



Republic of the Philippines
 Supreme Court
 Manila

SPECIAL THIRD DIVISION

ALLAN DE VERA y ANTE,
Petitioner,

G.R. No. 246231

Present:

LEONEN, *Acting C.J.,**
Chairperson,
 HERNANDO,
 INTING,
 ROSARIO, and
 MARQUEZ, *JJ.*

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

October 9, 2023

X-----Mistaken-----X

R E S O L U T I O N

INTING, *J.:*

Before the Court is the Motion for Reconsideration¹ and Supplement to Motion for Reconsideration² both filed by petitioner Allan de Vera y Ante (petitioner) assailing the Court's Decision³ dated January 20, 2021 (Decision), where the Court affirmed the Decision⁴ dated September 27, 2018, and Resolution⁵ 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.

* 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.

The Antecedents

Petitioner was charged with violation of Section 5(b) of RA 7610 in the Information⁶ 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

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.

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 assistant¹³ 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

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.

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

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.

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(b)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: ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱2,000.00 as exemplary damages.³⁹

Aggrieved, petitioner appealed to the CA, which was docketed as CA-G.R. CR No. 39723.⁴⁰

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 of 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

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 ₱10,000.00, and moral damages of ₱20,000.00, 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

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.

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.

*Petitioner's Motion for Reconsideration and
Supplement to Motion for Reconsideration/
Memorandum of Additional Authorities*

For resolution is petitioner's Motion for Reconsideration⁴⁴ and the Supplement to Motion for Reconsideration/Memorandum of Additional Authorities⁴⁵ 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

⁴⁴ *Id.* at 277-300.

⁴⁵ *Id.* at 303-316.

⁴⁶ Records, pp. 135-138.

⁴⁷ *Rollo*, pp. 345-361.

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

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.

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.

Petitioner's 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

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. Paderno*, 297 Phil. 887 (1993); *People v. Casim*, 288 Phil. 270 (1992); *People v. Lactao*, 298 Phil. 243 (1993).

⁵⁸ *Id.*

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 Affidavit⁶⁰ 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 Statement⁶² 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 binalewala 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 nangingig po akong pumunta sa classroom namin at tinanong po ako ng mga kaklase ko kung anong

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.

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 Statement⁶⁶ before the police, AAA mentioned that what she heard was *kaluskos*.

⁶³ *Id.*

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

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

⁶⁶ Records, p. 10.

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 Affidavit⁷² 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.

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.

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*)?

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

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

⁷⁶ TSN dated November 5, 2012, p. 52.

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 sound⁷⁸ 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

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

⁷⁸ *Id.* at 7.

⁷⁹ *Id.* at 22-23.

⁸⁰ *Id.* at 7.

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.

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

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

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

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

⁸⁴ Records, p. 271.

⁸⁵ *Id.* at 195.

⁸⁶ TSN dated February 18, 2013, pp. 34–36.

⁸⁷ *Id.* at 36.

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

⁸⁹ *Rollo*, p. 268.

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

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 Spaces 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

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, decisions⁹² 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.

...

is impossible 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).

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 RTC⁹⁴ and the CA⁹⁵ relied upon the testimony of Dr. Jao and her Psychiatric Report⁹⁶ 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

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.*

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 Report¹⁰⁰ 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

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.

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)

¹⁰⁶ *Id.*

¹⁰⁷ TSN dated February 24, 2014, pp. 24–25.

Dr. Jao narrated the same incident in her Psychiatric Report¹⁰⁸ 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.

Petitioner's 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;

¹⁰⁸ Records, p. 271.

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



while *demean* means to lower in 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.

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. i.

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*).

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.

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 buy 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

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

¹²³ *Id.* at 34-36.

¹²⁴ *People v. Bangsoy*, 778 Phil. 294, 303 (2016).

¹²⁵ *People v. Balbar*, 129 Phil. 358, 364 (1967); *People v. Co*, 246 Phil. 463, 467 (1988).

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's acquittal

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

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.

¹²⁷ *Rollo*, p. 282.

¹²⁸ *Id.* at 283.

¹²⁹ *People v. Poras*, 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).

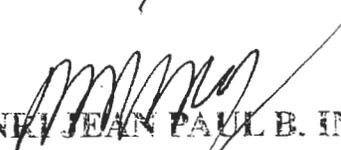
All told, petitioner should be acquitted of violation of Section 10(a) of RA 7610, given that: *first*, his supposed act of fondling or masturbating his penis in the presence of AAA was not proven beyond reasonable doubt; *second*, the alleged injury to AAA's intellectual or psychological functioning caused by petitioner's conduct has not been demonstrated to be serious or severe as to constitute 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.

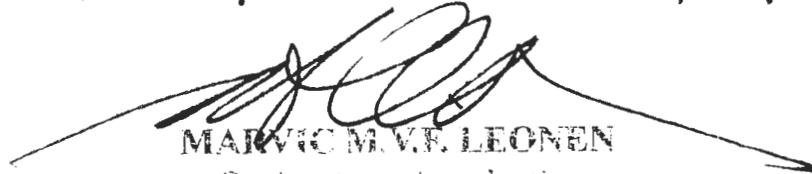
Let entry of judgment be issued immediately.

SO ORDERED.

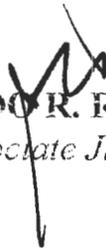

HENRI JEAN PAUL B. INTING
Associate Justice

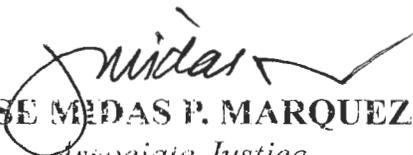
WE CONCUR:

See separate dissenting opinion


MARVIC M. V. LEONEN
Senior Associate Justice
Chairperson

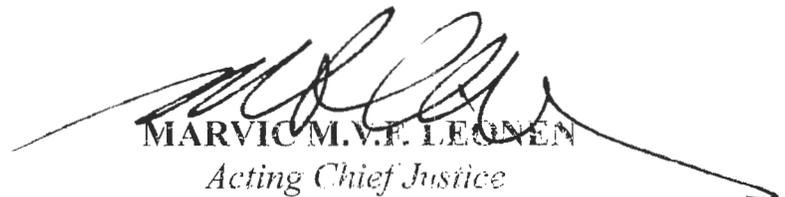

RAMON PAUL L. HERNANDO
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MEDAS P. MARQUEZ
Associate Justice

CERTIFICATION

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


MARVIC M.V.F. LEONEN
Acting Chief Justice
Per Special Order No. 2989 dated June 25, 2023