

COSTA RICA – JUDGMENT OF THE CRIMINAL COURT OF CASSATION, 20 OCT 2005

Judgment: 2005-1062

Case N°: 02-002448-0369-PE-(3)

CRIMINAL COURT OF CASSATION. Second Circuit Court of San Jose. Goicochea, at eight forty five, on October twentieth two thousand five.

CASSATION APPEAL filed in the case against **ARIEL RAMON CASTILLO NAVARRETE**, of age, a citizen of Limon, in charge of delivery and sale of in a sausages plant, married, with identification document N° 7-051-490, charged for the crime of **AGRESSION USING A WEAPON** against **LOAMMI CASTILLO LOPEZ**. Justices rendering this judgment: Omar Vargas Rojas, Ulises Ziñiga Morales, and Guillermo Sojo Picado. Appearing in this appeal: Gianina Luna Duran, Atty.; Ariel Ramon Castillo Navarrete; and Ana Isabel Chaves Lopez, Atty., on behalf of the Prosecutor's Office.

CONSIDERING:

1. That, in a judgment rendered at fifteen thirty hours on June sixteenth two thousand four, the Court of Heredia, resolved: "THEREFORE: In accordance with the provisions set forth in articles 39 and 41 of the Constitution; articles 1, 22, 30, 45, 71, 73, 74, 76, and 140 of the Criminal Code; and articles 270 and 360 of the Criminal Proceedings Code; **HARIEL RAMON CASTILLO NAVARRETE** is found to be the author of **TWO CRIMES OF AGGRESSION USING A WEAPON** effectively inflicted upon **LOAMMI BELEN CASTILLO LOPEZ AND ARIELA NAHIMA CASTILLO LOPEZ** and in this sense he is sentenced to serve **THREE MONTH OF JAIL TERM** for each of the crimes; adding up to a total of **SIX MONTHS OF JAIL TERM** that shall be discounted, from the preventive imprisonment, and that shall be enforced in the place and manner set forth by the Jail regulations. Concerning the crime of **AGRESSION USING A WEAPON** against **LOAMMI BELEN CASTILLO LOPEZ** the defendant is **ACQUITED** from any punishment or liability. The defendant shall pay the fees arising from this proceeding.

Once this judgment is final, it shall be recorded in the Judicial Records. Zayra Sevilla Mora, Judge."

2. That Ariel Ramon Castillo Navarrete filed cassation appeal against the above mentioned judgment.

3. That having carried out the corresponding deliberations, pursuant to article 450 of the Criminal Proceedings Code, the Court addressed the matters to be heard by the cassation panel.

4. That the proceedings have followed the pertinent legal requirements.

ACCORDING TO Justice VARGAS ROJAS; and

CONSIDERING

I.- The cassation appeal meets the legal arguments to be admitted, in accordance with articles 422, 423, 424, 443, 444, 445 of the Criminal Proceedings Code; thus the Court shall judge the matters stated therein.

II.- In the only cassation motion regarding the form, Ariel Ramon Castillo Navarrete alleges lack of grounds and therefore the breaching of articles 142, 184, 361, 363, 367, and 369 of the Criminal Proceedings Code. He affirms that the judgment has no intellectual reasoning. He points out that as a parent he is the maximum authority in charge of guarding and upbringing his children,

therefore he is entitled to determine and authorize whatever goes on within his scope of action, since he must safeguard the safety of the minors under his guardianship. The Court has acknowledged as a matter of fact the account of the plaintiff, which was the starting point of a number of events that involved the entire family, and which even made the members of the family disobey their father and disregard his authority, since the plaintiff tried to take the minors away from home without their father's authorization. He admits having punished his oldest daughter with a belt, following a custom that has existed for over twenty years, but points out that it was a soft belt without a buckle. He rejects the reports issued by experts in medical law regarding his two older daughters Loammi and Ariela. According to such medical reports the girls were disabled for five and ten days, yet he affirms that the girls continued carrying out their normal activities. He requests that the judgment be repealed and the defect corrected and for procedural economy his punishment be shortened to one month of jail term.

MOTION UNFOUNDED. According to the facts of matter that were evidenced, it was confirmed that on October 11th, 2002, in the evening, the defendant Castillo Navarrete was at his home located in San Francisco de Heredia with his children Loammi, Jaffet, and Jordan – the latter two are minors. The defendant told his children that their mother, Mrs. Marcia Lopez Alonso, was seeing another man; for this reason at around 11 pm he took Loammi to the hospital where her mother worked as a nurse and they confirmed that Mrs. Lopez was in fact working. In view of this, Loammi stayed in the hospital with her mother, while the defendant went back home where the two minors, Jaffet and Jordan, had stayed. Once he was back home, the defendant made several annoying calls to his wife and started shouting at the children. The following morning, since the defendant had told Loammi that he would not let her mother into the house, Mrs. Lopez, after work, went to her other daughter's house – Ariela Lopez Alonso - and sent Loammi home to fix breakfast for the children. When Loammi arrived home she found her father who took a belt and beat her all over her body and with the tip of the keys he pressed her fingers causing ecchymosis and excoriation as a result of which she was disabled for five days. Since Loammi did not return to her sister's house, Mrs. Marcia sent Ariela to find out what was going on and when Ariela opened the door, the defendant took the belt and beat her up causing ecchymosis in both arms (page 202). The Court reached these conclusions on the basis of the depositions and experts reports in connection with this case. Particularly, Loammi Castillo's deposition; she stated that the defendant "... *grabbed the belt and started beating me and he hit me everywhere without stopping, I can remember the strokes, my brothers were crying, he continued beating me up...*" (page 204). Likewise, her sister, Ariela Castillo Lopez stated that "*He hit me with the belt several times, he also slapped me, and he hit me against the door whenever I pushed it...*" (page 207). Likewise, the child Jordan Castillo Lopez stated, during the hearing, "*he told Loammi I want to destroy you, he was all red and angry, he had a belt in his hand and my sister was crying on the couch, all wounded; he also spanked my sister Ariela. He beat Loammi with a leather belt on her feet, face, hands, everywhere, that was in the morning...*" (pages 209 and 210). These depositions were supported with the experts and documentary evidences, especially with the reports issued by experts in medical law included in pages 16, 17, 21, and 22 of the docket and which describe in detail the injuries suffered by each of the victims and which resulted in the disabilities mentioned in the reports. Upon assessing the evidence following the rules of sound criticism, the judge was led to believe that there were reasonable grounds evidencing that the facts of matter had occurred and that the defendant had been involved in them. Very well then, the appellant's main argument is that as a father exercising his parental rights and duties, he was entitled to and even obliged to correct and guide his children. Certainly, article 143 of the Family Code in force sets forth: "*Parental Authority and Representation. Rights and duties. Parental authority confers the rights and imposes the duties to educate, safeguard, overlook, and, in a moderate way, correct children. Likewise, it empowers parents to request that a judge authorize the adoption of necessary measures to contribute in guiding the minor, these measure may include putting the child in an appropriate center for a reasonable time. This provision shall also be enforced upon minors who have been abandoned, who are at social risk or who are not subject to parental rights and duties, in this case the request shall be made by the Patronato Nacional de la Infancia (National Foundation for Children). The child shall be placed in a center until such time when the Court decides otherwise, prior expert reports needed for such purpose, and which shall be yielded within a term counted as from such time when the child is placed in the*

center.” From this, we can conclude, among others, the obligation of the person exercising parental rights and duties to correct and guide children. However, this can in no way be interpreted as a general authorization for parents or guardians of minors to hurt them without being punished for that action or simply to dispose of their lives as they please. This concept is an atavistic approach of family relationships, according to which the father disposed of all assets, including his wife and children. On the contrary, according to the legislation in force in Costa Rica, minors are vested with rights and duties and the State must watch out for their physical and moral integrity. Costa Rica has not only included this Integral protection in its Constitution but also in its regulations. Parental authority granted to adults, “means that adults exercise, with regard to minors, an authority that stems from the duty of protection that adults have towards children and adolescents. It also means that this is not an arbitrary authority and that when adults abuse this authority it is no longer legitimate and such abuse is a breach of rights” (MAXERA, RITA. *Human Rights of children and adolescents*, in: *Status Analysis of children and adolescents’ rights in Costa Rica*, San Jose, UNICEF, Costa Rica University, 1999, p.8) Article 51 of the Constitution establishes the State’s duty to protect integrally all vulnerable persons, among whom are minors. Moreover, article 55 of the Constitution, creates an autonomous agency in charge not only of watching out for rights but also of demanding its enforcement through the legal mechanisms set forth in the legal framework of Costa Rica. Also, under article 19 of the Convention on the Rights of the Child: “1.States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement. ” Moreover the recommendations of the Children’s Rights Committee insists on the need for “the State Party to ban the use of body punishments at home and to adopt efficient measures in order to enforce the legal prohibition of the body punishments (...)” Concerning the special legislation, article 24 of the Children and Adolescents Code establishes “Right to Integrity. Minors shall have a right for their physical, psychological, and moral integrity to be respected. This right includes the protection of their image, identity, autonomy, thought, dignity, and values.” From this rule, we can conclude that the rights granted to parents under the paternal rights and duties is limited by the human rights of minors and the prohibitions expressly established in the criminal laws. In Costa Rica, legislators have expressly typified as a crime any aggression using a weapon. Without a doubt, using a leather belt without a buckle is an “improper weapon” that can be used to harm and hurt others, as it has in fact been used for that purpose in this case.” In this regard, Case Law has established that “When article 140 of the Criminal Code uses the words “bruising device,” it introduces a regulatory element that calls for a legal assessment by the interpreter. **Bruising device** is the one, which is used to commit an event, could hurt the body of an individual and to leave or not evidence. Therefore, from a legal perspective, the bruising nature of a device depends on, first, the intention of whomever is using the device, in other words to harm the victim; and second, the possibility that when such device is used it can hurt a person as previously stated. The bruising can not depend on the increase of the offensive force, which a person who uses a device naturally has, since thinking in this way could lead to absurdity. In this case, an umbrella is a bruising device when it is used to hit a person because – in addition to the purpose for which it is used – it is an appropriate instrument to hurt the victim’s body.” (Third Division of the Supreme Court Vote: 543-F at eight fifty on November thirteenth, nineteen ninety-two). We must bear in mind that the defendant not only is an adult but also has a power and control relationship since he is the father of the victims. In addition, we must take into account that the events occurred amidst a violent family circle in which the defendant confronts physically and psychologically the other members of his family. According to article 2 of the Law against Domestic Violence N° 7586 of 1996, it defines “a) Domestic violence: as the act or omission, direct or indirect, exercised against a relative, by kinship, in-law, or adoption up to the third degree, as a result of a legal bond or de facto or by a guardianship,

custodianship or guardianship of adults relationship and that as a result of which there is a physical, sexual, psychological, or property deterioration. The in-law bond shall survive when the relationship from which it arose terminates. b) Psychological violence: action or omission intended to degrade or control the actions, behavior, beliefs, and decisions of other persons by intimidation, manipulation, threat, direct or indirect, humiliation, isolation, or any other behavior that damages the psychological health, self-determination or personal development. c) Physical violence: action or omission that risks or damages the physical integrity of an individual.” In this case, there is not only psychological violence against his son and his daughters upon questioning their mother’s behavior, while she was working, but also physical violence against them which ended up in a criminal action. In short, parents – even though vested with parental rights and duties have no “right” to hurt their children. Accepting otherwise would breach the principle of equality, established in article 33 of the Political Constitution, since aggression with weapons is not allowed among adults, let alone against persons who are vulnerable and/or within the family circle. Respect for physical integrity is part of respect for human dignity, and therefore, there is no legal standing to deteriorate the human rights of the victims in this case. Moreover, the victims were already of age, as a matter of fact, one of them had already established her own family and did not even live at home, so his excuse can not be accepted under these terms. Finally, with regard to the claims concerning the disability the victims had suffered, it is a matter that was not timely challenged and in any event, it does not proof a defect of the Court. The mentioned motions were timely informed to the parties, who had a chance to file the legal remedies to request their clarification, repeal or to request that a different expert be appointed. None of this has happened in due course since the defendant did not file the pertinent requests and agreed to the results. Furthermore, the appellant has not provided any evidence whatsoever to support his claim; it is just a matter of subjective appreciation without any evidence. With regard to the punishment imposed, we must point out that in this case there is an aggravating circumstance, pursuant to paragraph two of article 140 of the Criminal Code. Under such circumstances, the minimum punishment for each of the events would be two months and twenty days, so the three months for each of the crimes is not disproportional. In any event, the judge has provided sufficient grounds to justify the punishment imposed. In this sense, the defendants age, his education level, his financial status, his having criminal records, the existence of a violent domestic circle which he had subjected his family to, the scope of the damages, and his behavior following the events fully warrant the punishment imposed on him. For all these reasons, the repeal is unfounded.

THEREFORE:

Consequently, the remedy filed is hereby declared unfounded.

Omar Vargas Rojas

Ulises Zuñiga Morales

Guillermo Sojo Picado

Justices of the Criminal Cassation Court

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