

EN BANC

G.R. No. 252739 – XXX,* Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

April 16, 2024

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SEPARATE CONCURRING OPINION

INTING, J.:

I agree with the *ponencia* that the judgment of conviction against XXX for a violation of Section 5(i) of Republic Act No. 9262 or the “*Anti-Violence Against Women and Their Children Act of 2004*” must be affirmed by the Court.

I. *XXX may be convicted of a violation of Section 5(i) of Republic Act No. 9262 for causing mental or emotional anguish upon his wife, AAA, through marital infidelity, pursuant to the variance doctrine*

Preliminarily, it must be clarified that in the Information, XXX was charged with a violation of Section 5(i) of Republic Act No. 9262 by allegedly keeping a mistress, as follows:

On July 19, 2016 or prior thereto, in the city of [REDACTED], the Philippines, accused, being the husband of complainant [AAA], did then and there willfully, unlawfully and feloniously kept (sic) a mistress, thereby causing upon complainant mental and emotional anguish, in violation of the aforesaid law.

CONTRARY TO LAW.

* The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 8505, entitled “Rape Victim Assistance and Protection Act of 1998,” approved on February 13, 1998; and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/ Personal Circumstances.



Notwithstanding the above, I respectfully submit that XXX may be convicted of the offense charged but through a different means – marital infidelity.

The Court has recognized that the term “mistress” means “a woman with whom a man habitually fornicates.”¹ Meanwhile, “marital infidelity” or “conjugal infidelity” has been related to sexual congress by a married man or woman with a person other than his wife or husband.

With the foregoing, it is my position that under Section 5(i) of Republic Act No. 9262, *even a single act of sexual intercourse between a married person and another who is not his/her legal spouse constitutes marital infidelity*, provided that all the other elements thereof are present.

Thus, the charge of “keeping a mistress” against XXX is broad enough to include “marital infidelity” or sexual intercourse with a woman who is not XXX’s wife. The Information sufficiently states all the elements of the specific offense allegedly committed by XXX – causing mental or emotional anguish to AAA through marital infidelity – and enables him to adequately prepare his defense.² Surely, a person of ordinary intelligence would understand that keeping a mistress, as charged in the Information, includes marital infidelity and may therefore prepare his defenses accordingly.³

Perforce, in accordance with the variance doctrine under Rule 120, Sections 4 and 5,⁴ of the Rules of Court, if the prosecution was able to prove that XXX committed marital infidelity that caused mental or emotional anguish upon AAA, then he may be convicted of violation of Section 5(i) of Republic Act No. 9262.

II. Intent is not material under Section 5(i) of Republic Act No. 9262 when emotional or mental anguish is

¹ *Fernandez v. Lantin*, 165 Phil. 941, 946 (1976).

² *Singgit v. People*, G.R. No. 264179, February 27, 2023.

³ *Jurado v. Suy Yan*, 148 Phil. 677 (1971); *Enrile v. People*, 766 Phil. 75 (2015).

⁴ RULES OF COURT, Rule 120, secs. 4 and 5 provide:

SEC. 4. *Judgment in case of variance between allegation and proof.*— When there is variance between the offense charge in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another.*— An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

caused to a woman or her child due to marital infidelity

As a rule, the accused must possess a culpable mental state before he or she may be convicted of the crime charged. This springs from the general principle that the wrongdoing must be conscious to be criminal, or the required concurrence of *actus reus* and *mens rea*.⁵

However, as pointed out by the *ponencia*,⁶ specific intent is *not* necessary for there to be a violation of Section 5(i) of Republic Act No. 9262 when the means used by the accused to cause emotional or mental anguish upon the woman or her child is marital infidelity.

Philippine laws have distinguished between crimes which are *mala in se*, where intent is necessary for conviction, and *mala prohibita*, where intent is immaterial. While there is a general presumption that a penal statute requires *mens rea*, our jurisdiction equally recognizes the power of Congress to enact criminal statutes that are *mala prohibita*.⁷ This is sourced from the plenary power of the Legislature to define crimes and prescribe penalties therefor.⁸ Hence, *in the absence of language in the statute making guilty knowledge and criminal intent an essential element of the acts prohibited thereunder*, it is not necessary to charge or to prove that the accused acted with specific intent to violate the law in order to sustain convictions under the statute.⁹

Presently, the Court has adopted the approach of looking at the inherent immorality of the penalized act to determine whether it is deemed *malum in se*, where intent governs, in contrast to acts which are

⁵ *XXX v. People*, G.R. No. 255877, March 29, 2023. *See also Ruan v. United States*, 597 U.S. 450, 142 S. Ct. 2370, 2376–2377 (2022).

American jurisprudence has persuasive effect in the case at bar, given that the Philippines adopted the Fifth and Fourteenth Amendment as the Due Process Clause in the 1987 Constitution, as well as the legislative practice in the United States of passing special penal laws, both of which have bearing in the resolution of the present case. American decisions and authorities, though not *per se* controlling the Philippines, have persuasive effect. It may be resorted to if no law or jurisprudence is available locally to settle a controversy. [*Ejercito v. Commission on Elections*, 748 Phil. 205, 269 (2014)].

Significantly, the practice of passing special penal laws to criminalize acts in addition to the felonies under the Revised Penal Code was modeled from conventional practice in the United States. [*People v. Simon y Sunga*, 304 Phil. 725 (1994)]. Thus, the Court has adopted several principles of criminal law from American jurisprudence, including the *mens rea* requirement in embezzlement [*Tabuena v. Sandigercbayam*, 335 Phil. 795 (1997)], “totality of circumstances test” [*People v. Bacero*, 790 Phil. 745 (2016)], malice in libel [*MVRS Publications v. Islamic Da’wah Council of the Philippines*, 444 Phil. 230 (2003)], and pardon [*Monsanto v. Factoran, Jr.*, 252 Phil. 192 (1989)].

American jurisprudence has particular persuasiveness in the sphere of constitutional law, particularly with regard to the Due Process Clause, given that the latter was derived from the Fifth and Fourteenth Amendment of the U.S. Constitution. [*Saunar v. Ermita*, 822 Phil. 536, 543 (2017); *Peralta v. Philippine Postal Corp.*, 844 Phil. 603 (2018)].

⁶ *Ponencia*, p. 12.

⁷ *U.S. v. Go Chico*, 14 Phil. 128, 132–138 (1909); *U.S. v. Siy Cong Bieng*, 30 Phil. 577, 581 (1915); *People v. Bayona*, 61 Phil. 181, 184–185 (1935).

⁸ *People v. Echegaray*, 335 Phil. 343 (1997); *Oble v. Torres*, 354 Phil. 948 (1998).

⁹ *U.S. v. Siy Cong Bieng*, 30 Phil. 577, 581 (1915).

mala prohibita, where intent is immaterial.¹⁰ In *Acharon v. People*,¹¹ the Court applied this approach in laying down the elements of Section 5(i) of Republic Act No. 9262 and holding that intent to cause emotional or mental anguish is indispensable for the conviction of an accused charged with a violation thereof, *when committed through denial of financial support*. *Acharon* was reiterated and applied by the Court in subsequent cases involving similar alleged violations of Section 5(i) of Republic Act No. 9262.¹²

However, it should be stressed that *Acharon* and the cases¹³ where its ruling was applied specifically ruled on the element of intent under Section 5(i) of Republic Act No. 9262 when the means used by the accused is denial of financial support. In these cases, the Court held that mere *failure* to provide support cannot constitute a violation of Republic Act No. 9262 because the law requires that support be *denied*. Further, “support” depends on the capacity of the person bound to give support; hence, when the man himself is impoverished and fails to give support, he cannot be made criminally liable under Republic Act No. 9262. Obviously, the man cannot *deny* from the woman or her child support that he does not have in the first place. Moreover, denial of support under Republic Act No. 9262 ultimately relates to economic abuse, which requires that support be denied *for the purpose of* controlling the woman or her child or restricting their freedom of movement. Criminal intent was therefore necessary for conviction.

To my mind, *Acharon* cannot be indiscriminately applied in the present case where marital infidelity is the means used by the accused to cause emotional or mental anguish upon the woman or her child. Intent as an element of the offense charged against Allan must be determined based on the language of Section 5(i) in relation to Section 3(c) of Republic Act No. 9262, as well as the policy behind the law. That is, while the Court has used the test of “inherent immorality” to determine whether a crime is *mala in se* where intent is material, *the foremost consideration in determining whether intent is necessary for a violation of the law must still be the language of the statute and legislative intent*.

Verily, as early as 1909, the Court in *United States v. Go Chico*¹⁴ held that intent, as an element of a crime, should be discerned based on the language of the law and the purpose to be accomplished by the law, among others. Thus, when the “statutory definition of the offense

¹⁰ *Patulot v. People*, 845 Phil. 439 (2019); *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001).

¹¹ *Acharon v. People*, G.R. No. 224946, November 9, 2021.

¹² *XXX v. People*, G.R. No. 255877, March 29, 2023; *XXX256611 v. People*, G.R. No. 256611, October 12, 2022; *Calingasan v. People*, G.R. No. 239313, February 15, 2022.

¹³ *Id.*

¹⁴ 14 Phil. 128 (1909).

embraces no word implying that the prohibited act shall be done *knowingly or willfully*,” then the prohibited act is *mala prohibita* and intent is immaterial.¹⁵ Certainly, the Court has been guided with words evincing intent in requiring it as an element of the crime, as when the statute uses terms or phrases like “knowingly,”¹⁶ “willfully,”¹⁷ “deliberately,”¹⁸ or “for the purpose of.”¹⁹

Even when the special law punishes an act that is inherently immoral, Congress may prohibit the very same conduct and delete intent or malice as an element thereof precisely because it has the exclusive power to define crimes and prescribe penalties therefor. If it is so minded, Congress may pass a statute against *mala prohibita* crimes²⁰ and remove “intent” from offenses which ordinarily require *mens rea* before conviction.²¹ This applies even for a special law penalizing acts which are similar to crimes traditionally requiring *mens rea*, e.g., theft.²²

The Court must be guided by the foregoing principles in determining whether intent is required before XXX may be convicted of a violation of Section 5(i) of Republic Act No. 9262 through marital infidelity. That is, in passing Section 5(i) of Republic Act No. 9262, the Legislature may choose to criminalize the prohibited act itself regardless of the perpetrator’s intent in violating the law. Whether such is the case will have to be determined from the language of the law itself, the policy behind it, the nature of the prohibited conduct, and other relevant matters as laid down in *Go Chico*.

A. Based on the language of Republic Act No. 9262, intent is not an element of the offense charged against XXX

With these considerations in mind, I find that intent is not an element of Section 5(i) of Republic Act No. 9262 when mental or emotional anguish is caused to the woman or her child through marital infidelity. My conclusion is based on, among others, the language of the statute itself and the purpose behind it.

¹⁵ *Id.*

¹⁶ *U.S. v. Siy Cong Bieng*, 30 Phil. 577, 581 (1915).

¹⁷ *Id.*

¹⁸ *Guiani-Sayadi v. Office of the Ombudsman*, G.R. No. 239930, May 10, 2021 [Notice].

¹⁹ *See Coronado v. Sandiganbayan*, 296-A Phil. 414 (1993).

²⁰ *People v. Largo*, 306 Phil. 24 (1994).

²¹ *See Carter v. United States*, 530 U.S. 255 (2000). *See also People v. Martin*, 78 Cal. App.4th 1107, 1117 (Cal. Ct. App. 2000), *citing People v. Lynn*, August 28, 1894, 159 (Cal. App. 3d 716), *citing People v. Dillon*, September 1, 1983, 34 Cal. 3d 441.

²² *See Carter v. United States*, 530 U.S. 255 (2000).

First, an examination of Republic Act No. 9262 reveals that it clearly identifies those offenses which require intent, either by expressly requiring that the prohibited act be done knowingly or deliberately, or that it be executed to achieve a specific purpose.

Thus, under Section 5(e) of Republic Act No. 9262, the prohibited conduct must be for the purpose of “controlling or restricting the woman’s or her child’s movement or conduct.” Section 5(f) of the law also states that it is unlawful to inflict or threaten to inflict physical harm on oneself “for the purpose of controlling her actions or decisions,” by “deliberately” providing the woman’s children insufficient financial support, among other means. Similarly, Section 5(h) of the law refers to “purposeful” or “knowing” conduct that causes psychological distress to the woman or her child. *Significantly, there is no similar language evincing knowledge or intent in Section 5(i) of Republic Act No. 9262 in relation to Section 3(c) of the same law:*

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.

....

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. (Emphasis supplied)

Had it been the intention of the legislators to require intent as an element of Section 5(i) of Republic Act No. 9262, they would have used therein the same language evincing intent, as in Sections 5(e), 5(f), and 5(h) of the same law. The absence of any such term requiring intent on the part of the violator supports the conclusion that intent is not required in Section 5(i) of Republic Act No. 9262. Instead, the law merely looks at the *consequences, effect, or actual harm* suffered by the victim, i.e., when the conduct *causes* mental or emotional anguish to the woman or her child.

It is my position that the absence of such terms evincing “intent” in Section 5(i) of Republic Act No. 9262 is *not merely stylistic*. Rather, these terms evincing intent were withheld by the Legislature from Section 5(i) of Republic Act No. 9262 *deliberately* because it intended that the prohibited act be punished *regardless* of the intent of the accused.²³ In interpreting Republic Act No. 9262, the Court must be guided by well-established presumptions: that the Legislature knew the meaning of the terms it used; that it used these terms advisedly and to have expressed its intent by the use of such language; that it inserted those words evincing “intent” with reason, and conversely, must have withheld them from Section 5(i) with reason; and that it is familiar with principles of statutory construction.²⁴

To my mind, because Congress deliberately withheld from Section 5(i) of Republic Act No. 9262 such terms as would require criminal intent, then the Court must not require it as an element of the crime. Verily, the Court’s first duty is to apply the law as long as it is in force and effect, though the law may be regarded as harsh, unwise, or morally wrong.²⁵ The Court cannot supplant or modify the terms of

²³ See *Carter v. United States*, 530 U.S. 255 (2000).

²⁴ *Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission*, 102 Phil. 596 (1957); *Republic v. Rambuyong*, 646 Phil. 373, 381 (2010), citing *Aparri v. Court of Appeals*, 212 Phil. 215, 224–225 (1984).

²⁵ See *Villanueva v. Estoque*, 400 Phil. 6, 14 (2000).

Republic Act No. 9262 in the guise of statutory interpretation, as such would amount to impermissible judicial legislation.²⁶

Second, following *Go Chico*, the Court may look at the purpose of the law to determine whether the acts punished therein are *mala in se* or *mala prohibita*. Significantly, it has been held that penal statutes which are in the nature of police regulations²⁷ are *mala prohibita*; they impose criminal penalties, irrespective of any intent and obviously for the purpose of requiring a degree of diligence for the protection of the public.²⁸

In this regard, the Court must consider that Republic Act No. 9262 is a special law designed to protect the welfare of women and their children. Indeed, Section 2 of Republic Act No. 9262 expressly states that the policy behind the law is to “protect the family and its members particularly women and children, from violence and threats to their personal safety and security.” In passing Republic Act No. 9262, the lawmakers intended that it be a measure for the elimination of all forms of gender-based violence and discrimination against women and children, as well as their protection therefrom. The lawmakers particularly recognized the realities that Filipino women face and acknowledged that because our society considers the woman to be subordinate to the man, it is predominantly the women who become victims in intimate relationships.²⁹ With these considerations, the legislators saw the need to make our laws “coercive” by putting “more teeth” in penalizing domestic violence, which “would strongly help provide a deterrence to the rising gender-based crime against women and children whose perpetrators are more inclined to commit their nefarious act with impunity.”³⁰

Evidently, Republic Act No. 9262 is geared towards the protection of women in intimate relationships and the elimination of all forms of gender-based violence. Because the law is aimed towards a public

²⁶ *People v. Quijada*, 328 Phil. 505 (1996).

²⁷ See *Malcampo-Repollo v. People*, 890 Phil. 1159 (2020), and *Demata v. People*, G.R. No. 228583, September 15, 2021, which involve criminal cases for alleged violations of RA 7610 or the “*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*.” Relevantly, the Court has held that in general, the offenses punished in RA 7610 are *mala prohibita*, save for those where the law requires intent, e.g., lascivious conduct upon a child, acts which debase, degrade, or demean the intrinsic worth and dignity of the child as a human being, and being responsible for conditions prejudicial to the child’s development. In ruling that the prohibited acts in RA 7610 are generally *mala prohibita*, the Court reasoned that the law is a measure geared to provide a strong deterrence against child abuse and exploitation and to give special protection to children from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.

²⁸ See *U.S. v. Go Chico*, 14 Phil. 128, (1909); *U.S. v. Balint*, 258 U.S. 250 (1922); *Rehaif v. United States*, decided on June 21, 2019; and *People v. Merriweather*, 139 Misc. 2d 1039, 1040–1041 (N.Y. Dist. Ct. 1988).

²⁹ Minutes of the Meeting of the House Committee on Women dated February 19, 2002, pp. 10–11; Minutes of the Meeting of the House Committee on Women dated August 27, 2002, pp. 19–26; Minutes of the Meeting of the House Committee on Women dated March 4, 2003, pp. 9–10.

³⁰ Minutes of the Meeting of the House Committee on Women dated February 19, 2002, p. 26.

purpose, the Court should hold that the acts punished by Republic Act No. 9262 are *mala prohibita*, unless the law itself requires intent as an element of the offense.

Finally, legislative deliberations reveal that in passing Republic Act No. 9262, the lawmakers intended to address legal and social inequities between men and women; they acknowledged that in Philippine laws, there is a bias against women, most notably the provisions of the Revised Penal Code on marital infidelity, i.e., Adultery and Concubinage under Articles 333 and 334, respectively. They particularly noted that the Revised Penal Code imposes heavier penalties on adultery than on concubinage. Moreover, in adultery, the married woman is immediately liable the moment that she has sexual intercourse with a man who is not her husband; on the other hand, for a married man to be liable for concubinage, other conditions are required, such as cohabitation and sex under scandalous circumstances.

The discussion among the lawmakers during the deliberations for the enactment of Republic Act No. 9262 enlightens:

MS. [MAUREEN] PAGADUAN (Executive Director, Women's Legal Bureau):

.....

The four criteria for a reasonable classification have been squarely met by the Anti-AWIR [Abuse of Women in Intimate Relationships] bill:

First, the bill rest[s] on substantial distinctions. Men and women are afforded different degrees of protection under Philippine law and society. *In intimate relationships, Philippine society still condones sexual infidelity by men.* Hindi pa ho nagbabago iyan. And allows them to exercise inordinate amount of power over their wives, girlfriends, and lovers. Siguro nararamdaman ng marami sa atin iyan. *Philippine law also remains bias against women. The most glaring example of this legislative bias in favor of men and against women is the discrepancy in the crime of marital infidelity committed by husbands and wives, both as to the conditions for its commission and the penalties imposed. Mas malala sa babae, siyempre.*

Second, the classification is therefore germane to the purpose of the law. *By granting women with a legal arsenal for their protection, the bill merely seeks to address th[ese] legal and societal inequalities by providing women in particular with a weapon to counteract the inequity of their situation.*³¹

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³¹ Minutes of the Meeting of the House Committee on Women dated February 19, 2002, pp. 10-11.

MS. AURORA JAVATE-DE DIOS (Chairperson, National Commission on the Role of Filipino Women): Thank you.

Just on that point about whether or not the law addresses men and women equally. I think we are essentially dealing with a law...with a problem of inequality. A while ago, our Chairperson was saying that men and women cannot be equal. I slightly disagree with that because our...while women and men are unequal because of historical and structural inequalities, the point about having laws, legislation and policies to improve the plight of women is precisely to equalize their situation.

Now, the violence against women bill that is before us precisely addresses that very serious problem of inequality...³²

Based on the foregoing, it appears that the legislators deliberately included marital infidelity as an act of psychological violence upon the woman or her child in Republic Act No. 9262 so that men and women are placed on the same standard of public morals where both husband and wife are expected to remain faithful to their marital vows and obligation of fidelity to each other. That is, while the husband's marital infidelity under Article 334 of the Revised Penal Code on Concubinage requires additional conditions to be punishable, Republic Act No. 9262 punishes the same conduct as long as it causes mental or emotional anguish upon the wife.

To my mind, the *ponencia's* ruling is consistent with the foregoing objective of the framers of Republic Act No. 9262. Should the Court require the prosecution to prove that XXX had sexual congress with YYY with the specific intent to cause mental or emotional anguish upon his wife, AAA, an unfaithful husband can escape conviction by simply claiming that he committed marital infidelity to find sexual relief, to be entertained, to have a child with another woman, or for some other reason unrelated to Section 5(i) of Republic Act No. 9262. Such a restrictive interpretation of Republic Act No. 9262 would divest the law of its coercive powers and perpetuate a situation where unfaithfulness and marital infidelity on the part of the husband are condoned despite the mental or emotional anguish suffered by the wife or child, contrary to the purpose behind the enactment of Republic Act No. 9262. It would defeat the Legislature's objective for Republic Act No. 9262 to serve as a measure towards the equality of men and women in our laws, including those that proscribe marital infidelity.

I agree with the *ponencia*³³ that the Court must apply Section 3(c) in relation to Section 5(i) of Republic Act No. 9262 as they are written: *the law is violated when the husband causes mental or emotional anguish*

³² Minutes of the Meeting of the House Committee on Women dated August 27, 2002, p. 19.

³³ *Ponencia*, p. 12.

to his wife or child through marital infidelity. Whether the resulting mental or emotional anguish was intended or purposefully sought by the accused is immaterial. The fact that the husband caused such mental or emotional anguish to his wife or child through marital infidelity is sufficient for his conviction.

B. *If the criminal statute does not include an express mens rea element, the Court must require it only to separate wrongful from innocent conduct. Marital infidelity is not an act that is innocent in itself that should require intent as an element of the offense charged*

I also respectfully submit that intent must not be required in Section 5(i) of Republic Act No. 9262 when committed through marital infidelity because the prohibited conduct is “inherently immoral.” I have reservations about the constant use of this principle in every criminal case.³⁴ It should not be applied by the Court if there is no ambiguity in the law. I reiterate that the Legislature has the plenary power to enact criminal laws, define crime, and dictate whether *mens rea* is required for its violation.³⁵

The “inherent immorality” test must not always control the Court’s determination of whether a criminal statute is *mala in se* or *mala prohibita*. The interpretation of legislative intent as dispensing with knowledge and willfulness as elements of the crime must not be confined to offenses differentiable upon their relative *lack of turpitude*.³⁶ “Where the offenses prohibited and made punishable are capable of inflicting widespread injury, and where the requirement of proof of the offender’s guilty knowledge and wrongful intent would render enforcement of the prohibition difficult if not impossible (i.e., in effect tend to nullify the statute), the legislative intent to dispense with *mens rea* as an element of the offense has justifiable basis.”³⁷

When a special penal law is silent as to criminal intent as an element of the crime, the presumption in favor of scienter requires a court to read

³⁴ See *U.S. v. Go Chico*, 14 Phil. 128, 132–138 (1909); *U.S. v. Balint*, 258 U.S. 250 (1922); *Rehaif v. United States*, 588 U.S. 225, 228–29, 139 S. Ct. 2191, 2195 (2019); and *People v. Merriweather*, 139 Misc. 2d 1039, 1040–1041 (N.Y. Dist. Ct. 1988).

³⁵ *People v. Dillon*, September 1, 1983, 34 Cal. 3d 441; *People v. Lynn*, August 28, 1894, 159 (Cal. App. 3d 716); *People v. Martin*, 78 Cal. App. 4th 1107, 1117 (Cal. Ct. App. 2000); *Carter v. United States*, 530 U.S. 255 (2000).

³⁶ *United States v. Greenbaum*, 138 F.2d 437, 438–39 (3d Cir. 1943).

³⁷ *Id.*

into a statute only that *mens rea* which is necessary to *separate wrongful conduct from an "otherwise innocent conduct."*³⁸ That is, when the act punished by the law is *not innocent in itself*, a general intent to commit the *actus reus* is sufficient for conviction, and the Court must not read specific intent as an element of the offense when the law is otherwise silent on that matter.³⁹ This ultimately relates to due process, for no law can be passed nor interpreted in a way that criminalizes a broad range of apparently innocent conduct.⁴⁰

The application of the foregoing principle was illustrated in cases where specific criminal intent to violate the law was required, to wit: (1) possession of food stamps only for authorized purposes recognized by law, because the possession of these items is an innocent act in itself;⁴¹ (2) possession of an unlicensed machinegun,⁴² when the US has a long tradition of widespread lawful gun ownership, as opposed to grenades, the possession of which is not "*innocent in itself*" because it is a highly dangerous offensive weapon;⁴³ (3) carrying sharp objects, such as fountain pens and knitting needles, in the streets, because "no rational person could find the presence of fountain pens and knitting needles in the public streets to be a source of alarm," as opposed to four-inch knives, which are "rarely carried on the streets for innocent purposes";⁴⁴ and (4) sale or distribution of any obscene visual or print medium if it involves the use of a minor engaged in sexually explicit conduct, because sexually explicit materials involving persons over the age of 17 are protected by the First Amendment, and there is opportunity for reasonable mistake as to the actual age of the persons depicted in the medium.⁴⁵

The foregoing cases uniformly reveal that specific criminal intent must be required if, in the absence thereof, a wide array of conduct that is *innocent in itself* will be penalized, in violation of the constitutional right to due process. However, if the conduct punished is *not innocent in itself*, the criminal statute will *not* be taken as one requiring specific intent; instead, the legal *maxim*, "ignorance of the law excuses no one," is applicable.⁴⁶ In such a case, "[t]he accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it

³⁸ See *Elonis v. United States*, 575 U.S. 723 (2015) and *Ruan v. United States*, 597 U.S. 450, 142 S. Ct. 2370, 2376–2377 (2022). See also *Carter v. United States*, 530 U.S. 255, 269–271 (2000).

³⁹ See *Carter v. United States*, 530 U.S. 255, 269–271 (2000).

⁴⁰ *Liparota v. United States*, 471 U.S. 419 (1985).

⁴¹ *Id.*

⁴² *Staples v. United States*, 511 U.S. 600 (1994).

⁴³ *United States v. Freed*, 401 U.S. 601 (1971).

⁴⁴ *People v. Ortiz*, 125 Misc. 2d 318 (N.Y. Crim. Ct. 1984).

⁴⁵ *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994).

⁴⁶ *United States v. Freed*, 401 U.S. 601 (1971). [Concurring Opinion, J. Brennan]

might reasonably exact from one who assumed his responsibilities.”⁴⁷ The law only requires the prosecution to show “general intent,” i.e., that the accused “possessed knowledge with respect to the *actus reus* of the crime,”⁴⁸ or “knowledge of the circumstances that the law has defined as material to the offense.”⁴⁹

Applying the foregoing, the Court must resolve the question of whether the conduct prohibited by Section 5(i) of Republic Act No. 9262 is innocent in itself. If it is, then a strict specific criminal intent must be required; otherwise, only a general intent to voluntarily commit the prohibited act is sufficient for conviction in case of its violation.

There cannot be any serious debate that the act of “causing mental or emotional anguish, public ridicule or humiliation to the woman or her child,” through “repeated verbal and emotional abuse” and marital infidelity, among others, *is not innocent in itself*. Marital infidelity is even violative of the obligations between a husband and wife under Article 68,⁵⁰ in relation to Article 55,⁵¹ of the Family Code. Indeed, as early as 1948, the Court has recognized that damages may be recovered for mental and psychological suffering.⁵² Verily, any act that causes mental or emotional anguish is a form of violence upon persons.⁵³

In light of the above, I find that specific criminal intent to “cause mental or emotional anguish, public ridicule or humiliation to the woman or her child” is not required for XXX’s conviction. As long as the prosecution is able to show that all the elements of Section 5(i) of Republic Act No. 9262 are present, then XXX may be convicted for its violation. As further discussed below, the prosecution was able to discharge this evidentiary burden. Hence, XXX’s conviction must be affirmed by the Court.

I reiterate that the Legislature is ultimately the sole repository of the power to define and punish crime. In the exercise of such power, it may pass statutory crimes “in the commission of which the perpetrator acts at his peril, and that *if knowledge is not made a prerequisite by the statute defining the crime*, its absence is not a defense, nor is it an element to be

⁴⁷ *Morisette v. United States*, 342 U.S. 246, 256-257 (1952).

⁴⁸ *Carter v. United States*, 530 U.S. 255 (2000).

⁴⁹ *United States v. Freed*, 401 U.S. 601 (1971). [Concurring Opinion, J. Brennan]

⁵⁰ Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

⁵¹ Art. 55. A petition for legal separation may be filed on any of the following grounds:

.....
(8) Sexual infidelity or perversion;

⁵² See Concurring Opinion of J. Perfecto in *Castro v. Acro Taxicab Co., Inc.*, 82 Phil. 359 (1948).

⁵³ See *U.S. v. Borromeo*, 23 Phil. 279 (1912).

proved by the State.”⁵⁴ I respectfully submit that the Court must adopt a restrained approach in reading intent into a criminal statute that is otherwise silent on *mens rea*. A contrary ruling, in my opinion, encourages the Court to tread upon impermissible judicial legislation and outright usurpation of the exclusive power of Congress to enact penal laws, define crime, and prescribe penalties therefor.⁵⁵

Nevertheless, it must be clarified that for crimes that are *mala prohibita*, the Court has adopted a distinction between *volition*, as the voluntary performance of an act or knowledge of the act being done, and *intent*, as the conscious and willful violation of law.⁵⁶ Particularly in cases involving Republic Act No. 9262, the Court has ruled that while the law, being *mala prohibitum*, does not require guilty knowledge and criminal or evil intent, or the conscious intent or will to violate the statute,⁵⁷ it must still be shown that the accused intended to commit the prohibited act; conversely, *if a person did not intend to perpetrate an act which has been defined by law to be the crime itself, then he is not guilty of the act.*⁵⁸

I note the apprehensions of several members of the Court in construing the law in a manner where *mens rea* is not required because it will supposedly make violations of Section 5(i) of Republic Act No. 9262, “subjective” and “dependent on the allegations and personal feelings of the private complainant.”⁵⁹ However, it is my position that the application of Section 5(i) of Republic Act No. 9262 without requiring *mens rea* will not result in a penal statute that is purely subjective and dependent on the allegations of the woman or her child. The elements thereof still require *objective conduct* on the part of the accused, which *results* in mental or emotional anguish, public ridicule, or humiliation to the woman or her child. The resulting mental or emotional condition of the woman or her child is still dependent on the *external act or acts* of the accused.

It is true that for violations of Section 5(i) of Republic Act No. 9262, the resulting anguish, ridicule, or humiliation is addressed to the victim’s mind; hence, it cannot be tested based on any hard-and-fast rule.⁶⁰ Nevertheless, when the statute requires a condition to be produced in the victim’s mind as a result of the external acts of the accused, the Court must not shirk its duty to apply the law upon the excuse that it is “subjective” or “dependent” on the victim’s allegations. Instead,

⁵⁴ *People v. Largo*, 306 Phil. 24 (1994).

⁵⁵ *See People v. Quijada*, 328 Phil. 505 (1996).

⁵⁶ *U.S. v. Go Chico*, 14 Phil. 128 (1909).

⁵⁷ *See U.S. v. Siy Cong Bieng*, 30 Phil. 577 (1915).

⁵⁸ *XXX v. People*, G.R. No. 252087, February 10, 2021.

⁵⁹ *See Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa.*

⁶⁰ *See Astorga v. People*, 480 Phil. 535, 594-595 (2004).

the resulting mental or emotional anguish must be viewed in light of the perception and judgment of the victim.⁶¹ For example, in rape cases involving intimidation, the Court has required “intense fear produced in the mind of the victim which restricts or hinders the exercise of the will,” which may be determined based on “the age, sex and condition of the [victim].”⁶²

Besides, it is precisely the courts’ judicial function to apply the rules on evidence to determine the veracity of the victim’s claim regarding the mental or emotional suffering that he or she suffered and assess whether the conduct of the accused is *sufficient* to produce such condition in the mind of the victim.⁶³ For cases of alleged violations of Section 5(i) of Republic Act No. 9262, the Court may apply well-known principles on evidence, such as “bare allegations” not being equivalent proof and “proof beyond reasonable doubt” as the quantum of evidence required for conviction, among others.

III. Even if the Court considers specific intent as an element of Section 5(i) of Republic Act No. 9262, the accused’s intent to cause mental or emotional anguish through marital infidelity must be presumed once infidelity is established as a fact

Even assuming that specific intent to cause mental or emotional anguish is required for XXX’s conviction, I humbly submit that the prosecution was able to prove it beyond reasonable doubt.

A. The act of marital infidelity furnishes the evidence on intent to cause mental or emotional anguish because it is presumed that an unlawful act was done with an unlawful intent

In the first place, it is presumed that an *unlawful act* was done with unlawful intent.⁶⁴ Indeed, the law presumes all persons to be of sound mind and capable of understanding the ordinary and natural consequences

⁶¹ *Id.*

⁶² *Alejandro v. Bernas*, 672 Phil. 698, 708-709 (2011).

⁶³ For instance, in appreciating passion or obfuscation as a mitigating circumstance, there must be facts proved showing provocation *sufficient* to produce such a condition of mind. [*U.S. v. Pilares*, 18 Phil. 87 (1910)]

⁶⁴ Rule 131, sec. 3(b) OF THE RULES OF COURT.

of their actions, such that when they commit a crime, they are presumed to have committed it intentionally.⁶⁵

Once the prosecution is able to establish that the accused committed an unlawful act, then he or she is *presumed to have done so with deliberate intent*—with freedom, intelligence, and malice—because the moral and legal presumption under our jurisdiction is that freedom and intelligence constitute the normal condition of a person in the absence of evidence to the contrary.⁶⁶ Hence, where an act, in itself indifferent, becomes criminal if done with a particular intent, then the intent must be proved and found; *but where the act is in itself unlawful, the proof of justification or excuse lies on the defendant, and, in failure thereof, the law implies a criminal intent.*⁶⁷ In such a case, “the act itself furnishes the evidence, that to its perpetration there was some causes or influences moving the mind.”⁶⁸

Upon review of the records, it is my position that the foregoing presumption should be applied against XXX because the prosecution was able to prove all the elements of Section 5(i) of Republic Act No. 9262, namely:

- (1) that the offended party is a woman *and/or* her child or children;
- (2) that the woman is either the wife or the former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child;
- (3) that the offender causes on the woman *and/or* child mental or emotional anguish; and
- (4) that the anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children, or other similar acts or omissions.⁶⁹

The records bear that the prosecution was able to prove the following against XXX:

⁶⁵ *People v. Aldemita*, 229 Phil. 448 (1986).

⁶⁶ *People v. Aquino*, G.R. No. 87084, June 27, 1990.

⁶⁷ *Pixley v. State*, 203 Ark. 42, 46 (Ark. 1941), *citing Harris v. State*, 34 Ark. 469; *State v. Boggs*, 103 W. Va. 641, 645 (W. Va. 1927).

⁶⁸ *People v. Delim*, 444 Phil. 430, 461 (2003).

⁶⁹ *See Acharon v. People*, G.R. No. 224946, November 9, 2021, *citing Dinamling v. People*, 761 Phil. 356, 373 (2015).

First, AAA is the private complainant and offended party.

Second, AAA is the legal wife of XXX, their marriage having been celebrated in 1999,⁷⁰ and they have a son together named CCC;⁷¹

Third, XXX caused emotional or mental anguish upon AAA.

Proof of mental and emotional anguish may consist of the testimony of the offended party, AAA, as such damage is personal to her.⁷² Thus, in a previous case, the Court held that the testimony of the wife, who mentioned that she could not sleep and was hurt by her husband's marital infidelity, is sufficient proof of the element of "mental or emotional anguish, public ridicule, or humiliation."⁷³

Here, AAA took the witness stand and adequately testified on the mental and emotional anguish that she suffered where she mentioned her experiences after discovering XXX's marital infidelity: (1) she kept on crying; (2) she could not sleep and was not able to go for work for three to four months; (3) she felt like she was being tortured; (4) she had to make herself feel numb from her hurt feelings; (5) she felt helpless in her situation; and (6) she felt that she was broken and about to go crazy:

DIRECT-EXAMINATION OF ATTY. MISLANG ON AAA

- Q So after learning about and confirming about the child and the mistress, what did you feel and what did you think of it?
- A *Hindi ko po alam kung paano ko tatanggapin yung ganon. Kasi tinanggap ko na po na nambabae siya. Pinilit ko yun. Kinondisyon ko yung utak ko para hindi na ako nasasaktan kasi ang sakit-sakit eh tuwing nalalaman mo, nararamdaman mo na may babae siya. Para akong tinorture pero walang tutulong sa akin eh. Sarili ko lang. Ayokong umiyak lagi. Gusto kong mabuhay [nang] maayos. Magawa ko na lahat ng kailangan kong gawin. Ginawa ko ng bato yung sarili ko. Kahit na minsan may napapansin ako hindi ko na sinasabi. Hindi ko na lang sinasabi kasi wala din naman akong panalo sa kanya eh. Sasabihin lang niya na hindi totoo. Umiyak lang ako. Ganon lang. Masunurin po akong asawa.*
- Q Did it have any affect (*sic*) on your work and every day activities?
- A *After nangyarin yan, opo. Hindi ako nakapag-trabaho. Hindi ako nakakatulog.*
- Q For how long were you not able to work?
- A Three months, four months.

⁷⁰ RTC records, pp. 42-43, Marriage Certificate between XXX and AAA.

⁷¹ *Id.* at 59-60, Pre-Trial Order signed by XXX.

⁷² *Dinamling v. People*, 761 Phil. 356, 376 (2015).

⁷³ *XXX v. People*, G.R. No. 241390, January 13, 2021.

Q So what were you doing during those three to four months?

A *Kung san-san po ako pumunta nun. Pumunta ako sa mga pinsan ko. Pumunta ako sa lola ko, pumunta ako sa mga tita ko. Hindi ko sinasabi na may problema ako. Yung isang tita ko nakausap ko siya. Eventually nasabi ko din kasi kailangan ko ng kausap. Pag hindi ako nagsalita mababaliw ako. Nararamdaman ko yung sarili ko hinding-hindi na ako maayos. Nararamdaman ko. Ayoko siyang makita. Ayokong makita yung bahay namin, Ayokong makita kahit anong gamit niya.⁷⁴*

Notably, AAA's testimony on the mental and emotional anguish that she suffered due to XXX's marital infidelity was corroborated by BBB.⁷⁵

Finally, the emotional or mental anguish suffered by AAA is due to XXX's marital infidelity, which was not only proven by the prosecution but also admitted by XXX himself. XXX's marital infidelity is an established fact. Indeed, during pre-trial, XXX stipulated that he is the father of DDD,⁷⁶ the fruit of his sexual congress with YYY. The prosecution's evidence further established that YYY is the mother of DDD and that he was born in 2011,⁷⁷ 12 years after XXX married AAA in 1999.⁷⁸ XXX himself admitted his marital infidelity in open court when he mentioned on direct examination that he had sexual relations with YYY sometime in January 2011.⁷⁹

Some members of the Court take the position that the prosecution was unable to discharge its burden of proof because, in their opinion, marital infidelity may only constitute psychological violence under Republic Act No. 9262 if it is used as a coercive control tactic, to

⁷⁴ TSN, AAA, June 8, 2017, pp. 17–19.

⁷⁵ TSN, BBB, June 25, 2017, pp. 17–19, which relevantly reads:

DIRECT-EXAMINATION OF ATTY. MISLANG ON BBB

Q Did you see the effect of the discovery of the mistress and the child on AAA?

A *Opo.*

Q What was the effect to AAA?

A *Yun pong emotion na iyak na (sic) iyak si AAA, parang normal po sa isang babae iyong hindi niya matanggap na niloko siya ng asaya nya. Iyak ng (sic) iyak, hindi siya humihinto sa kakaiyak.*

Q Did you have communication with AAA after the July 19, 2016 (sic)?

A *After July 19 po, siguro po mga ilang days na iyon after, pumunta po si AAA sa bahay.*

Q And what happened when she went to your house, if any?

A *Mayroon po siyang pinabasang text ni XXX sa kanya.*

Q What was the text message?

A *Yung text po ni XXX sa kanya eh iyong part na lang po na magpapakamatay siya at susunugin niya po iyong bahay.*

Q And what was the effect of the text on AAA?

A *Iyak ng iyak siyempre si AAA po. Hindi niya po alam kung anong gagawin nya.*

⁷⁶ RTC records, pp. 59–60, Pre-Trial Order signed by Allan.

⁷⁷ *Id.* at 57–58, Birth Certificate of DDD.

⁷⁸ *Id.* at 42–43, Marriage Certificate between XXX and AAA.

⁷⁹ TSN, XXX, August 24, 2017, pp. 8–14.

intimidate or dominate the other spouse, or to otherwise infringe on his/her autonomy and agency.⁸⁰ With due respect, I find that this statutory interpretation has no basis in the language of Republic Act No. 9262.

All that Section 5(i) of Republic Act No. 9262 requires, as applied to the present case, is for the prosecution to prove that XXX committed marital infidelity, which caused mental or emotional anguish, public ridicule, or humiliation to AAA. Indeed, the Court has previously held that the wife's discovery of her husband's marital infidelity was sufficient to cause her pain and suffering, even though she may not have been "*bodily present* to witness the unfaithfulness of her husband."⁸¹ Requiring the prosecution to prove circumstances that are not provided by law is impermissible judicial legislation.

Further, to take the stance that XXX's purported one-time marital infidelity is insufficient for conviction is to belittle the mental or emotional anguish suffered by AAA. As pointed out by Justice Jhosep Y. Lopez (Justice J. Lopez), it is unnatural for a person to allow his/her spouse to engage in sexual relations with another.⁸² Certainly, for all its faults, and though Members of the Court may opine differently, our society still values monogamy in marriages, such that our legal system is replete with various laws that penalize marital infidelity.⁸³ It is therefore not unreasonable to expect AAA to suffer mental or emotional anguish after she discovered XXX's marital infidelity, even if it supposedly happened only once. The Court has even previously stated that "[marital] infidelity is not measured in terms of frequency."⁸⁴

In my assessment, all the elements of Section 5(i) of Republic Act No. 9262 were proven by the prosecution. The very act of marital infidelity, a conduct which is not innocent in itself, *coupled with* the wife's emotional anguish, furnishes the evidence of XXX's criminal intent.⁸⁵ Surely, if the Court can make such presumption on intent from the *material results* of the act in criminal cases involving theft⁸⁶ and homicide,⁸⁷ it may also presume intent to cause mental or emotional anguish when the latter has been proven by the prosecution, as in this case.

⁸⁰ See Dissenting Opinions of Senior Associate Justice Marvic M.V. F. Leonen and Associate Justice Mario V. Lopez.

⁸¹ *XXX v. People*, G.R. No. 241390, January 13, 2021.

⁸² See Concurring Opinion of Associate Justice Jhosep Y. Lopez.

⁸³ *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017).

⁸⁴ *Quiogue, Jr. v. Quiogue*, G.R. No. 203992, August 22, 2022 [Per: J. M.V. Lopez].

⁸⁵ *Pixley v. State*, 203 Ark. 42 (Ark. 1941), citing *Harris v. State*, 34 Ark. 469; *State v. Boggs*, 103 W. Va. 641 (W. Va. 1927); *People v. Delim*, 444 Phil 430 (2003).

⁸⁶ In theft, intent to gain is also presumed when it is proven that the accused unlawfully took personal property owned by another. [*People v. Tagon, Jr.*, G.R. No. 247501, October 11, 2021].

⁸⁷ Intent to kill is presumed from the fact that the victim died. [*People v. Delim*, 444 Phil 430 (2003); *People v. Vasquez*, 474 Phil. 59 (2004); *Yapyuco v. Sandigonbayan*, 689 Phil. 75 (2012)].

B. *XXX is also presumed to have intended the resulting emotional or mental anguish suffered by his wife because it is the natural and probable consequence of his marital infidelity*

Further, it is presumed that a person intends the ordinary consequences of his/her voluntary act, and no person of sane mind should be allowed to escape the natural and ordinary consequences of his voluntary acts by pleading that he did not intend them.⁸⁸ Hence, the Court has held that intent on the part of the accused may be established by applying the principle that every person is presumed to intend the natural consequences of his/her acts.⁸⁹

To apply the foregoing principle, the Court must first address the question of whether mental or emotional anguish to the wife is a natural and ordinary consequence of the husband's marital infidelity. In my assessment, it is. As pointed out by the *ponencia*, what else could adulterers have expected to cause upon their spouse when they committed acts of unfaithfulness, aside from mental or emotional pain?⁹⁰ Thus, XXX, being of reasonable and sane mind, is presumed to have intended the natural and ordinary consequences of his marital infidelity, which caused mental or emotional anguish to AAA.

My conclusion is drawn from pertinent laws, jurisprudence, and the legislative history of Republic Act No. 9262.

First, even Article 247⁹¹ of the Revised Penal Code recognizes marital infidelity as a conduct so atrocious that catching someone's spouse in the act of having sexual intercourse with another is considered an exceptional circumstance. In such a situation, the law recognizes that the

⁸⁸ See RULES OF COURT, Rule 131, sec. 3(c).

⁸⁹ *People's Bank and Trust Co. v. Syvel's Inc.*, 247 Phil. 209 (1988).

⁹⁰ *Ponencia*, p. 12.

⁹¹ Art. 247. *Death or physical injuries inflicted under exceptional circumstances.* - Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.

innocent spouse will be so overcome with passion and obfuscation, or a fit of rage, to the point of homicidal acts.⁹²

Second, Article 68 of the Family Code expressly states that the “husband and wife are obliged to live together, observe mutual love, respect and *fidelity*, and render mutual help and support.” Thus, Article 55 of the Family Code identifies sexual infidelity as one of the grounds for legal separation that may be taken as evidence that mental or emotional anguish to the innocent spouse is a natural consequence of marital infidelity.

Finally, in assessing intent as derived from the natural and probable consequences of an unlawful act, the Court must still be guided by common sense, logic, and human experience.⁹³ As earlier discussed, the normative expectation among married couples is monogamy; indeed, marriage and the family remain as inviolable social institutions in the Philippines and recognized as such by the 1987 Constitution.⁹⁴ Surely, Filipino mores and common sense dictate that unfaithfulness by a spouse will offend the other, as pointed out by Justice J. Lopez.⁹⁵

Hence, XXX should have known that his marital infidelity would cause anguish to AAA, his legal wife. Common sense dictates that XXX should have and would have known how offensive his marital infidelity was to AAA, especially considering that, by his own admission, he and AAA were living together under one roof when he had sexual relations with YYY, and it was only when AAA found out about his extra-marital relations that they lived separately.⁹⁶ Knowing the same yet still proceeding with his unfaithfulness, XXX is presumed to have intended the natural and probable consequences of his unfaithfulness.

The burden then shifts to XXX to prove that he lacked the specific intent to cause mental or emotional anguish to AAA when he had sexual relations with YYY.⁹⁷ Such intent may be negated by showing that at the time he had sexual relations with YYY, he and AAA were living separately and had mutually agreed that they are both free to resume

⁹² *People v. Marquez*, 53 Phil. 260 (1929); *People v. Dequiña*, 60 Phil. 279 (1934); *People v. Oyanib* 406 Phil. 650 (2001).

⁹³ See *People v. Julie*, 253 Phil. 578 (1989) and *People v. Baylon*, May 29, 1974, 156 Phil. 87 (1974). In *People v. Benigno Ang*, 223 Phil. 333, 342 (1985), the Court held that in cases involving theft, robbery, or assault, the mitigating alternative circumstance of lack of instruction cannot be appreciated in favor of the accused because “[n]o one, however unschooled he may be, is so ignorant as not to know that theft or robbery, or assault upon the person of another is inherently wrong and a violation of the law.”

⁹⁴ CONST., art. XV, secs. 1 and 2.

⁹⁵ See Concurring Opinion of Associate Justice Josep Y. Lopez.

⁹⁶ TSN, XXX, August 24, 2017, pp. 5–6.

⁹⁷ *People v. Delim*, 444 Phil. 430 (2005); *People v. Vasquez*, 474 Phil. 59 (2004); *Yapyuco v. Sandiganbayan*, 689 Phil. 75 (2012).

romantic or sexual relations with others.⁹⁸ Any alleged mental or emotional anguish to AAA may also be defeated by demonstrating that XXX and AAA have been separated for some time by their mutual consensus, and that XXX has been engaging in extra-marital relations with YYY publicly and notoriously.⁹⁹

However, XXX failed to establish any of the foregoing circumstances negating any intent on his part to cause mental or emotional anguish to AAA. Perforce, the presumption that XXX acted with criminal intent to cause mental or emotional anguish to AAA stands, and his conviction for violation of Section 5(i) of Republic Act No. 9262 is warranted.

IV. *Even assuming that mens rea is required, the standard of culpable mental state in Republic Act No. 9262 allows conviction based on reckless conduct*

Even assuming that intent or *mens rea* is required for XXX's conviction, it is clear from Republic Act No. 9262 that an accused may be held criminally liable for violations of its provisions based on *reckless conduct*.

In the context of Section 5(i), Republic Act No. 9262, "intent" may be interpreted as one that requires the prosecution to show that the accused committed the prohibited act for the *specific purpose* of "causing mental or emotional anguish, public ridicule or humiliation to the woman or her child." However, the degree of the accused's culpable mental state is not limited to purposeful or knowing conduct. *The culpable mental state of the accused may also be based on recklessness and criminal negligence.* Significantly, the Court has ruled that *negligence or indifference to duty or to consequences* may rise to the level of or be equivalent to criminal intent.¹⁰⁰

The standards of *mens rea* are the following: (1) *purpose*, where the accused acts with *specific intent* to cause the results of his/her conduct; (2) *knowledge*, where the accused commits the prohibited act knowing that it will result in harm; (3) *recklessness*, where the accused consciously disregards a substantial and unjustifiable risk that the conduct will cause harm to another; and (4) *negligence*, where the accused fails to perceive, even though he/she should be aware of, a substantial and unjustifiable risk to his/her conduct.¹⁰¹ The degree of *mens rea* to support a judgment of

⁹⁸ See *Matubis v. Praxedes*, 109 Phil. 789 (1960).

⁹⁹ See *U.S. v. Rivera*, 28 Phil. 13 (1914).

¹⁰⁰ *U.S. v. Elviña*, 24 Phil. 230 (1913), citing *U.S. v. Catalico*, 18 Phil. 504 (1911).

¹⁰¹ See *Borden v. United States*, 141 S. Ct. 1817, 1823–1824 (2021).

conviction will depend on the language of the statute.¹⁰² A higher standard of *mens rea* makes it harder for the prosecution to substantiate the needed inferences to establish intent.¹⁰³

Particularly with regard to “recklessness” as a standard of criminal liability, it is committed when the accused “acted willfully and wantonly, in utter disregard of the consequence of his or her action,” as it is the “inexcusable lack of precaution or conscious indifference to the consequences of the conduct which supplies the criminal intent and brings an act of mere negligence and imprudence under the operation of the penal law[.]”¹⁰⁴ It is “wanton and reckless disregard of the consequences and of the rights and of the feelings of others” that is “conceived in the spirit of mischief or of “criminal indifference to civil obligations.”¹⁰⁵ *Recklessness requires the accused to actually foresee the risk involved and to consciously decide to ignore it.*¹⁰⁶

To show that an accused acted with criminal recklessness, the prosecution must establish that (1) the alleged act or omission, viewed *objectively* at the time of its commission, created a substantial and unjustifiable risk of the type of harm that occurred; (2) the risk was of such a magnitude that disregard of it constituted a *gross deviation* from the accepted standard of care that a reasonable person would have exercised in the same situation; (3) the accused was consciously aware or knew of the “substantial and unjustifiable” risk at the time of the conduct; and (4) the accused consciously disregarded that risk.¹⁰⁷

¹⁰² *Id.*

¹⁰³ *Counterman v. Colorado*, 600 U.S. 66, 143 S. Ct. 2106, 2117–2118 (2023).

¹⁰⁴ *Valencia v. People*, 889 Phil. 450, 462 (2020).

¹⁰⁵ *Davis v. Hearst*, 160 Cal. 143, 172–173 (Cal. 1911).

¹⁰⁶ *Williams v. State*, 235 S.W.3d 742, 750–753 (Tex. Crim. App. 2007), which relevantly states:

Thus, “[a]t the heart of reckless conduct is conscious disregard of the risk created by the actor’s conduct[.]” As has often been noted, “[m]ere lack of foresight, stupidity, irresponsibility, thoughtlessness, ordinary carelessness, however serious the consequences may happen to be,” do not suffice to constitute either culpable negligence or criminal recklessness. *Recklessness requires the defendant to actually foresee the risk involved and to consciously decide to ignore it. Such a “devil may care” or “not giving a damn” attitude toward the risk distinguishes the culpable mental state of criminal recklessness from that of criminal negligence, which assesses blame for the failure to foresee the risk that an objectively reasonable person would have foreseen. “Those who are subjectively aware of a significant danger to life and choose, without justification, to engage in actions (or in some cases inactions) that threaten to bring about that danger have made a calculated decision to gamble with other people’s lives.” This combination of an awareness of the magnitude of the risk and the conscious disregard for consequences is crucial. “It is callous disregard of risk, and not awareness *vel non* of risk, however, which is critical.” And, of course, determining whether an act or omission involves a substantial and unjustifiable risk “requires an examination of the events and circumstances from the viewpoint of the defendant at the time the events occurred, without viewing the matter in hindsight.” (Emphasis supplied)*

¹⁰⁷ *Commonwealth v. Sanders*, 259 A.3d 524, 532 (Pa. Super. Ct. 2021). See also *See Borden v. United States*, 141 S. Ct. 1817, 1823–1824 (2021).

As earlier mentioned, the required standard of *mens rea* is derived from the language of the statute itself.¹⁰⁸ Thus, in *Voisine v. United States*,¹⁰⁹ it was held that the standard of recklessness was sufficient for conviction in a crime involving domestic violence, because the statute punished the act of “use or attempted use of physical force.”¹¹⁰ The U.S. Supreme Court considered that the term “use” “does not demand that the person applying force have the purpose or practical certainty that it will cause harm, as compared with the understanding that it is substantially likely to do so. Or, otherwise said, that word is *indifferent* as to whether the actor has the mental state of intention, knowledge, or recklessness with respect to the harmful consequences of his volitional conduct.”

Here, the language of the statute itself allows conviction for violations of Section 5(i) of Republic Act No. 9262 on the basis of reckless conduct. Indeed, Section 5(h) of Republic Act No. 9262 clearly recognizes that emotional or psychological distress may be caused through “*reckless conduct*,” viz.:

- (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: . . . (Emphasis supplied)

While “reckless conduct” is mentioned only in Section 5(h) of Republic Act No. 9262, there is basis to state that it may also be extended to violations under Section 5(i) of the same law. Indeed, in determining whether the prohibited act is *mala in se* or *mala prohibita*, the Court may review the language of the law and the totality of its provisions to conclude the degree of culpable mental state required by the statute. To this end, a term evincing intent in one section of the law or element of the crime may modify and be extended to another, such that *scienter* may also be required for the other elements of the offense.¹¹¹

It also bears reiterating that the acts of psychological violence in Section 3(c) of Republic Act No. 9262 are subsumed in Sections 5(h) and 5(i) of the same law.¹¹² Thus, both these sub-sections involve

¹⁰⁸ *Id.*

¹⁰⁹ *Voisine v. United States*, 579 U.S. 686, 69293, 136 S. Ct. 2272, 2278–2279 (2016).

¹¹⁰ In *Voisine*, the subject penal law was “misdemeanor crime of domestic violence”, which is “an offense that . . . (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the **use or attempted use of physical force**, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common; by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”

¹¹¹ *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 77–78, 115 S. Ct. 464, 471–472 (1994).

¹¹² It is evident from Section 3(c) in relation to Section 5, paragraphs (h) and (i), of RA 9262 that the law distinguishes between acts of psychological violence that are deliberate, knowing, and purposeful, and those acts which are prohibited when they cause mental or emotional anguish. Particularly, Section 3(c) of the law defines “psychological violence” and enumerates acts constituting it. These acts of psychological violence are punished either in paragraph (h) or

psychological violence. The penalties¹¹³ for violations under Sections 5(h) and 5(i) are even the same. The standard of culpable mental state for psychological violence under Section 5(i) may therefore be based on Section 5(h).

Further, Section 5(i) of Republic Act No. 9262 penalizes “[c]ausing mental or emotional anguish, public ridicule or humiliation to the woman or her child” through marital infidelity. Similar to *Voisine*, there is nothing in the language of the statute indicating that it is limited to “knowing” or “purposeful” acts calculated to result in mental or emotional anguish, public ridicule, or humiliation. It is *indifferent* as to whether the actor has the mental state of intention, knowledge, or recklessness with respect to the harmful consequences of his volitional conduct.

With these in mind, and to address the constitutional concerns of some members of the Court in the enforcement of Section 5(i) of Republic Act No. 9262 if intent is not required, I submit that the degrees of culpable mental state in Section 5(h) of Republic Act No. 9262 may also be extended to Section 5(i) of the same law. This means that XXX’s conviction for violation of Section 5(i) of Republic Act No. 9262 must be affirmed if it is shown that he acted with “purposeful, knowing, or *reckless conduct*.” As discussed below, I find that XXX acted in *reckless* disregard of or with conscious indifference to the consequences of his marital infidelity, which resulted in mental or emotional anguish to his wife, AAA.

V. *The evidence on record establishes
XXX’s malice and criminal intent
through his reckless conduct*

Upon review of the evidence on record, it is my assessment that XXX intended to cause mental or emotional anguish to AAA when he committed marital infidelity. At the very least, he knew that his conduct

paragraph (i) of Section 5. While paragraphs (h) and (i) of Section 5 both refer to acts of psychological violence enumerated in Section 3(c), only paragraph (h) requires the conduct to be purposeful, knowing, or reckless.

¹¹³ Sec. 6. *Penalties*. - The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

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

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than three hundred thousand pesos (300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court. (Emphasis supplied)

would necessarily cause mental or emotional anguish to AAA, yet he proceeded to commit marital infidelity anyway. He acted in reckless disregard of his marital vows and with conscious indifference to the consequences of his conduct *vis-à-vis* AAA's mental and emotional state, warranting his conviction for violation of Section 5(i) of Republic Act No. 9262.

A. *XXX's marital infidelity created a substantial and unjustifiable risk of mental or emotional anguish to AAA*

As discussed above, mental or emotional anguish to the innocent spouse is a natural and probable consequence of marital infidelity, considering that marriage is a protected and inviolable institution under Philippine laws and the Constitution. XXX's marital infidelity therefore created a substantial and unjustifiable risk that AAA will suffer mental or emotional anguish.

I concur in the observation of Justice J. Lopez that Allan's sole defense is premised on the absence of a "mistress" relationship with YYY because, purportedly, they only had a one-night stand.¹¹⁴ However, as pointed out by the *ponencia*, a one-time sexual intercourse between a husband and a woman who is not his wife is sufficient to commit marital infidelity under Republic Act No. 9262.

In any case, I stress that the prosecution has established continuing romantic relations between XXX and YYY, and that their relationship is more than what XXX claims it to be.

First, Jennifer Santos, a desk officer of Barangay ██████████ ██████████ City, who attended to AAA's complaint against XXX, testified that during the barangay proceedings between the spouses, XXX admitted his relationship with YYY, stating, "*kinasama po niya [XXX] iyong tao na iyon na si YYY.*"¹¹⁵ This reveals that XXX did not just have a one-

¹¹⁴ See Concurring Opinion of Associate Justice Joseph V. Lopez.

¹¹⁵ TSN, Jennifer Santos, June 22, 2017, pp. 7-8, which relevantly reads:
DIRECT- EXAMINATION OF ATTY. MISLANG ON JENNIFER SANTOS

Q So did the parties talk to each other?

A Yes, ma'am.

Q What was their conversation about if you can remember?

A Ang pinag-uusapan po nila, gusto sana na maging maayos ng complainant na si AAA and relasyon nila doon sa asawa niyang si XXX.

Q So what was the reply of XXX?

A Ang gusto kasing mangyari ni XXX is, hindi na makipagbalikan po kay AAA na asawa niya po.

time sexual tryst with YYY, for he even considered her as his “*kinasama*” or romantic partner. Great weight must be given to the testimony of Jennifer Santos because, being an official of Barangay [REDACTED] City, she enjoys the presumption of regularity in the performance of her official duties.¹¹⁶

Second, BBB clearly testified on YYY’s admission that she and XXX have been together for some time. Specifically, YYY answered in the affirmative when BBB asked her if she and XXX have been together for long.¹¹⁷

I find that BBB’s testimony on the foregoing matter is not inadmissible hearsay; instead, it constitutes an extra-judicial admission by YYY, XXX’s co-conspirator for the violation of Republic Act No.9262, which is an exception to the hearsay rule under Rule 130, Section 31,¹¹⁸ of the Rules of Court.¹¹⁹

Q Aside from this, was there other conversation that happened?

A *Noong nangyari po kasi iyon, nasaktan po ma’am si AAA so umiyak po siya noong oras na iyon.*

Q Was there any admission by XXX?

A *Yes po, ma’am.*

Q What did he say?

A *Ang sabi niya po na kinasama po niya iyong tao na iyon na si YYY tapos po gusto rin naman po niyang hiwalayan po, ma’am, tapos iyon tapos bibisitahin na lang daw po niya iyong anak niya.*

¹¹⁶ *Office of the Ombudsman v. Manlulu*, G.R. No. 215986, September 21, 2020 [Notice].

¹¹⁷ TSN, BBB, June 15, 2017, pp. 14 and 16–17, respectively, which relevantly reads:

Q You have a conversation with YYY.

A Yes.

Q What was your conversation?

A *Tinanong ko po si YYY kung matagal na sila ni XXX. Sumagot po si YYY ng...*

Q And what was the reply of YYY?

A *Oo, sabi niya.*

Q So after staying in the house, what happened next, if any?

A *Nagpaalam na po ako kay YYY. Binigyan nya kasi ako ng tubig, pinainum niya ako doon sa loob. Nagkwentuhan kami, tinanong ko si YYY kung alam nyang may asawa na si XXX.*

Q And what was her reply?

A *Opo.*

¹¹⁸ Sec. 31. *Admission by conspirator.* - The act or declaration of a conspirator in furtherance of the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration.

¹¹⁹ The rule on admission by a conspirator prescribes that the act or declaration of the conspirator relating to the conspiracy and during its existence may be given in evidence against co-conspirators provided that the conspiracy is shown by independent evidence aside from the extrajudicial confession. Thus, in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that (a) the conspiracy be first proved by evidence other than the admission itself (b) the admission relates to the common object and (c) it has been made while the declarant was engaged in carrying out the conspiracy. Otherwise, it cannot be used against the alleged co-conspirators without violating their constitutional right to be confronted with the witnesses against them and to cross-examine them. *Tamargo v. Awingan*, 624 Phil. 312, 327–328 (2010).

It bears pointing out that XXX testified that *YYY herself was a married woman*.¹²⁰ It thus appears that XXX is YYY's co-conspirator in the crime of Adultery. Hence, YYY's statement to BBB, as narrated by the latter, must be given weight, considering that it even constitutes an admission of adulterous acts on YYY's part,¹²¹ and she would not have lied about this matter to incriminate herself for Adultery.¹²² For the same reason, XXX's testimony on the marital status of YYY is equally credible under Rule 130, Section 27¹²³ of the Rules of Court; it is an admission against his interest as YYY's co-conspirator for Adultery.

Finally, in convicting XXX, the RTC observed that XXX was only wearing his undershirt and slippers at YYY's house, and "logic dictates that one would not be too cozy with a woman he was intimate with for only one night."¹²⁴ The RTC's findings are supported by the testimony of BBB, who mentioned that during the confrontation on July 19, 2016, XXX was wearing *white boxer shorts*, jeans, and slippers.¹²⁵ BBB additionally testified that XXX *removed his shoes* at YYY's house and even had to ask one of the *tanods* of Barangay [REDACTED] to fetch the shoes for him.¹²⁶ XXX likewise stated on cross-examination that when he was at YYY's house, he *removed his polo* and was seen wearing only his sando, his undershirt, and jeans.¹²⁷

XXX's cozy outfit at YYY's house, taken together with the rest of the prosecution's evidence, demonstrates that he was, in truth, cohabiting with YYY. Certainly, if XXX was simply granted visitation rights by YYY, it was suspect that he would be so comfortable at YYY's house as to remove his shoes and polo shirt, and even stay there with only his undershirt on and his white boxer shorts visible.

B. The risk created is not a mere remote possibility but a likelihood of substantial harm, such that its disregard constitutes

¹²⁰ TSN, XXX, August 24, 2017, pp. 33-34.

¹²¹ *See De Ocampo v. Florenciano*, 107 Phil. 35, 40 (1960), which relevantly states:

Here, the offense of adultery had really taken place, according to the evidence. The defendant could not have *falsely told* the adulterous acts to the Fiscal, because her story might send her to jail the moment her husband requests the Fiscal to prosecute. She could not have practiced deception at such a personal risk.

¹²² *Id.*

¹²³ Sec. 27. *Admission of a party.* — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him or her.

¹²⁴ RTC records, p. 113; RTC Decision, p. 12.

¹²⁵ TSN, BBB, June 15, 2017, p. 16.

¹²⁶ *Id.* at 14.

¹²⁷ TSN, XXX, August 24, 2017, pp. 42-43.

a gross violation of accepted standards of care under the relevant laws

The risk of substantial harm to AAA that may result from XXX's marital infidelity was of such *magnitude* that XXX's disregard of the risk constituted a *gross deviation* from the accepted standard of care that a reasonable husband would have exercised in the same situation. To repeat, under Article 68 of the Family Code, the spouses are obliged to "observe mutual love, respect and fidelity, and render mutual help and support." There cannot be any quibbling that XXX's marital infidelity is a gross deviation from accepted standards of care for his wife that a husband must observe under Article 68 of the Family Code.

The risk of harm to AAA was not a remote possibility, but a *strong likelihood*, given that, as earlier mentioned, XXX and his wife were living together under the same roof at that time and were even jointly raising their son.¹²⁸ The likelihood of resulting harm from XXX's marital infidelity is even heightened because, by XXX's own testimony, AAA has been supporting XXX's lifestyle by gifting him a car¹²⁹ and providing him financial support.¹³⁰ Incidentally, the very same car gifted by AAA to XXX is the vehicle that he used to visit YYY in ██████████ City.¹³¹

Evidently, AAA was committed in their conjugal relationship and has been complying with her spousal obligation to render mutual help and support to her husband, XXX. Consequently, it is not unreasonable to conclude that any betrayal of such trust by XXX created a strong likelihood of substantial harm—by way of mental or emotional anguish—to AAA.

C. XXX was conscious of or had knowledge of the substantial and unjustifiable risk that his marital infidelity created

¹²⁸ TSN, XXX, August 24, 2017, pp. 5–6.

¹²⁹ On cross-examination, XXX testified that he does not have a car registered in his name. The car that he uses was gifted to him by AAA. [TSN, XXX, August 24, 2017, p. 51]

¹³⁰ On direct examination, XXX testified that AAA is the one who is paying for the rental fees for the condominium unit in ██████████, Manila, that XXX and his son were staying in. [TSN, XXX, August 24, 2017, p. 21] He further testified on direct examination that AAA is supporting him financially and is the one who controls the funds in their marriage, stating, "[n]akakahiya mang aminin, ma'am, na siya [AAA] po ang bumubuhay sa akin." [TSN, XXX, August 24, 2017, pp. 25–26]

¹³¹ On cross-examination, XXX testified that he uses the car gifted to him by AAA when visiting YYY. He would park this car along ██████████ Street, in front of YYY's apartment. [TSN, XXX, August 24, 2017, p. 51]

“Knowledge” refers to a mental state of awareness of a fact.¹³² Because knowledge is a state of mind, it must be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances; it may also be inferred from the attendant events in each particular case.¹³³

In the present case, the attendant circumstances and XXX’s conduct before, during, and after the marital infidelity reveal that he foresaw the substantial risk of harm to AAA created by his violation of his oath of fidelity to his wife. That is, he was *consciously aware* or had *knowledge* that his marital infidelity created the substantial and unjustifiable risk of mental or emotional anguish to AAA.

First, it is well recognized that attempts to conceal the *corpus delicti* or evidence of a crime indicates knowledge of illegality.¹³⁴

Here, as admitted by XXX on direct testimony, and based on the stipulations¹³⁵ by the parties and the prosecution’s evidence,¹³⁶ XXX had sexual relations with YYY in January 2011.¹³⁷ However, he *concealed* this from AAA, who found out about YYY only on July 19, 2016, the date when AAA appeared at the residence of YYY in Barangay [REDACTED] City.¹³⁸

Further, when AAA went to the residence at [REDACTED] City, on July 19, 2016, XXX did not want to face her and refused to go out and meet her for a time.¹³⁹ It was only when AAA’s mother went inside the house, and when AAA’s mother told XXX, “*sige kung hindi ka lalabas, doon na lang tayo sa opisina mo mag-usap*,” that XXX finally went out to meet AAA.¹⁴⁰

XXX’s furtive behavior is certainly inconsistent with what an innocent man would do. Indeed, why would XXX conceal his infidelity from AAA and even refuse to immediately meet her at [REDACTED] City, if he did not know that his conduct would cause, as it indeed caused, mental or emotional anguish upon AAA? Certainly,

¹³² *People v. Peñaflorida, Jr.*, 574 Phil. 269, 272 (2008).

¹³³ *Id.*

¹³⁴ *San Jose v. People*, G.R. No. 236336, April 23, 2018 [Notice].

¹³⁵ As stated in the Pre-Trial Order signed by XXX, he stipulated that he is the father of DDD, YYY’s son [RTC records, pp. 59–60].

¹³⁶ The prosecution offered into evidence the Birth Certificate of DDD as its Exhibit “E,” where it is shown that DDD was born on [REDACTED] [RTC records, pp. 57–58].

¹³⁷ TSN, XXX dated August 24, 2017, pp. 8–14.

¹³⁸ Records, pp. 11–13; TSN dated June 8, 2017, pp. 10–13.

¹³⁹ TSN, AAA, June 15, 2017, pp. 11–12 and June 8, 2017, p. 12, respectively.

¹⁴⁰ *Id.*

“[a] guilty conscience makes a man such a coward as to bring himself out in the open.”¹⁴¹

Second, AAA’s testimony on direct examination reveals that XXX reacted negatively and even threatened self-harm when she mentioned to him that she sought advice from lawyers about her rights and the legal remedies available to her after she found out that XXX had sexual relations with YYY and even fathered her son, DDD. XXX’s conduct is indicative of a person with a guilty conscience and who fears reprisal from his victim, AAA.¹⁴² When AAA stated that she wanted XXX to be incarcerated, XXX was so upset to the point of threatening self-harm.¹⁴³ Surely, an innocent husband who has been observing the laws would not fear incarceration or retribution from his wife.

Third, XXX was uniquely situated to understand that his marital infidelity created a substantial risk of emotional or mental anguish to AAA. I repeat that AAA was financially supporting XXX, even going so far as to gift him a car. As the recipient of AAA’s care, XXX would have been aware that AAA would be particularly hurt to discover his marital infidelity despite the support that she has extended to her husband.

Respectfully, I do not subscribe to the view that a one-night stand, concealed by the husband but later on discovered by the wife, cannot be taken as an act of psychological violence;¹⁴⁴ or that XXX’s concealment of the marital infidelity is evidence of his intent *not* to cause mental or emotional anguish to his wife, his shame and humiliation, and his desire to spare AAA mental or emotional distress.¹⁴⁵

The foregoing conclusion goes against some of the most basic tenets of criminal law—concealment of the *corpus delicti* is evidence not only of guilt but also of discernment.¹⁴⁶ It is also manifestly violative of the clear provisions of the Family Code on fidelity. Such ruling rewards only the most ingenious unfaithful spouse, for their marital infidelity will not be considered as intentional infliction of mental or emotional anguish upon their clueless spouse, so long as they craftily conceal it. Though their betrayal is later discovered by the innocent spouse, their cover-up would even be taken as an act of benevolence, to “spare” the innocent spouse from emotional distress. This is absurd. It is willful blindness to

¹⁴¹ *People v. Peran*, 289 Phil. 597, 606 (1992).

¹⁴² Fear of reprisals is indicative of guilt. *People v. Villamin*, 64 Phil. 880 (1937); *People v. Cruz*, 219 Phil. 469 (1985); *People v. Zumil*, 341 Phil. 173 (1997).

¹⁴³ TSN, AAA, June 8, 2017, p. 19.

¹⁴⁴ See Dissenting Opinions of Senior Associate Justice Marvic M.V. F. Leonen, Associate Justice Alfredo Benjamin S. Caguioa and Associate Justice Mario V. Lopez.

¹⁴⁵ See Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa.

¹⁴⁶ *Dorado v. People*, 796 Phil. 233 (2016); *People v. Lacson*, 83 Phil. 574 (1949).

the fact that the innocent spouse would not have suffered such mental or emotional anguish had the offending spouse chosen to observe his/her civil obligation of fidelity to his/her spouse.

To repeat, the Court has previously held that the wife's discovery of her husband's marital infidelity was sufficient to cause her pain and suffering, even though she may not have been "*bodily present* to witness the unfaithfulness of her husband."¹⁴⁷ The discovery of marital infidelity, though it may have happened after the fact, was sufficient to cause mental or emotional anguish. I do not see any need for the Court to depart from this ruling.

D. *XXX willfully engaged in marital infidelity with YYY and consciously disregarded the risk of harm to AAA*

XXX's reckless conduct and conscious disregard of the consequences of his marital infidelity to AAA is on record. His testimony reveals that he deliberately, voluntarily, and romantically pursued YYY in January 2011, as shown by the following: (1) XXX helped YYY, then a customs representative, with her shipment at the port of Davao, where XXX was stationed as an administrative aide of the Bureau of Customs; (2) he went out with YYY on a date later that night; (3) in the course of their date, the two had drinks; (4) after their date, XXX accompanied YYY to her hotel (*hinatid*), where they consummated their carnal desires; and (5) XXX slept with YYY in her hotel room, returned to her later, and accompanied her to the airport. On direct examination, XXX testified:

DIRECT-EXAMINATION OF ATTY. BANSUELO ON XXX

Q So she's the mother of your love child. You had a child with YYY?

A Yes, Ma'am.

Q When did you have a child with YYY?

A *Ipinanganak po iyong bata ng [REDACTED]*

Q So you had a relationship with YYY?

A *Wala pong naging relasyon, parang one night stand lang.*

Q So the child was born [REDACTED]. So when did you get to meet YYY?

A *Mga exact year, 2009, 2010. Hindi ko po ano, wala pong exact na -- Kasi po nagkikita lang po kami sa work.*

¹⁴⁷ *XXX v. People*, G.R. No. 241390, January 13, 2021.

Q Ah! The first time you saw her was around 2009.

A Yes, Ma'am.

Q When was the second time?

A *Nagkita po kami sa birthday po nung – May birthday po akong inattendan, dun po kami nagkita ulit.*

Q And did you have a relationship after that?

A *Wala na po.*

Q When did you have sexual relation with YYY?

A 2011.

Q What month in 2011?

A January 2011 *po.*

Q January 2011 and the child was born on October.

A Yes.

Q And what occasion was this when you had a relation with YYY?

A *Kasi, ma'am, na assigned po ako sa Port of Davao.*

Q When was that?

A 2010 *po.*

Q 2010. So what happened when you were assigned in Davao? So you were assigned in Davao sometime in 2010.

A 2010.

Q What happened? How come you had suddenly sexual relations with YYY?

A *Kasi nga ma'am, nasa Davao nga po ako dahil dun po ako na assigned eh siya po bilang custom's (sic) representative, may naligaw po silang shipment sa Port of Davao.*

Q And what happened?

A *Nagkita po kami sa Port of Davao, tinulungan ko po siya kasi first time din po niya na pumunta doon together with her boss.*

Q And when was this?

A *Yun po iyong second time po naming na magkita, iyon nga po noong January na pumunta sila doon.*

Q Around January 2011.

A *Opo.*

Q So you helped her with their shipment.

A *Opo, ma'am, kasi tinutiro ko po kung saan opisina siya pupunta.*

- Q So what happened next after you helped her?
A *Pagkatapos po niyang iprocess iyong shipment nila doon kasi hindi pa makakalabas so kinabukasan pa po lalabas, iniwan po siya ng boss niya kasi yung boss niya babalik na ng Manila.*
- Q What happened next?
A *Noon pong gabi, lumabas po kami.*
- Q You mean you had a date that evening?
A Yes, ma'am.
- Q And during that day, what happened, that's when you had relations.
A *Nag inum po kami, ma'am, tapos...*
- Q You had a drink.
A Yes, ma'am.
- Q So what happened after you had your drink?
A *Medyo nakainum po, hinatid ko po siya dun sa hotel.*
- Q So happened in the hotel?
A *Mayroon pong nangyari.*
- Q You mean you had sexual relations?
A *Opo.*
- Q How many times did you have sexual relations after that evening with YYY?
A *Hindi na po naulit.*
- Q It never happened.
A *Hindi na po.*
- Q So after that date, you mean to say, you never had anymore sexual relations with YYY?
A *Wala na po.*
- Q Did you get to meet again after that date on January?
A *Noong pong hinatid ko pa siya ng hotel nun kasi doon na rin po ako natulog kasi kinabukasan kailangan ko pang umuwi ng boarding house kasi papasok pa po ako.*
- Q So you left her.
A *Iniwanan ko po siya [sa] hotel tapos binalikan ko siya. Sinamahan ko siya ulit sa pier po. Pagkatapos po, nung ma-release, hinatid ko po siya sa airport.¹⁴⁸*

XXX's testimony reveals his criminal intent. He recklessly and shamelessly behaved like an unmarried man when he romantically pursued YYY. His reckless conduct rises to the level of intent to cause

¹⁴⁸ TSN, XXX, August 24, 2017, pp. 8-14.

AAA mental or emotional anguish. It demonstrates his utter lack of even the slightest care for AAA and how she would feel if she knew that her husband broke his vow of fidelity to her by romantically pursuing another woman, taking her out on a date, and even engaging in amorous sexual relations with her.

Respectfully, I also disagree with the view that XXX did not intend to cause mental or emotional anguish to AAA because he remained present for AAA and CCC, continued to support them, and was even paying for utility and rent bills.¹⁴⁹ As pointed out by Justice Lazaro-Javier, XXX could continue to support AAA and CCC yet still be guilty of marital infidelity. Indeed, continuing support and marital infidelity are not mutually exclusive. An unfaithful husband may even be more solicitous towards his wife to cover up his philandering ways. As previously held by the Court, “[a] man could hide his evil motives and immoral conduct behind a deceptive facade.”¹⁵⁰ It stands to reason that a husband who has illicit relations with a woman may even be over-solicitous with his wife to camouflage his infidelity.¹⁵¹

A final word. As late as 2015, in *Perfecto v. Esidera*,¹⁵² the Court was quick to castigate a judge who violated her marital vows, even pointing out that her act of cohabiting, having sexual relations, and siring a child with her paramour had “legal implications.” It did not matter to the Court that her marriage to her husband was never consummated, that they never lived together, and that they had long been estranged when she pursued romantic relations with another man. The law is the law, and the Court must consider and apply it as such.

In XXX’s case, the prosecution has proven all the elements of his violation of Section 5(i), RA 9262. Given the prosecution’s evidence establishing XXX’s culpable mental state, the Court should not bend over backwards to accommodate XXX’s actions. Excuses have been proffered for his willful marital infidelity and reckless disregard of the consequences thereof, e.g., that the Philippines is one of the few remaining countries to criminalize marital infidelity, that he just had a one-night stand with YYY, that he continued to support his son with AAA, or that he “cared” enough to conceal his infidelity from AAA.

¹⁴⁹ See Dissenting Opinion of Associate Justice Mario V. Lopez.

¹⁵⁰ *People v. Fontanilla*, 132 Phil. 672, 587 (1968).

¹⁵¹ *Id.*

¹⁵² *Perfecto v. Esidera*, 764 Phil. 384 (2015), cited in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017).

Following case law¹⁵³ and the disquisition above, the Court must address only the following issues: (1) whether XXX committed marital infidelity; (2) whether the marital infidelity, if committed by XXX, caused mental or emotional anguish to AAA; and (3) whether XXX, supposing he committed marital infidelity, acted with a culpable mental state—purposeful, knowing, or reckless conduct. *If XXX, conscious of how his marital infidelity will result in substantial harm to his wife, decides to be unfaithful anyway, in reckless disregard of the consequences of his action, then he is guilty of violating Section 5(i) of Republic Act No. 9262.* The Court need not look any further or consider factor extraneous from what the law requires.

From *Esidera* to the instant case, the laws remain unchanged; only the sexes of the unfaithful partners have. If the laws on marriage are strictly enforced against the wife, I fail to see why we cannot take the same stance against the husband.

Accordingly, I vote to **DENY** the Petition and **AFFIRM** the conviction of XXX for violation of Section 5(i) of Republic Act No. 9262.


HENRI JEAN PAUL B. INTING
Associate Justice

¹⁵³ *Dinamling v. People*, 761 Phil. 356 (2015).