



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ELPEDIO RUEGO,
Petitioner,

G.R. No. 226745

Present:

-versus-

LEONEN, *J.*, Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, *J.*, *JJ.*

PEOPLE OF THE PHILIPPINES
and **ANTHONY M. CALUBIRAN,**
Respondents

Promulgated:
May 3, 2021

MisAPCB-H

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DECISION

LEONEN, *J.*:

Serious physical injuries contemplate physical deformity or the loss of a body part resulting in the alteration of one's physical appearance. The loss of a tooth, may, in most cases, be later repaired or replaced with an artificial tooth by a competent dentist. Thus, for the loss of a tooth to be considered within the scope of serious physical injuries, the circumstances surrounding its loss and whether it caused a physical deformity or permanent alteration of one's physical appearance must be examined on a case-to-case basis.

This is a Petition for Review on Certiorari¹ assailing the Decision² and

¹ *Rollo*, pp. 3–11.

² *Id.* at 80–92. The January 26, 2016 Decision was penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Pamela Ann Abella Maximo and Pablito A. Perez of the Twentieth Division of the Court of Appeals, Cebu City.

Resolution³ of the Court of Appeals, which affirmed Elpedio Ruego's conviction for Serious Physical Injuries under Article 263(3)⁴ of the Revised Penal Code.

In an October 27, 2005 Information,⁵ Elpedio Ruego (Ruego) was charged with serious physical injuries under Article 263(3) of the Revised Penal Code. The Information reads:

That on or about the 5th day of September, 2005 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally box and hit Anthony M. Calubiran, thereby causing upon the latter fractured upper right central incisor, which fractured tooth caused him permanent deformity.⁶

Ruego was arraigned on August 2, 2006,⁷ where he pleaded not guilty. Trial on the merits ensued.

Witnesses for the prosecution testified that on September 5, 2005, at around 10:30 p.m., June Alfred Altura (Altura), Anthony M. Calubiran (Calubiran), Raden Selguerra (Selguerra), and Selguerra's father were waiting for a jeepney along Paho Road, Barangay South Fundidor, Molo, Iloilo City when Ruego's group passed by. Ruego said to Calubiran, "[guina] kursunadahan mo kami?" (You took interest in us?) and suddenly punched him.⁸

Altura introduced himself as a Sangguniang Kabataan Chair and tried to stop the altercation by blocking Ruego. Ruego, however, ignored him and faced off against Calubiran. Altura then asked a passing pedicab driver to call some barangay officials for assistance.⁹

Thereafter, Police Officer I Ritchie Altura (PO1 Altura) and Barangay Kagawad Jonathan Altura (Barangay Kagawad Altura) arrived on a motorcycle and tried to talk to Ruego. In response, Ruego pushed their

³ Id. at 102–104. The July 18, 2016 Resolution was penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Pamela Ann Abella Maximo and Pablito A. Perez of the Twentieth Division of the Court of Appeals, Manila.

⁴ REV. PEN. CODE, art. 263(3) states:

ARTICLE 263. Serious Physical Injuries. — Any person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer:

.....
3. The penalty of prisión correccional in its minimum and medium periods, if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he was habitually engaged for a period of more than ninety days[.]

⁵ Rollo, p. 14.

⁶ Id.

⁷ Id. at 17.

⁸ Id. at 18 and 20.

⁹ Id. at 18.

motorcycle away.¹⁰

Calubiran and Barangay Kagawad Altura then reported the incident to the Philippine National Police of Molo, Iloilo City, per police blotter dated September 5, 2005. When the police arrived at the place of the incident, Ruego's group was already gone.¹¹

Per medical examination of Dr. Owen Jaen Libaquin (Dr. Libaquin), the medico-legal officer of the Philippine National Police Crime Laboratory, Iloilo City, Calubiran sustained injuries in the head region and a fractured upper right central incisor, causing permanent deformity. Calubiran presented his fractured tooth in trial but it had "already been repaired by means of a modern dental technological procedure that has not been revealed in the evidence."¹²

In his defense, Ruego presented himself and his friend Leomar Tondo, otherwise known as "Ok-Ok,"¹³ as witnesses. They testified that on September 5, 2009, at around 10:30 p.m., Ruego accompanied Ok-Ok in sending their friend Norberto Ong's son home. On the way to the jeepney waiting area, he observed Calubiran staring at him. He asked, "[a]no tulok mo?" (What are you looking/staring at?) when Calubiran suddenly punched him. Ruego alleged that Calubiran was drunk so he was unable to land the first punch. Ruego then punched him back and hit him. They were, however, pacified by Altura and Ok-Ok.¹⁴

In a December 15, 2011 Decision,¹⁵ the Municipal Trial Court in Cities of Iloilo found Ruego guilty of serious physical injuries under Article 263 of the Revised Penal Code. The dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered finding accused Elpedio Ruego guilty beyond reasonable doubt of Serious Physical Injuries as defined above and hereby sentences him to suffer imprisonment of six (6) months and one (1) day of prison correccional minimum and to pay the costs.

SO DECIDED.¹⁶

The Municipal Trial Court in Cities of Iloilo found that Calubiran's

¹⁰ Id.

¹¹ Id. at 20.

¹² Id. at 19.

¹³ Id. at 21.

¹⁴ Id. at 20-21.

¹⁵ Id. at 17-23. The Decision was penned by Pairing Judge Alexis A. Zerrudo of the Municipal Trial Court in Cities of Iloilo City.

¹⁶ Id. at 23.

to justify Ruego's infliction of injuries on Calubiran. It likewise found that "the loss of a front tooth due to a fist blow"¹⁸ was considered as a serious physical injury and is punished as such accordingly.

On appeal, the Regional Trial Court affirmed the conviction in an August 17, 2012 Decision.¹⁹ When Ruego's Motion for Reconsideration was denied,²⁰ he appealed to the Court of Appeals.

On January 26, 2016, the Court of Appeals rendered a Decision²¹ affirming the conviction. It found that there was no clear evidence that Calubiran instigated the fight.²² It also agreed with the Regional Trial Court that it was Ruego who started the fight when he told Calubiran, "*ano tulok mo?*" (What are you looking at?)²³ Further, it found that Ruego also admitted to throwing the punch that caused Calubiran's injuries.²⁴ The Court of Appeals likewise held that the loss of a front tooth, which causes a permanent physical deformity, was within the crime of serious physical injuries under Article 263(3) of the Revised Penal Code.²⁵

Ruego filed a Motion for Reconsideration, but it was denied by the Court of Appeals in a July 18, 2016 Resolution.²⁶ Hence, this Petition²⁷ was filed.

Petitioner argues that Calubiran was intoxicated at the time of the incident.²⁸ He also points out that Calubiran's tooth was only fractured, not extracted; hence, he should not have been convicted of serious physical injuries.²⁹ He asserts that there was a mutual agreement between them to engage in a fistfight³⁰ and thus, the equipoise rule should apply here.³¹

The Office of the Solicitor General, on the other hand, counters that Article 263(3) of the Revised Penal Code does not merely contemplate deformity, but also loss of a body part. Citing *People v. Balubar*,³² it contends that the injury contemplated by the law is "one that cannot be mended or healed by nature" and that the offender is not relieved of liability even if there were means to "lessen or minimize disfigurement by some

¹⁸ Id. at 23.

¹⁹ Id. at 36-41.

²⁰ Id. at 48-50.

²¹ Id. at 80-92.

²² Id. at 87.

²³ Id. at 88.

²⁴ Id. at 89.

²⁵ Id. at 90.

²⁶ Id. at 102-104.

²⁷ Id. at 3-11. Comment (*Rollo*, pp. 133-146) was filed on February 20, 2017 while Reply (*Rollo*, pp. 151-158) was filed on August 25, 2017.

²⁸ Id. at 5. See *rollo* p. 83.

²⁹ *Rollo* pp. 6-7.

³⁰ Id. at 7.

³¹ Id. at 8.

³² 60 Phil. 698 (1934) [Per J. Vickers, En Banc].

artificial contrivance.”³³ Thus, it concludes that petitioner cannot escape liability even if Calubiran’s fractured or broken upper right central incisor was repaired through a modern dental technological procedure.³⁴

The Office of the Solicitor General likewise argues that there was sufficient evidence to show that petitioner alone was the aggressor³⁵ so the equipoise principle cannot apply in this case.³⁶

In rebuttal, petitioner points out that the prosecution had admitted in trial that a fistfight had occurred, which implies that there was a mutual agreement to fight, and thus, the equipoise principle was applicable.³⁷

The issue before this Court is whether or not the Court of Appeals erred in affirming petitioner’s conviction for serious physical injuries under Article 263(3) of the Revised Penal Code, for causing respondent Calubiran’s fractured front tooth. However, before passing upon this issue, this Court must first address whether or not questions of fact are appropriate in a petition for review on certiorari under Rule 45 of the Rules of Court.

I

As a general rule, only questions of law may be brought in a petition for review on certiorari under Rule 45 of the Rules of Court.³⁸ The factual findings of the lower courts may be considered binding by this Court “because of the opportunity enjoyed by the [lower courts] to observe the demeanor of the witnesses on the stand and assess their testimony.”³⁹

There are, of course, recognized exceptions to this general rule. In criminal cases, the accused has the fundamental right to be presumed innocent until the contrary is proven.⁴⁰

A finding of guilt beyond reasonable doubt requires courts to evaluate the evidence presented in relation to the elements of the crime charged.⁴¹ The finding of guilt is essentially a question of fact.⁴² Thus, this Court is constrained to entertain questions of fact in appeals of criminal cases. In *Ferrer v. People*:⁴³

³³ Id. at 138.

³⁴ Id. at 139.

³⁵ Id. at 139–141.

³⁶ Id. at 143.

³⁷ Id. at 153.

³⁸ See RULES OF COURT, Rule 45, sec. 1.

³⁹ *People v. Macasinag*, 255 Phil. 279 (1989) [Per J. Cruz, First Division].

⁴⁰ CONST, art. III, sec. 14(2).

⁴¹ See *Macayan v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

⁴² Id.

⁴³ 518 Phil. 196 (2006) [Per J. Austria-Martinez, First Division].

It is a well-settled rule that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.⁴⁴

II

Petitioner punched respondent Calubiran, which resulted in his fractured front tooth. Petitioner was charged with serious physical injuries under Article 263(3) of the Revised Penal Code.

However, petitioner insists that he and respondent Calubiran had mutually agreed to engage in a fistfight, and that the latter had thrown the first punch. Moreover, he argues that a fractured front tooth does not come under the scope of a “deformity” or a “loss of a body part” under the law.

Article 263(3) of the Revised Penal Code makes it unlawful for any person to wound, beat, or assault another in a manner that would cause the person injured to suffer a deformity or lose any other part of his body. The provision reads:

ARTICLE 263. Serious Physical Injuries. — Any person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer:

....

3. The penalty of prisión correccional in its minimum and medium periods, if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he was habitually engaged for a period of more than ninety days[.]

Under this provision, the prosecution must prove the following elements: *first*, that the perpetrator wounds, beats, or assaults another; and *second*, that the person injured shall have gone through any of the following circumstances: (1) become deformed; (2) lost any other part of their body; (3) lost that body part’s use; or (4) been ill or incapacitated for the work performance in which they were habitually engaged for a period of more than 90 days.

Petitioner insists that he was merely defending himself from respondent Calubiran during a fistfight. However, his own testimony goes

⁴⁴ Id. at 220 citing *Aradillos v. Court of Appeals*, 464 Phil. 650 (2004) [Per J. Austria-Martinez, Second Division].

against his claim. As the Regional Trial Court found:

The accused claimed that it was the complainant who first uttered “ano tulok mo?” (“what are you staring at?”), however, upon clarificatory questioning made by the court a quo, he admitted that it was he who first uttered those words.

From this scenario, it can be deduced that it was the accused himself who insinuated the fight. It was he who first approached the victim and simultaneously delivered the punch that hit the latter. His claim that it was the complainant who was first to confront him is unbelievable considering that the latter was just a visitor to their place. In fact, as a customary gesture extended by the host to its visitor, the complainant was accompanied by SK Chairman June Alfred Altura in waiting for a passenger jeep to ride home.⁴⁵

Petitioner cannot insist that respondent Calubiran’s “dagger look”⁴⁶ at him justified his actions. While self-defense was not pleaded here, petitioner’s statement is analogous to arguing that there was unlawful aggression on respondent Calubiran’s part that justified petitioner’s act of punching him.

However, unlawful aggression “must [neither] consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong.”⁴⁷ Merely looking at a person in a threatening manner is not an excuse for that person to wound, beat, or assault another.

Considering that there was no clear evidence of unlawful aggression from respondent Calubiran, the principle of equipoise will not apply. In *People v. Urzais*:⁴⁸

The equipoise rule states that where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.⁴⁹

Here, the evidence is not evenly balanced. Petitioner himself admits to having instigated the fight. He had no defensive wounds. His only evidence is his testimony that respondent Calubiran had looked at him the wrong way and had thrown the first punch, which petitioner evaded. On the

⁴⁵ *Rollo*, p. 39.

⁴⁶ *Id.* at 7.

⁴⁷ 677 Phil. 168, 178 (2011) [Per J. Bersamin, First Division] citing GREGORIO, FUNDAMENTALS OF CRIMINAL LAW REVIEW 55–56 (9th ed., 1997).

⁴⁸ 784 Phil. 561 (2016) [Per J. Perez, Third Division].

⁴⁹ *Id.* at 579 citing *People v. Erguiza*, 592 Phil. 363, 388 (2008) [Per J. Austria-Martinez, Third Division].

other hand, witnesses stated that petitioner had to be pacified and that respondent Calubiran was the one who sustained injuries. There can be no other conclusion than that petitioner assaulted respondent Calubiran without sufficient provocation, resulting in his fractured tooth.

III

Due to respondent Calubiran's fractured tooth, petitioner was charged with violation of Article 263(3) of the Revised Penal Code, with the Municipal Trial Court, Regional Trial Court, and Court of Appeals concluding that the tooth fracture is a permanent deformity, since it had to be extracted and replaced by an artificial tooth. These conclusions were based on the 1934 case of *People v. Balubar*.⁵⁰

Admittedly, there is a dearth of jurisprudence on Article 263(3) of the Revised Penal Code. No major case, other than *Balubar*, discusses the loss of a tooth as a deformity within the scope of the crime of serious physical injuries. Now, almost a century later, the ruling in *Balubar* has yet to be re-examined, or even cited again by this Court.

In *Balubar*, the accused had struck the victim on the mouth with an "iron instrument used for cranking the engine of a motor truck,"⁵¹ breaking four of the victim's front teeth and inflicting a wound on his upper lip. The broken teeth had to be extracted because they hurt the victim's gums. The trial court judge had observed, during trial, that there was a visible disfigurement to the victim's mouth.

This Court, through Justice Vickers, first points out that the text of the law did not include the word "tooth" or "teeth," observing that the official English translation of the Article 263(3), which had been written in Spanish, was inaccurate:

The principal question involved in this case is whether or not the physical injuries inflicted by the defendant upon the offended party constitute a violation of subsection 3 of article 263 of the Revised Penal Code, the Spanish text of which reads as follows:

"Con la pena de prision correccional en sus grados minimo y medio, si de resultas de las lesiones el ofendido hubiere quedado deforme, o perdido cualquier otro miembro o quedado inutilizado de el, o hubiere estado incapacitado para su trabajo habitual o enfermo por mas de noventa dias."

The official English translation is as follows:

⁵⁰ 60 Phil. 698 (1934) [Per J. Vickers, En Banc].

⁵¹ Id. at 701.

“The penalty of *prision correccional* in its minimum and medium periods, if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he was habitually engaged for a period of more than ninety days.”

It will be noticed that the phrase “*cualquier otro miembro*” has been translated to read “any other part of his body”. The Spanish text scarcely justifies that translation. “*Cualquier otro miembro*” is more accurately translated “any other member”, meaning any other member than an eye, a hand, a foot, an arm, or a leg, which are those mentioned in subsection 2. “*Deforme*” is better translated “disfigured.”⁵²

Balubar then proceeds to discuss several cases by the Supreme Court of Spain from 1884 to 1910, all holding that the loss of teeth was a “*deformidad*” or a disfigurement under the Revised Penal Code. However, it makes mention of a 1903 Spanish Supreme Court case where the loss of an incisor of a 70-year-old woman would not constitute as a disfigurement, since the loss of teeth was common to those of advanced age.

Interestingly, *Balubar* mentions two unreported cases by the Philippine Supreme Court, where this Court held that the cases of the Spanish Supreme Court had since been rendered “obsolete” due to the advances in dental science and that the loss of teeth was not, per se, a disfigurement since they could be replaced by artificial teeth:

In the case of *People vs. Rodas* (G. R. No. 31807, promulgated February 7, 1930, not reported), where two of the offended party’s lower incisors were knocked out, a division of this court consisting of four members refused to follow the decisions of the Supreme Court of Spain on the ground that they were obsolete because of the progress in dental science, and held that in the United States and the Philippine Islands the loss of one or more teeth need not be taken as a permanent physical abnormality; and in the case of *People vs. Medina* (G. R. No. 32113, promulgated on the same date and by the same division, not reported), it was held that the loss of four teeth did not constitute a disfigurement within the meaning of the law, because it was not permanent; that the disfigurement was not permanent, because the four natural teeth lost by the offended party had been substituted by artificial teeth. The defendant was sentenced to suffer thirty days of *arresto menor* and to indemnify the offended party in the sum of P60, the cost of the false teeth.

We have not found any decision of this court in banc that is in point.⁵³

⁵² Id. at 702–703.

⁵³ Id. at 706.

Balubar, however, found these Division cases unsatisfactory and proceeded to hold that the loss of teeth impairs one's appearance, and that the offender must take liability even when the disfigurement could be lessened by some artificial means:

The *Rodas* and *Medina* cases, *supra*, were decided upon the finding that there was no disfigurement because the injuries were not permanent, since the teeth that were broken out could be substituted with artificial teeth. In our opinion this was not a correct interpretation of the law. The injury contemplated by the Code is an injury that cannot be repaired by the action of nature, and if the loss of the teeth is visible and impairs the appearance of the offended party, it constitutes a disfigurement. The fact that he may, if he has the necessary means and so desires, have artificial teeth substituted for the natural teeth he has lost does not repair the injury, although it may lessen the disfigurement. The case of a child or an old person is an exception to the rule.

One who unlawfully wounds another is responsible for the consequences of his act. If as a result thereof, the offended party is impaired in his appearance in such a way that the disfigurement cannot be removed by nature, the person causing the injuries is responsible for the disfigurement, and he is not relieved of that responsibility because the offended party might, if he had the means, lessen the disfigurement by some artificial contrivance.

The offended party in the case at bar was twenty-five years old, and he was conspicuously disfigured by the loss of four front teeth. We are therefore of the opinion that the defendant is guilty of a violation of subsection 3 of article 263 of the Revised Penal Code.⁵⁴

Justice Malcolm vigorously dissented against the majority "considering the ease with which an injury of this nature could be remedied by any reputable dentist."⁵⁵ He mentions *People v. Oh Suilay*,⁵⁶ a case that appears to have been ignored by the majority, which considered the loss of two teeth as less serious physical injuries:

In the case of *People vs. Oh Suilay* (G. R. No. 40699, p. 1024, post), the information alleged that various blows had caused the loss of two teeth producing a deformity. The evidence substantiated this allegation and on appeal to this court it was specifically found as a fact that the injured party received several blows "one of which knocked out two of his teeth." The Solicitor-General, taking cognizance of the evidence to this effect, argued that the case fell under article 263 of the Revised Penal Code, but this court declining to follow this suggestion merely found the accused guilty of the crime of less serious physical injuries penalized by article 265 of the Revised Penal Code. The decision

⁵⁴ Id. at 706-707.

⁵⁵ J. Malcolm, Dissenting Opinion in *People v. Balubar*, 60 Phil. 698, 708 (1934) [Per J. Vickers, En Banc].

⁵⁶ G. R. No. 40699, August 6, 1934
<<https://elibrary.judiciary.gov.ph/dtSearch/dtisapi6.dll?cmd=getdoc&DocId=9632&Index=%2ad0c0e936b466a758b3cf27764c7bfcbl&HitCount=3&hits=4+b+f+&SearchForm=C%3a%5celibrev%5celibse arch%5cdtform>> [Unsigned Resolution].

here referred to, it should be mentioned, was written by Justice Street of the first division And concurred in by Justices Abad Santos and Hull, and was promulgated on July 20 of this year.⁵⁷

More important, Justice Malcolm pointed out that while decisions of the Spanish Supreme Court were persuasive, they were not binding, and that this Court should take a more progressive stance in light of medical advances:

The majority decision lays great stress on a number of decisions of the Supreme Court of Spain. If it be desired to take into account these decisions, it should be recalled that according to the Supreme Court of Spain, by deformity is meant visible ugliness, permanent and visible physical abnormality. (5 Viada, *Codigo Penal Comentado*, 144.) If this doctrine is correct, the breaking of one or more teeth need not produce permanent and visible deformity, for any dentist can fill or replace such teeth. Moreover, while decisions coming from the Supreme Court of Spain are entitled to persuasive respect just as decisions coming from any other country are entitled to similar respect, they are no longer absolutely binding on the Supreme Court of the Philippines, and this court is at liberty to take a progressive stand in interpreting our Revised Penal Code.⁵⁸

In hindsight, this Court could not possibly continue upholding *Balubar's* rationale. The physical injury, as stated in the Revised Penal Code, must be of such *serious* nature that it cannot be restored through medical means. As Justice Malcolm pointed out, the deformity contemplated by law is disfigurement, or “visible ugliness, permanent[,] and visible physical abnormality.”⁵⁹

The Office of the Solicitor General, on the other hand, offers up the definition in *Miriam-Webster*: “a condition in which part of the body does not have the normal or expected shape[.]”⁶⁰ From these definitions, it can readily be concluded that the serious physical injury contemplated by law should alter one’s physical appearance permanently.

Deformity or the loss of any other part of the body under Article 263(3), therefore, should be properly interpreted to mean the loss of an eye, an ear, or any of the limbs—all of which would visibly alter one’s physical appearance and body functions.

The loss of an eye results in blindness that artificial eyes cannot restore. The loss of an ear will alter one’s head shape and may result in deafness. Persons with artificial limbs will have different postures and gaits.

⁵⁷ Id. at 711.

⁵⁸ Id. at 709.

⁵⁹ Id.

⁶⁰ *Rollo*, p. 138.

Osseointegration, or “a direct structural and functional connection between ordered living bone and the surface of a load-carrying implant,”⁶¹ has been used for prosthetic limbs by integrating “titanium implants into the medullary cavity of the bone [where] the implants extend from the bone, emerging through the skin to create an anchor for the prosthetic limb.”⁶² This process can lead to infection and metal corrosion.

Moreover, modern prosthetics also involve the connection of a socket to the residual limb, which can sometimes lead to instability, tissue damage, and pain. The socket’s structural design must take into account “ratio of muscle, the movement of the femur, and movement of the residual limb, all of which would affect gait and other gross functional movements.”⁶³

In contrast, artificial teeth are so common that they are known to the general public by its colloquial term: *pustiso* (dentures). In some cases, they are even used to beautify one’s appearance. As far back as 1934, it has already been observed that the loss of a tooth is not a serious affair, considering “the ease with which an injury of this nature could be remedied by any reputable dentist.”⁶⁴

It is conceded that there may be cases where the loss of teeth would cause a physical deformity that can no longer be remedied by science. In those instances, it should be the duty of courts to impose the proper, and graver, penalties required by the law. Trial courts should consider all the factual circumstances surrounding the injury and the resulting consequences. They should not equate, for example, the loss of a fingernail with the loss of a hand.

Thus, it is inequitable for this Court to arbitrarily apply the *Balubar* doctrine in all cases where a tooth has been chipped or fractured and then later medically repaired in a manner where no visible deformity could be seen. Article 263 itself provides for a gradation of penalties according to the factual circumstances surrounding the injury, from the extent of the injury to the consequences suffered by the offended party. There is no reason for this Court to stubbornly declare that the loss of a tooth is immediately classified as a serious physical injury, without taking into account all the circumstances that may affect the nature and consequences of the injury.

Thus, *in determining whether or not the loss of a tooth could be considered a serious physical injury under Article 263, there must first be a factual determination during trial that the loss of the tooth resulted in a*

⁶¹ Justin Z. Laferrier and Robert Gailey, *Advances in Lower-limb Prosthetic Technology*, PHYS MED REHABIL CLIN N AM 21, 89 (2010).

⁶² *Id.*

⁶³ *Id.* at 92.

⁶⁴ J. Malcolm, Dissenting Opinion in *People v. Balubar*, 60 Phil. 698, 708 (1934) [Per J. Vickers, En Banc].

visible deformity. Where deformity is not apparent at trial, whether as a result of a lesser injurious act or through medical intervention, a lesser penalty should be imposed.

In this case, Dr. Owen Jaen Lebaquin opined that respondent Calubiran's tooth fracture had caused a permanent deformity and that the tooth had to be extracted.⁶⁵ Respondent Calubiran was asked to show to the trial court his tooth, to which the trial court noted that it was already an artificial tooth.⁶⁶ More accurately, the trial court observed that his tooth had "already [been] repaired by means of a modern dental technological procedure that has not been revealed in the evidence[.]"⁶⁷ In other words, respondent Calubiran's face had no visible disfigurement that would warrant petitioner's conviction of serious physical injuries under Article 263(3) of the Revised Penal Code.

The evidence, however, does not reveal how many days it took for the dentist to replace respondent Calubiran's fractured tooth. The 1934 case of *People v. Oh Suilay*⁶⁸ had categorized the offense as less serious physical injuries under Article 265⁶⁹ of the Revised Penal Code and imposed a penalty of *arresto mayor*. Taking into account that respondent Calubiran did not appear to have any visible deformity at trial, this Court is constrained to categorize this offense as slight physical injuries under Article 266⁷⁰ of the Revised Penal Code.

In view of the recent passage of Republic Act No. 11362, or the Community Service Act, the court of origin may, in its discretion, impose community service in lieu of the penalty of *arresto menor*. Section 3 of the law provides:

SEC. 3. Community Service. - Article 88a of the Act No. 3815 is hereby inserted to read as follows:

"ART. 88a. Community Service. - The court in the discretion may, in lieu of service in jail, require that the penalties of *arresto menor* and

⁶⁵ *Rollo*, p. 40.

⁶⁶ *Id.*

⁶⁷ *Id.* at 19.

⁶⁸ G. R. No. 40699, August 6, 1934 [Unsigned Resolution].

⁶⁹ ARTICLE 265. Less Serious Physical Injuries. — Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*.

⁷⁰ ARTICLE 266. Slight Physical Injuries and Maltreatment. — The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period.
2. By *arresto menor* or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance.
3. By *arresto menor* in its minimum period or a fine not exceeding 50 pesos when the offender shall ill-treat another by deed without causing any injury.

arresto mayor may be served by the defendant by rendering community service in the place where the crime was committed, under such terms as the court shall determine, taking into consideration the gravity of offense and the circumstances of the case, which shall be under the supervision of a probation officer: Provided, That the court will prepare an order imposing the community service, specifying the number of hours to be worked and the period within which to complete the service. The order is then referred to the assigned probation officer who shall have responsibility of the defendant.

“The defendant shall likewise be required to undergo rehabilitative counseling under the social welfare and development office of the city or municipality concerned with the assistance of the Department of Social Welfare and Development (DSWD). In requiring community service, the court shall consider the welfare of the society and the reasonable probability that the person sentenced shall not violate the law while rendering a public service.

“Community service shall consist of any actual physical activity which inculcates civic consciousness, and is intended towards the improvement of a public work or promotion of a public service.

“If the defendant violates the terms of the community service, the court shall order his/her re-arrest and the defendant shall serve the full term of the penalty, as the case may be, in jail, or in the house of the defendant as provided under Article 88. However, if the defendant has fully complied with the terms of the community service, the court shall order the release of the defendant unless detained for some other offenses.

“The privilege of rendering community service in lieu of service in jail shall be availed of only once.”⁷¹

On October 6, 2020, this Court promulgated the Guidelines in the Imposition of Community Service as Penalty in Lieu of Imprisonment, which provides that:

If the accused is sentenced with a penalty higher than *arresto menor* or *arresto mayor*, and on appeal the penalty was lowered to *arresto menor* or *arresto mayor*, which became final and executory, the accused may, upon written application with the court of origin, seek community service in lieu of imprisonment, which may be acted upon subject to the provisions of these guidelines.

With respect hereto, in no case shall community service be allowed if the defendant is a habitual delinquent.⁷²

Considering that the accused must first apply for community service in the court of origin, this Court retains the imposable penalty of *arresto menor*, pending such application. 

⁷¹ Republic Act No. 11362 (2019), sec. 3.

⁷² A.M. No. 20-06-14-SC, October 6, 2020.

On a final note, this Court observes that these kinds of cases could have been avoided had cooler heads prevailed. Our courts' dockets are already congested as they are. Local officials, who had been present during this altercation, could have done more to mediate between the parties. Well-meaning friends and relatives could have stepped in to de-escalate the situation and avoid judicial interference. While this case has created an opportunity for this Court to revisit a long obsolete doctrine, it would, perhaps, have been better for both parties to have settled their issues before coming to court.

WHEREFORE, the Court of Appeals' January 26, 2016 Decision in CA-G.R. CR No. 02053 is **MODIFIED**. Petitioner Elpedio Ruego is found **GUILTY** of slight physical injuries under Article 266(1) of the Revised Penal Code. He is sentenced to imprisonment of *arresto menor* and to pay respondent Anthony M. Calubiran's dental costs, as determined by the Municipal Trial Court in Cities of Iloilo City, without prejudice to the trial court's subsequent application of Republic Act No. 11362 and A.M. No. 20-06-14-SC.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



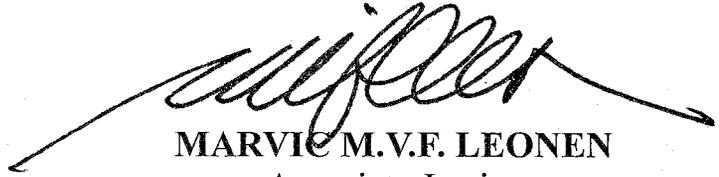
EDGARDO L. DELOS SANTOS
Associate Justice



JHOSEP N. LOPEZ
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.

**ALEXANDER G. GESMUNDO**

Chief Justice