

## THIRD DIVISION

[ G.R. No. 224679, February 12, 2020 ]

**JONAH MALLARI Y SAMAR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**LEONEN, J.:**

When a person being apprehended by a police officer resists or uses force that is not dangerous, grave, or severe, the offense is not direct assault under Article 148 of the Revised Penal Code. Instead, the proper offense is resistance and disobedience to an agent of a person in authority, penalized under Article 151 of the Revised Penal Code.

This Court resolves a Petition for Review on Certiorari<sup>[1]</sup> questioning the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals, which affirmed with modification the Municipal Trial Court<sup>[4]</sup> and the Regional Trial Court's<sup>[5]</sup> conviction of Jonah Mallari y Samar (Mallari) for the crime of direct assault upon an agent of a person in authority.

An Information was filed against Mallari on May 31, 2007.<sup>[6]</sup> It read:

That on or about the Twelfth (12<sup>th</sup>) day of January 2007, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while being pacified by PO2 Richard F. Navarro who was a duly qualified and appointed police officer of Olongapo City and while the latter was in the actual performance of his official duties, that is, maintaining peace and order in the said locality, and the said accused well knowing before and during the assault that PO2 Richard F. Navarro who was a duly appointed police officer, as such, an agent of a person in authority, did then and there willfull, unlawfully and feloniously assault, attack, kick and slap said police officer.

CONTRARY TO LAW.<sup>[7]</sup>

Mallari pleaded not guilty to the charge during her arraignment. Trial then ensued.<sup>[8]</sup>

The prosecution presented the victim, Police Officer 2 Richard Navarro (PO2 Navarro), along with Senior Police Officer 3 Melanio Merza (SPO3 Merza) and Dr. Rolando Mafel Ortiz (Dr. Ortiz), as its witnesses.<sup>[9]</sup>

The incident transpired on the early morning of January 12, 2007. According to the prosecution, at around 6:45 a.m., the Olongapo Police Station 3 received a report of an altercation on the ground floor of GenX Billiard Hall on Gordon Avenue. At this, PO2 Navarro and SPO3 Merza, who were both in uniform, went to the scene. There,

they found two (2) groups of women fighting and pulling each other's hair out, among them a visibly drunk Mallari. The officers rushed to stop the fight.<sup>[10]</sup>

Once the squabble was over, the officers asked the women to go to the police station to file proper complaints. However, the intoxicated Mallari shouted at them, "*Wala kayo pakialam sa akin, hindi aka sasama sa inyo.*"<sup>[11]</sup> She then grabbed PO2 Navarro by the collar, slapped his cheek, and kicked his legs several times. To restrain her, PO2 Navarro held her by the shoulders and brought her to the back of the patrol car. SPO3 Merza was about to pacify the other women, but they eventually agreed to go to the police station. The incident was entered in the blotter and Mallari was detained for direct assault.<sup>[12]</sup>

PO2 Navarro was treated at the James Gordon Memorial Hospital for the minor injuries he got from Mallari.<sup>[13]</sup> Dr. Ortiz issued him a medical certificate stating that he had sustained swelling on the zygomatic area, or the cheekbone.<sup>[14]</sup>

The defense presented the sole testimony of Mallari.<sup>[15]</sup>

Mallari testified that at around 6:00 a.m. that day, she and her co-workers were singing at a karaoke bar in GenX Billiard Hall when they got into a heated argument with another group of women, which then escalated to a physical fight. The ruckus prompted the bar owner to send the women downstairs, but their fighting only continued.<sup>[16]</sup>

Later, Mallari added, the police arrived and ordered them to board the patrol car. Mallari initially obeyed, but after noticing that her companions did not, she alighted from the vehicle. PO2 Navarro pushed her back in by holding her stomach and the collar of her blouse. When she still attempted to alight, PO2 Navarro grabbed her by the ankles, spreading her legs open in the process. When he pulled her down, she hit her head and neck on the vehicle's floor, her buttocks hitting the ground.<sup>[17]</sup>

After composing herself from the embarrassment, Mallari boarded the car and went with the officers to the police station. There, she was surprised that PO2 Navarro claimed that she had slapped him several times. She then called her mother and went to the hospital for a medical examination.<sup>[18]</sup> She was found to have sustained the following injuries:

- Contusion 2x2 cm medical aspect M/3 left forearm
- Contusion 2x2 cm medical aspect P/3 left forearm
- Contusion 2x2 cm post aspect D/3 left forearm
- Contusion 0.5x0.5 cm antero-medical aspect M/3 right forearm
- Abrasion 2 cm interscapular area
- Swelling left thenar eminence.<sup>[19]</sup>

Mallari later filed a Complaint against PO2 Navarro and SPO3 Merza for unlawful arrest, illegal detention, maltreatment of prisoners, and physical injuries. This was eventually dismissed by the Office of the Prosecutor.<sup>[20]</sup>

In its September 5, 2013 Decision,<sup>[21]</sup> the Municipal Trial Court found Mallari guilty beyond reasonable doubt of direct assault upon an agent of a person in authority. It noted that Mallari admitted to kicking PO2 Navarro and grabbing his shirt while he was performing his official duties. It likewise gave premium to the prosecution's

positive testimony against Mallari's defense of denial.<sup>[22]</sup> The dispositive portion of the Decision read:

**WHEREFORE**, foregoing considered, judgment is hereby rendered finding accused **JONAH MALLARI y SAMAR, GUILTY** beyond reasonable doubt of the crime of Direct Assault upon an Agent of a Person in Authority and hereby sentences her to suffer an **imprisonment of *prision correccional in its medium period of 3 yrs, 6 mos and 21 days to 4 years, 9 mos and 10 days and to pay the fine of PHp1,000.00. With costs against the accused.***

**SO DECIDED.**<sup>[23]</sup> (Emphasis in the original)

The Regional Trial Court affirmed Mallari's conviction in its July 30, 2014 Decision.<sup>[24]</sup> It found that all the elements of the offense were present: PO2 Navarro was an agent of a person in authority, and Mallari kicked, slapped, and injured him while he was engaged in the performance of his official duty. It found that no improper motive could be traced to the prosecution's witnesses who clearly testified on the matter. It also noted that Mallari's defenses and denials were weak and uncorroborated.<sup>[25]</sup>

The Court of Appeals, in its October 27, 2015 Decision,<sup>[26]</sup> affirmed with modification the Regional Trial Court's Decision, thus:

**WHEREFORE**, the instant petition is hereby **DISMISSED** for lack of merit. The *Decision* dated July 30, 2014 of the RTC, Branch 74, Olongapo City, in Criminal Case No. 44-14 is hereby **AFFIRMED with MODIFICATION** as to the imposable penalty.

Petitioner Jonah Mallari y Samar is hereby sentenced to suffer an indeterminate penalty of two (2) months of *arresto mayor* as minimum, to two (2) years and four (4) months of *prision correccional* as maximum. He is likewise ordered to pay a fine of Five Hundred (Php500.00) Pesos.

**SO ORDERED.**<sup>[27]</sup> (Emphasis in the original)

In ruling so, the Court of Appeals found that PO2 Navarro's testimony was credible and clear on how the incident occurred, while Mallari was unable to substantiate her claims. It held that Mallari was the aggressor and PO2 Navarro was only compelled to restrain her as she was kicking him.<sup>[28]</sup>

The Court of Appeals denied Mallari's Motion for Reconsideration in a May 12, 2016 Resolution.<sup>[29]</sup>

Thus, Mallari filed before this Court a Petition for Review on Certiorari,<sup>[30]</sup> claiming that the Court of Appeals erred in sustaining her conviction.

Petitioner argues that PO2 Navarro's testimony that she repeatedly kicked and slapped him was inconsistent with his injury of a slightly swollen cheekbone.<sup>[31]</sup> She points out that it was she who suffered several injuries, consistent with her allegation that PO2 Navarro "held her feet, pulled her to the ground and caused her

to hit her head, neck and buttocks,"<sup>[32]</sup> despite no aggression coming from her. Thus, she says that her testimony should have been given more credence.<sup>[33]</sup>

Assuming that she did kick PO2 Navarro, petitioner asserts that she was fully justified in doing so as the officer unnecessarily held her feet, which constitutes unlawful aggression on her honor and dignity.<sup>[34]</sup>

The Office of the Solicitor General, on behalf of respondent People of the Philippines, argued back that the Petition must be denied as it raises a question of fact, which is not proper in a petition for review on certiorari.<sup>[35]</sup>

In any case, the Office of the Solicitor General insists that petitioner's assault on PO2 Navarro was sufficiently established. It points out that the medical certificate stating that PO2 Navarro had a slightly swollen cheekbone does not negate his testimony that he was repeatedly kicked by petitioner, as she herself admitted attacking the officer. It also raises the other officers' testimonies affirming what had happened. From the totality of evidence, the Office of the Solicitor General argues that Mallari is the aggressor and her denials are weak defenses.<sup>[36]</sup> That PO2 Navarro was a police officer on official duty when petitioner assaulted him completes the elements of the offense charged.<sup>[37]</sup>

For this Court's resolution is the sole issue of whether or not petitioner Jonah Mallari y Samar is guilty beyond reasonable doubt of direct assault upon an agent of a person in authority.

This Court modifies the ruling of the Court of Appeals.

We affirm that the prosecution's evidence is sufficient to uphold the findings of fact against petitioner. Questions of fact may no longer be raised in Rule 45 petitions. In *Spouses Miano v. Manila Electric Company*:<sup>[38]</sup>

The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari*. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.

*Bases Conversion Development Authority v. Reyes* distinguished a question of law from a question of fact:

Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question

of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.

. . . .

Prevailing jurisprudence uniformly, holds that findings of facts of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. It is not the function of this Court to analyze or weigh such evidence all over again. It is only in exceptional cases where this Court may review findings of fact of the Court of Appeals.<sup>[39]</sup> (Citations omitted)

In this case, the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals all consistently found that petitioner slapped and kicked PO2 Navarro while he was on official duty as a police officer.<sup>[40]</sup> The lower courts arrived at this conclusion after thoroughly examining both parties' evidence. This Court will no longer disturb their uniform findings.

However, petitioner should not be held guilty of direct assault, but rather, of the crime of resistance or disobedience under Article 151 of the Revised Penal Code.

Article 148 of the Revised Penal Code defines and penalizes direct assault:

ARTICLE 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.

Direct assault may be committed in two (2) ways:

[F]irst, 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.*<sup>[41]</sup> (Emphasis supplied, citation omitted)

In this case, petitioner is charged with the second mode of assault. Its elements are the following: