

RANDY MICHAEL KNUTSON, ACTING ON BEHALF OF MINOR RHUBY SIBAL KNUTSON, PETITIONER, VS. HON. ELISA R. SARMIENTO-FLORES, IN HER CAPACITY AS ACTING PRESIDING JUDGE OF BRANCH 69, REG...

G.R. No. 239215. July 12, 2022

Ponente: LOPEZ, M., J.

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LOPEZ, M., J.:

The judicial quest to discern who may be offenders as defined in a penal statute is at times abstruse in itself. One such instance is whether Republic Act (RA) No. 9262,[1] or the Anti-Violence Against Women and Their Children Act of 2004, allows the father to apply for protection and custody orders against the mother who is alleged to have committed violence against their child.

ANTECEDENTS

In 2005, Randy Michael Knutson (Randy), an American citizen, met Rosalina Sibal Knutson (Rosalina) in Singapore. They got married and had a daughter named Rhuby Sibal Knutson (Rhuby). In 2011, the family lived in the Philippines. However, Randy and Rosalina became estranged after he discovered her extra-marital affairs. Anyhow, Randy supported Rosalina and Rhuby. Thereafter, Rosalina got hooked in casinos. Randy learned that Rosalina spent weeks in gambling dens and left Rhuby under the care of strangers. Worse, Rosalina incurred large debts from casino financiers prompting her to sell the house and lot, condominium unit, and vehicles that Randy provided for the family. Rosalina then rented an apartment and got herself a boyfriend. Randy advised Rosalina to be discreet in her illicit affairs because it is not good for Rhuby to see her mother with another man. Later, Randy discovered that Rosalina maltreated her own mother in Rhuby's presence. Rosalina also hurt Rhuby by pulling her hair, slapping her face and knocking her head. One time, Rosalina pointed a knife at Rhuby and threatened to kill her. Rosalina even texted Randy about her plan to kill their daughter and commit suicide. Randy reported the matter to the police station but the authorities explained that they cannot assist him in domestic issues. Afterwards, Rosalina sent Randy her naked pictures with a message that he would not see that body again. Meantime, the neighbors of Rosalina complained about noisy parties and pot sessions in her apartment. The lessor even terminated the lease after marijuana plants were confiscated in the premises.[2] On December 7, 2017, Randy, on behalf of minor Rhuby, filed against Rosalina a petition under RA No. 9262 for the issuance of Temporary and Permanent Protection Orders before the Regional Trial Court of Taguig City, Branch 69 (RTC) docketed as JDRC Case No. 313. Randy averred that Rosalina placed Rhuby in a harmful environment deleterious to her physical, emotional, moral, and psychological development.[3]

In an Order[4] dated January 10, 2018, the RTC dismissed the petition explaining that protection and custody orders in RA No. 9262 cannot be issued against a mother who allegedly abused her own child. The RTC ratiocinated that the child's mother cannot be considered as an offender under the law. Moreover, the remedies are not available to the father because he is not a "woman victim of violence." The RTC cited the ruling in *Ocampo v.*

Arcaya-Chua[5] (Ocampo) that a protection order cannot be issued in favor of a husband against his wife,[6] thus:

Notably, the offender under [RA No.] 9262 is any person who is the husband, former husband, those who had sexual or dating relationship with the woman or with whom she has a common child. On the other hand, the offended party may be the wife, former wife, a woman who has or had sexual or dating relationship, or with whom the man has a common child or HER child.

From the foregoing, it can be seen that in the definition of an offender, a child's mother is not included as one of the offenders. In stark contrast, a child's mother is specifically mentioned in the definition for offended party. This could lead to no other conclusion that a child's mother cannot be considered as an offender under [RA No.] 9262.

Moreover, a protection order is defined under Section 8 of [RA No.] 9262, to quote:

"SECTION 8. Protection Orders. — A protection order is an order issued under this act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order should serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. [x x x]"

Based on the foregoing, the issuance of a protection order is for [the] purpose of preventing further violence committed by an offender (any person who is the husband, former husband, those who had sexual or dating relationship with the woman or with whom she has a common child) against a woman or her child. It does not pertain to a mother who allegedly abused her own child. Hence, a protection order under [RA No.] 9262 cannot be issued against a mother who allegedly abused her own child.

Further, petitioner's prayer for the granting of a temporary or permanent custody of Rhuby under [RA No.] 9262 is likewise misplaced as Section 28 of the said law specifically states:

"SECTION 28. Custody of children. — The woman victim of violence shall be entitled to the custody and support of her child/children. Children below seven (7) years old [or] older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.["]

As it is, [RA No.] 9262 does not apply in the case at bar. The petitioner, who is not a "woman victim of violence[,"] cannot avail of the remedies provided therein particularly the issuance of a Temporary/Permanent Protection Order and the granting of a temporary or permanent custody of Rhuby to him.

To be further enlightened, in OFFICE OF THE COURT ADMINISTRATOR versus JUDGE EVELYN S. ARCAYA-CHUA, Regional Trial Court, Branch 144, Makati City [633 Phil. 79 (2010)], a judge in a custody case issued a TPO under Sec. 15, [RA No.] 9262, granting, among others, the custody of the subject minor, Rafi Pulliam, to therein petitioner, Albert Chang Tan, and directing therein respondent, Stephanie Pulliam, to stay away from the home and office of Chang Tan as well as from the school of the subject minor. The issuance of said TPO was questioned considering that it was issued in favor of petitioner, Albert Chang Tan. In [its] ruling[,] the Supreme Court pronounced:

"x x x x

In A.M. No. RTJ-07-2049 (the Chang Tan/RCBC Case), the Court upholds the finding of Justice Salvador-Fernando that respondent Judge Arcaya-Chua is guilty of gross ignorance of the law for issuing a TPO in favor of petitioner Albert Chang Tan in SP Case No. M-6373, since a TPO cannot be issued in favor of a man against his wife under [RA] No. 9292 (sic), known as the Anti[-]Violence Against Women and Their Children Act of 2004. Indeed, as a family court judge, Judge Arcaya-Chua is expected to know the correct

implementation of [RA] No. 9292 (sic)."

Applying the foregoing jurisprudence to the case at bar, considering that the petitioner is the husband, a Protection Order cannot be issued against herein respondent, his wife.

On a final note, granting that respondent neglected, abandoned or physically abused Rhuby, her minor daughter, there are laws and rules specifically created for the latter's protection and safety that petitioner and/or Rhuby could avail of. Unfortunately, [RA No.] 9262 is not one of them.

WHEREFORE, premises considered, the instant case is DISMISSED.

SO ORDERED.[7] (Emphases supplied)

Randy moved for a reconsideration[8] and argued that RA No. 9262 used the term "any person" which is not limited to male offenders. The law must be liberally construed to promote the protection and safety of victims of violence against women and their children. In an Order[9] dated March 14, 2018, the RTC denied the motion and reiterated that RA No. 9262 does not apply to a situation where the mother committed violence against her own child. The RTC expounded that the word "children" should not be isolated with the term "women" because the title of the law used the conjunction "and" which denotes joinder of words, phrases, and clauses. As such, the children being protected refer to those under the care of the woman victim of violence,[10] viz.:

In his Motion for Reconsideration, petitioner alleged that a mother may be the offender under [RA No.] 9262. He submits that Section 3 of [RA No.] 9262 does not limit the offender to a male person. Otherwise, the law could have used the term, "any male person", and not "any person". Citing the case of *Garcia v. Drilon*, petitioner argued that the term "any person" includes lesbian relationships, to quote:

"There is likewise no merit to the contention that [RA No.] 9262 singles out the husband or father as the culprit. As defined above, VAWC may likewise be committed "against a woman with whom the person has or had a sexual or dating relationship." Clearly, the use of the gender-neutral word "person" who [has] or had a sexual or dating relationship with the woman encompasses even lesbian relationships." (Emphases in the original)

Petitioner's reliance on foregoing jurisprudence is misplaced.

Notably, the aforementioned pronouncement is not applicable to the case at bar considering that there is no lesbian relationship between respondent [and Rhuby] as they are mother and child.

Moreover, the "person" referred to in the afore-quoted pronouncement pertains to the individual who [has] or had a sexual or dating relationship with the woman as a victim of violence.

It is thus clear that the foregoing provision does not apply to a situation where it was the mother herself who had committed violent and abusive acts against her own child.

Petitioner further argued that the restrictive interpretation of the court on the definition of an offender under [RA No.] 9262 does not hold water, taking into account Section 4 of [RA No.] 9262, which speaks of the liberal construction of the act to promote the protection and safety of victims of violence against women and their children.

The said argument is without merit.

Petitioner isolates the word "children" in order to avail the relief of a protection order under [RA No.] 9262 in favor of Rhuby against her own mother. However, a perusal of the title of [RA No.] 9262 explicitly states: "An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefore, And For Other Purposes". The conjunction used in the title is the conjunctive

word "and" not the word "or". Hence, there is joinder and not independence. x x x

x x x x

For emphasis, violence against women and their children is defined under Section 3 of [RA No.] 9262 as:

(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.

Aside from the foregoing, the definition of children under Sec. 3(h) of said act is clear, to quote:

"(h) "Children" refers to those below eighteen (18) years of age or older but are incapable of taking care of themselves as defined under [RA No.] 7610. As used in this Act, it includes the biological children of the victim and other children under her care."

Obviously, the victim being referred to in said definition is the woman subjected to acts of violence by her offender. As it is, children being protected under [RA No.] 9262 refer to the biological children and other children under the care of the woman/victim. Thus, the court maintains its position that a child's mother is not included as one of the offenders under [RA No.] 9262.

WHEREFORE, premises considered, petitioner's motion for reconsideration is DENIED.

SO ORDERED.[11] (Emphases supplied)

Aggrieved, Randy directly filed a Petition for Certiorari[12] before the Court ascribing grave abuse of discretion on the part of the RTC in dismissing the application for protection and custody orders. Randy contends that he availed of these remedies on behalf of his daughter, who is a victim of violence in the hands of her own mother. Furthermore, Randy maintains that RA No. 9262 does not limit the offender to a male person and the legislative intent is to provide all possible protection to children.[13]

RULING

The original jurisdiction of the Supreme Court to issue writs of certiorari is not exclusive but shared with the Court of Appeals (CA) and the RTC.[14] However, this concurrence of jurisdiction does not give a party unbridled freedom to choose the venue of action. The policy on the hierarchy of courts adjures the Court from dealing with causes that are also well within the competence of the CA and the RTC to resolve.[15] This Court is a court of last resort and must so remain if it is to satisfactorily perform its constitutional functions.[16] The doctrine of hierarchy of courts is both a constitutional imperative and a filtering mechanism to enable the Court to focus on more important matters.[17] Corollarily, the Court's jurisdiction to issue extraordinary writs should generally be exercised with respect to actions or proceedings before the CA, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the CA.[18]

However, the doctrine of hierarchy of courts is not an iron-clad rule and is subject to recognized exceptions, to wit: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter; (d) the constitutional issues raised are better decided by the Court; (e) where exigency in certain situations necessitate urgency in the resolution of the cases; (f) the filed petition reviews the act of a constitutional organ; (g) when petitioners rightly claim that they had no other plain,

speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (h) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[19]

Here, circumstances exist to justify direct recourse to this Court. The case presents an issue of first impression, i.e., whether the father can avail of the remedies under RA No. 9262 on behalf of his minor child against the mother's violent and abusive acts. To be sure, there is no definite ruling yet on this question to serve as a guidepost for future cases.[20] Also, the interests of justice and public welfare demand the resolution of the controversy because it will benefit not only the parties but also children similarly situated. More importantly, the petition raises a pure question of law and does not involve an examination of facts and probative value of evidence.[21] Hence, it is an opportune time for this Court to answer the novel query with far reaching implications on whether the father may apply for protection and custody orders against the mother who is alleged to have committed violence against their child.

RA No. 9262 allows the father of the offended party to apply for protection and custody orders.

In *Garcia v. Drilon*[22] (*Garcia*), the Court pointed out that the Congress excluded men as victims under RA No. 9262. The legislative intent is to limit the protection against violence to women and children only. The classification rests on substantial distinctions because women and children are vulnerable victims of abuse compared to men.[23] The difference in treatment is consistent with the declared policy of the law to value the dignity of women and children, and protect them from violence and threats to their personal safety and security.[24] In that case, the Court likewise upheld the constitutionality of the remedies of protection and custody orders to prevent further acts of violence committed by the offender against women and their children.[25] Inarguably, the offended parties under the law are only women and children. Nevertheless, it is improper to conclude that the law denies a father of these remedies solely because of his gender or that he is not a "woman victim of violence."

Section 9 (b)[26] of RA No. 9262 explicitly allows "parents or guardians of the offended party" to file a petition for protection orders. The exact provision was incorporated in Section 12 (b)[27] of the Implementing Rules and Regulations of RA No. 9262 and Section 8 (b)[28] of A.M. No. 04-10-11-SC,[29] or the Rule on Violence Against Women and Their Children. The statute categorically used the word "parents" which pertains to the father and the mother of the woman or child victim. *Absolute Sentencia Expositore Non Indiget*. The law speaks in clear language and no explanation is required.[30] There is no occasion for the Court to interpret but only to apply the law when it is not ambiguous.[31] Similarly, the statute did not qualify on who between the parents of the victim may apply for protection orders. *Ubi lex non distinguit, nec nos distinguere debemus*. When the law does not distinguish, the courts must not distinguish.[32]

In any event, A.M. No. 04-10-11-SC states that the Rules of Court shall apply in a suppletory manner to petitions for protection orders.[33] Under Section 5, Rule 3 of Rules of Court, "[a] minor or a person alleged to be incompetent, may sue or be sued with the assistance of his father, mother, guardian, or if he has none, a guardian ad litem." In this case, the title of the petition for issuance of a protection order is unequivocal, to wit: "RANDY MICHAEL KNUTSON acting on behalf of minor RHUBY SIBAL KNUTSON, Petitioner, -versus- ROSALINA SIBAL KNUTSON, Respondent." [34] There is no question that the offended party is Rhuby, a minor child, who

allegedly experienced violence and abuse. Thus, Randy may assist Rhuby in filing the petition as the parent of the offended party.

Contrary to the RTC's theory, the ruling in Ocampo is inapplicable. In that case, respondent judge issued a protection order directing the common law wife to stay away from her common law husband's house and office. Respondent judge also granted the father provisional custody of his minor daughter. The Investigating Justice found that the protection order is justified with respect to the minor daughter but not to the common law husband. Under the law, a protection order cannot be issued in favor of the husband against the wife. The Investigating Justice explained that the "TPO against [the wife], insofar as it directed the latter to stay away from the home and office of [the husband], to cease and desist from harassing, intimidating or threatening [the husband] and to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of [the husband], was anomalous." [35] However, the Investigating Justice clarified that there is justification to award the temporary custody of the minor daughter to the father. There is substantial evidence that the protection order in favor of the minor daughter was necessary and would serve her paramount interest. The psychological evaluation report and the statements of material witnesses all confirmed that the mother has not been a good influence to her daughter. The Court sustained these factual findings and adopted the recommendation of the Investigating Justice that respondent judge is guilty of gross ignorance of the law. [36]

On the other hand, Randy is not asking for a protection order in his favor. As intimated earlier, Randy filed the petition on behalf of their minor daughter Rhuby. The petition is principally and directly for the protection of the minor child and not the father. Admittedly, Randy also asked for the temporary custody of their daughter because the mother was allegedly unfit. Yet, the RTC did not evaluate the case whether the mother may be divested of custody over the child. The RTC ignored the evidence on the pretext that the father is not allowed to apply for protection and custody orders because he is not a woman victim of violence. On this point, the Court finds grave abuse of discretion on the part of the RTC that amounted to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. [37] As in Ocampo, the RTC should have examined the evidence on record and made a prima facie determination as to the ideal person to whom the temporary custody of the child should be awarded. The best interest of the child should be the primordial and paramount concern.

RA No. 9262 covers a situation where the mother committed violent and abusive acts against her own child.

Section 3 (a) of RA 9262 defines violence against women and their children as "any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty." The law criminalizes acts of violence against women and their children perpetrated by women's intimate partners, i.e., husband; former husband; or any person who has or had sexual or dating relationship with the woman, or with whom the woman has a common child. However, the Court in Garcia emphasized that the law does not single out the husband or father as the culprit. The statute used the gender-neutral word "person" as the offender which embraces any person of either sex. The offender may also include other persons who conspired to commit the violence, thus:

As defined above, VAWC may likewise be committed "against a woman with whom the person has or had a

sexual or dating relationship." Clearly, the use of the gender-neutral word "person" who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships. Moreover, while the law provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the principle of conspiracy under the Revised Penal Code (RPC). Thus, in the case of *Go-Tan v. Spouses Tan* [588 Phil. 532 (2008)], the parents-in-law of Sharica Mari L. Go-Tan, the victim, were held to be proper respondents in the case filed by the latter upon the allegation that they and their son (Go-Tan's husband) had community of design and purpose in tormenting her by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically.[38] (Emphases supplied)

Differently stated, the fact that a social legislation affords special protection to a particular sector does not automatically suggest that its members are excluded from violating such law. This is not the first time that social legislations in the Philippines with penal character used the phrase "any person" to describe who may be offenders. There are parallel provisions in RA No. 7610,[39] or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act,[40] RA No. 7277,[41] as amended by RA No. 9442,[42] or the Magna Carta for Disabled Persons,[43] RA No. 8042,[44] as amended by RA No. 10022,[45] or the Migrant Workers and Overseas Filipinos Act of 1995,[46] RA No. 4670,[47] or the Magna Carta for Public School Teachers,[48] RA No. 9433,[49] or the Magna Carta for Public Social Workers,[50] and RA No. 7305,[51] or the Magna Carta of Public Health Workers.[52] In other words, identification or association with such groups will not exempt their members from criminal liability. A child 16 years old and above who acted with discernment may still be charged with violation of RA No. 7610 if he induces or coerces another child to perform in obscene exhibitions. A person with disability is likewise criminally liable under RA No. 7277, as amended, if he discriminates or publicly ridicules another person suffering from restriction, impairment, or a different ability. The same is true with a migrant worker who engages in the act of illegal recruitment punished under RA No. 8042, as amended. Lastly, a public school teacher, a public social worker, or a public health worker who interferes or prevents similar professionals in the exercise of their rights and performance of their duties are criminally liable.

Logically, a mother who maltreated her child resulting in physical, sexual, or psychological violence defined and penalized under RA No. 9262 is not absolved from criminal liability notwithstanding that the measure is intended to protect both women and their children. In this case, however, the RTC dismissed Randy's petition for protection orders on behalf of his minor daughter on the ground that the mother cannot be considered as an offender under the law. To restate, the policy of RA No. 9262 is to guarantee full respect for human rights. Towards this end, the State shall exert efforts to address violence committed against children in keeping with the fundamental freedoms guaranteed under the Constitution, the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and other international human rights instruments of which the Philippines is a party.

Specifically, Section 3 (2), Article XV of the 1987 Constitution espoused the State to defend "[t]he right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development; x x x." Also, Article 25 (2) of the Universal Declaration of Human Rights advocated that "[m]otherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." Further, the Philippines as a state party to the Convention on the Rights of the Child has the following international commitments, to wit:

Preamble

The States Parties to the present Convention,

x x x x

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

x x x x

Article 2

x x x x

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

x x x x

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

x x x x

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

x x x x

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child. (Emphases supplied)

Notably, the Committee on the Rights of the Child commented that "all forms of violence against children, however light, are unacceptable. x x x Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence." [53] The United Nations Children's Fund recognized "violence against children x x x as

global human rights and public health problems of critical importance." [54] Also, violence against children "takes many forms, including physical, sexual, and emotional abuse, and may involve neglect or deprivation. Violence occurs in many settings, including the home, school, community and over the Internet. Similarly, a wide range of perpetrators commit violence against children, such as family members, intimate partners, teachers, neighbors, strangers and other children." [55] The World Health Organization said that "[v]iolence against children includes all forms of violence against people under 18 years old, whether perpetrated by parents or other caregivers, peers, romantic partners, or strangers." [56] Verily, mothers may be offenders in the context of RA No. 9262. The Court finds no substantial distinction between fathers and mothers who abused their children that warrants a different treatment or exemption from the law. Any violence is reprehensible and harmful to the child's dignity and development.

The RTC maintained its position that the child's mother is not included as one of the offenders under RA No. 9262 anchored on the interpretation based merely on the title of the law. To recall, the RTC explained that the word "children" should not be isolated with the term "women" because the title of the law used the conjunction "and" which denotes joinder of phrases and clauses. As such, the children being protected refer to those under the care of the woman victim of violence. Yet, the penal provisions under Section 5 of RA No. 9262 do away with the conjunctive word "and" and used the disjunctive term "or" that signals disassociation or independence, thus:

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 to her/his family;

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

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

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

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

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

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes

substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

- (1) Stalking or following the woman or her child in public or private places;
- (2) Peering in the window or lingering outside the residence of the woman or her child;
- (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
- (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
- (5) Engaging in any form of harassment or violence;

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

Section 4 of RA No. 9262 mandates that the law "shall be liberally construed to promote the protection and safety of victims of violence against women and their children." Obviously, the RTC's restrictive interpretation requiring that the mother and her child to be victims of violence before they may be entitled to the remedies of protection and custody orders will frustrate the policy of the law to afford special attention to women and children as usual victims of violence and abuse. The approach will weaken the law and remove from its coverage instances where the mother herself is the abuser of her child. The cramping stance negates not only the plain letters of the law and the clear legislative intent as to who may be offenders but also downgrades the country's avowed international commitment to eliminate all forms of violence against children including those perpetrated by their parents. The RTC's consoling statement that children who suffered abuse from the hands of their own mothers may invoke other laws except RA No. 9262 is discriminatory. The supposed reassurance is an outright denial of effective legal measures to address the seriousness and urgency of the situation. Suffice it to say that only RA No. 9262 created the innovative remedies of protection and custody orders. Other laws have no mechanisms to prevent further acts of violence against the child.

In sum, the Court refuses to be an instrument of injustice and public mischief perpetrated against vulnerable sectors of the society such as children victims of violence. The Court will not shirk its bounden duty to interpret the law in keeping with the cardinal principle that in enacting a statute, the legislature intended right and justice to prevail.[57]

FOR THESE REASONS, the Petition for Certiorari is GRANTED. The Orders dated January 10, 2018 and March 14, 2018 of the Regional Trial Court of Taguig City, Branch 69 in JDRC Case No. 313 are SET ASIDE. Let a PERMANENT PROTECTION ORDER be issued immediately.

SO ORDERED.

Gesmundo, C.J., See separate dissenting opinion.

Hernando, Inting, Gaerlan, Rosario, J. Lopez, Dimaampao, and Marquez, JJ., concur.

Leonen, SAJ., I concur. See separate opinion.

Caguioa, J., See Dissent.

Lazaro-Javier, J., See Concurrence.

Zalameda, J., with Dissenting Opinion.

Kho, Jr., J., I join the Dissent of Justice Caguioa.

Singh, J., See Dissenting Opinion.

[1] 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.

[2] Rollo, pp. 11-25, 106-107, and 136-138.

[3] Id. at 51-74.

[4] Id. at 106-110. Penned by Acting Presiding Judge Elisa R. Sarmiento-Flores.

[5] 633 Phil. 79 (2010).

[6] Rollo, pp. 107-110.

[7] Id. at 108-110.

[8] See Urgent Motion for Reconsideration dated January 17, 2018; id. at 115-135.

[9] Id. at 111-114.

[10] Id. at 111-113.

[11] Id. at 111-114.

[12] Id. at 3-48.

[13] Id. at 26-47.

[14] See Section 4, Rule 65 of the Rules of Court.

[15] Banez, Jr. v. Concepcion, 693 Phil. 399, 412 (2012).

[16] Vergara, Sr. v. Suelto, 240 Phil. 719, 732 (1987).

[17] Gios-Samar, Inc. v. Department of Transportation and Communications, G.R. No. 217158, March 12, 2019, 896 SCRA 213, 284 and 290.

[18] Vergara, Sr. v. Suelto, supra note 16, at 732-733.

[19] The Diocese of Bacolod v. Commission on Elections, 751 Phil. 301, 331-335 (2015).

[20] See Agan, Jr. v. Philippine International Air Terminals Co., Inc., 450 Phil. 744, 805 (2003); and Government of the United States of America v. Hon. Purganan, 438 Phil. 417, 435-436 (2002).

[21] See Malayan Insurance Company, Inc. v. St. Francis Square Realty Corporation, 836 Phil. 442, 458 (2018); CE Construction Corporation v. Araneta Center, Inc., 816 Phil. 221, 262 (2017); Far Eastern Surety and Insurance Co., Inc. v. People, 721 Phil. 760, 767 (2013), citing Heirs of Nicolas Cabigas v. Limbaco, 670 Phil. 274, 285 (2011); Taglay v. Daray, 693 Phil. 45, 54 (2012); F.F. Cruz & Co., Inc. v. HR Construction Corp., 684 Phil. 330, 347 (2012), citing Philippine National Construction Corporation v. CA, 541 Phil. 658, 669-670 (2007); Vda. De Formoso v. Philippine National Bank, 665 Phil. 184, 197 (2011); and Republic v. Malabanan, 646 Phil. 631, 637-638 (2010), citing Leoncio v. De Vera, 569 Phil. 512, 516 (2008).

[22] 712 Phil. 44 (2013).

[23] Id. at 137.

[24] See Section 2 of RA No. 9262.

[25] *Garcia v. Drilon*, supra note 22, at 104-105.

[26] Section 9. Who May File Petition for Protection Orders. — A petition for protection order may be filed by any of the following:

x x x x

(b) parents or guardians of the offended party;

x x x x

[27] Section 12. Who May File for Protection Orders. —

x x x x

b) parents or guardians of the offended party;

x x x x

[28] Section 8. Who may file petition. — A petition for protection order may be filed by any of the following:

x x x x

(b) Parents or guardians of the offended party;

x x x x

[29] Approved on October 19, 2004 and took effect on November 15, 2004.

[30] *Barcellano v. Bañas*, 673 Phil. 177, 187 (2011).

[31] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, 826 Phil. 329, 344-345 (2018).

[32] *Kida v. Senate of the Philippines*, 683 Phil. 198, 219 (2012).

[33] See Section 1 of A.M. No. 04-10-11-SC, which provides:

Section 1. Applicability. — x x x

The Rules of Court shall apply suppletorily.

[34] *Rollo*, p. 51.

[35] *Ocampo v. Arcaya-Chua*, supra note 5, at 113.

[36] See *id.* at 107-115.

[37] *Yu v. Reyes-Carpio*, 667 Phil. 474, 481-482 (2011).

[38] *Garcia v. Drilon*, supra note 22, at 103-104.

[39] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

[40] See Sections 6, 7, 8, 9, 10, 16, and 20 of RA No. 7610.

[41] Entitled "AN ACT PROVIDING FOR THE REHABILITATION, SELF-DEVELOPMENT AND SELF-RELIANCE OF DISABLED PERSONS AND THEIR INTEGRATION INTO THE MAINSTREAM OF SOCIETY AND FOR OTHER PURPOSES," approved on March 24, 1992.

[42] Entitled "AN ACT AMENDING REPUBLIC ACT No. 7277, OTHERWISE KNOWN AS THE 'MAGNA

CARTA FOR DISABLED PERSONS, AND FOR OTHER PURPOSES'," approved on April 30, 2007.

[43] See Sections 42, 44, and 46, as amended, which provide:

Section 42. Any individual, group or community is hereby prohibited from vilifying any person with disability which could result into loss of self-esteem of the latter.

x x x x

Section 44. Enforcement by the Secretary of Justice. — x x x

b) Potential Violations — If the Secretary of Justice has reasonable cause to believe that —

- 1) any person or group of persons is engaged in a pattern or practice of discrimination under this Act; or
- 2) any person or group of persons has been discriminated against under this Act and such discrimination raises an issue of general public importance, the Secretary of Justice may commence a legal action in any appropriate court.

x x x x

Section 46. Penal Clause. — (a) Any person who violates any provision of this Act shall suffer the following penalties: x x x x

(b) Any person who abuses the privileges granted herein shall be punished with imprisonment of not less than six months or a fine of not less than Five thousand pesos ([P]5,000.00), but not more than Fifty thousand pesos ([P]50,000.00), or both, at the discretion of the court.

x x x x

[44] Entitled "AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on June 7, 1995.

[45] Entitled "AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on March 8, 2010.

[46] See Section 6 of RA No. 8042, as amended by Section 5 of RA No. 10022.

[47] Approved on June 18, 1966.

[48] See Section 32 of RA No. 4670, which provides:

Section 32. Penal Provision. — A person who shall wilfully interfere with, restrain or coerce any teacher in the exercise of his rights guaranteed by this Act or who shall in any other manner commit any act to defeat any of the provisions of this Act shall, upon conviction, be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment, in the discretion of the court.

x x x x

[49] Entitled "AN ACT PROVIDING FOR A MAGNA CARTA FOR PUBLIC SOCIAL WORKERS," approved on April 11, 2007.

[50] See Sections 20 and 24 of RA No. 9433.

[51] Approved on March 26, 1992.

[52] See Sections 32 and 39 of RA No. 7305.

[53] See United Nations Convention on the Rights of the Child, Committee on the Rights of the Child, General Comment No. 13 (2011).

[54] Unicef, Gender Dimensions of Violence Against Children and Adolescents, available at <<https://www.unicef.org/media/93986/file/Child-Protection-Gender-Dimensions-of-VACAG-2021.pdf>> (last visited July 12, 2022).

[55] Unicef, Children from all walks of life endure violence, and millions more are at risk, available at <<https://data.unicef.org/topic/child-protection/violence/>> (last visited July 12, 2022).

[56] World Health Organization, Violence Against Children, available at <<https://www.who.int/news-room/fact-sheets/detail/violence-against-children>> (last visited July 12, 2022).

[57] See Article 10 of the Civil Code.

SEPARATE DISSENTING OPINION

GESMUNDO, C.J.:

I join Associate Justice Alfredo Benjamin S. Caguioa in voting to remand the case to the trial court to hear and decide the petition under the Rule on Custody of Minors and Writ of Habeas Corpus[1] (Custody Rule).

The essential facts are as follows: the father, Randy Michael Knutson (Randy), filed, on behalf of his minor daughter, Rhuby Sibal Knutson (Rhuby), against the latter's mother, Rosalina Sibal Knutson (Rosalina), a petition under Republic Act (R.A.) No. 9262[2] or the Violence Against Women and Their Children Act of 2004 for the issuance of Temporary and Permanent Protection Orders before the Regional Trial Court of Taguig City, Branch 69 (RTC). The RTC dismissed the petition, explaining that the protection order under R.A. No. 9262 cannot be issued against a mother who allegedly abused her own child. Aggrieved, Randy filed a petition for certiorari directly before the Court.

The majority grants the petition and directs the RTC to resolve the merits of the petition before it. On the procedural aspect, it holds that the following exceptions to the hierarchy of courts doctrine justify the direct recourse to this Court: (1) case of first impression where no jurisprudence yet exists that will guide the lower courts; and (2) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest or justice. On the substantive aspect, it held that (a) the father of the offended party is allowed to apply for protection and custody orders under R.A. No. 9262; and (b) R.A. No. 9262 covers a situation where the mother committed violent acts against her own child.

I respectfully disagree.

Certiorari is an improper remedy because of the availability of appeal; the petition can be treated as an appeal if filed within the reglementary period

It is opined that the RTC's Order dismissing the petition in this case constitutes a final order that completely disposed of the case,[3] as it leaves nothing more to be done by the RTC despite the absence of trial or other proceedings.[4] Hence, the proper remedy to assail such Order is an appeal, and not certiorari. Case law explains that appeal and certiorari are mutually exclusive,[5] because the availability of appeal is antithetical to the availability of the other.[6] Furthermore, when a pure question of law is involved, an appeal may be taken directly from the RTC to the Court via a Rule 45 petition. In the present case, while petitioner was correct in going directly to the Court, he erroneously used a petition for certiorari as his procedural vehicle.

In some instances, the Court has relaxed this procedural rule and treated a petition for certiorari as an appeal, provided that the petition is filed within the reglementary period to file an appeal.[7] Here, there was no indication in the majority whether the certiorari petition was filed before this Court within the reglementary period under Rule 45 of the Rules of Court (Rule 45). Jurisprudence provides that a petition for certiorari cannot be a substitute for a lapsed or lost appeal.[8] It is acknowledged, however, that this case presents a novel issue, one of first impression where no jurisprudence yet exists to guide the lower courts. Hence, if it is shown that the petition was filed within the reglementary period for an appeal, then the Court may proceed to treat this petition as an appeal under Rule 45.

Under R.A. No. 9262, the mother of an abused child is not the offender

On the merits, the core issue presented in this case is whether a mother of an allegedly abused child can be considered as an offender under R.A. No. 9262.

I respectfully maintain a contrary view from the majority. A textual analysis of Section 3 of R.A. No. 9262 shows that when the offended party is a child, the mother is not the offender contemplated under the statute. The policy of liberal construction does not mean that the Court, in the guise of interpretation, can enlarge the scope of the statute or include under its terms, situations that were not provided or intended.[9] Indeed, the protection order under R.A. No. 9262 is intended to benefit the statutorily-defined offended party.

Sec. 3 of R.A. No. 9262 defines "violence against women and their children," as follows:

(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. (Emphases and underscoring supplied)

This provision characterizes the offender and the offended party, as follows:

- Offender: "any person" who has a wife, former wife, or is dating, has or had a sexual or dating relationship, or has a common child with the woman involved.

- Offended party: can either be —

(a)

a woman who is the offender's wife, former wife, or a woman with whom the offender has or had a sexual or dating relationship, or with whom he has a common child; or

(b)

her child, whether legitimate or illegitimate, within or without the family abode.

As the provision is crafted, this definition contemplates that a woman is necessarily involved, either as (1) the main offended party or (2) one who has or had a relationship with both the offender and the child-offended party. It is submitted that by using the adjective "her" to describe the "child," the statute refers to the entire characterization of the woman described earlier in the provision (i.e., one who has or had a relationship with the offender). Notably, under this definition, the child-offended party need not necessarily be related to the offender, but must be a "child" of the woman. R.A. No. 9262 defines "children," thus: "[a]s used in this Act, [children] includes the biological children of the victim and other children under her care." Again, the key factor is the relationship of the child with the woman, who is not the offender as shown by her characterization as a victim. This ties in with Sec. 4 of R.A. No. 9262 which states that the statute "shall be liberally construed to promote the protection and safety of victims of violence against women and their children."

Hence, when the child is the offended party, the statute contemplates that there are at least three persons involved: (1) the offender; (2) the child who is the offended party; and (3) a woman who has a relationship with both the offender and the child-offended party.

The present case, however, involves only two participants — the mother as the supposed offender and her child as the offended party. It is, thus, submitted that the circumstances in this case do not create the scenario in which R.A. No. 9262 is applicable.

The majority harps on the fact that the statute uses the gender-neutral word "person" to refer to the offender, and reads it as embracing "any person of either sex." [10] This is true. As explained in *Garcia v. Judge Drilon*, [11] the relationship under R.A. No. 9262 between the offender and the woman "encompasses even lesbian relationships." Indeed, when the offended party is a woman, the offender can be a person with whom she has a same-sex relationship. However, when the violence is committed against the child, as discussed above, the law contemplates the involvement of a third person (i.e., a woman) who has a relationship with the child as the latter's guardian or mother, as well as the offender, as the woman's intimate partner. Hence, an abusive relationship only between a mother and a child, as presented in the instant case, is not the scenario covered under R.A. No. 9262, as correctly held by the RTC.

This textual analysis of the provision is also consistent with the legislative department's intended application for the statute. Children are indisputably covered under R.A. No. 9262, but not in all circumstances. When the matter of removing "children" from the statute's coverage was again raised in the Bicameral Conference Committee, the legislators added the possessive adjective "their" to qualify the "children" referred to under the statute. The relevant discussions are quoted in the Dissenting Opinion of Justice Caguioa, [12] to wit:

Rep. Angara-Castillo. I reiterate my suggestion, we eliminate the word "children" because it's totally unnecessary and inappropriate.

x x x x

Rep. Marcos. x x x

I don't know if this confuses the issue or it clarifies it. What is the Senate version should read as follows, in order to take into consideration the concerns of Representative Sarenas that priority be given to children in these abusive families to wit: "An Act Defining Violence Against Women and their Children, Providing Protective Measures and Penalties therefor and for Other Purposes."

Rep. Antonino-Custodio. Ma'am question. Actually may incident kasi, tunay na incident nangyari sa amin na yung anak is, actually hindi n'ya anak, eh, anak nung asawa nya, pero, parang she was still binded by that

relationship kasi kahit hindi n'ya anak 'yung bata, kahit papa'no lumaki na sa kanya, eh. So, dependent sa kanya – so, may hold pa rin yung asawa nya dun sa anak nung asawa nya. That's an actual case in our area.

Rep. Marcos. I think such a situation would be covered in fact by women and their children, inasmuch as the child is dependent upon that mother, either as ward or as an adopted child. So, okay lang 'yun.

Rep. Antonino-Custodio. Kasi baka – I mean, usually and even in some cases they are not adopted - - they are not adopted children eh.

Rep. Marcos. No, even if they have not been officially adopted, it's tantamount to a ward relationship or dependency relationship. So, palagay ko covered na 'yon kasi they are children. Kasi nga, I think there should be a distinction that this is not a law for all children everywhere under all circumstances, but rather children who are confronted with this abusive relationship within the family abode.

Rep. Antonino-Custodio. As long as, ma'am I guess the intention in the Bicameral Conference Committee is really on record, I think we will have no problem because when the court will refer definitely to the minutes of the Bicameral Conference Committee, then they will see that our intention is so. Just for the record.

The Chairperson (Sen. Ejercito-Estrada). Okay, we adopt the...

Rep. Marcos. Therefore, to reiterate, taking into consideration both [Representative Sarenas and Custodio's] concerns, the Bicam transcript should therefore reflect the intent of this body to broadly interpret the term children not only to include the biological children of the abused women or violated mothers, but also all children under their care.

The Chairperson (Sen. Ejercito-Estrada). Okay, para matapos na talaga. [x x x] Okay, accepted, use your title, gano'n na rin, dinagdagan lang ng "their children". (Emphases and underscoring supplied)

The exchanges in the Bicameral Conference Committee emphasized the emotional connection or dependency between the child-offended party and the woman. The scenario depicted is one of an "abusive relationship within the family abode." Relevantly, the legislator referred to the woman as "abused" or "violated" even when seemingly addressing a scenario of violence against the child. This is understandable considering that from a mother's perspective, the pain caused to the child may likewise be felt by the mother or the mother figure. Hence, the violence against the child may feel as if it is inflicted on the mother figure herself. In the present case, this is not the portrayed relationship between the mother, Rosalina, and the child, Rhuby.

Notably, during the Senate deliberations, the sponsor of R.A. No. 9262's source bill acknowledged the inadequacy of R.A. No. 7610 because for one, protection orders are not available in said law. Senator Sotto narrated that "I have seen 14, 15-year-old children being abused by their fathers, even by their mothers. And it breaks my heart to find out about these things. Because of the inadequate existing law on abuse of children, this particular measure will update that. It will enhance and hopefully prevent the abuse of children and not only women." [13] As above-discussed, this inclusion of children was later revisited and qualified in the Bicameral Conference Committee. Representative Angara-Castillo noted that the benefits to be given to children can be made "by way of amendment of [R.A. No.] 7610" explaining that "if you scatter all these provisions [benefiting] the children, napakagulo eh. So if we want to give them additional rights, then you just amend [R.A. No.] 7610." Representative Sarenas also clarified that "we certainly are talking about not just any child but a child of a woman victim of violence." In contrast, she referred to the co-parent of the woman as "the perpetrator." She then explained that "all children are covered under [R.A. No.] 7610. But the children we want covered under this law" are those who have an emotional connection or dependency with the woman. [14] It was at this point that Senator Imee Marcos recommended the use of "their" to qualify the "children" covered under the statute. From these latter discussions, the legislative intent became clear that when the offended party is a child, the setting contemplated

under the law is that there are three participants – the child, the woman, and the offender. As such, the mother-offender cannot be held liable under R.A. No. 9262. Nevertheless, she can be held responsible under R.A. No. 7610.[15]

Effective legal remedies for children

The majority cautions that "[t]he RTC's restrictive interpretation requiring that the mother and her child to be victims of violence before they may be entitled to the remedies of protection and custody orders will frustrate the policy of the law. It adds that the RTC's supposed reassurance that "children who suffered abuse from the hands of their own mothers may invoke other laws except R.A. No. 9262 is discriminatory" and is "an outright denial of effective legal measures to address the seriousness and urgency of the situation" involving violence against women and children.[16]

To my mind, no denial of effective legal measures will result from the textually accurate interpretation of "offender" under R.A. No. 9262, and the Court would only be exercising its solemn duty to apply the statute as intended. *Verba legis non est recedendum*, or from the words of a statute there should be no departure. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.[17] The remedy, as suggested in the Dissenting Opinion of Justice Caguioa, is to amend R.A. No. 7610 to include the protection order for abused children in cases not covered under R.A. No. 9262, as in the present case.

Besides, although a protection order is not a remedy presently available under R.A. No. 7610, it does not preclude the Court from making such protection order available to victims of child abuse under a duly--promulgated rule. The 1987 Constitution empowers the Court to "promulgate rules concerning the protection and enforcement of constitutional rights," which includes the right to life, liberty, and security of abused children. Pursuant to this power, the Court, in the Rule on the Writ of Amparo, listed protection order as an interim relief that a person may avail. It is submitted that the Court can make available the same interim relief in child abuse cases under R.A. No. 7610, in order for it to be a relief available against the mother who abuses her own child, as in this case.

For these reasons, I join Justice Caguioa in stating that based on the letter and spirit of the law, the present case does not fall within the purview of R.A. No. 9262. Nevertheless, the RTC may still grant reliefs to the child under the Custody Rule, which enables courts to provide provisional and permanent relief to protect the child. Notably, Sec. 13 of the Custody Rule authorizes the court to issue a provisional order awarding custody of the minor to either parent. Sec. 17 thereof also authorized the issuance of a protection order to require any person to comply with orders of the court to ensure the protection of the minor.[18] Hence, I also vote to partially grant the petition insofar as to remand the case to the trial court for the determination of this case.

[1] A.M. No. 03-04-04-SC, effective May 15, 2003.

[2] ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004, March 8, 2004.

[3] Section 1, Rule 41 of the Rules of Court states that: "An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. x x x"

[4] See *Carniyan v. Home Guaranty Corporation*, G.R. No. 228516, August 14, 2019, 914 SCRA 92, 103.

[5] *Butuan Development Corporation v. Court of Appeals*, 808 Phil. 443, 451 (2017).

[6] Under Section 1, Rule 65 of the Rules of Court, one of the requirements for a petition for certiorari is that

"there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law."

[7] *Punongbayan-Visitacion v. People*, 823 Phil. 212, 222 (2018).

[8] *Spouses Dycoco v. Court of Appeals*, 715 Phil. 550, 561 (2013), citing *Balayan v. Acorda*, 523 Phil. 305, 309 (2006).

[9] *Re: Letter of Court of Appeals Justice Vicente S. E. Veloso for Entitlement of Longevity Pay*, 760 Phil. 62, 97 (2015).

[10] See ponencia, p. 9.

[11] 712 Phil. 44 (2013).

[12] See Dissenting Opinion, pp. 16-17, citing Congressional Records, Minutes of the Bicameral Conference Committee dated January 26, 2004, pp. 192-202.

[13] *Garcia v. Judge Drilon*, supra note 11, citing the Senate deliberations.

[14] See Dissenting Opinion, pp. 14-17, citing Congressional Records, minutes of the Bicameral Conference Committee dated January 26, 2004, pp. 192-202, to wit:

Rep. Angara-Castillo. ... x x x

I don't think we should include children in the bill except as incidental beneficiaries of the reliefs to be granted to the woman victim. Because Republic Act 7610 is already so comprehensive as to cover the rights of the child.

[x x x] And my position is that, if we need to give more rights, then we should amend 7610 because that is the act applicable to children. I do not think this is really wise or prudent to include them in this particular bill because their inclusion is already guaranteed there by way of the relief that will benefit them as they are granted to their mother but it's not necessary for them to be made part of the title or really the bill itself. Except, as I said, as incidental beneficiaries of the reliefs to be granted to the offended mother.

The Chairperson (Sen. Ejercito-Estrada). There was a discussion on the Senate, the Minority Leader said that they don't mind if the males are excluded from this bill, but not the children. So I think I agree with them and so we include the children.

Rep. Angara-Castillo. Just for the record, Madam Chair, I am not saying that we should exclude children from consideration of benefits that may accrue to them. What I am just saying is that, the benefits they would like to give can be done by way of amendment of 7610 so we really have a clear law that affects only the children.

Kasi, if you scatter all these provisions benefitting the children, napakagulo eh. So if we want to give them additional rights, then you just amend Republic Act 7610.

[x x x x]

Rep. Sarenas. Madam Chair, I should have brought this up earlier but we certainly are talking about not just any child but a child of a woman victim of violence. And, therefore, to make that clear, Madam Chair, I suggest we include in our proposal somewhere where we describe who the victims can be following words: x x x That's a long one Madam Chair, but it does speak of the reality of the kind of children, not just biological children of a woman victim of violence but all other young children below 18 or who are incapable of taking care of themselves but her children because they are children from previous marriage, her adopted children or a child she has in common with the perpetrator. (Emphases and underscoring supplied)

[15] Section 2 of R.A. No. 7610 provides, thus: "Section 2. Declaration of State Policy and Principles. – It is

hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same." (Emphasis and underscoring supplied)

[16] See ponencia, pp. 14-15.

[17] *Republic v. Manalo*, 831 Phil. 33, 57 (2018).

[18] Section 17 of the Custody Rule provides, thus:

Section 17. Protection Order. – The court may issue a Protection Order requiring any person:

(a)

To stay away from the home, school, business, or place of employment of the minor, other parent or any other party, or from any other specific place designated by the court;

(b)

To cease and desist from harassing, intimidating, or threatening such minor or the other parent or any person to whom custody of the minor is awarded;

(c)

To refrain from acts of commission or omission that create an unreasonable risk to the health, safety, or welfare of the minor;

(d)

To permit a parent, or a party entitled to visitation by a court order or a separation agreement, to visit the minor at stated periods;

(e)

To permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court; and

(f)

To comply with such other orders as are necessary for the protection of the minor.

CONCURRING OPINION

LEONEN, SAJ.:

Violence should not be narrowly and solely viewed as a gender issue in the context of intimate relationships but rather, a power issue.[1] Constantly labeling women as "weak" and "victims" affirms a level of heteronormativity. Women who perpetrate violence should not be immune from the force of the law. On the other hand, children who suffer from domestic violence should be protected from their abusers — even from their own mothers.

I

Article II, Section 14 of the Constitution mandates the "fundamental equality before the law of women and men." [2] Consistent with this direction, the State, as a signatory of the Convention on the Elimination of All Forms of Discrimination Against Women, is bound to take all appropriate measures "[to] modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women[.]" [3] In *Alanis III v. Court of Appeals*: [4]

In keeping with the Convention, Article II, Section 14 of the Constitution requires that the State be active in ensuring gender equality. This provision is even more noticeably proactive than the more widely--invoked equal protection and due process clauses under the Bill of Rights. In *Racho v. Tanaka*, this Court observed: This constitutional provision provides a more active application than the passive orientation of Article III, Section 1 of the Constitution does, which simply states that no person shall "be denied the equal protection of the laws." Equal protection, within the context of Article III, Section I only provides that any legal burden or benefit that is given to men must also be given to women. It does not require the State to actively pursue "affirmative ways and means to battle the patriarchy — that complex of political, cultural, and economic factors that ensure women's disempowerment."

Article II, Section 14 implies the State's positive duty to actively dismantle the existing patriarchy by addressing the culture that supports it. [5] (Citation omitted)

Republic Act No. 9262, or the Anti-Violence Against Women and Their Children Act of 2004, reflects this policy. It is a novel statute which guarantees the dignity of women and children and mandates their protection from violence and threats to personal safety and security. [6] It addresses domestic violence in intimate relationships, which is largely due to unequal power relations between men and women. [7]

In *Garcia v. Drilon*, [8] this Court upheld the constitutionality of Republic Act No. 9262, emphasizing the prevailing patriarchal society which empowers men at the expense of women. Thus:

[V]iolence against women (VAW) is deemed to be closely linked with the unequal power relationship between women and men otherwise known as "gender-based violence". Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And V A W is a form of men's expression of controlling women to retain power. [9] (Citation omitted)

Further, Garcia explained how women and their children are the "usual" and "most likely" victims of violence. This creates a valid classification and substantial distinction between men and women which justified the enactment of Republic Act No. 9262. Thus:

Preventing violence against women and children through their availment of special legal remedies, serves the governmental objectives of protecting the dignity and human rights of every person, preserving the sanctity of family life, and promoting gender equality and empowering women. Although there exists other laws on violence against women in the Philippines, Republic Act No. 9262 deals with the problem of violence within the family and intimate relationships, which deserves special attention because it occurs in situations or places where women and children should feel most safe and secure but are actually not. The law provides the widest range of reliefs for women and children who are victims of violence, which are often reported to have been committed not by strangers, but by a father or a husband or a person with whom the victim has or had a sexual or dating relationship. Aside from filing a criminal case in court, the law provides potent legal remedies to the victims that theretofore were not available. The law recognizes, with valid factual support based on statistics that women and children are the most vulnerable victims of violence, and therefore need legal intervention. [10]

(Citation omitted)

Nevertheless, Garcia recognized that violence and abuse may also be perpetrated against men.[11] Women, on the other hand, may also be perpetrators of violence.[12] The underreported abuse against men is largely due to social and cultural expectations on masculinity which compels men to keep mum on domestic abuse.[13]

Gender must be viewed primarily as an "inequality of power," not merely as a difference assigned to sexes.[14] The social status and role attributed to men and women are repercussions of this inequality:

The differences we attribute to sex are lines inequality draws, not any kind of basis for it. Social and political inequality are ... basically indifferent to sameness and difference. Differences are inequality's post hoc excuse, its conclusory artifact, its outcome presented as its origin, the damage that it pointed to as the justification for doing the damage after the damage has been done, the distinctions that perception is socially organized to notice because inequality gives them consequences for social power. Distinctions of body or mind or behavior are pointed to as cause rather than effect, without realizing that they are so deeply effect rather than cause that pointing to them at all is an effect.[15]

Republic Act No. 9262 is a law which intends to reject patriarchy. The reductionist thinking that women are always victims reinforces their powerlessness. This only perpetuates and affirms the very biases and prejudices against them.[16]

The view which perpetually labels women as victims results in a narrow thinking that women are always weak. This does not advance gender equality, but aggravates the belief that men will always dominate women.[17] This only affirms heteronormativity:

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

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

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

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

There is now more space to believe that portraying only women as victims will not always promote gender equality before the law. It sometimes aggravates the gap by conceding that women have always been dominated by men. In doing so, it renders empowered women invisible; or, in some cases, that men as human beings can also become victims.[18] (Citations omitted)

Thus, violence and abuse in the context of intimate relationships is not a gender issue but a power issue.[19] With this understanding, it is entirely possible that women can be perpetrators of violence and abuse in domestic and intimate relationships.

II

Section 3 of Republic Act No. 9262 defines "violence against women and children" as:

[A]ny 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.

Violent acts include physical violence, sexual violence, psychological violence, and economic abuse.[20]

To address these acts, the law provides three distinct remedies to the victims: a criminal complaint, a civil action for damages, and a civil action for issuance of a protection order.[21]

A criminal case may be filed against offenders who commit any act of violence against women and their children under Section 5.[22] This includes: threatening, attempting, or causing physical harm to the woman or her child; placing them in fear of imminent physical harm; attempting to compel or compelling them to engage in any conduct; restricting their movement; engaging them in sexual activities through force; or causing substantial emotional or psychological distress to the woman or her child.

Meanwhile, a civil action may also be filed under Section 36 for actual, compensatory, moral, and exemplary damages.

One of the law's innovations is the remedy of protection orders. A protection order is issued to "[prevent] further acts of violence against a woman or her child specified in Section 5 ... and granting other necessary relief" and to "[safeguard] the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life." [23] Under Section 8 of Republic Act No. 9262, the protection order may include any, some, or all of the following reliefs:

- (a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;
- (b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- (c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and, if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until respondent has gathered his things and escort respondent from the residence;
- (d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;
- (e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
- (f) Granting a temporary or permanent custody of a child/children to the petitioner;

(g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;

(h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on the matter;

(i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;

(j) Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and

(k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

Republic Act No. 9262 provides three kinds of protection orders: a barangay protection order, a temporary protection order, and a permanent protection order. The punong barangay, or if they are unavailable, the barangay kagawad, issues barangay protection orders, while trial courts issue temporary and permanent protection orders.

Under Republic Act No. 9262, it is not only the victim who can file the petition for a protection order:

Section 9. Who may File Petition for Protection Orders. — A petition for protection order may be filed by any of the following:

- (a) the offended party;
- (b) parents or guardians of the offended party;
- (c) ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
- (d) officers or social workers of the DSWD or social workers of local government units (LGUs);
- (e) police officers, preferably those in charge of women and children's desks;
- (f) Punong Barangay or Barangay Kagawad;
- (g) lawyer, counselor, therapist or healthcare provider of the petitioner;
- (h) at least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed.

To enable the law to fully protect the victims, it mandates a liberal application in granting petitions for protection orders. This Court affirmed this approach.

In *Go-Tan v. Tan*,^[24] petitioner filed a petition for protection order against her husband and her parents-in-law. In arguing against the petition, respondents argued that they were not covered by Section 3 of Republic Act No. 9262 which explicitly states that the offender should be related to the victim only by marriage, a former marriage, or a dating or sexual relationship.^[25]

Section 3 of the law provides:

- (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.

In *Go-Tan*, this Court allowed the filing of a petition for protection order against the woman's parents-in-law, acknowledging that violence may be committed directly or indirectly through other persons. This is consistent with the policy of the law to promote the safety of violence victims.[26] Thus, while parents-in-law are not expressly provided in the definition of offenders, a protection order may be filed against them when shown that they have caused verbal, psychological, and economic abuses against the victim.[27] A strict interpretation of Republic Act No. 9262 will not advance its policy:

It bears mention that the intent of the statute is the law and that this intent must be effectuated by the courts. In the present case, the express language of R.A. No. 9262 reflects the intent of the legislature for liberal construction as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit — the protection and safety of victims of violence against women and children.[28] (Citation omitted)

The law further extends protection to the victim's children, regardless of their age. In *Estacio v. Estacio*,[29] petitioner-offender questioned the inclusion of their adult children in the protection order. He argued that only children below 18 years old or those incapable of taking care of themselves as defined under Section 3 of Republic Act No. 9262 can be covered by the law.

In upholding the adult children's inclusion in the protection order, this Court found that petitioner-offender indeed committed violence against respondent through their children. He harassed respondent by sending her degrading and threatening messages through the children. Although the children are no longer minors, descendants as a whole class are covered by the law within the context of protection orders. Moreover, this Court pointed out that the law does not distinguish children based on age as possible beneficiaries of protection orders.[30]

Even if the wording of the law provides that the term "children" in the law "refer[s] to those below eighteen (18) years of age or older but are incapable of taking care of themselves," this Court considered the parties' adult children who may be granted relief under other sections of the law. Particularly, Section 8 of Republic Act No. 9262 states that other forms of relief may be issued in favor of the victim and "any designated family or household member." [31] This liberal reading of the provisions will give life to the law's policy of protecting the victims.

Clearly, this case compels us to view gender as a relational and power dynamic with a broader understanding of domestic violence. With a liberal reading of the law, a petition can be filed on behalf of the child even against the mother.

This is in keeping with the law's declaration of policy, which does not only guarantee the safety and security of the woman, but also of the child.[32] Particularly, it stresses the State's commitment to advance not only the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, but also the Convention on the Rights of the Child.

The restrictive reading of Republic Act No. 9262 which treats a child as a mere adjunct of their mother defeats the law's policy. The law does not require the woman to be the victim to afford protection to the child. The text of the law is plain. As pointed out by the ponencia, Republic Act No. 9262 provides that acts of violence under Section 5 can be committed against the woman or her child.[33]

Further, under Section 9(a) of the law, one of the persons allowed to file a petition for protection order is the "offended party." This can be read in conjunction with Section 3(a) which defines violence under the law as any

act or a series of acts committed "against [a woman's] 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."

Moreover, Section 9(b) allows parents or guardians of the victim to file the petition for protection order. The wording of the law does not distinguish, which parent is allowed to file. It is not only the mother who can file a petition for her child. The gender-neutral framing of the provision allows space for fathers or even guardians to file a protection order against an abusive mother. The father, as a parent, can file the petition on behalf of his minor daughter.

Here, Randy Michael Knutson (Randy) alleged that his daughter, Rhuby Sibal Knutson (Rhuby), was maltreated and threatened to be killed by her mother, respondent Rosalina Sibal Knutson (Rosalina). There were instances when respondent Rosalina pulled Rhuby's hair, slapped her face, and knocked her head. These are acts of physical violence that can be prevented by a protection order.

Further, Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act does not diminish the force and effect of Republic Act No. 9262. As explained by Associate Justice Amy C. Lazaro-Javier, child abuse under Republic Act No. 7610 does not distinguish between relatives or non-relatives. Verily, Randy could have filed an action under this law. However, child abuse within the context of intimate relationships is still covered by Republic Act No. 9262. The law's distinct feature is its emphasis on violence perpetuated within the bounds of intimate and domestic relationships, which are saturated and often shaped by gender relations as compared to other types of relations.

On the other hand, Associate Justice Alfredo Benjamin S. Caguioa's strict interpretation of the law reduces the protection of the child from the abuses of the mother. It further diminishes the burden of the mother and removes her sense of agency simply because she is a woman. This is not the intent of Republic Act No. 9262. That Rhuby's mother is the respondent does not exclude Rhuby from the protection the law provides. This interpretation does not frustrate the law's intent. It also does not diminish the protection intended for victims of gender-based violence. The fundamental equality before the law of men and women should be invoked when the situation demonstrates political and social oppressions. Otherwise, the benefits of the law should be emphatically applied.

ACCORDINGLY, I vote to GRANT the Petition.

[1] J. Leonen, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44, 171 (2013) [Per J. Perlas-Bernabe, En Banc], citing A. Delschelt, *Recognizing Domestic Violence Directed Towards Men: Overcoming Societal Perceptions, Conducting Accurate Studies, and Enacting Responsible Legislation*, 12 KAN. J.L. & PUB. POL'Y 249 (2003).

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

[3] Convention on the Elimination of All Forms of Discrimination Against Women (July 15, 1980), ratified on August 5, 1981, art. 5(a).

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

[5] Id.

[6] Republic Act No. 9262 (2004), sec. 2 provides:

[7] Section 2. Declaration of Policy. – It is hereby declared that the State values the dignity of women and

children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

Estacio v. Estacio, G.R. No. 211851, September 16, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66987>> (Per J. Leonen, Third Division)

[8] 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

[9] Id. at 91-92.

[10] J. Leonardo-De Castro, Concurring Opinion in Garcia v. Drilon, id. at 134-135.

[11] Garcia v. Drilon, 712 Phil. 44, 97 (2013) [Per J. Perlas-Bernabe, En Banc].

[12] J. Leonen, Concurring Opinion in Garcia v. Drilon, id.

[13] Id. at 167.

[14] CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW, 8-9 (1st ed. 1987).

[15] Id. at 8.

[16] J. Leonen, Concurring Opinion in Acharon v. People, G.R. No. 224946, November 9, 2021 <<https://sc.judiciary.gov.ph/27269/>> [Per J. Caguioa, En Banc].

[17] J. Leonen, Concurring Opinion in Garcia v. Drilon, 712 Phil. 44, 171 (2013) [Per J. Perlas-Bernabe, En Banc].

[18] Id. at 170-171.

[19] Id. at 171.

[20] Republic Act No. 9262 (2004), sec. 3(a).

[21] Pavlow v. Mendenilla, 809 Phil. 24, 38-39 (2017) [Per J. Leonen, Second Division].

[22] Republic Act No. 9262 (2004), sec. 5 provides:

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.

[23] Republic Act No. 9262 (2004), sec. 8.

[24] 588 Phil. 532 (2008) [Per J. Austria-Martinez, Third Division].

[25] Id. at 538.

[26] Go-Tan v. Spouses Tan, 588 Phil. 532 (2008) [Per J. Austria-Martinez, Third Division].

[27] Id. at 540-542.

[28] Id. at 542.

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

[30] Id.

[31] Id.

[32] Republic Act No. 9262 (2004), sec. 2.

[33] Ponencia, pp. 13-14.

DISSENTING OPINION

CAGUIOA, J.:

I vote to remand the case to the trial court to hear and decide the petition not on the basis of Republic Act No. (R.A.) 9262[1] but pursuant to the rules set forth in A.M. No. 03-04-04-SC.[2] In this way, protection is afforded to the child while the Court stays true to its mandate of upholding the law based on what its letter and spirit intend.

The crux of the controversy in this case is whether the remedies of protection orders and custody under R.A. 9262 apply when violence is committed by a woman, in this case, a mother, against her own child. Public respondent, in the assailed Regional Trial Court (RTC) Orders,[3] ruled in the negative, reasoning as follows:

Notably, the offender under R.A. 9262 is any person who is the husband, former husband, those who had sexual or dating relationship with the woman or with whom she has a common child. On the other hand, the offended party may be the wife, former wife, a woman who has or had sexual or dating relationship, or with whom the man has a common child or HER child.

From the foregoing, it can be seen that in the definition of an offender, a child's mother is not included as one of the offenders. In stark contrast, a child's mother is specifically mentioned in the definition for offended party. This could lead to no other conclusion that a child's mother cannot be considered as an offender under R.A. 9262.

Moreover, a protection order is defined under Section 8 of R.A. 9262, to quote:

"SECTION 8. Protection Orders. [—] A protection order is an order issued under this act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order should serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. x x x"

Based on the foregoing, the issuance of a protection order is for purpose of preventing further violence committed by an offender (any person who is the husband, former husband, those who had sexual or dating relationship with the woman or with whom she has a common child) against a woman or her child. It does not pertain to a mother who allegedly abused her own child. Hence, a protection order under R.A. 9262 cannot be issued against a mother who allegedly abused her own child.

Further, petitioner's prayer for the granting of a temporary or permanent custody of Rhuby under R.A. 9262 is likewise misplaced as Section 28 of the said law specifically states:

"SECTION 28. Custody of children. — The woman victim of violence shall be entitled to the custody and support of her child/children. Children below seven (7) years old [or] older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.["]

As it is, R.A. 9262 does not apply in the case at bar. The petitioner, who is not a "woman victim of violence" cannot avail of the remedies provided therein particularly the issuance of a Temporary/Permanent Protection Order and the granting of a temporary or permanent custody of Rhuby to him.

x x x x

On a final note, granting that respondent neglected, abandoned or physically abused Rhuby, her minor daughter, there are laws and rules specifically created for the latter's protection and safety that petitioner and/or Rhuby could avail of. Unfortunately, R.A. 9262 is not one of them.[4] (Emphasis and italics in the original)

In denying petitioner's motion for reconsideration, public respondent reiterated that R.A. 9262 does not apply to a situation where it was the mother herself who committed violent and abusive acts against her own child. She explained that "children being protected under R.A. 9262 refer to the biological children and other children under the care of the woman/victim." [5] As such, a child's mother is not included as one of the offenders under R.A. 9262. [6]

I agree with the RTC. I find that public respondent's reading of the law — that R.A. 9262 does not cover violence committed by a mother against her own child — is in full accord not only with the plain language of its provisions, but also with the intent and spirit that animate it.

The present case is not covered by R.A. 9262

The first basic rule in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

Here, R.A. 9262 unequivocally defines the victims of violence or the offended parties the law intends to protect — the woman and her child. Notably, examining R.A. 9262 in detail reveals that the law is not intended to apply to all children victimized by violence or abuse but only to the child or children of the woman subjected to violence or abuse.

Foremost, the title of R.A. 9262 itself qualifies that the child covered by the law is the child of the woman subject to violence or abuse. Thus, the title of R.A. 9262 reads, "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES." [7] This is reiterated in Section 1 of R.A. 9262, viz.:

SECTION 1. Short Title. — This Act shall be known as the "Anti-Violence Against Women and Their Children Act of 2004[.]" (Emphasis, italics and underscoring supplied)

Further, all through-out the text of the law, the term "child" is always associated with the term "woman." As public respondent aptly noted, R.A. 9262 does not consider or treat the "child" independently from the "woman" subjected to violence or abuse.

To be sure, Section 3(a) of R.A. 9262, in defining what violence against women and their children means, states, "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[.]" [8] Further, in defining the term children, Section 3(h) provides, "[a]s used in this Act, it includes the biological children of the victim [, i.e. the woman,] and other children under her care." [9]

In addition, Sections 5 and 6 of R.A. 9262, in enumerating prohibited acts and their corresponding penalties, respectively state:

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

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;

- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman 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 her 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.

SEC. 6. Penalties. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules[.] (Emphasis, italics and underscoring supplied)

Likewise, Section 8, which pertains to the issuance of protection orders, refers not just to any child — it refers only to the child of the woman victim. It states that the immediate reliefs granted by law (barangay protection order, temporary protection order and permanent protection order) are for the purpose of preventing further acts of violence against a woman or her child as specified in Section 5 thereof.

In the same vein, R.A. 9262 explicitly defines the offender or perpetrator of the crime penalized therein. Thus, Section 3(a) provides that "[v]iolence 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." [10]

Following the foregoing enumeration, the offender contemplated by R.A. 9262 includes any of the following persons: the woman's husband, the woman's former husband, the woman's sexual or dating partner, the woman's former sexual or dating partner, or the father of the woman's child.

In *Garcia v. Judge Drilon*, [11] (*Garcia*) the Court clarified that R.A. 9262 does not single out men as offenders. Women may also be held liable for violating R.A. 9262. However, it should be emphasized that the Court also made it clear in *Garcia* that this applies only in cases when the woman-victim is in a lesbian relationship or where there is a conspiracy between the perpetrator of the violence or abuse against the woman (i.e. the woman's husband, the woman's former husband, the woman's sexual or dating partner, the woman's former sexual or dating partner, or the father of the woman's child) and another person/s, who may include a woman:

There is likewise no merit to the contention that R.A. 9262 singles out the husband or father as the culprit. As defined above, VAWC may likewise be committed "against a woman with whom the person has or had a sexual or dating relationship." Clearly, the use of the gender-neutral word "person" who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships. Moreover, while the law provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the principle of conspiracy under the Revised Penal Code (RPC). Thus, in the case of *Go-Tan v. Spouses Tan*, the parents-in-law of Sharica Mari L. Go-Tan, the victim, were held to be proper respondents in the case filed by the latter upon the allegation that they and their son (*Go-Tan's* husband) had community of design and purpose in tormenting her by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically. [12] (Emphasis and underscoring supplied; italics in the original)

Proceeding from the foregoing, R.A. 9262 applies only when there is a woman subjected to violence and abuse. Moreover, since R.A. 9262 does not treat the child independently from the abused woman, and given the offenders enumerated and contemplated by R.A. 9262, it becomes quite clear that R.A. 9262 only covers violence or abuse against the woman's child committed by any of the following persons: the woman's husband, the woman's former husband, the woman's sexual or dating partner, the woman's former sexual or dating partner, or the father of the woman's child.

Stated otherwise, it is quite clear that R.A. 9262 does not contemplate a situation wherein no woman is abused or subjected to violence, and instead it is the woman herself who is the offender or the one who inflicts violence against the victim or the offended party. Also, as explained by the Court in *Garcia*, a woman may be considered as an offender under R.A. 9262 only when the woman is in lesbian relationship or in conspiracy with other persons. To my mind, public respondent is therefore correct in ruling that R.A. 9262 does not apply to the present case. In the first place, there is no woman subjected to violence in the context of an intimate relationship in this case. Moreover, private respondent in this case is not in a lesbian relationship. Neither was conspiracy established between private respondent and the husband or father of the victim.

Another primordial principle in statutory construction is that a statute must be read according to its spirit or intent.

The legislative intent is the controlling factor in interpreting a statute. Any interpretation that contradicts the legislative intent is unacceptable.[13]

A perusal of the spirit and intent of R.A. 9262, through its legislative history and congressional deliberations, leads to this same interpretation that the child included under R.A. 9262 pertains only to the child of the abused woman and not to all children subjected to violence and abuse.

R.A. 9262 originated from three bills, two of which were drafted by the House of Representatives and the third emanating from the Senate.

House Bill No. (HB) 6054 entitled An Act Defining Domestic Violence, Providing Protection Measures and Penalties Therefor, and for Other Purposes (DV Bill) pertained to domestic violence in general. It sought to penalize violence committed by and against any member of the family or household whether a minor, adult, or elderly. It covered incidents of spouse battery, wife assault, woman or girl abuse, marital violence, wife cruelty and violence against family member. It appears that the DV Bill intended to penalize all forms of abuse or violence committed against any person in a family setting.

On the other hand, HB 5516 entitled An Act Defining the Crime of Abuse of Women in Intimate Relationships, Prescribing Penalties Therefor, Providing for Protective Measures for Victims, and for Other Purposes (Anti-AWIR Bill) limited the crime of violence and abuse to women in intimate relationships. Thus, it defined the crime as acts of violence or abuse committed against a woman who is his wife, or former wife, his/her live-in partner, or former live-in partner, or against a woman whom the person has or had a sexual dating relationship.

Records of committee deliberations of the House of Representatives showed that proponents of the DV Bill asserted the need for a comprehensive law on domestic violence. They emphasized that domestic violence is committed against all members of the family and distinction as to sex or a piecemeal approach in addressing the issue is unnecessary.[14] On the other hand, sponsors of the Anti-AWIR Bill insisted that statistical data support that majority of the victims of domestic violence are women and even international instruments like the Convention on the Elimination of All Forms of Discrimination Against Women recognized the proliferation of gender-based violence committed against women. They also explained that unlike the DV Bill, the Anti-AWIR Bill extends the protection of women not only within the framework of the household but even to women in intimate relationships. They further claimed that other members of the family are already protected by current laws: R.A. 7610 is comprehensive enough to address abuses committed against children, while the Revised Penal Code covers violence committed against other members of the household.[15]

While there was a move to consolidate both house bills, they were separately approved by the House of Representatives during their Third Reading and were both elevated to the Senate.

The counterpart bill of HB 5516 and 6054 in the Senate is Senate Bill No. (SB) 2723 entitled An Act Defining Violence Against Women and Members of the Family, Prescribing Penalties Therefor, Providing for Protective Measures for Victims, and for Other Purposes.

During the plenary deliberations, the issue on SB 2723's coverage was also raised. It was proposed that men be excluded from the coverage of the bill and that protection afforded by the bill be limited to women, who are mostly the victims of gender-based violence. Subsequently, Senator Vicente Sotto III (Senator Sotto) raised that there is also a need to expand the protection afforded to children subjected to violence and abuse. It was then agreed upon in the Senate that SB 2723 would include both women and children, viz.:

Wednesday, January 14, 2004

x x x x x x x x

The President Pro Tempore. x x x

Also, may the Chair remind the group that there was the discussion whether to limit this to women and not to families which was the issue of the AWIR group. The understanding that I have is that we would be having a broader scope rather than just women, if I remember correctly, Madam sponsor.

Senator Estrada. Yes, Mr. President.

As a matter of fact, that was brought up by Senator Pangilinan during the interpellation period.

I think Senator Sotto has something to say to that.

Senator Legarda. Mr. President, the reason I am in support of the measure. Do not get me wrong. However, I believe that there is a need to protect women's rights especially in the domestic environment.

As I said earlier, there are nameless, countless, voiceless women who have not had the opportunity to file a case against their spouses, their live-in partners after years, if not decade, of battery and abuse. If we broaden the scope to include even the men, assuming they can at all be abused by the women or their spouses, then it would not equalize the already difficult situation for women, Mr. President.

I think that the sponsor, based on our earlier conversations, concurs with this position. I am sure that the men in this Chamber who love their women in their lives so clearly will agree with this representation. Whether we like it or not, it is an unequal world. Whether we like it or not, no matter how empowered the women are, we are not given equal opportunities especially in the domestic environment where the macho Filipino man would always feel that he is stronger, more superior to the Filipino woman.

x x x x x x x x

The President Pro Tempore. What does the sponsor say?

Senator Estrada. Mr. President, before accepting this, the committee came up with this bill because the family members have been included in this proposed measure since the other members of the family other than women are also possible victims of violence. While women are most likely the intended victims, one reason incidentally why the measure focuses on women, the fact remains that in some relatively few cases, men also stand to be victimized and that children are almost always the helpless victims of violence. I am worried that there may not be enough protection extended to other family members particularly children who are excluded. Although Republic Act No. 7610, for instance, more or less, addresses the special needs of abused children. The same law is inadequate. Protection orders for one are not available in said law.

I am aware that some groups are apprehensive about granting the same protection to men, fearing that they may use this law to justify their abusive behavior against women. However, we should also recognize that there are established procedures and standards in our courts which give credence to evidentiary support and cannot just arbitrarily and whimsically entertain baseless complaints.

Mr. President, this measure is intended to harmonize family relations and to protect the family as the basic social institution. Though I recognize the unequal power relations between men and women in our society, I believe we have an obligation to uphold inherent rights and dignity of both husband and wife and their immediate family members, particularly children.

While I prefer to focus mainly on women, I was compelled to include other family members as a critical input arrived at after a series of consultations/meetings with various NGOs, experts, sports groups and other affected sectors, Mr. President.

Senator Sotto. Mr. President.

The President Pro Tempore. Yes, with the permission of the other senators.

Senator Sotto. Yes, with the permission of the two ladies on the Floor.

The President Pro Tempore. Yes, Sen. Vicente C. Sotto III is recognized.

Senator Sotto. I presume that the effect of the proposed amendment of Senator Legarda would be removing the "men and children" in this particular bill and focus specifically on women alone. That will be the net effect of that proposed amendment. Hearing the rationale mentioned by the distinguished sponsor, Sen. Luisa "Loi" Ejercito Estrada, I am not sure now whether she is inclined to accept the proposed amendment of Senator Legarda.

I am willing to wait whether she is accepting this or not because if she is going to accept this, I will propose an amendment to the amendment rather than object to the amendment, Mr. President.

x x x x x x x x

Senator Estrada. The amendment is accepted, Mr. President.

The President Pro Tempore. Is there any objection?

x x x x x x x x

Senator Sotto. x x x May I propose an amendment to the amendment.

The President Pro Tempore. Before we act on the amendment?

Senator Sotto. Yes, Mr. President.

The President Pro Tempore. Yes, please proceed.

Senator Sotto. Mr. President, I am inclined to believe the rationale used by the distinguished proponent of the amendment. As a matter of fact, I tend to agree. Kung may maaabuso, mas malamang iyong babae kaysa sa lalake. At saka iyong mga lalake, puwede na talagang magulpi iyan. Okey lang iyan. But I cannot agree that we remove the children from this particular measure.

So, if I may propose an amendment —

The President Pro Tempore. To the amendment.

Senator Sotto. — more than the women, the children are very much abused. As a matter of fact, it is not limited to minors. The abuse is not limited to seven, six, 5-year-old children. I have seen 14, 15-year--old children being abused by their fathers, even by their mothers. And it breaks my heart to find out about these things.

Because of the inadequate existing law on abuse of children, this particular measure will update that. It will enhance and hopefully prevent the abuse of children and not only women.

SOTTO-LEGARDA AMENDMENTS

Therefore, may I propose an amendment that, yes, we remove the aspect of the men in the bill but not the children.

Senator Legarda. I agree, Mr. President, with the Minority Leader.

The President Pro Tempore. Effectively then, it will be women AND CHILDREN.

Senator Sotto. Yes, Mr. President.

Senator Estrada. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] There being none, the amendment, as amended, is approved.[16]

Subsequently, when the three bills were reconciled during the bicameral conference committee, the issue on the persons covered by the consolidated bill was once again raised. There was a consensus among the members that men are excluded from the coverage of the consolidated bill. As to children, however, Senator Sotto's proposition to include all children subjected to violence and abuse was effectively modified when the members of the bicameral conference committee agreed to further refine the definition of children covered by the law, viz.:

REP. ANGAR[A]-CASTILLO. ... Madam Chair, if we go – I understand when I came in, that you said you are going to reserve the discussion of the title at the last. This one will have a bearing on the consideration of whether this would include children in the act at all.

My point is that, just for the record because I don't know what was agreed upon before I came, I don't think we should include children in the bill, except as incidental beneficiaries of the reliefs to be granted to the woman victim. Because Republic Act 7610 is already so comprehensive as to cover all the rights of the child.

x x x And my position is that, if we need to give the child more rights, then we should amend 7610 because that is the act applicable to children. I do not think this is really wise or prudent to include them in this particular bill because their inclusion is already guaranteed there by way of the relief that will benefit them as they are granted to their mother but it's not necessary for them to be made a part of the title or really of the bill itself. Except, as I said, as incidental beneficiaries of the reliefs to be granted to the offended mother.

THE CHAIRPERSON (SEN. EJERCITO-ESTRADA). There was a discussion in the Senate, the Minority Leader said that they don't mind if the males are excluded from this bill, but not the children. So I think I agree with them and so we include the children.

REP. ANGARA-CASTILLO. Just for the record, Madam Chair, I am not saying that we should exclude children from consideration of benefits that may accrue to them. What I am just saying is that, the benefits they would like to give to them can be done by way of amendment to 7610 so we really have a clear law that affects only the children.

Kasi, if you scatter all these provisions benefiting the children, napakagulo, eh. So if we want to give them additional rights, then you just amend Republic Act 7610.

x x x x

REP. SARENAS. Madam Chair, I should have [brought] this up earlier but we certainly are talking about not just any child but a child of a woman victim of violence. And, therefore, to make that clear, Madam Chair, I suggest we include in our proposal somewhere where we describe who the victims can be the following words: "children are those below 18 years of age or older but are incapable of taking care of themselves as defined under Republic Act 7610, which is the Children[']s Protection Law and in the context of this law, include the children of the woman from a previous marriage or relationship, her common children with the perpetrator, her adopted children and those children who do not, her own, live with her and are dependent on her emotionally." That's a long one, Madam Chair, but it does speak of the reality of the kind of children, not just biological children of a woman victim of violence but all other young children below 18 or who are incapable of taking care of themselves but her children because they are children from a previous marriage, her adopted children or x x x children she has in common with the perpetrator.

REP. ANTONINO-CUSTODIO. I think kasama na sa child yun, eh. I think, what I am scared of more than anything is that if we specify we might exempt other children pa. So, kung general tayo, kung child lang tayo, then I think, saklaw na lahat, whether adopted yung child, whether a child niya from a previous marriage or whether child niya from another – well, all-weather child. Basta child, di ba? Saklaw na nung definition ng

child, eh.

Ang fear ko lang na baka mayroong -- you know, by us specifying which child, we might exempt other children.

REP. SARENAS. I'd really just want to explain. All those children -- all children are covered under 7610. But the children we want covered under this law called Violence against Women and Children, are the ones that I enumerated. So just to make it clear that these are the children who are usually the victims because yung iba na-cover na duon sa 7610. [Para ma-iba lang] yung definition natin ng children, for emphasis of children victims of violence against women and children.

REP. ANTONINO-CUSTODIO. Bakit pa natin i-lilimit. Huwag na natin i-limit. Huwag na natin i-limit.

x x x x

REP. MARCOS. Therefore, taking into consideration the concerns of the members regarding violence against women and their children, may I suggest that the Senate title be adopted with the following amendments: "An Act Defining Violence Against Women and Children, Providing for Protective Measures for Them and Prescribing Penalties Therefor and For Other Purposes." I just switched it around, kasi dapat 'yung "protective" mauna sa "penalty." 'Yun lang.

REP. ANGARA-CASTILLO. I reiterate my suggestion, we eliminate the word "children" because it's totally unnecessary and inappropriate.

REP. ANTONIO-CUSTODIO. Ma'am I'd just like to put into the - - well, put into records that the women specified here are the women in intimate relationships, 'yun 'yung referral natin to women here. Whether you put it in the title or not is not really a concern of mine but just like to make it on record that the women we have - - kumbaga ang saklaw nitong special law na 'to are actually women in intimate relationships.

x x x x

REP. MARCOS. x x x

I don't know if this confuses the issue or it clarifies it. What if the Senate version should read as follows, in order to take into consideration the concerns of Representative Sarenas that priority be given to children in these abusive families to wit: An Act Defining Violence Against Women and their Children, Providing Protective Measures and Penalties therefor and for Other Purposes.'

REP. ANTONINO-CUSTODIO. Ma'am question. Actually may incident kasi, tunay na incident nangyari sa amin na 'yung anak is, actually hindi n'ya anak, eh, anak nung asawa n'ya, pero parang she was still binded by that relationship kasi kahit hindi n'ya anak 'yung bata, kahit papa'no lumaki na sa kanya, eh. So, dependent sa kanya - - so, may hold pa rin 'yung asawa n'ya dun sa anak nung asawa. That's an actual case, eh, in our area.

REP. MARCOS. I think such a situation would be covered in fact by women and their children, inasmuch as the child is dependent upon that mother, either as ward or as an adopted child. So okay, lang 'yun.

REP. ANTONINO-CUSTODIO. Kasi baka - - I mean, usually and even in some cases they are not adopted child - - they are not adopted children, eh.

REP. MARCOS. No, even if they have not been officially adopted, it's tantamount to a ward relationship or dependency relationship. So, palagay ko covered na 'yon kasi they are children. Kasi nga, I think there should be a distinction that this is not a law for all children everywhere under all circumstances, but rather children who are confronted with this abusive relationship within the family abode.

REP. ANTONINO-CUSTODIO. As long as, ma'am I guess the intention in the Bicameral Conference Committee is really on record, I think we will have no problem because when the court will refer definitely to

the minutes of the Bicameral Conference Committee, then they will see that our intention is so. Just for the record.

THE CHAIRPERSON (SEN. EJERCITO-ESTRADA). Okay, we adopt the...

REP. MARCOS. Therefore, to reiterate, taking into consideration both Representative Sarenas and Representative Custodio's concerns, the Bicam transcript should therefore reflect the intent of this body to broadly interpret the term "children" not only to include the biological children of the abused or violated mothers, but also all children under their care.

THE CHAIRPERSON (SEN. EJERCITO-ESTRADA). Okay, para matapos na talaga. x x x Okay, accepted, use your title, gano'n na rin, dinagdagan lang ng "their children." [17] (Emphasis and underscoring supplied)

As can be gleaned from the foregoing, while Representative Bellaflor Angara-Castillo's suggestion to completely remove the word "children" from the title of the consolidated bill was not adopted, it was nevertheless clarified that the proposed consolidated bill does not cover all children victimized by violence or abuse. The child which the consolidated bill intends to protect is the child affected by the abusive relationship the woman--victim is/was into. It is the child of the woman subjected to violence and abuse, whether the child is her biological or adopted child or a child under her care. As such, the title was revised to include the word "their" beside children and the body of the R.A. 9262 consistently made reference to the child as "her child." This is to make clear the intent, as agreed and clarified during the bicameral conference committee, that not all children subjected to violence or abuse are covered by R.A. 9262 but only the child of the abused woman or violated mother or the child under her care. In this light, the present case unfortunately does not fall within the purview of the law.

Worthy of note as well is the fact that R.A. 9262 did not expressly repeal or amend the provisions of R.A. 7610, which, as raised during the congressional deliberations, provides a comprehensive protection to minor children subjected to violence and abuse.

R.A. 7610 penalizes child prostitution and other sexual abuse, child trafficking, and other acts of neglect, abuse, cruelty or exploitation committed against children. It covers all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions prejudicial to a child's development, including acts against a child committed by the parent, guardian, teacher or person having care and custody of the same.[18] As such, Section 10(a) of R.A. 7610 penalizes all other acts of child abuse, cruelty or exploitation against a child, which includes those committed by parents against their children, as enumerated under Article 59[19] of Presidential Decree No. 603[20] or the Child and Youth Welfare Code. Further, R.A. 7610 and its implementing rules and regulations grant the child reliefs against acts of abuse, violence, cruelty and neglect, such as immediate protective custody and transfer of parental authority.[21]

Indeed, had Congress really intended to repeal or amend R.A. 7610, which specifically defines and penalizes child abuse, including those committed by their parents, and grants reliefs to protect the child victim, then Congress would have explicitly done so. Despite the fact that R.A. 7610 was raised during congressional deliberations, Congress did not include any amendatory provision in R.A. 9262 on the rights of children provided under R.A. 7610. On the contrary, Congress, during the bicameral conference committee, even clarified that R.A. 9262 does not cover all circumstances of child abuse. What R.A. 9262 actually covers are the acts of violence against the woman and her child, whether biological, adopted or under her care, committed by the woman's husband, woman's former husband, woman's dating or sexual partner, woman's former dating or sexual partner or the father of the woman's child. A child abused by her own mother is not included in any of these circumstances.

In ruling that mothers can be prosecuted under R.A. 9262 when they commit violent and abusive acts against their own children, the ponencia posits that R.A. 9262 uses the gender-neutral word "person" as the offender which

embraces any person of either sex.[22]

However, it must be borne in mind that, and as shown from the preceding discussion, legislative intent is ascertained from a consideration of the statute as a whole.[23] The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.[24] The meaning of the law is not to be extracted from any single part, portion or section or from isolated words and phrases, clauses or sentences but from a general consideration or view of the act as a whole.[25]

In this regard, the term person under Section 3(a) of R.A. 9262 cannot be read separately from the succeeding phrases which the law deliberately used to describe or qualify the offenders therein. It bears emphasis that Section 3(a) describes the term "person" as the woman's husband, former husband, person with whom the woman has or had a sexual or dating relationship, or with whom she has a common child. Likewise, the use of the term "person" arose from a recognition of the reality that women may enter into intimate relationships not just with men. It does not at all signify that the woman herself may be an offender, as this interpretation runs counter to the very essence of the law, which is the protection of women from violence in the context of intimate relationships.

Furthermore, in defining violence committed against a child, R.A. 9262, from beginning to end, consistently refers to the abused woman's child. This reinforces the interpretation that the offenders with respect to violence committed against the abused woman's child also pertains to the woman's husband, former husband, person with whom the woman has or had a sexual or dating relationship or with whom the woman has a common child, or simply, the child's own father. In fact, nothing in R.A. 9262 explicitly or even impliedly indicate that the woman herself or a mother is considered as an offender; save in the cases explained by the Court in the case of Garcia. Therefore, it is very inaccurate to say that R.A. 9262 does not limit or qualify the offenders when, in fact, the language of the law categorically does.

In stark contrast to R.A. 9262, R.A. 7610 explicitly names and penalizes parents — hence, including mothers — as offenders or perpetrators of the violence committed against their child. As discussed, Section 10(a) of R.A. 7610 covers acts of neglect, abuse, cruelty or exploitation committed by parents against their own child. As well, the declared policy of R.A. 7610, as expressed in Section 2 thereof, is that the State shall intervene on behalf of the child when abuse, exploitation and discrimination against the child are committed by the his or her own parent, guardian, teacher or person having care and custody of the child.

Undoubtedly, R.A. 7610 is the law dedicated for the protection of a child, while R.A. 9262 is the law enacted mainly to protect women in abusive relationships. The core of R.A. 7610 is the protection of a child from all forms of abuse, neglect and exploitation, including those committed by their own parents. On the other hand, R.A. 9262's focus is the gender-based violence and abuse committed against women in intimate relationships. This distinction between R.A. 9262 and R.A. 7610 can also reasonably be inferred from the fact that R.A. 9262 was mostly drawn from the provisions of the Anti-AWIR bills instead of the various DV bills introduced in Congress.

During the deliberations of this case, it was raised that the legislative debates reveal that R.A. 9262 was intended to provide a more comprehensive remedy and that Congress opted not to remove the protection of children from the proposed measures. Senator Sotto's statement that mothers also commit violence and abuse against their children, and the discussion between Representative Darlene Antonino-Custodio (Representative Antonino--Custodio) and Representative Imee Marcos (Representative Marcos) on broadening the definition of child supposedly affirm this position.

With due respect, this is a wrong reading of the deliberations.

While Senator Sotto expressed that women, including mothers can be abusers, and thus, all children should be part of R.A. 9262, as discussed, this proposal was effectively modified during the Bicameral Conference Committee, when the members decided to add the word "their" before children, to signify that the child covered by R.A. 9262 is the child of the abused woman and not just any child abused in a family setting. In other words, by adding the word "their" or "her" to modify the words of "children" or "child," what R.A. 9262 simply intends is to extend protection not only to the abused woman, but also to the abused woman's child as he or she is an unfortunate victim of the abusive relationship his or her mother is into.

In this regard, the discussion between Representative Antonino--Custodio and Representative Marcos on broadening the term "child" to include also those under the woman's care should be read together with the unanimous agreement to describe the child covered by R.A. 9262 as the child of the abused woman confronted with such abusive relationship; as well as and the express language of the law on who the offenders or perpetrators of the violence are. To be sure, Representative Marcos, in adopting the suggestions to broadly define the term child, still made reference to their abused mothers:

REP. MARCOS: Therefore, to reiterate, taking into consideration both Representative Sarenas and Representative Custodio's concerns, the Bicom transcript should therefore reflect the intent of this body to broadly interpret the term "children" not only to include the biological children of the abused or violated mothers, but also all children under their care.[26] (Emphasis, italics and underscoring supplied)

Accordingly, based on congressional records, the intent of R.A. 9262, similar to what its language expresses, is to include only the child affected by the abusive relationship his or her mother is into, and not all children subjected to violence or abuse in a family. If R.A. 9262 is to be interpreted to include all abuse committed against a child, including those committed by their own mothers, then R.A. 9262 would also cover abuses committed by grandparents, uncles, aunties, elder brother or sister, or any person living in the family abode — circumstances which are certainly beyond what R.A. 9262 intends. In including mothers as offenders under R.A. 9262, and consequently, all other members of a household, as what the ponencia does, the very policy for the creation of R.A. 9262, which is to protect women against violence in the context of intimate relationships, is effectively diluted. It also results in a conflation of laws and an abject confusion about, and may possibly conflict with, the coverage of R.A. 7610. Truly, a statute must be construed, not only to be consistent with itself, but also to harmonize it with other laws on the same subject matter, as to form a complete, coherent and intelligible system.[27] The operative word is to harmonize — not to confuse.

Response to Senior Associate Justice Marvic M.V.F. Leonen (Justice Leonen)

Justice Leonen, in his Concurring Opinion, opines that "violence and abuse in the context of intimate relationships is not a gender issue but a power issue." [28] From this, he makes the argument that it is, therefore, "entirely possible that women can be perpetrators of violence and abuse in domestic and intimate relationships." [29] The ultimate conclusion from these premises is that the victims of women in general, when they commit violence or abuse, can therefore seek the remedies under R.A. 9262.

While I agree with the premises, I do not agree that the premises warrant the conclusion.

I do not dispute that domestic abuse is an issue of power. In fact, abuse in general is an issue of power. Irrespective of context — whether it be in interstate relations (developed vs. developing countries), the State vs. its citizens, employers vs. its employees, parents vs. their children — the ability to commit acts of abuse is directly linked to power. Power may come from different sources and in different forms: it can be political, economic, or

rooted in cultural norms, just to name a few. This is why I agree that even in domestic settings, abuse is an issue of power. Historically though, a lot of societies, including ours, have given males the social duty to earn for the family. It has long been the social expectation for the woman to take care of the family and be a "housewife," while the husband is the one expected to earn. This may indeed have skewed power in domestic relationships in favor of the males, as they would naturally hold economic power as a result of this social expectation. Not to mention, there are other factors as well that contribute to abuse in domestic settings, such as gender socialization, to which most — regardless of gender — are subjected, which perpetuate the notion that females are "the weaker sex."

I therefore accept as correct the premise that domestic abuse is an issue of power. What I cannot concede, however, is that this premise implies the following conclusion: that we can read R.A. 9262 beyond its letter.

If this Court were the floors of Congress, and we were debating on the choice between enacting "Anti-Violence Against Women and their Children," on the one hand, and a general "Anti-Domestic Violence" measure, on the other, I would support the latter. After all, abuse, as a function of power, can go both ways regardless of sex.

Unfortunately, we are not in the halls of the legislature. Instead, we are in a court of law. Our function is to apply the law, not discuss or debate its wisdom. And in my view, as I am reading the law in its entirety, R.A. 9262 and its provisions are clear: it only applies in situations where women are subjected to violence in the context of intimate relationships. The reference to children, to repeat, has always been in relation to the woman subjected to violence. It covers situations where the child of an abused woman is himself/herself subjected to abuse as a result of, or in connection with, the abuse against the woman. Abuse against children in other contexts is covered by R.A. 7610.

Justice Leonen also wants the Court to liberally apply R.A. 9262 to the present case, in the same way that the Court did in the cases of *Estacio y Salvosa v. Estacio y Santos*[30] (*Estacio*) and *Go-Tan v. Spouses Tan*[31] (*Go--Tan*).

However, as I see it, these cases, in fact, fortify the position that what R.A. 9262 penalizes is the violence committed against the woman and her child in the context of intimate relationships and not all abuse committed against a child, as in the present case.

In *Go-Tan*, the victim was a woman, who was abused by her husband. The Court ruled that R.A. 9262 also applies to the husband's parents, as it was alleged that the husband, conspired with his parents, "in tormenting [the wife] by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically." [32]

Similarly, in *Estacio*, the offender was the husband and the victim were the wife and their three (3) children. As the trial court found, which the Court affirmed, that the offender-husband/father has committed acts of abuse and violence against his wife and their three (3) children, the issuance of protection orders also in favor of the children was proper. The Court said:

Here, petitioner's intent to intimidate and dominate respondent is readily seen. Back when they still cohabited, petitioner would verbally and physically abuse respondent in front of their children. His threats to kill her were so real that even their children advised her to leave the conjugal home because they feared for her life. When he no longer had contact with her, petitioner resorted to using their children as pawns. He would use this passive-aggressive behavior to assert his perceived dominance over respondent when he could not get what he wanted. All of these can be characterized as psychological violence committed against respondent, which have disrupted respondent's life.

Thus, whether petitioner committed acts of violence directly against his children is beside the point. That the children were exploited so that he could indirectly harass respondent is sufficient basis for their inclusion in the stay-away directive. To begin with, petitioner himself dragged their children in the controversy. With the stay-away directive, petitioner can no longer use their children to inflict violence on respondent.[33] (Emphasis supplied)

To emphasize, a plain reading of R.A. 9262 leads to only one conclusion: it is meant to protect women who are subjected to violence in the context of intimate relationships. The case before the Court is not about violence and abuse against women in intimate relationship. Resort to R.A. 9262 is therefore erroneous and unwarranted. It is incumbent upon the Court not to unduly expand R.A. 9262's coverage beyond its clear sphere of application. To quote the words of the Court in *Garcia*, "Congress has made its choice and it is not our prerogative to supplant this judgment. The choice may be perceived as erroneous but even then, the remedy against it is to seek its amendment or repeal by the legislative. By the principle of separation of powers, it is the legislative that determines the necessity, adequacy, wisdom and expediency of any law." [34]

The trial court may still grant reliefs to the child under A.M. No. 03-04-04-SC

While the purpose of the ponencia to protect the child in this case is quite understandable, it needlessly confuses the laws that should apply.

As well, while the circumstances of the present case make it fall within the purview of R.A. 7610, there is no showing from the narration of the facts whether there was a Complaint or Information for violation of R.A. 7610 that had been filed against private respondent which may bestow upon the RTC the jurisdiction to issue protective reliefs under said law.

Nevertheless, while R.A. 9262 is not the appropriate law in this case and the RTC may not have the jurisdiction to try and hear the case for violation of R.A. 7610, I find that petitioner and his minor child are not without any remedy.

To recall, in filing the petition with the trial court, petitioner not only prays for the issuance of temporary and permanent protection orders against private respondent, but also for the temporary and permanent custody of his minor child. As such, the instant petition can be treated as a Petition for Custody of Minors and heard and decided following A.M. No. 03-04-04-SC. Under this rule, apart from determining custody based on the best interest of the minor child, the trial court also has the authority to grant provisional and permanent reliefs for the child's protection.

Section 13 of the said rule provides that after the filing of an answer or the expiration of the period to file the same, the trial court may issue a provisional order awarding custody of the minor to either parent, in this case to petitioner, taking into account all relevant considerations including preference of the minor child, unless the parent chosen is unfit.[35] This award of custody to the father in this case will be a total and complete protection against the acts of the mother against the child.

Short of giving full relief by way of a custody grant, the trial court is authorized under Section 17 to issue a Protection Order requiring any person:

(a)

To stay away from the home, school, business, or place of employment of the minor, other parent or any other party, or from any other specific place designated by the court;

(b)

To cease and desist from harassing, intimidating, or threatening such minor or the other parent or any person to whom custody of the minor is awarded;

(c)

To refrain from acts of commission or omission that create an unreasonable risk to the health, safety, or welfare of the minor;

(d)

To permit a parent, or a party entitled to visitation by a court order or a separation agreement, to visit the minor at stated periods;

(e)

To permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court; and

(f)

To comply with such other orders as are necessary for the protection of the minor.[36]

Note that paragraph (f) grants the trial court sufficient authority to issue incidental and necessary reliefs to protect a child from any forms of violence and abuse, including those committed by his or her own parent, as in this case. Thus, in pursuit of the best interest of the minor child, the Court may remand the case to the trial court for the purposes of hearing petitioner's prayer for custody of his minor child following the aforementioned rules.

Lest I be misunderstood, I am one with the ponencia in its desire to fulfill the State's duty of shielding children from all forms of abuse and exploitation. However, I cannot join with the ponencia's resort to R.A. 9262 in this case. Indeed, the solemn power and duty of the Court, foremost, is to interpret and apply the law within the boundaries set by its language and intent. It does not include the power to correct, expand, or supplant by reading into the law what is not written therein.[37] In ruling that mothers can be offenders under R.A. 9262, the ponencia reads into the law something which the language and spirit simply do not provide. This is a breach of the court's solemn duty. This is judicial legislation — one that has the deleterious effect of conflating penal laws, to the detriment of the accused who is entitled to the proscription that all doubts be resolved in their favor.

In fine, all the foregoing considered, I find that public respondent did not err in denying petitioner the reliefs prayed for under R.A. 9262. Considering both the plain language and intent of the law, the circumstances of this case clearly do not fall within the purview of R.A. 9262.

That said, to protect the paramount interest and security of the minor child, and to give private respondent her right to due process, the trial court may be directed to treat the petition as a petition for the custody of a minor and hear and decide the case with dispatch following A.M. No. 03-04-04-SC.

WHEREFORE, I vote to PARTLY GRANT the petition but only insofar as remanding the case to the trial court to hear and decide the petition under the rules provided in A.M. No. 03-04-04-SC.

[1] AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR

PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES, approved on March 8, 2004.

[2] RULE ON CUSTODY OF MINORS AND WRIT OF HABEAS CORPUS IN RELATION TO CUSTODY OF MINORS, approved on April 22, 2003.

[3] Orders dated January 10, 2018 and March 14, 2018, rollo, pp. 106-110 and 111-114, respectively, both penned by Acting Presiding Judge Elisa R. Sarmiento-Flores.

[4] Rollo, pp. 108-110.

[5] *Id.* at 113; emphasis in the original.

[6] *Id.*

[7] Emphasis, italics and underscoring supplied.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] 712 Phil. 44 (2013).

[12] *Id.* at 103-104.

[13] *Federal Express Corporation v. Airfreight 2100, Inc.*, 800 Phil. 292, 304 (2016).

[14] See Transcript of the Hearing on Committee on Women dated February 19, 2002 and August 27, 2002.

[15] See *id.*

[16] *Garcia v. Judge Drilon*, *supra* note 11, at 86-89.

[17] Congressional Records, Minutes of the Bicameral Conference Committee dated January 26, 2004, pp. 192-202.

[18] See Sec. 2. Declaration of State Policy and Principles.

[19] ART. 59. Crimes.—Criminal liability shall attach to any parent who:

(1) Conceals or abandons the child with intent to make such child lose his civil status.

(2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.

(3) Sells or abandons the child to another person for valuable consideration.

(4) Neglects the child by not giving him the education which the family's station in life and financial conditions permit.

(5) Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.

(6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.

It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.

(7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.

(8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignities and other

excessive chastisement that embarrass or humiliate him.

(9) Causes or encourages the child to lead an immoral or dissolute life.

(10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.

(11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

"Parents" as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

[20] Approved on December 10, 1974.

[21] R.A. 7610, Sec. 28 states:

SEC. 28. Protective Custody of the Child. — The offended party shall be immediately placed under the protective custody of the Department of Social Welfare and Development pursuant to Executive Order No. 56, series or 1986. In the regular performance of this function, the officer of the Department of Social Welfare and Development shall be free from any administrative, civil or criminal liability. Custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603. (AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES, approved on June 17, 1992)

Implementing Rules and Regulations of R.A. 7610 provide:

Sec. 8. Investigation. — Not later than forty-eight (48) hours after receipt of a report on a possible incident of child abuse, the Department shall immediately proceed to the home or establishment where the alleged child victim is found and interview said child to determine whether an abuse was committed, the identity of the perpetrator and the need of removing the child from his home or the establishment where he may be found or placing him under protective custody pursuant to Section 9 of these Rules.

Whenever practicable, the Department shall conduct the interview jointly with the police and/or a barangay official.

To minimize the number of interviews of the child victim, his statement shall be transcribed or recorded on voice or video tape.

Sec. 9. Protective Custody. — If the investigation discloses sexual abuse, serious physical injury or life-threatening neglect of the child, the duly authorized officer or social worker of the Department shall immediately remove the child from his home or the establishment where he was found and place him under protective custody to ensure his safety.

Sec. 10. Immunity of Officer Taking the Child Under Protective Custody. — The duly authorized officer or social worker of the Department and the assisting police officer or barangay official, if any, who shall take a child under protective custody shall be exempt from any civil, criminal and administrative liability therefor.

Sec. 11. Notification of Police. — The Department shall inform the police or other law enforcement agency whenever a child victim is placed under protective custody.

Sec. 12. Physical Examination; Interview. — The Department shall refer the child who is placed under protective custody to a government medical or health officer for a physical/mental examination and/or medical treatment. Thereafter, the Department shall determine the rehabilitation or treatment program which the child may require and to gather data relevant to the filing of criminal charges against the abuser.

Sec. 13. Involuntary Commitment. — The Department shall file a petition for the involuntary commitment of

the child victim under the provisions of Presidential Decree No. 603, as amended, if the investigation confirms the commission of child abuse.

Sec. 14. Suspension or Deprivation of Parental Authority. — The Department shall ask the Court to suspend the parental authority of the parent or lawful guardian who abused the child victim, Provided, that in cases of sexual abuse, the Department shall ask for the permanent deprivation of parental authority of the offending parent or lawful guardian.

Sec. 15. Transfer of Parental Authority. — The Department shall, in case of suspension or deprivation of parental authority and if the child victim cannot be placed under the care of a next of kin, ask the proper Court to transfer said authority over the child victim to the Department or to the head of a duly accredited children's home, orphanage or similar institution. (RULES AND REGULATIONS ON THE REPORTING AND INVESTIGATION OF CHILD ABUSE CASES, adopted on October 11, 1993)

[22] See ponencia, pp. 10-11.

[23] *Aisporna v. CA*, 198 Phil. 838, 847 (1982).

[24] *Id.*

[25] *Id.*

[26] Congressional Records, Minutes of the Bicameral Conference Committee dated January 26, 2004, pp. 201-202.

[27] *The Office of the Solicitor General (OSG) v. Court of Appeals*, 735 Phil. 622, 628 (2014).

[28] Concurring Opinion of Justice Leonen, p. 5.

[29] *Id.*

[30] G.R. No. 211851, September 16, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66987>>.

[31] 588 Phil. 532 (2008).

[32] *Id.* at 538.

[33] *Supra* note 30.

[34] *Supra* note 11, at 89.

[35] A.M. No. 03-04-04-SC, *supra* note 2.

[36] *Id.*

[37] *Agote v. Judge Lorenzo*, 502 Phil. 318, 334 (2005).

CONCURRENCE

LAZARO-JAVIER, J.:

The ability to ask the right question is more than half the battle of finding the answer. — Thomas J. Watson, Founder, International Business Machines Corporation

I concur.

The ponencia illustrates the importance of first correctly defining the issue so we may arrive at the appropriate ruling.

Here, the facts are straightforward. The child has allegedly been abused by her mother after she and her spouse, the child's father, became estranged. The child's father sought government protection on behalf of the child. The police allegedly did not provide assistance. So he petitioned the trial court for relief, on behalf of the child.

What sowed the trial court's confusion, apparently, was the father's invocation of Republic Act. No. (RA) 9262, the Anti-Violence Against Women and Their Children Act of 2004,[1] and its rule of procedure, the Rule on Violence Against Women and Their Children. Somehow, the title of this rule is thought-provoking as it is ambiguous – as worded, it seems to imply that there is a rule on the violence inflicted upon women and their children, or stated differently, that violence against women and their children may be regulated and that the Rule provides that regulation. As well, as the thought process of the trial court has shown, the belief in error was that Rule could only be availed of by women for women and on behalf of their children.

This thought process was in error as it glossed over these considerations: (i) the fact that children have fathers too, (ii) that when there is marital breakdown or the separation of unmarried couples, there could be permutations of the traditional family set-up, where the decision-making responsibilities for and parenting time or contact with the children are situated among several but not necessarily united loci, and (iii) each of these loci could potentially summon the protection of the law for the children being allegedly abused.

The foregoing three (3) matters are explicitly recognized by the Rule on Violence Against Women and their Children. Its Section 8 is clear on who may apply for a protection order – the offended party or the legal agents of the latter, the parent/s or the guardian/s, among a host of others. As we can read from Section 8, the applicant for the protection order need not be for the applicant's own protection. The applicant may simply be a conduit. The legal bases for this are plenty. Section 3, Rule 3 of the Rules of Civil Procedure, as amended recognizes the legitimacy of claims staked by litigation guardians on behalf of their wards. In the case of married couples, this representation is available to parents, as recognized by Article 220 (6) of the Family Code – that a parent or both parents have the right to represent their children in all matters affecting their interests.

Child abuse matters can either be relational or non-relational. Relational child abuse is governed by and large by RA 9262. RA 7610 may also be invoked because this statute does not distinguish between relatives and non-relatives. If the child abuse is by a stranger, the offense belongs to RA 7610.

The Rule on Violence Against Women and their Children deals only with protection orders falling under RA 9262. This means that the protection is sought for the woman and/or her child (both biological and those only under her care) in a domestic or intimate setting, and subsidiarity together with the latter, on behalf of members of their family and/or household. Take away this setting or the child's qualifying status, child abuse would be dealt with under RA 7610 and its administrative processes for protective custody. But the proper party who may invoke them is not only the women and their children. A subset of others may invoke them on their behalf. In the same manner, these laws may be invoked not only against the relational figure who has allegedly committed the abuse but also those who conspired with the former.

Here, the trial court asked in error, is the father entitled to invoke the Rule on Violence Against Women and their

Children? The question is in error since the father was not invoking the Rule for his own benefit but for the child, on her behalf. The trial court should have asked, may the allegedly abused child's father seek a protection order on behalf of the child? Had the issue been framed this way, and had the trial court been alerted to this framing, it would have avoided the mistaken references to the case law it cited in its assailed Order and would have resolved the issue appropriately. As it is, we only could surmise as to what has happened to the child, and hope that the delay in the disposition of the case below has not factored in any further harm to her.

ACCORDINGLY, I join the Majority in reversing the assailed dispositions of the trial court and in issuing a Temporary Protection Order against the mother of the child.

[1] Republic Act. No. 9262, Anti-Violence Against Women and Their Children Act of 2004, Approved: March 08, 2004.

DISSENTING OPINION

ZALAMEDA, J.:

Nothing hurts a parent more than seeing one's child in pain or in danger. Afraid for his beloved child's safety in the hands of the child's mother, the anxious heart of a father impelled him to file this case which now presents a compelling predicament: whether a mother who abuses her child could be considered an offender under Republic Act No. (RA) 9262[1] or the Anti-Violence Against Women and Their Children Act of 2004. The ponencia answers in the affirmative. It rules that a father can apply for protection and custody orders against a mother alleged to have committed acts of violence against their child under the auspices of RA 9262.

While I agree that, under Section 9 (b) of RA 9262, a father has standing to file a case on behalf of his minor child, I am constrained to dissent on the ponencia's conclusion that RA 9262 may be used against a mother who inflicted violence upon her own child. Both statutory text and congressional records show that RA 9262 was specifically enacted to cover acts of violence committed on women and children by a woman's intimate partner. It was not intended to cover acts of violence committed by a woman against her own child. Be that as it may, remand is proper to allow petitioner to avail of the remedy for the protection of his child under A.M. No. 03-04-04-SC[2] (Custody Rule), as proposed by Justice Alfredo Benjamin S. Caguioa.

Text of the law does not cover all kinds of violence; statute contemplates violence committed in the context of an intimate relationship

As can be gleaned from the title of the law itself, the reference to children is in relation to the woman victim of violence - "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES."

Section 3 of RA 9262 also defines the phrase "violence against women and their children" as follows:

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.[3]

Clearly, RA 9262 does not purport to cover all kinds of violence committed against a woman; rather, it contemplates only violence committed in the context of an intimate relationship, i.e., former or existing marriage or sexual or dating relationship between the offender and the woman victim of violence.

Moreover, while the definition considers the possibility of harm against a child (whether a child in common with the offender or the woman's child from a different relationship), the law defines the offender to be the woman's former or current intimate partner or the father of her child. As such, the law's definition of violence does not cover harm inflicted upon a child by the mother herself.

This interpretation is consistent with the wordings of the other provisions of the law, which presuppose that the victim is the woman or her child, thus:

SECTION 8. Protection Orders. — A protection order is an order issued under this Act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. x x x

x x x x

SECTION 28. Custody of children. – The woman victim of violence shall be entitled to the custody and support of her child/children. Children below seven (7) years old or older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.

A victim who is suffering from battered woman syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the perpetrator of a woman who is suffering from Battered woman syndrome.[4]

As aptly emphasized by Justice Caguioa, the law consistently and repeatedly associates the term "child" with "woman." [5] The law does not treat the child independently of the woman victim. [6]

On this score, the ponencia declares that RA 9262 allows the father of the offended party (child) to apply for protection and custody orders. In support thereof, the ponencia cites Section 9 (b) of RA 9262, which allows "parents or guardians of the offended party" to file a petition for protection order.

However, Section 9 (b) should be interpreted to mean that a father has standing to file a petition for protection order if the protection sought is for his child who has been a victim of violence together with the mother. This can happen in a scenario where the mother had a subsequent relationship with someone who inflicted violence against her and/or her child, and for some reason, the mother refused to file a petition for protection order. The complexities of the issue could prevent the woman from exhausting legal remedies for her and her child. The law, however, allows other relatives and even concerned citizens to file the petition. This is consistent with the characterization that the crime punished under RA 9262 is a public crime, thus:

SECTION 25. Public Crime. — Violence against women and their children shall be considered a public offense which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.

Thus, while a father has standing to file a petition for protection order under RA 9262, it should be against a person with whom a woman has or had a relationship, and not against the woman herself. Congressional records further support this conclusion.

Legislative records show that RA 9262 was primarily enacted to protect women from gender-based violence committed by their intimate partners or the fathers of their children; children are merely incidental beneficiaries, and the law only covers children of women victims

The legislative history of RA 9262 reveals a conscious choice to limit the offenders to be ensnared by the law. Such restraint stems from a policy decision to accord special protection to women, who are disproportionately affected by violence. In opting to focus on gender-based violence and its immediate effects, legislators necessarily rejected the inclusion of all other kinds of violence, like that committed by a mother against her child.

A closer study of the rationale and progression of the originating bills is necessary, if only to elucidate the intended coverage of RA 9262. The coverage of the law was such a highly contentious issue that it led to the approval of three separate bills with varying scopes: (1) House Bill No. (HB) 6054, also known as the Anti-Domestic Violence Bill (Anti-DV Bill);[7] (2) HB 5516, or the Anti-Abuse of Women in Intimate Relationships (Anti--AWIR Bill);[8] and (3) Senate Bill No. (SB) 2723.[9]

The Anti-DV Bill, had broader provisions. It covered domestic violence "committed by and against any member of the family or household[,], whether minor, adult or elderly." [10] Thus, the offender was not limited to women's intimate partners, and even covered mothers. The Anti--DV Bill listed the following as offenders:

1. Who May Be Liable - Any person who shall commit any act or acts as herein defined shall be liable for the crime of domestic violence. This includes, but not limited, to the following:

a)

ascendants and descendants;

b)

the spouse or former spouse, live-in partner or former live-in partner of the victim;

c)

a partner in a dating or sexual relationship, current or former;

d)

parents and siblings, whether biological or adoptive;

e)

domestic workers/helpers or household staff; and,

f)

relatives by consanguinity or affinity including step-parents and step-siblings.[11]

In contrast, the Anti-AWIR Bill, merely covered former and current intimate partners of abused women.[12] By express provision, other family members, including children, were directed to resort to other laws, such as the Revised Penal Code and RA 7610.[13] Nonetheless, the Anti-AWIR Bill granted them the option to seek the issuance of a protection order under the proposed law.[14]

Those advocating for the expansive protection under the Anti-DV Bill argued that the law should protect everyone – wives, husbands, children, elderly, and even same-sex partners – from "all forms of abuse that take place in the

home." [15] They claimed that "women can also be guilty of the act subject matter of the bills, especially if psychological abuse is considered." [16]

Meanwhile, those supporting the narrowly-drawn provisions of the Anti-AWIR Bill claimed that the law should be single-minded and incisive; the focus should be on gender-based violence against women in intimate relationships, as that is the gap in legislation. [17] Advocates and resource persons further emphasized that other forms of abuse were already covered by existing laws. [18] Former Representative Bellaflor Angara-Castillo, one of the authors of the Anti-AWIR Bill, expounded thus:

I think what the legislation we need right now is really a bill focused on women in intimate relationships because that is the gap in our present legislation. It's not really about domestic violence where you include everybody within the household whether it be the women, I mean, the wife, the husband, the children, the parents, the stepparents, stepchildren, even the ... yeah, anyone within the household and we have always said that that is very misleading. You say it is as if you are accepting the assumption that you can have violence against the women only within the home but that is not correct. Because many acts of violence are committed against the women outside the home, in the workplace or anywhere else. And I said what we need is a focused legislation on women in intimate relationships. Because if you include the man, the children, the children are already covered by Republic Act 7610. If there is anything lacking in the protection of children in that Republic Act, by all means we can amend it. If you are thinking of protection of the men, they are already covered by the Revised Penal Code and so are the other members of the household who are there. But it is when a woman is abused, a woman in an intimate relationship being abused by her partner, there is where we don't have a specific legislation that will tell you what are the legal remedies available to her to protect herself.
x x x [19]

During the deliberations of the House of Representatives' Committee on Women, Ms. Maureen Pagaduan, then Executive Director of the Women's Legal Bureau, Inc., emphasized the importance of a law focusing on abuse by women's intimate partners:

The second point of resistance. The bill is limited in scope and excludes children as primary beneficiaries. It also does not cover other members of the household. So eto pa yung ni-re-raise na isang issue.

The [A]nti-AWIR [B]ill is specifically focused on women in intimate relationships because of the distinct nature of abuse against women in intimate relationships characterized by intimacy, cohabitation or marriage. Pag sinabing intimacy, may sexual na tinutukoy yung abuse, sexual abuse, particularly. Furthermore, children and other members of household are not without remedies. There are laws designed to protect children, housemaids, and other family relatives. Republic Act 7610, known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act is comprehensive enough to address the special needs of abused children. Nilinaw namin ito nga kay Congresswoman Bella Angara.

The nature of relationship between house help and housemaids is distinct from that of women in intimate relationships since the former is characterized by an employer-employee relationship. Therefore, any form of violence and abuse against house help are covered by our labor laws. Ang distinct sa AWIR e yung abuse na mula sa kapangyarihan na sexual. Iyon ang pinaka-distinct. Ano ang ibig sabihin ng abusong nangyayaring iyon. The other members of the family including men may avail of the release provided by existing laws. The Revised Penal Code penalizes any person guilty of inflicting physical injuries against another. The victim may also opt to file for civil action for damages and other release under the Civil Code. [20]

Relatedly, Atty. Evalyn Ursua cautioned that a broad anti-domestic violence law could be weaponized and used against women. [21] Thus, she urged Congress to "consider the distinct situation of women and [to] not disempower them further by giving more power to the abusers." [22] Ms. Elizabeth Angsioco of the Democratic Socialist Women of the Philippines further emphasized that the inclusion of other kinds of violence could dilute

the protection envisioned by law, and even prejudice women, thus:

Concern po namin ito kasi when the [A]nti-AWIR [B]ill was being developed, yung particular reliefs na ito are meant for women. And pagka ibinigay natin doon sa men at the same time, we are very much concerned that pag pumasa yung DV as written with the existing reliefs in that bill, it will eventually be anti-women and we are very concerned about this, Your Honors.[23]

As to the Senate, SB 2723 initially had a similar scope as House's Anti-DV Bill, covering "any act or a series of acts committed by and against any member/s of the family or against a woman with whom the person has or had a dating relationship, within or without the family abode..."[24] SB 2723 was envisioned to be a "synthesized measure" harmonizing two conflicting bills – the "Anti-Domestic Violence Act" which covered abuse committed by and against any member of the family, and the "Anti-Abuse of Women in Intimate Relationships Act" which only pertained to abuse committed by a woman's intimate partner.[25]

However, during the plenary deliberations, the Senate voted to adopt a version that is narrower in scope. The delimitation was intended to refocus the main purpose of the law, i.e., to protect women against domestic abuse. The text, as amended, approximates the final wording used in RA 9262. The pertinent portions of the deliberations read:

Senator Legarda. Mr. President, the reason I am in support of the measure. Do not get me wrong. However, I believe that there is a need to protect women's rights especially in the domestic environment.

As I said earlier, there are nameless, countless, voiceless women who have not had the opportunity to file a case against their spouses, their live-in partners after years, if not decade, of battery and abuse. If we broaden the scope to include even the men, assuming they can at all be abused by the women or their spouses, then it would not equalize the already difficult situation for women, Mr. President.

I think that the sponsor, based on our earlier conversations, concurs with this position. I am sure that the men in this Chamber who love their women in their lives so dearly will agree with this representation. Whether we like it or not, it is an unequal world. Whether we like it or not, no matter how empowered the women are, we are not given equal opportunities especially in the domestic environment where the macho Filipino man would always feel that he is stronger, more superior to the Filipino woman.

x x x x

The President Pro Tempore. The session is resumed. Senator Legarda is recognized.

Senator Legarda. Mr. President, just for clarification, may I repeat my amendment.

On page 1, line 15, the phrase "and against any member of the family or against" be deleted; after which, insert the phrase "ANY PERSON AGAINST A WOMAN WHO IS HIS WIFE, FORMER WIFE, HIS/HER LIVE-IN PARTNER OR FORMER LIVE-IN PARTNER OR AGAINST;"

Insert the phrase, "OR WITH WHOM THE PERSON HAS A CHILD IN COMMON, OR HAS A BLOOD RELATIONSHIP THROUGH A CHILD," after the phrase "a woman with whom the person has or had a dating relationship" on page 1, line 16;

x x x x

Senator Sotto. I presume that the effect of the proposed amendment of Senator Legarda would be removing the "men and children" in this particular bill and focus specifically on women alone. That will be the net effect of that proposed amendment. Hearing the rationale mentioned by the distinguished sponsor, Sen. Luisa "Loi" Ejercito Estrada, I am not sure now whether she is inclined to accept the proposed amendment of Senator Legarda.

I am willing to wait whether she is accepting this or not because if she is going to accept this, I will propose an amendment to the amendment rather than object to the amendment, Mr. President.

x x x x

Senator Ejercito Estrada. The amendment is accepted, Mr. President.[26]

Thus, the amendment made SB 2723 substantially similar with the Anti-AWIR Bill, in that both focused on violence committed against women in intimate relationships, and the offenders were the women's intimate partners.

During the bicameral conference on the three conflicting bills, it was suggested anew that the definition of violence against women be expanded to cover other family members.[27] Representative Angara-Castillo objected to the proposal, emphasizing, among others, the main object of the bill:

I think we are losing sight of the fact that we are passing a bill for women. And this is because of the recognition that the crime against women is gender-based. So, it is not a case of, for instance, the mother getting angry with the son or the father getting angry with the daughter. We are talking about a bill based on gender-based approach to the crime against women. x x x[28]

Ultimately, the committee voted against the proposal and opted to adopt the definition of violence in SB 2723, which, except its reference to children, had a similar thrust with the Anti-AWIR Bill.

Notably, during the bicameral conference, the committee also decided to include as perpetrators the father of a woman's child and the woman's sexual partner.[29] The inclusion was intended to cover persons with whom the woman had a single sexual act (as opposed to a dating relationship), and the father of children born of rape.[30] Nonetheless, the expansion of offenders was still very limited; it still required sexual relations or fatherhood.

Thus, the legislative history of RA 9262 shows a clear intent to frame its provisions in the context of gender-based violence in intimate or sexual relations. This is in recognition of the fact that violence against women is "closely linked with the unequal power relationship between women and men otherwise known as 'gender-based violence.'"[31] Violence against women is "a form of men's expression of controlling women to retain power." [32]

On this point, I share the view of Justice Marvic M.V.F. Leonen that violence in intimate relationships is ultimately an issue of power, and not merely of gender.[33] It is true that women may also be aggressors; they are not always powerless victims. Nonetheless, the legislature made a conscious policy choice when it confined the law's coverage to violence against women and the resulting harm to their children.

This special focus was justified by statistics on violence against women at the time SB 2723 was presented to the Senate plenary – "Female violence comprised more than 90% of all forms of abuse and violence and more than 90% of these reported cases were committed by the women's intimate partners such as their husbands and live-in partners." [34] In contrast, there were no statistics on violence committed by women. Hence, concerns were raised against legislating on an issue without any empirical basis.[35]

Thus, RA 9262 should not be construed to cover all kinds of violence committed by any perpetrator. It was enacted to specifically address one form of violence, i.e., gender-based violence committed by women's intimate partners or the fathers of their children. To hold otherwise would be to hark back to the broad coverage of the Anti-DV Bill, which Congress has deliberately abandoned. Moreover, as pointed out by women's rights advocates, such broad scope may result in the weaponization of the law against women, who are supposedly the primary beneficiaries of the law.

Indeed, despite the progression of jurisprudence in defining other possible offenders under RA 9262, case law remains consistent that the main offender should be an intimate or sexual partner of the woman victim, or, at the very least, the father of her child. For instance, in *Garcia v. Drilon*,^[36] the Court rejected the contention that husbands or fathers are the only possible perpetrators of violence under RA 9262, as in fact it conceded that RA 9262 may even encompass lesbian relationships. In *Go-Tan v. Spouses Tan*,^[37] the Court applied the principle of conspiracy to hold parents-in-law as proper co-respondents in a case filed by a wife against her abusive husband. Nevertheless, in all of the foregoing cases, RA 9262 was applied given the existence of underlying intimate or sexual relations, i.e., the main offending party was an intimate or sexual partner of the woman victim.

Legislators likewise contemplated the inclusion of children under the mantle of RA 9262 to be limited. The protection of the law is intended for "women and their children," not women and children separately. It is clear from the title of the law that the children covered by the act are the children of women victims of violence.

The ponencia cites the use of the disjunctive term "or" in the penal provisions under Section 5 of RA 9262 to further the interpretation that the law covers women and children separately.^[38] This interpretation, however, ignores the intent of the law as can be gleaned from the congressional deliberations. That the law covers children of women victims of violence only, not all children, was emphasized during the bicameral deliberations, to wit:

REP. SARENAS: Madam Chair, I should have brought this up earlier but we certainly are talking about not just any child but a child of a woman victim of violence. And, therefore, to make that clear, Madam Chair, I suggest that we include in our proposal somewhere where we describe who the victims can be the following words: "children are those below 18 years of age or older but are incapable of taking care of themselves as defined under Republic Act 7610, which is the Childrens (sic) Protection Law and in the context of the law, include the children of the woman from a previous marriage or relationship, her common children with the perpetrator, her adopted children and those children who do not, her own, live with her and are dependent on her emotionally." x x x

REP. MARCOS: x x x

I don't know if this confuses the issue or it clarifies it. What if the Senate version should read as follows, in order to take into consideration the concerns of Representative Sarenas that priority be given to children in these abusive families to wit: An Act Defining Violence Against Women and their Children, Providing Protective Measures and Penalties therefor and for Other Purposes."

REP. ANTONINO-CUSTODIO: Maám, question. Actually, may incident kasi, tunay na incident na nangyari sa amin na 'yung anak is, actually hindi n'ya anak, eh, anak nung asawa n'ya, pero, parang she was still binded (sic) by that relationship kasi kahit hindi n'ya anak 'yung bata, kahit papa'no lumaki na sa kanya, eh. So, depende sa kanya—so, may hold pa rin 'yung asawa n'ya dahil dun sa anak nung asawa. That's an actual case, eh, in our area.

REP. MARCOS: I think such a situation would be covered in fact by women and their children, inasmuch as that child is dependent upon that mother, either as a ward or as an adopted child. So, okay, lang 'yun.

REP. ANTONINO-CUSTODIO: Kasi baka --- I mean, usually and even in some cases they are not adopted child - they are not adopted children, eh.

REP. MARCOS: No, even if they have not been officially adopted, it's tantamount to a ward relationship or dependency relationship. So, palagay ko covered na 'yon kasi they are children. Kasi nga, I think there should be a distinction that this is not a law for all children everywhere under all circumstances, but rather children who are confronted with this abusive relationship within the family abode.^[39]

Further, in the bicameral deliberations, Representative Angara-Castillo maintained her position as the author of the Anti-AWIR Bill that the children should be included only as incidental beneficiaries of the relief to be granted

to the woman victims:

Madam Chair, if we go – I understand when I came in, that you said you are going to reserve the discussion of the title at the last. This one will have a bearing on the consideration of whether the (sic) would include children in the act at all.

My point is that, just for the record because I don't know what was agreed upon before I came, I don't think we should include children in the bill, except as an incidental beneficiaries of the reliefs to be granted to the woman victim. Because Republic Act 7610 is already so comprehensive as to cover all the rights of the child.

In the same manner that when we were considering child labor, we decided not to make a magna carta for child labor because we already have existing law on child labor but merely to amend existing legislation. And my position is that, if we need to give the child more rights, then we should amend 7610 because that is the act applicable to children. I do not think this is really wise or prudent to include them in this particular bill because their inclusion is already guaranteed there by way of the relief that will benefit them as they are granted to their mother but it's not necessary for them to be made a part of the title or really of the bill itself. Except, as I said, as incidental beneficiaries of the reliefs to be granted to the offended mother.[40]

Verily, the language of Section 5 (a) should be understood within the context that what the law intends to address is gender-based violence, and children of women victims of such violence, usually caught in the crossfire, are incidental beneficiaries of the law.

Remedy may be found in RA 7610; RA 9262 cannot be applied in this case without violating the proscription against judicial legislation

Petitioner is not without remedy. The alleged acts of private respondent Rosalina Sibal Knutson (Rosalina) may fall under Section 10 (a) of RA 7610, which penalizes "[a]ny person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended."

While it is recognized that RA 7610 does not contain the innovative remedies of protection and custody orders provided under RA 9262, this is a necessary consequence of the language of RA 9262, whose wisdom is not subject to the Court's review. Notably, Section 8 of the Anti-AWIR Bill provides that other family members, including children, should resort to other laws such as RA 7610 when filing criminal complaints for abuse, but they were allowed to apply for a protection order provided in the bill. Unfortunately, the proviso on the extension of the protection orders to other family members was not adopted in the enacted law. Be that as it may, the Court cannot apply the protection order to children in situations where the mother is the abuser.

The primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by judicial legislation and that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms.[41]

Undeniably, the promotion of welfare and best interest of children are noble purposes. I am in full support of the State policy to exert efforts to address violence against children in keeping with our obligation under the Constitution and international human rights instruments to which we are a party. The Court, however, cannot go beyond its constitutional mandate and exercise a power that is clearly vested in another branch of the government,

no matter how noble the cause and the liberal interpretation clause under Section 4[42] of RA 9262 notwithstanding.

To illustrate, the Court in the 1997 case of *Republic v. Alarcon Vergara*[43] (Vergara), acknowledged the purpose of our adoption laws but was constrained to deny the joint adoption by an alien and his spouse, a former Filipino citizen, of the two minor children who are relatives of the latter, viz:

We are not unmindful of the main purpose of adoption statutes, which is the promotion of the welfare of children. Accordingly, the law should be construed liberally, in a manner that will sustain rather than defeat said purpose. The law must also be applied with compassion, understanding and less severity in view of the fact that it is intended to provide homes, love, care and education for less fortunate children. Regrettably, the Court is not in a position to affirm the trial court's decision favoring adoption in the case at bar, for the law is clear and it cannot be modified without violating the proscription against judicial legislation. Until such time however, that the law on the matter is amended, we cannot sustain the respondent-spouses' petition for adoption.[44]

Article 184 of the Family Code cited in Vergara, which proscribes adoption by an alien except in very limited circumstances, has been amended in 1998 by RA 8552, followed by the recently enacted RA 11642. The amendatory laws now provide for a wider latitude for adoption by foreign nationals. Indeed, Congress responds to calls for new or amendatory legislation to confront gaps in our legal framework. Any perceived inadequacies of RA 7160 should thus be directed to, and addressed by, Congress.

Case should be remanded and tried under A.M. No. 03-04-04-SC

Even if this case does not fall under RA 9262, the trial court may still provide protective reliefs in favor of petitioner and his minor child. I join Justice Caguioa's opinion that the petition filed before the trial court should be treated as one for custody of a minor. Thereafter, the trial court should apply the Custody Rule and grant the appropriate reliefs.

The Custody Rule applies to petitions for custody of minors and writs of habeas corpus in relation thereto.[45] Section 2 to 4 of the Rule specify the basic requirements for a petition for custody:

SECTION 2. Petition for custody of minors; who may file. — A verified petition for the rightful custody of a minor may be filed by any person claiming such right. The party against whom it may be filed shall be designated as the respondent.

SECTION 3. Where to file petition. — The petition for custody of minors shall be filed with the Family Court of the province or city where the petitioner resides or where the minor may be found.

SECTION 4. Contents of petition. — The verified petition shall allege the following:

(a)

The personal circumstances of the petitioner and of the respondent;

(b)

The name, age and present whereabouts of the minor and his or her relationship to the petitioner and the respondent;

(c)

The material operative facts constituting deprivation of custody; and

(d)

Such other matters which are relevant to the custody of the minor.

The verified petition shall be accompanied by a certificate against forum shopping, which the petitioner must sign personally.

The petition before the trial court meets the basic requirements of the Custody Rule. It was verified and filed by petitioner, a person claiming rightful custody of his child. It was also filed before the Family Court of the city where petitioner allegedly resides.[46] Moreover, the petition narrates facts supporting petitioner's prayer for temporary and permanent custody of his minor child.[47]

Thus, there is no procedural hindrance to treating the petition as one for custody of a minor. Even assuming that there is, petitioner may simply amend his petition to fully conform with the Custody Rule.[48]

In the application of such Rule, the trial court may issue a protection order requiring the commission or omission of acts necessary to protect the minor.[49] Thus, while petitioner may not avail of the protection order specifically provided in RA 9262, he may still obtain the same protections through the Custody Rule. It is in this way that the Court may exercise its liberality without violating its mandate. The Court need not unnecessarily extend the application of the law to protect the interests of the minor child.

ACCORDINGLY, I vote to DENY the petition insofar as it prays for the issuance of a protection order under Republic Act No. 9262. The case should be REMANDED to the trial court for further proceedings following A.M. No. 03-04-04-SC.

[1] Entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES." Approved: 08 March 2004.

[2] RULE ON CUSTODY OF MINORS AND WRIT OF HABEAS CORPUS IN RELATION TO CUSTODY OF MINORS.

[3] Emphasis and underscoring supplied.

[4] Underscoring supplied.

[5] Dissenting Opinion of J. Caguioa, pp. 5-6.

[6] Id.

[7] Entitled "AN ACT DEFINING DOMESTIC VIOLENCE, PROVIDING PROTECTION MEASURES AND PENALTIES THEREFOR, AND FOR OTHER PURPOSES"; substituted HB 376, 583, 1320, 2753, 2858, and 4941.

[8] Entitled "AN ACT DEFINING THE CRIME OF ABUSE OF WOMEN IN INTIMATE RELATIONSHIPS, PRESCRIBING PENALTIES THEREFOR, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, AND FOR OTHER PURPOSES"; substituted HB 35.

[9] Entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND MEMBERS OF THE FAMILY

PRESCRIBING PENALTIES THEREFOR, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, AND FOR OTHER PURPOSES"; substituted SB 594, 644, 775, 864, 1263, 1527, 1574, 1915, and 2490.

[10] HB 6054, Sec. 3.

[11] HB 6054, Sec. 5. Emphasis supplied.

[12] HB 5516, Sec. 3 reads:

SEC. 3. Abuse of Women in Intimate Relationships. - The crime of abuse of women in intimate relationships is committed by any person against a woman who is his wife or former wife, his/her live-in partner or former live-in partner, or against a woman with whom the person has or had a sexual or dating relationship through any of the following acts: x x x

[13] HB 5516, Sec. 8 reads:

SEC. 8. Criminal Complaint to be Filed by Family or Household Member. Family or household members abused under Sections 3(e) and 3(g) herein may file criminal complaints under the Revised Penal Code, Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act", and other relevant or applicable laws, without prejudice to their applying for a protection order under the provisions of this Act.

[14] Id.

[15] House Committee on Women Records, 12[th] Congress, p. 7 (19 February 2002).

[16] Id. at 5.

[17] House Committee on Women Records, 12[th] Congress, p. 4 (27 August 2002).

[18] House Committee on Women Records, 12[th] Congress, pp. 12-13 (19 February 2002).

[19] House Committee on Women Records, 12[th] Congress, pp. 3-4 (27 August 2002).

[20] Id. at 12-13. Emphasis supplied.

[21] Id. at 40.

[22] Id.

[23] Id. at 20-21. Emphasis supplied.

[24] SB 2723, Sec. 3 (a).

[25] II RECORD, SENATE 12[TH] CONGRESS 3[RD] SESSION 833-834 (10 December 2003).

[26] III RECORD, SENATE 12[TH] CONGRESS 3[RD] SESSION 104-105 (14 January 2004).

[27] Minutes of the Bicameral Conference Committee on the Disagreeing Provisions of SB 2723 and HB 5516 and 6054, p. 17 (26 January 2004).

[28] Id. at 20.

[29] See Republic Act No. 9262 (2004), Sec. 3 (a): "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman x x x x with whom the person has or had a sexual or dating relationship, or with whom he has a common child x x x x"

[30] Minutes of the Bicameral Conference Committee on the Disagreeing Provisions of SB 2723 and 5516 and 6054, pp. 25-30 and pp. 50-55 (26 January 2004).

[31] *Garcia v. Drilon*, 712 Phil. 44, 91 (2013).

[32] *Id.* at 92.

[33] Reflections of J. Leonen, pp. 3-4.

[34] II RECORD, SENATE 12[TH] CONGRESS 3[RD] SESSION 832 (10 December 2003).

[35] House Committee on Women Records, 12[th] Congress, pp. 7-8 and 35-36 (27 August 2002).

[36] 712 Phil. 44 (2013).

[37] 588 Phil. 532 (2008).

[38] Ponencia, p. 14.

[39] Minutes of the Bicameral Conference Committee on the Disagreeing Provisions of SB 2723 and HB 5516 and 6054, pp. 194-201 (26 January 2004). Emphases and underscoring supplied.

[40] *Id.* at 192. Emphasis and underscoring supplied.

[41] *H. Villarica Pawnshop, Inc. v. Social Security Commission*, 824 Phil. 613, 636-637 (2018) citing *Corpuz v. People*, 734 Phil. 353-498 (2014).

[42] SECTION 4. Construction. - This Act shall be liberally construed to promote the protection and safety of victims of violence against women and their children.

[43] 336 Phil. 944 (1997). See also *In re Lim*, 606 Phil. 82 (2009).

[44] 336 Phil. 944, 948-949 (1997). Emphasis supplied.

[45] A.M. No. 03-04-04-SC, Sec. 1.

[46] *Rollo*, p. 52.

[47] *Id.* at 52-67.

[48] A.M. No. 03-04-04-SC, Sec. 1, in relation to the 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, Rule 10, Secs. 1 and 2.

[49] A.M. No. 03-04-04-SC, Sec. 1.

DISSENTING OPINION

SINGH, J.:

Abuse is gender-blind. Women, children, and even men, are all susceptible to abuse and violence at the hands of the very people who are supposed to protect and care for them—their own family members and loved ones. Quite unnaturally, the family has become a breeding ground for violence and abuse.

In 2018, based on the preliminary finding of the 2017 National Demographic and Health Survey, one in every four ever-married women aged 15 to 49 has experienced physical, sexual or emotional violence at the hands of

their husband or partner. One in every five women, or 20%, has experienced emotional violence; 14% has experienced physical violence; and 5% has experienced sexual violence from their current or most recent husband or partner.[1] This societal prevalence of violence against women and their children (VAWC) by their intimate partners, i.e., their current or former husband, live-in partner, boyfriend or girlfriend, is what Republic Act No. (R.A.) 9262, otherwise known as the Anti-Violence Against Women and their Children Act, sought to address.[2]

We recognize that women and children are not the only victims of domestic violence. Men are also susceptible to abuse in intimate relationships. The Court itself has conceded that men can also be victims of domestic abuse in a patriarchal society such as ours.[3] It is high time that we also acknowledge that a woman, as in this case a mother, who is expected to take care of her children and nurture them with love and affection, can also be the perpetrator of the abuse. In such a situation, the courts are expected to step in and breathe life to the children's constitutional right to be protected from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.[4]

However, while it is true that in all actions concerning children, the primordial consideration should always be the best interests of the child,[5] it is equally true that the first and fundamental duty of the Court is to apply the law in a manner that would give effect to its letter and spirit.

Thus, I take exception to the ponencia's conclusion that the protection and custody orders under R.A. 9262 may be issued against a mother who maltreats her own child. Such an interpretation constitutes a clear departure from and an unconstitutional expansion of the scope of the law. The child here and her father are not without any remedy. The present case should be treated as a petition filed under A.M.-03-04-04-SC or the Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors, as pointed out by Associate Justice Alfredo Benjamin Caguioa (Justice Caguioa) in his Dissenting Opinion.

This case stemmed from a Petition for the issuance of Temporary and Permanent Protection Orders under R.A. 9262 filed by Randy Michael Knutson (Randy) on behalf of his minor daughter, Rhuby Sibal Knutson (Rhuby), against his estranged wife and Rhuby's mother, Rosalina Sibal Knutson (Rosalina). Generally, Randy averred that Rosalina placed Rhuby in a harmful environment deleterious to the child's physical, emotional, moral, and psychological development. Randy accused Rosalina of neglecting Rhuby and inflicting psychological and physical injury on the child, among others. Claiming that Rosalina was unfit, Randy also prayed that he be given the custody of Rhuby.

The Regional Trial Court of Taguig City, Branch 69 (RTC) dismissed the Petition. According to the RTC, protection and custody orders in R.A. 9262 are not available against a mother who is alleged to have abused her child as the child's mother cannot be considered as an "offender" under the said law. Moreover, citing *Ocampo v. Arcaya-Chua*,[6] the RTC ratiocinated that a protection order cannot be issued in Randy's favor because he is not a "woman victim of violence."

Randy moved for reconsideration, which was denied by the RTC. Hence, this Petition.

A woman may be the offending party under R.A. 9262 only if she is or were in a same-sex relationship or if there is conspiracy

Citing *Garcia v. Drilon*[7] (Garcia), the ponencia maintains that based on the use of the gender-neutral word "person" in Section 3(a) of R.A. 9262, which defines VAWC, the law also contemplates a situation where the mother is the perpetrator of the violent and abusive acts against her own child.

I respectfully differ. The ponencia misapplied Garcia in the present case.

In Garcia, where the constitutionality of R.A. 9262 was challenged for being violative of the due process and equal protection clauses, the Court, in holding that the law does not single out men, enunciated that a woman may also be an offending party under R.A. 9262 in cases where the same-sex partner in a lesbian relationship inflicts violence against her partner or the latter's child or a child under her care, or in situations where conspiracy is present, but not in a situation where the violence is inflicted on the child by the mother herself, as in the present case. The Court held:

There is likewise no merit to the contention that R.A. 9262 singles out the husband or father as the culprit. As defined above, VA WC may likewise be committed "against a woman with whom the person has or had a sexual or dating relationship." Clearly, the use of the gender-neutral word "person" who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships. Moreover, while the law provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the principle of conspiracy under the Revised Penal Code (RPC). Thus, in the case of Go-Tan v. Spouses Tan, the parents-in-law of Sharica Mari L. Go-Tan, the victim, were held to be proper respondents in the case filed by the latter upon the allegation that they and their son (Go-Tan's husband) had community of design and purpose in tormenting her by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically.[8]

The cardinal rule in statutory construction is that in interpreting the meaning and scope of a term used in the law, a careful review of the whole law as well as the intention of the law must be made. In fact, legislative intent must be ascertained from a consideration of the statute as a whole, and not its isolated parts or particular provisions alone.[9] Aisporna v. Court of Appeals[10] instructs:

x x x Legislative intent must be ascertained from a consideration of the statute as a whole. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. The meaning of the law, it must be borne in mind, is not to be extracted from any single part, portion or section or from isolated words and phrases, clauses or sentences but from a general consideration or view of the act as a whole. Every part of the statute must be interpreted with reference to the context. This means that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment, not separately and independently. x x x[11]

Section 3 of R.A. 9262 pertinently provides:

Section 3. Definition of Terms. - As used in this Act,

(a) "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

x x x x x x x x

(h) "Children" refers to those below eighteen (18) years of age or older but are incapable of taking care of themselves as defined under Republic Act No. 7610. As used in this Act, it includes the biological children of the victim and other children under her care. x x x (Emphasis and underscoring supplied.)

As can be gleaned from the above, the offending party under the law is "any person" who commits violence 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." Concomitantly, the victims under R.A. 9262 are "women and their children."

The primary rule in addressing any problem relating to the understanding or interpretation of a law is to examine the law itself to see what it plainly says.[12] This is the plain meaning rule of statutory construction.[13]

As is evident from the use of the conjunctive word "and" as well as the pronoun "her"/"their" in between the words "women"/"woman" and "child"/"children" all throughout the law, including its short title, violence against a child falls under the ambit of R.A. 9262 only if it is committed against the child of a woman, including a child under her care, by a person with whom the woman has or had a sexual or dating relationship, or with whom the woman has a common child. The legislative intent, as can be gleaned from the plain letter of the law, is to protect women and their children against domestic violence perpetrated by their partners—both men and same-sex partners. The law recognizes that violence against a woman's offspring is the most insidious form of violence against the woman herself.

I agree with Justice Caguioa's Dissenting Opinion that an examination of the legislative history and congressional deliberations on the bills that eventually became R.A. 9262 reveals the intent of the legislature to limit the application of the law to violence against the child of the abused woman or child under her care, and not extend it to all children subjected to violence and abuse, as the latter case already falls within the ambit of R.A. 7610, or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

The Court should not encroach on the realm of the Legislative Department

Again, I concede the basic rule that the best interests of the child should be the primary consideration in cases involving their welfare and custody. However, the bedrock principle of separation of powers, on which our system of democracy is anchored, precludes this Court from exceeding its constitutional duty to apply the law in accordance with its letter and intent and from encroaching on the realm exclusively allocated to the Legislative Department to make laws. Otherwise, the Court will be engaging in judicial legislation and violating its own sacred duty to uphold the Constitution.

The ponencia states that R.A. 9262 should be liberally construed and thus the RTC's restrictive interpretation requiring that the mother and her child be the victims of violence before they may be entitled to the remedies of protection and custody orders should be rejected.[14]

Indeed, Section 4 of R.A. 9262 states that "the [law] shall be liberally construed to promote the protection and safety of victims of violence against women and their children." However, R.A. 9262's unequivocal language precludes interpretation, which is resorted to only when the law is ambiguous.[15] If the language of the law is clear, there is no room for interpretation but merely application.[16] Assuming there was an ambiguity, the liberal construction of R.A. 9262 is not a license for the Court to unduly expand the scope of the law and assume a power exclusively vested in the legislature. To rule that R.A. 9262 also applies in cases where the offending party is a woman and the victim of abuse is her own child would defeat the legislature's clear intent to limit the law's application to VAWC cases.

To close, it is important to stress that Rhuby and other minors, as well as their fathers, similarly situated are not left without recourse. To stress, abuse by a mother of her own child falls under R.A. 7610. Moreover, protective

and custody orders may be applied for against the abusive mother under A.M.-03-04-04-SC.

In conclusion, a remand to the RTC is proper under the premises. There is a need for the court a quo to resolve the present Petition on the merits, albeit under A.M.-03-04-04-SC, and not R.A. 9262.

WHEREFORE, I DISSENT and vote to PARTLY GRANT the Petition and REMAND the case to the Regional Trial Court of Taguig City, Branch 69 for further proceedings under A.M. No. 03-04-04-SC or the Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors, and not under Republic Act No. 9262.

[1] One In Four Women Have Ever Experienced Spousal Violence (Preliminary results from the 2017 National Demographic and Health Survey), accessed at <<https://psa.gov.ph/content/one-four--women-have-ever-experienced-spousal-violence-preliminary-results-2017-national>>.

[2] VAWC Frequently Asked Question, accessed at <<https://pcw.gov.ph/vaw-faqs/>>.

[3] Estacio vs. Estacio, G.R. No. 211851, 16 September 2020, accessed at <<https://sc.judiciary.gov.ph/18911/>>.

[4] CONSTITUTION, Art. XV, Sec. 3, par. (2).

[5] Convention on the Rights of the Child, Art. 3.

[6] 633 Phil. 79 (2010).

[7] 712 Phil. 44 (2013).

[8] Id. at 103-104; citations omitted; emphasis supplied.

[9] Laurel, A Study Guide in Statutory Construction: Cases and Materials, Manila: Rex Book Store, 1999.

[10] 198 Phil. 838 (1982).

[11] Id. at 847; citations omitted; emphasis supplied.

[12] Securities and Exchange Commission v. Commission on Audit, G.R. No. 252198, 27 April 2021, accessed at <<https://sc.judiciary.gov.ph/19520/>>.

[13] Id.

[14] Ponencia, pp. 14-15.

[15] Miramar Fish Co., Inc. v. Commissioner of Internal Revenue, 735 Phil. 125 (2014).

[16] Id. at 145.

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