

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARMEN LIM @ “MAMENG LIM”;
DEFENDANT-APPELLANT.**

G.R. No. 86454. October 18, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Masbate, Branch 46, the dispositive portion of which reads:

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"WHEREFORE, judgment is hereby rendered finding the accused Carmen Lim guilty beyond reasonable doubt of the crime charged and sentencing her to reclusion perpetua, and to pay the costs." (Rollo, p. 22)

The information filed against the accused and John Doe reads:

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"That on or about July 1, 1986, in the afternoon thereof, at Zurbito Street, Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this court, the said accused who are private persons conspired and mutually helped each other, did then and there willfully, unlawfully and feloniously kidnap Aida and Avelyn both minors and surnamed Villanueva; separating them from their parental care; Aida Villanueva was detained for about twenty (20) days in the house of Carmen Lim alias "Mameng" while Avelyn Villanueva was detained and brought to Cebu City by the co-accused, thereby depriving the two, Aida and Avelyn of their personal liberties." (Records, p. 1)

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is summarized as follows:

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"That in the morning of July 1, 1986, Aida Villanueva and her younger sister Avelyn Villanueva, 10 and 7 years old, respectively, were sent on an errand by their father Charlito (should be Charito) Villanueva to buy rice in Masbate, Masbate. The Villanuevas lived in Mobo, a neighboring town of the capital of the province. Upon their arrival at the poblacion of the capital town of Masbate at around 9:00 o'clock in the morning, Aida and Avelyn went to the pier, staying there up to 12:00 noon, to meet their mother whom they thought would arrive by boat from Manila. They left the pier when their mother did not arrive and went to Helen Theatre on Zurbito Street, Masbate, Masbate, to see a picture.

"At around 2:00 o'clock in the afternoon of the same day while they were in front of the Helen Theatre, they were called by the accused Carmen Lim, in a loud voice. "Come here Nene" and asked them to go to her house just in front of the moviehouse. Aida and Avelyn went to the house of the accused and got inside passing through the front door.

"After a brief conversation with the two children, the accused gave Aida and Avelyn rice and kangkong for lunch. After they had finished eating, Aida was told by the accused to take a bath. The accused gave Aida a dress to wear.

"From July 1, 1986 to July 15, 1986, Aida Villanueva was detained in the house of the accused doing household chores such as cleaning the kitchen, scrubbing the floor, washing the plates including removing lice from the head of the accused and fanning her. Avelyn, the younger sister of Aida, was brought by Carmen's mother (should be sister) in Cebu on the same day they arrived in the house of the accused.

"On July 15, 1986, Charito Villanueva, father of the two minor children, found his daughter Aida in the house of the accused. He asked the accused to let Aida go home with him, but the accused refused.

"Charito came back to the house of the accused the following day, July 16, 1986, accompanied this time by Sgt. Antonio Ariate of the 266th PC Company at Camp Bonny Serrano, Masbate, Masbate, who had with him an armalite. After identifying himself to the accused, the soldier told the accused that he was taking Aida with him.

"Without resistance but uttering slanderous remarks, the accused released Aida to Sgt. Ariate. Charito Villanueva and his daughter Aida were brought by Sgt. Ariate to the 266th PC Company Headquarters where the complaint of Charito was recorded in the blotter by CIC Vincent Elliot Vasquez of the I & I Section." (Rollo, p. 12)

The appellant's version, on the other hand, is summarized in her brief as follows:

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"On or about 1:30 in the afternoon of 1 July 1986, the sisters went to Helen Theater, located along Zurbito St., Masbate, Masbate, to look at the pictures displayed outside. Helen Theater is located across the store and residence of the appellant.

"The sisters then proceeded to appellant's store which she was tending at that time. Appellant noticed the sisters and called them over. She inquired from the sisters as to the whereabouts of their parents as they were apparently alone. The sisters replied that their parents had separated and that their mother had gone to Manila, and that their father was in Buenavista, Uson, Masbate. The sisters claimed that they were driven away by their father and that they were not given any food to eat.

"Taking pity on the sisters, appellant gave the sisters food and allowed them to take a bath. Concerned for their safety, appellant offered to shelter the sisters. As the younger sister of appellant was at that time visiting appellant, appellant proposed to Aida to let Avelyn accompany appellant's sister to the latter's home. Aida agreed, on condition that she and Avelyn could meet every week.

"Aida stayed in appellant's residence for about two (2) weeks. To help in the house, Aida would go to the market to buy bread, fish and salt for appellant's household. Aida also helped watch over appellant's store from time to time.

"On or about 9:00 a. m. of 15 July 1986, Charito Villanueva, the complainant and father of the sisters, went to appellant's store. Charito introduced himself to appellant as the father of the two sisters and informed appellant that he was going to bring the sisters home. Charito talked to Aida and asked her to go home with him. Aida, however, refused to go with her father. As a result, Charito left. When asked by appellant why she refused to go with her father, Aida replied that she was afraid that her father would beat her up.

"On 16 July 1986, Charito returned to appellant's store, this time accompanied by Sgt. Antonio Ariate, Jr. of the Philippine Constabulary. Sgt. Ariate introduced himself to appellant. Charito again talked to Aida to convince her to go home with him. This time, Aida agreed to go home with her father." (Rollo, pp. 44-46)

The appellant raises the following assignment of errors in her appeal, to wit:

I

THE TRIAL COURT ERRED IN NOT DISMISSING THE CASE AGAINST THE APPELLANT DESPITE THE DESISTANCE OF THE COMPLAINANT

II

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE PROSECUTION WITNESSES' TESTIMONY WHICH WERE REplete WITH INCONSISTENCIES AND CONTRADICTIONS

III

THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT DESPITE THE FACT THAT AIDA VILLANUEVA WAS NOT DETAINED BY THE APPELLANT

IV

THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT DESPITE THE FACT THAT APPELLANT HAD NO MOTIVE TO DETAIN AIDA AND AVELYN VILLANUEVA (Rollo, pp. 47-48)

The fundamental axiom underlying a criminal prosecution is that before the accused may be convicted of any crime, his guilt must be proved beyond reasonable doubt. Thus, if there are substantial facts which were overlooked by the trial court but which could alter the results of the case in favor of the accused, then such facts should be carefully taken into account by the reviewing tribunal. (People v. Torre, G.R. No. L-44905, April 25, 1990)

In the case at bar, after a careful review of the evidence adduced by the prosecution, we find the same to be insufficient to sustain a conviction.

The uncorroborated testimony of the alleged kidnapped victim, Aida Villanueva, which was mainly relied upon by the trial court in convicting the appellant, was not clear and convincing enough to overcome the constitutional presumption of innocence.

There is no kidnapping in this case. The two minors voluntarily entered the appellant's residence through the front entrance. The fact of detention which is an essential element in the crime charged, was not clearly established. There was no showing that there was actual confinement or restriction of the person of the offended party. (See People v. Mercado, 131 SCRA 501, 506 [1984]; US v. Cabanag, 8 Phil. 64, 67 [1907]). The appellant's residence has a store fronting the street where many customers presumably come and go. The place is busy with a movie house in front. There is no indication that Aida was locked up, physically restrained of her liberty or unable to communicate with anyone.

There are other circumstances which create grave doubts in Aida's version of her two week detention. In her testimony, Aida claimed that she attempted to escape three times but she was not able to do so. (TSN, July 21, 1987, p. 34). Just how she tried to escape or why she did not succeed is not explained clearly. When Aida saw her father for the first time on July 15, 1986, she inexplicably did not shout for help or run to him but just observed him and the appellant talk for half an hour. (TSN, July 21, 1987, p. 23) The Solicitor General counters the appellant's claim stating that Aida did ask for help from her father when the latter was about to leave, but the appellant pushed her and refused to let her go with her father. (TSN, July 21, 1987, pp. 25-26).

The actuations of both Aida and her father are highly incredible. They are not the natural reactions of a ten-year old child who has been detained against her will for two weeks and who has tried unsuccessfully to escape three times.

The fact that her father was already there was the perfect opportunity for Aida to try and get away from the appellant. She could have clung to him from the moment he came in instead of quietly observing him and the appellant talk for some time. Aida did not go with her father because the appellant allegedly told her not to go. For someone who had been detained against her will, as between her father and her detainor, Aida would have disregarded the appellant's order and would have run to her father. Neither is it believable that a father who has been desperately looking for his two minor daughters for two weeks would just calmly accept the appellant's refusal to let go of his daughter.

The Court is not unaware of previous pronouncements that the testimony of a single witness, if positive and credible, is sufficient to support a conviction. (People v. Aldeguez, G.R. No. L-47991, April 3, 1990; People v. Salufrania, 159 SCRA 401, 415-416 [1988]) But as discussed above, the testimony of Aida Villanueva does not inspire credibility. Well-settled is the rule that evidence to be believed, must not only proceed from the mouth of a credible witness but it must be credible itself. No better test has yet been found to measure the value of a witness than its conformity to the knowledge and common experience of mankind. (People v. Maspil, G.R. No. 85177, August 20, 1990; People v. Maribung, 149 SCRA 292, 297 [1987])

The fact of detention is also belied by the testimony of one of the prosecution witnesses. Sgt. Ariate stated that:

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Q. You also saw Aida Villanueva?

A. Yes, sir.

Q. Where did you see her?

A. By the door of her store...going inside." (TSN, October 22, 1987, p. 10)

It is apparent that Aida had free access going in and out of the appellant's residence. In fact, Aida could have escaped at that particular period of time. She was three feet away from the appellant when Sgt. Ariate saw her (TSN, October 22, 1987, p. 10) so she could have made a run for it if she really wanted to go.

There is also the question of Sgt. Ariate's conflicting statements as to the answer of Aida's father about his missing daughters which was dismissed by the trial court as a minor inconsistency. In his testimony, he stated that Aida's father said that he just sent his two daughters on an errand and they were already missing (TSN, October 22, 1987, p. 9) while in his answer to the questions propounded to him he stated that Aida's father admitted that his daughter ran away. (Records, p. 15)

Such conflicting statements taken together with the statement of Charito Villanueva, the father of the victim that "Aida Villanueva and Avelyn Villanueva, 10 and 6 yrs. old were (sic) left their house without his consent," (Records, p. 126) recorded in the blotter dated July 23, 1986 cast doubt on the criminal liability of the appellant. The answer of Sgt. Ariate to the questions propounded to him and the statement in the blotter corroborate the appellant's testimony that the two children ran away from home. (TSN, April 22, 1988, pp. 4-5)

The unbelievable and conflicting evidence of the prosecution strengthens the version of the appellant that she took pity on the two runaway children and decided to give them food and shelter. Whether or not she treated them like unpaid servants is not in issue. What is apparent from the records is the absence of proof showing kidnapping and serious illegal detention.

Another circumstance that belies the kidnapping charge is the unexplained delay in the lodging of the complaint against the appellant. An entire week passed before the complaint was lodged on July 23, 1986. (See *People v. Antonio*, 161 SCRA 72, 81 [1988])

The fourth circumstance present which calls for the reversal of the conviction is that there is no motive whatsoever for the appellant to kidnap the two children. The appellant is a woman of sufficient means. It is undisputed that she is the owner of a store and was the employer of two maids at the time of the incident. She did not know the two children prior to the incident. Had she wanted to hire an additional maid, she could certainly afford to hire another one without going to the extent of committing a crime as serious as kidnapping. There was no need to kidnap a minor and force her to work against her will. The appellant had everything to lose and nothing to gain if it is true that she kidnapped the two children. No motive was ever propounded by the prosecution. We are thus ushered to applying the precept that though proof of motive is not indispensable to conviction, yet a void in the evidence in this respect discloses a weakness in the case for the prosecution. (*People v. Modesto*, 25 SCRA 36, 46 [1968]) It has also been held in *People v. Zamora*, 59 Phil. 568, 569, [1934]:

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"In the case at bar, no motive for the killing has been established, and granting that proof of particular motive for taking the life of a human being is not indispensable to conviction for homicide, the absence of such motive is nevertheless important in determining which of two conflicting theories is more likely to be true." (Underlining supplied)

And finally, the execution of the affidavit of desistance by Charito Villanueva, complainant in the kidnapping case, stating that his daughters were not detained after all by the appellant taken together with the circumstances abovementioned has the effect of exculpating the appellant from the charge of kidnapping. As held in *Gomez v. Intermediate Appellate Court* (135 SCRA 620, 630 [1985]):

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"It is conceded that the State has the sovereign right to prosecute criminal offenses under the full control of the fiscal and that the dismissal of criminal cases by the execution of an affidavit of desistance by the complainant is not looked upon with favor. However, it is also true that an affidavit of desistance may create serious doubts as to the liability of the accused. At the very least, it calls for a second hard look at the records of the case and the basis for the judgment of conviction. Jurisprudence on the effect of desistance notwithstanding, the affidavit should not be peremptorily dismissed as a useless scrap of paper." (Underlining supplied)

The instant case falls under the exception where an affidavit of desistance is given due consideration. Significantly, the father of the two girls testified in open court on November 24, 1987 that he was withdrawing the case and that his children were not detained. The prosecution had every opportunity to cross-examine or tear apart the retraction and prove that the facts were as earlier alleged. It failed to do so.

The Solicitor General quotes the trial court's statement that:

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"If the accused thought that the evidence of the prosecution was fabricated or false, the accused could have presented her two maids as witnesses to testify to rebut said evidence. Her failure to introduce them as witnesses could only mean that the testimonies of the prosecution witnesses about the detention of Aida in her house were all true." (Rollo, p. 21)

It is a well-entrenched rule in our jurisprudence that the prosecution must rely on the strength of its evidence rather than on the weakness of the defense. (*People v. de Dios*, G.R. No. 58174, July 6, 1990; *People v. Domingo*,

165 SCRA 620, 626 [1988]) In this case, the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt.

WHEREFORE, the judgment of the trial court is hereby REVERSED and SET ASIDE and appellant Carmen Lim is ACQUITTED of the crime charged for failure to prove her guilt beyond reasonable doubt.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, and Cortes, JJ., concur.
Feliciano, J., on leave.

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