



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

**ROCHARD BALSAMO y
DOMINGUEZ,**

Petitioner,

— versus —

**PEOPLE OF THE
PHILIPPINES,**

Respondent.

G.R. No. 260109

Present:

LEONEN, *SAJ*, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ*.

Promulgated:

APR 12 2023

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D E C I S I O N

M. LOPEZ, J.:

The question of whether the crime is direct assault or resistance and disobedience to persons in authority or their agents depends on the gravity of the act proved and the particular conditions under which it is committed. The courts must consider the circumstances surrounding the conduct of the offender, the motives prompting it, and the real importance of the transgression.¹ We observe this doctrine in this Petition for Review on *Certiorari*² assailing the Court of Appeals' (CA) Decision³ dated November 11, 2021 in CA G.R. SP No. 10207-MIN.

¹ *People v. Brás*, 765 Phil. 743, 811 (2015) [Per J. Carpio, Second Division]; see also *United States v. Tapiana*, 37 Phil. 515 (1911) [Per J. Street, *En Banc*].

² *Rolla*, pp. 3-21.

³ *Id.* at 24-38. Penned by Associate Justice Richard O. Mordeno, with the concurrence of Associate Justices Evelyn M. Arellano-Ayralles and Alfredo C. Ruiz U.

ANTECEDENTS

On February 10, 2016 at 4:30 p.m., Dexter Cris Adalim (Dexter) contacted his brother Police Officer 3 Policarpio Adalim III (PO3 Adalim) who was assigned at the Police Intelligence Branch Office, Camp Abelon in Pagadian City. Dexter told PO3 Adalim that he was hiding in their house at Purok Santan B, San Jose District after their drunk neighbor Rochard Balsamo (Rochard) punched and threatened to shoot him. Immediately, PO3 Adalim reported the incident to the police station and responded together with Police Officer 1 Gerome Tare (PO1 Tare). At that time, PO3 Adalim and PO1 Tare were in civilian clothes since members of the Intelligence Branch are not required to be in uniform except during inspections. Upon arrival at Purok Santan B, PO3 Adalim saw Rochard about to charge at Dexter. PO3 Adalim shouted to stop Rochard and introduced himself as a police officer. But Rochard ran to the direction of his house. PO3 Adalim ran after Rochard and was able to get hold of his right arm. However, Rochard punched PO3 Adalim in his chest. Rochard then entered his house and slammed the gate shut which hit PO3 Adalim's right upper arm and caught his four fingers. PO3 Adalim sustained slight abrasions and swollen fingers. Thereafter, Bernardo Bayoyo (Bernardo) helped PO3 Adalim convince Rochard to come out of the house. Minutes later, Rochard surrendered himself to the authorities.⁴ Accordingly, Rochard was charged with direct assault before the Municipal Trial Court in Cities (MTCC), to *wit*:

That on the 10th day of February 2016, at around 4:30 o'clock [*sic*] in the afternoon, more or less, at Purok Santan B, San Jose District, Pagadian City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously attack and boxed hitting the chest and injuring the fingers of PO3 POLICARPIO ADALIM III, a member of Philippine National Police, Pagadian City, which fact is known to the accused, on the accusation when the said police officer was actually engaged in the performance of his duties, in violation of Article 148 of the Revised Penal Code.

CONTRARY TO LAW.⁵

Rochard denied the accusation and claimed that on February 10, 2016 at 4:30 p.m., he went out of the house to get his motorcycle to fetch his children from school. However, Dexter approached and stared at him. Suddenly, Bernardo held him tightly while Dexter punched him. Rochard asked help from his cousin Christopher Balsamo (Christopher) who pacified the commotion. Rochard reported the matter to the barangay and returned home. Thereafter, Rochard went outside but he sensed danger when two armed men in civilian clothes approached him. Rochard hurriedly ran back to his house and locked the gate. The two men forcibly opened the gate and

⁴ *Id.* at 26-27.

⁵ *Id.* at 70-71.

mauled Rochard who sustained abrasions and bruises on his face. The two men dragged Rochard out of the house and beat him again. Dexter and Bernardo joined the fray. Later, Rochard was arrested and brought to the police station where he learned the identity of the armed men as police officers.⁶

On May 4, 2020, the MTCC found Rochard guilty of direct assault committed against PO3 Adalim. The MTCC rejected Rochard's defense that he has no knowledge that PO3 Adalim is a police officer,⁷ thus:

The evidence of the prosecution proves that PO3 Policarpio S. Adalim III is a member of the Philippine National Police assigned at Provincial Intelligence Branch, Camp Abelon, Pagadian City. Thus, he is an agent of person in authority pursuant to Art. 152 of the Revised Penal Code. On February 10, 2016 around 4:30 o'clock [*sic*] in the afternoon, PO3 Policarpio S. Adalim III together with PO1 Gerome Tare responded to the call of his brother Dexter Cris S. Adalim asking him for an assistance at Purok Santan B, San Jose District, Pagadian City because he was in trouble with his neighbor and the latter threatened him to be killed. Thus, when PO3 Policarpio S. Adalim III responded to the call for assistance from his brother, he was engaged in the performance of his duty as a police officer.

Upon arrival at the reported place of incident, PO3 Adalim III and PO1 Tare saw the accused and Dexter Cris Adalim were about to charge each other again. PO3 Adalim III then shouted to the accused and Dexter Cris Adalim to stop the fight, and they are police officers. Upon seeing the arrival of PO3 Adalim III and PO1 Tare, and upon hearing the announcement of the former, accused hurriedly run towards his house; PO3 Adalim chased the accused while PO1 Tare hold [*sic*] Dexter Cris Adalim. When PO3 Adalim III was able to hold the right arm of the accused, the latter punched the chest of the former, and upon reaching the gate, accused quickly closed it injuring the fingers of police officer Adalim III after his fingers were caught with the metal of the gate. xxx Thus, accused makes an attack, employ force [*sic*], or makes a serious resistance unto police officer Policarpo[*sic*] S. Adalim III but there is no public uprising. x x x

The denial of the accused that he does not know PO3 Policarpio S. Adalim and PO1 Gerome Tare as police officers cannot prevail over the positive declaration of PO3 Adalim III and PO1 Tare that police officer Adalim III identified themselves as police officers when they arrived at the place of incident. In fact, the declaration of police officer Adalim III that they are police officers was loud and clear as testified by the witnesses of the Prosecution.

x x x x

⁶ *Id.* at 42.

⁷ *Id.* at 47-68.

WHEREFORE, finding Rochard D. Balsamo guilty beyond reasonable doubt of the crime of Direct Assault defined and penalized under Art. 148 of the Revised Penal Code, this Court hereby rendered judgment convincing him of the said offense, and he is sentenced to suffer an indeterminate penalty of four (4) months and one (1) day of arresto mayor, as minimum, to one (1) year and one (1) month of prision correccional, as maximum, imprisonment. He is likewise ordered to pay a fine of [FIVE HUNDRED PESOS] ([PHP 500.00]) and to pay the costs.

SO ORDERED.⁸

Rochard appealed to the Regional Trial Court (RTC) and reiterated that he was not aware that PO3 Adalim was a police officer since he was in civilian clothes. Moreover, Rochard alleged that he had no criminal intent when he punched and injured PO3 Adalim. On December 29, 2020, the RTC affirmed the MTCC's findings that Rochard was guilty of direct assault and pointed out that PO3 Adalim was performing his duty to investigate a crime when the assault happened,⁹ viz.:

x x x Accused-appellant's self-serving declaration that he did not know then that private complainant was a police officer is untenable. Private complainant testified, as corroborated by the other State witnesses, that when accused-appellant and a certain Dexter Cris Adalim was about to further charge against each other, private complainant and fellow police officer PO1 Tare introduced themselves as police officers and ordered both accused-appellant and a certain Dexter Cris Adalim to stop the fight. Thereafter, when said police officers were about to interrogate both accused-appellant and Dexter Adalim about the occurrence, accused-appellant ran away in disobedience of the authority of private complainant to investigate the participants of the brawl, which prompted private complainant to chase him.

There is no question, therefore, that the act by private complainant of chasing a fleeing suspect was in performance of his duty and such performance enjoys presumption of regularity. When accused-appellant admitted that he may have hurt private complainant when the latter chased him as he was trying to resist the latter negates his position that he had no intention of committing Direct Assault [.] *

x x x x

WHEREFORE, in view of the foregoing, the instant appeal is hereby DISMISSED. The court a quo's Decision dated May 4, 2020 is hereby AFFIRMED.

SO ORDERED.¹⁰

⁸ *Id.* at 67-68.

⁹ *Id.* at 43-46.

¹⁰ *Id.* at 44-46.

Dissatisfied, Rochard elevated the case to the CA through a Petition for Review docketed as CA-G.R. SP No. 10207-MIN. Rochard argued that he is only liable for resistance or disobedience considering that PO3 Adalim's injuries are not of a serious nature. On November 11, 2021, the CA agreed with the trial courts' rulings that all the elements of direct assault are present,¹¹ to wit:

As borne out by the records, the prosecution was able to prove that petitioner made an attack, employed force and made a serious resistance upon SPO1 Adalim. As observed by the MTCC and RTC, SPO1 Adalim responded to the call for assistance from his brother, Dexter. Upon arrival at the place of incident, he and PO2 Tare saw Dexter and petitioner engaged [*sic*] in a serious fight. SPO1 Adalim shouted at the protagonists to stop the fight and introduced himself and PO2 Tare as police officers. However, upon hearing the reprehension, petitioner immediately fled and ran towards his house. SPO1 Adalim chased petitioner and was able to hold the latter's right arm. Petitioner however punched him at his chest, but even then, he still continued to run after the petitioner. When petitioner reached the gate of his house, he slammed the gate and quickly closed it, but in the process however, SPO1 Adalim's fingers were caught with the metal of the gate and got injured as a consequence. Interestingly, petitioner never denied this fact and even admitted that he may have hurt SPO1 Adalim, albeit putting up the lame excuse that he was merely defending himself for fear of his life.

Petitioner, however, insists that his act of allegedly punching the chest of SPO1 Adalim and injuring the latter's fingers are not serious as to constitute employment of force. Hence, he argues that since the use of physical force against SPO1 Adalim is not serious, he should be held liable only for the crime of resistance and disobedience under Article 151 of the RPC.

x x x x

In this case, the MTCC and RTC are one in saying that petitioner's use of physical force against SPO1 Adalim was serious. As found by both the MTCC and RTC, petitioner's acts of punching the chest of SPO1 Adalim and quickly closing the gate and thereby injuring SPO1 Adalim's fingers as a consequence were serious because it constitutes an [*sic*] offensive or antagonistic actions committed against SPO1 Adalim. x x x.

x x x x

Further, as held by the MTCC and RTC, petitioner was aware that SPO1 Adalim is an agent of a person in authority who was engaged in the actual performance of official duties at the time of the assault. x x x And *finally*, there was no public uprising at the time of the assault.

¹¹ *Id.* at 24-38.

Against the damning evidence presented by the prosecution, what petitioner could only muster is a barefaced denial. It is a cardinal rule that the defense of denial cannot stand when faced with clear positive identification of the accused as the person who committed the crime. x x x

x x x x

Anent the penalty x x x, this Court finds it to be in accordance with law. Under Article 148 of the RPC, the crime of direct assault is punishable with *prision correccional* in its minimum period and a fine not exceeding [PHP] 500.00 in the absence of qualifying aggravating circumstances, such as in this case.

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be that which, in view of attending circumstances, could properly imposed under the rules of the RPC, and the minimum term shall be taken from the penalty next lower to that prescribed by RPC. As such, the maximum term of the penalty shall be taken from *prision correccional* in its minimum period, that is, [*sic*] six (6) months and one (1) day to two (2) years and four (4) months; while the minimum term shall be taken from penalty next lower which is *arresto mayor*, that is, one (1) month and one (1) day to six (6) months.

x x x x

WHEREFORE, the Amended Petition is DENIED. The assailed Decision dated 29 December 2020 and the Resolution dated 17 February 2021, both rendered by the Regional Trial Court, 9th Judicial Region, Branch 19, Pagadian City, are hereby AFFIRMED.

SO ORDERED.¹²

Rochard sought reconsideration but was denied.¹³ Hence, this Petition. Rochard contends that the CA erred in finding him guilty of direct assault and insisted that he was merely evading arrest without intention to defy the authority of PO3 Adalim. On the other hand, the People, through the Office of the Solicitor General (OSG), insists that Rochard committed direct assault because he intentionally used force and injured PO3 Adalim while performing his duties as a police officer.¹⁴

¹² *Id.* at 34-37.

¹³ *Id.* at 40-41.

¹⁴ *Id.* at 79-97.

RULING

The Petition is partly meritorious.

Direct assault is a crime against public order and the principal object is to penalize the spirit of lawlessness or lack of respect for the rule of law. There are two modes of committing direct assault: *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 their agents, while engaged in the performance of official duties, or on occasion of such performance.¹⁵

Rochard was charged under the second mode of direct assault which has the following elements, to *wit*: (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 their agent; (3) that at the time of the assault, the person in authority or their agent is engaged in the actual performance of official duties, or that they are assaulted by reason of the past performance of official duties; (4) that the offender knows that the one they are assaulting is a person in authority or his or her agent in the exercise of their duties; and (5) that there is no public uprising.¹⁶

At the trial, the prosecution established the second, third, fourth, and fifth elements of direct assault. The CA, the RTC, and the MTCC are unanimous in their findings that PO3 Adalim is an agent of a person in authority. As a police officer, PO3 Adalim was charged with the maintenance of public order and the protection and security of life and property.¹⁷ Also, PO3 Adalim was engaged in the actual performance of his duties at the time of the assault. PO3 Adalim responded to investigate the alleged threats committed against his brother and to apprehend the culprit. More importantly, Rochard knew that the victim is possessed with some sort of authority. PO3 Adalim introduced himself as a police officer when he arrived at the place of the incident. Lastly, it is undisputed that there was no public uprising.

The controversy lies in the first element: whether the nature and amount of force that Rochard employed against PO3 Adalim constitute direct assault. On this score, the Court held that the use of physical force against the agent of a person in authority in direct assault must be serious. Otherwise, the crime is only resistance or disobedience defined under Article 151 of the Revised Penal Code,¹⁸ thus:

¹⁵ Revised Penal Code, Article 148.

¹⁶ *Rafols, et al. v. People*, G.R. No. 248730, July 14, 2021 [Notice, Third Division].

¹⁷ Revised Penal Code, Article 152.

¹⁸ *Mullari v. People*, 870 Phil. 687 (2020) [Per J. Leonen, Third Division].

In *United States v. Gumban*, this Court held that the amount of force employed against agents of persons in authority spells the difference between direct assault and resistance or disobedience:

In reaching this conclusion, we took into account the decision rendered by this court in the case against Gelacio Tabiana and Canillas, in which it is said that **the distinction between an assault and a resistance to agents of authority lies largely in the amount of the force employed in each case, and that a sudden blow given to a policeman while engaged in effecting an arrest does not constitute that employment of force which is punishable as assault.** We have also considered the decision rendered by this court in the case against Cipriano Agustin . . . in which it was also held that a blow upon a policeman was not an aggression amounting to an assault. It must be remembered, however, that in these two cases the crime involved was that of assault upon agents of authority, in which the essential element is substantially the force employed. It is said in these two cases that **any force is not sufficient to constitute an assault[,] but that it is necessary to consider the circumstances of each case to decide whether the force used is, or is not, sufficient to constitute assault upon an agent of authority.**

Previous convictions for direct assault against an agent of a person in authority involve force that is more severe than slapping and punching. In *United States v. Cox*, the accused "seized [the police officer] by the throat, threw him to the ground, and struck him several blows with the club which he succeeded in wresting from the policeman[.]"

In *Rivera v. People*, the accused repeatedly hurled menacing threats against the police officer, challenged him to a fight, and scored a punch on the lip as they grappled. The officer sustained an injury that would take several days to heal, while the accused was only subdued with the help of other police officers. Thus:

. . . 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.

X X X X

As clarified in *People v. Breis*, if the use of physical force against agents of persons in authority is not serious, the offense is not direct assault, but resistance or disobedience:

The laying of hands or using physical force against agents of persons in authority when not serious in nature constitutes resistance or disobedience under Article 151, and not direct assault under Article 148 of the RPC. This is because the gravity of the disobedience to an order of a person in authority or his agent is measured by the circumstances surrounding the act, the motives prompting it and the real importance of the transgression, rather than the source of the order disobeyed. The pushing of IO1 Mangili is not of such serious defiance to be considered direct assault, but is resistance nonetheless.¹⁹

X X X X

In this case, it was established that petitioner grabbed the shirt of PO2 Navarro, then slapped and kicked him several times.

X X X X

Based on the circumstances, petitioner's resistance and use of force are not so serious to be deemed as direct assault. While she exerted force, it is not dangerous, grave, or severe enough to warrant the penalties attached to the crime.¹⁹ (Emphasis supplied)

Here, the facts show that PO3 Adalim chased Rochard and grabbed his right arm. Rochard punched PO3 Adalim in the chest in order to free himself and evade arrest. The act is done not to assault PO3 Adalim or to defy his authority. Rochard blindly slammed the gate while running away without knowing that it hit PO3 Adalim's arm and fingers. More telling is that PO3 Adalim sustained slight abrasions and swollen fingers. Also, PO3 Adalim was able to run after Rochard punched him in the chest, and withstand the pain from his injured fingers. Taken together, the circumstances surrounding the act, the motive prompting it, and the real importance of the transgression reveal that Rochard's use of force against PO3 Adalim is not dangerous, grave, or severe. Again, the force involved in direct assault must be serious or more than a sudden blow, slapping, or punching. Corollarily, although the charge is direct assault, the prosecution was able to prove resistance or disobedience. These felonies have similar

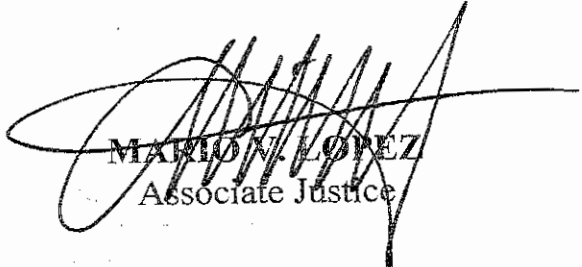
¹⁹ *Id.* at 698-704.

elements, varying only as to the degree of seriousness of the offender's resistance. Direct assault necessarily includes resistance or disobedience.²⁰

Under Article 151 of the RPC, the penalty of *arresto mayor* and a fine not exceeding PHP 500.00 shall be imposed upon any person, who not being liable for direct assault or indirect assault, shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance of official duties. If the disobedience to an agent of a person in authority is not of a serious nature, the penalty of *arresto menor* or a fine ranging from PHP 10.00 to PHP 100.00 shall be imposed upon the offender. In this case, the Court finds that Rochard is guilty of resistance to an agent of a person in authority considering the particular conditions under which the felony is committed. Hence, the Court deems it proper to impose upon Rochard the straight penalty of three months of *arresto mayor* and a fine of PHP 500.00. The Indeterminate Sentence Law is inapplicable given that the maximum term of imprisonment does not exceed one year.

ACCORDINGLY, the Petition is **PARTLY GRANTED**. The Court of Appeals' Decision dated November 11, 2021 and Resolution dated March 22, 2022 in CA G.R. SP No. 10207-MIN are **AFFIRMED** with **MODIFICATION**. Petitioner Rochard Balsamo y Dominguez is found guilty of resistance to an agent of a person in authority and is sentenced to suffer the penalty of three months of *arresto mayor* and pay a PHP 500.00 fine.

SO ORDERED.


MARION N. LOPEZ
Associate Justice

²⁰ *Id.* at 705.

WE CONCUR:



MARVIC M.V. F. LEONEN
Associate Justice
Chairperson



AMY C. LAZARO-JAVIER
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V. F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER C. GESMUNDO
Chief Justice

