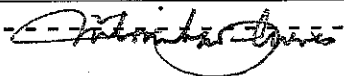


EN BANC

G.R. No. 239215 – RANDY MICHAEL KNUTSON, acting on behalf of minor RHUBY SIBAL KNUTSON, *petitioner, versus* 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, *respondents*.

Promulgated:

July 12, 2022

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

DISSENTING OPINION

CAGUIOA, J.:

I vote to remand the case to the trial court to hear and decide the petition not on the basis of Republic Act No. (R.A.) 9262¹ but pursuant to the rules set forth in A.M. No. 03-04-04-SC.² In this way, protection is afforded to the child while the Court stays true to its mandate of upholding the law based on what its letter and spirit intend.

The crux of the controversy in this case is whether the remedies of protection orders and custody under R.A. 9262 apply when violence is committed by a woman, in this case, a mother, against her own child. Public respondent, in the assailed Regional Trial Court (RTC) Orders,³ ruled in the negative, reasoning as follows:

Notably, the **offender** under R.A. 9262 is **any person** who is the husband, former husband, those who had sexual or dating relationship with the woman or with whom she has a common child. On the other hand, the **offended party** may be the **wife, former wife, a woman who has or had sexual or dating relationship, or with whom the man has a common child or HER child**.

From the foregoing, it can be seen that in the definition of an offender, a child's mother is not included as one of the offenders. In stark contrast, a child's mother is specifically mentioned in the definition for offended party. This could lead to no other conclusion that a child's mother cannot be considered as an offender under R.A. 9262.

Moreover, a protection order is defined under Section 8 of R.A. 9262, to quote:

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

² RULE ON CUSTODY OF MINORS AND WRIT OF *HABEAS CORPUS* IN RELATION TO CUSTODY OF MINORS, approved on April 22, 2003.

³ Orders dated January 10, 2018 and March 14, 2018, *rollo*, pp. 106-110 and 111-114, respectively, both penned by Acting Presiding Judge Elisa R. Sarmiento-Flores.



“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.** The relief granted under a protection order should serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim’s daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. xxx”

Based on the foregoing, the issuance of a protection order is for purpose of preventing further violence committed by an offender (any person who is the husband, former husband, those who had sexual or dating relationship with the woman or with whom she has a common child) against a woman or her child. It does not pertain to a mother who allegedly abused her own child. Hence, a protection order under R.A. 9262 cannot be issued against a mother who allegedly abused her own child.

Further, petitioner’s prayer for the granting of a temporary or permanent custody of Rhuby under R.A. 9262 is likewise misplaced as Section 28 of the said law specifically states:

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

As it is, R.A. 9262 does not apply in the case at bar. The petitioner, who is not a “woman victim of violence” cannot avail of the remedies provided therein particularly the issuance of a Temporary/Permanent Protection Order and the granting of a temporary or permanent custody of Rhuby to him.

x x x x

On a final note, granting that respondent neglected, abandoned or physically abused Rhuby, her minor daughter, there are laws and rules specifically created for the latter’s protection and safety that petitioner and/or Rhuby could avail of. Unfortunately, R.A. 9262 is not one of them.⁴ (Emphasis and italics in the original)

In denying petitioner’s motion for reconsideration, public respondent reiterated that R.A. 9262 does not apply to a situation where it was the mother herself who committed violent and abusive acts against her own child. She explained that “children being protected under R.A. 9262 refer to the biological children and other children under the care of the **woman/victim.**”⁵

⁴ *Rollo*, pp. 108-110.

⁵ *Id.* at 113; emphasis in the original.

As such, a child's mother is not included as one of the offenders under R.A. 9262.⁶

I agree with the RTC. I find that public respondent's reading of the law — that R.A. 9262 does not cover violence committed by a mother against her own child — is in full accord not only with the plain language of its provisions, but also with the intent and spirit that animate it.

***The present case is not covered by
R.A. 9262***

The first basic rule in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

Here, R.A. 9262 unequivocally defines the victims of violence or the offended parties the law intends to protect — the woman and her child. Notably, examining R.A. 9262 in detail reveals that the law is not intended to apply to all children victimized by violence or abuse but only to the child or children of the woman subjected to violence or abuse.

Foremost, the title of R.A. 9262 itself qualifies that the child covered by the law is the child of the woman subject to violence or abuse. Thus, the title of R.A. 9262 reads, “AN ACT DEFINING **VIOLENCE AGAINST WOMEN AND THEIR CHILDREN**, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES.”⁷ This is reiterated in Section 1 of R.A. 9262, viz.:

SECTION 1. *Short Title.* — This Act shall be known as the “Anti-Violence **Against Women and Their Children** Act of 2004[.]” (Emphasis, italics and underscoring supplied)

Further, all through-out the text of the law, the term “child” is always associated with the term “woman.” As public respondent aptly noted, R.A. 9262 does not consider or treat the “child” independently from the “woman” subjected to violence or abuse.

To be sure, Section 3(a) of R.A. 9262, in defining what *violence against women and their children* means, states, “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

⁶ Id.

⁷ Emphasis, italics and underscoring supplied.



or illegitimate[.]”⁸ Further, in defining the term children, Section 3(h) provides, “[a]s used in this Act, it includes the **biological children of the victim** [, i.e. the woman,] **and other children under her care.**”⁹

In addition, Sections 5 and 6 of R.A. 9262, in enumerating prohibited acts and their corresponding penalties, respectively state:

SEC. 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**;
- (b) Threatening to cause **the woman or her child** physical harm;
- (c) Attempting to cause **the woman or her child** physical harm;
- (d) Placing **the woman or her child** in fear of imminent physical harm;

(e) Attempting to compel or compelling **the woman or her child** to engage in conduct which **the woman or her child** has the right to desist from or to desist from conduct which **the woman or her child** has the right to engage in, or attempting to restrict or restricting **the woman’s or her child’s** freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against **the woman or her child**. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting **the woman’s or her child’s** movement or conduct:

(1) Threatening to deprive or actually depriving **the woman or her child** of custody or access to her/his family;

(2) Depriving or threatening to deprive **the woman or her children** of financial support legally due her or her family, or deliberately providing **the woman’s children** insufficient financial support;

(3) Depriving or threatening to deprive **the woman or her child** of a legal right;

(4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim’s own money or properties, or solely controlling the conjugal or common money, or properties;

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

⁸ Id.

⁹ Id.



(g) Causing or attempting to cause **the woman or her child** to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against **the woman or her child** or her/his immediate family;

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to **the woman or her child**. This shall include, but not be limited to, the following acts:

(1) Stalking or following **the woman or her child** in public or private places;

(2) Peering in the window or lingering outside the residence of **the woman or her child**;

(3) Entering or remaining in the dwelling or on the property of **the woman or her child** against her/his will;

(4) Destroying the property and personal belongings or inflicting harm to animals or pets of **the woman or her child**; and

(5) Engaging in any form of harassment or violence;

(i) Causing mental or emotional anguish, public ridicule or humiliation to **the woman or her child**, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the **woman's child/children**.

SEC. 6. *Penalties*. — The crime of violence **against women and their children**, under Section 5 hereof shall be punished according to the following rules[.] (Emphasis, italics and underscoring supplied)

Likewise, Section 8, which pertains to the issuance of protection orders, refers not just to any child — it refers only to the child of the woman victim. It states that the immediate reliefs granted by law (barangay protection order, temporary protection order and permanent protection order) are for the purpose of preventing further acts of violence **against a woman or her child** as specified in Section 5 thereof.

In the same vein, R.A. 9262 explicitly defines the offender or perpetrator of the crime penalized therein. Thus, Section 3(a) provides that “[v]iolence 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.”¹⁰

¹⁰ Id.

Following the foregoing enumeration, the offender contemplated by R.A. 9262 includes any of the following persons: the woman's husband, the woman's former husband, the woman's sexual or dating partner, the woman's former sexual or dating partner, or the father of the woman's child.

In *Garcia v. Judge Drilon*,¹¹ (*Garcia*) the Court clarified that R.A. 9262 does not single out men as offenders. Women may also be held liable for violating R.A. 9262. However, it should be emphasized that the Court also made it clear in *Garcia* that this applies only in cases when the woman-victim is in a lesbian relationship or where there is a conspiracy between the perpetrator of the violence or abuse against the woman (*i.e.* the woman's husband, the woman's former husband, the woman's sexual or dating partner, the woman's former sexual or dating partner, or the father of the woman's child) and another person/s, who may include a woman:

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.¹² (Emphasis and underscoring supplied; italics in the original)

Proceeding from the foregoing, R.A. 9262 applies only when there is a woman subjected to violence and abuse. Moreover, since R.A. 9262 does not treat the child independently from the abused woman, and given the offenders enumerated and contemplated by R.A. 9262, it becomes quite clear that R.A. 9262 only covers violence or abuse against the woman's child committed by any of the following persons: the woman's husband, the woman's former husband, the woman's sexual or dating partner, the woman's former sexual or dating partner, or the father of the woman's child.

Stated otherwise, it is quite clear that R.A. 9262 does not contemplate a situation wherein no woman is abused or subjected to violence, and instead it is the woman herself who is the offender or the one who inflicts violence against the victim or the offended party. Also, as explained by the Court in *Garcia*, a woman may be considered as an offender under R.A. 9262 only

¹¹ 712 Phil. 44 (2013).

¹² *Id.* at 103-104.



when the woman is in lesbian relationship or in conspiracy with other persons. To my mind, public respondent is therefore correct in ruling that R.A. 9262 does not apply to the present case. In the first place, there is no woman subjected to violence in the context of an intimate relationship in this case. Moreover, private respondent in this case is not in a lesbian relationship. Neither was conspiracy established between private respondent and the husband or father of the victim.

Another primordial principle in statutory construction is that a statute must be read according to its spirit or intent. The legislative intent is the controlling factor in interpreting a statute. Any interpretation that contradicts the legislative intent is unacceptable.¹³

A perusal of the spirit and intent of R.A. 9262, through its legislative history and congressional deliberations, leads to this same interpretation that the child included under R.A. 9262 pertains only to the child of the abused woman and not to all children subjected to violence and abuse.

R.A. 9262 originated from three bills, two of which were drafted by the House of Representatives and the third emanating from the Senate.

House Bill No. (HB) 6054 entitled *An Act Defining Domestic Violence, Providing Protection Measures and Penalties Therefor, and for Other Purposes* (DV Bill) pertained to domestic violence in general. It sought to penalize violence committed by and against any member of the family or household whether a minor, adult, or elderly. It covered incidents of spouse battery, wife assault, woman or girl abuse, marital violence, wife cruelty and violence against family member. It appears that the DV Bill intended to penalize all forms of abuse or violence committed against any person in a family setting.

On the other hand, HB 5516 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* (Anti-AWIR Bill) limited the crime of violence and abuse to women in intimate relationships. Thus, it defined the crime as acts of violence or abuse committed against a woman who is his wife, or former wife, his/her live-in partner, or former live-in partner, or against a woman whom the person has or had a sexual dating relationship.

Records of committee deliberations of the House of Representatives showed that proponents of the DV Bill asserted the need for a comprehensive law on domestic violence. They emphasized that domestic violence is committed against all members of the family and distinction as to sex or a piecemeal approach in addressing the issue is unnecessary.¹⁴ On the other

¹³ *Federal Express Corporation v. Airfreight 2100, Inc.*, 800 Phil. 292, 304 (2016).

¹⁴ See Transcript of the Hearing on Committee on Women dated February 19, 2002 and August 27, 2002.



hand, sponsors of the Anti-AWIR Bill insisted that statistical data support that majority of the victims of domestic violence are women and even international instruments like the Convention on the Elimination of All Forms of Discrimination Against Women recognized the proliferation of gender-based violence committed against women. They also explained that unlike the DV Bill, the Anti-AWIR Bill extends the protection of women not only within the framework of the household but even to women in intimate relationships. They further claimed that other members of the family are already protected by current laws: R.A. 7610 is comprehensive enough to address abuses committed against children, while the Revised Penal Code covers violence committed against other members of the household.¹⁵

While there was a move to consolidate both house bills, they were separately approved by the House of Representatives during their Third Reading and were both elevated to the Senate.

The counterpart bill of HB 5516 and 6054 in the Senate is Senate Bill No. (SB) 2723 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*.

During the plenary deliberations, the issue on SB 2723's coverage was also raised. It was proposed that men be excluded from the coverage of the bill and that protection afforded by the bill be limited to women, who are mostly the victims of gender-based violence. Subsequently, Senator Vicente Sotto III (Senator Sotto) raised that there is also a need to expand the protection afforded to children subjected to violence and abuse. It was then agreed upon in the Senate that SB 2723 would include both women and children, *viz.:*

Wednesday, January 14, 2004

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x x x

x x x

The President Pro Tempore. x x x

Also, may the Chair remind the group that there was the discussion whether to limit this to women and not to families which was the issue of the AWIR group. The understanding that I have is that we would be having a broader scope rather than just women, if I remember correctly, Madam sponsor.

Senator Estrada. Yes, Mr. President.

As a matter of fact, that was brought up by Senator Pangilinan during the interpellation period.

I think Senator Sotto has something to say to that.

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

¹⁵ See id.

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 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.

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x x x

x x x

The President Pro Tempore. What does the sponsor say?

Senator Estrada. Mr. President, before accepting this, the committee came up with this bill because the family members have been included in this proposed measure since the other members of the family other than women are also possible victims of violence. While women are most likely the intended victims, one reason incidentally why the measure focuses on women, the fact remains that in some relatively few cases, men also stand to be victimized and that children are almost always the helpless victims of violence. I am worried that there may not be enough protection extended to other family members particularly children who are excluded. Although Republic Act No. 7610, for instance, more or less, addresses the special needs of abused children. The same law is inadequate. Protection orders for one are not available in said law.

I am aware that some groups are apprehensive about granting the same protection to men, fearing that they may use this law to justify their abusive behavior against women. However, we should also recognize that there are established procedures and standards in our courts which give credence to evidentiary support and cannot just arbitrarily and whimsically entertain baseless complaints.

Mr. President, this measure is intended to harmonize family relations and to protect the family as the basic social institution. Though I recognize the unequal power relations between men and women in our society, I believe we have an obligation to uphold inherent rights and dignity of both husband and wife and their immediate family members, particularly children.

While I prefer to focus mainly on women, I was compelled to include other family members as a critical input arrived at after a series of consultations/meetings with various NGOs, experts, sports groups and other affected sectors, Mr. President.

Senator Sotto. Mr. President.

The President Pro Tempore. Yes, with the permission of the other senators.



Senator Sotto. Yes, with the permission of the two ladies on the Floor.

The President Pro Tempore. Yes, Sen. Vicente C. Sotto III is recognized.

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.

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x x x

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

The President Pro Tempore. Is there any objection?

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x x x

Senator Sotto. x x x May I propose an amendment to the amendment.

The President Pro Tempore. Before we act on the amendment?

Senator Sotto. Yes, Mr. President.

The President Pro Tempore. Yes, please proceed.

Senator Sotto. Mr. President, I am inclined to believe the rationale used by the distinguished proponent of the amendment. As a matter of fact, I tend to agree. *Kung may maaabuso, mas malamang iyong babae kaysa sa lalake. At saka iyong mga lalake, puwede na talagang magulpi iyan. Okey lang iyan.* But I cannot agree that we remove the children from this particular measure.

So, if I may propose an amendment —

The President Pro Tempore. To the amendment.

Senator Sotto. — more than the women, the children are very much abused. As a matter of fact, it is not limited to minors. The abuse is not limited to seven, six, 5-year-old children. I have seen 14, 15-year-old children being abused by their fathers, even by their mothers. And it breaks my heart to find out about these things.

Because of the inadequate existing law on abuse of children, this particular measure will update that. It will enhance and hopefully prevent the abuse of children and not only women.

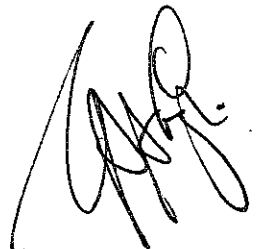
SOTTO-LEGARDA AMENDMENTS

Therefore, may I propose an amendment that, yes, we remove the aspect of the men in the bill but not the children.

Senator Legarda. I agree, Mr. President, with the Minority Leader.

The President Pro Tempore. Effectively then, it will be women AND CHILDREN.

Senator Sotto. Yes, Mr. President.



Senator Estrada. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] There being none, the amendment, as amended, is approved.¹⁶

Subsequently, when the three bills were reconciled during the bicameral conference committee, the issue on the persons covered by the consolidated bill was once again raised. There was a consensus among the members that men are excluded from the coverage of the consolidated bill. As to children, however, Senator Sotto's proposition to include all children subjected to violence and abuse was effectively modified when the members of the bicameral conference committee agreed to further refine the definition of children covered by the law, *viz.*:

REP. ANGAR[A]-CASTILLO. ... 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 this 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 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.

x x x 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.

THE CHAIRPERSON (SEN. EJERCITO-ESTRADA). There was a discussion in the Senate, the Minority Leader said that they don't mind if the males are excluded from this bill, but not the children. So I think I agree with them and so we include the children.

REP. ANGARA-CASTILLO. Just for the record, Madam Chair, I am not saying that we should exclude children from consideration of benefits that may accrue to them. What I am just saying is that, the benefits they would like to give to them can be done by way of amendment to 7610 so we really have a clear law that affects only the children.

Kasi, if you scatter all these provisions benefiting the children, napakagulo, eh. So if we want to give them additional rights, then you just amend Republic Act 7610.

¹⁶ *Garcia v. Judge Drilon*, supra note 11, at 86-89.

x x x x

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 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 Children[']s Protection Law and in the context of this 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.” That’s a long one, Madam Chair, but it does speak of the reality of the kind of children, not just biological children of a woman victim of violence but all other young children below 18 or who are incapable of taking care of themselves but her children because they are children from a previous marriage, her adopted children or x x x children she has in common with the perpetrator.

REP. ANTONINO-CUSTODIO. I think kasama na sa child yun, eh. I think, what I am scared of more than anything is that if we specify we might exempt other children pa. So, kung general tayo, kung child lang tayo, then I think, saklaw na lahat, whether adopted yung child, whether a child niya from a previous marriage or whether child niya from another – well, all-weather child. Basta child, di ba? Saklaw na nung definition ng child, eh.

Ang fear ko lang na baka mayroong -- you know, by us specifying which child, we might exempt other children.

REP. SARENAS. I’d really just want to explain. All those children – all children are covered under 7610. But the children we want covered under this law called Violence against Women and Children, are the ones that I enumerated. So just to make it clear that these are the children who are usually the victims because yung iba na-cover na duon sa 7610. [Para ma-iba lang] yung definition natin ng children, for emphasis of children victims of violence against women and children.

REP. ANTONINO-CUSTODIO. Bakit pa natin i-lilimit. Huwag na natin i-limit. Huwag na natin i-limit.

x x x x

REP. MARCOS. Therefore, taking into consideration the concerns of the members regarding violence against women and their children, may I suggest that the Senate title be adopted with the following amendments: “An Act Defining Violence Against Women and Children, Providing for Protective Measures for Them and Prescribing Penalties Therefor and For Other Purposes.” I just switched it around, kasi dapat ‘yung “protective” mauna sa “penalty.” ‘Yun lang.

REP. ANGARA-CASTILLO. I reiterate my suggestion, we eliminate the word "children" because it's totally unnecessary and inappropriate.

REP. ANTONIO-CUSTODIO. Ma'am I'd just like to put into the- - well, put into records that the women specified here are the women in intimate relationships, 'yun 'yung referral natin to women here. Whether you put it in the title or not is not really a concern of mine but just like to make it on record that the women we have - - kumbaga ang saklaw nitong special law na 'to are actually women in intimate relationships.

x x x x

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. Ma'am question. Actually may incident kasi, tunay na incident nangyari sa amin na 'yung anak is, actually hindi n'ya anak, eh, anak nung asawa n'ya, pero, parang she was still binded by that relationship kasi kahit hindi n'ya anak 'yung bata, kahit papa'no lumaki na sa kanya, eh. So, dependent sa kanya- - so, may hold pa rin 'yung asawa n'ya 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 the child is dependent upon that mother, either as 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.

REP. ANTONINO-CUSTODIO. As long as, ma'am I guess the intention in the Bicameral Conference Committee is really on record, I think we will have no problem because when the court will refer definitely to the minutes of the Bicameral Conference Committee, then they will see that our intention is so. Just for the record.

THE CHAIRPERSON (SEN. EJERCITO-ESTRADA). Okay, we adopt the...



REP. MARCOS. Therefore, to reiterate, taking into consideration both Representative Sarenas and Representative Custodio's concerns, the Bicam transcript should therefore reflect the intent of this body to broadly interpret the term "children" not only to include the biological children of the abused or violated mothers, but also all children under their care.

THE CHAIRPERSON (SEN. EJERCITO-ESTRADA). Okay, para matapos na talaga. x x x Okay, accepted, use your title, gano'n na rin, dinagdagan lang ng "their children."¹⁷ (Emphasis and underscoring supplied)

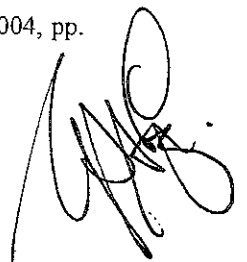
As can be gleaned from the foregoing, while Representative Bellaflor Angara-Castillo's suggestion to completely remove the word "children" from the title of the consolidated bill was not adopted, **it was nevertheless clarified that the proposed consolidated bill does not cover all children victimized by violence or abuse.** The child which the consolidated bill intends to protect is the child affected by the abusive relationship the woman-victim is/was into. It is the child of the woman subjected to violence and abuse, whether the child is her biological or adopted child or a child under her care. As such, the title was revised to include the word "their" beside children and the body of the R.A. 9262 consistently made reference to the child as "her child." This is to make clear the intent, as agreed and clarified during the bicameral conference committee, that not all children subjected to violence or abuse are covered by R.A. 9262 but only the child of the abused woman or violated mother or the child under her care. In this light, the present case unfortunately does not fall within the purview of the law.

Worthy of note as well is the fact that R.A. 9262 did not expressly repeal or amend the provisions of R.A. 7610, which, as raised during the congressional deliberations, provides a comprehensive protection to minor children subjected to violence and abuse.

R.A. 7610 penalizes child prostitution and other sexual abuse, child trafficking, and other acts of neglect, abuse, cruelty or exploitation committed against children. It covers all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions prejudicial to a child's development, including acts against a child committed by the parent, guardian, teacher or person having care and custody of the same.¹⁸ **As such, Section 10(a) of R.A. 7610 penalizes all other acts of child abuse, cruelty or exploitation against a child, which includes those committed by parents**

¹⁷ Congressional Records, Minutes of the Bicameral Conference Committee dated January 26, 2004, pp. 192-202.

¹⁸ See Sec. 2. Declaration of State Policy and Principles.



against their children, as enumerated under Article 59¹⁹ of Presidential Decree No. 603²⁰ or the Child and Youth Welfare Code. Further, R.A. 7610 and its implementing rules and regulations grant the child reliefs against acts of abuse, violence, cruelty and neglect, such as immediate protective custody and transfer of parental authority.²¹

- ¹⁹ ART. 59. *Crimes.*—Criminal liability shall attach to any parent who:
- (1) Conceals or abandons the child with intent to make such child lose his civil status.
 - (2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.
 - (3) Sells or abandons the child to another person for valuable consideration.
 - (4) Neglects the child by not giving him the education which the family's station in life and financial conditions permit.
 - (5) Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.
 - (6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.

It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.

- (7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.
- (8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignities and other excessive chastisement that embarrass or humiliate him.
- (9) Causes or encourages the child to lead an immoral or dissolute life.
- (10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.
- (11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

"Parents" as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

²⁰ Approved on December 10, 1974.

²¹ R.A. 7610, Sec. 28 states:

SEC. 28. *Protective Custody of the Child.* — The offended party shall be immediately placed under the protective custody of the Department of Social Welfare and Development pursuant to Executive Order No. 56, series of 1986. In the regular performance of this function, the officer of the Department of Social Welfare and Development shall be free from any administrative, civil or criminal liability. Custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603. (AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES, approved on June 17, 1992)

Implementing Rules and Regulations of R.A. 7610 provide:

Sec. 8. ***Investigation.*** — Not later than forty-eight (48) hours after receipt of a report on a possible incident of child abuse, the Department shall immediately proceed to the home or establishment where the alleged child victim is found and interview said child to determine whether an abuse was committed, the identity of the perpetrator and the need of removing the child from his home or the establishment where he may be found or placing him under protective custody pursuant to Section 9 of these Rules.

Whenever practicable, the Department shall conduct the interview jointly with the police and/or a barangay official.

To minimize the number of interviews of the child victim, his statement shall be transcribed or recorded on voice or video tape.

Sec. 9. ***Protective Custody.*** — If the investigation discloses sexual abuse, serious physical injury or life-threatening neglect of the child, the duly authorized officer or social worker of the Department shall immediately remove the child from his home or the establishment where he was found and place him under protective custody to ensure his safety.

Sec. 10. ***Immunity of Officer Taking the Child Under Protective Custody.*** — The duly authorized officer or social worker of the Department and the assisting police officer or barangay official, if any, who shall take a child under protective custody shall be exempt from any civil, criminal and administrative liability therefor.

Sec. 11. ***Notification of Police.*** — The Department shall inform the police or other law enforcement agency whenever a child victim is placed under protective custody.

Sec. 12. ***Physical Examination; Interview.*** — The Department shall refer the child who is placed under protective custody to a government medical or health officer for a physical/mental examination and/or medical treatment. Thereafter, the Department shall

Indeed, had Congress really intended to repeal or amend R.A. 7610, which specifically defines and penalizes child abuse, including those committed by their parents, and grants reliefs to protect the child victim, then Congress would have explicitly done so. Despite the fact that R.A. 7610 was raised during congressional deliberations, Congress did not include any amendatory provision in R.A. 9262 on the rights of children provided under R.A. 7610. On the contrary, Congress, during the bicameral conference committee, even clarified that R.A. 9262 does not cover all circumstances of child abuse. What R.A. 9262 actually covers are the acts of violence against the woman and her child, whether biological, adopted or under her care, committed by the woman's husband, woman's former husband, woman's dating or sexual partner, woman's former dating or sexual partner or the father of the woman's child. A child abused by her own mother is not included in any of these circumstances.

In ruling that mothers can be prosecuted under R.A. 9262 when they commit violent and abusive acts against their own children, the *ponencia* posits that R.A. 9262 uses the gender-neutral word "*person*" as the offender which embraces any person of either sex.²²

However, it must be borne in mind that, and as shown from the preceding discussion, legislative intent is ascertained from a consideration of the statute as a whole.²³ The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.²⁴ **The meaning of the law is not to be extracted from any single part, portion or section or from isolated words and phrases, clauses or sentences but from a general consideration or view of the act as a whole.**²⁵

In this regard, the term *person* under Section 3(a) of R.A. 9262 cannot be read separately from the succeeding phrases which the law deliberately used to describe or qualify the offenders therein. It bears emphasis that Section 3(a) describes the term "*person*" as the woman's husband, former husband,

determine the rehabilitation or treatment program which the child may require and to gather data relevant to the filing of criminal charges against the abuser.

Sec. 13. ***Involuntary Commitment.*** — The Department shall file a petition for the involuntary commitment of the child victim under the provisions of Presidential Decree No. 603, as amended, if the investigation confirms the commission of child abuse.

Sec. 14. ***Suspension or Deprivation of Parental Authority.*** — The Department shall ask the Court to suspend the parental authority of the parent or lawful guardian who abused the child victim, *Provided*, that in cases of sexual abuse, the Department shall ask for the permanent deprivation of parental authority of the offending parent or lawful guardian.

Sec. 15. ***Transfer of Parental Authority.*** — The Department shall, in case of suspension or deprivation of parental authority and if the child victim cannot be placed under the care of a next of kin, ask the proper Court to transfer said authority over the child victim to the Department or to the head of a duly accredited children's home, orphanage or similar institution. (RULES AND REGULATIONS ON THE REPORTING AND INVESTIGATION OF CHILD ABUSE CASES, adopted on October 11, 1993)

²² See *ponencia*, pp. 10–11.

²³ *Aisporna v. CA*, 198 Phil. 838, 847 (1982).

²⁴ *Id.*

²⁵ *Id.*

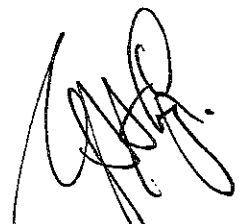
person with whom the woman has or had a sexual or dating relationship, or with whom she has a common child. Likewise, the use of the term “*person*” arose from a recognition of the reality that women may enter into intimate relationships not just with men. **It does not at all signify that the woman herself may be an offender, as this interpretation runs counter to the very essence of the law, which is the protection of women from violence in the context of intimate relationships.**

Furthermore, in defining violence committed against a child, R.A. 9262, from beginning to end, consistently refers to the abused woman’s child. This reinforces the interpretation that the offenders with respect to violence committed against the abused woman’s child also pertains to the woman’s husband, former husband, person with whom the woman has or had a sexual or dating relationship or with whom the woman has a common child, or simply, the child’s own father. In fact, nothing in R.A. 9262 explicitly or even impliedly indicate that the woman herself or a mother is considered as an offender; save in the cases explained by the Court in the case of *Garcia*. Therefore, it is very inaccurate to say that R.A. 9262 does not limit or qualify the offenders when, in fact, the language of the law categorically does.

In stark contrast to R.A. 9262, R.A. 7610 explicitly names and penalizes parents — hence, including mothers — as offenders or perpetrators of the violence committed against their child. As discussed, Section 10(a) of R.A. 7610 covers acts of neglect, abuse, cruelty or exploitation committed by parents against their own child. As well, the declared policy of R.A. 7610, as expressed in Section 2 thereof, is that the State shall intervene on behalf of the child **when abuse, exploitation and discrimination against the child are committed by the his or her own parent, guardian, teacher or person having care and custody of the child.**

Undoubtedly, R.A. 7610 is the law dedicated for the protection of a child, while R.A. 9262 is the law enacted mainly to protect women in abusive relationships. The core of R.A. 7610 is the protection of a child from all forms of abuse, neglect and exploitation, including those committed by their own parents. On the other hand, R.A. 9262’s focus is the gender-based violence and abuse committed against women in intimate relationships. This distinction between R.A. 9262 and R.A. 7610 can also reasonably be inferred from the fact that R.A. 9262 was mostly drawn from the provisions of the Anti-AWIR bills instead of the various DV bills introduced in Congress.

During the deliberations of this case, it was raised that the legislative debates reveal that R.A. 9262 was intended to provide a more comprehensive remedy and that Congress opted not to remove the protection of children from the proposed measures. Senator Sotto’s statement that mothers also commit violence and abuse against their children, and the discussion between Representative Darlene Antonino-Custodio (Representative Antonino-Custodio) and Representative Imee Marcos (Representative Marcos) on broadening the definition of child supposedly affirm this position.



With due respect, this is a wrong reading of the deliberations.

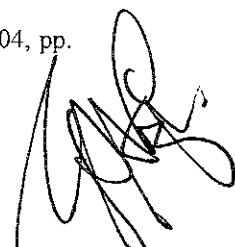
While Senator Sotto expressed that women, including mothers can be abusers, and thus, all children should be part of R.A. 9262, as discussed, this proposal was effectively modified during the Bicameral Conference Committee, when the members decided to add the word “their” before children, to signify that the child covered by R.A. 9262 is the child of the abused woman and not just any child abused in a family setting. In other words, by adding the word “their” or “her” to modify the words of “children” or “child,” what R.A. 9262 simply intends is to extend protection not only to the abused woman, but also to the abused woman’s child as he or she is an unfortunate victim of the abusive relationship his or her mother is into.

In this regard, the discussion between Representative Antonino-Custodio and Representative Marcos on broadening the term “child” to include also those under the woman’s care should be read together with the unanimous agreement to describe the child covered by R.A. 9262 as the child of the abused woman confronted with such abusive relationship; as well as and the express language of the law on who the offenders or perpetrators of the violence are. To be sure, Representative Marcos, in adopting the suggestions to broadly define the term child, still made reference to their abused mothers:

REP. MARCOS: Therefore, to reiterate, taking into consideration both Representative Sarenas and Representative Custodio’s concerns, the Bicam transcript should therefore reflect the intent of this body to broadly interpret the term “children” not only to include the **biological children of the abused or violated mothers, but also all children under their care.**²⁶ (Emphasis, italics and underscoring supplied)

Accordingly, based on congressional records, the intent of R.A. 9262, similar to what its language expresses, is to include only the child affected by the abusive relationship his or her mother is into, and not all children subjected to violence or abuse in a family. If R.A. 9262 is to be interpreted to include all abuse committed against a child, including those committed by their own mothers, then R.A. 9262 would also cover abuses committed by grandparents, uncles, aunties, elder brother or sister, or any person living in the family abode — circumstances which are certainly beyond what R.A. 9262 intends. In including mothers as offenders under R.A. 9262, and consequently, all other members of a household, as what the *ponencia* does, the very policy for the creation of R.A. 9262, which is to protect women against violence in the context of intimate relationships, is effectively diluted. It also results in a conflation of laws and an abject confusion about, and may possibly conflict with, the coverage of R.A. 7610. Truly, a statute must be construed, not only to be consistent with itself, but also to harmonize it with other laws on the

²⁶ Congressional Records, Minutes of the Bicameral Conference Committee dated January 26, 2004, pp. 201-202.



same subject matter, as to form a complete, coherent and intelligible system.²⁷ The operative word is to harmonize — not to confuse.

*Response to Senior Associate
Justice Marvic M.V.F. Leonen
(Justice Leonen)*

Justice Leonen, in his Concurring Opinion, opines that “violence and abuse in the context of intimate relationships is not a gender issue but a power issue.”²⁸ From this, he makes the argument that it is, therefore, “entirely possible that women can be perpetrators of violence and abuse in domestic and intimate relationships.”²⁹ The ultimate conclusion from these premises is that the victims of women in general, when they commit violence or abuse, can therefore seek the remedies under R.A. 9262.

While I agree with the premises, I do not agree that the premises warrant the conclusion.

I do not dispute that domestic abuse is an issue of power. In fact, abuse in general is an issue of power. Irrespective of context — whether it be in interstate relations (developed vs. developing countries), the State vs. its citizens, employers vs. its employees, parents vs. their children — the ability to commit acts of abuse is directly linked to power. Power may come from different sources and in different forms: it can be political, economic, or rooted in cultural norms, just to name a few. This is why I agree that even in domestic settings, abuse is an issue of power. Historically though, a lot of societies, including ours, have given males the social duty to earn for the family. It has long been the social expectation for the woman to take care of the family and be a “housewife,” while the husband is the one expected to earn. This may indeed have skewed power in domestic relationships in favor of the males, as they would naturally hold economic power as a result of this social expectation. Not to mention, there are other factors as well that contribute to abuse in domestic settings, such as gender socialization, to which most — regardless of gender — are subjected, which perpetuate the notion that females are “the weaker sex.”

I therefore accept as correct the premise that domestic abuse is an issue of power. What I cannot concede, however, is that this premise implies the following conclusion: that we can read R.A. 9262 beyond its letter.

If this Court were the floors of Congress, and we were debating on the choice between enacting “Anti-Violence Against Women and their Children,” on the one hand, and a general “Anti-Domestic Violence” measure, on the other, I would support the latter. After all, abuse, as a function of power, can go both ways regardless of sex.

²⁷ *The Office of the Solicitor General (OSG) v. Court of Appeals*, 735 Phil. 622, 628 (2014).

²⁸ Concurring Opinion of Justice Leonen, p. 5.

²⁹ *Id.*



Unfortunately, we are not in the halls of the legislature. Instead, we are in a court of law. Our function is to apply the law, not discuss or debate its wisdom. And in my view, as I am reading the law in its entirety, R.A. 9262 and its provisions are clear: it only applies in situations where women are subjected to violence in the context of intimate relationships. The reference to children, to repeat, has always been in relation to the woman subjected to violence. It covers situations where the child of an abused woman is himself/herself subjected to abuse as a result of, or in connection with, the abuse against the woman. Abuse against children in other contexts is covered by R.A. 7610.

Justice Leonen also wants the Court to liberally apply R.A. 9262 to the present case, in the same way that the Court did in the cases of *Estacio y Salvosa v. Estacio y Santos*³⁰ (*Estacio*) and *Go-Tan v. Spouses Tan*³¹ (*Go-Tan*).

However, as I see it, these cases, in fact, fortify the position that what R.A. 9262 penalizes is the violence committed against the woman and her child in the context of intimate relationships and not all abuse committed against a child, as in the present case.

In *Go-Tan*, the victim was a woman, who was abused by her husband. The Court ruled that R.A. 9262 also applies to the husband's parents, as it was alleged that the husband, conspired with his parents, "in tormenting [the wife] 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."³²

Similarly, in *Estacio*, the offender was the husband and the victim were the wife and their three (3) children. As the trial court found, which the Court affirmed, that the offender-husband/father has committed acts of abuse and violence against his wife and their three (3) children, the issuance of protection orders also in favor of the children was proper. The Court said:

Here, petitioner's intent to intimidate and dominate respondent is readily seen. Back when they still cohabited, petitioner would verbally and physically abuse respondent in front of their children. His threats to kill her were so real that even their children advised her to leave the conjugal home because they feared for her life. When he no longer had contact with her, petitioner resorted to using their children as pawns. He would use this passive-aggressive behavior to assert his perceived dominance over respondent when he could not get what he wanted. All of these can be characterized as psychological violence committed against respondent, which have disrupted respondent's life.

Thus, whether petitioner committed acts of violence directly against his children is beside the point. **That the children were**

³⁰ G.R. No. 211851, September 16, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/show_docs/1/66987>.

³¹ 588 Phil. 532 (2008).

³² Id. at 538.



exploited so that he could indirectly harass respondent is sufficient basis for their inclusion in the stay-away directive. To begin with, petitioner himself dragged their children in the controversy. With the stay-away directive, petitioner can no longer use their children to inflict violence on respondent.³³ (Emphasis supplied)

To emphasize, a plain reading of R.A. 9262 leads to only one conclusion: it is meant to protect women who are subjected to violence in the context of intimate relationships. The case before the Court is not about violence and abuse against women in intimate relationship. Resort to R.A. 9262 is therefore erroneous and unwarranted. It is incumbent upon the Court not to unduly expand R.A. 9262's coverage beyond its clear sphere of application. To quote the words of the Court in *Garcia*, "Congress has made its choice and it is not our prerogative to supplant this judgment. The choice may be perceived as erroneous but even then, the remedy against it is to seek its amendment or repeal by the legislative. By the principle of separation of powers, it is the legislative that determines the necessity, adequacy, wisdom and expediency of any law."³⁴

The trial court may still grant reliefs to the child under A.M. No. 03-04-04-SC

While the purpose of the *ponencia* to protect the child in this case is quite understandable, it needlessly confuses the laws that should apply.

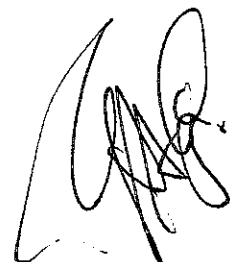
As well, while the circumstances of the present case make it fall within the purview of R.A. 7610, there is no showing from the narration of the facts whether there was a Complaint or Information for violation of R.A. 7610 that had been filed against private respondent which may bestow upon the RTC the jurisdiction to issue protective reliefs under said law.

Nevertheless, while R.A. 9262 is not the appropriate law in this case and the RTC may not have the jurisdiction to try and hear the case for violation of R.A. 7610, I find that petitioner and his minor child are not without any remedy.

To recall, in filing the petition with the trial court, petitioner not only prays for the issuance of temporary and permanent protection orders against private respondent, **but also for the temporary and permanent custody of his minor child**. As such, the instant petition can be treated as a Petition for Custody of Minors and heard and decided following A.M. No. 03-04-04-SC. Under this rule, apart from determining custody based on the best interest of the minor child, **the trial court also has the authority to grant provisional and permanent reliefs for the child's protection**.

³³ Supra note 30.

³⁴ Supra note 11, at 89.



Section 13 of the said rule provides that after the filing of an answer or the expiration of the period to file the same, the trial court may issue a provisional order awarding custody of the minor to either parent, in this case to petitioner, taking into account all relevant considerations including preference of the minor child, unless the parent chosen is unfit.³⁵ This award of custody to the father in this case will be a total and complete protection against the acts of the mother against the child.

Short of giving full relief by way of a custody grant, the trial court is authorized under Section 17 to issue a Protection Order requiring any person:

- (a) To stay away from the home, school, business, or place of employment of the minor, other parent or any other party, or from any other specific place designated by the court;
- (b) To cease and desist from harassing, intimidating, or threatening such minor or the other parent or any person to whom custody of the minor is awarded;
- (c) To refrain from acts of commission or omission that create an unreasonable risk to the health, safety, or welfare of the minor;
- (d) To permit a parent, or a party entitled to visitation by a court order or a separation agreement, to visit the minor at stated periods;
- (e) To permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court; and
- (f) To comply with such other orders as are necessary for the protection of the minor.³⁶

Note that paragraph (f) grants the trial court sufficient authority to issue incidental and necessary reliefs to protect a child from any forms of violence and abuse, including those committed by his or her own parent, as in this case. Thus, in pursuit of the best interest of the minor child, the Court may remand the case to the trial court for the purposes of hearing petitioner's prayer for custody of his minor child following the aforementioned rules.

Lest I be misunderstood, I am one with the *ponencia* in its desire to fulfill the State's duty of shielding children from all forms of abuse and exploitation. However, I cannot join with the *ponencia*'s resort to R.A. 9262 in this case. Indeed, the solemn power and duty of the Court, foremost, is to interpret and apply the law within the boundaries set by its language and intent. It does not include the power to correct, expand, or supplant by reading into the law what is not written therein.³⁷ In ruling that mothers can be offenders under R.A. 9262, the *ponencia* reads into the law something which the language and spirit simply do not provide. This is a breach of the court's

³⁵ A.M. No. 03-04-04-SC, supra note 2.

³⁶ Id.

³⁷ *Agote v. Judge Lorenzo*, 502 Phil. 318, 334 (2005).



solemn duty. This is judicial legislation — one that has the deleterious effect of conflating penal laws, to the detriment of the accused who is entitled to the proscription that all doubts be resolved in their favor.

In fine, all the foregoing considered, I find that public respondent did not err in denying petitioner the reliefs prayed for under R.A. 9262. Considering both the plain language and intent of the law, the circumstances of this case clearly do not fall within the purview of R.A. 9262.


That said, to protect the paramount interest and security of the minor child, and to give private respondent her right to due process, the trial court may be directed to treat the petition as a petition for the custody of a minor and hear and decide the case with dispatch following A.M. No. 03-04-04-SC.

WHEREFORE, I vote to PARTLY GRANT the petition but only insofar as remanding the case to the trial court to hear and decide the petition under the rules provided in A.M. No. 03-04-04-SC.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED TRUE COPY



MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Notary Officer
COCOA Hall, San Jose Court