



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**GEORGE BONGALON,**  
Petitioner,

**G.R. No. 169533**

Present:

- versus -

SERENO, C.J.,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.

Promulgated:

**PEOPLE OF THE PHILIPPINES,**  
Respondent.

**MAR 20 2013**

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**DECISION**

**BERSAMIN, J.:**

Not every instance of the laying of hands on a child constitutes the crime of *child abuse* under Section 10 (a) of Republic Act No. 7610.<sup>1</sup> Only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as *child abuse*. Otherwise, it is punished under the *Revised Penal Code*.

**The Case**

On June 22, 2005,<sup>2</sup> the Court of Appeals (CA) affirmed the conviction of the petitioner for the crime of *child abuse* under Section 10 (a) of Republic Act No. 7610.

<sup>1</sup> *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act* (Approved on June 17, 1992).

<sup>2</sup> *Rollo*, pp. 18-31; penned by Associate Justice Rodrigo V. Cosico (retired), with Associate Justice Danilo B. Pine (retired) and Associate Justice Arcangelita Romilla-Lontok (retired) concurring.

### Antecedents

On June 26, 2000, the Prosecutor's Office of Legazpi City charged the petitioner in the Regional Trial Court (RTC) in Legazpi City with *child abuse*, an act in violation of Section 10(a) of Republic Act No. 7610, alleging as follows:

That on or about the 11<sup>th</sup> day of May 2000, in the City of Legazpi Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously commit on the person of JAYSON DELA CRUZ, a twelve year-old, Grade VI pupil of MABA Institute, Legazpi City, acts of physical abuse and/or maltreatment by striking said JAYSON DELA CRUZ with his palm hitting the latter at his back and by slapping said minor hitting his left cheek and uttering derogatory remarks to the latter's family to wit: "Mga hayop kamo, para dayo kamo digdi, Iharap mo dito ama mo" (You all animals, you are all strangers here. Bring your father here), which acts of the accused are prejudicial to the child's development and which demean the intrinsic worth and dignity of the said child as a human being.

CONTRARY TO LAW.<sup>3</sup>

The Prosecution showed that on May 11, 2002, Jayson Dela Cruz (Jayson) and Roldan, his older brother, both minors, joined the evening procession for the Santo Niño at Oro Site in Legazpi City; that when the procession passed in front of the petitioner's house, the latter's daughter Mary Ann Rose, also a minor, threw stones at Jayson and called him "sissy"; that the petitioner confronted Jayson and Roldan and called them names like "strangers" and "animals"; that the petitioner struck Jayson at the back with his hand, and slapped Jayson on the face;<sup>4</sup> that the petitioner then went to the brothers' house and challenged Rolando dela Cruz, their father, to a fight, but Rolando did not come out of the house to take on the petitioner; that Rolando later brought Jayson to the Legazpi City Police Station and reported the incident; that Jayson also underwent medical treatment at the Bicol Regional Training and Teaching Hospital;<sup>5</sup> that the doctors who examined Jayson issued two medical certificates attesting that Jayson suffered the following contusions, to wit: (1) contusion .5 x 2.5 scapular area, left; and (2) +1x1 cm. contusion left zygomatic area and contusion .5 x 2.33 cm. scapular area, left.<sup>6</sup>

On his part, the petitioner denied having physically abused or maltreated Jayson. He explained that he only talked with Jayson and Roldan after Mary Ann Rose and Cherrylyn, his minor daughters, had told him about Jayson and Roldan's throwing stones at them and about Jayson's burning Cherrylyn's hair. He denied shouting invectives at and challenging

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<sup>3</sup> Records, pp. 1-2.

<sup>4</sup> TSN, June 4, 2001, pp. 9-11.

<sup>5</sup> TSN, February 6, 2001, pp. 6-21.

<sup>6</sup> TSN, October 19, 2001, pp. 3-12.

Rolando to a fight, insisting that he only told Rolando to restrain his sons from harming his daughters.<sup>7</sup>

To corroborate the petitioner's testimony, Mary Ann Rose testified that her father did not hit or slap but only confronted Jayson, asking why Jayson had called her daughters "Kimi" and why he had burned Cherrlyn's hair. Mary Ann Rose denied throwing stones at Jayson and calling him a "sissy." She insisted that it was instead Jayson who had pelted her with stones during the procession. She described the petitioner as a loving and protective father.<sup>8</sup>

### **Ruling of the RTC**

After trial, the RTC found and declared the petitioner guilty of *child abuse* as charged, to wit:<sup>9</sup>

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered finding the accused GEORGE BONGALON @ "GI" GUILTY beyond reasonable doubt of Violation of Republic Act No. 7610, and is hereby ordered to undergo imprisonment of six (6) years and one (1) day to eight (8) years of *prision mayor* in its minimum period.

SO ORDERED.

### **Ruling of the CA**

On appeal, the petitioner assailed the credibility of the Prosecution witnesses by citing their inconsistencies. He contended that the RTC overlooked or disregarded material facts and circumstances in the records that would have led to a favorable judgment for him. He attacked the lack of credibility of the witnesses presented against him, citing the failure of the complaining brothers to react to the incident, which was unnatural and contrary to human experience.

The CA affirmed the conviction, but modified the penalty,<sup>10</sup> viz:

**WHEREFORE**, premises considered, the decision dated October 20, 2003 of the Regional Trial Court, Branch 9 of Legazpi City is hereby **AFFIRMED** with **MODIFICATION** in that accused-appellant George Bongalon is sentenced to suffer the indeterminate penalty of (4) years, two (2) months and one (1) day of *prision correccional*, as minimum term, to six (6) years, eight (8) months and 1 day of *prision mayor* as the maximum term.

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<sup>7</sup> TSN, March 10, 2003, pp. 6-9.

<sup>8</sup> TSN, June 28, 2002, pp. 7-16.

<sup>9</sup> Records, pp. 301-304.

<sup>10</sup> Supra note 2.

Further, accused-appellant is ordered to pay the victim, Jayson de la Cruz the additional amount of ₱5,000 as moral damages.

SO ORDERED.

### Issues

The petitioner has come to the Court *via* a petition for *certiorari* under Rule 65 of the *Rules of Court*.<sup>11</sup>

The petitioner asserts that he was not guilty of the crime charged; and that even assuming that he was guilty, his liability should be mitigated because he had merely acted to protect her two minor daughters.

### Ruling of the Court

At the outset, we should observe that the petitioner has adopted the wrong remedy in assailing the CA's affirmance of his conviction. His proper recourse from the affirmance of his conviction was an appeal taken in due course. Hence, he should have filed a petition for review on *certiorari*. Instead, he wrongly brought a petition for *certiorari*. We explained why in *People v. Court of Appeals*:<sup>12</sup>

The special civil action for *certiorari* is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. As observed in *Land Bank of the Philippines v. Court of Appeals, et al.* "the special civil action for *certiorari* is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The *raison d'être* for the rule is when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a scenario, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision—not the jurisdiction of the court to render said decision—the same is beyond the province of a special civil action for *certiorari*. The proper recourse of the aggrieved party from a decision of the Court of Appeals is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court.

It is of no consequence that the petitioner alleges grave abuse of discretion on the part of the CA in his petition. The allegation of grave abuse of discretion no more warrants the granting of due course to the petition as

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<sup>11</sup> *Rollo*, pp. 3-17.

<sup>12</sup> G.R. No. 142051, February 24, 2004, 423 SCRA 605, 612-613.

one for *certiorari* if appeal was available as a proper and adequate remedy. At any rate, a reading of his presentation of the issues in his petition indicates that he thereby imputes to the CA errors of judgment, not errors of jurisdiction. He mentions instances attendant during the commission of the crime that he claims were really constitutive of justifying and mitigating circumstances; and specifies reasons why he believes Republic Act No. 7610 favors his innocence rather than his guilt for the crime charged.<sup>13</sup> The errors he thereby underscores in the petition concerned only the CA's appreciation and assessment of the evidence on record, which really are errors of judgment, not of jurisdiction.

Even if we were to treat the petition as one brought under Rule 45 of the *Rules of Court*, it would still be defective due to its being filed beyond the period provided by law. Section 2 of Rule 45 requires the filing of the petition within 15 days from the notice of judgment to be appealed. However, the petitioner received a copy of the CA's decision on July 15, 2005,<sup>14</sup> but filed the petition only on September 12, 2005,<sup>15</sup> or well beyond the period prescribed by the *Rules of Court*.

The procedural transgressions of the petitioner notwithstanding, we opt to forego quickly dismissing the petition, and instead set ourselves upon the task of resolving the issues posed by the petition on their merits. We cannot fairly and justly ignore his plea about the sentence imposed on him not being commensurate to the wrong he committed. His plea is worthy of another long and hard look. If, on the other hand, we were to outrightly dismiss his plea because of the procedural lapses he has committed, the Court may be seen as an unfeeling tribunal of last resort willing to sacrifice justice in order to give premium to the rigidity of its rules of procedure. But the *Rules of Court* has not been intended to be rigidly enforced at all times. Rather, it has been instituted first and foremost to ensure justice to every litigant. Indeed, its announced objective has been to secure a "just, speedy and inexpensive disposition of every action and proceeding."<sup>16</sup> This objective will be beyond realization here unless the *Rules of Court* be given liberal construction and application as the noble ends of justice demand. Thereby, we give primacy to substance over form, which, to a temple of justice and equity like the Court, now becomes the ideal ingredient in the dispensation of justice in the case now awaiting our consideration.

The petitioner's right to liberty is in jeopardy. He may be entirely deprived of such birthright without due process of law unless we shunt aside the rigidity of the rules of procedure and review his case. Hence, we treat this recourse as an appeal timely brought to the Court. Consonant with the

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<sup>13</sup> *Rollo*, pp. 10-14.

<sup>14</sup> *Id.* at 8.

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

<sup>16</sup> Section 6, Rule 1, *Rules of Court*, which provides:

Section 6. *Construction.* These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.  
(2a)

basic rule in criminal procedure that an appeal opens the whole case for review, we should deem it our duty to correct errors in the appealed judgment, whether assigned or not.<sup>17</sup>

The law under which the petitioner was charged, tried and found guilty of violating is Section 10 (a), Article VI of Republic Act No. 7610, which relevantly states:

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

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

x x x x

*Child abuse*, the crime charged, is defined by Section 3 (b) of Republic Act No. 7610, as follows:

Section 3. *Definition of terms.* –

x x x x

(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.

x x x x

Although we affirm the factual findings of fact by the RTC and the CA to the effect that the petitioner struck Jayson at the back with his hand and slapped Jayson on the face, we disagree with their holding that his acts constituted *child abuse* within the purview of the above-quoted provisions. The records did not establish beyond reasonable doubt that his laying of hands on Jayson had been intended to debase the “intrinsic worth and dignity” of Jayson as a human being, or that he had thereby intended to humiliate or embarrass Jayson. The records showed the laying of hands on

<sup>17</sup> *Ferrer v. People*, G.R. No. 143487, February 22, 2006, 483 SCRA 31, 54.

Jayson to have been done at the spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters who had just suffered harm at the hands of Jayson and Roldan. With the loss of his self-control, he lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of *child abuse*.

It is not trite to remind that under the well-recognized doctrine of *pro reo* every doubt is resolved in favor of the petitioner as the accused. Thus, the Court should consider all possible circumstances in his favor.<sup>18</sup>

What crime, then, did the petitioner commit?

Considering that Jayson's physical injury required five to seven days of medical attention,<sup>19</sup> the petitioner was liable for slight physical injuries under Article 266 (1) of the *Revised Penal Code*, to wit:

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

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period.

x x x x

The penalty for slight physical injuries is *arresto menor*, which ranges from one day to 30 days of imprisonment.<sup>20</sup> In imposing the correct penalty, however, we have to consider the mitigating circumstance of passion or obfuscation under Article 13 (6) of the *Revised Penal Code*,<sup>21</sup> because the petitioner lost his reason and self-control, thereby diminishing the exercise of his will power.<sup>22</sup> Passion or obfuscation may lawfully arise from causes existing only in the honest belief of the accused.<sup>23</sup> It is relevant to mention, too, that in passion or obfuscation, the offender suffers a diminution of intelligence and intent. With his having acted under the belief that Jayson and Roldan had thrown stones at his two minor daughters, and that Jayson had burned Cherrlyn's hair, the petitioner was entitled to the mitigating circumstance of passion. *Arresto menor* is prescribed in its minimum period (*i.e.*, one day to 10 days) in the absence of any aggravating circumstance that offset the mitigating circumstance of passion. Accordingly, with the

<sup>18</sup> *Villanueva v. People*, G.R. No. 160351, April 10, 2006, 487 SCRA 42, 58.

<sup>19</sup> Records, p. 154.

<sup>20</sup> Article 27, *Revised Penal Code*.

<sup>21</sup> Article 13. *Mitigating circumstances*. — The following are mitigating circumstances:

xxx

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

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<sup>22</sup> *United States v. Salandanan, et al.*, 1 Phil. 464, 465 (1902).

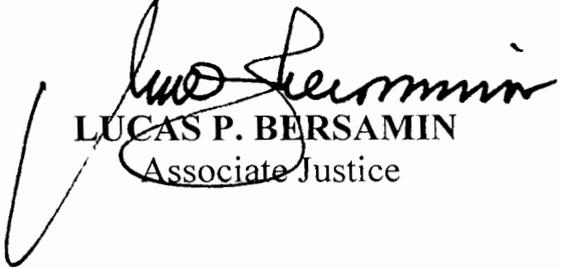
<sup>23</sup> Reyes, *Criminal Law, The Revised Penal Code*, Book One (15th Edition), p. 286, citing *U.S. v. Ferrer*, 1 Phil. 56, 62, *U.S. v. Macalintal*, 2 Phil. 448, 451; and *People v. Zapata*, 107 Phil. 103, 109.

*Indeterminate Sentence Law* being inapplicable due to the penalty imposed not exceeding one year,<sup>24</sup> the petitioner shall suffer a straight penalty of 10 days of *arresto menor*.

The award of moral damages to Jayson is appropriate. Such damages are granted in criminal cases resulting in physical injuries.<sup>25</sup> The amount of ₱5,000.00 fixed by the lower courts as moral damages is consistent with the current jurisprudence.<sup>26</sup>

WHEREFORE, we SET ASIDE the decision of the Court of Appeals; and ENTER a new judgment: (a) finding petitioner George Bongalon GUILTY beyond reasonable doubt of the crime of SLIGHT PHYSICAL INJURIES under paragraph 1, Article 266, of the *Revised Penal Code*; (b) sentencing him to suffer the penalty of 10 days of *arresto menor*; and (c) ordering him to pay Jayson Dela Cruz the amount of ₱5,000.00 as moral damages, plus the costs of suit.

SO ORDERED.



LUCAS P. BERSAMIN  
Associate Justice

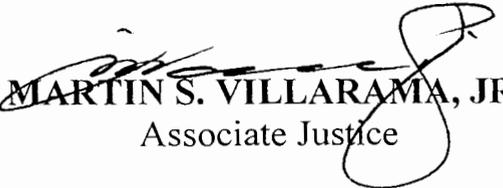
WE CONCUR:



MARIA LOURDES P. A. SERENO  
Chief Justice



TERESITA J. LEONARDO-DE CASTRO  
Associate Justice



MARTIN S. VILLARAMA, JR.  
Associate Justice



BIENVENIDO L. REYES  
Associate Justice

<sup>24</sup> Section 2, *Indeterminate Sentence Law*.

<sup>25</sup> Article 2219 (1) of the *Civil Code*.

<sup>26</sup> *People v. Villacorta*, G.R. No. 186412, September 7, 2011, 657 SCRA 270, 288.

**CERTIFICATION**

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



**MARIA LOURDES P. A. SERENO**  
Chief Justice