

**SPECIAL THIRD DIVISION**

**G.R. No. 246231 – ALLAN DE VERA y ANTE, Petitioner v. PEOPLE OF THE PHILIPPINES, Respondent.\***

Promulgated:  
October 9, 2023

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**DISSENTING OPINION**

**LEONEN, J.:**

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

That on or about the 7<sup>th</sup> day of July 2012 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully and unlawfully commit acts of lascivious conduct upon the person of [AAA], a minor, 16 years of age, by then and there fondling his penis and masturbating while he was beside the complainant who was then taking her examinations at the [REDACTED] 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.<sup>1</sup>

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

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\* In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 8353, the names of the private offended parties, along with other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

<sup>1</sup> *Rollo*, p. 11.

<sup>2</sup> *Id.* at 123–135. The Decision dated August 2, 2016 was penned by Presiding Judge Roslyn M. Rabara-Tria of Branch 94, Regional Trial Court, Quezon City.

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

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

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

- (a) petitioner masturbated in the presence of the minor, AAA. The victim's testimony is not credible due to inconsistencies;
- (b) the psychological harm to AAA was serious or severe. The prosecution evidence do not point to "masturbation" as cause of the victim's post-traumatic stress disorder; and
- (c) petitioner had specific intent to debase, degrade, or demean the minor.

I dissent.

## I

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

In this case, the Regional Trial Court found:

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

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

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

<sup>5</sup> *Awas v. People*, 811 Phil. 700, 707 (2017) [Per J. Bersamin, Third Division].

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

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

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

.....

ATTY. PANGANIBAN

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

.....

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

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

A Yes.

.....

WITNESS

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

.....

ATTY. PANGANIBAN

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

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

.....

*. . . At the point of being repetitive, it is clear from [AAA's] entire testimony that she actually saw Allan masturbating using his right hand while his left hand was holding a binder. It must be remembered that the credibility of the prosecution's witness should be assessed in its entirety and not just*

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<sup>6</sup> Rollo, p. 132.

based on excerpts lifted by accused-appellant from the transcript of stenographic notes to support his claim.

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

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

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

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

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

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

The relevant portion of AAA's sworn statement states:

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<sup>7</sup> *Id.* at 20–23.

<sup>8</sup> *Ponencia*, p. 17.

<sup>9</sup> *Rollo*, pp. 21–23.

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

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

Sworn statements are generally subordinated in importance to open court declarations<sup>12</sup> because they are often incomplete and inaccurate, and are ordinarily prepared by a person other than the affiant.<sup>13</sup> Moreover, these statements “are often executed when an affiant’s mental faculties are not in such a state as to afford [her] a fair opportunity of narrating in full the incident which has transpired.”<sup>14</sup>

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

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

Furthermore, the word “*kaluskos*” was apparently the literal translation given by the police officer for AAA’s description of what she heard, in the absence of a direct translation of “*tapping*” in Filipino.<sup>15</sup>

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

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<sup>10</sup> *Id.* at 116–117.

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

<sup>12</sup> *People v. Matugas*, 427 Phil. 696, 712 (2002) [*Per Curiam, En Banc*].

<sup>13</sup> *People v. Lagarto*, 383 Phil. 591, 647 (2000) [*Per Curiam, En Banc*]; *People v. Matugas*, 427 Phil. 696, 412 (2002) [*Per Curiam, En Banc*].

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

<sup>15</sup> *Ponencia*, p. 13.

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

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

Again, I disagree.

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

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

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

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

Parenthetically, AAA specifically stated that she saw petitioner’s penis. Now, assuming petitioner’s zipper is indeed broken, was it necessary for him to fix it while standing one meter away from the 16-year-old minor who was

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<sup>16</sup> *Id.* at 16–17.

<sup>17</sup> *Id.* at 17.

<sup>18</sup> *Rollo*, p. 23.

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

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

<sup>21</sup> *Rollo*, p. 12.

taking her exam? He could have chosen a corner of the mini-library where he was not in open view of the minor.

To reiterate this Court's ruling in the January 20, 2021 Decision, the perceived inconsistencies in the victim's narration of the incident are trivial and do not go into the very core of her credibility. This Court has previously recognized that "[e]ven the most truthful witnesses can make mistakes, but such innocent lapses do not necessarily affect their credibility. The testimony of a witness must be considered and calibrated in its entirety and not by its truncated portions or isolated passages."<sup>22</sup>

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

## II

Petitioner is convicted of other acts of child abuse under Section 10(a) of Republic Act No. 7610<sup>23</sup>:

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

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

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

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

- (1) *psychological* and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

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

<sup>23</sup> Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (1992)

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

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

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

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

The *ponencia* holds, however, that “to constitute child abuse through psychological abuse, the harm to the child’s psychological or intellectual functioning must be serious or severe.”<sup>28</sup> Otherwise, there would have been no reason to distinguish it from “discipline” that is reasonable in manner and moderate in degree.<sup>29</sup>

I disagree.

This restrictive interpretation lacks textual support and goes against the policy of Republic Act No. 7610 to “provide special protection to children from *all forms* of abuse, neglect, cruelty, exploitation and discrimination, and other conditions, prejudicial to their development.”<sup>30</sup>

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<sup>24</sup> *Rollo*, p. 128.

<sup>25</sup> *Id.* at 15.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Ponencia*, p. 18.

<sup>29</sup> *Id.* at 19.

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

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

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

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

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

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

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

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

<sup>32</sup> Rules and Regulations on the Reporting and Investigation of Child Abuse Cases

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

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

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

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

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

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

Indeed, if the only intention of petitioner were to discipline AAA and stop him from interfering, he could have resorted to other less violent means. Instead of reprimanding AAA or walking away, petitioner chose to hit the latter.

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

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

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

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

<sup>37</sup> *Id.* at 490–491.

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

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

<sup>40</sup> *Ponencia*, pp. 19–20.

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

<sup>42</sup> *Ponencia*, p. 20.

This reasoning is flawed.

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

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

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

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

The commission of the act is solely attributable to the offender. Whether the victim has prior knowledge or awareness of the male sex organ and of the act of masturbation is irrelevant, just as prior intercourse with a different person is irrelevant in a rape case.<sup>47</sup> It is utterly unfair to minimize the severity or seriousness of the wrongdoing just because the victim is aware of the act of masturbation and of the male sex organ. Masturbating in close proximity to another person, without the latter's consent, is intrinsically

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<sup>43</sup> 159 Phil. 159 (1975) [Per J. Muñoz Palma, *En Banc*].

<sup>44</sup> *Id.* at 170.

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

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

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

offensive and would naturally have a frightening effect and undermine the person's sense of safety. Lasting emotional trauma can result when the other person is a child.

If we go by the logic in the *ponencia*, then the trauma of rape may not be considered serious in nature when the incident is fleeting and the minor has previously seen rape in movies and is aware of the male sex organ. This reasoning not only mitigates the liability of the accused for his wrongdoing, but also unfairly shifts the responsibility to the victim.

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

I disagree.

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

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

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

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<sup>48</sup> *Ponencia*, p. 22.

<sup>49</sup> *Id.*

<sup>50</sup> *Rollo*, pp. 354–355.

<sup>51</sup> *Id.* at 289–290.

<sup>52</sup> *Id.* at 290.

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

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

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

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

### III

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

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

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

<sup>54</sup> G.R. No. 236628, January 17, 2023 [Per J. J. Lopez, *En Banc*].

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

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

<sup>58</sup> *Id.*



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

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

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

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

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

Again, rather than masturbate in the privacy of his home or within the confines of a private room while he was alone, petitioner chose to satiate his sexual desire while he was less than a meter away from an unsuspecting child,

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

<sup>60</sup> *Ponencia*, p. 28.

<sup>61</sup> *Perez v. People*, 830 Phil. 162, 177 (2018) [Per J. Leonen, Third Division].

<sup>62</sup> *Rollo*, p. 158.

<sup>63</sup> 129 Phil 358 (1967) [Per J. Makalintal, *En Banc*].

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

who had a reasonable expectation of safety and security because she was within the walls of the school and in the presence of a person of authority.

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

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

**ACCORDINGLY**, I vote to **DENY** the Motion for Reconsideration.



MARVIC M.V.F. LEONEN  
Senior Associate Justice

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