

RICKY DINAMLING, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 199522. June 22, 2015*

Ponente: PERALTA, J.

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Before the Court is a Petition for Review on certiorari, under Rule 45 of the Rules of Court, assailing the Decision[1] dated August 11, 2011 and Resolution[2] dated November 25, 2011 of the Court of Appeals, in CA-G.R. CR No. 32912, which affirmed with modification the conviction of petitioner for violation of Section 5(i), in relation to Section 6(f) of Republic Act (RA) No. 9262, otherwise known as the Anti-Violence Against Women and their Children Act of 2004.

The facts of the case follow.

On the night of March 14, 2007, petitioner Ricky Dinamling and a friend came from a drinking session and went to the boarding house of AAA.[3] At that time, Dinamling and the woman AAA were in an ongoing five-year relationship and they had two common children (then aged four and two years old). Dinamling and his friend arrived as AAA was putting the two children to bed. Suddenly, Dinamling started to evict AAA and the children, ordering AAA to pack her things in a trash bag and a carton box for ducklings. His reason for the eviction was that she was allegedly using the place as a “whore house” wherein she “brought (her) partners.” AAA initially did not want to leave as she could not carry the children and their things, but she left when Dinamling threw a baby’s feeding bottle outside the house, causing it to break. She then went to the house of BBB and requested the latter to fetch her children. When BBB and another friend went for the children, Dinamling already had left with the older child and only the baby was left. The baby was brought by the friends back to AAA. In the past, there were similar incidents that happened between Dinamling and AAA. Dinamling would hit AAA’s head, pull her hair and kick her. When AAA went to the police, she was merely told that it was a family problem that could be talked over. Dinamling was, at that time, a policeman himself.[4]

Six days later, or on March 20, 2007, at around 9:00 p.m., another incident occurred. AAA was at the house of CCC when Dinamling arrived. He shouted and counted down for AAA to come out. When she came out, Dinamling punched her at the left ear, which subsequently bled. When AAA asked him why he kept on following her when she already had left him, Dinamling shouted her family name and told her she was “good-for-nothing.” AAA left for the barangay captain’s house, but Dinamling caught up with her and kicked her until she fell to the ground. On the road, Dinamling pulled down AAA’s pants and panty and shouted at her while people looked on. Dinamling then threw the pants and panty back at AAA and shouted her family name. Dinamling, then intoxicated, left on a motorcycle.[5] AAA stayed at her friend’s home until she felt some back pain in the next morning. She found out she was bleeding and about to miscarry so she was immediately brought to the hospital. There, she was told that she was 19 weeks pregnant and had an incomplete abortion. She was hospitalized for four days. Dinamling visited her but showed no remorse over his acts.[6]

As a result of the above incidents, petitioner Ricky Dinamling was charged in two (2) criminal Informations in the Regional Trial Court (RTC) for violation of Section 5(i), in relation to Section 6(f)[7] of RA No. 9262. The two Informations against him read:

Criminal Case No. 1701:

That on or about the evening of March 14, 2007, at XXX, Ifugao, the above-named accused did then and there willfully, unlawfully and feloniously inflict psychological violence upon AAA, a woman with whom he has two common children, resulting to mental and emotional anguish and public ridicule or humiliation by repeated verbal and emotional abuse consisting of several bad and insulting utterances directed against the victim and a feeding bottle being thrown against the latter in anger.

CONTRARY TO LAW, with the offense being attended by the special qualifying aggravating circumstance of the victim being pregnant at the time.

Criminal Case No. 1702:

That on or about the evening of March 20, 2007 at XXX, Ifugao, the above-named accused did then and there willfully, unlawfully and feloniously inflict psychological violence upon AAA, a woman with whom he has two common children, resulting to mental and emotional anguish and public ridicule or humiliation by boxing the victim on the head, kicking her at the back and removing her pant (sic) and panty (sic).

CONTRARY TO LAW, with the offense being attended by the special qualifying aggravating circumstance of the victim being pregnant at the time.

Upon arraignment, Dinamling pleaded Not Guilty to both charges. Thereafter, the cases were tried jointly.[8]

For the prosecution, AAA, her mother DDD and Dr. Mae Codamon-Diaz testified. For the accused, only petitioner testified for and in his own defense. His defense was denial and alibi, claiming that he was on duty at the town's police station at the time that the offenses were committed.[9]

After trial, the RTC rendered its decision on August 4, 2009 finding Dinamling guilty of both charges. For Criminal Case No. 1701, the court sentenced him to suffer imprisonment of from ten (10) years and one (1) day to twelve (12) years of prision mayor.[10] For Criminal Case No. 1702, the court ordered him to suffer imprisonment of from ten (10) years and one (1) day to twelve (12) years of prision mayor in its maximum period.

On appeal to the Court of Appeals, the decision in Criminal Case No. 1701 was affirmed and the one in Criminal Case No. 1702 was affirmed with the modification on the penalty, by applying the Indeterminate Sentence Law, such that Dinamling was sentenced to imprisonment of nine (9) years, four (4) months and one (1) day of prision mayor, as minimum, to twelve (12) years of prision mayor, as maximum.

Hence, the present petition.

The petition assails the findings of the Court of Appeals for allegedly disregarding his defenses of denial and alibi as well as in discounting the supposedly exculpatory nature of a part of a prosecution witness' testimony. Allegedly, the witness, Dr. Diaz, testified that she was unsure if the abortion was a result of the mauling that AAA suffered or could have been caused by an infection or other factors.[11]

This Court resolves to deny the petition for lack of merit, but will modify some of the penalties imposed by the appellate court.

The petition raises issues that call for an examination of the factual findings of the trial court and the appellate court. As a general rule, under Rule 45, no questions of fact but only questions of law may be raised in a petition

for review brought before this Court.[12]Time and again, the Court has consistently declared that questions of facts are beyond the pale of a petition for review.[13] Factual findings of the trial court, particularly when affirmed by the appellate courts, are generally binding on this Court.[14]

But there are recognized exceptions to the rule that questions of fact may not be entertained by this Court in a petition for review, to wit:

(1)

When the factual findings of the Court of Appeals and the trial court are contradictory;

(2)

When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;

(3)

When the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible;

(4)

When there is grave abuse of discretion in the appreciation of facts;

(5)

When the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6)

When the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7)

When the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;

(8)

When the findings of fact are themselves conflicting;

(9)

When the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10)

When the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record,[15]

None of the above-mentioned exceptions, however, are cited by the petitioner as a ground to grant his petition. But even assuming arguendo, and in the interest of substantial justice, that any of the exceptions above were indeed invoked, as the petition alleges that the appellate court failed to give weight to petitioner's defenses of denial and alibi as well as to his stance that the testimony of Dr. Diaz exculpates him from the crime, this Court, upon a close examination of the case records, still found no error in the appellate court's finding of guilt in petitioner.

On its face, there is no reason to doubt the veracity and truthfulness of the victim AAA's evidence. In particular, AAA's testimony narrating the specific incidents which gave rise to the charges was clear, categorical and straightforward and, therefore, worthy of credence. Herein below are excerpts of her testimony:

Q.

Specifically inviting your attention to that incident in the evening of March 14, 2007, could you please tell the court what transpired?

A.

In the evening of March 14, 2007, somewhere around seven or eight o'clock in the evening, I was letting my kids sleep (w)hen (Dinamling) came with a friend. They had a drinking spree and x x x he started to evict us from that boarding house because according to him, I (was) using that boarding house as a whore house (by) bringing in partners, et cetera to that boarding house. That (was) why he was letting us out of it. And he even told me that if I (had) no travelling bag, I (could) use the basura (garbage) bag outside and I (could) use the carton where he placed the ducklings to pack our things and leave the place. That night, I (did) not know how to carry them out and I was waiting for him to stop talking and leave but he never left us up to the time he threw the feeding bottle of my baby outside that caused it to break and that was also the time I decided to go to the house of BBB because it is the place where my landlady (was) staying.

x x x x x x x x

Q.

You mentioned of a feeding bottle.

A.

He threw it outside, Sir.

Q.

How did you feel as regards these actuations of the accused that evening?

A.

That is worst. He was inflicting pain (on) me but that time it was directed (at an) innocent individual and that is very painful.

Q.

Personally, did you feel distressed or stressed or fearful at the time the accused was acting that way?

A.

When he started acting that way, I fear(ed) he would again inflict those pain (on) us.

Q.

So when you went to the house of BBB, what happened next?

A.

x x x He (BBB) went to fetch the kids and came home with one of the kids but to my dismay, even the milk of my baby was not there any more; that night because it was around 11:00 o'clock, we had to use the feeding bottle of BBB's son together with the milk because when they went to fetch the kids, the milk was gone.

Q.

Was the incident on March 14, 2007 the first time or it happened (sic) previously?

A.

It happened previously. Those were the time(s) that (I was) prompted to go back home and to my relatives for protection but he (came, followed) us where we (went).

Q.

In those previous incidents before March 14, 2007, what did he do, if any?

A.

There are times he did that in public. He usually starts hitting my head, pulls my hair kicks me and there was a time I went to the police station but they said that (it) is some kind of family problem that we could talk xxx over and so it was left that way. I thought leaving him would be the best thing to do but he kept on following us.[16]

x x x x x x x x

Q.

I am inviting your attention to that incident of March 20, 2007. Will you please tell the court what happened that late afternoon or early evening?

A.

I was at the house of CCC waiting for a friend because of what happened on March 14, 2007 when we left the boarding house.

x x x x x x x x

Q.

What transpired thereat, when you were at that place?

A.

After sometime, around 9 o'clock, (Dinamling) came and shouted words that (on) final count, (I) should be out of that place.

Q.

And what else happened?

A.

After shouting, he boxed me at the left ear.

Q.

What transpired next?

A.

(T)hen I felt there was blood in my ear. I followed him outside and I inquired (as to) why he (kept on) following us when we (already) left the boarding house and then he started shouting at me, shouting my family name, x x x x that I (was) good for nothing and that I (could) sue him (in) court and he (would) pay me. So I

said “I thought when we already left, you were at peace with yourself already.” When I was going down, going to the barangay captain's house, he followed me. When I tried to go back, he kicked me. He pulled my pants down and pulled even my panty and he said x x x he (did) that to me because I was worthless.

Q.

(At) what particular spot did the accused pull down your pants and your panty?

A.

Front of CCC.

Q.

What was that spot, road or backyard?

A.

Road.

Q.

Could you describe the place? Were there houses nearby, that road, that spot where he pulled down your pants and panty?

A.

There is a small store and people were looking at us. There are houses above and then one of them told me he saw but he is afraid to come out.

Q.

Was it already dark (at) that time?

A.

Dark but then there was a street light near the residence.

Q.

Was it still early evening?

A.

Yes, sir.

Q.

About what time?

A.

Around 9 o'clock.

Q.

After pulling down your pants and your panty along that road, what else happened?

A.

He threw my pants and panty back to me and he left shouting at me, my family name. It is very hurting

because my family (had) nothing to do with this.

x x x x x x x x

Q.

And what happened the following day?

A.

I stayed at my friend's house then at 5:00 o'clock early morning of March 21, there was pain at my back. That night when he kicked me, there was pain at my back. I said I (would) just go tomorrow for medication but I did not reach the day because I was bleeding. When I went to the bathroom, there (was) blood so I said I think I am going to abort. There (was) blood already so I decided to go to bath before I (went) to the hospital but when I went to take a bath, I already had profuse bleeding so they (had) to carry me with the use of a blanket to the hospital.[17]

AAA also stated that the baby that she claims was aborted would have been her third child with Dinamling. She also testified about always being afraid of Dinamling, even fearing the sound of his motorcycle as that signalled that she or her children would be abused. She previously filed with the police a complaint for physical injuries but nothing came of it. Later, she learned from Dinamling that he had been discharged as a policeman.[18]

The trial court specifically ascribed credibility on the said testimony of AAA which the Court of Appeals has affirmed. Under such circumstances, this Court has little option but to accord said findings with great respect, if not finality. The findings of fact of the trial court, as regards the credibility of a witness, when affirmed by the Court of Appeals and supported by the evidence on record are accorded finality.[19]

In addition to AAA's testimony, her mother DDD also testified that her daughter was "like a corpse" because of Dinamling's maltreatment. DDD narrated the history of maltreatment of her daughter, including the times that she saw her with "bluish spots" and when AAA had a miscarriage from all the boxing and kicking that she had received from Dinamling.[20] She knew that Dinamling was a married man when he had his relationship with AAA[21] and she knew for a fact that Dinamling did not live with AAA and the children because he always went home to his own wife.[22]

The above testimonies suffice to establish the elements of the crime as defined in Section 5(i) of RA No. 9262 and as alleged in the two Informations filed against petitioner. The provision of the law 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 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 RA No. 9262, the elements of the crime are derived as follows:

(1)

The offended party is a woman and/or her child or children;[23]

(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;[24]

(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.[25]

As for the first case, Criminal Case No. 1701, filed against petitioner Dinamling, the elements have been proven and duly established. It is undisputed that AAA, as the victim, is a woman who was then in a five-year ongoing relationship with petitioner Dinamling. At that time, AAA and Dinamling had two common children. AAA was often in fear of petitioner due to the latter's physical and verbal abuse. In the evening of March 14, 2007, an incident occurred in which she and her children were actually evicted by Dinamling from a boarding house. Dinamling, in the presence of his own friend and the children, accused AAA of using the boarding house as a "whore-house" and alleged that AAA brought sexual partners in that place. Dinamling further humiliated AAA by telling her to pack her clothes in a trash bag and in a carton box used to pack ducklings. He then threw a baby bottle outside and broke it. This forced AAA to hastily leave even without her children. Dinamling also left and took with him the elder child and left the baby behind. AAA had to ask for her friends to fetch the children but the latter found only the baby. According to AAA and her mother DDD, that incident was not an isolated one, as similar incidents had happened previously.

As for the second case, Criminal Case No. 1702, the crime's elements were likewise proven. In addition to the first two elements of the victim being a woman and in a relationship with the offender, the prosecution was able to prove another incident of mental or emotional anguish through public ridicule or humiliation when it showed Dinamling acting in the following manner:

a)

by calling and counting down on AAA for the latter to come out of the house where she was staying;

b)

by punching AAA at the left ear upon seeing her;

c)

by shouting AAA's family name and calling her "good-for-nothing;"

d)

by saying that AAA could sue him but he would just pay her;

e)

by kicking AAA to the ground and then pulling off her pants and underwear (panty) and calling her worthless;

f)

by throwing the pants and panty back at AAA while shouting AAA's family name as he left.

All such acts were committed while in full view and hearing of the public, highlighting the public ridicule and humiliation done on AAA and causing her mental and emotional pain. AAA's suffering is so much that even the sound of petitioner's motorcycle would put fear in her.

All the above, as established during trial, lead to no other conclusion than the commission of the crime as prescribed in the law.

It matters not that no other eyewitness corroborated AAA's testimony of the actual incidents. The testimony of the complainant as a lone witness to the actual perpetration of the act, as long as it is credible, suffices to establish the guilt of the accused because evidence is weighed and not counted.[26] If, in criminal cases of rape[27] or homicide,[28] the positive, categorical and credible testimony of a lone witness is deemed enough to support a conviction, then, in the case at bar, involving a case of violation of Section 5(i) of RA No. 9262, this Court shall treat in the same manner the testimony of a single but credible witness for the prosecution. Especially if the testimony bears the earmarks of truth and sincerity and was delivered spontaneously, naturally and in a straightforward manner, corroborative testimony is not needed to support a conviction.[29]

It bears 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.

The law defines psychological violence as follows:

Section 3(a)

x x x x x x x x

C. "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 mental infidelity. It includes 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.

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.[30] All of this was complied with in the case at bar.

In the face of the strong and credible testimony of AAA, petitioner Dinamling relies on a defense of denial and alibi. On the nights of March 14 and 20, 2007, he claimed that he was on duty at XXX Police Station.[31] He denied seeing AAA on those dates.[32] However, on cross examination, he admitted that it takes only two to three minutes to go from the police station to AAA's boarding house.[33]

Denial and alibi, as defenses of an accused in a criminal case, have been consistently held as inherently weak[34] and which, unless supported by clear and convincing evidence, cannot prevail over the positive declarations of the victim.[35] In general, a plea of denial and alibi is not given much weight relative to the affirmative testimony of the offended party.[36] The only exception to this rule is where there is no effective identification, or where the identification of the accused has been fatally tainted by irregularity and attendant inconsistencies.[37]

In the case at bar, nothing in Dinamling's defense overcomes the clear, straightforward, unequivocal and positive declarations of AAA. For one, the positive identification of Dinamling as the perpetrator is not an issue. It is not disputed that he and AAA knew each other very well as, in fact, they were at that time carrying on a five-year relationship which had borne two common children.

Then, as for alibi, such a defense would prosper only if the accused was able to prove that not only was he at some other place when the crime was committed, but also that he could not have been physically present at the place of the crime, or in its immediate vicinity, during its commission.[38] Using such standards, Dinamling's alibi holds no water. Not only was his alleged location at the time of commission, that is, the XXX Police Station where he was on duty, in the same municipality as the crimes' place of commission, Dinamling himself also admitted that this police station is just "two to three minutes" away from AAA's boarding house. Where the accused admits that he was in the same municipality as the place where the offense occurred, it cannot be said that it was physically impossible for him to have committed the crime, and his defense of alibi cannot prosper.[39]

Therefore, the trial and appellate courts correctly found petitioner Dinamling guilty beyond reasonable doubt and such conviction must be upheld. To reiterate, the denial of the accused is a negative assertion that is weaker than the affirmative testimony of the victim.[40] It almost has no probative value and may be further discarded in the absence of any evidence of ill motives on the part of the witness to impute so grave a wrong against the accused.[41] As for alibi, it is not given weight if the accused failed to demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.[42]

But petitioner Dinamling also harps on the allegedly exculpatory testimony of Dr. Diaz, the substance of which allegedly frees him from responsibility for the incomplete abortion of AAA's unborn child.

By way of background, a witness, who is an officer of the Ifugao Provincial Hospital, brought a copy of a medical certificate issued by a Dr. Johan Baguilat stating that:

- a) AAA was hospitalized at the said hospital from March 21 to March 24, 2007;
- b) AAA had an incomplete abortion secondary to the mauling, and;
- c) AAA had anemia, contusion, hematoma and abrasion of the left elbow.[43]

The witness testified that she herself typed the medical certificate and had it signed by Dr. Baguilat.[44] Dr. Baguilat, however, was unable to testify, due to the alleged distance of the court from his current place of work.[45] Instead of Dr. Baguilat, it was Dr. Mae Codamon-Diaz, an obstetrician-gynecologist of the Ifugao Provincial Hospital, who testified that the medical certificate indicated that AAA was pregnant, but that her incomplete abortion might or might not have been caused by her "mauling."[46] Dr. Diaz added that the anemia was caused by profuse bleeding, while the contusion and hematoma were caused by a fall, trauma, blow or impact to the patient's body.[47] When cross-examined, Dr. Diaz stated that other possible causes of abortion include infection of the reproductive organ or urinary tract infection and intake of strong medicines, while another cause of anemia is malnutrition.[48]

Petitioner Dinamling's position is that such testimony of Dr. Diaz, which expresses an uncertainty as to whether the mauling of AAA caused her abortion, exculpates him from the crime.

The Court disagrees. Petitioner barks up the wrong tree because the fact of AAA's physical injuries from the mauling, including her abortion, do not constitute an element of the crime with which he is charged. Such injuries are likewise not alleged in the two informations against him. Therefore, the testimony of Dr. Diaz or any physician as to the fact or existence of such physical injuries is not indispensable to petitioner's conviction or

acquittal. Simply put, AAA's physical condition is not an element of the crime that petitioner was charged with, hence, proof of the same is, strictly speaking, unnecessary.

In fact, neither the physical injuries suffered by the victim nor the actual physical violence done by the perpetrator are necessary to prove the essential elements of the crime as defined in Section 5(i) of RA 9262. The only exception is, as in the case at bar, when the physical violence done by the accused is alleged to have caused the mental and emotional suffering; in which case, such acts of physical violence must be proven. In this instance, the physical violence was a means of causing mental or emotional suffering. As such, whether or not it led to actual bodily injury, the physical violence translates to psychological violence since its main effect was on the victim's mental or emotional well-being. In the case at bar, petitioner Dinamling's acts of publicly punching, kicking and stripping AAA of her pants and underwear, although obvious acts of physical violence, are also instances of psychological violence since it was alleged and proven that they resulted in AAA's public ridicule and humiliation and mental or emotional distress. The clear, un rebutted testimony of the victim AAA, as to the physical violence done on her as well as to the mental and emotional suffering she experienced as a result thereof, suffices to prove such facts.

The victim's resulting actual bodily injuries are immaterial unless such injuries are also alleged to have led to her mental or emotional anguish. There was no such allegation in the information in the case at bar. Thus, proof of physical injuries is not needed for conviction. Likewise, proof of the absence thereof or lack of proof of such injuries would not lead to an acquittal. Physical violence or physical injuries, in isolation, are not elements of this particular crime.

As earlier discussed, the focus of this particular criminal act is the causation of non-physical suffering, that is, mental or emotional distress, or even anxiety and social shame or dishonor on the offended party, and not of direct bodily harm or property damage which are covered by the other sub-sections of the law's provision. The use of physical violence, whether or not it causes physical or property harm to the victim, falls under Section 5(i) only if it is alleged and proven to have caused mental or emotional anguish. Likewise, the physical injuries suffered are similarly covered only if they lead to such psychological harm. Otherwise, physical violence or injuries, with no allegation of mental or emotional harm, are punishable under the other provisions of the law.

As to the alleged miscarriage or incomplete abortion, the allegedly exculpatory testimony of Dr. Diaz, or even the complete disregard of any evidence surrounding such fact does not lead to petitioner Dinamling's acquittal. Like the physical injuries that was discussed above, the fact of AAA's miscarriage or incomplete abortion is not essential to proving the elements of the crime, unless it is alleged to have caused mental or emotional suffering. It is not among the crime's elements. In fact, it is not abortion but the mere fact of pregnancy of the victim at the time of commission which is an aggravating circumstance, not an element, of the offense. Section 6 of RA 9262 reads:

SECTION 6. Penalties.- The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

x x x x x x x x

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by prision mayor.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than three hundred thousand pesos (P300,000.00); (b) undergo

mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.[49]

For this crime, pregnancy or the presence of the woman's child are aggravating circumstances which increase the imposable penalty, thus, they must be alleged and proven with competent evidence for the penalty to be properly imposed.[50]

It is true that the fact of AAA's incomplete abortion or miscarriage does not establish any of the crime's elements, as indeed the information itself did not allege the same. However, from the fact of miscarriage one may logically derive the fact of AAA's pregnancy, which is an aggravating circumstance for the crime and which is alleged as such in the information. The pregnancy is proven by AAA's un rebutted testimony as well as by the medical certificate that she presented in the course of such testimony to show that she was indeed hospitalized and suffered an "incomplete abortion secondary to the mauling."

Although petitioner Dinamling, up to this stage of the case, denies having caused the incomplete abortion or miscarriage, he does not deny the fact of pregnancy itself. He did not present contradictory evidence during trial to controvert the prosecution's assertions and proof of pregnancy. The pregnancy was never put in issue during trial and on appeal. Neither is the same in question in this petition. Therefore, it may be safely concluded that the fact of AAA's pregnancy has been established and it may be taken account of and considered as a circumstance that aggravates Dinamling's criminal liability.

Therefore, given such finding, this Court will now accordingly modify the penalties imposed by the trial court and appellate court.[51]

As for Criminal Case No. 1701, no mitigating and only one (1) aggravating circumstance attends the crime. Although it was stated during trial that the offense was committed in the presence of AAA's children, such fact was not alleged in the information and therefore will not be taken into consideration.[52] Nighttime, though alleged, is not considered aggravating because it neither facilitated the commission of the offense nor was it shown to have been purposely sought by the offender.[53] The fact of AAA's pregnancy during the crime's commission, however, has been alleged and established. This single circumstance aggravates the accused's liability and automatically raises his penalty to the maximum period of the penalty prescribed, per Section 6 of RA 9262 and also Article 64(3) of the Revised Penal Code. Hence, petitioner Dinamling should be sentenced to a maximum penalty that is derived from prision mayor in its maximum period, which is imprisonment of ten (10) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law,[54] the minimum penalty should come from the penalty one degree lower than prision mayor which is prision correccional, whose range is from six (6) months and one (1) day to six (6) years.[55] Therefore, this Court modifies the trial court's Order dated September 17, 2009,[56] which was affirmed by the Court of Appeals, and imposes on petitioner Dinamling an indeterminate sentence of imprisonment of two (2) years, four (4) months and one (1) day of prision correccional as minimum to eleven (11) years of prision mayor as maximum. The trial court's order for petitioner to pay a fine of one hundred thousand pesos (P100,000.00) and to undergo psychological counseling, as affirmed by the Court of Appeals, is upheld.

As for Criminal Case No. 1702, there is likewise no mitigating and only one (1) aggravating circumstance. Again, the single circumstance of pregnancy aggravates the accused's liability and automatically raises his penalty to the maximum period of the penalty prescribed, per Section 6 of RA No. 9262 and Article 64(3) of the Revised Penal Code. Therefore, the penalty imposed by the Court of Appeals are to be modified. The maximum penalty should be derived from prision mayor in its maximum period, which, again, is imprisonment of ten (10) years and one (1) day to twelve (12) years. And again, applying the Indeterminate Sentence Law, the minimum should be derived from the penalty next lower in degree, which is prision correccional. Therefore, the new penalty to be imposed

shall be imprisonment of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum. The rest of the penalties, like the imposition on the petitioner of a fine of one hundred thousand pesos (P100,000.00) and the order for him to undergo psychological counseling, as upheld by the appellate court, are hereby affirmed.

Both Criminal Case Nos. 1701 and 1702 involve the same offense as defined in RA 9262 and are punishable by the same range of penalties as prescribed in the said law. However, due to the greater ignominy of the acts done by the accused in Criminal Case No. 1702, the minimum and maximum lengths of the sentence imposed should therefore be greater than in Criminal Case No. 1701.

WHEREFORE, premises considered, the petition is DENIED for failure of petitioner to show any reversible error in the assailed CA decision. The assailed Decision dated August 11, 2011 and Resolution dated November 25, 2011 of the Court of Appeals, in CA-G.R. CR No. 32912, are hereby AFFIRMED and MODIFIED only as to the penalties imposed, to wit:

1)

in Criminal Case No. 1701, petitioner Ricky Dinamling is ORDERED to serve to an indeterminate sentence of imprisonment of two (2) years, four (4) months and one (1) day of prision correccional as minimum to eleven (11) years of 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;

2)

in Criminal Case No. 1702, petitioner Ricky Dinamling is hereby ORDERED to serve an indeterminate sentence of imprisonment of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum. He is also ORDERED to PAY a fine of one hundred thousand pesos (P100,000.00) and to undergo psychological counseling.

SO ORDERED.

Velasco, Jr. (Chairperson), Villarama, Jr., Perez,[*] and Reyes, JJ., concur.

July 13, 2015

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on June 22, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 13, 2015 at 2:51 p.m.

Very truly yours,

(SGD.)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated June 17, 2015.

[1] Penned by Associate Justice Japar B. Dimaampao, with Presiding Justice Andres B. Reyes, Jr. and Associate

Justice Jane Aurora C. Lantion, concurring, rollo, pp. 73-86.

[2] Id. at 97-98.

[3] The real names of persons (other than the accused) and places or any other information tending to reveal the identity of the private complainant and those of her immediate family or household members are withheld in accordance with Republic Act No. 9262, or the Anti-Violence Against Women and their Children Act of 2004 (Sec. 44); Republic Act No. 7610, or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Sec. 29); A.M. No. 04-10-11-SC, known as "Rule on Violence Against Women and Their Children," effective November 15, 2004, (Sec. 40); and the case of *People v. Cabalquinto*, 533 Phil. 703, 705-709 (2006). See also *Dabalos v. Regional Trial Court*, G.R. No. 193960, January 7, 2013, 688 SCRA 64.

[4] Rollo, pp. 13-14; TSN (Direct examination of AAA), November 27, 2007, pp. 3-6; Cross examination of AAA, id., at 16.

[5] Id. at 14; id. at 6-8.

[6] Id.; id. at 8-10.

[7] Sec. 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 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.

x x x x x x x x

Sec. 6. Penalties.- The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by prision mayor.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than three hundred thousand pesos (P300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

[8] Rollo, pp. 12-13.

[9] TSN (Direct and cross-examination of Ricky Dinamling), March 5, 2009, pp. 2-7.

[10] Later lowered by the RTC in its Order dated September 17, 2009 for Crim. Case No. 1701. Acting on the petitioner's motion for reconsideration, the RTC reversed its finding of the existence of the aggravating circumstance of pregnancy and applied the Indeterminate Sentence Law and modified the penalty to a minimum of prision correccional in its medium period of two (2) years four (4) months and one (1) day to a maximum of prision mayor in its medium period of ten (10) years. It also imposed a fine of P100,000.00 and ordered the accused to undergo psychological counseling. Rollo, pp. 48-49; RTC records, Crim. Case No. 1701, pp. 149-150.

[11] Id. at 17-19.

[12] RULES OF COURT, Rule 45, Sec. 1, in relation to Rule 122, Secs. 2(c) and 3(e) and Rule 125, Sec. 2; Tan v. People, 604 Phil. 68, 78 (2009).

[13] National Power Corporation v. Court of Appeals, 479 Phil. 850, 865 (2009), citing Inland Trailways, Inc. v. Court of Appeals, 325 Phil. 457 (1996).

[14] Id., citing Fuentes v. Court of Appeals, 335 Phil. 1163 (1997); Merencillo v. People, 549 Phil. 544 (2007); People v. Bautista, 628 Phil. 145, 152 (2010).

[15] Salcedo v. People, 400 Phil. 1302, 1308-1309, citing Fuentes v. Court of Appeals, 335 Phil. 1163 (1997); Castillo v. Court of Appeals, 329 Phil. 150 (1996); Solid Homes, Inc. v. Court of Appeals, 341 Phil. 261, (1997).

[16] TSN (Direct examination of AAA), November 27, 2007, pp. 3-6.

[17] Id. at 6-9.

[18] Id. at 10-14; AAA spoke of a similar complaint filed against Dinamling by another woman but it is unclear whether this was the reason for his dismissal from the police service.

[19] Almeda v. Court of Appeals, 336 Phil. 621, 629-630 (1997); People v. Pacuancuan, 452 Phil. 72, 81 (2003).

[20] TSN (Direct examination of DDD), April 29, 2008, pp. 3-7. It is unclear if this miscarriage is the same one mentioned in AAA's testimony, or is another earlier incident.

[21] Id. at 4-5.

[22] TSN (Cross examination of DDD), April 29, 2008, p. 7.

[23] In relation to Sec. 3(a), RA 9262.

[24] Id.

[25] Any of the acts enumerated in No. 4 comprise this element and they are a "means" or way of causing mental or emotional anguish, per the definition of "psychological violence" found in Sec. 3(a)(C), id., to wit:

Section 3(a)

x x x x x x x x

C. "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 mental infidelity. It includes 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. (Emphasis supplied.)

[26] Manantan v. People, 558 Phil. 104, 116 (2007).

[27] People v. Buendia, 373 Phil. 430, 437 (1999).

[28] People v. Ayupan, 427 Phil. 200, 208-209 (2002).

[29] Id.

[30] Proof of mental anguish as a component of moral damages is herein applied by analogy. Jurisprudence holds that mental anguish is proven by the testimony of no other person than the victim because it is personal to him. Mental anguish, serious anxiety, wounded feelings and other emotional and mental suffering are proven only by

the victim himself/herself taking the witness stand and testifying. (*Mahinay v. Velasquez*, 464 Phil. 146, 149 [2004]). There must be a clear testimony on the anguish and other forms of mental suffering. Thus, if the plaintiff fails to take the witness stand and testify as to his/her social humiliation, wounded feelings and anxiety, moral damages cannot be awarded. *Kierulf v. Court of Appeals*, 336 Phil. 414, 431-432 (1997).

[31] Rollo, p. 15; TSN (Direct examination of Ricky Dinamling), March 5, 2009, pp. 2, 4.

[32] *Id.*; *id.* at 2-5.

[33] Cross examination of Ricky Dinamling, *id.* at 6.

[34] *People v. Nelmidia*, G.R. No. 184500, September 11, 2012, 680 SCRA 386, 421.

[35] *People v. Castillo*, 641 Phil. 570, 590 (2010).

[36] *People v. Rodrigo*, 586 Phil. 515, 541-542 (2008).

[37] *Id.*

[38] *Nerpio v. People*, 555 Phil. 87, 95 (2007).

[39] *People v. Agomo-o*, 389 Phil. 617, 640 (2000).

[40] *People v. Madeo*, 617 Phil. 638, 660 (2009).

[41] *People v. Ramos*, 358 Phil. 261, 285 (1998); *Gulmatico v. People*, 562 Phil. 78, 89 (2007).

[42] *People v. Bravo*, G.R. No. 185282, September 24, 2012, 681 SCRA 607, 623.

[43] Rollo, p. 15; TSN (Direct and cross examination of Mary Lydia Allaga), July 27, 2008, pp. 2-4

[44] Cross examination of Mary Lydia Allaga, *id.* at 3-4.

[45] Records, pp. 84-85.

[46] TSN (Direct examination of Dr. Mae Codamon-Diaz), October 2, 2008, p. 2.

[47] *Id.* at 3.

[48] *Id.* at 4-5, Cross examination of Dr. Mae Codamon-Diaz.

[49] Emphasis supplied.

[50] *People v. Abello*, 601 Phil. 373, 396-397 (2009).

[51] RULES OF COURT, Rule 124, Sec. 11, in relation to Rule 125, Sec. 1; *Ko Bulin v. Court of Appeals*, 204 Phil. 211, 220-221 (1982), also *De Castro, J. Dissenting*, at 225-226; *People v. Las Piñas*, 427 Phil. 633, 641 (2002); *People v. Moreno*, G.R. No. 92049, March 22, 1993, 220 SCRA 292, 307.

[52] *People v. Paragas*, 434 Phil. 124, 129-130, 146-147 (2002); *People v. Sayaboc*, 464 Phil. 824, 843-844 (2004); RULES OF COURT, Rule 110, Secs. 8 and 9.

[53] *People v. Demate*, 465 Phil. 127, 147-148 (2004); *People v. Malinao*, 467 Phil. 432, 454 (2004).

[54] Where the special law adopted penalties from the Revised Penal Code, the Indeterminate Sentence Law will apply just as it would in felonies. (*Sanchez v. People*, G.R. No. 179090, June 5, 2009, 588 SCRA 747).

[55] *Guillermo v. People*, 579 Phil. 127, 144 (2008).

[56] See supra note 10.

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