

## THIRD DIVISION

[ CA-G.R. CR NO. 35587, June 26, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. DIANA KYLA DELA CRUZ Y REYES, ACCUSED-APPELLANT.**

### DECISION

**DE GUIA-SALVADOR, R., J.:**

This is an appeal from the Decision dated 08 February 2013 rendered by the Regional Trial Court of Las Piñas City, Branch 199, (**RTC**) in Criminal Case No. 08-0711, the decretal portion of which reads:

"WHEREFORE, this court finds the accused DIANA KYLA DELA CRUZ, GUILTY beyond reasonable doubt for violation of Other Acts of Abuse (penalized under Sec. 10(a) RA No. 7610. This court hereby imposes an Indeterminate Penalty of imprisonment ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of PRISION CORRECCIONAL, as its minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of PRISION MAYOR, as its maximum period with the accessory penalty provided for by law. Accused is further directed to indemnify the victim the amount of FIVE THOUSAND PESOS as moral damages.

The period under which accused has remained under detent[i]on shall be credited to her in full provided that she agreed and complied with the rules and regulation of the City jail.

Let a copy of this Decision be furnished the parties.

SO ORDERED."

### ***The Indictment***

On 04 August 2008, an Information was filed by the City Prosecutor of Las Piñas City charging accused-appellant Diana Kyla Dela Cruz (**appellant**) with violation of Section 10(a) of Republic Act 7610 (**RA 7610**), the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, for physically assaulting the 15-year-old AAA<sup>[1]</sup>, as follows:

"That on or about [the] 28<sup>th</sup> day of May 2008, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, [appellant], did then and there willfully, unlawfully and feloniously commit an act of abuse against [AAA], a fifteen (15) year old minor, by then and there grabbing her hair and kicking her leg; which acts debase[d], degrade[d] and demean[ed] the intrinsic worth of the minor as a human being, and the same is prejudicial to the minor-complainant's mental and psychological development."<sup>[2]</sup>

When arraigned on 04 November 2008,<sup>[3]</sup> appellant entered a plea of not guilty to the charge.

During trial, the prosecution presented as witnesses private complainant AAA, her parents (Norma and Lauro), and Mayona Malibong (**Mayona**), AAA's neighbor and an eyewitness to the incident.

For the defense, appellant and Dr. Blesilda Asuncion testified.

### ***The Facts***

#### ***Version of the Prosecution***

The Solicitor General summarized the prosecution's version of the physical confrontation between AAA and appellant as follows:

"In 2007, [AAA] was a 15-year-old high school student. The prosecution showed that during that year, the [appellant] began showing animosity to [AAA] after her live-in partner tried to court [AAA] for a week. The [appellant] would send unpleasant messages to [AAA] and spread sexual rumors about her.

On 28 May 2008, the [appellant](who was with a companion named Cherry Joy Santos) confronted [AAA] inside a store and angrily asked her why she called the [appellant] '*malandi*' (slutty) and '*pokpok*' (prostitute)....

[AAA] remained silent and turned away from the [appellant] after the alleged confrontation. The [appellant] suddenly pulled [AAA's] hair and kicked her legs while shouting '*malandi*' and '*pokpok*'. AAA allegedly sustained a lump on her head and felt pain in her legs, but did not undergo medical examination.

x x x x x x x x x"<sup>[4]</sup>

#### ***Version of the Defense***

Appellant admitted the confrontation between her and AAA in the afternoon of 28 May 2008 inside a neighborhood store, but claimed that it was AAA who attacked her first.

Appellant related that she was the live-in partner of Geralvin Mateo with whom she had two children. Sometime in 2006, appellant learned of AAA's romantic relation with Geralvin Mateo, and decided to part ways with him. When Mateo decided to reconcile with appellant, AAA started spreading rumors that appellant was slutty (*malandi*) and a prostitute (*pokpok*). On 28 May 2008, appellant chanced upon AAA and calmly asked her why she was spreading such rumors. AAA angrily replied: "*Why?*" *Is it not true?*"

When appellant turned her back to leave, AAA suddenly grabbed her arm and pulled her hair. Appellant could not fight back as AAA's cousin and father joined the fray. As a result, appellant sustained bruises and scratches on her arms and neck.

Dra. Blesida Asuncion issued a Medical Certification (Exhibit "1")<sup>[5]</sup> noting the following injuries of appellant that she treated on the date of the incident:



### ***The Court's Ruling***

We find the appeal partly impressed with merit.

Evidently, the resolution of this appeal hinges on the credibility of the witnesses and the probative weight of their testimonies. The rule is settled that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of their probative weight, as well as its conclusions anchored on said findings are accorded by the appellate court high respect, if not conclusive effect, precisely because of the unique advantage of the trial court in observing and monitoring at close range the demeanor, deportment and conduct of the witnesses as they testify.<sup>[12]</sup> Unless the trial court has overlooked, misconstrued or misinterpreted cogent facts of substance which if considered might affect the result of the case,<sup>[13]</sup> appellate courts are not inclined to disturb the factual determinations of the trial court.

Our judicious review of the records yielded no cogent reason that would warrant a departure from this settled principle. The trial court correctly gave credence to the account of AAA whose testimony is consistent and without any taint of uncertainty as to the circumstances surrounding the incident.<sup>[14]</sup> AAA testified with clear details on how appellant unleashed her pent-up anger on the former when they met by chance at a neighborhood store on 28 May 2008, thus:

"FISCAL MATAMMU-SION:

Q On May 28, 2008 at about 4:30 in the afternoon, do you still remember where were you at that time?

WITNESS

A Yes, maám.

Q Will you please tell this Honorable Court on the said date and time what were you doing?

A I just got home from school because me and my mother enrolled in school. My mother instructed me to buy a load for our phone. While I was talking to the person tending the store, she called my name. She had a woman companion.

Q Who is this person who called you?

A [Appellant] maám.

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Q When the [appellant] called you, what did she tell you?

A [Appellant] asked me why I was saying that she's '*malandi*' and '*pokpok*' when in fact she's telling me those words.

Q What was the manner by which the [appellant] asked you that question?

A [Appellant] was facing me, her eyebrows were raised.

Q How about the tone of her voice when she uttered those statements. Will you please described.

A Angry tone, maám.

Q Would you know why the [appellant] would be approaching you?

A [Appellant is] angry maám.

xxx xxx xxx

Q And what was your reply, Madam Witness to the statements given to you by the [appellant]?

A I did not give a reply. I just turned my back because I was talking to the woman who was selling me load.

Q When you turned your back to the woman tending the store, what happened next?

A [Appellant] grabbed my hair, she started to pull my hair. She kicked my legs. There were many people around at that time. I was able to grab her and then, the money was even torn.

xxx xxx xxx

Q What did you feel when the [appellant] pulled your hair and kicked your leg?

A I felt pain and I think, there was a bump in my head....

xxx xxx xxx

COURT

Q While [appellant] was hurting you, did you hear anything from her?

A None, Your Honor.”<sup>[15]</sup>

For her part, appellant denied having physically abused AAA, insisting that it was the latter who attacked her first, and as a result thereof, she sustained bruises and scratches on her arms and neck. Appellant's bare denial, however, cannot prevail over AAA's direct, positive and categorical assertion. Mere denial of involvement in a crime cannot take precedence over the positive testimony of the offended party. Unsubstantiated by clear and convincing evidence, appellant's denial cannot be given greater evidentiary value than the credible and straightforward testimony of the victim, like AAA, who testified on affirmative matters.<sup>[16]</sup> Further, We find appellant's failure to file a complaint against AAA runs counter to the normal human conduct and behavior of one who feels truly aggrieved by the act complained of. As correctly noted by the trial court, appellant admitted having filed a complaint for physical injuries against the father and cousin of AAA, but not against the latter despite her claim that it was AAA who attacked her first.