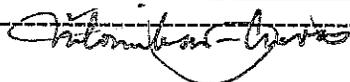


EN BANC

G.R. No. 224946 — CHRISTIAN PANTONIAL ACHARON, *petitioner*,
v. PEOPLE OF THE PHILIPPINES, *respondent*.

Promulgated:
November 9, 2021

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CONCURRING OPINION

LEONEN, J.:

I concur with the *ponencia* as regards the acquittal of petitioner Christian Pantonal Acharon.

Further, I concur with the *ponencia*'s clarification of the distinction between Sections 5(e) and 5(i) of Republic Act No. 9262, along with the necessary abandonment of the application of the variance doctrine to these provisions in *Melgar v. People*¹ and *Reyes v. People*.²

Indeed, the mere failure or inability of a man to provide financial support is not a crime. Treating it as such would perpetuate the stereotype that women are always incapable of supporting themselves or their families. On the contrary, this Court has noted that “[i]n this day and age, women have taken on increasingly important roles in the financial and material support of their families.”³ Moreover, I wish to emphasize the *ponencia*'s statement that “while [Republic Act No. 9262] was indeed enacted to protect women, it was not meant to discount women’s ability to provide for themselves, especially when they are able-bodied.”⁴

Article II, Section 14 of the Constitution affirmed the State’s commitment to ensure the fundamental equality of women and men before the law.⁵ This Court discussed this constitutional provision in *Alanis III v. Court of Appeals*:⁶

¹ 826 Phil. 177 (2018) [Per J. Perlas-Bernabe, Second Division].

² G.R. No. 232678, July 3, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65240>> [Per J. Peralta, Third Division].

³ *Azcueta v. Republic*, 606 Phil. 177, 199 (2009) [Per J. Leonardo-De Castro, First Division].

⁴ *Ponencia*, p. 21.

⁵ CONST., art. II, sec. 14.

⁶ G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division].



Article II, Section 14 of the Constitution requires that the State be active in ensuring gender equality. This provision is even more noticeably proactive than the more widely-invoked equal protection and due process clauses under the Bill of Rights. In *Racho v. Tanaka*, this Court observed:

This constitutional provision provides a more active application than the passive orientation of Article III, Section 1 of the Constitution does, which simply states that no person shall “be denied the equal protection of the laws.” Equal protection, within the context of Article III, Section 1 only provides that any legal burden or benefit that is given to men must also be given to women. It does not require the State to actively pursue “affirmative ways and means to battle the patriarchy — that complex of political, cultural, and economic factors that ensure women’s disempowerment.”

Article II, Section 14 implies the State’s positive duty to actively dismantle the existing patriarchy by addressing the culture that supports it.⁷ (Citations omitted)

Republic Act No. 9262 is an expression of this commitment. The law protects women with the goal of restoring equality, rather than reinforcing harmful gender roles that have long pervaded our society.

Men have traditionally been portrayed as stronger and more superior, while women are depicted as weak and subordinate:

Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men’s companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And [violence against women] is a form of men’s expression of controlling women to retain power.⁸ (Citation omitted)

In Filipino culture, the husband is called “*haligi ng tahanan*,” or the strong pillar who establishes the home. Men are culturally expected to provide for their families. Meanwhile, the wife is referred to as “*ilaw ng tahanan*,” because she is expected to be the warm, guiding light of the home who must take on the role of bearing and raising the children.

In the past, women were forced to stay home and were not allowed to pursue education and employment. However, recent statistics show that society appears to have improved in this regard:

⁷ *Id.*

⁸ *Garcia v. Drilon*, 712 Phil. 44, 91–92 (2013) [Per J. Perlas-Bernabe, En Banc].

On the labor front, the Philippine labor force (15 years old and above) numbered 40,426,000 in 2012 (64.2% of the population), 61% of whom were males and 39% of whom were females. The labor force participation rate (“LFPR”) of females increased significantly from 30.6% in 1970 to 50% in 2012. While the LFPR took a downward trend in 2013, from 64.2% to 63.9%, the decrease was more pronounced among the male labor workforce.

In 1974, 36.6% of the women in the labor force were engaged in agriculture and related work. Over the years, however, the number of workers employed in the service sector has overtaken the number of workers employed in the agricultural sector, such that employment has been driven by the service sector. In 2012, when the number of women employed stood at 14,751,000, 28% were in the service sector, particularly wholesale and retail trade; 20% in the agricultural sector; 10.3% in other service activities; and lastly, 9% in the industry sector, mainly in manufacturing industry. Thus, women in the industry and service sectors combined to outnumber women in agricultural sector. Nevertheless, the agricultural sector continues to play an important role in employment and in job creation.

Statistics show that women’s share in professional and managerial positions is steadily increasing, although the rate of progress is slow. In 2012, 14,751 of 37,600 or 39.2% of employed persons in major occupation groups were women. Of the 14,751 women employed, only 11.6% of these were employed as professionals, technicians, and associate professionals, while 18% were women employed as corporate executives, managers, and supervisors. These data show that women are still markedly under-represented in managerial jobs compared to the overall share of their employment.⁹

Yet even though women make up a large portion of the work force, they are still somehow expected to take primary responsibility for childcare and the management of the home. Professor E. (Leo) D. Battad observed:

In a society that expects women to take care of the children and do household chores, working women confront the problem of a double-burden, or even multiple burdens in terms of longer hours of work and a wider breadth of responsibility.¹⁰

There is also the idea that only certain professions are suitable for women and vice versa:

Then there is also the pre-employment practice of sex-based preferences in the hiring phase. Women and men continue to experience discriminatory practices in advertisements through sex-based preferences, thereby reinforcing the traditional stereotypes of “women’s work” and

⁹ E. (Leo) D. Battad, Review, *The Continuing Narrative of the Economic Emancipation of Filipino Working Women*, 88 PHIL. L. J. 601, 601–602 (2014).

¹⁰ Id. at 614–615.

“men’s work.” This practice, in effect, limits the worker’s choices and access to employment opportunities.

The lack of protection in the pre-employment phase contributes to the phenomenon of occupation segregation. The equality of pay between men and women is compromised due to existing practices of exclusion or preference for either worker for particular work or occupation. Also, there is an absence of affirmative actions to combat occupation segregation, such as introducing schemes that would encourage women and men to enter in nontraditional skills or occupation.¹¹

Even the courts are not immune to prejudices and biases against women.¹² In *Maxey v. Court of Appeals*,¹³ this Court, despite its intent to uphold a woman’s property rights, perpetuated the traditional gender role of wives as the spouse who manages the affairs of the household.¹⁴ This Court stated that “[t]he major, if not the full[,] responsibility of running the household remains with the woman. She is the administrator of the household.”¹⁵

Further, the conduct and language of some judges towards women reveals their prejudices and lack of gender sensitivity.¹⁶ This Court has only recently revisited the “woman’s honor” doctrine where it says that “no young Filipina of decent repute would publicly admit that she has been sexually abused, unless that is the truth, for it is her natural instinct to protect her honor.”¹⁷ We advocated against the Maria Clara stereotype of a demure and reserved Filipino woman and in favor of the evaluation of the testimony of a private complainant of rape without gender bias or cultural misconception.¹⁸ The credibility of a private complainant’s testimony should not be affected just because they are not the fictitious and generalized demure girl, or the epitome of the Maria Clara Stereotype, especially when

¹¹ Id. at 618.

¹² Id.

¹³ 214 Phil. 160 (1984) [Per J. Gutierrez, Jr., First Division].

¹⁴ Id.

¹⁵ Id.

¹⁶ See *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc] citing *Benancillo v. Amila*, 660 Phil. 286 (2011) [Per J. Del Castillo, First Division].

¹⁷ *People v. Amarela*, G.R. Nos. 225642-43, January 17, 2018, 852 SCRA 54 [Per J. Martires, Third Division], citing *People v. Gan*, 150-B Phil. 593 (1972) [Per J. Antonio, First Division]; *People v. Sarmiento*, 183 Phil. 499 (1979) [Per CJ. Fernando, Second Division]; *People v. Gamez*, 209 Phil. 209 (1983) [Per J. Gutierrez, Jr., First Division]; *People v. Quidilla*, 248 Phil. 1005 (1988) [Per Regalado, Second Division]; *People v. Fabro*, 269 Phil. 409 (1990) [Per J. Melencio-Herrera, Second Division], citing *People v. Sambangan*, 211 Phil. 72 (1983) [Per J. Concepcion, Second Division]; *People v. Patilan*, 274 Phil. 634 (1991) [Per J. Davide, Jr., Third Division], citing *People v. Ramilo*, 230 Phil. 342 (1986) [Per J. Gutierrez, Jr., Second Division]; *People v. Esquila*, 324 Phil. 366 (1996) [Per J. Melo, Third Division]; *People v. Manahan*, 374 Phil. 77 (1999) [Per J. Bellosillo, En Banc]; *People v. Dreu*, 389 Phil. 429 (2000) [Per J. Mendoza, Second Division], citing *People v. Barcelona*, 382 Phil. 46 (2000) [Per J. Mendoza, Second Division]; *People v. Durano*, 548 Phil. 383 (2007) [Per J. Ynares-Santiago, Third Division], citing *People v. Domingo*, 297 Phil. 167 (1993) [Per J. Regalado, Second Division]; and *People v. Madsali*, 625 Phil. 431 (2010) [Per J. Peralta, Third Division], citing *People v. Loyola*, 404 Phil. 71 (2001) [Per J. Pardo, First Division].

¹⁸ Id.

their testimony is supported by the other pieces of evidence presented in the case.¹⁹

In *Kane v. Roggenkamp*,²⁰ this Court called out a Regional Trial Court judge's apparent severe lack of gender sensitivity. The trial court judge acquitted the husband who was charged with physically abusing his wife under Republic Act No. 9262. Primarily, the trial court judge asserted that the woman chose to conceal her lover's abuse.²¹ According to him, "the hesitation of the woman to immediately leave her lover is an unnatural act and, hence, unbelievable."²² This Court then noted that "[a] more enlightened interpretation of the evidence" requires "a less caricaturized, less patriarchal set of assumptions."²³

Republic Act No. 9262 was enacted to recognize the systemic presence of patriarchy in our society, and how this contributes to the abuse of women. The law acknowledges that women are more often the victims of domestic abuse not because they are inherently weaker, but because of the unequal power relationship between women and men.²⁴ As a result, the widespread gender bias and prejudice against women have historically hampered their growth, forcing them into subordination to men.²⁵

This Court discussed the deep historical roots of unequal power relations between women and men in *Estacio v. Estacio*:²⁶

Hence, Republic Act No. 9262 has been upheld as a valid law meant to address this historical and societal problem.

This unequal power relation is better understood when one considers its deep historical roots:

The perspective portraying women as victims with a heritage of victimization results in the unintended consequence of permanently perceiving all women as weak. This has not always been accepted by many other strands in the Feminist Movement.

As early as the 70s, the nationalist movement raised questions on the wisdom of a women's movement and its possible divisive effects, as "class problems deserve unified

¹⁹ *Perez v. People*, 830 Phil. 162 (2018) [Per J. Leonen, Third Division].

²⁰ G.R. No. 214326, July 6, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66520>> [Per J. Leonen, Third Division].

²¹ Id.

²² Id.

²³ Id.

²⁴ *Estacio v. Estacio*, G.R. No. 211851, September 16, 2020 [Per J. Leonen, Third Division].

²⁵ Id. citing *Garcia v. Drilon*, 712 Phil. 44, 85 (2013) [Per J. Perlas-Bernabe, En Banc].

²⁶ G.R. No. 211851, September 16, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66987>> [Per J. Leonen, Third Division].

and concentrated attention [while] the women question is vague, abstract, and does not have material base.”

In the early 80s, self-identifying feminist groups were formed. The “emancipation theory” posits that female crime has increased and has become more masculine in character as a result of the women’s liberation movement.

Feminism also has its variants among Muslims. In 2009, Musawah (“equality” in Arabic) was launched as a global movement for equity and justice in the Muslim family. It brought together activists, scholars, legal practitioners, policy makers, and grassroots women and men from all over the world. Their belief is that there cannot be justice without equality, and its holistic framework integrates Islamic teachings, universal human rights, national constitutional guarantees of equality, and the lived realities of women and men.²⁷ (Citations omitted)

This historical inequality between women and men leads to women being abused and the abuse going unpunished, even subjecting them to “double victimization” —first by the offender and then, by the legal system.²⁸

Patriarchy becomes encoded in our culture when it is normalized.²⁹ The more it pervades our culture, the greater its chances of infecting the current and the future generation.³⁰ In *People v. Jumawan*,³¹ this Court said:

The Philippines, as State Party to the [Convention on the Elimination of All Forms of Discrimination Against Women], recognized that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between them. Accordingly, the country vowed to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.³² (Citation omitted)

Courts, like all other government departments and agencies, must ensure the fundamental equality of women and men before the law.³³ In our

²⁷ Id.

²⁸ *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

²⁹ *Alanis III v. Court of Appeals*, G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division], citing J. Leonen, Concurring Opinion in *Re: Untian, Jr.*, A.C. No. 5900 (Resolution), April 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65162>> [Per J. A. Reyes, Jr., En Banc].

³⁰ Id.

³¹ 733 Phil. 102 (2014) [Per J. Reyes, First Division].

³² Id.

³³ *Alanis III v. Court of Appeals*, G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division].

pursuit of equality, we need to acknowledge and dismantle the “obstacle[s] to the full realization of the potentialities of women.”³⁴

Nevertheless, it is also improper to think that women are always victims.³⁵ This will only reinforce their already disadvantaged position.³⁶ The perspective that portrays women as victims with a history of victimization results in the unintended consequence of permanently perceiving all women as weak.³⁷ Indisputably, to consider women as the weaker sex is discriminatory.³⁸

Laws such as Republic Act No. 9262 are intended to negate the patriarchy in our culture,³⁹ not to bolster it. In safeguarding the interests of women as a discriminated class, we must be careful not to perpetuate the very prejudices and biases that contribute to their discrimination.

There is now more space to believe that portraying only women as victims will not always promote gender equality before the law.⁴⁰ It sometimes aggravates the gap by conceding that women have always been dominated by men.⁴¹

Societal norms and traditions dictate people to think that men are leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men’s companions and supporters, and take on subordinate roles in society.⁴² If Sections 5(e) and 5(i) of Republic Act No. 9262 are interpreted to mean that the accused man’s failure or inability to provide financial automatically entails criminal liability, then this depiction will be reinforced rather than corrected. This confirms the false idea that women are incapable of supporting themselves and their families. Applied correctly, Sections 5(e) and 5(i) of Republic Act No. 9262 should not result in the over-patronage of women.

The Constitution requires the State to recognize the role of women in nation building.⁴³ This role is not confined to child-rearing, honorable as motherhood may be. It is entirely possible that the woman in the sexual or

³⁴ United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

³⁵ *Estacio y Salvosa v. Estacio y Santos*, G.R. No. 211851, September 16, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66987>> [Per J. Leonen, Third Division].

³⁶ Id.

³⁷ J. Leonen, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

³⁸ *Tolioncco v. Court of Appeals*, G.R. No. 231748, July 8, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66544>> [Per J. Leonen, Third Division].

³⁹ J. Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017) [Per Curiam, En Banc].

⁴⁰ J. Leonen, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

⁴¹ Id.

⁴² *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

⁴³ CONST., art. II, sec. 14. See also Republic Act No. 9710 (2009), sec. 2.

dating relationship is more financially capable than the man. Consistent with the spouses' mutual obligation to provide support under the Family Code,⁴⁴ the duty to provide financial support should not fall on the man alone. His mere failure or inability to provide financial support should not be penalized as a crime, especially when the woman is more financially capable.

We should not, however, go as far as denying the existence of patriarchal dominance in many social relationships.⁴⁵ Courts must continue to be sensitive to the power relations that come clothed in gender roles.⁴⁶ Gender roles in patriarchy may be detrimental to men as well. For instance:

Social and cultural expectations on masculinity and male dominance urge men to keep quiet about being a victim, adding to the unique experience of male victims of domestic abuse. This leads to latent depression among boys and men. In a sense, patriarchy while privileging men also victimizes them.⁴⁷

Persons who do not conform to traditional gender roles find themselves excluded from the hegemony and underrepresented in society:

Those with sexual orientations other than the heteronormative, gender identities that are transgender or fluid, or gender expressions that are not the usual manifestations of the dominant and expected cultural binaries — the lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities (LGBTQI+) community — have suffered enough marginalization and discrimination within our society.⁴⁸

Truth be told, our law cruelly defines the normal.⁴⁹ This Court has started to take steps to address this where possible. In a concurring opinion from *Republic v. Manalo*,⁵⁰ we have acknowledged that couples of all genders may constitute loving families:

The restrictive nature of our marriage laws tends to reify the concept of a family which is already far from the living realities of many couples and children. For instance, orthodox insistence on heteronormativity may not compare with the various types of care that various other “non-traditional” arrangements present in many loving households.

⁴⁴ FAMILY CODE, art. 68.

⁴⁵ *Perez v. People*, 830 Phil. 162 (2018) [Per J. Leonen, Third Division].

⁴⁶ *Id.*

⁴⁷ J. Leonen, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

⁴⁸ *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744>> [Per J. Leonen, En Banc].

⁴⁹ J. Leonen, Concurring Opinion in *Republic v. Manalo*, G.R. No. 221029, April 24, 2018, 862 SCRA 580 (2018) [Per C.J. Peralta, En Banc].

⁵⁰ *Id.*

The worst thing we do in a human relationship is to regard the commitment of the other formulaic. That is, that it is shaped alone by legal duty or what those who are dominant in government regard as romantic. In truth, each commitment is unique, borne of its own personal history, ennobled by the sacrifices it has gone through, and defined by the intimacy which only the autonomy of the parties creates.

In other words, words that describe when we love or are loved will always be different for each couple. It is that which we should understand: intimacies that form the core of our beings should be as free as possible, bound not by social expectations but by the care and love each person can bring.⁵¹

In *Republic v. Cagandagan*,⁵² this Court upheld the trial court's allowance of the respondent's change of name and recognized the situation of intersex individuals:

In the absence of a law on the matter, the Court will not dictate on respondent concerning a matter so innately private as one's sexuality and lifestyle preferences, much less on whether or not to undergo medical treatment to reverse the male tendency due to CAH. The Court will not consider respondent as having erred in not choosing to undergo treatment in order to become or remain as a female. Neither will the Court force respondent to undergo treatment and to take medication in order to fit the mold of a female, as society commonly currently knows this gender of the human species. Respondent is the one who has to live with his intersex anatomy. To him belongs the human right to the pursuit of happiness and of health. Thus, to him should belong the primordial choice of what courses of action to take along the path of his sexual development and maturation. In the absence of evidence that respondent is an "incompetent" and in the absence of evidence to show that classifying respondent as a male will harm other members of society who are equally entitled to protection under the law, the Court affirms as valid and justified the respondent's position and his personal judgment of being a male.

In so ruling we do no more than give respect to (1) the diversity of nature; and (2) how an individual deals with what nature has handed out. In other words, we respect respondent's congenital condition and his mature decision to be a male. Life is already difficult for the ordinary person. We cannot but respect how respondent deals with his unordinary state and thus help make his life easier, considering the unique circumstances in this case.⁵³ (Citation omitted)

Recently, this Court promulgated the Rules on the Use of Gender-Fair Language in the Judiciary and Gender-Fair Courtroom Etiquette⁵⁴ in an effort not to "perpetuate gender stereotypes, which rest on unfounded generalizations regarding the characteristics and roles of binary and non-

⁵¹ Id. at 632.

⁵² *Republic v. Cagandahan*, 586 Phil. 637 (2008) [Per J. Quisumbing, Second Division].

⁵³ Id. at 651–652.

⁵⁴ A.M. No. 21-11-25-SC, February 15, 2022, <<https://sc.judiciary.gov.ph/24882/>>.

binary genders, but indisputably influence the perspectives of the judges and litigants alike.”⁵⁵

We continue to fight toward genuine and meaningful equality for men and women, as well as those who are nonbinary. It is vital to this movement that we take apart the structures that perpetuate the abuse of women. The doctrines in *Melgar* and *Reyes* now abandoned by this Court are among these harmful structures.

ACCORDINGLY, I vote to **GRANT** the Petition.



MARVIC M.V.F. LEONEN
Associate Justice

⁵⁵ Id.

