

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. DIANA KYLA DELA CRUZ Y REYES, ACCUSED-APPELLANT.

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

This is an appeal from the Decision dated 08 February 2013 rendered by the Regional Trial Court of Las Piñas City, Branch 199, (RTC) in Criminal Case No. 08-0711, the decretal portion of which reads:

“WHEREFORE, this court finds the accused DIANA KYLA DELA CRUZ, GUILTY beyond reasonable doubt for violation of Other Acts of Abuse (penalized under Sec. 10(a) RA No. 7610. This court hereby imposes an Indeterminate Penalty of imprisonment ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of PRISION CORRECCIONAL, as its minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of PRISION MAYOR, as its maximum period with the accessory penalty provided for by law. Accused is further directed to indemnify the victim the amount of FIVE THOUSAND PESOS as moral damages.

The period under which accused has remained under detent[i]on shall be credited to her in full provided that she agreed and complied with the rules and regulation of the City jail.

Let a copy of this Decision be furnished the parties.

SO ORDERED.”

The Indictment

On 04 August 2008, an Information was filed by the City Prosecutor of Las Piñas City charging accused-appellant Diana Kyla Dela Cruz (appellant) with violation of Section 10(a) of Republic Act 7610 (RA 7610), the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, for physically assaulting the 15-year-old AAA[1], as follows:

“That on or about [the] 28[th] day of May 2008, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, [appellant], did then and there willfully, unlawfully and feloniously commit an act of abuse against [AAA], a fifteen (15) year old minor, by then and there grabbing her hair and kicking her leg; which acts debase[d], degrade[d] and demean[ed] the intrinsic worth of the minor as a human being, and the same is prejudicial to the minor-complainant's mental and psychological development.”[2]

When arraigned on 04 November 2008,[3] appellant entered a plea of not guilty to the charge.

During trial, the prosecution presented as witnesses private complainant AAA, her parents (Norma and Lauro), and Mayona Malibong (Mayona), AAA's neighbor and an eyewitness to the incident.

For the defense, appellant and Dr. Blesilda Asuncion testified.

The Facts

Version of the Prosecution

The Solicitor General summarized the prosecution's version of the physical confrontation between AAA and appellant as follows:

“In 2007, [AAA] was a 15-year-old high school student. The prosecution showed that during that year, the [appellant] began showing animosity to [AAA] after her live-in partner tried to court [AAA] for a week. The [appellant] would send unpleasant messages to [AAA] and spread sexual rumors about her.

On 28 May 2008, the [appellant](who was with a companion named Cherry Joy Santos) confronted [AAA] inside a store and angrily asked her why she called the [appellant] 'malandi' (slutty) and 'pokpok' (prostitute)....

[AAA] remained silent and turned away from the [appellant] after the alleged confrontation. The [appellant] suddenly pulled [AAA's] hair and kicked her legs while shouting 'malandi' and 'pokpok'. AAA allegedly sustained a lump on her head and felt pain in her legs, but did not undergo medical examination.

X X X X X X X X X" [4]

Version of the Defense

Appellant admitted the confrontation between her and AAA in the afternoon of 28 May 2008 inside a neighborhood store, but claimed that it was AAA who attacked her first.

Appellant related that she was the live-in partner of Geralvin Mateo with whom she had two children. Sometime in 2006, appellant learned of AAA's romantic relation with Geralvin Mateo, and decided to part ways with him. When Mateo decided to reconcile with appellant, AAA started spreading rumors that appellant was slutty (malandi) and a prostitute (pokpok). On 28 May 2008, appellant chanced upon AAA and calmly asked her why she was spreading such rumors. AAA angrily replied: "Why?" Is it not true?"

When appellant turned her back to leave, AAA suddenly grabbed her arm and pulled her hair. Appellant could not fight back as AAA's cousin and father joined the fray. As a result, appellant sustained bruises and scratches on her arms and neck.

Dra. Blesida Asuncion issued a Medical Certification (Exhibit “1”)[5] noting the following injuries of appellant that she treated on the date of the incident:

“(+) Erythema

(1) Shoulder along anterior axillary line (L)

(2) Anterior chest (L)

(3) wrist (L)

X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X"

The RTC's Ruling

In the Decision dated 08 February 2013, the RTC found that appellant's act of badmouthing AAA with words such as “pokpok” and “malandi”, as well as simultaneously hurting her, falls squarely under the definition of child abuse under Section 10(a) of RA 7610. It accorded great weight and consideration to AAA's testimony for being consistent and without any taint of uncertainty as to the circumstances surrounding the incident, for manifesting no doubt as to the identity of appellant as the assailant, and for having been corroborated by an eyewitness. Further, it noted the ill-motive on the part of appellant to badmouth and physically assault AAA, ostensibly provoked by the alleged romantic liaison between the latter and appellant's live-in partner. In rejecting appellant's version that AAA started the fight between them, it held that while there was a medical certificate

showing that appellant had sustained injuries, there was no proof who had caused them. It also stressed that while appellant had filed a complaint for physical injuries, she admitted that the complaint was not against AAA but against the latter's father and cousin.

The Issue

Aggrieved, appellant filed the present appeal, urging the reversal of her conviction on the ground that:

“THE TRIAL COURT GRAVELY ERRED IN CONVICTING [APPELLANT] OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.”[6]

Appellant argues that the inconsistencies and improbabilities in the evidence for the prosecution warrant the reversal of the judgment of conviction. First, private complainant AAA testified that only the appellant physically assaulted her, while prosecution witness Mayona testified that not just the appellant, but also her companion, Cherry Joy, assaulted AAA.[7] Second, on clarificatory questions of the trial court, AAA belied her own testimony and that of Mayona that she did not fight back when appellant attacked her.[8] Third, the failure of AAA to submit herself to medical examination is a positive indication that she was neither assaulted by appellant nor sustained injuries therefrom.[9]

The Solicitor General counters that the alleged inconsistencies will not alter the verdict of conviction, and stresses that Mayona corroborated AAA's account that appellant physically assaulted her.[10] Further, it argues that AAA's failure to consult a doctor regarding her injuries hardly indicated that AAA did not suffer an injury from the attack of appellant. It also pointed out that “physical harm” is not an element of the crime of child abuse punished under Section 10 (a) of RA 7610.[11]

The basic issue is whether or not appellant is guilty of the crime of child abuse under Section 10(a) of RA 7610.

The Court's Ruling

We find the appeal partly impressed with merit.

Evidently, the resolution of this appeal hinges on the credibility of the witnesses and the probative weight of their testimonies. The rule is settled that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of their probative weight, as well as its conclusions anchored on said findings are accorded by the appellate court high respect, if not conclusive effect, precisely because of the unique advantage of the trial court in observing and monitoring at close range the demeanor, deportment and conduct of the witnesses as they testify.[12] Unless the trial court has overlooked, misconstrued or misinterpreted cogent facts of substance which if considered might affect the result of the case,[13] appellate courts are not inclined to disturb the factual determinations of the trial court.

Our judicious review of the records yielded no cogent reason that would warrant a departure from this settled principle. The trial court correctly gave credence to the account of AAA whose testimony is consistent and without any taint of uncertainty as to the circumstances surrounding the incident.[14] AAA testified with clear details on how appellant unleashed her pent-up anger on the former when they met by chance at a neighborhood store on 28 May 2008, thus:

“FISCAL MATAMMU-SION:

Q

On May 28, 2008 at about 4:30 in the afternoon, do you still remember where were you at that time?

WITNESS

A

Yes, maám.

Q

Will you please tell this Honorable Court on the said date and time what were you doing?

A

I just got home from school because me and my mother enrolled in school. My mother instructed me to buy a load for our phone. While I was talking to the person tending the store, she called my name. She had a woman companion.

Q

Who is this person who called you?

A

[Appellant] maám.

xxx xxx xxx

Q

When the [appellant] called you, what did she tell you?

A

[Appellant] asked me why I was saying that she's 'malandi' and 'pokpok' when in fact she's telling me those words.

Q

What was the manner by which the [appellant] asked you that question?

A

[Appellant] was facing me, her eyebrows were raised.

Q

How about the tone of her voice when she uttered those statements. Will you please described.

A

Angry tone, maám.

Q

Would you know why the [appellant] would be approaching you?

A

[Appellant is] angry maám.

xxx xxx xxx

Q

And what was your reply, Madam Witness to the statements given to you by the [appellant]?

A

I did not give a reply. I just turned my back because I was talking to the woman who was selling me load.

Q

When you turned your back to the woman tending the store, what happened next?

A

[Appellant] grabbed my hair, she started to pull my hair. She kicked my legs. There were many people around at that time. I was able to grab her and then, the money was even torn.

xxx xxx xxx

Q

What did you feel when the [appellant] pulled your hair and kicked your leg?

A

I felt pain and I think, there was a bump in my head....

xxx xxx xxx

COURT

Q

While [appellant] was hurting you, did you hear anything from her?

A

None, Your Honor.”[15]

For her part, appellant denied having physically abused AAA, insisting that it was the latter who attacked her first, and as a result thereof, she sustained bruises and scratches on her arms and neck. Appellant's bare denial, however, cannot prevail over AAA's direct, positive and categorical assertion. Mere denial of involvement in a crime cannot take precedence over the positive testimony of the offended party. Unsubstantiated by clear and convincing evidence, appellant's denial cannot be given greater evidentiary value than the credible and straightforward testimony of the victim, like AAA, who testified on affirmative matters.[16] Further, We find appellant's failure to file a complaint against AAA runs counter to the normal human conduct and behavior of one who feels truly aggrieved by the act complained of. As correctly noted by the trial court, appellant admitted having filed a complaint for physical injuries against the father and cousin of AAA, but not against the latter despite her claim that it was AAA who attacked her first.

The law under which appellant was charged, tried and found guilty of violating is Section 10 (a) of RA 7160, which provides:

“Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. –

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

xxx xxx xxx”

Child abuse, the crime charged, is defined by Section 3 (b) of Republic Act No. 7610, as follows:

“Section 3. Definition of terms. –

x x x x

(b) "Child Abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

xxx xxx xxx”

Although We affirm the factual findings of the RTC to the effect that appellant grabbed the hair of AAA and kicked her leg, We disagree with its ruling that such acts of appellant constituted child abuse within the purview of the above-quoted provisions. As borne by the evidence on record, appellant was angry at AAA because of the latter's alleged past romantic liaison with appellant's live-in partner, Geralvin Mateo.[17] Hence, when they met by chance at a neighborhood store, appellant, in anger and at the spur of the moment, grabbed and pulled the hair,

and kicked the leg of AAA. However, the prosecution failed to establish beyond reasonable doubt that such acts of appellant had been intended to debase, degrade and demean the intrinsic worth and dignity of AAA as a human being, or that appellant had thereby intended to humiliate or embarrass the child.

In the case of *Bongalon vs. People*,^[18] the Supreme Court explained that not all acts of physical assault on a minor constitutes the crime of child abuse under Section 10 (a) of RA 7610. It is only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse; otherwise, it is punished under the Revised Penal Code. In the said case, the Supreme Court acquitted the accused of the crime of violation of Section 10 (a) RA No. 7610 since the records did not establish beyond reasonable doubt that the accused's laying of hands on the minors had been intended to debase the "intrinsic worth and dignity" of the child as a human being, or that he had thereby intended to humiliate or embarrass the child. The High Court found that the laying of hands was done at the spur of the moment and in anger, which was indicative of the accused being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters who had just suffered harm at the hands of the minor victims. It stressed that with the loss of his self-control, the accused lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of the child as a human being that was so essential in the crime of child abuse.

In any event, aware of the need to establish the psychological impact of appellant's physical attack on AAA, the RTC directed^[19] a social worker to conduct a case study on AAA and to submit a report. Unfortunately for the prosecution, Social Welfare Officer II Ma. Edna Picato made no assessment in the Social Case Study Report^[20] as to whether AAA felt debased by the 28 May 2008 incident, but merely recommended that an in-depth Psycho-Social analysis of the subject minor be made by the personnel of the Department of Social Welfare and Development (DSWD).^[21] Not to mention, AAA's mother admitted during cross-examination that she is in possession of the said DSWD report, but the prosecution never offered the same in evidence. We view such omission in the context of the disputable presumption that "evidence willfully suppressed would be adverse if produced."^[22]

All said, guided by the ruling in *Bongalon vs. People*,^[23] We rule that appellant cannot be held criminally liable for child abuse under Section 10(a) of RA 7610 for failure of the prosecution to establish with moral certainty that appellant's act of grabbing the hair and kicking the leg of the minor AAA was specifically aimed to debase the latter's intrinsic worth and dignity as a human being, or to humiliate or embarrass her.

Despite its failure to prove the charge of child abuse under Section 10(a) of RA 7610 as stated earlier on, the prosecution was able to establish beyond reasonable doubt that appellant had pulled the hair and kicked the leg of AAA, which constitutes the crime of physical injuries under the Revised Penal Code, as amended, (RPC), to wit:

“Art. 266. Slight physical injuries and maltreatment. - The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period;
2. By *arresto menor* or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance;
3. By *arresto menor* in its minimum period or a fine not exceeding 50 pesos when the offender shall ill-treat another by deed without causing any injury.

There being no proof of the required medical attendance or the period of AAA's incapacity for labor as a result of

the injuries inflicted by the appellant, the latter may only be held criminally liable for slight physical injuries[24] under Article 266 (2) of the RPC, the penalty for which is *arresto menor*, which ranges from one (1) day to thirty (30) days of imprisonment, or a fine not exceeding twenty (Php20) pesos and censure. With the Indeterminate Sentence Law being inapplicable as the penalty prescribed does not exceed one year and in the absence of any mitigating or aggravating circumstance, the appellant shall suffer a straight penalty of 10 days of *arresto menor*.

As to appellant's civil liability, moral damages compensate for the mental anguish, serious anxiety, and moral shock suffered by the victim and his family as a proximate result of the wrongful act of the accused and requires no proof of pecuniary loss.[25] Under paragraph (1), Article 2219 of the Civil Code, moral damages may be recovered in a criminal offense resulting in physical injuries. For less serious and slight physical injuries, jurisprudence[26] fixes the award of moral damages at Php5,000.00. Having been found guilty of slight physical injuries, appellant is therefore liable to pay AAA such amount in moral damages.

WHEREFORE, the appealed 08 February 2013 Decision of the Regional Trial Court of Las Piñas City, Branch 199, is REVERSED and SET ASIDE. In lieu thereof, another is entered finding appellant Diana Kyla Dela Cruz GUILTY beyond reasonable doubt of the crime of slight physical injuries under Article 266(2) of the Revised Penal Code. Accordingly, she is sentenced to suffer the straight penalty of ten (10) days of *arresto menor*, and ordered to PAY private complainant AAA moral damages in the amount of FIVE THOUSAND PESOS (Php5,000.00).

SO ORDERED.

Garcia and Bueser, JJ., concur.

[1] Republic Act No. 7610 (An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes); Republic Act No. 9262 (An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And For Other Purposes); and Section 40 of A.M. No. 04-10-11-SC (Rule On Violence Against Women And Their Children) mandate that in cases involving violence against women and their children, the identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld.

[2] Records, p. 01.

[3] *Id.*, p. 86.

[4] Rollo, pp. 61-62.

[5] Records, p. 261.

[6] Rollo, p. 25.

[7] *Id.*, pp. 30-31.

[8] *Id.*, pp. 31-32.

[9] *Id.*, p. 33.

[10] *Id.*, p. 63.

[11] *Id.*, p. 64.

[12] *People v. Padigos*, G.R. No. 181202, 5 December 2012, cited in *People v. Basallo*, G.R. No. 182457, 13 January 2013.

[13] *People v. Escleto*, G.R. No. 183706, 25 April 2012; *People v. Rarugal*, G.R. No. 188603, 26 January 2013; *Nombrefia vs. People*, G.R. No. 157919, January 30, 2007, citing *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260, 265-266.

[14] Page 06 of the assailed Decision.

[15] TSN, 25 November 2008, pp. 11-15.

[16] *People vs. An*, G.R. No. 169870, 04 August 2009

[17] See Exhibit "A," Records, p. 161.

[18] G.R. No. 169533, 20 March 2013.

[19] Records, p. 92.

[20] Records, p. 117.

[21] *Id.*, p. 118.

[22] Section 3(e), Rule 131 of the Rules of Court.

[23] *supra*

[24] *People v. Penesa*, 81 Phil. 398.

[25] See *Caprio v. Valmonte*, G.R. No. 151866. September 9, 2004, citing Art. 2217, Civil Code, *Fule v. Court of Appeals*, 350 Phil. 349 [1998], and *Zulueta v. Pan American Airways, Inc.*, 151 Phil. 1 (1973).

[26] *People v. Villacorta*, G.R. No. 186412, 7 September, 2011, 657 SCRA 270, cited in *Bongalon v. People*, *supra*.

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