

FIFTH DIVISION

[CA - G.R. CR No. 35993, March 17, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LETICIA NICOLASORA, ACCUSED-APPELLANT.**

D E C I S I O N

LOPEZ, J.:

Accused-appellant Leticia Nicolasora is charged with Slight Physical Injuries in relation to Republic Act No. 7610^[1] in the Information^[2] that reads:

That on or about July 7, 2004 in Valenzuela City and within the jurisdiction of this Honorable [C]ourt, the above-named accused, without any justifiable cause, did then and there willfully, unlawfully and feloniously pinch three times on the cheeks one AAA, 8 years old, thereby inflicting upon the latter physical injuries which injuries required medical attendance for a period of less than nine (9) days and incapacitated said victim from performing his habitual work for the same period of time, thereby subjecting said minor to psychological and physical abuse, cruelty and emotional maltreatment.

Contrary to Law, Valenzuela City, October 2, 2004.

Accused pleaded not guilty,^[3] hence, trial ensued.

AAA is a Grade II pupil at the Andres Fernando Elementary School in Valenzuela City. In the morning of July 4, 2007, during a Mathematics class, he was asked by his teacher, the accused herein, to answer the question written on the blackboard regarding "greater than" and "less than". When he failed to answer, he was approached by the accused and pinched 3 times on his left cheek that became red and painful. He went back to his seat frightened. The class was dismissed at 12:00 o'clock in the afternoon and AAA was fetched by his father. At home, his mother, BBB, noticed the redness on his cheek and asked him what happened to it. He did not answer. He just ate his lunch and slept. When he woke up, he had fever. He was asked again by his mother what happened to his cheek and he told her that he was pinched by the accused.^[4]

BBB brought AAA to a hospital for medical examination. She alleged that AAA was traumatized by the incident and by the threats of the accused. He had trouble sleeping at night and experienced recurring fever. The Department of Social Welfare and Development advised them to seek attention from the National Center for Mental Health. Dr. Zarah Cariaga-Espinoza, a doctor of medicine and the Medico-Legal Officer of the Center, examined AAA and found that he was suffering from Post-traumatic Stress Disorder^[5] manifested by nervousness, palpitations, tremors and cold hands. He also showed fear, hypervigilance, irritability and sleep

disturbances. Dr. Cariaga-Espinoza opined that the pinching caused the disorder. BBB then accompanied AAA to the police station to file a complaint.^[6]

Accused denied pinching AAA.^[7] During their Mathematics class, she asked AAA to bring his notebook and answer the question on the blackboard. He failed to answer correctly because he had no assignment written on his notebook. Irritated, accused said, "Ako na nga" and grabbed a chalk to write the answer herself. As she did this, she accidentally hit AAA on his lower left cheek with her right hand which has a ring. She immediately said, "sorry, tinamaan ka tuloy." She did not pinch. CCC,^[8] one of AAA's classmates, corroborated the claim of the accused.

DDD, one of AAA's classmates, supported accused's denial. She testified that during their Mathematics class on July 4, 2007, accused called AAA to answer the question on the blackboard about "greater than" and "less than", which was also their assignment. Accused got mad when AAA failed to answer the question correctly and also because many of them did not have their assignment. Accused then told AAA to write the symbol for "less than" and "greater than", but he failed to do it. Consequently, accused got the chalk from him and wrote the answer herself on the blackboard. She did not notice that she hit the face of AAA with her ring. DDD said that the accused did not pinch AAA. She testified for the accused because AAA's accusations are not true.^[9]

The trial court found the accused guilty of inflicting physical and psychological abuse, and emotional maltreatment to AAA and sentenced her as follows:

WHEREFORE, the court finds the accused LETECIA NICOLASORA guilty beyond reasonable doubt as principal for violation of Sec. 10(a), in relation to Sec. 3(b) of R.A. 7610 and in the absence of mitigating and aggravating circumstance and applying the Indeterminate Sentence Law, she is hereby sentenced to suffer the penalty of imprisonment of four (4) years two (2) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum.

The accused is likewise ordered to pay the(sic) AAA the amount of P30,000.00 as moral damages. SO ORDERED.^[10]

In this appeal, accused (now appellant) contends that the trial court erred in finding her guilty. The prosecution failed to prove that she pinched the cheek of AAA. The redness caused in AAA's cheek was due to the accidental brushing of her ring against it. This is supported by the testimony of AAA's classmates, CCC and DDD. Similarly, the Division of City School of Valenzuela, which conducted an investigation regarding the incident, found no *prima facie* evidence against her.

The appeal is meritorious.

Appellant was found guilty of violating Section 10(a) in relation to Section 3(b) of RA 7610, which provides:

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 or

exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

xxx

Child abuse, the crime charged, is defined by Section 3 (b) of Republic Act No. 7610, as follows:

Section 3. Definition of terms. –

xxx

(b) "Child Abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

As a rule, the trial court's findings of fact are binding and conclusive. However, there are some recognized exceptions, to wit: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) certain relevant and undisputed facts have been overlooked that, if properly considered, would justify a different conclusion.^[11] In this case, We find that the trial court disregarded relevant facts that would negate the guilt of the appellant for the crime charged.

Foremost, the prosecution failed to establish that the appellant intended to debase the "intrinsic worth and dignity" of AAA as a human being, or that she had intended to humiliate or embarrass him. To be sure, aside from the sole testimony of AAA, there is no other evidence showing that the appellant pinched AAA's cheek, or that she threatened him. We give more credence to the testimony of DDD, to wit:

Q: You were classmates in school year 2004 and you were both in Grade II?

A: Yes, Ma'am.

Q: And [appellant] is your teacher in Math?

A: Yes, Ma'am.

Q: Do you remember if you attended your classes on July 7, 2004?

A: Yes, Ma'am.