

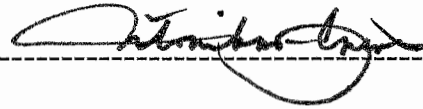
EN BANC

G.R. No. 252739 (XXX, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent).

Promulgated:

April 16, 2024

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CONCURRING OPINION

LOPEZ, J., J.:

“Let marriage be held in honor among all, and let the marriage bed be undefiled, for God will judge the sexually immoral and adulterous.” — The Holy Bible, Hebrews 13:4 (ESV)

I concur with the *ponencia* that the guilt of XXX for violation of Section 5(i) of Republic Act No. 9262 had been proven beyond reasonable doubt.

However, I wish to elucidate certain points in order to emphasize further why specific intent to cause mental or emotional anguish or psychological suffering on the victim need not be proved before the perpetrator may be made to account for his wrongful act. Hence, I write this concurring opinion.

On the presumption of innocence and the application of related canons of construction

No less than the Bill of Rights as embodied in the Constitution mandates that an accused shall be presumed innocent until the contrary is proven.¹ The main and perhaps the more known effect or consequence of such presumption is that the prosecution has the *onus probandi* of establishing the guilt of the accused.² The other effect of such presumption is that when the court is faced with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him or her, the more lenient interpretation in favor of the accused is to be adopted.³ Such rule of lenity is known as the *pro reo* doctrine.⁴ Accordingly, since the resolution of the case at hand cannot proceed without reconciling the seemingly overlapping provisions of the various parts of Republic Act No. 9262 as it

¹ *Collao v. People*, G.R. No. 242539, February 1, 2021 [Per J. Delos Santos, Third Division].

² *People v. Pagal*, 886 Phil. 570, 654 (2020) [Per J. Gesmundo, *En Banc*].

³ *Intestate Estate of Manolita Gonzales Vda. de Carungcong v. People*, 626 Phil. 177, 200 (2010) [Per J. Corona, Third Division].

⁴ *See Pulido v. People*, G.R. No. 220149, July 27, 2021 [Per J. Hernando, *En Banc*].

pertains to psychological violence in the context of marital infidelity, the matter of *pro reo*'s applicability or non-applicability must first be elucidated to determine whether there is any doubt affecting those provisions that may or may not be interpreted in favor of the accused.

All parts of a statute are to be harmonized and reconciled so that effect may be given to each and every part and that conflicting intention in the same statute is never to be supposed or so regarded, unless forced upon the court by an unambiguous language.⁵ In other words, every part of the statute must be interpreted with reference to the context in that "*every part of the statute must be considered together with the other parts*, and kept subservient to the general intent of the whole enactment."⁶ Thus, the various provisions of an act should be read so that all may, if possible, have their due and conjoint effect without repugnancy or inconsistency.⁷

Here, XXX was charged with violation of Section 5(i) of Republic Act No. 9262, which reads:

SECTION 5. *Acts of Violence Against Women and Their Children.*

– The crime of violence against women and their children is committed through any of the following acts:

....

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

In *Dimamling v. People*,⁸ the elements of violation of Section 5(i) of Republic Act No. 9262 were enumerated as follows:

- (1) The offended party is a woman *and/or* her child or children;
- (2) The woman is either the wife or former wife of the offender, 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. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;
- (3) The offender causes on the woman and/or child mental or emotional anguish; and
- (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or

⁵ *People v. Garcia*, 85 Phil. 651 (1950) [Per J. Tuason, *En Banc*].

⁶ *Philippine International Trading Corporation v. COA*, 635 Phil. 447, 454 (2010) [Per J. Perez, *En Banc*]. (Citation omitted)

⁷ *Lichauco & Company, Inc. v. Apostol*, 44 Phil. 138, 148 (1922) [Per J. Street, *En Banc*].

⁸ 761 Phil. 356 (2015) [Per J. Peralta, Third Division].

custody of minor children or access to the children or similar acts or omissions.⁹ (Citations omitted)

Essentially, as what this Court did in the case of *Araza v. People*,¹⁰ Section 5(i) must be related to Section 3(c) of Republic Act No. 9262, which defines “psychological violence” as those referring “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*.”¹¹

Noticeably, a glance at Section 3(c) of Republic Act No. 9262 would show that there are two scenarios of acts or omissions involving “mental or emotional suffering” which the law considers as psychological violence: (1) “causing;” and (2) “likely to cause.” The first scenario refers to those acts or omissions that have actually been consummated, while the second scenario refers to those that are “likely” or probable, and not even required to be consummated.

At this juncture, it must be emphasized that psychological violence is a result that is personal to the offended party and which arises by reason of the acts committed by an offender. Thus, the perspective of the offended party, not the intent of the offender, must be given primary significance. This finds support from the very reason why Republic Act No. 9262 was enacted — to promote the protection of women and children from violence and threats to their personal safety and security.¹² Also, the legislative deliberations on the precursor bills of Republic Act No. 9262 show that one of the impetus for the passing of this law is to elevate women on the same plane as men in terms of protection in law, recognizing the incongruence of treatment accorded to women in adulterous relationships with regard to married men who are sexually unfaithful. The legislative deliberations elucidate this point:

Ms. MAUREEN PAGADUAN (Executive Director, Women’s Legal Bureau)[.]

....

Yung una ho, sinasabi na yung anti-AWIR bill violates the equal protection clause and the gender neutrality provision of the Constitution because it does not extend its protection to men. Ito yung pinakamalakas na resistance. Ang sa amin ho ang tingin namin the anti-AWIR bill does not violate the equal protection clause of the Constitution. The equal protection clause presupposes a situation wherein all the parties to the

⁹ *Id.* at 373.

¹⁰ 882 Phil. 905, 917 (2020) [Per C.J. Peralta, First Division].

¹¹ *Id.* at 917. (Emphasis supplied)

¹² Republic Act No. 9262, sec. 2 provides:

Section 2. *Declaration of Policy.* – It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security[.]

controversy are similarly situated with the same power, resources and ability. However, social conditions and culture have subjected women to abuse and violence more than men. Kaya nga yung CEDAW, yung Conven[t]ion on the Elimination of Discrimination Against Women, focus on what they call gender-based violence.

Philippine Constitutional Law also recognize the validity of class legislation or that which applies to a specific group or class of people only provided that such class legislation is based on reasonable classification.

The four criteria for a reasonable classification have been squarely met by the anti-AWIR bill:

First, the bill rest 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 nababago iyan. And allows them to exercise an 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, siempre.*

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 this legal and societal inequalities by providing women in particular with a weapon to counteract the [inequality] of their situation.*¹³ (Emphasis supplied)

....

MS. AURORA JAVATE-DE DIOS (Chairperson, National Commission on the Role of Filipino Women)[.]

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[.]*¹⁴ (Emphasis supplied)

....

REP. ANGARA-CASTILLO . . . *What we are saying is that the reason we want focus on a bill against abuse or violence against women especially in intimate relationships is because there is a gap in legislation covering that particular situation and the fact that there is really a distinction between violence against women and violence against men. In the gender base violence contemplated in the anti-AWIR bill, we are saying*

¹³ Minutes of the Meeting of the House Committee on Women, February 19, 2002, pp. 8–11.

¹⁴ Minutes of the Meeting of the House Committee on Women, August 27, 2002, p. 19.

that women are violated or abused because they are women. It's like a . . . parang a position of superiority of the man over the woman. This is what distinguishes the violence committed against the man or against the woman. *You've got to get that distinction, that basis for that distinction is a gender base violence . . . that is not covered by any existing legislation[.]*¹⁵ (Emphasis supplied)

As Republic Act No. 9262 has levelled the playing field, wives now can come to its succor to seek redress for their husbands' marital infidelity without the need to prove the stringent requirements under Article 332 of the Revised Penal Code on concubinage, as it is enough that it be shown that they suffered mental or emotional anguish by reason of their husbands' marital infidelity.

In *Araza*, this Court articulated this legislative intent:

Psychological violence is an indispensable element of violation of Section 5(i) of R.A. No. 9262. Equally essential is the element of emotional anguish and mental suffering, which are personal to the complainant. Psychological violence is the means employed by the perpetrator, while emotional anguish or mental suffering are the effects caused to or the damage sustained by the offended party. The law does not require proof that the victim became psychologically ill due to the psychological violence done by her abuser. Rather, the law only requires emotional anguish and mental suffering to be proven. To establish emotional anguish or mental suffering, jurisprudence only requires that the testimony of the victim to be presented in court, as such experiences are personal to this party.¹⁶ (Citations omitted)

It bears emphasis that psychological violence pertaining to marital infidelity under Section 3(c) is punished under Section 5(i) of Republic Act No. 9262 if the act, among others, “[c]aused mental or emotional anguish . . . to the woman or her child.”

It is clear from the foregoing that the means employed for violation of Section 5(i) can be found under Section 3(c) of Republic Act No. 9262, while the effect is that stated under Section 5(i) of the Act.

Focusing on the means employed, marital infidelity is clearly enumerated as one of the acts of psychological violence, which is an act that causes or likely to cause mental or emotional suffering. This finds support in *XXX v. People*¹⁷ which unequivocally held that marital infidelity is one of the forms of psychological violence.¹⁸ In this case, there is no denial that XXX became romantically involved with another person outside of his marriage with AAA. He even admitted having a love child because of such romantic

¹⁵ *Id.* at 21–22.

¹⁶ *Araza v. People*, 882 Phil. 905, 917 (2020) [Per C.J. Peralta, First Division].

¹⁷ G.R. No. 250219, March 1, 2023 [Per J. Hernando, First Division].

¹⁸ *Id.* at 10. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

involvement. Whether it was proven to have occurred only once or at several occasions, this is no doubt marital infidelity.

Also, the Information specifically stated that XXX was being charged for keeping a mistress. It would not be amiss to point out that keeping a mistress is a form of marital infidelity. Such an act presupposes not only the act of keeping a mistress but of having a mistress in the first place. A mistress is someone who has a romantic involvement or extramarital sexual relationship with someone who is married. Indeed, it is not easy to prove the fact of having and keeping a mistress as these relationships are usually kept hidden from the public's view, moreso, with the family of the guilty party. However, there becomes a glaring evidence of such an extramarital relationship, as when a love child is born out of such an affair. This fact was already admitted by XXX as, in fact, he claimed that what happened was only a one-night stand.

With respect to the deliberate act of causing mental or emotional anguish, while it may be true that XXX did not abandon his family as he attended to their needs, and even had to endure the pain of not seeing his child with YYY, still, the fact of having an extramarital affair remains. Engaging in a relationship, moreso, sharing an intimate moment, requires the consent of two individuals. Under the law, the husband and wife are obliged to live together, observe mutual love, respect, and fidelity, and render mutual help and support.¹⁹ It is the husband and wife, who are joined by marriage, who should be romantically involved with one another. Sharing such an intimate moment with another person other than one's spouse, especially when voluntarily done, goes against not just legal but also moral obligations, and without question, harm, if not destroy, the emotional well-being of the victim.

Moreover, the causal connection between the marital infidelity of XXX and the mental and emotional suffering of AAA cannot be denied. As the legal wife, AAA had every right to expect fidelity and devotion from XXX. Her actuations from the moment she heard of tales of his infidelity clearly demonstrate the torment she experienced both mental and emotional, as a consequence of XXX's conduct. To recall, when AAA received information on XXX's extramarital affair on July 16, 2016, she lost no time in seeking assistance to locate the address she was told her husband and his mistress were staying. On July 19, 2016, she confirmed the veracity of the information she received. On said date and at the given address, she came face to face with both her husband and his paramour. To make matters worse, she found out that he sired a child with his paramour. Soon after that, on December 29, 2017, a case for violation of Section 5(i) of Republic Act No. 9262 was filed against XXX. The fact that AAA immediately checked on the truth of what she heard about XXX indubitably established that she experienced betrayal, devastation, mental and emotional anguish from such news, which was later

¹⁹ FAMILY CODE, art. 68.

confirmed to be true. Had she been unaffected, she would have acted indifferently, which is not the case here.

Besides, even assuming *arguendo* that XXX did not intend to cause mental or emotional anguish on AAA by committing marital infidelity, he would not be able to pass through the requirement of “likely to cause mental or emotional suffering” as included in the definition of what is “psychological violence” under Section 3(c) of Republic Act No. 9262. It stands to reason that marital infidelity is one of the most difficult situation a couple may go through. Any information relating to such an infidelity between married couples would undoubtedly cause, and is likely to cause, mental or emotional suffering. To argue otherwise would be to allow a spouse to commit infidelity and ignore its consequences, which presents a rational infirmity as freely consenting to the sexual infidelity of one’s spouse is not in accord with “superior logic of ordinary human experience,”²⁰ as well as not consistent with the “inviolable” nature of marriage espoused in Article XV, Section 2 of the Constitution, which the State has the duty to protect. It is *unnatural* for a person in his or her *right mind* to allow his or her spouse to engage in sexual relations with another person. More, it is not for this Court to alter the traditional view of marriage practices as protected by Congress by coming out with a ruling that erodes basic family values, if it is to respect the constitutionally-ordained principle of separation of powers. These matters are best left to the people to address through their elected representatives.²¹ Thus, as it relates to the case at hand, whatever is repugnant to the standards of human knowledge, observation, and experience becomes incredible and must lie outside judicial cognizance.²²

Further, in the absence of any other circumstance presented by XXX, to look further into his intention after the one-night stand, could lead to a disregard of the emotional suffering of AAA. Instead of intently examining the requirement of emotional suffering from the perspective of AAA, the intention of XXX would have to be given a weightier consideration. To stretch the effect of giving too much weight into the intention of XXX could lead to asking if AAA consented to such an infidelity. However, it is customarily unusual for a person to freely give consent for his or her spouse to have sexual relations with another. In any event, the prosecution was able to show that AAA had suffered mental and emotional anguish, especially during the July 19, 2016 encounter, as a result of XXX’s marital infidelity.

*Overcoming the presumption of
innocence and evidentiary burdens*

²⁰ See *Ramos v. Court of Appeals*, 378 Phil. 1198, 1219 (1999) [Per J. Kapunan, First Division].

²¹ See Separate Opinion of J. Delos Santos in *Almonte v. People*, 878 Phil. 628, 1078 (2020) [Per Curiam, En Banc].

²² *People v. De Guzman*, 690 Phil. 701, 712 (2012) [Per J. Mendoza, Third Division].

Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.²³ To do this, the prosecution must establish a “*prima facie* case” or one “which, if unexplained or uncontradicted, is sufficient to sustain a prosecution or establish the facts, as to counterbalance the presumption of innocence and warrant the conviction of the accused.”²⁴ Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense.²⁵ It now becomes incumbent upon the accused to adduce evidence to meet and nullify, if not overthrow, the *prima facie* case against him or her.²⁶ In *Bautista v. Sarmiento*,²⁷ this Court explained:

When a *prima facie* case is established by the prosecution in a criminal case, as in the case at bar, the burden of proof does not shift to the defense. It remains throughout the trial with the party upon whom it is imposed — the prosecution. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial. This burden of going forward with the evidence is met by evidence which balances that introduced by the prosecution. Then the burden shifts back.²⁸ (Citation omitted)

In this case, the prosecution was able to establish a *prima facie* case of marital infidelity and the commission of psychological violence by XXX against AAA. Thus, the burden of evidence to prove that the elements or acts constituting the offense charged subject herein are absent or lacking has shifted to the accused.

However, XXX did not meet the required burden of evidence to redeem himself from conviction. Here, save for his bare claim that a single casual sexual encounter or a “one-night-stand” is not enough to prove that he intended to inflict mental and emotional anguish on AAA, XXX did not present any evidence, or at least proffered a reasonable and convincing explanation, to disprove the means of commission of the offense and the emotional suffering of AAA. Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.²⁹ As a result, XXX failed to overthrow, or at least equalize,³⁰ the *prima facie* case

²³ *Franco v. People*, 780 Phil. 36, 43 (2016) [Per J. Reyes, Third Division].

²⁴ *Cometa v. Court of Appeals*, 378 Phil. 1187, 1196 (1999) [Per J. Mendoza, Second Division]. (Citation omitted)

²⁵ *People v. Abdula*, 843 Phil. 706, 721 (2018) [Per J. Gesmundo, Third Division].

²⁶ *Bautista v. Judge Sarmiento*, 223 Phil. 181, 185 (1985) [Per J. Cuevas, Second Division]. (Citation omitted)

²⁷ 223 Phil. 181 (1985) [Per J. Cuevas, Second Division].

²⁸ *Id.* at 185.

²⁹ *LNS International Manpower Services v. Padua, Jr.*, 628 Phil. 223, 224 (2010) [Per J. Del Castillo, Second Division].

³⁰ *See People v. Santiago*, 465 Phil. 151, 159–163 (2004) [Per J. Sandoval-Gutierrez, Third Division]. (Citations omitted)

established by the prosecution in order that he might secure a judgment of acquittal.

In sum, XXX's petition must be denied because: (1) his unlawful act of causing mental and emotional anguish was successfully established by his own admission and by the prosecution's evidence; and (2) he did not overcome the *prima facie* case established by the prosecution that, as an effect to his act, AAA suffered mental and emotional anguish. On its fore, the case may present an inherent unfairness, treading along the bounds of what is violative of the Equal Protection Clause, due the *ipso jure* criminal liability being imposed on the husband based solely on the "likelihood" of causing mental and emotional anguish on the part of the wife. However, such is not the *lis mota* or even the issue here which necessitates a novel approach to the interpretation of Republic Act No. 9262 on the matter of psychological violence through the act of marital infidelity. Perhaps either this Court in another proceeding raising the Equal Protection Clause ramifications, or Congress in the exercise of its plenary power to enact some remedial legislation, can correct the perceived unfairness. But it is not for this Court in this proceeding to undertake that task, especially by way of interpretation absent any constitutional ground.

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


JHOSEP V. LOPEZ
Associate Justice