

## FIRST DIVISION

[ G.R. No. 127694, May 31, 2000 ]

### QUIRICO MARI, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

#### D E C I S I O N

##### **PARDO, J.:**

The case before the Court is an appeal from a decision of the Court of Appeals, the dispositive portion of which reads:

"WHEREFORE, the conviction of petitioner Quirico Mari for the offense of serious slander by deed is hereby AFFIRMED, but with a modified penalty of one (1) month and one (1) day of *arresto mayor*, as minimum, to two (2) years and four (4) months of *prision correctional*, as maximum.

"SO ORDERED."<sup>[1]</sup>

The facts, as found by the Court of Appeals, are as follows:

Complainant Norma Capintoy and petitioner Quirico Mari were co-employees in the Department of Agriculture, with office at Digos, Davao del Sur, although complainant occupied a higher position.

On December 6, 1991, petitioner borrowed from complainant the records of his 201 file. However, when he returned the same three days later, complainant noticed that several papers were missing which included official communications from the Civil Service Commission and Regional Office, Department of Agriculture, and a copy of the complaint by the Rural Bank of Digos against petitioner. Upon instruction of her superior officer, Honorio Lumain, complainant sent a memorandum to petitioner asking him to explain why his 201 file was returned with missing documents.

Instead of acknowledging receipt of the memorandum, petitioner confronted complainant and angrily shouted at her: "Putang ina, bullshit, bugo." He banged a chair in front of complainant and choked her. With the intervention of the security guard, petitioner was prevailed upon to desist from further injuring complainant.

Petitioner's version is that, he borrowed from complainant his service record and not his 201 file which contained his personal records. The service record which he borrowed did not include the missing documents. Acknowledging that complainant was higher in rank than him, he claimed that it was complainant who provoked him into acting the way he did and he was just reacting to the provocation.

On January 7, 1992, complainant filed with the Municipal Trial Court, Digos, Davao del Sur a criminal complaint against petitioner for slander by deed.<sup>[2]</sup>

On May 20, 1992, complainant filed an amended criminal complaint, adding that the crime was aggravated by the fact that the offended party was a woman.<sup>[3]</sup>

After trial, on September 22, 1994, the Municipal Trial Court, Digos, Davao del Sur rendered decision, the dispositive portion of which reads:

"In the light of the foregoing, the court is of the opinion that the accused is guilty of the offense charged and that private complainant has been slandered and embarrassed by the accused.

"Finding, therefore, accused guilty beyond reasonable doubt of the charge filed against him and crediting in favor of the prosecution one (1) ordinary aggravating circumstance, the Court hereby sentences the accused to an Indeterminate Sentence of five (5) months and eleven (11) days to two (2) years, eleven (11) months and eleven (11) days and to pay private complainant the amount of FIVE THOUSAND (P5,000.00) PESOS as moral damages, FIVE THOUSAND (P5,000.00) PESOS attorney's fees and to reimburse her the cost of suit.

"Private complainant is, however, ordered to pay the docket fee corresponding to the damages she is entitled to receive, by virtue of this decision.

"SO ORDERED.

"Digos, Davao del Sur, September 22, 1994."<sup>[4]</sup>

In due time, petitioner appealed to the Regional Trial Court.

After due proceedings, on December 1, 1995, the Regional Trial Court, Davao del Sur, Digos, Branch 19 rendered decision adopting the trial court's findings of fact, and affirming the appealed decision *in toto*.<sup>[5]</sup>

On June 18, 1996, petitioner filed with the Court of Appeals a petition for review.<sup>[6]</sup>

On July 16, 1996, the Court of Appeals ordered respondents to file their comment on the petition, which shall be considered as an answer in the event the petition is given due course.<sup>[7]</sup>

On December 9, 1996, the Court of Appeals rendered decision affirming the judgment *a quo* convicting petitioner of serious slander by deed, but modifying the penalty to an indeterminate sentence of one (1) month and one (1) day of *arresto mayor*, as minimum, to two (2) years and four (4) months of *prision correccional*, as maximum.<sup>[8]</sup>

Hence, this appeal.<sup>[9]</sup>

At issue is whether the Court of Appeals erred in sustaining the conviction of petitioner for serious slander by deed assailing the trial court's finding that petitioner shouted invectives at complainant in the presence of several persons and

then choked her. Petitioner submits that the prosecution failed to prove that he choked the complainant; that the choking was an after-thought as shown by inconsistencies in the testimonies of the prosecution witnesses.

The issue raised is factual, which would bar us from reviewing the same in an appeal *via certiorari*.<sup>[10]</sup> The findings of fact of the Court of Appeals supported by substantial evidence are conclusive and binding on the parties and are not reviewable by this Court,<sup>[11]</sup> unless the case falls under any of the exceptions to the rule,<sup>[12]</sup> such as diverse factual findings of the lower courts<sup>[13]</sup> or the findings are entirely grounded on speculations.<sup>[14]</sup> Petitioner failed to prove that the case falls within the exceptions.<sup>[15]</sup>

However, we regret to note that the Municipal Trial Court, Digos, Davao del Sur, the Regional Trial Court, Digos, Davao del Sur and even the Court of Appeals erred in the proper application of the Indeterminate Sentence Law.

In the first place, the municipal trial court found the attendance of an "ordinary aggravating circumstance." The court did not state what this aggravating circumstance was, as required.<sup>[16]</sup> True, the amended criminal complaint alleged that the crime had been aggravated by the fact that the offended party is a woman. However, the mere fact that the victim is a woman is not *per se* an aggravating circumstance.<sup>[17]</sup> There was no finding that the evidence proved that the accused in fact deliberately intended to offend or insult the sex of the victim, or showed manifest disrespect to the offended woman or displayed some specific insult or disrespect to her womanhood. There was no proof of specific fact or circumstance, other than the victim is a woman, showing insult or disregard of sex in order that it may be considered as aggravating circumstance.<sup>[18]</sup> Hence, such aggravating circumstance was not proved, and indeed, in the circumstances of this case may not be considered as aggravating.<sup>[19]</sup> Consequently, the trial court erred in "crediting in favor of the prosecution one (1) ordinary aggravating circumstance." On review, the Regional Trial Court Judge did not notice the error because it did not make its own findings of fact, and followed the line of least resistance by simply adopting the trial court's "finding of fact as well as its reasons for making so." Neither did the Court of Appeals notice the error, even if the Solicitor General in his comment noted that the sentence imposed on the accused was excessive, meaning that there was no aggravating circumstance proved.<sup>[20]</sup>

In the second place, in applying the Indeterminate Sentence Law, the court shall fix minimum and maximum penalties.<sup>[21]</sup> If the offense is punished by the Revised Penal Code, as in this case, the court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.<sup>[22]</sup> The court shall fix the minimum penalty within the number of months or years covered by the penalty next lower in degree to that prescribed by the Code for the offense without regard to any modifying circumstance attendant to the commission of the crime.<sup>[23]</sup> The court has the unqualified discretion to fix the term of the minimum penalty.<sup>[24]</sup> The only limitation is that it must be within the range of the penalty next lower to that