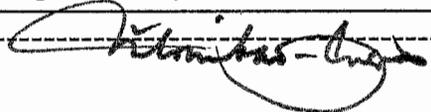


EN BANC

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

Promulgated:

April 16, 2024

X----------X

DISSENTING OPINION

CAGUIOA, J.:

“Teacher, this woman was caught in the act of adultery. In the Law Moses commanded us to stone such women. Now what do you say?”¹

The male counterpart in the story is not known to us, but the facts of the case unwittingly serve to complete the picture. Had the Pharisees caught *the man* in the act of adultery, the majority’s answer to the Pharisees’ question would be a resounding affirmative—*stone him to death as well*. The majority opine that the State has the right to prosecute and incarcerate a husband who fails to be faithful to his wife. In their view: *male marital infidelity* amounts to psychological violence and erring husbands ought to be incarcerated for such behavior over and above *concubinage* in the Revised Penal Code. And despite their colorful rhetoric of progress and empowerment, the majority have ironically returned to *the Law of Moses* as their *ratio decidendi*, reminiscent of a time where adulterers are put to death,² except that we have already abolished the death penalty that was deemed to be inhumane. The majority might as well lift and paraphrase the relevant verse from Deuteronomy as the *ponencia*’s doctrine: *“If a man is found sleeping with another man’s wife, both the man who slept with her and the woman must die. You must purge the evil from [the Philippines].”³*

I dissent.

* In line with Amended Administrative Circular No. 83-2015 dated September 5, 2017, titled “Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances,” the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

¹ John 8:4-6 (NIV).

² Leviticus 20:10: “If a man commits adultery with another man’s wife—with the wife of his neighbor—both the adulterer and the adulteress are to be put to death.”

³ Deuteronomy 22:22 (NIV).



It is of no moment that Republic Act No. 9262, otherwise known as the “Anti-Violence Against Women and Their Children (VAWC) Act of 2004”⁴ **does not define** “marital infidelity” or any reason why “infidelity” is limited to marriage. With the majority’s opinion, it is high time to consider how far the feminist pendulum has swung and ponder on the consequences.

Marital infidelity, **without more**, does not, and cannot, automatically translate into a violation of Section 5(i) of Republic Act No. 9262. I thus strongly dissent with the *ponencia* in convicting petitioner XXX of the charge against him. The evidence of the prosecution simply failed to prove beyond reasonable doubt that XXX violated Section 5(i) of Republic Act No. 9262 by causing psychological violence upon his wife, AAA.

I.

Marital infidelity *per se* is not penalized under Section 5(i) of Republic Act No. 9262

- a. *Intent to cause mental or emotional anguish, public ridicule, or humiliation upon the victim is an essential element of the offense*

Republic Act No. 9262 was enacted to address the social problem of domestic violence; whose usual and likely victims are women and children. As spelled out in its *Declaration of Policy*, Republic Act No. 9262 aims to protect women and children from violence and threats to their personal safety and security in keeping with the State’s obligation to safeguard human rights and fundamental freedoms.

Section 3 of Republic Act No. 9262 provided an encompassing definition of “violence against women and their children” in an attempt to protect women from the different kinds of violence they experience or are vulnerable to while being in an intimate relationship.⁵ Section 3 of Republic Act No. 9262 reads:

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,

⁴ An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes.

⁵ *Acharon v. People*, G.R. No. 224946, November 9, 2021 [Per J. Caguioa, *En Banc*]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.



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:

A. “*Physical violence*” refers to acts that include bodily or physical harm;

B. “*Sexual violence*” refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim’s body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c) Prostituting the woman or her child.

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.

D. “*Economic abuse*” refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. withdrawal of financial support or preventing the victim from engaging in



any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;

2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
3. destroying household property;
4. controlling the victim's own money or properties or solely controlling the conjugal money or properties. (Emphasis supplied)

Despite the encompassing definition of physical, sexual, psychological, and economic violence under Section 3 of Republic Act No. 9262, Section 5 thereof, the penal provision of the law, limited what may constitute criminal violations of the law.

Section 5 states:

SECTION 5. *Acts of Violence Against Women and Their Children.* — The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or



effect of controlling or restricting the woman's or her child's movement or conduct:

- (1) Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;
 - (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 - (3) Depriving or threatening to deprive the woman or her child of a legal right;
 - (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
- (f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
- (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
- (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
- (1) Stalking or following the woman or her child in public or private places;
 - (2) Peering in the window or lingering outside the residence of the woman or her child;
 - (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
 - (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and



(5) Engaging in any form of harassment or violence;

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

Plainly, Section 5 is the implementation of the classifications of violence against women already identified and defined under Section 3. Sections 5(a) to 5(d) seek to protect women and their children from physical violence, 5(f), 5(h) and 5(i) from psychological violence, 5(g) from physical and sexual violence, and 5(e) from a mixture of all types of violence that attempts to control the woman or make her lose her agency.

In addition, it is apparent from the terms employed in Section 5, e.g., *causing, threatening, placing, inflicting, engaging*, that the acts punished are intentional in character. In other words, the presence of evil intent is precisely what transforms these acts or omissions into the “crime of violence against women and their children.” The crime is essentially “*dolo*” in nature—there must be a concurrence between intent, freedom, and intelligence, in order to consummate the crime.⁶ Thus, while the law employs broad definitions of the different kinds of violence, **the penal provisions of the law cover only those acts in which violence of whatever character is intentionally inflicted upon the woman.**

In this case, XXX was charged and convicted by the trial court and the Court of Appeals of psychological violence resulting from marital infidelity, under Section 5(i) of Republic Act No. 9262, committed as follows:

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

CONTRARY TO LAW.⁷

A perusal of Section 5(i), as well as related jurisprudence, is thus imperative in order for the Court to properly rule on the guilt or innocence of XXX.

As above quoted, Section 5(i) considers a crime of psychological violence against women and children the act of “[c]ausing mental or emotional anguish, public ridicule or humiliation to the woman or her child,

⁶ *Acharon v. Pecple*, *supra* note 5.

⁷ *Ponencia*, p. 3.

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 *Dinamling v. People*,⁸ the Court explained that the mental or emotional anguish suffered by the woman and the acts of the offender constituting psychological violence which caused such mental or emotional anguish are **two (2) distinct elements of the crime that the prosecution must separately prove beyond reasonable doubt:**

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.⁹ (Emphasis supplied, citation omitted)

In other words, to sustain a conviction for violation of Section 5(i), it is not enough to establish that the acts complained of constitute psychological violence, there must be concomitant proof that the woman experienced mental or emotional anguish as a result of such acts of violence. Conversely, proving that the woman suffered mental or emotional anguish does not automatically equate to already proving that the acts complained of amount to psychological violence defined and punished under Section 5(i).

In the recent *En Banc* case of *Acharon v. People*¹⁰ (*Acharon*), the Court underscored that crimes penalized in Section 5(i) of Republic Act No. 9262 are crimes *mala in se*. As such, there must be a specific intent to inflict mental or emotional anguish upon the woman to constitute a violation of Section 5(i). Stated differently, without any proof that the accused had intended to cause mental or emotional anguish upon the victim, the acts complained of will not give rise to any criminal liability under Section 5(i). The rationale for this principle is elucidated by the Court in *Acharon* as follows:

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.**

In this connection, the Court deems it proper to clarify, as Associate Justices Amy C. Lazaro-Javier [(Justice Lazaro-Javier)] and Mario V. Lopez pointed out in their respective Opinions that **the crimes penalized under Section 5(i) and 5(e) of [Republic Act No.] 9262 are *mala in se*,**

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

⁹ *Id.* at 376.

¹⁰ *Supra* note 5.



not *mala prohibita*, even though [Republic Act No.] 9262 is a special penal law. The acts punished therein are inherently wrong or depraved, and the language used under the said penal law requires a mental element. Being a crime *mala in se*, there must thus be a concurrence of both *actus reus* and *mens rea* to constitute the 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*.”

It is not enough, therefore, for the woman to experience mental or emotional anguish, or for her partner to deny financial support that is legally due her. In order for criminal liability to arise under Section 5(i) of [Republic Act No.] 9262, insofar as it deals with “denial of financial support,” there must, therefore, be evidence on record that the accused willfully or consciously withheld financial support legally due the woman for the purpose of inflicting mental or emotional anguish upon her. In other words, the *actus reus* of the offense under Section 5(i) is the willful denial of financial support, while the *mens rea* is the intention to inflict mental or emotional anguish upon the woman. Both must thus exist and be proven in court before a person may be convicted of violating Section 5(i) of [Republic Act No.] 9262.

“It bears emphasis that Section 5(i) penalizes some forms of psychological violence that are inflicted on victims who are women and children.” In prosecutions under Section 5(i), therefore, “[p]sychological violence is the means employed by the perpetrator” with denial of financial support as the weapon of choice. 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.

This means that the mere failure or one’s inability to provide financial support is not sufficient to rise to the level of criminality under Section 5(i), even if mental or emotional anguish is experienced by the woman. In other words, even if the woman were to suffer mental or emotional anguish due to the lack of financial support, but the accused merely failed or was unable to so provide support, then criminal liability would not arise. A contrary interpretation to the foregoing would result in absurd, if not outright unconstitutional, consequences.¹¹ (Emphasis supplied, citations omitted)

It must be remembered that in *Acharon*—promulgated just in November of 2021—the Court *En Banc* unanimously voted for the acquittal of the accused therein because the prosecution failed to prove intent to inflict mental or emotional anguish on the part of the accused.

Following *Acharon*, the “evidence must establish beyond reasonable doubt that the accused intended to cause the victim mental or emotional

¹¹ *Id.*



anguish, or public ridicule or humiliation”¹² with marital infidelity as the weapon of choice. Therefore, the elements of a violation of Section 5(i) of Republic Act No. 9262, insofar as the same deals with marital infidelity, are 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 enters into an extramarital affair; and**
- (4) The offender’s purpose in having an affair is to cause the woman and/or her child or children mental or emotional anguish.**

This means that marital infidelity *per se* is not punished by Republic Act No. 9262. To be sure, this act is already, and properly, punished by the Revised Penal Code in its articles on Adultery and Concubinage. **What is punished by Section 5(i), Republic Act No. 9262 is the infliction of psychological violence where purpose or intention is indispensable.**

In fact, in an earlier case, the Court had already made a categorical ruling that marital infidelity *per se* is not what Republic Act No. 9262 penalizes but the psychological violence causing mental or emotional suffering upon the victim. In *AAA v. BBB*,¹³ the Court said:

[W]hat [Republic Act No.] 9262 criminalizes is not the marital infidelity *per se* but the psychological violence causing mental or emotional suffering on the wife. **Otherwise stated, it is the violence inflicted under the said circumstances that the law seeks to outlaw. Marital infidelity as cited in the law is only one of the various acts by which psychological violence may be committed.** Moreover, 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 wife. Thus, the mental or emotional suffering of the victim is an essential and distinct element in the commission of the offense.¹⁴ (Emphasis supplied)

As applied to this case, for XXX to be convicted of violating Section 5(i) of Republic Act No. 9262, the prosecution’s evidence must establish, beyond reasonable doubt, that XXX intended to cause mental or emotional

¹² *Id.*

¹³ 832 Phil. 607 (2018) [Per J. Tijam, First Division].

¹⁴ *Id.* at 620.

anguish upon AAA with marital infidelity as a weapon of choice to accomplish such purpose. In other words, XXX must have intended to cause mental or emotional anguish upon AAA (*mens rea*) specifically by willfully, unlawfully, and feloniously committing "marital infidelity" (*actus reus*). Only with the concurrence of these two (2) things established by proof beyond reasonable doubt can conviction of XXX be warranted.

b. *Acharon* squarely applies to this case; ruling that specific intent is immaterial contradicts the plain language of the law and renders the crime subjective

As every student of constitutional law knows, "[i]t is emphatically the duty of the Judicial Department to say *what the law is*. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule."¹⁵ The fundamental duty of a court is to interpret the law *as it is* and not as it should be. Here, the majority renege on this duty by interpreting Republic Act No. 9262 based on their presumptions and beliefs of what it should be and not based on what the language of the law *per se* provides. For one, the majority reject the application to the present case of the doctrine in *Acharon*, which similarly involves a violation of Section 5(i). The majority believe that Section 5(i) must be qualified when it comes to marital infidelity such that intent to inflict mental or emotional anguish is immaterial. In effect, the majority are carving out from *Acharon* psychological violence under Section 5(i), committed through marital infidelity, by considering it as a crime *malum prohibitum* and not *malum in se*.

During the deliberations of this case, it was opined that for cases of marital infidelity under Section 5(i), the specific criminal intent to inflict mental or emotional anguish upon the woman is irrelevant. Thus, in keeping with the intent of Republic Act No. 9262, which is the protection of women and children, proof that the woman suffered mental or emotional anguish due to the acts committed by the accused suffices to hold a person criminally liable. Hence, for psychological violence through marital infidelity, the Court should disregard the specific criminal intent to commit the crime.¹⁶

It was also posited that criminal intent is irrelevant to constitute a violation of Section 5(i). Consequently, it was opined that *Acharon* is inapplicable to this case because the former involves the deprivation of financial support. Further, considering that Section 5(i) does not use the term "deliberate," "knowingly," "for the purpose of," specific intent is, therefore,

¹⁵ *Marbury v. Madison*, 5 U.S. 137 (1803). Emphasis supplied.

¹⁶ J. Lazaro-Javier, Concurring Opinion, pp. 8-9.



not required. Instead, what the law merely looks at is the consequence, effect or actual harm suffered by the victim.¹⁷

I strongly disagree.

To my mind, ruling that specific intent to inflict mental or emotional anguish is immaterial in cases of psychological violence through marital infidelity under Section 5(i), but relevant in other cases as in deprivation of financial support in *Acharon*, is completely baseless and unwarranted nitpicking. More importantly, it violates the fundamental rule that all penal statutes shall be construed in favor of the accused.

The language of the law does not make such distinction; thus, courts should also refrain from making distinctions. If the Court were to hold that specific intent is irrelevant to prosecute violations of Section 5(i) only with respect to marital infidelity, it would, in effect, be ruling that marital infidelity *per se* is punished by Republic Act No. 9262, which is not the case. As earlier emphasized, this act is already, and properly, punished by the Revised Penal Code. **In contrast, and at the risk of being repetitive, what is punished by Section 5(i), Republic Act No. 9262 is the purpose or intention to inflict psychological violence.**

Moreover, the discussions in *Acharon* are on all fours with this case as both cases deal with the same provision of law—Section 5(i) of Republic Act No. 9262. It would be the height of incongruence for the Court to say that a penal provision would have different constitutive elements depending on the circumstances. Every crime, every penal provision, has a standard set of elements, all of which must be present for guilt beyond reasonable doubt to be established. And to reiterate, what Section 5(i) punishes is the act of “[c]ausing mental or emotional anguish, public ridicule or humiliation to the woman or her child” with the enumerated examples of doing so (e.g., 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) being merely the weapons of choice.¹⁸ **The Court thus cannot make a distinction between denial of financial support, on the one hand, and marital infidelity, on the other, for purposes of determining whether a person is guilty of violating Section 5(i), Republic Act No. 9262.** In each and every case involving said provision, the Court has to be assured that *intentional* causing of mental or emotional anguish is present before conviction may be had.

Thus, while *Acharon* involves deprivation of financial support as the “weapon of choice” to commit psychological violence, the Court’s ruling therein squarely applies to this case. To be sure, the Court’s pronouncement in *Acharon* as to the requisite specific intent for Section 5(i) is all

¹⁷ J. Inting, Separate Concurring Opinion, pp. 7–8.

¹⁸ See *Acharon v. People*, *supra* note 5.



encompassing. The Court categorically said, in recognition of the respective Opinions of Justices Lazaro-Javier and Mario V. Lopez in *Acharon*, “that the crimes penalized under Section 5(i) of [Republic Act No.] 9262 are *mala in se*, not *mala prohibita*,”¹⁹ which includes psychological violence through marital infidelity. **Being a crime *mala in se*, there must be concurrence between the acts complained of and the accompanying criminal intent to inflict mental or emotional anguish upon the victim.**

As explained in *Acharon*, the specific acts penalized by Republic Act No. 9262 as defined under Section 5²⁰ pertain to various forms of violence which the law aims to protect women from—such as physical violence under Sections 5(a) to 5(d), psychological violence under Sections 5(f), 5(h) and 5(i), physical and sexual violence under Section 5(g), and economic abuse

¹⁹ *Id.*

²⁰ SECTION 5. *Acts of Violence Against Women and Their Children.* — The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
 - (1) Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;
 - (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 - (3) Depriving or threatening to deprive the woman or her child of a legal right;
 - (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
- (f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
- (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
- (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
 - (1) Stalking or following the woman or her child in public or private places;
 - (2) Peering in the window or lingering outside the residence of the woman or her child;
 - (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
 - (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
 - (5) Engaging in any form of harassment or violence;
- (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

under Section 5(e). Undoubtedly, all these acts are vile and inherently immoral. Punishable acts or omissions that are immoral by nature, are considered crimes *mala in se*. The absence of the terms “deliberate,” “knowingly,” or “for the purpose of” does not necessarily mean that the crime is not *mala in se*. For example, no such words appear in the crimes of homicide and serious illegal detention and yet the element of intent to kill or deprive of liberty is without controversy. On the other hand, acts that are not inherently immoral, but there is a statute prohibiting its commission by reasons of public policy, are crimes *mala prohibita*.²¹ The rule on the subject is, unlike in acts *mala prohibita*, where the intent of the offender is immaterial, in acts *mala in se*, intent to commit the crime governs.²² For violation of Section 5(i), the intent necessary to give rise to criminal liability is expressed therein—“*to cause mental or emotional anguish, public ridicule or humiliation to the woman or her child.*”

In this connection, the *ponencia* suggests that intent to cause mental and emotional anguish may be conclusively presumed from the act of committing marital infidelity. To support this novel theory, the *ponencia* draws the absurd analogy between homicide and marital infidelity, to wit:

To further illustrate, it can be said that one who kills another person—an inherently vile act—will generally be found guilty, barring all justifications, as long as specific intent to kill is proven. Intent to kill, in turn, is conclusively presumed from the fact of the victim’s death, thereby completing the ingredients of the crime.

Applied to the present case, can it also be said that the specific intent to cause mental and emotional anguish upon the victim may be conclusively presumed from the fact of infidelity itself?

The Court firmly believes so.²³

This is a false analogy.²⁴ Simply because two crimes are “inherently vile” does not give license to transpose rules from one crime to the other. In *homicide*, there is a metaphysical union between the actor, the object or act, the victim, and the effect. A man (the actor) deliberately picks up and fires a gun (the object or act) at a woman (the victim) and, as a result, the latter dies (the effect). Did the man intend to cause the woman’s death? Obviously, all human reason suggests so. Compare this scenario with a violation of Section 5(i) of Republic Act No. 9262. XXX (a married man) had sexual intercourse with a woman who is not his wife and then concealed the same from AAA.

²¹ *Dungo v. People*, 762 Phil. 630, 659 (2015) [Per J. Mendoza, Second Division].

²² *Id.* at 658.

²³ *Ponencia*, p. 16.

²⁴ The fallacy of *faulty analogy* occurs when analogies are used as arguments or explanations and the similarities between the two things compared are too remote to support the conclusion. Stanford Encyclopedia of Philosophy, available at <<https://plato.stanford.edu/entries/fallacies/#:~:text=The%20fallacy%20of%20faulty%20analogy,will%20want%20to%20use%20them>> (last accessed on May 15, 2024).

The intent to have sexual intercourse with a woman other than his wife can be inferred from the act of sexual intercourse. But intent to cause mental or emotional anguish under Republic Act No. 9262 does not reasonably follow from the act of sexual intercourse with another woman. There is hardly any metaphysical connection to use as a foundation for any inference.

The *ponencia*, however, poses a question: “*What else could adulterers have expected to cause upon their spouse when they committed an act of unfaithfulness, aside from mental and emotional pain?*” Here, the *ponencia* ironically perhaps thinks too highly of men—it is more probable that the husband **was not expecting anything at all**, as the latter has been blinded by lust.

In this regard, the *ponencia* poses the challenge to flesh out how marital infidelity can be used as a means to cause mental and emotional anguish. Consider this: a husband commits marital infidelity but, unlike XXX, videotapes his act of coitus with his mistress and sends a copy thereof to his spouse, or of a man who openly publicizes his extramarital affair in front of his wife. In these scenarios, as opposed to XXX’s case where intent to cause mental or emotional anguish was drawn by the majority out of thin air, specific intent to cause mental and emotional anguish can easily be discerned from the acts of the erring husband.

That said, worthy of note as well is that Section 5 does not only enumerate specific acts of violence committed against the woman or child, it also describes the circumstances or context upon which such acts must be performed to give rise to criminal liability. For instance, as illustrated in *Acharon*, the act of denying financial support is not *per se* penalized by Republic Act No. 9262. What makes it punishable under Republic Act No. 9262 is the existence of the circumstances or context under which the act of deprivation of financial support was employed by the accused. In *Acharon*, the Court further noted that deprivation of financial support is both covered under Sections 5(e) and 5(i). What makes the act of denying financial support punishable under Section 5(e) and not under Section 5(i) is the specific intent, as described in Section 5(e), of controlling or restricting the woman’s and/or the child’s or her children’s actions or decisions. On the other hand, denial of financial support becomes punishable under Section 5(i) only when such was done with intent to inflict upon the woman or child mental or emotional anguish, as described in Section 5(i). Clearly, specific intent is a material and relevant element in determining *first*, whether the act is punishable by Republic Act No. 9262 and, *second*, in some cases, under which paragraph of Section 5 the complained act falls.

Construing Section 5(i) of Republic Act No. 9262, in relation to a marital infidelity, as *malum prohibitum* raises several issues. To begin with, it would be contrary to the plain language of the law. To stress anew, it is not the commission of marital infidelity that is punished, but the “[c]ausing [of]

mental or emotional anguish, public ridicule or humiliation to the woman or her child”—this is the overt act punished by the law. The Court need not look further than in Section 5’s other subsections as proof that this offense is intentional in nature.

An interpretation that Section 5(i) is *malum prohibitum* likewise substantially deviates from the meaning of other subsections under Section 5. Indeed, as discussed above, the verbs used by each of the nine (9) acts under Section 5 are *intentional* in nature as it would be absurd to consider them as “accidental.” Intentionality is implied by the use of words such as “purposeful,” “causing” and “threatening.” The law thus punishes offenders whose objective is to inflict violence upon the woman or her child by various means. Consequently, the foregoing acts **require intentionality** simply because the contrary would result in absurdity. For instance, if the family goes on a trip (which the husband planned) but is then kidnapped by malefactors, is the husband guilty under Section 5(d) for *accidentally* “[p]lacing the woman or her child in fear of imminent physical harm”? What if the husband is driving and forgets to check the tire pressure that results in a crash and injuries to the wife and child. Is the husband liable under Section 5(a) for *negligently* “[c]ausing physical harm to the woman or her child?” Precisely, adopting the *ponencia*’s view gives rise to these absurdities. To repeat, intent to inflict physical, emotional, sexual, psychological, or economic abuse upon the woman or child victim is an essential element of violation of Section 5(i) of Republic Act No. 9262.

I also underscore that removing the element of specific intent from Section 5(i) does not only go against the plain language of the law, **it likewise makes the crime completely subjective**. To illustrate its subjectiveness, the *ponencia* reads in relevant part:

Thus, in ascertaining whether the third element is satisfied or not in cases involving marital infidelity, the question to be asked therefore is this: did the woman or their child suffer mental or emotional anguish due to the acts committed by the offender? If the answer is yes, then the third element already exists. The husband’s intent to cause mental or emotional anguish upon the wife or her child is already presumed upon the husband’s mere commission of the act of marital infidelity. Another observation that supports this pronouncement is the way the statute is worded: a closer look will reveal that the provision deliberately chose the phrasing “**causing mental or emotional anguish**” perhaps to highlight the idea as discussed above, and without regard to the intent of the offender. Otherwise, the law could have simply made an explicit requirement that the offender intended to cause such mental or emotional harm. However, it did not.²⁵ (Emphasis in the original)

If proof that the woman suffered mental or emotional anguish is to be considered the gravamen of Section 5(i), then the determination of whether the crime is committed is no longer based on the overt acts of the accused but

²⁵ *Ponencia*, p. 17.

on the personal disposition and circumstances of the victim. **Effectively, the guilt of the accused will be at the mercy of, and solely to be adjudged by, the allegations of the victim. This is a dangerous reading and application of a criminal statute. It is the law that determines whether an act is criminalized, not the personal feelings of the aggrieved party.** XXX can only be held liable for his own acts or omissions.

In addition, the individual experience of the complainant cannot be the determinative factor for violations of Section 5(i), for doing so would effectively allow Section 5(i) to criminalize a host of other acts that are normally part of being in an intimate relationship. For example, if a husband continuously fails to put down the toilet seat despite having been repeatedly reminded to do so, and the wife experiences emotional anguish as a result because she feels that her husband does not listen to her, does this already constitute a violation of Section 5(i)? Using the majority's ruling of the present case, the answer is a resounding yes; it is a violation of Section 5(i) for, after all, all that is required is to do an act that causes mental or emotional anguish. Another example would be if a boyfriend decides to break up with his girlfriend—a relationship still covered by Republic Act No. 9262 as the law covers sexual or dating relationships, not just marriage—would this constitute a violation of Section 5(i)? Again, using the majority's reasoning, it will likewise be a violation since logic and experience dictate that going through a breakup is a source of mental or emotional anguish. Lastly, would a 20-year-old man be penalized under Section 5(i) if he finds himself genuinely falling in love with another girl, thereby causing mental and emotional anguish to his current girlfriend? Following the majority's reasoning again, the answer would be in the affirmative.

Clearly, this is a dangerous precedent. By redefining the elements of violation of Section 5(i) to only, essentially, be the mental or emotional anguish suffered by the victim, the majority is putting not just an accused in a disadvantageous position, but also relationships and families in a vulnerable state.

Simply put, it cannot be said that doing an act which will naturally cause emotional anguish to one's partner already constitutes "violence" that may be punished by the law. Once again, what makes an act punishable under the statute—like most Philippine criminal laws—is the intent of the offender.

The *ponencia* asserts on one hand that a man's specific intent is "purely a mental process" that may not be "demonstrated externally"—proof of which would render "enforcement of the law ... difficult, if not impossible," and yet, on the other hand, the *ponencia* is unwilling to apply this same standard to a victim's testimony on her "mental and emotional anguish." Is the latter not a "mental process" as well? What all this amounts to is simple hypocrisy and virtue-signaling, which was exemplified by the majority when they decided to carve out marital infidelity from the *ratio decidendi* in *Acharon*. In



Acharon, those in the majority required proof of specific intent with respect to all other offenses covered by Section 5(i) without ever considering the “impracticality” or how doing so will “weaponize” “subjectivity.”

As illustrated above, to rule that proof of the victim’s suffering determines the guilt and liability of the accused for violation of Section 5(i), without regard to whether the complained act was done for the purpose of inflicting mental or emotional anguish, will open a Pandora’s box of criminal suits and convictions not even contemplated by Republic Act No. 9262. All mistakes, intentional or unintentional, which naturally causes a woman mental or emotional anguish become a criminal offense and will subject a man to incarceration. While Republic Act No. 9262 was enacted to protect and empower women, **it was never meant to be used as a weapon for women to chastise their partners for every error or mistake committed in their relationships.**

This slippery slope has been precisely opened by some members of the Court. In fact, as stated at the outset, the term “marital infidelity” itself is not defined in Republic Act No. 9262. Republic Act No. 9262 neither states that “marital infidelity” is a husband having sexual intercourse with a woman who is not his wife, nor does it state that “marital infidelity” includes having lustful thoughts over a woman who is not his wife. Nowhere in Republic Act No. 9262 does it state the nature, extent, and/or duration of “marital infidelity” and there is no test provided in the statute for the Courts to use and apply. On this point, the Court in *People v. Dela Piedra*,²⁶ declared:

Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. A criminal statute that “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,” or is so indefinite that “it encourages arbitrary and erratic arrests and convictions,” is void for vagueness. The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning.²⁷ (Citations omitted)

If the Court were to rule that specific intent is not an element of the offense under Section 5, then the nature, extent, and duration of “marital infidelity” covered by Section 5(i) will effectively be up to the private complainant. By what standard, then, is the Court to decide when the following situations suffice to send the offender-husband to jail?

- The husband gets a second cellphone, refuses to show it to his wife upon the latter’s request and, as a result, causes her mental or emotional anguish due to the former’s refusal to share his secrets with her.

²⁶ 403 Phil. 31 (2001) [Per J. Kapunan, First Division].

²⁷ *Id.* at 47–48.



- The wife discovers that her husband casually flirted with a co-worker at an office event.
- The husband ceases to show any desire for his wife but is friendly to other women.

Justice Maria Filomena D. Singh (Justice Singh) opines:

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.²⁸

Justice Singh thus raises four (4) arguments in favor of the proposition that marital infidelity is *malum prohibitum* under Republic Act No. 9262:

- i. The contrary position would encourage infidelity.
- ii. The proposition corrects an “imbalance” in the marital relations by proscribing “marital infidelity” through its classification as “psychological violence.”
- iii. The language of the law is “clear and unqualified.”
- iv. To hold the contrary is judicial legislation.²⁹

Again, these reasons are absurd.

First, the premise that requiring *intent to cause psychological violence* would validate lecherous conduct is absurd. The male stereotype assumed by the example is simply a strawman—as if dispensing with intent in relation to Section 5(i) today will “deter” the cheaters of tomorrow. Aside from being a question of policy that is not within the province of the Court, it is precisely the failure of a man’s reasonable faculties, the succumbing to temptation, that

²⁸ J. Singh, Separate Concurring Opinion, p. 8.

²⁹ *See id.*



leads him into these unfortunate situations. A man like XXX, for example, is precisely in this predicament because his passions overcame his reason, and not because of any elaborate scheme of revenge against his wife that was foiled by its discovery.

Second, rather than “correcting” the supposed “imbalance” in the marriage, dispensing with intent under Section 5(i) would only have the opposite effect. Precisely, doing so would reify these “imbalances” and would highlight marriage roles as rather “victim-oppressor.” This stems from a misunderstanding of the nature of power in a marriage relationship, which is not simply a question of who has more votes. A wife is not a “minority shareholder” so to speak who requires protection. Such an analogy does not assume that men and women are fundamentally equals in marriage and disregards the unique and mysterious logic of power in a marriage.

Third, it is inaccurate to state that the language of the law is “clear and unqualified” when Section 5 uses words such as “purposeful,” “causing,” and “threatening,” as discussed above. Hence, intentionality cannot be divorced from Section 5(i).

Lastly, it would precisely be judicial legislation, **and against the well-settled rule to interpret all penal statutes liberally in favor of the accused**, to arbitrarily consider Section 5(i) as *malum prohibitum* and to send otherwise innocent men to jail.

Here, with the majority’s ruling that intent to cause mental or emotional anguish need not be proven in relation to a violation of Section 5(i) in relation to marital infidelity, and that the same can be presumed from the act of marital infidelity *per se*, the *ponencia* is amending both the provisions of Republic Act No. 9262 and the Revised Penal Code—a plain act of judicial legislation. Not finished there, the *ponencia* furthers this egregious error when it discussed how marital infidelity (even while not defined in the law) “still admits of defenses akin to exempting circumstances in criminal law” and suggests that “estranged spouses” may not be able to have a cause of action for marital infidelity under Section 5(i). This is clearly inconsistent with Section 3(a) of Republic Act No. 9262 which provides that VAWC may be committed against a “former wife” – “estranged” or otherwise. At any rate, what then is the standard to call a couple “estranged”? Similarly, may a man who has an affair now assert that he was a “person who act[ed] under the impulse of an uncontrollable fear [i.e., of his wife]” or that he acted “under the compulsion of an irresistible force [i.e., his lust]”? The absurdities go on.

To be sure, the minority’s view is in no way “minimizing” the trauma caused by a partner’s betrayal of trust or a “spit in the face of every woman who has been the victim of such one-night stands and casual sexual encounters.”³⁰ This is a complete *non sequitur*. Vengeance should not be the

³⁰ *Id.* at 9.

animating principle in the judicial interpretation of laws. Importantly, the male perspective is wholly ignored. The incarceration of a partner or spouse for unintentional offenses and the consequent breaking up of a family is no light matter and great caution must be taken before such an interpretation may be given to Section 5(i).

II.

Effects of construing Section 5(i) of Republic Act No. 9262 as penalizing marital infidelity *per se*

a. Discriminates against married men

Even assuming that “infidelity” is a term that was properly defined under Republic Act No. 9262, the interpretation espoused by the majority arbitrarily limits the same within marriage. Republic Act No. 9262 does not only protect married women, but even women in sexual or dating relationships. To recall, Republic Act No. 9262 was enacted to address **all types of violence suffered by women in intimate relationships; it applies equally to all women and their children who suffer violence and abuse.** Thus, Section 3 of Republic Act No. 9262 defines VAWC as:

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. (Emphasis supplied)

In *Garcia v. Judge Drilon, et al.*,³¹ (*Drilon*) the Court *En Banc* had the opportunity to clarify that Republic Act No. 9262 does not discriminate against a husband or father because the law encompasses all types of intimate relationships, even lesbian relationships, to wit:

There is likewise no merit to the contention that [Republic Act No.] 9262 singles out the husband or father as the culprit. As defined above, 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. Moreover, while the law provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the principle of conspiracy under the Revised Penal Code (RPC). Thus, in the case of *Go-Tan v. Spouses Tan*, the parents-in-law of Sharica Mari L. Go-Tan, the victim, were held to be proper respondents in the case filed by the latter upon the allegation that they and

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

their son (Go-Tan's husband) had community of design and purpose in tormenting her by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically.³² (Citations omitted)

Indeed, "infidelity" does not discriminate between married and unmarried women. The proper interpretation of Republic Act No. 9262, which is consistent with its purpose, is to guard **all** women, married or unmarried, in intimate relationships against malefactors intending to cause them mental or emotional anguish. This is not achieved if the Court were to rule that the commission of marital infidelity *per se* constitutes psychological violence punished under Section 5(i) of Republic Act No. 9262. Effectively, only married men may be charged and convicted of violating Section 5(i) through marital infidelity. The infidelity or unfaithfulness committed by a person against a woman with whom he or she has or had a sexual or dating relationship, even if such act/s was/were done with intent to cause mental or emotional anguish, public ridicule and humiliation upon the said woman, will not be covered by Section 5(i) of Republic Act No. 9262.

This is not the intent of Republic Act No. 9262. To reiterate the Court's ruling in *Drilon*, Republic Act No. 9262 does not discriminate against married men. The law encompasses all forms of violence and abuse committed against women in all types of relationships, even including sexual or dating relationships.

Thus, punishing only married men for committing infidelity for violating Section 5(i) would constitute a violation of one of the fundamental principles of the Constitution—the equal protection clause. In such case, the distinction effectively made between married men and unmarried men is not germane to the purpose of Republic Act No. 9262, which is to address all types of violence committed against women.³³ To be sure, a woman, who has been cheated on by her partner whom she truly loves, would always feel mental and emotional anguish because of the infidelity. The amount of pain and betrayal cannot be measured on the scales of the law but by one's personal relationship, and the same exists regardless of whether the woman is married or unmarried.

*b. Undermines marriage and
the possibility of
reconciliation between
spouses/couples*

Additionally, the violation of Section 5 of Republic Act No. 9262 is a public crime. Section 25 of Republic Act No. 9262 states that "[v]iolence against women and their children shall be considered a **public offense which**

³² *Id.* at 103–104.

³³ *See id.*



may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.” This means that any John or Jane Doe can file a criminal case against an erring husband or partner.

Contrariwise, marital infidelity under the Revised Penal Code is considered a private offense. Article 344 of the Revised Penal Code states that “[t]he crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he [or she] shall have consented or pardoned the offenders.”

Section 5, Rule 110 of the Revised Rules of Criminal Procedure³⁴ as amended, echoes this provision of the Revised Penal Code:

SEC. 5. *Who Must Prosecute Criminal Actions.* —

.....

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

In a catena of cases, the rationale of the law on the prosecution of private crimes has been explained in this wise:

In *People v. Lualhati*,³⁵ the Court said that the legal requirement is to “let the aggrieved woman and her family decide whether to expose to public view or to heated controversies in court the vices, faults and disgraceful acts occurring in the family.”³⁶

In *People v. Ilarde*,³⁷ it was ruled that “the law leaves it to the option of the aggrieved spouse to seek judicial redress for the affront committed by the erring spouse.”³⁸ This policy was adopted “out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial.”³⁹

Succinctly put, the policy of affording the aggrieved woman the decision to seek judicial redress in private crimes is the State’s recognition of and respect for familial and marital privacy. If the Court were to say that

³⁴ A.M. No. 00-5-03-SC, as amended, December 1, 2000.

³⁵ G.R. No. 66038, March 16, 1989, 171 SCRA 277 [Per J. Grifo-Aquino, First Division].

³⁶ *Id.* at 283.

³⁷ G.R. No. L-58595, October 10, 1983; 125 SCRA 11 [Per J. Escolin, Second Division].

³⁸ *Id.* at 18.

³⁹ *Id.*

specific intent to inflict mental or emotional anguish is immaterial in Section 5(i), marital infidelity, as defined and penalized by the Revised Penal Code, becomes a public offense under Republic Act No. 9262. **As such, any person—a neighbor, an officemate, an acquaintance—can easily pry into the personal and private affairs of the couple and file a case against the erring partner, even regardless of the fact that the aggrieved partner has already reconciled with or forgiven his or her erring partner.**

Take for instance, a “concerned” neighbor who has knowledge of his neighbor’s husband’s visits to a place of ill repute with a woman other than his wife. Can such concerned neighbor institute a criminal case against the erring husband for violation of Section 5(i), even without the wife’s consent? Yes, if the Court were to rule that marital infidelity is an offense *malum prohibitum* and a public crime under Section 5(i) of Republic Act No. 9262. What if the husband, admitting to his mistake, was forgiven by the wife? Can the husband still be prosecuted and convicted for violation of Section 5(i) after the lapse of ten years? By a complaint filed by the wife herself out of fear for the husband committing infidelity again? Or by the concerned officemate, neighbor, or friend, seeing that the wife has been in continued distress? Again, the answer to these questions would be yes if the Court were to rule that Section 5(i) penalizes marital infidelity *per se*. In all these scenarios, one thing is clear—a couple’s marriage, their marital and familial privacy, and the possibility of their reconciliation will be undermined if not totally destroyed.

Therefore, the majority of the Court resolve this case with a totally myopic viewpoint. It cannot confine the consequences of its interpretation of Section 5(i) solely on the circumstances of the marriage of XXX and AAA. Otherwise, the Court will lose sight of the purpose for which the law was enacted.

Truly, adultery, marital infidelity, and sexual immorality in general, have existed long before Republic Act No. 9262 and have been punished in various ways in history—even with death.⁴⁰ The majority should thus disabuse themselves of the notion that interpreting Section 5(i) of Republic Act No. 9262 as penalizing marital infidelity *per se* will drive cheating husbands to extinction. However, the majority seem to have lost sight that the Spouses XXX were, at some point in time, in love and indeed intended to make good on their vows when they were married. It would be absurd to propose that XXX entered into a marriage as a pretext to commit marital infidelity—he simply lost his way down the road. The majority suggest that the reasons for XXX losing his way are irrelevant simply because the pain suffered by AAA is proof enough of violence.

The view of the majority that every marital infidelity committed by a man, without regard to the specific circumstances of such infidelity, is

⁴⁰ See Leviticus 20:10, ESV: “If a man commits adultery with the wife of his neighbor, both the adulterer and the adulteress shall surely be put to death.”

tantamount to intentional violence on the woman-partner is simply vindictive and bordering on misandry. Indeed, marital infidelity, as broad as the term is, involves issues that cannot be examined from a single perspective. If it is truly the policy to “strengthen” the family’s “solidarity,” how can a marriage address these complex issues when husbands or partners are simply being shipped off to jail? Throwing the partner-husband in jail would not mend the relationship but would rather euthanize it.

The construction of Section 5 by the majority may be worse than the evil sought to be prevented **and a descent into puritanism**. Effectively ruling that marital infidelity, without more, is penalized under Section 5(i) affects the entire institution of marriage. Erring partners/husbands now face the threat of incarceration should the Court decide to convict XXX as a caricature of another lecherous simpleton who, failing to cover his tracks, got caught red-handed by his wife. And in doing so, what is often taken for granted is the couples’ personal commitment and vow to each other when they were married.

III.

XXX’s guilt was not proven beyond reasonable doubt

Applying the foregoing principles to this case, I find that the evidence of the prosecution failed to surpass the standard of moral certainty that XXX committed the crime charged. In particular, the prosecution’s evidence fell short of proving the fourth element of Section 5(i)—the specific intent to inflict mental or emotional anguish upon AAA, through marital infidelity.

Based on the narration of facts, the evidence by the prosecution may be summarized as follows:

1. AAA was informed by a certain EEE that XXX was keeping a mistress and a four-year-old child in Makati;
2. AAA with her mother and family friend, BBB went to the place and saw their family car parked outside;
3. Inside the house, AAA saw XXX, with the alleged mistress, YYY, and a boy who called XXX “Daddy;”
4. XXX admitted to AAA that he is the father of YYY’s child;
5. XXX signed the boy’s birth certificate; and



6. BBB asked YYY how long she and her child had been staying in the area, to which YYY replied "*hindi pa naman katagalan.*"⁴¹

To my mind, these pieces of evidence were able to establish that XXX was unfaithful to his wife and such unfaithfulness resulted in an illegitimate child. While marital infidelity—whether a one-night stand or an illicit relationship—is morally reprehensible and may cause mental or emotional anguish upon a woman, especially to a wife, this cannot and does not automatically give rise to criminal liability under Section 5(i), *without proof of intent*, i.e., that the accused intended to cause the woman mental or emotional anguish, public ridicule, or humiliation by engaging in marital infidelity. Here, the evidence of the prosecution does not reasonably suggest, much less prove, that XXX kept YYY as his mistress so that he could inflict mental or emotional anguish upon AAA.

Some members of the Court find that the following circumstances indicate that XXX intended to inflict mental or emotional anguish upon his wife: (a) XXX signed the birth certificate of his "lovechild;" (b) XXX kept his one-night stand "a secret for good reason;" and (c) XXX visited his child with YYY on several occasions at various places.⁴²

I disagree. Proof of specific intent to inflict mental or emotional anguish, public ridicule, or humiliation cannot be based on conjectures, presumptions and prejudices. As an essential element of the crime, it must be drawn from hard evidence showing that such specific intent was the accused's driving force for committing marital infidelity, thereby inflicting psychological violence upon the victim.

Circumstances (a) and (c) do not even prove that XXX kept an illicit relationship with YYY. Thus, these cannot be reasonable bases to conclude that XXX had intended to cause his wife mental or emotional anguish, public ridicule, or humiliation by maintaining an extra marital relationship. In fact, as I see it, circumstances (a) and (c) only establish that XXX wanted to take responsibility for the child. Circumstance (b) cannot also be equated to intent to inflict mental or emotional anguish, public ridicule, or humiliation. To the contrary, keeping his alleged one-night stand and illegitimate child a secret indicates shame and humiliation for his mistake which he kept from his wife precisely to spare her emotional distress.

Furthermore, during the deliberations it was raised that the following circumstances indicate that XXX chose to consciously continue his illicit affair with YYY: (a) XXX went out of YYY's house wearing a white boxer shorts, *maong* pants, slippers, and a sando; (b) XXX admitted that every time he went to YYY's house, he would park on the street in front; (c) XXX

⁴¹ *Ponencia*, pp. 3-5.

⁴² J. Lazaro-Javier, Concurring Opinion, p. 15.

admitted having seen his son with YYY 15 to 20 times; (d) AAA and BBB testified (and XXX admitted) that YYY's child called XXX "Dad" or "Daddy;" and (e) XXX characterized his relationship with his son as a "[normal] father and son relationship."

To my mind, in no way do these circumstances prove, beyond a reasonable doubt, that XXX maintains an illicit relationship and keeps YYY as his mistress. At most, these circumstances pertain only to XXX's relationship with his illegitimate child and how XXX is supporting said child. ***In visiting YYY's place and maintaining a relationship with his child, XXX is not keeping a mistress, he is simply fulfilling his obligation as a father.*** To be sure, nothing in the prosecution's evidence show that XXX was seen with YYY alone. All evidence of the prosecution point to the fact that XXX's connection or relationship with YYY is only in relation to supporting their child.

This reading of the evidence is not to justify or condone XXX's marital infidelity. This is simply the application of the time-honored principle in criminal law that "if the inculpatory facts are capable of two or more explanations, one consistent with the innocence of the accused and the other with his [or her] guilt, the Court should adopt that which is more favorable to the accused, for then the evidence does not fulfill the test of moral certainty."⁴³

I cannot also agree with the conclusion that XXX's unwillingness to reconcile with AAA and save their marriage aggravates proof of criminal intent to inflict mental or emotional anguish on his part.⁴⁴ A husband or a wife is at the liberty to refuse to see, live, or reconcile with his or her spouse without threat of any penalty attached to the exercise of such right. No court is empowered as a judicial authority to compel a husband or a wife to live with his or her spouse.⁴⁵

The majority's ruling that such constitutes criminal intent under Section 5(i) runs the risk of compelling couples to stay in a relationship even though one or both parties no longer want to do so. This is especially true in a country like ours which does not have divorce proceedings and has limited grounds for annulment. It is well to be reminded that a couple's continued relationship or cohabitation "is a matter beyond judicial authority and is best left to the man and woman's free choice."⁴⁶

To end, I wish to emphasize that our system of laws has never meant to provide a remedy for every damage caused—hence the concept of *damnum absque injuria*—and much less does it require that every damage be met with criminal prosecution. To be clear, this is not to say that having extramarital affairs should be countenanced or even tolerated. In this Opinion, I only wish to stress that **the provisions on Adultery and Concubinage in the Revised**

⁴³ *People v. Tolentino*, G.R. No. L-56103, November 24, 1986, 145 SCRA 597, 598-599 [Per J. Fernan, Second Division].

⁴⁴ See C.J. Gesmundo, Concurring Opinion, p. 3.

⁴⁵ See *Ilusorio v. Bildner*, 387 Phil. 915 (2000) [Per J. Pardo, First Division].

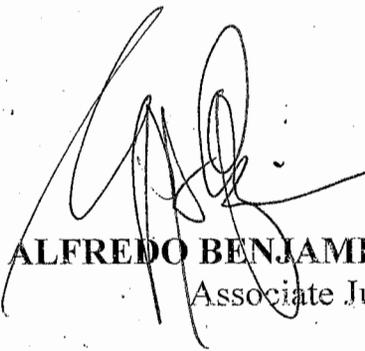
⁴⁶ *Id.*

Penal Code already punish those situations. I merely emphasize that the evil sought to be addressed by Republic Act No. 9262 is the intentional infliction of violence upon the woman. **To reiterate, Republic Act No. 9262 is not meant to criminalize marital infidelity *per se*.** By the same token, it is likewise not meant to criminally punish any and all acts that somehow bring emotional pain or suffering upon the woman. This is clear from the plain language of the law itself.

I join the members of the Court who find that marital infidelity *per se*—whether a one-night stand or an extramarital affair—may be enough to constitute psychological violence. However, as it stands, Section 5(i) of Republic Act No. 9262 plainly does not penalize marital infidelity alone. Whatever “gap” there is in the law should therefore be addressed to the Legislature and not through this case. The power and duty of the Court is to interpret and apply the law within the boundaries set by its language and intent. It does not include the power to correct, expand, or supplant by reading into the law what is not written therein.⁴⁷ Consequently, affirming XXX’s conviction for Section 5(i) of Republic Act No. 9262 on the basis of his unfaithfulness alone is tantamount to judicial legislation, one that is detrimental to the accused whose presumption of innocence is guaranteed by the Constitution and who is entitled to the proscriptio that all doubts be resolved in his favor.

Therefore, it is my view that the principles laid down in the *ponencia* are the egregiously wrong interpretation of Section 5(i) insofar as it deals with marital infidelity.

ACCORDINGLY, I vote to **GRANT** the Petition and **ACQUIT** petitioner XXX from the charge of violating Section 5(i) of Republic Act No. 9262.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁴⁷ *Agote v. Judge Lorenzo*, 502 Phil. 318, 334 (2005) [Per J. Garcia, *En Banc*].