

Duterte should be prosecuted by a government prosecutor

Written by ANTONIO C. CAMPO
Friday, 29 July 2011 13:16



THE author has been following up with interest the investigation of the incident in Davao City involving Davao City Mayor Sara Duterte-Carpio for punching Sheriff Abe Andres during a demolition on July 1, 2011.

The latest news from Manila published on page one in the July 22-28, 2011 issue of the **Filipino Reporter** states: DILG: Mayor in guilty of misconduct.

MANILA — Davao City Mayor Sara Duterte was found guilty of “conduct unbecoming of a public official” by the fact-finding body of the Department of Interior and Local Government (DILG) when she repeatedly punched Sheriff Abe Andres during a demolition of informal settlers on July 1.

Interior Secretary Jesse Robredo said that this finding was contained in the report submitted to President Benigno Aquino III.

The conduct of Mayor Duterte embraced not only conduct unbecoming of a public official.

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Under the Revised Penal Code of the Philippines, Mayor Duterte's conduct is a criminal act.

Since the July 1 incident involved the sphere of criminal law I am setting forth below the applicable penal provisions and jurisprudence under the Revised Penal Code of the Philippines:

Chapter Four

Assault Upon, And Resistance And Disobedience To, Persons In Authority And Their Agents

Art. 148. Direct assaults. - Any person who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crime 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 correctional 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. xxx

There are two ways of committing the crime of direct assault:

First, without public uprising, by employing force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, and

Second, without public uprising, by attacking, by employing force, or by seriously intimidating or seriously resisting any person in authority or any of his agents, while engaged in the performance of official duties.

The July 1 incident applies to the second form of direct assault.

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The following are the elements of the second form of direct assault:

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 that he is assaulted, (b) 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 official duties.

5. That there is no public uprising.

Who is an agent of a person in authority?

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 and barrio policeman and barangay leader, and any person who come to the aid of person in authority. (Art. 152, as amended.)

The Supreme Court of the Philippines in the case of *People vs. Hernandez*, 59 Phil. 343 ruled that a sheriff is a person in authority.

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(The Revised Penal Code - Criminal Law by Luis B. Reyes, former professor of criminal law, criminal law review and bar reviewer in criminal law, retired associate justice of the Court of Appeals.)

Author's comment

It appears that Secretary Robredo's report to President Aquino that Mayor Duterte is guilty of conduct unbecoming of a public official is pure and simple whitewash.

Mayor Duterte undoubtedly committed a criminal act, direct assault to a person in authority and should be prosecuted by government prosecutor.

In a constitutional government, no person is above the law.

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