

NINTH DIVISION

[CA–G.R. CR. No. 36255, March 16, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
POCHOLO MIRANDA Y BUMANLAG A.K.A. POCHIE, ACCUSED-
APPELLANT.**

D E C I S I O N

DICDICAN, J.:

Since the private complainant in this case is a minor, her real name and the names of her immediate relatives are withheld and, instead, fictitious initials are used pursuant to Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act", and Republic Act No. 9262, also known as the "Anti-Violence Against Women and Their Children Act of 2004".

For adjudication by this Court is an appeal from the Decision^[1] rendered by Presiding Judge Joselito dj. Vibandor of Branch 199 of the Regional Trial Court in Las Piñas City, National Capital Judicial Region, ("trial court") on December 6, 2013 in Criminal Case No. 11-0247 convicting herein accused-appellant Pocholo Miranda y Bumanlag *a.k.a.* Pochie ("accused-appellant") for violation of Section 10(a) of Republic Act No. 7610 otherwise known as Special Protection of Children Against Abuse, Exploitation and Discrimination Act in the following Information^[2] which reads as follows:

"That on or about 15th day of January, 2011, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit an act of abuse against "AAA", a 16-year old minor, by then and there presenting himself to her, thru text messages, as "Macky," complainant's friend, and thereafter sending text messages inviting her to go somewhere and asking for a kiss from her, which acts caused her annoyance, irritation, vexation and distress, which are prejudicial to said child's development and which debase, degrade or demean her intrinsic worth and dignity as a human being.

"CONTRARY TO LAW."

On June 13, 2011, upon being arraigned of the charge against him, the accused-appellant entered a plea of not guilty^[3] thereto. Subsequently, a pre-trial was conducted on October 5, 2011^[4]. A trial on the merits ensued thereafter.

During the trial, the prosecution adduced in evidence the testimonies of the following: (1) "AAA", the minor complainant herself; (3) Fernan Kalaw ("Kalaw"); (4) Mark Jason Cortez ("Cortez"); and (4) Barangay Tanod Gerardo Caballes

("Caballes") .

On the other hand, the accused-appellant adduced in evidence his own testimony as well as that of Sharmaine Someya ("Someya").

The prosecution's recital of established facts is summarized as follows:

On January 15, 2011, at around 5:00 o'clock in the afternoon, herein private complainant "AAA", who was then sixteen (16) years old, received a text message from a number unknown to her. Upon inquiry, the sender of the text message introduced himself as "Macky".

Since "AAA" had a best friend whose nickname is "Macky" and considering that their manner of texting was the same, she was led to believe that the "Macky" that she knew had only changed his cellular phone number.

Subsequently thereafter, "AAA" received a voice call from "Macky". At that instance, "AAA" inquired as to why "Macky's" voice sounded different. "Macky" then told her that he had just woke up and was suffering from colds.

Feeling skeptical, "AAA" went to the house of her best friend, Mark Jason Cortez or Macky, and told the latter that someone was sending her text messages and pretending to be him. "AAA", Cortez and his friends then came up with a plan and decided to meet up with the person pretending to be "Macky".

At around 8:00 o'clock in the evening of the same day, "AAA", accompanied by Cortez and his friends, all went to the clubhouse in Teresa Park Subdivision, Pillar Village, Las Piñas City to meet with "Macky".

At around 9:00 o'clock in the evening, "AAA" received a text message from the accused-appellant which stated that he was already in their meeting place and that he was the guy on board the motorcycle. Upon the advice of her friends, "AAA" remained where she was.

The guy with the motorcycle then approached "AAA" and told her that he was instructed by "Macky" to come and pick her up. "AAA" also claimed that the accused-appellant approached their group and told them, *"Ako ito, ate."*

Suddenly, Kalaw, Aguila and Cortez, came out and started to maul accused-appellant. The accused-appellant was then brought to the barangay hall after the barangay tanods, who received a call for help from "AAA", responded to the commotion.

With respect to the testimony of Kalaw, he claimed that, on January 15, 2011, at around 7:00 o'clock in the evening, he was in the house of his friend, Jeremy Aguila, when he received a text message from Cortez telling him that someone was misrepresenting himself as "Macky" to "AAA" through text messages.

Kalaw, "AAA" and Cortez then proceeded to the house of Aguila where they came up with a plan to entrap "Macky".

It was in the clubhouse at Teresa Park Subdivision where "AAA" and "Macky" decided

to meet. Kalaw, Cortez and Aguila accompanied "AAA" to the said meeting place.

Kalaw claimed that he was hiding at the back of the clubhouse, together with Cortez and Aguila, while "AAA" waited for "Macky" to arrive.

Kalaw likewise claimed that, upon seeing that the accused-appellant was already forcing "AAA" to ride his motorcycle, Cortez emerged from their hiding place and confronted the accused-appellant. Kalaw and Aguila then followed behind.

When accosted by Cortez about his misrepresentations, the accused-appellant merely answered, "*Wala lang.*". Kalaw and his group then instructed "AAA" to run back to her house and ask for assistance from her mother and the barangay officials.

Kalaw and his group then started to run after the accused-appellant who was then trying to escape in his motorcycle. When Kalaw got hold of the accused-appellant, the latter hit him on his shoulder with his helmet. Kalaw then retaliated and chased the accused-appellant who was trying to flee. Soon thereafter, the barangay officials arrived and they boarded herein accused-appellant in the barangay patrol.

To corroborate the testimony of "AAA", Cortez narrated that "AAA" told her that someone was pretending to be him and was sending her some text messages. Allegedly, the sender of the text message was inviting her to go out and have a drink. Subsequently, at around 6:00 o'clock in the afternoon of January 15, 2011, he went to the house of "AAA" wherein the latter showed to her all the text messages which a certain "Macky" had sent to her.

It was at that moment when he decided to seek for the assistance of his friends, Kalaw and Aguila. At around 9:45 p.m. on the same day, Cortez, together with "AAA", Kalaw and Aguila waited for "Macky" at the clubhouse in Teresa Park, Pillar Village, Las Pinas City.

Herein accused-appellant arrived at the clubhouse in a motorcycle while Cortez, Kalaw and Aguila stayed at the back of the clubhouse. Cortez asserted that he saw the accused-appellant forcing "AAA" to ride on the motorcycle. According to Cortez, he heard that the accused-appellant claimed that "Macky", who was already drinking somewhere else, told him to fetch "AAA".

Upon witnessing the incident, Cortez, together with Kalaw and Aguila, came out and confronted the accused-appellant. When asked as to why he was misrepresenting himself as "Macky", the accused-appellant answered "*Wala lang.*". The accused-appellant's response then prompted Kalaw and Aguila to attack him.

Meanwhile, Cortez escorted "AAA" to her house and then proceeded to run after the accused-appellant. After their group was able to catch the accused-appellant, they brought him to "AAA's" house. At that point, Cortez claimed that the accused-appellant said sorry and was pleading for them to set him free.

Caballes, on the other hand, testified on the basis of the Sinumpaang Salaysay ng Pag-aresto which he executed and wherein he claimed that he was one of the barangay tanods who apprehended the accused-appellant during the incident which transpired on January 15, 2011.

In an attempt to absolve himself from criminal liability, the accused-appellant denied the accusation hurled against him and raised the defense of denial.

The accused-appellant admitted that he had seen "AAA" at the Teresa Park for several weeks before he asked Someya, "AAA's" childhood friend, to introduce him to her. It was also through Someya that the accused-appellant obtained the cellular phone number of "AAA" on January 13, 2011.

While the accused-appellant explained that he invited "AAA" to have a drink in the eve of January 15, 2011, he however claimed that he withdrew his invitation since Someya was not available.

The accused-appellant denied that it was his intention to abduct "AAA" as it was "AAA" who was persistent to meet up with him and even insisted to have a drinking spree at his house.

Because "AAA" insisted on meeting up with him, the accused-appellant conceded. Upon reaching their meeting place, the companions of "AAA", including Kalaw who was purportedly the latter's suitor, started to utter invectives against him and were furious as they started to maul him. According to the accused-appellant, "AAA" and her group even wanted to take his motorcycle from him during the incident.

When questioned as to the possible motive of the complainant in filing a case against him, the accused-appellant claimed that all the accusations against him were mere fabrications since "AAA's" parents and suitor were furious at him.

Someya corroborated the testimony of the accused-appellant.

According to Someya, the accused-appellant was also well known as "Macky" and that she was the one who introduced the accused-appellant to "AAA", who was her childhood friend. She testified that she got "AAA's" cellular phone number from Jake Cortez, the brother of Mark Jason Cortez.

Someya further testified that the accused-appellant indeed invited her to have a drinking spree on January 15, 2011 together with "AAA" but, on account of the fact that she was still in Laguna, she was not able to join them. She corroborated the testimony of the accused-appellant that it was "AAA" who was persistent in having a drinking session with them.

Someya, likewise, revealed that "AAA's" mother talked to her mother and told her that she (Someya) would be implicated as an accomplice in this case if she would testify in favor of the accused-appellant. She described the accused-appellant as a kind-hearted and loving son whose only intention in sending text messages to "AAA" was to be his friend. On the contrary, Someya described "AAA" as a bully.

Finding the testimony of the private complainant more credible, the court *a quo* rendered a Decision on December 6, 2013, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, this court finds accused Pocholo Miranda y Bumanlag @ 'Pochie' GUILTY beyond reasonable doubt for violation of Section 10(a) Other Acts of Child Abuse, of R.A. 7610 and

absent any modifying circumstances, he is hereby sentenced to suffer imprisonment of 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.

"The accused is likewise ordered to pay the minor complainant the amount of Php20,000.00 as moral damages.

"SO ORDERED."

The trial court ruled that the prosecution was able to establish the fact that the accused-appellant pretended to be "AAA's" friend "Macky", telling her to bring her gadgets with her and meet with him. For the trial court, such incident had caused fright upon the minor which affected her focus on her studies and threatened her normal development.

The trial court likewise ruled that, given the prevailing facts of this case as established by the prosecution, it can be said that the minor complainant "AAA" was annoyed, irritated, vexed and distressed during the time that the accused-appellant was sending text messages to her and pretending to be her friend "Macky".

Not satisfied with the foregoing decision, herein accused-appellant interposed the instant appeal raising as errors the following acts that were committed by the trial court, to wit:

I.

THE COURT A *QUO* GRAVELY ERRED IN RULING THAT THE FACTS OF THE CASE AS ESTABLISHED CONSTITUTED A VIOLATION OF SECTION 10(A) OF ARTICLE VI OF REPUBLIC ACT NO. 7610.

II.

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III.

THE COURT A *QUO* GRAVELY ERRED IN AWARDING DAMAGES IN FAVOR OF THE PRIVATE COMPLAINANT AS THE SAME WAS WITHOUT ANY LEGAL OR FACTUAL BASIS WHATSOEVER.

The primordial issue brought before this Court for resolution is whether the court a quo erred in convicting herein accused-appellant beyond reasonable doubt for violation of Sec. 10(a) of R.A. 7610 or the Child Abuse Law.

Section 10(a) of R.A. No. 7610 reads:

"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