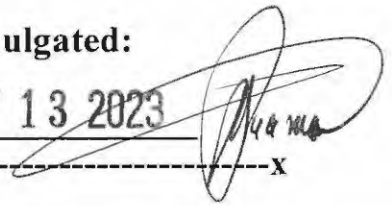


SECOND DIVISION

G.R. No. 263449 — XXX, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

NOV 13 2023



X-----X

DISSENTING OPINION

LEONEN, J.:

To be abandoned can indeed be one of the most painful experiences a person can have in their life. However, it is my view that spousal abandonment, in and of itself, cannot be considered a violation of Republic Act No. 9262, Section 5(i). Apart from the act of abandonment, there must be proof of the accused's *intent* to inflict mental or emotional anguish on the abandoned spouse. Hurt feelings are not enough for conviction.

I add that abandonment, like marital infidelity, is a violation primarily of the essential marital obligations of spouses to each other. Considering that it is, fundamentally, a violation of civil and matrimonial law, the liability for it should likewise be civil in nature. To criminalize civil law violations can have dire constitutional consequences, including infringing on the right to life and liberty, and to autonomy and human dignity.

I therefore dissent.

I

Petitioner XXX was convicted of violating Section 5(i) of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Children Act of 2004. The provision states:

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

....

- (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.

The elements of the crime of violating Section 5(i) are: (1) the offended party is a woman and/or her child or children; (2) the woman is either the wife or former wife of the offender, is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode; (3) the offender causes on the woman and/or child mental or emotional anguish; and (4) the anguish is caused through the acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children, or access to the children or similar such acts or omission.¹

According to the *ponencia*, the prosecution proved all the elements of violation of Republic Act No. 9262, Section 5(i).² It highlights how XXX, in abandoning his wife AAA, caused her emotional anguish.³ It cites AAA's testimony on how her physical health suffered upon learning that XXX actually eloped with their former helper, even fathering a child with the latter.⁴ The unpaid conjugal debts are likewise cited as reason for XXX's conviction.⁵

Without discounting the pain and emotional anguish AAA may have experienced when XXX left her, I disagree that XXX violated Section 5(i). A review of Republic Act No. 9262 reveals that a conviction for Section 5(i) violations requires *deliberate intent* to inflict emotional anguish on the accused's wife or their child. This deliberate intent is the element that the prosecution failed to establish in this case.

In *Acharon v. People*,⁶ this Court had the occasion to rule that Section 5(i) of Republic Act No. 9262, at least with respect to "denial of financial support," is *dolo* in nature. This means that Section 5(i) violations must be committed with the deliberate intent of inflicting mental or emotional anguish upon the woman and her child to warrant a conviction. In *Acharon*, the accused and his wife loaned PHP 85,000.00 from his wife's godmother as placement fee. He then left for Brunei in 2011 to work as a delivery rider.

At first, Acharon was able to send money to his wife but eventually failed to do so. When his wife learned that he allegedly kept a paramour,

¹ See *Dinamling v. People*, 761 Phil. 356, 373 (2015) [Per J. Peralta, Third Division].

² *Ponencia*, p. 4.

³ *Id.* at 5-7.

⁴ *Id.* at 5-6.

⁵ *Id.* at 7.

⁶ G.R. No. 224946, November 9, 2021 [Per J. Caguioa, *En Banc*].

she charged him with violation of Section 5(i) for denying her financial support.

In his defense, Acharon contended that he initially sent money to his wife totaling to PHP 71,000.00. However, because a fire had razed his apartment, and he got into a vehicular accident that cost him USD 1,000.00 in medical expenses, he eventually failed to provide financial support to his wife. He likewise denied that he kept a paramour, although he admitted that he encouraged his wife to look for another man. After trial, Acharon was convicted as charged.

On appeal, this Court acquitted Acharon. In so ruling, this Court first examined the text of Section 5(i) and held that “denial” in “denial of financial support” denotes “refusal to satisfy a request or desire”⁷ or “the act of not allowing someone to do or have something.”⁸ Thus, according to the Court, “denial of financial support” requires *willfulness* or “an *active* exertion of effort so that one would not be able to have or do something.”⁹ Excluded are instances where the accused merely failed or is unable to provide financial support, even if the woman experienced mental or emotional anguish.¹⁰

This Court addressed the misconception that only acts punished under the Revised Penal Code are *mala in se* or “inherently wrong or depraved,”¹¹ while those punished under special laws, such as Republic Act No. 9262, are *mala prohibita*. While this is generally true, this Court explained that there are special laws that punish crimes *mala in se*, the same way that the Revised Penal Code punishes some crimes *mala prohibita*. Among those special laws that punish crimes *mala in se* is Republic Act No. 9262, because the language used in the law “requires a mental element.”¹² Violations of Republic Act No. 9262 being crimes *mala in se*, this Court held that such violations require both *actus reus*, or “the external or overt acts or omission included in a crime’s definition;”¹³ and *mens rea*, or the “accused’s guilty state of mind or criminal intent accompanying the *actus reus*.”¹⁴ This Court continues:

It is not enough, therefore, for the woman to experience mental or emotional anguish, or for her partner to deny financial support that is legally due her. In order for criminal liability to arise under Section 5 (i) of [Republic Act No.] 9262, insofar as it deals with “denial of financial support,” there must, therefore, be evidence on record that the accused willfully or consciously withheld financial support *legally due* the woman

⁷ *Id.* (Citation omitted)

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

for the purpose of inflicting mental or emotional anguish upon her. In other words, the *actus reus* of the offense under Section 5 (i) is the willful denial of financial support, while the *mens rea* is the intention to inflict mental or emotional anguish upon the woman. Both must thus exist and be proven in court before a person may be convicted of violating Section 5 (i) of [Republic Act No.] 9262.

“It bears emphasis that Section 5 (i) penalizes some forms of *psychological violence* that are inflicted on victims who are women and children.” In prosecutions under Section 5 (i), therefore, “[p]sychological violence is the means employed by the perpetrator” with denial of financial support as the weapon of choice. *In other words, to be punishable by Section 5 (i) of [Republic Act No.] 9262, it must ultimately be proven that the accused had the intent of inflicting mental or emotional anguish upon the woman, thereby inflicting psychological violence upon her, with the willful denial of financial support being the means selected by the accused to accomplish said purpose.*

This means that the mere failure or one’s inability to provide financial support is not sufficient to rise to the level of criminality under Section 5 (i), even if mental or emotional anguish is experienced by the woman. In other words, even if the woman were to suffer mental or emotional anguish due to the lack of financial support, but the accused merely *failed* or was *unable* to so provide support, then criminal liability would not arise. A contrary interpretation to the foregoing would result in absurd, if not outright unconstitutional, consequences.¹⁵ (Citations omitted)

In acquitting Acharon, the Court found that he, for a time, provided financial support to his wife. He only failed to continue to support his wife because of the fire that had razed his apartment in Brunei and the vehicular accident that he had gotten into. More importantly, this Court held that Acharon’s lack of financial support was not a “willful refusal” to inflict mental or emotional anguish upon his wife, just an inability to do so. With no *mens rea* to accompany the *actus reus*, the Court held that Acharon “cannot be held guilty of violating Section 5(i) of [Republic Act No.] 9262.”¹⁶

Applying *Acharon* here by analogy, I am of the view that XXX is not guilty of violating Republic Act No. 9262, Section 5(i) when he left AAA for their helper. For XXX to be criminally punished for abandoning AAA, there must be evidence on record that he willfully did so to inflict moral and emotional anguish on her. This evidence of deliberate intent is lacking in this case.

The prosecution heavily dwelled on AAA’s testimony on the emotional anguish she experienced. However, there is no evidence that XXX left her to inflict mental or emotional anguish on her. As was held in *Acharon*, evidence of the mental or emotional anguish suffered by the

¹⁵ *Id.*

¹⁶ *Id.*

woman is not enough for conviction. With no evidence of XXX's *intent* to inflict emotional anguish on AAA, he cannot be convicted of violating Section 5(i), even if AAA experienced emotional anguish.

The same is true with marital infidelity, for which XXX was convicted, as affirmed by the Court of Appeals. There must be proof that he strayed *with the specific intent* of inflicting mental or emotional anguish on his wife to be convicted. While it is true that Section 3(a)(C)¹⁷ of Republic Act No. 9262 mentions "marital infidelity" as an example of "psychological violence," the specific intent of inflicting mental or emotional anguish remains necessary because it is Section 5(i), not Section 3(a)(C), that specifically enumerates the acts considered as crimes under Republic Act No. 9262. And under Section 5(i), the act should have been done precisely to cause mental or emotional anguish on the woman. To repeat, this intent was not proven in this case.

A deeper reason exists for punishing spousal abandonment or marital infidelity as psychological violence *only* if there is proof of the intent to inflict mental or emotional anguish on the wife and/or child. As explained in *Garcia v. Drilon*,¹⁸ Republic Act No. 9262 was enacted to address the unequal power relations between men and women, with society considering men as the more dominant sex.¹⁹ With this perceived dominance comes the need to control women to maintain the upper hand, and violence against women is one such form of control.²⁰ Republic Act No. 9262 was enacted precisely to prevent and punish this coercive control.

Therefore, for an act to be considered as violence against women and children under Republic Act No. 9262, it should be done to control the woman and maintain power and dominance over her. Within the context of spousal abandonment or marital infidelity, it can only be considered

¹⁷ Republic Act No. 9262, sec. 3(a)(C) 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:

....

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.

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

¹⁹ *Id.* at 91. See also J. Leonen, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44, 171 (2013) [Per J. Perlas-Bernabe, *En Banc*]. I am of the view that violence in intimate relationships should not be seen simply as a gender issue, especially considering cases where the woman wields more power than the man. Rather, domestic violence is a power issue.

²⁰ *Garcia v. Drilon*, 712 Phil. 44, 91–92 (2013) [Per J. Perlas-Bernabe, *En Banc*].

psychological violence if it is done with the intent of inflicting mental and emotional anguish on the woman to control or otherwise manipulate her into submission.

The facts of this case show that XXX left AAA not because he wanted to inflict mental or emotional anguish on her, but because, for reasons known only to XXX, he just did not want to be with AAA anymore. It appears that XXX abandoned AAA not to control but to cut ties with her. From 2007, when XXX left AAA, to 2013, when AAA learned through Facebook that XXX fathered a child with their former helper, XXX never returned to the conjugal residence. There is also no evidence that XXX contacted AAA after he left. On the contrary, it was AAA who actively searched for him on Facebook.

I do not doubt the pain and emotional anguish AAA experienced when XXX abandoned her. The hurt from the betrayal was probably excruciating, especially since her husband eloped with someone she trusted enough to allow in her home. However, with no proof that XXX left AAA specifically to inflict mental and emotional anguish on her, I am not ready to vote for XXX's conviction.

II

My vote for acquittal does not mean that XXX cannot be held liable for his actions. Article 68²¹ of the Family Code obliges spouses to live together and observe mutual fidelity, and XXX, based on the facts of this case, did not comply with these essential marital obligations. Considering that the law violated is civil in nature, only civil remedies may be pursued against XXX.

Under Article 55(10)²² of the Family Code, spousal abandonment for more than one year, if without justifiable cause, is a ground for filing a petition for legal separation. A petition for declaration of nullity of marriage under Article 36²³ of the Family Code may likewise be filed if it can be proven that the abandonment is a manifestation of psychological incapacity to comply with the essential marital obligations.

²¹ FAMILY CODE, art. 68 provides:

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

²² FAMILY CODE, art. 55(10) provides:

ARTICLE 55. A petition for legal separation may be filed on any of the following grounds:

....

(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

²³ FAMILY CODE, art. 36, as amended by Executive Order 227, provides:

ARTICLE 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

For marital infidelity, a petition for legal separation may be filed if it can be proven that the infidelity was sexual in nature.²⁴ If it can be proven that the marital infidelity is a manifestation of psychological incapacity, again, a petition for declaration of nullity of marriage may likewise be filed. Furthermore, a complaint for damages under Article 26²⁵ of the Civil Code may be filed against the alleged paramour for meddling with or disturbing the private life or family relations of the offended spouse. All these remedies can be pursued to hold XXX civilly liable.

To hold XXX criminally liable for what should only be a civil liability will entail violation of the Constitution. To imprison consenting adults for their private sexual activities is to violate their rights to life and liberty protected under the due process clause.²⁶ It is likewise a violation of their right to privacy, with the State interfering into what should be a private matter between sexual partners.²⁷

Furthermore, criminalizing activities the State has no business meddling in is to violate its people's dignity.²⁸ Conviction brings about shame and stigma, making it difficult for former convicts to walk back to their old life and reclaim their dignity. Instead of intruding into peoples' private lives, the State should criminalize activities that are truly deserving of its outrage, such as "breach[es] of the security and peace of the people at large . . . against the very sovereignty of the State."²⁹

²⁴ FAMILY CODE, art. 55(8) provides:

ARTICLE 55. A petition for legal separation may be filed on any of the following grounds:

....

(8) Sexual infidelity or perversion[.]

See Philippine Commission on Women, *Priority Legislative Agenda for the 18th Congress, Repealing the Revised Penal Code Provisions on Adultery and Concubinage*, Philippine Commission on Women, available at <https://pcw.gov.ph/assets/files/2019/10/PCW-WPLA-PB-02-Repeal-of-RPC-provisions-on-Adultery-and-Concubinage-AEB.pdf?x23702> (last accessed on November 9, 2023).

²⁵ CIVIL CODE, art. 26 provides:

ARTICLE 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

....

(2) Meddling with or disturbing the private life or family relations of another[.]

See Philippine Commission on Women, *Priority Legislative Agenda for the 18th Congress, Repealing the Revised Penal Code Provisions on Adultery and Concubinage*, Philippine Commission on Women, available at <https://pcw.gov.ph/assets/files/2019/10/PCW-WPLA-PB-02-Repeal-of-RPC-provisions-on-Adultery-and-Concubinage-AEB.pdf?x23702> (last accessed on November 9, 2023).

²⁶ CONST., art. III, sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

²⁷ See Philippine Commission on Women, *Priority Legislative Agenda for the 18th Congress, Repealing the Revised Penal Code Provisions on Adultery and Concubinage*, Philippine Commission on Women, available at <https://pcw.gov.ph/assets/files/2019/10/PCW-WPLA-PB-02-Repeal-of-RPC-provisions-on-Adultery-and-Concubinage-AEB.pdf?x23702> (last accessed on November 9, 2023).

²⁸ See *Tan-Andal v. Andal*, 902 Phil. 558, 595 (2021) [Per J. Leonen, *En Banc*], citing *J. Leonen, Dissenting Opinion in Mallilin v. Jamesolamin*, 754 Phil. 158, 203–204 (2015) [Per J. Mendoza, Second Division]. This Court said that "[t]he state's interest should not amount to unwarranted intrusions into individual liberties."

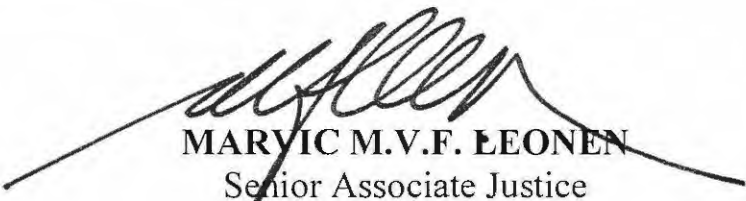
²⁹ See *Baviera v. Paglinawan*, 544 Phil. 107, 119 (2007) [Per J. Sandoval-Gutierrez, First Division], where this Court defined what a "crime" is.

l

Instead of applying the morality of some to others, the State should empower couples to exercise their autonomy and decide for themselves what constitutes cheating. Society, through our laws on marital infidelity, assumes that monogamy is the norm when there are intimate partners who agree³⁰ to or are indifferent³¹ to nonmonogamy. If the latter case is true, intimate partners should be allowed to sexually engage with others outside of the relationship without fear of our criminal laws being weaponized against them. The Legislative, in legislating against domestic violence, should acquaint itself with the myriad permutations and configurations of intimate relationships.

Assuming the truth of the allegations in this case, what XXX violated was his marital obligation to live with AAA. However, with no proof that he did so with the intent of inflicting mental or emotional anguish on her, XXX cannot be convicted of violating Republic Act No. 9262, Section 5(i).

ACCORDINGLY, I vote to the **GRANT** the Petition for Review on *Certiorari* and to **REVERSE** and **SET ASIDE** the January 24, 2022 Decision and July 29, 2022 Resolution of the Court of Appeals in CA-G.R. CR No. 01923-MIN. Petitioner XXX must be **ACQUITTED** of violating Republic Act No. 9262, Section 5(i).



MARYIC M.V.F. LEONEN
Senior Associate Justice

³⁰ See ESTHER PEREL, *THE STATE OF AFFAIRS: RETHINKING INFIDELITY* (2017). See also ESTHER PEREL, *MATING IN CAPTIVITY: SEX, LIES AND DOMESTIC BLISS* (2007).

³¹ See *AAA v. BBB*, 823 Phil. 607, 620 (2018) [Per J. Tijam, First Division]. In this case, this Court recognized that situations where the infidelity may not even be causing mental or emotional anguish on the other spouse.