

PEOPLE OF THE PHILIPPINES, RESPONDENT, VS. JOVENAL D. APOSTOL, ALIAS “JUVAL APOSTOL”, AND ONE (1) JOHN DOE, ACCUSED-PETITIONER.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal from the Decision[1] dated June 27, 2012 of the Regional Trial Court of Negros Oriental, 7[th] Judicial Region, Branch 44, Dumaguete City, docketed as APL-CRC No. 0228-0033, affirming the Judgment[2] dated February 15, 2012 of the 5[th] Municipal Circuit Trial Court of Zamboanguita-Dauin, Dauin, Negros Occidental in Criminal Case No. CC-1691, finding accused-petitioner Jovenal D. Apostol alias “Juval Apostol”, et al. guilty beyond reasonable doubt of Other Mischiefs, punishable under Article 327 of the Revised Penal Code.

The Facts

Accused-petitioner, Jovenal D. Apostol alias “Juval Apostol” [Apostol] was charged in an Information[3] dated January 19, 2009 for Other Mischiefs punishable under Article 327 of the Revised Penal Code and Article 329 (1) providing for its respective penalty. The accusatory portion of the information, reads:

“That on or about 9:00 o'clock in the morning of September 21, 2008 at Brgy. Maluay, Zamboanguita, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with malice, aforethought, did, then and there, willfully, unlawfully and feloniously destroy the fence constructed by TIRSO A. DAGAYLOAN on his lot, valued at about One Thousand Five Hundred Pesos (P1,500.00), to the damage and prejudice of the said offended party in the amount aforestated.

An Act (sic) defined by Article 327 and penalized by Article 329 (1), both of the Revised Penal Code.”

On December 14, 2009, during his arraignment, Apostol pleaded not guilty to the offense charged.[4]

Thereafter, trial on the merits ensued.

The undisputed antecedent facts as laid down by the MCTC, which We are quoting, read:

“Private complainant Tirso Dagayloan alleges that on September 21, 2008, at around 9:00 o'clock in the morning, he was at his house in Barangay Maluay, Zamboanguita, Negros Oriental when accused Jovenal Apostol suddenly arrived. In a very angry manner, accused confronted private complainant on why the latter blocked the road even without a clear right to do so. Accused was referring to a portion of the road leading to the highway that was blocked by a bamboo pole, which effectively prevented (the) vehicles from passing through.

Tirso Dagayloan replied to the accused and asserted that he has the right to decide if he should allow vehicles to pass through since the land is his property. After hearing what private complainant said, accused left with a threat that he will be filing a case against private complainant.

Witness Isaias Ta-an declared at around 9:00 o'clock in the morning of September 21, 2008, he was tending his

store that was situated near the lot of private complainant. At this point, the witness saw accused, together with an aide, destroy the bamboo fence that was constructed on the lot of complainant. Thereafter, both accused and his companion left, then returned to uproot the posts of the bamboo fence, and then left again. Not long after, both accused and his companion came back again and this time they totally destroyed the said fence.

Another witness, Marvin Tenido, corroborates the testimony of Isaias Ta-an. He declares that he was passing by on his bike at the store of Isaias Ta-an on September 21, 2008. While passing, he saw accused and another person destroy and cut into pieces the bamboo fence of private complainant. After cutting the bamboo, both accused and his companion left. Thereafter, private complainant arrived and the said witness informed him that it was accused and a companion who destroyed his fence.

On the other hand, accused Jovenal Apostol counters that in the morning of September 21, 2008, he and his family were on their way to the church but were, however, prevented from passing through the road because a portion thereof was blocked by a bamboo that was strongly tied to another bamboo pole. He then went to the house of private complainant to negotiate with the latter so he could use the road. However, private complainant wanted him to pay Twenty Pesos (P20.00) every time he would pass and use the said road. Accused asked private complainant if he has any proof of ownership but the latter could not produce any.

Accused thereafter went back to the area and decided to cut the bamboo in the middle so that the residents with vehicles could pass through. Accused reasoned that since private complainant could not prove his ownership over the land and because the residents in the area have been using the portion of the land as passageway, he made the decision to remove the bamboo pole that was blocking the access road.”[5]

The MCTC in its Judgment[6] dated February 15, 2012 convicted Apostol of the crime charged, the dispositive portion thereof, reads:

“WHEREFORE, the Court finds accused Jovenal Apostol guilty beyond reasonable doubt of the crime of Malicious Mischief, as defined and penalized under Articles 327 and 329 of the Revised Penal Code. Consequently, accused is hereby sentenced to suffer an imprisonment of three (3) months and 11 days of of arresto mayor and to pay Tirso Dagayloan the amount of One Thousand Five Hundred Pesos (P1,500.00) for the damage caused by the destruction of his fence.

SO ORDERED.”[7]

On appeal, Apostol asseverated that he and a certain Margarito Credo filed a case of Harassment against Tirso Dagayloan and Roger Padilla before the Office of the Barangay Captain of Maluay, Zamboanguita, Negros Oriental in relation to what transpired on September 21, 2008 when Dagayloan blocked the passageway with bamboo poles, thus effectively depriving the people living inside the area access to the main road. An agreement was forged by the parties on September 30, 2008 contained in a “Malinawon nga Kasabutan” to the effect that while there is still no clear resolution as to the document of sale to Dagayloan, the subject portion closed by him should remain open to all passers-by and should not be fenced or blocked whatsoever. Appellant contends that because of this agreement, which has the force and effect of a final judgment of a court, the same not having been repudiated, Dagayloan is already precluded or barred from filing the present case for other mischiefs against him.[8] The RTC Decision[9] dated June 27, 2012, affirmed the decision of the MCTC, the fallo thereof, reads:

“WHEREFORE, the 15 February 2012 Judgment of the Municipal Circuit Trial Court of Zamboanguita-Dauin, Negros Oriental in Criminal Case No. CC-1691 is hereby affirmed in toto.

SO ORDERED.”[10]

Upon the denial[11] of his Motion for Reconsideration,[12] accused-petitioner comes to Us on appeal, with the following assignment of errors, to wit:

“I. THAT THE REGIONAL TRIAL COURT ERRED IN DENYING ACCUSED-PETITIONER'S MOTION FOR RECONSIDERATION AND IN NOT APPRECIATING THE “MALINAWON NGA KASABUTAN” VOLUNTARILY EXECUTED BY THE PARTIES TO THE CASE BEFORE THE OFFICE OF THE BARANGAY CAPTAIN OF MALUAY, ZAMBOANGUITA, NEGROS ORIENTAL WHICH WOULD PROVE THAT PRIVATE-COMPLAINANT TIRSO DAGAYLOAN HAD NO CAUSE OF ACTION TO FILE A CASE FOR OTHER MISCHIEFS AGAINST ACCUSED-PETITIONER JOVENAL APOSTOL; and

II. THAT THE LOWER COURT ERRED IN FINDING ACCUSED JOVENAL APOSTOL GUILTY OF MALICIOUS MISCHIEF DESPITE THE FACT THAT NO EVIL INTENT COULD BE ATTRIBUTED WHEN THE BAMBOO POLES WERE CUT AS IT BLOCKED THE PASSAGE WAY OF PEOPLE LIVING INSIDE THE AREA.”[13]

Our Ruling

Accused-petitioner Apostol asserts that the MCTC as well as the RTC should have considered the “Malinawon nga Kasabutan” (Compromise Agreement) voluntarily and freely forged between him and Tirso Dagayloan in order to exonerate him from the crime charged. The parties in said agreement come into terms that while awaiting final resolution regarding the deed of sale in favor of Tirso Dagayloan the latter agrees to have that area previously fenced to remain open. As a result, under Section 416[14] of R.A. 7160 or the Local Government Code, the amicable settlement has the force and effect of a final judgment or a court upon the expiration of ten [10] days from its execution without being repudiated by any of the parties as provided under Article 418[15] of the same law.

The argument is specious.

It is a firmly recognized rule, that criminal liability cannot be the subject of a compromise. For a criminal case is committed against the People, and the offended party may not waive or extinguish the criminal liability that the law imposes for its commission. And that explains why a compromise is not one of the grounds prescribed by the Revised Penal Code for the extinction of criminal liability.[16] Thus, the compromise agreement relied upon by the Apostol, not being one of the modes of extinguishing criminal liability, his assertions have no basis in law and in fact. As observed by the RTC, the compromise agreement relied upon by Apostol pertains to the Harassment case he filed against Dagayloan and not the instant case pertaining to Malicious Mischief. It is worthy to quote the pronouncement of the RTC regarding the matter, which reads:

“The essence of the afore-quoted agreement clearly indicates that Dagayloan made a promise to keep the passageway open to all its users, including appellant, until the alleged controversy of Dagayloan's deed of sale of the land involved shall have been resolved. Nowhere on said agreement is it shown, not even remotely, that Dagayloan condoned the appellant's act of cutting to pieces and removing the bamboo poles Dagayloan put up as blockade to prevent people from passing through his property. xxxxx”[17]

Either way, even if it was the compromise for the Malicious Mischief case, the same would still not be a ground for the exoneration of Apostol of the crime charged as a compromise is not one of the grounds for the exoneration of a crime.

The elements of the crime of malicious mischief under Article 327 of the Revised Penal Code are as follows:

- “(1) That the offender deliberately caused damage to the property of another;
- (2) That such act does not constitute arson or other crimes involving destruction;
- (3) That the act of damaging another's property be committed merely for the sake of damaging it.”

We find that all the elements of the crime charged are present in the instant case. First, Apostol admitted having destroyed the bamboo fence found on the property of Dagayloan, second, such act does not constitute arson or

other crimes involving destruction and the third element, as found out by the MCTC, which We are quoting with approval, thus:

“And third, it was admitted during trial that accused and his family were prevented from using the access road due to the blocking thereof by the bamboo fence of complainant. It was likewise established that accused went to the house of private complainant to negotiate with the latter to be allowed to pass through the access road. This negotiation failed however and the next chain of events indicates that the accused returned to the site of the bamboo fence to cut it out of anger and frustration. It is within this context that the act of the accused in summarily cutting the bamboo fence exposes this action as one borne out of hatred and revenge. Witness Ta-an declares that accused was very angry at the time he was cutting the bamboo into pieces. In fact, according to witness Ta-an, accused and his companion even returned twice to the bamboo fence so they could totally destroy the same. All these are indicative that accused was motivated with anger and disgust in destroying the bamboo fence. In malicious mischief cases, it has always been regarded of the essence of this felony is that the offender should have not only the general intention to carry out the felonious act (a feature common to all willful crimes) but that he should act under the impulse of a specific desire to inflict injury to another. That accused could not pass and that his negotiation to be allowed to do so failed to give him the desired result provided him the motivation to seek revenge against private complainant by destroying the fence. Thus, the prosecution was able to establish the third element of the crime of malicious mischief.”[18]

Hence, there is no reason for Us to deviate from the settled jurisprudence that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. This doctrine is premised on the undisputed fact that, since the trial court had the best opportunity to observe the demeanor of the witnesses while on the stand, it was in a position to discern whether or not they were telling the truth. Moreover, the testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.[19]

WHEREFORE, the Decision dated June 27, 2012 of the Regional Trial Court of Negros Oriental, 7th Judicial Region, Branch 44, Dumaguete City docketed as APL-CRC No. 0228-0033 is hereby **AFFIRMED** in toto.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 22-27, penned by the Honorable Judge Neciforo C. Enot

[2] Rollo, pp. 28-31, penned by the Honorable Judge Amelia Lourdes U. Mendoza

[3] Rollo, p. 22

[4] Rollo, p. 22

[5] Rollo, pp. 28-29

[6] Rollo, pp. 28-31

[7] Rollo, p. 31

[8] Rollo, p. 26

[9] Rollo, pp. 22-27

[10] Rollo, p. 27

[11] Rollo, p. 37

[12] Rollo, pp. 32-35

[13] Rollo, p. 10

[14] Section 416. Effect of Amicable Settlement and Arbitration Award. - The amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of ten (10) days from the date thereof, unless repudiation of the settlement has been made or a petition to nullify the award has been filed before the proper city or municipal court.

[15] Section 418. Repudiation. - Any party to the dispute may, within ten (10) days from the date of the settlement, repudiate the same by filing with the lupon chairman a statement to that effect sworn to before him, where the consent is vitiated by fraud, violence, or intimidation. Such repudiation shall be sufficient basis for the issuance of the certification for filing a complaint as hereinabove provided.

[16] *Trinidad v. Office of the Ombudsman, et al.*, G.R. No. 166038, December 4, 2007

[17] Rollo, p. 25

[18] Rollo, pp. 30-31

[19] *Taguinod v. People*, G.R. No. 185833, October 12, 2011

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