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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

DEC 19 2016

THIRD DIVISION

**RICARDO DEL POSO y DELA
CERNA,**

Petitioner,

- versus -

G.R. No. 210810

VELASCO, JR., *J.*, Chairperson,
BRION,*
PERALTA,
PEREZ, and
REYES, *JJ.*

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

December 7, 2016

x-----*Wilfredo V. Lapitan*-----x

DECISION

PERALTA, J.:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated January 28, 2014 of petitioner Ricardo Del Poso y Dela Cerna seeking the reversal of the Decision¹ dated July 22, 2013 of the Court of Appeals (CA), which affirmed the Decision² dated July 1, 2011 of the Regional Trial Court (RTC), Branch 38, Manila in Criminal Case No. 05-239429 convicting petitioner of violation of Section 10 (a) of Republic Act (R.A.) No. 7610.

The facts follow.

The victim, VVV³ was given by her biological mother to the petitioner when she was 7 years old and the latter then acted as her guardian.

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza per Raffle dated October 1, 2014.

¹ Penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon.

² Penned by Presiding Judge Ma. Celestina C. Mangrobang.

³ This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (533 Phil. 703, 709 [2006]) wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as

On September 10, 2005, when VVV was 9 years old, petitioner ordered her to attend to petitioner's photocopying business. While attending the business, VVV fell asleep. When petitioner saw VVV asleep, the former became furious and laid VVV on top of an ironing board and placed a heated flat iron on her. When VVV tried to evade the heat emanating from the flat iron, her forehead, right elbow, left cheek, left buttock and back got burned. Thereafter, petitioner got her down from the ironing board and ordered her to sleep. The following morning, petitioner's wife saw the burns on VVV and told petitioner not to do it again. Later on, VVV went to her Lola Ma. Luisa to watch TV and the latter, and several other people, saw the burns prompting Lola Ma. Luisa to bring VVV to the Barangay Hall where the incident was put on blotter. Thereafter, VVV was brought to the hospital and then to the police station. Hence, an Information was filed against petitioner, which reads as follows:

That on or about September 10, 2005, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully, and knowingly commit cruelty and abusive acts upon VVV, a minor, 9 years old, by then and there injuring the said minor on the forehead, right cheek, abdomen and at her right forearm with a hot flat iron, inflicting upon her multiple 1st degree burns, which debases and demeans the intrinsic worth and dignity of said VVV as a human being, an act prejudicial to her normal growth and development, to her damage and prejudice.

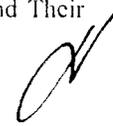
Contrary to law.

The prosecution presented seven (7) witnesses, namely: Anielyn Barnes, the Social Worker-on-case; SPO2 Susan Mendez of Station VI, the investigator; Redentor Torres, a Barangay Kagawad; VVV, herself; Laura Delos Santos, Records Custodian of the Ospital ng Maynila; Nanette Repalpa, a social worker who took custody of the victim; and Dr. Martin Joseph Cabahog. VVV, during her testimony, also narrated the other acts of physical abuse that petitioner had inflicted on her prior to the incident which became the basis of the present case.

Petitioner, on the other hand, claimed that the incident happened accidentally. According to him, on that particular day, he just came from work when he saw VVV playing under a table and to teach her a lesson, he tried to scare her with a hot flat iron. Petitioner was then not aware that

those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.



VVV was hurt as there were no marks on her. The marks only became evident the following morning. Petitioner claimed that he applied medication on VVV's burns.

The RTC found petitioner guilty beyond reasonable doubt of violation of Section 10 (a) of R.A No. 7610 in its Decision dated July 1, 2011, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Court finds that the prosecution has proven the guilt of the accused beyond reasonable doubt from the crime of violation of Section 10 (a) of RA 7610, "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act" and hereby sentences Ricardo Del Poso y Cerna to suffer the penalty of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum.

SO ORDERED.

Petitioner filed his appeal with the CA and the latter court, in its Decision dated July 22, 2013, dismissed the same appeal and affirmed the Decision of the RTC, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal filed by appellant is hereby DENIED. The Decision dated 1 July 2011 and Order dated 27 October 2011 RTC, (NCJR) Branch 38, Manila in Crim. Case No. 05-239429 are AFFIRMED.

SO ORDERED.⁴

Hence, the present petition.

The grounds relied upon by petitioner are the following:

- I. THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER WHEN THE MINOR CHILD-COMPLAINANT ADMITTED THAT SHE SUSTAINED THE BURNS WHEN SHE TRIED TO EVADE THE HEATED IRON THAT (PETITIONER) WAS HOLDING OVER HER WHILE LYING ON THE IRONING BOARD JUST TO SCARE HER AS A WAY OF CHASTENING HER, WHICH THE COURT FOUND IN ITS ASSAILED DECISION. [EQUALLY] OF WEIGHT, WHICH IT LIKewise FOUND AND WHICH IT UNCEREMONIOUSLY DISREGARDED IS THE RELATION OF THE PARTIES ESTABLISHED BY FATE.
- II. ASSUMING THE HONORABLE COURT OF APPEALS IS CORRECT, IT ERRED WHEN IT REFUSED TO APPRECIATE IN FAVOR OF THE PETITIONER THE MITIGATING

⁴ Rollo, p. 41.



CIRCUMSTANCES OF NO INTENTION TO COMMIT SO GRAVE A WRONG AS THAT COMMITTED DESPITE THE PARALLEL CASE OF PEOPLE V. ENRIQUEZ, 58 PHIL. 536 IN WHICH IT WAS HELD THAT TO BE PRESENT, PASSION AND OBFUSCATION AND SUCH OTHER CIRCUMSTANCES ANALOGOUS THERETO.

- III. HENCE, THE HONORABLE COURT OF APPEALS ERRED IN NOT MODIFYING THE SENTENCE OF THE PETITIONER TO ONE DEGREE LOWER.⁵

Petitioner insists that the CA erred in convicting him when the minor admitted that she sustained the burns when she tried to evade the heated iron that he was holding over her while lying on the ironing board just to scare her as a way of chastening her. He also claims that assuming the CA is correct, it still erred in refusing to appreciate the mitigating circumstances of no intention to commit so grave a wrong as that committed and passion and/or obfuscation, thus, also erring in not modifying his sentence to another degree lower.

The Office of the Solicitor General (*OSG*), in its Comment⁶ dated June 19, 2014, argues that the trial court and the CA correctly convicted the petitioner for violation of R.A. No. 7610. It also avers that the trial court correctly denied appreciation of the mitigating circumstances of passion and/or obfuscation and lack of intention to commit so grave a wrong, and as such properly applied the corresponding penalty without any mitigating circumstance.

In its Reply⁷ dated October 8, 2014, petitioner reiterates the arguments and issues he presented in his petition.

The petition is unmeritorious.

Under Rule 45, Section 1 of the Rules of Court, only questions of law may be raised in a Petition for Review on *Certiorari*:

Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same

⁵ *Id.* at 13.

⁶ *Id.* at 60-92.

⁷ *Id.* at 99-106.

provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

As an exception to the rule, questions of fact may be raised in a Rule 45 Petition if any of the following is present:

(1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.⁸

A question of fact exists "when the doubt or difference arises as to the truth or the falsehood of alleged facts."⁹ On the other hand, a question of law exists "when the doubt or difference arises as to what the law is on a certain state of facts."¹⁰ A close reading of the issues presented by petitioner shows that they are all factual in nature, and thus, does not fall within the scope of a petition for review under Rule 45 of the Rules of Court nor do they fall within the exceptions to the general rule.

Nevertheless, even if this Court should disregard such infirmity, the petition still fails to impress.

Section 10 of R.A. No. 7610 otherwise known as "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes," provides the following:

ARTICLE VI
Other Acts of Abuse

⁸ *Pagsibigan v. People*, 606 Phil. 233, 241-242 (2009) [Per J. Carpio, First Division]. See *Medina v. Asistio, Jr.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223 [Per J. Bidin, Third Division] where this court enumerated for the first time the instances when the findings of fact by the trial courts and the Court of Appeals were passed upon and reviewed in a Rule 45 Petition.

⁹ *Benito v. People*, G.R. No. 204644, February 11, 2015, 750 SCRA 450, 460, citing *Sesbreno v. Honorable Court of Appeals*, 310 Phil. 671, 679 (1995) [Per J. Quiason, First Division], *Bernardo v. Court of Appeals*, G.R. No. 101680, December 7, 1992, 216 SCRA 224, 232 (1992) [Per J. Campos, Jr., Second Division].

¹⁰ *Id.*



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 3 of the same law defines child abuse as —

3 (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.**

The prosecution was able to prove the elements of the violation of the said law, namely: (1) the minority of VVV; (2) the acts constituting physical abuse, committed by petitioner against VVV; and (3) the said acts are clearly punishable under R.A. No. 7610. As aptly ruled by the CA citing the factual findings of the RTC, all the elements of the crime charged are present, thus:

We agree with the trial court when it ruled that the prosecution have established the elements of child abuse in this case, to wit: (a) the victim's minority; (b) the acts constituting physical and psychological abuse when accused employed the use of a heated flat iron; and (c) said excessive acts of rebuke and chastening are clearly punishable under RA No. 7610. This is clearly shown in the evidence it presented during trial particularly the testimonies of its witnesses and that of the minor victim, VVV, who gave a clear, consistent, and credible account of the events on September 10, 2010, in a straightforward and candid manner. Settled is the rule that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. Hence, We see no reason not to affirm the factual findings of the trial court. Equally, settled is the rule that factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case. Not one of the exceptions is present in this case.¹¹



¹¹ *Rollo*, p. 37.

In *Araneta v. People*,¹² this Court discussed the nature of the crime of child abuse as defined in R.A. No. 7610, thus:

Republic Act No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that **The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.** This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the Revised Penal Code and Presidential Decree No. 603 or the Child and Youth Welfare Code. As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized. Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development.

Article VI of the statute enumerates the other acts of abuse. Paragraph (a) of Section 10 thereof states:

Article VI

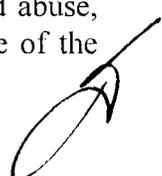
OTHER ACTS OF ABUSE

SEC. 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 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.

As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the

¹² 578 Phil. 876 (2008).



child because an act prejudicial to the development of the child is different from the former acts.

Moreover, it is a rule in statutory construction that the word or is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of or in Section 10(a) of Republic Act No. 7610 before the phrase **be responsible for other conditions prejudicial to the child's development** supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.

The subject statute defines children as persons below eighteen (18) years of age; or those over that age but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.¹³

As to the contention of petitioner that the mitigating circumstance of lack of intention to commit so grave a wrong should have been appreciated, this Court finds it unmeritorious. It is a hornbook doctrine that this mitigating circumstance can be taken into account only when the facts proven show that there is a notable and evident disproportion between the means employed to execute the criminal act and its consequences.¹⁴ The facts found by the trial court and the CA show that petitioner intended the natural consequence of his act. The observation of the OSG that petitioner's intention of inflicting such harm should be judged in accordance with his previous acts of abusing the victim, of regarding VVV as a mere adoptive child who is not his blood relative and petitioner's evident superiority of physique as a fully grown man inflicting harm upon a 9-year-old victim, and thus, when petitioner pressed the hot iron upon the body of the victim, it must be presumed that his intention was to physically abuse her since such act was sufficient to produce the evil which resulted from such act is also worth noting.¹⁵

Applying the same set of facts, petitioner is also not entitled to the application of the mitigating circumstance of passion and/or obfuscation. The mitigating circumstance of passion or obfuscation only applies if the act of the victim is both unlawful and sufficient to produce such condition of mind.¹⁶ A child who fell asleep while attending to a business establishment is not an offense at all and could not give rise to an impulse sufficiently

¹³ *Araneta v. People*, *supra*, at 883-886. (Emphases ours)

¹⁴ *People v. Amit*, 143 Phil. 48, 50 (1970).

¹⁵ *Rollo*, pp. 86-87.

¹⁶ See *People v. Takbobo*, G.R. No. 102984, June 30, 1993, 224 SCRA 134, 142.



powerful to naturally produce a justified diminution of an adult's self-control. As correctly ruled by the CA:

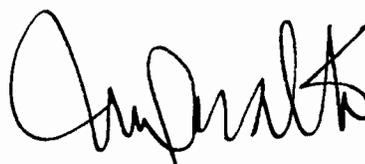
Going now to the theory of appellant that the trial court committed error when it did not appreciate the mitigating circumstances of passion and/or obfuscation and lack of intent to commit so grave a wrong, the same deserves scant consideration.

To be entitled to the mitigating circumstance [of] passion and/or obfuscation the following elements must be present: (1) there should be an act both unlawful and sufficient to produce such condition of mind; (2) the act that produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity. These elements are not present here. There was no unlawful and sufficient act on VVV's part which sufficiently provoked passion and/or obfuscation on appellant's side. As correctly observed by the trial court, the dozing off of VVV when she was ordered to watch over the Xerox machine for possible clients is not an unlawful act sufficient to produce passion and raging anger, even to a disciplinarian foster parent. Hence, appellant cannot successfully claim that he was blinded by passion and obfuscation.¹⁷

Hence, the trial court and the CA correctly imposed the penalty by not considering the mitigating circumstances claimed by petitioner. Section 10 (a) of R.A. No. 7610 imposes the penalty of *prision mayor* in its minimum period. Applying the Indeterminate Sentence Law, the trial court did not err when it imposed the penalty of 4 years, 9 months and 11 days of *prision correccional*, as minimum, to 6 years, 8 months and 1 day of *prision mayor*, as maximum.

WHEREFORE, the Petition for Review on Certiorari under Rule 45 dated January 28, 2014 of Ricardo Del Poso y Dela Cerna is **DENIED** for lack merit and the Decision dated July 22, 2013, dismissing petitioner's appeal and affirming the Decision dated July 1, 2011 of the Regional Trial Court, Branch 38, Manila in Criminal Case No. 05-239429, convicting petitioner of violation of Section 10 (a) of R.A No. 7610 and imposing upon petitioner the indeterminate penalty of imprisonment of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum, is **AFFIRMED**.

SO ORDERED.



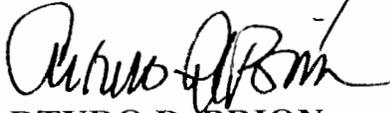
DIOSDADO M. PERALTA
Associate Justice

¹⁷ *Rollo*, p. 40. (Emphases omitted)

WE CONCUR:

PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

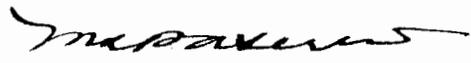

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division


MARIA LOURDES P. A. SERENO
Chief Justice