

EN BANC

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

Promulgated:

April 16, 2024

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DISSENTING OPINION

LEONEN, J.:

To restore the humanity of our laws in relation to intimate relationships, I dissent.

Infidelity is painful. It can be the most difficult challenge in any relationship. Many of us have gone through it. We know its reality.


Some of our relationships have survived. Some have had to be terminated giving the partners another chance to be in a better place. Some have forgiven. Many have not forgotten.

If we are to be truly human as judges, we have to accept that the acts that constitute fidelity can vary among couples. We need to accept that the causes of infidelity are varied. While none may be justifiable, we also need to be true to our hope that freedom in intimate relationships are the bedrock upon which happiness, meaning, and society are built. We need to read the law as one that provides openings for those who survive their relationships despite infidelities.

With utmost respect, the reading of the law by the slim majority of this Court does not reflect this aspect of our humanity. Regretfully, it misunderstands what intimate relationships often go through.

Reading marital infidelity as criminal per se is unjust.

I acknowledge the existence of patriarchy and the possibility of physical abuse and psychological coercion that can happen in intimate relationships. I acknowledge that in these cases, having the state intervene by making the acts criminal is essentially justifiable. In such cases, it is



clear that the relationship has significantly deteriorated to one of power: where the dominant abuses.

In *Garcia v. Drilon*,¹ I acknowledged that this is generally in heterosexual relationships but I called attention to the possibility that the protection of the State is absent in intimate relationships between men.² In *Agacid v. People*,³ the Court unanimously applied the provision of this law in an intimate relationship between women.

I cannot, however, in conscience, convict now on the basis of a phrase in the law—marital infidelity—that is vague, infringes on the autonomy of couples to resolve their differences, and stereotypes all women as always victims. Neither can I accept that we criminally punish undefined marital infidelity in the context of our legal order that does not recognize divorce between Filipinos. It is cruel for all those in a relationship. Infidelity in monogamous relationships is a phenomenon that has a lot of causes. It cannot automatically be attributed to an intent to abuse or coerce one of the partners.

Our laws should be interpreted to have a more mature understanding of the complexities of intimate relationships. We should avoid a doctrinal interpretation of morality of only one dominant religion.

There is no dispute that petitioner XXX strayed from the marital relationship. Neither is there doubt that his wife AAA experienced excruciating pain upon learning of his indiscretion. But there being no evidence that he did so precisely to inflict mental or emotional anguish on his wife, I am of the view that petitioner's infidelity is not psychological violence within the meaning of the law.

My vote is for XXX's acquittal.

I

The majority thoroughly discussed the historical and social background surrounding Republic Act No. 9262,⁴ stating that the statute is a piece of social legislation created to address the worsening rates of crimes against women in the Philippines.⁵ According to the majority, the goal of

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

² *Id.* at 171–172.

³ G.R. No. 242133, April 16, 2024 [Per J. Leonen, *En Banc*].

⁴ *Ponencia*, pp. 7–10.

⁵ *Id.* at 10.

the law is to achieve equality by eliminating violence against women and their children.⁶

The majority then interpreted “marital infidelity” as a mode of committing violence under Section 5(i) of Republic Act No. 9262. It held that marital infidelity, regardless of the circumstances, is criminally punished under Republic Act No. 9262.⁷ The majority differentiated “marital infidelity” from another mode of committing a violation of Section 5(i)—“denial of financial support”—declaring that specific criminal intent to cause mental and emotional suffering is presumed in marital infidelity. It explained that, unlike denial of financial support, marital infidelity is inherently immoral and depraved under prevailing societal, cultural, and religious norms.⁸

Ultimately, it affirmed XXX’s conviction of violation of Section 5(i) of Republic Act No. 9262.

II

I join the majority in recognizing the importance of Republic Act No. 9262 as a progressive step towards equality. Patriarchal ideology has long enabled the systemic oppression of women and their treatment as less than men, especially within the context of intimate relationships. With the enactment of Republic Act No. 9262, more and more women are now aware that they are equal to men before the law; and that they do not deserve any form of violence by reason of their sex.

The laudable purpose behind Republic Act No. 9262 notwithstanding, I cannot accept the majority’s ruling. I remain of the view that marital infidelity, in and of itself, is not a violation of Section 5(i) of Republic Act No. 9262 absent a showing of intent to cause mental or emotional anguish on the victim.

III

The mention of marital infidelity in the law is vague. For reference, Section 5(i) of Republic Act No. 9262 is reproduced below:

⁶ *Id.*

⁷ *Id.* at 11.

⁸ *Id.* at 15–16.



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:

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- (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.

A reading of Section 5(i) will reveal that it does not include “marital infidelity” as an example of “causing mental or emotional anguish, public ridicule or humiliation to the woman or her child.” While it is true that the enumeration of the modes of committing a violation of Section 5(i) is not exclusive, with the use of the words “including, but not limited to”; and that Section 3(a)(C)⁹ of the same law mentions “marital infidelity” in defining “psychological violence,” still, it is Section 5(i), not Section 3(a)(C) that enumerates the acts explicitly considered as *crimes* under Republic Act No. 9262.¹⁰ Therefore, it is not even clear if marital infidelity, in and of itself, is a crime under Republic Act No. 9262. My position is that it cannot be so.

First, the Revised Penal Code already clearly defines the crimes of adultery and concubinage.¹¹ Both crimes involve sexual intercourse. In contrast, the law is devoid of any explanation as to what constitutes marital infidelity. The Legislative cannot be assumed to have enacted a law that punishes the exact same crime. Thus, marital infidelity must mean something beyond adultery, concubinage, or sexual intercourse.

Marital infidelity may mean different things. It implies more than just a sexual act. It can be going out on a date with a former lover. It can be

⁹ Republic Act. No. 9262 (2004), sec. 3(a)(C) provides:

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

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

....

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

¹⁰ See J. Leonen, Dissenting Opinion in *XXX v. People*, G.R. No. 263449, November 13, 2023 [Per J. J. Lopez, Second Division].

¹¹ REV. PEN. CODE, arts. 333 and 334.

visiting so-called massage parlors or gentlemen's clubs. It can be receiving lap dances. It can even be watching pornography. It can also be the spouse carrying out a relationship with another of their same sex. These acts may elicit different reactions depending on who you ask. Some might say these constitute infidelity. Some may say that it is infidelity only if an emotional attachment is formed. Others might say it is infidelity only when it becomes habitual. Others may tolerate if the other spouse becomes intimate with one of their similar sex. Still, others might react entirely differently or with a permutation of the foregoing.

Marital infidelity was not defined in the law as strictly being sexual. Even if we read it to mean sexual, what is sexual can include a whole spectrum, from sharing intimate glances to intercourse.

Second, marital infidelity is ultimately a question of boundaries—boundaries that ought to be set between each couple.¹² Couples should first agree on what constitutes marital infidelity for them. This is a conversation in which the State and its prosecutors take no part. However, openly negotiating these decisions are not common in our culture or laws. More often, they are discussed only when one spouse's idea of fidelity is breached. At that point, emotions are running high. With the addition of criminalizing mere marital infidelity, peaceful resolutions seem improbable. With the interpretation of the majority, the State and its prosecutors are invited into the most intimate corners of a marriage.

Third, marital infidelity in the law is vague because there may be many reasons for its commission. Without recognizing the following as licenses for infidelity, we acknowledge that they are possible causes. Marital infidelity may indeed be committed to hurt the other spouse without necessarily constituting psychological coercion. It can happen at a time of weakness. For instance, research shows that husbands who earn less than their wives are more prone to straying from the marital relationship, the reason being that they need to prove their masculinity in ways other than providing financial support to the family.¹³ While being outearned by one's wife is definitely not an excuse to cheat, the research nevertheless shows that marital infidelity may be committed for reasons other than causing mental and emotional anguish on the wife. In the case of the outearned husband, he may stray to fill a gaping hole in his perceived identity.

Marital infidelity may be prompted by loneliness, as with the case of a couple where one spouse is an overseas Filipino worker. One might commit marital infidelity to address a perceived gap in the relationship. Nobody

¹² ESTHER PEREL, *MATING IN CAPTIVITY* 272–273 (2007).

¹³ American Sociological Association, *Men more likely to cheat if they are economically dependent on their female partners, study finds*, August 18, 2010, available at www.sciencedaily.com/releases/2010/08/100816095617.htm (last accessed on August 1, 2024).

possesses all the qualities that the other desires. Lack of communication might lead one spouse to seek from another person a characteristic missing from the other spouse. Even if marital infidelity was committed to hurt the other spouse, it may be a way of communicating needs. Marital infidelity may be an indication that emotions are fading, or that the relationship should be extinguished, or one is simply not built for monogamy.

The vague definition of marital infidelity is more cruel in light of the absence of divorce in our legal system. *Tan-Andal v. Andal*¹⁴ may offer some relief, but this option is still lengthy, difficult, and inaccessible to many. Unhappy spouses imprisoned in marriages now become vulnerable to criminal complaints. To reiterate, I do not seek to justify the causes of marital infidelity but to demonstrate that there may be many motivations behind it. We draw a hard line between these and domestic violence.


The constitutionality of the provision on marital infidelity is suspect due its vagueness, but this matter was not raised here. Still, the Court must refrain from interpreting the law in such a way as to make it unconstitutional.

IV

The interpretation of the law that is ascribed by the majority infringes on the autonomy of spouses.

To criminalize all acts that cause mental and emotional anguish as “psychological violence” will foreclose any chance for reconciliation between the parties. This infringes on the autonomy of spouses to resolve their differences on their own accord. It is worth noting at this point that psychological violence, like all acts of violence against women and their children under Republic Act No. 9262, is a public crime.¹⁵ As such, it may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.¹⁶

In contrast, adultery and concubinage may only be prosecuted upon a complaint filed by the offended spouse.¹⁷ Neither may criminal liability for adultery and concubinage be sought if the offended party consented to the offense or pardoned the offenders.¹⁸



¹⁴ 901 Phil. 558 (2021) [Per J. Leonen, *En Banc*].

¹⁵ Republic Act No. 9262 (2004), sec. 25.

¹⁶ Republic Act No. 9262 (2004), sec. 25.

¹⁷ RULES OF COURT, Rule 110, sec. 5.

¹⁸ RULES OF COURT, Rule 110, sec. 5.

Once the prosecution of the criminal case for psychological violence is commenced in court, they cannot be compromised by the spouses. When the case is filed, the State intervenes. The conflict will be out of the control of the parties, foreclosing any chance of reconciliation between the parties. A subsequent conviction will bring about shame and stigma, which will further estrange the parties from each other.

If the spouses are able to reconcile prior to the filing of a complaint, a prescriptive period of 10 years will still loom over their marriage.¹⁹ Despite any compromise, the innocent spouse may renege on the agreement. A complaint may still be filed as retaliation.

V

In addition to the autonomy of spouses to resolve their issues, spouses ought to enjoy autonomy to set the terms of their relationship. Monogamy, the practice of having one partner at a time, began as an “externally imposed system of control over women’s reproduction.”²⁰ It had nothing to do with love and everything to do with lineage and property.²¹ But as the institution of marriage evolved to be the “love-based marriage”²² that we know today, the “ideal of the faithful couple”²³ emerged. Fidelity eventually became *the* boundary in intimate relationships.²⁴

Yet monogamy is not always the reality for all couples, as there are views that monogamy is unnatural and against human nature.²⁵ There are intimate partners who agree to consensual and ethical nonmonogamy, where they are free to sexually engage with others outside of their relationship, so long as it is with the consent of the other. Some scholars suggest approaching “monogamy not as a given but as a choice.”²⁶ Meanwhile, other couples simply agree to live separately considering the difficulty of obtaining annulments, decrees of absolute nullity, or legal separation. Ethical nonmonogamy is possible, and it should be up to the spouses to decide.

¹⁹ Republic Act. No. 9262 (2004), sec. 24 provides:

SECTION 24. *Prescriptive Period.* — Acts falling under Sections 5(a) to 5(f) shall prescribe in twenty (20) years. Acts falling under Sections 5(g) to 5(l) shall prescribe in ten (10) years.

²⁰ ESTHER PEREL, *MATING IN CAPTIVITY* 178 (2007).

²¹ *Id.*

²² Feeld, *Exclusive Relationships: The History of Monogamy*, June 20, 2022, available at <https://feeld.com/magazine/playbook/monogamy> (last accessed on August 4, 2024).

²³ *Id.*

²⁴ ESTHER PEREL, *MATING IN CAPTIVITY* 176 (2007).

²⁵ ESTHER PEREL, *THE STATE OF AFFAIRS, RETHINKING INFIDELITY* 255–257 (2017). See also ESTHER PEREL, *MATING IN CAPTIVITY* 275–276 (2007).

²⁶ ESTHER PEREL, *MATING IN CAPTIVITY* 199 (2007).

Also, punishing marital infidelity, without regard to intent to inflict mental or emotional anguish, reinforces heteronormativity. It bears stressing that Republic Act No. 9262 is broadly worded to apply to different kinds of relationships. In *Garcia*, the Court ruled that:

VAWC may likewise be committed “against a woman with whom the person has or had a sexual or dating relationship.” Clearly, the use of the gender-neutral word “person” who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships.²⁷

However, due to the present state of our marriage laws, marital infidelity is limited to married men and women. Thus, psychological violence through sexual infidelity in other relationships are not similarly punished in Republic Act No. 9262. This aggravates the exclusion and underrepresentation of gender and sexual minorities in our society:

Those with sexual orientations other than the heteronormative, gender identities that are transgender or fluid, or gender expressions that are not the usual manifestations of the dominant and expected cultural binaries—the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community—have suffered enough marginalization and discrimination within our society.²⁸

VI

In our desire to rid our culture of patriarchy, we should be careful not to stereotype all women as victims. Likewise, we should not typecast all men who commit infidelity as abusers.

Domestic violence should be treated as a power issue, not a gender issue.²⁹

The majority’s interpretation may allow a wife to use Republic Act No. 9262 and file a criminal complaint for psychological violence against her husband, even if the husband did not intend to cause mental or emotional suffering on her. She may even file a case under Section 5(i) even if she is actually indifferent to her husband’s infidelity. This shows that, without requiring proof of deliberate intent to cause mental or emotional anguish, marital infidelity could be abused to control or punish individuals within a marriage, allowing citizens to utilize the strong arm of the law for private slights. This, in turn, exacerbates power imbalances and situations of domestic violence.

²⁷ *Garcia v. Drilon*, 712 Phil. 44, 103–104 (2013) [Per J. Perlas-Bernabe, *En Banc*].

²⁸ *Falcis v. Civil Registrar General*, 861 Phil. 388, 413 (2019) [Per J. Leonen, *En Banc*].

²⁹ *Garcia v. Drilon*, 712 Phil. 44, 171 (2013) [Per J. Perlas-Bernabe, *En Banc*].

Infidelity is a human act. It is possible among men and women. There is no biological basis that only men can become disloyal. For the same reasons discussed above, women can also commit marital infidelity. It may also be that the disloyalty by the wife is done not merely to abuse and subject the husband to psychological harm but for some other reason.

We should not unreasonably typecast all marital infidelity by the husband as beyond repair. That is exactly what we do when we make it a criminal act. Spouses should be encouraged to find a fair resolution to marital infidelity, regardless if the infidelity is done by a husband or a wife or both. Finding a resolution, whether it is to move on in a relationship or rescinding that relationship, is not necessarily a vestige of patriarchy that the law must protect against.

VII

It is imperative to consider all the circumstances surrounding the marital infidelity, especially intent. Section 5(i) must be read to require *deliberate intent* to inflict mental or emotional anguish on the woman or her child. As examples of causing mental or emotional anguish, Section 5(i) cites “repeated verbal or emotional abuse” as well as “denial of financial support or custody of minor children” or “denial of access to the woman’s child/children,” all of which connote willfulness. Specifically, for “denial of financial support,” it is already settled in *Acharon v. People*³⁰ that deliberate intent to withhold financial support *for the purpose of inflicting mental or emotional anguish* must be proved to establish a Section 5(i) violation.³¹ Consequently, instances where the accused merely failed or is unable to provide financial support are not considered psychological violence, even if the woman experienced mental or emotional anguish.³²

The majority in this case holds that “specific criminal intent to inflict mental or emotional suffering is already satisfied at the moment the perpetrator commits the act of infidelity.”³³ In other words, deliberate intent to cause mental or emotional anguish is presumed upon the commission of the marital infidelity, because, according to the majority, it is “inherently immoral and depraved under prevailing societal, cultural, and religious norms.”³⁴

³⁰ 913 Phil. 731 (2021) [Per J. Caguioa, *En Banc*].

³¹ *Id.* at 737–739.

³² *Id.*

³³ *Ponencia*, p. 15.

³⁴ *Id.* at 15–16.

With respect, I disagree.

Like denial of financial support, marital infidelity is just one of the numerous modes of committing the same crime, i.e., psychological violence. If proof of deliberate intent to cause mental or emotional anguish is required in one mode, then there is no reason why deliberate intent should be outrightly presumed in the other. Nothing in Republic Act No. 9262 warrants this “presumed intent” in cases of marital infidelity, especially since the modes specifically enumerated in Section 5(i) all require willfulness and deliberate intent.

The majority’s analogy between marital infidelity and crimes against persons that involve killing is not proper. In murder or homicide, intent to kill is conclusively presumed when the victim dies “because the act of killing clearly constitutes an unlawful act.”³⁵ The killing of another is universally considered evil. It is to literally deprive someone of the most fundamental and sacred of human rights—the right to life.

Marital infidelity is not an inherently universally unlawful act. In the Asia-Pacific Region, the Philippines is only one of three other countries that criminalizes marital infidelity, more particularly, adultery.³⁶ Notably, all European countries already decriminalized marital infidelity.³⁷

Even the “prevailing societal, cultural, or religious norms”³⁸ that marital infidelity allegedly infringes are not universal. While the majority makes no mention of what these norms are, these obviously relate to Christian doctrine, specifically, the Christian practice of monogamy. The ruling in this case imposes the morality of a dominant religion on others who may not want to be bound by these norms. In the absence of divorce in Philippine jurisdiction—another influence of Christian doctrine on our secular laws, hence, contrary to the separation of Church and State—I cannot accept that marital infidelity may be presumed immoral.

VIII

For the State to truly value the dignity of every human person,³⁹ the Legislative, in making anti-violence against women and children laws, has to take into account all relationship permutations possible. Section 5(i) of

³⁵ *Abdulla v. People*, 495 Phil. 70, 80 (2005) [Per J. Garcia, Third Division].

³⁶ See Philippine Commission on Women, *Women’s Priority Legislative Agenda for the 18th Congress, Repealing the Revised Penal Code Provisions on Adultery and Concubinage*, available at <https://pcw.gov.ph/assets/files/2019/10/PCW-WPLA-PB-02-Repeal-of-RPC-provisions-on-Adultery-and-Concubinage-AEB.pdf> (last accessed on August 1, 2024).

³⁷ *Id.*

³⁸ *Ponencia*, p. 16.

³⁹ CONST., art. ii, sec. 11.

Republic Act No. 9262 assumes that marital infidelity causes mental and emotional anguish. This may be true for others, but not for all, as was recognized by this Court in *AAA v. BBB*.⁴⁰ In that case, this Court said that “depending on the circumstances of the spouses and for a myriad of reasons, the illicit relationship may or may not even be causing mental or emotional anguish on the [other spouse].”⁴¹

To determine what should be criminalized then, we should go back to the definition of a “crime.” A crime is a “breach of the security and peace of the people at large, an outrage against the very sovereignty of the State.”⁴² A review of criminal cases involving psychological violence through marital infidelity will reveal that this Court equates marital infidelity to sexual infidelity.⁴³ It is my view, however, that marital infidelity is an issue that has no bearing to society at large and, therefore, should not be punished as a crime. In a long line of cases, this Court has recognized that the mental or emotional anguish caused by sexual marital infidelity is highly personal to the offended party.⁴⁴

Therefore, instead of punishing marital infidelity for the hurt feelings caused to a party, it should be punished if it is used as a coercive control tactic. It should be a crime only when it is used to dominate, manipulate, or intimidate the other partner, thereby infringing on the autonomy and agency of the other and maintaining the power imbalance between the couple.

An example would be a case where the partner consistently engages in extramarital affairs to manipulate and control the other. The unfaithful partner may intentionally flaunt their affairs, openly discuss them, or even threaten to leave the relationship if the other partner does not comply with their demands. In such cases, it is not the infidelity that is punished but the use of fear, insecurity, and dependence on the other partner, making them more likely to give in to the manipulative partner’s wishes to avoid the potential loss of the relationship. In this context, infidelity becomes abuse, an affront on the inherent dignity of every of human person. It is the manipulative act, the abuse, that should be criminal.

⁴⁰ 823 Phil. 607 (2018) [Per J. Tijam, First Division].

⁴¹ *Id.* at 620.

⁴² *See Baviera v. Paglinawan*, 544 Phil. 107, 119 (2007) [Per J. Sandoval-Gutierrez, First Division].

⁴³ *See XXX v. People*, G.R. No. 250219, March 1, 2023 [Per J. Hernando, First Division]; *XXX v. People*, 887 Phil. 161 (2020) [Per J. Delos Santos, Second Division]; *Araza v. People*, 882 Phil. 905 (2020) [Per C.J. Peralta, First Division]; *AAA v. BBB*, 823 Phil. 607 (2018) [Per J. Tijam, First Division].

⁴⁴ *See XXX v. People*, G.R. No. 250219, March 1, 2023 [Per J. Hernando, First Division]; *Araza v. People*, 882 Phil. 905 (2020) [Per C.J. Peralta, First Division]; *Reyes v. People*, 855 Phil. 991, 1004 (2019) [Per J. Peralta, Third Division]; *AAA v. People*, 844 Phil. 213, 222 (2018) [Per J. Gesmundo, Third Division]; *AAA v. BBB*, 823 Phil. 607, 620 (2018) [Per J. Tijam, First Division]; *Dinamling v. People*, 761 Phil. 356, 376 (2015) [Per J. Peralta, Third Division].

IX

Thus, XXX should be acquitted. There is no proof that he, in fathering a child with another woman after a one-night stand, did so to inflict mental or emotional anguish on his wife AAA or otherwise control or exert dominance over her.

I do not doubt that AAA experienced emotional anguish upon learning that her husband fathered a child with another woman. However, under the law, emotional anguish is not enough for conviction for psychological violence. Deliberate intent to inflict mental or emotional anguish should be shown.

X

If a legal action is really needed by the spouse who suffers, there is no lack of cause of action. The acquittal does not mean that he cannot be held legally accountable for his actions. Under Article 68⁴⁵ of the Family Code, spouses are obliged to observe mutual fidelity. He certainly did not comply with this essential marital obligation.

Under Article 55⁴⁶ of the Family Code, a petition for legal separation may be filed if the marital infidelity can be proven to be sexual in nature. If it can be proven that the marital infidelity is a manifestation of psychological incapacity, a petition for declaration of nullity under Article 36⁴⁷ of the Family Code may likewise be filed. Furthermore, a complaint for damages under Article 26⁴⁸ of the Civil Code may be filed against the alleged

⁴⁵ FAMILY CODE, art. 68 provides:

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

⁴⁶ FAMILY CODE, art. 55(8) provides:

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

.....

(8) Sexual infidelity or perversion[.]

See also Philippine Commission on Women, *Women's Priority Legislative Agenda for the 18th Congress, Repealing the Revised Penal Code Provisions on Adultery and Concubinage*, available at <https://pcw.gov.ph/assets/files/2019/10/PCW-WPLA-PB-02-Repeal-of-RPC-provisions-on-Adultery-and-Concubinage-AEB.pdf?x23702> (last accessed on August 1, 2024).

⁴⁷ FAMILY CODE, art. 36, as amended by Executive Order No. 227 (1987), provides:

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

⁴⁸ CIVIL CODE, art. 26 provides:

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

.....

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

See also Philippine Commission on Women, *Women's Priority Legislative Agenda for the 18th Congress, Repealing the Revised Penal Code Provisions on Adultery and Concubinage*, available at

paramour for meddling with or disturbing the private life or family relations of the offended spouse.

XI

Our laws should be interpreted to have a more mature understanding of the complexities of intimate relationships. Acknowledgment, atonement, understanding, and the possibility of forgiveness may follow sin. So should separation be a recourse after betrayal. For human relationships, restorative justice is better than retribution.

Infidelity is already painful. We should not add to the pain by feeding into the meaningless desire for revenge by incarcerating the human offender. Those in intimate relationships regardless of legal status should be given as much freedom to resolve their differences and to find ways forward. If not, the couple and their family should be given the kindness, by our laws, to have their marriage declared void, to divorce and permanently separate.

Laws should not impose the morality of those belonging to a dominant belief. To do so is plainly unethical. To do so is to encourage a simplistic view of what it is to relate intimately with another individual. To do so is also plainly unjust.

Love is complex. It is unique to individuals in love. The State—in whatever incarnation of any law—will never be able to fully imagine or understand what it means for two unique individuals to survive love or to let go. How to love and how to un-love are both first freedoms that should be protected against the intervention of the state. We continually discover ourselves as we go through all that is there in our intimate relationships.

Infidelity should trigger accountability. Infidelity is an occasion for the one who betrays to introspect. Infidelity provides the couple precious moments to reevaluate the complexity of themselves in a relationship. Thus, even all marital infidelity, should never be dangerously caricatured by the interpretation of the majority into a crime.

At least, in this case, it should not be.

FOR THESE REASONS, I vote to **GRANT** the Petition for Review on *Certiorari* and **SET ASIDE** the November 8, 2019 Decision and June 22, 2022 Resolution of the Court of Appeals in CA-G.R. CR

No. 40938. Petitioner XXX must be **ACQUITTED** of violating Section 5(i) of Republic Act No. 9262.



MARVIC M.V.F. LEONEN
Senior Associate Justice