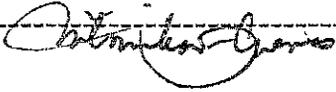


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G.R. No. 224946 – XXX, *Petitioner*, v. PEOPLE OF THE PHILIPPINES,
Respondents.

Promulgated:

November 9, 2021

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur in the result to acquit petitioner XXX (petitioner) of violation of Section 5 (i) of Republic Act No. (RA) 9262,¹ otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004.” As aptly observed by the *ponencia*, the prosecution failed to show, beyond reasonable doubt, that petitioner’s failure to provide financial support to his wife, AAA, was made with the specific intent of **causing the latter mental or emotional anguish, public ridicule, or humiliation**. Rather, it was shown that his failure to do so was due to justifiable reasons, *i.e.*, his apartment in Brunei was razed by fire and he met a vehicular accident, which incidents required him to spend a significant amount of money. Moreover, it was also shown that despite petitioner’s failure to remit the full amount of ₱85,000.00 with three percent (3%) monthly interest, he was able to send to his wife a total of ₱71,000.00 as payment for their loan.

Likewise, I concur in the *ponencia*’s proposal to abandon the rulings in *Melgar v. People*² (*Melgar*) and *Reyes v. People*³ (*Reyes*) wherein it was held that a person charged with violation of Section 5 (i) of RA 9262 may also be convicted of violation of Section 5 (e) of the same law pursuant to the variance doctrine. These provisions have different elements since on the one hand, a violation of Section 5 (i) is premised on the accused’s specific intent to cause mental or emotional anguish, public ridicule or humiliation to the woman or her child, while a violation of Section 5 (e) is premised on the specific intent to control or restrict the woman’s or her child’s movement or conduct. Sections 4 and 5 of Rule 120 of the Revised Rules of Criminal Procedure provide for the rule on variance:

Section 4. *Judgment in case of variance between allegation and proof.* —
When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

¹ Entitled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES;” approved on March 8, 2004.

² 826 Phil. 177 (2018).

³ See G.R. No. 232678, July 3, 2019.

Section 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

As earlier intimated, it cannot be said that a violation of Section 5 (i) of RA 9262 includes or is necessarily included in a violation of Section 5 (e) of the same law because the specific intent required to be proven in the two (2) violations are fundamentally different from each other. As such, the accused cannot be charged under Section 5 (i) and eventually be convicted under Section 5 (e), or vice-versa.

Nonetheless, I take this opportunity to elaborate on the proper treatment of acts constituting “violence against women and their children.” As will be discussed below, for doctrinal accuracy, the types of violence stated in the subsections of Section 3 (a) of RA 9262 should not be treated as means/punishable offenses, but rather, as resulting effect/s of the acts committed by the accused under Section 5 of RA 9262. Further, considering the multi-faceted nature of a case of violence against women and their children, it is possible that several types of violence under Section 3 (a) may be experienced by the woman or her child as a result of an act punished under Section 5. Hence, one type of violence under Section 3 (a) is not restrictively associated to a Section 5 offense, and thus negates any exclusive correspondence. Ultimately, the types of violence are enumerated in the law if only to provide for a comprehensive definition of violence in light of RA 9262’s animating policy to ensure full protection to abused women and their children.

I.

Violence against women, otherwise known as “intimate partner violence,” is a significant problem recognized on a global scale.⁴ As defined by relevant literature, “intimate partner violence” is “any act of physical, sexual, psychological or economic violence that occurs between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”⁵ Ordinarily, four main types of “intimate partner violence” are identified, to wit: (a) physical violence, or the intentional use of physical force with the potential for causing death, disability, injury, or harm; (b) sexual violence, which includes rape, as well as unwanted sexual contact and experiences; (c) stalking, or the pattern of repeated, unwanted, attention and contact that causes fear or concern for one’s own safety or the safety of someone else, such as a family member or friend; and (d) psychological aggression, or the use of verbal and non-verbal

⁴ See <https://www.who.int/health-topics/violence-against-women#tab=tab_1> (November 9, 2021).

⁵ See “The psychological subtype of intimate partner violence and its effect on mental health: protocol for a systematic review and meta-analysis,” Sarah Dokkedahl, Robin Niels Kok, Siobhan Murphy, *et al.* <<https://systematicreviewsjournal.biomedcentral.com/articles/10.1186/s13643-019-1118-1>> (last accessed November 9, 2021), citing “Glossary of definitions of rape, femicide and intimate partner violence,” the European Institute for Gender Equality, p. 44.

communication with the intent to harm another person mentally or emotionally, and/or to exert control over another person.⁶

In our jurisdiction, RA 9262, or the “Anti-Violence Against Women and Their Children Act of 2004,” was passed in order to address the prevalence of violence against women and children committed by their intimate partners.⁷ This law, enacted “in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child[,] and other international human rights instruments of which the Philippines is a party,”⁸ explicitly “recognizes the need to protect the family and its members[,] particularly women and children, from violence and threats to their personal safety and security.”⁹

Under Section 3 (a) of RA 9262, “**violence against women and their children**” is defined 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.” **The same provision further contains subsections which provide for the types of “violence against women and their children,” namely, physical, sexual, and psychological violence and economic abuse.** Notably, despite its four subsections on the types of violence, Section 3 (a) recognizes that these are **not exclusive** as evinced by the phrase “**it includes, but is not limited to, the following x x x.**” For reference, Section 3 (a) of RA 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, **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

⁶ See <https://www.atrainceu.com/content/3-types-intimate-partner-violence> (last accessed November 9, 2021).

⁷ <https://pcw.gov.ph/vaw-faqs/> (last accessed November 9, 2021).

⁸ Section 2, RA 9262.

⁹ Id.

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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.

x x x x

As worded, the term "*violence against women and their children*" is characterized under Section 3 (a) as "an act or a series of acts"; similarly, the listed four types of violence against women and their children are referred to as "acts." The subsections of Section 3 (a), in fact, further enumerate specific instances that would fall under a particular violence type. Thus, a literal reading of these provisions would lead one to believe that these types of violence are punishable offenses constitutive of the crime violence against women and their children.

However, Section 5 of the same law list downs certain punishable acts which are explicitly classified as "**the crime of violence against women and their children**":

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;

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- (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.

Given the phraseology of these separate provisions in the same law, confusion arises as to what RA 9262 deems as the punishable offense and related thereto, the specific criminal intent that must be proven. As earlier intimated, the language of Section 3 (a) and its subsections creates an impression that what RA 9262 criminalizes is the type of violence, *i.e.*, physical, sexual, and psychological violence and economic abuse. In fact, in some earlier cases,¹⁰ the Court has held that the type of violence under Section 3 (a) is the means employed by the perpetrator and that it is the violence under the circumstances in RA 9262 that the law seeks to outlaw. **In my view, this perception that the types of violence are the means of commission is not completely accurate. Rather, as will be expounded below, the types of violence should be deemed as the resulting effect/s to the victim, while the acts enumerated under Section 5 of the same law should be considered as the punishable offenses themselves.**

II.

A meticulous scrutiny of the entire law would show that while RA 9262 mentions the different types of violence against the woman and their children under Section 3 (a) and refers to them as “acts,” what it ultimately criminalizes is the **“violence against women and their children” committed through the enumerated acts under Section 5.** In particular, Section 5 of RA 9262 should be read in relation to **Section 6 of RA 9262 which provides for the penalties relative to the acts stated in Section 5 (and not Section 3 [a]), *viz.*:**

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

- (a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.

If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prison mayor; those constituting less serious physical injuries shall be punished by *prision correccional*; and those constituting slight physical injuries shall be punished by *arresto mayor*.

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

¹⁰ See *Araza v. People*, G.R. No. 247429, September 8, 2020; *AAA v. BBB*, 823 Phil. 607 (2018); and *Dinamling v. People*, 761 Phil. 356 (2015).

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

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

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

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

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than three hundred thousand pesos (P300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

To my mind, the fact that (1) penalties are made relative to the acts listed in Section 5 and not to the types of violence under Section 3 (a) of RA 9262; and the fact that (2) Section 5 explicitly states that “[t]he crime of violence against women and their children is committed through any of the following acts” confirms the position that the types of violence stated in Section 3 (a) are not the means by which the crime is committed nor the acts that are penalized.

This therefore begs the question – *what now is the significance of the types of violence listed in Section 3 (a) of RA 9262 when it comes to the prosecution of the crime of violence against women and their children?*

The way that the law is framed, and the placement of the provisions provide us guidance on how to treat Section 3 (a) in relation to Section 5 of RA 9262. As designed, the law first provides for the definition of “**violence against women and their children**”; this term is then classified in types of violence, *i.e.*, physical, sexual, psychological, and economic, which are found in Section 3 (a)’s four **subsections**, *i.e.*, “physical violence” in subsection A, “sexual violence” in subsection B, “psychological violence” in subsection C, and “economic abuse” in subsection D. While it is odd that the types of violence are referred to in said subsections as “acts,” Section 3 (a) itself states that the term “**violence against women and their children**” are acts “**which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse.**”

The defined term “**violence against women and their children**” in Section 3 (a) would then appear in Section 5, which states in its preliminary sentence that “**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**

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following acts: x x x.” As earlier discussed, the usage of the word “crime” in Section 5 vis-a-vis the term “*violence against women and their children*” in Section 3 (a), among others, leads to the conclusion that the specific acts listed in Section 5 are the punishable offenses; on the other hand, “violence against women and children” under Section 3 (a) is more of a general characterization of the underlying nature of the crime; in turn, the four types of violence are further variations of the nature of violence that the woman or her child experiences. **By virtue of an act committed under Section 5, the woman or her child is indeed violated, and the violence experienced by her and/or her child may either (albeit not exclusively) be physical, sexual, psychological, or economic.** Thus, to reconcile and to avoid confusion between Section 3 (a) and Section 5, it is therefore submitted that **the types of violence under the former provision should be deemed as the resulting effect/s on the woman and her child, which spring from the acts committed in Section 5.**

This treatment of the types of violence as resulting effect/s (rather than means/punishable offenses) equally finds basis in the first paragraph of Section 3 (a) which states that violence against women and children refers to an act or series of acts “**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.”

Overall, I reckon that Section 3 (a) and its four subsections only provide for a comprehensive definition of violence against women and children, which is a **by-product of the specific acts mentioned in Section 5.** *Ostensibly, the intent of the law in providing for the four (4) types of violence against women and their children is not to establish them as the actual offenses per se but rather to create a comprehensive concept of violence that sweeps across physical, sexual, psychological or economic facets, which the women or her child may experience.* This intent squares with the animating policy of the law which is to protect women and their children from all forms of discrimination and abuse in line with the State’s international commitments.

Accordingly, I submit that the Court’s perception in some earlier cases wherein the types of violence under Section 3 (a) of RA 9262 were deemed as the means or even the punishable offenses is conceptually inaccurate. At the risk of belaboring the point, these types of violence are only descriptive of the effects on the woman and her child which result from the specific acts committed by the accused listed in Section 5 of RA 9262. Simply put, the acts enumerated in Section 5 are the means/punishable offenses, while the types of violence in Section 3 (a) – physical, sexual, and psychological violence and economic abuse – are the ends/resulting effects.

III.

The above-discussed conceptual nuances are relevant since it affects the determination on where to situate criminal intent. In my opinion, considering that (1) the punishable acts are those provided under Section 5 of RA 9262; and (2)

the types of violence under Section 3 (a) are the resultant effects on the part of the woman or her child, it is thus imprecise to say that the prosecution must show, by proof beyond reasonable doubt, that the accused had the intent to inflict for example psychological violence to the woman. Psychological violence, as well as the other forms of violence under Section 3 (a), are descriptive of the violence experienced by the woman or her child; **the type of violence is more on the effect to the recipient of violence, rather than the underlying intent of the criminal actor.** The accused may perform one Section 5 act, but the resulting violence on the part of the woman may be multi-faceted; the accused may also perform a series of Section 5 acts, and the interplay between these acts, may result into several forms of violence.

For instance, when an accused deprives a woman and her child of financial support, the woman may either experience economic abuse or psychological violence. Economic abuse is experienced when the woman or her child becomes financially dependent; meanwhile, that same act may also cause psychological violence, considering that deprivation of financial support may be the chosen avenue for intimidation, harassment, or even ridicule which thereby causes mental or emotional suffering. It is also common that in a scenario where there is deprivation of support, other acts of abuse may occur. Verbal and physical abuse are unfortunate occurrences in situations of domestic violence. The complexity and even cyclical nature of domestic violence may permeate into various tragic experiences in the household and thus, result into different effects on the part of the woman and her child. This is also probably why Section 3 (a), while listing four types of violence, recognizes that these types are not exclusive as evinced by the qualifier **“it includes, but is not limited to, the following x x x.”** The phrase “includes, but is not limited to” recurs even in other portions of the law. This therefore shows that while RA 9262 attempts to characterize certain forms of violence, ultimately these types are mere estimations of the common forms of violence; **what remains important is to understand that the law is comprehensive enough to cover all forms of abuse against the woman and her child.**

Notably, the *ponencia* properly recognizes the multi-faceted definition of violence against women and their children by stating that “there is no one-to-one correspondence between the classifications of violence against women under Section 3(a), on the one hand, and the specific punishable acts under Section 5, on the other”:

A plain reading of Section 5 reveals that it is meant to specify the punishable acts based upon the classifications of violence against women already identified and defined under Section 3(a). While **there is no one-to-one correspondence between the classifications of violence against women under Section 3(a), on the one hand, and the specific punishable acts under Section 5, on the other, it can still be reasonably gleaned that the punishable acts spring from the multifaceted definition of violence against women which the law aims to protect women from.** For example, Sections 5(a) to 5(d) appear to protect women and their children from physical violence, 5(f), 5(h) and 5(i) from psychological violence, and 5(g) from physical and sexual violence. Meanwhile, Section 5(e), as previously discussed, protects the woman from acts of violence that are committed for the purpose of attempting to control her conduct or actions, or make her lose her agency, with most of the enumerated examples of acts having a connection with the use of finances as the primary mode of controlling the woman. Thus, Section

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5(e) could be viewed as protecting the woman from economic abuse, as defined in Section 3(a), in some cases.¹¹ (Emphasis supplied)

Indeed, an exclusive correspondence between a type of violence and a specific Section 5 act runs the danger of glossing over more complex domestic violence scenarios, and therefore may tie the Courts hands in deciding future cases where a certain Section 5 act may be considered as producing multiple types of violence based on what the woman or her child may actually experience in a given case.

Therefore, since the types of violence are neither exclusive to a Section 5 act nor are the means/punishable offenses themselves, it is but proper **to situate intent on the acts mentioned in Section 5 of RA 9262**. These acts relate to purposes that are in the nature of specific intent, and due to the *mala in se* nature of the offense, must underlie the commission of the act sought to be punished. As case law instructs, “in acts *mala in se*, the intent governs; but in acts *mala prohibita*, the only inquiry is, has the law been violated?”¹² “[T]here may be *mala in se* crimes under special laws, [as in this case].”¹³ “The [prevailing] approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime *mala in se* x x x.”¹⁴

Going back to Section 5, it bears to stress that, “[s]pecific intent is used to describe a state of mind which exists where circumstances indicate that an offender actively desired certain criminal consequences or objectively desired a specific result to follow his act or failure to act. Specific intent involves a state of the mind. It is the particular purpose or specific intention in doing the prohibited act. Specific intent must be alleged in the Information and proved by the state in a prosecution for a crime requiring specific intent.”¹⁵ This may be shown by the nature of the act, the circumstances under which it was committed, the means employed, and the motive of the accused.¹⁶

In this case, petitioner was charged for deprivation of financial support to his wife, AAA, in violation of Section 5 (i) of RA 9262, which reads:

Section 5. *Acts of Violence Against Women and Their Children*. – x x x.

x x x x

(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.

¹¹ *Ponencia*, p. 16.

¹² *Dungo v. People*, 762 Phil. 630, 658 (2015).

¹³ *Id.*

¹⁴ *Id.* at 659.

¹⁵ *People v. Delim*, 444 Phil. 430, 448 (2003).

¹⁶ *Recuerdo v. People*, 526 Phil. 460, 475 (2006).

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Thus, ***the prosecution must prove that the accused, by depriving AAA, his wife, of financial support, intended to cause her mental or emotional anguish, public ridicule or humiliation, which thereby resulted into psychological violence.***

The *ponencia* adopts this **essential distinction** between the result, *i.e.*, the type of violence under Section 3 (a), and the acts with the specific intent mentioned under Section 5 of RA 9262, by stating that “to be convicted under Section 5(i) [for instance], the evidence must establish beyond reasonable doubt that **the accused intended to cause the victim mental or emotional anguish, or public ridicule or humiliation through the denial of – not the mere failure or inability to provide – financial support, which thereby resulted into psychological violence.**”¹⁷ With this, it correctly frames the specific intent not relative to the form of violence alleged to have resulted, but rather to the acts stated in Section 5.

The foregoing approach also has an impact on the application of the variance doctrine. The acts found in Section 5 – and not the types of violence under Section 3 (a) – should be determinative of variance, *i.e.*, what offense is charged and what offense could the accused be convicted. The type of violence under Section 3 (a) should not be applied in determining variance since the same is not, after all, the punishable offense, which as mentioned, is found in Section 5.

IV.

The foregoing notwithstanding, I deem it apt to point out that the *ponencia* still cites the old formulation of the elements of violation of Section 5 (i) of RA 9262 found in *Dinamling v. People*¹⁸ (*Dinamling*). However, in my view, *Dinamling* inaccurately phrases the third element of said violation as follows:

From the aforementioned Section 5(i), in relation to other sections of RA No. 9262, the elements of the crime are derived 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 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.¹⁹

¹⁷ *Ponencia*, pp. 8-9.

¹⁸ 761 Phil. 356 (2015).

¹⁹ *Id.* at 373.

As above-discussed, **the specific intent must be situated on the acts sought to be punished under Section 5 of RA 9262, and that the types of violence under Section 3 (a) thereof should be treated as the resulting effect of said acts.** However, the formulation of the *Dinamling* elements fails to reflect this view since **“mental or emotional anguish” is treated therein as a result, rather than the specific intent of the accused in relation to its corresponding Section 5 offense, i.e., Section 5 (i).** Thus, to avoid confusion and preserve the essential distinction between the Section 5 and Section 3 (a), I submit that the elements for violation of Section 5 RA 9262 should instead be:

- (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 accused, or is a woman with whom the accused has or had a sexual or dating relationship, or is a woman with whom such accused 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 accused commits any of the acts listed under Section 5 of RA 9262;
- (4) The said act was committed with the specific intent relative to the offense listed under Section 5 of RA 9262 for which the accused is duly charged; and
- (5) The commission of the said act results into physical, sexual, or psychological violence, or economic abuse or other form of violence against women and their children as described under Section 3 (a) of RA 9262 on the part of the victim/s.

Applying the foregoing, petitioner should be acquitted of the crime charged, *i.e.*, violation of Section 5 (i) of RA 9262, since, as preliminarily mentioned, the prosecution was not able to prove beyond reasonable doubt that petitioner’s failure to provide financial support to AAA was made with the specific intent of causing the latter mental emotional anguish, public ridicule, or humiliation – the fourth element.

ACCORDINGLY, petitioner should be **ACQUITTED**, and the petition perforce **GRANTED**.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice