

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JONAH MALLARI y SAMAR,
Petitioner,

G.R. No. 224679

Present:

-versus-

LEONEN, J., *Chairperson*,
GESMUNDO,
CARANDANG,*
ZALAMEDA, and
DELOS SANTOS,* JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
February 12, 2020

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DECISION

LEONEN, J.:

When a person being apprehended by a police officer resists or uses force that is not dangerous, grave, or severe, the offense is not direct assault under Article 148 of the Revised Penal Code. Instead, the proper offense is resistance and disobedience to an agent of a person in authority, penalized under Article 151 of the Revised Penal Code.

* On special leave.

* Designated additional Member per Raffle dated February 5, 2020.

This Court resolves a Petition for Review on Certiorari¹ questioning the Decision² and Resolution³ of the Court of Appeals, which affirmed with modification the Municipal Trial Court⁴ and the Regional Trial Court's⁵ conviction of Jonah Mallari y Samar (Mallari) for the crime of direct assault upon an agent of a person in authority.

An Information was filed against Mallari on May 31, 2007.⁶ It read:

That on or about the Twelfth (12th) day of January 2007, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while being pacified by PO2 Richard F. Navarro who was a duly qualified and appointed police officer of Olongapo City and while the latter was in the actual performance of his official duties, that is, maintaining peace and order in the said locality, and the said accused well knowing before and during the assault that PO2 Richard F. Navarro who was a duly appointed police officer, as such, an agent of a person in authority, did then and there willfully, unlawfully and feloniously assault, attack, kick and slap said police officer.

CONTRARY TO LAW.⁷

Mallari pleaded not guilty to the charge during her arraignment. Trial then ensued.⁸

The prosecution presented the victim, Police Officer 2 Richard Navarro (PO2 Navarro), along with Senior Police Officer 3 Melanio Merza (SPO3 Merza) and Dr. Rolando Mafel Ortiz (Dr. Ortiz), as its witnesses.⁹

The incident transpired on the early morning of January 12, 2007. According to the prosecution, at around 6:45 a.m., the Olongapo Police Station 3 received a report of an altercation on the ground floor of GenX Billiard Hall on Gordon Avenue. At this, PO2 Navarro and SPO3 Merza, who were both in uniform, went to the scene. There, they found two (2) groups of women fighting and pulling each other's hair out, among them a visibly drunk Mallari. The officers rushed to stop the fight.¹⁰

¹ *Rollo*, pp. 12–27. The Petition was filed under Rule 45 of the Rules of Court.

² *Id.* at 29–40. The October 27, 2015 Decision was penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Franchito N. Diamante and Samuel H. Gaerlan (now a member of this Court) of the Special Thirteenth Division of the Court of Appeals, Manila.

³ *Id.* at 42–44. The May 12, 2016 Resolution was penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Franchito N. Diamante and Samuel H. Gaerlan of the Former Special Thirteenth Division of the Court of Appeals, Manila.

⁴ *Id.* at 74–79. The September 5, 2013 Decision was penned by Judge Merinnisa O. Ligaya of Branch 1, Municipal Trial Court of Olongapo City.

⁵ *Id.* at 66–73. The July 30, 2014 Decision was penned by Judge Roline M. Ginez-Jabalde of Branch 74, Regional Trial Court of Olongapo City.

⁶ *Id.* at 29.

⁷ *Id.* at 30.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 30–31 and 74.

Once the squabble was over, the officers asked the women to go to the police station to file proper complaints. However, the intoxicated Mallari shouted at them, "*Wala kayo pakialam sa akin, hindi ako sasama sa inyo.*"¹¹ She then grabbed PO2 Navarro by the collar, slapped his cheek, and kicked his legs several times. To restrain her, PO2 Navarro held her by the shoulders and brought her to the back of the patrol car. SPO3 Merza was about to pacify the other women, but they eventually agreed to go to the police station. The incident was entered in the blotter and Mallari was detained for direct assault.¹²

PO2 Navarro was treated at the James Gordon Memorial Hospital for the minor injuries he got from Mallari.¹³ Dr. Ortiz issued him a medical certificate stating that he had sustained swelling on the zygomatic area, or the cheekbone.¹⁴

The defense presented the sole testimony of Mallari.¹⁵

Mallari testified that at around 6:00 a.m. that day, she and her co-workers were singing at a karaoke bar in GenX Billiard Hall when they got into a heated argument with another group of women, which then escalated to a physical fight. The ruckus prompted the bar owner to send the women downstairs, but their fighting only continued.¹⁶

Later, Mallari added, the police arrived and ordered them to board the patrol car. Mallari initially obeyed, but after noticing that her companions did not, she alighted from the vehicle. PO2 Navarro pushed her back in by holding her stomach and the collar of her blouse. When she still attempted to alight, PO2 Navarro grabbed her by the ankles, spreading her legs open in the process. When he pulled her down, she hit her head and neck on the vehicle's floor, her buttocks hitting the ground.¹⁷

After composing herself from the embarrassment, Mallari boarded the car and went with the officers to the police station. There, she was surprised that PO2 Navarro claimed that she had slapped him several times. She then called her mother and went to the hospital for a medical examination.¹⁸ She was found to have sustained the following injuries:

¹¹ Id.

¹² Id. at 31.

¹³ Id.

¹⁴ Id. at 70.

¹⁵ Id. at 30.

¹⁶ Id. at 31 and 70.

¹⁷ Id.

¹⁸ Id. at 31, 70, and 77.

Contusion 2x2 cm medical aspect M/3 left forearm
Contusion 2x2 cm medical aspect P/3 left forearm
Contusion 2x2 cm post aspect D/3 left forearm
Contusion 0.5x0.5 cm antero-medical aspect M/3 right forearm
Abrasion 2 cm interscapular area
Swelling left thenar eminence.¹⁹

Mallari later filed a Complaint against PO2 Navarro and SPO3 Merza for unlawful arrest, illegal detention, maltreatment of prisoners, and physical injuries. This was eventually dismissed by the Office of the Prosecutor.²⁰

In its September 5, 2013 Decision,²¹ the Municipal Trial Court found Mallari guilty beyond reasonable doubt of direct assault upon an agent of a person in authority. It noted that Mallari admitted to kicking PO2 Navarro and grabbing his shirt while he was performing his official duties. It likewise gave premium to the prosecution's positive testimony against Mallari's defense of denial.²² The dispositive portion of the Decision read:

WHEREFORE, foregoing considered, judgment is hereby rendered finding accused **JONAH MALLARI y SAMAR, GUILTY** beyond reasonable doubt of the crime of Direct Assault upon an Agent of a Person in Authority and hereby sentences her to suffer an **imprisonment of prision correccional in its medium period of 3 yrs, 6 mos and 21 days to 4 years, 9 mos and 10 days and to pay the fine of PHp1,000.00. With costs against the accused.**

SO DECIDED.²³ (Emphasis in the original)

The Regional Trial Court affirmed Mallari's conviction in its July 30, 2014 Decision.²⁴ It found that all the elements of the offense were present: PO2 Navarro was an agent of a person in authority, and Mallari kicked, slapped, and injured him while he was engaged in the performance of his official duty. It found that no improper motive could be traced to the prosecution's witnesses who clearly testified on the matter. It also noted that Mallari's defenses and denials were weak and uncorroborated.²⁵

The Court of Appeals, in its October 27, 2015 Decision,²⁶ affirmed with modification the Regional Trial Court's Decision, thus:

¹⁹ Id. at 32.

²⁰ Id. at 31-32 and 88-90.

²¹ Id. at 74-79.

²² Id. at 77-78.

²³ Id. at 79.

²⁴ Id. at 73.

²⁵ Id. at 71-72.

²⁶ Id. at 29-40.

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit. The *Decision* dated July 30, 2014 of the RTC, Branch 74, Olongapo City, in Criminal Case No. 44-14 is hereby **AFFIRMED with MODIFICATION** as to the imposable penalty.

Petitioner Jonah Mallari y Samar is hereby sentenced to suffer an indeterminate penalty of two (2) months of *arresto mayor* as minimum, to two (2) years and four (4) months of *prision correccional* as maximum. He is likewise ordered to pay a fine of Five Hundred (Php500.00) Pesos.

SO ORDERED.²⁷ (Emphasis in the original)

In ruling so, the Court of Appeals found that PO2 Navarro's testimony was credible and clear on how the incident occurred, while Mallari was unable to substantiate her claims. It held that Mallari was the aggressor and PO2 Navarro was only compelled to restrain her as she was kicking him.²⁸

The Court of Appeals denied Mallari's Motion for Reconsideration in a May 12, 2016 Resolution.²⁹

Thus, Mallari filed before this Court a Petition for Review on Certiorari,³⁰ claiming that the Court of Appeals erred in sustaining her conviction.

Petitioner argues that PO2 Navarro's testimony that she repeatedly kicked and slapped him was inconsistent with his injury of a slightly swollen cheekbone.³¹ She points out that it was she who suffered several injuries, consistent with her allegation that PO2 Navarro "held her feet, pulled her to the ground and caused her to hit her head, neck and buttocks,"³² despite no aggression coming from her. Thus, she says that her testimony should have been given more credence.³³

Assuming that she did kick PO2 Navarro, petitioner asserts that she was fully justified in doing so as the officer unnecessarily held her feet, which constitutes unlawful aggression on her honor and dignity.³⁴

The Office of the Solicitor General, on behalf of respondent People of the Philippines, argued back that the Petition must be denied as it raises a question of fact, which is not proper in a petition for review on certiorari.³⁵

²⁷ Id. at 39.

²⁸ Id. at 35-36.

²⁹ Id. at 42-44.

³⁰ Id. at 12-27.

³¹ Id. at 19.

³² Id. at 20.

³³ Id.

³⁴ Id. at 21.

³⁵ Id. at 204-205.

In any case, the Office of the Solicitor General insists that petitioner's assault on PO2 Navarro was sufficiently established. It points out that the medical certificate stating that PO2 Navarro had a slightly swollen cheekbone does not negate his testimony that he was repeatedly kicked by petitioner, as she herself admitted attacking the officer. It also raises the other officers' testimonies affirming what had happened. From the totality of evidence, the Office of the Solicitor General argues that Mallari is the aggressor and her denials are weak defenses.³⁶ That PO2 Navarro was a police officer on official duty when petitioner assaulted him completes the elements of the offense charged.³⁷

For this Court's resolution is the sole issue of whether or not petitioner Jonah Mallari y Samar is guilty beyond reasonable doubt of direct assault upon an agent of a person in authority.

This Court modifies the ruling of the Court of Appeals.

We affirm that the prosecution's evidence is sufficient to uphold the findings of fact against petitioner. Questions of fact may no longer be raised in Rule 45 petitions. In *Spouses Miano v. Manila Electric Company*:³⁸

The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari*. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.

Bases Conversion Development Authority v. Reyes distinguished a question of law from a question of fact:

Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the

³⁶ Id. at 205.

³⁷ Id. at 206.

³⁸ 800 Phil. 118 (2016) [Per J. Leonen, Second Division].

question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.

....

Prevailing jurisprudence uniformly holds that findings of facts of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. It is not the function of this Court to analyze or weigh such evidence all over again. It is only in exceptional cases where this Court may review findings of fact of the Court of Appeals.³⁹ (Citations omitted)

In this case, the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals all consistently found that petitioner slapped and kicked PO2 Navarro while he was on official duty as a police officer.⁴⁰ The lower courts arrived at this conclusion after thoroughly examining both parties' evidence. This Court will no longer disturb their uniform findings.

However, petitioner should not be held guilty of direct assault, but rather, of the crime of resistance or disobedience under Article 151 of the Revised Penal Code.

Article 148 of the Revised Penal Code defines and penalizes direct assault:

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 purposes 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 1,000 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 500 pesos shall be imposed.

Direct assault may be committed in two (2) ways:

[F]irst, 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*

³⁹ Id. at 122–125.

⁴⁰ *Rollo*, pp. 35, 72, and 77–78.

*agents, while engaged in the performance of official duties, or on occasion of such performance.*⁴¹ (Emphasis supplied, citation omitted)

In this case, petitioner is charged with the second mode of assault. Its elements are the following:

1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance.
2. That the person assaulted is a person in authority or his agent.
3. That at the time of the assault the person in authority or his agent (a) is engaged in the actual performance of official duties, or [b] that he is assaulted by reason of the past performance of official duties.
4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.
5. That there is no public uprising.⁴²

A police officer is an agent of a person in authority.⁴³ An agent of a person in authority is one 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[.]"⁴⁴ Being a police officer, PO2 Navarro is an agent of a person in authority.

Petitioner was also aware that PO2 Navarro was a police officer. He introduced himself as one and was in his police uniform. He was performing his official duties as a police officer when he was pacifying the melee, and right when petitioner attacked him. Thus, the second, third, fourth, and fifth elements of direct assault are present in this case.

However, the first element of the offense is not present.

To be considered as direct assault, the laying of hands or the use of physical force against the agent of a person in authority must be *serious*.

In *United States v. Gumban*,⁴⁵ this Court held that the amount of force employed against agents of persons in authority spells the difference between direct assault and resistance of disobedience:

⁴¹ *Gelig v. People*, 640 Phil. 109, 116 (2010) [Per J. Del Castillo, First Division].

⁴² *Id.* at 116–117 citing LUIS REYES, *THE REVISED PENAL CODE*, Book II, 15th ed. (2001), p. 122.

⁴³ *US v. Taylor*, 6 Phil. 162, 163 (1906) [Per J. Carson, First Division].

⁴⁴ REV. PEN. CODE, art. 152 as amended by Batas Pambansa Blg. 873 (1985).

⁴⁵ 39 Phil. 76 (1918) [Per J. Avanceña, En Banc].

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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*.⁴⁶ (Emphasis supplied, citations omitted)

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*,⁴⁷ 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[.]”⁴⁸

In *Rivera v. People*,⁴⁹ 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.

. . . In the medico-legal certificate (Exhibit “A”) of Inspector Leygo, his injury described as “contusion with 0.5 laceration, upper lip, left side”

⁴⁶ Id. at 79–80.

⁴⁷ 3 Phil. 140 (1904) [Per J. Torres, En Banc].

⁴⁸ Id. at 141.

⁴⁹ 501 Phil. 37 (2005) [Per J. Garcia, Third Division].

with healing period from 5 to 7 days. Subsequently, this present case was filed against the accused.⁵⁰

As clarified in *People v. Breis*,⁵¹ 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.⁵² (Citations omitted)

Resistance or disobedience is punished under Article 151 of the Revised Penal Code, which provides:

ARTICLE 151. *Resistance and disobedience to a person in authority or the agents of such person.* — The penalty of *arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any person who not being included in the provisions of the preceding articles shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance of official duties.

When 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 10 to 100 pesos shall be imposed upon the offender.

For this crime to be proven, the two (2) key elements must be shown: “(1) That a person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender; and (2) That the offender resists or seriously disobeys such person or his agent.”⁵³

In *United States v. Tabiana*,⁵⁴ where the accused hit the police officer with his fist, this Court explained the rationale behind the distinction in the force used:

Upon the whole we find the defendant Tabiana guilty of resistance and serious disobedience to public authority under article 252, Penal Code, and not of the more serious offense indicated in subsection 2 of article 249,

⁵⁰ Id. at 41–42.

⁵¹ 766 Phil. 785 (2015) [Per J. Carpio, Second Division].

⁵² Id. at 811.

⁵³ *Sydeco v. People*, 746 Phil. 916, 932–933 (2014) [Per J. Velasco, Third Division] citing LUIS REYES, THE REVISED PENAL CODE, Book II, 18th ed. (2008), p. 154.

⁵⁴ 37 Phil. 515 (1918) [Per J. Street, First Division].

Penal Code, which was applied by the Court of First Instance. The question whether an offense consists of simple resistance or to grave resistance is to be determined with a view to the gravity of the act proved and the particular conditions under which committed. In considering this question reference should also be had to the nature and extend of the penalties attached by the authors of the Code to the different offenses. Thus, when it is observed that the offense indicated in article 249 carries with it a penalty ranging from *prision correccional* to *prision mayor* in its minimum degree, with corresponding fines, it is obvious that the lawmaker here had in mind serious offenses, characterized in part at least by the spirit of aggression directed against the authorities or their agents. . . .

The greatest hesitancy which we have felt in applying article 252 instead of article 249 to this case arises from the words "shall employ force against them" (*emplearen fuerza contra ellos*) contained in article 249. These words, taken without reference to the context, would seem to make absolutely necessary the application of article 249 in every case where any degree of force is exerted. We believe, however, that the words quoted are to be understood as applying to *force of a more serious character* than that employed in the present instance. We are led to this conclusion not only because of the grave penalty attached, as indicated above, but for the further reason that the Code mentions grave resistance further on in the same paragraph and also makes special provision for the offense of simple resistance in article 252. Now practically and rationally considered in connection with the subject of arrest, resistance is impossible without the employment of some force. A man may abscond or evade or elude arrest, or may disobey the commands of an officer without using force but he cannot resist without using force of some kind or in some degree. If at the ultimate moment no force is employed to resist, there is not resistance but submission; and if it had been intended that every manifestation of force, however slight, against the authorities and their agents should bring the case under article 249, it was an idle waste of words to make other provisions to cover grave resistance and simple resistance. It therefore seems reasonable to hold that the words in article 249 relating to the employment of force are in some degree limited by the connection in which they are used and are less peremptory than they at first seem. Reasonably interpreted they appear to have reference to something more dangerous to civil society than a simple blow with the hands at the moment a party is taken into custody by a policeman.⁵⁵ (Emphasis supplied)

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

Q: When you [saw] these (*sic*) commotion, what did you and Police officer Merza do?

A: We tried to stop them and introduced ourselves as police officers, sir.

Q: Who directed them to stop, and did they stop?

A: Yes, sir.

Q: What did you do next?

⁵⁵ Id. at 519–521.

A We invited them at the police station, so that they will file their complaint if there is any.

Q: Did they abide on (*sic*) you?

A: No, sir.

Q: And what did they do?

A: After telling them to go to the police station, there was one (1) woman who shouted: 'WALA KAYO PAKIALAM SA AKIN. HINDI AKO SASAMA SA INYO.'

Q: Was the woman who shouted part of the group?

A: Yes, sir.

Q: What did you do then after you heard those words?

A: We continued telling them to board on the vehicle, but this woman slapped me and kicked me, sir.

....

Q: You said that this woman held your collar, and slapped and kicked you. How many times [were] you slapped?

A: I could not remember, sir.

Q: Where were [you] slapped?

A: On my right cheek, sir.

Q: And where were you kicked?


A: On both legs, sir.

Q: How many times were you kicked?

A: Many times, sir.⁵⁶

In the January 12, 2007 Joint Affidavit of PO3 Merza and PO2 Navarro, they stated:

That upon arrival thereat we saw a two group of female persons fighting each other in front of gen-ex Billiard hall, located along Gordon Avenue, New Asinan Olongapo City, That we immediately pacified them, introduced ourselves as a Police officers (*sic*) despite we wearing our official Police uniform and invited both parties involved to our station for proper disposition, but one of the person (*sic*) involved later identified as Jona (*sic*) Mallari Y Samar who reeking with the smell of alcoholic beverages resisted and shows disrespect and disobedience upon us, and uttered the following remarks on top of her voice "WALA KAYO PAKIALAM SA AKIN HINDI AKO SASAMA SA INYO!" then she grabbed PO2 Navarro (*sic*) uniform and repeatedly kicked him and slapped him on his face that cause (*sic*) an injury to his person, and placed us to an embarrassing situation;



⁵⁶ Rollo, pp. 35-36.

That we compelled to used (*sic*) a necessary and sufficient forced (*sic*) to arrest him and brought (*sic*) to our Station for proper disposition[.]⁵⁷

Mallari also admitted to this. Her testimony reveals:

Q: Ms. Witness, in your complaint affidavit [and] earlier you mentioned that PO2 Navarro was in uniform, and he was inviting you to go to the police station, and in 2.4 paragraph of your complaint affidavit Ms. Witness, on the last portion of the paragraph you mentioned "I was afraid he might again harm me, so I grabbed his shirt to push him away and kick him away." Now, you admit having grabbed the shirt of police officer Navarro?

A: Yes, Ma'am.

Q: You admit having kicked him?

A: Yes, ma'am.

....

Q: I will let you read the part, "when I get up, PO2 Navarro approached me." So he was not doing anything but approaching you, correct?

A: Yes, Ma'am.

Q: And upon getting near you Ms. Witness you grabbed his shirt and kicked him?

A: Yes, Ma'am.⁵⁸

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.

Moreover, PO2 Navarro himself stated that he was not kicked hard:

Q: Were you kicked hard by the accused?

A: Not really hard, sir.

Court: Did you resent being kicked in the presence of other ladies?

A: Yes, Your Honor.⁵⁹

Thus, instead of direct assault, this Court convicts petitioner of resistance or disobedience.

When the crime proved is different from the offense alleged, the accused may be convicted of the offense proved when the offense charged

⁵⁷ CA rollo, p. 45.

⁵⁸ Rollo, p. 78.

⁵⁹ CA rollo, p. 79.

necessarily includes the offense proven.⁶⁰ Rule 120, Sections 4 and 5 of the Rules of Court provide:

SECTION 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SECTION 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

In this case, although the charge is direct assault, the prosecution was able to prove resistance or disobedience. These offenses have similar elements, varying only as to the degree of seriousness of the offender's resistance. Direct assault necessarily includes resistance or disobedience.

WHEREFORE, this Court **MODIFIES** the October 27, 2015 Decision and May 12, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36835. Petitioner Jonah Mallari y Samar is found **GUILTY** beyond reasonable doubt of the crime of resistance or disobedience under Article 151 of the Revised Penal Code. She is sentenced to suffer the penalty of imprisonment of *arresto mayor*, which covers one (1) month and one (1) day, as minimum, to six (6) months, as maximum, and a fine not exceeding ₱500.00.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

⁶⁰ *Sevilla v. People*, 741 Phil. 198 (2014) [Per J. Reyes, First Division].

WE CONCUR:


ALEXANDER G. GESMUNDO
Associate Justice


On special leave
ROSMARI D. CARANDANG
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


EDGARDO L. DELOS SANTOS
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 Section 13, Article VIII 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.


DIOSDADO M. PERALTA
Chief Justice