

**G.R. No. 184535 (Sister Pilar Versoza v. People of the Philippines,
Michelina S. Aguirre-Olondrez, Pedro Aguirre and Dr. Marissa Pascual.)**

Promulgated:

September 3, 2019

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SEPARATE OPINION

PERALTA, J.:

I agree with the Resolution that the Petition for Review on *Certiorari* should be dismissed for lack of party, considering the death of the petitioner Sister Pilar Versoza and absent an appeal from the Office of the Solicitor General. However, I also partly agree with Justice Marvic Mario Victor F. Leonen that because of the novelty and importance of the issue, which deals with special protection to children from all forms of abuse, the Court should still resolve the issue of whether bilateral vasectomy constitutes child abuse under Section 3(b),¹ Republic Act (R.A.) No. 7610 (*An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties For Its Violation and For Other Purposes*), as well as whether the Court of Appeals committed reversible error in affirming the trial court's dismissal of the child abuse complaint against accused-respondents for lack of probable cause.

On the merits, however, I join the opinion of Justice Alfredo Benjamin S. Caguioa inasmuch as the *ponencia* held that the vasectomy performed on Laureano "Larry" Aguirre constitutes a form of cruelty which qualifies as an act of child abuse under Section 10(a) of R.A. No. 7610. I find that the Court of Appeals committed no reversible error in affirming the Order of the trial court dismissing the child abuse case for lack of probable cause. Based on the evidence on record, the vasectomy performed on Larry does not constitute child abuse or cruelty to a child as contemplated under Section 10(a)² of R.A. No. 7610.

¹ Section 3. *Definition of Terms.* –

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(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.

² 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 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.

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With the untimely demise of Versoza, I agree with the *ponencia* that such supervening event warrants the dismissal of the case. At any rate, for the guidance of the Bench and the Bar, the novel issue of whether the bilateral vasectomy conducted on Larry constitutes child abuse under R.A. No. 7610 should be resolved. I also have to agree that the issue of whether the bilateral vasectomy performed on Larry constitutes child abuse under R.A. No. 7610 is one of transcendental importance to others similarly situated due to mental deficiency, inasmuch as the term "child" not only refers to "a person below eighteen (18) years of age, but also to one over said age who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself [or herself] from abuse."³

Besides, even if petitioner Versoza had already passed away during the pendency of the instant petition, Section 2, Article XI of R.A. No. 7610 mandates that the State shall intervene on behalf of the child when acts of abuse, exploitation and discrimination against the child are committed by the parent, guardian, [as in the case of respondent Pedro Aguirre] teacher or person having care and custody of the same. Section 2, Article XI explicitly states that the best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. It is in line with this provision that the Court may, in the interest of justice, resolve the issue of whether the bilateral vasectomy conducted on Larry constitutes child abuse under R.A. 7610. After all, it is not Larry who died, but Versoza, his former guardian who was then a social worker or representative of a licensed child-caring institution when she filed the complaint on behalf of Larry. It is safe to say that Larry is still alive today, there being no showing to the contrary, bearing the lingering effect of his bilateral vasectomy.

On the merits of the case, I join Justice Francis H. Jardeleza and Justice Caguioa in disagreeing with the *ponencia* that the bilateral vasectomy conducted on Larry is an act of child abuse.

In *P/C Supt. Pfleider v. People*,⁴ it was held that "the determination of probable cause is not lodged with this Court. Its duty, in an appropriate case, is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction." This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule, some of which are enumerated in *Brocka v. Enrile*.⁵ None of such exceptions obtain in this case.

³ Section 2(b) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

⁴ 811 Phil. 151, 159 (2017).

⁵ 270 Phil. 271, 276-277 (1990).

Moreover, this Court is not a trier of facts, and the determination of probable cause is and will always entail a review of the facts of the case.

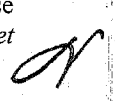
In finding that no probable cause exists to hold the accused for trial, the RTC ruled as follows:

In the case at bar, there was already a pronouncement made by the Court of Appeals, which was learned by this Court only after it made a prior determination of probable cause, that there was neither a case of falsification or mutilation. This stands to reason that the Court was misled by the circumstances surrounding the case or the determination of probable cause. Had it known that there was already contradictory resolutions issued by the Public Prosecutors and the Decision rendered by the Court of Appeals touching the core issue of mutilation, this Court would have dismissed the case. However, this Court belatedly learned of such facts. Consequently, there is a need to re-determine the existence of probable cause.

xxx the main core for the filing of the instant information for violation of RA 7610 sprung from the bilateral vasectomy performed on Larry Aguirre. There was already a judicial determination made by the Court of Appeals that no probable cause exists with respect to the bilateral vasectomy to be considered as mutilation. Consequently, there would be no violation of RA 7610. But then it appears that in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion in filing an Information for violation of RA 7610. There is no reason to hold the accused for trial and further expose them to an open and public accusation of the crime when no probable cause exists.

In upholding the dismissal of the complaint for child abuse, the CA aptly held, thus:

Bilateral vasectomy performed on Larry Aguirre cannot be considered a form of child abuse. In fact, the bilateral vasectomy is not a surgical procedure which totally divests him of the essential organ of

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- a. To afford adequate protection to the constitutional rights of the accused (*Hernandez v. Albano, et al.*, 125 Phil. 513 [1967]).
 - b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. v. Fernandez*, 43 Phil. 304 [1922]; *Hernandez v. Albano, supra*; *Fortun v. Labang, et al.*, 192 Phil. 125 [1981];
 - c. When there is a pre-judicial question which is *sub judice* (*De Leon v. Mabanag*, 70 Phil. 202 [1940]);
 - d. When the acts of the officer are without or in excess of authority (*Planas v. Gil*, 67 Phil. 62 [1938]);
 - e. Where the prosecution is under an invalid law, ordinance or regulation (*Young v. Rafferty*, 33 Phil. 556 [1916]; *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 389 [1925]);
 - f. When double jeopardy is clearly apparent (*Sangalang v. People and Avendia*, 109 Phil. 1140 [1960]);
 - g. Where the court has no jurisdiction over the offense (*Lopez v. City Judge*, 124 Phil. 1211 [1996]).
 - h. Where it is a case of persecution rather than prosecution (*Rustia v. Ocampo*, CA-G.R. No. 4760, March 25, 1960);
 - i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto v. Castelo*, 18 L.J., [1953], cited in *Ranoa v. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; *Cf. Guingona, Jr., et al. v. City Fiscal of Manila, et al.*, 213 Phil. 516 [1984]); and. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied (*Salonga v. Hon. Pano, etc., et al.*, 219 Phil. 402 (1985).
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reproduction for the simple reason that it does not entail the taking away of a part of portion of the male reproductive organ. Vasectomy as an effective surgical sterilization prevents conception from taking place but the male reproductive organs remain intact as the body continues to produce sperm, the intentional act of vasectomy procedure prevents pregnancy which is not the same thing as saying that the reproductive incapacity is permanently impaired. While the bilateral vasectomy does not totally preclude him from siring an offspring and/or raising a family, the operation is reversible and therefore has not caused permanent damage on his person, neither does it demean, debase and degrade the intrinsic worth and dignity of Larry Aguirre as a person. Thus, the surgical procedure cannot be considered prejudicial to the child's development.

On the issue of whether the bilateral vasectomy performed on Larry constitutes child abuse as contemplated in R.A. No. 7610, I quote with approval the opinion of Justice Caguioa, thus:

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.

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 Versoza during the course of the proceedings, not a single shred of evidence was offered to show that the 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.

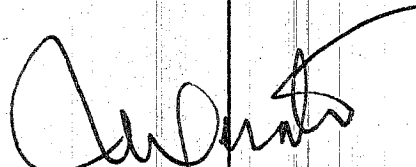
Quite the contrary, assessed in light of their intent as Larry's parents, the act of respondents cannot, by any stretch of imagination, be characterized as debasing, degrading or demeaning. Indeed, my own appreciation of that intent is that it was borne out of care and love for Larry, and by extension,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

Probable cause is defined as the existence of facts and circumstances that engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty of that crime and should be held for trial. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.

Based on the records, the 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,⁶ was absent on the part of accused-respondents when they had Larry undertake bilateral vasectomy. Hence, the Court of

⁶ *Bongalon v. People*, 707 Phil. 11, 21 (2013).

Appeals committed no reversible error in affirming the Order of the RTC, which dismissed the child abuse case against respondents for lack of probable cause. Be that as it may, the petition should be dismissed for lack of party, in light of the death of petitioner Sister Versoza and the absence of an appeal from the Office of the Solicitor General.



DIOSDADO M. PERALTA
Associate Justice

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EDC R. O. ARICHETA
Clerk of Court En Banc
Supreme Court