

## FIRST DIVISION

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

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

### D E C I S I O N

**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.<sup>[1]</sup>

Petitioner Lydia Gelig (Lydia) impugns the Decision<sup>[2]</sup> 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<sup>[3]</sup> 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<sup>[4]</sup> was filed charging Lydia with Direct Assault with Unintentional Abortion committed as follows:

That on the 17<sup>th</sup> 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<sup>[5]</sup> 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<sup>[6]</sup> 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.<sup>[7]</sup>

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.<sup>[8]</sup> Likewise, Lydia's purpose was not to defy the authorities but to confront Gemma on the alleged name-calling of her son.<sup>[9]</sup>

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.<sup>[10]</sup> 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.**<sup>[11]</sup>

### **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.<sup>[12]</sup>

### **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.<sup>[13]</sup>

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