



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 14, 2021**, which reads as follows:

**“G.R. No. 248730 (Romualdo Rafols alias “Boboy,” Luis Espina, Jose Rodriguez alias “Babei”\* and Celso Evangelista alias “Babie” v. People of the Philippines).** – This is a Petition for Review on *Certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated February 12, 2019 of the Court of Appeals (CA), in CA G.R. CEB-CR No. 02785 which affirmed the Decision<sup>3</sup> dated January 29, 2016 of Branch 29, Regional Trial Court (RTC), Toledo City in Criminal Case No. TCS-10311. The RTC Decision<sup>4</sup> affirmed the Decision<sup>5</sup> dated November 27, 2014 of the Municipal Trial Court in Cities (MTCC), Toledo City, in Criminal Case No. A-6896 finding Romualdo Rafols alias “Boboy” (Rafols), Luis Espina (Espina), Jose Rodriguez alias “Babei” (Rodriguez) and Celso Evangelista alias “Babie” (Evangelista) (collectively, petitioners) guilty beyond reasonable doubt of the crime of Direct Assault defined under Article 148 of the Revised Penal Code (RPC).

*The Antecedents*

Petitioners were charged with the crime of Direct Assault before the MTCC in an Information<sup>6</sup> which states:

That on or about 18 May 2001, at around 11:00 in the morning, more or less, in the City of Toledo, Philippines, and within the jurisdiction of this Honorable Court, said accused with evident premeditation, conspiring and confederating together and mutually helping each other, knowing that the City Board of Canvassers (CBOC) of Toledo City, composed of Atty. Federico S. Sanchez, who as COMELEC Registrar was chairman and Mr. Jose C. Cabantan, who as Schools Division Superintendent was a member, was holding

\* Babie in some parts of the *rollo*.

<sup>1</sup> *Rollo*, pp. 15-37.

<sup>2</sup> *Id.* at 45-59; penned by Associate Justice Louis P. Acosta with Associate Justices Pamela Ann Abella Maxino and Dorothy Montejo-Gonzaga, concurring.

<sup>3</sup> CA *Rollo*, pp. 31-39; penned by Presiding Judge Ruben F. Altubar.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 42-50; penned by Presiding Judge Albie Carmelo R. Pescadero.

<sup>6</sup> As culled from the CA Decision, *rollo*, p. 46.

session in canvassing election returns coming from different precincts of the City in relation to the May 14, 2001 elections, did then and there willfully, unlawfully and feloniously barge into and enter the canvassing room and after having entered thereto, employed force and seriously intimidate by the use of firearm and physically attacking and laying hands on the aforementioned members of the CBOC, causing fear, commotion, panic and pandemonium in the canvassing room.

CONTRARY TO LAW.<sup>7</sup>

Petitioners pleaded not guilty to the crime charged.<sup>8</sup>

Trial on the merits ensued.

The prosecution established that at around 8:00 a.m. of May 18, 2001, the Toledo City Board of Canvassers (CBOC), composed of Atty. Federico Sanchez (Atty. Sanchez) as Chairman and Dr. Jose S. Cabantan (Dr. Cabantan) as member, convened at the session hall for the canvassing of the May 14, 2001 election returns. At around 11:00 a.m., Juanito Alferez (Alferez) and petitioners entered the session hall. Upon seeing Rafols carrying a gun, Police Officer 3 Napoleon Monteroso sought the assistance of the members of the Provincial Mobile Group (PMG).<sup>9</sup>

Inside the hall, Rodriguez pointed at Dr. Cabantan. Thereafter, Espina approached Dr. Cabantan and arm-locked his neck. Alferez also arm-locked Atty. Sanchez's neck. At that instance, Rafols pointed a gun at Atty. Sanchez. Thereafter, Alferez dragged Atty. Sanchez towards Evangelista, who held the latter's jaw and attempted to hit him. Eventually, the commotion ceased when the members of the PMG arrived.<sup>10</sup>

For their part, petitioners denied the allegations hurled against them.

Espina averred that he and the other petitioners went inside the session hall when they received a request for assistance from a certain Atty. Tan pertaining to a commotion. Once inside the hall, Espina saw two persons assaulting Dr. Cabantan. When Dr. Cabantan asked for help, Espina pushed the two persons aside and told them not to harm Dr. Cabantan. During trial, Espina identified Dr. Cabantan's affidavit of desistance.<sup>11</sup>

Rodriguez alleged that he was not one of the men who caused the commotion. He recalled having seen five men enter the session hall,

<sup>7</sup> As culled from the CA Decision, *id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 47.

<sup>10</sup> *Id.* at 47-48.

<sup>11</sup> *Id.* at 49.

where one of them swept away a CBOC table.<sup>12</sup>

Rafols averred that in the morning of May 18, 2001, he entered the session hall only after the commotion ceased. He denied having carried a gun.<sup>13</sup>

Evangelista asserted that when the commotion happened, he and his assistants went to the ground floor where he told the police officers to secure the CPU. Thereafter, he went home.<sup>14</sup>

#### *The MTCC Ruling*

The MTCC convicted petitioners of Direct Assault and sentenced each of them to suffer the penalty of imprisonment of four (4) months and one (1) day, as minimum, to three (3) years, six (6) months, and twenty-one (21) days, as maximum, and to pay a fine of ₱1,000.00 each.<sup>15</sup>

The MTCC held that petitioners' guilt was proven beyond reasonable doubt. It ruled that the positive and straightforward accounts of the prosecution's witnesses prevail over petitioners' defense of denial. Moreover, it found that all petitioners acted in concert in committing the crime charged.<sup>16</sup>

#### *The RTC Ruling*

The RTC affirmed the MTCC Decision with modification as to the penalty. It sentenced petitioners to suffer the penalty of four (4) months and one (1) day of *arresto mayor* in its maximum period, as minimum, to three (3) years, six (6) months, and twenty-one (21) days of *prision correccional* in its medium period as maximum and to pay a fine of ₱1,000.00 each, with subsidiary imprisonment in case of insolvency.<sup>17</sup>

The RTC agreed with the MTCC's findings that all the elements of the crime charged were proven by the prosecution beyond reasonable doubt. Further, it concurred with the MTCC's findings of conspiracy of all the petitioners in the commission of the crime.<sup>18</sup>

#### *The CA Ruling*

In the assailed Decision<sup>19</sup> dated February 12, 2019, the CA

---

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 49-50.

<sup>14</sup> *Id.* at 50.

<sup>15</sup> *CA rollo*, p. 50.

<sup>16</sup> *Id.* at 46-48.

<sup>17</sup> *Id.* at 39.

<sup>18</sup> *Id.* at 38.

<sup>19</sup> *Rollo*, pp. 45-59.

affirmed the RTC Decision.<sup>20</sup> The CA ruled that all elements of Direct Assault in the second mode were proven by the prosecution beyond reasonable doubt. It likewise found that petitioners acted in concert in committing the crime charged.<sup>21</sup>

Hence, the instant petition.

On August 15, 2019, petitioners' counsel notified the Court of the death of Rafols.<sup>22</sup> Hence, Rafol's criminal liability is extinguished.

Petitioners assert that there are several inconsistencies in the statements of the prosecution's witnesses. According to them, the inconsistencies are not merely trivial because the inconsistent statements involved the participation of each petitioner in the crime charged.<sup>23</sup> Moreover, petitioners maintain that no conspiracy exists among them.<sup>24</sup>

On the other hand, the People reiterate that: (1) the testimonies of the prosecution witnesses are credible;<sup>25</sup> (2) there is no evidence of any ill motive on their part in testifying against petitioners;<sup>26</sup> (3) denial cannot prevail over the positive identification of petitioners as the perpetrators of the crime;<sup>27</sup> and petitioners' guilt was proven beyond reasonable doubt.<sup>28</sup>

#### *Issue*

Whether the CA erred in affirming petitioners' conviction.

#### *Our Ruling*

The MTCC, RTC, and CA issued a uniform ruling. The Court finds no compelling reason to depart from the lower courts' factual findings.

Direct assault as defined under Article 148 of the RPC is a crime against public order that 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;<sup>29</sup> *second*, by any person or persons who, without a public uprising, shall attack, employ force, or

<sup>20</sup> CA rollo, pp. 31-39.

<sup>21</sup> Rollo, pp. 53-58.

<sup>22</sup> *Id.* at 10-12.

<sup>23</sup> *Id.* at 18.

<sup>24</sup> *Id.* at 35-36.

<sup>25</sup> *Id.* at 83.

<sup>26</sup> *Id.* at 87-88.

<sup>27</sup> *Id.* at 88.

<sup>28</sup> *Id.*

<sup>29</sup> *Gelig v. People*, 640 Phil 109, 116-117 (2010). *People v. Vibal, Jr.*, G.R. No. 229678, June 20, 2018.

seriously intimidate or resist any person in authority or any of his or her agents, while engaged in the performance of official duties, or on occasion of such performance.<sup>30</sup>

The case falls under the second mode.

In prosecuting a case involving the crime of Direct Assault under the second mode, the following elements must be established: (1) that the offender makes an attack, employs force, makes a serious intimidation, or makes a serious resistance; (2) that the person assaulted is a person in authority or his or her agent; (3) that at the time of the assault, the person in authority or his or her agent is engaged in the actual performance of official duties, or that he or she is assaulted by reason of the past performance of official duties; (4) that the offender knows that the one he or she is assaulting is a person in authority or his or her agent in the exercise of his duties; and (5) that there is no public uprising.<sup>31</sup>

The prosecution was able to prove beyond reasonable doubt the existence of the above-mentioned elements. Petitioners acted in concert in attacking, employing force, and seriously intimidating Atty. Sanchez and Dr. Cabantan, who are persons in authority – Chairperson and member, respectively, of the CBOC of the May 14, 2001 Elections. Undeniably, Atty. Sanchez and Dr. Cabantan were in the actual performance of their duties when the petitioners assaulted them. Petitioners also knew that Atty. Sanchez and Dr. Cabantan were persons in authority as they were part of the CBOC and canvassing of the election returns at the time of the incident. Finally, there was no public uprising.

The prosecution also proved conspiracy among petitioners. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.<sup>32</sup> “It can be proven by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action, and community of interest.”<sup>33</sup> Petitioners’ community of criminal design could be inferred from the following circumstances: (a) they arrived at the session hall at the same time where the canvassing was conducted, (b) they were armed with weapons, and (c) there was community of purpose to seriously intimidate and attack Atty. Sanchez and Dr. Cabantan.

Petitioners cannot escape liability on the strength of the affidavit of desistance executed by Atty. Sanchez after he testified in open court. An affidavit of desistance is merely an additional ground to buttress the

---

<sup>30</sup> *Id.*

<sup>31</sup> *Mallari v. People*, G.R. No. 224679, February 12, 2020.

<sup>32</sup> Article 8, Revised Penal Code.

<sup>33</sup> *People v. Amago*, G.R. No. 227739, January 15, 2020.

accused's defenses, not the sole consideration that can result in acquittal.<sup>34</sup> Mere retraction by a complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if credible.<sup>35</sup> There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge.<sup>36</sup> Concededly, the State has the sovereign right to prosecute criminal offenses under the full control of the fiscal, and dismissal of criminal cases by the complainant's desistance is not looked upon with favor.<sup>37</sup> Here, the prosecution witnesses' statements, including that of Atty. Sanchez, pointing to petitioners as the culprits are credible, candid, and straightforward.

As to the penalty imposed, the RTC correctly imposed the penalty of four (4) months and one (1) day, as minimum to three (3) years, six (6) months, and twenty-one (21) days, as maximum and a fine of ₱1,000.00 each. Under Article 148<sup>38</sup> of the RPC, persons who are found guilty of Direct Assault shall suffer the penalty of *prision correccional in its medium and maximum periods and a fine not exceeding ₱1,000.00*, when the assault is committed *with a weapon* or when the offender lays hands upon a person in authority, as in the case.

Notably, Article 148 of the RPC was amended by Section 13<sup>39</sup> of RA 10951,<sup>40</sup> which was approved on August 29, 2017. While it is conceded that the crime charged was committed way before the enactment of RA 10951, the newly enacted law expressly provides for retroactive application only if it is favorable to the accused or person

<sup>34</sup> *Adlawan v. People*, 830 Phil. 88 (2018).

<sup>35</sup> *Id.*

<sup>36</sup> *Tadena v. People*, G.R. No. 228610, March 20, 2019.

<sup>37</sup> *Id.*

<sup>38</sup> Article 148. *Direct assaults*. - Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purpose 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 P1,000 pesos*, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prision correccional in its minimum period and a fine not exceeding P500 pesos* shall be imposed. (Italics supplied)

<sup>39</sup> Section 13. Article 148 of the same Act is hereby amended to read as follows:

“Art. 148. *Direct assaults* - Any 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 of any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prisión correccional in its medium and maximum periods and a fine not exceeding Two hundred thousand pesos (₱200,000)*, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prisión correccional in its minimum period and a fine not exceeding One hundred thousand pesos (₱100,000)* shall be imposed.” (Italics supplied)

<sup>40</sup> An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as “The Revised Penal Code”, as Amended

serving final judgment.<sup>41</sup> The Court finds that the application of RA 10951 is not favorable to herein petitioners as the law increases the penalty of fine from ₱1,000.00 to ₱200,000.00. Thus, RA 10951 cannot be applied retroactively in the case.

Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty shall be taken from the proper penalty that could be imposed under the RPC for direct assault which, there being no mitigating or aggravating circumstance, shall be taken from the medium period of *prision correccional* in its medium and maximum periods, or three (3) years, six (6) months, and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days. On the other hand, the minimum term shall be taken from the penalty next lower in degree which is *arresto mayor* in its maximum period to *prision correccional* in its minimum period or four (4) months and one (1) day to two (2) years and four (4) months. Thus, the RTC correctly imposed the penalty of imprisonment of four (4) months and one (1) day of *arresto mayor*, as minimum, to three (3) years, six (6) months, and twenty-one (21) days of *prision correccional*, as maximum and to pay a fine of ₱1,000.00 each.

**WHEREFORE**, the petition is **DENIED**. The Decision dated February 12, 2019 of the Court of Appeals in CA G.R. CEB-CR No. 02785 is **AFFIRMED** only insofar as petitioners Luis Espina, Jose Rodriguez alias “Babei”, and Celso Evangelista alias “Babie”. Criminal Case No. A-6896 before the Municipal Trial Court in Cities, Toledo City is **DISMISSED** insofar as petitioner Romualdo Rafols alias “Boboy” is concerned in view of his death.

**SO ORDERED.**” (ROSARIO, J., designated as additional member per Special Order No. 2833 dated June 29, 2021).

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court  
6/14/22

Atty. Roquesa M. Joyo-Alcomendras  
Counsel for Petitioner  
G/F JLM Building, [Toledo Commercial  
Arcade Area] Poblacion, Toledo City  
6038 Cebu

COURT OF APPEALS  
CA-G.R. CEB-CR No. 02785  
6000 Cebu City

<sup>41</sup> Section 100. *Retroactive Effect*. - This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
1229 Legaspi Village, Makati City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 29, 6038 Toledo City  
[Crim. Case No. TCS-10311]


The Presiding Judge  
MUNICIPAL TRIAL COURT in CITIES  
6038 Toledo City  
[Crim. Case No. A-6896]

PHILIPPINE JUDICIAL ACADEMY  
Research Publications and Linkages Office  
Supreme Court, Manila  
[research\_philja@yahoo.com]

PUBLIC INFORMATION OFFICE  
Supreme Court, Manila  
[For uploading pursuant to A.M. 12-7-1-SC]

LIBRARY SERVICES  
Supreme Court, Manila

Judgment Division  
JUDICIAL RECORDS OFFICE  
Supreme Court, Manila

G.R. No. 248730  
*leni* 

  
(198)  
URES