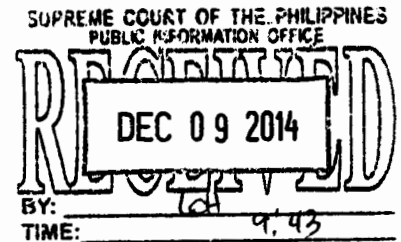




Republic of the Philippines  
**Supreme Court**  
 Manila  
**FIRST DIVISION**



**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 22, 2014** which reads as follows:*

**“G.R. No. 213747 - REX VELBES y AQUINO, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.-** The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

Before the Court is the appeal of accused-appellant Rex Velbes y Aquino from the Decision<sup>1</sup> dated February 20, 2014 of the Court of Appeals in CA-G.R. CR No. 35197, which affirmed with modification the Decision<sup>2</sup> dated August 15, 2012 of the Regional Trial Court (RTC), Branch 44, Dagupan City, in Criminal Case No. 2012-0306-D. The RTC, in turn, affirmed the Decision<sup>3</sup> of the Municipal Trial Court in Cities (MTCC), in Crim. Case No. 51717, finding him guilty beyond reasonable doubt of Direct Assault upon an Agent of a Person in Authority, defined and penalized under Article 148 of the Revised Penal Code.

Accused-appellant was charged as follows in an Information dated January 30, 2012 before the MTCC:

That on or about the 28<sup>th</sup> day of January 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **REX VELBES y Aquino**, did then and there, willfully, unlawfully and criminally, attack, assault and use personal violence upon **PO3 ALFONSO C. VILLAMIL**, PNP Member of this City, qualified and appointed as such, by attacking and grabbing

<sup>1</sup> Rollo, pp. 26-34; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Rodil V. Zalameda and Edwin D. Sorongon, concurring.  
<sup>2</sup> Id. at 57-60; penned by Judge Genoveva Coching-Maramba.  
<sup>3</sup> Id. at 54-56; penned by Judge Junius F. Dalaten.

his service pistol, while said **PO3 ALFONSO C. VILLAMIL**, was then engaged in the actual performance of his duties, or on occasion thereof, and knowing him to be so, and that as a consequence thereof, the herein offended party sustained damages.<sup>4</sup>

When arraigned, accused-appellant pleaded not guilty to the charge against him.

Police Officer (PO) 3 Alfonso C. Villamil (Villamil) testified for the prosecution. PO3 Villamil had been a member of the Philippine National Police (PNP) of Dagupan City since December 22, 2001 and he was then assigned at the Tondaligan Police Community Precinct No. 6, Bonuan Tondaligan, Dagupan City. According to PO3 Villamil, he reported for work on January 28, 2012. While on duty at the precinct, PO3 Villamil was approached by Ma. Cleofe Alcones (Alcones), who reported that Rex Velbes (Velbes) threatened to kill her and that Velbes threw a stone at the roof of her house causing damage to three galvanized iron sheets. PO3 Villamil, with PO1 Alexis Ulat, proceeded to the place of the incident, and upon their arrival, they encountered Velbes, who was obviously under the influence of liquor. Alcones pointed to Velbes and informed them that the latter was the one who threw a stone at the former's house. PO3 Villamil approached and asked Velbes what was his problem but Velbes rudely answered them "*Anggapoy problema dia, pawel kayo la, baunina yon pupulis kayo, sikami so hari dia, baonina yo* (There is no problem here, go back, vulva of your mother, you policemen, we are the king here, vulva of your mother). The police officers invited Velbes to the police station for a confrontation with complainant Alcones but Velbes repeatedly uttered the aforestated defamatory words. Velbes approached PO3 Villamil and tried to grab the pistol tucked in the police officer's waist. A struggle ensued between Velbes and PO3 Villamil over the gun, however, PO1 Ulat managed to pacify and handcuff Velbes. The police officers then brought Velbes to the hospital for medical examination.

Velbes took the witness stand in his own defense. Velbes denied the charge against him, narrating that on January 28, 2012, he was having a drinking spree with his uncle Pedro Aquino (Aquino) and several cousins at Aquino's house. Velbes went to the fence and was about to urinate when Alcones asked him to stop and threatened that she would send him to jail. In retaliation, Velbes threw stones at Alcones' house. Thereafter, the police officers came and one of them tripped him. Velbes was handcuffed, his left hand whipped with a pistol, and dragged to the mobile car. Aquino, Velbes' uncle, also took the witness stand for the defense and recounted that on January 28, 2012, as he was lying inside his house, Velbes and two cousins were having a drinking spree and joking with one another. Aquino then heard his sister-in-law Alcones shouting because Velbes pelted Alcones' house with stones. When the police officers arrived, they asked

---

<sup>4</sup> Id. at 52.

for Velbes' name, but Velbes replied, "Vulva of your mother, you policemen are animals." Consequently, the police officers handcuffed Velbes.

On May 31, 2012, the MTCC promulgated its Decision finding Velbes guilty as charged and imposing upon him the following penalties:

**WHEREFORE**, the court finds accused **Rex Velbes y Aquino GUILTY** beyond reasonable doubt of the crime of Direct Assault Upon an Agent of a Person in Authority and pursuant to law, he is hereby sentenced to suffer imprisonment consisting of indeterminate sentence of **two (2) years and four (4) months** of *prision correccional* in its minimum period as minimum to **four (4) years and two (2) months** of *prision correccional* in its medium period as maximum and to pay a fine of **Php1,000.00**.

With costs against the accused.<sup>5</sup>

Velbes appealed to the RTC. In its Decision dated August 15, 2012, the RTC held:

**WHEREFORE**, judgment is hereby rendered affirming *in toto* the assailed Decision of the Municipal Trial Court in Cities, Dagupan City dated May 31, 2012.<sup>6</sup>

Unwilling to accept the judgment of conviction against him, Velbes filed an appeal before the Court of Appeals. The appellate court rendered its Decision on February 20, 2014, the dispositive portion of which reads:

**WHEREFORE**, the petition is **DENIED**. The Decision dated August 15, 2012 of the Regional Trial Court [Branch 44, Dagupan City] in Criminal Case No. 2012-0306-D, is **AFFIRMED with MODIFICATION** in that petitioner Rex Velbes is hereby sentenced to suffer the indeterminate penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years and four (4) months of *prision correccional*, as maximum. Petitioner is likewise ordered to pay a fine of **₱500.00**.<sup>7</sup>

Hence, the instant appeal.

Velbes' appeal essentially consists of two questions: (1) on the sufficiency of evidence presented by the prosecution proving all the elements of the crime charged; and (2) on the propriety of the penalties imposed upon him.

We find no merit in Velbes' appeal and see no reason to disturb the judgment and sentence rendered by the Court of Appeals.

---

<sup>5</sup> Id. at 56.

<sup>6</sup> Id. at 60.

<sup>7</sup> Id. at 33.

Velbes attempts to point out inconsistencies and raise doubts as to the credibility of the testimony of PO3 Villamil, the lone witness for the prosecution. However, the settled rule is that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court. Without any clear showing that the MTCC, the RTC, and the Court of Appeals overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.<sup>8</sup>

Direct assault, a crime against public order, 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; 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 his agents, while engaged in the performance of official duties, or on occasion of such performance.<sup>9</sup>

The second mode is the most common form of assault. Its elements are: (a) that an offender makes an attack, employs force, makes a serious intimidation, or makes a serious resistance; (b) that the person assaulted is a person in authority or his agent; (c) that at the time of the assault the person in authority or his agent is engaged in the actual performance of official duties or that he is assaulted by reason of the past performance of official duties; (d) that the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties; and (e) that there is no public uprising.<sup>10</sup> As aptly observed by the Court of Appeals, all these elements are present in the instant case. It found that:

*Firstly*, the prosecution was able to prove that [Velbes] attacked PO3 Villamil by attempting to disarm him. The word "attack" includes any offensive or antagonistic movement or action of any kind. PO3 Villamil categorically and convincingly testified that when he asked [Velbes] to proceed to the police station regarding the complaint of Alcones, [Velbes] hurled invectives at him, attacked him and tried to grab his firearm, x x x.

x x x x

<sup>8</sup> *People v. Basao and Apole*, G.R. No. 189820, October 10, 2012, 683 SCRA 529, 543.

<sup>9</sup> *Rivera v. People*, 501 Phil. 37, 44-45 (2005).

<sup>10</sup> *Gelig v. People*, G.R. No. 173150, July 28, 2010, 626 SCRA 48, 54.

x x x [T]he acts imputed to [Velbes] (*i.e.* attempting to disarm PO3 Villamil and struggling with the latter) constitute offensive or antagonistic movements or actions committed against PO3 Villamil. Interestingly, [Velbes] admitted that he attempted to grab PO3 Villamil's firearm albeit putting up the lame excuse that he was merely defending himself from the police officers who acted in excess of authority. It is true that the police officers were not armed with a warrant of arrest at the time of the assault. However, [Velbes] and his witness admitted that he pelted stones at the house of Alcones and the police officers acted on her complaint. When confronted by the police officers, instead of explaining his side, [Velbes] hurled invectives at them and even attempted to disarm PO3 Villamil. At that precise moment, the crime of direct assault is considered consummated and the police officers correctly arrested [Velbes] since he had committed an offense in their presence and such offense was even committed against one of them. Ergo, there was no excess of authority to speak of because the warrantless arrest is considered reasonable and valid under Rule 113, Section 5(a) of the Revised Rules on Criminal Procedure.

*Secondly*, it is undisputed that PO3 Alfonso Villamil and PO1 Alexis Ulat are agents of persons in authority. An agent of a person in authority is any person who, by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barrio councilman, barrio policeman and barangay leader, and any person who comes to the aid of persons in authority.

*Thirdly*, [Velbes] was aware that PO3 Villamil is an agent of a person in authority who was engaged in the actual performance of official duties at the time of the assault. In fact, when PO3 Villamil asked him about the complaint of Alcones, [Velbes] even shouted, "*Anggapoy problema dia, pawel kayo la, baunina yon pupulis kayo, sikami so hari dia, baonina yo* (There is no problem here, go back, vulva of your mother you police officers, we are the king here, vulva of your mother)." Even [Velbes' uncle], Pedro Aquino, testified that [Velbes] said, "Vulva of your mother, you policemen are animal[s]." *Lastly*, there was no public uprising at the time of the assault.

As against the evidence adduced by the prosecution, what [Velbes] could only muster is a barefaced denial. Nothing is more settled in criminal law jurisprudence than that denial cannot prevail over the positive and categorical testimony and identification of the complainant. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. In the instant case, [Velbes'] denial is unsubstantiated by clear and convincing evidence. In addition, [Velbes] failed to show, by any satisfactory degree of proof, that PO3 Villamil was impelled by ill-motives to testify against him. There is, therefore, no basis to suspect the veracity of his testimony.<sup>11</sup> (Citations omitted.)

As for the penalties, we likewise affirm those imposed by the Court of Appeals. Under Article 148 of the Revised Penal Code, the crime of direct assault is punishable with *prision correccional* in its minimum period and a fine not exceeding ₱500.00. But when the direct assault is

---

<sup>11</sup> *Rollo*, pp. 30-32.

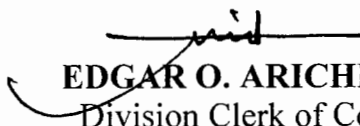
aggravated by any of the following circumstances: (a) the assault is committed with a weapon; or (b) when the offender is a public officer or employee; or (c) when the offender lays hand upon a person in authority, the imposable penalty is *prision correccional* in its medium and maximum periods and a fine not exceeding ₱1,000.00. The Court had ruled that there was aggravated direct assault in *Gelig v. People*, wherein the accused slapped and pushed a teacher; as well as in *Rivera v. People*, wherein the accused punched a police officer's face. Velbes' acts (*i.e.*, attempting to grab PO3 Villamil's gun and struggling with the latter) could not be considered as an aggravating circumstance mentioned in Article 148 like those committed by the offenders in *Gelig* and *Rivera*. In the absence of any of the qualifying aggravating circumstances, Velbes is guilty only of direct assault.

According to the Indeterminate Sentence Law, the maximum term of the penalty shall be that which, in view of attending circumstances, could be properly imposed under the rules of the Revised Penal Code. Meanwhile, the minimum term shall be taken from the penalty next lower than the minimum prescribed by law. Accordingly, the maximum term of the penalty shall be taken from *prision correccional* in its minimum period, *i.e.*, six (6) months and one (1) day to two (2) years and four (4) months; while the minimum term shall be taken from the penalty next lower which is *arresto mayor*, *i.e.*, one (1) month and one (1) day to six (6) months. Thus, the Court of Appeals was correct in imposing upon Velbes the penalty of imprisonment of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years and four (4) months of *prision correccional*, as maximum. The appellate court also properly ordered Velbes to pay a fine of ₱500.00.

**WHEREFORE**, the Court **AFFIRMS** *in toto* the decision of the Court of Appeals dated February 20, 2014 in CA-G.R. CR No. 35197.

**SO ORDERED."**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court *pk 10h*

**15**

PUBLIC ATTORNEY'S OFFICE  
Counsel for Petitioner  
DOJ Agencies Bldg.  
Diliman 1128 Quezon City

Court of Appeals (x)  
Manila  
(CA-G.R. CR No. 35197)

- over -



The Solicitor General (x)  
Makati City

The Hon. Presiding Judge  
Regional Trial Court, Br. 44  
Dagupan City 2400 Pangasinan  
(Crim. Case No. 2012-0306-D)

The Hon. Presiding Judge  
Municipal Trial Court in Cities, Br. 1  
Dagupan City 2400 Pangasinan  
(Crim. Case No. 51717)

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M.  
No. 12-1-7-SC)

Judgment Division (x)  
Supreme Court

15



SR

