



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

XXX264870,*

Petitioner,

G.R. No. 264870

Present:

-versus-

LEONEN, J., *Chairperson*,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ*.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

APR 21 2025

X-----X

DECISION

LEONEN, S.A.J.:

Marital infidelity per se is not an act of violence criminalized under Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004.

This Court resolves a Petition for Review on *Certiorari*¹ assailing the Court of Appeals Decision² and Resolution,³ which affirmed the Decision⁴ of

* In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 9262, 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 *Rollo*, pp. 11–42.

² *Id.* at 45–61. The January 28, 2021 Decision (Modified Version) in CA-G.R. CR No. 43253 was penned by Associate Justice Alfredo D. Ampuan and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Maria Elisa Sempio Diy of the Fourth Division, Court of Appeals, Manila.

³ *Id.* at 62–66. The December 21, 2022 Resolution in CA-G.R. CR No. 43253 was penned by Associate Justice Alfredo D. Ampuan and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Maria Elisa Sempio Diy of the Former Fourth Division, Court of Appeals, Manila.

⁴ CA *rollo*, pp. 52–64. The November 20, 2018 Decision in Crim. Case No. R-MKT-18-00092-CR was penned by Presiding Judge Cristina F. Javalera-Sulit of [REDACTED], Regional Trial Court, [REDACTED].

the Regional Trial Court of [REDACTED]. The courts found XXX264870 guilty beyond reasonable doubt of violating Section 5(i) of Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004.

XXX264870 was charged with violation of Section 5(h)⁵ of Republic Act No. 9262 committed against his wife, AAA264870.⁶ The Information reads:

Sometime in the month of November 2015 and subsequent thereto, in the [REDACTED], the Philippines, accused, XXX264870, legally married to complainant AAA264870, willfully, unlawfully, and feloniously at [sic] have an extramarital affair with BBB264870 and impregnated her, thereby causing psychological violence to AAA264870, which resulted in her mental and emotional anguish, psychological distress, humiliation, harm, and suffering.

CONTRARY TO LAW.⁷

Upon arraignment, XXX264870 pleaded not guilty to the charges. Trial then ensued.⁸

The prosecution established that XXX264870 and AAA264870 were married on June 28, 2014 at the Iglesia ni Cristo House of Worship in [REDACTED].⁹ About a year and a half into their marriage, AAA264870 read messages on XXX264870's phone and later learned that her husband was having an affair with her friend, BBB264870.¹⁰ She fainted upon discovering this and was brought to [REDACTED].¹¹ When she returned home, XXX264870 had already moved out.¹² AAA264870 messaged BBB264870 on Facebook Messenger, confronting her about the affair.¹³

In an attempt to save their marriage, AAA264870 met with XXX264870 a few days after, where XXX264870 admitted to having sexual intercourse with BBB264870.¹⁴ XXX264870 even invited AAA264870 to spend the holidays with his family in [REDACTED], Rizal,¹⁵ which AAA264870 accepted because she wanted their marriage to work.¹⁶ However, during the celebrations, AAA264870 again read messages from BBB264870 on

⁵ XXX264870 was found guilty of violating Section 5(i) of Republic Act No. 9262 by the Court of Appeals and Regional Trial Court but was charged with violation of Section 5(h) in the Information.

⁶ *Rollo*, p. 46.

⁷ Records, p. 1.

⁸ *Rollo*, p. 47.

⁹ *Id.* at 48.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

XXX264870's phone, which resulted in a fight.¹⁷ It was at that time that XXX264870 said he no longer wanted to continue the marriage.¹⁸ His decision remained the same even after the intervention of their parents.¹⁹

XXX264870 and BBB264870 sent messages to AAA264870 apologizing to her and telling her to move on. AAA264870 later learned that the two were already living together and that they already had a child on October 2016.²⁰

AAA264870 underwent psychological assessment by clinical psychologist Nedy L. Tayag, where she was found to be having "a severe case of Post-Traumatic Stress Disorder with mood coloring, attributed and as caused by the psychological abuse she was subjected to by [her] husband."²¹

For his part, XXX264870 admitted to having a child with BBB264870 but denied any romantic involvement with her.²² He also denied any psychological abuse, pointing to AAA264870's messages to him saying, "[a]t wag ka na mag sorry. Pinapatawad na kita okay. Just be happy with your choice," "Thanks for these years. You made me learn how to love," "Basta napatawad na kita wag muna ako alalahanin wala ka ng atraso saakin."²³

Further, AAA264870 asked XXX264870 to file for the annulment of their marriage, saying that she herself had found a boyfriend whom she wanted to marry. XXX264870 agreed and filed the case and even paid for the filing fee.²⁴

The Regional Trial Court found XXX264870 guilty of violating Section 5(i) of Republic Act No. 9262, finding that the prosecution established that XXX264870 inflicted psychological or emotional harm on AAA264870 due to his marital infidelity, which caused AAA264870 to become sad, depressed, and traumatized.²⁵ The dispositive portion of its Decision reads:

WHEREFORE, the court hereby finds the accused [XXX264870] GUILTY beyond reasonable doubt of the crime of psychological violence defined and penalized under Section 5(i) of [Republic Act] No. 9262. Consequently, the court hereby sentences him to suffer an indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional*[,] as minimum[:] to eight

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 49.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 50.

²⁴ *Id.*

²⁵ *Id.*

(8) years and one (1) day of *prision mayor*[,] as maximum, plus a fine of [PHP] 100,000.00.

The same accused is ordered to pay moral damages in the amount of [PHP] 20,000.00 with interest of 6% *per annum* beginning from the finality of this decision until full payment.

In addition, the accused is required to undergo mandatory psychological counseling every month and submit compliance to the court.

Costs de oficio.

SO ORDERED.²⁶

XXX264870 moved for reconsideration, which was denied by the trial court in its Order.²⁷ He then appealed the case to the Court of Appeals.

In its assailed Decision, the Court of Appeals denied XXX264870's appeal and affirmed the Regional Trial Court's Decision convicting him of violating Section 5(i) of Republic Act No. 9262. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed *Decision* dated 20 November 2018 of the Regional Trial Court, [REDACTED], in Criminal Case No. R-MKT-18-00092-CR, is **AFFIRMED**.

SO ORDERED.²⁸

Unsatisfied with this, XXX264870 filed a Motion for Reconsideration.²⁹ Thereafter, he filed an Urgent Motion for Leave to Admit Supplement to Motion for Reconsideration,³⁰ and a Supplement to Motion for Reconsideration,³¹ attaching an Affidavit of Recantation³² voluntarily executed by AAA264870 before Assistant City Prosecutor Paolo C. Barcelona of the Office of the Prosecutor of [REDACTED].³³

In her Affidavit of Recantation, AAA264870 categorically stated that she "was not hurt nor devastated" when she learned about XXX264870's affair.³⁴ She said they both "had an understanding about new relationships outside of [their] marriage and [she] knew it would happen to him or to [her] in due time."³⁵ However, her feelings towards BBB264870 were different

²⁶ CA rollo, p. 64.

²⁷ Records, pp. 277–279.

²⁸ Rollo, p. 60.

²⁹ CA rollo, pp. 144–159.

³⁰ *Id.* at 170–175.

³¹ *Id.* at 176–182.

³² *Id.* at 183–187.

³³ *Id.* at 178.

³⁴ *Id.* at 185.

³⁵ *Id.*

because she felt betrayed by a close friend.³⁶ She retaliated by filing an administrative case against BBB264870 before the Professional Regulation Commission, and to file the criminal case against her and XXX264870 “against better judgment.”³⁷

AAA264870 also retracted her earlier testimony about fainting and being brought to [REDACTED]; she said in her Affidavit that this incident did not happen.³⁸ As to the family celebration in [REDACTED], Rizal, AAA264870 said that there was no fight between them, and that they had “a grand time together.”³⁹ XXX264870 also never told her that he no longer wanted to save their marriage because he was already seeing BBB264870.⁴⁰

AAA264870 also denied seeing a clinical psychologist because of XXX264870’s illicit affairs. Instead, she said that she went to see a clinical psychologist only after the filing of the criminal case against XXX264870 two years after the affair, because she was told she needed medical evidence in that case.⁴¹ The present criminal case was filed because the first criminal case for concubinage she filed was dismissed.⁴²

In her Affidavit, AAA264870 also stated that “[t]he truth of the matter is that... [XXX264870]... and I had already been living separately long before his illicit affair, and we were open to the possibility of creating new relationships outside of our marriage.”⁴³ She also mentioned that they are “now talking regularly, without fighting, and we are now listening to each other.”⁴⁴ On XXX264870’s affair with BBB264870, AAA264870 states that “[w]hile I realize that XXX264870... and I had been separated when he had an affair with BBB264870..., there is still no excuse for an extra-marital affair, but understanding what kindled the affair is a key to being able to move forward. For now I would like to view this affair as a turning point, an opportunity to grow separately and together, and reconnect in a way that is stronger and closer.”⁴⁵

Ultimately, AAA264870 hopes that her statements will be considered and that they be given the opportunity to rekindle their relationship, making this a step towards reconciliation.⁴⁶

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 186.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 467.

⁴⁶ *Id.*

Despite this, the Court of Appeals denied XXX264870's Motion for Reconsideration. It said that AAA264870's Affidavit failed to persuade it to overturn XXX264870's conviction.⁴⁷ It said that recantations are generally not viewed favorably, and that in any case, the elements of the offense were also proven during trial from the testimonies of other witnesses.⁴⁸

Hence, the present Petition was filed.

Petitioner XXX264870 argues that the Court of Appeals erred in not finding that private complainant AAA264870's Affidavit of Recantation cast serious doubt on his liability, considering that private complainant admitted that she did not experience emotional anguish and mental suffering, elements of the crime for which he was convicted.⁴⁹ This Affidavit was freely and voluntarily executed.⁵⁰ Its delayed submission was because it was only executed after the trial court had already tried the case.⁵¹ Nonetheless, petitioner asks that the Affidavit of Recantation be viewed favorably, considering that it was executed voluntarily and that he and private complainant are already at the verge of reconciliation.⁵²

Petitioner also claims that the Court of Appeals erred in affirming his conviction because even the clinical psychologist testified during her cross-examination that the cause of private complainant's emotional suffering was not due to petitioner's marital infidelity. It was because petitioner told her that he was no longer happy with her.⁵³

Moreover, petitioner claims that forgiveness on private complainant's part does not extinguish criminal liability per se but proves that she did not suffer mental or emotional anguish.⁵⁴ He also points to several facts to show this, particularly, private complainant's Facebook post about their meeting regarding their annulment case.⁵⁵

Finally, petitioner maintains that there was a violation of his constitutional right to be informed of the nature and cause of the accusation against him because the case filed against him was for violation of Section 5(h) of Republic Act No. 9262, but he was convicted under Section 5(i) of the same law.⁵⁶ He rejects the applicability of the variance doctrine because the two sections have different elements.⁵⁷ During trial, the prosecution did not

⁴⁷ *Rollo*, p. 64.

⁴⁸ *Id.* at 65.

⁴⁹ *Id.* at 21, 25–26.

⁵⁰ *Id.* at 22.

⁵¹ *Id.* at 23.

⁵² *Id.* at 24.

⁵³ *Id.* at 29–30.

⁵⁴ *Id.* at 31.

⁵⁵ *Id.* at 32–33.

⁵⁶ *Id.* at 33–34.

⁵⁷ *Id.* at 37–38.

adduce evidence to show that he engaged in any form of violence against private complainant, as punished under Section 5(h) for which he was charged. To him, this should warrant his acquittal.⁵⁸ He also questions the lack of particularity of time, place, names, and circumstances constituting the crime in the Information.⁵⁹

For its part, respondent People of the Philippines, through the Office of the Solicitor General, filed its Comment.⁶⁰

In its Comment, respondent argues that petitioner's appeal raises questions of fact, which are outside the scope of a Rule 45 petition.⁶¹ Respondent also claims that petitioner's guilt for violation of Section 5(i) was proven beyond reasonable doubt.⁶²

Section 5(i) punishes acts which cause "mental or emotional anguish, public ridicule or humiliation to the woman. The infliction of mental and emotional distress is the essence of the offense, hence, the prosecution's task is to prove that by the very nature of Petitioner's acts, the victim sustained emotional and mental suffering."⁶³ All the elements of the offense, particularly: "(1) psychological violence as a means employed by the perpetrator consisting of any acts enumerated in Sec. 5(i) or similar acts, and (2) the mental or emotional suffering or damage sustained by the offended party"⁶⁴ have been established.⁶⁵

As to the difference in the charge stated in the Information, respondent insists that the characterization of the offense in the caption of the Information is not what determines the crime for which an accused stands trial for, but it is the facts alleged in the body of the Information which are crucial.⁶⁶

In this case, respondent maintains that the Information is sufficient because it alleges that petitioner "willfully, unlawfully and feloniously have an extramarital affair with [BBB264870] and impregnated her, thereby causing psychological violence to [AAA264870], which resulted in her mental and emotional anguish, psychological distress, humiliation, harm, and suffering."⁶⁷



⁵⁸ *Id.* at 38–39.

⁵⁹ *Id.* at 39.

⁶⁰ *Id.* at 101–117.

⁶¹ *Id.* at 105–107.

⁶² *Id.* at 107.

⁶³ *Id.*

⁶⁴ *Id.* (Citations omitted)

⁶⁵ *Id.* at 107–108.

⁶⁶ *Id.* at 108–109, citing *People v. Dimaano*, 506 Phil. 630 (2005) [*Per Curiam, En Banc*].

⁶⁷ *Id.* at 109.

As to AAA264870's Affidavit of Recantation, respondent argues that it carries no probative weight,⁶⁸ as it is the court's general policy to give scant consideration to a desistance because of its unreliability.⁶⁹ It reiterates the Court of Appeals' finding that the Affidavit "lacks credibility, particularly when considering the private complainant's prior actions. These actions involve initiation of two criminal cases and filing an administrative complaint against petitioner, all of which entailed considerable effort to establish the petitioner's criminal culpability."⁷⁰ Respondent cites *People v. Lamsen*,⁷¹ warning of the danger of setting aside testimony taken in open court by way of recantation, saying it makes a mockery of trials and places the truth at the hands of unscrupulous witnesses.⁷²

The two main issues for this Court's resolution are: first, whether there was a violation of petitioner's constitutional right to be informed of the nature and cause of accusation against him because the Information's caption charged him with violation of Section 5(h) of Republic Act No. 9262 but his conviction was for Section 5(i) of the same law; and second, whether there is reasonable doubt that justifies petitioner's acquittal because of the Affidavit of Recantation executed by private complainant, retracting her statement that she suffered mental or emotional anguish.

On this first issue, the Court agrees with respondent. There is no violation of petitioner's right even if the prosecution erred in designating the proper offense. Petitioner could still be convicted based on the facts alleged in the Information, which were sufficiently proven during trial.

Respondent correctly relies on *People v. Dimaano*,⁷³ which states:

What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably

⁶⁸ *Id.* at 110.

⁶⁹ *Id.*

⁷⁰ *Id.* at 110–111.

⁷¹ 721 Phil. 256 (2013) [Per J. Perlas-Bernabe, Second Division].

⁷² *Id.* at 259. *See also* rollo, p. 111.

⁷³ 506 Phil. 630 (2005) [*Per Curiam, En Banc*].

prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.⁷⁴

In this case, the allegations contained in the Information clearly constitute a violation of Section 5(i) of Republic Act No. 9262. It sufficiently describes the particular elements of the offense, and petitioner was adequately informed of the charge against him. In his Judicial Affidavit, petitioner clearly admitted to knowing the nature of his case:

Q3: Do you know what is the nature of the case filed against you?

A3: Yes, Sir. It is for violation of Section 5(h) of [Republic Act No. 9262 allegedly for having an extramarital affair with a certain [BBB264870] and having impregnated her which resulted to mental and emotional anguish, psychological distress, humiliation, harm and suffering to my wife, [AAA264870]].⁷⁵

Thus, petitioner knew that the allegations against him were for having an extramarital affair and having a child with another woman, which caused mental and emotional anguish to his wife. Despite the erroneous designation of the offense as a violation of Section 5(h), the allegations stated in the Information and as known to petitioner undoubtedly point to a violation of Section 5(i). It cannot be said that petitioner was not properly apprised of the charge against him.

As to the second issue, the Court finds in favor of petitioner. Marital infidelity per se is not an act of violence against women and their children criminalized under Republic Act No. 9262.

Republic Act No. 9262 “protects women from violence committed in the context of an intimate relationship, which can be physical violence, sexual violence, psychological violence, or economic abuse.”⁷⁶ The law’s protection extends to women because of the patriarchal culture that dominates our society. It is important to highlight this context where the law seeks to negate patriarchal dominance, not to privilege a certain class of individuals, but to correct a historical and social phenomenon that disadvantages women simply for their gender.

In *Agacid v. People*,⁷⁷ Republic Act No. 9262 was characterized as a legislation that empowers women:

⁷⁴ *Id.* at 649–650.

⁷⁵ Records, p. 218.

⁷⁶ *Estacio v. Estacio*, 885 Phil. 157, 169 (2020) [Per J. Leonen, Third Division].

⁷⁷ G.R. No. 242133, April 16, 2024 [Per SAJ Leonen, *En Banc*].

Republic Act No. 9262 seeks to protect women from the various forms of violence they endure in their private relationships. The nature of this social legislation is to empower women who find themselves in situations where they are left vulnerable to their abusers who are their intimate partners. The dynamics within intimate relationship of two people, with all its intricacies, difficulties, and power play, is the context within which the law places the violence it penalizes. Aside from being a gender-based issue, violence against women is necessarily a power issue[.]

....

Thus, understanding women's struggle only as a gender issue might present a simplistic understanding as it fails to paint a complete picture of why this phenomenon occurs. The oppression of women is a result of the patriarchal view that women are proper subjects of dominance[.]⁷⁸

Therefore, at the core of this legislation is the affirmation of the woman's inherent dignity which is unjustly diminished in a patriarchal society. Republic Act No. 9262 empowers the woman, through her own agency, to assert her dignity against acts of oppression.

The law should not be treated as an unbridled license for the State to intrude into personal affairs. This is especially true because Republic Act No. 9262 necessarily touches upon matters that are characteristically private. The State, therefore, should be cautious in its actions so as not to make unwarranted intrusions into issues that belong in the intimate sphere of personal relations.

Sections 3 and 5 of the law are the bases of petitioner's conviction:

Section 3. *Definition of Terms*. - As used in this Act,

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

....

C. "*Psychological violence*" refers to *acts or omissions causing or likely to cause mental or emotional suffering of the victim such as* but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and *marital infidelity*. It includes causing or allowing the victim to

⁷⁸ *Id.* at 7-9. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children. (Emphasis supplied.)

....

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

....

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

Taking these provisions together, the two elements for the commission of this offense are (1) actions or omissions that constitute psychological violence used as a means by the perpetrator, and (2) mental or emotional anguish caused to the victim.

Although connected, these two elements are separate and distinct. The acts complained of, which are the means of committing the offense, should be evaluated on whether they were done with the intention of "causing mental or emotional anguish, public ridicule or humiliation to the woman or her child."⁷⁹ It is when these acts are done with the intent to tilt the scales of power within the relationship against the woman, causing her to lose her autonomy does the State have a legitimate interest in punishing such acts. This Court finds that the prosecution failed to prove this element of the offense beyond reasonable doubt. To be sure, the effect on the victim alone, which is the second element, is not enough to sustain a conviction.

Another point to seriously consider is the Affidavit of Recantation executed by the offended party. In offenses covered by Republic Act No. 9262, especially as the law closely touches on private matters to protect the woman's dignity and autonomy, her word should be given great importance. The Affidavit of Recantation creates reasonable doubt as to whether petitioner's conviction should be upheld, as it directly affects an essential element of the offense, particularly the second element. Indeed, to affirm petitioner's conviction will highlight the irony where the private offended party herself had declared that she did not suffer emotional anguish and mental suffering, but the State insists that she did.

This situation reveals exactly the reason why the State should refrain from needlessly intruding into intimate relations. Human relationships are

⁷⁹ See Republic Act No. 9262 (2004), sec. 5(i).

complex; they cannot be judged as black and white. A simplistic approach will inevitably fail to capture all the intricacies and obscurities of these relationships, the moments of joy and suffering shared between partners, as well as each person's capacity for self-reflection, healing, and even openness to reconciliation.

All these said, this acquittal is neither meant to condone marital infidelity nor to justify unfaithfulness to one's commitments. This is not to discredit the very real pain and suffering felt by persons whose trust was broken. However, these experiences are as important as they are intimate and private. In a sense, these experiences are what make us human, and the State has neither an interest nor a role in unnecessarily interfering with them.

ACCORDINGLY, the Petition for Review on *Certiorari* is **GRANTED**. The Court of Appeals January 28, 2021 Decision and December 21, 2022 Resolution in CA-G.R. CR No. 43253 are **REVERSED AND SET ASIDE**. Petitioner XXX264870 is **ACQUITTED** of violation of Section 5(i) of Republic Act No. 9262.

Let entry of judgment be issued immediately.

SO ORDERED.


MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:


AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice

 w/ dissenting opinion!
JHOSEP V. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

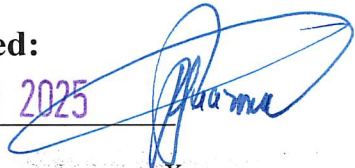
CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson’s Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was as assigned to the writer of the opinion of the Court’s Division.


ALEXANDER G. GESMUNDO
Chief Justice

Promulgated:

APR 21 2025



X-----X

DISSENTING OPINION

LOPEZ, J., J.:

I respectfully dissent.

The conviction of petitioner XXX264870 for violation of Section 5(i) of Republic Act No. 9262,¹ otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, should be affirmed.

Republic Act No. 9262, as a form of social legislation, was enacted in an attempt to protect women from the different kinds of violence they experience or to which they are vulnerable to while being in an intimate relationship.² Toward this end, Section 3(a) enumerates in a non-limiting manner the various forms of violence and abuse that may be committed against women and their children. Pertinently, psychological violence is defined in this wise:

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

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

....

C. “Psychological violence” refers to *acts or omissions causing or likely to cause mental or emotional suffering of the victim such as* but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and *marital infidelity*. It includes causing or allowing the victim to witness the

* Pursuant to Amended Administrative Circular No. 83-2015 dated September 5, 2017, which requires the preparation of a first copy of Resolutions where the real or genuine name/s or identities and personal circumstances of the victim/s are used.

¹ An Act Defining Violence Against Women and Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefore, and For Other Purposes. (2004)

² *Acharon v. People*, 913 Phil. 731, 746 (2021) [Per J. Caguioa, *En Banc*].

physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children. (Emphasis supplied)

Correlatively, Section 5(i) penalizes a form of psychological violence:

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

....

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

To prosecute this form of violence against women, the following elements must be established:

- (1) The offended party is a woman and/or her child or children;
- (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;
- (3) The offender causes on the woman and/or child mental or emotional anguish; and
- (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.³

Verily, in violation of Section 5(i), the act of psychological violence and the mental or emotional anguish caused on the victim are equally indispensable. 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.⁴

The *ponencia* argues that to satisfy the requirements of the law, the acts complained of, constituting the offense, must be done with the intention of causing mental or emotional anguish, public ridicule or humiliation to the woman or her child.⁵ More, "[i]t is [only] when these acts are done with the intent to tilt the scales of power within the relationship against the woman, causing her to lose her autonomy does the State have a legitimate interest in

³ *Dinamling v. People*, 761 Phil. 356, 373 (2015) [Per J. Peralta, Third Division].

⁴ *Id.* at 376.

⁵ *Ponencia*, p. 11. (Citation omitted)

punishing such acts”⁶ and “intruding into issues that belong to the intimate sphere of personal relations.”⁷

I beg to differ.

In *XXX[252739] v. People (XXX[252739])*,⁸ this Court, sitting *En Banc*, clarified the pronouncements in *Acharon v. People*⁹ as applied to cases of psychological violence by reason of marital infidelity:

The Court’s pronouncement in *Acharon* that the accused must be proven to have intended to inflict mental or emotional anguish upon the woman *applies only to circumstances involving willful denial of financial support, and not marital infidelity*[.]

Moreover, while We agree with *Acharon* that the crimes penalized under [Section] 5(i) are *mala in se* and not *mala prohibita*, thereby requiring specific criminal intent, it is the Court’s position that in instances *where marital infidelity is the act concerned* as in the present case, *the requirement of specific criminal intent to cause mental and emotional suffering is satisfied the moment the perpetrator decides to commit the act of marital infidelity*. This finds basis on the fact that marital infidelity is inherently immoral and depraved, is in all instances wrong, and cannot be justified by any sort of context, while the same cannot be said for willful denial of financial support. In other words, marital infidelity, divorced from its legal connotations, is an act which is wrong in itself.

....

Thus, in ascertaining whether the third element [of “causing mental or emotional anguish”] 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 is satisfied.¹⁰ (Emphasis supplied, citations omitted)

As it now stands, in cases of marital infidelity as a mode through which psychological violence was committed,¹¹ specific intent to cause mental and emotional anguish upon the victim may be conclusively presumed from the fact of infidelity itself. This conclusive presumption, however, does not render the crime subjective. As explained by this Court, not all scenarios involving extramarital relationships will give rise to criminal liability under Section 5(i) of the law.¹² It presupposes that there is a traditional “bond or commitment to

⁶ *Id.*

⁷ *Id.* at 10.

⁸ G.R. No. 252739, April 16, 2024 [Per J. Hernando, *En Banc*].

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

¹⁰ *XXX v. People*, G.R. No. 252739, April 16, 2024 [Per J. Hernando, *En Banc*] at 15–16. This pinpoint citation refers to a copy of this Decision uploaded to the Supreme Court website.

¹¹ *People v. XXX*, G.R. No. 250219, March 1, 2023 [Per J. Hernando, First Division] at 10. This pinpoint citation refers to a copy of this Decision uploaded to the Supreme Court website.

¹² *XXX v. People*, G.R. No. 252739, April 16, 2024 [Per J. Hernando, *En Banc*] at 17–18. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

which one owes fidelity,”¹³ thereby excluding non-traditional family setups and more modern relationship arrangements in which extramarital entanglements are not equivalent to unfaithfulness.¹⁴

In this case, the prosecution was able to establish that petitioner, through his infidelity, caused mental and emotional anguish on his wife, AAA264870. XXX264870 even admitted that he fathered a child BBB264870. Despite his insistence that he did not have any romantic relationship with BBB264870 and that the child was a result of a one-night stand, the records show otherwise. The string of messages¹⁵ presented in evidence reveals that petitioner continued with his extramarital relationship with BBB264870 after he separated from his wife sometime in December 2015.¹⁶ Worse, after abandoning AAA264870 and leaving their family home, petitioner publicly flaunted his extramarital affair. This fact is established by the testimony of Teofilo C. Bayoguing, Jr., who saw petitioner with BBB264870.¹⁷ To corroborate this, the prosecution submitted pictures of petitioner with BBB264870 and their nonmarital child.¹⁸

More importantly, in raising the defense that it was only one-time indiscretion, XXX264870 is, in fact, admitting his infidelity. His denial had the earmark of being a negative pregnant, that is, a denial pregnant with the admission of the substantial facts in the pleading responded to which are not squarely denied.¹⁹ In XXX[252739], this Court declared that “an illicit sexual encounter committed by a male person, however casual, constitutes marital infidelity that is tantamount to psychological violence, as far as Republic Act No. 9262 is concerned.”²⁰

Needless to state, a single act of marital infidelity can constitute psychological violence for as long as all the elements of the crime are likewise proven. For the law is categorical—violence against women and their children refers to “any *act* or series of acts.”²¹ As aptly put by the Court of Appeals, “even a single act can result in psychological harm and suffering.”²²

¹³ *Id.* at 19. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

¹⁴ *Id.*

¹⁵ Records, pp. 121–123, 194.

¹⁶ CA rollo, p. 60.

¹⁷ TSN, Teofilo Bayoguing, Jr., October 1, 2018, p. 42.

¹⁸ Records, p. 124.

¹⁹ See *Republic v. Sandiganbayan*, 461 Phil. 598 (2003) [Per J. Corona, *En Banc*].

²⁰ XXX v. People, G.R. No. 252739, April 16, 2024 [Per J. Hernando, *En Banc*] at 13. This pinpoint citation refers to a copy of this Decision uploaded to the Supreme Court website.

²¹ Republic Act No. 9262, sec. 3(a) 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, 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.

²² Rollo, p. 57.

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Concomitantly, it must be underscored that marriage is a special contract vested with public interest. Given the State's avowed interest in promoting marriage as the foundation of the family and an inviolable social institution, it has institutionalized the rights and obligations between husband and wife in the Family Code, which, include, among others, the obligation to live together, observe mutual love, respect and fidelity, and render mutual help and support.²³

These obligations, when taken singly, are not actionable by themselves but when deliberately violated to perpetuate some form of violence against women and their children, may be a basis for criminal prosecution. Here, petitioner admitted that he left their conjugal home. Taken together with his infidelity, his failure to comply with his obligation to live with his wife, without any valid and compelling reason, is indicative of his unwillingness to comply with his essential marital obligations, which, ultimately caused mental and emotional anguish on AAA264870, his wife.

Meanwhile, the emotional and mental anguish experienced by AAA264870 was established through her testimony. AAA264870 recounted that when petitioner admitted having an affair, she fainted and was brought to the hospital.²⁴ Her pain was further exacerbated when petitioner, in absolute disregard of her feelings, publicly flaunted his infidelity, cohabited with BBB264870, and even fathered a child with her. To corroborate this, the prosecution presented the message sent by AAA264870 to petitioner, which reads:

[AAA264870]

Basta eto lang. Wag na wag niyo saakin ipapamuka ni [BBB264870] na ako ang may mali. Kayong dalawa ang may pakakamali. Dahil [h]indi makatao ang ginawa niyo saakin. Kayo ang walang puso at kayo ang sumira ng buhay ko. May tinapakan kayong tao. At [XXX264870] pl[ea]s[e] don't tell me na "bumalik ka sa akin" you fucked her in the morning tapos you're claiming bumalik ka? "no[,] you didn't". Please reflect. Frome [sic] there hindi ka na bumalik. Okay. Basta yun lang. Thanks.²⁵

Further, at the time of her testimony, AAA264870 has not forgiven petitioner. She declared that:

[Re-Direct Examination of AAA264870 by Atty. Patrick Sarmiento]

²³ See FAMILY COURT, arts. 68-69 read:

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

Article 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide. The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

²⁴ Records, p. 110.

²⁵ *Id.* at 19.

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Atty. Sarmiento:

Ms. Witness, in your cross-examination, the good counsel confronted you with the Annex “2” of the Counter Affidavit of the accused in the Concubinage case, correct?

A: Yes

Q: It says here that it appears that you have forgiven the accused in the exchanged of message. Have you forgiven the accused?

A: To be honest, Attorney, that time I was confused. I wanted to be a wife at that time. I wanted to save the marriage that is why—meaning—*it doesn't mean that I forgive or allow the affair*. It is not okay. That is why I am here, it is not okay. *I did not forgive. But at that time, I was confused, I wanted to be a wife and I wanted to save the marriage.*²⁶ (Emphasis supplied)

The psychological violence suffered by AAA264870 was further supported by the findings of clinical psychologist Nedy L. Tayag (Tayag). In her Psychological Assessment,²⁷ Tayag found AAA264870 to be suffering from “a severe case of Post-Traumatic Stress Disorder with mood coloring, attributed, and as caused by the psychological abuse she was subjected into by her husband.”²⁸ Tayag further declared that AAA264870 suffered from depression and, at one point, wanted to commit suicide.²⁹ Tayag testified thus:

ATTY. SARMIENTO:

Ms. Witness in your report[,] what is your finding?

A: [AAA264870] is suffering from emotional distress collated panic attack and clinically[,] I identified her suffering from post[-]traumatic distress [sic] disorder.

Q: How did this condition result?

A: This apparently brought [sic] about by emotional trauma that she had relative to her relationship with her husband.

Q: Okay. What particular trauma that she had?

A: During the mental status examination, she described how she was traumatized by the fact that she learned that her husband involved [sic] in other woman, who happens to be her best friend and bridesmaid during her wedding. The woman already has a child with her husband.³⁰

For these reasons, I must respectfully submit that the prosecution sufficiently established all the elements of the crime. Petitioner committed an act of psychological violence against his wife, AAA264870, who suffered emotional and mental anguish.

As an additional support to acquit petitioner, the *ponencia* held that the Affidavit of Recantation executed by the offended party creates reasonable

²⁶ TSN, [AAA264870], June 26, 2018, pp. 45–46.

²⁷ Records, pp. 135–140.

²⁸ *Id.* at 140.

²⁹ TSN, Nedy L. Tayag, September 17, 2018, p. 8.

³⁰ *Id.* at 29–30.

doubt as to the very element of the crime of psychological violence against women under Section 5(i) of Republic Act No. 9262.³¹

However, it has also been held that a recantation of a testimony is exceedingly unreliable and generally viewed with suspicion and reservation for it can easily be secured through intimidation or for monetary consideration.³² More, there is always the probability that such recantation may later be itself repudiated, rendering criminal prosecutions interminable.

Thus, mere retraction by a prosecution witness does not necessarily vitiate the original testimony, if credible.³³ “It is only where there exist special circumstances which, when coupled with the desistance or retraction raise doubts as to the truth of the testimony or statement given, can a retraction be considered and upheld.”³⁴

In *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan, et al.*,³⁵ this Court elucidated that:

[I]n cases where the previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. *A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons and motives for the change discriminately analyzed.*³⁶ (Emphasis supplied, citations omitted)

Applied to the present case, petitioner failed to present evidence independent of the Affidavit of Recantation engendering doubt as to the veracity of the previous testimony given by AAA264870 in open court.

Juxtaposed upon AAA264870’s previous testimony and the evidence thus presented, I find the explanation provided by AAA264870 in her recantation sparse and unconvincing. She merely stated that:

5. I must have *misunderstood the meaning of the phrase “emotional anguish” and “mental suffering”* when I described in my Judicial Affidavit my experiences in order to establish emotional anguish, as a result of [XXX264870]’s extramarital affair with [BBB264870], for which I am truly sorry.³⁷ (Emphasis supplied)

³¹ Ponencia, p. 11.

³² *Umpa v. People*, 898 Phil. 387 (2021) [Per J. J. Lopez, Third Division].

³³ *People v. Espenilla*, 718 Phil. 153, 166 (2013) [Per J. Leonardo-De Castro, First Division].

³⁴ *Adlawan v. People*, 830 Phil. 88 (2018) [Per J. Martires, Third Division].

³⁵ 815 Phil. 425 (2017) [Per J. Mendoza, Second Division].

³⁶ *Id.* at 434-435.

³⁷ *Rollo*, p. 68.

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She went on further to declare that:

17. It was during the pandemic which started last year that I experienced so much emotional distress brought about by a halt in my career as a Sales Marketing Officer of an established bank in █████ City and restrictions imposed by the Government on our social and religious activities. During this time, I found myself depending on [XXX264870], who has graciously made himself available to listen to my problems. [XXX264870] and I are now talking regularly, without fighting, and we are now listening to each other.³⁸

It is worth noting that the recantation was made only on May 27, 2021, or four years after criminal proceedings were initiated in 2017, and after the judgment of conviction has been affirmed by the Court of Appeals. AAA264870 even went to great lengths to file a separate criminal complaint for concubinage against petitioner and BBB264870. Given this, it is nothing short of incredulous that after going through the burdensome process of reporting petitioner to the authorities, executing a criminal complaint-affidavit against him, attending trial and testifying against him, AAA264870 would later on declare that all the foregoing is actually a farce and the truth is now what she says it to be in her Affidavit of Recantation.³⁹

Taken together, it appears that AAA264870's Affidavit of Recantation was a mere afterthought. Her earlier testimony prevails over her subsequent recantation.

To stress, mere recantation, without more, is insufficient to warrant a reversal of a judgment of conviction. To accept the recantation in the absence of special circumstances and cogent reasons trivializes the court proceedings. The trial in which the recanted testimony was given is made a mockery, and the investigation is placed at the mercy of an unscrupulous witness.⁴⁰

Further, rather than contradict, the Affidavit of Recantation⁴¹ reinforces AAA264870's testimony that she suffered mental and emotional anguish as a result of petitioner's infidelity. While the Affidavit attempts to disavow previous claim of psychological violence, AAA264870 nevertheless remained consistent in her allegation that petitioner had an extramarital affair with BBB264870.⁴²

At any rate, the Affidavit of Recantation, by itself, does not even constitute as pardon by AAA264870, warranting the total extinguishment of

³⁸ *Id.* at 70–71.

³⁹ *Id.* at 65.

⁴⁰ *People v. XXX*, 886 Phil. 155, 179 (2020) [Per C.J. Peralta, First Division].

⁴¹ *Id.* at 67–71.

⁴² *Id.*

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petitioner's criminal liability.⁴³ To borrow the erudite words of Justice Puno in *Alonte v. Savellano, Jr.*,⁴⁴ "only when the desistance [or recantation] is grounded on forgiveness and pardon and is made before the institution of the criminal action, can it extinguish criminal liability. Desistance [or recantation], *per se*, is not equivalent to pardon."⁴⁵

Basic is the rule that the pardon of the private offended party is only a bar to criminal prosecution in private crimes, and not a mode of extinguishing criminal liability.⁴⁶ Once a complaint has been instituted in court, the will of the private offended party is ascertained and he or she loses the right or absolute privilege to decide whether the charge should proceed.⁴⁷ Correspondingly, the court acquires absolute discretion whether to proceed with the prosecution to vindicate the outrage to the State and the society in general.⁴⁸ At such stage, the will of the State prevails. Thus, save only for exceptional instances expressly provided for by law,⁴⁹ any pardon given by the complainant to the offender would be unavailing.⁵⁰ This rule applies in equal force to public crimes, as in the present case for violation of Republic Act No. 9262.⁵¹

FOR THESE REASONS, I vote to **DENY** the Petition. XXX264870 is **GUILTY** of violation of Section 5(i) of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004.


JOSE V. LOPEZ
Associate Justice

⁴³ REV. PEN. CODE, art. 23 reads:

Article 23. *Effect of Pardon by the Offended Party.* — A pardon by the offended party does not extinguish criminal action except as provided in article 344 of this Code; but civil liability with regard to the interest of the injured party is extinguished by his express waiver.

⁴⁴ 350 Phil. 700 (1998) [Per J. Vitug, *En Banc*].

⁴⁵ J. Puno, Separate Opinion in *Alonte v. Savellano, Jr.*, 350 Phil. 700 (1998) [Per J. Vitug, *En Banc*].

⁴⁶ See REV. PEN. CODE, art. 89 reads:

Article 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.
2. By service of the sentence;
3. By amnesty, which completely extinguishes the penalty and all its effects;
4. By absolute pardon;
5. By prescription of the crime;
6. By prescription of the penalty;
7. By the marriage of the offended woman, as provided in Article 344 of this Code.

⁴⁷ *Isturis-Rebuelta v. Rebuelta*, G.R. Nos. 222105 & 222143, December 13, 2023 [Per C.J. Gesmundo, First Division].

⁴⁸ *Peopie v. Dimaano*, 506 Phil. 630, 647 (2005) [Per Curiam, *En Banc*].

⁴⁹ See REV. PEN. CODE, art. 266-C, as amended by Republic Act No. 8353, sec. 2 (1997).

⁵⁰ *Isturis-Rebuelta v. Rebuelta*, G.R. Nos. 222105 & 222143, [December 13, 2023] [Per C.J. Gesmundo, First Division].

⁵¹ Republic Act No. 9262, sec. 25 states:

Section 25. *Public Crime.* — Violence against women and their children shall be considered a public offense which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.