

THIRD DIVISION

[G.R. No. 195224, June 15, 2016]

**VIRGINIA JABALDE Y JAMANDRON, PETITIONER, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

DECISION

REYES, J.:

Before the Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated August 12, 2010 and the Resolution^[3] dated January 4, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 00424, which affirmed with modification the Judgment^[4] 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 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 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 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]

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 Judgment^[17] 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]

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 Comment^[24] 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 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 law^[28] and not question of fact^[29] 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 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**