

FIRST DIVISION

[CA-G.R. CR. No. 36192, December 19, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENIGNO JOSE, ACCUSED-APPELLANT.**

D E C I S I O N

BRUSELAS, JR. J.:

This is an appeal from the *Decision*^[1] that convicted herein appellant Benigno Jose of slight physical injuries in relation to Republic Act No. 7610 (R.A. 7610),^[2] and which disposed as follows:

“WHEREFORE, premises considered, accused Benigno Jose is hereby found guilty of slight physical injury in relation to RA 7610 and hereby sentences him to an indeterminate sentence of four (4) years, nine (9) months and eleven (11) days of prision correctional as Minimum, to six (6) years, eight (8) months and one (1) day of prision mayor as Maximum.

SO ORDERED.”^[3]

AAA^[4] was born on 21 January 2005 in Mayantoc, Tarlac.^[5]

On 28 August 2011, while in their house in Barangay Rotrotooc, Mayantoc, Tarlac, AAA was ordered by her grandmother to buy sugar at a nearby store. When she reached the store, the appellant called her. She approached the appellant, who appeared to be drunk, and the latter held her hand and dragged her towards the back of a church located in Barangay Rotrotooc, Mayantoc, Tarlac. Thereat, the appellant choked her. While she was crying, she tried to break away from the appellant's hold and which she successfully did. She hastened to her sister, who was also buying an item at the store, and they went home immediately. Upon arrival at their house, she reported the incident to her grandmother.^[6]

At the time of the incident, BBB, the father of AAA, was in Manila and he only learned about what happened to AAA on the following day upon returning home to Tarlac. The matter was brought to the barangay authorities but no settlement was reached between the parties and a *Certificate to File Action* was consequently issued. On 02 September 2011, BBB had AAA examined at Magalued Clinic where the latter was diagnosed to have a sprain at her left shoulder.^[7] Then, on 05 September 2011, BBB and AAA went to the Mayantoc police station where they jointly executed a sworn statement^[8] about what happened to AAA.

In an *Information*^[9] dated 29 June 2012, the appellant was charged before the Regional Trial Court (RTC) of Camiling, Tarlac with slight physical injuries in relation to R.A. 7610, the accusatory portion of which reads:

"That on or about August 28, 2011 around 5:00 p.m. In the Municipality of Mayantoc, Province of Tarlac, and within the jurisdiction of this Honorable Court, the above named accused did then and there, willfully, unlawfully, and feloniously choked the neck and pull the hands of Angel L. Bumatay, 6 years old thereby inflicting upon her physical injuries which require medical attendance for a period of less than nine (9) days which act is prejudicial to the normal development and growth of the complainant as a child.

CONTRARY TO LAW."^[10]

When arraigned on 22 January 2013, the appellant entered a plea of not guilty to the crime with which he had been charged.^[11]

The appellant interposed the defense of *alibi*. He claimed that at the time of the incident he was working at *Manny Cucuz Panciteria* in Las Pinas, Metro Manila. He posited that no one could corroborate his *alibi* because he could not contact his co-workers and employer as his cellular phone was lost. When asked for any proof of his employment at that restaurant, he could not present one.^[12]

After the trial, the RTC found the appellant guilty as charged. It accorded more weight to the positive declaration of AAA than the uncorroborated *alibi* of the appellant.

The appellant moved for a reconsideration but the motion was denied^[13] by the RTC.

Dismayed, the appellant filed the instant appeal on the sole ground that the RTC gravely erred in convicting him because the prosecution failed to prove his guilt beyond reasonable doubt.

The appellant questions the credibility of AAA. He argues that it is unbelievable testimony that he would just pull and drag away AAA only to threaten to kill her. Assuming for the sake of argument that he intended to commit a crime, he, certainly, would have chosen a more discreet place other than the back of the church where people are sure to pass by and which place is well-lighted. Furthermore, he argues that it is quite odd that the prosecution never presented AAA's sister or grandmother to corroborate AAA's statements. He further posits that the *Medical Certificate* does not support AAA's claim that she was choked by him because it contained no findings of any injury along AAA's neck. Finally, he maintains that even if his *alibi* is not worthy of credence, still he could not be convicted as charged because the prosecution failed to prove his guilt beyond reasonable doubt.

As with the RTC, the Solicitor General is also convinced that the appellant is guilty as charged. He opines that the testimony of AAA is natural, spontaneous, consistent and credible and is thus sufficient proof to convict the appellant. Also, he maintains that there is no proof of prior ill feelings on the part of AAA and her father that would suggest any improper motive on their part to falsely testify against the appellant.

We sustain the appellant's conviction.

The RTC ruled that the testimony of AAA passed the test of credibility. It concluded that the frank and categorical declaration of AAA bore the hallmarks of truth especially that she was a minor. Well-settled is the rule that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts. Matters affecting credibility are best left to the trial court because of its unique opportunity to observe the elusive and incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case.^[14] We have perused the records as well as the transcript of stenographic notes and found no cogent reason to depart from this oft-repeated principle.

AAA's narration of how she was maltreated by the appellant was candid, categorical and straightforward, to wit:

“THE PROSECUTOR:

Q: Will you tell us where were you on August 28, 2011?

THE WITNESS:

A: I was in our house, sir.

Q: While you were in your house, what did you [sic] grandmother tell you, if any?

A: To buy in the sari-sari store, sir.

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Q: And when you reached the store, what happened?

A: Someone called me, sir.

Q: And what did you do when that someone called you?

A: I went near him, sir.

Q: Who was that person?

A: Benigno, Jose, sir.

Q: The Benigno Jose you earlier pointed?

A: Yes, sir.

Q: And when you went near Benigno Jose, what happened?

A: He held my hand and he dragged me at the back of the church, sir.

Q: So he held your hand and dragged you at the back of the church. What happened at the back of the church?

A: He choked me, sir.

Q: While the accused was choking you, what happened?

A: I cried, sir.

Q: And when you cried, what happened?

A: I tried to free myself, sir.

Q: Were you able to free yourself?

A: Yes, sir."^[15]

Even during cross-examination, AAA remained firm and consistent in her testimony. She even corrected the defense counsel, and we quote:

"xxx xxx xxx

Q: And when you went near him you claimed that he suddenly choked you or held you. Is that what you are saying?

A: No. sir.

Q: So what happened when you went near him?

A: He held my hand, sir."^[16]

The foregoing testimony was further strengthened by the diagnosis of Dr. Ruperto D. Magalued, who examined AAA and found that the latter had *"left shoulder sprain secondary to trauma."*^[17] The lack of injury on the neck of AAA does not necessarily render her testimony to be incredible. As quoted above, AAA's declaration of how the appellant maltreated her was clear and spontaneous such that, by itself, it could support the latter's conviction. Furthermore, there had been no showing of any improper motive on AAA's part to falsely testify against the appellant. What would AAA gain by going at length in prosecuting the accused? AAA's testimony had not been diluted such that is worthy of belief.