

THIRD DIVISION

[G.R. NO. 138553, June 30, 2005]

**ENRIQUE "TOTOY" RIVERA Y DE GUZMAN PETITIONER, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

GARCIA, J.:

Assailed and sought to be set aside in this petition for review on certiorari are the October 16, 1998 decision^[1] and April 5, 1999 resolution^[2] of the Court of Appeals in **CA-G.R. CR No. 17284**, which respectively affirmed *in toto* an earlier decision of the Regional Trial Court of La Trinidad, Benguet convicting herein petitioner Enrique "Totoy" Rivera of the crime of direct assault, and denied petitioner's motion for reconsideration.

On May 6, 1993, in the Regional Trial Court at La Trinidad, Benguet an information^[3] for direct assault was filed against petitioner, allegedly committed, as follows:

That on or about the 20th day of March, 1993, at Tomay, Shilan, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously attack, employ force and seriously resist one Lt. EDWARD M. LEYGO, knowing him to be a policeman, by then and there challenging the latter to a fistfight and thereafter grappling and hitting the said policeman on his face, thus injuring him in the process while the latter was actually engaged in the performance of his official duties.

Contrary to law.

On arraignment, petitioner entered a plea of "Not Guilty." Thereafter, trial ensued.

To prove its case, the prosecution presented in evidence the testimonies of the victim himself, Lt. Edward Leygo, and the two alleged eyewitnesses to the incident, SPO1 Jose Bangcado and Brenda Dup-et. For its part, the defense presented the petitioner himself and one Alfredo Castro.

As summarized by the trial court and adopted by the Court of Appeals in the decision herein assailed, the People's version^[4] is, as follows:

On March 20, 1993 at around 8:00 o'clock in the evening, Police Inspector Edward M. Leygo, Deputy Chief of Police for Operation and Patrol of the La Trinidad Police Station, La Trinidad, Benguet and SPO1 Joseph Basquial were conducting routinary patrol on board a police car somewhere in Shilan, La Trinidad, Benguet when they came upon a truck

unloading sacks of chicken dung at the stall of accused Enrique "Totoy" Rivera which was located along the Halsema Highway at Shilan, La Trinidad, Benguet. Inspector Leygo advised the driver to stop unloading the manure as it violates La Trinidad Municipal Ordinance No. I-91 (Exhibit "C") which prohibits, among others, the loading and unloading of chicken manure along the sidewalks or road shoulders or within 15 meters from the center of the Halsema Highway located at La Trinidad, Benguet. The driver complied with the police directive. The policemen then escorted the truck back to Poblacion, La Trinidad, Benguet and proceeded to the police headquarters.

Not long after, SPOI Jose Bangcado and SPOI Rivera Dayap, members of the La Trinidad Police under Inspector Leygo were conducting patrol aboard a police car somewhere at Km. 6, La Trinidad, Benguet when they observed a truck loaded with chicken dung proceeding towards Shilan, La Trinidad, Benguet. Having in mind the instructions of La Trinidad Mayor Edna C. Tabanda and their Commanding Officer Inspector Leygo to Implement Ordinance No. I-91, the two policemen followed and stopped the truck at Cruz, La Trinidad, Benguet. Immediately they called Inspector Leygo on the radio and informed him that they stopped a truck carrying chicken dung. Inspector Leygo ordered them to restrain the truck, as he would be proceeding to the area.

Knowing that the truck being restrained by the two policemen was the same truck which they had escorted earlier from Shilan, La Trinidad, Benguet, Inspector Leygo felt ignored and insulted. He immediately called SPO4 Justino Tiwtiwa, SPO1 Baldwin Ngolab and SPO1 Joseph Basquial and the group sped to Cruz, La Trinidad, Benguet.

Meanwhile, back at Cruz, La Trinidad, Benguet, the accused arrived before the group of Inspector Leygo did and ordered the driver not to obey the policemen but instead obey him, as he (accused) was the boss. The truck driver followed the accused's order and drove the truck towards Shilan, La Trinidad, Benguet with the accused following closely behind in his vehicle.

Inspector Leygo and his group arrived in time to see the truck pulling away and so they gave chase. The police were able to overtake and stop the truck at Dengsi, Tomay, La Trinidad, Benguet. Inspector Leygo confronted the truck driver and asked him why he still insisted on proceeding to Shilan to unload chicken manure despite the fact that he was ordered to go back earlier in the evening. The truck driver stated that he was just following the orders of the accused. Immediately, Inspector Leygo turned around to see the accused who had at that time alighted from his vehicle behind the truck. Inspector Leygo asked the accused why he insisted on defying the ban on the unloading and loading of chicken manure. Instead of answering however, the accused pointed a finger on the policeman and uttered words like "Babalian kita ng buto" (I'll break your bones). "Ilalampaso kita" (I'll scrub you). "Pulis lang kayo" (you are only policemen) and other unsavory and insulting words. Inspector Leygo who was a little bit angry warned the accused to stop uttering further insulting words and cautioned him to take it easy and

then informed him that he was being arrested for violation of the chicken dung ordinance. The accused removed his jacket, placed it inside the vehicle, assumed a fighting stance and challenged the policeman. Inspector Leygo then approached the accused and warned him anew that he was being arrested. The accused responded by punching Inspector Leygo on his face, particularly on his lip. The two then grappled as Inspector Leygo tried to hold the accused. Finally, with the help of Policemen Dayap and Bongcado, the accused was subdued. The accused was then pushed into one of the police cars but he resisted until Alfredo Castro, one of the chicken dung dealers in the area, boarded the police car to accompany him.

The accused was brought to the police headquarters where Inspector Leygo immediately called Mayor Tabanda who arrived at about 10:00 o'clock that same evening. She confronted the two protagonists and at the same time admonished the accused for violating Ordinance No. I-91. Mayor Tabanda then accompanied the accused and Inspector Leygo to the Benguet General Hospital where both were examined by Dr. Antonio T. Carino. In the medico-legal certificate (Exhibit "A") of Inspector Leygo, his injury described as "contusion with 0.5 laceration, upper lip, left side" with healing period from 5 to 7 days. Subsequently, this present case was filed against the accused.

Reproduced from the same decision of the appellate court, the defense's version^[5] runs:

At about 8:00 o'clock in the evening of March 20, 1993, while the accused was at the Trading Post at Km. 5, La Trinidad, Benguet, the driver reported to him that he was prevented by the police from unloading chicken manure at Shilan, La Trinidad, Benguet. The accused reminded the driver that he should have brought the chicken manure to Acop, Tublay, Benguet where dealers sell it when prevented from unloading within the municipality of La Trinidad, Benguet. As it would be more expensive to return the chicken dung to Batangas where it came from, the accused told the driver to bring the chicken dung to Acop, Tublay, Benguet. The driver expressed his fear that the police might stop him along the way and so the accused ordered the driver to proceed and gave him the assurance that he (accused) would follow later.

The truck then proceeded as instructed and the accused following after a short while. Arriving at Cruz, La Trinidad, Benguet, the accused noticed that the truck was stopped at the side of the road while a police vehicle and three policemen were across the road. Thinking that the policemen were there trying to extort money from the driver, the accused told the truck driver to proceed. The truck driver complied and the accused tailed along.

When the truck and the accused reached Dengsi, Tomay, La Trinidad, Benguet, he heard a police siren from behind. Immediately, a police vehicle overtook the truck, another police vehicle was running along side the accused's vehicle and a third police vehicle was right behind them. Thus, the truck and the accused had no recourse but to stop.

Inspector Leygo alighted from one of the police vehicles and angrily uttered so many words at the accused. The policeman then held the collar of accused's jacket and forced the latter to get out of his vehicle while shouting "Ang tigas ng ulo mo. Sige, bumunot ka." (You are very stubborn. Go ahead, draw your gun.) The accused explained that he had no gun to draw while removing his jacket and raising his hands to show that there was no gun on his body. Inspector Leygo then held the left hand of the accused and tried to put handcuffs on him. The accused tried to resist, pleading that he had no fault and at the same time asking what infraction of law he committed. Inspector Leygo answered by uttering insulting words and pointing his left forefinger on the accused's face while his right hand was poking a gun on the accused. The accused noticed that the policeman smelled of liquor.

A crowd started to gather around the scene. Sensing that the onlookers were on his side, the accused stated that he was going to get his camera inside his vehicle. As he was opening the door, Inspector Leygo suddenly slapped and boxed him in the stomach causing the accused to feel dizzy. This assault weakened him and so he did not resist when the police pushed him inside the police vehicle. Inspector Leygo then ordered his men to bring the accused to the police headquarters. The accused recognized Alfredo Castro among the onlookers and because he (accused) knew him to be one of the chicken dung dealers, asked him (Castro) to accompany him to the police headquarters for fear that something might happen.

At the police station, the accused suggested that Inspector Leygo should undergo medical examination to determine if the policeman was positive of alcoholic breath. The accused, however, was examined ahead and was issued a medical certificate (Exhibit "4") which described his injury as "erythema, lip left side face" and "contusion-midepigastic area". The healing period is from 3 to 5 days. With him sustaining this injury, the accused now wonders why this charge was filed against him.

After weighing the parties' respective versions of the incident, the trial court found that of the People more credible. Accordingly, in its decision of April 22, 1994,^[6] it convicted petitioner of the crime of direct assault and sentenced him, thus:

WHEREFORE, the guilt of the accused having been proven beyond reasonable doubt, the Court hereby renders judgment finding the accused Enrique "Totoy" Rivera GUILTY and sentences him to suffer an indeterminate penalty of Four (4) Months and One (1) Day of arresto mayor as MINIMUM to One (1) Year, One (1) Month and Eleven (11) Days of prision correccional as MAXIMUM. He is likewise ordered to pay a fine of FIVE HUNDRED PESOS (P500.00) and to pay the costs.

SO ORDERED.

With his motion for reconsideration having been denied by the trial court, petitioner then went on appeal to the Court of Appeals whereat his recourse was docketed as CA-G.R. CR No. 17284.

As stated at the outset hereof, the appellate court, in its decision^[7] of October 16, 1998, affirmed in toto that of the trial court, to wit:

WHEREFORE, premises considered the decision appealed from is hereby affirmed *in toto*.

SO ORDERED,

and denied petitioner's motion for reconsideration in its resolution of April 5, 1999.^[8]

Hence, this petition for review on certiorari, submitting for our consideration the principal issue of whether or not the Court of Appeals erred in affirming the judgment of conviction rendered by the trial court.

We **AFFIRM**.

Direct assault, a crime against public order, 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.^[9]

Unquestionably, petitioner's case falls under the second mode, which is the more common form of assault and is aggravated when: (a) the assault is committed with a weapon; or (b) when the offender is a public officer or employee; or (c) when the offender lays hand upon a person in authority.^[10]

In this recourse, petitioner argues that the appellate court, like the trial court, erred in finding the testimony of complainant Lt. Leygo as clear and convincing. In an attempt to impugn the latter's credibility, petitioner contends that Lt. Leygo was mumbling while giving his testimony, adding that the latter failed to identify which of his (petitioner) hands was used and the precise distance between them when he punched the police lieutenant.

Admittedly, the record shows that the trial judge had to call Lt. Leygo's attention for testifying in such a low voice while on the witness box. Evidently, however, this did not prevent the trial court into believing his testimony and from according it full faith and credit. As it is, the witness was able to narrate and communicate the events that transpired. Both the trial court and the Court of Appeals found the witness to have clearly and adequately recounted how the incident happened, and we find no valid reason to discredit the truth and veracity of his narration. We quote:

Q Now, you said that Mr. Rivera faced you, when he faced you after he removed his jacket what did you do?

A He positioned himself in a fighting stance, sir.

Q What do you mean "in the fighting stance"?