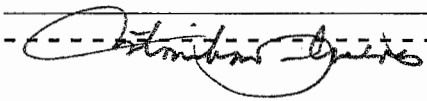


EN BANC

G.R. No. 236628 – MARVIN L. SAN JUAN, *petitioner*, *versus* PEOPLE OF THE PHILIPPINES, *respondent*.

Promulgated:

January 17, 2023

X-----X


DISSENTING OPINION

CAGUIOA, J.:

From the various observations, analyses, and suggestions introduced by my esteemed colleagues, as well as the revisions undergone by the *ponencia*, I offer my humble comments through this Dissenting Opinion on the proper understanding of what acts are meant to be punished under Section 10(a) of Republic Act No. (RA) 7610.¹

The *ponencia* discusses: (a) the meaning of the clause “but not covered by the Revised Penal Code [(RPC)]” in Section 10(a) of RA 7610; and (b) the difference between child abuse as defined in Section 3(b)(1) and Section 3(b)(2) of the same law.

Section 10(a) of RA 7610 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 [RPC], as amended, shall suffer the penalty of *prision mayor* in its minimum period.

On the meaning of the clause “but not covered by the [RPC]”

The *ponencia* explains that the clause “but not covered by the [RPC]” is meant to modify only the immediately preceding clause “including those covered by Article 59 of Presidential Decree No. [(PD)] 603,² as amended.” Considering the intent of the legislature to increase penalties, the *ponencia* interprets these two adjacent clauses to mean that acts which were previously

¹ AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION, AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES, approved on June 17, 1992.

² THE CHILD AND YOUTH WELFARE CODE, signed on December 10, 1974.



enumerated under Article 59³ of PD 603, but do not have any counterpart in the RPC, should be deemed punished under Section 10(a) of RA 7610. As to what these acts are, the *ponencia* explains:

The interpretation means that acts punished under Sec. 10(a) of [RA] 7610 include those acts punishable under Article 59 of [PD] 603, even if not covered by the [RPC]. Notably, as pointed out by Associate Justice Alfredo Benjamin Caguioa, most of the criminal acts defined under Article 59 of [PD] 603 find counterparts in the [RPC]. In the case of [PD] 603, its provisions apply in case the offenders are the child-victim's parents, where "parent" also encompasses "the guardian and the head of the institution or foster home which has custody of the child." Meanwhile, the RPC applies in case of non-parent-offenders, as its provisions did not specify the personality of the offender. Since Article 59 of [PD] 603 defined certain acts which found no counterparts in the RPC [*i.e.*, subparagraphs (6), (10), and (11)], no recourse could be had if these acts were committed by a non-parent.⁴

Hence, based on the *ponencia*, the clause "including those covered by Article 59 of [PD] 603, as amended, but not covered by the [RPC], as amended," refers to paragraphs 6, 10, and 11 of Article 59 of PD 603 as committed by non-parents, since these would not have been covered by either PD 603 or the RPC prior to the enactment of RA 7610. The *ponencia* further explains that by making "any person" a possible offender under Section 10(a), this section also now punishes the acts enumerated under Article 59 of PD 603, even as they are acts committed by parents:

x x x With the word "any person" under Section 10(a) and the intention to increase the penalties of the punishable acts involving child abuse, Section 10(a) of [RA] 7610 encompasses a wide-ranging act by which the punishable acts under Article 59 of [PD] 603, whether or not these

³ ART. 59. *Crimes.* – Criminal liability shall attach to any parent who:

- (1) Conceals or abandons the child with intent to make such child lose his civil status.
- (2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.
- (3) Sells or abandons the child to another person for valuable consideration.
- (4) Neglects the child by not giving him the education which the family's station in life and financial conditions permit.
- (5) Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.
- (6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.

It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.

- (7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.
- (8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignities and other excessive chastisement that embarrass or humiliate him.
- (9) Causes or encourages the child to lead an immoral or dissolute life.
- (10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.
- (11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

"Parents" as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

⁴ *Ponencia*, pp. 11-12.

are covered by the RPC, as well as acts under the RPC, involving children may be examined. x x x⁵

I agree with the *ponencia*'s interpretation as discussed. Notably also, punishing the acts enumerated in Article 59 of PD 603 under Section 10(a) of RA 7610 is supported by Article 60 of PD 603, which states:

ART. 60. *Penalty.* – The act[s] mentioned in the preceding article [(referring to Article 59)] shall be punishable with imprisonment from two to six months or a fine not exceeding five hundred pesos, or both, at the discretion of the Court, unless a higher penalty is provided for in the [RPC] or special laws, without prejudice to actions for the involuntary commitment of the child under Title VIII of this Code.

The penalty of *prision mayor* in its minimum period (six years and one day to eight years) is undeniably higher than the two to six months of imprisonment or a fine imposed by Article 60 of PD 603.

As the foregoing discussion has already established that the acts punished under Article 59 of PD 603 should be punished under Section 10(a), the only remaining question is under which law should an offender be prosecuted and convicted if his/her acts can fall in either or both the RPC or Section 10(a) of RA 7610.

The distinctions between Section 3(b)(1) and Section 3(b)(2) of RA 7610

Section 3(b) in its entirety states:

(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.

The *ponencia* points out that the acts described in Section 3(b)(1), 3(b)(3), and 3(b)(4), in contrast to the acts described in 3(b)(2), require only proof of general criminal intent, which is ordinarily presumed from the commission of the criminal act.⁶ It is for the accused to rebut this

⁵ Id. at 14.

⁶ Id. at 16.



presumption.⁷ On the other hand, Section 3(b)(2) additionally requires that the prosecution prove the existence of the specific intent to debase, degrade, or demean the intrinsic worth and dignity of a child as a human being, as an essential element of the crime.⁸

In applying these principles to the case at hand, the *ponencia* begins by examining the Information filed against petitioner Marvin L. San Juan (San Juan):

That on or about March 26, 2014, in [REDACTED] and within the jurisdiction of this Honorable Court, the above-named accused, who was drunk, without any justifiable cause, did then and there willfully, unlawfully and feloniously threaten the life of one AAA,⁹ 15 years old (DOB: May 5, 1998) (complainant) by poking a gun at him, an act amounting to a crime, thereby subjecting said minor to psychological cruelty and emotional maltreatment.

CONTRARY TO LAW.¹⁰

The *ponencia* notes that aside from narrating the act of threatening the life of the minor by poking a gun at him, the Information also alleges that San Juan subjected the minor to “psychological cruelty and emotional maltreatment.” Given these allegations in the Information, the *ponencia* concludes that what is being described is an act of “psychological abuse and an act of cruelty.”¹¹ “Psychological abuse” is among the acts enumerated in Section 3(b)(1) of RA 7610. As far as “cruelty” is concerned, the *ponencia* observes that there may be two ways of understanding the same.

First is the definition of “cruelty” in Section 2(c) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (Rules on Child Abuse Cases), as follows:

(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[.]

The above definition evidently references the phrase “debases, degrades, or demeans the intrinsic worth and dignity of a child.” This, as already mentioned, is a clause that appears in Section 3(b)(2) and not in 3(b)(1). This then conflicts with characterizing the alleged acts as

⁷ Id..

⁸ Id. at 16-17.

⁹ The real name of the victim, his/her personal circumstances and other information which tend to establish or compromise his/her identity, as well as those of his/her immediate family, or household members, shall not be disclosed to protect his/her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006), and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

¹⁰ *Ponencia*, p. 2.

¹¹ Id. at 18.

“psychological abuse” under Section 3(b)(1). Furthermore, “cruelty” itself appears in the enumeration in Section 3(b)(1) alongside “psychological and physical abuse,” among other acts. To remedy this, the *ponencia* looks to the ordinary meaning of “cruelty”:

Certainly, the term cruelty, in its common usage, simply means suffering that is excessive and unnecessary to the purpose to be achieved by an offender. An act that is accompanied by such a cruel act can easily be determined by the manner it was executed. It does not need an inquiry into the specific intent to debase, degrade or demean the intrinsic worth and dignity of the child, as being referred to under the Rules and Regulations of [RA] 7610.

As such, while cruelty has been given a definition under the Rules and Regulations of [RA] 7610, such term cannot be confined therein especially that Section 3(b)(1) includes cruelty among its enumeration, that is separate from Section 3(b)(2).

To avoid confusion, child cruelty, when referring to Section 3(b)(2) of [RA] 7610 must thus always carry the qualification that the act complained of, debased, degrade[d] or demeaned the intrinsic worth and dignity of the child. Otherwise, the same may be used in its common usage, which is the definition being applied in the instant case.¹²

The *ponencia* then borrows the term “intrinsically cruel” from the case of *Lucido v. People*¹³ (*Lucido*) to distinguish between what might be considered “cruelty” under Section 3(b)(1) and “cruelty” as defined in the Rules on Child Abuse Cases. According to the *ponencia*, if the act involved is inherently cruel (such as in *Lucido*, where the accused severely pinched and beat an 8-year-old child, causing her to limp) there is no need to establish the existence of the specific intent to debase, degrade, or demean the intrinsic worth or dignity of the child as a human being.

Finally, the *ponencia* observes that since the Information in the case at bar does not allege the specific intent, the Court cannot analyze the facts using the definition of “cruelty” in the Rules on Child Abuse Cases. Hence, the ordinary definition of “cruelty” should be followed. This leads the *ponencia* to the following conclusion:

Certainly, when there is nothing to defend against, any preparatory act of using a gun, as by pointing it towards a minor, would only cause fear in the mind of that person. With the only remaining act of pulling the trigger of a gun, it is the near possibility of the resulting death or injury that will remain etched in the mind of the minor. There is no denying that psychological harm immediately results therefrom, which falls as psychological abuse, as Section 3(b) of [RA] 7610 classifies maltreatment as child abuse based on the act committed, whether it be habitual or not.¹⁴

¹² *Id.* at 19.

¹³ 815 Phil. 646 (2017).

¹⁴ *Ponencia*, pp. 21-22.



At this point, I make the observation that the *ponencia*'s method of analyzing the facts of the case *vis-à-vis* RA 7610 is essentially a process of elimination. While the *ponencia* no longer goes into this, it is also clear that the alleged act is not similar to any of the acts described in Article 59 of PD 603. Also, the act alleged against San Juan does not fall under Section 3(b)(3) and 3(b)(4), and these are rightly excluded from the discussion. Following these, the *ponencia* explains that Section 3(b)(2) also does not apply, because the specific intent is not alleged in the Information. Finally, the act described was found to be covered by psychological abuse per Section 3(b)(1).

I believe this to be a logical and efficient way of determining whether Section 10(a) of RA 7610 is applicable. I agree with the discussions and the process employed by the *ponencia* for cases clearly falling under Section 10(a). ***However***, while I agree with the method of analysis, I have come to a different conclusion as regards the criminal liability of San Juan.

San Juan's act of pointing a gun at the victim cannot be punished under RA 7610

The bulk of the discussion on RA 7610 in recent years focuses on the supposed intent to increase penalties for crimes committed against children. Oft-quoted are the explanations of Senator Jose Lina during the Senate deliberations on the bills which eventually culminated in the enactment of RA 7610. **But I do not believe that this should automatically classify every act which has a child or minor as its victim, as child abuse punishable under Section 10(a) of RA 7610.** RA 7610 simply did not provide that it would apply automatically, in place of the RPC, once the victim is a child/minor. In fact, it explicitly recognized that the provisions of the RPC remain operative, but it only provided a higher penalty if the victim was below a certain age:

For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the [RPC], for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under twelve (12) years of age. The penalty for the commission of acts punishable under Article 337, 339, 340 and 341 of Act No. 3815, as amended, the [RPC], for the crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years of age.¹⁵

In this connection, I quote the following passage in the *ponencia*:

Thus, it is only when the Information alleges a specific intent, or when the provision of law demands it, must the prosecution prove its existence. Specific intent becomes significant for determining the specific

¹⁵ RA 7610, Sec. 10.



provision—whether under the RPC, under [RA] 7610, or even other criminal laws—under which an act will be punished. As such, where the specific intent is not proven under a provision of law, the act may still be punished under other applicable penal laws provided that the elements of the crime [have] been satisfied. It is only when both general and specific intent are not proven that an accused is entitled to acquittal.¹⁶

It is my understanding that “specific intent” as used in the foregoing paragraph refers not only to the specific intent to debase, degrade, or demean the inherent worth and dignity of a child. It could refer to any specific outcome which the accused intended to cause, such as the intent to make a child lose his/her civil status, as required in paragraph 1 of Article 59 of PD 603.¹⁷

In a similar way, I understand Section 10(a) of RA 7610 as punishing acts not merely because the victim is a child, **but because the victim was sought out as a victim precisely because he or she is a child.** This is the enduring thread I have observed in the myriad of cases in which the Court refused to convict the accused under Section 10(a) because the acts alleged were perpetrated in the spur of the moment, out of retaliation to a harm caused to the accused’s own children, or in the heat of the moment or during an altercation.¹⁸ In other words, I believe that the dividing line between acts punished under the RPC, on the one hand, and those punished under Section 10(a), on the other, is the intention to commit “child abuse” — which means that, in the first place, the offender committed the acts against the child precisely because the latter is a child.

To illustrate, I borrow the situation involved in the case of *Bongalon v. People*,¹⁹ where the accused struck a minor on his back and face, “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 [the minor victim].”²⁰ To my mind, a situation like this should not be categorized as “child abuse” and would be more properly punished under the RPC. For one, the accused in *Bongalon* did not commit the act against the child because the latter is a child. Arguably, the accused therein would have committed the act regardless of who harmed his daughters, minor or otherwise. Furthermore, the definition of “physical injury” in the Rules on Child Abuse Cases, which in turn clarifies the definition of “child abuse” as punishable under Section 10(a) of RA 7610, is as follows: “includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe injury or serious bodily harm suffered by a child.”²¹ While this enumeration is by no means exhaustive, its interpretation should adhere to the doctrine of *ejusdem generis*. A single slap in the heat of anger as described in the above example, if no serious injuries are proven,

¹⁶ *Ponencia*, p. 18.

¹⁷ ART. 59. *Crimes*. – Criminal liability shall attach to any parent who:

(1) Conceals or abandons the child with intent to make such child lose his civil status.

¹⁸ See *Briñas v. People*, G.R. No. 254005, June 23, 2021; *Talocod v. People*, G.R. No. 250671, October 7, 2020; *Calaoagan v. People*, 850 Phil. 183 (2019); *Bongalon v. People*, 707 Phil. 11 (2013).

¹⁹ *Id.*

²⁰ *Id.* at 21.

²¹ RULES ON CHILD ABUSE CASES, Sec. 2(d).

should not be lumped in together with “lacerations, fractured bones, burns, internal injuries x x x.”

Applying the foregoing in the present case, I note that San Juan’s act of pointing a gun against the minor to threaten and intimidate him was an act which can be perpetrated against anyone, even an adult. My reading of the facts is that San Juan did not choose the minor complainant as his victim because he was a child. If he had been an adult, he would have likely used the same tactics in order to assert himself and to make him take him seriously. **Hence, I believe he is liable, not for a violation of Section 10(a) of RA 7610, but only of Grave Threats under the RPC.**

Furthermore, while I agree with the *ponencia*’s formulation of the distinction between Section 3(b)(1) and Section 3(b)(2), and while I agree that San Juan’s act does not fall under Section 3(b)(2) because no specific intent to debase the inherent dignity of the child was ever alleged in the Information, I also believe that the act in question does not fall under Section 3(b)(1) **because it is not inherently cruel.**

In its discussion on what “cruelty” or being “cruel” means, the *ponencia* keenly notes:

The term cruelty, in its common usage, has been defined as the **intentional and malicious** infliction of physical suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; **inhumanity**; outrage. Under the RPC, cruelty is included as one of the aggravating circumstances. It presupposes that **the injury caused be deliberately increased by causing other wrong and that other wrong be unnecessary for the execution of the purpose of the offender.**²² (Emphasis supplied)

Intentional, malicious, *inhumane* — these words used in the foregoing paragraph, to my mind, carry such severe implications. One would ordinarily understand a cruel person as one who delights in or derives gratification out of the suffering of his or her victim, or, knowing the extent of the harm his or her acts could cause, callously performs those acts anyway, without justifiable reason.

With this understanding, I struggle to characterize San Juan’s act as inherently cruel. While any reasonable person would understand that a gun would cause fear in the person staring down its barrel, the ordinary person would not be readily aware of the long-term psychological effects of such fear after its source — the gun — has already been taken away. Hence, San Juan cannot be said to have been deliberately inducing psychological abuse on his victim. Furthermore, his motive was clear: to intimidate the minors, who he says were laughing at him, into respecting him and his complaint against their

²² *Ponencia*, p. 19.



basketball game, given how early it was in the morning. His actions may have been excessive and immature, but they do not have the same sinister quality as cruelty or abuse.

Thus, in conclusion, while I agree with the *ponencia*'s interpretation of Section 10(a) *vis-à-vis* Section 3(b) of RA 7610, it is my considered view that, as previously mentioned, San Juan should be found guilty only for Grave Threats under the RPC, and not Section 10(a) of RA 7610. The two-fold reason for this is simple: (a) San Juan's act is not punishable under Section 10(a) because his act was not attended by the specific intent to commit "child abuse" as the minority of the victim in this case was not specifically sought, nor was it the prime consideration for the act committed, by San Juan; and (b) the specific intent to debase, degrade, or demean the intrinsic worth and dignity of the victim was not alleged, and inherent cruelty was not proven.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice