

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENIGNO JOSE, ACCUSED-APPELLANT.

Ponente: BRUSELAS, JR. J.

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### BRUSELAS, JR. J.:

This is an appeal from the Decision[1] that convicted herein appellant Benigno Jose of slight physical injuries in relation to Republic Act No. 7610 (R.A. 7610),[2] and which disposed as follows:

“WHEREFORE, premises considered, accused Benigno Jose is hereby found guilty of slight physical injury in relation to RA 7610 and hereby sentences him to an indeterminate sentence of four (4) years, nine (9) months and eleven (11) days of prison correctional as Minimum, to six (6) years, eight (8) months and one (1) day of prison mayor as Maximum.

SO ORDERED.”[3]

AAA[4] was born on 21 January 2005 in Mayantoc, Tarlac.[5]

On 28 August 2011, while in their house in Barangay Rotrotooc, Mayantoc, Tarlac, AAA was ordered by her grandmother to buy sugar at a nearby store. When she reached the store, the appellant called her. She approached the appellant, who appeared to be drunk, and the latter held her hand and dragged her towards the back of a church located in Barangay Rotrotooc, Mayantoc, Tarlac. Thereat, the appellant choked her. While she was crying, she tried to break away from the appellant's hold and which she successfully did. She hastened to her sister, who was also buying an item at the store, and they went home immediately. Upon arrival at their house, she reported the incident to her grandmother.[6]

At the time of the incident, BBB, the father of AAA, was in Manila and he only learned about what happened to AAA on the following day upon returning home to Tarlac. The matter was brought to the barangay authorities but no settlement was reached between the parties and a Certificate to File Action was consequently issued. On 02 September 2011, BBB had AAA examined at Magalued Clinic where the latter was diagnosed to have a sprain at her left shoulder.[7] Then, on 05 September 2011, BBB and AAA went to the Mayantoc police station where they jointly executed a sworn statement[8] about what happened to AAA.

In an Information[9] dated 29 June 2012, the appellant was charged before the Regional Trial Court (RTC) of Camiling, Tarlac with slight physical injuries in relation to R.A. 7610, the accusatory portion of which reads:

“That on or about August 28, 2011 around 5:00 p.m. In the Municipality of Mayantoc, Province of Tarlac, and within the jurisdiction of this Honorable Court, the above named accused did then and there, willfully, unlawfully, and feloniously choked the neck and pull the hands of Angel L. Bumatay, 6 years old thereby inflicting upon her physical injuries which require medical attendance for a period of less than nine (9) days which act is prejudicial to the normal development and growth of the complainant as a child.

CONTRARY TO LAW.”[10]

When arraigned on 22 January 2013, the appellant entered a plea of not guilty to the crime with which he had

been charged.[11]

The appellant interposed the defense of alibi. He claimed that at the time of the incident he was working at Manny Cucuz Panciteria in Las Pinas, Metro Manila. He posited that no one could corroborate his alibi because he could not contact his co-workers and employer as his cellular phone was lost. When asked for any proof of his employment at that restaurant, he could not present one.[12]

After the trial, the RTC found the appellant guilty as charged. It accorded more weight to the positive declaration of AAA than the uncorroborated alibi of the appellant.

The appellant moved for a reconsideration but the motion was denied[13] by the RTC.

Dismayed, the appellant filed the instant appeal on the sole ground that the RTC gravely erred in convicting him because the prosecution failed to prove his guilt beyond reasonable doubt.

The appellant questions the credibility of AAA. He argues that it is unbelievable testimony that he would just pull and drag away AAA only to threaten to kill her. Assuming for the sake of argument that he intended to commit a crime, he, certainly, would have chosen a more discreet place other than the back of the church where people are sure to pass by and which place is well-lighted. Furthermore, he argues that it is quite odd that the prosecution never presented AAA's sister or grandmother to corroborate AAA's statements. He further posits that the Medical Certificate does not support AAA's claim that she was choked by him because it contained no findings of any injury along AAA's neck. Finally, he maintains that even if his alibi is not worthy of credence, still he could not be convicted as charged because the prosecution failed to prove his guilt beyond reasonable doubt.

As with the RTC, the Solicitor General is also convinced that the appellant is guilty as charged. He opines that the testimony of AAA is natural, spontaneous, consistent and credible and is thus sufficient proof to convict the appellant. Also, he maintains that there is no proof of prior ill feelings on the part of AAA and her father that would suggest any improper motive on their part to falsely testify against the appellant.

We sustain the appellant's conviction.

The RTC ruled that the testimony of AAA passed the test of credibility. It concluded that the frank and categorical declaration of AAA bore the hallmarks of truth especially that she was a minor. Well-settled is the rule that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts. Matters affecting credibility are best left to the trial court because of its unique opportunity to observe the elusive and incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case.[14] We have perused the records as well as the transcript of stenographic notes and found no cogent reason to depart from this oft-repeated principle.

AAA's narration of how she was maltreated by the appellant was candid, categorical and straightforward, to wit:

“THE PROSECUTOR:

Q:

Will you tell us where were you on August 28, 2011?

THE WITNESS:

A:

I was in our house, sir.

Q:

While you were in your house, what did you [sic] grandmother tell you, if any?

A:

To buy in the sari-sari store, sir.

xxx xxx xxx

Q:

And when you reached the store, what happened?

A:

Someone called me, sir.

Q:

And what did you do when that someone called you?

A:

I went near him, sir.

Q:

Who was that person?

A:

Benigno, Jose, sir.

Q:

The Benigno Jose you earlier pointed?

A:

Yes, sir.

Q:

And when you went near Benigno Jose, what happened?

A:

He held my hand and he dragged me at the back of the church, sir.

Q:

So he held your hand and dragged you at the back of the church. What happened at the back of the church?

A:

He choked me, sir.

Q:

While the accused was choking you, what happened?

A:

I cried, sir.

Q:

And when you cried, what happened?

A:

I tried to free myself, sir.

Q:

Were you able to free yourself?

A:

Yes, sir.”[15]

Even during cross-examination, AAA remained firm and consistent in her testimony. She even corrected the defense counsel, and we quote:

“xxx xxx xxx

Q:

And when you went near him you claimed that he suddenly choked you or held you. Is that what you are saying?

A:

No, sir.

Q:

So what happened when you went near him?

A:

He held my hand, sir.”[16]

The foregoing testimony was further strengthened by the diagnosis of Dr. Ruperto D. Magalued, who examined AAA and found that the latter had “left shoulder sprain secondary to trauma.”[17] The lack of injury on the neck of AAA does not necessarily render her testimony to be incredible. As quoted above, AAA's declaration of how the appellant maltreated her was clear and spontaneous such that, by itself, it could support the latter's conviction. Furthermore, there had been no showing of any improper motive on AAA's part to falsely testify against the appellant. What would AAA gain by going at length in prosecuting the accused? AAA's testimony had not been diluted such that is worthy of belief.

The non-presentation by the prosecution of AAA's grandmother or sister does not work against the prosecution's cause. The prosecution was under no obligation to present AAA's grandmother, or her sister, to confirm her testimony. It has been consistently ruled that the testimony of a single witness, if credible, would suffice to sustain a conviction because witnesses are to be weighed and not numbered.[18] Moreover, the matter as to who to present as witnesses is addressed to the sound discretion of the prosecutor handling the case and the failure to present a witness does not necessarily suggest that said witness will testify adversely.[19]

We are not also persuaded by the appellant's assertion that if he intended to commit a crime, he, certainly, would have chosen a more discreet place other than the back of the church where people are sure to pass by and which area is well-lighted. It must be noted even the crime of rape can be committed in a public place, in places where people congregate, in parks, along the roadside, within school premises, inside a house or where there are other occupants, and even in the same room where there are other members of the family who are sleeping.[20] Thus, such an argument by the appellant is absurd and fallacious.

Anent the appellant's defense of alibi, the RTC properly disregarded the same. Time-tested is the rule that between the positive assertion of prosecution witnesses and the negative averment of an accused, the former undisputedly deserves more credence and is entitled to greater evidentiary value.[21] Thus, the unsubstantiated alibi of the appellant cannot prevail over the positive identification made by AAA of him as the perpetrator of the crime. Moreover, for alibi to prosper, not only must an accused prove that he was at another place at the time of the commission of the crime, but also that it was physically impossible for him to be at the crime scene at that time.[22] Here, the appellant failed to establish these two elements. First, there was no record or any witness attesting to his presence at Manny Cucuz Panciteria in Las Pinas, Metro Manila at the time of the incident. Second, he never demonstrated that it was physically impossible for him to be at the crime scene in the afternoon of 28 August 2011.

Considering that the injury sustained by AAA was only slight, the appellant would have been liable for the crime of slight physical injuries under Article 266[23] of the Revised Penal Code if AAA was not a minor. Since AAA was only 6 years old when the incident happened, she was therefore entitled to the protection extended by R.A. No. 7610, as mandated by the Constitution,[24] which provides for stiffer penalties.

Section 10 (a) of R.A. No. 7610 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 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.”

The foregoing provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603,[25] but also four distinct acts, i.e., (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development.[26]

Under Subsection (b), Section 3 of R.A. No. 7610, child abuse refers to the maltreatment of a child, whether habitual or not, 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.”

As defined in the law, child abuse includes physical abuse of the child, whether the same is habitual or not. The appellant's acts of pulling AAA's hands, dragging her towards the back of the church and choking her fall squarely

within the definition. Furthermore, such acts of the appellant also tend to degrade or demean the intrinsic worth and dignity of AAA as a human being. Thus, the RTC did not err in convicting the appellant as charged.

The imposable penalty under Section 10 (a), Article VI of R.A. No. 7610 is prision mayor in its minimum period. Applying the Indeterminate Sentence Law, one degree lower than the prescribed penalty is prision correccional in its maximum period, which ranges from 4 years, 2 months and 1 day to 6 years. Thus, the minimum of the indeterminate sentence should be taken anywhere from 4 years, 2 months and 1 day to 6 years. With respect to the maximum, there being no modifying circumstances, it must be taken from the medium period of prision mayor minimum, the penalty prescribed which ranges from 6 years, 8 months and 1 day to 7 years and 4 months. The penalty imposed by the RTC, that is, four (4) years, nine (9) months and eleven (11) days of prision correccional as minimum, to six (6) years, eight (8) months and one (1) day of prision mayor as maximum, being within the range of the imposable penalty, is therefore sustained.

WHEREFORE, the appeal is DENIED. The decision appealed from is AFFIRMED.

**IT IS SO ORDERED.**

Reyes, Jr., PJ., (Chairperson) and Gaerlan, JJ., concur.

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[1] Written by Presiding Judge Jose S. Vallo of the Regional Trial Court of Camiling, Tarlac, Branch 68, on 26 September 2013, Records, pp. 65-68.

[2] Also known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

[3] Written by Presiding Judge Jose S. Vallo of the Regional Trial Court of Camiling, Tarlac, Branch 68, on 26 September 2013, Records, pp. 65-68.

[4] Per the Supreme Court's Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, as well as the ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), pursuant to Republic Act No. 9262, also known as the "Anti-Violence Against Women and Their Children Act of 2004," and its implementing rules, the real name of the victim and those of her immediate family members other than the accused are to be withheld and fictitious initials are instead used to protect the victim's privacy.; *Sanchez v. People*, G.R. No. 179090, 05 June 2009.

[5] Exhibit "A," Records, p. 5.

[6] TSN, 06 August 2013, pp. 3-5.

[7] TSN, 05 March 2013, p. 4-7

[8] Exhibit "B," Records, p. 3.

[9] Records, p. 01.

[10] Id.

[11] Records, p. 18.

[12] TSN, 12 September 2013, pp. 2-4.

[13] Records, pp. 78-79.

[14] *People v. Dahilig*, G.R. No. 187083, 13 June 2011.

[15] TSN, 06 August 2013, pp. 3-5.

[16] *Id.*, p. 7.

[17] Exhibit "D," Records, p. 9.

[18] *People v. Hilario*, G.R. No. 128083, 16 March 2001.

[19] *People v. Hilario*, *supra*.

[20] *People v. Amper*, G.R. No. 172708, 05 May 2010.

[21] *People v. Dalipe*, G.R. No. 187154, 23 April 2010.

[22] *Id.*

[23] 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.chanrobles virtual law library

2. By *arresto menor* or a fine not exceeding 20 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 assistance.chanrobles virtual law library

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.

[24] Article XV, Section 3, paragraph 2, of the 1987 Constitution provides that "The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development."

[25] The Child and Youth Welfare Code.

[26] *Araneta v. People*, G.R. No. 174205, 27 June 2008, 556 SCRA 323.

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