

CHRISTIAN PANTONIAL ACHARON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 224946. November 09, 2021

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CAGUIOA, J:

Before the Court is a Petition for Review on Certiorari[1] under Rule 45 assailing the Decision[2] dated February 17, 2016 and Resolution[3] dated May 31, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 36913 affirming the Decision[4] dated August 26, 2014 of Branch 270, Regional Trial Court of Valenzuela City (RTC) in Crim. Case No. 34-V-13, which convicted petitioner Christian Pantonial Acharon (Christian) for violation of Section 5(i) of Republic Act No. (R.A.) 9262 or the Anti-Violence Against Women and their Children Act (VAWC Law).

Facts

An Information was filed against Christian, the accusatory portion of which states:

That sometime in (sic) January 25, 2012, up to the present, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously cause mental or emotional anguish, public ridicule or humiliation to his wife AAA, by denying financial support to the said complainant.[5]

Christian pleaded not guilty to the charge. Pre-trial and trial then ensued. The version of the prosecution, as summarized by the RTC, is as follows:

[AAA][6] testified that she and [Christian] have been sweethearts for six (6) years before they got married on September 30, 2011, in a civil wedding officiated by Mayor Gatchalian. On October 6, 2011 or only six (6) days after their wedding, [Christian] left to work at Pizza Hut, Brunei as delivery rider. As placement fee, they borrowed the amount of P85,000.00 with 3% monthly interest from their godmother, Emelina So. She and [Christian] agreed that the latter would send money in the amount of Php9,633.00 per month in payment of their loan. However, [Christian] did not send money on a regular basis. All in all, he was able to send money in the total amount of Php71,500.00 only, leaving the balance in the amount of Php13,500.00. For which reason, she felt so embarrassed with Emelina So because she could not pay the balance. She even pleaded to So not to lodge a complaint to the barangay. Emelina So communicated to the employer of [Christian] in Brunei about their debt to her.

Moreover, while in Brunei, [Christian] maintained a paramour in the person of Melete Domalaon. The manager of [Christian] and his board mate, Jovelyn Pastrano disclosed to her the indiscretions of [Christian]. [AAA] identified the photographs marked as Exhibits "C" to "C-5" depicting [Christian] and his alleged paramour. This brought her so much anguish. The womanizing activity of [Christian] extremely hurt her feelings and caused her depression. The message of [Christian] that he no longer cares for her since they are childless destroyed her whole being. [AAA] identified [Christian] in open court and her sworn statement (Exhibit "A") she executed in connection with this case.

On cross, she stated that when [Christian] left in December 2011, she [was] jobless. Presently, she is gainfully

employed. She lost communication with [Christian] since January 2012. According to the employer and friends of [Christian], the latter is living with his paramour in Brunei. She filed this case because she was extremely hurt and she experienced emotional agony by the neglect and utter insensitivity that [Christian] made her endure and suffer.[7]

On the other hand, the version of the defense, as likewise summarized by the RTC, is as follows:

Christian Acharon vehemently denied the accusations against him. According to him, his original stay in Brunei was two (2) years and three (3) months. However, when he left on October 6, 2011, he was able to come back to the Philippines only in February 2014. He had to extend his stay in Brunei to bring some money to his family. While he was in Brunei, his rented place was razed by fire and he met a vehicular accident which required him to spend [a significant] sum of money. He and [AAA] had an on and off communication from October 2011 until April 2013. [AAA] demanded for him to pay their debt in the entire amount.

He used to send money to [AAA]. But it was the latter who told him not to send money anymore. He also claimed that he was able to send the total amount of Php71,000.00 to [AAA] in payment of their loan. He agreed that the same is not enough to fully pay their loan in the total amount of Php85,000.00. In their exchange of messages [on] Facebook, he and [AAA] were talking about their debt, his alleged womanizing, and their separation.

On cross, he testified that [when he met a minor motor accident, he managed] to go back to the office. He confirmed that [medical expenses are included in his Employment Contract in Brunei] (Exhibit "I"). He told the court that when he arrived in Brunei, he was made to sign another contract which has lower basic salary and big amounts were deducted from it. When he met [the accident] he paid for his medicines because it would take [a] long period of time to process and claim it to their office. For a year, he estimated that he spent about \$1,000.00 for medical expenses only. He affirmed that he was the one who encourage[d] [AAA] to look for another man (Exhibit "J"). Jovelyn Ranoso Pastrana is her former friend. It is not true that he was staying in his girlfriend's house while he was in Brunei.[8]

Ruling Of The RTC

In its Decision[9] dated August 26, 2014, the RTC convicted Christian, disposing as follows:

WHEREFORE, foregoing considered, the prosecution having proven the guilt of the accused beyond reasonable doubt, ACCUSED CHRISTIAN ACHARON y PANTONIAL is hereby sentenced to suffer the penalty of imprisonment with a term of two (2) years, four (4) months and one day of prision correccional [as minimum,] to six (6) years and one (1) day of prision mayor [as maximum] of his indeterminate sentence and a FINE of One Hundred (sic) Pesos (P100,000.00). The accused is further sentenced to undergo mandatory psychological counseling under the supervision of any government accredited clinical psychologist/psychiatrist and shall immediately report to court his compliance thereto.[10]

The reasons advanced by the RTC for adjudging Christian guilty were his failure to maintain an open communication with his wife, his having a paramour while he was in Brunei, and his neglect of his legal obligation to extend financial support.[11]

Aggrieved, Christian filed an appeal with the CA.

Ruling of the CA

In its Decision[12] dated February 17, 2016, the CA denied Christian's appeal and affirmed the RTC Decision. The CA held that the refusal to give financial support constitutes violence against women. According to the CA, Christian's failure to provide financial support, especially for the payment of the loan they used to send him to Brunei, constitutes economic abuse. Thus, the CA upheld his conviction.

Christian then filed this present appeal.

Issue

Whether the CA erred in finding Christian guilty of causing psychological or emotional anguish when he allegedly failed to: (1) financially support AAA; and (2) keep the communication lines open with the latter.[13]

The Court's Ruling

The Court grants the appeal. Christian is, as he should be, acquitted of the charge.

The present case is limited only to Christian's alleged lack of financial support

At the outset, it must be emphasized that Christian's criminal liability should be adjudged only on the basis of his alleged failure to give financial support to his wife as this is the only allegation contained in the Information.

"No less than the Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the nature and cause of accusation against him." [14] The purpose of the law in having a right to be informed "is to enable the accused to suitably prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense." [15] By virtue of this right, "an accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him." [16]

In this case, the Information filed against Christian only alleged that he "did then and there willfully, unlawfully and feloniously cause mental or emotional anguish, public ridicule or humiliation to his wife AAA, by denying financial support to the said complainant." [17]

It was error, therefore, for the RTC to have allowed the introduction of evidence tending to establish, for instance, that Christian had a paramour when he was in Brunei as this is an irrelevant issue in this case in light of its absence in the Information. Needless to say, the RTC further erred in appreciating these pieces of evidence in establishing his guilt.

Prescinding from the foregoing, the Court now proceeds to determine whether Christian is indeed guilty of violating R.A. 9262 by denying financial support to AAA.

Mere failure or an inability to provide financial support is not punishable by R.A. 9262

Christian was charged, and later on convicted by the RTC and the CA, under an Information that alleges a violation of Section 5(i) of R.A. 9262, as the Information accused him of "caus[ing] mental or emotional anguish, public ridicule or humiliation to his wife AAA, by denying financial support." Section 5(i) considers as "violence against women" those acts "[c]ausing 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 denial of access to the woman's child/children." [18] In *Dinamling v. People*, [19] the Court laid down the elements to prove a violation of Section 5(i):

(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.[20]

Not all of the foregoing elements, however, are present in this case. Specifically, the fourth element was not established beyond reasonable doubt.

It is well-settled that "criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted." [21]

The Court stresses that Section 5(i) of R.A. 9262 uses the phrase "denial of financial support" in defining the criminal act. The word "denial" is defined as "refusal to satisfy a request or desire" [22] or "the act of not allowing someone to do or have something." [23] The foregoing definitions connote willfulness, or an active exertion of effort so that one would not be able to have or do something. This may be contrasted with the word "failure," defined as "the fact of not doing something [one] should have done," [24] which in turn connotes passivity. From the plain meaning of the words used, the act punished by Section 5(i) is, therefore, *dolo* in nature — there must be a concurrence between intent, freedom, and intelligence, [25] in order to consummate the crime.

In this connection, the Court deems it proper to clarify, as Associate Justices Amy C. Lazaro-Javier and Mario V. Lopez pointed out in their respective Opinions that the crimes penalized under Sections 5(i) and 5(e) of R.A. 9262 are *mala in se*, not *mala prohibita*, even though R.A. 9262 is a special penal law. [26] The acts punished therein are inherently wrong or depraved, [27] and the language used under the said penal law requires a mental element. [28] Being a crime *mala in se*, there must thus be a concurrence of both *actus reus* and *mens rea* to constitute the crime. "Actus reus pertains to the external or overt acts or omissions included in a crime's definition while *mens rea* refers to the accused's guilty state of mind or criminal intent accompanying the *actus reus*." [29]

It is not enough, therefore, for the woman to experience mental or emotional anguish, or for her partner to deny financial support that is legally due her. In order for criminal liability to arise under Section 5(i) of R.A. 9262, insofar as it deals with "denial of financial support," there must, therefore, be evidence on record that the accused willfully or consciously withheld financial support legally due the woman for the purpose of inflicting mental or emotional anguish upon her. In other words, the *actus reus* of the offense under Section 5(i) is the willful denial of financial support, while the *mens rea* is the intention to inflict mental or emotional anguish upon the woman. Both must thus exist and be proven in court before a person may be convicted of violating Section 5(i) of R.A. 9262.

"It bears emphasis that Section 5(i) penalizes some forms of psychological violence that are inflicted on victims who are women and children." [30] In prosecutions under Section 5(i), therefore, "[p]sychological violence is the means employed by the perpetrator" [31] with denial of financial support as the weapon of choice. In other words, to be punishable by Section 5(i) of R.A. 9262, it must ultimately be proven that the accused had the intent of inflicting mental or emotional anguish upon the woman, thereby inflicting psychological violence upon her, with the willful denial of financial support being the means selected by the accused to accomplish said purpose.

This means that the mere failure or one's inability to provide financial support is not sufficient to rise to the level of criminality under Section 5(i), even if mental or emotional anguish is experienced by the woman. In other

words, even if the woman were to suffer mental or emotional anguish due to the lack of financial support, but the accused merely failed or was unable to so provide support, then criminal liability would not arise. A contrary interpretation to the foregoing would result in absurd, if not outright unconstitutional, consequences.

To be sure, under the Family Code, the obligation to support is imposed mutually upon the spouses.[32] In other words, both the husband and the wife have the obligation to give support to each other. However, even as the law imposes the obligation to support mutually upon the spouses, the failure of the wife to financially support the husband only results in civil liability, whereas if it is the husband who fails to provide financial support to the wife, this will result not only in civil liability, but also criminal liability under Section 5(i) of R.A. 9262. Surely, this cannot be the case, as the law recognizes no substantial distinction between the husband and the wife as regards their responsibility to provide financial support to each other and the family.

It is also worth emphasizing that the obligation to give support is measured "in keeping with the financial capacity of the family"[33] — which also implies that it may depend on who is earning for the family. As well, the amount of support "shall be in proportion to the resources or means of the giver and to the necessities of the recipient." [34] As previously stated, therefore, the prosecution must first establish that there is an amount of support legally due the woman, and that the partner willfully denied the same to her to cause mental or emotional anguish, before a conviction under Section 5(i) of R.A. 9262 may be had.

The elements of a violation of Section 5(i), insofar as it deals with denial of financial support, are therefore:

(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 willfully refuses to give or consciously denies the woman and/or her child or children financial support that is legally due her and/or her child or children; and

(4)

The offender denied the woman and/or her child or children the financial support for the purpose of causing the woman and/or her child or children mental or emotional anguish.

Applying the foregoing discussion to the facts of the present case, the Court finds that Christian is not guilty of violating Section 5(i) of R.A. 9262 for the failure of the prosecution to establish the third and fourth elements of the crime. The Court finds him innocent, for there is undenied evidence that Christian tried, as he successfully did for a time, to provide financial support. He testified under oath that he failed to continue providing support only when his apartment in Brunei was razed by fire, and when he met a vehicular accident there. There is also no dispute that he had already paid P71,000.00 out of the P85,000.000 of the debt that the spouses — not the husband alone — were obligated to pay from their community property.

While Christian eventually failed to continue providing financial support, this, however, is not enough to support a conviction under Section 5(i) of R.A. 9262. Again, to be convicted under Section 5(i), the evidence must establish beyond reasonable doubt that the accused intended to cause the victim mental or emotional anguish, or public ridicule or humiliation through the denial of — not the mere failure or inability to provide — financial support, which thereby resulted into psychological violence. As the prosecution failed to establish that fact, i.e., willful refusal to provide financial support, then Christian cannot be held guilty of violating Section 5(i) of R.A. 9262.

Neither could Christian be held guilty of violating Section 5(e)

The Court is aware that cases involving denial of financial support typically involve Informations charging a person with a violation of either Section 5(e) or Section 5(i) of R.A. 9262. This is so because Section 5(e) of R.A. 9262 punishes the acts of:

Section 5. Acts of Violence Against Women and Their Children. — x x x

x x x x

(e)

Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

(1)

Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;

(2)

Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3)

Depriving or threatening to deprive the woman or her child of a legal right;

(4)

Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties[.]
(Emphasis supplied)

In fact, the Court has previously held that a person charged for violation of Section 5(i) may, in the alternative, be convicted instead for violating Section 5(e) by applying the variance doctrine.

In *Melgar v. People*[35] (*Melgar*), the Court explained that the variance doctrine may be applied because the only difference between Section 5(e) and Section 5(i) is the element of psychological violence. In particular, the Court, in *Melgar*, said that deprivation of financial support, by itself, is already sufficient to obtain a conviction under Section 5(e), while psychological distress brought by the deprivation of financial support is an essential element in order for an accused to be punished under Section 5(i). In other words, the Court held, in *Melgar*, that Section 5(i), insofar as it punishes deprivation of financial support, has the same elements as Section 5(e), but with one

added element — the element of psychological violence:

Section 5 (i) of RA 9262, a form of psychological violence, punishes the act of "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 denial of access to the woman's child/children." Notably, "[p]sychological 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 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." Thus, in cases of support, it must be first shown that the accused's denial thereof — which is, by itself, already a form of economic abuse — further caused mental or emotional anguish to the woman-victim and/or to their common child.

In this case, while the prosecution had established that Melgar indeed deprived AAA and BBB of support, no evidence was presented to show that such deprivation caused either AAA or BBB any mental or emotional anguish. Therefore, Melgar cannot be convicted of violation of Section 5 (i) of RA 9262. This notwithstanding — and taking into consideration the variance doctrine which allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged — the courts a quo correctly convicted Melgar of violation of Section 5 (e) of RA 9262 as the deprivation or denial of support, by itself and even without the additional element of psychological violence, is already specifically penalized therein.[36]

The above ruling in Melgar was affirmed subsequently in the case of Reyes v. People[37] (Reyes) where the Court, despite affirming the Court's conviction under Section 5(i), still made an obiter dictum and said:

The Court agrees with the observation of the CA that if properly indicted, Reyes can also be convicted of violation of Section 5 (e), par. 2 for having committed economic abuse against AAA. Section 5 (e), par. 2 identifies the act or acts that constitute the violence of economic abuse, x x x [.]

x x x x

Indeed, criminal liability for violation of Section 5 (e) of R.A. No. 9262 attaches when the accused deprives the woman of financial support which she is legally entitled to. Deprivation or denial of support, by itself, is already specifically penalized therein.[38]

Thus, Sections 5(e) and 5(i), under current jurisprudence, ultimately punish the same act, i.e., the denial or deprivation of financial support by the husband or the father of the children. And, as already stated, under present jurisprudence, denial of financial support, by itself, is already sufficient to make a person liable for a violation of Section 5(e) of R.A. 9262.

It is thus relevant for the Court to now determine whether, like the accused in Melgar, Christian may be held liable for a violation of Section 5(e) of R.A. 9262 even if the Information filed was for violation of Section 5(i). To this point, the Court finds that Christian cannot likewise be held guilty of violating Section 5(e).

The current judicial interpretation that denial of financial support, by itself, is enough to convict under Section 5(e) of R.A. 9262 is not supported by the letter of the law. To state once more, Section 5(e), R.A. 9262 punishes:

Section 5. Acts of Violence Against Women and Their Children. — x x x

x x x x

(e)

Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

(1)

Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;

(2)

Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3)

Depriving or threatening to deprive the woman or her child of a legal right;

(4)

Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties[.] (Emphasis and underscoring supplied)

The language of Section 5(e) above is clear: the denial of financial support, to be punishable, must have the "purpose or effect of controlling or restricting the woman's x x x movement or conduct." To be sure, Section 5(e) uses the word "deprive"[39] which, like the use of the word "denial" in Section 5(i), connotes willfulness and intention. The denial or deprivation of financial support under Section 5(e) is, therefore, an intentional act that has, for its purpose, to control or restrict the woman's movement or conduct. The willful deprivation of financial support, therefore, is the actus reus of the offense, while the mens rea is the intention to control or restrict the woman's conduct. Thus, similar to the discussion in Section 5(i), Section 5(e) cannot be read as punishing the mere failure or one's inability to provide financial support, which is what happened in this case.

In this connection, the Court sees it fit to use this opportunity to clarify, for the guidance of the bench and the Bar, the applicability of Section 5(e) of R.A. 9262.

It is a well-established principle that every part of the statute must be interpreted with reference to the context.[40] Section 5(e), if read and understood in its entirety, punishes acts, or the employment of machinations, that have the effect of either (1) compelling a woman and/or her child or children to do something unwillingly or (2) preventing her and/or her child or children from doing something which is within her or her child's or her children's right/s to do. Absent this element, the failure to provide financial support will entail only civil, not criminal, responsibility.

A reading of R.A. 9262 in its entirety bolsters the foregoing reading of Section 5(e).

In an attempt to protect women from the different kinds of violence they experience or to which they are vulnerable to while being in an intimate relationship, R.A. 9262 provided an encompassing definition of "violence against women." This definition is found in Section 3(a) of R.A. 9262, which provides:

SECTION 3. Definition of Terms. — As used in this Act, (a) "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 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, battery, 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:

a)

rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b)

acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c)

Prostituting the woman or her child.

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 marital 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.

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:

1.

withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;

2.

deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the

conjugal, community or property owned in common;

3.

destroying household property;

4.

controlling the victim's own money or properties or solely controlling the conjugal money or properties.
(Emphasis and underscoring supplied)

As pointed out by Senior Associate Justice Estela M. Perlas-Bernabe, however, Section 3(a) and its four subsections above only provide for a comprehensive definition of violence against women and children.[41] Section 3(a) does not provide the specific punishable acts under R.A. 9262. Instead, the specific acts that are criminalized by the law are enumerated under Section 5 of R.A. 9262, which 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:

(a)

Causing physical harm to the woman or her child;

(b)

Threatening to cause the woman or her child physical harm;

(c)

Attempting to cause the woman or her child physical harm;

(d)

Placing the woman or her child in fear of imminent physical harm;

(e)

Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

(1)

Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;

(2)

Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3)

Depriving or threatening to deprive the woman or her child of a legal right;

(4)

Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;

(f)

Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g)

Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h)

Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(1)

Stalking or following the woman or her child in public or private places;

(2)

Peering in the window or lingering outside the residence of the woman or her child;

(3)

Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4)

Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5)

Engaging in any form of harassment or violence;

(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 denial of access to the woman's child/children. (Emphasis and underscoring supplied)

A plain reading of Section 5 reveals that it is meant to specify the punishable acts based upon the classifications of violence against women already identified and defined under Section 3(a). While there is no one-to-one correspondence between the classifications of violence against women under Section 3(a), on the one hand, and the specific punishable acts under Section 5, on the other, it can still be reasonably gleaned that the punishable acts spring from the multifaceted definition of violence against women which the law aims to protect women from. For example, Sections 5(a) to 5(d) appear to protect women and their children from physical violence; Sections 5(f), 5(h) and 5(i) from psychological violence; and Section 5(g) from physical and sexual violence. Meanwhile, Section 5(e), as previously discussed, protects the woman from acts of violence that are committed for the purpose of attempting to control her conduct or actions, or make her lose her agency, with most of the enumerated examples of acts having a connection with the use of finances as the primary mode of controlling the woman. Thus, Section 5(e) could be viewed as protecting the woman from economic abuse, as defined in Section 3(a), in some cases.

To recall, when Section 5(e) describes the act of "(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support"[42] as an act of violence against women and children, it does so in the context of having "the purpose or effect of controlling or restricting the woman's or her child's movement or conduct." [43] Such control or restriction of movement through the use of finances may, in some cases, rise to the level of "economic abuse" as defined in Section 3(a), as it is the financial dependence which normally allows women's partners to exercise control over the woman's actions and decisions.

Thus, situations of economic abuse — making the woman financially dependent upon her partner — if prosecuted, would also likely fall under Section 5(e). Just to provide concrete examples, the National Coalition Against Domestic Violence (NCADV), a non-profit organization based in the United States of America to improve legislation dealing with domestic violence, explains that:

[b]y controlling and limiting the victim's access to financial resources, a batterer ensures that the victim will be financially limited if he/she chooses to leave the relationship. As a result, victims of domestic violence are often forced to choose between staying in an abusive relationship or facing economic hardship and possibly extreme poverty and homelessness.[44]

The NCADV enumerates the different types of economic abuse as follows:

- Interfering with the victim's work performance through harassing activities, such as frequent phone calls or

unannounced visits;

- Denying the victim access to money or the means of obtaining it, to the point that he/she is entirely dependent on the abuser for food, clothing and shelter;
- Refusing to allow the victim to work or attend school, or engaging in activities that make it impossible for the victim to do so;
- Intentionally withholding necessities such as food, clothing, shelter, personal hygiene products, or medication;
- Stealing from the victim, defrauding their money or assets, and/or exploiting the victim's financial resources or property for personal gain;
- Requiring justification for any money spent and punishing the victim with physical, sexual or emotional abuse;
- Stealing or destroying the victim's personal belongings;
- Forbidding a victim from maintaining a personal bank account;
- Threatening to out an LGBTQ victim in their workplace;
- Refusing to pay the victim court-ordered child or spousal support; or
- Forcing their victim to obtain credit, then ruining the victim's credit rating or future ability to obtain credit.[45]

Similar to the foregoing, the Battered Women's Support Services, another non-profit organization in the United States, also enumerates the various ways by which women are economically abused:

- Controlling paychecks and bank accounts;
- Stealing from her;
- Preventing the woman from accessing transportation;
- Determining how money is spent;
- Deciding where the woman will work;
- Preventing the woman from working through isolation tactics;
- Outright forbidding the woman to work;
- Forcing the woman to work in family business with little or no pay;
- Forcing the woman to become pregnant;
- Preventing the woman from accessing child care;
- Harassing the woman at her workplace to the extent that the job is lost;
- Controlling property decisions;
- Destroying the woman's credit rating by using credit cards, lines of credit, without permission or filing all financial contracts (lease, credit cards, utilities, etc.) in the woman's name and failing to make payments on time or at all;
- Forcing women to turn over government benefit payments including child tax benefits;
- Using his income for his individual interests while her income is used to maintain the family collective interests;

- "Giving" her all the "control" of the financial decision for the family then criticizing her decisions and/or having unrealistic understanding of what things cost;

- Forbidding her to attend school or upgrading programs.[46]

These examples are referenced not to provide an exhaustive list of acts that constitute economic abuse, but to highlight that there are different possible scenarios in which control of the woman is obtained through finances. As well, the foregoing examples are used to impress that mere failure to pay financial support does not constitute economic abuse contemplated by R.A. 9262.

The Court sees the need to clarify, however, that for purposes of determining the required specific intent to constitute a violation of R.A. 9262, it is the letter of Section 5 which governs.[47] Section 3(a) just provides the context — the various kinds of violence that women in intimate relationships are vulnerable to — in order to provide a full picture of what the punishable acts under Section 5 seeks to protect women from.

In sum, this is, therefore, the proper understanding of Section 5(e) of R.A. 9262, insofar as it deals with the deprivation, or threat of deprivation, of financial support: There must be allegation and proof that the act was done with the intent to control or restrict the woman's and/or her child's or her children's actions or decisions, consistent with the letter of Section 5(e) itself.

It is this element of specific intent to control or restrict the woman's and/or her child's or her children's actions or decisions which is the defining characteristic that makes the act of "deprivation of financial support" under Section 5(e) of R.A. 9262 criminally punishable. It is what elevates or qualifies the act of "deprivation of financial support" from one in which only civil liability may arise to an act that incurs criminal liability under Section 5(e) of R.A. 9262. As previously discussed, a contrary interpretation to the foregoing would result in absurd, if not outright unconstitutional, consequences as the law imposes the obligation to support mutually upon the spouses.

In fine, and to reiterate, for deprivation of financial support to rise to a level that would make a person criminally liable under Section 5(e), R.A. 9262, there must be allegation and proof that it was made with the intent to control or restrict the woman's and/or her child's or her children's actions.

The elements of a violation of Section 5(e) of R.A. 9262, insofar as it deals with deprivation of financial support, are therefore:

(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 either (a) deprived or (b) threatened to deprive the woman or her children of financial support legally due her or her family, or (c) deliberately provided the woman's children insufficient financial support;

(4)

The offender committed any or all of the acts under the third element for the purpose of controlling or restricting the woman's or her child's movement or conduct.

Applying the foregoing to this case, the Court holds that Christian is also not guilty of violating Section 5(e) of R.A. 9262 due to the absence of the third and fourth elements. There is no proof that he deliberately refused to give support in order to control the behavior or actions of AAA. Neither was there any allegation or proof that he prevented AAA from seeking gainful employment or pursuing economic opportunities. The evidence in this case simply established that he failed or was unable to provide financial support which, as discussed, is not enough to convict under the law.

Conclusion

From the above discussions, the Court clarifies that it now hereby abandons Melgar and Reyes insofar as they hold that a person charged with a violation of Section 5(i) of R.A. 9262 may be convicted of violating Section 5(e) by applying the variance doctrine. Based on the discussions in this Decision, the portions of Sections 5(e) and 5(i) that deal with denial or deprivation of financial support punish different things. Section 5(e) punishes the deprivation of financial support for the purpose of controlling the woman or to make her and/or her child or children lose their agency. Section 5(i), on the other hand, punishes the willful infliction of mental or emotional anguish, or public ridicule or humiliation upon the woman and/or her child or children by denying her and/or her child or children financial support that is legally due her and/or her child or children. Thus, while the portions of Sections 5(e) and 5(i) that deal with denial or deprivation of financial support may seem similar at first glance, they, in reality, deal with different matters and penalize distinct acts. As the Court comes to the realization that the said sections punish different things, the Court, therefore, abandons Melgar and Reyes to the extent that they hold that the variance doctrine may be applied for Sections 5(e) and 5(i) of R.A. 9262.

Finally, the Court clarifies that in either case, whether the accused is prosecuted under Section 5(e) or Section 5(i), the mere failure to provide financial support is not enough. In other words, neither Section 5(e) nor 5(i) can be construed to mean that mere failure or inability to provide support is sufficient for a conviction. Those entitled to support and are not given any have the remedy of filing a civil case for support against the delinquent person, consistent with the provisions of the Civil Code and the Family Code. In order to be liable under the penal provisions of R.A. 9262, therefore, it is necessary to allege and prove the existence of the facts that qualify the act of denial or deprivation of financial support from one in which mere civil liability may arise to one where a person may be criminally liable.

The Court sees the need for this clarification, as R.A. 9262 was not meant to make the partners of women criminals just because they fail or are unable to financially provide for them. Certainly, courts cannot send individuals to jail because of their mere inability — without malice or evil intention — to provide for their respective families. In a developing country like ours, where poverty and unemployment are especially rampant, courts would inevitably find themselves incarcerating countless people, mostly fathers, should the interpretation be that mere failure or inability to provide financial support is enough to convict under Sections 5(e) and 5(i). As Associate Justice Rodil V. Zalameda put it simply during the deliberations of this case, "poverty is not a crime x x x [and] the failure or inability to provide support, without more, should not be the cause of a man's incarceration."

Also, while R.A. 9262 was indeed enacted to protect women, it was not meant to discount women's ability to provide for themselves, especially when they are able-bodied. As Associate Justice Marvic M.V.F. Leonen explained in his Concurring Opinion:

Nevertheless, it is improper to think that women are always victims. This will only reinforce their already

disadvantaged position. The perspective portraying women as victims with a heritage of victimization results in the unintended consequence of permanently perceiving all women as weak. To consider women as the weaker sex is discriminatory. In safeguarding the interests of a discriminated class, we must be careful not to perpetuate the very prejudices and biases that encourage discrimination of the members of the class.

There is now more space to believe that portraying only women as victims will not always promote gender equality before the law. It sometime aggravates the gap by conceding that women have always been dominated by men.

x x x x

No less than the Constitution mandates the State to recognize the role of women in nation building. This role is not confined to child-rearing, honorable as motherhood may be. It is entirely possible that the woman in the sexual or dating relationship is more financially capable than the man. Consistent with the spouses' mutual obligation to provide support under the Family Code, the duty to provide financial support should not fall on the man alone. His mere failure or inability to provide financial support should not be penalized as a crime, especially when the woman is more financially capable.[48]

Given the foregoing findings of fact and conclusions of law, the Court herein proclaims the innocence of Christian from the charge.

WHEREFORE, premises considered, the Petition for Review on Certiorari is hereby GRANTED. The Decision dated February 17, 2016 and Resolution dated May 31, 2016 of the Court of Appeals in CA-G.R. CR No. 36913 are hereby REVERSED and SET ASIDE. Accordingly, petitioner Christian Pantonial Acharon is ACQUITTED of the crime charged. Let an entry of final judgment be issued immediately.

SO ORDERED.

Gesmundo, C.J., Hernando, Carandang, Inting, Gaerlan, Rosario, J. Lopez, and Dimaampao, JJ., concur.

Perlas-Bernabe, S.A.J., please see Separate Concurring Opinion.

Leonen, J., with Separate Concurring Opinion.

Lazaro-Javier, J., please see Separate Concurring Opinion.

Zalameda, J., please see Concurring Opinion.

M. Lopez, J., please see Concurring Opinion.

[1] Rollo, pp. 11-28.

[2] Id. at 33-42. Penned by Associate Justice Romeo F. Barza, with Presiding Justice Andres B. Reyes, Jr. (retired Member of the Court) and Associate Justice Agnes Reyes-Carpio concurring.

[3] Id. at 44-45.

[4] Id. at 62-69. Penned by Presiding Judge Evangeline M. Francisco.

[5] Id. at 34.

[6] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with People v. Cabalquinto, 533 Phil. 703 (2006), and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

[7] Rollo, pp. 64-65.

[8] Id. at 65-66.

[9] Id. at 62-69.

[10] Id. at 69.

[11] Id. at 67.

[12] Supra note 2.

[13] Id. at 17.

[14] *Canceran v. People*, 762 Phil. 558, 566 (2015).

[15] *People v. Solar*, G.R. No. 225595, August 6, 2019, 912 SCRA 271, 310-311.

[16] *Canceran v. People*, supra note 14, at 568.

[17] Rollo, p. 34. Emphasis supplied.

[18] Emphasis supplied.

[19] 761 Phil. 356 (2015).

[20] Id. at 373.

[21] *People v. Garcia*, 85 Phil. 651, 656 (1950). Emphasis supplied.

[22] "Denial," MERRIAM-WEBSTER DICTIONARY, accessed at
<<https://www.merriam-webster.com/dictionary/denial>>.

[23] "Denial," CAMBRIDGE DICTIONARY, accessed at
<<https://dictionary.cambridge.org/dictionary/english/denial>>.

[24] "Failure," CAMBRIDGE DICTIONARY, accessed at
<<https://dictionary.cambridge.org/us/dictionary/english/failure>>.

[25] See *Guevarra v. Almodovar*, G.R. No. 75256, January 26, 1989, 169 SCRA 476, 481.

[26] Concurring Opinion of Associate Justice Lazaro-Javier, p. 2; Separate Concurring Opinion of Associate Justice M. Lopez, p. 2.

[27] Separate Concurring Opinion of Associate Justice M. Lopez, p. 2.

[28] Concurring Opinion of Associate Justice Lazaro-Javier, p. 3.

[29] Separate Concurring Opinion of Associate Justice M. Lopez, p. 3.

[30] *Dinamling v. People*, supra note 19, at 375.

[31] Id. at 376.

[32] ARTICLE 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

ARTICLE 70. The spouses are jointly responsible for the support of the family.

ARTICLE 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

- (1) The spouses;
- (2) Legitimate ascendants and descendants;
- (3) Parents and their legitimate children and the legitimate and illegitimate children of the latter;
- (4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and
- (5) Legitimate brothers and sisters, whether of the full or half-blood. (Underscoring supplied)

[33] FAMILY CODE, Art. 194.

[34] FAMILY CODE, Art. 201.

[35] 826 Phil. 177 (2018).

[36] *Id.* at 186-187. Emphasis, underscoring, and italics supplied.

[37] G.R. No. 232678, July 3, 2019, 907 SCRA 479.

[38] *Id.* at 494-495.

[39] Defined as "an act or instance of withholding or taking something away from someone or something." See "Deprivation," MERRIAM-WEBSTER DICTIONARY, accessed at <<https://www.merriam-webster.com/dictionary/deprivation>>.

[40] *Civil Service Commission v. Jason, Jr.*, G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786.

[41] Separate Concurring Opinion of Senior Associate Justice Perlas-Bernabe, p. 8.

[42] Emphasis supplied.

[43] See R.A. 9262. Sec. 5(e).

[44] See Economic Abuse Fact Sheet, NCADV, accessed at <http://www.mmgconnect.com/projects/userfiles/file/dcestop_now/ncadv_economic_abuse_fact_sheet.pdf>.

[45] *Id.*

[46] See Angela Marie MacDougall, Economic Abuse and Violence Against Women — How Battered Women's Support Services Take Action, BATTERED WOMEN'S SUPPORT SERVICES, accessed at <<https://www.bwss.org/economic-abuse-and-violence-against-women-how-battered-womens-support--services-takes-action/>>.

[47] See Separate Concurring Opinion of Senior Associate Justice Perlas-Bernabe, p. 10.

[48] Concurring Opinion of Associate Justice Leonen, pp. 2-3.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur in the result to acquit petitioner XXX (petitioner) of violation of Section 5 (i) of Republic Act No. (RA) 9262,[1] otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004." As aptly observed by the ponencia, the prosecution failed to show, beyond reasonable doubt, that petitioner's failure to provide financial support to his wife, AAA, was made with the specific intent of causing the latter mental or

emotional anguish, public ridicule, or humiliation. Rather, it was shown that his failure to do so was due to justifiable reasons, i.e., his apartment in Brunei was razed by fire and he met a vehicular accident, which incidents required him to spend a significant amount of money. Moreover, it was also shown that despite petitioner's failure to remit the full amount of P85,000.00 with three percent (3%) monthly interest, he was able to send to his wife a total of P71,000.00 as payment for their loan.

Likewise, I concur in the ponencia's proposal to abandon the rulings in *Melgar v. People*[2] (*Melgar*) and *Reyes v. People*[3] (*Reyes*) wherein it was held that a person charged with violation of Section 5 (i) of RA 9262 may also be convicted of violation of Section 5 (e) of the same law pursuant to the variance doctrine. These provisions have different elements since on the one hand, a violation of Section 5 (i) is premised on the accused's specific intent to cause mental or emotional anguish, public ridicule or humiliation to the woman or her child, while a violation of Section 5 (e) is premised on the specific intent to control or restrict the woman's or her child's movement or conduct. Sections 4 and 5 of Rule 120 of the Revised Rules of Criminal Procedure provide for the rule on variance:

Section 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Section 5. When an offense includes or is included in another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

As earlier intimated, it cannot be said that a violation of Section 5 (i) of RA 9262 includes or is necessarily included in a violation of Section 5 (e) of the same law because the specific intent required to be proven in the two (2) violations are fundamentally different from each other. As such, the accused cannot be charged under Section 5 (i) and eventually be convicted under Section 5 (e), or vice-versa.

Nonetheless, I take this opportunity to elaborate on the proper treatment of acts constituting "violence against women and their children." As will be discussed below, for doctrinal accuracy, the types of violence stated in the subsections of Section 3 (a) of RA 9262 should not be treated as means/punishable offenses, but rather, as resulting effect/s of the acts committed by the accused under Section 5 of RA 9262. Further, considering the multi-faceted nature of a case of violence against women and their children, it is possible that several types of violence under Section 3 (a) may be experienced by the woman or her child as a result of an act punished under Section 5. Hence, one type of violence under Section 3 (a) is not restrictively associated to a Section 5 offense, and thus negates any exclusive correspondence. Ultimately, the types of violence are enumerated in the law if only to provide for a comprehensive definition of violence in light of RA 9262's animating policy to ensure full protection to abused women and their children.

I.

Violence against women, otherwise known as "intimate partner violence," is a significant problem recognized on a global scale.[4] As defined by relevant literature, "intimate partner violence" is "any act of physical, sexual, psychological or economic violence that occurs between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim." [5] Ordinarily, four main types of "intimate partner violence" are identified, to wit: (a) physical violence, or the intentional use of physical force with the potential for causing death, disability, injury, or harm; (b) sexual violence, which includes rape, as well as

unwanted sexual contact and experiences; (c) stalking, or the pattern of repeated, unwanted, attention and contact that causes fear or concern for one's own safety or the safety of someone else, such as a family member or friend; and (d) psychological aggression, or the use of verbal and non-verbal communication with the intent to harm another person mentally or emotionally, and/or to exert control over another person.[6]

In our jurisdiction, RA 9262, or the "Anti-Violence Against Women and Their Children Act of 2004," was passed in order to address the prevalence of violence against women and children committed by their intimate partners.[7] This law, enacted "in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child[,] and other international human rights instruments of which the Philippines is a party,"[8] explicitly "recognizes the need to protect the family and its members[,] particularly women and children, from violence and threats to their personal safety and security." [9]

Under Section 3 (a) of RA 9262, "violence against women and their children" is defined as "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 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, battery, assault, coercion, harassment or arbitrary deprivation of liberty." The same provision further contains subsections which provide for the types of "violence against women and their children," namely, physical, sexual, and psychological violence and economic abuse. Notably, despite its four subsections on the types of violence, Section 3 (a) recognizes that these are not exclusive as evinced by the phrase "it includes, but is not limited to, the following x x x." For reference, Section 3 (a) of RA 9262 reads:

Section 3. Definition of Terms. — As used in this Act, (a) "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 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, battery, 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:

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c) Prostituting the woman or her child.

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 marital 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.

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:

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
3. destroying household property;
4. controlling the victim's own money or properties or solely controlling the conjugal money or properties.

x x x x

As worded, the term "violence against women and their children" is characterized under Section 3 (a) as "an act or a series of acts"; similarly, the listed four types of violence against women and their children are referred to as "acts." The subsections of Section 3 (a), in fact, further enumerate specific instances that would fall under a particular violence type. Thus, a literal reading of these provisions would lead one to believe that these types of violence are punishable offenses constitutive of the crime violence against women and their children.

However, Section 5 of the same law list downs certain punishable acts which are explicitly classified as "the crime of violence against women and their children":

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:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
 - (1) Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;
 - (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 - (3) Depriving or threatening to deprive the woman or her child of a legal right;
 - (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or

properties;

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(1) Stalking or following the woman or her child in public or private places;

(2) Peering in the window or lingering outside the residence of the woman or her child;

(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5) Engaging in any form of harassment or violence;

(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 denial of access to the woman's child/children.

Given the phraseology of these separate provisions in the same law, confusion arises as to what RA 9262 deems as the punishable offense and related thereto, the specific criminal intent that must be proven. As earlier intimated, the language of Section 3 (a) and its subsections creates an impression that what RA 9262 criminalizes is the type of violence, i.e., physical, sexual, and psychological violence and economic abuse. In fact, in some earlier cases,[10] the Court has held that the type of violence under Section 3 (a) is the means employed by the perpetrator and that it is the violence under the circumstances in RA 9262 that the law seeks to outlaw. In my view, this perception that the types of violence are the means of commission is not completely accurate. Rather, as will be expounded below, the types of violence should be deemed as the resulting effect/s to the victim, while the acts enumerated under Section 5 of the same law should be considered as the punishable offenses themselves.

II.

A meticulous scrutiny of the entire law would show that while RA 9262 mentions the different types of violence against the woman and their children under Section 3 (a) and refers to them as "acts," what it ultimately criminalizes is the "violence against women and their children" committed through the enumerated acts under Section 5. In particular, Section 5 of RA 9262 should be read in relation to Section 6 of RA 9262 which provides for the penalties relative to the acts stated in Section 5 (and not Section 3 [a]), viz.:

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

(a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.

If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those

constituting serious physical injuries shall have the penalty of prison mayor; those constituting less serious physical injuries shall be punished by prison correccional; and those constituting slight physical injuries shall be punished by arresto mayor.

Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.

(b) Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor;

(c) Acts falling under Section 5(e) shall be punished by prison correccional;

(d) Acts falling under Section 5(f) shall be punished by arresto mayor;

(e) Acts falling under Section 5(g) shall be punished by prison mayor;

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

To my mind, the fact that (1) penalties are made relative to the acts listed in Section 5 and not to the types of violence under Section 3 (a) of RA 9262; and the fact that (2) Section 5 explicitly states that "[t]he crime of violence against women and their children is committed through any of the following acts" confirms the position that the types of violence stated in Section 3 (a) are not the means by which the crime is committed nor the acts that are penalized.

This therefore begs the question – what now is the significance of the types of violence listed in Section 3 (a) of RA 9262 when it comes to the prosecution of the crime of violence against women and their children?

The way that the law is framed, and the placement of the provisions provide us guidance on how to treat Section 3 (a) in relation to Section 5 of RA 9262. As designed, the law first provides for the definition of "violence against women and their children"; this term is then classified in types of violence, i.e., physical, sexual, psychological, and economic, which are found in Section 3 (a)'s four subsections, i.e., "physical violence" in subsection A, "sexual violence" in subsection B, "psychological violence" in subsection C, and "economic abuse" in subsection D. While it is odd that the types of violence are referred to in said subsections as "acts," Section 3 (a) itself states that the term "violence against women and their children" are acts "which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse."

The defined term "violence against women and their children" in Section 3 (a) would then appear in Section 5, which states in its preliminary sentence that "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." As earlier discussed, the usage of the word "crime" in Section 5 vis-a-vis the term "violence against women and their children" in Section 3 (a), among others, leads to the conclusion that the specific acts listed in Section 5 are the punishable offenses; on the other hand, "violence against women and children" under Section 3 (a) is more of a general characterization of the underlying nature of the crime; in turn, the four types of violence are further variations of the nature of violence that the woman or her child experiences. By virtue of an act committed under Section 5, the woman or her child is indeed violated, and the violence experienced by her and/or her child may

either (albeit not exclusively) be physical, sexual, psychological, or economic. Thus, to reconcile and to avoid confusion between Section 3 (a) and Section 5, it is therefore submitted that the types of violence under the former provision should be deemed as the resulting effect/s on the woman and her child, which spring from the acts committed in Section 5.

This treatment of the types of violence as resulting effect/s (rather than means/punishable offenses) equally finds basis in the first paragraph of Section 3 (a) which states that violence against women and children refers to an act or series of acts "which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty."

Overall, I reckon that Section 3 (a) and its four subsections only provide for a comprehensive definition of violence against women and children, which is a by-product of the specific acts mentioned in Section 5. Ostensibly, the intent of the law in providing for the four (4) types of violence against women and their children is not to establish them as the actual offenses per se but rather to create a comprehensive concept of violence that sweeps across physical, sexual, psychological or economic facets, which the women or her child may experience. This intent squares with the animating policy of the law which is to protect women and their children from all forms of discrimination and abuse in line with the State's international commitments.

Accordingly, I submit that the Court's perception in some earlier cases wherein the types of violence under Section 3 (a) of RA 9262 were deemed as the means or even the punishable offenses is conceptually inaccurate. At the risk of belaboring the point, these types of violence are only descriptive of the effects on the woman and her child which result from the specific acts committed by the accused listed in Section 5 of RA 9262. Simply put, the acts enumerated in Section 5 are the means/punishable offenses, while the types of violence in Section 3 (a) – physical, sexual, and psychological violence and economic abuse – are the ends/resulting effects.

III.

The above-discussed conceptual nuances are relevant since it affects the determination on where to situate criminal intent. In my opinion, considering that (1) the punishable acts are those provided under Section 5 of RA 9262; and (2) the types of violence under Section 3 (a) are the resultant effects on the part of the woman or her child, it is thus imprecise to say that the prosecution must show, by proof beyond reasonable doubt, that the accused had the intent to inflict for example psychological violence to the woman. Psychological violence, as well as the other forms of violence under Section 3 (a), are descriptive of the violence experienced by the woman or her child; the type of violence is more on the effect to the recipient of violence, rather than the underlying intent of the criminal actor. The accused may perform one Section 5 act, but the resulting violence on the part of the woman may be multi-faceted; the accused may also perform a series of Section 5 acts, and the interplay between these acts, may result into several forms of violence.

For instance, when an accused deprives a woman and her child of financial support, the woman may either experience economic abuse or psychological violence. Economic abuse is experienced when the woman or her child becomes financially dependent; meanwhile, that same act may also cause psychological violence, considering that deprivation of financial support may be the chosen avenue for intimidation, harassment, or even ridicule which thereby causes mental or emotional suffering. It is also common that in a scenario where there is deprivation of support, other acts of abuse may occur. Verbal and physical abuse are unfortunate occurrences in situations of domestic violence. The complexity and even cyclical nature of domestic violence may permeate into various tragic experiences in the household and thus, result into different effects on the part of the woman and her child. This is also probably why Section 3 (a), while listing four types of violence, recognizes that these types are

not exclusive as evinced by the qualifier "it includes, but is not limited to, the following x x x." The phrase "includes, but is not limited to" recurs even in other portions of the law. This therefore shows that while RA 9262 attempts to characterize certain forms of violence, ultimately these types are mere estimations of the common forms of violence; what remains important is to understand that the law is comprehensive enough to cover all forms of abuse against the woman and her child.

Notably, the ponencia properly recognizes the multi-faceted definition of violence against women and their children by stating that "there is no one-to-one correspondence between the classifications of violence against women under Section 3(a), on the one hand, and the specific punishable acts under Section 5, on the other":

A plain reading of Section 5 reveals that it is meant to specify the punishable acts based upon the classifications of violence against women already identified and defined under Section 3(a). While there is no one-to-one correspondence between the classifications of violence against women under Section 3(a), on the one hand, and the specific punishable acts under Section 5, on the other, it can still be reasonably gleaned that the punishable acts spring from the multifaceted definition of violence against women which the law aims to protect women from. For example, Sections 5(a) to 5(d) appear to protect women and their children from physical violence, 5(f), 5(h) and 5(i) from psychological violence, and 5(g) from physical and sexual violence. Meanwhile, Section 5(e), as previously discussed, protects the woman from acts of violence that are committed for the purpose of attempting to control her conduct or actions, or make her lose her agency, with most of the enumerated examples of acts having a connection with the use of finances as the primary mode of controlling the woman. Thus, Section 5(e) could be viewed as protecting the woman from economic abuse, as defined in Section 3(a), in some cases.[11] (Emphasis supplied)

Indeed, an exclusive correspondence between a type of violence and a specific Section 5 act runs the danger of glossing over more complex domestic violence scenarios, and therefore may tie the Courts hands in deciding future cases where a certain Section 5 act may be considered as producing multiple types of violence based on what the woman or her child may actually experience in a given case.

Therefore, since the types of violence are neither exclusive to a Section 5 act nor are the means/punishable offenses themselves, it is but proper to situate intent on the acts mentioned in Section 5 of RA 9262. These acts relate to purposes that are in the nature of specific intent, and due to the mala in se nature of the offense, must underlie the commission of the act sough to be punished. As case law instructs, "in acts mala in se, the intent governs; but in acts mala prohibita, the only inquiry is, has the law been violated?"[12] "[T]here may be mala in se crimes under special laws, [as in this case]."[13] "The [prevailing] approach to distinguish between mala in se and mala prohibita crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime mala in se x x x."[14]

Going back to Section 5, it bears to stress that, "[s]pecific intent is used to describe a state of mind which exists where circumstances indicate that an offender actively desired certain criminal consequences or objectively desired a specific result to follow his act or failure to act. Specific intent involves a state of the mind. It is the particular purpose or specific intention in doing the prohibited act. Specific intent must be alleged in the Information and proved by the state in a prosecution for a crime requiring specific intent."[15] This may be shown by the nature of the act, the circumstances under which it was committed, the means employed, and the motive of the accused.[16]

In this case, petitioner was charged for deprivation of financial support to his wife, AAA, in violation of Section 5 (i) of RA 9262, which reads:

Section 5. Acts of Violence Against Women and Their Children. – 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 denial of access to the woman's child/children.

Thus, the prosecution must prove that the accused, by depriving AAA, his wife, of financial support, intended to cause her mental or emotional anguish, public ridicule or humiliation, which thereby resulted into psychological violence.

The ponencia adopts this essential distinction between the result, i.e., the type of violence under Section 3 (a), and the acts with the specific intent mentioned under Section 5 of RA 9262, by stating that "to be convicted under Section 5(i) [for instance], the evidence must establish beyond reasonable doubt that the accused intended to cause the victim mental or emotional anguish, or public ridicule or humiliation through the denial of – not the mere failure or inability to provide – financial support, which thereby resulted into psychological violence." [17] With this, it correctly frames the specific intent not relative to the form of violence alleged to have resulted, but rather to the acts stated in Section 5.

The foregoing approach also has an impact on the application of the variance doctrine. The acts found in Section 5 – and not the types of violence under Section 3 (a) – should be determinative of variance, i.e., what offense is charged and what offense could the accused be convicted. The type of violence under Section 3 (a) should not be applied in determining variance since the same is not, after all, the punishable offense, which as mentioned, is found in Section 5.

IV.

The foregoing notwithstanding, I deem it apt to point out that the ponencia still cites the old formulation of the elements of violation of Section 5 (i) of RA 9262 found in *Dinamling v. People* [18] (*Dinamling*). However, in my view, *Dinamling* inaccurately phrases the third element of said violation as follows:

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;
- (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. [19]

As above-discussed, the specific intent must be situated on the acts sought to be punished under Section 5 of RA 9262, and that the types of violence under Section 3 (a) thereof should be treated as the resulting effect of said acts. However, the formulation of the *Dinamling* elements fails to reflect this view since "mental or emotional anguish" is treated therein as a result, rather than the specific intent of the accused in relation to its corresponding Section 5 offense, i.e., Section 5 (i). Thus, to avoid confusion and preserve the essential distinction between the Section 5 and Section 3 (a), I submit that the elements for violation of Section 5 RA 9262 should instead be:

- (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 accused, or is a woman with whom the accused has or had a sexual or dating relationship, or is a woman with whom such accused 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 accused commits any of the acts listed under Section 5 of RA 9262;

(4) The said act was committed with the specific intent relative to the offense listed under Section 5 of RA 9262 for which the accused is duly charged; and

(5) The commission of the said act results into physical, sexual, or psychological violence, or economic abuse or other form of violence against women and their children as described under Section 3 (a) of RA 9262 on the part of the victim/s.

Applying the foregoing, petitioner should be acquitted of the crime charged, i.e., violation of Section 5 (i) of RA 9262, since, as preliminarily mentioned, the prosecution was not able to prove beyond reasonable doubt that petitioner's failure to provide financial support to AAA was made with the specific intent of causing the latter mental emotional anguish, public ridicule, or humiliation – the fourth element.

ACCORDINGLY, petitioner should be ACQUITTED, and the petition perforce GRANTED.

[1] Entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES;" approved on March 8, 2004.

[2] 826 Phil. 177 (2018).

[3] See G.R. No. 232678, July 3, 2019.

[4] See <https://www.who.int/health-topics/violence-against-women#tab=tab_1> (November 9, 2021).

[5] See "The psychological subtype of intimate partner violence and its effect on mental health: protocol for a systematic review and meta-analysis," Sarah Dokkedahl, Robin Niels Kok, Siobhan Murphy, et al. <<https://systematicreviewsjournal.biomedcentral.com/articles/10.1186/s13643-019-1118-1>> (last accessed November 9, 2021), citing "Glossary of definitions of rape, femicide and intimate partner violence," the European Institute for Gender Equality, p. 44.

[6] See <https://www.atrainceu.com/content/3-types-intimate-partner-violence> (last accessed November 9, 2021).

[7] <https://pcw.gov.ph/vaw-faqs/> (last accessed November 9, 2021).

[8] Section 2, RA 9262.

[9] Id.

[10] See Araza v. People, G.R. No. 247429, September 8, 2020; AAA v. BBB, 823 Phil. 607 (2018); and Dinamling v. People, 761 Phil. 356 (2015).

[11] Ponencia, p. 16.

[12] Dungo v. People, 762 Phil. 630, 658 (2015).

[13] Id.

[14] Id. at 659.

[15] *People v. Delim*, 444 Phil. 430, 448 (2003).

[16] *Recuerdo v. People*, 526 Phil. 460, 475 (2006).

[17] Ponencia, pp. 8-9.

[18] 761 Phil. 356 (2015).

[19] *Id.* at 373.

CONCURRING OPINION

LEONEN, J.:

I concur with the ponencia as regards the acquittal of petitioner Christian Pantonial Acharon.

Further, I concur with the ponencia's clarification of the distinction between Sections 5(e) and 5(i) of Republic Act No. 9262, along with the necessary abandonment of the application of the variance doctrine to these provisions in *Melgar v. People*[1] and *Reyes v. People*. [2]

Indeed, the mere failure or inability of a man to provide financial support is not a crime. Treating it as such would perpetuate the stereotype that women are always incapable of supporting themselves or their families. On the contrary, this Court has noted that "[i]n this day and age, women have taken on increasingly important roles in the financial and material support of their families." [3] Moreover, I wish to emphasize the ponencia's statement that "while [Republic Act No. 9262] was indeed enacted to protect women, it was not meant to discount women's ability to provide for themselves, especially when they are able-bodied." [4]

Article II, Section 14 of the Constitution affirmed the State's commitment to ensure the fundamental equality of women and men before the law. [5] This Court discussed this constitutional provision in *Alanis III v. Court of Appeals*: [6]

Article II, Section 14 of the Constitution requires that the State be active in ensuring gender equality. This provision is even more noticeably proactive than the more widely-invoked equal protection and due process clauses under the Bill of Rights. In *Racho v. Tanaka*, this Court observed:

This constitutional provision provides a more active application than the passive orientation of Article III, Section 1 of the Constitution does, which simply states that no person shall "be denied the equal protection of the laws." Equal protection, within the context of Article III, Section 1 only provides that any legal burden or benefit that is given to men must also be given to women. It does not require the State to actively pursue "affirmative ways and means to battle the patriarchy — that complex of political, cultural, and economic factors that ensure women's disempowerment."

Article II, Section 14 implies the State's positive duty to actively dismantle the existing patriarchy by addressing the culture that supports it. [7] (Citations omitted)

Republic Act No. 9262 is an expression of this commitment. The law protects women with the goal of restoring equality, rather than reinforcing harmful gender roles that have long pervaded our society.

Men have traditionally been portrayed as stronger and more superior, while women are depicted as weak and subordinate:

Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on

subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And [violence against women] is a form of men's expression of controlling women to retain power.[8] (Citation omitted)

In Filipino culture, the husband is called "haligi ng tahanan," or the strong pillar who establishes the home. Men are culturally expected to provide for their families. Meanwhile, the wife is referred to as "ilaw ng tahanan," because she is expected to be the warm, guiding light of the home who must take on the role of bearing and raising the children.

In the past, women were forced to stay home and were not allowed to pursue education and employment. However, recent statistics show that society appears to have improved in this regard:

On the labor front, the Philippine labor force (15 years old and above) numbered 40,426,000 in 2012 (64.2% of the population), 61% of whom were males and 39% of whom were females. The labor force participation rate ("LFPR") of females increased significantly from 30.6% in 1970 to 50% in 2012. While the LFPR took a downward trend in 2013, from 64.2% to 63.9%, the decrease was more pronounced among the male labor workforce.

In 1974, 36.6% of the women in the labor force were engaged in agriculture and related work. Over the years, however, the number of workers employed in the service sector has overtaken the number of workers employed in the agricultural sector, such that employment has been driven by the service sector. In 2012, when the number of women employed stood at 14,751,000, 28% were in the service sector, particularly wholesale and retail trade; 20% in the agricultural sector; 10.3% in other service activities; and lastly, 9% in the industry sector, mainly in manufacturing industry. Thus, women in the industry and service sectors combined to outnumber women in agricultural sector. Nevertheless, the agricultural sector continues to play an important role in employment and in job creation.

Statistics show that women's share in professional and managerial positions is steadily increasing, although the rate of progress is slow. In 2012, 14,751 of 37,600 or 39.2% of employed persons in major occupation groups were women. Of the 14,751 women employed, only 11.6% of these were employed as professionals, technicians, and associate professionals, while 18% were women employed as corporate executives, managers, and supervisors. These data show that women are still markedly under-represented in managerial jobs compared to the overall share of their employment.[9]

Yet even though women make up a large portion of the work force, they are still somehow expected to take primary responsibility for childcare and the management of the home. Professor E. (Leo) D. Battad observed:

In a society that expects women to take care of the children and do household chores, working women confront the problem of a double-burden, or even multiple burdens in terms of longer hours of work and a wider breadth of responsibility.[10]

There is also the idea that only certain professions are suitable for women and vice versa:

Then there is also the pre-employment practice of sex-based preferences in the hiring phase. Women and men continue to experience discriminatory practices in advertisements through sex-based preferences, thereby reinforcing the traditional stereotypes of "women's work" and "men's work." This practice, in effect, limits the worker's choices and access to employment opportunities.

The lack of protection in the pre-employment phase contributes to the phenomenon of occupation segregation. The equality of pay between men and women is compromised due to existing practices of exclusion or preference for either worker for particular work or occupation. Also, there is an absence of affirmative actions to combat occupation segregation, such as introducing schemes that would encourage women and men to enter in nontraditional skills or occupation.[11]

Even the courts are not immune to prejudices and biases against women.[12] In *Maxey v. Court of Appeals*,[13] this Court, despite its intent to uphold a woman's property rights, perpetuated the traditional gender role of wives as the spouse who manages the affairs of the household.[14] This Court stated that "[t]he major, if not the full[,] responsibility of running the household remains with the woman. She is the administrator of the household." [15]

Further, the conduct and language of some judges towards women reveals their prejudices and lack of gender sensitivity.[16] This Court has only recently revisited the "woman's honor" doctrine where it says that "no young Filipina of decent repute would publicly admit that she has been sexually abused, unless that is the truth, for it is her natural instinct to protect her honor." [17] We advocated against the Maria Clara stereotype of a demure and reserved Filipino woman and in favor of the evaluation of the testimony of a private complainant of rape without gender bias or cultural misconception.[18] The credibility of a private complainant's testimony should not be affected just because they are not the fictitious and generalized demure girl, or the epitome of the Maria Clara Stereotype, especially when their testimony is supported by the other pieces of evidence presented in the case.[19]

In *Kane v. Roggenkamp*, [20] this Court called out a Regional Trial Court judge's apparent severe lack of gender sensitivity. The trial court judge acquitted the husband who was charged with physically abusing his wife under Republic Act No. 9262. Primarily, the trial court judge asserted that the woman chose to conceal her lover's abuse.[21] According to him, "the hesitation of the woman to immediately leave her lover is an unnatural act and, hence, unbelievable." [22] This Court then noted that "[a] more enlightened interpretation of the evidence" requires "a less caricaturized, less patriarchal set of assumptions." [23]

Republic Act No. 9262 was enacted to recognize the systemic presence of patriarchy in our society, and how this contributes to the abuse of women. The law acknowledges that women are more often the victims of domestic abuse not because they are inherently weaker, but because of the unequal power relationship between women and men.[24] As a result, the widespread gender bias and prejudice against women have historically hampered their growth, forcing them into subordination to men.[25]

This Court discussed the deep historical roots of unequal power relations between women and men in *Estacio v. Estacio*: [26]

Hence, Republic Act No. 9262 has been upheld as a valid law meant to address this historical and societal problem.

This unequal power relation is better understood when one considers its deep historical roots:

The perspective portraying women as victims with a heritage of victimization results in the unintended consequence of permanently perceiving all women as weak. This has not always been accepted by many other strands in the Feminist Movement.

As early as the 70s, the nationalist movement raised questions on the wisdom of a women's movement and its possible divisive effects, as "class problems deserve unified and concentrated attention [while] the women question is vague, abstract, and does not have material base."

In the early 80s, self-identifying feminist groups were formed. The "emancipation theory" posits that female crime has increased and has become more masculine in character as a result of the women's liberation movement.

Feminism also has its variants among Muslims. In 2009, Musawah ("equality" in Arabic) was launched as a global movement for equity and justice in the Muslim family. It brought together activists, scholars, legal practitioners, policy makers, and grassroots women and men from all over the world. Their belief is that there cannot be justice without equality, and its holistic framework integrates Islamic teachings, universal human rights, national constitutional guarantees of equality, and the lived realities of women and men.[27] (Citations

omitted)

This historical inequality between women and men leads to women being abused and the abuse going unpunished, even subjecting them to "double victimization" — first by the offender and then, by the legal system.[28]

Patriarchy becomes encoded in our culture when it is normalized.[29] The more it pervades our culture, the greater its chances of infecting the current and the future generation.[30] In *People v. Jumawan*,[31] this Court said:

The Philippines, as State Party to the [Convention on the Elimination of All Forms of Discrimination Against Women], recognized that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between them. Accordingly, the country vowed to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.[32] (Citation omitted)

Courts, like all other government departments and agencies, must ensure the fundamental equality of women and men before the law.[33] In our pursuit of equality, we need to acknowledge and dismantle the "obstacle[s] to the full realization of the potentialities of women." [34]

Nevertheless, it is also improper to think that women are always victims.[35] This will only reinforce their already disadvantaged position.[36] The perspective that portrays women as victims with a history of victimization results in the unintended consequence of permanently perceiving all women as weak.[37] Indisputably, to consider women as the weaker sex is discriminatory.[38]

Laws such as Republic Act No. 9262 are intended to negate the patriarchy in our culture,[39] not to bolster it. In safeguarding the interests of women as a discriminated class, we must be careful not to perpetuate the very prejudices and biases that contribute to their discrimination.

There is now more space to believe that portraying only women as victims will not always promote gender equality before the law.[40] It sometimes aggravates the gap by conceding that women have always been dominated by men.[41]

Societal norms and traditions dictate people to think that men are leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society.[42] If Sections 5(e) and 5(i) of Republic Act No. 9262 are interpreted to mean that the accused man's failure or inability to provide financial automatically entails criminal liability, then this depiction will be reinforced rather than corrected. This confirms the false idea that women are incapable of supporting themselves and their families. Applied correctly, Sections 5(e) and 5(i) of Republic Act No. 9262 should not result in the over-patronage of women.

The Constitution requires the State to recognize the role of women in nation building.[43] This role is not confined to child-rearing, honorable as motherhood may be. It is entirely possible that the woman in the sexual or dating relationship is more financially capable than the man. Consistent with the spouses' mutual obligation to provide support under the Family Code,[44] the duty to provide financial support should not fall on the man alone. His mere failure or inability to provide financial support should not be penalized as a crime, especially when the woman is more financially capable.

We should not, however, go as far as denying the existence of patriarchal dominance in many social relationships.[45] Courts must continue to be sensitive to the power relations that come clothed in gender

roles.[46] Gender roles in patriarchy may be detrimental to men as well. For instance:

Social and cultural expectations on masculinity and male dominance urge men to keep quiet about being a victim, adding to the unique experience of male victims of domestic abuse. This leads to latent depression among boys and men. In a sense, patriarchy while privileging men also victimizes them.[47]

Persons who do not conform to traditional gender roles find themselves excluded from the hegemony and underrepresented in society:

Those with sexual orientations other than the heteronormative, gender identities that are transgender or fluid, or gender expressions that are not the usual manifestations of the dominant and expected cultural binaries — the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community — have suffered enough marginalization and discrimination within our society.[48]

Truth be told, our law cruelly defines the normal.[49] This Court has started to take steps to address this where possible. In a concurring opinion from *Republic v. Manalo*,[50] we have acknowledged that couples of all genders may constitute loving families:

The restrictive nature of our marriage laws tends to reify the concept of a family which is already far from the living realities of many couples and children. For instance, orthodox insistence on heteronormativity may not compare with the various types of care that various other "non-traditional" arrangements present in many loving households.

The worst thing we do in a human relationship is to regard the commitment of the other formulaic. That is, that it is shaped alone by legal duty or what those who are dominant in government regard as romantic. In truth, each commitment is unique, borne of its own personal history, ennobled by the sacrifices it has gone through, and defined by the intimacy which only the autonomy of the parties creates.

In other words, words that describe when we love or are loved will always be different for each couple. It is that which we should understand: intimacies that form the core of our beings should be as free as possible, bound not by social expectations but by the care and love each person can bring.[51]

In *Republic v. Cagandagan*,[52] this Court upheld the trial court's allowance of the respondent's change of name and recognized the situation of intersex individuals:

In the absence of a law on the matter, the Court will not dictate on respondent concerning a matter so innately private as one's sexuality and lifestyle preferences, much less on whether or not to undergo medical treatment to reverse the male tendency due to CAH. The Court will not consider respondent as having erred in not choosing to undergo treatment in order to become or remain as a female. Neither will the Court force respondent to undergo treatment and to take medication in order to fit the mold of a female, as society commonly currently knows this gender of the human species. Respondent is the one who has to live with his intersex anatomy. To him belongs the human right to the pursuit of happiness and of health. Thus, to him should belong the primordial choice of what courses of action to take along the path of his sexual development and maturation. In the absence of evidence that respondent is an "incompetent" and in the absence of evidence to show that classifying respondent as a male will harm other members of society who are equally entitled to protection under the law, the Court affirms as valid and justified the respondent's position and his personal judgment of being a male.

In so ruling we do no more than give respect to (1) the diversity of nature; and (2) how an individual deals with what nature has handed out. In other words, we respect respondent's congenital condition and his mature decision to be a male. Life is already difficult for the ordinary person. We cannot but respect how respondent deals with his unordinary state and thus help make his life easier, considering the unique circumstances in this case.[53] (Citation omitted)

Recently, this Court promulgated the Rules on the Use of Gender-Fair Language in the Judiciary and Gender-Fair Courtroom Etiquette^[54] in an effort not to "perpetuate gender stereotypes, which rest on unfounded generalizations regarding the characteristics and roles of binary and non-binary genders, but indisputably influence the perspectives of the judges and litigants alike."^[55]

We continue to fight toward genuine and meaningful equality for men and women, as well as those who are non-binary. It is vital to this movement that we take apart the structures that perpetuate the abuse of women. The doctrines in *Melgar* and *Reyes* now abandoned by this Court are among these harmful structures.

ACCORDINGLY, I vote to GRANT the Petition.

[1] 826 Phil. 177 (2018) [Per J. Perlas-Bernabe, Second Division].

[2] G.R. No. 232678, July 3, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65240>> [Per J. Peralta, Third Division].

[3] *Azcueta v. Republic*, 606 Phil. 177, 199 (2009) [Per J. Leonardo-De Castro, First Division].

[4] *Ponencia*, p. 21.

[5] CONST., art. II, sec. 14.

[6] G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division].

[7] *Id.*

[8] *Garcia v. Drilon*, 712 Phil. 44, 91-92 (2013) (Per J. Perlas-Bernabe, En Banc).

[9] E. (Leo) D. Battad, Review, *The Continuing Narrative of the Economic Emancipation of Filipino Working Women*, 88 PHIL. L. J. 601, 601-602 (2014).

[10] *Id.* at 614-615.

[11] *Id.* at 618.

[12] *Id.*

[13] 214 Phil. 160 (1984) [Per J. Gutierrez, Jr., First Division].

[14] *Id.*

[15] *Id.*

[16] See *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc] citing *Benancillo v. Amila*, 660 Phil. 286 (2011) [Per J. Del Castillo, First Division].

[17] *People v. Amarela*, G.R. Nos. 225642-43, January 17, 2018, 852 SCRA 54 [Per J. Martires, Third Division], citing *People v. Gan*, 150-B Phil. 593 (1972) [Per J. Antonio, First Division]; *People v. Sarmiento*, 183 Phil. 499 (1979) [Per CJ. Fernando, Second Division]; *People v. Gamez*, 209 Phil. 209 (1983) [Per J. Gutierrez, Jr., First Division]; *People v. Quidilla*, 248 Phil. 1005 (1988) [Per Regalado, Second Division]; *People v. Fabro*, 269 Phil. 409 (1990) (Per J. Melencio-Herrera, Second Division), citing *People v. Sambangan*, 211 Phil. 72 (1983) [Per J. Concepcion, Second Division]; *People v. Patilan*, 274 Phil. 634 (1991) [Per J. Davide, Jr., Third Division], citing *People v. Ramilo*, 230 Phil. 342 (1986) [Per J. Gutierrez, Jr., Second Division]; *People v. Esquila*, 324 Phil. 366

(1996) [Per J. Melo, Third Division]; *People v. Manahan*, 374 Phil. 77 (1999) [Per J. Bellosillo, En Banc]; *People v. Dreu*, 389 Phil. 429 (2000) [Per J. Mendoza, Second Division], citing *People v. Barcelona*, 382 Phil. 46 (2000) [Per J. Mendoza, Second Division]; *People v. Durano*, 548 Phil. 383 (2007) [Per J. Ynares-Santiago, Third Division], citing *People v. Domingo*, 297 Phil. 167 (1993) (Per J. Regalado, Second Division); and *People v. Madsali*, 625 Phil. 431 (2010) [Per J. Peralta, Third Division], citing *People v. Loyola*, 404 Phil. 71 (2001) [Per J. Pardo, First Division].

[18] *Id.*

[19] *Perez v. People*, 830 Phil. 162 (2018) [Per J. Leonen, Third Division].

[20] G.R. No. 214326, July 6, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66520>> [Per J. Leonen, Third Division].

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Estacio v. Estacio*, G.R. No. 211851, September 16, 2020 [Per J. Leonen, Third Division].

[25] *Id.* citing *Garcia v. Drilon*, 712 Phil. 44, 85 (2013) [Per J. Perlas-Bernabe, En Banc].

[26] G.R. No. 211851, September 16, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66987>> [Per J. Leonen, Third Division].

[27] *Id.*

[28] *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

[29] *Alanis III v. Court of Appeals*, G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division], citing J. Leonen, Concurring Opinion in *Re: Untian, Jr., A.C. No. 5900 (Resolution)*, April 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65162>> [Per J. A. Reyes, Jr., En Banc].

[30] *Id.*

[31] 733 Phil. 102 (2014) [Per J. Reyes, First Division].

[32] *Id.*

[33] *Alanis III v. Court of Appeals*, G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division].

[34] United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

[35] *Estacio y Salvosa v. Estacio y Santos*, G.R. No. 211851, September 16, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66987>> [Per J. Leonen, Third Division].

[36] *Id.*

[37] J. Leonen, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

[38] *Toliongco v. Court of Appeals*, G.R. No. 231748, July 8, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66544>> [Per J. Leonen, Third Division].

- [39] J. Leonen, Concurring and Dissenting Opinion in Anonymous Complaint v. Dagala, 814 Phil. 103 (2017) [Per Curiam, En Banc].
- [40] J. Leonen, Concurring Opinion in Garcia v. Drilon, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].
- [41] Id.
- [42] Garcia v. Drilon, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].
- [43] CONST., art. II, sec. 14. See also Republic Act No. 9710 (2009), sec. 2.
- [44] FAMILY CODE, art. 68.
- [45] Perez v. People, 830 Phil. 162 (2018) [Per J. Leonen, Third Division].
- [46] Id.
- [47] J. Leonen, Concurring Opinion in Garcia v. Drilon, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].
- [48] Falcis III v. Civil Registrar General, G.R. No. 217910, September 3, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744>> [Per J. Leonen, En Banc].
- [49] J. Leonen, Concurring Opinion in Republic v. Manalo, G.R. No. 221029, April 24, 2018, 862 SCRA 580 (2018) [Per C.J. Peralta, En Banc].
- [50] Id.
- [51] Id. at 632.
- [52] Republic v. Cagandahan, 586 Phil. 637 (2008) [Per J. Quisumbing, Second Division].
- [53] Id. at 651-652.
- [54] A.M. No. 21-11-25-SC, February 15, 2022, <<https://sc.judiciary.gov.ph/24882/>>.
- [55] Id.

CONCURRING OPINION

LAZARO-JAVIER, J.:

I agree for the most part with the ponencia of the learned Justice Alfredo Benjamin S. Caguioa. I also thank him for graciously accommodating some of my views in this case, especially the relevance of the civil law on support in determining liability for violation of Section 5 (i) of Republic Act No. 9262 (RA 9262). I, nonetheless, advance the following viewpoints with the hope of providing an analytical framework for the judges of the Family Courts and designated Family Courts to work with.

The analytical framework I most respectfully suggest is not an original one. It is basically a reiteration of what first year law students have been taught when analyzing a criminal fact-pattern or case for that matter.

We start every analysis with the basic elements of the subject crime. We organize our thought process according to the established categories of actus reus and where applicable mens rea. Here, both are applicable and will be discussed to arrive at a reasoned disposition.

Why is this framework extremely important? This is because at times the statutory definition of a crime could be

confusing. The analysis often begins with the elements of the crime. There is nothing wrong with that if the analysis takes full account of the legal requirement that the elements must correspond to a criminal act, conduct and/or circumstances (the *actus reus*) and a criminal state of mind (the *mens rea*). This framework is consistent with the very definition of what a crime is – *actus non facit reum, nisi mens sit rea*. That is, except for strict liability crimes, evil intent must unite with an unlawful act for a crime to exist.

The extreme importance of this reference to the elements of a crime is illustrated in the considered view of the esteemed Senior Associate Justice Estella M. Perlas-Bernabe that the mental or emotional suffering of the victim is not a result of the criminal act but an element of the intent in the doing of such criminal act. Senior Associate Justice Perlas-Bernabe thus rejected the formulation in *Dinamling v. People*[1] that the third element of the offense of Section 5 (i) of RA 9262 is that the "offender causes on the woman and/or child mental or emotional anguish."

Her point of view is doubtless correct. With due respect, however, her formulation is not the entirety of the elements of Section 5 (i). She is correct that mental or emotional anguish is an integral part of the criminal state of mind (i.e., the *mens rea*) in the definition of Section 5 (i).

Still, *Dinamling* is correct too that mental or emotional anguish is also an integral part of the criminal act, conduct and/or circumstances (i.e., the *actus reus*) penalized by Section 5 (i). If there was no mental or emotional anguish, or if there was but it was not caused by any of the mentioned predicate criminal acts, there is no violation of Section 5 (i). So it is not entirely fruitful to eliminate, as the good Senior Associate Justice recommends, the third element of Section 5 (i) as identified in *Dinamling* because mental or emotional anguish is both integral parts of the *mens rea* (as the good Senior Associate Justice correctly observes) and the *actus reus* (as *Dinamling* rightly mentions).

Of course, the enumeration of the elements of Section 5 (i) in *Dinamling* is deficient because it fails to account for the *mens rea* component of mental or emotional anguish as properly commented by Senior Associate Justice Perlas-Bernabe. Nowhere in *Dinamling* was it mentioned that there must be that specific criminal intent to cause mental or emotional anguish. While Section 5 (i) is a special law, and generally crimes under a special law are erroneously lumped together as *mala prohibita*, it does not mean that Section 5 (i) requires no mental element. The reason is simply that the text of this provision calls for a mental element. Indeed, if the definition of a crime is not broken into its elements, and by elements, we mean the *actus reus* and the *mens rea*, we would fall into the same deficiencies as the listing of elements in *Dinamling* illustrates.

Hence, it is extremely important that the analytical framework in determining whether a crime has been committed by an accused and whether the prosecution has proven this crime and its commission by the accused beyond reasonable doubt, we must examine the facts if they fit into the elements of the crime charged, that is, if the facts demonstrate the commission of the *actus reus* and the presence of the *mens rea*.

The Elements of a Crime

The crimes defined in Section 5 (e) and Section 5 (i) of RA 9262 are crimes punished by a special law. But these crimes are not *malum prohibitum* just because they are offenses defined and punished by a special law. These crimes require as an element the presence of *mens rea*.

I digress a bit to quote the renowned Justice Regalado who abhorred this classification of crimes into *mala in se* and *malum prohibitum*, which I passionately shared in one[2] of my opinions:

4. Nor should we hold a "judicial prejudice" from the fact that the two forms of illegal possession of firearms in Presidential Decree No. 1866 are *mala prohibita*. On this score, I believe it is time to disabuse our minds of

some superannuated concepts of the difference between mala in se and mala prohibita. I find in these cases a felicitous occasion to point out this misperception thereon since even now there are instances of incorrect assumptions creeping into some of our decisions that if the crime is punished by the Revised Penal Code, it is necessarily a malum in se and, if provided for by a special law, it is a malum prohibitum.

It was from hornbook lore that we absorbed the distinctions given by text writers, claiming that: (1) mala in se require criminal intent on the part of the offender; in mala prohibita, the mere commission of the prohibited act, regardless of intent, is sufficient; and (2) mala in se refer to felonies in the Revised Penal Code, while mala prohibita are offenses punished under special laws.

The first distinction is still substantially correct, but the second is not accurate. In fact, even in the Revised Penal Code there are felonies which are actually and essentially mala prohibita. To illustrate, in time of war, and regardless of his intent, a person who shall have correspondence with a hostile country or territory occupied by enemy troops shall be punished therefor. An accountable public officer who voluntarily fails to issue the required receipt for any sum of money officially collected by him, regardless of his intent, is liable for illegal exaction. Unauthorized possession of picklocks or similar tools, regardless of the possessor's intent, is punishable as such illegal possession. These are felonies under the Revised Penal Code but criminal intent is not required therein.

On the other hand, I need not mention anymore that there are now in our statutes so many offenses punished under special laws but wherein criminal intent is required as an element, and which offenses are accordingly mala in se although they are not felonies provided for in the Code.[3]

Originally, a crime was considered to be the commission of a physical act which was specifically prohibited by law. It was the act itself which was the sole element of the crime. If it was established that the act was committed by an accused, then a finding of guilt would ensue.

As early as the twelfth century, however, in large part through the influence of the canon law, it was established that there must also be a mental element combined with the prohibited act to constitute a crime. That is to say that an accused must have meant or intended to commit the prohibited act. The physical act and the mental element which together constitute a crime came to be known as the *actus reus* denoting the act, and the *mens rea* for the mental element.

Violations of Section 5 (e) and Section 5 (i) have the requisite *actus reus* and *mens rea* elements. In deciding the merits of a criminal case, the analysis should always start from and refer to these elements and not from anywhere or to anything else.

The following excerpt from *Valenzuela v. People*, G.R. No. 160188, June 21, 2007, supplies the rationale for this starting point of every criminal case analysis:

The long-standing Latin maxim "*actus non facit reum, nisi mens sit rea*" supplies an important characteristic of a crime, that "ordinarily, evil intent must unite with an unlawful act for there to be a crime," and accordingly, there can be no crime when the criminal mind is wanting. Accepted in this jurisdiction as material in crimes mala in se, *mens rea* has been defined before as "a guilty mind, a guilty or wrongful purpose or criminal intent," and "essential for criminal liability." It follows that the statutory definition of our mala in se crimes must be able to supply what the *mens rea* of the crime is, and indeed the U.S. Supreme Court has comfortably held that "a criminal law that contains no *mens rea* requirement infringes on constitutionally protected rights." The criminal statute must also provide for the overt acts that constitute the crime. For a crime to exist in our legal law, it is not enough that *mens rea* be shown; there must also be an *actus reus*.

It is from the *actus reus* and the *mens rea*, as they find expression in the criminal statute, that the felony is produced. As a postulate in the craftsmanship of constitutionally sound laws, it is extremely preferable that the

language of the law expressly provide when the felony is produced. Without such provision, disputes would inevitably ensue on the elemental question whether or not a crime was committed, thereby presaging the undesirable and legally dubious set-up under which the judiciary is assigned the legislative role of defining crimes. Fortunately, our Revised Penal Code does not suffer from such infirmity. From the statutory definition of any felony, a decisive passage or term is embedded which attests when the felony is produced by the acts of execution. For example, the statutory definition of murder or homicide expressly uses the phrase "shall kill another," thus making it clear that the felony is produced by the death of the victim, and conversely, it is not produced if the victim survives.

Actus reus is the act (or sometimes an omission or state of affairs) indicated in the definition of the offense charged together with (1) any consequences of that conduct which are indicated by that definition; and (2) any surrounding circumstances so indicated (other than references to the mens rea or element of negligence required on the part of the defendant, or to any defense).[4]

In addition to a physical element consisting of committing a prohibited act, creating a prohibited state of affairs, or omitting to do that which is required by the law, the actus reus requires the conduct in question to be willed; this is usually referred to as voluntariness. The doing of the prohibited act or conduct must involve a mental element. It is this mental element, that is the act of will, which makes the act or conduct willed or voluntary.

On the other hand, mens rea is the subjective or mental element of an accused's intention to commit a crime, or knowledge that an accused's action or lack of action would cause a crime to be committed, or willful blindness or recklessness that an accused's actus reus would cause a crime to be perpetrated.

But mens rea, properly understood, does not encompass all of the mental elements of a crime. As stated, the actus reus has its own mental element; the act must be the voluntary act of an accused for the actus reus to exist.

Mens rea, on the other hand, refers to the guilty mind, the wrongful intention, of an accused. Its function in criminal law is to prevent the conviction of the morally innocent – those who do not understand or intend the consequences of their acts.

Mens rea is a contemporaneous mental element comprising an intention to carry out the prohibited physical act or omission to act; that is to say a particular state of mind such as the intent to cause, or some foresight of, the results of the act or the state of affairs.

Thus, typically, mens rea is concerned with the mental element accompanying the consequences of the prohibited actus reus.

The prosecution always bears the burden of proving the actus reus, the mental element of voluntariness of the actus reus, and the mens rea mental element. Therefore, in certain situations, a person who committed a prohibited physical act still could not be found guilty. A number of examples come to mind.

For instance, if a person in a state of automatism as a result of a blow on the head committed a prohibited act that this person was not consciously aware of committing, the latter could not be found guilty. The mental element involved in committing a willed voluntary act and the mental element of intending to commit the act were absent. Thus neither the requisite actus reus or mens rea for the offense was present.

The result would be the same in the case of an accused who had an unexpected reaction to medication which rendered this person totally unaware of the latter's actions. Similarly, if an accused, during an epileptic seizure, with no knowledge of what this person was doing, shot and killed a victim, this accused could not be found guilty of killing since both the ability to act voluntarily and the mental element of the intention to kill were absent.

In all these instances, though the accused committed the actus reus, the latter simply could not have formed the

requisite mental elements of voluntariness in the performance of the prohibited act or omission and intention to commit the prohibited act.

The statutory definition generally furnishes the elements of each crime and the elements in turn unravel the particular requisite acts of execution and accompanying criminal intent.[5]

The Elements of Section 5 (i) in relation to Section 3 (a) (C)

i. Actus Reus of Violation of Section 5 (i)

The starting point is the statutory definition in Section 5(i) of RA 9262:

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....

(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 denial of access to the woman's child/children.

In relation to Section 5 (i) is Section 3 (a) (C) of RA 9262:

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

(a) "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 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, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts...

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 marital 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.

From this definition, the actus reus of this offense consists of the –

(i)

relationship between an accused and offended parties, that is, 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 whether legitimate or illegitimate, within or without the family abode.

(ii)

denial of financial support to those entitled to receive financial support and to whom an accused is obliged to give financial support.

a.

The act is the deliberate withholding of the provision of financial support.

b.

The consequence of the act is the absence or inadequacy of financial support as defined by law for those entitled to be supported by the accused, since the complainant cannot compensate for the support denied to the complainant and/or their children by the accused.

(iii)

Legal entitlement to support and legal obligation (i.e., concurrence of capacity and need) to provide support.

(iv)

Mental or emotional anguish or likelihood or probability of mental or emotional anguish on the part of those entitled to receive financial support and to whom an accused is obliged to give financial support.

(v)

causation or likely causation of the mental or emotional anguish by the accused's denial of financial support.

Let me expound on each of these components of the actus reus.

(i)

relationship between an accused and offended parties, that is, 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 whether legitimate or illegitimate, within or without the family abode.

This is an objective element.

The presence of this element is not determined from a subjective (an accused's or a complainant's) perspective but from these objective or real world circumstances: (a) having a common child; (b) having engaged in a single sexual act which may or may not result in the bearing of a common child (sexual relations); or (c) having lived together without the benefit of marriage as if spouses or having been involved romantically over time and on a continuing basis during the course of their relationship, but excluding casual acquaintance or ordinary socialization between two individuals in a business or social context (dating relationship).

For purposes of establishing the actus reus, no other mental element than voluntariness has to be proved.

To clarify, it is not required that an accused or a complainant intended or was purposely involved, or knew that they were, in any of these types of relationship. It is enough that the prosecution established that they voluntarily had a child, engaged in a single sexual act, lived together as if spouses, or bonded themselves romantically continuously over a period of time.

(ii)

denial of financial support to those entitled to receive financial support and to whom an accused is obliged to give financial support.

This actus reus has two components: (a) an act and (b) a consequence.

The act, as correctly defined by Justice Caguioa, is the deliberate withholding of the provision of financial

support.

The consequence thereof is the absence or inadequacy of financial support as defined by law (i.e., Article 194, Family Code: "Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family") for those entitled to be supported by the accused, since the complainant cannot compensate for the support denied to the complainant and/or their children by the accused.

The test in establishing this actus reus is objective.

The presence of this element is not determined from a subjective (an accused's or a complainant's) perspective but from objective or real world circumstances.

The relevant objective circumstances to establish this actus reus include:

- subject-matter of the needed sustenance, dwelling, clothing, medical attendance, education and transportation;
- amounts required to pay for the foregoing support items;
- the claimed support items vis-à-vis the financial capacity of the family prior to the withholding of the provision of financial support;
- demand to an accused to pay financial support;
- capacity of an accused to give support;
- non-provision or partial provision of financial support; and
- absent or inadequate financial support on the part of the obligees of the support since the woman is unable to compensate for the denied support by the accused.

Notably, there is a legal obligation to provide support only if there is a concurrence between the capacity to give support and the need to be supported. If there is no such legal obligation, there can be no actus reus of deliberately withholding financial support because there is really nothing to withhold. Also, if there is no legal obligation to give support, the act of denying financial support cannot be a criminal act since there is no legal mandate to do so.

There are two legitimate issues on this actus reus:

(a)

whether the act component of the actus reus of denial of financial support refers to the denial of full or partial financial support.

Hence, if an accused, during the period alleged in the Information, provided some support for a portion or the entirety of this period, would he still be liable for violation of Section 5 (i)?

My short answer to this issue is that the quantum of support denied by an accused is not material. This is because the language of the statute does not make such distinction.

Further, the purpose of the law is to redress a complainant's mental or emotional anguish and deter others from causing it. The proposed distinction should not be allowed because a denial of either a full or partial support could still potentially result in such prejudice.

(b)

whether the actus reus of denial of financial support has really a consequence component, that is, the act of

denial of support should result in the absence or inadequacy of financial support to those entitled to be supported, that is, the financial support to the woman and/or the children would be absent or at least insufficient as a result of the accused's denial of support.

Or, whether it is enough that an accused denied support regardless of the consequence or impact of the denial of support.

As already mentioned above, this actus reus has both an act and consequence components. The act of denial of support must have the consequence of depriving the woman and/or their children in whole or in part of the needed support as the woman is unable to compensate for the accused's denied support.

Therefore, if the woman is able to provide the needed support for herself and/or their children, and the accused's denial of support has no prejudicial impact upon the obligees' support, then there is no violation of Section 5 (i) of RA 9262, even if the woman is mentally or emotionally anguished by the accused's apparent finagling of the woman in terms of not sharing in the support obligations.

The rationale for the consequence component of this actus reus is the policy behind RA 9262.

Section 2 states that the statute is designed to value the dignity of women and children, to guarantee full respect for their human rights, to recognize the need to protect women and children from violence and threats to their personal safety and security.

If the woman is able to provide adequate financial support to herself and/or the children sans the accused's financial support, the policy behind RA 9262 is not at all implicated.

This is because, if the woman and the children are financially secure despite the accused's denial of financial support, there is no impairment of their dignity or violation of their human rights or their personal security. The woman's remedy in this instance is not under RA 9262 but under the civil laws on support as well as her access to and liquidation and dissolution of their property relations if any.

Another rationale is that the legal obligation to give financial support entails the concurrence of the capacity to provide financial support and the need to be supported. If there is no legal obligation to give financial support, the act of denying financial support cannot be a criminal act because there is no legal compulsion to extend financial support.

This actus reus of denial of support has two mental elements – the voluntary mental element of the actus reus and the mens rea mental element.

The mens rea element will be discussed below.

As regards the voluntariness of the act, this means the prosecution has to establish that the accused was not forced to deny financial support due to lack of resources, other legal obligations and other circumstances beyond the accused's control or discretion preventing the accused from providing financial support.

(iii)

Legal entitlement to support and legal obligation (i.e., concurrence of capacity and need) to provide support

This actus reus is an objective element. This is determined by the civil laws on support. Neither an accused nor a complainant can determine for themselves who is entitled to support and who is obliged to give support. The civil laws provide the answer. Accordingly, the legal obligation to provide support requires the concurrence of an accused's capacity to provide support and an obligee's need for support.

(iv)

Mental or emotional anguish or likelihood or probability of mental or emotional anguish itself, on the part of those entitled to receive financial support and to whom an accused is obliged to give financial support.

This actus reus has both subjective and objective components.

Mental or emotional anguish is subjective if the woman and/or her children with the accused has/have attested to its existence, that is, they testify that they are in fact suffering from mental or emotional anguish.

As held in *Dinamling v. People*, 761 Phil. 356 (2015), this element is proven by the testimonies of the complainant woman and/or children since the mental or emotional anguish is personal to them.

If the complainants testify to this effect, they have established halfway this actus reus. The other half is determined by the credibility of this claim that must then be examined on the totality of the evidence in the case.

Mental or emotional anguish is objective if the claim is limited to the likelihood or probability of mental or emotional anguish of the woman and/or her children with the accused. To be liable for violation of Section 5 (i), among other requisites, the mental or emotional anguish need not exist as a fact but there must at least be the likelihood or probability of its occurrence according to the perspective of reasonable persons in the situation of the woman and/or her children.

Note that this actus reus of the likelihood or probability of mental or emotional anguish is found textually in Section 3 (a) (C) of RA 9262 and not in the text of Section 5 (i). Nonetheless, since Section 5 (i) must be read in relation to Section 3 (a) (C), this particular component of the actus reus is deemed written into the statutory definition of the crime under Section 5 (i).

(v)

causation or likely causation of the mental or emotional anguish by the accused's denial of financial support.

This actus reus has both subjective and objective components.

The causation of mental or emotional anguish by the accused's denial of financial support is subjective if the woman and/or her children with the accused has/have attested to the existence of this causation, that is, they testify that they are in fact suffering from mental or emotional anguish as a result of the accused's denial of financial support.

If the complainants testify to this effect, they have established halfway this actus reus. The other half is determined by the credibility of this claim that must then be examined on the totality of the evidence in the case.

This causation of the mental or emotional anguish is objective if the claim is limited to the likelihood or probability of the causation of mental or emotional anguish by the accused's denial of financial support.

Causation need not exist as a fact but there must at least be the likelihood or probability of this causation according to the perspective of reasonable persons in the situation of the woman and/or her children.

The causal relationship required by the law is that the mental or emotional anguish need not only be factual or consummated by the accused's denial of support but also be likely or probable to happen as a result of the denial of financial support.

This actus reus of the likelihood or probability of the causation of mental or emotional anguish is found textually in Section 3 (a) (C) of RA 9262 and not in the text of Section 5 (i). Nonetheless, since Section 5 (i) must be read in relation to Section 3 (a) (C), this specific actus reus is deemed written into the statutory definition of the crime under Section 5 (i).

Notably, the actus reus of denial of financial support has both act and consequence components. The emotional or mental anguish must be caused by the ultimate consequence of the denial of financial support, which is the absence or inadequacy of support that cannot be compensated by the woman's own resources. This connection among these components of the actus reus may be illustrated as follows:

(image should be here)

Conversely, if the mental or emotional anguish is not due to or likely to be due to the absence or inadequacy of support, since the woman is able to provide ample support or since the woman is bothered by something else, then Section 5 (i) is not the proper remedy for the woman and/or their children.

There is a mental element to this actus reus but this is found in the mens rea element of Section 5 (i) – the accused's intention and purpose to inflict such mental or emotional anguish upon the woman and/or their children or the willful blindness or recklessness of the accused's conduct in not recognizing that the act of denying financial support would probably or likely cause such mental or emotional anguish on their part.

ii. Mens rea of Violation of Section 5 (i)

While RA 9262 defines an offense punishable by a special law, violation of Section 5 (i) in relation to Section 3 (a) (C) nonetheless requires a mens rea element.

The mens rea has three components:

(i)

the specific intent of an accused to deny financial support to the obligees of support, which requires as stated the mental element of voluntary performance of this act and the intention, purpose and knowledge to do so.

(ii)

the specific intent of an accused to cause the absence or inadequacy of financial support on the part of the obligees of support, which requires not only the mental element of voluntary performance of the act of denying financial support but also the intention, purpose and knowledge to accomplish such consequence of the act of denying support; the absence or inadequacy of financial support on the part of the obligees of support must be a fact – they must in fact be in need of the accused's financial support,

(iii)

the specific intent to cause or to likely cause the obligees' mental or emotional anguish due to the accused's denial of financial support and its consequence of absence or inadequacy of financial support.

Note that the third specific intent requirement of to cause likely is found textually in Section 3 (a) (C) of RA 9262 and not in the text of Section 5 (i). But since Section 5 (i) must be read in relation to Section 3 (a) (C), this specific intent is deemed written into the statutory definition of the crime under Section 5 (i).

This mental element consists of the accused's intention and purpose to cause or inflict such mental or emotional anguish upon the woman and/or their children by denying them financial support. This is the mental element required where mental or emotional anguish is actually suffered by them.

Alternatively, the mental element may also be the accused's willful blindness or recklessness in pursuing the act of denying financial support and not recognizing that this act would probably or likely cause such mental or emotional anguish on the woman and/or their children.

Application of the Elements of Section 5 (i) in relation to Section 3 (a) (C)

i. Facts of the Case

Accused-petitioner was charged with violation of Section 5 (i) of RA 9262 in an Information alleging thus:

That sometime in (sic) January 25, 2012, up to the present, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously cause mental or emotional anguish, public ridicule or humiliation to his wife AAA, by denying financial support to the said complainant.

He pleaded not guilty to the charge and trial ensued. According to the trial court, after he left for Brunei to work as an overseas worker, he maintained another romantic non-marital relationship while not being emotionally separated from his spouse. The latter is the sole complainant in this criminal case as she and accused had no children. In Brunei, he lived together with the woman. He also failed to pay the amount he and his spouse had borrowed to settle his placement fee. As recounted by the trial court:

However, the accused did not send money on a regular basis. All in all, he was able to send money in the total amount of P71,500.00 only, leaving the balance in the amount of P13,500.00. For which reason, she felt so embarrassed with [their creditor] because she could not pay the balance. She even pleaded to [their creditor] not to lodge a complaint to the barangay. [Their creditor] communicated to the employer of the accused in Brunei about their debt to her.

....

On cross, she stated that when the accused left in December 2011, she [was] jobless. Presently, she is gainfully employed. She lost communication with the accused since January 2012. According to the employer and friends of the accused, the latter is living with his paramour in Brunei. She filed this case because she was extremely hurt and she experience emotional agony by the neglect and utter insensitivity that the accused made her endure and suffer.

Accused-petitioner explained that he really wanted to send and bring money back from Brunei. Unfortunately, while he was in Brunei, his rented place was razed by fire and he met a vehicular accident which required him to spend a significant sum of money. He and his spouse had an on and off communication from October 2011 until April 2013. He admitted though that complainant demanded that he pay the entire amount of the debt.

He further recalled:

He used to send money to the private complainant. But it was the latter who told him not to send money anymore. He also claimed that he was able to send the total amount of P71,000.00 to the private complainant in payment of their loan. He agreed that the same is not enough to fully pay their loan in the total amount of P85,000.00.

ii.

Application of the Analytical Test to the Facts of the Case

I agree with the ponencia that accused-petitioner is entitled to an acquittal.

The prosecution failed to prove at all the requisite actus reus and necessarily mens rea of Section 5 (i).

The following components of the actus reus are not disputed:

(i)

relationship between an accused and offended parties, that is, 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 whether legitimate or illegitimate, within or without the family abode.

(ii)

Legal entitlement to support and legal obligation (i.e., concurrence of capacity and need) to provide support

(iii)

Mental or emotional anguish or likelihood or probability of mental or emotional anguish on the part of those entitled to receive financial support and to whom an accused is obliged to give financial support.

At issue are these components of actus reus:

(i)

denial of financial support to those entitled to receive financial support and to whom an accused is obliged to give financial support.

a.

The act is the deliberate withholding of the provision of financial support.

b.

The consequence of the act is the absence or inadequacy of financial support as defined by law for those entitled to be supported by the accused, since the complainant cannot compensate for the support denied to the complainant and/or their children by the accused.

(ii)

The consequence or likely consequence of mental or emotional anguish as a result of the accused's denial of financial support

There was no deliberate withholding of financial support because –

(a) the unfortunate events in accused-petitioner's life in Brunei prevented him from saving money that he could have remitted to the Philippines; with no money to remit, there was nothing he was withholding much less deliberately withholding; and

(b) there was no demand from his spouse to provide support; if there was no demand to give support, it cannot be said that he was deliberately withholding or in short denying financial support.

His spouse also did not suffer absent or inadequate support. She was gainfully employed as she had admitted. She also did not demand support at all. All she wanted was for him to pay his debt to their godmother.

Thus, the consequence of the act component – absent or inadequate support is also missing.

While complainant suffered emotional or mental anguish, this was not the result of any denial of financial support (which did not happen anyway) or the absence or inadequacy of financial support (which did not occur too).

Rather, the emotional or mental anguish was due to the alleged other relationship of accused-petitioner. This cause of the mental or emotional anguish, however, was not the mode of psychological violence alleged in the Information. It should not and could not have been, therefore, the proof-focus of the prosecution evidence against

him. This allegation, though harrowing to complainant, is not the cause of the accusation, hence, it is irrelevant and inadmissible in this case.

Since the actus reus of the crime charged was not proved at all, any discussion on its mens rea element is totally unnecessary. The reason is that there is no prohibited act, state of affairs, and consequence to which the relevant mens rea could attach.

iii.

Criminalization of Non-Provision of Support and the Variance Doctrine

RA 9262 does not criminalize the mere omission to pay support or solely the non-provision of support. The matter of support as an item of the actus reus appears only in Section 5 (i) in relation to Section 3 (a) (C) and Section 5 (e) (2). In both these provisions, lack of support or provision of inadequate support is criminal only if the other components of the statutorily defined actus reus and mens rea are present.

Neither does RA 9262 criminalize the mere denial of financial support.

In particular, I agree with Justice Caguioa that *Melgar v. People*, G.R. No. 223477, February 14, 2018, imprecisely held that Section 5 (i) necessarily includes Section 5 (e) (2) and that this actus reus can be the sole basis for a conviction under Section 5 (e) (2).

Justice Caguioa also correctly recommended abandoning this case law and *Reyes v. People*, G.R. No. 232678, July 3, 2019, which affirmed *Melgar*.

Section 5 (e) (2) is not necessarily included in Section 5 (i) because the element of the former is not only denial of financial support.

But for the element of depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support, which is a common element with Section 5 (i), the statutory definition of Section 5 (e) (2) requires different actus reus and mens rea.

Without exhaustively canvassing the elements of Section 5 (e) (2), the actus reus includes the overarching prohibited consequence of controlling or restricting, attempting to control or restrict, or threatening to control or restrict, the woman's or her child's movement or conduct. This is not an element of Section 5 (i) and is a distinctive element of the crime loosely termed economic abuse.

Further, the mens rea of Section 5 (e) (2) includes the specific intent to bring about or cause – the intentional, purposeful and knowing bringing about or causing of – the overarching prohibited consequence. This specific intent is not present in Section 5 (i) and is a distinctive element of Section 5 (e) (2).

The cause of accusation for Section 5 (e) (2) crime is different from the cause of accusation under Section 5 (i). Each of these elements must be alleged in the Information and proven beyond a reasonable doubt to obtain a conviction.

Allegations for Section 5 (i) do not encompass allegations under Section 5 (e) (2) because the former are different from the latter.

The variance principle was therefore inaccurately applied in *Melgar* and *Reyes*. The good Senior Associate Justice graciously conceded this point in her Reflections and, for this and other reasons, I admire and respect superbly her wisdom, graciousness, and humility.

iv.

Opinion of Senior Associate Justice Perlas-Bernabe

I agree with the good Senior Associate Justice that Section 3 (a) has a bearing upon the meaning of the particular criminal provision in RA 9262, Section 5. I myself refer to Section 3 (a) to identify the act and consequence and the mental elements of Section 5. The Supreme Court has in fact done so countless times prior.

I respectfully suggest, however, that Section 3 (a) is not just about the effects of the acts mentioned in Section 5 upon the woman and/or her children.[6]

Section 3 (a) is far more comprehensive than what the good Senior Associate Justice proffers. Please consider the following:

Section 5 (i) punishes the infliction of mental or emotional anguish by means of the acts some of which are mentioned in Section 5 (i) while others are stated in Section 3 (a) (C).

An example is marital infidelity which appears in the latter but not in Section 5 (i). Denial of financial support is mentioned in Section 5 (i) but not in Section 3 (a) (C).

Section 5 (i) requires the mens rea of the specific intent to cause mental or emotional anguish. It is a specific intent because the mere voluntary performance or omission of denial of financial support does not automatically result in the actus reus of mental or emotional anguish. The latter effect must be specifically willed or intended.

But Section 3 (a) (C) adds another dimension of actus reus and mens rea – likely to cause mental or emotional anguish.

Denial of financial support that is likely to cause emotional or mental anguish is an actus reus that is different and apart from denial of financial support that causes mental or emotional anguish. This actus reus has a different mental component as mens rea. Likely to cause calls for the mental states of willful blindness or recklessness and not intent, purpose or knowledge.

I also humbly opine that the mental element in mens rea is not the intent to commit psychological violence or economic abuse.[7] I think, as the good Senior Associate Justice does, that this is an imprecise way of identifying the mens rea of Section 5 (i) in relation to Section 3 (a) (C).

The mental element in mens rea must be correlated to the specific actus reus component to which the mental element attaches.

The terms psychological violence and economic abuse, for instance, are a bundle of components of the actus reus and the mens rea, some of which intersect between these types of violence, some are shared between them, and some are distinctive. So we have to be more specific and precise when identifying the actus reus and mens rea involved.

Thus, I agree with the view of Senior Associate Justice Perlas-Bernabe that

Therefore, since it has been established that the types of violence are neither exclusive to a Section 5 act nor are the means/punishable offense, it is but proper to situate intent on the actual purposes mentioned in Section 5 of RA 9262. These purposes are in the nature of specific intent, which must underlie the commission of the act sought to be punished.

Still, I do not think it was error for Justice Caguioa to categorize the provisions of Section 5 into the types of violence identified and defined or illustrated in Section 3 (a). I agree with the following approach of Justice

Caguioa to which Senior Justice Perlas-Bernabe disagreed –

A simple reading of Section 5 reveals that it is meant to classify the acts of violence against women already identified and defined under Section 3. Sections 5 (a) to 5 (d) seek to protect women and their children from physical violence, 5 (f), 5 (h) and 5 (i) from psychological violence, and 5 (g) from physical and sexual violence. Meanwhile, Section 5 (e), as previously discussed, protects the woman from acts of violence that are committed for the purpose of attempting to control her conduct or actions, or make her lose her agency. To the mind of the Court, Section 5 (e) enumerates the act of "economic abuse" defined under Section 3.

This approach commends itself to a more organized and simplified understanding of the elements of the Section 5 offenses in relation to the types of offenses classified in Section 3 (a) (C). While there might be some divergence between the types of offense categorized in Section 3 (a) and the definition of the offenses in Section 5, there is a general correspondence in the coupling or pairing made by Justice Caguioa. The approach may not be perfect but it is a shorthand reference to what is relevant in Section 3 (a) vis-à-vis Section 5. But of course Senior Associate Justice Perlas-Bernabe is correct in advising caution in using these pairings when they are not on-all-fours with the specifics of an actual case.

I appreciate her opinion that here, the specific intent requirement is as follows:

Instead of stating that the prosecution must show that the accused intended to commit psychological violence, it is submitted that the more accurate phrasing is that the prosecution must prove that the accused, by depriving AAA, his wife, of financial support, intended to cause her mental or emotional anguish, public ridicule or humiliation, which thereby resulted into psychological violence.

She also mentions that –

Overall, I respectfully submit that it is necessary to frame the specific intent not relative to the form of violence alleged to have resulted, but rather to the actual purposes mentioned in the acts stated in Section 5 itself.

I believe that her formulation is in synch with my discussion above on the specific intent mens rea, to wit:

(iv)

the specific intent of an accused to deny financial support to the obligees of support, which requires as stated the mental element of voluntary performance of this act and the intention, purpose and knowledge to do so.

(v)

the specific intent of an accused to cause the absence or inadequacy of financial support on the part of the obligees of support, which requires not only the mental element of voluntary performance of the act of denying financial support but also the intention, purpose and knowledge to accomplish such consequence of the act of denying support; the absence or inadequacy of financial support on the part of the obligees of support must be a fact – they must in fact be in need of the accused's financial support,

(vi)

the specific intent to cause or to likely cause the obligees' mental or emotional anguish due to the accused's denial of financial support and its consequence of absence or inadequacy of financial support.

To be sure, the key to analyzing criminal statutes and cases is –

(1) to examine the elements of the crime by using the categories of actus reus and mens rea, and then,

(2) to determine the actual components of these elements from the statutory definition of the crime itself and the purpose for the enactment of the criminal provision.

This analysis could be a painstaking one but it should be able to account for the policies behind the criminal statute.

Conclusion

ALL TOLD, I concur in the result and vote to grant the petition and acquit accused-petitioner of violation of Section 5 (i) of RA 9262 or of any other crime necessarily included therein if any.

[1] 761 Phil. 356, 374 (2015).

[2] *Sama v. People*, G.R. No. 224469, January 5, 2021.

[3] Concurring Opinion, *People v. Quejada*, 328 Phil. 505 (1996).

[4] Criminal Law (Volume 25 (2020), paras 1-552; Volume 26 (2020), paras 553-1014) Commentary at <https://www.lexisnexis.co.uk/legal/commentary/halsburys-laws-of-england/criminal-law/the-actus-reus>.

[5] *Valenzuela v. People*, supra.

[6] The learned Senior Associate Justice opined during the deliberation that "[a]ccordingly, the Court would do well to clarify the perception in some earlier cases wherein the types of violence under Section 3 (a) of RA 9262 as means/punishable offenses. At the risk of belaboring the point, these types of violence are only descriptive of the effects on the woman and her child which result from the specific acts committed by the accused listed in Section 5 of RA 9262. Simply put, the acts enumerated in Section 5 are the means/punishable offenses, while the types of violence in Section 3 (a) -physical, sexual, and psychological violence and economic abuse - are the ends/resulting effects.

[7] The good Senior Associate Justice mentioned that "[t]he above-discussed conceptual nuances are relevant since it affects the determination on where to situate criminal intent. In my opinion, considering that (1) the punishable acts are those provided under Section 5 of RA 9262; and (2) that the types of violence under Section 3 (a) are the resultant effects on the part of the woman or her child, it is thus inaccurate to say that the prosecution must show, by proof beyond reasonable doubt, that "the accused had the intent to inflict [for example] psychological violence to the woman x x x".

CONCURRING OPINION

ZALAMEDA, J.:

Upon meticulous study of the pertinent laws and jurisprudence, I concur with the ponencia as regards the clarification of the construction of Sections 5(e) and 5(i) of Republic Act No. (RA) 9262.

To stress, the instant case establishes that the mere failure or inability of an accused to provide financial support to 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 whether legitimate or illegitimate, within or without the family abode, does not amount to criminal liability punishable under the above-mentioned provisions of law.

At this juncture, it must be underlined that it is the duty of this Court to abandon any doctrine or rule found to be

in violation of the law in force.[1] In line with the purpose of our judicial system to discover the truth and see that justice is done,[2] We must not condone the perpetuation of an inaccurate interpretation of the law merely on the basis of a mechanical application of the doctrine of stare decisis. Thus, this Court must not be shackled by precedents, more so when altering the same promotes judicious dispensation of justice.

In this regard, the present interpretation laid down by the ponencia is more faithful to the text of RA 9262; not to mention, more in consonant with the current cultural and societal norms of the country.

Section 5 (e) of RA 9262 is clear in that to amount to criminal liability, the denial of financial support was made with the intent to control or restrict the woman's action

It is well settled that when the law is clear and free from any doubt or ambiguity, it must be given its literal meaning or applied according to its express terms, without any attempted interpretation, and leaving the court no room for any extended ratiocination or rationalization.[3]

On this note, Section 5(e) of RA 9262 unequivocally provides that "[A]ttempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:" through "[D]epriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support" is the act of violence punishable by law.

Corollary to this, Section 3 (D) of RA 9262 defines economic abuse as "acts that make or attempt to make a woman financially dependent", which includes withdrawal of financial support, deprivation of financial resources, and control of the woman's own and conjugal money or properties. Without a doubt, Section 5(e) must be read in conjunction with Section 3(D) of RA 9262 since a statute must be read or construed as a whole or in its entirety. All parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all others, and in harmony with the whole.[4] To be sure, Section 5 (e) of RA 9262 fleshes out Section 3 (D) of said law; thus, acts punishable under Section 5(e) of RA 9262 may also amount to economic abuse defined by Section 3 (D).

However, I agree with the ponencia's clarification that Section 5(e) must not necessarily be limited by Section 3 (D) such that the acts specifically enumerated under Section 5(e) need not always equate to economic abuse in order to be punishable.

Verily, the ponencia is correct in that non-payment of financial support, to be punishable, must be done to control or attempt to control the woman - compelling her to do something unwillingly or preventing her from doing something which is within her right to do. For the denial of financial support to rise to the level of violence that would make a person criminally liable under Section 5(e), RA 9262, there must be allegation and proof that it was made with the intent to control or restrict the woman's actions. Moreover, when said act amounts to economic abuse, the same is necessarily punishable under Section 5(e) of RA 9262.

It is worthy to note that in the different versions of the bills consolidated and amended to craft the present RA 9262, the same qualification as to controlling the woman was stipulated for acts pertaining or amounting to economic abuse.[5] Moreover, economic abuse was explicitly and consistently defined as either "willful neglect" or "denial" to provide support to the woman, which includes the "withdrawal" thereof.[6] Significantly, it was also

highlighted in the Senate Deliberations that in the glossary approved by the National Statistical Coordination Board for its use, economic abuse is defined as the denial of access of control of the woman over economic resources.[7]

Criminal liability under Section 5(i) of RA 9262 pertains to denial of financial support

In the same vein, Section 5(i) of RA 9262 is clear as to the act prohibited.

To reiterate, words used in law must be given their plain meaning.[8] In this regard, Section 5(i) of RA 9262 is unmistakable that to be punishable, the mental or emotional anguish, public ridicule or humiliation is inflicted on the woman through the denial of financial support. Indeed, Black's Law dictionary defines "denial" as a refusal or rejection, a disavowal[9] - which confirms the ponencia that willfulness must be proven for a conviction under the provision in issue. Verily, to be punishable under the law, there must be a deliberate intent to inflict psychological violence on the woman through the willful denial of financial support.

Additionally, it bears noting that in the different versions of the bills consolidated and amended to arrive at RA 9262, the same word - denial - was used as regards financial support in relation to psychological violence.[10]

Mutual obligation of the spouses to provide support

Articles 68, 70 and 195 of the Family Code provide that the husband and wife have the mutual obligation to financially support the family. To be sure, it is not only the husband who has the responsibility to economically support the family. This obligation is also qualified by the resources and necessities of both parties.[11]

The above discussion on the wording of Sections 5(e) and 5(i) of RA 9262, coupled with the mutual obligation of support prescribed by the Family Code, inevitably results to and supports the interpretation that the mere failure to provide financial support to 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 whether legitimate or illegitimate, within or without the family abode, does not constitute violence criminally punishable under the law.

Here, as articulately explained by the ponencia, private complainant cannot simply wait for financial support from petitioner Acharon. This, especially since Acharon was able to pay more than half of the debt and his failure to continue providing financial support is not deliberate or malicious as he had justifiable explanations for the same.

This construction is likewise more in keeping with the present times. Without a doubt, women are currently more capable of supporting themselves and their families. Further, given the state of our economy, it is to be expected that furnishing financial support consistently is a challenge.

The Variance Doctrine cannot be applied to convict an accused of violation of Section 5(e) of RA 9262 if the crime charged is violation of Section 5(i) of RA 9262

As embodied in Section 4, in relation to Section 5 of Rule 120 of the Rules of Court, the variance doctrine allows the conviction of an accused for a crime proved which is different from, but necessarily included, in the crime charged.[12]

Prevailing jurisprudence allows for the conviction of an accused charged with violation of Section 5(i) of RA 9262 and for the violation of Section 5(e) of RA 9262 due to the variance doctrine.[13] However, considering the clarification as regards the modes of violence against women under Sections 5(e) and 5(i) of RA 9262, the ponencia establishes that the variance doctrine may not be applied anymore for the provisions in issue.

Given the material distinctions between the acts punishable and the specific intent behind said acts specified in

Sections 5(e) and 5(i) of RA 9262, the ponencia is correct that the former offense cannot be considered subsumed in the latter.[14] This, notwithstanding the common factor of denial or deprivation of financial support.

In sum, mere failure to provide financial support to a woman as qualified by RA 9262 does not amount to violence punishable under said law. In order to amount to criminal liability punishable under Section 5(e) of RA 9262, the deprivation of financial support must be done to control or restrict the woman. On the other hand, in order to be punishable as psychological violence in violation of Section 5(i) of RA 9262, there must be a deliberate intent to cause the victim mental or emotional anguish, or public ridicule or humiliation through the willful denial of financial support. Considering the stark difference between the offenses, especially as regards the additional elements of control for Section 5(e) and mental and emotional anguish for Section 5(i), the variance doctrine does not apply.

Accordingly, I concur in the result and vote to GRANT the petition and ACQUIT petitioner Christian Pantonial Acharon of violation of Section 5(i) of RA 9262.

[1] See *Tan Chong v. Secretary of Labor*, 79 Phil. 249 (1947) [Per J. Padilla].

[2] See *Tolentino v. Secretary of Finance*, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873 & 115931, 25 August 1994 [Per J. Mendoza].

[3] *Ocampo v. Rear Admiral Enriquez*, 798 Phil. 227 (2017) [Per J. Peralta].

[4] *Valera v. Office of the Ombudsman*, 570 Phil. 368 (2008) [Per CJ Puno].

[5] Senate Bill No. (SB) 2723, Section 3 (D), Section 5(d); House Bill No. (HB) 6054, Section 4 (A) (3); and HB 5516, Section 3 (e).

[6] SB 2723, Section 3 (D) (1); HB 5516, Section 3 (e); HB 6054, Section 4 (A)(3); See also HB 2858, Section 3 (3); HB 1320, Section 3(3)(a); HB 2753, Section 4(3).

[7] SB 2723, TCM, 06 May 2002, pp. 6-8.

[8] *People v. Sandiganbayan*, 504 Phil. 407, 429 (2005) [Per J. Panganiban].

[9] *Black's Law Dictionary*, p. 521.

[10] SB 2723, Section 5(h); HB 5516, Section 3(i); See also HB 1308, Section 2(a) (2); HB 2753, Section 4(3).

[11] FAMILY CODE, Art. 194 and 201.

[12] *People v. Caoili*, 815 Phil. 839 (2017) [Per J. Tijam].

[13] See *Melgar v. People*, G.R. No. 223477, 14 February 2018 [Per J. Perlas-Bernabe]

[14] See *People v. Caoili*, 815 Phil. (2017) [Per J. Tijam].

CONCURRING OPINION

LOPEZ, M. J.:

I commend the ponente's astute discussion on the interpretation of Sections 5(e)[1] and 5(i)[2] of Republic Act (RA) No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004." Similarly, I wish to offer

this separate opinion to guide the bench and the bar in the prosecution of crimes under this special law.

The present case arose from a criminal charge against Christian Pantonial Acharon (Acharon) for violation of Section 5(i) of RA 9262 or psychological violence resulting from willful refusal to provide financial support, to wit:

That sometime in [sic] January 25, 2012, up to the present, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously cause mental or emotional anguish, public ridicule or humiliation to his wife AAA, by denying financial support to the said complainant. (Emphases supplied.)[3]

The decision acquitted Acharon and ruled that Section 5(i) does not punish mere failure or inability to provide financial support. Neither could Acharon be held guilty under Section 5(e) applying the variance doctrine. This is because Sections 5(e) and 5(i) deal with different matters and penalize distinct acts. Accordingly, the ponencia abandoned the rulings in *Melgar v. People*[4] and *Reyes v. People*[5] where the Court held that a person charged under Section 5(i) may be convicted of Section 5(e) and vice versa.

To begin, the study of Criminal Law has long divided crimes into acts wrong in themselves called acts mala in se; and acts which would not be wrong but for the fact that positive law forbids them, called acts mala prohibita. This distinction is important with reference to the intent with which a wrongful act is done. The rule is that in acts mala in se, the intent governs; but in acts mala prohibita, the only inquiry is whether the law was violated. A common misconception is that all mala in se crimes are found in the Revised Penal Code (RPC), while all mala prohibita crimes are provided by special penal laws. In reality, however, there may be mala in se crimes under special laws,[6] and mala prohibita crimes defined in the RPC.[7] In *Dungo v. People*,[8] the Court explained that the better approach to distinguish between mala in se and mala prohibita crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime mala in se; on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reasons of public policy, then it is mala prohibita.

Applying this approach, it becomes clear that Section 5(e) or "acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct" and Section 5(i) or acts "causing mental or emotional anguish, public ridicule or humiliation to the woman or her child", are inherently depraved and immoral, hence, proof of the accused's criminal intent is required. On this note, I suggest to adopt a framework in better understanding the anatomy of RA 9262's penal provisions.

Foremost, proof of corpus delicti is indispensable in the prosecution of crimes.[9] The term corpus delicti refers to the body or substance of the crime, or the fact of its commission.[10] It consists of the criminal act and the defendant's agency in the commission of the act. In homicide, for instance, the prosecution must prove: (a) the death of the victim; (b) that the death was produced by the criminal act of person/s other than the deceased and was not the result of accident, natural cause or suicide; and (c) that accused committed the criminal act or was in some way criminally responsible for the act which produced the death.[11] In arson, the corpus delicti rule is satisfied by proof of the bare fact of the fire and of it having been intentionally caused.[12] In other words, corpus delicti primarily describes the act (objective) and the agent (subjective) in relation to the actus reus (AR) and the mens rea (MR) of a crime. Actus reus pertains to the external or overt acts or omissions included in a crime's definition while mens rea refers to the accused's guilty state of mind or criminal intent accompanying the actus reus. Hence, the formula is "Corpus Delicti = Actus Reus + Mens Rea."

ACTUS REUS

Actus reus may have a varied formulation depending on the definition of the crime. Foremost, the crime may or may not consist of a single actus reus. An example is a complex crime when a single act constitutes two or more grave or less grave felonies (compound crime), or when an offense is a necessary means for committing the other (complex crime proper).[13] In the eyes of the law and in the conscience of the offender they constitute only one crime, thus, only one penalty is imposed.[14] Also, in special complex crimes like robbery with rape, there is only one specific crime but the prosecution must prove the commission of external criminal acts of robbery and rape. In offenses that require predicate crimes like a violation of the Anti-Money Laundering Act, the component crimes must be identified to prove the more serious crime of money laundering.

Moreover, the component circumstances may be considered in ascertaining the actus reus. To prove treason under Article 114 of the RPC, for instance, the prosecution must prove that the accused is either a Filipino citizen or a resident alien. On the other hand, to prove murder under Article 248 of the RPC, the qualifying circumstance of treachery, abuse of superior strength, etc., must be established. When it comes to special laws, we need to look for the specific circumstances intended by the legislators for the application of the law. In RA 7610 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, the law takes into account the age of the victim who must be below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves.[15] In RA 9475 or the Anti-Torture Act of 2009,[16] the physical or mental torture must be inflicted by a person in authority or agent of a person in authority. In RA 7877 or the Anti-Sexual Harassment Act of 1995,[17] the offender must be a person who has authority, influence or moral ascendancy over another in an education, training, or work environment.

Lastly, the actus reus may include the result or the consequences of the crime. In other jurisdictions, criminal offenses are classified as "conduct crimes" or "resulting crimes." In conduct crimes, proof of the commission of the prohibited conduct only is required. On the other hand, resulting crimes necessitate proof that the harmful act leads to a specified consequence.[18] In Philippine Criminal Law, physical injuries under Articles 263, 265, and 266 of the RPC is considered a resulting crime. The determination of whether "physical injuries" is serious, less serious, or slight depends upon the extent of the resulting injuries arising from the infliction of harm to the victim. In Article 263, for example, the crime is always serious physical injuries when it resulted in the insanity, imbecility, impotency, or blindness of the victim.

Taken together, the comprehensive anatomy of actus reus can be summarized as: "Actus Reus = act/omission + circumstances + results/consequences.[19] Corollarily, the actus reus of RA 9262's penal provisions may be analyzed using this framework as follows:

RA 9262's ACTUS REUS =

Acts/Omissions (Section 5 of RA 9262)

+

Circumstances (Section 3 of RA 9262)

+

Results/Consequences (Section 3 in relation to Section 6 of RA 9262)

Section 5 of RA 9262 refers to the specific acts of violence committed against women and children, to wit:

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:

(a)

Causing physical harm to the woman or her child;

(b)

Threatening to cause the woman or her child physical harm;

(c)

Attempting to cause the woman or her child physical harm;

(d)

Placing the woman or her child in fear of imminent physical harm;

(e)

Attempting to compel or compelling the woman or her child to engage in conduct which the woman her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

(1)

Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;

(2)

Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3)

Depriving or threatening to deprive the woman or her child of a legal right;

(4)

Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;

(f)

Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g)

Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h)

Engaging in purposeful, knowing, or reckless conduct, personally, or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(1)

Stalking or following the woman or her child in public or private places;

(2)

Peering in the window or lingering outside the residence of the woman or her child;

(3)

Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4)

Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5)

Engaging in any form of harassment or violence;

(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 denial of access to the woman's child/children. (Emphases supplied.)

Section 3 of RA 9262 illustrates the different forms of violence, and enumerates the circumstances surrounding the criminal acts. Likewise, Section 3 necessitates that the commission of the specific acts results in some form of violence, whether physical, sexual, psychological or economic suffering, making RA 9262 a "resulting crime."

SEC 3. Definition of Terms. — As used in this Act, (a) "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 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, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts: x x x (Emphases supplied.)

In relation to Section 3, the provisions of Section 6 impose the penalties according to the crime committed, thus:

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

(a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code. If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prision mayor; those constituting less serious physical injuries shall be punished by prision correccional; and those constituting slight physical injuries shall be punished by arresto mayor.

Acts falling under Section 5(b) shall be punished by imprisonment of two (2) degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.

(b)

Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor;

(c)

Acts falling under Section 5(e) shall be punished by prision correccional;

(d)

Acts falling under Section 5(f) shall be punished by arresto mayor;

(e)

Acts falling under Section 5(g) shall be punished by prision mayor;

(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.

MENS REA

Anent the "mens rea" of a crime, a distinction must be made between general intent and specific intent. General criminal intent pertains to the *dolo* required under Article 4[20] of the RPC. It means the accused purpose to do an act prohibited by law regardless of the result. On the other hand, specific criminal intent refers to the particular intent comprising the definition of the crime, as for instance, the specific criminal intent to kill or *animus interficendi* in homicide or murder.[21] In robbery, the specific intent is "gain", in illegal detention the "deprivation of liberty", in mutilation the deprivation of "essential organ of reproduction" is involved. In this regard, I agree with Senior Associate Justice Estela M. Perlas-Bernabe that the specific intent of the crime of violence against women and children must be framed to the actual purposes mentioned in Section 5 of RA 9262.

In *Dinamling v. People*,[22] the Court laid down the elements of a violation of Section 5(i) of RA 9262, to wit:

(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. (Emphases supplied.)

The first and second elements refer to the "circumstances" described in Section 3 of RA 9262. The third and fourth elements pertain to the specific "acts" that the accused committed corresponding to those enumerated in Section 5 of the law. Also, the third element evinces the mens rea that is the specific intent to cause "mental or emotional anguish, public ridicule or humiliation" resulting from the infliction of some form of violence to the woman or her child. To reiterate, a violation of Section 5(i) of RA 9262 requires a causal connection between the *actus reus* and the mens rea. Otherwise, no crime of violence against a woman or her children under this provision is committed.

Here, the *corpus delicti* for violation of Section 5(i) of RA 9262 was not fully established. As regards the *actus*

reus, the surrounding "circumstances" that the offended party is a woman and that the accused and the victim are husband and wife were undisputed. Yet, the evidence of the prosecution fell short to prove the specific "act", "results/consequences", and "mens rea" constituting the crime. As the ponencia aptly observed, the charge against Acharon alleged the act of "denying financial support" which connotes "willful refusal" to give support. Further, "from the plain meaning of the words used, the act punished by Section 5(i) is, therefore, dolo in nature – there must be a concurrence between intent, freedom, and intelligence, in order to consummate the crime." As such, mere failure or inability to provide financial support is not punishable. The records reveal that Acharon "successfully did for a time, to provide financial support." Acharon "failed to continue providing support only when his apartment in Brunei was razed by fire, and when he met a vehicular accident." At the trial, the complainant even admitted that Acharon "already paid P71,000.00 out of the P85,000.000" of their debt. Differently stated, there was no willful refusal on the part of Acharon to give financial support. Similarly, the Information against Acharon alleged that he "cause mental or emotional anguish, public ridicule or humiliation to his wife." Under the proposed framework, this pertains to the "results/consequences" of the supposed denial of financial support as well as the mens rea of the crime. Nevertheless, the prosecution failed to substantiate this allegation.

VARIANCE DOCTRINE

I agree with the ponencia that the variance doctrine is inapplicable since Sections 5(e) and 5(i) of RA 9262 deal with different matters and penalize distinct acts. However, I wish to point out that the application of the variance doctrine in *Reyes v. People*[23] where the Court held that a person charged under Section 5(i) may be convicted of Section 5(e) and vice versa, is a mere obiter dictum. In that case, the accused was originally charged under Section 5(e) of RA 9262. Later, the accused moved to quash the information because its allegations do not constitute the offense. However, the trial court ruled that the contents of the information sufficiently charged a violation of Section 5(i) and not Section 5(e). Consequently prior to the accused's arraignment, the trial court directed the prosecutor's office to amend the Information by designating the crime as under Section 5(i). After trial, the accused was convicted with a violation of Section 5(i). Obviously, the trial court did not rely on the variance doctrine because the information itself sufficiently alleged the elements of Section 5(i). Moreover, the prosecution established that the accused deliberately refused to provide financial support after admitting that he was disappointed to find out that his wife filed a bigamy case against him. The Court's statement in *Reyes* that it "agrees with the observation of the CA that if properly indicted, Reyes can also be convicted of violation of Section 5 (e), par. 2 for having committed economic abuse against AAA" is merely an obiter dictum and not the controlling doctrine. Strictly speaking, there is nothing to abandon.

Lastly, the variance doctrine is inapplicable only to some violations of RA 9262 like Sections 5(e) and 5(i), and vice versa. The variance doctrine may still be possibly applied to other punishable acts that are relatively included or necessarily included and defined in Section 5 of RA 9262. For instance, a person charged under Section 5(a) or "causing physical harm to the woman or her child" can be convicted of violation of Section 5(c) or "attempting to cause the woman or her child physical harm," – Section 5(c) is necessarily included in Section 5(a). This is on the assumption that the greater offense of consummated crime includes the lesser offense of an attempted crime.

FOR THESE REASONS, I vote to GRANT the petition.

[1] 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: xxx

x x x x

(e)

Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct: xxx

xxxx

(2)

Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

[2] (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 of access to the woman's child/children.

[3] Rollo, p. 34. Penned by Presiding Judge Evangeline M. Francisco.

[4] *Melgar v. People*, 826 Phil. 177, 187-188 (2018).

[5] G.R. No. 232678, July 3, 2019.

[6] An example is Plunder under R.A. No. 7080, as amended.

[7] An example is Technical Malversation.

[8] 762 Phil. 630, 659 (2015).

[9] *People v. Oliva*, 395 Phil 265, 275 (2000).

[10] *Rimorin, Sr. v. People*, 450 Phil 465, 474 (2003).

[11] *Quinto v. Andres*, 493 Phil 643, 654 (2005).

[12] *People v. Murcia*, 628 Phil. 648, 657 (2010).

[13] Article 48 of the Revised Penal Code.

[14] *People v. Nelmidia*, 694 Phil. 529, 569 (2012).

[15] Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, Republic Act No. 7610, June 17, 1992.

[16] Anti-Torture Act of 2009, Republic Act No. 9745, November 10, 2009.

[17] Anti-Sexual Harassment Act of 1995, Republic Act No. 7877, February 14, 1995.

[18] <https://www.lexisnexis.co.uk/legal/guidance/causation-intervening-acts-in-criminal-cases>.

[19] Criminal Law (Fifth Edition), Janet Loveless, p. 38.

[20] RPC, Article 4 provides that "[c]riminal liability shall be incurred: (1) by any person committing a felony

(delito) although the wrongful act done be different from that which he intended; and (2) by any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or an account of the employment of inadequate or ineffectual means.

[21] *People v. Malinao*, 467 Phil. 432, 446-447 (2004).

[22] 761 Phil. 356, 373 (2015).

[23] G.R. No. 232678, July 3, 2019.

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