

**FIRST DIVISION**

[ G.R. No. 250219. March 01, 2023 ]

**XXX,<sup>[1]</sup> PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

**D E C I S I O N**

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>[2]</sup> under Rule 45 of the Rules of Court assails the January 31, 2019 Decision<sup>[3]</sup> and the October 18, 2019 Resolution<sup>[4]</sup> rendered by the Court of Appeals (CA) in CA-G.R. CR No. 40971. The CA affirmed with modifications the November 10, 2017 Decision<sup>[5]</sup> of the Regional Trial Court (RTC) of ██████████<sup>[6]</sup> in Criminal Case No. 194-V-16 finding petitioner XXX guilty beyond reasonable doubt of violation of Section 5(i) of Republic Act No. (RA) 9262,<sup>[7]</sup> or the “Anti-Violence Against Women and Their Children Act of 2004.”

**Facts of the Case**

Petitioner was charged with a violation of Sec. 5(i) of RA 9262 based on an Information<sup>[8]</sup> dated January 29, 2016, to wit:

In October 2015 up to the present, in ██████████ and within the jurisdiction of this Honorable Court, the above-named accused, being the husband of victim [AAA],<sup>[9]</sup> did then and there willfully, unlawfully, feloniously deprive his minor child of financial support legally due to the complainant and to her minor child and abandoning them totally, causing psychological and emotional anguish to the complainant and her minor child.

CONTRARY TO LAW.<sup>[10]</sup>

Petitioner filed an Omnibus Motion to Quash [the] Information and to Quash Warrant of Arrest<sup>[11]</sup> arguing violation of the constitutional right to due process and consequently praying for a preliminary investigation.<sup>[12]</sup> The motion was granted by the trial court. Trial

prosecutor Agapito F. Fajardo, Jr. was directed to conduct the proper investigation and submit a Resolution within 30 days from receipt of the Order dated March 3, 2016, granting the motion.<sup>[13]</sup>

After re-investigation and careful evaluation of the evidence presented by both sides, the prosecutor found no reason to reverse or modify the Resolution dated January 29, 2016 finding probable cause for violation of Sec. 5(i) of RA 9262 against petitioner.<sup>[14]</sup>

Upon arraignment, petitioner pleaded not guilty to the crime charged.<sup>[15]</sup> Thereafter, trial on the merits ensued.

### **Version of the Prosecution**

Petitioner and AAA were married on December 29, 2006;<sup>[16]</sup> out of their union, a daughter was born.<sup>[17]</sup> After their wedding, petitioner and AAA stayed in [REDACTED]. However, due to their difficult circumstances, AAA decided to look for a job abroad to help sustain their family.<sup>[18]</sup> AAA left for Singapore in 2108.

In May 2015, AAA learned that petitioner is in a romantic relationship with another woman, CCC. Petitioner even messaged AAA not to communicate with him anymore.<sup>[19]</sup> To make things worse, in July 2015, AAA discovered that CCC was pregnant with petitioner's child.<sup>[20]</sup>

On several occasions, petitioner and CCC would send AAA text messages just to spite her, to wit:

Excerpts from CCC's exchanges with AAA:

CCC: Nabuntis ako out of love... Eh ikaw nabuntis ka out [sic] of LUST.. oh by the way do you know what lust means?

x x x x

AAA: Ohh bakit masama bang malaman kung kelan ipanganak ang anak ng asawa ko sa ibang babae.. haha

CCC: Hahahahah asawa? Uy hindi mo daw siya asawa, eto o tumatawa sa tabi ko... Sa papel lang daw kayo nag asawa at hindi sa puso at kaluluwa niya. Hahahaha it hurts diba?<sup>[21]</sup>

Excerpts from petitioner's and CCC's exchanges:

Petitioner: Sige na, ngarod ta marog kamin nakaligo na mahal ko sarap yumakap malamig ti kwarto mi hehe (sige na matutulog na kami ng mahal ko nakaligo na siya, masarap yumakap dahil malamig ang kwarto namin)<sup>[22]</sup>

Later on, AAA learned that petitioner brought CCC to their hometown,<sup>[23]</sup> prompting AAA to return to the country.<sup>[24]</sup> Upon learning that petitioner and CCC started to cohabit in ██████████, AAA sought the help and assistance of the Department of Social Welfare and Development in getting her daughter, BBB, from her mother-in-law.<sup>[25]</sup>

BBB, who at the time of her testimony was 9 years old, also took the stand. BBB testified that in 2015, her mother fetched her from her father. The transcript shows that BBB had a hard time narrating her testimony as she kept on crying when propounded with questions. Multiple times BBB would stop and cry and would require the counsels, her mother, or the presiding judge to calm her down to allow her to compose herself to be able to give her testimony.<sup>[26]</sup> According to BBB, while she was not used to having her mother AAA around, she voluntarily went with her mother when she was being fetched from the house she grew up in. BBB further confirmed that petitioner, her father, had a girlfriend, CCC, whom petitioner would bring home every now and then. When asked to explain why she was crying, BBB explained that it was because her father and CCC had an affair, and that she wanted that her father and mother to reconcile together.<sup>[27]</sup> BBB said that she no longer loved her father.

When the prosecution formally offered its evidence, petitioner filed a Motion to Dismiss the case on Demurrer to Evidence,<sup>[28]</sup> claiming that the prosecution failed to establish the allegation in the criminal Information that petitioner deprived AAA and BBB of financial support. The RTC denied the same in an Order dated March 21, 2017.<sup>[29]</sup>

### **Version of the Defense**

Petitioner confirmed that BBB is his daughter with AAA. Prior to October 2015, BBB was living with him in ██████████; his mother helped in rearing BBB until AAA forcibly took her away.<sup>[30]</sup> Contrary to AAA's accusations, it was petitioner who had custody and who primarily took care of their child since AAA left the country and work in Singapore.

Petitioner initially denied knowing CCC, but subsequently clarified that they went to the

same secondary school, but had not seen CCC in a long time.<sup>[31]</sup> When asked if he was providing support to BBB, he replied that since October 2015 when the child was taken from him, he stopped giving support because AAA does not allow BBB to be near him nor show her to him.<sup>[32]</sup>

### **Ruling of the Regional Trial Court**

The RTC found petitioner guilty of inflicting psychological violence against AAA and BBB through emotional and psychological abandonment. The RTC held that petitioner might not have physically abandoned his family, but the emotional and psychological abandonment and all the hurts, pains, and distress brought about by his indiscretion as a husband are far worse than physical abandonment.<sup>[33]</sup>

The *fallo* of the trial court's Decision reads:

**WHEREFORE**, foregoing considered, judgment is hereby rendered finding ACCUSED [XXX] guilty of violation of Section 5(i) of RA 9262 and is hereby sentenced to suffer an indeterminate sentence of imprisonment of two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day prision mayor as maximum. He is likewise, ORDERED TO PAY a fine of one hundred thousand pesos (P100,000.00) and to undergo psychological counseling in any government accredited institution and submit to this Court his proof of compliance thereof.

**SO ORDERED.**<sup>[34]</sup>

Aggrieved, petitioner appealed to the CA imputing the following errors to the RTC: (1) in considering psychological violence when the only accusation against him is merely economic abuse; (2) in failing to consider the fact that it was AAA who alienated their child from petitioner; (3) in failing to consider the fact that it was petitioner who took custody of BBB when she was still 7-months old until October 2015; (4) in failing to consider the legal implication of the act of petitioner in filing a Petition for Custody; and (5) in failing to consider that the pieces of evidence so far adduced by the prosecution are insufficient to support the assailed Decision.<sup>[35]</sup>

Representing the People of the Philippines, the Office of the Solicitor General argued that the criminal Information against petitioner charges not only deprivation of financial support,

but likewise of abandonment, which caused psychological and emotional anguish to both AAA and BBB.<sup>[36]</sup>

### **Ruling of the Court of Appeals**

In a Decision dated January 31, 2019, the appellate court found no merit in the Petition. Sec. 5(i) of RA 9262 penalizes some forms of psychological violence inflicted on victims who are women and children.<sup>[37]</sup> Specifically, Sec. 5(i) of RA 92962 states:

*Section 5. Acts of Violence Against Women and their Children.* – The crime of violence against women and their children is committed through any of the following acts:

x x x x

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or access to the woman’s child/children.

The criminal Information filed against petitioner stated that he “willfully, unlawfully, feloniously deprive x x x financial support legally due to the complainant and to her minor child and abandoning them totally causing psychological and emotional anguish to the complainant and to her minor child.”<sup>[38]</sup> Clearly, contrary to petitioner’s allegation, the Information charged him not only with deprivation of financial support to BBB, but also the act of abandoning both AAA and BBB, which may be considered as having been subsumed in the phrase “similar acts or omissions” mentioned under Sec. 5(i) of RA 9262. While the prosecution was not able to establish that petitioner denied AAA and BBB financial support, the prosecution was able to clearly show that petitioner abandoned them, and such abandonment caused them mental or emotional anguish.<sup>[39]</sup>

The CA further emphasized that what constitutes abandonment is not only the physical act of separating and abandoning AAA for another woman, but likewise, the emotional abandonment and alienation that petitioner did which made AAA suffer. The fact of abandonment was supported by the text messages between petitioner and AAA. For the CA, these exchanges do not only prove the fact of abandonment, physical and/or emotional, but likewise an admission of marital infidelity, another specie of psychological violence by

petitioner.<sup>[40]</sup>

The dispositive portion of the Decision reads:

**WHEREFORE**, premises considered, the instant Appeal is hereby **DENIED**. Accordingly, the assailed Decision dated 10 November 2017 is **AFFIRMED** with **MODIFICATION** as to the penalty of imprisonment, in that, accused-appellant is sentenced to suffer an indeterminate penalty of imprisonment from two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

The assailed Decision is **AFFIRMED** in all other respects.

**SO ORDERED.**<sup>[41]</sup>

Petitioner filed a Motion for Reconsideration<sup>[42]</sup> imploring the CA to review its findings and carefully study his arguments. However, in a Resolution<sup>[43]</sup> dated October 18, 2019, the CA is not swayed to reconsider. Hence, this petition.

Petitioner now comes before this Court contending that psychological violence could not be considered against him since the same was not alleged in the Information to which he pleaded not guilty.<sup>[44]</sup> Petitioner asserts that an accused cannot be convicted of a crime or an act which is not alleged in the Information. To rule otherwise would be a violation of the accused's basic constitutional right to be informed of the nature and cause of the accusation levelled against him or her.<sup>[45]</sup>

## Issue

The sole issue for Our resolution is whether the CA erred in affirming the Decision of the RTC finding petitioner guilty beyond reasonable doubt of a violation of Sec. 5(i) of RA 9262.

## Our Ruling

The elements of a violation of Sec. 5(i) of RA 9262 are as follows:

1. The offended party is a woman and/or her child or children;
2. The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;
3. The offender causes on the woman and/or child mental or emotional anguish; and
4. The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar to such acts or omissions.<sup>[46]</sup>

The Court in *Reyes v. People*,<sup>[47]</sup> elucidated that conviction under Sec. 5(i) of RA 9262 requires proof of the indispensable elements of (1) psychological violence as the means employed by the perpetrator consisting of any acts enumerated in Sec. 5(i) or similar acts, and (2) the mental or emotional suffering or damage sustained by the offended party.<sup>[48]</sup> Further, it has been stressed that “the law does not require proof that the victim become psychologically ill due to the psychological violence done by her abuser. Rather, the law only requires emotional anguish and mental suffering to be proven. To establish emotional anguish or mental suffering, jurisprudence only requires that [the victim testify in court and narrate such experiences].”<sup>[49]</sup>

We agree with the CA and the RTC that all the elements to establish a violation of Sec. 5(i) of RA 9262 are present.

The first and second elements are present since the offended parties are AAA and her child. The fact of petitioner's marriage to AAA has been proven conclusively by an undisputed Certificate of Marriage dated December 29, 2006; while the fact that BBB is AAA and petitioner's child has been proven by BBB's Certificate of Live Birth which states petitioner and AAA as parents.

The testimonies of AAA and BBB clearly established the presence of the third and fourth elements, *i.e.*, the offender causing on the woman and/or child mental or emotional anguish through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children, or access to the children, or similar to such acts or omissions.

There are several forms of abuse, the most visible form of which is physical violence.<sup>[50]</sup> RA 9262 enumerated in a non-limiting manner the various forms of violence and abuse that may be committed against women and children.<sup>[51]</sup> Sec. 3 of RA 9262 defines violence against women and children as follows:

Sec. 3. *Definition of Terms.* — As used in this Act,

“*Violence against women and their children*” refers to **any act or a series of acts** committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child

(a) whether legitimate or illegitimate, within or without the family abode, **which result in or is likely to result in** physical, sexual, **psychological harm or suffering**, or economic abuse including threats of such acts, batter, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

A. “*Physical Violence*” refers to acts that include bodily or physical harm;

B. “*Sexual violence*” refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

x x x x

“*Psychological violence*” refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and **marital infidelity**. It includes

C. causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

D. “*Economic abuse*” refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:<sup>[52]</sup>

It is crucial that the essential elements of psychological abuse under RA 9262 be identified to categorically determine the jurisdiction and authority of the court over a criminal case, as well as determine whether liability for the crime can be ascribed to the accused. In *Dinamling v. People*,<sup>[53]</sup> this Court enumerated the elements of psychological violence under Sec. 5(i) of RA 9262, as follows:

**Section 5. Acts of Violence Against Women and Their Children.** — The crime of violence against women and their children is committed through any of the following acts:

[x x x x]

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, **including, but not limited to**, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or access to the woman's child/children.

From the aforequoted Section 5 (i), in relation to other sections of R[.]A[.] No. 9262, the elements of the crime are derived as follows:

(1) The offended party is a woman *and/or* her child or children;

(2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;

(3) **The offender causes on the woman and/or child mental or emotional anguish;** and

(4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.

x x x x

It bear emphasis that Section 5(i) penalizes some forms of psychological violence that are inflicted on victims who are women and children. Other forms of psychological violence, as well as physical, sexual and economic violence, are addressed and penalized in other sub-parts of Section 5.

x x x x

**Psychological violence is an element of violation of Section 5(i) just like the mental or emotional anguish caused on the victim. Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party.** To establish psychological violence as an element of the crime,

it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) or similar such acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party.<sup>[54]</sup>

Marital infidelity is one of the forms of psychological violence. The prosecution in this case was able to satisfactorily establish petitioner's marital infidelity, his cohabitation with CCC who even bore him a child, and his abandonment of AAA. BBB's psychological trauma was evident when she wept in open court upon being asked to narrate petitioner's infidelity. In particular, BBB explained that she was deeply hurt because her father had another family and loved another woman other than her mother, BBB.<sup>[55]</sup>

In fine, the RTC and the CA did not err in finding petitioner guilty of violating Sec. 5 (i) of RA 9262.

### **Penalty**

Sec. 6 of RA 9262 provides the penalty of *prision mayor* for acts falling under Sec. 5(i) of RA 9262. In addition, a fine of not less than PHP100,000.00 but not more than PHP 300,000.00 is imposed. Moreover, the perpetrator shall undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court. The CA therefore correctly modified the penalty imposed upon petitioner to an indeterminate sentence of two (2) years, four (4) months, and one (1) day, of *prision correccional*, as minimum, to eight (8) years, and one (1) day of *prision mayor*, as maximum, to pay a fine in the amount of PHP 100,000.00, and to undergo psychological counseling.

**WHEREFORE**, the petition is **DENIED**. The January 31, 2019 Decision and the October 18, 2019 Resolution of the Court of Appeals in CA-G.R. CR No. 40971 are **AFFIRMED**.

### **SO ORDERED.**

*Gesundo, C.J. (Chairperson), Gaerlan,\* Rosario, and Marquez, JJ., concur.*

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\* Designated additional Member per Raffle dated February 15, 2023 vice J. Zalameda, who recused due to prior participation in the Court of Appeals.

<sup>[1]</sup> Initials were used to identify the accused-appellant pursuant to the Supreme Court

Amended Administrative Circular No. 83-2015 dated September 5, 2017 entitled “Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances.”

<sup>[2]</sup> *Rollo*, pp. 13-25.

<sup>[3]</sup> *Id.* at 28-42. Penned by Associate Justice Rodil V. Zalameda (now a Member of this Court) and concurred in by Associate Justices Fernanda Lampas Peralta and Henri Jean Paul B. Inting (now a Member of this Court).

<sup>[4]</sup> *Id.* at 44-45. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Danton Q. Bueser and Ronaldo Roberto B. Martin.

<sup>[5]</sup> *Id.* at 54-62. Penned by Presiding Judge Evangeline M. Francisco.

<sup>[6]</sup> Geographical location is blotted out pursuant to Supreme Court Amended Administrative Circular No. 83-2015.

<sup>[7]</sup> Entitled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES.” Approved: March 8, 2004.

<sup>[8]</sup> Records, p. 1.

<sup>[9]</sup> “The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act 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; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and their Children, effective November 15, 2004.” (**People v. Dumadag**, 667 Phil. 664, 669 [2011]).

<sup>[10]</sup> *Id.*

<sup>[11]</sup> *Id.* at 19-23.

<sup>[12]</sup> *Id.* at p. 20-22.

<sup>[13]</sup> *Id.* at 67-68; Order of the Regional Trial Court Br. 270 of Valenzuela City in Crim Case No. 194-V-16.

<sup>[14]</sup> *Id.* at 73-74.

<sup>[15]</sup> *Id.* at 78; Certificate of Arraignment dated April 11, 2016.

<sup>[16]</sup> *Id.* at 107; Certificate of Marriage between petitioner and AAA.

<sup>[17]</sup> *Id.* at 108; Certificate of Live Birth.

<sup>[18]</sup> *Id.* at 6; 'Sumbong Salaysay' executed by AAA.

<sup>[19]</sup> TSN, June 17, 2016, p. 23.

<sup>[20]</sup> Records, p. 6.

<sup>[21]</sup> *Id.* at 10.

<sup>[22]</sup> *Id.* at 14.

<sup>[23]</sup> *Id.* at 148-149.

<sup>[24]</sup> *Id.*

<sup>[25]</sup> *Id.* at 149-150.

<sup>[26]</sup> TSN, January 9, 2017, pp. 5-7.

<sup>[27]</sup> *Id.* at 12.

<sup>[28]</sup> Records, pp. 260-266; Motion to Dismiss on Demurrer to Evidence.

<sup>[29]</sup> *Id.* at 307-308; Order of the RTC Br. 270 of Valenzuela City.

<sup>[30]</sup> TSN, July 27, 2017, p. 5.

<sup>[31]</sup> *Id.*

<sup>[32]</sup> *Id.*

<sup>[33]</sup> CA rollo, pp. 48-50.

[34] *Id.* at 50-51.

[35] *Id.* at 34

[36] *Id.* at 68; Plaintiff-Appellee's Brief.

[37] **Dinamling v. People of the Philippines**, 761 Phil. 356, 375 (2015).

[38] *Rollo*, pp. 36; CA Decision in CA-G.R. CR No. 40971 dated January 31, 2019.

[39] *Id.* at p. 37.

[40] *Id.*

[41] *Id.* at 41.

[42] *Id.* at 44.

[43] *Id.* at 44-45. CA Resolution in CA-G.R. CR No. 40971 dated October 18, 2019.

[44] *Id.* at 19; Petition for Review.

[45] *Id.*

[46] **Dinamling v. People**, *supra* note 35 at 373.

[47] **G.R. No. 232678**, July 3, 2019.

[48] See **AAA v. BBB**, 823 Phil. 607, 620 (2018).

[49] **Araza v. People**, **G.R. No. 247429**, September 8, 2020.

[50] **AAA v. BBB**, *supra* at 618.

[51] *Id.*

[52] *Id.* at 618-619. Emphases in the original.

[53] *Supra* note 34.

[54] *Id.* at 372-376.

<sup>[55]</sup> *Rollo*, pp. 38-39.

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