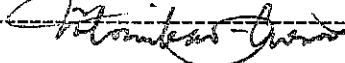


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G.R. No. 224946 – CHRISTIAN PANTONIAL ACHARON v. PEOPLE OF THE PHILIPPINES

Promulgated:

November 9, 2021

x ---------- x

CONCURRING OPINION

LAZARO-JAVIER, J.:

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

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

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

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

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

¹ 761 Phil. 356, 374 (2015).



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

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

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

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

The Elements of a Crime

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

I digress a bit to quote the renowned Justice Regalado who abhorred this classification of crimes into *mala in se* and *malum prohibitum*, which I passionately shared in one² of my opinions:

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

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

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

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

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

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

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

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

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

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

The long-standing Latin maxim "*actus non facit reum, nisi mens sit rea*" supplies an **important characteristic of a crime**, that "ordinarily, **evil intent must unite with an unlawful act for there to be a crime,**" and accordingly, there can

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

be no crime when the criminal mind is wanting. Accepted in this jurisdiction as **material in crimes *mala in se*, *mens rea*** has been defined before as “**a guilty mind, a guilty or wrongful purpose or criminal intent,**” and “**essential for criminal liability.**” It follows that **the statutory definition of our *mala in se* crimes must be able to supply what the *mens rea* of the crime is,** and indeed the U.S. Supreme Court has comfortably held that “**a criminal law that contains no *mens rea* requirement infringes on constitutionally protected rights.**” The **criminal statute must also provide for the overt acts that constitute the crime.** For a crime to exist in our legal law, it is not enough that *mens rea* be shown; there **must also be an *actus reus*.**

It is from the *actus reus* and the *mens rea*, as they find expression in the criminal statute, that the felony is produced. As a postulate in the **craftsmanship of constitutionally sound laws,** it is **extremely preferable that the language of the law expressly provide when the felony is produced.** Without such provision, disputes would inevitably ensue on the elemental question whether or not a crime was committed, thereby presaging the undesirable and legally dubious set-up under which the judiciary is assigned the legislative role of defining crimes. Fortunately, our Revised Penal Code does not suffer from such infirmity. **From the statutory definition of any felony, a decisive passage or term is embedded which attests when the felony is produced by the acts of execution.** For example, the statutory definition of murder or homicide expressly uses the phrase “shall kill another,” thus making it clear that the felony is produced by the death of the victim, and conversely, it is not produced if the victim survives.

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

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

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

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

Mens rea, on the other hand, refers to the **guilty mind**, the **wrongful intention**, of an accused. Its **function** in criminal law is to *prevent the conviction of*

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

the morally innocent – those who **do not understand or intend the consequences of their acts.**

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

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

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

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

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

In all these instances, though the accused committed the *actus reus*, the latter simply **could not have formed** the requisite *mental elements* of voluntariness in the performance of the **prohibited act or omission and intention to commit the prohibited act**.

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

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

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

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

⁵ *Valenzuela v. People*, supra.

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

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

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

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

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

C. "Psychological violence" refers to acts or omissions **causing or likely to cause mental or emotional suffering of the victim** such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and **marital infidelity**. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

From this definition, the *actus reus* of this offense consists of the —

- (i) **relationship between an accused and offended parties**, that is, a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode.
- (ii) **denial of financial support** to those entitled to receive financial support and to whom an accused is obliged to give financial support.
 - a. The act is the deliberate withholding of the provision of financial support.
 - b. The consequence of the act is the absence or inadequacy of financial support as defined by law for those entitled to be supported by the accused, since the complainant cannot compensate for the support denied to the complainant and/or their children by the accused.
- (iii) **Legal entitlement to support and legal obligation (i.e., concurrence of capacity and need) to provide support.**
- (iv) **Mental or emotional anguish** or likelihood or probability of mental or emotional anguish on the part of *those entitled to receive financial support and to whom an accused is obliged to give financial support.*

- (v) **causation or likely causation** of the mental or emotional anguish by the accused's **denial of financial support**.

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

- (i) **relationship between an accused and offended parties**, that is, a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode.

This is an **objective** element.

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

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

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

- (ii) **denial of financial support** to those entitled to receive financial support and to whom an accused is obliged to give financial support.

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

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

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

The test in establishing this *actus reus* is **objective**.

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

The relevant **objective** circumstances to establish this *actus reus* include:

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

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

There are **two legitimate issues** on this *actus reus*:

- (a) whether the **act component** of the *actus reus* of **denial of financial support** refers to the **denial** of **full** or **partial** financial support.

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

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

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

- (b) whether the *actus reus* of **denial of financial support** has really a **consequence component**, that is, the **act** of denial of support should result in the **absence** or **inadequacy** of financial support to those entitled to be supported, that is, the **financial support** to the woman and/or the children would be **absent** or at least **insufficient as a result of the accused's denial of support**.

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

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

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

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

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

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

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

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

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

The *mens rea* element will be discussed below.

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

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

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

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

This *actus reus* has **both subjective and objective** components.

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

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

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

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

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

- (v) **causation or likely causation** of the mental or emotional anguish by the accused's **denial of financial support**.

This *actus reus* has **both subjective and objective** components.

The **causation** of mental or emotional anguish **by** the accused's **denial of financial support** is **subjective** if the woman and/or her children with the accused has/have **attested** to the **existence** of this **causation**, that is, they testify that they are

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in fact suffering from mental or emotional anguish as a result of the accused's denial of financial support.

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

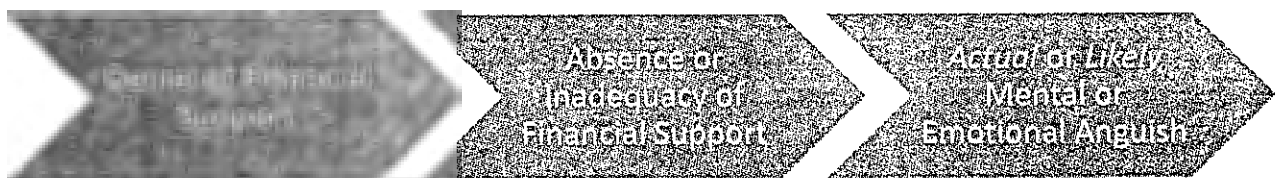
This **causation** of the **mental or emotional anguish** is **objective** if the claim is **limited** to the *likelihood* or *probability* of the **causation** of mental or emotional anguish by the accused's **denial of financial support**.

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

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

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

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



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

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

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

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

The *mens rea* has **three components**:

- (i) the **specific intent** of an accused to **deny financial support** to the obligees of support, which requires as stated the **mental element** of **voluntary performance** of this act *and* the **intention, purpose and knowledge** to do so.
- (ii) the **specific intent** of an accused to **cause the absence or inadequacy of financial support** on the part of the obligees of support, which requires *not only* the **mental element** of **voluntary performance** of the act of denying financial support *but also* the **intention, purpose and knowledge** to accomplish such **consequence** of the act of denying support; the **absence or inadequacy of financial support** on the part of the obligees of support must be a **fact** – they must in fact be **in need of the accused's financial support**,
- (iii) the **specific intent** to **cause** or to **likely cause** the **obligees' mental or emotional anguish** due to the **accused's denial** of financial support *and its consequence* of absence or inadequacy of financial support.

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

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

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

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

i. Facts of the Case

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

That sometime in (*sic*) January 25, 2012, up to the present, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there **willfully, unlawfully and feloniously cause mental or**

emotional anguish, public ridicule or humiliation to **his wife AAA**, by **denying financial support to the said complainant**.

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

However, the **accused did not send money on a regular basis**. All in all, **he was able to send money in the total amount of ₱71,500.00 only**, leaving the balance in the amount of ₱13,500.00. For which reason, **she felt so embarrassed with [their creditor] because she could not pay the balance**. She even pleaded to [their creditor] not to lodge a complaint to the barangay. [Their creditor] communicated to the employer of the accused in Brunei **about their debt to her**.

....

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

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

He further recalled:

He used to send money to the private complainant. But it was the latter who told him not to send money anymore. He also claimed that he was able to send the total amount of ₱71,000.00 to the private complainant in payment of their loan. He agreed that the same is not enough to fully pay their loan in the total amount of ₱85,000.00.

ii. Application of the Analytical Test to the Facts of the Case

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

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

The following components of the *actus reus* are **not disputed**:

- (i) **relationship between an accused and offended parties**, that is, a woman with whom the person has or had a sexual or dating relationship, or with whom he

has a common child, or against her child whether legitimate or illegitimate, within or without the family abode.

- (ii) **Legal entitlement to support and legal obligation (i.e., concurrence of capacity and need) to provide support**
- (iii) **Mental or emotional anguish *or* likelihood or probability of mental or emotional anguish** on the part of *those entitled to receive financial support and to whom an accused is obliged to give financial support.*

At issue are these components of *actus reus*:

- (i) **denial of financial support** to those entitled to receive financial support and to whom an accused is obliged to give financial support.
 - a. The **act** is the ***deliberate* withholding of the provision of financial support.**
 - b. The **consequence** of the act is the **absence or inadequacy of financial support as defined by law** for those entitled to be supported by the accused, since the complainant **cannot compensate** for the **support denied** to the complainant and/or their children by the accused.
- (ii) The **consequence or likely consequence of mental or emotional anguish** as a **result** of the accused's **denial of financial support**

There was **no deliberate withholding** of financial support because —

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

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

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

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

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

Rather, the emotional or mental anguish was **due to the alleged other relationship** of accused-petitioner. This **cause** of the **mental or emotional anguish**, however, was **not the mode of psychological violence** alleged in the Information.

It **should not** and **could not** have been, therefore, the **proof-focus** of the prosecution evidence against him. This allegation, though harrowing to complainant, is **not the cause of the accusation**, hence, it is **irrelevant** and **inadmissible** in this case.

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

iii. Criminalization of Non-Provision of Support and the Variance Doctrine

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

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

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

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

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

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

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

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

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

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

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

*iv. Opinion of Senior Associate Justice
Perlas-Bernabe*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This **approach** commends itself to a **more organized and simplified** understanding of the **elements** of the Section 5 offenses in relation to the types of offenses classified in Section 3 (a) (C). While there **might be some divergence**

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

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

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

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

She also mentions that –

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

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

- (iv) the **specific intent** of an accused to **deny financial support** to the obligees of support, which requires as stated the **mental element of voluntary performance** of this act *and* the **intention, purpose and knowledge** to do so.
- (v) the **specific intent** of an accused to **cause the absence or inadequacy of financial support** on the part of the obligees of support, which requires *not only* the **mental element of voluntary performance** of the act of denying financial support *but also* the **intention, purpose and knowledge** to accomplish such **consequence** of the act of denying support; the **absence or inadequacy of financial support** on the part of the obligees of support must be a **fact** – they must in fact be **in need of the accused's financial support**,
- (vi) the **specific intent** to **cause or to likely cause the obligees' mental or emotional anguish** due to the **accused's denial** of financial support *and* **its consequence** of absence or inadequacy of financial support.

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

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

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

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

Conclusion

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


AMY C. LAZARO-JAVIER
Associate Justice