

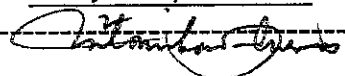
EN BANC

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

Promulgated:

July 12, 2022

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CONCURRING OPINION

LEONEN, J.:

Violence should not be narrowly and solely viewed as a gender issue in the context of intimate relationships but rather, a power issue.¹ Constantly labeling women as “weak” and “victims” affirms a level of heteronormativity. Women who perpetrate violence should not be immune from the force of the law. On the other hand, children who suffer from domestic violence should be protected from their abusers — even from their own mothers.

I

Article II, Section 14 of the Constitution mandates the “fundamental equality before the law of women and men.”² Consistent with this direction, the State, as a signatory of the Convention on the Elimination of All Forms of Discrimination Against Women, is bound to take all appropriate measures “[to] modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]”³ In *Alanis III v. Court of Appeals*:⁴

¹ J. Leonen, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44, 171 (2013) [Per J. Perlas-Bernabe, En Banc], citing A. Delschelt, *Recognizing Domestic Violence Directed Towards Men: Overcoming Societal Perceptions, Conducting Accurate Studies, and Enacting Responsible Legislation*, 12 KAN. J.L. & PUB. POL’Y 249 (2003).

² CONST., art. II, sec. 14.

³ Convention on the Elimination of All Forms of Discrimination Against Women (July 15, 1980), ratified on August 5, 1981, art. 5(a).

⁴ G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division].



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

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

Article II, Section 14 implies the State’s positive duty to actively dismantle the existing patriarchy by addressing the culture that supports it.⁵ (Citation omitted)

Republic Act No. 9262, or the Anti-Violence Against Women and Their Children Act of 2004, reflects this policy. It is a novel statute which guarantees the dignity of women and children and mandates their protection from violence and threats to personal safety and security.⁶ It addresses domestic violence in intimate relationships, which is largely due to unequal power relations between men and women.⁷

In *Garcia v. Drilon*,⁸ this Court upheld the constitutionality of Republic Act No. 9262, emphasizing the prevailing patriarchal society which empowers men at the expense of women. Thus:

[V]iolence against women (VAW) is deemed to be closely linked with the unequal power relationship between women and men otherwise known as “gender-based violence”. Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men’s companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control

⁵ Id.

⁶ Republic Act No. 9262 (2004), sec. 2 provides:
Section 2. *Declaration of Policy.* – It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.
Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

⁷ *Estacio v. Estacio*, G.R. No. 211851, September 16, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66987>> [Per J. Leonen, Third Division].

⁸ 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

to retain that power. And VAW is a form of men's expression of controlling women to retain power.⁹ (Citation omitted)

Further, *Garcia* explained how women and their children are the "usual" and "most likely" victims of violence. This creates a valid classification and substantial distinction between men and women which justified the enactment of Republic Act No. 9262. Thus:

Preventing violence against women and children through their availment of special legal remedies, serves the governmental objectives of protecting the dignity and human rights of every person, preserving the sanctity of family life, and promoting gender equality and empowering women. Although there exists other laws on violence against women in the Philippines, Republic Act No. 9262 deals with the problem of violence within the family and intimate relationships, which deserves special attention because it occurs in situations or places where women and children should feel most safe and secure but are actually not. The law provides the widest range of reliefs for women and children who are victims of violence, which are often reported to have been committed not by strangers, but by a father or a husband or a person with whom the victim has or had a sexual or dating relationship. Aside from filing a criminal case in court, the law provides potent legal remedies to the victims that theretofore were not available. The law recognizes, with valid factual support based on statistics that women and children are the most vulnerable victims of violence, and therefore need legal intervention.¹⁰ (Citation omitted)

Nevertheless, *Garcia* recognized that violence and abuse may also be perpetrated against men.¹¹ Women, on the other hand, may also be perpetrators of violence.¹² The underreported abuse against men is largely due to social and cultural expectations on masculinity which compels men to keep mum on domestic abuse.¹³

Gender must be viewed primarily as an "inequality of power," not merely as a difference assigned to sexes.¹⁴ The social status and role attributed to men and women are repercussions of this inequality:

The differences we attribute to sex are lines inequality draws, not any kind of basis for it. Social and political inequality are . . . basically indifferent to sameness and difference. Differences are inequality's post hoc excuse, its conclusory artifact, its outcome presented as its origin, the damage that it pointed to as the justification for doing the damage after the damage has been done, the distinctions that perception is socially organized to notice because inequality gives them consequences for social

⁹ Id. at 91–92.

¹⁰ J. Leonardo-De Castro, Concurring Opinion in *Garcia v. Drilon*, id. at 134–135.

¹¹ *Garcia v. Drilon*, 712 Phil. 44, 97 (2013) [Per J. Perlas-Bernabe, En Banc].

¹² J. Leonen, Concurring Opinion in *Garcia v. Drilon*, id.

¹³ Id. at 167.

¹⁴ CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW, 8–9 (1st ed. 1987).

power. Distinctions of body or mind or behavior are pointed to as cause rather than effect, without realizing that they are so deeply effect rather than cause that pointing to them at all is an effect.¹⁵

Republic Act No. 9262 is a law which intends to reject patriarchy. The reductionist thinking that women are always victims reinforces their powerlessness. This only perpetuates and affirms the very biases and prejudices against them.¹⁶

The view which perpetually labels women as victims results in a narrow thinking that women are always weak. This does not advance gender equality, but aggravates the belief that men will always dominate women.¹⁷ This only affirms heteronormativity:

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

As early as the 70s, the nationalist movement raised questions on the wisdom of a women's movement and its possible divisive effects, as "class problems deserve unified and concentrated attention [while] the women question is vague, abstract, and does not have material base."

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

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

There is now more space to believe that portraying only women as victims will not always promote gender equality before the law. It sometimes aggravates the gap by conceding that women have always been dominated by men. In doing so, it renders empowered women invisible; or, in some cases, that men as human beings can also become victims.¹⁸ (Citations omitted)

¹⁵ Id. at 8.

¹⁶ J. Leonen, Concurring Opinion in *Acharon v. People*, G.R. No. 224946, November 9, 2021, <<https://sc.judiciary.gov.ph/27269/>> [Per J. Caguioa, En Banc].

¹⁷ J. Leonen, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44, 171 (2013) [Per J. Perlas-Bernabe, En Banc].

¹⁸ Id. at 170–171.

Thus, violence and abuse in the context of intimate relationships is not a gender issue but a power issue.¹⁹ With this understanding, it is entirely possible that women can be perpetrators of violence and abuse in domestic and intimate relationships.

II

Section 3 of Republic Act No. 9262 defines “violence against women and children” as:

[A]ny 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.

Violent acts include physical violence, sexual violence, psychological violence, and economic abuse.²⁰

To address these acts, the law provides three distinct remedies to the victims: a criminal complaint, a civil action for damages, and a civil action for issuance of a protection order.²¹

A criminal case may be filed against offenders who commit any act of violence against women and their children under Section 5.²² This includes:

¹⁹ *Id.* at 171.

²⁰ Republic Act No. 9262 (2004), sec. 3(a).

²¹ *Pavlov v. Mendenilla*, 809 Phil. 24, 38–39 (2017) [Per J. Leonen, Second Division].

²² Republic Act No. 9262 (2004), sec. 5 provides:

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;
- (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 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;

threatening, attempting, or causing physical harm to the woman or her child; placing them in fear of imminent physical harm; attempting to compel or compelling them to engage in any conduct; restricting their movement; engaging them in sexual activities through force; or causing substantial emotional or psychological distress to the woman or her child.

Meanwhile, a civil action may also be filed under Section 36 for actual, compensatory, moral, and exemplary damages.

One of the law's innovations is the remedy of protection orders. A protection order is issued to "[prevent] further acts of violence against a woman or her child specified in Section 5 . . . and granting other necessary relief" and to "[safeguard] 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."²³ Under Section 8 of Republic Act No. 9262, the protection order may include any, some, or all of the following reliefs:

(a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;

(b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;

(c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and, if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until respondent has gathered his things and escort respondent from the residence;

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

(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.

²³ Republic Act No. 9262 (2004), sec. 8.

(d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;

(e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(f) Granting a temporary or permanent custody of a child/children to the petitioner;

(g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;

(h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on the matter;

(i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;

(j) Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and

(k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

Republic Act No. 9262 provides three kinds of protection orders: a barangay protection order, a temporary protection order, and a permanent protection order. The punong barangay, or if they are unavailable, the barangay kagawad, issues barangay protection orders, while trial courts issue temporary and permanent protection orders.

Under Republic Act No. 9262, it is not only the victim who can file the petition for a protection order:

Section 9. *Who may File Petition for Protection Orders.* — A petition for protection order may be filed by any of the following:

- (a) the offended party;
- (b) parents or guardians of the offended party;
- (c) ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
- (d) officers or social workers of the DSWD or social workers of local government units (LGUs);
- (e) police officers, preferably those in charge of women and children's desks;
- (f) Punong Barangay or Barangay Kagawad;
- (g) lawyer, counselor, therapist or healthcare provider of the petitioner;
- (h) at least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed.

To enable the law to fully protect the victims, it mandates a liberal application in granting petitions for protection orders. This Court affirmed this approach.

In *Go-Tan v. Tan*,²⁴ petitioner filed a petition for protection order against her husband and her parents-in-law. In arguing against the petition, respondents argued that they were not covered by Section 3 of Republic Act No. 9262 which explicitly states that the offender should be related to the victim only by marriage, a former marriage, or a dating or sexual relationship.²⁵

Section 3 of the law provides:

- (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.

In *Go-Tan*, this Court allowed the filing of a petition for protection order against the woman's parents-in-law, acknowledging that violence may be committed directly or indirectly through other persons. This is consistent with the policy of the law to promote the safety of violence victims.²⁶ Thus, while parents-in-law are not expressly provided in the definition of

²⁴ 588 Phil. 532 (2008) [Per J. Austria-Martinez, Third Division].

²⁵ *Id.* at 538.

²⁶ *Go-Tan v. Spouses Tan*, 588 Phil. 532 (2008) [Per J. Austria-Martinez, Third Division].

offenders, a protection order may be filed against them when shown that they have caused verbal, psychological, and economic abuses against the victim.²⁷ A strict interpretation of Republic Act No. 9262 will not advance its policy:

It bears mention that the intent of the statute is the law and that this intent must be effectuated by the courts. In the present case, the express language of R.A. No. 9262 reflects the intent of the legislature for liberal construction as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit — the protection and safety of victims of violence against women and children.²⁸ (Citation omitted)

The law further extends protection to the victim's children, regardless of their age. In *Estacio v. Estacio*,²⁹ petitioner-offender questioned the inclusion of their adult children in the protection order. He argued that only children below 18 years old or those incapable of taking care of themselves as defined under Section 3 of Republic Act No. 9262 can be covered by the law.

In upholding the adult children's inclusion in the protection order, this Court found that petitioner-offender indeed committed violence against respondent through their children. He harassed respondent by sending her degrading and threatening messages through the children. Although the children are no longer minors, descendants as a whole class are covered by the law within the context of protection orders. Moreover, this Court pointed out that the law does not distinguish children based on age as possible beneficiaries of protection orders.³⁰

Even if the wording of the law provides that the term "children" in the law "refer[s] to those below eighteen (18) years of age or older but are incapable of taking care of themselves," this Court considered the parties' adult children who may be granted relief under other sections of the law. Particularly, Section 8 of Republic Act No. 9262 states that other forms of relief may be issued in favor of the victim and "any designated family or household member."³¹ This liberal reading of the provisions will give life to the law's policy of protecting the victims.

Clearly, this case compels us to view gender as a relational and power dynamic with a broader understanding of domestic violence. With a liberal reading of the law, a petition can be filed on behalf of the child even against the mother.

²⁷ Id. at 540–542.

²⁸ Id. at 542.

²⁹ G.R. No. 211851, September 16, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66987>> [Per J. Leonen, Third Division].

³⁰ Id.

³¹ Id.

This is in keeping with the law's declaration of policy, which does not only guarantee the safety and security of the woman, but also of the child.³² Particularly, it stresses the State's commitment to advance not only the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, but also the Convention on the Rights of the Child.

The restrictive reading of Republic Act No. 9262 which treats a child as a mere adjunct of their mother defeats the law's policy. The law does not require the woman to be the victim to afford protection to the child. The text of the law is plain. As pointed out by the *ponencia*, Republic Act No. 9262 provides that acts of violence under Section 5 can be committed against the woman *or* her child.³³

Further, under Section 9(a) of the law, one of the persons allowed to file a petition for protection order is the "offended party." This can be read in conjunction with Section 3(a) which defines violence under the law as any act or a series of acts committed "against [a woman's] 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."

Moreover, Section 9(b) allows parents or guardians of the victim to file the petition for protection order. The wording of the law does not distinguish which parent is allowed to file. It is not only the mother who can file a petition for her child. The gender-neutral framing of the provision allows space for fathers or even guardians to file a protection order against an abusive mother. The father, as a parent, can file the petition on behalf of his minor daughter.

Here, Randy Michael Knutson (Randy) alleged that his daughter, Rhuby Sibal Knutson (Rhuby), was maltreated and threatened to be killed by her mother, respondent Rosalina Sibal Knutson (Rosalina). There were instances when respondent Rosalina pulled Rhuby's hair, slapped her face, and knocked her head. These are acts of physical violence that can be prevented by a protection order.

Further, Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act does not diminish the force and effect of Republic Act No. 9262. As explained by Associate Justice Amy C. Lazaro-Javier, child abuse under Republic Act No. 7610 does not distinguish between relatives or non-relatives. Verily, Randy could have filed an action under this law. However, child abuse within the context of intimate relationships is still covered by Republic Act No. 9262. The

³² Republic Act No. 9262 (2004), sec. 2.

³³ *Ponencia*, pp. 13-14.

law's distinct feature is its emphasis on violence perpetuated within the bounds of intimate and domestic relationships, which are saturated and often shaped by gender relations as compared to other types of relations.


On the other hand, Associate Justice Alfredo Benjamin S. Caguioa's strict interpretation of the law reduces the protection of the child from the abuses of the mother. It further diminishes the burden of the mother and removes her sense of agency simply because she is a woman. This is not the intent of Republic Act No. 9262. That Rhuby's mother is the respondent does not exclude Rhuby from the protection the law provides. This interpretation does not frustrate the law's intent. It also does not diminish the protection intended for victims of gender-based violence. The fundamental equality before the law of men and women should be invoked when the situation demonstrates political and social oppressions. Otherwise, the benefits of the law should be emphatically applied.

ACCORDINGLY, I vote to GRANT the Petition.



MARVIC M.V.F. LEONEN
Associate Justice

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