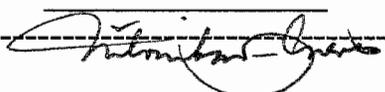


EN BANC

G.R. No. 236628 – MARVIN L. SAN JUAN, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

January 17, 2023

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CONCURRING OPINION

LEONEN, J.:

I concur in the result that petitioner Marvin L. San Juan (San Juan) should be convicted of violation of Section 10(a) of Republic Act No. 7610. I contribute for the consideration of the *ponente* the following observations.

I

An Information was filed against petitioner charging him with subjecting AAA to “psychological cruelty and emotional maltreatment.”¹ The Information reads:

That on or about March 26, 2014, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, who was drunk, without and justifiable cause, did then and there willfully, unlawfully and feloniously threaten of life of one [AAA] 15 years old (DOB: May 5, 1998) (complainant) by poking a gun at him, an act amounting to a crime, thereby subjecting said minor to psychological cruelty and emotional maltreatment.

CONTRARY TO LAW.

After trial, the Regional Trial Court convicted San Juan of child abuse under Section 10(a) of Republic Act No. 7610.² The Court of Appeals

¹ *Ponencia*, p. 2.

² *Id.*

sustained San Juan’s conviction but modified the designation of the offense as grave threats³ in relation to Section 10(a) of Republic Act No. 7610.⁴

The *ponencia*, while affirming petitioner’s conviction, deleted the correlation to grave threats and convicted him of violation of Section 10(a) in relation to Section 3(b)(1) of Republic Act No. 7610.⁵ In ruling this, the *ponencia* considered the interplay between the provisions of Republic Act No. 7610, Presidential Decree No. 603, and the Revised Penal Code. It also took into account the legislature’s intent in enacting Republic Act No. 7610.⁶

It observed that while most of the punishable acts under Article 59 of Presidential Decree No. 603 had a counterpart provision in the Revised Penal Code, paragraphs 6, 10 and 11 of Article 59 had no equivalent rule under the Revised Penal Code, and thus “no recourse could be had if these acts were committed by a non-parent.”⁷ It then presented a comparative table⁸ of the corresponding offenses punished under Presidential Decree No. 603 and the Revised Penal Code:

[Presidential Decree] No. 603, Article 59	Possible [Revised Penal Code] Counterpart
(1) Conceals or abandons the child with intent to make such child lose his civil status.	Article 347. <i>Simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child.</i>
(2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.	Article 276. <i>Abandoning a minor or Article 277. Abandonment of minor by person entrusted with his custody; indifference of parents.</i>
(3) Sells or abandons the child to another person for valuable consideration.	Article 272. <i>Slavery.</i>
(4) Neglects the child by not giving him the education which the family’s station in life and financial conditions permit.	Article 277. <i>Abandonment of minor by person entrusted with his custody; indifference of parents.</i>
(5) Fails or refuses, without justifiable	Article 277. <i>Abandonment of minor by</i>

³ ARTICLE 282. Grave threats. - Any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime, shall suffer:
 1. The penalty next lower in degree than that prescribed by law for the crime be threatened to commit, if the offender shall have made the threat demanding money or imposing any other condition, even though not unlawful, and said offender shall have attained his purpose. If the offender shall not have attained his purpose, the penalty lower by two degrees shall be imposed.

If the threat be made in writing or through a middleman, the penalty shall be imposed in its maximum period.

2. The penalty of *arresto mayor* and a fine not exceeding 500 pesos, if the threat shall not have been made subject to a condition.

⁴ *Ponencia*, p. 4.

⁵ *Id.* at 23.

⁶ *Id.* at 8–15.

⁷ *Id.* at 12.

⁸ *Id.* at 11–12. See footnote 43.

grounds, to enroll the child as required by Article 72.	<i>person entrusted with his custody; indifference of parents.</i>
(6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. . . .	None.
(7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.	Article 278. <i>Exploitation of minors.</i>
(8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignities and other excessive chastisement that embarrass or humiliate him.	Article 358. <i>Slander</i> , Article 263. <i>Serious physical injuries</i> , Article 265. <i>Less serious physical injuries</i> , or Article 266. <i>Slight physical injuries and maltreatment.</i>
(9) Causes or encourages the child to lead an immoral or dissolute life.	Article 340. <i>Corruption of minors.</i>
(10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.	None.
(11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive. .	None.

While I admire the *ponencia's* effort to harmonize Presidential Decree No. 603 and the Revised Penal Code, I believe that the acts punished under paragraph 8, Article 59 of Presidential Decree No. 603 are not on all fours with that of Articles 263, 265, 266, and 358 of the Revised Penal Code. For reference, paragraph 8 of Article 59 reads:

ART. 59. Crimes. – Criminal liability shall attach to any parent who:

....

(8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignities and other excessive chastisement that embarrass or humiliate him.

Meanwhile, Articles 263, 265, 266, and 358 of the Revised Penal Code provide:

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

1. The penalty of *prision mayor*, if in consequence of the physical injuries inflicted, the injured person shall become insane, imbecile, impotent, or blind;
2. The penalty of *prision correccional* in its medium and maximum periods, if in consequence of the physical injuries inflicted, the person injured shall have lost the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm, or a leg or shall have lost the use of any such member, or shall have become incapacitated for the work in which he was therefor habitually engaged;
3. The penalty of *prision correccional* in its minimum and medium periods, if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he as habitually engaged for a period of more than ninety days;
4. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than thirty days.

If the offense shall have been committed against any of the persons enumerated in Article 246, or with attendance of any of the circumstances mentioned in Article 248, the case covered by subdivision number 1 of this Article shall be punished by *reclusion temporal* in its medium and maximum periods; the case covered by subdivision number 2 by *prision correccional* in its maximum period to *prision mayor* in its minimum period; the case covered by subdivision number 3 by *prision correccional* in its medium and maximum periods; and the case covered by subdivision number 4 by *prision correccional* in its minimum and medium periods.

The provisions of the preceding paragraph shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement.

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

Whenever less serious physical injuries shall have been inflicted with the manifest intent to kill or offend the injured person, or under circumstances adding ignominy to the offense in addition to the penalty of *arresto mayor*, a fine not exceeding 500 pesos shall be imposed.

Any less serious physical injuries inflicted upon the offender's parents, ascendants, guardians, curators, teachers, or persons of rank, or persons in authority, shall be punished by *prision correccional* in its minimum and medium periods, provided that, in the case of persons in authority, the deed does not constitute the crime of assault upon such person.

Article 266. Slight physical injuries and maltreatment. - The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period.
2. By *arresto menor* or a fine not exceeding 20 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance.
3. By *arresto menor* in its minimum period or a fine not exceeding 50 pesos when the offender shall ill-treat another by deed without causing any injury.

Article 358. Slander. - Oral defamation shall be punished by *arresto mayor* in its maximum period to *prision correccional* in its minimum period if it is of a serious and insulting nature; otherwise the penalty shall be *arresto menor* or a fine not exceeding 200 pesos.

A perusal of these provisions reveals that while Article 59 (8) is couched in general terms, in that it may include the beating, assaulting, and oral defamation of a child, Article 59 (8) requires the additional element of embarrassment or humiliation. The infliction of cruel or unusual punishment upon a child must have resulted in the child's embarrassment or humiliation. Yet, an individual prosecuted for violation of Articles 263, 265, 266, and 358 of the Revised Penal Code may be convicted regardless of the effect of his or her act upon the child victim.

In the same way, it is my view that Article 59 (9) cannot be equated to Article 340 of the Revised Penal Code.

On one hand, Article 59 (9) imposes criminal liability upon a parent who “[c]auses or encourages. . . [his or her] child to lead an immoral or dissolute life[.]”

On the other hand, Article 340 penalizes “[a]ny person who shall promote or facilitate the prostitution or corruption of persons underage to satisfy the lust of another[.]”

Immorality pertains to conduct that “is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community[.]”⁹ While this definition may include the acts punished under Article 340 of the Revised Penal Code, immoral conduct is not limited to prostitution of children.

⁹ *Arciga v. Maniwang*, 193 Phil. 730, 735 (1981) [Per J. Aquino, Second Division]. (Citations omitted)

Accordingly, I submit that the acts punished under Article 59, paragraphs 8 and 9 cannot be interpreted to equate to Articles 263, 265, 266, 358, and 340 of the Revised Penal Code.

II

I concur with the *ponencia* that San Juan is guilty of violating Section 10(a) in relation to Section 3(b)(1) of Republic Act No. 7610.

Republic Act No. 7610 is a legislation enacted to advance the State's policy of affording children special protection against "all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial their development[.]"¹⁰

In line with this, the law enumerates certain prohibited acts which include child prostitution¹¹ and child trafficking,¹² among others. In addition, Section 10 of Republic Act No. 7610 outlines the acts which are characterized as other acts of abuse. Section 10(a) provides:

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.

Among the acts punished under Section 10(a) is child abuse, the definition of which is provided in Section 3(b) of the same law:

- (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;

¹⁰ Republic Act No. 7610, sec. 2. See also *Caballo v. People*, 710 Phil. 792 (2013) [Per J. Perlas-Bernabe, Second Division].

SECTION 2. Declaration of State Policy and Principles. — It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

¹¹ Republic Act No. 7610, sec. 5.

¹² Republic Act No. 7610, sec. 7.

(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 *Malcampo-Repollo v. People*,¹³ this Court, citing *Lucido v. People*,¹⁴ characterized violations of Republic Act No. 7610 as *malum prohibitum*, for which “no malice or intent to commit a crime need be proved.”¹⁵ It held:

Child abuse, as penalized under Republic Act No. 7610, is *malum prohibitum*, where intent is not the defining mark in the offense:

Republic Act No. 7610 is a measure geared to provide a strong deterrence against child abuse and exploitation and to give a special protection to children from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development. It must be stressed that the crime under Republic Act No. 7610 is *malum prohibitum*. Hence, the intent to debase, degrade, or demean the minor is not the defining mark. Any act of punishment that debases, degrades, and demeans the intrinsic worth and dignity of a child constitutes the offense.

In other words, intent is not an indispensable element to sustain all convictions under Section 10 (a) of Republic Act No. 7610. Generally, in *mala prohibita*, the defense of lack of criminal intent is irrelevant. As long as all the elements of the offense have been established beyond reasonable doubt, conviction ensues.¹⁶

Yet, *Malcampo-Repollo* clarified that in some forms of child abuse, the prosecution must also prove the existence of the specific intent to debase, degrade, or demean the child’s intrinsic worth and dignity as a human being:

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. The specific intent becomes relevant in child abuse when: (1) it is required by a specific provision in Republic Act No. 7610, as for instance, in lascivious conduct; or (2) when the act is

¹³ G.R. No. 246017, November 25, 2020
<<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67548>> [Per J. Leonen, Third Division].

¹⁴ 815 Phil. 646 (2017) [Per J. Leonen, Second Division].

¹⁵ *People v. Lobo*, 101 Phil. 179, 183 (1957) [Per J. Padilla, *En Banc*].

¹⁶ *Malcampo-Repollo v. People*, G.R. No. 246017, November 25, 2020 [Per J. Leonen, Third Division].

described in the information as one that debases, degrades, or demeans the child's intrinsic worth and dignity as a human being.¹⁷

It is the factual allegations in the information that determine whether there is a need to establish the specific intent to debase, degrade, or demean. "If the form of child abuse alleged requires specific intent as defined by law, the prosecution is required to prove it. If the information does not allege the specific intent, or if it is not required by law, it need not be established."¹⁸

I agree with the *ponencia* that the facts, as alleged in the Information, do not require the prosecution to establish the specific intent to debase, degrade, or demean.¹⁹ The acts of petitioner, as described in the Information, constitute child abuse under Section 3(b)(1) of Republic Act No. 7610. Crimes of this nature are inherently cruel for which intent of the offender is immaterial.

Abusing a child is always an intrinsically cruel act. Regardless of one's intent, acts constituting child abuse have the effect of impairing "the child's dignity and worth as a human being and infringe upon [his or her] right to grow up in a safe, wholesome, and harmonious place."²⁰

It is human instinct which holds us accountable to rear a child in a hospitable, secure, and abundant environment. Away from maltreatment, obscenities, and deprivation, a child has a better chance of growing into a well-rounded adult. The effect of abuse is not always apparent. Scars and trauma are not always visible.

ACCORDINGLY, I vote to **GRANT** the Petition.



MARVIC M.V.F. LEONEN
Senior Associate Justice

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Ponencia*, p. 21.

²⁰ *Lucido v. People*, 815 Phil. 646, 663 (2017) [Per J. Leonen, Second Division].