

EN BANC

G.R. No. 184535 — SR. PILAR VERZOSA,\* *petitioner, versus* PEOPLE OF THE PHILIPPINES, MICHELINA S. AGUIRRE-OLONDRIZ, PEDRO AGUIRRE and DR. MARISSA PASCUAL, *respondents*.

Promulgated:

September 3, 2019

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SEPARATE OPINION

CAGUIOA, J.:

I concur with the *Resolution*.

The supervening death of petitioner Pilar Verzosa (Verzosa), coupled with the absence of any action on the part of the Office of the Solicitor General (OSG) to pursue an appeal, rids the *Petition* of any justiciable controversy over which the Court may exercise its power of review. Verily, the resolution of the substantive issues submitted herein would not serve any practical purpose. The *Petition* should thus be dismissed for being moot and academic.

Nevertheless, I submit this Opinion in response to Associate Justice Marvic M.V.F. Leonen's position that the vasectomy performed on Laureano "Larry" Aguirre (Larry) constitutes a form of cruelty which, in turn, qualifies as an act of child abuse punished under Section 10(a) of Republic Act No. (RA) 7610.

Based on my assessment of the applicable law and attendant circumstances, I take a contrary position.

The facts are not in dispute.

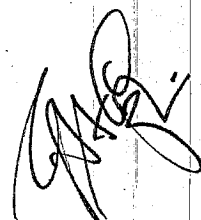
On June 19, 1980, the Regional Trial Court (RTC) of Balanga, Bataan appointed spouses Pedro and Lourdes Aguirre (Spouses) as co-guardians of Larry, then a two-year-old baby under the care and custody of the Heart of Mary Villa (HMV) foster home.<sup>1</sup> Verzosa was the Nursery Supervisor of HMV at the time.<sup>2</sup>

Pedro and Lourdes assumed custody over Larry, and raised him as their own, together with their four daughters, among whom were Gloria S.

\* Also stated as "Versoza" in some parts of the *rollo*.

<sup>1</sup> *Rollo*, p. 12.

<sup>2</sup> *Id.*



Aguirre (Gloria) and respondent Michelina S. Aguirre-Olondriz (Michelina).<sup>3</sup>

Larry exhibited signs of slow mental development throughout his childhood. Hence, he was made to undergo several neuropsychological examinations, and was later diagnosed to be suffering from Mild Mental Deficiency.<sup>4</sup>

Sometime in November 2001, Pedro instructed Michelina to bring Larry to Dr. Juvido Agatep (Dr. Agatep), a urologist, for the purpose of subjecting Larry to a vasectomy. Recognizing that Larry may not be able to intelligently consent to the procedure, Dr. Agatep urged that Larry be examined by a psychiatrist for proper clearance.<sup>5</sup> Thus, Larry was examined by Dr. Marissa B. Pascual (Dr. Pascual) who confirmed Dr. Agatep's initial impressions.<sup>6</sup>

Thereafter, Dr. Agatep performed a bilateral vasectomy on 24-year-old Larry on January 31, 2002 upon Pedro's instruction.<sup>7</sup>

The procedure prompted Gloria and Verzosa to file two separate complaint-affidavits before the Office of the City Prosecutor of Quezon City (OCP) charging Pedro, Michelina, Dr. Pascual and Dr. Agatep (collectively, respondents) of the following offenses:

- (i) Falsification under Article 172 of the Revised Penal Code (RPC);
- (ii) Mutilation under Article 262 of the RPC; and
- (iii) Child Abuse under Sections 3 and 10 of RA 7610.<sup>8</sup>

The OCP dismissed all three charges against respondents for lack of probable cause through its Resolutions dated January 8, 2003 and August 26, 2003 (collectively, 2003 OCP Resolutions).<sup>9</sup>

However, the OCP later revived the third charge through a subsequent Resolution dated May 13, 2005 which found probable cause to charge respondents with violation of Sections 3 and 10 of RA 7610.<sup>10</sup>

On the basis of the allegations set forth in the Information, the RTC of Quezon City initially found probable cause to hold respondents for trial and

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<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id. at 13.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id. at 25.

<sup>9</sup> Id.

<sup>10</sup> Id. at 26.

thus issued the corresponding warrants for their arrest.<sup>11</sup> Hence, respondents posted their respective bail bonds and filed several motions<sup>12</sup> essentially praying for the dismissal of the case.

On November 8, 2005, Judge Ma. Lourdes A. Giron (Judge Giron), Presiding Judge of the RTC of Quezon City, issued an Order<sup>13</sup> dismissing the case for lack of probable cause. Judge Giron stressed that she was only made aware of the previous dismissal of the charges against respondents after she was furnished copies of the 2003 OCP Resolutions, as such copies were not appended to the Information. In this connection, Judge Giron held that the undue revival of the dismissed charges against respondents constitutes a violation of their right to due process, warranting the dismissal of the criminal case.<sup>14</sup> Judge Giron further held that in any case, Verzosa lacks standing to charge respondents with violation of RA 7610.<sup>15</sup> Verzosa filed a Motion for Reconsideration, which was subsequently denied.<sup>16</sup>

The Court of Appeals (CA) affirmed Judge Giron's orders on appeal through its Decision<sup>17</sup> dated May 16, 2008 and subsequent Resolution<sup>18</sup> dated September 17, 2008, which in turn, are assailed in this *Petition*.

The *Petition* alleges, among others, that a vasectomy performed on an adult male suffering from Mild Mental Deficiency qualifies as an act of child abuse under Section 10(a) of RA 7610.

Justice Leonen finds that the vasectomy performed on Larry violates "his fundamental right to life and liberty."<sup>19</sup> Proceeding therefrom, Justice Leonen holds that the "unconsented vasectomy of [Larry] is clearly a case of cruelty, not so much for the manner it was done, but because of the circumstance surrounding its commission and the resulting limitations to the way Larry will be able to live for the rest of life."<sup>20</sup> Further, Justice Leonen concludes that such "unconsented" vasectomy constitutes an act of child abuse, punishable under Section 10(a) of RA 7610, which provides:

<sup>11</sup> Id. at 27.

<sup>12</sup> Id. at 48. The motions filed by the respondents for the RTC's resolution, as enumerated in the Order dated November 8, 2005, were: (i) *Motion to Dismiss* filed by Atty. Jose A. Bernas (counsel for Michelina and Pedro); (ii) *Urgent Motion to Quash Information and Warrant of Arrest* filed by Alampay Gatchalian Mawis and Alampay (counsel for Dr. Pascual); (iii) *Motion for Re-Determination of Probable Cause* filed by Atty. Jose A. Bernas; (iv) *Consolidated Motions to Deny Entry of Appearance of [Verzosa's] Counsel and to Strike From Records her Comment/Opposition* filed by Atty. Jose A. Bernas; (v) *Reiterative Motion to Disqualify Private Prosecutor* filed by Atty. Veronica Jude E. Abarquez (counsel for Dr. Pascual); and (vi) *Motion for Trial Prosecutor to Stipulate Whether She Intends to Prosecute Accused under RA 7610 Despite Having Been Informed that this Matter was Previously Ruled upon by the DOJ and Currently under Review by the Court of Appeals* filed by Atty. Jose A. Bernas.

<sup>13</sup> Id. at 48-55.

<sup>14</sup> Id. at 49-50.

<sup>15</sup> Id. at 55.

<sup>16</sup> Id. at 27.

<sup>17</sup> Id. at 24-39. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Isaias P. Dican and Ramon R. Garcia concurring.

<sup>18</sup> Id. at 46-47.

<sup>19</sup> Separate Opinion, p. 12.

<sup>20</sup> Id. at 18.

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.

As stated at the outset, I disagree.

In holding that the bilateral vasectomy performed on Larry cannot be considered a form of cruelty, the CA correctly held that the test to be applied is whether the accused *deliberately* and *sadistically* augmented the victim's suffering by causing another wrong not necessary for its commission or inhumanely increased the victim's suffering or outrage.<sup>21</sup> Inasmuch as the best interests of a child must, at all times, be upheld, such commitment must be situated and read in light of the applicable law.

The United Nations Convention on the Rights of the Child (UNCRC), which the Philippines became a signatory to on January 26, 1990 and ratified on August 21, 1990,<sup>22</sup> provides that States-parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age[.]<sup>23</sup>

In interpreting the specific provision on "*cruel, inhuman or degrading treatment or punishment*" of children, the UNCRC Committee on the Rights of the Child (Committee) in General Comment No. 8,<sup>24</sup> first and foremost defines "corporal" or "physical" punishment as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light."<sup>25</sup> The Committee further observes that most forms of cruel, inhuman, or degrading treatment or punishment of children involve hitting ("smacking", "slapping", "spanking") with the hand or with an implement — a whip, stick, belt, shoe, wooden spoon, etc., but it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices).<sup>26</sup> Notably, a common element in

<sup>21</sup> CA Decision, p. 10; *rollo* p. 33.

<sup>22</sup> United Nations Treaty Collection, available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf>.

<sup>23</sup> Art. 37, Convention on the Rights of the Child, available at [https://treaties.un.org/doc/source/docs/A\\_RES\\_44\\_25-Eng.pdf](https://treaties.un.org/doc/source/docs/A_RES_44_25-Eng.pdf).

<sup>24</sup> General Comment No. 8, UNCRC Committee on the Rights of the Child, CRC/C/GC/8, 2 March 2007.

<sup>25</sup> *Id.*, par. 11.

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

all these circumstances is that in the act of inflicting “punishment” on the child, the punishment is invariably degrading.<sup>27</sup>

Further, as to other non-physical forms of punishment, cruel and degrading punishment contemplate acts that are “incompatible with the [UNCRC, specifically,] x x x punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”<sup>28</sup>

Consistent with the foregoing principles, the Court, in *Bongalon v. People*,<sup>29</sup> unequivocally espoused that not every instance of laying of hands on a child qualifies as an act of child abuse under Section 10(a).<sup>30</sup>

To sustain a conviction under Section 10(a) of RA 7610, proof of the accused’s **intent to debase, degrade or demean** the intrinsic worth and dignity of the child as a human being should be established beyond reasonable doubt.<sup>31</sup>

In this regard, the records show that while general allegations anent the purported degrading and demeaning effects of the vasectomy performed on Larry had been repeatedly made by Verzosa during the course of the proceedings, not a single shred of evidence was offered to show that respondents were impelled by any ill motive in facilitating the questioned procedure. To my mind, no specific intent to debase, degrade or demean Larry’s intrinsic worth as a human being had been convincingly shown, thereby negating respondents’ criminal liability under Section 10(a) of RA 7610.

**Quite the contrary, assessed in light of their intent as Larry’s parents, the act of respondents cannot, by any stretch of the imagination, be characterized as debasing, degrading or demeaning.** Indeed, my own appreciation of that intent is that it was borne out of care and love for Larry, and by extension, for any offspring Larry may bear, as indicated by the following circumstances:

Foremost, a professional evaluation of Larry’s personal circumstances revealed that he “grew up with a very supportive adoptive family.”<sup>32</sup> This is consistent with the declarations of Pedro and Michelina to the effect that the vasectomy procedure was done merely as a **preventive** measure against unwanted pregnancies in light of Larry’s “emerging sexuality and inability to take care of himself[,] much less a child [of his own]”<sup>33</sup> More so, the Spouses’ age at the time precluded their ability to fully monitor and take

<sup>27</sup> See id.

<sup>28</sup> Id.

<sup>29</sup> 707 Phil. 11 (2013).

<sup>30</sup> Id. at 14.

<sup>31</sup> Id.

<sup>32</sup> Psychiatry Report dated January 21, 2002 of Dr. Marissa B. Pascual, see *Aguirre v. Secretary of the Dept. of Justice*, 571 Phil. 138, 145 (2008).

<sup>33</sup> Comment of respondents Pedro and Michelina, *rollo*, p. 143.

care of Larry as much as they used to.<sup>34</sup> Quite clearly, the intent behind the decision of Pedro and Michelina to have Larry undergo the operation is to be understood within the context of ensuring Larry's best interest.

Next, Larry was treated as one of the Spouses' own children; no expenses were spared by the Spouses when it came to Larry's welfare and educational needs. At the early age of 6, he was enrolled at the Colegio de San Agustin in Dasmariñas Village.<sup>35</sup> At age 11, Larry was subjected to a psychological evaluation after showing signs of delayed development.<sup>36</sup> Based on the recommendation of a medical professional, Larry was then transferred to St. John Marie Vianney, where he could receive special education and training.<sup>37</sup> Larry was later enrolled in a vocational course at Don Bosco after completing his secondary education.<sup>38</sup>

In all these years, Larry could not prepare his own meals, do his errands, or even bathe himself without supervision from his parents or his older siblings.<sup>39</sup> Yet, despite this, Larry confessed to having been in a relationship at least once and that he had learned to drink and smoke.<sup>40</sup>

Taking the circumstances in their totality, it is crystal clear to me that Pedro and Michelina were driven by no other motive than that of love and compassion for Larry. If Larry were to reproduce, by deliberate choice or otherwise, the task of raising a child would be too difficult a task to undertake, given Larry's proven inability to take care of his own affairs. Inevitably, the responsibility to take care of the child would redound to the Spouses, who, as previously mentioned, are already encountering difficulty taking care of Larry alone. Thus, by no stretch of the imagination can it be said that there is any evidence of malevolent intent to debase or degrade Larry's intrinsic worth as a human being. **To declare otherwise, would be, to my mind, cruel and degrading to the adoptive parents who, by all indications, only sought the best for Larry.**

**ACCORDINGLY**, I vote to **DISMISS** the *Petition*, solely on the ground of mootness.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

<sup>34</sup> See Psychiatry Report dated January 21, 2002 of Dr. Marissa B. Pascual, see *Aguirre v. Secretary of the Dept. of Justice*, supra note 32, at 145.

<sup>35</sup> Id.

<sup>36</sup> Id.


<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id. at 145-146.

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**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court