

ALLAN DE VERA Y ANTE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 246231. October 09, 2023

Ponente: INTING, J.

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INTING, J.:

Before the Court is the Motion for Reconsideration[1] and Supplement to Motion for Reconsideration[2] both filed by petitioner Allan de Vera y Ante (petitioner) assailing the Court's Decision[3] dated January 20, 2021 (Decision), where the Court affirmed the Decision[4] dated September 27, 2018, and Resolution[5] dated March 27, 2019, of the Court of Appeals (CA) in CA-G.R. CR No. 39723. The CA found petitioner guilty beyond reasonable doubt of child abuse as defined and punished under Section 10(a) of Republic Act No. 7610 (RA 7610), otherwise known as the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.

The Antecedents

Petitioner was charged with violation of Section 5(6) of RA 7610 in the Information[6] filed with Branch 94 of the Regional Trial Court of Quezon City (RTC), which was docketed as Criminal Case No. Q-12- 177236. The Information reads as follows:

That on or about the 7th day of July 2012 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully and unlawfully commit acts of lascivious conduct upon the person of AAA,[7] a minor, 16 years of age, by then and there fondling his penis and masturbating while he was beside the complainant who was then taking her examinations at the XXX University, thereby prejudicing her psychological and physical development and further debasing, degrading, or demeaning the intrinsic worth and dignity of said AAA, as human being, to the damage and prejudice of said offended party.

CONTRARY TO LAW.[8]

Upon arraignment, petitioner entered a plea of "NOT GUILTY." After pre-trial, trial on the merits ensued.[9]

Version of the Prosecution

Private complainant AAA is a 16-year old first-year college student then enrolled at XXX University (XXX). AAA is both a Filipino and an American citizen, having been born and raised in the United States from Filipino parents.[10] When she was in high school, her family returned to the Philippines. Among her subjects at XXX is the Special Filipino Program, which required her to take the Filipino for Foreigners Diagnostic Exam.[11]

At around 8:30 a.m. on July 7, 2012, AAA went to the Filipino Department of XXX.[12] Petitioner, an office assistant[13] of the Filipino Department, proctored the diagnostic exam for AAA.[14] Petitioner made AAA take the diagnostic exam at the Mini-Library of the Filipino Department.[15] AAA sat on the couch and answered the exam on the coffee table inside the Mini-Library.[16] Petitioner kept open the door leading to and from the reception area of the Filipino Department to the Mini- Library.[17] Petitioner was standing approximately less

than a meter away to the left of AAA and was facing a bookshelf.[18] While taking the exam, AAA heard a tapping sound like skin slapping against skin, which she initially ignored.[19] When the sound became louder, AAA looked to her left and saw petitioner holding a book, binder, or folder on his left hand while his right hand was masturbating his penis.[20]

Afraid, AAA told petitioner that she would continue taking the Diagnostic Exam at the reception area of the Filipino Department. When she finished the exam, she handed her papers to petitioner who has come out to the reception area from the Mini-Library.[21]

AAA reported the incident to the security officers of XXX, who brought petitioner to the police. At the police station, AAA was assisted by her mother, BBB in translating the questions propounded by the police officer.[22] BBB also assisted in the translation of AAA's sworn statement, which was written in Filipino.[23]

On July 12, 2012, BBB brought AAA to a psychiatrist, Dr. Alma Jimenez, at St. Luke's Hospital, who prescribed Clonazepam to AAA, a minor tranquilizer to treat anxiety symptoms such as sleeplessness.[24] On August 6, 2012, AAA was brought to another psychiatrist, Dr. Angela Aida W. Halili-Jao (Jao), for assessment.[25] Dr. Jao interviewed AAA and took the history related to AAA's complaint against petitioner.[26] Dr. Jao assessed that AAA was suffering from post-traumatic stress disorder (PTSD).[27]

Version of the Defense

Petitioner denied the accusations against him. He asserted that the zipper of his jeans was broken on the day that AAA took the Filipino for Foreigners Diagnostic Exam.[28] At around 8:00 a.m. of July 7, 2012, petitioner's witness, Imelda Agbayani-Estrelles (Agbayani-Estrelles), an administrative assistant of the Filipino Department of XXX, called petitioner's attention to his broken zipper and recommended that he change his pants.[29] However, petitioner did not have a change of clothes.[30] Since it was a Saturday and petitioner only had to render work for half a day, he decided to just hide his broken zipper by pulling his shirt downward and his pants upward.[31]

Petitioner insisted that he could not have done the charges against him as he was arranging books at the Mini-Library that time. Further, the door from the reception area of the Filipino Department leading to the Mini-Library remained open; the place was well-lit and open to the public; and professors, students, visitors, and employees frequently visited the area.[32] Three other women, namely: 1) Agbayani-Estrelles; (2) Kristine V. Romero, Instructor at the Filipino Department; and (3) Arnette Rubio, a visitor of one of the faculty members, were present at the reception area of the Filipino Department on the day that AAA completed the Diagnostic Exam.[33] However, despite supposedly having seen petitioner masturbating, AAA still submitted to petitioner the Diagnostic Exam that she took.[34]

A few minutes past 9:00 a.m., petitioner was arrested by the security officers of XXX based on AAA's allegation that he masturbated in her presence. The security officers brought him to the police station where petitioner was examined to determine if there was any discharge on his clothing. The police officer who examined petitioner's pants and briefs stated that the clothes were dry and he did not see any discharge on what petitioner was wearing.[35]

XXX formed an ad hoc disciplinary committee, which cleared petitioner of the alleged incident.[36]

The Ruling of the RTC

The RTC found petitioner guilty of violation of Section 5(6)[37] of RA 7610. The RTC held that under Section 2(h) of the Rules and Regulations on Reporting and Investigation of Child Abuse Cases, masturbation is considered a lascivious conduct. Considering that petitioner committed a lascivious act in front of AAA who was

only 16 years old and the latter was deemed to have been subjected to other sexual abuse, petitioner must be convicted of the crime charged. The RTC gave great weight to the positive and candid manner by which AAA testified as to how petitioner masturbated in her presence. The RTC also ruled that AAA's testimony prevails over petitioner's defense of denial.[38]

The RTC sentenced petitioner to the penalty of eight years and one day of prision mayor to 17 years, four months and one day of reclusion temporal. He was further ordered to pay AAA: P20,000.00 as civil indemnity, P30,000.00 as moral damages, and P2,000.00 as exemplary damages.[39]

Aggrieved, petitioner appealed to the CA, which was docketed as CA-G.R. CR No. 39723.[40]

The Ruling of the CA

The CA partly granted petitioner's appeal and modified the RTC Decision.[41] It held that masturbation in the presence of a minor constitutes child abuse under Section 10(a)[42] of RA 7610. Even if Section 10(a) was not alleged in the Information, petitioner could still be convicted because the Information charged petitioner of intentionally subjecting AAA to abusive, degrading, and demeaning acts by masturbating in AAA's presence to the latter's damage and detriment, and the elements thereof were proven. Petitioner was meted out with the penalty of indeterminate sentence of four years, nine months and 11 days of prision correccional to six years, eight months and one day of prision mayor, with civil indemnity of P10,000.00, and moral damages of P20,000.00, with 6% interest per annum from date of finality until fully paid.

The Court's Decision dated January 20, 2021

In the Decision dated January 20, 2021, the Court denied petitioner's Petition for Review on Certiorari[43] (the Petition). In affirming the CA Decision, the Court ruled that the act of masturbating in the presence of the minor AAA is considered lascivious conduct and constitutes psychological abuse on the minor victim.

The Court also did not find merit in petitioner's argument that if he committed any crime, it would only be unjust vexation and not child abuse. The purpose of the crime of unjust vexation is to cause annoyance, irritation, torment, distress, or disturbance to the mind of the person to whom it was directed. However, there is overwhelming evidence on record and applicable jurisprudence which supports the ruling of the CA that petitioner's act of masturbation is not just to vex AAA, but was done intentionally to excite sexual desire on account of the minor victim because he knew that AAA was there and only an arm's length away.

Petitioners Motion for Reconsideration and Supplement to Motion for Reconsideration/ Memorandum of Additional Authorities

For resolution is petitioner's Motion for Reconsideration[44] and the Supplement to Motion for Reconsideration/Memorandum of Additional Authorities[45] substantially reiterating his arguments in the Petition. He alleges that: (1) AAA wavered in her testimony on material matters; (2) petitioner's evidence should be given more weight considering that his testimony was corroborated by object evidence, including photographs of the broken zipper of his jeans,[46] unlike AAA's evidence that relied on her mere "say so"; (3) to be punishable under RA 7610, the act of masturbation, assuming it was committed in the case, requires the participation of the child; (4) assuming that there was masturbation, the prosecution failed to prove lewd design; thus, the crime is only unjust vexation; (5) assuming that there was masturbation, the prosecution failed to prove that AAA suffered trauma; (6) to be punishable under RA 7610, the abuse must be directed at the child, and the intent to debase, demean, or degrade the dignity of the child must be established; (7) assuming liability, the mitigating circumstance of voluntary surrender or circumstances analogous thereto should have been appreciated in imposing the proper penalty; and (8) assuming liability, the damages awarded are excessive under the premises.

In its Comment,[47] representing the People, the Office of the Solicitor General (OSG) prays for the denial of the Motion for Reconsideration and Supplement to Motion for Reconsideration/Memorandum of Additional Authorities. It argues that: (1) the alleged inconsistencies in AAA's testimony are trivial and do not affect its probative value; (2) petitioner was unable to prove that his broken zipper rendered masturbation impossible; (3) masturbation does not require physical contact with the victim to constitute child abuse under Section 10(a) of RA 7610; (4) the prosecution adequately proved lewd design on the part of petitioner; hence, the offense cannot be considered unjust vexation; (5) the prosecution satisfactorily proved psychological abuse suffered by AAA; (6) petitioner's lascivious conduct was directed at AAA and intended to debase, degrade, and demean her intrinsic worth and dignity as a human being; (7) the mitigating circumstance of voluntary surrender cannot be appreciated in favor of petitioner as the latter did not surrender spontaneously but through the security officers of XXX; and (8) the damages awarded are not excessive as these are in accordance with the policy behind RA 7610 and discretionary upon the Court.

Issue

The issue before the Court is whether petitioner should be acquitted of violation of Section 10(a) of RA 7610.

The Ruling of the Court

After a second hard look at the records and the facts of the case, the Court finds merit in the Motion for Reconsideration and Supplement to Motion for Reconsideration/Memorandum of Additional Authorities; thus, the Court resolves to acquit petitioner of violation of Section 10(a) of RA 7610.

Section 10(a) of RA 7610 imposes penalties upon any person "who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development." Relevant thereto is Section 3(b) of RA 7610, which defines child abuse as follows:

Section 3. Definition of Terms. -

(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1)

Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2)

Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3)

Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4)

Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth

and development or in his permanent incapacity or death.

In the January 20, 2021 Decision, petitioner was found guilty of child abuse as defined in Section 3(b)(1) of RA 7610, i.e., psychological abuse, and in Section 3(b)(2) of RA 7610, i.e., through an act which debases, degrades, or demeans the intrinsic worth and dignity of AAA as a human being.

The Court finds that petitioner's conviction under the foregoing provisions of law warrants reconsideration given that, upon further review of the records, the prosecution was unable to establish that: (1) petitioner masturbated in AAA's presence; (2) the psychological harm upon AAA was serious or severe as to amount to child abuse; and (3) petitioner had the specific intent to debase, degrade, or demean AAA's intrinsic worth and dignity as a human being.

The present case warrants a review of the factual findings of the lower courts

Preliminarily, the Court clarifies that as a general rule, only questions of law may be raised in a petition for review on certiorari and factual questions are not the proper subject thereof.[48]

However, in criminal cases, the entire records are thrown open for review because a finding of guilt is essentially a factual question, where the Court is called upon to evaluate the evidence presented in relation to the elements of the crime charged.[49] The Court is not precluded from reviewing and reversing the factual findings of the lower courts if it is not convinced that the findings are conformable to the evidence on record and to its own impression of the credibility of the witnesses,[50] or when the lower courts overlooked and disregarded significant facts which could affect the results had they been properly considered.[51]

Further, the rule that only questions of law may be raised in petitions for review on certiorari before the Court admits of exceptions,[52] as when the judgment is based on a misapprehension of facts, or when a conclusion or finding is grounded on speculation, surmises, or conjecture.

The foregoing exceptions apply to the present case, thus warranting a review of the factual findings of the lower courts.

Petitioners act of masturbating in the presence of AAA was not satisfactorily established.

The RTC and the CA uniformly determined that petitioner masturbated in the presence of AAA while the latter was taking the Diagnostic Exam at the Mini-Library of the Filipino Department of XXX.[53] Although this finding is based on the lone testimony of AAA, both courts gave credence to AAA's statements because she is young and immature, which are generally badges of truth.[54] The RTC particularly noted that it could not find any ill motive on AAA's part to falsely charge petitioner of having committed lascivious conduct in her presence.[55]

Significantly, the Court has held that conviction or acquittal in crimes such as rape depends almost entirely on the credibility of the victim's testimony because ordinarily, only the participants can testify to its occurrence.[56] In such cases, the testimony of the victim should be scrutinized with great caution and should not be received with precipitate credulity; and when the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion.[57] For conviction to be had upon the lone testimony of the victim, the latter's testimony must be clear and free from any serious contradiction, impeccable, and must ring true throughout or bear the stamp of absolute truth.[58]

The foregoing principles apply to the instant case considering that only AAA and petitioner were present and only the two of them can testify on what exactly happened, insofar as the alleged masturbation incident is concerned. Verily, other than AAA, no other prosecution witness has personal knowledge of what transpired at the Mini-Library at the time that AAA was taking the Diagnostic Exam on July 7, 2012. The testimony of the other prosecution witnesses, namely, BBB and Dr. Jao,[59] cannot be used as proof of petitioner's supposed masturbation as their statements were based only on what AAA narrated to them and they have no personal knowledge of the incident.

Here, the records reveal material inconsistencies in AAA's testimony; hence, petitioner cannot be convicted on the basis thereof.

First, AAA stated in her Judicial Affidavit[60] that she saw petitioner masturbating:

I started to take the exams and while taking it, I heard a tapping sound but I ignored it because I was focused on finishing my exams in time for my next class which was scheduled at 9 am. I continued taking the exam until the tapping sound got louder and faster so I looked up to where the sound was coming from and when I looked to the left of me, I saw the accused holding his penis and doing the masturbating motion in it.[61]

However, AAA's Sworn Statement[62] to the police completely omitted the supposed masturbation. Instead, AAA only narrated that she saw the penis of petitioner, without mentioning the alleged masturbation:

8:30 ng umaga July 7, 2012, pumunta po ako sa Filipino Department. Para magtanong ng schedule ko sa Filipino Subject ko at sinabi naman po niya ang schedule at section ko, at tinanong niya ako kung gusto kung mag exam sa Filipino for Foreigners Diagnostics Exam at kumuha po ako, dinala po niya ako sa bandang likod ng office at doon daw ako magexam, hindi po siya umalis at binantayan niya po ako. Habang ako po ay kumukuha ng exam may narinig po akong kaluskos, pero binalawala ko lang po dahil ako po ay kumukuha ng exam. Nagulat nalang po ako paglingon ko sa bandang kaliwa nakita ko po ang ari nung lalaking nambastos sa akin, sa takot ko po bigla po akong napatayo at tumakbo palabas, at nanginig po akong pumunta sa classroom namin at tinanong po ako ng mga kaklase ko kung anong nangyari sa akin, umiyak na po ako noon, nasabi ko po sa kaklase ko na si NICO at sinabihan po ako na tumawag po ako sa MAMA ko, tenext ko po si MAMA ko na tawagan ako at umiyak na po ako sa kanya habang kausap ko siya sa phone. At nalaman niya po ang nangyari at sinabi niya po pumunta ako sa Security Office ng [XXX].[63] (Emphasis supplied)

On cross-examination, AAA insisted that she saw with her own two eyes that petitioner was masturbating by holding his penis and moving it back and forth.[64] However, AAA also answered during cross-examination that she heard the tapping sound and saw petitioner's penis. As to his act of masturbation, AAA merely put the two together to conclude that petitioner was masturbating:

Q:

... Ms. Witness, what made you conclude, because here you said in the paragraph I asked you to read you said, "nakita ko po ang ari", you saw the penis. But there was no mentioned (sic) here at all that something was being done by the accused, am I correct?

...

A:

I saw his penis and from what I recognized what the penis looks like. I saw his penis, I heard the sound, I understand what masturbating is....

...

Q:

But, Ms. Witness, here in the Affidavit that you gave with the police, you did not indicate that you saw him doing any motion, making any motion with the penis, am I correct?

A:

Yes, but I did hear and I did see the penis. So, if you put the 2 together as a ... the person with you, then you would say that this man is masturbating.[65]

AAA's statements on cross-examination place great doubt on whether she saw petitioner masturbating. AAA's testimony on cross-examination support the conclusion that she merely deduced that petitioner was masturbating by correlating what she heard, i.e., tapping sound, with what she supposedly saw, i.e., petitioner's penis.

Second, the insufficiency of AAA's testimony is further shown by her inconsistency on what she heard at that time. In her Sworn Statement[66] before the police, AAA mentioned that what she heard was kaluskos.

Meanwhile, in her Judicial Affidavit,[67] AAA mentioned that what she heard was a tapping sound. AAA repeated the same in her cross-examination,[68] where she said that what she heard was like a clapping sound, like skin slapping against another skin:

I would say that it sounded like skin slapping against another skin. So, that's the sound that first caught my attention. Almost like a clapping sound. (Witness demonstrating by clapping her hands softly).[69]

Kaluskos translates to a rustling or shuffling sound. It is not like clapping or skin slapping against skin reflective of petitioner's alleged masturbation. Evidently, AAA's statements on the sound that she heard at the time relevant to the case are inconsistent.

AAA attempted to explain the variance in her statements by asserting that she narrated her story to the police officer in English, but she was asked to give her statement in Filipino.[70] AAA asserted that it was the interviewing police officer who chose the term "kaluskos" as there is no direct translation of "tapping" in Filipino according to this police officer.[71]

However, BBB testified in her Judicial Affidavit[72] that during the police interview, she was present with AAA, she was translating for AAA, and she helped translate the sworn statement of AAA from English to Filipino. BBB affirmed this statement during her cross-examination.[73] Evidently, the terms used in AAA's sworn statement were not entirely reliant upon the police officer's translation of what AAA averred. BBB helped translate the narration of AAA. Being the mother of AAA, it is reasonable to believe that BBB would have ensured that her daughter's statement to the police is accurate. BBB even confirmed on cross-examination that she made sure that AAA understood her translation:

Q

Madam Witness, do you affirm that when you were translating this, your daughter was present?

A

Yes, that's right.

Q

And in fact, she understood your translation ... may I rephrase that. And you made sure that she understood your translation from English to Filipino?

A

Yes, sir.

Q

And that she herself, your daughter herself, told you that she understood the question that you translated to her?

A

That's correct, sir.[74]

Even more, on cross-examination, AAA understood that "kaluskos" means rustling or shuffling:

Q: My question is, in this statement you used the word "kaluskos."

A: Yes.

Q: Which means rustling or shuffling?

A: Yes.[75]

The inconsistency between AAA's sworn statement to the police and her statement before the trial court cannot therefore be entirely attributed to errors in translation due to AAA's lack of mastery over the Filipino language. AAA herself understood that kaluskos is not the same as tapping, yet she allowed the same to be used in her sworn statement.

Third, AAA's testimony on cross-examination further casts doubts on her statement that she heard and saw petitioner masturbating. On one hand, she insisted that she saw petitioner doing the masturbating motion by holding his penis and moving it back and forth.[76] However, upon further cross-examination, AAA changed her earlier statement by claiming that masturbation is touching or handling the penis, not a push- and-pull motion

with the hand:

Q: .. .In the case of the accused, he made a push and pull motion with his penis with his hand, correct?

A: Where I stated (sic) the push and pull motion?

Q: That's what I understand by your saying that he was masturbating.

A: So, that is the common definition of a masturbation (sic)?

Q: What was he doing? Would you say that masturbation is fondling of ones (sic) penis?

A: Fondling not necessarily have to be like this. Fondling means to touch. Fondling means to handle.[77]

AAA's testimony on cross-examination clearly contradicts her earlier statement that she heard a sound[78] like skin slapping against skin and that based on this, petitioner was masturbating.[79] If petitioner was merely touching or handling his penis, not making a push-and-pull motion with his hand to stroke his penis, it is unclear how petitioner's alleged masturbation could produce a sound like skin slapping against skin, almost like clapping. The Court observes that merely touching or fondling one's penis would not create enough force to produce a sound like skin slapping against skin or clapping. Even AAA had to clap her hands to demonstrate to the RTC what she allegedly heard at that time.[80]

Fourth, a reading of the records reveals that AAA's testimony is not entirely reliable, as she herself was unsure about the details of what she supposedly witnessed at the time that she was taking the Diagnostic Exam.

The records bear that at the Mini-Library, AAA was seated on a couch. To the left of the couch is a bookshelf. Petitioner was facing the bookshelf when he was allegedly masturbating, less than a meter away from AAA. Thus, petitioner and AAA were facing opposite directions, with petitioner to the left of AAA, and AAA to the left of petitioner. Hence, if AAA looked to her left, she would see the left side of petitioner.

However, on cross-examination, AAA could not categorically testify what petitioner was holding in his left hand, even though this was more proximate to where AAA was located:

WITNESS

No, he was facing the cabinet or the library where there are books. He was actually holding a book or folder or binder and then his other hand was over here....

COURT

He was holding a book or folder or binder, with what hand?

WITNESS

A With his left hand, he was holding a binder, folder, whatever it maybe. And his right was over here.

COURT

Continue.

ATTY. PANGANIBAN

Q So, [AAA], you said that the accused was holding something, what is this something, a book or a binder or what?

A A binder.

Q A binder of what?

A

I was taking my test, so I wasn't quite... I didn't notice exactly what he was holding but from what I could it see it was a binder.[81]

It bears emphasizing that AAA asserted during trial that her glance towards petitioner at the time relevant to this case was long enough to recognize what something looks like. On cross-examination, AAA testified:

Q: ... Could you tell this Court how long the glance you took when you saw the penis of the accused. Can you tell this Court how many seconds?

A: I don't know how many seconds, but it's enough to recognize what something looks like. So, maybe you could look at the mic and see how long it take (sic) for you to recognize that mic.

...

Q: So, would I be correct to say that that glance you made was just for a fleeting moment?

A: Yes.[82]

The Court finds AAA's testimony inconsistent. On one hand, AAA asserts that she had enough time to see that petitioner was fondling his penis with his right hand. On the other, AAA claimed that she could not make out what exactly petitioner was holding in his left hand. To repeat, petitioner's left side was more proximate to where

AAA was located. It is incredible that AAA, for a fleeting moment, was able to make out what petitioner was holding in his right hand but not in his left, even though the right hand of petitioner was more distal from AAA.

Finally, AAA testified that when she supposedly saw petitioner masturbating, she began to panic and was overcome with feelings of anxiety.[83] In her narration to Dr. Jao, AAA even claimed that she was hyperventilating at that time.[84] However, after finishing the Diagnostic Exam and despite what she allegedly witnessed earlier, AAA still submitted her exam papers to petitioner.[85] This is unusual, considering that by AAA's own testimony, at the time that she finished the exam at the reception area of the Filipino Department, there were other people who were present thereat.[86] When asked to explain why she did not approach the other persons present, AAA could only state that she did not pay attention to them and that they were not her concern.[87]

The OSG maintains that any inconsistencies in the testimony of AAA are merely trivial and do not affect her credibility. The Court disagrees. All the foregoing inconsistencies, taken together, reveal that AAA's lone testimony is not impeccable and does not ring true throughout or bear the stamp of absolute truth. The inconsistencies go deep into the veracity and credibility of AAA's testimony, raising the question of whether the act complained of, i.e., petitioner's masturbation, actually occurred.[88] Hence, the lone testimony of AAA is insufficient to convict petitioner of violation of Section 10(a) of RA 7610.

Child abuse through the
infliction of severe or serious
psychological injury is likewise
not established

In the Decision,[89] the Court determined that petitioner's conduct constitutes child abuse through the infliction of psychological injury upon AAA or harm to AAA's psychological or intellectual functioning.

The Court reconsiders this conclusion. To constitute child abuse through psychological abuse, the harm to the child's psychological or intellectual functioning must be severe or serious. With this in mind, the Court finds that any supposed injury inflicted by petitioner upon AAA does not amount to psychological abuse.

Physical abuse, psychological abuse, and cruelty, as forms of child abuse, are provided in Section 3(b)(1) of RA 7610. They are further defined in Section 2(b) to 2(e) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, viz.:

SECTION 2. Definition of Terms. - As used in these Rules, unless the context requires otherwise -

....

b) "Child abuse" refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child;

c) "Cruelty" refers to any act by word or deed which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. Discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein;

d) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe injury or serious bodily harm suffered by a child;

e) "Psychological injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of said

behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;

The Rules and Regulations on the Reporting and Investigation of Child Abuse Cases shows that physical injury requires severe injury or serious bodily harm suffered by a child. As to psychological injury, it may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of said behaviors. Meanwhile, it is not child abuse through cruelty in the discipline of minors administered to a child when the latter is reasonable in manner, moderate in degree, and does not constitute physical or psychological injury under the same Rules and Regulations.

From the foregoing, it is evident that the law contemplates severe or serious harm to the child to come within the purview of child abuse.

Had it been the intention of the law to punish any and all acts of physical or psychological harm upon the child without regard to its severity or seriousness, then there would have been no reason to distinguish the same from the administration of discipline upon minors in a reasonable manner and moderate in degree. This is consistent with the deliberations of the legislators in passing RA 7610 on the severity of injury contemplated by the law:

THE CHAIRMAN. Sa Committee level. Tanong lang! Kung tatanggalin natin yung "unreasonable deprivation" sa Physical Neglect, yung "unreasonable infliction of physical injury"? Ito ang iniisip naman dito eh yung papaluin sa kamay; hoy, magulo ka; nasugatan dahil don. Hindi naman siguro yon ang iniisip nating parusahan dito, 'no. Yung pinaparusahan natin dito yung gabi-gabi ginugulpe, pinapalo na wala naming dahilan, ecetera.

...

(Silence) Tuloy. Emotional Abuse or Maltreatment.

...

So, it reads: "Emotional Abuse or Maltreatment - infliction of unreasonable punishment other than physical, (comma) through excessive verbal assault or non-verbal acts of harassment, (comma) threats, emotional neglect or deprivation of emotional needs." Okay. Mukhang malinaw na, no. (Silence)[90]

Thus, to constitute child abuse through psychological injury, the harm to the child's psychological or intellectual functioning must be severe or serious. Hence, for petitioner to be convicted of psychological abuse, the prosecution must show that he inflicted severe or serious psychological harm upon AAA.

A review of the records reveals that the prosecution's evidence is insufficient to prove that petitioner inflicted severe or serious harm to AAA's intellectual or psychological functioning as to amount to child abuse.

First, the severity of the psychological injury inflicted upon AAA is suspect. In *Court of Industrial Relations v. Solidum (Solidum)*,^[91] the Court has previously described the conduct of masturbating in view of the public, including a 16-year-old minor, as an indecent act that is repulsive to normal standards of propriety and decorum. Relevantly, decisions^[92] by foreign courts on the crime of indecent exposure - ranging from a partial showing of a flaccid penis to a full exposure of the genitalia with erect penis, masturbation, and intense experience of sexual gratification - have ruled that based on clinical studies, the harm done by such conduct appears to be minimal at most and any long-term or significant psychological damage resulting therefrom has not been established. Any psychological injury suffered by AAA in seeing petitioner's act of masturbation would therefore be minimal, not severe or serious as to amount to child abuse under Section 10(a) of RA 7610.

Second, AAA herself testified on cross-examination that she supposedly witnessed petitioner masturbating only for a fleeting moment, as earlier discussed. Apart from petitioner's alleged masturbation seen by AAA for a fleeting moment, no other act of psychological abuse is charged against petitioner. He did not touch, embrace, or

even talk to AAA at the Mini-Library.

Significantly, AAA testified on cross-examination that she has previously seen masturbation in movies and has even attended biological and sexual education classes teaching masturbation; hence, she is aware of the male sex organ and masturbation:

ATTY. PANGANIBAN

Has she personally witnessed before a masturbation ...

COURT

Before this incident?

ATTY. PANGANIBAN

Yes, for her to conclude that it was masturbation.

COURT

Alright, answer.

WITNESS

A

To be frank, there are movies that include masturbation everywhere. I took health classes, I took sexual education classes that teach masturbation, so that makes me aware of it.

ATTY. PANGANIBAN

Yes, your honor. From the movies and if you got through it, what movies are you talking about? Can you cite the movie where ...

COURT

You don't have to go into that, just let her describe what masturbation is?

WITNESS

A

I am sorry but I find the question quite evasive, but alright. I know that masturbation is fondling your private parts or your sexual organs. I obviously know what sexual organ is of a man, I have biology classes and sexual education classes. So besides the movies like American Pie, there are a lot of movies that include masturbation. There are a lot of TV shows, there are a lot of other forms of media that included that. I know what it is

because if for a woman you can fondle your private part and if you can fondle your sexual part, then if for a man, it's obviously the same thing. I don't think men have another form of masturbation other than fondling or playing with their private parts.[93]

With the foregoing, the Court is not prepared to accept that petitioner's alleged act of masturbation is of such a serious or severe nature as to constitute child abuse through the infliction of psychological injury upon AAA. The exposure of petitioner's conduct to AAA was only for a fleeting moment. AAA has also previously seen acts of masturbation and is aware of the male sex organ prior to the incident subject of this case.

Third, the prosecution's evidence does not categorically point to petitioner's conduct as the event which caused serious psychological injury to AAA. The Court notes that both the RTC[94] and the CA[95] relied upon the testimony of Dr. Jao and her Psychiatric Report[96] dated August 12, 2012 in finding that AAA suffered PTSD because of petitioner's conduct.

For a psychiatric assessment and report to constitute competent evidence establishing mental problems, the Court has ruled that the qualification of the examining doctor as an expert in the field of mental illnesses and diseases must be established.[97] Further, a general statement in the doctor's report that the patient was suffering from a mental illness without providing the details on how the diagnosis was arrived at would not suffice, for a doctor who has competently examined the patient would have been able to discuss at length the circumstances and precedents of their diagnosis.[98]

Here, the prosecution offered the testimony of Dr. Jao to show that she had the capacity to conduct the psychiatric examination of AAA and that she should be considered as an expert witness.[99] However, even a cursory look at Dr. Jao's Psychiatric Report[100] readily reveals that her assessment of AAA contained a general statement that the latter was suffering from PTSD, without explaining the cause of the disorder. While the Report contained information regarding, "Mental Status Examination," it was nothing more than a summary of AAA's narration of the incident subject of this case to Dr. Jao. The incident itself was not determined as the cause of AAA's PTSD.

Further, when Dr. Jao was subjected to cross-examination, she admitted having committed a lapse in writing her Psychiatric Report because she did not include a statement on prior history of abuse or trauma on the part of AAA, which should have been included.[101] When asked to explain why this was omitted, Dr. Jao simply stated that AAA said that she had no prior history of abuse or trauma.[102] Dr. Jao's testimony also established that while she conducted a "mental status examination"[103] of AAA by examining her facial expressions, the way she dressed, her coherence, logic in her statements, and appropriateness of her affect, this was conducted for only more than an hour.[104]

Given the circumstances, the Court finds Dr. Jao's testimony insufficient to establish the alleged PTSD suffered by AAA because of petitioner's conduct. The testimony of Dr. Jao and her Psychiatric Report did not discuss at length the circumstances and precedents of her diagnosis of AAA as well as the cause thereof.

Finally, AAA's own narration to Dr. Jao points to circumstances distinct and separate from petitioner's conduct as the cause of her PTSD. Hence, it cannot be said that petitioner authored the psychological harm allegedly suffered by AAA.

Significantly, in *Demata v. People*,[105] the Court acquitted therein accused of violation of Section 10(a) of RA 7610 because the accused's conduct was not established as the proximate cause of the alleged PTSD suffered by the purported minor victim. The accused therein was charged with such violation after he supposedly caused the publication of the minor's photos, which allegedly caused the minor to suffer PTSD. In acquitting the accused, the Court ruled that based on the testimony of the doctor who examined the minor, it was the minor's emotional response to exposure to publication - not the publication per se - which caused her disorder. The reaction of the

people around the minor, including bullying by her classmates, also contributed to the disorder. However, the accused cannot be found guilty of child abuse upon the minor, as he cannot be causally linked to these reactions from the people around the minor, viz.:

Furthermore, the first of clinical abstracts prepared by Dr. Bascos was issued on October 12, 2012, almost four months after the publication and two months after AAA's brother showed the Bagong Toro newspaper to the family. That there was a two-month interim between the publication and BBB's discovery of the paper - and another two-month interim between that and the first psychological consultation - are further reasons to believe that it was not the publication itself which necessarily or directly caused AAA's PTSD. In fact, Dr. Bascos testified that it was AAA's emotional response to exposure to the publication - and therefore not the publication per se - which caused her disorder:

DIRECT EXAMINATION BY PROS. SIOSANA: ...

Q: Would you be able to get again the root of this traumatic distress disorder of the private complainant in this case?

A: In [AAA's] case, it was severe emotional trauma that she experienced when exposed to that publication.

Furthermore, it is not unreasonable to believe that the sudden revelation of the publication to her by her brother, the ensuing confrontation with her parents, the bullying from some of AAA's classmates, the uncalled-for remarks of one of her teachers, the anger of her relatives, her uncle's sudden withdrawal of financial support for her education all worked towards creating an emotionally tenuous atmosphere around AAA that was prejudicial to her development. The people in AAA's school and family are not automatons and therefore, their actions cannot be causally linked to Demata.[106]

The Court's ruling in Demata obtains in the case at bar. Verily, the records bear that AAA felt demeaned because her classmates laughed at her when she narrated to them that she supposedly saw petitioner masturbating. It was not the masturbation per se which caused her to feel demeaned. As testified on by Dr. Jao on direct examination:

[AAA] was feeling having (sic) these flashbacks everytime, she said that everytime she was asked questions about the incident that happened in [XXX], she would feel as if she was there again in that room where it happened and she also felt bad after the incident when she told her classmates about it, she felt demeaned because there were some who were even laughing at what happened to her ...[107] (Italics ours)

Dr. Jao narrated the same incident in her Psychiatric Report[108] dated August 12, 2012:

... While answering her exam, [AAA] claimed that she heard a tapping sound, which she initially ignored as she was focused in answering her exam. However, the tapping sound persisted and as she was already being bothered by it, she looked up and turned her head towards her left side to find out where the sound was coming from and to her surprise she allegedly witnessed the [petitioner] masturbating his penis. [AAA] claimed that in fear and shock, she ran out of the room and was hyperventilating. She claimed that despite her apparent confusion and disgust, she attempted to finish her exam in the waiting area and still submitted the said exam to the respondent and then hurriedly proceeded to her classroom. She started to cry while in her classroom as she disclosed to her classmate, Nico her traumatic experience, who advised her to immediately inform her mother. Some classmates she claimed even made fun of the incident and this reaction of her classmates made her feel bad... (Italics ours)

It thus appears that AAA's feeling of having been demeaned is not specifically due to petitioner's supposed masturbation but is attributable to the conduct of her classmates who laughed at her. This casts doubt on whether petitioner's conduct amounted to psychological injury upon AAA and is the cause of the alleged harm to her psychological or intellectual functioning.

With the foregoing, the Court reverses its earlier finding that petitioner committed a violation of Section 10(a) of RA 7610 through psychological abuse of AAA. The prosecution's evidence does not establish beyond reasonable doubt that petitioner inflicted serious or severe harm to AAA's intellectual or psychological functioning, warranting petitioner's acquittal.

Petitioners specific intent to
debase, degrade, or demean the
intrinsic worth and dignity of
AAA was not satisfactorily
established

The act of debasing, degrading, or demeaning the child's intrinsic worth and dignity as a human being has been characterized as a specific intent in some forms of child abuse.[109] Debasement is defined as the act of reducing the value, quality, or purity of something; degradation, on the other hand, is a lessening of a person's or thing's character or quality; while demean means to lower m status, condition, reputation, or character.[110]

The specific intent to debase, degrade, or demean the intrinsic worth and dignity of the child as a human being is relevant in child abuse when: (1) it is required by a specific provision in RA 7610, as for instance, in lascivious conduct; or (2) when the act is described in the information as one that debases, degrades, or demeans the child's intrinsic worth and dignity as a human being.[111]

Thus, in several cases, the accused were acquitted as they lacked the specific intent to debase, degrade, or demean the intrinsic worth and dignity of the child as a human being. In *Bongalon v. People*,^[112] therein accused slapped and hit a minor at the back. The information alleged that the accused's conduct was "prejudicial to the child's development and which demean the intrinsic worth and dignity of the said child as a human being."^[113] However, the accused was acquitted as he hit and slapped the minor in the heat of anger, after he witnessed the minor harming his daughter.

Similarly, in *Jabalde v. People*,^[114] the accused was charged with acts "prejudicial to [the child's] development"^[115] but was acquitted because she was only acting in defense of her daughter, who suffered a head injury after the minor pushed her daughter. Likewise, in *Escolano v. People*^[116] and *Talocod v. People*,^[117] therein accused hurled invectives at minors and were charged with an act that "debases, demeans, and degrades the intrinsic worth and dignity of said minors." Both accused were acquitted as they made offhand remarks and invectives out of parental concern for their children, who were being harmed by the alleged child victim.

In the present case, the Information charges petitioner with committing acts of lascivious conduct upon AAA by fondling his penis and masturbating in her presence, "thereby prejudicing her psychological and physical development and further debasing, degrading, or demeaning the intrinsic worth and dignity of said AAA, as human being."^[118] Hence, petitioner's specific intent to debase, degrade, or demean the intrinsic worth and dignity of AAA as a human being is material for his conviction.

That is, petitioner may only be convicted if the prosecution was able to prove beyond reasonable doubt that he acted with the specific intent to debase, degrade, or demean the intrinsic worth and dignity of AAA.^[119]

Intent is a state of mind that accompanies the act and can only be verified through the external acts of the person.^[120] The intention of the accused can be inferred from the manner in which they committed the act complained of, as when the accused's use of force against the child was calculated, violent, excessive, or done without any provocation.^[121] Thus, to determine whether petitioner acted with the specific intent to debase, degrade, or demean AAA's intrinsic worth and dignity as a human being, petitioner's conduct at the time of the

alleged masturbation incident must be examined.

A review of the records reveals that the prosecution failed to discharge its burden to prove beyond reasonable doubt that petitioner acted with intent to debase, degrade, or demean AAA 's intrinsic worth and dignity as a human being.

First, AAA herself testified on cross-examination that petitioner kept open the door leading to the Mini-Library from the reception area of the Filipino Department of XXX and anyone could have come inside the room:

Q:

And you also said, Ms. Witness, that he could have closed the door. So, the door was opened (sic) the whole time?

A:

Yes, and that is in my Affidavit.

Q:

So, any one could have come, Ms. Witness, inside the room?

A:

Yes, but we were at the back of the office. I have given them the sketch.

Q:

Now, you stated that you took the exam in the mini-library and it was kept opened (sic) all the time?

A:

The door was opened (sic).

Q: Yes, it was opened (sic). And in fact, it was the accused who kept the door opened (sic). Correct?

A: Yes. He did not close the door.[122]

Significantly, AAA testified that when she continued taking the Diagnostic Exam at the reception area of the Filipino Department, other people were present thereat:

Q: I'll go back a little bit, a little further, a little back. You said that you went to the reception area of the Filipino Department and saw someone sitting there beside you?

A: I sat down and someone sat beside me.

Q: So, there were no other people?

A: There were other officemates, but I do not pay attention to them. I did not pay attention to the woman who sat down beside me.

...

Q: So, were there other people other than the one who sat besides (sic) you?

A:

I assumed that there were other people in the faculty, faculty member that were there but I did not pay attention to them given my situation.[123]

The Court has repeatedly recognized that lust is not a respecter of time or place.[124] However, there have also been instances where the Court absolved the accused of lewd designs and lascivious conduct as the acts were committed in a public place, such as a schoolroom within hearing distance of other teachers.[125] The Court finds the latter situation applicable to petitioner, especially considering the inconsistencies in the testimony of AAA, as earlier discussed.

Given the situation where the door from the reception area of the Filipino Department leading to the Mini-Library was kept open by petitioner himself, coupled with the fact that other people were present who could enter the Mini-Library at any time, it is doubtful if petitioner intended to debase, degrade, or demean the intrinsic worth and dignity of AAA as a human being by purportedly fondling or masturbating his penis in the presence of the latter. Petitioner's act of keeping open the door and allowing anyone to enter betrays such criminal intent.

Second, petitioner's conduct is equivocal and does not evince beyond reasonable doubt an intention to degrade, debase, or demean the intrinsic worth and dignity of AAA as a human being. The records bear that other than AAA supposedly seeing petitioner masturbating or fondling his penis, petitioner did not commit any act upon AAA. He did not touch nor speak to AAA at the Mini-Library. On cross-examination, AAA stated that she did not even see petitioner looking at her:

Q: But did you see him at any time during the time inside the [mini-library] that he was looking at you. Did you catch him looking at you?

...

A:

I was taking the test. When we were walking inside the room together... I didn't notice because I was focus

(sic) on taking the test and my attention was only caught by him after that sound. But, of course, I can see him in my peripherals.

Q:

So, you can see him in your peripherals. Did you see him in inter-peripherals (sic) that he was looking at you at any time? Was he looking at you?

...

A:

I was looking at the test and I couldn't tell if he was looking at me but... I don't know if he is looking at me right now as I look at his thought (sic). But I understand that you are there, your figure is there.[126]

Evidently, petitioner did not intentionally display his conduct to AAA. It was only after AAA heard a sound and turned to her left to look at petitioner that AAA saw what petitioner was doing for a fleeting moment. He did not coerce AAA or even call her attention. Such conduct does not establish beyond reasonable doubt that he acted with the intention to debase, degrade, or demean the intrinsic worth and dignity of AAA as a human being.

The equipoise rule applies and
must result in petitioner
acquittal

The prosecution claims that petitioner masturbated in AAA's presence upon the latter's lone testimony. Petitioner denies the same and asserts that he was merely arranging books at the Mini-Library.[127] He insists that he was only fixing his broken zipper on that fateful day, which AAA mistook as masturbation.[128]

Faced with two conflicting versions, the Court is guided by the equipoise rule. This rule states that when the evidence is consistent with a finding of innocence but also compatible with a finding of guilt, then the evidence is at equipoise and does not fulfill the test of moral certainty sufficient to support a conviction.[129] The rule is rooted on the well-settled principle that every criminal conviction must draw its strength from the prosecution's evidence, which must be of such degree that the constitutional presumption of innocence is overthrown and guilt is established beyond reasonable doubt.[130] This burden of the prosecution is not met when the circumstances can yield to different inferences, as such equivocation betrays a lack of moral certainty sufficient to support a judgment of conviction.[131]

The equipoise rule finds relevance in cases where the prosecution attempts to prove the criminal culpability of the accused on the lone testimony of a single witness but there are reasons to warrant the suspicion that the witness's observation had been inaccurate, yet no corroborative evidence was proffered by the prosecution.[132] This is especially true when the private complainant's testimony is met by an equally credible evidence of the defense.[133]

Here, the prosecution relies on the sole testimony of AAA to establish petitioner's supposed act of fondling or masturbating his penis in the presence of the latter. However, the Court finds that AAA's version is not impeccable and does not ring true throughout, given the several inconsistencies in AAA's testimony earlier pointed out. Meanwhile, petitioner's version is equally credible, as his testimony is corroborated not only by

photographs of his pants and the zipper thereof, but also by the testimony of Agbayani-Estrelles. The evidence is therefore in equipoise, warranting petitioner's acquittal.

All told, petitioner should be acquitted of violation of Section 10(a) of RA 7610, given that: first, his supposed act of fondling or masturbating his penis in the presence of AAA was not proven beyond reasonable doubt; second, the alleged injury to AAA's intellectual or psychological functioning caused by petitioner's conduct has not been demonstrated to be serious or severe as to continue child abuse; and third, petitioner's intent to debase, degrade, or demean the intrinsic worth and dignity of AAA as a human being was not satisfactorily established.

WHEREFORE, the Motion for Reconsideration is GRANTED. The Court's Decision dated January 20, 2021, affirming the Decision dated September 27, 2018 and Resolution dated March 27, 2019 of the Court of Appeals in CA-G.R. CR No. 39723 is REVERSED and SET ASIDE.

Petitioner Allan de Vera y Ante is hereby ACQUITTED in Criminal Case No. Q-12-177236 filed with Branch 94, Regional Trial Court, Quezon City for failure of the prosecution to prove his guilt beyond reasonable doubt.

Let entry of judgment be issued immediately.

SO ORDERED.

Hernando, Rosario, and Marquez, JJ., concur.

Leonen,[*] Acting C.J. (Chairperson), see separate dissenting opinion.

[*] Per Special Order No. 2989 dated June 25, 2023.

[1]Rollo, pp. 277-301.

[2]Id. at 303-317.

[3]Id. at 261-276. Penned by Associate Justice Edgardo L. Delos Santos (now a retired member of the Court) and concurred in by Senior Associate Justice Marvic Mario Victor F. Leonen and Associate Justices Ramon Paul L. Hernando, Henri Jean Paul B. Inting, and Ricardo R. Rosario (On Official Leave).

[4]Id. at 10-29. Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Jane Aurora C. Lantion and Ronaldo Roberto B. Martin, of the Special Seventh Division, Court of Appeals, Manila.

[5]Id. at 6-7.

[6]As culled from the CA Decision, id. at 11.

[7]The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and For Other Purposes;" RA 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and For Other Purposes;" Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; People v. Cabalquinto, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names./Personal Circumstances.

[8]As culled from the CA Decision, rollo, p. 11.

[9]Id.

[10]Records, pp. 152-153.

[11]Rollo, p. 212.

[12]Id.

[13]Records, p. 127.

[14]Rollo, pp. 212-213.

[15]Id.

[16]Id.

[17]Id. at 37.

[18]Transcript of Stenographic Notes (TSN) dated November 5, 2012, p. 54.

[19]Rollo, p. 213.

[20]Id.

[21]Id. at 214.

[22]Id. at 215.

[23]Id.

[24]TSN dated September 9, 2013, pp. 24-25; TSN dated February 24, 2014, pp. 42-45; Records, p. 265.

[25]TSN dated February 24, 2014, p. 22.

[26]Id. at 23.

[27]Records, pp. 270-274.

[28]Rollo, p. 35.

[29]Records, 340-341.

[30]Rollo, p. 35.

[31]Id. at 35-36.

[32]Id. at 35-38.

[33]Records, pp. 342 and 456.

[34]Rollo, p. 38.

[35]Id. at 39-40 and Records, p. 601.

[36]Rollo, p. 40.

[37]Section 5(b) of RA 7610 reads:

Section 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual

intercourse or lascivious conduct. are deemed to be children exploited in prostitution and other sexual abuse.

....

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct. as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and .

..

[38]CA rollo, pp. 79-80.

[39]Id. at 82.

[40]Following the charges against petitioner he was initially arrested and detained at the Quezon City Jail. (Records, pp. 40 and 46) On July 13, 2012, petitioner posted bail and was subsequently released upon order of the RTC. (Records, pp. 43-58) After conviction by the RTC, petitioner applied for bail pending appeal on the same bond that he previously posted, which was not opposed by the prosecution. (Records, pp. 830-834) In its Order dated February 10, 2017, the RTC granted petitioner's motion and ordered his release pending appeal under the same bond. (Records, p. 836)

[41]Records, pp. 732-744. Penned by Presiding Judge Roslyn M. Rabara-Tria.

[42]Section 10(a) of RA 7610 reads:

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. -

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

[43]Rollo. pp. 33-63.

[44]Id. at 277-300.

[45]Id. at 303-316.

[46]Records, pp. 135-138.

[47]Rollo, pp. 345-361.

[48]Sps. Miano v. Manila Electric Co., 800 Phil. 118 (2016).

[49]Lapi v. People, 847 Phil. 38 (2019).

[50]People v. Macasinag, 255 Phil. 279 (1989).

[51]People v. Ortiz, 334 Phil. 590 (1997).

[52]See Sps. Miano v. Manila Electric Co., supra, where the Court reiterated the following exceptions to the general rule that only questions of law may be raised in petitions filed under Rule 45 of the Rules of Court, viz.: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the

inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

[53]Rollo, pp. 78-82 and 132.

[54]Id.

[55]Id. at 132.

[56]People v. Painitan, 402 Phil. 297 (2001).

[57]People v. Arciaga, 187 Phil. 1 (1980); People v. Royeras, 215 Phil. 227 (1984); People v. Padero, 297 Phil. 887 (1993); People v. Casim, 288 Phil. 270 (1992); People v. Lactao, 298 Phil. 243 (1993).

[58]Id.

[59]The testimony of BBB was offered by the prosecution to prove: 1) that she is the mother of AAA; 2) that she was the one who came to the scene of the alleged crime to assist her daughter; 3) the psychological and emotional trauma that AAA suffered as a result of the purported crime; and 4) that she brought AAA to a psychiatrist for evaluation and further treatment of the supposed psychological violence inflicted by petitioner upon AAA. (Records, p. 213 and TSN dated June 10, 2013, pp. 7-8) Meanwhile, the testimony of Dr. Jao was offered by the prosecution to prove: 1) that Dr. Jao conducted a psychiatric examination of AAA and made a report on said examination; 2) that after the incidents subject of the present case, AAA suffered psychological and emotional trauma; 3) AAA was assessed to be suffering from Post-Traumatic Stress Disorder; and 4) that Dr. Jao "is testifying as an expert witness to prove her capacity to conduct the examination of AAA. (Records, p. 225 and TSN dated February 24, 2014, pp. 6-7).

[60]Records, pp. 191-196, Exhibit "E".

[61]Id. at 194.

[62]Id. at 10.

[63]Id.

[64]TSN dated November 5, 2012. pp. 51-59.

[65]TSN dated February 18, 2013, pp. 22-23.

[66]Records. p. 10.

[67]Id. at 194.

[68]TSN dated February 18, 2013. p. 7.

[69]Id.

[70]Id. at 9.

[71]Id. at 11-12.

[72]Records, p. 217.

[73]TSN dated September 9, 2013, p. 15.

[74]TSN dated September 9, 2013, p. 18.

[75]TSN dated February 18, 2013, p. 11.

[76]TSN dated November 5, 2012, p. 52.

[77]TSN dated February 18, 2013, pp. 60-61.

[78]Id. at 7.

[79]Id. at 22-23.

[80]Id. at 7.

[81]TSN dated November 5, 2012. pp. 55-56.

[82]TSN dated February 18, 2013, pp. 63-64.

[83]TSN dated February 18, 2013, p. 27.

[84]Records. p. 271.

[85]Id. at 195.

[86]TSN dated February 13, 2013, pp. 34-36.

[87]Id. at 36.

[88]People v. Bautista, 426 Phil. 391 (2002).

[89]Rollo, p. 268.

[90]Minutes of the meeting of the Technical Working Group on Social Services dated November 22, 1991, pp. 35-37.

[91]159 Phil. 159 (1975). Solidum was decided in 1975. Notably, the Congress subsequently passed Republic Act No. 11313 or the Safe Space Act, which took effect in 2019, 7 years after the incidents subject of the present case. Sections 4 and 11 (b) of the said law criminalizes the act of public masturbation and flashing of private parts in a public space, which includes a school, imposing the penalty of up to arresto mayor (1 month and 1 day to 6 months) and a fine of Twenty thousand pesos (P20,000.00). Under Section 15 of the same law, the penalty next higher in degree is imposable if the offended party is a minor.

[92]In re. Lynch, 8 Cal.3d 410, 431 (Cal 1972); People v. Massicot, 118 Cal. Rptr. 2d 705 (Cal. Ct. App. 2002).

[93]TSN dated November 5, 2012, pp. 48-49.

[94]Rollo, p. 133.

[95]Id. at 26.

[96]Records, p. 271.

[97]Marsaman Manning Agency, Inc. v. National Labor Relations Commission, 371 Phil. 827 (1999).

[98]Id.

[99]TSN dated February 24, 2014, pp. 6-7.

[100]Records, pp. 270-274.

[101]Id. at 38, 40-41.

[102]Id.

[103]Id. at 49-51.

[104]Id. at 47.

[105]G.R. No. 228583, September 15, 2021.

[106]Id.

[107]TSN dated February 24, 2014, pp. 24-25.

[108]Records, p. 271.

[109]Malcampo-Repollo v. People, 890 Phil. 1159, 1178 (2020).

[110]Talocod v. People, G.R. No. 250671, October 7, 2020.

[111]Malcampo-Repollo v. People, *supra*.

[112]707 Phil. 11 (2013).

[113]Id. at 14.

[114]787 Phil. 255 (2016).

[115]Id. at 266.

[116]845 Phil. 129 (2018).

[117]*Supra* note 110 at 800.

[118]Records, Volume 1, p. 1.

[119]Jabalde v. People, *supra* note 113.

[120]Delos Santos v. People, G.R. No. 227581, January 15, 2020. See also Yap v. People, 843 Phil. 328 (2018), where the Court held that intent to kill may be discerned by the courts only through external manifestations, i.e., the acts and conduct of the accused at the time of the assault and immediately thereafter.

[121]*Supra* note 110 at 803.

[122]TSN dated February 18, 2013 pp. 29 and 59.

[123]Id. at 34-36.

[124]People v. Bangsoy, 778 Phil. 294, 103 (2016).

[125]People v. Bulbar, 129 Phil. 358, 364 (1967); People v. Co, 246 Phil. 463, 467 (1988).

[126]TSN dated February 18, 2013, pp. 19-20.

[127]Rollo, p. 282.

[128]Id. at 283.

[129]People v. Paras, 626 Phil. 526 (2010).

[130]Masangkay v. People, 635 Phil. 220 (2010).

[131]Id.

[132]People v. Rodriguez, 818 Phil. 625 (2017).

[133]Tin v. People, 415 Phil. 1 (2001).

DISSENTING OPINION

LEONEN, J.:

Petitioner was charged with lascivious conduct by fondling his penis and masturbating while beside the 16-year-old minor, "thereby prejudicing her psychological and physical development and further debasing, degrading, or demeaning the intrinsic worth and dignity of said [minor]." The Information reads:

That on or about the 7[th] day of July 2012 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully and unlawfully commit acts of lascivious conduct upon the person of [AAA], a minor, 16 years of age, by then and there fondling his penis and masturbating while he was beside the complainant who was then taking her examinations at the xxxxxxxxxxxx University, thereby prejudicing her psychological and physical development and further debasing, degrading, or demeaning the intrinsic worth and dignity of said [AAA], as human being, to the damage and prejudice of said offended party.[1]

After trial, the Regional Trial Court found[2] petitioner guilty beyond reasonable doubt of sexual abuse by committing a lascivious act, under Section 5(b) of Republic Act No. 7610. It gave more weight and credence to the minor's testimony over petitioner's denial. It also stressed that the minor's normal development as a child was affected by the incident as shown by the psychiatrist's findings that she suffered from post-traumatic stress disorder.

On appeal, the Court of Appeals convicted[3] petitioner not of sexual abuse under Section 5(6) for lack of evidence of coercion, but of other acts of child abuse under Section 10(a) of Republic Act No. 7610.

This Court affirmed[4] the Court of Appeals Decision with modification by increasing the amounts of civil indemnity and moral damages to PHP 50,000.00 each and adding exemplary damages of PHP 50,000. The Court agreed with the Court of Appeals that petitioner's masturbation in the presence of the minor victim constitutes psychological abuse and is debasing, degrading, demeaning, and prejudicial to the victim's development.

However, upon petitioner's Motion for Reconsideration and Supplement to Motion for Reconsideration/Memorandum of Additional Authorities, the ponencia reverses the Court's January 20, 2021 Decision and acquits the accused on the ground that the prosecution failed to prove that:

(a) petitioner masturbated in the presence of the minor, AAA. The victim's testimony is not credible due to inconsistencies;

(b) the psychological harm to AAA was serious or severe. The prosecution evidence do not point to "masturbation" as cause of the victim's post-traumatic stress disorder; and

(c) petitioner had specific intent to debase, degrade, or demean the minor.

I dissent.

I

The long-settled rule is that the trial court's assessment of the credibility of witnesses is accorded the highest respect, if not conclusive effect. Absent any proper reason to depart from this rule, the factual conclusions reached by the trial court, which had the unique opportunity to personally observe the witnesses as they testify and "assess the various indicia of their credibility,"[5] will not be disturbed.

In this case, the Regional Trial Court found:

[AAA 's] testimony, given in a positive and candid manner, conclusively established that the accused masturbated in her presence.

The testimony of [AAA] was clear, unperturbed and unwavering. She insisted that she saw the accused masturbate. She never faltered in her testimony given in open court even during an exhaustive cross-examination. Moreover, the court could not find any ill-motive on the part of [AAA] for her to falsely charge accused of having committed lascivious conduct in her presence.[6] (Emphasis supplied)

The Court of Appeals, in affirming the Regional Trial Court's assessment of AAA's credibility, made an independent evaluation and scrutiny of the records. It held:

... [AAA] positively and consistent! testified that while she was taking examinations at xxxxxxxxxxxx mini-library, she saw Allan holding his penis and masturbating, viz.:

ATTY. PANGANIBAN

Q I am asking you that, Ms. Frankera, because in your Judicial Affidavit, you said that you saw the accused holding his penis . . .

. . . .

A I saw the accused holding his penis and masturbating motion. A masturbating motion, I mean, holding his penis and moving it back and forth, that is masturbation motion.

Q So you saw with your two (2) own eyes that he was doing it?

A Yes.

WITNESS

A With his left hand, he was holding a binder, folder, whatever it maybe. And his right was over here.

. . . .

ATTY. PANGANIBAN

Q Was it really possible for her to see all three (3) things, face all three (3) things all at the same time?

A Yes, ma'am. I was taking my exam, it was on a coffee table, it was like more of a couch than a chair and I was sitting down and I was taking my test. And as I have stated in my Affidavit, I heard a tapping motion first before I turn my head and I saw him masturbating.

....

. . . At the point of being repetitive, it is clear from [AAA 's] entire testimony that she actually saw Allan masturbating using his right hand while his left hand was holding a binder. It must be remembered that the credibility of the prosecution's witness should be assessed in its entirety and not just based on excerpts lifted by accused-appellant from the transcript of stenographic notes to support his claim.

Besides, the RTC, which had the opportunity to observe both [AAA] and accused-appellant directly and test their credibility by their demeanor on the witness stand, was completely persuaded by [AAA's] testimony regarding the events that transpired in July 2012. More than the legal truism that appellate courts give great weight to the findings of fact of the trial court, Our independent reading of [AAA 's] testimony compels us to conclude that she is indeed a credible witness. Her testimony was straight forward, candid, unflawed by inconsistencies or contradictions in its material points, and remained steadfast even under grueling cross- examination. There was no indication whatsoever of a concocted recital. These factors impress upon Us that [AAA 's] claim against Allan was not at all fabricated. [7] (Emphasis supplied)

The ponencia, however, finds that the victim's lone testimony is not credible because of supposed inconsistencies and incredibility in her statements which, taken together, allegedly shows that her testimony is not "impeccable" or does not ring true throughout.[8]

It cites the omission of the word "masturbation" in AAA's statement to the police, and her description thereof of what she heard-"kaluskos"-as opposed to her testimony in court that she heard a "tapping sound" like skin slapping against skin.

The ponencia adds that at one point in her cross-examination, AAA declared that she saw petitioner masturbating. She said she heard the tapping sound and saw the penis, thus, putting the two together, petitioner was masturbating. On further cross-examination, she said that petitioner was merely "fondling or handling" his penis.

From these supposedly conflicting statements, the ponencia concludes that there was no certainty as to whether the victim actually saw petitioner masturbating.

I disagree. The seeming discrepancy is more apparent than real and is far from sufficient to render AAA's testimony untruthful or incredible. On the contrary, a reading of AAA's entire testimony reveals her certainty in her knowledge that petitioner was masturbating based on what she heard and saw.[9]

The relevant portion of AAA's sworn statement states:

"Habang aka po ay kumukuha ng exam may narinig po akong kaluskos, pero binalewala ko lang po dahil aka po ay kumukuha ng exam. Ang akala ko po ay binabantayan po aka ng lalaking nambastos sa akin dahil ako po ay kumukuha ng exam. Nagulat na lang po ako pag-lingon ko sa bandang kaliwa nakita ko po ang ari nung lalaking nambastos sa akin, sa takot po bigla po akong napatayo at tumakbo palabas, . . . [10] (Emphasis supplied)

I find no inconsistency or conflict between AAA's police statement and testimony in court. In fact, her statement that "nakita ko po ang ari nung lalaking nambastos sa akin" was clarified or expounded in her testimony that she saw the petitioner holding his penis and masturbating. As this Court held, "[t]estimonies during trial are more detailed and elaborate than those stated in sworn statements."[11]

Sworn statements are generally subordinated in importance to open court declarations[12] because they are often incomplete and inaccurate, and are ordinarily prepared by a person other than the affiant.[13] Moreover, these statements "are often executed when an affiant's mental faculties are not in such a state as to afford [her] a fair

opportunity of narrating in full the incident which has transpired." [14]

Added to this difficulty are the basic limitations of a translation. Not all texts are easy to translate. Some words cannot be accurately translated, or the expressions obtained by means of translation do not necessarily correspond.

The Filipino word "nambastos" has varied meaning based on the context in which it was used. Given the context of AAA's entire statement "may narinig po akong kaluskos . . . nakita ko po ang ari nung lalaking nam,bastos sa kin," the word "nambastos" here means lewdness, with reference to the doer of the act. On the other hand, there is no common direct translation in Filipino of the word "masturbate/masturbating."

Furthermore, the word "kaluskos" was apparently the literal translation given by the police officer for AAA's description of what she heard, in the absence of a direct translation of "tapping" in Filipino. [15]

Thus, the perceived inconsistencies between AAA's police statement and her testimony in court are not material or significant as to impair her credibility.

Similarly, the word "fondling or handling" does not conflict with the act of "masturbating," but is actually a part of it.

The ponencia also finds it incredible that AAA, for a fleeting moment, was able to make out what petitioner was holding with his right hand but not with his left, even though the right hand of petitioner was more distal from her. [16] Furthermore, the ponencia points out that despite her claims of "panic and feelings of anxiety," AAA was able to finish her exam and submit her paper to petitioner instead of approaching the other persons in the reception area. [17]

Again, I disagree.

Whether petitioner was holding a binder or a book or a folder is an inconsequential detail that does not impair AAA's credibility. At any rate, AAA categorically testified that she saw petitioner holding a binder with his left hand while holding his penis and masturbating with his right hand. [18]

Witnesses "are not expected to recall every single minute detail of a startling occurrence" [19]-more so in this case, wherein the minor was unsuspectingly absorbed in her exam, when she was suddenly distracted by the sound she heard and, upon looking to where the sound was coming from, would be shocked to see petitioner masturbating.

The fact that AAA finished her exam does not necessarily negate that petitioner was masturbating. There is no standard behavior when one is confronted with a startling or frightful experience. [20] People react differently to emotional stress. Moreover, it is not improbable for AAA to finish her exam given her outstanding track record in school. [21]

Also, that AAA submitted her test paper to petitioner is of no moment, since she simply submitted her paper to the person who was charged to administer her exam. There is no showing that AAA was aware that she could have submitted her exam to anyone else inside the office of the Filipino Department.

Parenthetically, AAA specifically stated that she saw petitioner's penis. Now, assuming petitioner's zipper is indeed broken, was it necessary for him to fix it while standing one meter away from the 16-year-old minor who was taking her exam? He could have chosen a corner of the mini-library where he was not in open view of the minor.

To reiterate this Court's ruling in the January 20, 2021 Decision, the perceived inconsistencies in the victim's narration of the incident are trivial and do not go into the very core of her credibility. This Court has previously

recognized that "[e]ven the most truthful witnesses can make mistakes, but such innocent lapses do not necessarily affect their credibility. The testimony of a witness must be considered and calibrated in its entirety and not by its truncated portions or isolated passages." [22]

Based on the foregoing, there is no clear reason to disturb the Regional Trial Court's and the Court of Appeals' findings.

II

Petitioner is convicted of other acts of child abuse under Section 10(a) of Republic Act No. 7610 [23]:

SECTION 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.

(a)

Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

Section 10(a) of Republic Act No. 7610 punishes any other act of child abuse prejudicial to the child's development that are not specified under other provisions, i.e., Sections 5 and 6 on child prostitution and other forms of sexual abuse; Sections 7 and 8 on child trafficking; and Section 9 on obscene publications and indecent shows that involve a child.

Child abuse is defined under Section 3(b) of Republic Act No. 7610, as the maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) failure to immediately give medical treatment to an injured child resulting in serious impairment of his [or her] growth and development or in his [or her] permanent incapacity or death. (Emphasis supplied)

In this case, petitioner undoubtedly caused psychological harm upon the minor victim through his lascivious conduct. Witnessing petitioner pleasuring himself right beside her, while she was taking an exam under his watch, traumatized her. As narrated by the Regional Trial Court:

[AAA] was traumatized by the incident that she had to stop schooling. She lost trust in schools and she was deprived of basic normal interactions with other persons of her age because of her withdrawal from school. She suffers anxiety and she is worried that she will not be able to finish school on time. She was humiliated and demeaned that someone could look at her lasciviously. She continues to have nightmares and easily gets impatient. She became reclusive and snaps at everyone. [24]

Dr. Halili-Jao, a child psychiatrist, examined AAA days after the incident, and noted that she manifested symptoms of anxiety, insomnia, and depression. [25] She further observed that AAA was apparently distressed while narrating the events that transpired. [26] Based on her examination and evaluation, she concluded that the victim suffered from post-traumatic stress disorder. [27] This constitutes psychological abuse.

The ponencia holds, however, that "to constitute child abuse through psychological abuse, the harm to the child's

psychological or intellectual functioning must be serious or severe." [28] Otherwise, there would have been no reason to distinguish it from "discipline" that is reasonable in manner and moderate in degree. [29]

I disagree.

This restrictive interpretation lacks textual support and goes against the policy of Republic Act No. 7610 to "provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions, prejudicial to their development." [30]

To be punishable under Section 10(a) of Republic Act No. 7610, the important consideration is whether an act is or can be prejudicial to a child's development. [31]

The Implementing Rules and Regulations of Republic Act No. 7610 (Implementing Rules) [32] defines psychological injury as "harm to a child's psychological or intellectual functioning ... " without qualifying the harm as "serious or severe." Furthermore, the psychological harm upon the child is "demonstrated by a change in behavior, emotional response or cognition," such as "severe anxiety, depression, withdrawal or outward aggressive behavior." The word "severe" qualifies only the word that it precedes, i.e., "anxiety."

On the other hand, under the same Implementing Rules, physical injury "includes, but is not limited to . . . severe injury or serious bodily harm." Thus, the enumeration of what constitutes physical injury was not intended to be all-inclusive.

Accordingly, in *Malcampo-Repollo v. People*, [33] this Court held that the teacher's act of hitting, slapping, and pinching her 10-year-old student constitutes other acts of abuse, through physical abuse, under Section 10(a) of Republic Act No. 7610.

As regards cruelty, a proviso qualifies its broad definition in the Implementing Rules, i.e., "discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury." In other words, cruelty can be seen either in the act and manner by which it was done or it can refer to the result of the act. [34]

Our laws recognize the right and duty of parents to impose discipline on their children as circumstances may require. [35] Discipline is basically purposed to teach. But, if employed as punishment, the potential for harm to the child becomes possible. Under the law, any kind of discipline that results in harm, physical or psychological, upon the child is child abuse, even if the method itself might otherwise be "reasonable" and "moderate."

In *Torres v. People*, [36] the accused claimed that he whipped the child merely to discipline him and that there was no intent to abuse on his part. The accused further argued that there was no proof that the child's development had been prejudiced. This Court, in rejecting his argument, held that the accused's act of whipping a child three times on the neck with a wet t-shirt and in public constituted child abuse.

Although it is true that not every instance of laying of hands on the child constitutes child abuse, petitioner's intention to debase, degrade, and demean the intrinsic worth and dignity of a child can be inferred from the manner in which he committed the act complained of.

To note, petitioner used a wet t-shirt to whip the child not just once but three (3) times. Common sense and human experience would suggest that hitting a sensitive body part, such as the neck, with a wet t-shirt would cause an extreme amount of pain, especially so if it was done several times. There is also reason to believe that petitioner used excessive force. Otherwise, AAA would not have fallen down the stairs at the third strike. AAA would likewise not have sustained a contusion.

Indeed, if the only intention of petitioner were to discipline AAA and stop him from interfering, he could have

resorted to other less violent means. Instead of reprimanding AAA or walking away, petitioner chose to hit the latter.

We find petitioner liable for other acts of child abuse under Article VI, Section 10 (a) of Republic Act No. 7610 . . . [37]

In *Bantang v. People*,^[38] the accused's act of punching a minor twice on her face and neck, in public, which resulted in a hematoma contusion, was held to constitute physical abuse. This Court further held that if the accused's intention was only to discipline the minor or to defend her mother, she could have resorted to other less violent means.

In this case, the ponencia proceeded to rule that: (a) the severity of the psychological injury upon AAA is suspect, because masturbation was previously described as an indecent act,^[39] and foreign decisions are to the effect that the psychological harm done by indecent exposure is minimal, at most, and with no proven long-lasting effects;^[40] and (b) petitioner's alleged act of masturbation cannot be serious or severe in nature^[41] since petitioner "did not touch, embrace or even talk to" AAA, the exposure was "fleeting," and the minor was previously "aware of the male sex organ and masturbation."^[42]

This reasoning is flawed.

The 1975 case of *Court of Industrial Relations v. Solidum*,^[43] cited in the ponencia, which purportedly referred to masturbation as an indecent act, involves different facts and circumstances. In that case, the respondent exhibited himself through the window of his office and masturbated within the view of a 16-year-old minor who was in her apartment fronting respondent's office. There is an appreciable distance between the respondent and the minor as both were in different buildings, while in this case, the accused was one meter away from AAA, and both of them were inside the mini-library. Even then, in *Solidum*, this Court held that respondent's act "violates basic norms of decency and morality and is repulsive to normal standards of propriety and decorum,"^[44] and affirmed his dismissal from service as the hearing examiner of the Court of Industrial Relations. This Court further stated that such act done within the view of a minor is abhorred and condemned by society.

Similarly, the foreign decisions that the ponencia cited are not controlling and pertained to "indecent exposure" or "exposure in public or in any place where there are persons present who may merely be 'offended or annoyed' thereby." For instance, in *People v. Massicot*,^[45] there was no genital exposure involved; and in *In Re Lynch*,^[46] the issue is whether the punishment for the second-time offense of indecent exposure was constitutionally excessive.

Again, this case involves masturbation, not merely within the view but in the proximate presence of a minor.

Masturbation is considered lascivious conduct under Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases. By its nature, masturbation done in the presence of another person is an offensive sexual conduct.

The commission of the act is solely attributable to the offender. Whether the victim has prior knowledge or awareness of the male sex organ and of the act of masturbation is irrelevant, just as prior intercourse with a different person is irrelevant in a rape case.^[47] It is utterly unfair to minimize the severity or seriousness of the wrongdoing just because the victim is aware of the act of masturbation and of the male sex organ. Masturbating in close proximity to another person, without the latter's consent, is intrinsically offensive and would naturally have a frightening effect and undermine the person's sense of safety. Lasting emotional trauma can result when the other person is a child.

If we go by the logic in the ponencia, then the trauma of rape may not be considered serious in nature when the

incident is fleeting and the minor has previously seen rape in movies and is aware of the male sex organ. This reasoning not only mitigates the liability of the accused for his wrongdoing, but also unfairly shifts the responsibility to the victim.

As to Dr. Halili-Jao's findings, the ponencia held that these did not categorically say that the victim suffered from post-traumatic stress disorder because of petitioner's masturbation.[48] The psychiatrist's report allegedly lacked discussion on the circumstances and precedents of her diagnosis.[49]

I disagree.

It must be stressed that aside from Dr. Halili-Jao's report, AAA and her mother BBB testified on how the incident negatively affected the child. In the Office of the Solicitor General's narration:

After the incident, the victim lost trust and any sense of security causing her to withdraw from school. She felt humiliated and demeaned by petitioner's actions. She spent her days in crippling anxiety worrying about what her friends and classmates thought about her sudden disappearance from school. She was concerned that her absence from school would hinder the timely completion of her studies, and she worried about her ability to function normally again once she returns to school. Furthermore, she exhibited emotional outbursts and would sometimes become hysterical and frustrated to the point that her mother grew concerned that she would hurt herself or others. She also suffered from disturbing nightmares, and she rarely slept to avoid having them. She became reclusive and started spending most of her time inside her room.[50]

Indeed, when asked during cross-examination, Dr. Halili-Jao opined that it could be possible that a post-traumatic stress disorder is a delayed onset of an initial traumatic experience that happened years back.[51] However, she continued that with regard to the victim in this case, there was no history of traumatic experience and "it was just immediately after the incident that she manifested the symptoms." [52]

With regard to giving weight to expert witnesses, trial courts exercise a wide latitude of discretion, and their ruling is not reviewable in the absence of an abuse of discretion:

Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study or observation of the matters about which he testifies, and any other matters which serve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect. The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion.[53] (Emphasis supplied)

At any rate, while expert evidence is not always required to establish psychological injury, the opinion of a psychiatrist or psychologist can still provide a valuable piece of evidence in establishing such injury.

For instance, in *San Juan v. People*, [54] this Court considered that "in the normal course of things, a gun, when displayed, more so when pointed towards another, regardless of age, instantly generates fear." [55] Thus, it affirmed petitioner's conviction for other acts of child abuse through psychological abuse, ratiocinating that a gun pointed at the minor would undoubtedly create a lasting fear and "further erode and even endanger the minor's psychological state and normal development." [56]

III

Finally, I disagree with the ponencia that the intent to debase, degrade, or demean was not proven.

In *Briñas v. People*,^[57] this Court held that "the presence or absence of specific intent to debase the child in child abuse cases may be drawn from the circumstances of the case and the manner by which the accused inflicted the physical or psychological injuries upon the minor."^[58]

Petitioner's act of masturbating right beside the victim while the two of them were alone inside the mini-library could lead to no other conclusion than that the lascivious act was directed at the victim. At its core, it is debasing, degrading, and demeaning of AAA's worth and dignity as a human being.

As held by this Court in its January 20, 2021 Decision, "the feeling of being violated and the anxiety suffered by the minor student upon witnessing a school employee masturbating in her presence inside the school campus undoubtedly tarnished her purity, quality, character and dignity."^[59]

That petitioner kept open the door to the mini-library where other people in the reception area could have entered^[60] is irrelevant. Lust is no respecter of time and place.^[61] Besides, the mini-library is located at the back of the office of the Filipino Department. In order to reach it, one had "to walk towards the inner part of the office, turn left at the hallway, make another left at the end of the hallway, and walk all the way to the back where the door to the library was located."^[62] Clearly, although the door may have been open, the mini-library was not readily seen and accessible from the reception area.

The setting here is starkly different from the cases cited in the ponencia. In *People v. Balbar*,^[63] the accused embraced a schoolteacher and kissed her on the eye while she was conducting her class. This Court held that the manner, place, and time under which the acts were done rule out the conclusion that accused was actuated by "lustful design" or that his conduct was lewd or lascivious. In *People v. Co*,^[64] this Court found implausible the narration of the 39-year-old complainant that she was threatened with a knife by the 19-year-old accused, so she allowed herself to be kissed, led or pulled upstairs to accused's room, while Zeny (the accused's sister and also the complainant's employer), a certain Roberto Impestan, and Zeny's children were watching.

Going back to this case, that petitioner did not touch, talk to, or look at the minor is similarly inconsequential and in-elevant. At any rate, the "tapping sound" produced by petitioner's act had in fact distracted the minor who was then preoccupied with her exam and was greatly disturbed by what she saw.

Again, rather than masturbate in the privacy of his home or within the confines of a private room while he was alone, petitioner chose to satiate his sexual desire while he was less than a meter away from an unsuspecting child, who had a reasonable expectation of safety and security because she was within the walls of the school and in the presence of a person of authority.

All told, I hold that the prosecution was able to sufficiently overthrow the presumption of petitioner's innocence, proving beyond reasonable doubt all the elements of the crime charged.

Proof beyond reasonable doubt does not mean such degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.^[65]

ACCORDINGLY, I vote to DENY the Motion for Reconsideration.

[*] In line with Amended Administrative Circular No.83-2015, as mandated by Republic Act No. 8353, the names of the private offended parties, along with other personal circumstances that may tend to establish their identities.

are made confidential to protect their privacy and dignity.

[1]Rollo, p. 11.

[2]Id. at 123-135. The Decision dated August 2, 2016 was penned by Presiding Judge Roslyn M. Rabara-Tria of Branch 94, Regional Trial Court. Quezon City.

[3]Id. at 10-29. The Decision dated September 27, 2018 was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Jane Aurora C. Lantion and Ronaldo Roberto B. Martin of the Special Seventeenth Division, Court of Appeals, Manila.

[4]De Vera v. People, G.R. No. 246231, January 20, 2021 [Per J. Delos Santos, Third Division].

[5]Awat v. People, 811 Phil. 700, 707 (2017) [Per J. Bersamin, Third Division].

[6]Rollo, p. 132.

[7]Id. at 20-23.

[8]Ponencia, p. 17.

[9]Rollo, pp. 21-23.

[10]Id. at 116-117.

[11]People v. Caniezo, 406 Phil. 761, 771 (2001) [Per J. Mendoza, Second Division].

[12]People v. Matugas, 427 Phil. 696, 712 (2002) [Per Curiam, En Banc].

[13]People v. Iagarto, 383 Phil. 591, 647 (2000) [Per Curiam, En Banc]; People v. Matugas, 427 Phil. 696, 712 (2002) [Per Curiam, En Banc].

[14]People v. Empleo, 297 Phil. 514, 528 (1993) [Per J. Regalado, Second Division].

[15]Ponencia, p. 13.

[16]Id. at 16-17.

[17]Id. at 17.

[18]Rollo, p. 23.

[19]People v. Garcia, 447 Phil. 244, 256 (2003) [Per J. Callejo, Sr., En Banc].

[20]Perez v. People, 830 Phil. 162, 177 (2018) [Per J. Leonen, Third Division].

[21]Rollo, p. 12.

[22]People v. Calegan, 303 Phil. 558, 568 (1994) [Per J. Bellosillo, First Division].

[23]Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (1992)

[24]Rollo, p. 128.

[25]Id. at 15.

[26]Id.

[27]Id.

[28]Ponencia, p. 18.

[29]Id. at 19.

[30]Republic Act No. 7610 (1992), sec. 2. See also *Bantang v. People*, G.R. No. 241500, December 7, 2022 [Per J. Lopez, Second Division]. (Emphasis supplied)

[31]J. Leonen, Separate Opinion in *Versoza v. People*, 861 Phil. 230, 287 (2019) [Per Curiam, En Banc].

[32]Rules and Regulations on the Reporting and Investigation of Child Abuse Cases

[33]G.R. No. 246017, November 25, 2020 [Per J. Leonen, Third Division].

[34]J. Leonen, Separate Opinion in *Versoza v. People*, 861 Phil. 230, 302(2019) [Per Curiam, En Banc].

[35]FAMILY CODE, art. 220, par. 7. See also Presidential Decree No. 603 (1974), art. 45, which states that: ARTICLE 45. Right to Discipline Child. - Parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions.

[36]803 Phil. 480 (2017) [Per J. Leonen, Second Division].

[37]Id. at 490-491.

[38]G.R. No. 241500, December 7, 2022 [Per J. Lopez, Second Division].

[39]Citing *Court of Industrial Relations v. Solidum*, 159 Phil. 159, 169 (1975) [Per J. Munoz Palma, En Banc].

[40]Ponencia, pp. 19-20.

[41]*De Vera v. People*, G.R. No. 246231, January 20, 2021 [Per J. Delos Santos, Third Division].

[42]Ponencia, p. 20.

[43]159 Phil. 159 (1975) [Per J. Munoz Palma, En Banc].

[44]Id. at 170.

[45]*People v. Massicot*, 118 Cal. Rptr. 2d 705 (2002) [United States].

[46]*In Re Lynch*, 8 Cal. 3d 410, 431 (1972) [United States].

[47]*People v. Marcelo*, 421 Phil. 566, 579 (2001) [Per J. Quisumbing, En Banc].

[48]Ponencia, p. 22.

[49]Id.

[50]Rollo, pp. 354-355.

[51]Id. at 289-290.

[52]Id. at 290.

[53]*Tortona v. Gregorio*, 823 Phil. 980, 993 (2018) [Per J. Leonen, Third Division].

[54]G.R. No. 236628, January 17, 2023 [Per J. J. Lopez, En Banc].

[55]Id.

[56]Id.

[57]G.R. No. 254005, June 23, 2021 [Per J. Caguioa, First Division].

[58]Id.

[59]De Vera v. People, G.R. No. 246231, January 20, 2021 [Per J. Delos Santos, Third Division].

[60]Ponencia, p. 28.

[61]Perez v. People, 830 Phil. 162, 177 (20 I 8) [Per J. Leonen, Third Division].

[62]Rollo, p. 158.

[61]129 Phil 358 (1967) [Per J. Makalintal, En Banc].

[64]246 Phil. 463 (1988) [Per J. Narvasa, First Division].

[65]XXX v. People, 887 Phil. 161, 171 (2020) (Per J. Delos Santos, Second Division).

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