

XXX, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND AAA, RESPONDENT.

G.R. No. 232190, August 20, 2025

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 148784, viz.:

1)

Decision[2] dated March 30, 2017 convicting petitioner XXX of violation of Section 5(i) of Republic Act No. 9262;[3] and

2)

Resolution[4] dated June 6, 2017 denying XXX's Motion for Reconsideration.

Antecedents

XXX was charged with violation of Section 5(i) of Republic Act No. 9262, as follows:

That sometime in the year 2008 and on dates subsequent thereto in the city of xxxxxxxxxxxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the husband of complainant AAA, did then and there willfully, unlawfully[,] and feloniously commits [sic] psychological violence upon her by committing marital infidelity by having sexual relationship with one PPP with whom he has two minor children, which caused mental or emotional anguish on the part of complainant AAA, who was diagnosed as suffering from symptoms of dysthymia.

CONTRARY TO LAW.[5]

When arraigned, XXX pleaded not guilty.[6] During pre-trial, the parties made the following stipulations: (1) AAA and XXX are husband and wife; (2) the subject incident took place in xxxxxxxxxxxx City; (3) AAA and XXX have a son named BBB;[7] (4) they have been living separately from each other since 2008; (5) there is no public record showing that XXX inflicted physical harm on AAA; and (6) the civil registry records bear the certificates of live births of MMM and NNN[8] indicating XXX as their father and PPP as their mother.

Version of the Prosecution

During trial, the prosecution presented the testimonies of AAA and Dr. Maria Carmen P. Lambuson (Dr. Lambuson).[9]

The prosecution also adduced the following as documentary evidence: (1) the sworn statement of AAA; (2) certification of Dr. Lambuson, who conducted a psychiatric evaluation on AAA; (3) the prescription of medicine for AAA; (4) printouts of excerpts from the Twitter account of PPP showing pictures of XXX carrying a female child and posing with PPP and two children, and, announcing the birthday of his son NNN; (5) Certificate of Marriage of AAA and XXX; (6) Certificate of Live Birth of BBB, the child of XXX with AAA; (7) Certificates of Live Birth of MMM and NNN, the children of XXX with PPP; and (8) the psychiatric evaluation of AAA.[10]

AAA essentially testified that she was married to XXX on May 6, 2005. They have a son together named BBB, who was born on January 15, 2008. While she was pregnant with BBB, XXX would always go home in the wee hours of the morning, telling her that he was out with his friends. She had a suspicion, however, that he was having an affair with another woman after she saw the messages on XXX's phone. She nonetheless harbored hope that he would change his ways after she gave birth to their son.[11]

XXX, however, continued to go home early in the morning despite the birth of BBB. At the time, she saw a text message on his phone, saying "AYAW KO NG MAGING KABIT." She confronted him about what she saw, but he passed off the text message as a mere prank from his friends. To avoid marital quarrel, she no longer brought the text message up again.[12]

To AAA's surprise, XXX left their home the next day and never lived with her and her son again. He would only visit BBB every weekend. Although XXX never inflicted physical harm on her,[13] she suffered mental and emotional anguish when he left their conjugal home. Her emotional suffering was further aggravated when she discovered that he and his mistress, PPP, had children together, MMM and NNN, and flaunted their love affair on social media. XXX and PPP would announce their children's birthdays and post pictures of them together.[14]

Dr. Lambuson testified that she was engaged by AAA sometime in 2012 after she filed the criminal complaint against XXX. She diagnosed AAA with depression or dysthymia, which she noted cannot be solely attributed to AAA being left by XXX. This kind of depression, she explained, can be ordinarily experienced by anybody in circumstances such as the death of a loved one or in cases of abandonment.[15]

Version of the Defense

The defense presented the testimonies of XXX and Dr. Visitacion G. Revita (Dr. Revita) and the following documentary evidence: (1) sworn statements of XXX; (2) pictures of AAA; and (3) the psychological report of Dr. Revita.[16]

XXX testified that his marital relationship with AAA became sour sometime in March 2008 because of their differences. AAA was totally dependent and overly attached to her family and never displayed marital maturity. In August 2008, AAA's mother told him to pack up his things and leave their house. He tried to win AAA back but was constrained to leave their conjugal home because of her incessant immaturity and overdependence on her parents.[17]

Even after they parted, AAA continued texting him with vulgar and sarcastic language and told him that his parents were happy about their separation because it meant they would benefit from his earnings. Despite her harsh words, he still tried to mend their marital relationship. He and his family even arranged for them to attend marriage counseling but AAA shrugged off the idea. In fact, she denounced any idea of reconciliation and expressed her desire to file for annulment.[18]

What prompted AAA to file the criminal complaint against him was his refusal to enroll BBB in AAA's chosen school. It was after then that she demanded a huge amount of support and filed the present case to harass him.[19]

Ruling of the Regional Trial Court

By Decision[20] dated September 30, 2016, the trial court rendered a verdict of acquittal based on reasonable doubt:

WHEREFORE, premises considered, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, the accused, XXX, is hereby ACQUITTED.

SO ORDERED.[21] (Emphasis in the original)

It noted that both prosecution witnesses, AAA and Dr. Lambuson, admitted that the criminal complaint was belatedly filed four years after the incident. This, together with AAA's admissions that XXX consistently communicated with her and their son and provided support after their separation, and the fact that Dr. Lambuson was engaged only five years after the incident and the filing of the criminal case incites reasonable doubt on XXX's guilt.[22]

The trial court explained that the separation de facto of the parties is part of human experience and a natural consequence of their irreconcilable differences. In all, it found that the evidence of the prosecution failed to prove to a moral certainty the elements of psychological violence.[23]

Consequently, the People, through the Office of the Solicitor General (OSG), filed a petition for certiorari under Rule 65 of the Rules of Court with the Court of Appeals, ascribing grave abuse of discretion amounting to lack or excess of jurisdiction against the Regional Trial Court for acquitting XXX. The OSG emphasized that marital infidelity is considered psychological violence under Republic Act No. 9262.[24]

Ruling of the Court of Appeals

By Decision[25] dated March 30, 2017, the Court of Appeals reversed:

WHEREFORE, the trial court's Decision dated September 30, 2016 in Criminal Case No. 13-028 is nullified and set aside. Private respondent XXX is hereby held guilty beyond reasonable doubt of violation of Section 5(i), R.A. No. 9262 and sentenced to suffer imprisonment of four (4) years, two (2) months and one (1) day of prision correccional maximum, as the minimum period, to eight (8) years and one (1) day of prision mayor medium, as the maximum period. He is also ordered to pay a fine of three hundred thousand pesos ([PHP] 300,000.00) and to undergo psychological counseling and report his compliance therewith to the trial court.

SO ORDERED.[26] (Emphasis in the original)

The Court of Appeals found that the evidence of the prosecution proved the crime charged beyond reasonable doubt. First, the records are replete of evidence showing that XXX had another woman, PPP. They would flaunt their illicit relationship by posting their pictures and those of their children on Twitter. Meanwhile, the certificates of live birth of MMM and NNN proved that XXX is their father. All these pieces of evidence are indicative of XXX's sheer insensitivity and total disregard of the feelings, dignity, and self-worth of AAA. Second, per the psychological evaluation of Dr. Lambuson, AAA suffered from depression and "her life shattered right before her eyes when her husband left her." [27]

The Court of Appeals noted that the trial court disregarded the express provisions of Republic Act No. 9262 when it ruled that XXX's marital infidelity, which was committed after the spouses' separation de facto, cannot be considered a violation of the said law since Republic Act No. 9262 identifies "the wife or former wife of the offender" as one of the offended parties.[28]

Under Resolution[29] dated June 6, 2017, the Court of Appeals denied reconsideration.

The Present Appeal

XXX now seeks anew a verdict of acquittal, praying that the Decision dated September 30, 2016 of the Regional Trial Court be reinstated. He maintains that the People is proscribed from appealing the judgment of acquittal of the Regional Trial Court pursuant to the rule against double jeopardy. A judgment of acquittal is final, unappealable, and immediately executory upon its promulgation,[30] especially here where the judgment of the trial court was made in compliance with the law since the same considered carefully the facts and evidence on record.[31]

In any case, he claims that the prosecution failed to establish his guilt to a moral certainty. The totality of the circumstances, such as AAA's admission that she considered annulling their marriage, consistently received support from him for their child, and that they were civil to each other even after their separation, belie her claim of psychological violence.[32] Verily, the trial court did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it acquitted him of the crime charged.

In its Comment,[33] the OSG, on behalf of the People, ripostes that the present Petition must be dismissed because the People was not impleaded as a respondent.[34] At any rate, the Court of Appeals did not err in granting its petition for certiorari since the People may file a Rule 65 petition without placing the accused in double jeopardy, especially since the trial court failed to act in contemplation of Republic Act No. 9262 when it acquitted XXX.[35]

The OSG emphasizes that all elements of violation of Section 5(i) of Republic Act No. 9262 through marital infidelity were duly proven. XXX is the husband of AAA with whom he has a son. He abandoned them when AAA discovered his extramarital affair. He then lived with his mistress, PPP, with whom he has two children. Worse, he publicly flaunted his illicit relationship with her. As a result, AAA suffered emotional, mental, and psychological anguish, culminating in depression, not to mention public humiliation and embarrassment because of her husband's affair.[36] As such, it would allegedly be the height of injustice if XXX would be acquitted on the premise that the complaint against him was filed by AAA four years after their separation in fact.[37]

Under Notice[38] dated December 3, 2018, the Court impleaded the People of the Philippines considering that the action is a criminal action.

Meanwhile, in AAA's Comment,[39] she manifests that she fully and completely adopts the arguments of the OSG. She avers that XXX exhibited bad faith by failing to implead the People and instead impleading her in the case, albeit she was not even included as a party in the case before the Court of Appeals.[40]

Issues

First, was the right against double jeopardy of XXX violated when the OSG filed a petition for certiorari before the Court of Appeals assailing the verdict of acquittal of the Regional Trial Court?

Second, is XXX guilty of psychological violence under Section 5(i) of Republic Act No. 9262?

Our Ruling

The Petition lacks merit.

Double jeopardy does not attach to void judgments; the OSG correctly filed a Rule 65 Petition to assail the verdict of acquittal of the Regional Trial Court

Article III, Section 21 of the Constitution protects all persons from being placed in double jeopardy of punishment

for a single offense:

No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

It means that when a person is charged with an offense and the case is terminated either by acquittal or conviction or in any other manner without the consent of the accused, the latter cannot again be charged with the same or identical offense. This principle is founded upon the law of reason, justice, and conscience.[41] It ensures that the government does not abuse its powers by repeatedly prosecuting the same accused for the same charge. *People v. Hon. Velasco*[42] elucidated:

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State. . . ." Thus, Green expressed the concern that "[t]he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty." [43] (Emphasis supplied, citations omitted)

Indeed, it is a basic principle of law that the rule against double jeopardy proscribes an appeal from a judgment of acquittal on the merits from being filed. A verdict of acquittal is immediately final and a re-examination of the merits of such acquittal, even in an appellate court, will put the accused a second time in jeopardy for the same offense.[44]

Thus, XXX argues that the People violated his right against double jeopardy when it filed a Rule 65 petition assailing his acquittal.

We do not agree.

It is settled that a judgment of acquittal may be assailed by the People in a petition for certiorari under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the People is burdened to establish that the court below acted without jurisdiction or with grave abuse of discretion amounting to excess or lack of jurisdiction.[45]

The People was able to fulfill this burden in its petition for certiorari filed with the Court of Appeals. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. Grave abuse of discretion attends when the trial court manifestly disregarded the basic rules and procedures, or acted with obstinate disregard of basic and established rule of law or procedure.[46]

Contrary to XXX's position, the trial court failed to justify its verdict of acquittal. In casting doubt on the evidence of the prosecution, the trial court merely pointed out the circumstances of the parties at the time the criminal complaint was filed. To recall, the trial court hinged its ruling on the fact that the complaint was belatedly filed five years after the separation of the parties; that XXX and AAA were civil to each other despite their separation; and XXX consistently provided support for BBB.[47]

These, however, are matters that do not delve into the essence of the offense. Worse, they are not evidence that dispel the mental and emotional anguish suffered by AAA as a result of her husband's extramarital affair. It is

indeed perplexing how, as between the trial court's bare conjectures arising from the circumstances of the case and the hard evidence showing AAA's mental and emotional suffering (i.e., the psychiatric evaluation of Dr. Lambuson) and XXX's marital infidelity (i.e., his own admission, the photos and posts from Twitter, and certificates of live birth of MMM and NNN), the former prevailed.

Worse, it does not escape the Court that part of the trial court's explanation that the marital infidelity of XXX was committed after he and AAA separated de facto, hence, the same falls outside the scope of Republic Act No. 9262.[48] This is a mistaken notion. Legal separation entitles the parties to live separately from each other, but the marriage bonds shall not be severed;[49] more so, here, where the separation of the parties is merely in fact and not by legal decree. Verily, any extramarital relation maintained by any of the spouses still constitutes marital infidelity, which is one of the means of committing psychological violence under Republic Act No. 9262.

By disregarding the foregoing basic principles of law and rudimentary appreciation of evidence, we find no error on the part of the Court of Appeals in granting the petition for certiorari filed by the OSG on behalf of the People.

XXX is guilty of psychological violence through marital infidelity under Section 5(i) of Republic Act No. 9262

XXX was charged with violation of Section 5(i) of Republic Act No. 9262, which reads:

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 of access to the woman's child/children.

Dinamling v. People[50] lists the elements of violation of Section 5(i) of Republic Act No. 9262 that must concur before a judgment of conviction may be rendered:

(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.[51]

The first two elements are not in dispute. The offended party in this case is AAA, the legal wife of XXX. This fact

is duly established by the Certificate of Marriage between the parties.[52]

The contention thus lies in the third and fourth elements. Indeed, conviction under Section 5(i) of Republic Act No. 9262 requires proof of the indispensable elements of: (1) psychological violence as the means employed by the perpetrator consisting of any acts enumerated in Section 5(i) or similar acts; and (2) the mental or emotional suffering or damage sustained by the offended party.[53]

Section 3(c) of Republic Act No. 9262 defines psychological violence as any act or omission which causes or is likely to cause mental or emotional suffering of the victim. Notably, the enumeration of such acts expressly includes marital infidelity:

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

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. (Emphasis supplied)

Here, the People was able to prove beyond reasonable doubt that XXX committed marital infidelity. He maintained a relationship with another woman who is not his wife and has, in fact, fathered two children with her. This fact is uncontroverted and supported by a number of evidence on record: the social media posts containing photos of XXX, his mistress PPP, and their children[54] and the entries in the certificates of live birth of their children, MMM and NNN, indicating that their father is XXX and their mother is PPP.[55] Notably, XXX also never denied his affair with PPP.

Instead, his defense consists mainly of imputing vindictive motives against AAA in filing the criminal complaint against him. She was allegedly the cause of the breakdown of their marriage for being overly dependent on her parents and for being immature. He left their home because his mother-in-law told him to.[56] These, however, are not justifiable reasons to leave the conjugal home and to renege on his marital obligations to live together, observe mutual love, respect and fidelity, and render mutual help and support to each other.[57]

More, it is incredible that XXX would have simply agreed to leave his wife and son just because he was told to do so by his mother-in-law. Logic suggests that there was an underlying reason for his abandonment of his legal family. We thus find AAA's narration of facts more credible than XXX's.

Contrary to the finding of the trial court, XXX's extramarital affair did not begin only after the spouses got separated. The records are replete with evidence that the cause of the quarrel and eventual separation of XXX and AAA began when the latter discovered the text messages of a woman on XXX's phone. One of the text messages unequivocally told him, "AYAW KO NG MAGING KABIT" and, it was when she confronted him about it that XXX left home.[58] Clearly, therefore, XXX was unfaithful to his wife even before they got separated in fact, and his infidelity was the proximate cause thereof.

That XXX committed an act of psychological violence, specifically, marital infidelity, is thus beyond doubt. True, what Republic Act No. 9262 criminalizes is not marital infidelity per se but the psychological violence causing mental or emotional suffering on the wife. For it is the violence inflicted under the said circumstances that the law seeks to outlaw.[59]

On this score, we find that the appraisal of evidence by the Court of Appeals vis-à-vis AAA's mental and emotional suffering is legally sound. As astutely observed by the Court of Appeals, the effect of XXX's marital

infidelity on AAA was duly explained and proven in the psychological evaluation of AAA by Dr. Lambuson.[60]

The psychiatric evaluation convincingly illustrated what AAA suffered as a result of the breakdown of her marriage. She had sleep disturbances, constant self-pity, feelings of hopelessness and worthlessness, palpitations, social withdrawal, and depressions,[61] viz.:

This is a case of a 36-year-old married woman with a 4-year-old child who was left by her husband for another woman. She manifested with the following signs and symptoms of sleep disturbances, having self-pity, feelings of guilt, hopelessness and worthlessness, crying episodes, palpitations, social withdrawal, and depressed mood most of the day and felt most days of the week. The abovementioned signs and symptoms were severe enough for the patient to affect her social as well as occupational functioning. . .

. . . .

The main cause of the depression for this particular patient, her life shattered before her eyes when her husband left; her child becoming an orphan having no father to be with him, to guide him while growing up because the father, the patient's spouse, had decided to leave them. Whatever her beliefs were about marriage were now fractured, dreams shattered, self-confidence gone. Medication is helping her as well as psychotherapy we do when she comes in for follow-up. It will take several more sessions for her to believe in herself again and not blame herself for whatever happened to her and to her child. She has on her own, re-build her dreams, her beliefs mended, her self-confidence fixed and this may take her months or years or maybe when the goal of this legal battle achieved in her favor, this disorder will be easier to overcome.[62] (Emphasis supplied)

Dr. Lambuson's admission that AAA approached her after she already filed the criminal complaint against XXX[63] is of no moment. This fact does not negate the fact that even prior to her psychiatric consultation, AAA had already been suffering from mental and emotional turmoil. The psychiatric evaluation merely confirmed this fact. Nor is it incriminatory that AAA consulted a psychiatrist to obtain evidence to support her allegation of psychological violence against XXX. It is but natural that one who institutes a legal action would endeavor to collect all necessary evidence to support their claim. It does not necessarily follow that such evidence was fabricated.

Neither does Dr. Lambuson's clarification that AAA's depression or dysthymia cannot be solely attributed to XXX leaving their marital home and committing an illicit affair[64] militate against the finding of mental and emotional anguish. There indeed can be many reasons why a person may feel distressed and emotionally or mentally disturbed. Here, however, Dr. Lambuson's psychiatric evaluation clearly indicated that the main cause of AAA's depression is XXX leaving her and, as a result, her son losing his father. Consequently, she lost self-confidence, blamed herself for failing to keep her husband, and felt worthless.

At any rate, the law does not require proof that the victim became psychologically ill due to the psychological violence done by her abuser. The law only requires emotional anguish and mental suffering to be proven. To establish emotional anguish or mental suffering, jurisprudence only requires that the testimony of the victim be presented in court since such experiences are personal to this party.[65]

Here, AAA testified in detail how she suffered as a result of her husband's infidelity, especially whenever she would see the posts of XXX's mistress flaunting their illicit affair on social media. PPP would announce their children's birthday parties and post pictures of them together.[66] Indeed, it is not difficult to imagine how XXX's illicit affair shattered AAA's life and caused her to live a nightmare. Instead of keeping true to the vows he made when he wed her, XXX callously left her and instead kept the same promises with another woman. As pointedly found by the Court of Appeals:[67]

[XXX's] marital infidelity, aggravated by the public display and exhibits of photographs and words of

endearment by and between private respondent and his mistress PPP through the social media, flaunting their illicit relationship and their two children, are indicative of [XXX's] sheer insensitivity and total disregard of the feelings, dignity, and self-worth of [AAA]. All such acts constituted psychological violence, causing [AAA] mental torture, emotional pain, and anguish.[68] (Emphasis supplied)

To be sure, whatever XXX's intention was when he chose another woman over his wife is immaterial. For his leaving their conjugal home and building a family with his mistress are acts that were done by him consciously and deliberately. He could not feign innocence by hiding behind good intentions—may they be excuses that he remained civil with AAA or he constantly supported his legitimate son, BBB. The incontrovertible fact remains: he was unfaithful to his wife, and this caused her irreparable mental and emotional hurt. Thus, XXX v. People[69] ratiocinated:

While We agree with Acharon that the crimes penalized under Sec. 5(i) are mala in se and not mala prohibita, thereby requiring specific criminal intent, We hereby hold that in instances of marital infidelity, the requirement of specific criminal intent to cause mental and emotional suffering is already satisfied at the moment the perpetrator commits the act of marital infidelity. This finds basis in the fact that marital infidelity is inherently immoral and depraved under prevailing societal, cultural, and religious norms. In the normal course of human behavior, an aggrieved wife will never approve of a rogue and wandering husband, and vice versa. The same line of reasoning just cannot be applied in cases of willful denial of financial support. In other words, marital infidelity, divorced from its legal connotations, is an act which is essentially wrong in itself. To pose a rhetoric, what else could adulterers have expected to cause upon their spouse when they committed an act of unfaithfulness, aside from mental and emotional pain?[70] (Emphasis supplied)

All told, XXX is guilty of psychological violence under Section 5(i) of Republic Act No. 9262 committed against his wife, AAA.

Penalty

Republic Act No. 9262, Section 6[71] punishes acts falling under Section 5(i) with prison mayor. And, in addition to imprisonment, the perpetrator shall pay a fine in the amount of not less than PHP 100,000.00 but not more than PHP 300,000.00 and undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

In the absence of any modifying circumstances, the imposable penalty shall be applied in its medium period, which is eight years and one day to 10 years of prison mayor. Applying the Indeterminate Sentence Law, this shall serve as the maximum term. Meanwhile, the penalty next lower in degree shall serve as the minimum term, or prison correccional, which is six months and one day to six years. The Court of Appeals thus correctly imposed the indeterminate sentence of four years, two months, and one day of prison correccional, as the minimum term, and eight years and one day of prison mayor, as the maximum term.

We affirm the directive of the Court of Appeals for XXX to pay a fine, but we lower the amount from PHP 300,000.00 to PHP 100,000.00 per prevailing jurisprudence.[72] He is also ordered to undergo psychological counseling pursuant to the last paragraph of Section 6 of Republic Act No. 9262

ACCORDINGLY, the Petition is DENIED. The Decision dated March 30, 2017 and Resolution dated June 6, 2017 of the Court of Appeals in CA-G.R. SP No. 148784 are AFFIRMED with MODIFICATION. XXX is GUILTY of violation of Section 5(i) of Republic Act No. 9262 and is sentenced to the indeterminate penalty of four years, two months, and one day of prison correccional, as the minimum term, and eight years and one day of prison mayor, as the maximum term. He is also ordered to PAY a fine of PHP 100,000.00 and to undergo psychological counseling and to report his compliance therewith to the Court, as set forth in the last paragraph of Section 6 of Republic Act No. 9262.

SO ORDERED.

J. Lopez and Villanueva, JJ., concur.

Leonen, SAJ. (Chairperson), please see separate concurring and dissenting opinion.

Kho, Jr., please see dissenting opinion.

[*] In line with Amended Administrative Circular No. 83-2015, as mandated by Article 266(A) of the Revised Penal Code as amended by Republic Act No. 8353, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

[1] Rollo, pp. 36-55.

[2] Id. at 14-28. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes, Fifth Division, Court of Appeals, Manila.

[3] Otherwise known as "The Anti-Violence Against Women and Their Children Act of 2004."

[4] Rollo, at 30-31. Penned by Associate Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes, Fifth Division, Court of Appeals, Manila.

[5] Id. at 79-80.

[6] Id. at 80.

[7] Id.

[8] Id. at 82.

[9] Id. at 16.

[10] Id. at 16-17.

[11] Id. at 80.

[12] Id.

[13] Id.

[14] Id. at 15.

[15] Id. at 80-81.

[16] Id. at 17 & 83.

[17] Id. at 82.

[18] Id. at 83.

[19] Id. at 83.

[20] Id. at 79-86. Penned by Presiding Judge Leandro C. Catalo, Branch xxx, Regional Trial Court, xxxxxxxxxxxx.

[21] Id. at 86.

[22] Id. at 85.

- [23] Id. at 86.
- [24] Id. at 17.
- [25] Id. at 14-28.
- [26] Id. at 27-28.
- [27] Id. at 24-25.
- [28] Id. at 26.
- [29] Id. at 30-31.
- [30] Id. at 47.
- [31] Id. at 48.
- [32] Id. at 48-49.
- [33] Id. at 114-125.
- [34] Id. at 118.
- [35] Id. at 119-120.
- [36] Id. at 121-122.
- [37] Id. at 123.
- [38] Id. at 138.
- [39] Id. at 141-145.
- [40] Id. at 144.
- [41] *Melo v. People*, 85 Phil. 766, 768 (1950) [Per C.J. Moran, En Banc].
- [42] 394 Phil. 517 (2000) [Per J. Bellosillo, En Banc].
- [43] Id. at 555-556.
- [44] *People v. Serrano*, 374 Phil. 302, 306 (1999) [Per J. Pardo, First Division].
- [45] *People v. Arcega*, 880 Phil. 291, 308 (2020) [Per C.J. Peralta, First Division].
- [46] *Gacad, Jr. v. Corpuz*, 927 Phil. 259, 267-268 (2022) [Per J. Hernando, First Division].
- [47] *Rollo*, p. 85.
- [48] Id. at 26.
- [49] FAMILY CODE, art. 63.
- [50] 761 Phil. 356 (2015) [Per J. Peralta, Third Division].
- [51] Id. at 373.
- [52] *Rollo*, pp. 16-17.
- [53] *XXX v. People*, 937 Phil. 356, 364 (2023) [Per J. Hernando, First Division].

[54] Rollo, p. 81.

[55] Id. at 82.

[56] Id.

[57] FAMILY CODE, art. 68.

[58] Rollo, p. 80.

[59] AAA v. BBB, 823 Phil. 607, 620 (2018) [Per J. Tijam, First Division].

[60] Id. at 25.

[61] Rollo, p. 25.

[62] Id.

[63] Id. at 80-81.

[64] Id.

[65] XXX270257 v. People, 957 Phil. 604, 611 (2024) [Per J. Inting, Third Division].

[66] Rollo, p. 15.

[67] Id. at 25.

[68] Id.

[69] 953 Phil. 462 (2024) [Per J. Hernando, En Banc].

[70] Id. at 481.

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

....

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

....

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 (300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

[72] XXX v. People, 953 Phil. 462 (2024) [Per J. Hernando, En Banc].

G.R. No. 232190 – XXX, Petitioner, v. PEOPLE OF THE PHILIPPINES and AAA,[*] Respondents.

CONCURRING AND DISSENTING OPINION

LEONEN, SAJ:

Infidelity is deeply painful. Many of us, if not all, are familiar with this reality. Some of our relationships have survived, others have met its end. Some couples chose to forgive, others chose to condemn.

Yet, in the eyes of the law, not all instances "involving extramarital relationships will rise to the level of criminality as to make it punishable under [Section] 5(i) of [Republic Act. No. 9262.]"[1] Marital infidelity per se does not amount to psychological violence. It must be shown that the infidelity caused mental or emotional

suffering to the victim before the resulting crime—psychological violence—can be successfully prosecuted.[2] The causation between the act and the effect must be duly established beyond reasonable doubt to constitute the crime.

This is a Petition for Review[3] assailing the Decision[4] and Resolution[5] of the Court of Appeals finding XXX guilty of violating Section 5(i) of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004.

XXX and AAA were married in 2006.[6] In 2008, their son BBB was born.[7] However, their marriage fell apart after AAA discovered XXX's marital infidelity.[8] AAA alleged that she saw someone message XXX saying, "AYAW KO [NA]NG MAGING KABIT[.]"[9] When she confronted him about it, XXX brushed it aside and claimed that it was just a prank played by his friend.[10] The following day, he left their home and never returned.[11]

AAA suffered mentally and emotionally due to their separation.[12] This was aggravated when XXX and his mistress bore two children and brandished their affair on social media.[13] In 2012, AAA was diagnosed with a type of depression called dysthymia.[14]

In his defense, XXX blamed their separation on AAA's marital immaturity and over-attachment to her family.[15] He alleged that he left their house due to his mother-in-law's insistence.[16] He tried to win AAA back, even suggesting a marriage seminar, but to no avail.[17] He claimed that she only filed the action after their disagreement over her preferred school for their son.[18]

The Regional Trial Court acquitted XXX.[19] It pointed out that AAA admitted that XXX continuously communicated with her, visited their child, and provided support to them after they had separated. They remained civil toward each other.[20] It also stressed that AAA's psychological evaluation was conducted only five years after their separation.[21] The trial court doubted the evaluation, citing that AAA was gainfully employed at a bank during this time.[22]

Further, the trial court gave credence to the defense's evidence showing that XXX and AAA's marriage was falling apart due to their irreconcilable differences.[23] It held that their separation is part of the usual human experience, and noted that XXX's alleged marital infidelity happened after they had separated. It highlighted that XXX's children with his paramour were born after his and AAA's separation in 2008.[24] These, to the trial court's mind, raised reasonable doubt as to XXX's guilt.[25]

The Court of Appeals reversed the Regional Trial Court's ruling and found XXX guilty of the charge.[26] On the procedural issue, the Court of Appeals held that an ordinary appeal is the proper remedy to correct errors of judgment.[27] However, by way of exception, a judgment of acquittal may be assailed through a petition for certiorari under Rule 65 without placing an accused in double jeopardy if the lower court acted with grave abuse of discretion or if there was denial of due process.[28]

Proceeding to the merits, the Court of Appeals ruled that the prosecution's evidence proved beyond reasonable doubt that XXX inflicted psychological violence on AAA.[29] XXX's marital infidelity and his proud display of his illicit relationship in public showed his total disregard of AAA's feelings, causing her mental and emotional pain.[30]

AAA testified that her suspicion began when she saw XXX's text messages suggesting that he was having an affair.[31] This was further confirmed when XXX and his paramour flaunted their relationship and children on social media.[32] The prosecution also submitted the birth certificates of XXX's children with his paramour.[33]

The Court of Appeals further cited Dr. Maria Carmen P. Lambuson's (Dr. Lambuson) psychological evaluation of

AAA.[34] Dr. Lambuson confirmed that AAA suffered from depression, and that it mainly developed when XXX left her and their son.[35] Dr. Lambuson's evaluation showed that AAA suffered from sleep disturbances, feelings of guilt, self-pity, hopelessness, and worthlessness.[36] She also experienced crying episodes, palpitations, social withdrawal, and depressed moods on most days.[37] As a result, AAA had to take medication and undergo psychotherapy.[38]

The Court of Appeals ruled that the commission of punishable acts, even after the de facto separation of spouses, is punishable.[39]

The ponencia held that a judgment of acquittal may be assailed by the People through a petition for certiorari under Rule 65 of the Rules of Court without violating the constitutional protection against double jeopardy.[40] I concur.

However, in affirming XXX's conviction, the ponencia found that the prosecution had proven beyond reasonable doubt that: (1) he committed marital infidelity;[41] and (2) such infidelity caused AAA significant mental and emotional suffering.[42]

With utmost respect, I disagree.

I

The prohibition against double jeopardy ensures that no one suffers a second punishment or second trial for the same offense.[43] When one is charged with an offense and it is consequently terminated by acquittal or conviction or in any other way without their consent, they cannot be charged again with the similar offense.[44]

This is bolstered by Rule 117, Section 7 of the Revised Rules of Criminal Procedure, which provides:

RULE 117

Motion to Quash

....

Section 7. Former Conviction or Acquittal; Double Jeopardy. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

When an accused is acquitted or convicted in the lower court, the State cannot appeal the ruling through a Rule 45 petition. Errors by the trial court with respect to the legal soundness of its decision, errors of judgment, or mistakes in findings and conclusions can no longer be reviewed. Otherwise, the accused is forced to undergo a new trial by means of appeal. In *People v. Sandiganbayan*:^[45]

The rule is that a judgment acquitting the accused is final and immediately executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy. Such acquittal is final and unappealable on the ground of double jeopardy whether it happens at the trial court or on appeal at the CA. Thus, the State is proscribed from appealing the judgment of acquittal of the accused to this Court under Rule 45 of the Rules of Court.

....

The public interest in the finality of criminal judgments is so strong that an acquitted defendant may not be

retried even though the acquittal was based upon an egregiously erroneous foundation. If the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair. Because jeopardy attaches before the judgment becomes final, the constitutional protection also embraces the defendant's valued right to have his trial completed by a particular tribunal. Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial. The reason is not that the first trial established the defendant's factual innocence, but rather that the second trial would present all the untoward consequences that the clause was designed to prevent. The government would be allowed to seek to persuade a second trier of the fact of the defendant's guilt, to strengthen any weaknesses in its first presentation, and to subject the defendant to the expense and anxiety of a second trial.[46] (Citations omitted)

Nevertheless, the State is not without recourse when it is handed down a decision of acquittal. A judgment of acquittal may still be assailed but only through a petition for certiorari under Rule 65 of the Rules of Court.[47] This does not constitute double jeopardy because a petition for certiorari does not assail the trial court's factual finding and conclusion, but the lower court's jurisdiction.[48] In these cases, the State must prove that the lower court acted without jurisdiction or with grave abuse of discretion amounting to excess or lack of jurisdiction.[49] In *People v. Asis*,[50] this Court underscored this rule:

A petition for certiorari under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for certiorari questioning the acquittal of the accused in, or the dismissals of, criminal cases. Thus, in *People v. Louel Uy*, the Court has held:

Like any other rule, however, the above said rule is not absolute. By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for certiorari under Rule 65 of the Rules of Court upon clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus rendering the assailed judgment void[.]

In *People v. Laguio, Jr.*, where the acquittal of the accused was via the grant of his demurrer to evidence, We pointed out the propriety of resorting to a petition for certiorari. Thus:

By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. This may be done via the special civil action of certiorari under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via certiorari, the right of the accused against double jeopardy is not violated.[51] (Citations omitted)

There is grave abuse of discretion amounting to lack or in excess of jurisdiction when a "court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction." [52] In *Villareal v. Aliga*: [53]

The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law, or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. No grave abuse of discretion may be attributed to a court simply because of its alleged misapplication of facts and evidence, and erroneous conclusions based on said evidence.[54]

Petitioner argues that there is no error of jurisdiction or grave abuse of discretion committed by the trial court. Petitioner further claims that there is neither an error of law nor a mistake in the evaluation of evidence.[55]

Public respondent resorted to the proper procedural remedy.

When the trial court acquitted petitioner, public respondent did not appeal and contest the trial court's factual findings and conclusions. By filing a petition for certiorari under Rule 65 before the Court of Appeals, public respondent claimed that the trial court acted with grave abuse of discretion amounting to lack or excess in jurisdiction.[56]

The Court of Appeals, in ruling for petitioner's conviction, found that the trial court committed grave abuse of discretion on the basis of petitioner's exclusion from the scope of the law. The Court of Appeals noted:

The trial court's ratiocination that the marital infidelity of [petitioner] cannot be punished under R.A. No. 9262 since the act was committed after the spouses' de facto separation in 2008, is in utter disregard of the express provisions in Section 5(i), R.A. No. 9262, that the offended party may be "the wife or former wife of the offender." With this provision, it necessarily follows that commission of the acts punished under R.A. No. 9262, even during the separation de facto of the spouses, is punishable. Thus:

(ii) 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[.][57]

Indeed, petitioner cannot be excluded from the operation of Republic Act No. 9262 merely because he and private respondent have de facto separated.[58] This is a glaring and patent error considering that the law clearly states that the offended party may be the "wife or former wife of the offender." [59] This is not a mere misappreciation of facts and evidence, but an unfounded reading of the law. Given the trial court's erroneous ruling in this respect, the Court of Appeals voided the judgment of acquittal.

Concomitantly, when an appellate court overturns an acquittal in a special civil action of certiorari, the right of the accused against double jeopardy is not violated.

I(A)

Republic Act No. 9262 is a key legislation which defines and penalizes acts of violence against women and their children. Section 3(a) of Republic Act No. 9262 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. (Emphasis supplied)

Thus, violence against women and their children can be inflicted by: (1) a woman's intimate partner; (2) any person with whom she has or had a sexual or dating relationship with; or (3) with whom the woman has a common child.[60]

Violence against women and children may be inflicted through the following acts:

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.[61] (Emphasis supplied)

Meanwhile, the definition of psychological violence under the law further enumerates similar acts or omissions:

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.[62] (Emphasis supplied)

A plain reading of Section 5(i) reveals that it does not include "marital infidelity" as an example of "causing mental or emotional anguish, public ridicule or humiliation to the woman or her child." While it is true that the enumeration of the modes of committing a violation of Section 5(i) is not exclusive, with the legislature's use of the words "including, but not limited to;" and that Section 3(a)(C) of the same law mentions "marital infidelity" in defining "psychological violence," still, it is Section 5(i), not Section 3(a)(C) that enumerates the acts explicitly considered as crimes under Republic Act No. 9262. Therefore, it is not even clear if marital infidelity, in and of itself, is a crime under Republic Act No. 9262.[63]

This notwithstanding, the Court has, in several instances, construed marital infidelity which caused mental and emotional anguish, as a violation of Section 5(i).

The Court, in *Dinamling v. People*,[64] enumerated the elements of psychological violence under Section 5(i) in relation to the definition of psychological violence found in Section 3(a)(C), thus:

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;[65]
- (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;[66]
- (3) The offender causes on the woman and/or child mental or emotional anguish;[67] 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.[68] (Emphasis supplied)

These elements harmonized the punishable acts in Section 5(i) in relation to how the law defined psychological violence in Section 3(a)(C). Digesting it, the act or omission is the means employed by the perpetrator to cause the mental or emotional anguish to the victim.[69] The concurrence of the third and fourth elements results in the crime of psychological violence.

In *Araza v. People*,[70] the accused was charged with committing psychological violence against his wife by having marital infidelity and siring a child with his mistress. In affirming the conviction of the accused, this Court held that the elements of psychological violence through marital infidelity are present. The victim is a woman, and she is married to the accused.[71]

As to the third and fourth elements, it was established that the accused was living with his paramour and this marital infidelity was the proximate cause of the victim's mental and emotional anguish. This Court cited the prosecution witnesses' testimonies before the trial court. The prosecution was able to present the testimony of the victim's psychiatrist, who affirmed that the victim suffered anxiety and depression. The psychiatrist noted that while the marital infidelity is not the sole cause of the victim's psychological issues, the loss of her partner "perpetrated symptoms of depression." Moreover, the victim herself testified that she suffered from mental and emotional pain due to her husband's acts.[72]

Similarly, in *XXX v. People*,[73] this Court affirmed petitioner's conviction for psychological violence under Section 5(i). Citing the victim's testimony, this Court found that the elements of the crime were sufficiently established by the prosecution. It held that the victim suffered from mental and emotional anguish upon learning petitioner's marital infidelity. The prosecution was able to establish that the accused was romantically involved

with another woman and had a child with her while married to the victim. The victim's brother, who was present when the couple had a confrontation, also corroborated his sister's testimony. This Court held that testimonial evidence of the prosecution successfully established the elements of the crime.[74]

In *Acharon v. People*,^[75] the Court further clarified the interpretation of Section 5(i) of Republic Act No. 9262. In *Acharon*, the violation in Section 5(i) was recalibrated, explaining that crimes under this provision are *mala in se*, not *mala prohibita*, thereby requiring specific criminal intent even though Republic Act No. 9262 is a special penal law.^[76]

Ultimately, in *Acharon*, this Court ruled that to prosecute under Section 5(i), it must be proven that the accused intended to inflict mental or emotional anguish upon the victim and the "willful denial of financial support being the means selected by the accused to accomplish [this] purpose."^[77] In acquitting petitioner, this Court in *Acharon* found that the prosecution failed to establish that there was willful refusal to provide financial support.^[78]

However, in the recent case of *XXX v. People*,^[79] the Court, in a slim majority, held that *Acharon* only applies to "circumstances involving willful denial of financial support, and not marital infidelity."^[80] It further held that in cases of marital infidelity, "the requirement of specific criminal intent to cause mental and emotional suffering is already satisfied at the moment the perpetrator commits the act."^[81]

Reconciling it with *Dinamling*, the Court in *XXX* (2024) distilled the presence, or the lack thereof, of the third requisite posing a question, to wit:

[D]id the wife or her child suffer mental or emotional anguish due to the acts committed by the offender? If the answer is yes, then the third element already exists. The husband's intent to cause mental or emotional anguish upon the wife or her child is already presumed upon the husband's mere commission of the act of marital infidelity.^[82] (Emphasis supplied)

Yet, the Court also acknowledged that not all extramarital relationships will cause mental or emotional suffering which will result to psychological violence:

As the name suggests, marital infidelity presupposes that there is a bond or commitment to which one owes fidelity, but the Court takes notice of non-traditional family setups and more modern relationship arrangements in which extramarital entanglements are not equivalent to unfaithfulness. For example, it may be argued, such as in cases of estranged relations and consciously consenting spouses, that not all instances of extramarital relationships inflict mental or emotional suffering to the other spouse. In such situations, it is the Court's view that there is no crime committed as there is a crime only when the acts or omissions cause or are likely to cause mental or emotional suffering upon the wife or her child. In Our view, this interpretation is more in sync with Republic Act No. 9262's main thrust, which is the protection of women and their children. Thus, it is rational to say that it is more concerned with defending them as victims, rather than penalizing offenders, which is merely a consequence of its defensive and protective stance. In other words, Republic Act No. 9262 looks at the effects of a certain act or omission against a woman or their child, rather than the motive of the offender.^[83] (Emphasis supplied)

Conversely stated, there is no crime if the act or omission—in this case marital infidelity—did not cause or is not likely to cause mental or emotional suffering upon the wife. In other words, marital infidelity by or in itself does not automatically result to psychological violence. Rather, there must be an interdependence between the marital infidelity and the mental or emotional distress which the victim suffered.^[84]

I(B)

Due to the complexities of intimate relationships, not all instances of infidelity will inflict mental or emotional

suffering.[85] In my dissenting opinion in *XXX v. People*, I explained that marital infidelity includes a whole spectrum of different scenarios:

Marital infidelity may mean different things. It implies more than just a sexual act. It can be going out on a date with a former lover. It can be visiting so-called massage parlors or gentlemen's clubs. It can be receiving lap dances. It can even be watching pornography. It can also be the spouse carrying out a relationship with another of their same sex. These acts may elicit different reactions depending on who you ask. Some might say these constitute infidelity. Some may say that it is infidelity only if an emotional attachment is formed. Others might say it is infidelity only when it becomes habitual. Others may tolerate if the other spouse becomes intimate with one of their similar sex. Still, others might react entirely differently or with a permutation of the foregoing.

Marital infidelity was not defined in the law as strictly being sexual. Even if we read it to mean sexual, what is sexual can include a whole spectrum, from sharing intimate glances to intercourse.

Second, marital infidelity is ultimately a question of boundaries—boundaries that ought to be set between each couple. Couples should first agree on what constitutes marital infidelity for them. This is a conversation in which the State and its prosecutors take no part. However, openly negotiating these decisions are not common in our culture or laws. More often, they are discussed only when one spouse's idea of fidelity is breached. At that point, emotions are running high. With the addition of criminalizing mere marital infidelity, peaceful resolutions seem improbable. With the interpretation of the majority, the State and its prosecutors are invited into the most intimate corners of a marriage.

Third, marital infidelity in the law is vague because there may be many reasons for its commission. Without recognizing the following as licenses for infidelity, we acknowledge that they are possible causes. Marital infidelity may indeed be committed to hurt the other spouse without necessarily constituting psychological coercion. It can happen at a time of weakness. For instance, research shows that husbands who earn less than their wives are more prone to straying from the marital relationship, the reason being that they need to prove their masculinity in ways other than providing financial support to the family. While being outearned by one's wife is definitely not an excuse to cheat, the research nevertheless shows that marital infidelity may be committed for reasons other than causing mental and emotional anguish on the wife. In the case of the outearned husband, he may stray to fill a gaping hole in his perceived identity.

Marital infidelity may be prompted by loneliness, as with the case of a couple where one spouse is an overseas Filipino worker. One might commit marital infidelity to address a perceived gap in the relationship. Nobody possesses all the qualities that the other desires. Lack of communication might lead one spouse to seek from another person a characteristic missing from the other spouse. Even if marital infidelity was committed to hurt the other spouse, it may be a way of communicating needs. Marital infidelity may be an indication that emotions are fading, or that the relationship should be extinguished, or one is simply not built for monogamy.[86] (Citations omitted)

These scenarios do not seek to justify the act of marital infidelity but to demonstrate that there may be many motivations and/or causes behind it. Besides, an act of infidelity—no matter how couples define the boundaries amongst themselves to mean—may or may not even hurt the other party's feelings. It may or may not automatically equate to mental or emotional suffering upon the woman.

This reality has already been recognized by the Court in the case of *AAA v. BBB*,[87] where it said that "depending on the circumstances of the spouses and for a myriad of reasons, the illicit relationship may or may not even be causing mental or emotional anguish on the [other spouse]."[88] To rule otherwise would infringe on the autonomy of couples and stereotype all women as victims.

II

To have a successful prosecution of psychological violence, it must be shown that the infidelity caused mental or emotional anguish to the victim.[89] The causation between the act and the effect must be duly established beyond reasonable doubt.

Going back to the elements of the crime as stated in *Dinamling*, and as recently modified in XXX (2024), the presence of the first two requisites is undisputed in the case at bar.

First, the victim, private respondent, is a woman. Second, she is petitioner's wife.[90] The trial court seemed to misinterpret this element by pointing out that the acts complained of transpired after the couple separated. This is immaterial. The fact remains that petitioner and the victim are still married and that they have a child together, albeit separated de facto.

The law does not create further distinction and characterization of the victim and the perpetrator's relationship. It covers various complexions of the relationship. The victim and the perpetrator do not necessarily need to be married, or if married, they do not necessarily need to be living together. They will also fall under the law's coverage if they were formerly married, have or had a sexual or dating relationship, or if they have a common child, whether marital or nonmarital,[91] living within or without the family home.

However, I submit that the presence of the third and fourth requisites were not proven by the prosecution beyond reasonable doubt. To answer the question that was posed in XXX (2024): Did private respondent suffer mental or emotional anguish due to the acts committed by petitioner? The evidence does not convincingly support an affirmative answer. The link between the act of marital infidelity and the alleged mental or emotional suffering was, in my view, not adequately demonstrated.

To establish these elements, the prosecution must show "proof of commission of any of the acts enumerated in Section 5(i) or similar such acts"[92] on one hand, and the mental and emotional suffering caused by such act on the other.[93] The latter may be established through the victim's lone testimony, so long as it is credible.[94] A corroborative testimony is not indispensable.[95]

Here, the prosecution submitted documentary evidence such as: (1) the certificates of live birth of petitioner's children with PPP; and (2) the screenshots of excerpts from petitioner and his paramour's Facebook and Twitter accounts, showing pictures of petitioner with their children celebrating their birthdays[96] to prove the fact of infidelity.

To this, I fully ascribe that such act was in fact committed.

Meanwhile, private respondent's testimony was offered to establish that the infidelity caused her to suffer mental and emotional anguish. As narrated by private respondent, she discovered her husband's infidelity after seeing another woman's text message stating that she no longer wanted to be petitioner's mistress.[97] When private respondent confronted him, petitioner denied it but soon after, he left her and their child behind to live with his paramour.[98] Subsequently, she discovered that petitioner and his paramour had two children, even flaunting their relationship and their children on social media.[99]

To corroborate the testimony of private respondent, the prosecution presented private respondent's psychiatrist, Dr. Lambuson.[100] In Dr. Lambuson's evaluation however, she noted that private respondent suffered from depression, triggered by petitioner's abandonment. Her findings revealed:

The main cause of the depression for this particular patient, her life shattered right before her eyes when her husband left; her child becoming an orphan having no father to be with him, to guide him while growing up because the father, the patient's spouse, had decided to leave them. Whatever her beliefs were about marriage were now fractured, dreams shattered, self-confidence gone. Medication is helping her as well as the

psychotherapy we do when she comes in for follow-up. It will take several more sessions for her to believe in herself again and not blame herself for whatever happened to her and to her child. She has on her own, re-build her dreams, her beliefs mended, her self-confidence fixed and this may take her months or years or maybe when the goal of this legal battle achieve in her favor, this disorder will be easier to overcome.[101] (Emphasis supplied)

The trial court absolved petitioner, noting that he and private respondent continuously communicated after they had separated. Petitioner continued to visit their child and provided support. They were also civil with each other. The trial court further questioned the belated filing of the complaint and doubted the diagnosis of private respondent because it happened four years after the separation.[102] It concluded that the marital infidelity only happened after the separation in 2008 because petitioner's children with his paramour were born after he had left private respondent.[103]

Although I already explained that the de facto separation of petitioner and private respondent does not exclude them from the coverage of the law, I agree with the trial court's disposition.

First, the fact that private respondent and petitioner maintained constant communication and remained civil towards each other cannot be made the sole basis of petitioner's conviction. From these admissions, it cannot be inferred that private respondent was suffering from any mental or emotional anguish because of petitioner's infidelity. What is clear from this is that private respondent respected petitioner's decision to leave their household and decided to move forward and accept the new dynamics of their defunct marriage. This circumstance should be taken liberally in favor of petitioner as a form of pardon, acquiescence, or condonation on the part of his wife.

In a long line of cases, this Court has recognized that the mental or emotional anguish caused by sexual marital infidelity is highly personal to the offended party.[104] Marital infidelity should be punished if it is used as a coercive control tactic—when it is used to dominate, manipulate, or intimidate the other partner, thereby infringing on the autonomy and agency of the other and maintaining the power imbalance between the couple.[105]

Thus, while ill feelings between petitioner and private respondent may be presumed, it will not rise to the level of mental and emotional suffering that results to psychological violence.

Second, and most telling, is the psychological evaluation of private respondent's psychiatrist. Instead of corroborating private respondent's claim that the cause of her mental and emotional anguish is petitioner's infidelity, it proved otherwise, stating that the trigger and cause of her depression is petitioner's abandonment. This goes to show that the proximate cause of private respondent's depression is petitioner's abandonment, not the latter's infidelity.

Besides, it seems that the filing of the petition was a mere afterthought due to their disagreement over their child's education. This is supported by the fact that: (1) the filing of the present complaint and private respondent's consultation with her psychiatrist happened at least four years after their de facto separation;[106] and (2) despite the filing of two cases against him (this case and another case involving the issuance of a protection order with order of support, docketed as G.R. No. 219715), petitioner was consistent in both cases that the cause of their separation was private respondent's immaturity and extreme attachment to her family.[107]

Ultimately, the prosecution, in my view, failed to establish beyond reasonable doubt the causal link between the petitioner's act and its alleged effect on the private respondent. Petitioner should be acquitted.

This notwithstanding, I remain steadfast in my commitment to uphold the protection of women and their children against all forms of violence. The enactment of Republic Act No. 9262 has empowered more and more women to see themselves as equals to men and to recognize that they do not deserve to suffer any form of violence simply

because of their sex.

While we aim to eliminate patriarchy from our culture, we must also avoid stereotyping all women as victims and labeling all men who commit infidelity as abusers. Infidelity is a human act. There is no biological basis that only men can become unfaithful; both sexes are capable of disloyalty. Too, the infidelity by the woman can result to abuse and subject the man to psychological harm. Conversely, as in this case, it can also be caused by some other reason.

Infidelity is already painful. We should not add to the pain by feeding into the meaningless desire for revenge by incarcerating the human offender. Spouses should be encouraged to find a fair resolution to marital infidelity, regardless if the infidelity is done by a husband or a wife or both. Finding a resolution, whether it is to move on in a relationship or rescinding that relationship, is not necessarily a vestige of patriarchy that the law must protect against.[108]

Acknowledgment, atonement, understanding, and the possibility of forgiveness may follow sin. So should separation be a recourse after betrayal. For human relationships, restorative justice is better than retribution.[109]

Accordingly, I vote to GRANT the Petition for Review on Certiorari and ACQUIT petitioner XXX.

[*] In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 9262, the names of offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

[1] Manalang v. People, 953 Phil. 462, 485 (2024) [Per J. Hernando, En Banc].

[2] Id. 485-486.

[3] Rollo, pp. 36-62.

[4] Id. at 14-28. The March 30, 2017 Decision in CA-G.R. SP No. 148784 was penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes of the Fifth Division, Court of Appeals, Manila.

[5] Id. at 30-31. The June 6, 2017 Resolution in CA-G.R. SP No. 148784 was penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes of the Fifth Division, Court of Appeals, Manila.

[6] Id. at 37.

[7] Id.

[8] Id. at 40, 64.

[9] Id. at 73, 80.

[10] Id.

[11] Id.

[12] Id. at 15.

[13] Id.

[14] Id. at 81. Dysthymia is a form of depression. It is less severe than major depression but lasts longer. See

Harvard Health Publishing, *Dysthymia*, available at <http://www.health.harvard.edu/depression/dysthymia> (last accessed on March 10, 2023).

[15] *Id.* at 82.

[16] *Id.*

[17] *Id.* at 82-83.

[18] *Id.* at 83.

[19] *Id.* at 79-86. The September 30, 2016 Decision in Criminal Case No. 13-028 was penned by Presiding Judge Leandro C. Catalo of Branch xxx, Regional Trial Court, xxxxxxxxxxxx City.

[20] *Id.* at 80, 85.

[21] *Id.* at 80-81, 85.

[22] *Id.* at 85.

[23] *Id.*

[24] *Id.*

[25] *Id.* at 85-86.

[26] *Id.* at 27-28.

[27] *Id.* at 68.

[28] *Id.* at 69.

[29] *Id.* at 24.

[30] *Id.* at 24-25.

[31] *Id.* at 24.

[32] *Id.*

[33] *Id.* at 25.

[34] *Id.* 25-26.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.* at 26.

[39] *Id.*

[40] Ponencia, p. 8-10.

[41] *Id.* at 10-11.

[42] *Id.* at 11-12.

- [43] *Corpus, Jr. v. Pamular*, 839 Phil. 731, 773 (2018) [Per J. Leonen, Third Division].
- [44] *Id.*
- [45] 524 Phil. 496 (2006) [Per J. Callejo, Sr., First Division].
- [46] *Id.* at 517-518, 521-522.
- [47] *Id.* at 522.
- [48] *Id.* at 522-523.
- [49] *Id.*
- [50] 643 Phil. 462 (2010) [Per J. Mendoza, Second Division].
- [51] *Id.* at 469-470.
- [52] *Chua v. People*, 821 Phil. 271, 279 (2017) [Per J. Marites, Third Division].
- [53] 724 Phil. 47 (2014) [Per J. Peralta, Third Division].
- [54] *Id.* at 61, citing *People v. Sandiganbayan* (First Division), 524 Phil. 496, 523 (2006) [Per J. Callejo, Sr., First Division].
- [55] *Rollo*, pp. 51-52.
- [56] *Id.* at 66.
- [57] *Id.* at 75.
- [58] *Id.*
- [59] *Id.*
- [60] *Garcia v. Drilon*, 712 Phil. 44, 66 (2013) [Per J. Perlas-Bernabe, En Banc].
- [61] Republic Act No. 9262 (2004), sec. 5.
- [62] Republic Act No. 9262 (2004), sec. 3(a)(C).
- [63] See J. Leonen, Dissenting Opinion in *XXX v. People*, 953 Phil. 462, 581-582 (2024) [Per J. Hernando, En Banc].
- [64] 761 Phil. 356 (2015) [Per J. Peralta, Third Division].
- [65] In relation to Section 3(a) of Republic Act No. 9262 (2004).
- [66] In relation to Section 3(a) of Republic Act No. 9262 (2004).
- [67] In relation to Section 3(a) of Republic Act No. 9262 (2004).
- [68] In relation to Section 5(i) of Republic Act No. 9262 (2004). Any of the acts enumerated in No. 4 refers to the acts or omissions comprising this element and they are a "means" or way of causing mental or emotional anguish, per the definition of "psychological violence" found in Section 3(a)(C) of the same law.
- [69] *Dinamling v. People*, 761 Phil. 356, 375-376 (2015) [Per J. Peralta, Third Division].
- [70] 887 Phil. 905 (2020) [Per C.J. Peralta, First Division].

[71] Id. 918-930.

[72] Id. at 919-924, 929.

[73] 887 Phil. 161 (2020) [Per J. Delos Santos, Second Division].

[74] Id. at 170.

[75] 913 Phil. 731 (2021) [Per J. Caguioa, En Banc].

[76] Id. at 737-738.

[77] Id. at 739.

[78] Id. 740-741.

[79] XXX v. People, 953 Phil. 462 (2024) [Per J. Hernando, En Banc].

[80] Id. at 481.

[81] Id.

[82] Id. at 483.

[83] Id. at 485-486.

[84] Melgar v. People, 826 Phil. 177, 187 (2018) [Per J. Perlas-Bernabe, Second Division].

[85] XXX v. People, 953 Phil. 462 (2024) [Per J. Hernando, En Banc].

[86] See J. Leonen, Dissenting Opinion in XXX v. People, 953 Phil. 462, 582-584 (2024) [Per J. Hernando, En Banc].

[87] 823 Phil. 607 (2018) [Per J. Tijam, First Division].

[88] Id. at 620.

[89] XXX v. People, 953 Phil. 462, 483 (2024) [Per J. Hernando, En Banc].

[90] Rollo, p. 15.

[91] In Aquino v. Aquino, 918-A Phil. 371 (2021) [Per J. Leonen, En Banc], this Court recognized the pejorative implication of using the "legitimate"/"illegitimate" dichotomy, as this perpetuates a historical stigma. Thus, we noted that, whenever practicable and not directly referring to statute and jurisprudence, the terms "legitimate" and "illegitimate" shall be replaced by "marital" and "nonmarital," respectively.

[92] Dinamling v. People, 761 Phil. 356, 376 (2015) [Per J. Peralta, Third Division].

[93] XXX v. People, 953 Phil. 462, 486-487 (2024) [Per J. Hernando, En Banc].

[94] Dinamling v. People, 761 Phil. 356, 375 (2015) [Per J. Peralta, Third Division].

[95] Id.

[96] Rollo, pp. 16-17.

[97] Id. at 80.

[98] Id.

[99] Id. at 15.

[100] Id. at 16.

[101] Id. at 26.

[102] Id. at 85.

[103] Id.

[104] See XXX v. People, 937 Phil. 356, 367 (2023) [Per J. Hernando, First Division]; Araza v. People, 882 Phil. 905, 919 (2020) [Per C.J. Peralta, First Division]; Reyes v. People, 855 Phil. 991, 1004 (2019) [Per J. Peralta, Third Division]; AAA v. People, 844 Phil. 213, 222 (2018) [Per J. Gesmundo, Third Division]; AAA v. BBB, 823 Phil. 607, 620 (2018) [Per J. Tijam, First Division]; Dinamling v. People, 761 Phil. 356, 376 (2015) [Per J. Peralta, Third Division].

[105] See J. Leonen, Dissenting Opinion in XXX v. People, 953 Phil. 462, 591 (2024) [Per J. Hernando, En Banc].

[106] Rollo, pp. 80-81.

[107] Id. at 82; see Cumigad v. AAA, 917 Phil. 589, 592 (2021) [Per J. Leonen, Third Division].

[108] See J. Leonen, Dissenting Opinion in XXX v. People, 953 Phil. 462, 587-588, 593-594 (2024) [Per J. Hernando, En Banc].

[109] Id.

G.R. No. 232190 – XXX,[*] Petitioner, v. PEOPLE OF THE PHILIPPINES and AAA, Respondents.

DISSENTING OPINION

KHO, JR., J.:

I dissent.

For reasons as will be explained hereunder, the Decision[1] dated March 30, 2017 and the Resolution[2] dated June 6, 2017 of the Court of Appeals (CA) convicting petitioner XXX (petitioner) of the crime of violation of Section 5(i) of Republic Act (R.A.) No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," should be reversed and set aside. Consequently, the Decision[3] dated September 30, 2016 of the Regional Trial Court of xxxxxxxxxxxxxx, Branch xxx (RTC) acquitting petitioner of such crime on the ground of reasonable doubt must be reinstated.

I.

As a brief background, this case stemmed from an Information filed before the RTC charging petitioner of the aforementioned crime, the accusatory portion of which reads:

That sometime in the year 2008 and on dates subsequent thereto in the city of xxxxxxxxxxxxxx, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, being the husband of complainant [AAA], did then and there willfully, unlawfully and feloniously commits psychological violence upon her by committing marital infidelity by having sexual relationship with one [PPP] with whom he has two minor children, which caused mental or emotional anguish on the part of complainant [AAA], who was diagnosed as suffering from symptoms of dysthymia.[4]

The prosecution alleged that petitioner and private complainant AAA were married in 2006, and their relationship bore fruit with the birth of their son. However, sometime in 2008, their marriage fell apart when AAA discovered petitioner's marital infidelity, eventually resulting in their de facto separation. According to AAA, she suffered mentally and emotionally due to this development, and such suffering was aggravated when she found out that petitioner and his new partner, PPP, flaunted their relationship on social media and even had their own children.[5]

In his defense, petitioner maintained that it was AAA's immaturity and overdependence on her parents that constrained him to separate with her on the insistence of his mother-in-law. Petitioner likewise claimed that she tried to reconcile with AAA, but the latter denounced the same and even expressed her desire to seek an annulment of their marriage. Finally, petitioner averred that AAA only filed the instant case after their disagreement over the latter's preferred school for their son.[6]

After due proceedings, the RTC promulgated a Decision[7] dated September 30, 2016 acquitting petitioner of the crime charged on the ground that the prosecution failed to prove his guilt beyond reasonable doubt. In acquitting petitioner, the RTC pointed out that: (a) AAA herself admitted that despite her de facto separation from petitioner, the latter still continuously communicated with her, visited their son regularly, and religiously supported them, and that they remained civil with one another; (b) petitioner's marital infidelity only occurred after their de facto separation; and (c) the filing of the criminal complaint and the psychological diagnosis of AAA were all done live years after their separation. Given the foregoing, the RTC opined that "the separation of the complainant and accused in 2008 is a part of human experience, that when the relationship between husband and wife turned sour and misunderstanding occurs[,] this leads to a [de] facto separation, which under the foregoing circumstances here, both parties [voluntarily] accepted as both admit that their differences are indeed irreconcilable." [8] As such, the RTC concluded that "the evidence adduced by the prosecution failed to prove with moral certainty, that [petitioner] was gravely wrong and committed such crime against complainant. In other words, calibrated against the required quantum of evidence in criminal cases, the prosecution's inclusive evidence fell short of proving the elements of psychological violence [under Section 5 (i) of R.A. No. 9262] beyond reasonable doubt." [9] Aggrieved, the People of the Philippines, through the Office of the Solicitor General, filed a petition for certiorari before the CA.

In a Decision[10] dated March 30, 2017, the CA annulled and set aside the RTC ruling, and entered a new one finding petitioner guilty beyond reasonable doubt of the crime charged. Contrary to the RTC's findings, the CA held that the totality of the prosecution's evidence proved beyond reasonable doubt that petitioner indeed committed psychological violence against AAA. It held that petitioner's marital infidelity and proud display of his illicit relationship in public showed his total disregard of AAA's feelings, which eventually caused her mental and emotional pain. Finally, it held that the psychological evaluation of AAA confirmed that she suffered from depression, and that it developed when petitioner left her and their child. In light of the foregoing, the CA concluded that the RTC gravely abused its discretion in acquitting petitioner of the crime charged.[11] Hence, the instant petition.

The ponencia affirms the questioned CA ruling. It posits, inter alia, that: (a) the certiorari petition before the CA did not violate petitioner's right against double jeopardy as the same did not contest the findings of the RTC, but rather, ascribed grave abuse of discretion on the part of the latter court; [12] and (b) all the elements of the crime charged are present in this case, considering that petitioner's estranged wife, AAA, experienced mental and emotional anguish, the proximate cause of which is petitioner's marital infidelity. [13]

As earlier adverted to, I dissent to the ponencia's position that petitioner's conviction must be sustained.

II.

Right against Double Jeopardy and the Finality of Acquittal Doctrine

Section 21, Article III of the Constitution protects a person's right against double jeopardy, viz.:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Pursuant to this right, our jurisdiction adheres to the finality of acquittal doctrine, which states that "a judgment acquitting the accused is final and immediately executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy. Such acquittal is final and unappealable on the ground of double jeopardy whether it happens at the trial court or on appeal at the CA." [14] In *People v. Sandiganbayan*, [15] the Court elucidated on these principles, to wit:

In criminal law, the principle is expressed in the Latin maxim: "Nemo bis punitur pro eodem delicto," or, as Coke says, "Nemo debet bis puniri pro uno delicto" (No one can be twice punished for the same crime or misdemeanor). The United States Supreme Court declared that at the heart of this policy is the concern that permitting the sovereign freely to subject the citizen to a second judgment for the same offense would arm the government with a potent instrument of oppression. The provision therefore guarantees that the State shall not be permitted to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Society's awareness of the heavy personal strain which a criminal trial represents for the individual defendant is manifested in the willingness to limit the government to a single criminal proceeding to vindicate its very vital interest in the enforcement of criminal laws.

The policies underlying the Double Jeopardy Clause militate against permitting the government to appeal after a verdict of acquittal. Granting such broad appeal rights to the government would allow the prosecutor to seek to persuade a second trier of fact of defendant's guilt after having failed with the first; it would permit him to re-examine the weaknesses in his first presentation in order to strengthen the second; and it would disserve the defendant's legitimate interest in the finality of a verdict of acquittal. The underlying idea is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Thus, the State is prevented from honing its trial strategies and perfecting its evidence through successive attempts at conviction. Repeated prosecutorial sallies would unfairly burden defendant and create a risk of conviction through sheer governmental perseverance. For this reason, when a reversal rests upon the ground that the prosecution has failed to produce sufficient evidence to prove its case, the Double Jeopardy Clause bars the prosecutor from making a second attempt at conviction.

When a defendant has been acquitted of an offense, the clause guarantees that the State shall not be permitted to make repeated attempts to convict him, thereby subjecting him to embarrassment, expense, and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

Thus, it is one of the elemental principles of criminal law that the government cannot secure a new trial by means of an appeal even though an acquittal may appear to be erroneous. That judgment of acquittal, however erroneous, bars further prosecution on any aspect of the count, and consequently, bars appellate review of the trial court's error. Unless grave abuse of discretion amounting to lack of jurisdiction is shown, the errors

committed by the trial court in the exercise of its jurisdiction, or even the legal soundness of such decision, errors of judgment, mistakes in its findings and conclusions, are not proper subjects of appeal under Rule 45 of the Rules of Court.

....

One other reason why further prosecution is barred to appeal an acquittal is that the government has already been afforded one complete opportunity to prove a case of the criminal defendant's culpability and, when it has failed for any reason to persuade the court not to enter a final judgment favorable to the accused, the constitutional policies underlying the ban against multiple trials become compelling. It matters not whether the final judgment constitutes a formal "acquittal." What is critical is whether the accused obtained, after jeopardy attached, a favorable termination of the charges against him. If he did, no matter how erroneous the ruling, the policies embodied in the Double Jeopardy Clause require the conclusion that further proceedings devoted to the resolution of factual issues on the elements of the offense charged are barred.

The public interest in the finality of criminal judgments is so strong that an acquitted defendant may not be retried even though the acquittal was based upon an egregiously erroneous foundation. If the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair. Because jeopardy attaches before the judgment becomes final, the constitutional protection also embraces the defendant's valued right to have his trial completed by a particular tribunal. Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial. The reason is not that the first trial established the defendant's factual innocence, but rather that the second trial would present all the untoward consequences that the clause was designed to prevent. The government would be allowed to seek to persuade a second trier of the fact of the defendant's guilt, to strengthen any weaknesses in its first presentation, and to subject the defendant to the expense and anxiety of a second trial.[16] (Emphasis supplied)

Exceptions to the Rule on Double Jeopardy and the Finality of Acquittal Doctrine

It is well to clarify, however, that the rule on double jeopardy admits of exceptions, namely: (i) where there has been a deprivation of due process and a finding of mistrial; or (ii) where there has been a grave abuse of discretion under exceptional circumstances.[17]

The first exception is illustrated in *Galman v. Sandiganbayan*,[18] where the Court held that the prosecution was denied due process of law as the trial was a sham:

[T]he sham trial was but a mock trial where the authoritarian president ordered respondents Sandiganbayan and Tanodbayan to rig the trial and closely monitored the entire proceedings to assure the predetermined final outcome of acquittal and total absolution as innocent of all the respondents-accused. Notwithstanding the laudable efforts of Justice Herrera which saw him near the end "deactivating" himself from the case, as it was his belief that its eventual resolution was already a foregone conclusion, they could not cope with the misuse and abuse of the overwhelming powers of the authoritarian President to weaken the case of the prosecution, to suppress its evidence, harass, intimidate and threaten its witnesses, secure their recantation or prevent them from testifying. Fully aware of the prosecution's difficulties in locating witnesses and overcoming their natural fear and reluctance to appear and testify, respondent Sandiganbayan maintained a "dizzying tempo" of the proceedings and announced its intention to terminate the proceedings in about 6 months time or less than a year, pursuant to the scripted scenario. The prosecution complained of "the Presiding Justice's seemingly hostile attitude towards (it)" and their being the subject of warnings, reprimand and contempt proceedings as compared to the nil situation for the defense. Herrera likewise complained of being "cajoled into producing witnesses and pressed on making assurances that if given a certain period, they will be able to produce their witnesses," Herrera pleaded for "a reasonable period of preparation of its evidence" and cited other pending

cases before respondent court that were pending trial for a much longer time where the "dizzying tempo" and "fast pace" were not maintained by the court. Manifestly, the prosecution and the sovereign people were denied due process of law with a partial court and biased Tanodbayan under the constant and pervasive monitoring and pressure exerted by the authoritarian President to assure the carrying out of his instructions. A dictated, coerced and scripted verdict of acquittal such as that in the case at bar is a void judgment. In legal contemplation, it is no judgment at all. It neither binds nor bars anyone. Such a judgment is "a lawless thing which can be treated as an outlaw". It is a terrible and unspeakable affront to the society and the people. To paraphrase Brandeis: If the authoritarian head of the government becomes the lawbreaker, he breeds contempt for the law, he invites every man to become a law unto himself, he invites anarchy.[19] (Emphasis supplied)

Thus, in *Raya v. People*,^[20] the Court reiterated *Galman* and held that "the right against double jeopardy, absolute as it ordinarily is, may be invoked only when there was a valid judgment terminating the first jeopardy. The Court explained that no right attaches from a void judgment, and hence the right against double jeopardy may not be invoked when the decision that 'terminated' the first jeopardy was invalid and issued without jurisdiction."^[21]

As may be gleaned from *Raya*, the first exception should only obtain in instances where the prosecution is deprived of a fair opportunity to prosecute and prove its case, resulting in the deprivation of its right to due process^[22]—that is, when the denial of due process on the part of the prosecution was so gross and palpable. Thus, the rule on double jeopardy is inapplicable when the Court finds that the criminal trial was a sham because the prosecution representing the sovereign people in the criminal case was denied due process.^[23]

Anent the second exception (i.e., that there has been grave abuse of discretion under exceptional circumstances), *Raya* holds that the same should still be understood in the context of deprivation of due process, such as when a court blatantly disregards material evidence of one party and shows outward bias for the other.^[24] Verily, this means that not every error in the trial or evaluation of the evidence by the court in question that led to the acquittal of the accused would be reviewable by certiorari. As *Raya* instructs, "no error, however flagrant, committed by the court against the State, can be reserved by it for decision by the Supreme Court when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed."^[25]

At this juncture, it bears stressing that the special function of a petition for certiorari is to correct errors of jurisdiction wherein an officer or tribunal acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or in excess of jurisdiction. As the Court elucidated in *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*:^[26]

A special civil action for certiorari is an original civil action and not an appeal. An appeal aims to correct errors in judgment and rectify errors in the appreciation of facts and law which a lower court may have committed in the proper exercise of its jurisdiction. A special civil action for certiorari, on the other hand, is used to correct errors in jurisdiction. We have defined an error in jurisdiction as "one where the officer or tribunal acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction."

This distinction finds concrete significance when a party pleads before a higher court seeking the correction of a particular order. When a party seeks an appeal of a final order, his or her petition must identify the errors in the lower court's findings of fact and law. Meanwhile, when a party files a special civil action for certiorari, he or she must allege the acts constituting grave abuse of discretion.

Grave abuse of discretion has a precise meaning in remedial law. It is not mere abuse of discretion but must be grave "as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." In more concrete terms, not every error

committed by a tribunal amounts to grave abuse of discretion. A misappreciation of the facts or a misapplication of the law does not, by itself, warrant the filing of a special civil action for certiorari. There must be a clear abuse of the authority vested in a tribunal. This abuse must be so serious and so grave that it warrants the interference of the court to nullify or modify the challenged action and to undo the damage done.[27] (Emphasis supplied)

Relatedly, jurisprudence has set a clear demarcation between an error of judgment and an error of jurisdiction. "An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal, while an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or excess of jurisdiction, and which error is correctable only by the extraordinary writ of certiorari.[28] In *People v. Hon. Tria-Tirona*[29] the Court held that any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by certiorari. Certiorari will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law.[30]

Thus, for the second exception to apply, mere error of judgment is not sufficient; it must be shown that the court promulgating the judgment of acquittal is tainted with grave abuse of discretion, which in turn, amounts to an error of jurisdiction correctible by certiorari. Otherwise, the rule on double jeopardy and the finality of acquittal doctrine would be rendered illusory as the reviewing court could ascribe grave abuse of discretion on the part of the lower court even when there was an error of judgment on the part of the latter tribunal.

None of the exceptions apply in this case; hence the CA erred in annulling and setting aside the RTC's acquittal of petitioner

Guided by the foregoing considerations, none of the exceptions apply in this case.

Suffice it to say that the first exception is inapplicable as records clearly show that the prosecution was amply afforded due process and that there was no mistrial that occurred therein.

Similarly, the second exception likewise finds no application as records likewise show that no grave abuse of discretion in the context of deprivation of due process may be ascribed on the part of the RTC when it promulgated the judgment of acquittal in petitioner's favor. As may be gleaned from the questioned RTC ruling, the RTC carefully weighed the facts of the case and the evidence presented by the parties-litigants before coming up with the judgment of acquittal in petitioner's favor. If at all, any perceived errors on the part of the RTC do not rise to the level of errors of jurisdiction but may only be considered as errors of judgment which cannot be corrected by certiorari. This is especially evinced in the CA ruling which, for the most part, merely re-appreciated the evidence submitted by the parties-litigants.

Consequently, in finding that there was grave abuse of discretion on the part of the RTC, the ponencia, relying on the CA Decision, found that the exclusion of AAA in the operation of R.A. No. 9262 due to her de facto separation with petitioner is not a mere misappreciation of facts and evidence but an unfounded reading of the law.

However, a reading of the RTC Decision revealed that the reason for the acquittal of the petitioner was due to the prosecution's failure "to prove with moral certainty that he was gravely wrong and committed said crime against [AAA]." It calibrated the evidence presented by both the prosecution and the defense in arriving at its conclusion, viz.:

In order to determine the accused[']s culpability[,] certain questions of fact need to be clarified.

The prosecution's theory directly relied on the testimony of the complainant that she was abandoned with her child by the accused on the pretext that accused is having an extra-marital affair and concretized by the public documents of the Certificate of Births of the children of the accused with another woman testifying also that marital infidelity transpired. And because of this abandonment and marital infidelity the complainant believed and felt that she was psychologically violated by the accused. To support this claim, prosecution presented during the trial two witnesses. Unfortunately, both prosecution witnesses testified and admitted that the filing of the instant case happened only almost four (4) years after the alleged abandonment. While the prosecution banks on the supposed abandonment and marital infidelity, there are several issues making such allegations problematic. First, complainant herself admitted and testified that from 2008 of their separation, accused continuously and religiously communicated with the complainant and he also visited and gave support to his child which to her is insufficient. Second, they are civil with each other. Third, the engagement and treatment of the complainant with Dr. Lambuson for the alleged psychological violence happened also almost five (5) years in 2012, just before the filing of this instant case at bar. Fourth, the filing of this criminal complaint transpired only after almost five (5) years of the said separation in 2008 and from this time the complainant is also continuously working in a reputable bank in Metro Manila. However, a look at the evidence shows that the accused indeed religiously gave support from the time of their separation and the Certificate of Birth of children of the accused with another woman submitted by the complainant show that they are all born indeed after the separation in 2008. This is bolstered by the testimony of the accused himself.

Indeed, the version given by the defense is more plausible. The separation of the complainant and accused in 2008 is a part of a usual human experience, that when the relationship between husband and wife turned sour and misunderstanding occur this leads to a (sic) facto separation, which under the foregoing circumstances here, both parties voluntary (sic) accepted as both admit (sic) that their difference are indeed irreconcilable. All of these are all bolstered by the testimony and admissions of the prosecutions' witnesses and accused's witnesses which were fully established by all the documentary evidence on record.

Verily and to reiterate, the RTC, in rendering its decision, weighed all the evidence presented by the prosecution, thus, making the errors raised in the CA as mere error of judgment.

In light of these discussions, it is my considered view that pursuant to the rule on double jeopardy and the finality of acquittal doctrine, petitioner's acquittal could no longer be disturbed. Hence, the CA erred in annulling and setting aside the judgment of acquittal by the RTC.

III.

In any event, it is respectfully opined that the RTC did not err in acquitting petitioner on the ground that the prosecution failed to establish his guilt beyond reasonable doubt.

Section 3(c) of R.A. No. 9262, in relation to Section 5(i), provides:

Section 3. Definition of Terms. — As used in this Act:

....

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. (Emphasis supplied)

On the other hand, Section 5(i) of R.A. No. 9262 penalizes some forms of psychological violence that are inflicted

on victims who are women and children through 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 access to the woman's child/children. (Emphasis supplied)

In order to properly secure the conviction of an accused charged with violation of Section 5(i) of R.A. No. 9262, the prosecution must be able to establish the following:

(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 acts or omissions.[31]

Psychological violence is defined as any intentional conduct that seriously impairs another person's psychological integrity through coercion or threats.[32] It includes a range of behaviors that encompass acts of emotional abuse and controlling behavior. These often coexist with physical and sexual violence by intimate partners and are acts of violence in themselves.[33] It is thus an indispensable element of violation of Section 5(i) of R.A. No. 9262. Equally essential is the element of emotional anguish and mental suffering, which are personal to the complainant.

In the recent case of *Acharon v. People*,^[34] the Court En Banc expounded that the crime contemplated under Section 5(i) of R.A. No. 9262 is *mala in se*, despite it being a special penal law, viz.:

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. The acts punished therein are inherently wrong or depraved, and the language used under the said penal law requires a mental element. 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*."

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." In prosecutions under Section 5(i), therefore, "[p]sychological violence is the means employed by the perpetrator" 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.[35] (Emphasis supplied)

Concededly, Acharon dealt with psychological violence under the concept of "willful denial of financial support"; whereas this case involves psychological violence under the concept of "marital infidelity." Nevertheless, *XXX v. People*,[36] the Court, while agreeing with Acharon that the crimes penalized under Section 5(i) of R.A. No. 9262 are *mala in se*, and not *mala prohibita*, found that in instances when the *actus reus* is marital infidelity, the requirement of specific criminal intent to cause mental and emotional suffering is already satisfied at the moment the perpetrator commits the act of marital infidelity, thus:

While We agree with Acharon that the crimes penalized under Sec. 5 (i) are *mala in se* and not *mala prohibita*, thereby requiring specific criminal intent, in instances of marital infidelity, the requirement of specific criminal intent to cause mental and emotional suffering is already satisfied at the moment the perpetrator commits the act of marital infidelity. This finds basis in the fact that marital infidelity is inherently immoral and depraved under prevailing societal, cultural, and religious norms. In the normal course of human behavior, an aggrieved wife will never approve of a rogue and wandering husband, and vice versa. The same line of reasoning just cannot be applied in cases of willful denial of financial support. In other words, marital infidelity, divorced from its legal connotations, is an act which is essentially wrong in itself. To pose a rhetoric, what else could adulterers have expected to cause upon their spouse when they committed an act of unfaithfulness, aside from mental and emotional pain?[37] (Emphasis supplied)

Insofar as marital infidelity is concerned, it is well to note that the Court in *AAA v. BBB*[38] held that "what R.A. No. 9262 criminalizes is not the marital infidelity per se but the psychological violence causing mental or emotional suffering on the wife. ... Marital infidelity as cited in the law is only one of the various acts by which psychological violence may be committed. Moreover, depending on the circumstances of the spouses and for a myriad of reasons, the illicit relationship may or may not even be causing mental or emotional anguish on the wife. Thus, the mental or emotional suffering of the victim is an essential and distinct element in the commission of the offense." [39]

Thus, when the ratiocinations in Acharon, *XXX*, and *AAA* are combined, this leads to a reasonable conclusion that for a successful prosecution for psychological violence under Section 5(i) of R.A. No. 9262 in the concept of "marital infidelity," the prosecution must establish beyond reasonable doubt that the marital infidelity committed by the accused (fourth element) caused mental and emotional anguish to the victim (third element).

At this point, it is well to emphasize that "[p]roof beyond reasonable doubt does not mean such degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind." [40] "Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, no matter how strong, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring [the accused], and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring [the accused's] innocence should be fully taken into account. That is what [the Courts] must be do herein, for [the accused] is entitled to nothing less." [41] "Without the proof of his guilt being

beyond reasonable doubt, therefore, the presumption of innocence in favor of the accused [could not be] overcome."[42]

At this juncture, it is noted that the ponencia convicted petitioner of psychological violence committed through marital infidelity under Section 5(i) of R.A. No. 9262 finding that all elements thereof were present in the case. The ponencia likewise found that AAA's overdependence to her parents and immaturity, as well as his mother-in-law's order for petitioner to leave their conjugal home, were not justifiable reasons for petitioner to actually leave and renege on his marital obligations to live together, observe mutual love, respect, and fidelity, and render mutual love, help, and support to each other. Further, the ponencia suggested that there was an underlying reason for petitioner's decision to abandon their conjugal home aside from the instruction given by his mother-in-law. The ponencia then added that petitioner's marital infidelity began even before their separation-in-fact, and that it was actually the proximate cause thereof.

On the contrary, it is opined that the following circumstances creates reasonable doubt as to petitioner's intent to cause psychological violence against AAA:

First, AAA testified that after her de facto separation with petitioner in 2008, the latter still continuously communicated with them, visited their son regularly, and religiously provided them with support. Moreover, it appears that petitioner and AAA remained civil with each other, and that their line of communication never stopped despite AAA's knowledge that petitioner already has another family. Thus, due to the following circumstances, it cannot be inferred if petitioner knew that his acts after their de facto separation, i.e., posting pictures of his new family in social media, would cause mental anguish to AAA, thereby creating reasonable doubt as to presence of intent on his part to commit the crime.

Second, based on AAA's action after her de facto separation with petitioner, i.e., being civil with each other and never severing their communication, it can be inferred that the filing of the instant petition and her consultation with the psychiatrist can be considered as a mere afterthought. It is worthy to emphasize that the filing of the complaint and AAA's consultation with the psychiatrist both happened five years alter the de facto separation and was filed only after their disagreement over their child's education.[43]

Third, as aptly observed by the RTC, petitioner and AAA admitted that their separation in 2008 was due to their irreconcilable differences.[44] Moreover, it was established that petitioner's marital infidelity only occurred after his de facto separation with AAA.[45]

Fourth, assuming the arguendo that petitioner committed marital infidelity to AAA prior to their separation de facto, there was no showing that the same resulted to mental and emotional anguish on the part of the latter aside from the psychological evaluation conducted by Dr. Lampuson in 2012 solely based on the narration of AAA.[46]

Fifth, records revealed that petitioner made efforts to preserve his marriage with AAA after their separation in 2018 by seeking assistance from his own parents and proposing to AAA that they engage in a marital reconciliation, thus:

Q: During your marriage as husband and wife do you have Problems encountered?

A: We have a lot sir as an ordinary couple especially financial and authority in the house sir.

Q: What did you do if any?

A: I tried to seek the help of my own parents to mediate Our marital differences, but the same failed, Sir.

I tried to reach out for her by telling her my predicament and asked her to have a marriage encounter to resolve our marital problem but this remained unheeded and fell to the deaf ear of my wife, Sir.[47]

However, petitioner's efforts were futile as the same fell into AAA's deaf ears. There was no showing from the records that this was controverted by AAA.

Sixth, during the cross-examination, the psychiatrist presented by the prosecution to corroborate AAA's testimony admitted that the latter's alleged depression cannot be solely attributed to her being left by petitioner. She further added that this kind of depression were ordinarily experienced by anyone in other circumstances such as death of a loved one and child left behind by a mother.[48]

Finally, it appears that AAA has the propensity to file R.A. No. 9262-related cases against petitioner. In this regard, judicial notice[49] should be taken of xxxxxxxxx v. AAA,[50] which: (a) also involves herein petitioner and AAA; but (b) involves a different R.A. No. 9262 issue, particularly, the propriety of the issuance of a protection order with order of support against herein petitioner for supposed acts of economic abuse he committed against AAA and their child, i.e., insufficient financial support. Notably, as early as in that case, AAA was already alleging acts of marital infidelity on the part of herein petitioner as the cause of their de facto separation; on the other hand, the latter was consistent, both in that case and the instant case, that the cause of their de facto separation was AAA's immaturity and extreme attachment (as stated in that case) or overdependence (as described in this case) to her parents. As a matter of fact, in the said case, it was mentioned that AAA separately filed a case for violation of R.A. No. 9262[51]—which is actually the instant case. This will bolster the findings that the filing of the instant case is a mere afterthought and was brought about by petitioner and AAA's disagreement over their son's education.

It is worthy to reiterate the basic criminal law principle that it is incumbent upon the prosecution, and not on the defense, to establish all the elements of the crime charged. Moreover, the prosecution must rely on the strength of its evidence, and not on the weakness of his defense.[52]

Considering the foregoing, it is posited that AAA's filing of this case only betrays her vindictiveness towards herein petitioner. She should not be allowed to weaponize R.A. No. 9262 and pervert the Congress' noble intentions in enacting the same. Thus, there is reasonable doubt as to whether the marital infidelity committed by petitioner caused psychological violence to AAA. Perforce, his acquittal is in order.

As a final note, it is conceded that a married couple's separation is a traumatic event to either spouse, whether the same is done through legal means (e.g., legal separation, annulment, declaration of nullity) or through a mere de facto separation. It may also be reasonable to presume that a wife seeing her estranged husband build a life with another may result, to a certain extent, mental and/or emotional anguish on her part. However, this circumstance, by and of itself, should not result in the estranged husband's incarceration, especially when this is not established beyond reasonable doubt that he caused psychological violence to his former spouse, as in this case.

ACCORDINGLY, I VOTE to acquit petitioner XXX of the crime of violation of Section 5(i) of Republic Act No. 9262.

[*] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members and the accused, shall be withheld pursuant to RA 7610, entitled "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes," approved on June 17, 1992; RA 9262, entitled "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014] [Per J. Perlas-Bernabe, Second

Division], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013] [Per J. Brion, Second division]. See also Amended Administrative Circular No. 83-2015, entitled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances," dated September 5, 2017.)

[1] Rollo, pp. 63-77. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes of the Fifth Division, Court of Appeals, Manila.

[2] *Id.* at 100.

[3] Rollo, pp. 79-86. Penned by Presiding Judge Leandro C. Catalo.

[4] Rollo, p. 79-80.

[5] See ponencia., pp. 2-3. See rollo, pp. 64, 80-82.

[6] See ponencia., p. 4. See also rollo, pp. 64, 82-84.

[7] Rollo, pp. 79-86. Penned by Presiding Judge Leandro C. Catalo.

[8] *Id.* at 85.

[9] *Id.* at 85-86. See also ponencia., pp. 4-5.

[10] *Id.* at 63-77. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes of the Fifth Division, Court of Appeals, Manila.

[11] See *id.* at 68-76. See also ponencia, pp. 4-5.

[12] See ponencia, pp. 8-10.

[13] See *id.* at 10-15.

[14] 524 Phil. 496, 517-518 (2006) [Per J. Callejo, Sr., First Division].

[15] 524 Phil. 496 (2006) [Per J. Callejo, Sr., First Division].

[16] *Id.* at 518-522. (Citations omitted)

[17] *People v. Alejandro*, 823 Phil. 684, 692 (2018) [Per J. Tijam, First Division].

[18] 228 Phil. 42 (1986) [Per C.J. Teehankee, En Banc].

[19] *Id.* (Citations omitted)

[20] 902 Phil. 141 (2021) [Per J. Caguioa, First Division].

[21] *Id.* at 162 (Citation omitted)

[22] *Id.* at 160. See also *People v. Laguio, Jr.*, 547 Phil. 296, 311 (2007) [Per J. Garcia, First Division]. (Citation omitted)

[23] *Raya v. People*, 902 Phil 141, 161-163 (2021) [Per J. Caguioa, First Division].

[24] See *People v. Court of Appeals*, 755 Phil. 80 (2015) [Per J. Peralta, Third Division], citing *Equitable PCI Bank v. Caguioa*, 504 Phil. 242, 249 (2005) [Per J. Panganiban, Third Division].

[25] *People v. Arcega*, 880 Phil. 291, 314 (2020) [Per C.J. Peralta, First Division], citing *Republic v. Ang Cho*

Kio, 95 Phil. 475 (1954).

[26] 820 Phil. 235 (2017) [Per J. Jardeleza, First Division].

[27] Id. 246-247. (Citations omitted)

[28] People v. Soliman, 941 Phil. 438, 466 (2023) [Per J. Kho, Jr., En Banc].

[29] 502 Phil. 31 (2005) [Per J. Chico-Nazario, Second Division].

[30] Id.

[31] Acharon v. People, 913 Phil. 731, 736-737 (2021) [Per J. Caguioa, En Banc].

[32] Available at <https://eige.europa.eu/thesaurus/terms/1334> (last accessed June 1, 2025).

[33] The World's Women 2015: Trends and Statistics, Department of Economic and Social Affairs, United Nations, New York, 2015, p. 152, available at https://unstats.un.org/unsd/gender/downloads/worldswomen2015_report.pdf (last accessed June 1, 2025).

[34] 913 Phil. 731 (2021) [Per J. Caguioa, En Banc].

[35] Id. at 738-739.

[36] 953 Phil. 462 (2024) [Per J. Hernando, En Banc].

[37] Id. at 481.

[38] 823 Phil. 607 (2018) [Per J. Tijam, First Division].

[39] Id. at 620.

[40] XXX v. People, 887 Phil. 161, 171 (2020) [Per J. Delos Santos, Second Division], citing People v. Manson, 801 Phil. 130, 139 (2016) [Per J. Peralta, Third Division].

[41] People v. Claro, 808 Phil. 455, 468 (2017) [Per J. Bersamin, Third Division].

[42] Id.

[43] See xxxxxxxxxxxx v. AAA, 917 Phil. 589 (2021) [Per J. Leonen, Third Division].

[44] Rollo, p. 85.

[45] Id.

[46] Id.

[47] Id. at 88.

[48] Id. at 3.

[49] See Bersamin v. People, 847 Phil. 305, 315-316 (2019) [Per J. Perlas-Bernabe, Second Division].

[50] 917 Phil. 589 (2021) [Per J. Leonen, Third Division].

[51] Id. at 592.

[52] People v. Sangcajo, Jr., 839 Phil. 1073, 1074-1075 & 1080-1081 (2018) [Per J. Bersamin, First Division].

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