

LYDIA C. GELIG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 173150. July 28, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

An examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the court to correct such error as may be found in the judgment appealed from.[1]

Petitioner Lydia Gelig (Lydia) impugns the Decision[2] promulgated on January 10, 2006 by the Court of Appeals (CA) in CA-G.R. CR No. 27488 that vacated and set aside the Decision[3] of the Regional Trial Court (RTC), Cebu City, Branch 23, in Criminal Case No. CU-10314. The RTC Decision convicted Lydia for committing the complex crime of direct assault with unintentional abortion but the CA found her guilty only of the crime of slight physical injuries.

Factual Antecedents

On June 6, 1982, an Information[4] was filed charging Lydia with Direct Assault with Unintentional Abortion committed as follows:

That on the 17[th] day of July, 1981 at around 10:00 o'clock in the morning, at Barangay Nailon, Municipality of Bogo, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully, and feloniously assault, attack, employ force and seriously intimidate one Gemma B. Micarsos a public classroom teacher of Nailon Elementary School while in the performance of official duties and functions as such which acts consequently caused the unintentional abortion upon the person of the said Gemma S. Micarsos.

CONTRARY TO LAW.

Lydia pleaded not guilty during her arraignment. Thereafter, trial ensued.

The Prosecution's Version

Lydia and private complainant Gemma B. Micarsos (Gemma), were public school teachers at the Nailon Elementary School, in Nailon, Bogo, Cebu. Lydia's son, Roseller, was a student of Gemma at the time material to this case.

On July 17, 1981, at around 10:00 o'clock in the morning, Lydia confronted Gemma after learning from Roseller that Gemma called him a "sissy" while in class. Lydia slapped Gemma in the cheek and pushed her, thereby causing her to fall and hit a wall divider. As a result of Lydia's violent assault, Gemma suffered a contusion in her "maxillary area", as shown by a medical certificate[5] issued by a doctor in the Bogo General Hospital. However, Gemma continued to experience abdominal pains and started bleeding two days after the incident. On August 28,

1981, she was admitted in the Southern Islands Hospital and was diagnosed, to her surprise, to have suffered incomplete abortion. Accordingly, a medical certificate[6] was issued.

The Defense's Version

Lydia claimed that she approached Gemma only to tell her to refrain from calling her son names, so that his classmates will not follow suit. However, Gemma proceeded to attack her by holding her hands and kicking her. She was therefore forced to retaliate by pushing Gemma against the wall.

Ruling of the Regional Trial Court

On October 11, 2002, the trial court rendered a Decision convicting Lydia of the complex crime of direct assault with unintentional abortion. The dispositive portion reads:

WHEREFORE, the court finds the accused LYDIA GELIG, guilty beyond reasonable doubt of the crime of direct assault with unintentional abortion, and she is hereby sentenced to suffer an Indeterminate Penalty of SIX (6) MONTHS OF ARRESTO MAYOR AS MINIMUM TO FOUR (4) YEARS, TWO (2) MONTHS OF PRISION CORRECCIONAL AS MAXIMUM. She is likewise ordered to pay the offended party the amount of Ten Thousand (P10,000.00) Pesos as actual damages and Fifteen Thousand (P15,000.00) Pesos for moral damages.

SO ORDERED.[7]

Thus, Lydia filed an appeal.

Ruling of the Court of Appeals

The CA vacated the trial court's judgment. It ruled that Lydia cannot be held liable for direct assault since Gemma descended from being a person in authority to a private individual when, instead of pacifying Lydia or informing the principal of the matter, she engaged in a fight with Lydia.[8] Likewise, Lydia's purpose was not to defy the authorities but to confront Gemma on the alleged name-calling of her son.[9]

The appellate court also ruled that Lydia cannot be held liable for unintentional abortion since there was no evidence that she was aware of Gemma's pregnancy at the time of the incident.[10] However, it declared that Lydia can be held guilty of slight physical injuries, thus:

WHEREFORE, premises considered, the appealed Decision of the Regional Trial Court-Branch 23 of Cebu City, dated October 11, 2002 is hereby VACATED AND SET ASIDE. A new one is entered CONVICTING the accused-appellant for slight physical injuries pursuant to Article 266 (1) of the Revised Penal Code and sentencing her to suffer the penalty of arresto menor minimum of ten (10) days.

SO ORDERED.[11]

Issues

Still dissatisfied, Lydia filed this petition raising the following as errors:

1. The Honorable Court of Appeals erred in finding that the petitioner is liable for Slight Physical Injuries pursuant to Article 266 (1) of the Revised Penal Code and sentencing her to suffer the penalty of arresto menor minimum of ten days.
2. The Honorable Court of Appeals erred in finding that the petitioner can be convicted of Slight Physical Injuries under the information charging her for Direct Assault with Unintentional Abortion.[12]

Our Ruling

The petition lacks merit.

When an accused appeals from the judgment of his conviction, he waives his constitutional guarantee against double jeopardy and throws the entire case open for appellate review. We are then called upon to render such judgment as law and justice dictate in the exercise of our concomitant authority to review and sift through the whole case to correct any error, even if unassigned.[13]

The Information charged Lydia with committing the complex crime of direct assault with unintentional abortion. Direct assault is defined and penalized under Article 148 of the Revised Penal Code. The provision reads as follows:

Art. 148. Direct assaults. - Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of prision correccional in its medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of prision correccional in its minimum period and a fine not exceeding 500 pesos shall be imposed.

It is clear from the foregoing provision that direct assault is an offense against public order that may be committed in two ways: first, by any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition; and second, by any person or persons who, without a public uprising, shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.[14]

The case of Lydia falls under the second mode, which is the more common form of assault. Its elements are:

1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance.
2. That the person assaulted is a person in authority or his agent.
3. That at the time of the assault the person in authority or his agent (a) is engaged in the actual performance of official duties, or [b] that he is assaulted by reason of the past performance of official duties.
4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.
4. That there is no public uprising.[15]

On the day of the commission of the assault, Gemma was engaged in the performance of her official duties, that is, she was busy with paperwork while supervising and looking after the needs of pupils who are taking their recess in the classroom to which she was assigned. Lydia was already angry when she entered the classroom and accused Gemma of calling her son a "sissy". Lydia refused to be pacified despite the efforts of Gemma and instead initiated a verbal abuse that enraged the victim. Gemma then proceeded towards the principal's office but Lydia followed and resorted to the use of force by slapping and pushing her against a wall divider. The violent act resulted in Gemma's fall to the floor.

Gemma being a public school teacher, belongs to the class of persons in authority expressly mentioned in Article 152 of the Revised Penal Code, as amended. The pertinent portion of the provision reads as follows:

Art. 152. Persons in Authority and Agents of Persons in Authority - Who shall be deemed as such. -

x x x x

In applying the provisions of articles 148 and 151 of this Code, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on the occasion of such performance shall be deemed persons in authority. (As amended by Batas Pambansa Bilang 873, approved June 12, 1985).[16]

Undoubtedly, the prosecution adduced evidence to establish beyond reasonable doubt the commission of the crime of direct assault. The appellate court must be consequently overruled in setting aside the trial court's verdict. It erred in declaring that Lydia could not be held guilty of direct assault since Gemma was no longer a person in authority at the time of the assault because she allegedly descended to the level of a private person by fighting with Lydia. The fact remains that at the moment Lydia initiated her tirades, Gemma was busy attending to her official functions as a teacher. She tried to pacify Lydia by offering her a seat so that they could talk properly,[17] but Lydia refused and instead unleashed a barrage of verbal invectives. When Lydia continued with her abusive behavior, Gemma merely retaliated in kind as would a similarly situated person. Lydia aggravated the situation by slapping Gemma and violently pushing her against a wall divider while she was going to the principal's office. No fault could therefore be attributed to Gemma.

The prosecution's success in proving that Lydia committed the crime of direct assault does not necessarily mean that the same physical force she employed on Gemma also resulted in the crime of unintentional abortion. There is no evidence on record to prove that the slapping and pushing of Gemma by Lydia that occurred on July 17, 1981 was the proximate cause of the abortion. While the medical certificate of Gemma's attending physician, Dr. Susan Jaca (Dr. Jaca), was presented to the court to prove that she suffered an abortion, there is no data in the document to prove that her medical condition was a direct consequence of the July 17, 1981 incident.[18] It was therefore vital for the prosecution to present Dr. Jaca since she was competent to establish a link, if any, between Lydia's assault and Gemma's abortion. Without her testimony, there is no way to ascertain the exact effect of the assault on Gemma's abortion.

It is worth stressing that Gemma was admitted and confined in a hospital for incomplete abortion on August 28, 1981, which was 42 days after the July 17, 1981 incident. This interval of time is too lengthy to prove that the discharge of the fetus from the womb of Gemma was a direct outcome of the assault. Her bleeding and abdominal pain two days after the said incident were not substantiated by proof other than her testimony. Thus, it is not unlikely that the abortion may have been the result of other factors.

The Proper Penalty

Having established the guilt of the petitioner beyond reasonable doubt for the crime of direct assault, she must suffer the penalty imposed by law. The penalty for this crime is prision correccional in its medium and maximum periods and a fine not exceeding P1,000.00, when the offender is a public officer or employee, or when the offender lays hands upon a person in authority.[19] Here, Lydia is a public officer or employee since she is a teacher in a public school. By slapping and pushing Gemma, another teacher, she laid her hands on a person in authority.

The penalty should be fixed in its medium period in the absence of mitigating or aggravating circumstances.[20] Applying the Indeterminate Sentence Law,[21] the petitioner should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, i.e., *arresto mayor* in its maximum period to *prision correccional* in its minimum period, and the maximum of which is that properly imposable under the Revised Penal Code, i.e., *prision correccional* in its medium and maximum periods.

Thus, the proper and precise prison sentence that should be imposed must be within the indeterminate term of four (4) months and one (1) day to two (2) years and four (4) months of arresto mayor, maximum to prison correccional minimum to three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days of prison correccional in its medium and maximum periods. A fine of not more than P1,000.00 must also be imposed on Lydia in accordance with law.

WHEREFORE, the Decision of the Court of Appeals finding petitioner Lydia Gelig guilty beyond reasonable doubt of the crime of slight physical injuries is REVERSED and SET ASIDE. Judgment is hereby rendered finding Lydia Gelig guilty beyond reasonable doubt of the crime of direct assault and is ordered to suffer an indeterminate prison term of one (1) year and one (1) day to three (3) years, six (6) months and twenty-one (21) days of prison correccional. She is also ordered to pay a fine of P1,000.00.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] *People v. Pajarillo*, 183 Phil. 392, 399 (1979).

[2] CA rollo, pp. 86-94; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr.

[3] Records, pp. 157- 161; penned by Judge Generosa G. Labra.

[4] *Id.* at 40.

[5] Exhibit "A," Folder of Exhibits.

[6] Exhibit "B," *id.*

[7] Records, p. 161.

[8] CA rollo, p. 92.

[9] *Id.* at 91.

[10] *Id.* at 93.

[11] *Id.* at 94.

[12] Rollo, p. 8.

[13] *People v. Rondero*, 378 Phil. 123, 143 (1999).

[14] *Rivera v. People*, 501 Phil. 37, 44-45 (2005).

[15] Reyes, Luis B., *The Revised Penal Code*, Book Two, Fifteenth Edition, Revised 2001, p. 122.

[16] *Id.* at 147.

[17] TSN, March 20, 1991, p. 6.

[18] Exhibit "C," Folder of Exhibits.

[19] REVISED PENAL CODE, Article 148.

[20] See REVISED PENAL CODE, Article 64 (1).

[21] 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. (As amended by Act No. 4225)

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