



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

SANDRA JANE GAGUI G.R. No. 250627
 JACINTO,

Petitioner, Present:

CAGUIOA, J., *Chairperson,*
 INTING,
 GAERLAN,
 DIMAAMPAO,* and
 SINGH, JJ.

- versus -

MARIA ELOISA SARMIENTO Promulgated:
 FOUTS,

Respondent. December 7, 2022

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RESOLUTION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction under Rule 45 of the Rules of Court seeking to reverse and set aside the Orders dated July 24, 2019² and November 28, 2019³ of the Branch 73, Regional Trial Court (RTC), Antipolo City in Criminal Case No. 18-60992. The questioned Orders denied the Motion to Quash⁴ the Information⁵ filed by Sandra Jane Gagui Jacinto (petitioner) for lack of merit on the ground that Republic Act No. (RA) 9262, otherwise known as the Anti-Violence Against Women and Their Children Act, applies to lesbian relationships.

* On official leave.

¹ *Rollo*, pp. 3-24.

² *Id.* at 27-29; issued by Acting Presiding Judge Leili Cruz Suarez.

³ *Id.* at 26; issued by Presiding Judge Gay Marie F. Lubigan-Rafael.

⁴ *Id.* at 30-37.

⁵ *Id.* at 53-54.

The Antecedents

The case stemmed from the following Information⁶ dated June 8, 2018 filed against the petitioner for violation of Section 5(a) in relation to paragraph 2 Section 6(a), of RA 9262 and Section 5(k) of RA 8369:⁷

That on or about the 14th day of January 2018, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above named accused, did, then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one MARIA ELOISA SARMIENTO FOUTS, her live-in partner by pushing her forcefully with swaying arms and crushing her hands repeatedly with the door of the car, thereby causing upon her physical injuries which required medical attendance for a period of I [*sic*] less than thirty (30) days and incapacitated her from performing her customary labor for the same period of time.

CONTRARY TO LAW.⁸

Petitioner and Maria Eloisa Sarmiento Fouts (respondent) were in a relationship for 16 years. Respondent alleged that petitioner broke up with her on December 24, 2017 while they were celebrating Christmas in Hongkong. When they got back to the country, petitioner would come to their house in Antipolo City just to get her things then leave to spend the night with her lover. Respondent then asked petitioner to stop using her credit cards because the latter still owed her ₱3,000,000.00.⁹

Later, petitioner started to demand that respondent leave the house and forced the latter to sign a deed of absolute sale over the property in her favor. Respondent refused to leave and sign the document. On January 12, 2018, because of respondent's continued refusal to leave the house, petitioner became angry and violent that she threatened to break everything and burn the house down. Petitioner's threats caused respondent to suffer chest pain and difficulty in breathing that she was brought to the hospital to seek medical attention.¹⁰

Petitioner visited respondent in the hospital on the next day and tried to make amends. When they went home, respondent averred that petitioner forced her to take Rivotril, a drug that caused her to feel weak and groggy. On January 14, 2018, when respondent regained

⁶ Id. at 53-54.

⁷ Family Courts Act of 1997, approved on October 28, 1997.

⁸ *Rollo*, pp. 30-31.

⁹ Id. at 192.

¹⁰ Id.

consciousness, she was already naked with petitioner on top her taking photos and videos of her. She then begged petitioner to delete the photos fearing that the latter might kill her or have her killed. Respondent followed petitioner to her car, but the latter repeatedly crushed her hand with the door of the car and pushed her hard so that she fell to the floor. She suffered fracture on her left wrist and thereafter underwent surgery and physical therapy.¹¹

For her part, petitioner countered that the complaint against her was filed to seek leverage for a case for reconveyance, annulment of title, and damages that she filed against respondent before the RTC of Antipolo City. She insisted that she alone purchased and built the house in Antipolo City and that respondent merely stayed therein after their break-up to seduce and provoke her.¹²

Petitioner further narrated that after respondent was discharged from the hospital, the latter seduced petitioner to have sex with her and asked her to take pictures of them while they were naked. When petitioner asked respondent to delete the pictures, the latter became hysterical and followed petitioner towards her car. Respondent grabbed petitioner's hands to prevent her from entering the car and she fell to the ground as petitioner tried to escape.¹³

Thus, on June 8, 2018, an Information for violation of Section 5(a) in relation to 2nd paragraph Section 6(a), of RA 9262 was filed in the RTC against petitioner. Petitioner moved to quash¹⁴ the Information on the ground that the facts charged in the information do not constitute an offense because RA 9262 does not apply to lesbian relationships.¹⁵

The Ruling of the RTC

On July 24, 2019, the RTC issued the first assailed Order denying the motion to quash on the ground that Section 3(a) of RA 9262 is clear that any person could be liable for violation of its provisions whether the violator is a man or a woman. Citing the case of *Garcia v. Drilon*¹⁶ (*Garcia*), the RTC explained that the use of the gender-neutral word "person" who has or had a sexual or dating relationship with the woman

¹¹ Id. at 192-193.

¹² Id. at 193.

¹³ Id. at 194.

¹⁴ See Motion to Quash, id. at 30-36.

¹⁵ Id. at 31.

¹⁶ 712 Phil. 44 (2013).

under Section 3(a) encompasses lesbian relationships.¹⁷

Petitioner sought reconsideration,¹⁸ but the RTC denied it in the second assailed Order¹⁹ dated November 28, 2019.

Hence, the petition before the Court that seeks to reverse and set aside the July 24, 2019 and November 28, 2019 Orders of the RTC insofar as it found that RA 9262 applies to lesbian relationships.

The Issue

The issue submitted before the Court is whether the RTC erred in denying the motion to quash filed by the petitioner on the ground that RA 9262 applies to lesbian relationships.

Petitioner asserts that reliance of the RTC in the case of *Garcia* in ruling that RA 9262 applies in the case is misplaced. According to her, the petitioner in *Garcia* was a husband who assailed the constitutionality of RA 9262 for being violative of the equal protection and due process clauses. Thus, the pronouncement of the Court that RA 9262 also applies to lesbian relationships was a mere *obiter dictum* in *Garcia* as it was not upon the question brought before the Court on petition.²⁰ Petitioner adds that to assert that RA 9262 applies to lesbian relationships is to protect one woman in a relationship and deny the other woman of the same protection.²¹

Petitioner further claims that: (1) the RTC's interpretation of the phrase "any person" in Section 3(a) of the law is patently erroneous;²² (2) the enumeration after the phrase "any person" has one denominator in that they refer to the male sex – husband, former husband, or a person with whom the woman has or had dating or sexual relationship, or shares common child with; (3) following the principle of *ejusdem generis*, the "person" referred to under Section 3(a) cannot be a woman;²³ and (4) the recent proposal by the Congress to amend RA 9262 to expand the scope of the law to include "partners and their children" further strengthens the

¹⁷ *Rollo*, p. 28.

¹⁸ See Motion for Reconsideration dated October 22, 2019, id. at 38-51.

¹⁹ Id. at 26.

²⁰ Id. at 10-12.

²¹ Id. at 14.

²² Id.

²³ Id. at 15.

position that same sex relationships are not covered under the law.²⁴

In seeking for the issuance of a temporary restraining order and/or writ of preliminary injunction, petitioner argues that the continuation of the trial in the RTC would probably work injustice to her. She laments that she will be tried under a defective information and that the resolution of the petition will eventually determine whether trial in the RTC should proceed or not.²⁵

In her Comment,²⁶ respondent counters that the petition filed under Rule 45 of the Rules of Court is an improper remedy because the denial of a motion to quash is unappealable. Being an improper remedy, the petition must be dismissed outright.²⁷

Further, respondent avers that RA 9262 is clear and free from any doubt or ambiguity;²⁸ there is no room for interpretation in the use of the phrase “any person”. It is without regard to gender or sexual orientation so long as the person has or had a dating relationship with the victim.²⁹ Respondent also argues that the pronouncement of the Court in *Garcia* is not a mere *obiter dictum* because one of the issues submitted in the case was the validity of the classification between men and women that would justify the protection given by RA 9262.³⁰ It was meant to provide protection to women and children as offended parties and not as perpetrators.³¹

Considering that the petition is improper and lacks merit, respondent likewise opposes the issuance of a temporary restraining order and/or writ of preliminary injunction as prayed for by the petitioner. Respondent insists that petitioner failed to establish that she is entitled to the relief demanded, more particularly, that she has a clear and unmistakable right to be protected.³²

In her Reply,³³ petitioner submits that the petition for review under Rule 45 is the proper remedy, the issue raised being a question of law.³⁴

²⁴ Id. at 16.

²⁵ Id. at 19.

²⁶ Id. at 337-353.

²⁷ Id. at 339.

²⁸ Id. at 341.

²⁹ Id. at 343.

³⁰ Id. at 344.

³¹ Id. at 345.

³² Id. at 348-349.

³³ Id. at 365-372.

³⁴ Id. at 366.

She reiterates that the issue in *Garcia* is a mere *obiter dictum* as the case therein did not, in any way, involve lesbian relationships;³⁵ and that RA 9262 does not yet cover homosexual relationships.³⁶

The Court's Ruling

The Court denies the petition on two grounds: *first*, for being an improper remedy; *second*, for lack of merit.

The denial of a motion to quash information is an interlocutory order; hence, not appealable.

Section 1 Rule 41 of the Rules of Court provides that an appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein as may be allowed by the Rules. It is also explicit as to what judgments or final orders are not appealable, thus:

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) An interlocutory order; xxx

It is a fundamental principle that an order denying a motion to quash is interlocutory in nature. As such, it is not appealable nor can it be the subject of a petition for *certiorari*³⁷ in light of the other available legal remedies.³⁸ In *Enrile v. Manalastas*³⁹ (*Enrile*), the Court explained that “[t]he remedy against the denial of a motion to quash is for the movant accused to enter a plea, go to trial, and should the decision be adverse, reiterate on appeal from the final judgment and assign as error the denial of the motion to quash. The denial, being an interlocutory order, is not appealable, and may not be the subject of a petition for *certiorari* because of the availability of other remedies in the

³⁵ Id. at 368.

³⁶ Id. at 370.

³⁷ *Querijero v. Palmes-Limitar*, 695 Phil. 110 (2012).

³⁸ *Tolentino v. People*, G.R. No. 235994, March 5, 2018 (Notice).

³⁹ 746 Phil. 43 (2014).

ordinary course of law.”⁴⁰

Certainly, the petition was filed under Rule 45 of the Rules of Court which is not the proper remedy to assail the Orders of the RTC denying petitioner’s motion to quash the information filed against her. The Orders, being interlocutory in nature, are not appealable pursuant to Section 1, Rule 41 of the Rules of Court; and, following *Enrile*, the proper remedy is for the petitioner to go to trial and appeal from the adverse judgment against her, should one be rendered by the RTC.

The Court also notes that the petition was directly filed before Us to assail the RTC Orders. Assuming that the Court take an exception and treat the petition as one filed under Rule 65, it should nonetheless be dismissed for blatant disregard of the judicial hierarchy of courts.

RA 9262 applies to lesbian relationships.

At any rate, the Court deems it proper to discuss the issue raised in the petition if only to reiterate the earlier pronouncement in *Garcia* that RA 9262 applies to lesbian relationships.

The Information filed in the RTC against the petitioner is anchored on Section 5(a) of RA 9262, viz.:

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; xxx

On the other hand, Section 3(a) thereof defines 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

⁴⁰ Id. at 48.

such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.

xxx

Petitioner's main contention is that the facts charged in the information filed against her in the RTC do not constitute an offense because RA 9262 does not apply to lesbian relationships. However, this issue was already settled in the case of *Garcia* in this wise:

There is likewise no merit to the contention that R.A. 9262 singles out the husband or father as the culprit. As defined above, VAWC may likewise be committed "against a woman with whom the person has or had a sexual or dating relationship." Clearly, the use of the gender-neutral word "person" who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships. Moreover, while the law provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the **principle of conspiracy** under the Revised Penal Code (RPC). Thus, in the case of *Go-Tan v. Spouses Tan*, the parents-in-law of Sharica Mari L. Go-Tan, the victim, were held to be proper respondents in the case filed by the latter upon the allegation that they and their son (Go-Tan's husband) had community of design and purpose in tormenting her by giving her insufficient financial support; harassing and pressuring her to be ejected from the family home; and in repeatedly abusing her verbally, emotionally, mentally and physically.⁴¹ (Emphases in the original.)

Contrary to petitioner's submission that the foregoing disquisition in *Garcia* was a mere *obiter dictum*, the Court notes that one of the issues raised in *Garcia* is the supposed discriminatory and unjust provisions of RA 9262 which are likewise violative of the equal protection clause.⁴² The foregoing discussion of the Court as to the applicability of the law to lesbian relationships is clearly a resolution of the particular issue raised in *Garcia* and not a mere *obiter dictum* or an opinion of the Court. The statement of the Court that "[t]here is likewise no merit to the contention that RA 9262 singles out the husband or father as the culprit" further amplifies that the issue of whether RA 9262 only applies to male perpetrators was indeed raised in the said case.

Applying the case of *Garcia*, the motion to quash information filed by the petitioner on the ground that the facts charged therein do not constitute an offense utterly lacks basis.

⁴¹ Supra note 16, at 103-104.

⁴² Id. at 77.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.




HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson



SAMUEL H. GAERLAN
Associate Justice

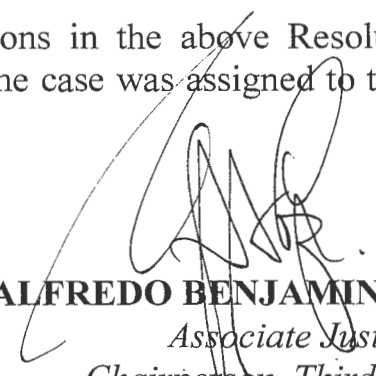
(On official leave)
JAPAR B. DIMAAMPAO
Associate Justice

Please see my Concurring Opinion

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

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



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division



CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice

