

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR T. BRITO, ACCUSED,

Ponente: SORONGON, E. D., J.

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SORONGON, E. D., J.:

On appeal is the Decision[1] of the Regional Trial Court (RTC) of Tabaco City, Branch 16 dated August 4, 2011 in Criminal Case No. T-4885, finding accused-appellants Jose V. Brosula and Nilo B. Olavario guilty beyond reasonable doubt of violation of Section 10 (a), Article VI of Republic Act No. 7610, also known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," as amended".

In an Information[2] dated November 11, 2008, accused-appellants Jose V. Brosula (Brosula) and Nilo B. Olavario (Olavario) and co-accused Edgar T. Brito (Brito) were charged with violation of Section 10 (a), Article VI of Republic Act No. 7610, the pertinent portion of which reads:

“That on or about the 20[th] day of March 2008, in Bangkilingan, Tabaco City, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously, committed acts of abuse and cruelty against complaining witness, AAA, a sixteen-year old minor, by beating the latter and inflicting physical injuries upon his person, and by uttering words intended to threaten and harm the above-named complaining witness; all of which acts debased, degraded, demeaned his intrinsic worth and dignity as a child, to his damage and prejudice.”

CONTRARY TO LAW.[3]

During their arraignment on different dates, Brosula, Olavario and Brito gave a “not guilty” plea to the charge. However, during the hearing on June 11, 2009, Brito, with the assistance of his counsel, entered into a plea-bargaining with the prosecution. With the consent of the prosecution and complainant AAA, Brito pleaded guilty to the lesser offense of less serious physical injuries. Following his plea of guilty, the trial court sentenced him to suffer the penalty of imprisonment of two (2) months of arresto mayor. Thereafter, trial continued with respect to the accused-appellants.

The prosecution presented complainant AAA, his brother BBB, CCC, mother of the complainant and Dr. Cesar Cometa (Dr. Cometa), medical officer who treated complainant. Their combined testimonies may be summarized as follows:

At about 5:00 o'clock in the afternoon of March 20, 2008, AAA, who was only sixteen (16) years old then and his fourteen (14) year old brother, BBB, went near the river at Barangay Bangkilingan, Tabaco City, Albay to gather firewood. While they were chopping firewood, Brosula arrived and asked AAA who gave them the permission to gather firewood, at the same time tried to beat AAA but the latter was able to evade his blow. Thereafter, Olavario and Brito arrived. Olavario also beat AAA on the nose and head which made him fell to the ground. BBB tried to grab the bolo of Brito but the latter hit him on the neck causing BBB to drop off the river. Thereafter, an unidentified person arrived and pacified Brito. He also told AAA and BBB to go home. When they arrived at their

house they informed their aunt DDD that Brosula and Olavario mauled them. DDD brought them to Ziga Memorial District Hospital for medical treatment. Dr. Cometa attended AAA and issued him a medico-legal certificate[4] dated May 21, 2008, stating that AAA sustained contusion 2 x 2 cm., left eye; and hematoma hand 1 x 2 cm xxx.

For his part, Brosula denied inflicting any physical injury on the siblings. According to him, he was at their yard when he saw Brito having a heated argument with AAA and BBB. He approached them and asked where they came from to which the boys replied that they are from Bangkilingan. When he told them that he too is from Bangkilingan but he does not recognize them, the two run away.

Olavario also denied having laid his hands on AAA and BBB. On March 20, 2008, he was at his house when Brito arrived and told him that he saw persons cutting his woods. His wife was not home yet so he told Brito to go to the place where the cutting of woods was being done. When his wife arrived, he followed Brito to the said place where he only saw Brito holding an ax and a bolo. The persons whom Brito saw chopping his woods were no longer around.

On August 4, 2010, the RTC rendered a Decision, the dispositive portion whereof reads:

WHEREFORE, the Court finds accused JOSE V. BROSULA and NILO B. OLAVARIO guilty beyond reasonable doubt of Violation of Section 10 (a), Article VI, of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act". Applying the provisions of the Indeterminate Sentence Law, as amended, the case herein being under a special law, said accused are hereby sentenced to an indeterminate prison term ranging from six (6) years and one (1) day of prision mayor, as minimum, to seven (7) years, four (4) months and one (1) day of prision mayor, as maximum.

On the civil liability of the accused, judgment is hereby rendered ordering the above-named accused to pay complainant AAA, jointly and severally, the sum of Php10,000.00 by way of moral damages, in accordance with Article 2219, par. (1), of the Civil Code of the Philippines. Cost against the accused.

SO ORDERED.[5]

Hence, this appeal by accused-appellants alleging in their respective briefs the following:

- THE RTC GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT;
- THE RTC ERRED IN FINDING THAT CONSPIRACY EXISTED BETWEEN ACCUSED-APPELLANTS;
- THE RTC ERRED IN ITS DETERMINATION OF THE PROPER PENALTY FOR THE OFFENSE CHARGED; AND
- THE RTC ERRED IN AWARDING DAMAGES TO THE PRIVATE COMPLAINANT.

A thorough reading of the testimonies of AAA and BBB revealed that they positively and categorically identified accused-appellants as the perpetrators of the crime and their narration of the incident is straight forward, logical, and probable in all material points deserving full credit and belief. Excerpts from their pertinent testimonies are hereunder quoted:

Testimony of AAA[6]:

Q: Mr. Witness, do you know the accused in this case Jose Brusola?

A: Yes, ma'am.

xxx xxx xxx

Q: Is Jose Brusola inside the courtroom now?

A: Yes, ma'am.

Q: Will you please point at him?

A: That man.

INTERPRETER:

Witness points to a man seated on the first bench wearing black t-shirt who when asked his name answered the name Jose Brosula.

PROS. TUGADO:

Q: How about the accused Nilo Olavario do you know him?

A: Yes, ma'am.

Q: Will you please point at him?

A: That man.

INTERPRETER:

Witness points to a man seated beside Jose Brosula who when asked his name answered Nilo Olavario.

PROS. TUGADO:

xxx xxx xxx

Q:

Can you tell us where were you on March 20, 2008 at around 5:00 o'clock in the afternoon?

A:

We were then gathering firewood together with my brother beside the river of Bangkilingan.

Q:

Of what municipality and city?

A:

Tabaco City.

Q:

You mentioned of your brother, what is the name of your brother?

A:

BBB.

Q:

Can you tell us why did you gather firewood at that time?

A:

Because at that time we do not have anymore firewood.

Q:

While you were gathering firewood beside the river of Bangkilingan, Tabaco, City, will you please tell us what happened?

A:

While we were then chopping the wood suddenly Jose Brosula arrived. Then, he asked me who gave you permission to gather firewood on that place then he boxed me on my nose and I was able to evade it.

Q:

Then, what happened next Mr. Witness?

A:

Then, Nilo Olavario and Edgar Brito arrived and Nilo Olavario boxed me on my nose and on my head and fell on the ground.

Q:

What did you feel after you fell on the ground?

A:

I cried because blood was already oozing on my nose.

Q:

What about your brother BBB what was he doing at that time?

A:

He was trying to get the bolo from Edgar Brito but Edgar Brito boxed my brother on his neck which caused him to fall on the river.

Q:

What happened after your brother BBB fell on the river?

A:

Then, there was a person who pacified Edgar Brito and told us to go home.

Q:

After that what happened Mr. Witness?

A:

And when we reached our house we texted our aunt and informed her that we were boxed by drunk persons.

Q:

What is the name of your aunt?

A:

DDD.

Q:

You said you texted your aunt that there were drunk persons boxed you. Who were those drunk persons?

A:

Jose Brusola and Nilo Olavario.

Q:

What was the reply of your aunt to the text you sent her?

A:

She did not reply and we just stayed in our house and waiting for her to arrive.

Q:

Did she arrive later on Mr. Witness?

A:

Yes, ma'am.

Q:

What happened when she arrived?

A:

She brought us immediately to Ziga Memorial Hospital.

Q:

Were you examined at Ziga Memorial Hospital?

A:

Yes, ma'am.

xxx xxx xxx

Q:

Do you have evidence or document to prove that you were treated in the hospital?

A:

I have a medical certificate.

Q:

Are you referring to this medical certificate dated may 21, 2008 signed by Dr. Cesar Cometa?

A:

Yes, ma'am.

Testimony of BBB[7]:

Q:

Mr. Witness, do you remember where were you on March 20, 2008 at about 5:00 o'clock in the afternoon?

A:

Yes, ma'am.

Q:

Where were you at that time Mr. Witness?

A:

I was in our house.

Q:

Who was with you in your house?

A:

My brother was with me.

Q:

What is the name of your brother?

A:

AAA.

Q:

Is this brother of yours AAA the same as AAA , the private complainant in this case?

A:

Yes, ma'am.

Q:

So what happened while you were at your house together with your brother AAA Cardino?

A:

My brother asked me to go with him to gather firewood.

Q:

And where were you supposed to gather firewood?

A:

Near the river.

Q:

And where is that river located?

A:

In Bangkilingan, Tabaco City.

xxx xxx xxx

Q:

Upon reaching said river what happened next Mr. Witness?

A:

When we reached the place near the river we saw a child and there were woods near the child and we asked him if we could get some wood and he said yes, you can get some wood.

xxx xxx xxx

Q:

What happened next?

A:

Q:

A:

Jose Brosula arrived.

What happened when Jose Brosula arrived?

He asked us where we from?

Q:

What was your reply?

A:

We told him that we are from Purok 4, Bangkilingan, Tabaco City.

Q:

After you told Jose Brosula that you are from Purok 4, Bangkilingan, Tabaco City, what happened?

A:

He did not believe that we are from Bangkilingan.

Q:

What happened next Mr. Witness?

A:

He boxed my brother on the right face and different parts of the body.

Q:

Will you please tell us Mr. Witness how many times Jose Brosula boxed AAA Cardino on the different parts of the body?

A:

I cannot count but he boxed him many times.

Q:

Is Jose Brosula right now present?

A:

Yes, ma'am.

Q:

Will you please point at him?

A:

That man.

INTERPRETER:

Witness points to a man wearing blue t-shirt when asked his name he answered, Jose Brosula.

PROS. TUGADO:

Q:

Now after Jose Brosula boxed your brother AAA on the right face and on different parts of his body what happened next?

A:

After Jose Brosula boxed my brother on his face and on the different parts of his body Edgar Brito arrived.

Q:

What Happened next?

A:

When Edgar Brito Arrived he boxed me on my neck.

xxx xxx xxx

Q: If giving a chance to see Edgar Brito, will you be able to recognize him?

A: Yes, ma'am.

Q: What happened next Mr. Witness?

A: And a little while Nilo Olavario arrived.

Q: What happened after Nilo Olavario arrived?

A: He boxed my brother.

Q: Was he able to hit your brother?

A: Yes, ma'am.

Q: Where?

A: He was hit on the neck.

Q: What happened to AAA after he was boxed by Nilo Olavario on the neck?

A: AAA fell down on the ground.

Q: After he fell down on the ground what did you notice if any?

A: I saw that there was blood on his mouth.

Q:

You mentioned about the accused Nilo Olavario. Is this person inside the courtroom right now Mr. Witness?

A: Yes, ma'am.

Q: Can you point at him?

A: That man.

INTERPRETER:

Witness points to a man sitting beside Jose Brusola who when asked his name he said that he is Nilo Olavario.

PROS. TUGADO:

Q:

Will you please tell us Mr. Witness what happened next?

A:

Edgar Brito went back.

Q:

What did he do next?

A:

And Edgar Brito got the bolo from me.

xxx xxx xxx

Q:

What happened next Mr. Witness?

A:

He again boxed me on my body and I fell.

Q:

Mr. Witness where did you fall?

A:

I fell to the river.

xxx xxx xxx

Q:

What happened next after you fell to the river?

A:

A person arrived and telling them to stop.

Q:

Do you know the person who intervened?

A:

I do not know that person who intervened during the incident?

Q:

What that person a male or female?

A:

He was a male.

Q:

What happened next after this person arrived?

A:

That person who intervened told us to go home.

xxx xxx xxx

Q:

What happened next when you were at your home?

A:

We texted our auntie.

Q:

What is the name of your auntie?

A:

DDD.

xxx xxx xxx

Q:

After you texted your aunt, what happened next?

A:

We went to Ziga Memorial District Hospital and have ourselves medical examined.

AAA and BBB could not have been mistaken on the identity of the accused-appellants because they are their barriomates and neighbors at Barangay Bangkilingan, Tabaco City. Hence, the positive and direct testimonies of AAA who is the victim of the mauling incident and his brother BBB should be given full faith and credit. Besides, the fact that AAA sustained injuries was testified to by Dr. Cometa who examined the victim. The declarations of these prosecution witnesses positively identified accused-appellants as the assailants are direct, clear, credible, convincing and dovetailed on material points.[8]

The defense of alibi and denial interposed by accused-appellants are self-serving and cannot prevail over the positive declarations of AAA and the other prosecution witnesses.

Case law has declared that positive identification, where categorical and consistent without any showing of ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence, are negative and self-serving evidence underserving of weight in law[9]. Accused-appellants failed to attribute to AAA and his other witnesses any wrong motive that compelled the latter to impute the crime charged against them.

These inconsistencies pointed out by accused-appellants are minor and trivial that have no substantial effect on the nature of the offense charged. Neither were it sufficient to impair the credibility of the witnesses. Whether

AAA was boxed in the head, nose or neck is not crucial in determining accused-appellants' guilt or innocence. What is decisive in the offense charged is the positive identification of the victim that accused-appellants were the ones who assaulted him on March 20, 2008. Moreover, the testimony of BBB that her brother was hit on the face and on the different parts of the body is not inconsistent with the medical report stating that AAA suffered contusion in the eye and on his hand. It has been consistently held by jurisprudence that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[10] Furthermore, accused-appellants failed to ascribe any ill motive on the part of AAA for implicating them. In the case before us, we cannot find any reason why AAA and BBB should testify falsely against accused-appellants. On the other hand, accused-appellants equally failed to prove any motive why the brothers should give a false testimony against them. Thus, we cannot avoid but conclude that the only motive of AAA and BBB was to tell the truth of what exactly happened near the river on that fateful day and seek justice for the wrong done to them.

Additionally, it is settled that the issue of credibility of witnesses is to be resolved primarily by the trial court because it is in the better position to assess the credibility of witnesses having heard the testimonies, observed the deportment and manner of testifying of the witnesses. Accordingly, its findings are entitled to great respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[11]

Under the second assigned error, accused-appellants argued that the RTC erred in concluding that they conspired together in inflicting physical harm against the victim. They pointed out that the RTC failed to discuss their individual participation in the mauling incident. It merely stated that since conspiracy exists, the act of one is the act of all.

We agree with accused-appellants.

In *Salvatierra vs. CA*,[12] the concept of conspiracy is explained in this wise:

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. There is conspiracy if at the time of the commission of the felony the defendants had the same criminal purpose and acted in unison towards the execution of their common criminal design. Once the conspiracy is proven the act of one becomes the act of all regardless of who actually rendered the fatal blow on the victim. A conspirator must however, perform an overt act in furtherance of the plan to commit a felony; mere presence at the scene of the incident, knowledge of the plan or acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator. As such conspiracy must be established as any element of the crime and evidence of the conspiracy must be beyond reasonable doubt.

In the present case, there was no showing that there was a prior agreement between accused-appellants relating to the commission of the crime. The mere fact that accused-appellants arrived in the river and assaulted the victim does not necessarily prove that their meeting was prearranged. In fact, as can be gleaned from the testimonies of the witnesses of the prosecution, Brosula, Olavario and Brito did not arrive at the same time but they came one after the other. It was Brosula who arrived first and attacked AAA in the different parts of his body, then followed by Olavario who also hit the victim in the head, and finally Brito who boxed BBB on the neck. While it can be said that the trio simultaneously hit the victim, this does not prove conspiracy between them. The rule is well-settled that "simultaneousness does not of itself demonstrate the concurrence of will nor the unity of action and purpose which are the basis of the responsibility of two or more individuals." To establish common responsibility it is not sufficient that the attack be joint and simultaneous; it is necessary that the assailants be animated by one and the same purpose.[13] The evidence on record showed that the purpose of Brosula in

attacking AAA was due to the latter's refusal to stop cutting his woods. On the other hand, the act of Olavario in hitting the victim when he arrived at the river was merely to express his sympathy or show a feeling of camaraderie with Brosula. These acts of accused-appellants therefore did not convincingly and indubitably prove the presence of conspiracy.

At any rate, even in the absence of conspiracy, accused-appellants are nevertheless liable for violation of Section 10(a), Article VI of R.A. No. 7610, 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 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.

Corollarily, Section 3(b), Article VI of RA 7610 defines “ children and child abuse” as:

Section 3. Definition of terms. —

(a) "Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

(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. (Emphasis supplied).

The totality of the evidence of the prosecution clearly proved that accused-appellants inflicted physical harm upon AAA, who was then 16 years old, by repeatedly hitting him on the different parts of his body because he refused to heed the demand of Brosula to stop cutting the woods. Undoubtedly, such insensitive and unkind acts of accused-appellants constitute child abuse as defined by the law.

With respect to the imposable penalty, we find that there is a need for us to rectify the penalty imposed by the RTC. Prefatorily, the penalty of prision mayor in its minimum period imposed for violation of Section 10(a), Article VI of Republic Act No. 7610 is one which is derived from and defined under the Revised Penal Code. According to Section 1 of the Indeterminate Sentence Law,[14] where the special law adopted penalties from the Revised Penal Code, the Indeterminate Sentence Law will apply just as it would in felonies.[15] Applying now the Indeterminate Sentence Law, the minimum of the indeterminate sentence shall be within the range next lower in degree, which is prision correccional in its minimum period to prision correccional in its maximum period, or a period ranging from 6 months 1 day to 6 years. The maximum of the indeterminate sentence in the absence of any modifying circumstance, shall be within the range of the medium period of the penalty prescribed by law, which is prision mayor in its minimum period or 6 years and 1 day to 8 years. Thus, the RTC erred in imposing a penalty of six (6) years and one (1) day of prision mayor, as minimum, to seven (7) years, four (4) months and one (1) day

of prison mayor.

Anent the last error, we agree with the RTC that AAA is entitled to moral damages in accordance with Article 2219 (1) of the Civil Code which states:

Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

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As to the amount thereof, we likewise affirm the P10,000.00 granted by the RTC. There is no hard-and-fast rule in the determination of what would be a fair amount of moral damages, since each case must be governed by its own peculiar facts. The yardstick should be that it is not palpably and scandalously excessive.[16] To our mind, the amount given by the RTC is fairly reasonable under the facts obtaining in this case.

WHEREFORE, the appeal is partially granted. The Decision of the Regional Trial Court (RTC) of Tabaco City, Branch 16 dated August 4, 2010 in Criminal Case No. T-4885 finding accused-appellants Jose V. Brosula and Nilo B. Olavario guilty beyond reasonable doubt of violating Section 10 (a), Article VI of Republic Act No. 7610 is hereby AFFIRMED with MODIFICATION as to the penalty imposed against accused-appellants in that they are henceforth sentenced to suffer the penalty of four (4) years two (2) months and one (1) day of prison correccional as minimum to seven (7) years and four (4) months of prison mayor as maximum.

SO ORDERED.

Reyes, Jr., A.B., Chairperson, and Rosario, R.R. JJ., concur.

[1] Rollo, pp. 20-30.

[2] Record, pp. 18-19

[3] Record, p. 18.

[4] Record, p. 113.

[5] Rollo, p. 29-30.

[6] Transcript of Stenographic Notes, January 20, 2009, pp. 3-7.

[7] TSN, February 17, 2010, pp. 5-11.

[8] People vs. Ladera, G.R. No. 131922, November 15, 2000.

[9] People v. Amania, 318 Phil. 579, 588 (1995), cited in People vs. Edison Arellano, G.R. No. 122477.

[10] People vs. Rebotazo, G.R. No. 192913, June 13, 2013.

[11] People vs. Sagarino, G.R. Nos. 135356-58, September 4, 2001.

[12] G.R. No. 115998, June 16, 2000.

[13] Quidet vs. People, G.R. No. 170289, April 8, 2010, citing People vs. Vistido, G.R. No. L-31582 October 26, 1977.

[14] SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or

its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[15] Sanchez vs. People, G.R. No. 179090, June 5, 2009.

[16] Araneta vs. People, G.R. No. 174205, June 27, 2008.

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