

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL DIAZ Y SANTIAGO @ BOY TOPAK, ACCUSED-APPELLANT.

G.R. No. 130652. June 21, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

As a general rule, the assessment of the credibility of witnesses and their testimonies is best left to the discretion of trial courts. However, where the lower court overlooked relevant, material and pervasive inconsistencies which in their totality create reasonable doubt in an unprejudiced mind, the conviction of the accused cannot be justified. The prosecution must rely on the strength of its own evidence, not on the weakness of the defense.

The Case

Before us is an appeal from the January 16, 1997 Decision[1] of the Regional Trial Court of Malabon (Branch 72),[2] in Criminal Case No. 16969-MN, which found Noel Diaz guilty beyond reasonable doubt of the crime of kidnapping a minor and sentenced him to reclusion perpetua.

On June 7, 1996, State Prosecutor Jorge G. Catalan Jr. filed an Information charging the accused and two John Does with kidnapping allegedly committed as follows:

"That on or about the 3rd day of June, 1996, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, being then a private individual, did then and there wilfully, unlawfully and feloniously kidnap, carry away and deprive one MAYLIN[3] MARIBUJO y BASILAN, a minor, 5 years old, of her liberty without authority of law and against her will and consent."

Upon arraignment, Noel Diaz, with the assistance of Counsel de Parte Oscar B. Maturan, pleaded not guilty.[4] The other two John Does were and have remained unidentified and at large. Trial proceeded against Diaz alone. Thereafter, the court a quo rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused Noel Diaz y Santiago alyas Boy Topak guilty beyond reasonable doubt of kidnapping. In the absence of any mitigating or aggravating circumstance, and applying the provision of [the] Indeterminate Sentence Law, and considering the fact that the victim is a minor five (5) years of age, said accused is hereby sentenced to suffer the prison term of reclusion perpetua."

In view of the penalty imposed, this appeal was filed directly with this Court.[5]

The Facts

Version of the Prosecution

In the Appellee's Brief,[6] the Office of the Solicitor General (OSG) presents the following narration of the facts as viewed by the prosecution:[7]

"On June 3, 1996, at around 8:00 o'clock in the evening, Marilyn Maribujo was at the house of her sister at

Mangosteen Road, Potrero, Malabon, Metro Manila watching TV and at the same time washing the dishes as they had just finished eating dinner, when her five (5)-year old daughter Maylin left the house. A few minutes later, Marilyn went out of the house to look for her daughter at the basketball court at Mangosteen Road but Maylin was not there. Marilyn then searched for her daughter in the nearby places up to the exit or labasan of their place but her daughter was nowhere to be found. Further search for Maylin was unsuccessful (t.s.n., September 11, 1996, pp. 2-4).

"The next day, June 4, 1996, Marilyn and her sister Tess and brother-in-law Renato continued searching for Maylin and went to BBB in Marulas, Valenzuela, Metro Manila but did not find Maylin thereat. They went to the barangay hall the following day to report the matter and seek assistance from the barangay authorities in looking for Maylin (t.s.n., September 11, 1996, p. 4).

"Coming home from the barangay hall, Marilyn was approached and told by a young boy, Marvin Bisana, that her daughter was taken by two men[,] one of whom was known to him as Boy Topak. Forthwith, Marilyn went to the barangay captain to convey the information. Later, appellant was found outside his house riding a bicycle and was brought to the barangay hall by the barangay captain for questioning where he denied having taken Maylin (t.s.n., September 11, 1996, pp. 4-6).

"Thereafter, appellant was brought by the barangay authorities to the police headquarters where he finally admitted that he brought Maylin to Pasay City and dropped her in[to] a canal thereat. When Maylin could not be found in said place, appellant then said he brought Maylin to BBB in Marulas, Valenzuela, Metro Manila. But the police authorities again were unable to find Maylin in the latter place (t.s.n., September 11, 1996, pp. 6-7).

"On June 6, 1996, Maylin was finally recovered from two women [with] whom appellant had left her. It was at the police headquarters that Marilyn and Maylin saw each other again (t.s.n., September 11, 1996, p. 7).

"Marvin Bisana, an 11-year old Grade II pupil at the Potrero Elementary School, was playing with Maylin at about 8:00 o'clock in the evening on June 3, 1996 near the basketball court at Mangosteen Road, Potrero, Malabon, Metro Manila when two men, one of whom was appellant whom he identified in court, approached them and took Maylin away. Marvin was warned by the two men not to call for policemen or else he [would] be killed. He was further told not to report the matter or call the parents of Maylin (t.s.n., October 9, 1996, pp. 2-6).

"The two men then put Maylin on board a passenger jeep going to Monumento and Marvin ran after them but did not find the appellant and his companion as well as Maylin in the Monumento area (t.s.n., October 9, 1996, pp. 6-7).

"The following Monday [sic], Marvin told Maylin's mother about the taking of her daughter by the two men. Marvin also executed a sworn statement (Exh. "B") in connection with the case (t.s.n., October 9, 1996, pp. 7-9).

"On June 4, 1996, at about 10:00 o'clock in the evening, Dolores Santos, a vendor, was in front of the Pagoda Pubhouse at BBB, Marulas, Valenzuela, Metro Manila, where she had a cigarette stand, when she saw a man holding a child by the hand approaching her. The man who seemed to be proceeding to Gate I of San Miguel Brewery in said place, then released his hold of the child. Thereafter, the man took hold of the child again but the latter was able to free herself from the man's hold and r[un] away. Dolores told her youngest daughter and a woman to go after and bring the child to her. Dolores then brought the child home (t.s.n., November 6, 1996, pp. 2-5).

"The following day Dolores took the child to the Dona Ata Detachment of the Valenzuela, Metro Manila Police Force to report the matter. The police, however, told her to take back or have custody of the child in the meantime (t.s.n., November 6, 1996, pp. 5-6).

"After three days, policemen from the Malabon, Metro Manila Police Station came to Dolores inquiring about the missing child. She told them that the child was with her Kumareng Susan Reyes and accompanied them to the latter to fetch the child. Thereafter, the policemen took the child and Dolores to the Malabon Police Headquarters where the latter was investigated and [where she] gave her sworn statement (t.s.n., November 6, 1996, pp. 6-8)."

Version of the Defense

In his Brief,[8] appellant denies the charges against him and proffers alibi, stating that he was in his house when the crime was allegedly committed. The defense presents the following narration of facts:[9]

"Accused-Appellant was in his house at No. 42 Guyabano Road, Potrero, Malabon on June 3, 1996. He was with his family the whole evening on that day and stayed with them in the same house until he was invited by the Barangay Tanods to go with them to the Barangay Hall for some work on June 5, 1996.

"There at the Barangay Hall, accused-appellant was arrested as a suspect in the crime of kidnapping of [a] minor.

"An alleged eyewitness, eleven-year-old, Marvin Bisana, was brought before the accused-appellant for confrontation but [the former] failed to identify him. [The boy] describ[ed] the person who took the alleged victim as tall, fair-complexioned, long hair[ed] and with a scar on his face.

"Thereafter, the boy was brought inside the Office of the Barangay Captain and when brought back, the boy this time pointed [to] the accused-appellant as the abductor.

"Immediately, [a]ccused-[a]ppellant was brought to the Malabon Police Station where he was beaten while being blind-folded. Unable to stand the pain, he was forced to concoct a story to stop the torture and to see his mother in Pasay City. He told his captors that he threw the child in[to] a creek in Tramo St., Pasay City, where his mother [was] living nearby.

"Failing to see a victim in the creek, accused-appellant was again beaten, locked-up and charged.

"Unknown to the investigators of the case, the same five-year[-]old alleged kidnap victim was found by one Lea Fernando at Seven-Eleven, BBB, Marulas, Valenzuela, Metro Manila at 11:00 p.m. of June 3, 1996 or exactly three (3) hours after the child was allegedly kidnapped.

"This fact that [the] same child was found on June 3, 1996 at 11:00 p.m. is shown in the police blotter of [the] Dona Ata Police Station in Marulas, Valenzuela, Metro Manila was admitted by the prosecution in Exh. 3, page 3 and 4 TSN, Dec. 18, 1996.

"Three (3) days after the alleged kidnapping of the five-year-old child, the same child was recovered in Marulas, Valenzuela."

Ruling of the Trial Court

The trial court relied on the testimonies of Prosecution Witnesses Marvin Bisana, Marilyn Maribujo and Dolores Santos. Bisana stated that while he was playing near the basketball court, Maylin was taken by appellant and one other man, who both resorted to threats to keep him from reporting what he saw. Noting that Bisana's narration was "unshaken," the trial court also ruled that "Dolores Santos was categorical, clear and convincing in her testimony describing in detail how she first noticed Maylin and [Diaz] who was holding her, with Maylin seemingly trying to free herself from the man's hold, approach the place where she was selling cigarettes and how Maylin eventually freed herself from [his] hold." Because of the positive identification by the two witnesses, the trial court rejected appellant's alibi. It further held that inconsistencies in the prosecution witnesses' testimonies regarding the time and date of the events mentioned were not material.

Assignment of Errors

Appellant contends that the trial court committed the following errors:[10]

"I

The lower court erred in admitting and giving credence to the testimony of witness, Dolores Santos, who was found inconsistent and who failed to appear for the continuation of the cross-examination.

"II

There was error when the lower court relied heavily on the identification of prosecution witnesses found inconsistent with several contradictory statements."

Essentially, appellant questions the credibility of the prosecution witnesses.

The Court's Ruling

The appeal is meritorious.

Main Issue:

Credibility of Prosecution Witnesses

It is well-settled that "evidence to be believed must not only proceed from the mouth of a credible witness but it must also be credible in itself, such that common experience and observation of mankind lead to the inference of its probability under the circumstances." [11] As a general rule, the trial court's assessment of the credibility of witnesses and their testimonies is binding on appellate courts, absent any fact or circumstance of weight and substance that may have been overlooked, misapprehended or misapplied. [12] In the present case, the trial court overlooked the serious inconsistencies in the testimonies of the prosecution witnesses. Furthermore, it gave credence to testimonies that were incongruous with common experience.

The conviction of the accused hinges on the testimony of the following: Marvin Bisana, who was an alleged eyewitness of the abduction; Marilyn Maribujo, the victim's mother who testified on incidents after the abduction; and Dolores Flores, who allegedly saw the abducted child in the company of the accused, and who eventually recovered the child and turned her over to the police. As earlier noted, serious and fatal inconsistencies beset each of these testimonies.

Marvin Bisana's Story

During his direct examination, Marvin Bisana stated that he and Mylene were playing at the basketball court around 8:00 p.m. on June 3, 1996 when two men approached them, took Mylene, and warned him against calling the police. He then saw the two men and Mylene board a jeep. That night, he reported to Mylene's mother, Marilyn, what had happened. The three of them, including Marilyn's brother-in-law Renato, ran after the jeep up to Monumento. Pertinent portions of Marvin's direct testimony are reproduced hereunder:

"Q What happened while you and Mylene were then playing?

A Two (2) men approached us.

Q What happened when these two (2) men approached you?

A They took Mylene.

xxx xxx xxx

Q Now, when these two men including Boy Topak whom you just identified took Mylene, did they say anything?

xxx xxx xxx

A They told me not to call any policeman.

xxx xxx xxx

Q What else, if any, did they say?

A That I should not call the parents of Mylene.

Q After taking Mylene, what did these two men do, if any?

A They boarded Mylene to a jeep. [sic]

Q How did you know that these two men [loaded] Mylene [in]to a jeep?

A Because I was able to read it.

Q What did you do after these two men took Mylene?

A I called the mother of Mylene and Renato.

Q When was that ?

A Monday.

Q Now, what did this mother of Mylene and Renato do, if any?

A We ran after the two men.

Q

Where did you run after them?

A

At Monumento.

Q What happened at Monumento?

A

They did not find the men there." [13] (Emphasis supplied.)

During cross-examination, however, Marvin testified otherwise. His statement that only two men abducted the victim was contradicted by his subsequent testimony during cross-examination and by his affidavit [14] that there were three abductors. He testified: [15]

"Q In short, Marvin, there were three people who approached you?

A Yes, sir.

Q

But I [was] surprised, Marvin, when you were asked during the last hearing by the distinguished fiscal a question like this and I quote, the question appearing in the transcript of the stenographic notes, dated October 9, 1996, page 4, xxx reads like this:

'Q What happened while you and Mylene were then playing?

A Two (2) men approached us.

Q What happened when these two (2) men approached you?

A They took Mylene.'

Marvin, tell this Honorable Court why you said in your statement that there were only two men who took Mylene while in the affidavit, you said there were three men?

ATTY MATURAN:

Under the same notation, Your Honor, that the witness when confronted with the abovementioned question [could] not answer." (Emphasis supplied.)

Other contradictions in Bisana's testimony were revealed during cross-examination. Although he had declared that he called the victim's mother first before following the kidnappers, he subsequently stated that he followed the kidnappers first before going to Mylene's house. Furthermore, although he had testified during direct examination that the three of them -- Bisana, the victim's mother and Renato -- ran after the kidnappers up to Monumento, he subsequently averred during cross-examination that he alone had done so. His statements during cross-examination are reproduced below:

"Q Where did you call the mother of Mylene and a certain Renato?

A At their house.

xxx xxx xxx

COURT:

Q What came first, your having followed Mylene xxx or your calling for the mother of Mylene and Renato?

A My following xxx Mylene and the men.

ATTY. MATURAN:

Q Now, Marvin, so you ran after the three men with Mylene first before you informed the mother of Mylene, is that correct?

A Yes, sir.

Q Up to what place did you chase or run after these takers of Mylene?

A Up to Monumento."[16] (Emphasis supplied.)

However, Bisana's testimony that he alone had followed the kidnappers up to Monumento was subsequently contradicted by his statement that he was actually in the company of a certain Kuya Nato. Thus:

"Q But you were so brave Marvin. Will you inform this court after you saw the two men [take] Mylene away, you followed them even to Monumento?

A I was with Kuya Nato when we followed them.

xxx xxx xxx

Q

Now, Marvin during the last hearing you were asked by this Honorable Court whether you ran or you followed the accused up to Monumento and if you kn[e]w Monumento and your answer was "yes." Do you remember having said that?

A Yes, sir.

Q You also informed this Honorable Court that you were alone when you followed [the] two men in Monumento?

A Yes, sir.

Q

Marvin tell us now the truth, you are now telling this Honorable Court that you [were] with a certain Kuya Nato[.] [C]an you please explain to this Honorable Court why you said that?

A Yes, sir, I only made a mistake.

xxx xxx xxx

Q

Marvin you told us [of] a different witness before. When you were asked by the Fiscal, you told this Honorable Court that you followed the accused together with the mother of Mylene, do you remember having said that?

A I was only with Kuya Nato in following the two men."[17] (Emphasis supplied.)

Thus, during his direct examination, Marvin stated that he, together with the victim's mother and one "Kuya Nato" ran after the abductors up to Monumento.[18] On cross-examination, however, he stated that he alone followed the abductors up to Monumento.[19] On further questioning by the defense counsel, he admitted he was with a certain Kuya Nato.

Marvin's foregoing conflicting testimonies were further contradicted by his affidavit, in which he declared that he alone followed the accused up to the labasan where he saw the alleged kidnappers and the victim board a jeep bound for Monumento.[20]

Also unbelievable is his story that he was with Renato when he ran after the kidnappers. Marvin testified:

"Q You were running after those two men boarding a jeep along the street going to Monumento with your Kuya Nato?

A Yes, sir, we were running.

Q Did you tell your Kuya Nato that you kn[e]w Noel Diaz one of the men who took Mylene?

A I did not tell him.

Q Why Marvin, tell us the truth, why?

A Because I was threatened by Noel.

Court:

Let us clarify this.

Q

In other words, you merely told your Kuya Nato that somebody took Mylene without telling him that it was Noel Diaz?

A yes, sir.

Q Did your Kuya Nato not ask you if you kn[e]w that person who took Mylene?

A No, sir.

Atty. Maturan:

Q Did you tell your Kuya Nato that [you were] both [that person's] neighbor?

A I did not." [21] (Emphasis supplied.)

It is improbable that Marvin joined Renato in following the jeepney to Monumento, without telling the latter that he knew one of the abductors. This narration is contrary to human experience, especially because the kidnapper was also a neighbor of Renato. Paramount in situations such as this is the identification of the kidnapper, particularly when he or she is known to the person who has come to help.

Marilyn Maribujo's Story

The testimony of the victim's mother, Marilyn, engenders more doubts about the prosecution's case. It is not only contradictory; it is also incompatible with Bisana's account.

During direct examination, Marilyn stated that when she realized her daughter was missing, she and her brother-in-law Renato went to look for the child in the vicinity of the basketball area and as far as Monumento, but in vain. The next day she started asking everyone else around. Only on the third day did she report the incident to the barangay officials. Upon reaching home that day, there she found Marvin who told her that he knew who had taken Mylene. Pertinent portions of her direct testimony are reproduced hereunder:[22]

"Q You said that while you were watching TV your five- [year]-old daughter by the name of Mylene stepped out of the house, what then did you do, if any?

A When Mylene stepped out of the house I was then washing dishes because we just finished our dinner and after about two minutes I went out and followed her.

Q Where did you follow your daughter?

A I went out to look for her outside and at the basketball court.

xxx xxx xxx

Q What when did you do, if any, when you failed to see your daughter at the basketball court?

A So we looked for her in the vicinity of the basketball court until we reach[ed] the exit of our place (labasan).

Q You said "we looked for her." Who were these "we"?

A My brother-in-law Renato and my sister Tess.

Q How far did you reach in locating your daughter?

A We even looked for her up to Monumento.

Q Did you find your daughter that evening of June 3, 1996?

A No, sir.

Q Now on the following day, June 4, 1996, what did you do, if any?

A We continued looking for Mylene until we reached BBB near the Cosmos Factory.

Q Who were with you in looking for your missing daughter?

A

My sister and my [b]rother-in-law.

xxx xxx xxx

Q Now, did you find your missing daughter on June 4, 1996?

A We did not find her.

Q Now, the following day, June 5, 1996, do you remember what happened?

A So we went to the barangay hall and report[ed] the matter.

Q Who was with you in going to the barangay hall?

A My sister and her husband.

Q Why did you go to the barangay?

A To ask for help.

Q Help in connection with what?

A To look for my missing daughter and on [the] day after that when we reached home Marvin approached me.

Q

You said that coming from the barangay you went home and a certain Marvin approached you[. W]ill you please tell us the complete name of this Marvin who approached you?

A I know him only [by] that name.

Q

What did Marvin tell you, if any?

A Marvin told me that he saw my daughter being taken by two men.

Q

What else did Marvin tell you, if any?

A Marvin further said that he knew these two men and one of [them was] known as Boy Topak.

Q Did Marvin tell you when did these two men [take] Mylene?

A Yes, sir." (Emphasis supplied.)

The foregoing statements are not only inconsistent with human nature; they are also contrary to Marilyn's subsequent testimony on cross-examination. First, she testified that she did not know the surname of Marvin. In her affidavit, however, she had stated the full name of the boy.[23] Second, she testified that she was able to talk to Marvin Bisana only on June 5, 1996, Wednesday, two days after the incident, when the boy went to her house to tell her what had happened. Although the mother knew that her daughter had gone out to play with Bisana, it was incredible that she waited for two days before talking to him.

Furthermore, her testimony on this point was contrary to her subsequent story on cross-examination, in which she gave two more conflicting dates of her conversation with Bisana. She testified:[24]

"Q When did you ask Marvin about the whereabouts of your daughter?

A That was June 4 already.

Q Mrs. Witness, let us clarify this: did you ask Marvin or Marvin told you?

A Marvin told me, sir.

Q So, you never asked Marvin about the whereabouts of your daughter?

A Yes, sir.

Q On June 3, 1996, the very night your daughter was lost as you said?

A I asked him, sir.

Q Are you sure of that answer of yes?

A Yes, sir."

Worse, the contradiction lies not only in the date on which she talked to Bisana. In her direct testimony, she clearly declared that the boy approached her on June 5, when she came back from the barangay hall, and reported to her the kidnapping incident. But on cross-examination, she admitted that they fetched Bisana from school. Thus, she testified:[25]

"ATTY. MATURAN:

Q What did the barangay officials do when you told them that your daughter was in the company of [a] playmate named Marvin Bisana?

A

The barangay officials asked us if my daughter was in the company of somebody else, and I said only Marvin. So, the barangay officials said that they [would] go and see Marvin.

xxx xxx xxx

Q Now, did these barangay officials indeed go xxx to the house of Marvin?

A Yes, sir. We fixed [sic] Marvin from school since he was in the school at that time.

xxx xxx xxx

Q

Now, please clarify Mr[s]. Witness. This incident of your going to the barangay officials to report the loss of your daughter and the barangay officials['] going to the place of Marvin happened on June 3 or June 5, 1996?

A June 5, sir." (Emphasis supplied.)

As earlier stated, this testimony is contrary to her initial statement that Marvin voluntarily went to her house two days after the incident to tell her what had happened. Furthermore, such direct testimony also differs from her assertion on cross-examination that Marvin talked to them at the basketball court. She asserted:[26]

"Q

Now, Mrs. Witness, you said earlier that you went to the basketball court to look for your daughter before you went to Monumento. Did you go to the basketball court or not?

A We went there, sir.

xxx xxx xxx

Q Mrs. Witness, where was Marvin when you went to the basketball court looking for your daughter?

A Marvin was there at the basketball court and even approached us.

Q Was he alone when you saw him at the basketball court?

A

Yes, sir.

xxx xxx xxx

ATTY. MATURAN:

Q And what did Marvin tell you when you asked him at the basketball court?

A He told me that Mylin was taken by two men and he said that he knows these two men who took Mylin."
(Emphasis supplied.)

This assertion is incompatible with her testimony that the matter was reported to barangay officials only two days later. If on the night of the abduction Bisana indeed told them of the identity of the abductors, the failure of the victim's mother to immediately notify the authorities was inexplicable. Asked to specify whether the incident was reported to the barangay authorities on June 3 or on June 5, she stressed that it was on June 5. Thus:[27]

"Q

Now, please clarify Mr[s]. Witness. This incident of your going to the barangay officials to report the loss of your daughter and the barangay officials['] going to the place of Marvin happened on June 3 or June 5, 1996?

A June 5, sir." (Emphasis supplied.)

The foregoing question was prompted by an earlier contradictory testimony of the victim's mother:[28]

"Q Now, Mrs. Witness, on the night of June 3, 1996, when you came to know that your daughter was missing, did you not report the matter to the barangay?

A We reported the matter, and I was even with my brother-in-law." (Emphasis supplied.)

Discrepancies Between the Accounts of
Bisana and of Maribujo

The testimonies of Bisana and of Maribujo were also incompatible with each other. In different instances, Bisana declared that he had followed the abductors as far as Monumento either by himself or with Nato only or with Nato and Maribujo. Maribujo on the other hand declared that she reached Monumento with Tess and Nato on June 3, but that she failed to mention that Bisana was with them.

Bisana further declared that after he had followed the jeep to the labasan, he "called" the victim's mother that same evening to tell her about the incident. None of Maribujo's conflicting accounts, on the other hand, matched Bisana's story. In separate instances, Maribujo declared that Bisana told them what he knew only on June 5 or on June 4. In another instance, she maintained that she asked Bisana on the night of June 3. On another occasion, Maribujo claimed that while they were looking for Mylene at the basketball court, they saw Bisana, who then told them about the incident. Indeed, even the prosecution's narration appearing in the Appellee's Brief reveals the discrepancy. The OSG states that Bisana approached Marilyn to tell her about the abduction only on June 5, 1996.[29] In the same breath, it claims that Bisana told Marilyn about it "the following Monday." [30]

Dolores Santos' Story

The prosecution also presented Dolores Santos, who allegedly saw Mylene with Boy Topak and found the opportunity to take the child away from him and turn her over to the police.

On June 4, 1996, she saw appellant holding the hand of Mylene. After observing the two, she realized that the girl might not be under the legitimate care of the man, because of her "tendency" to run away. Thereafter, the child managed to free herself and run away from him. Dolores then instructed her daughter and a companion to follow the child and bring her back. The two complied. That night, they all slept in the house of Dolores, who took the child to the police station the following day.

Like the testimonies of the two other prosecution witnesses, Dolores' account is unworthy of credence.

She testified that she suspected the girl might not be a child or ward of the man, because of the girl's "tendency" to run away. There was no showing, however, that the child was crying or looking for her mother or violently resisting him. Indeed, she even saw her playing in the mud, with the man seemingly content with just watching her.

Moreover, her story that she turned over the child to the police on June 5 was convincingly refuted during the trial. In the Appellee's Brief, the OSG stated that Dolores Santos recovered the victim from the appellant on June 4, 1996, and turned her over to the police "the following day," [31] *Ibid.*, pp. 6-7; Rollo, pp. 94-95.31 June 5, 1996. Subsequently, however, she declared that she went to the police on June 4, 1996. Even these two inconsistent stories were refuted on cross-examination. Dolores testified:[32]

"FISCAL ACUÑA:

The records of the Doña Ata Police Detachment of Marulas, Valenzuela, Metro Manila show, Madam Witness, that it was Lea Fernando, a receptionist of the Pagoda Club in Marulas who reported the matter of having recovered the child Maylin Maribujo to that detachment. What can you say about that?

A Lea was with me in going to the Doña Ata Detachment, but she was the one who reported the matter to the police.

Q Aside from you and Lea Fernando, did you have any companions when this matter was reported to the Doña Ata Detachment?

A

My kumare.

Q Why is it then that it was Lea Fernando who appeared to have made the report to that detachment on that day?

A Because she went with the child inside the detachment.

Q And where were you at the time that the child went inside to the police detachment with Lea Fernando?

A [At] the Information Desk.

x x x x x x x x

ATTY. MATURAN:

Mrs. Santos, you went with a certain Lea Fernando[.] [W]hen was that?

FISCAL ACUÑA:

There was another person.

A June 4.

ATTY. MATURAN:

Now, Mrs. Witness, you will change your answer.

COURT:

Witness may answer.

A

I will not.

ATTY. MATURAN:

I refer now, Mrs. Witness, to the police blotter which reads: 6/3/96. Can you explain to this Honorable Court

why the police officer put 6/3/96? Is there an objection, please, Your Honor? Can you explain now, it took [a] longer time to answer.

COURT:

No objection?" (Emphasis supplied.)

To that last question of the trial judge, no answer was given. Dolores could say nothing more. Even assuming that she saw the child on June 3, 1996, and not on June 4, 1996, the entry on the police blotter dated June 3, 1996 discredits her claim that she let the child sleep in her house for one night before turning her over to the police.

It may also be noted that she identified herself to a reporter as a floor manager of the Pagoda Club, a claim which appeared in a news article. When shown the article, she confirmed having made the statements attributed to her. But during the trial, she said that she was a cigarette vendor with a pwesto outside the said pub.[33]

Inconsistencies Engender

Reasonable Doubt

As a rule, minor discrepancies or inconsistencies do not discredit the prosecution's case as a whole. Where the discrepancies pervade the testimonies of prosecution witnesses, such that the totality of the prosecution evidence fails to constitute a coherent account, the conviction of an accused cannot be justified. The Court has held that "[t]he test is whether the testimonies agree on the essential facts and whether the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole." [34]

Thus, in *People v. Cartuano*, [35] the Court acquitted the accused, finding it "incredible that the trial court refused to entertain serious misgivings about the testimony and accusations of the complainant, after she had flubbed material dates, confused important sequences of events and had wide gaps in her memory." In *People v. Lactao*, [36] the Court also ordered an acquittal after it rejected the complainant's testimony which was "replete with discrepancies [and] inconsistent with human experience."

In the present case, the testimonies of the prosecution witnesses do not agree on the essential facts, and they do not make a coherent whole. As earlier stressed, discrepancies pervade each prosecution testimony. For instance, the number of kidnappers is not a minor point, and it is inexplicable why Bisana wavered on whether there were two or three. And when all of the prosecution testimonies are considered together, the Court is invariably confronted with incompatible accounts. Not only is the prosecution evidence afflicted with inconsistencies, it is also beset with improbabilities. Indeed, the proof against the accused must overcome not only "the test of reason and logic, but above all, that of experience." [37] The prosecution failed this test. Clearly, reasonable doubts emerge from the narrations of the three prosecution witnesses.

Verily, the constitutional presumption of innocence requires courts to take "a more than casual consideration" of every circumstance or doubt favoring the innocence of the accused. In the same vein, courts have the imperative duty to "put prosecution evidence under severe testing." [38]

In the present case, the totality of the prosecution evidence, when put "under severe testing," does not amount to proof beyond reasonable doubt. The Court has taken a "more than casual consideration" of the testimonies of the prosecution witnesses and has concluded that the inconsistencies therein unmistakably create a reasonable doubt. The test of moral certainty is not fulfilled.

The defense interposes denial and alibi, but both are inherently weak. [39] Appellant claims that he was at home at the time and on the day in question. On June 5, he was asked by the barangay officials to go to the barangay hall

for questioning. The accused claims that during their confrontation, Bisana was unable to identify him as the kidnapper. The boy pointed to him as the perpetrator of the crime, only after the former had been taken out of the room and after some time brought in again by the officials. The accused further alleged that the police then took him in for questioning and subsequently tortured him, a claim he supported with a medical certificate.[40] He alleges that in order to be relieved from torture, he concocted a story that he threw the child into a creek in Pasay. The evidence on record shows that the child was never brought to Pasay, but was found in the vicinity of both his residence and that of the child.

In any event, the merit of appellant's defense is not the issue here. The acquittal, rather, is based upon the incredibility and the insufficiency of the evidence presented by the prosecution. A finding of guilt must rest on the prosecution's own evidence, not on the weakness or even absence of that for the defense.[41] It is precisely when the prosecution's case is weak, as in this instance, that the defense of alibi assumes importance and becomes crucial in negating criminal liability.[42]

WHEREFORE, the appeal is hereby GRANTED. The Decision of the court a quo is hereby REVERSED and VACATED. Noel Diaz is hereby ACQUITTED on reasonable doubt. The director of the Bureau of Corrections is hereby directed to cause the release of appellant forthwith, unless the latter is being lawfully held for another cause, and to inform the Court of his release, or the reasons for his continued confinement, within ten days from notice. No costs.

SO ORDERED.

Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.
Romero, J., abroad on official business.

[1] Rollo, pp. 27-33; records, pp. 90-96.

[2] Presided by Judge Benjamin M. Aquino Jr.

[3] Also spelled "Mylene" or "Mylin" in the TSNs.

[4] Records, p. 13.

[5] This case was deemed submitted for resolution on March 4, 1999, upon receipt by this Court of the Appellee's Brief. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.

[6] The Appellee's Brief was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Mariano M. Martinez and Solicitor Jesus P. Castelo.

[7] Appellee's Brief, pp. 3-8; Rollo, pp. 91-96.

[8] This was signed by Atty. Oscar B. Maturan.

[9] Appellant's Brief, pp. 3-4; Rollo, pp. 45-46.

[10] Ibid., p. 5; Rollo, p. 47.

[11] *People v. Manambit*, 271 SCRA 344, April 18, 1997, per Panganiban, J.; *People v. Dayag*, 56 SCRA 439, March 29, 1974; *People v. Salazar*, 272 SCRA 481, May 14, 1997.

[12] *People v. Sumbillo*, 271 SCRA 428, April 18, 1997; *People v. Quinao*, 269 SCRA 495, March 13, 1997; *People v. Nuestro*, 240 SCRA 221, January 18, 1995.

[13] TSN, October 9, 1996, pp. 4-7; records, pp. 94-97.

[14] Records, p. 6.

[15] TSN, October 16, 1996, pp. 13-14.

[16] TSN, October 16, 1996, pp. 17-18.

[17] TSN, October 23, 1996, pp. 4-6.

[18] TSN, October 9, 1996, p. 6.

[19] TSN, October 16, 1996, pp. 18-19.

[20] In his affidavit, Bisana declared:

"xxx [A]ng ginawa ko po ay sumorkat [nag-shortcut] po ako patungong labasan at pagdating ko po roon ay nakita ko na karga pa rin ni NOEL si MAYLIN at pumara ng sasakyan si NOEL at sumakay po si NOEL na karga si MAYLIN sa dyip patungong Monumento at iyong dalawang mama naman po ay hindi ko na nakita at ako po nga pala po ay pinagbantaan ng dalawang mama na nagsabi sa akin na huwag daw po akong sumunod ay sinabi pa po sa akin na kapag nagsumbong daw po ako sa mga pulis ay papatayin daw po nila ako, kaya ako po ay natakot magsumbong noon subalit kapag nakikita ko po ang nanay ni MAYLIN na si MARILYN ay naawa na po ako kaya sinabi ko na po sa kanya ang aking nakita."

[21] TSN, October 23, 1996, pp. 4-6.

[22] TSN, September 11, 1996, pp. 3-5.

[23] Records, p. 5.

[24] TSN, October 2, 1996, pp. 7-8.

[25] TSN, October 2, 1996, pp. 15-16.

[26] TSN, October 2, 1996, pp. 12-13.

[27] TSN, October 2, 1996, p. 16.

[28] TSN, October 2, 1996, p. 14.

[29] Appellee's Brief, p. 4; Rollo, p. 92.

[30] Ibid., p. 6; Rollo, p. 94. "The following Monday" apparently refers to the day after the abduction and before the arrest of the appellant. The OSG's supposition is incorrect, because June 3, 1996, which was the date of the commission of the alleged crime, was a Monday.

[31] Ibid., p. 6; Rollo, p. 94. "The following Monday" apparently refers to the day after the abduction and before the arrest of the appellant. The OSG's supposition is incorrect, because June 3, 1996, which was the date of the commission of the alleged crime, was a Monday.

[32] TSN, December 18, 1996, pp. 10-14.

[33] TSN, November 20, 1996, pp. 12-14.

[34] *People v. Sibug*, 229 SCRA 489, 497, January 24, 1994, per Davide, J. (Now CJ); *People v. Landicho*, 258 SCRA 1, 32-33, July 3, 1996.

[35] 255 SCRA 403, 423, March 29, 1996, per Kapunan, J.

[36] 227 SCRA 463, 468, per Bellosillo, J.

[37] *People v. Cartuano*, supra.

[38] *People v. Cartuano*, supra.

[39] *People v. Sumbillo*, supra; *People v. Quinao*, supra; *People v. Pagal*, GR Nos. 112620-21, May 14, 1997; *People v. Yparraguirre*, GR No. 117702, February 10, 1997.

[40] TSN, December 11, 1996, pp. 6-8.

[41] *People v. Llaguno*, GR No. 91262, January 28, 1998; *People v. Paguntalan*, 242 SCRA 753, March 27, 1995.

[42] *People v. Adofina*, 239 SCRA 67, December 8, 1994.

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