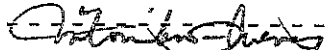


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G.R. No. 224946 - Christian Pantonial Acharon, *Petitioner*, v. People of the Philippines, *Respondent*.

Promulgated:
November 9, 2021

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CONCURRING OPINION

ZALAMEDA, J.:

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

To stress, the instant case establishes that the mere failure or inability of an accused to provide financial support to a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, does not amount to criminal liability punishable under the above-mentioned provisions of law.

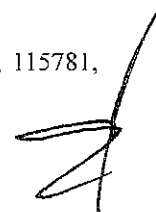
At this juncture, it must be underlined that it is the duty of this Court to abandon any doctrine or rule found to be in violation of the law in force.¹ In line with the purpose of our judicial system to discover the truth and see that justice is done,² We must not condone the perpetuation of an inaccurate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

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

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

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

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



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

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

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

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

Verily, the *ponencia* is correct in that non-payment of financial support, to be punishable, must be done to control or attempt to control the woman - compelling her to do something unwillingly or preventing her from doing something which is within her right to do. For the denial of financial

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

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



support to rise to the level of violence that would make a person criminally liable under Section 5(e), RA 9262, there must be allegation and proof that it was made with the intent to control or restrict the woman's actions. Moreover, when said act amounts to economic abuse, the same is necessarily punishable under Section 5(e) of RA 9262.

It is worthy to note that in the different versions of the bills consolidated and amended to craft the present RA 9262, the same qualification as to controlling the woman was stipulated for acts pertaining or amounting to economic abuse.⁵ Moreover, economic abuse was explicitly and consistently defined as either "willful neglect" or "denial" to provide support to the woman, which includes the "withdrawal" thereof.⁶ Significantly, it was also highlighted in the Senate Deliberations that in the glossary approved by the National Statistical Coordination Board for its use, economic abuse is defined as the denial of access of control of the woman over economic resources.⁷

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

In the same vein, Section 5(i) of RA9262 is clear as to the act prohibited.

To reiterate, words used in law must be given their plain meaning.⁸ In this regard, Section 5(i) of RA 9262 is unmistakable that to be punishable, the mental or emotional anguish, public ridicule or humiliation is inflicted on the woman through the **denial** of financial support. Indeed, Black's Law dictionary defines "denial" as a refusal or rejection, a disavowal⁹ - which confirms the *ponencia* that willfulness must be proven for a conviction under the provision in issue. Verily, to be punishable under the law, there must be a deliberate intent to inflict psychological violence on the woman through the willful denial of financial support.

Additionally, it bears noting that in the different versions of the bills consolidated and amended to arrive at RA 9262, the same word - denial -

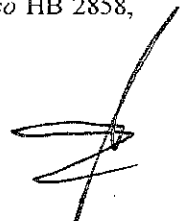
⁵ Senate Bill No. (SB) 2723, Section 3 (D), Section 5(d); House Bill No. (HB) 6054, Section 4 (A) (3); and HB 5516, Section 3 (e).

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

⁷ SB 2723, TCM, 06 May 2002, pp. 6-8.

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

⁹ Black's Law Dictionary, p. 521.



was used as regards financial support in relation to psychological violence.¹⁰

Mutual obligation of the spouses to provide support

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

The above discussion on the wording of Sections 5(e) and 5(i) of RA 9262, coupled with the mutual obligation of support prescribed by the Family Code, inevitably results to and supports the interpretation that the mere failure to provide financial support to a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, does not constitute violence criminally punishable under the law.

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

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

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

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

¹¹ FAMILY CODE, Art. 194 and 201.


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

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

Given the material distinctions between the acts punishable and the specific intent behind said acts specified in Sections 5(e) and 5(i) of RA 9262, the *ponencia* is correct that the former offense cannot be considered subsumed in the latter.¹⁴ This, notwithstanding the common factor of denial or deprivation of financial support.

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

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


RODIL V. ZALAMEDA
Associate Justice

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

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

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