alleged statement to Reyes on May 10, 1993 that: "Willy, pagbutihin n'yo lang, ito naman ay alam ni Barako." Again, the utterance is equivocal. In fact, according to Reyes, other than said statement, the kidnapping operation was never discussed by him and accused-appellant on that day.

As to Reyes' contention that he was tasked to infiltrate Mateo's group, the same is open to doubt. It is undisputed that he never submitted any report, nor was he mentioned in the PACC reports. The P50,000.00 allegedly given to him by Evasco was evidenced only by an unsigned handwritten receipt, and the same was never included by PACC in its reports to the Department of Justice regarding the matter. Lastly, Reyes was supposedly invited by Mateo to participate in the kidnapping, yet it was only on May 20 when he learned of the same.

Moreover, it is odd that it was Evasco, the supposed emissary between Mateo and Reyes, and one of those supposed to be involved in the operation, who showed signs of apprehension at the outcome of the plan, such that he needed to be given proof of accused-appellant Berroya's participation in the nefarious plan, while Reyes, the newcomer, never became wary of the group's bona fides. It can thus be seen from the above discussion that C/Insp. Reyes' testimony is riddled with inconsistencies and infirmities such that it lacks that degree of conclusiveness required to convict the appellant.

Similarly, Lenny Pagtakhan, the other principal witness, gave inconclusive testimony as to appellant Berroya's complicity in the crime charged.

She testified that Kit Mateo and accused-appellant Berroya had a telephone conversation on May 7, 1993, where she overheard Mateo tell appellant that he had given instructions to the group. Appellant Berroya then said, "All right, call me up tomorrow or let us meet on Monday." Standing alone, there is nothing incriminatory in the above statement.

With respect to the May 10, 1993 meeting to kidnap a Taiwanese national, allegedly presided over by Berroya, the actual name of the victim was never mentioned. In fact, Pagtakhan admitted that she was not a participant thereof, as the same was held behind closed doors. On cross-examination, she changed her testimony, saying that the statement "O sig kailangan malinis ang pagkuha ng tao," which she initially imputed to appellant was not said by Berroya, but actually by Kit Mateo.

Additionally, her version of facts conflicts with that of C/Insp. Reyes. She alleged that on May 10, 1993, the group discussed the kidnap scheme from 5:00 p.m. until midnight. Reyes, on the other hand, denies that there was a discussion of the same, purportedly because he was ashamed to discuss the same with his superior. Her narration that accused-appellant Berroya arrived at the Le France office accompanied by Reyes is contradicted as well by Reyes, who said that accused-appellant was already at the Le France office in the evening of May 10, 1993 when

he arrived.

As for the money allegedly given to Berroya by Kit Mateo, there is no proof that it came from the ransom money paid by Chou Cheng Fu.

Given the above disquisition, the testimony of Lenny Pagtakhan, with regard to appellant Berroya, cannot likewise be accorded the trustworthiness and credibility required of a witness in a criminal case.

Finally, as to the matter of the phone calls presented in evidence as allegedly incriminatory of Berroya, the records only identify the numbers where the calls were made and received. They do not show who were the actual caller and receiver thereof; nor do they reveal the matters discussed during the telephone conversations. To inject sinister meaning to these calls is risky, being fraught with speculation.

As regards the first call, the same was made from Chou's cellular phone at the time that he was already in captivity. However, the call was directed to Samuel Abellera, a neighbor of accused-appellant. It proves nothing as to the guilt of the accused. Berroya and his neighbor are two distinct individuals, and absent proof that it was accused-appellant Berroya who received the call, the same cannot be held against him.

The second call from Hongkong to the Special Operations Group, Southern Police District Command, Fort Bonifacio, again does not constitute conclusive proof of Berroya's guilt. Although appellant was the chief of said office, there is no showing that he was the one who received the call. In fact, said phone was registered in the name of the government. Moreover, the prosecution witness failed to state under oath that the same was not being used by other members of the Special Operations Group.

As for the third call made on May 14, 1993, there is no evidence as to the subject matter of the conversation thereof. Worse, Kit Mateo never went to his office on that day as he was in Hongkong at the time. Then too, it must be borne in mind that Mateo and accused-appellant Berroya were longtime acquaintances. A telephone call between them, if it transpired at all, is not highly improbable or even suspect.

In the words of the Solicitor General, "the theory of the prosecution against appellant Berroya has too many loose ends that it has dismally failed to tie up to the satisfaction of the constitutional requirement of proof beyond reasonable doubt. Appellant Berroya's twin defenses of alibi and denial, to be sure, are weak, but the incurably ambiguous evidence of the prosecution simply cannot justify appellant Berroya's condemnation for the rest of his life where there are disturbing whispers of doubt that he is guilty." [10]

As to appellant Jose Vienes, the evidence presented against him by the State only establishes his presence at the May 7, 1993 and the May 10, 1993 meeting at the Le France office in Mandaluyong. During those meetings, a kidnapping scheme, with an undisclosed Taiwanese national as victim, was hatched. Appellant Vienes was to serve as backup during the actual kidnapping. Additionally, Vienes is said to have been present on May 11, 1993 at the Le France office when the group allegedly had the kidnap victim at the basement thereof.

Again, it must be emphasized that not one of the prosecution witnesses saw the actual kidnapping. No one saw appellant Vienes participate therein. Even the victim failed to identify him as one of the perpetrators thereof. In point of fact, the trial court convicted him as a principal largely due to his alleged conspiracy with Mateo. The finding of conspiracy was based on his close friendship with Mateo and his presence in those two crucial meetings. As the trial court found it:

"With respect to SPO4 Vienes, said accused was present during the meetings of May 7 and 10, 1993 at Le France, Jovan Condominium, Shaw Boulevard, Mandaluyong, Metro Manila. He was given task allocation (sic) as a back up of Michael Evasco and that on May 11, 1993, SPO4 Jose Vienes was present at Jovan Condominium at Le France Office, Mandaluyong, Metro Manila after the kidnapping of the Taiwanese Chou

Cheung Yih. He is a close friend of Francisco “Kit” Mateo and he even recommended to Kit Mateo a friend to become a janitor in the office of Francisco “Kit” Mateo.

SPO4 Jose Vienes cannot impute any evil motive, such as revenge, spite or whatever that will prompt Lenny Pagtakhan and Chief Inspector Wilfredo Reyes to testify against him.

His defense consisting of mere denials and alibi are so weak compared to the positive identification against him. His having been at Le France, Jovan Condominium, Shaw Boulevard, Mandaluyong, Metro Manila together with those who actually kidnapped Chou Cheung Yih is a proof that indeed he complied with the plan for him to be a back up.” [11]

It must be kept in mind that conspiracy must be established by positive and conclusive evidence. It cannot be based on mere conjectures but must be established as a fact. The same degree of proof required to establish the crime is necessary to support a finding of the presence of conspiracy, that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself. [12] An assumed intimacy is of no legal bearing inasmuch as conspiracy transcends companionship. [13]

Furthermore, in order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. That overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy. [14] Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it without any active participation in the same, is not enough for purposes of conviction. [15] Thus, assuming Vienes was a participant in the planning to abduct a Taiwanese national, in the absence of eyewitnesses to the actual abduction, there is a paucity of evidence as to whether or not Vienes carried out his part of the plan.

Given the above, it becomes painfully apparent that Vienes’ presence at the May 7 and May 10 meetings is insufficient to convict him. In fact, even the evidence as to his presence in the May 10, 1993 meeting is inconclusive. While both Reyes and Pagtakhan pinpoint appellant Vienes as present in the May 7 meeting, Reyes does not say that he was present on May 10. Pagtakhan, on the other hand, says he was. His presence at Le France on May 11, 1993, when the victim was said to be downstairs, cannot be held against him, as the same is belied by the prosecution itself, which claims that the victim was never brought to Le France.

Consequently, without proof that appellant Vienes personally took part in the execution of the kidnapping, there is only at most, a conspiracy with the other accused. Conspiracy alone, without the execution of its purpose, is not a crime punishable by law except in special cases, [16] none of which is present in the case at bar; hence, appellant Vienes cannot be held criminally liable.

However, accused-appellant Kit Mateo tells of an altogether different story. The facts on record as regards him constitute an unbroken chain leading to the fair and reasonable conclusion that he is guilty of kidnapping.

While the testimonies of prosecution witnesses C/Insp. Wilfredo Reyes and Lenny Pagtakhan may not have produced the moral certainty necessary to convict appellants Berroya and Vienes, the same, coupled with the other pieces of evidence gathered by the prosecution, are more than sufficient to overthrow the presumption of his innocence and establish his culpability beyond reasonable doubt.

Consider the following antecedents. It has been proved that indeed there was a plot to kidnap a Taiwanese national, albeit his identity was unknown. The same was formulated on May 7 and May 10, 1993. Appellant Mateo was present at the aforesaid meetings; in fact, he presided over the same. William Teng was present at

these meetings.

In the afternoon of Chou Cheung Yih's abduction, his cellular phone was used by his abductors to call Mateo's Le France office. During the ransom negotiations, there was an exchange of phone calls between appellant Mateo's telephone and William Teng's place in Hongkong. During the same period, William Teng's telephone called up the victim's father seven times. Appellant Mateo presented not a single shred of evidence to rebut or explain the reason for such calls. Certainly, such exchange of phone calls cannot be considered merely coincidental.

On May 14, 1993, appellant Mateo went to Hongkong with William Teng, allegedly to buy spare parts for a Volkswagen used for racing. Appellant never presented any proof of his purchase of said spare parts, nor that such spare parts were unavailable in the Philippines. His reason for going to Hongkong is vague and tenuous.

The above-mentioned circumstances further bolster the inculpatory link between appellant Mateo and William Teng, the person who personally collected in Hongkong the ransom money remitted by Chou Cheung Yih's father on May 17, 1993.

Taken altogether, the unequivocal testimonies of the principal witnesses pointing to appellant Mateo as the one who presided over the May 7 and May 10 meeting at Le France; William Teng's presence at the aforesaid meetings; appellant's close association with William Teng; appellant's trip to Hongkong together with William Teng; the series of calls between Mateo's office and Teng's flat in Hongkong; the calls from Teng's flat to the victim's father during the same period; and William Teng's collection and receipt of the ransom money — all collectively and ineluctably constitute an unbroken chain leading to a single conclusion — that there was a consummated conspiracy between appellant Mateo and Teng to kidnap Chou Cheung Yih for ransom.

Appellant Mateo assails the credibility of prosecution witnesses Reyes and Pagtakhan. Although the same cannot be relied upon to convict appellants Berroya and Vienes, the same does not hold true as regards appellant Mateo. The testimony of a witness may be believed in part and disbelieved in part, as the corroborative evidence or the lack thereof and the probabilities and improbabilities of the case may require. [17] We find appellant Mateo guilty of the crime charged.

Now for a final point that needs must be stressed lest it be misconstrued that the ruling of this Court is a categorical declaration as to the innocence of accused-appellants Berroya and Vienes. It is the law that requires proof beyond reasonable doubt. This, the prosecution has failed to even approximate. It does not mean that accused-appellants are lily-white or as pure as driven snow. To be sure, if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused of the crime charged and the other consistent with their guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. This, from the beginning, has been the lodestar of our accusatorial system of criminal justice.

We call to mind what Alfonso El Sabio was reputed to have said a long time ago: "Mas vale que queden sin castigar diez reos presuntos, que se castigue uno inocente." [18]

WHEREFORE, premises considered, the decision appealed from with respect to accused-appellant REYNALDO BERROYA and SPO4 JOSE VIENES is hereby REVERSED and ASIDE. Accused-appellants Berroya and Vienes are acquitted of the charge of kidnapping on grounds of reasonable doubt and their immediate release from custody is ordered unless they are being held on other legal grounds.

As for accused-appellant FRANCISCO "KIT" MATEO, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, and Francisco, JJ., concur.
Panganiban, J., in the result.

[1] Decision, pp. 331-332.

[2] Michael Evasco, a criminal with a P250,000.00 price on his head, was killed during an armed encounter in Cebu City on January 17, 1994.

[3] Francisco, Evidence, 3rd Ed., p. 576, citing *State vs. Postal Tel. Cable Co.*, 53 Mont. 104.

[4] *Id.*, p. 577, citing Wharton's Criminal Evidence.

[5] *People vs. Gapasan*, 243 SCRA 53 [1995].

[6] *People vs. Casingal*, 243 SCRA 37 [1995] citing *People vs. Jara*, 144 SCRA 517.

[7] Decision, pp. 327-328.

[8] Sec. 36, Rule 130, Rules of Court.

[9] Sec. 28, Rule 130, Rules of Court.

[10] Solicitor General's Manifestation and Motion, pp. 37-38.

[11] Decision, p. 329.

[12] *Pareño vs. Sandiganbayan*, 256 SCRA 242 (1996), citing *Macadangdang vs. Hon. Sandiganbayan*, 170 SCRA 308 (1989).

[13] *People vs. Paguntalan*, 242 SCRA 753 (1995).

[14] *People vs. Tami*, 244 SCRA 1 (1995).

[15] *People vs. Cortez*, 57 SCRA 508 (1974).

[16] See Art. 8, Revised Penal Code.

[17] *People vs. Somooc*, 244 SCRA 731 (1995).

[18] *People vs. Cunanan*, 19 SCRA 769 (1967), citing *Frases, Ideas y Pensamientos de Varios Autores recopilados por Pablo Buill*, p. 112.

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