



Republic of the Philippines
Supreme Court
 Manila

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Wilfredo V. Lacitan
 WILFREDO V. LACITAN
 Division Clerk of Court
 Third Division
 JUL 15 2016

THIRD DIVISION

**VIRGINIA JABALDE y
 JAMANDRON,**

G.R. No. 195224

Petitioner,

Present:

VELASCO, JR., J.,
Chairperson,

- versus -

PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA,* JJ.

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

June 15, 2016

Wilfredo V. Lacitan

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DECISION

REYES, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated August 12, 2010 and the Resolution³ dated January 4, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 00424, which affirmed with modification the Judgment⁴ promulgated on May 31, 2006 of the Regional Trial Court (RTC) of Bayawan City, Negros Oriental, Branch 63, in Criminal Case No. 210, finding Virginia Jabalde y Jamandron (Jabalde) guilty beyond reasonable doubt for violation of Section

* On official business.

¹ *Rollo*, pp. 11-22.

² Penned by Associate Justice Ramon A. Cruz, with Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez concurring; *id.* at 26-38.

³ *Id.* at 42-43.

⁴ Issued by Judge Orlando C. Velasco; *id.* at 44-50.

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10(a), Article VI, of Republic Act (R.A) No. 7610, otherwise known as the “Special Protection of Children Against Abuse, Exploitation, Discrimination Act.”

The Antecedent Facts

The CA narrated the facts as follows:

Jabalde pleaded “not guilty” in a criminal information dated October 14, 2002, for violation of Section 10(a), Article VI, of R.A. No. 7610, before the RTC of Dumaguete City, Branch 31,⁵ which reads:

That on December 13, 2000 at 9:00 o'clock in the morning, more or less, in Barangay Cawitan, Santa Catalina, Negros Oriental, and within the jurisdiction of the Honorable Court, [Jabalde], with cruelty and with intent to abuse, maltreat and injure one LIN J. BITOON, 8 years of age, did then and there willfully, unlawfully and feloniously slap and strike said Lin J. Bitoon, hitting said Lin J. Bitoon on the latter's nape; and immediately thereafter[,] [c]hoke the said offended party, causing the latter to sustain the following injuries: Abrasions: Two (2), linear 1 cm in length at the base of the right mandibular area; One (1), linear 1 inch at the right lateral neck; Two (2), linear 1 cm in length at the anterior neck; and Four (4), minute circular at the left lateral neck, which acts of sa[i]d accused caused the said offended part[y] not only physical but also emotional harm prejudicial to his development.

CONTRARY to the aforesaid.⁶

The witnesses presented by the prosecution were: Lin J. Bito-on (Lin), the minor victim; Dr. Rosita Muñoz (Dr. Muñoz), the physician who examined Lin; Ray Ann Samson (Ray Ann), the classmate of Lin who witnessed the incident; and Aileen Bito-on (Aileen), the mother of Lin.⁷

Lin testified that in the year 2000, he was a Grade 1 pupil of Cawitan Elementary School. At around 9:00 a.m. of December 13, 2000, he was playing “*langit lupa*” during recess with Ray Ann, Marco, Nova and another classmate. During the course of their game, he touched the shoulder of Nova, Jabalde's daughter, causing the latter to fall down and wounding her head. He then helped Nova to stand while one of his classmates called Jabalde. Afraid of what happened, he ran towards a

⁵ Id. at 26-27.

⁶ Id. at 27.

⁷ Id.

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dilapidated building, which was near the place of the incident. Soon thereafter, Jabalde arrived and slapped him on his neck and choked him. Lin was able to get out of her hold when he removed her hands from his neck. He immediately ran towards their house some 500 meters away from the school. He told his mother Aileen about the incident. Thereafter, he was brought to Sta. Catalina Hospital for treatment and a medical certificate was then issued to him.⁸

Dr. Muñoz testified that she was the physician who issued the medical certificate to Lin on December 13, 2000 for the physical examination conducted upon the latter. Dr. Muñoz stated that Lin sustained abrasions: two (2) linear abrasions 1 cm in length at the base of the right mandibular area; one (1) linear abrasion 1 inch in length at the right lateral neck; two (2) linear abrasions 1 cm in length at the back of the neck; and four (4) minute circular abrasions at the left lateral neck. According to her, the abrasions could have been caused by a hard object but mildly inflicted and that these linear abrasions were signs of fingernail marks. Moreover, the abrasions were greenish in color signifying that they were still fresh. She did not notice other injuries on the body of Lin except those on his neck.⁹

Ray Ann, the classmate and playmate of Lin, testified that she knows Jabalde because she was a teacher at Cawitan Elementary School. At about 9:00 a.m. of December 13, 2000, she was playing "*langit lupa*" with Lin, Nova, Ryan and Rhea. Nova, who was standing on top of an unstable stone fell on the ground and thereafter hit her head on the stone. Then, somebody called Jabalde, Nova's mother. When Jabalde came to see her daughter, she struck Lin on his neck then squeezed it. Lin cried and was able to free himself and ran towards their house. Jabalde then shouted, "Better that you are able to free yourself because if not I should have killed you."¹⁰ Ray Ann saw Lin again after their class dismissal at 11:00 a.m. when she went to their house. Lin did not return to school again because he was afraid of Jabalde. During cross examination, Ray Ann testified that Lin did not run into the dilapidated building after the incident and that she was near them when Jabalde struck Lin.¹¹

Aileen testified that Lin is her son who was born on September 4, 1993, and at the time of the incident, he was still 7 years old. That at about 10:00 a.m. of December 13, 2000, Lin came home crying and trembling. Lin told her that he was strangled by Jabalde, who happens

⁸ Id. at 27-28.

⁹ Id. at 28.

¹⁰ Id.

¹¹ Id.

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to be Aileen's aunt and Lin's grandmother. Lin was running back and forth crying but Aileen noticed his neck with scratches. Thereafter, she went to see his teacher-in-charge whom she asked for details of the incident. While in the school campus, she did not see Jabalde. She also testified that they went to Dr. Muñoz for the examination of her son's injuries. Afterwards, they went home. Her son no longer returned to the school because of fear but they let him pass on that school year. During cross-examination, she testified that Jabalde's house is just adjacent to their house in Cawitan, Sta. Catalina. Aileen also filed two cases against her for stealing and physical injuries in the year 2002 in Sta. Catalina. After she filed two cases, she then filed the instant complaint in the Provincial Prosecution's Office in Dumaguete City. She said it took her until 2002 to file the present charges against Jabalde because she was still pregnant during the time of the incident and that her husband was still assigned in Surigao. She admitted that when she was still a child, she already feared Jabalde. She also initiated the filing of the present case because she heard that if she will not file a case against Jabalde, the latter instead will file a case against them.¹²

The defense, on the other hand, presented Jabalde herself. She testified that she is a school teacher at Cawitan Elementary School for 18 years. Lin is her grandson and that his mother Aileen is her niece. She remembered that it was about 10:00 a.m. of December 13, 2000, she was teaching Mathematics when some children went to her classroom and shouted "Mam Jabalde, Ma'm Jabalde, Nova's head was punctured (*nabuslot*)".¹³ Thinking that her daughter was dead, her vision got blurred and she fainted. When she returned into consciousness, she sat on her chair in front of the board for about 5 to 10 minutes. The children then came again and shouted that her daughter's head got punctured. She ran towards her daughter's classroom while at the same time, looking for a gathering of people in the hope of finding her daughter. But, before reaching the place of the incident, she saw her grandson Lin crying. She asked him the whereabouts of Nova but he just kept on jumping and so she held him still. Lin said, "*Lola[,] forgive me, forgive me*"¹⁴ and immediately ran. Jabalde proceeded to her daughter's room and saw the latter seated on the desk. Thereafter, she brought Nova to her own classroom and applied first aid. Then she resumed teaching. She believed that there was a motive in filing the instant complaint which has something to do with a family grudge because of inheritance.¹⁵

¹² Id. at 29.

¹³ Id.

¹⁴ Id. at 30.

¹⁵ Id. at 29-30.

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Another defense witness Rhealuz Pedrona, playmate of Nova and Lin, testified that Nova got injured while they were playing “*langit lupa*” during their recess on December 13, 2000. She went to Jabalde to inform her that Nova’s head was punctured. Jabalde immediately ran to the place of incident. She, however, did not see Jabalde slap or choke Lin.¹⁶

In its Judgment¹⁷ promulgated on May 31, 2006, the RTC found Jabalde guilty beyond reasonable doubt for violation of Section 10(a), Article VI, of R.A. No. 7610. The dispositive portion of the judgment reads:

WHEREFORE, the prosecution having proved the guilt of [Jabalde] beyond reasonable doubt of violation of paragraph (a), Section 10, Article VI of R.A. 7610, as amended, [Jabalde] is **Convicted**. Appreciating in her favor the mitigating circumstance of passion and obfuscation, and applying the provisions of the indeterminate sentence law, [Jabalde] is hereby sentenced to an indeterminate penalty of imprisonment ranging from six (6) months and one (1) day of prision correccional in its minimum period, as minimum to six (6) years and one (1) day of prision mayor in its minimum period, as maximum

The bond posted for her temporary liberty is hereby ordered release.

SO ORDERED.¹⁸

Naturally dissatisfied with the trial court’s decision, Jabalde appealed to the CA.

Ruling of the CA

On August 12, 2010, the CA dismissed Jabalde’s appeal and affirmed the RTC decision with modification.¹⁹ The dispositive portion of the decision reads:

WHEREFORE, the 31 May 2006 Decision, of the [RTC], Branch 63, Bayawan City, Negros Oriental, is **AFFIRMED with MODIFICATION** that [Jabalde] is hereby sentenced to suffer the penalty of **four (4) years, nine (9) months and eleven (11) days of prision correccional, as minimum, to six (6) years, eight (8) months and one (1) day of prision mayor, as maximum.**

SO ORDERED.²⁰

¹⁶ Id. at 30.
¹⁷ Id. at 44-50.
¹⁸ Id. at 49.
¹⁹ Id. at 26-38.
²⁰ Id. at 36.



Jabalde filed a motion for reconsideration but it was denied by the CA on January 4, 2011.²¹

The Issues

1. Whether or not acts complained of are covered by the Revised Penal Code (RPC) or R.A. No. 7610.
2. Whether or not under the facts established, the lower court erred in appreciating the acts of Jabalde as constitutive of violation of Section 10(a), Article VI of R.A. No. 7610.

Ruling of the Court

The petition is meritorious.

Jabalde posits that in her case, the act of inflicting injuries, however minute they were, is punishable under the RPC particularly Article 266(1)²² which defines slight physical injuries; hence, she should be punished under the RPC and not under Section 10(a), Article VI of R.A. No. 7610.²³

The Office of the Solicitor General (OSG) pointed out in its Comment²⁴ filed on May 24, 2011 that since the issue was just raised for the first time on appeal by Jabalde, this is already barred by estoppel citing the cases of *People v. Francisco*²⁵ and *People v. Lazaro, Jr.*²⁶

The cases cited by the OSG do not apply in this case. In *Francisco*, the appellant assailed the order of the trial court for failing to ascertain the voluntariness of his plea of guilt for the records show neither proof nor a transcript of the proceedings that the appellant indeed voluntarily made a guilty plea and that he fully understood its import. The appellant also maintained that he was not given the opportunity to present evidence and that the case was submitted for decision immediately after the prosecution

²¹ Id. at 42-43.

²² Art. 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 from labor from one to nine days, or shall require medical attendance during the same period.

²³ *Rollo*, pp. 19-20.

²⁴ Id. at 82-87.

²⁵ 649 Phil. 729 (2010).

²⁶ 619 Phil. 235 (2009).

filed its offer of evidence. In *Lazaro*, the appellant raised the buy-bust team's alleged non-compliance with Section 21, Article II of R.A. No. 9165. In both cases, this Court held that issues raised for the first time on appeal are barred by estoppel.

However, the reliance on the foregoing cases is misplaced due to different factual antecedents. Here, Jabalde postulates that the acts complained of do not fall within the definition of R.A. No. 7610 and therefore, she should not be convicted on the basis of the said law, to wit:

[Jabalde] postulates that other acts of child abuse falling under Section 10 (a), Art. II, R.A. 7610 is limited to acts not punishable under the [RPC]. As the law is being defined in this section:

“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 maximum period[.]”

Needless to say, acts which are covered under the [RPC] will be dealt with under the provisions of the [RPC] and definitely, out of the context of R.A. 7610, particularly Section 10 (a). In the case of [Jabalde], the act of inflicting injuries, however minute they were, is punishable under the [RPC] particularly Article 266 (1) which defines slight physical injuries. The act of [Jabalde] in slapping, striking and choking [Lin], causing abrasions on the different parts of his neck is absolutely covered within the realm of Article 266 (1). 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, shall be punished with *arresto menor*.²⁷ (Citations omitted)

Here, Jabalde questions the applicability of R.A. No. 7610 on the factual circumstances of the case and is correct in claiming that the instant petition raises pure question of law²⁸ and not question of fact²⁹ as being argued by the OSG. In *Cucueco v. CA*,³⁰ the Court discussed the distinction between questions of law and questions of fact, to wit:

The distinction between questions of law and questions of fact has long been settled. There is a “question of law” when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a “question of fact” when the doubt or controversy arises as to the truth or falsity of

²⁷ *Rollo*, pp. 19-20.

²⁸ *Id.* at 106.

²⁹ *Id.* at 83.

³⁰ 484 Phil. 254 (2004).

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the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.

Simple as it may seem, determining the true nature and extent of the distinction is sometimes complicated. **In a case involving a “question of law,” the resolution of the issue must rest solely on what the law provides on the given set of circumstances.** Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.

x x x The test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.³¹ (Citations omitted and emphasis ours)

“The Court has consistently ruled that a question of law exists when there is a doubt or controversy as to what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference arises as to the truth or the alleged falsehood of the alleged facts. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them.”³²

In the case on hand, Jabalde neither questions the veracity or the falsehood of the alleged facts nor the sufficiency of the evidence, but the appreciation of R.A. No. 7610 on the factual circumstances of the case. Jabalde is simply correct in raising the question of law in the instant petition.

Now, on the substantive issue of the applicability of R.A. No. 7610 in the case at bar, the Court agrees with the contention of Jabalde in her Reply to OSG’s Comment³³ that the acts complained of do not fall within the definition of the said law, to wit:

The [OSG] in his comment is correct in saying that the issues that could be raised in a petition for review are purely questions of law. Guided by this principle, [Jabalde] comes to this Court to raise a question of law. [Jabalde] has been arguing when she availed of his right to appeal that the acts of the [OSG] does not fall within the definition of R.A. 7610 and should not be convicted on the basis of the said law. This is not a new matter that [Jabalde] raised.³⁴

³¹ Id. at 264-265.

³² *Tamondong v. CA*, 486 Phil. 729, 739 (2004).

³³ *Rollo*, pp. 105-108.

³⁴ Id. at 106.

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The law under which Jabalde was charged, tried and found guilty of violating is Section 10(a), Article VI, of R.A. No. 7610, which states:

SEC. 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.**
(Emphasis ours)

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

SEC. 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.

In the recent case of *Bongalon v. People*,³⁵ the Court expounded the definition of "child abuse" being referred to in R.A. No. 7610. In that case, therein petitioner was similarly charged, tried, and convicted by the lower courts with violation of Section 10(a), Article VI of R.A. No. 7610. The Court held that 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 RPC, to wit:

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707 Phil. 11 (2013).

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 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*.**³⁶ (Emphasis ours and italics in the original)

Jabalde was accused of slapping and striking Lin, hitting the latter on his nape, and immediately thereafter, choking the said offended party causing the latter to sustain injuries.³⁷ However, the records of the case do not show that Jabalde intended to debase, degrade or demean the intrinsic worth and dignity of Lin as a human being.

Black’s Law Dictionary defined debasement as “the act of reducing the value, quality, or purity of something.”³⁸ Degradation, on the other hand, is “a lessening of a person’s or thing’s character or quality.”³⁹ Webster’s Third New International Dictionary defined demean as “to lower in status, condition, reputation, or character.”⁴⁰

The laying of the hands on Lin was an offshoot of Jabalde’s emotional outrage after being informed that her daughter’s head was punctured, and whom she thought was already dead. In fact, her vision got blurred and she fainted. When she returned into consciousness, she sat on her chair in front of the board for about five to ten minutes.⁴¹ Moreover, the testimony of the examining physician, Dr. Muñoz, belied the accusation that Jabalde, with cruelty and with intent, abused, maltreated and injured Lin, to wit:

[T]he abrasions could have been caused by a hard object but **mildly inflicted**. She also testified that the linear abrasions were signs of fingernail marks. She did not notice other injuries on the body of the victim except those on his neck. Moreover, the abrasions were greenish in color, signifying that they were still fresh.⁴² (Emphasis ours)

³⁶ Id. at 20-21.

³⁷ *Rollo*, p. 27.

³⁸ *Black’s Law Dictionary* 430 (8th ed. 2004).

³⁹ Id. at 456.

⁴⁰ *Webster’s Third New International Dictionary* 599 (1986).

⁴¹ *Rollo*, p. 29.

⁴² Id. at 28.

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It would be unforeseeable that Jabalde acted with cruelty when prosecution's witness herself testified that the abrasions suffered by Lin were just "mildly inflicted." If Jabalde indeed intended to abuse, maltreat and injure Lin, she would have easily hurt the 7-year-old boy with heavy blows.

As a mother, the death of her child, who has the blood of her blood, and the flesh of her flesh, is the most excruciating idea that a mother could entertain. The spontaneity of the acts of Jabalde against Lin is just a product of the instinctive reaction of a mother to rescue her own child from harm and danger as manifested only by mild abrasions, scratches, or scrapes suffered by Lin, thus, negating any intention on inflicting physical injuries. Having lost the strength of her mind, she 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. In fine, the essential element of intent was not established with the prescribed degree of proof required for a successful prosecution under Section 10(a), Article VI of R.A. No. 7610.

What crime, then, did Jabalde commit?

Jabalde is liable for slight physical injuries under Article 266(2) of the RPC, to wit:

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

x x x x

2. By arresto menor or a fine not exceeding 20 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance.

x x x x

As found out by Dr. Muñoz, Lin only sustained abrasions namely: two linear abrasions of 1 cm in length at the base of the right mandibular area; one linear abrasion of 1 inch in length at the right lateral neck; two linear abrasions of 1 cm in length at the back of the neck; and four minute circular abrasions at the left lateral neck.⁴³ When there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance; or when there is no proof as to the period of the offended party's

⁴³ Id.

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incapacity for labor or of the required medical attendance, the offense is only slight physical injuries.⁴⁴

Although it is found out, as discussed hereinabove, that Jabalde lacked the intent to debase, degrade or demean the intrinsic worth and dignity of the child as a human being as required under Section 10(a), Article VI of R.A. No. 7610, her acts of laying hands against Lin showed the essential element of intent which is a prerequisite in all crimes punishable under the RPC.

The case of *Villareal v. People*⁴⁵ is instructing. In that case, the Court discussed that the RPC belongs to the classical school of thought. The criminal liability is thus based on the free will and moral blame of the actor. The identity of *mens rea* – defined as a guilty mind, a guilty or wrongful purpose or criminal intent – is the predominant consideration. In order for an intentional felony to exist, it is necessary that the act be committed by means of “*dolo*” or “malice”.⁴⁶

The Court further explained that the term “*dolo*” or “malice” is a complex idea involving the elements of freedom, intelligence, and intent. The element of intent is described as the state of mind accompanying an act, especially a forbidden act. It refers to the purpose of the mind and the resolve with which a person proceeds. On the other hand, the term “felonious” means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose. With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act.⁴⁷

In order to be found guilty of the felonious acts under Articles 262 to 266 of the [RPC], the employment of physical injuries must be coupled with *dolus malus*. As an act that is *mala in se*, the existence of malicious intent is fundamental, since injury arises from the mental state of the wrongdoer – *iniuria ex affectu facientis consistat*. If there is no criminal intent, the accused cannot be found guilty of an intentional felony. Thus, in case of physical injuries under the [RPC], there must be a specific *animus iniuriandi* or malicious intention to do wrong against the physical integrity or well-being of a person, so as to incapacitate and deprive the victim of certain bodily functions. Without proof beyond reasonable doubt of the required *animus iniuriandi*, the overt act of inflicting physical injuries *per se* merely satisfies the elements of freedom and intelligence in an intentional felony. The commission of the act does not, in itself, make a man guilty unless his intentions are.⁴⁸

⁴⁴ *Li v. People*, 471 Phil. 128, 150 (2004); *People v. Arranchado, et al.*, 109 Phil. 410, 414 (1960).

⁴⁵ 680 Phil. 527 (2012).

⁴⁶ *Id.* at 564.

⁴⁷ *Id.* at 564-565.

⁴⁸ *Id.* at 589-590.

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In the case at bar, the positive testimonies of the minor victim Lin that Jabalde slapped him on his neck and choked him,⁴⁹ and that of Ray Ann that she saw Jabalde struck Lin on his neck, squeezed it and then shouted, “Better that you are able to free yourself because if not I should have killed you,”⁵⁰ deserve more credit than Jabalde’s own statement that she merely held Lin still because the latter kept on jumping.⁵¹ The laying of the hands and the utterance of words threatening the life of Lin established the fact that Jabalde, indeed, intended to cause or inflict physical injuries on, much less kill, Lin.

The penalty for slight physical injuries is *arresto menor*, which ranges from one (1) day to thirty (30) days of imprisonment.⁵² In imposing the correct penalty, however, the Court has to consider the mitigating circumstance of passion or obfuscation under Article 13(6) of the RPC,⁵³ because Jabalde lost his reason and self-control, thereby diminishing the exercise of his will power.⁵⁴ There is *passional obfuscation* when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason.⁵⁵ For passion and obfuscation to be considered a mitigating circumstance, it must be shown that: (1) an unlawful act sufficient to produce passion and obfuscation was committed by the intended victim; (2) the crime was committed within a reasonable length of time from the commission of the unlawful act that produced the obfuscation in the accused’s mind; and (3) the passion and obfuscation arose from lawful sentiments and not from a spirit of lawlessness or revenge.⁵⁶ With her having acted under the belief that Lin had killed her daughter, Jabalde is entitled to the mitigating circumstance of passion and obfuscation.

Arresto menor is prescribed in its minimum period (*i.e.* one [1] day to ten [10] days) when only mitigating circumstance is present in the case.⁵⁷ Accordingly, with the Indeterminate Sentence Law being inapplicable due to the penalty imposed not exceeding one year,⁵⁸ Jabalde shall suffer a penalty of one (1) day to ten (10) days of *arresto menor*.

⁴⁹ *Rollo*, pp. 27-28.

⁵⁰ *Id.* at 28.

⁵¹ *Id.* at 29-30.

⁵² REVISED PENAL CODE, Article 27.

⁵³ ART. 13. *Mitigating circumstances*. – The following are mitigating circumstances:

x x x x

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

⁵⁴ *Bongalon v. People*, *supra* note 35, at 21-22.

⁵⁵ *People v. Lobino*, 375 Phil. 1065, 1074 (1999).

⁵⁶ *People v. Gonzalez, Jr.*, 411 Phil. 893, 924 (2001).

⁵⁷ REVISED PENAL CODE, Article 64(2).

⁵⁸ Act No. 4103, as amended by Act No. 4225 and Republic Act No. 4203, Section 2.

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WHEREFORE, the Decision dated August 12, 2010 and Resolution dated January 4, 2011 of the Court of Appeals in CA-G.R. CR No. 00424 are **SET ASIDE**; and a new judgment is **ENTERED** (a) finding petitioner Virginia Jabalde y Jamandron **GUILTY** beyond reasonable doubt of the crime of **SLIGHT PHYSICAL INJURIES** under paragraph 2, Article 266, of the Revised Penal Code, and (b) sentencing her to suffer the penalty of one (1) day to ten (10) days of *arresto menor*.

SO ORDERED.




BIENVENIDO L. REYES
Associate Justice

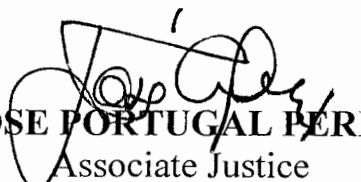
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice

(On official business)
FRANCIS H. JARDELEZA
Associate Justice


ATTESTATION

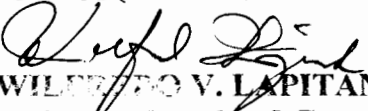
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 15 2016

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