

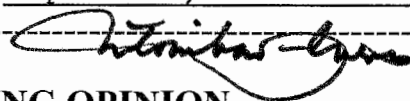
EN BANC

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

PROMULGATED:

April 16, 2024

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SEPARATE CONCURRING OPINION

SINGH, J.:

Petitioner XXX was charged with violation of Section 5(i), Republic Act No. 9262, or the Violence Against Women and their Children Act, as follows:

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

CONTRARY TO LAW.¹

The Regional Trial Court (RTC) convicted XXX, finding that the emotional anguish of his wife, AAA (**Donna**), was apparent during her emotional breakdown while narrating the circumstances that led to her confrontation with Allan.²

On appeal, the Court of Appeals (CA) affirmed the conviction, pointing out that the element that the accused caused the victim mental and emotional anguish was sufficiently proven.³

Citing the primary objective of Republic Act No. 9262 of protecting women and their children from all forms of violence, the *ponencia* affirms the conviction and concludes that marital infidelity resulting in mental and emotional anguish is punishable under Republic Act No. 9262.

¹ Draft *ponencia*, p. 2.

² *Id.* at 6.

³ *Id.* at 7.



The *ponencia* distinguished the present case from *Acharon v. People*,⁴ where the Court acquitted the accused of violating Section 5(i) of Republic Act No. 9262 for failure of the prosecution to prove the criminal intent to inflict mental or emotional anguish, as follows:

In other words, to be punishable by Section 5(i) of [Republic Act No.] 9262, it must ultimately be proven that the accused had the intent of inflicting mental or emotional anguish upon the woman, thereby inflicting psychological violence upon her, with the willful denial of financial support being the means selected by the accused to accomplish said purpose.

I agree with Associate Justice Hernando that the pronouncement in *Acharon*, particularly the need to prove intent to inflict mental or emotional anguish upon the victim, should be limited in its application to the act of willful denial of financial support. Such intent need not be proved to convict an accused for inflicting psychological violence through marital infidelity.

Section 3 of Republic Act No. 9262 enumerates the forms of violence that may be committed against women and their children. These include, but are not limited to, physical violence, sexual violence, psychological violence, and economic abuse. Relevant to the present case is psychological violence, which is defined as:

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. (Emphasis supplied)

Here, XXX is charged for the act of psychological violence, as defined in Section 5(i) of Republic Act No. 9262, which reads:

(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 of access to the woman’s child/children.

As cited in the *ponencia*, *Dinamling v. People*⁵ enumerates the elements of Section 5(i), in relation to Section 3, of Republic Act No. 9262:

⁴ G.R. No. 224946, November 9, 2021 [Per J. Caguioa, *En Banc*].

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



- (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 custody of minor children or access to the children or similar such acts or omissions.*⁶ (Emphasis supplied; citations omitted)

The Court in *Dinamling*, as cited in *AAA v. BBB*,⁷ clarified what the third and fourth elements of Section 5(i), Republic Act No. 9262 meant:

Psychological violence is an element of violation of Section 5(i) just like the mental or emotional anguish caused on the victim. Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party. To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) or similar such acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party.⁸ (Emphasis supplied; citation omitted)

There must thus be proof of the psychological violence, as the means employed in committing the prohibited act under Section 5(i), and proof of the victim's mental or emotional anguish as a result of the psychological violence.

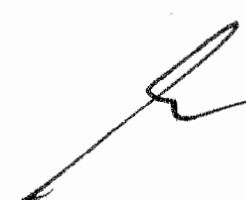
It is conceded that the fourth element is established. While marital infidelity is not specifically mentioned, it is clear from the phrase, "including, but not limited to," that the list in Section 5(i) is not exhaustive or exclusive.

However, as to the third element, there is the view that this constitutes the *mens rea* that is the specific intent to cause mental or emotional anguish, public ridicule or humiliation resulting from the infliction of some form of violence to the woman or her child.

⁶ *Id.* at 373.

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

⁸ *Id.* at 620.



The commission of psychological violence under Section 5(i) of Republic Act No. 9262 is a crime *mala in se*, as opposed to a crime *mala prohibita*, since such act is inherently immoral or evil. It is my position that the specific intent to cause mental or emotional anguish is presumed when a person commits the crime of psychological violence under Section 5(i) of Republic Act No. 9262, committed through marital infidelity, in relation to Section 3 of Republic Act No. 9262.

The concept of specific intent is well established in jurisprudence. In *People v. Delim*,⁹ the Court explained:

Philippine and American penal laws have a common thread on the concept of specific intent as an essential element of specific intent crimes. Specific intent is used to describe a state of mind which exists where circumstances indicate that an offender actively desired certain criminal consequences or objectively desired a specific result to follow his act or failure to act. Specific intent involves a state of the mind. It is the particular purpose or specific intention in doing the prohibited act. Specific intent must be alleged in the Information and proved by the state in a prosecution for a crime requiring specific intent[.]¹⁰ (Citation omitted)

Marital infidelity is a deliberate breach of trust. It does not happen by accident. It involves an awareness, a conscious choice to engage in actions that violate the marital vows.

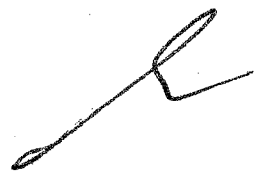
Even if the accused, as in this case, pleads no intent to cause emotional distress, the very nature of infidelity will unfailingly result in such psychological harm. The sense of security within the relationship is breached. The broken trust and the realization that the partner has strayed emotionally or physically often leads to a profound sense of despair. Infidelity, thus, inherently carries the effect of mental anguish as it violates the very foundation of the marriage. It is a clear betrayal not only of the spouse but also of the institution of marriage, which is considered the foundation of the family.¹¹

The act of infidelity itself is a demonstration of a disregard for the emotional well being of the spouse precisely because the emotional distress experienced by the victim-spouse is neither incidental nor unforeseeable, but is rather a natural and logical consequence of the infidelity.

⁹ 444 Phil. 430 (2003) [Per J. Callejo, Sr., *En Banc*].

¹⁰ *Id.* at 448.

¹¹ CONST., art XV, sec. 2.



If a wife suffers mentally or emotionally after learning of her husband's infidelity, what other element or circumstance should the prosecution prove before the husband can be found guilty of psychological violence under Republic Act No. 9262? Applied by analogy to the attempted or frustrated stage of homicide or murder, it is only when the wife does not undergo mental or emotional anguish that proof of the husband's specific intent becomes necessary.

Section 4 of Republic Act No 9262 mandates that the law "shall be liberally construed to promote the protection and safety of victims of violence against women and their children." A restrictive interpretation that a mere one-night stand that bore a lovechild could not have caused emotional anguish on the wife contradicts the very spirit of the law, which aims to address the violence committed against women and their children, who are the usual victims of violence and abuse.¹²

Jurisprudence provides:

Psychological violence is an indispensable element of violation of Section 5(i) of [Republic Act] 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.*¹³ (Emphasis supplied; citations omitted)

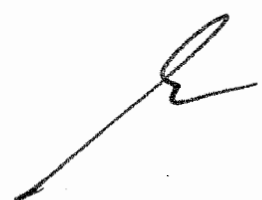
Assuming without conceding that there is a need to prove intent to cause mental or emotional anguish on the victim of marital infidelity, I respectfully submit that the evidence of the prosecution established the emotional anguish sustained by the private complainant. The evidence of the prosecution, as summarized by the Regional Trial Court (RTC), reveals that:

Private complainant found herself unable to function properly thus, asked accused to accompany her to Manaoag to hear mass. Accused agreed and when they went to mass, private complainant continued to cry and ask what she had done to be in this situation.

Thus, on July 19, 2016, private complainant, accompanied by her mother and a family friend she called *tita*, went to Makati and asked

¹² See *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, *En Banc*].

¹³ *Araza v. People*, 882 Phil. 905, 919 [Per C.J. Peralta, First Division].



assistance from the Palanan barangay authorities *because she was afraid that she might do something drastic.*

....

Accused again asked complainant what she wanted to happen and *complainant replied that she wanted accused to be incarcerated. Accused responded, "Ah, ganon? Gusto mo akong makulong?" and locked himself in the bathroom.*

Private complainant feared that accused would hurt himself but accused eventually got out and went to the kitchen where he saw a knife and threatened to stab himself with it. Their son ran to complainant out of fear.

....

After the incident, *private complainant was unable to work for three to four months and could not sleep. She averred that she went to different relatives but did not tell them about her marital difficulties at first. She explained that she did not want to see their house and did not want to see accused or his belongings.*¹⁴ (Emphasis supplied)

The findings of the RTC, as affirmed by the CA, further reveal:

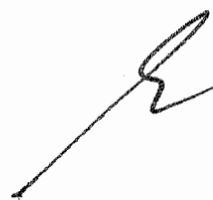
Apart from the affair, the testimony of the barangay desk officer affirmed that accused was no longer interested in his marriage to complainant, and even suggested that they live separately while the latter was willing to exert efforts into salvaging their relationship. The desk officer attested to complainant's emotional state during the confrontation at the barangay hall, as she was present when the parties tried to talk things over.

....

Finally, the anguish of private complainant was apparent during her emotional breakdown while narrating the circumstances that led to up to the confrontation between her and accused on July 19, 2016. She narrated that she was hurt by the confirmation of her suspicions that accused had been unfaithful during their marriage and that he disregarded her efforts to keep the family together.¹⁵

¹⁴ Rollo, pp. 24, 26.

¹⁵ *Id.* at 32.



Donna also testified:

Q Okay. When he went out, what happened, if any?

A Sinampal ko po talaga siya. Nagdilim na po talaga ang paningin ko tapos ang sabi niya sa akin, "Ma wag dito! Nakakahiya!

Q So what happened next, if any?

A Sabi ko, "*Nakakahiya? Ngayon ka pa nahiya? Sa kanila nahiya ka sa akin hindi ka nahiya?*" Bastos ka! Wala kang respeto!

.....

A Nung bago pa pala yun. *Nung kukunin na ako ng pulis, nakita ko kukunin din siya ng barangay, nakita ko may batang tumatakbo sa loob ng gate. Sabi niya, "Daddy! Daddy!" tapos ang sabi niya, "Pumasok ka!" Sabi ko, "Walang hiya ka, may anak ka talaga ano?" sabi kong ganon.* Tapos sinakay na po ako ng pulis.¹⁶
(Emphasis supplied)

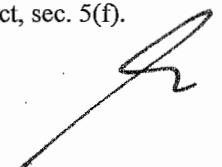
From the foregoing, it is apparent that the private complainant suffered deep emotional anguish. It is only natural for any woman going through this kind of ordeal to suffer psychologically as a consequence. To make matters worse, aside from the anguish caused by XXX's marital infidelity, his threats to commit suicide are clearly a form of emotional abuse and manipulation that cannot be simply ignored. In fact, threatening to inflict physical harm on oneself for the purpose of controlling the woman's actions or decisions is also considered an act of violence against women and their children.¹⁷

It cannot be denied that XXX intentionally had a sexual encounter with Aileen and that it was committed with the free will and intelligence of a married man. XXX made a series of choices fully aware of his marital commitments. A man who truly values and respects his marriage would not engage in this kind of damaging behavior.

As a matter of fact, the defense that it was a mere one-night stand is belied by the evidence. The transcript quoted above shows that XXX had an illegitimate son with YYY and that he maintained such relationship, which was the reason why AAA was able to find him in the house he was sharing with them. This cohabitation with YYY and the act of having a child out of marriage are undoubtedly constitutive of infidelity which caused lasting and incalculable psychological harm to AAA.

¹⁶ *Id.* at 34.

¹⁷ Republic Act No. 9262 (2004), Anti-Violence Against Women and Their Children Act, sec. 5(f).



Certain actions, such as infidelity, are inherently likely to cause emotional distress to a spouse upon discovery and carry consequences that extend beyond the immediate act itself. Necessarily, the responsibility extends beyond the act itself as to encompass the foreseeable emotional aftermath for the affected spouse.

Otherwise, what specific circumstances could possibly further show a husband's intent to cause mental or emotional anguish other than the mere fact of committing marital infidelity? What are the limits or standards before considering marital infidelity as a tool used by husbands to dominate, manipulate, or intimidate the other partner—having a second or third casual sexual encounter or producing a second or third child from another woman?

It is important to note that the crime of psychological violence will necessarily be subjective in the sense that it considers the allegations and personal feelings of the private complainant. As Associate Justice Hernando has emphasized, the purpose of Republic Act No. 9262 is to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.¹⁸ Precisely, the law was enacted to protect the woman and the child. If their perspective of pain and suffering consequent to a duly proven act of violence is disregarded, then the enforcement of the law would be futile.

The commission of the prohibited act may be proven independently of the mental or emotional anguish such that the accused need not be shown to have intended to cause the latter. To hold otherwise would be to unerringly validate the conduct of men who are undeterred by their marriage vows and freely engage in infidelity, without regard to their wives and children. Men, therefore, cannot escape liability by invoking lack of proof that they intended to inflict mental or emotional anguish upon their defenseless and unknowing wives. This was not the intention of the lawmakers in enacting Republic Act No. 9262. Precisely, the lawmakers intended the law to correct the imbalance in the marital relations by proscribing "marital infidelity" through its classification as "psychological violence." Surely, had the situation been reversed, if it had been a woman who had engaged in a one-night stand which results in a lovechild, the husband would undoubtedly exact the full measure of retribution. The language of the law is clear and unqualified. To add more, by saying that intent must be proven, is to engage in judicial legislation.

It will be a truly dark day in the Court's history if we brush aside the deleterious effects of a husband's marital infidelity by establishing a distinction between a "casual sexual encounter" or a "one night stand" and a

¹⁸ Anti-Violence Against Women and Their Children Act of 2004, sec. 2.



relationship intended to inflict mental or emotional anguish. The mere fact that a man who swore to be faithful to his wife had a sexual relation with another woman is marital infidelity, it is betrayal, it is unfaithfulness. The degree of mental anguish and emotional suffering it will bring to a wife is untold, not to mention the children of the marriage. What more for such infidelity to produce an illegitimate child. The psychological trauma to the woman and her children cannot be imagined. To minimize, therefore, such suffering by referring to the betrayal as "casual" or "a one-night stand" is to spit in the face of every woman who has been the victim of such one-night stands and casual sexual encounters. The Court cannot tread such an unenlightened path.

Children are only collateral victims in this situation. Thus, illegitimate children should never be placed in a bad light. However, the fact is that these children born out of wedlock are considered illegitimate under the law and they are born illegitimate precisely because of their parent's marital infidelity.

It is in this context that, viewed from the wife's perspective, knowing one's husband has a child with another woman aggravates one's emotional suffering caused by the fact of the extra-marital affair. The wife is now confronted with the consequences of the infidelity, including the existence of a child outside the marital relationship. This situation will evoke lingering feelings of betrayal as the wife grapples with the reality of a fractured family.

Finally, until such time that the Congress decriminalizes adultery and concubinage, and for that matter, psychological violence caused by marital infidelity, it is our duty as Magistrates of the Highest Court of the land to interpret and apply the law in keeping with the intention of the lawmakers and consistent with justice and equity.

Thus, I agree with the *ponencia* that psychological violence may be committed through marital infidelity without proof that the husband specifically intended to cause mental or emotional anguish upon his wife and therefore **VOTE** to **AFFIRM** XXX's conviction as it is what the law requires and what morality dictates.



MARIA FILOMENA D. SINGH