

## SECOND DIVISION

G.R. No. 223477, February 14, 2018

**CELSO M.F.L. MELGAR**, *Petitioner*, v. **PEOPLE OF THE PHILIPPINES**, *Respondent*.

### DECISION

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated August 28, 2015 and the Resolution<sup>3</sup> dated February 10, 2016 of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 02211, which affirmed the Judgment<sup>4</sup> dated September 10, 2012 of the Regional Trial Court of Cebu City, Branch 6 (RTC) in Crim. Case No. CBU-87386 finding petitioner Celso M.F.L. Melgar (Melgar) guilty beyond reasonable doubt of violating Section 5 (e) of Republic Act No. (RA) 9262,<sup>5</sup> otherwise known as the "*Anti-Violence Against Women and their Children Act of 2004*."

#### The Facts

An Information was filed before the RTC charging Melgar with violation Section 5 of RA 9262, the accusatory portion of which reads:

That on or about the month of August, 2001 and subsequent thereto, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, having the means and capacity to give financial support, with deliberate intent, did then and there commit acts of economic abuse against one [AAA,<sup>6</sup>] and her minor son, [BBB] (12 years old), by depriving them of financial support, which caused mental or emotional anguish, public ridicule or humiliation, to AAA and her son.

CONTRARY TO LAW.<sup>7</sup>

After arraignment wherein Melgar pleaded not guilty to the charge against him, he and AAA entered into a compromise agreement<sup>8</sup> on the civil aspect of the case. After the RTC's approval of the compromise agreement on June 24, 2010, the criminal aspect of the case was provisionally dismissed with Melgar's conformity. However, one (1) year later, or on June 24, 2011, the prosecution moved to set aside the compromise agreement and to revive the criminal action, on the ground that Melgar sold the property, which was supposed to, among others, answer for the support-in-arrears of his son, BBB, from 2001 to 2010 pursuant to their compromise agreement. Consequently, the RTC revived the criminal aspect of the case and allowed the prosecution to present its evidence.<sup>9</sup>

The prosecution alleged that in 1995, AAA had a romantic relationship with Melgar, which resulted in the birth of BBB, an illegitimate child. Melgar freely acknowledged the paternity of BBB as evidenced by the latter's Certificate of Live Birth, as well as numerous photographs showing Melgar with BBB. However, AAA's relationship with Melgar turned sour as the latter had an affair with a younger woman. When BBB was just about one (1) year old, Melgar stopped giving support, prompting AAA to file a case for support, which was eventually granted. This notwithstanding, Melgar still

refused to give support for her and BBB. As such, AAA was constrained to file the instant criminal case against Melgar.<sup>10</sup>

To substantiate her claims, AAA averred that Melgar could afford to provide support of P8,000.00 per month because he has a lavish lifestyle with his family. He owns a Toyota Avanza and his children are enrolled in. On the other hand, her son, BBB, is a scholar at and she spends the amount of P20,000.00 a month for his needs, of which she asked Melgar for P8,000.00 as support.<sup>11</sup>

For his part, Melgar was deemed to have waived his right to adduce evidence due to his repeated failure to appear during trial.<sup>12</sup>

### **The RTC Ruling**

In a Judgment<sup>13</sup> dated September 10, 2012, the RTC found Melgar guilty beyond reasonable doubt of violating Section 5 (e) of RA 9262 and, accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.<sup>14</sup>

The RTC found Melgar to have committed economic abuse against AAA and their son, BBB, when he stopped supporting them. Worse, he sold the property which was supposed to answer for his support-in-arrears from 2001 to 2010.<sup>15</sup>

Melgar moved for reconsideration,<sup>16</sup> which was, however, denied in an Order<sup>17</sup> dated May 9, 2013 of the RTC. Aggrieved, Melgar appealed<sup>18</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>19</sup> dated August 28, 2015, the CA affirmed Melgar's conviction. It held that Melgar is legally obliged to support BBB.<sup>20</sup> As such, when he deliberately and with evident bad faith deprived BBB of support, he committed economic abuse under Section 5 (e) of RA 9262. In this regard, the CA observed that the reinstatement of the criminal case was prompted by Melgar's evident refusal to comply with the judgment based on compromise agreement, particularly, in providing support to his son; and worse, in conveying to another person the parcel of land which was supposed to, among others, answer for the support-in-arrears of his son from 2001 to 2010.<sup>21</sup> Lastly, the CA ruled that Melgar's acts "has clearly caused mental or emotional anguish, public ridicule or humiliation to [AAA] and her child[, BBB]."<sup>22</sup>

Undaunted, Melgar moved for reconsideration,<sup>23</sup> which was, however, denied in a Resolution<sup>24</sup> dated February 10, 2016; hence, this petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA correctly upheld Melgar's conviction for violation of Section 5 (e) of RA 9262.

### **The Court's Ruling**

The petition is bereft of merit.

Enacted in 2004, RA 9262 is a landmark legislation that defines and criminalizes acts of violence against women and their children (VAWC) perpetrated by women's intimate partners, *i.e.*, husband, former husband, or any person who has or had a sexual or dating relationship, or with whom the woman 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, *inter alia*, economic abuse.<sup>25</sup> The said law defines economic abuse as follows:

Section 3. *Definition of Terms.* - x x x.

x x x x

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 may be gathered from the foregoing, "economic abuse" may include the deprivation of support of a common child of the man-accused and the woman-victim, whether such common child is legitimate or not.<sup>26</sup> This specific act is penalized by Section 5 (e) of RA 9262, pertinent portions of which read:

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:

xxxx

- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or 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 hann, 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:

XXXX

- (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
- (3) Depriving or threatening to deprive the woman or her child of a legal right;

XXXX

Under this provision, the deprivation or denial of financial support to the child is considered an act of violence against women and children.<sup>27</sup> Notably, case law instructs that the act of denying support to a child is a continuing offense.<sup>28</sup>

In this case, the courts *a quo* correctly found that all the elements of violation of Section 5 (e) of RA 9262 are present, as it was established that: (a) Melgar and AAA had a romantic relationship, resulting in BBB's birth; (b) Melgar freely acknowledged his paternity over BBB; (c) Melgar had failed to provide BBB support ever since the latter was just a year old; and (d) his intent of not supporting BBB was made more apparent when he sold to a third party his property which was supposed to answer for, among others, his support-in-arrears to BBB. Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties and, hence, due deference should be accorded to the same.<sup>29</sup>

In an attempt to absolve himself from criminal liability, Melgar argues, *inter alia*, that he was charged of violation of Section 5 (i) of RA 9262 as the Information alleged that the acts complained of "caused mental or emotional anguish, public ridicule or humiliation to [AAA] and her son[, BBB]." As such, he contends that he cannot be convicted of violation of Section 5 (e) of RA 9262.<sup>30</sup>

Melgar's contention is untenable.

Section 5 (i) of RA 9262, a form of psychological violence,<sup>31</sup> punishes the act of "**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." Notably, "[p]sychological 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 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."<sup>32</sup> Thus, in cases of support, it must be first shown that the accused's denial thereof - which is, by itself,

already a form of economic abuse - further caused mental or emotional anguish to the woman-victim and/or to their common child.

In this case, while the prosecution had established that Melgar indeed deprived AAA and BBB of support, no evidence was presented to show that such deprivation caused either AAA or BBB any mental or emotional anguish. Therefore, Melgar cannot be convicted of violation of Section 5 (i) of RA 9262. This notwithstanding - and taking into consideration the variance doctrine which allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged<sup>33</sup> - the courts *a quo* correctly convicted Melgar of violation of Section 5 (e) of RA 9262 as the deprivation or denial of support, by itself and even without the additional element of psychological violence, is already specifically penalized therein.

As to the proper penalty to be imposed on Melgar, Section 6 of RA 9262 provides that violations of Section 5 (e) shall be punished by, *inter alia*, *prision correccional*. Notably, while such crime is punishable by a special penal law, the penalty provided therein is taken from the technical nomenclature in the Revised Penal Code (RPC). In *Quimvel v. People*,<sup>34</sup> the Court succinctly discussed the proper treatment of prescribed penalties found in special penal laws vis-a-vis Act No. 4103,<sup>35</sup> otherwise known as the Indeterminate Sentence Law, *viz.*:

Meanwhile, Sec. 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed. Be that as it may, the Court had clarified in the landmark ruling of *People v. Simon* [(G.R. No. 93028, July 29, 1994, 239 SCRA 555)] that the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.<sup>36</sup>

Otherwise stated, if the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC.<sup>37</sup>

Applying the foregoing to this case, the courts *a quo* correctly imposed on Melgar the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. In addition, Melgar is also ordered to pay a fine in the amount of P300,000.00, to undergo a mandatory psychological counselling or psychiatric treatment, and report compliance to the court.<sup>38</sup>

**WHEREFORE**, the petition is **DENIED**. Accordingly, the Decision dated August 28, 2015 and the Resolution dated February 10, 2016 of the Court of Appeals in CA-G.R. CEB-CR No. 02211 finding petitioner Celso M.F.L. Melgar **GUILTY** beyond reasonable doubt of violating Section 5 (e) of Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," are hereby **AFFIRMED** with **MODIFICATION**, sentencing petitioner Celso M.F.L. Melgar: (a) to suffer the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum; (b) to pay a fine in the amount of P300,000.00; and (c) to

undergo a mandatory psychological counselling or psychiatric treatment and report compliance to the Regional Trial Court of Cebu City, Branch 6.

**SO ORDERED.**

*Carpio, (Chairperson), Peralta, and Reyes, Jr., JJ., concur.  
Caguioa, J., on official business.*

**Endnotes:**

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<sup>1</sup>*Rollo*, pp. 12-43.

<sup>2</sup> *Id.* at 50-61. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Renato C. Francisco and Edward B. Contreras concurring.

<sup>3</sup> *Id.* at 64-65. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Edward B. Contreras and Germano Francisco D. Legaspi concurring.

<sup>4</sup> *Id.* at 88-93. Penned by Presiding Judge Ester M. Veloso.

<sup>5</sup> Entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004.

<sup>6</sup> The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USINU FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

<sup>7</sup>*Rollo*, pp. 50-51 and 88.

<sup>8</sup> Dated June 23, 2010. *Id.* at 85-87.

<sup>9</sup> See *id.* at 51-52.

<sup>10</sup> See *id.* at 89-90.

<sup>11</sup> See *id.* at 90-91.

<sup>12</sup> *Id.* at 52. See also *id.* at 92.

<sup>13</sup> *Id.* at 88-93.

<sup>14</sup> *Id.* at 93.

<sup>15</sup> See *id.* at 92-93.

<sup>16</sup> See motion for reconsideration dated February 4, 2013; *id.* at 94-98.

<sup>17</sup> *Id.* at 99-101.

<sup>18</sup> Not attached to the *rollo*.

<sup>19</sup> *Rollo*, pp. 50-61.

<sup>20</sup> *Id.* at 60.

<sup>21</sup> See *id.* at 55-60.

<sup>22</sup> *Id.* at 60.

<sup>23</sup> See motion for reconsideration dated October 7, 2015; *id.* at 66-78.

<sup>24</sup> *Id.* at 64-65.

<sup>25</sup> See Section 3 (a) of RA 9262. See also *Garcia v. Drilon*, 712 Phil. 44, 66 (2013).

<sup>26</sup> Under the Family Code, parents are obliged to provide for their children, whether legitimate or illegitimate, support which comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. This obligation to give support is demandable from the time the person who is entitled thereto needs it, and such obligation may be enforced through a civil action for this purpose. (See Articles 194, 195, and 203 of the Family Code.)

<sup>27</sup> *Del Socorro v. Van Wilsem*, 749 Phil. 823, 839 (2014).

<sup>28</sup> *Id.* at 840.

<sup>29</sup> See *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

<sup>30</sup> See *rollo*, pp. 21-34.

<sup>31</sup> Under Section 3 (a) (C) of RA 9262, "[p]sychological 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."

<sup>32</sup>*Dinamling v. People*, 761 Phil. 356, 376 (2015).

<sup>33</sup> See *People v. Caoili*, G.R. Nos. 196342 and 196848, August 8, 2017. See also Sections 4 and 5 of Rule 120 of the 2000 Revised Rules of Criminal Procedure, which read:

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.

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 part of those constituting the latter.

<sup>34</sup> See G.R. No. 214497, April 18, 2017.

<sup>35</sup> Entitled "AN ACT TO PROVIDE AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES," approved on December 5, 1933.

<sup>36</sup> See *Quimvel v. People*, supra note 34.

<sup>37</sup> See *Peralta v. People*, supra note 29, citing *Mabunot v. People*, G.R. No. 204659, September 19, 2016, 803 SCRA 349, 364.

<sup>38</sup> Pertinent portions of Section 6 of RA 9262 read:

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

x x x x

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.