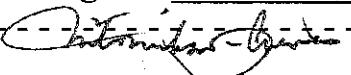


EN BANC

G.R. No. 239215 – Randy Michael Knutson, acting on behalf of minor Rhuby Sibal Knutson v. Hon. Elisa R. Sarmiento-Flores, in her capacity as Acting Presiding Judge of the Regional Trial Court Branch 69 of Taguig City, and Rosalina Sibal Knutson.

Promulgated: July 12, 2022

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

DISSENTING OPINION

ZALAMEDA, J.:

Nothing hurts a parent more than seeing one's child in pain or in danger. Afraid for his beloved child's safety in the hands of the child's mother, the anxious heart of a father impelled him to file this case which now presents a compelling predicament: whether a mother who abuses her child could be considered an offender under Republic Act No. (RA) 9262¹ or the Anti-Violence Against Women and Their Children Act of 2004. The *ponencia* answers in the affirmative. It rules that a father can apply for protection and custody orders against a mother alleged to have committed acts of violence against their child under the auspices of RA 9262.

While I agree that, under Section 9 (b) of RA 9262, a father has standing to file a case on behalf of his minor child, I am constrained to dissent on the *ponencia*'s conclusion that RA 9262 may be used against a mother who inflicted violence upon her own child. Both statutory text and congressional records show that RA 9262 was specifically enacted to cover acts of violence committed on women and children by a woman's *intimate partner*. It was not intended to cover acts of violence committed *by a woman against her own child*. Be that as it may, remand is proper to allow petitioner to avail of the remedy for the protection of his child under A.M. No. 03-04-04-SC² (Custody Rule), as proposed by Justice Alfredo Benjamin S. Caguioa.

Text of the law does not cover all kinds of violence; statute contemplates violence committed in the context of an intimate relationship

¹ Entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES." Approved: 08 March 2004.

² RULE ON CUSTODY OF MINORS AND WRIT OF HABEAS CORPUS IN RELATION TO CUSTODY OF MINORS.



As can be gleaned from the title of the law itself, the reference to children is in relation to the woman victim of violence - "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES."

Section 3 of RA 9262 also defines the phrase "violence against women and their children" as follows:

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.³

Clearly, RA 9262 does not purport to cover all kinds of violence committed against a woman; rather, it contemplates only violence committed *in the context of an intimate relationship, i.e., former or existing marriage or sexual or dating relationship between the offender and the woman victim of violence.*

Moreover, while the definition considers the possibility of harm against a child (whether a child in common with the offender or the woman's child from a different relationship), the law defines the offender to be the woman's former or current intimate partner or the father of her child. As such, the law's definition of violence does not cover harm inflicted upon a child by the mother herself.

This interpretation is consistent with the wordings of the other provisions of the law, which presuppose that the victim is the woman or her child, thus:

SECTION 8. Protection Orders. — A protection order is an order issued under this Act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. xxx

xxx

SECTION 28. Custody of children. — The woman victim of violence shall be entitled to the custody and support of her child/children.

³ Emphasis and underscoring supplied.

Children below seven (7) years old or older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.

A victim who is suffering from battered woman syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the perpetrator of a woman who is suffering from Battered woman syndrome.⁴

As aptly emphasized by Justice Caguioa, the law consistently and repeatedly associates the term "child" with "woman."⁵ The law does not treat the child independently of the woman victim.⁶

On this score, the *ponencia* declares that RA 9262 allows the father of the offended party (child) to apply for protection and custody orders. In support thereof, the *ponencia* cites Section 9 (b) of RA 9262, which allows "parents or guardians of the offended party" to file a petition for protection order.

However, Section 9 (b) should be interpreted to mean that a father has standing to file a petition for protection order if the protection sought is for *his child who has been a victim of violence together with the mother*. This can happen in a scenario where the mother had a subsequent relationship with someone who inflicted violence against her and/or her child, and for some reason, the mother refused to file a petition for protection order. The complexities of the issue could prevent the woman from exhausting legal remedies for her and her child. The law, however, allows other relatives and even concerned citizens to file the petition. This is consistent with the characterization that the crime punished under RA 9262 is a public crime, thus:

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.

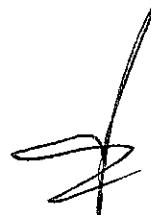
Thus, while a father has standing to file a petition for protection order under RA 9262, it should be against a person with whom a woman has or had a relationship, and not against the woman herself. Congressional records further support this conclusion.

Legislative records show that RA 9262 was primarily enacted to protect

⁴ Underscoring supplied.

⁵ Dissenting Opinion of J. Caguioa, pp. 5-6.

⁶ *Id.*



women from gender-based violence committed by their intimate partners or the fathers of their children; children are merely incidental beneficiaries, and the law only covers children of women victims

The legislative history of RA 9262 reveals a conscious choice to limit the offenders to be ensnared by the law. Such restraint stems from a policy decision to accord special protection to women, who are disproportionately affected by violence. In opting to focus on gender-based violence and its immediate effects, legislators necessarily rejected the inclusion of all other kinds of violence, like that committed by a mother against her child.

A closer study of the rationale and progression of the originating bills is necessary, if only to elucidate the intended coverage of RA 9262. The coverage of the law was such a highly contentious issue that it led to the approval of three separate bills with varying scopes: (1) House Bill No. (HB) 6054, also known as the Anti-Domestic Violence Bill (Anti-DV Bill);⁷ (2) HB 5516, or the Anti-Abuse of Women in Intimate Relationships (Anti-AWIR Bill);⁸ and (3) Senate Bill No. (SB) 2723.⁹

The Anti-DV Bill, had broader provisions. It covered domestic violence “committed by and against any member of the family or household[,] whether minor, adult or elderly.”¹⁰ Thus, the offender was not limited to women’s intimate partners, and even covered mothers. The Anti-DV Bill listed the following as offenders:

1. Who May Be Liable - Any person who shall commit any act or acts as herein defined shall be liable for the crime of domestic violence. This includes, but not limited, to the following:
 - a) ascendants and descendants;
 - b) the spouse or former spouse, live-in partner or former live-in partner of the victim;
 - c) a partner in a dating or sexual relationship, current or former;
 - d) **parents and siblings, whether biological or adoptive;**
 - e) domestic workers/helpers or household staff; and,
 - f) relatives by consanguinity or affinity including step-parents and step-

⁷ Entitled “AN ACT DEFINING DOMESTIC VIOLENCE, PROVIDING PROTECTION MEASURES AND PENALTIES THEREFOR, AND FOR OTHER PURPOSES”; substituted HB 376, 583, 1320, 2753, 2858, and 4941.

⁸ Entitled “AN ACT DEFINING THE CRIME OF ABUSE OF WOMEN IN INTIMATE RELATIONSHIPS, PRESCRIBING PENALTIES THEREFOR, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, AND FOR OTHER PURPOSES”; substituted HB 35.

⁹ Entitled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND MEMBERS OF THE FAMILY PRESCRIBING PENALTIES THEREFOR, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, AND FOR OTHER PURPOSES”; substituted SB 594, 644, 775, 864, 1263, 1527, 1574, 1915, and 2490.

¹⁰ HB 6054, Sec. 3.

siblings.¹¹

In contrast, the Anti-AWIR Bill, merely covered former and current intimate partners of abused women.¹² By express provision, other family members, including children, were directed to resort to other laws, such as the Revised Penal Code and RA 7610.¹³ Nonetheless, the Anti-AWIR Bill granted them the option to seek the issuance of a protection order under the proposed law.¹⁴

Those advocating for the expansive protection under the Anti-DV Bill argued that the law should protect everyone – wives, husbands, children, elderly, and even same-sex partners – from “all forms of abuse that take place in the home.”¹⁵ They claimed that “women can also be guilty of the act subject matter of the bills, especially if psychological abuse is considered.”¹⁶

Meanwhile, those supporting the narrowly-drawn provisions of the Anti-AWIR Bill claimed that the law should be single-minded and incisive; the focus should be on gender-based violence against women in intimate relationships, as that is the gap in legislation.¹⁷ Advocates and resource persons further emphasized that other forms of abuse were already covered by existing laws.¹⁸ Former Representative Bellaflor Angara-Castillo, one of the authors of the Anti-AWIR Bill, expounded thus:

I think what the legislation we need right now is really a bill focused on women in intimate relationships because that is the gap in our present legislation. It's not really about domestic violence where you include everybody within the household whether it be the women, I mean, the wife, the husband, the children, the parents, the stepparents, stepchildren, even the... yeah, anyone within the household and we have always said that that is very misleading. You say it is as if you are accepting the assumption that you can have violence against the women only

¹¹ HB 6054, Sec. 5. Emphasis supplied.

¹² HB 5516, Sec. 3 reads:

SEC. 3. Abuse of Women in Intimate Relationships. - The crime of abuse of women in intimate relationships is committed by any person against a woman who is his wife or former wife, his/her live-in partner or former live-in partner, or against a woman with whom the person has or had a sexual or dating relationship through any of the following acts: xxx

¹³ HB 5516, Sec. 8 reads:

SEC. 8. Criminal Complaint to be Filed by Family or Household Member. Family or household members abused under Sections 3(e) and 3(g) herein may file criminal complaints under the Revised Penal Code, Republic Act No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”, and other relevant or applicable laws, without prejudice to their applying for a protection order under the provisions of this Act.

¹⁴ Id.

¹⁵ House Committee on Women Records, 12th Congress, p. 7 (19 February 2002).

¹⁶ Id. at 5.

¹⁷ House Committee on Women Records, 12th Congress, p. 4 (27 August 2002).

¹⁸ House Committee on Women Records, 12th Congress, pp. 12-13 (19 February 2002).



within the home but that is not correct. Because many acts of violence are committed against the women outside the home, in the workplace or anywhere else. **And I said what we need is a focused legislation on women in intimate relationships.** Because if you include the man, the children, the children are already covered by Republic Act 7610. If there is anything lacking in the protection of children in that Republic Act, by all means we can amend it. If you are thinking of protection of the men, they are already covered by the Revised Penal Code and so are the other members of the household who are there. But it is when a woman is abused, a woman in an intimate relationship being abused by her partner, there is where we don't have a specific legislation that will tell you what are the legal remedies available to her to protect herself. x x x¹⁹

During the deliberations of the House of Representatives' Committee on Women, Ms. Maureen Pagaduan, then Executive Director of the Women's Legal Bureau, Inc., emphasized the importance of a law focusing on abuse by women's intimate partners:

The second point of resistance. The bill is limited in scope and excludes children as primary beneficiaries. It also does not cover other members of the household. So eto pa yung ni-re-raise na isang issue.

The [A]nti-AWIR [B]ill is specifically focused on women in intimate relationships because of the distinct nature of abuse against women in intimate relationships characterized by intimacy, cohabitation or marriage. Pag sinabing intimacy, may sexual na tinutukoy yung abuse, sexual abuse, particularly. **Furthermore, children and other members of household are not without remedies.** There are laws designed to protect children, housemaids, and other family relatives. Republic Act 7610, known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act is comprehensive enough to address the special needs of abused children. Nilinaw namin ito nga kay Congresswoman Bella Angara.

The nature of relationship between house help and housemaids is distinct from that of women in intimate relationships since the former is characterized by an employer-employee relationship. Therefore, any form of violence and abuse against house help are covered by our labor laws. **Ang distinct sa AWIR e yung abuse na mula sa kapangyarihan na sexual. Iyon ang pinaka-distinct. Ano ang ibig sabihin ng abusong nangyayaring iyon. The other members of the family including men may avail of the release provided by existing laws.** The Revised Penal Code penalizes any person guilty of inflicting physical injuries against another. The victim may also opt to file for civil action for damages and other release under the Civil Code.²⁰

Relatedly, Atty. Evalyn Ursua cautioned that a broad anti-domestic

¹⁹ House Committee on Women Records, 12th Congress, pp. 3-4 (27 August 2002).

²⁰ Id. at 12-13. Emphasis supplied.



violence law could be weaponized and used against women.²¹ Thus, she urged Congress to “consider the distinct situation of women and [to] not disempower them further by giving more power to the abusers.”²² Ms. Elizabeth Angsioco of the Democratic Socialist Women of the Philippines further emphasized that the inclusion of other kinds of violence could dilute the protection envisioned by law, and even prejudice women, thus:

Concern po namin ito kasi when the [A]nti-AWIR [B]ill was being developed, yung particular reliefs na ito are meant for women. **And pagka ibinigay natin doon sa men at the same time, we are very much concerned that pag pumasa yung DV as written with the existing reliefs in that bill, it will eventually be anti-women** and we are very concerned about this, Your Honors.²³

As to the Senate, SB 2723 initially had a similar scope as House’s Anti-DV Bill, covering “any act or a series of acts committed by and against any member/s of the family or against a woman with whom the person has or had a dating relationship, within or without the family abode...”²⁴ SB 2723 was envisioned to be a “synthesized measure” harmonizing two conflicting bills – the “Anti-Domestic Violence Act” which covered abuse committed by and against any member of the family, and the “Anti-Abuse of Women in Intimate Relationships Act” which only pertained to abuse committed by a woman’s intimate partner.²⁵

However, during the plenary deliberations, the Senate voted to adopt a version that is narrower in scope. The delimitation was intended to refocus the main purpose of the law, *i.e.*, to protect women against domestic abuse. The text, as amended, approximates the final wording used in RA 9262. The pertinent portions of the deliberations read:

Senator Legarda. Mr. President, the reason I am in support of the measure. Do not get me wrong. However, I believe that there is a need to protect women’s rights especially in the domestic environment.

As I said earlier, there are nameless, countless, voiceless women who have not had the opportunity to file a case against their spouses, their live-in partners after years, if not decade, of battery and abuse. If we broaden the scope to include even the men, assuming they can at all be abused by the women or their spouses, then it would not equalize the already difficult situation for women, Mr. President.

I think that the sponsor, based on our earlier conversations, concurs with this position. I am sure that the men in this Chamber who love

²¹ Id. at 40.

²² Id.

²³ Id. at 20-21. Emphasis supplied.

²⁴ SB 2723, Sec. 3 (a).

²⁵ II RECORD, SENATE 12TH CONGRESS 3RD SESSION 833-834 (10 December 2003). 

their women in their lives so dearly will agree with this representation. Whether we like it or not, it is an unequal world. Whether we like it or not, no matter how empowered the women are, we are not given equal opportunities especially in the domestic environment where the macho Filipino man would always feel that he is stronger, more superior to the Filipino woman.

x x x x

The President Pro Tempore. The session is resumed. Senator Legarda is recognized.

Senator Legarda. Mr. President, just for clarification, may I repeat my amendment.

On page 1, line 15, the phrase “and against any member of the family or against” be deleted; after which, insert the phrase “ANY PERSON AGAINST A WOMAN WHO IS HIS WIFE, FORMER WIFE, HIS/HER LIVE-IN PARTNER OR FORMER LIVE-IN PARTNER OR AGAINST;”

Insert the phrase, “OR WITH WHOM THE PERSON HAS A CHILD IN COMMON, OR HAS A BLOOD RELATIONSHIP THROUGH A CHILD,” after the phrase “a woman with whom the person has or had a dating relationship” on page 1, line 16;

x x x x

Senator Sotto. I presume that the effect of the proposed amendment of Senator Legarda would be removing the “men and children” in this particular bill and focus specifically on women alone. That will be the net effect of that proposed amendment. Hearing the rationale mentioned by the distinguished sponsor, Sen. Luisa “Loi” Ejercito Estrada, I am not sure now whether she is inclined to accept the proposed amendment of Senator Legarda.

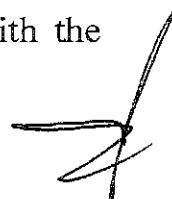
I am willing to wait whether she is accepting this or not because if she is going to accept this, I will propose an amendment to the amendment rather than object to the amendment, Mr. President.

x x x x

Senator Ejercito Estrada. The amendment is accepted, Mr. President.²⁶

Thus, the amendment made SB 2723 substantially similar with the

²⁶ III RECORD, SENATE 12TH CONGRESS 3RD SESSION 104-105 (14 January 2004).



Anti-AWIR Bill, in that both focused on violence committed against women in intimate relationships, and the offenders were the women's intimate partners.

During the bicameral conference on the three conflicting bills, it was suggested anew that the definition of violence against women be expanded to cover other family members.²⁷ Representative Angara-Castillo objected to the proposal, emphasizing, among others, the main object of the bill:

I think we are losing sight of the fact that we are passing a bill for women. And this is because of the recognition that the crime against women is gender-based. So, it is not a case of, for instance, the mother getting angry with the son or the father getting angry with the daughter. We are talking about a bill based on gender-based approach to the crime against women.
xxx²⁸

Ultimately, the committee voted against the proposal and opted to adopt the definition of violence in SB 2723, which, except its reference to children, had a similar thrust with the Anti-AWIR Bill.

Notably, during the bicameral conference, the committee also decided to include as perpetrators the father of a woman's child and the woman's sexual partner.²⁹ The inclusion was intended to cover persons with whom the woman had a single sexual act (as opposed to a dating relationship), and the father of children born of rape.³⁰ Nonetheless, the expansion of offenders was still very limited; it still required sexual relations or fatherhood.

Thus, the legislative history of RA 9262 shows a clear intent to frame its provisions in the context of gender-based violence in intimate or sexual relations. This is in recognition of the fact that violence against women is "closely linked with the unequal power relationship between women and men otherwise known as 'gender-based violence.'"³¹ Violence against women is "a form of men's expression of controlling women to retain power."³²

On this point, I share the view of Justice Marvic M.V.F. Leonen that violence in intimate relationships is ultimately an issue of power, and not merely of gender.³³ It is true that women may also be aggressors; they are not

²⁷ Minutes of the Bicameral Conference Committee on the Disagreeing Provisions of SB 2723 and HB 5516 and 6054, p. 17 (26 January 2004).

²⁸ Id. at 20.

²⁹ See Republic Act No. 9262 (2004), Sec. 3 (a): "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman x x x x with whom the person has or had a sexual or dating relationship, or with whom he has a common child x x x x"

³⁰ Minutes of the Bicameral Conference Committee on the Disagreeing Provisions of SB 2723 and HB 5516 and 6054, pp. 25-30 and pp. 50-55 (26 January 2004).

³¹ *Garcia v. Drilon*, 712 Phil. 44, 91 (2013).

³² Id. at 92.

³³ Reflections of J. Leonen, pp. 3-4.

always powerless victims. Nonetheless, the legislature made a conscious policy choice when it confined the law's coverage to violence against women and the resulting harm to their children.

This special focus was justified by statistics on violence against women at the time SB 2723 was presented to the Senate plenary – “Female violence comprised more than 90% of all forms of abuse and violence and more than 90% of these reported cases were committed by the women’s intimate partners such as their husbands and live-in partners.”³⁴ In contrast, there were no statistics on violence committed by women. Hence, concerns were raised against legislating on an issue without any empirical basis.³⁵

Thus, RA 9262 should not be construed to cover all kinds of violence committed by any perpetrator. It was enacted to specifically address one form of violence, *i.e.*, gender-based violence committed by women’s intimate partners or the fathers of their children. To hold otherwise would be to hark back to the broad coverage of the Anti-DV Bill, which Congress has deliberately abandoned. Moreover, as pointed out by women’s rights advocates, such broad scope may result in the weaponization of the law against women, who are supposedly the primary beneficiaries of the law.

Indeed, despite the progression of jurisprudence in defining other possible offenders under RA 9262, case law remains consistent that the main offender should be an intimate or sexual partner of the woman victim, or, at the very least, the father of her child. For instance, in *Garcia v. Drilon*,³⁶ the Court rejected the contention that husbands or fathers are the only possible perpetrators of violence under RA 9262, as in fact it conceded that RA 9262 may even encompass lesbian relationships. In *Go-Tan v. Spouses Tan*,³⁷ the Court applied the principle of conspiracy to hold parents-in-law as proper co-respondents in a case filed by a wife against her abusive husband. Nevertheless, in all of the foregoing cases, RA 9262 was applied given the existence of underlying intimate or sexual relations, *i.e.*, the main offending party was an intimate or sexual partner of the woman victim.

Legislators likewise contemplated the inclusion of children under the mantle of RA 9262 to be limited. The protection of the law is intended for “women and their children,” not women and children separately. It is clear from the title of the law that the children covered by the act are the children of women victims of violence.

The *ponencia* cites the use of the disjunctive term “or” in the penal provisions under Section 5 of RA 9262 to further the interpretation that the

³⁴ II RECORD, SENATE 12TH CONGRESS 3RD SESSION 832 (10 December 2003).

³⁵ House Committee on Women Records, 12th Congress, pp. 7-8 and 35-36 (27 August 2002).

³⁶ 712 Phil. 44 (2013).

³⁷ 588 Phil. 532 (2008).

law covers women and children separately.³⁸ This interpretation, however, ignores the intent of the law as can be gleaned from the congressional deliberations. That the law covers children of women victims of violence only, not all children, was emphasized during the bicameral deliberations, to wit:

REP. SARENAS: Madam Chair, I should have brought this up earlier but we certainly are talking about not just any child but a child of a woman victim of violence. And, therefore, to make that clear, Madam Chair, I suggest that we include in our proposal somewhere where we describe who the victims can be the following words: "children are those below 18 years of age or older but are incapable of taking care of themselves as defined under Republic Act 7610, which is the Childrens (sic) Protection Law and in the context of the law, include the children of the woman from a previous marriage or relationship, her common children with the perpetrator, her adopted children and those children who do not, her own, live with her and are dependent on her emotionally." xxx

REP. MARCOS: x x x

I don't know if this confuses the issue or it clarifies it. What if the Senate version should read as follows, **in order to take into consideration the concerns of Representative Sarenas that priority be given to children in these abusive families to wit: An Act Defining Violence Against Women and their Children, Providing Protective Measures and Penalties therefor and for Other Purposes.**"

REP. ANTONINO-CUSTODIO: Maám, question. Actually, may incident kasi, tunay na incident na nangyari sa amin na 'yung anak is, actually hindi n'ya anak, eh, anak nung asawa n'ya, pero, parang she was still binded (sic) by that relationship kasi kahit hindi n'ya anak 'yung bata, kahit papa'no lumaki na sa kanya, eh. So, depende sa kanya—so, may hold pa rin 'yung asawa n'ya dahil dun sa anak nung asawa. That's an actual case, eh, in our area.

REP. MARCOS: I think such a situation would be covered in fact by women and their children, inasmuch as that child is dependent upon that mother, either as a ward or as an adopted child. So, okay, lang 'yun.

REP. ANTONINO-CUSTODIO: Kasi baka--- I mean, usually and even in some cases they are not adopted child- they are not adopted children, eh.

REP. MARCOS: No, even if they have not been officially adopted, it's tantamount to a ward relationship or dependency relationship. So, palagay ko covered na 'yon kasi they are children. Kasi nga, **I think there should be a distinction that this is not a law for all children everywhere under all circumstances, but rather children who are confronted with this abusive relationship within the family abode.**³⁹

³⁸ *Ponencia*, p. 14.

³⁹ Minutes of the Bicameral Conference Committee on the Disagreeing Provisions of SB 2723 and HB 5516 and 6054, pp. 194-201 (26 January 2004). Emphases and underscoring supplied.

Further, in the bicameral deliberations, Representative Angara-Castillo maintained her position as the author of the Anti-AWIR Bill that the children should be included only as incidental beneficiaries of the relief to be granted to the woman victims:

Madam Chair, if we go – I understand when I came in, that you said you are going to reserve the discussion of the title at the last. This one will have a bearing on the consideration of whether ths (sic) would include children in the act at all.

My point is that, just for the record because I don't know what was agreed upon before I came, I don't think we should include children in the bill, except as an incidental beneficiaries of the reliefs to be granted to the woman victim. Because Republic Act 7610 is already so comprehensive as to cover all the rights of the child.

In the same manner that when we were considering child labor, we decided not to make a magna carta for child labor because we already have existing law on child labor but merely to amend existing legislation. And my position is that, if we need to give the child more rights, then we should amend 7610 because that is the act applicable to children. I do not think this is really wise or prudent to include them in this particular bill because their inclusion is already guaranteed there by way of the relief that will benefit them as they are granted to their mother but it's not necessary for them to be made a part of the title or really of the bill itself. Except, as I said, as incidental beneficiaries of the reliefs to be granted to the offended mother.⁴⁰

Verily, the language of Section 5 (a) should be understood within the context that what the law intends to address is gender-based violence, and children of women victims of such violence, usually caught in the crossfire, are incidental beneficiaries of the law.

Remedy may be found in RA 7610; RA 9262 cannot be applied in this case without violating the proscription against judicial legislation

Petitioner is not without remedy. The alleged acts of private respondent Rosalina Sibal Knutson (Rosalina) may fall under Section 10 (a) of RA 7610, which penalizes “[a]ny person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child’s development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended.”

⁴⁰ Id. at 192. Emphasis and underscoring supplied.

While it is recognized that RA 7610 does not contain the innovative remedies of protection and custody orders provided under RA 9262, this is a necessary consequence of the language of RA 9262, whose wisdom is not subject to the Court's review. Notably, Section 8 of the Anti-AWIR Bill provides that other family members, including children, should resort to other laws such as RA 7610 when filing criminal complaints for abuse, but they were allowed to apply for a protection order provided in the bill. Unfortunately, the *proviso* on the extension of the protection orders to other family members was not adopted in the enacted law. Be that as it may, the Court cannot apply the protection order to children in situations where the mother is the abuser.

The primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by judicial legislation and that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms.⁴¹

Undeniably, the promotion of welfare and best interest of children are noble purposes. I am in full support of the State policy to exert efforts to address violence against children in keeping with our obligation under the Constitution and international human rights instruments to which we are a party. The Court, however, cannot go beyond its constitutional mandate and exercise a power that is clearly vested in another branch of the government, no matter how noble the cause and the liberal interpretation clause under Section ⁴² of RA 9262 notwithstanding.

To illustrate, the Court in the 1997 case of *Republic v. Alarcon Vergara*⁴³ (*Vergara*), acknowledged the purpose of our adoption laws but was constrained to deny the joint adoption by an alien and his spouse, a former Filipino citizen, of the two minor children who are relatives of the latter, *viz*:

We are not unmindful of the main purpose of adoption statutes, which is the promotion of the welfare of children. Accordingly, the law should be construed liberally, in a manner that will sustain rather than defeat said purpose. The law must also be applied with compassion, understanding and less severity in view of the fact that it is intended to provide homes, love, care and education for less fortunate children. Regrettably, the Court is not in a position to affirm the trial court's decision favoring adoption in the case at bar, **for the law is clear and it cannot be modified without violating the proscription against judicial legislation.** Until such time

⁴¹ *H. Villarica Pawnshop, Inc. v. Social Security Commission*, 824 Phil. 613, 636-637 (2018) citing *Corpuz v. People*, 734 Phil. 353-498 (2014).

⁴² SECTION 4. *Construction*.- This Act shall be liberally construed to promote the protection and safety of victims of violence against women and their children.

⁴³ 336 Phil. 944 (1997). See also *In re Lim*, 606 Phil. 82 (2009).

however, that the law on the matter is amended, we cannot sustain the respondent-spouses' petition for adoption.⁴⁴

Article 184 of the Family Code cited in *Vergara*, which proscribes adoption by an alien except in very limited circumstances, has been amended in 1998 by RA 8552, followed by the recently enacted RA 11642. The amendatory laws now provide for a wider latitude for adoption by foreign nationals. Indeed, Congress responds to calls for new or amendatory legislation to confront gaps in our legal framework. Any perceived inadequacies of RA 7160 should thus be directed to, and addressed by, Congress.

*Case should be remanded and tried
under A.M. No. 03-04-04-SC*

Even if this case does not fall under RA 9262, the trial court may still provide protective reliefs in favor of petitioner and his minor child. I join Justice Caguioa's opinion that the petition filed before the trial court should be treated as one for custody of a minor. Thereafter, the trial court should apply the Custody Rule and grant the appropriate reliefs.

The Custody Rule applies to petitions for custody of minors and writs of habeas corpus in relation thereto.⁴⁵ Section 2 to 4 of the Rule specify the basic requirements for a petition for custody:

SECTION 2. *Petition for custody of minors; who may file.* — A verified petition for the rightful custody of a minor may be filed by any person claiming such right. The party against whom it may be filed shall be designated as the respondent.

SECTION 3. *Where to file petition.* — The petition for custody of minors shall be filed with the Family Court of the province or city where the petitioner resides or where the minor may be found.

SECTION 4. *Contents of petition.* — The verified petition shall allege the following:

- (a) The personal circumstances of the petitioner and of the respondent;
- (b) The name, age and present whereabouts of the minor and his or her relationship to the petitioner and the respondent;
- (c) The material operative facts constituting deprivation of custody; and
- (d) Such other matters which are relevant to the custody of the minor.

⁴⁴ 336 Phil. 944, 948-949 (1997). Emphasis supplied.

⁴⁵ A.M. No. 03-04-04-SC, Sec. 1.



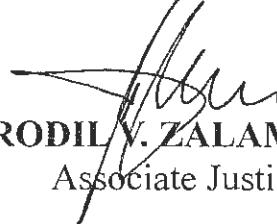
The verified petition shall be accompanied by a certificate against forum shopping, which the petitioner must sign personally.

The petition before the trial court meets the basic requirements of the Custody Rule. It was verified and filed by petitioner, a person claiming rightful custody of his child. It was also filed before the Family Court of the city where petitioner allegedly resides.⁴⁶ Moreover, the petition narrates facts supporting petitioner's prayer for temporary and permanent custody of his minor child.⁴⁷

Thus, there is no procedural hindrance to treating the petition as one for custody of a minor. Even assuming that there is, petitioner may simply amend his petition to fully conform with the Custody Rule.⁴⁸

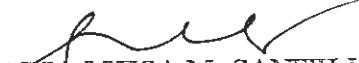
In the application of such Rule, the trial court may issue a protection order requiring the commission or omission of acts necessary to protect the minor.⁴⁹ Thus, while petitioner may not avail of the protection order specifically provided in RA 9262, he may still obtain the same protections through the Custody Rule. It is in this way that the Court may exercise its liberality without violating its mandate. The Court need not unnecessarily extend the application of the law to protect the interests of the minor child.

ACCORDINGLY, I vote to **DENY** the petition insofar as it prays for the issuance of a protection order under Republic Act No. 9262. The case should be **REMANDED** to the trial court for further proceedings following A.M. No. 03-04-04-SC.



RODILY V. ZALAMEDA
Associate Justice

CERTIFIED TRUE COPY



MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Recording Officer
COURT OF APPEALS

⁴⁶ *Rollo*, p. 52.

⁴⁷ *Id.* at 52-67.

⁴⁸ A.M. No. 03-04-04-SC, Sec. 1, in relation to the 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, Rule 10, Secs. 1 and 2.

⁴⁹ A.M. No. 03-04-04-SC, Sec. 1.