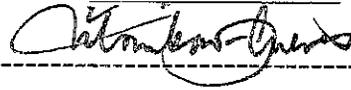


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G.R. No. 224946 – CHRISTIAN PANTONIAL ACHARON, *Petitioner*, v.
THE PEOPLE OF THE PHILIPPINES, *Respondent*.

Promulgated:

November 9, 2021



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CONCURRING OPINION

LOPEZ, M. J.:

I commend the *ponente's* astute discussion on the interpretation of Sections 5(e)¹ and 5(i)² of Republic Act (RA) No. 9262 or the “Anti-Violence Against Women and Their Children Act of 2004.” Similarly, I wish to offer this separate opinion to guide the bench and the bar in the prosecution of crimes under this special law.

The present case arose from a criminal charge against Christian Pantonial Acharon (Acharon) for violation of Section 5(i) of RA 9262 or psychological violence resulting from willful refusal to provide financial support, to wit:

That sometime in [*sic*] January 25, 2012, up to the present, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously **cause mental or emotional anguish, public ridicule or humiliation to his wife AAA, by denying financial support** to the said complainant. (Emphases supplied.)³

The decision acquitted Acharon and ruled that Section 5(i) does not punish mere failure or inability to provide financial support. Neither could Acharon be held guilty under Section 5(e) applying the variance doctrine. This

¹ SEC 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: xxx

xxxx

(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 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: xxx

xxxx

(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;

² (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.

³ *Rollo*, p. 34. Penned by Presiding Judge Evangeline M. Francisco.



is because Sections 5(e) and 5(i) deal with different matters and penalize distinct acts. Accordingly, the *ponencia* abandoned the rulings in *Melgar v. People*⁴ and *Reyes v. People*⁵ where the Court held that a person charged under Section 5(i) may be convicted of Section 5(e) and *vice versa*.

To begin, the study of Criminal Law has long divided crimes into acts wrong in themselves called acts *mala in se*; and acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*. This distinction is important with reference to the intent with which a wrongful act is done. The rule is that in acts *mala in se*, the intent governs; but in acts *mala prohibita*, the only inquiry is whether the law was violated. A common misconception is that all *mala in se* crimes are found in the Revised Penal Code (RPC), while all *mala prohibita* crimes are provided by special penal laws. In reality, however, there may be *mala in se* crimes under special laws,⁶ and *mala prohibita* crimes defined in the RPC.⁷ In *Dungo v. People*,⁸ the Court explained that the better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime *mala in se*; on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reasons of public policy, then it is *mala prohibita*.

Applying this approach, it becomes clear that Section 5(e) or “acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct” and Section 5(i) or acts “causing mental or emotional anguish, public ridicule or humiliation to the woman or her child”, are inherently depraved and immoral, hence, proof of the accused's criminal intent is required. On this note, I suggest to adopt a framework in better understanding the anatomy of RA 9262's penal provisions.

Foremost, proof of *corpus delicti* is indispensable in the prosecution of crimes.⁹ The term *corpus delicti* refers to the body or substance of the crime, or the fact of its commission.¹⁰ It consists of the criminal act and the defendant's agency in the commission of the act. In homicide, for instance, the prosecution must prove: (a) the death of the victim; (b) that the death was produced by the criminal act of person/s other than the deceased and was not the result of accident, natural cause or suicide; and (c) that accused committed the criminal act or was in some way criminally responsible for the act which produced the death.¹¹ In arson, the *corpus delicti* rule is satisfied by proof of the bare fact of the fire and of it having been intentionally caused.¹² In other words, *corpus delicti* primarily describes the act (objective) and the agent

⁴ *Melgar v. People*, 826 Phil. 177, 187-188 (2018).

⁵ G.R. No. 232678, July 3, 2019.

⁶ An example is Plunder under R.A. No. 7080, as amended.

⁷ An example is Technical Malversation.

⁸ 762 Phil 630, 659 (2015).

⁹ *People v. Oliva*, 395 Phil 265, 275 (2000).

¹⁰ *Rimorin, Sr. v. People*, 450 Phil 465, 474 (2003).

¹¹ *Quinto v. Andres*, 493 Phil 643, 654 (2005).

¹² *People v. Murcia*, 628 Phil. 648, 657 (2010).

(subjective) in relation to the *actus reus* (AR) and the *mens rea* (MR) of a crime. *Actus reus* pertains to the external or overt acts or omissions included in a crime's definition while *mens rea* refers to the accused's guilty state of mind or criminal intent accompanying the *actus reus*. Hence, the formula is "***Corpus Delicti = Actus Reus + Mens Rea.***"

ACTUS REUS

Actus reus may have a varied formulation depending on the definition of the crime. **Foremost, the crime may or may not consist of a single *actus reus*.** An example is a complex crime when a single act constitutes two or more grave or less grave felonies (compound crime), or when an offense is a necessary means for committing the other (complex crime proper).¹³ In the eyes of the law and in the conscience of the offender they constitute only one crime, thus, only one penalty is imposed.¹⁴ Also, in special complex crimes like robbery with rape, there is only one specific crime but the prosecution must prove the commission of external criminal acts of robbery and rape. In offenses that require predicate crimes like a violation of the Anti-Money Laundering Act, the component crimes must be identified to prove the more serious crime of money laundering.

Moreover, the component circumstances may be considered in ascertaining the *actus reus*. To prove treason under Article 114 of the RPC, for instance, the prosecution must prove that the accused is either a Filipino citizen or a resident alien. On the other hand, to prove murder under Article 248 of the RPC, the qualifying circumstance of treachery, abuse of superior strength, etc., must be established. When it comes to special laws, we need to look for the specific circumstances intended by the legislators for the application of the law. In RA 7610 or the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*, the law takes into account the age of the victim who must be below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves.¹⁵ In RA 9475 or the *Anti-Torture Act of 2009*,¹⁶ the physical or mental torture must be inflicted by a person in authority or agent of a person in authority. In RA 7877 or the *Anti-Sexual Harassment Act of 1995*,¹⁷ the offender must be a person who has authority, influence or moral ascendancy over another in an education, training, or work environment.

Lastly, the *actus reus* may include the result or the consequences of the crime. In other jurisdictions, criminal offenses are classified as "*conduct crimes*" or "*resulting crimes*." In conduct crimes, proof of the commission of the prohibited conduct only is required. On the other hand, resulting crimes

¹³ Article 48 of the Revised Penal Code.

¹⁴ *People v. Nelmidia*, 694 Phil. 529, 569 (2012).

¹⁵ Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, Republic Act No. 7610, June 17, 1992.

¹⁶ Anti-Torture Act of 2009, Republic Act No. 9745, November 10, 2009.

¹⁷ Anti-Sexual Harassment Act of 1995, Republic Act No. 7877, February 14, 1995.

necessitate proof that the harmful act leads to a specified consequence.¹⁸ In Philippine Criminal Law, physical injuries under Articles 263, 265, and 266 of the RPC is considered a resulting crime. The determination of whether “physical injuries” is serious, less serious, or slight depends upon the extent of the resulting injuries arising from the infliction of harm to the victim. In Article 263, for example, the crime is always serious physical injuries when it resulted in the insanity, imbecility, impotency, or blindness of the victim.

Taken together, the comprehensive anatomy of *actus reus* can be summarized as: “*Actus Reus = act/omission + circumstances + results/consequences*.”¹⁹ Corollarily, the *actus reus* of RA 9262’s penal provisions may be analyzed using this framework as follows:

$$\begin{array}{ccccc} & & \text{RA 9262's ACTUS REUS =} & & \\ & \text{Acts/Omissions} & & \text{Circumstances} & & \text{Results/Consequences} \\ & \text{(Section 5 of RA 9262)} & + & \text{(Section 3 of RA 9262)} & + & \text{(Section 3 in relation to} \\ & & & & & \text{Section 6 of RA 9262)} \end{array}$$

Section 5 of RA 9262 refers to the **specific acts of violence** committed against women and children, to wit:

SEC 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 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:**

¹⁸ <https://www.lexisnexis.co.uk/legal/guidance/causation-intervening-acts-in-criminal-cases>.

¹⁹ Criminal Law (Fifth Edition), Janet Loveless, p. 38.

- (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.** (Emphases supplied.)
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Section 3 of RA 9262 illustrates the different forms of violence, and enumerates the **circumstances surrounding the criminal acts**. Likewise, Section 3 necessitates that **the commission of the specific acts results in some form of violence**, whether physical, sexual, psychological or economic suffering, making RA 9262 a **“resulting crime.”**

SEC 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: x x x (Emphases supplied.)

In relation to Section 3, the provisions of Section 6 impose the penalties according to the crime committed, thus:

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

(a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code. If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of *prision mayor*; those constituting less serious physical injuries shall be punished by *prision correccional*; and those constituting slight physical injuries shall be punished by *arresto mayor*.

Acts falling under Section 5(b) shall be punished by imprisonment of two (2) degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than *arresto mayor*.

(b) Acts falling under Section 5(c) and 5(d) shall be punished by *arresto mayor*;

(c) Acts falling under Section 5(e) shall be punished by *prision correccional*;

(d) Acts falling under Section 5(i) shall be punished by *arresto mayor*;

(e) Acts falling under Section 5(g) shall be punished by *prision mayor*;

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(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision 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 (₱100,000.00) 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.

MENS REA

Anent the “*mens rea*” of a crime, a distinction must be made between general intent and specific intent. General criminal intent pertains to the *dolo* required under Article 4²⁰ of the RPC. It means the accused purpose to do an act prohibited by law regardless of the result. On the other hand, specific criminal intent refers to the particular intent comprising the definition of the crime, as for instance, the specific criminal intent to kill or *animus interficendi* in homicide or murder.²¹ In robbery, the specific intent is “*gain*”, in illegal detention the “*deprivation of liberty*”, in mutilation the deprivation of “*essential organ of reproduction*” is involved. In this regard, I agree with Senior Associate Justice Estela M. Perlas-Benabe that the specific intent of the crime of violence against women and children must be framed to the actual purposes mentioned in Section 5 of RA 9262.

In *Dinamling v. People*,²² the Court laid down the elements of a violation of Section 5(i) of RA 9262, to wit:

- (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

²⁰ RPC, Article 4 provides that “[c]riminal liability shall be incurred: (1) by any person committing a felony (*delito*) although the wrongful act done be different from that which he intended; and (2) by any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or an account of the employment of inadequate or ineffectual means.

²¹ *People v. Malinao*, 467 Phil 432, 446-447 (2004).

²² 761 Phil 356, 373 (2015).

children or similar such acts or omissions. (Emphases supplied.)

The first and second elements refer to the “*circumstances*” described in Section 3 of RA 9262. The third and fourth elements pertain to the specific “*acts*” that the accused committed corresponding to those enumerated in Section 5 of the law. Also, the third element evinces 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. To reiterate, a violation of Section 5(i) of RA 9262 requires a causal connection between the *actus reus* and the *mens rea*. Otherwise, no crime of violence against a woman or her children under this provision is committed.

Here, the *corpus delicti* for violation of Section 5(i) of RA 9262 was not fully established. As regards the *actus reus*, the surrounding “*circumstances*” that the offended party is a woman and that the accused and the victim are husband and wife were undisputed. Yet, the evidence of the prosecution fell short to prove the specific “*act*”, “*results/consequences*”, and “*mens rea*” constituting the crime. As the *ponencia* aptly observed, the charge against Acharon alleged the act of “*denying financial support*” which connotes “*willful refusal*” to give support. Further, “*from the plain meaning of the words used, the act punished by Section 5(i) is, therefore, dolo in nature – there must be a concurrence between intent, freedom, and intelligence, in order to consummate the crime.*” As such, mere failure or inability to provide financial support is not punishable. The records reveal that Acharon “*successfully did for a time, to provide financial support.*” Acharon “*failed to continue providing support only when his apartment in Brunei was razed by fire, and when he met a vehicular accident.*” At the trial, the complainant even admitted that Acharon “*already paid ₱71,000.00 out of the ₱85,000.000*” of their debt. Differently stated, there was no willful refusal on the part of Acharon to give financial support. Similarly, the Information against Acharon alleged that he “*cause mental or emotional anguish, public ridicule or humiliation to his wife.*” Under the proposed framework, this pertains to the “*results/consequences*” of the supposed denial of financial support as well as the *mens rea* of the crime. Nevertheless, the prosecution failed to substantiate this allegation.

VARIANCE DOCTRINE

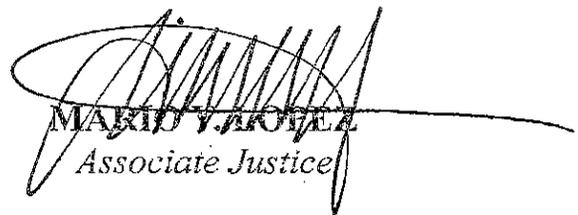
I agree with the *ponencia* that the variance doctrine is inapplicable since Sections 5(e) and 5(i) of RA 9262 deal with different matters and penalize distinct acts. However, I wish to point out that the application of the variance doctrine in *Reyes v. People*²³ where the Court held that a person charged under Section 5(i) may be convicted of Section 5(e) and *vice versa*, is a mere *obiter dictum*. In that case, the accused was originally charged under Section 5(e) of

²³ G.R. No. 232678, July 3, 2019.

RA 9262. Later, the accused moved to quash the information because its allegations do not constitute the offense. However, the trial court ruled that the contents of the information sufficiently charged a violation of Section 5(i) and not Section 5(e). Consequently, prior to the accused's arraignment, the trial court directed the prosecutor's office to amend the Information by designating the crime as under Section 5(i). After trial, the accused was convicted with a violation of Section 5(i). Obviously, the trial court did not rely on the variance doctrine because the information itself sufficiently alleged the elements of Section 5(i). Moreover, the prosecution established that the accused deliberately refused to provide financial support after admitting that he was disappointed to find out that his wife filed a bigamy case against him. The Court's statement in *Reyes* that it "*agrees with the observation of the CA that if properly indicted, Reyes can also be convicted of violation of Section 5 (e), par. 2 for having committed economic abuse against AAA*" is merely an *obiter dictum* and not the controlling doctrine. Strictly speaking, there is nothing to abandon.

Lastly, the variance doctrine is inapplicable only to some violations of RA 9262 like Sections 5(e) and 5(i), and *vice versa*. The variance doctrine may still be possibly applied to other punishable acts that are relatively included or necessarily included and defined in Section 5 of RA 9262. For instance, a person charged under Section 5(a) or "*causing physical harm to the woman or her child*" can be convicted of violation of Section 5(c) or "*attempting to cause the woman or her child physical harm.*" – Section 5(c) is necessarily included in Section 5(a). This is on the assumption that the greater offense of consummated crime includes the lesser offense of an attempted crime.

FOR THESE REASONS, I vote to GRANT the petition.


MARIO V. LOPEZ
Associate Justice