

SECOND DIVISION

G.R. No. 244657 – MICHAEL VALENCIA, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:
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DISSENTING OPINION

LEONEN, J.:

I dissent.

No less than the Constitution requires proof beyond reasonable doubt to prove the guilt of an accused.¹ For the crime of adultery, there should be a strict interpretation of the elements of the crime because conviction in criminal actions requires proof beyond reasonable doubt.² Mere circumstantial evidence is not sufficient to overcome this requirement-

“Proof beyond reasonable doubt” means that

mere suspicion of the guilt of the accused, no matter how strong, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account.³ (Citations omitted)

Petitioner Michael Valencia (Valencia) and his co-accused, Rubirosa M. Ciocon (Rubirosa) were charged with adultery, punished under Article 333 of the Revised Penal Code, which provides:

Article 333. *Who are guilty of adultery.* — Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her

¹ CONST. art. III, sec. 14(2) provides:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

² *People v. Que*, 824 Phil. 882 (2018) [Per J. Leonen, Third Division].

³ *Cabarios v. People*, 911 Phil. 415, 440–441 (2021) [Per J. Lazaro-Javier, First Division].

knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by *prisión correccional* in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed. (Emphasis supplied)

I

For a crime of adultery to prosper, it is necessary that the woman must be married, that she engaged in sexual intercourse with a man not her husband, and that her paramour must be aware that she is married to another man.

It appears on record that private complainant Ramon Ciocon (Ramon) presented a marriage contract, showing that he and Rubirosa were married on August 19, 1991.⁴ Thus, the first element was sufficiently proven to exist.

As to knowledge of the married status of the woman, the evidence presented by petitioner shows that he knew Ramon and Rubirosa to be husband and wife.⁵ Portions of petitioner's judicial affidavit were cited in the decision of the Municipal Trial Court in Cities:

That he is of legal age, Filipino, married, and a resident of Bgy. General Paulino Santos, Koronadal City, South Cotabato.

That he knows the Private Complainant, who owns a carenderia, at Leon Llido St, General Santos City, as the former was introduced to him which [sic] he was eating there.

He also knows his wife, Rubirosa Ciocon as he and his salesmen were eating in the said carenderia, as he was a supervisor of Ace Foods, Inc. which office is only a block away, and the carenderia is the only one within the vicinity.⁶ (Emphasis supplied)

Petitioner's admission proves the existence of the third element of adultery.

As to the second element, or the act of sexual intercourse, it cannot be gleaned that sexual intercourse had indeed taken place. None of the prosecution witnesses testified that sexual intercourse between petitioner and Rubirosa took place. Ramon said that he was not around when the alleged

⁴ *Rollo*, p. 27.

⁵ *Id.* at 26.

⁶ *Id.*

incident happened since he was working abroad. Monaby Faith Ciocon (Monaby), Rubirosa and Ramon's daughter, testified that she only saw petitioner and her mother hugging and kissing.⁷

Monaby further testified that petitioner and her mother "usually slept together, although she does not know if they were wearing undergarments, as they were always covered by blanket."⁸ Monaby testified in court as follows:

Q: So you went up and check, what did you find out?

A: **I saw them hugging and he is kissing my mother?**

Q: That is all you saw at that time at Countryside Subdivision?

A: They were together in bed.

Q: But they were only hugging and kissing?

A: **That is only what I saw.**⁹ (Emphasis supplied)

Clearly, Monaby did not see the actual act of sexual intercourse. Thus, her testimony is not sufficient to establish the second element of adultery.

Moreover, since Rule 133, Section 3 of the Rules of Court provides that "[a]n extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*," the admission made by Rubirosa to Ramon that she had sexual relations with petitioner cannot be given weight as it was only him who was present when his wife confessed to him and the same will stay as hearsay and self-serving if not ascertained or confirmed by any witness or any other supporting evidence.

Rubirosa allegedly admitted to having a relationship with petitioner-accused, but this is not equivalent to admission that sexual intercourse took place with a person not her husband.

Here, if the testimonies of Ramon and Monaby are to be taken together, a doubt as to the guilt of petitioner will exist for they are not sufficient to provide a strong circumstantial and corroborative evidence to convict petitioner of the crime of adultery.

We recognize that this Court previously ruled in *United States v. Legaspi*¹⁰ that:

⁷ *Id.* at 23.

⁸ *Id.*

⁹ *Id.* at 11.

¹⁰ 14 Phil. 38 (1909) [Per J. Carson, *En Banc*].

Proof of the commission of the crime of adultery, like proof of the commission of most other crimes, may safely be rested on circumstantial evidence when that evidence is such that it leaves no room for reasonable doubt of the guilt of the accused, and . . . convictions for this crime have frequently been had without direct evidence as to the specific acts constituting the offense[.]¹¹

*United States v. Feliciano*¹² also recognized that it may be difficult to directly witness the act of sexual intercourse:

The nature of the crime of adultery is such that it will not be often when it can be established by direct evidence. Nevertheless, strong circumstantial and corroborative evidence . . . will lead the guarded discretion of a reasonable and just man to the conclusion that the alleged act has been committed is sufficient to sustain a conviction for adultery.¹³

However, we must not forget that the Constitution grants the presumption of innocence in favor of the accused.¹⁴ Thus, we should strictly construe the element of sexual intercourse. It may be difficult to prove, but it is also easy to fabricate accusations of adultery.

To be clear, it is my opinion that petitioner should be acquitted on the ground of reasonable doubt. The evidence presented by the prosecution, when taken together, do not present strong circumstantial and corroborative evidence to uphold petitioner's conviction for the crime of adultery.

II

Another reason for ensuring that the evidence presented is beyond reasonable doubt in adultery is because the Court, as a protector of constitutional rights, should never allow a situation where women are at a disadvantage compared to men. For instance, there is an apparent inequality between the crimes of concubinage and adultery. Both are crimes against chastity and involve married couples engaging in affairs outside of the marital bond.

Adultery is committed by a wife, with a man who knows her to be


¹¹ *Id.* at 40.

¹² 36 Phil. 753 (1917) [Per J. Malcolm, *En Banc*].

¹³ *Id.* at 754.

¹⁴ CONST. art. III, sec. 14 (2) provides:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.



married, “even if the marriage be subsequently declared void.”¹⁵ One act of sexual intercourse is one count of adultery.¹⁶ The penalty imposable on the wife and the man is the same.

Concubinage is committed by a husband, with a woman other than his wife.

We take a look at the provisions on concubinage and adultery from the old Penal Code to present.

Provisions under Articles 434 and 437 of the old Penal Code provide:

Article 434 of the [Penal Code] says:

“No penalty shall be imposed for the crime of adultery except upon the complaint of the aggrieved spouse.

“The aggrieved spouse can only file such a complaint against both offenders, if both are living, and not at all if he or she has consented to the adultery or pardoned either of them.”¹⁷

Article 437 of the Penal Code says:

“The husband who shall keep a concubine in his home, or out of it with scandal, shall be punished with the penalty of *prision correccional* in its minimum and medium degrees.

“The concubine shall be punished with banishment.

“The provisions of articles 434 and 435 are applicable to the case referred to in this article.”¹⁸

Act No. 1773¹⁹ was enacted in October 11, 1907, which amended a portion of the old Penal Code. Adultery was one of the crimes reclassified into a public crime under the said act. Worthy to note is Section 2, which stated that pardon does not extinguish liability or bar prosecution for adultery. Concubinage remained to be a private crime, barred by consent or pardon:

Section 2. Condonation, pardon, or remission of penalty by the aggrieved person or the parents, grandparents, or guardian of such person shall in no way extinguish the liability of the guilty person or persons to criminal prosecution and punishment, nor shall such condonation, pardon, or remission operate to dismiss or suspend any prosecution once commenced in accordance with the provisions of the preceding section: PROVIDED, HOWEVER, That in cases of *estupro*, *rpto*, or *violation* the legal marriage of the accused or convicted person to the aggrieved person shall extinguish such criminal liability.

¹⁵ REV. PEN. CODE, art. 333.

¹⁶ *People v. Zapata*, 88 Phil. 688 (1951) [Per J. Padilla, *En Banc*].

¹⁷ *United States v. Rivera*, 28 Phil 13, 17 (1914) [Per J. Torres, *En Banc*].

¹⁸ *Id.* at 16–17.

¹⁹ Act No. 1773 (1907), An Act to Provide for the Public Prosecution of the Crimes of *Adulterio*, *Estupro*, *Rapto*, *Violacion*, *Calumnia*, and *Injuria*, to Abolish the Right of Pardon by the Aggrieved Party in such cases, to provide for a Special Civil Action for Damages therein, and for Other Purposes.

Maulit v. Samonte,²⁰ decided at a time when the old Penal Code as amended by Act No. 1773 was still in effect, involved concubinage. Maulit was found guilty, but before he could start serving his sentence, his wife executed an affidavit stating that she was granting full pardon. Maulit was still imprisoned on the ground that under Act No. 1773, concubinage could no longer be extinguished by condonation or pardon. Maulit's wife filed a petition for the issuance of a writ of *habeas corpus*. The writ was granted, and Maulit was released. The Provincial Fiscal filed an appeal. This Court affirmed the trial court's decision and mentioned that:

It may be true that concubinage is not much better than adultery and that the two crimes are similar in nature. But it is evident from the language of articles 433 and 437 of the Penal Code that the authors thereof considered concubinage a lesser offense than adultery and therefore prescribed separate and different penalties for the two offenses. As far as concubinage is concerned, there is no provision in Act No. 1773, or in any other act, which directly indicates that it is a public crime and that the penalty for concubinage cannot be remitted under article 435 of the Penal Code. It must also be remembered that we are dealing with a criminal statute and consequently are bound to construe it in favor of the accused.²¹

Even under the Revised Penal Code, both adultery and concubinage involve acts of infidelity yet adultery is considered as the graver offense, based on the elements that must be proven and the penalty imposable. As currently written:

Article 333. *Who are guilty of adultery.* – Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by *prision correccional* in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed.

Article 334. *Concubinage.* – Any husband who shall keep a mistress in the conjugal dwelling; or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods.

The concubine shall suffer the penalty of *destierro*.

*Ocampo v. People*²² states that concubinage may be committed in three

²⁰ 55 Phil. 410 (1930) [Per J. Ostrand, First Division].

²¹ *Id.* at 413.

²² 72 Phil. 268 (1941) [Per J. Moran, First Division].

different ways: (1) by keeping a mistress in the conjugal dwelling; (2) by having sexual intercourse, under scandalous circumstances, with a woman who is not his wife; and (3) by cohabiting with such woman in any other place.²³ It further explained the term "cohabit" thus:

The term "cohabit" means to dwell together, in the manner of husband and wife, for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse. And, whether an association, for illicit intercourse, has been such as to constitute an unlawful assumption of the conjugal relation, is, in every case a question of fact, and the extent of such association as to constitute a cohabitation within the meaning of the law, is a matter of court's appreciation.²⁴ (Citations omitted)

A comparison of concubinage and adultery indicates the defects in the law punishing it as crimes against chastity.

Concubinage is harder to prove but carries a lighter penalty. In concubinage, the cohabitation must be for a period of time. In adultery, one act of sexual intercourse is sufficient.

In concubinage, the husband may be given a penalty of *prision correccional* in its minimum and medium periods, while the woman is meted the penalty of *destierro*.

Further, it seems that prosecution for concubinage is more easily barred on the ground of consent than adultery.

In *United States v. Rivera*,²⁵ the wife was deemed to have given consent to her husband's concubinage because of her inaction. This Court ruled:

The long period of time over ten years that elapsed during which her husband Juan Rivera was separated from her after 1902 and living in marital relations with Rafaela Vitug, without its having occurred to her to denounce such unlawful conduct, although they all lived in the town of Lubao, where the immoral life her husband was leading with the defendant Vitug was public and notorious, is proof of her consent thereto, and if only in June 1912, it occurred to her to accuse him of adultery, although a few days later she desisted from her complaint and on the next day by common accord they executed the agreement of separation set forth in the document at page 44, ratified before a notary, the injured party has by such conduct demonstrated in an indubitable manner that if before 1912 she had given her consent to the illegal conduct of her husband, later she ratified it in a document setting forth that she withdrew the complaint she had presented and in the agreement of separation of which mention has been made.²⁶

²³ *Id.* at 269.

²⁴ *Id.*

²⁵ 28 Phil. 13 (1914) [Per J. Torres, *En Banc*].

²⁶ *Id.* at 17-18.

In *Matubis v. Praxedes*,²⁷ Matubis filed a complaint for legal separation against her husband Praxedes. The trial court found that there was concubinage, which is a ground for legal separation, but dismissed the complaint because it was filed beyond the prescriptive period and there was consent between Matubis and Praxedes on living separately with other partners. The agreement between Matubis and Praxedes reads:

. . . (a) That both of us relinquish our right over the other as legal husband and wife.

(b) That both of us is free to get any mate and live with as husband and wife without any interference by any of us, nor either of us can prosecute the other for adultery or concubinage or any other crime or suit arising from our separation.

(c) That I, the wife, is no longer entitled for any support from my husband or any benefits he may receive thereafter, nor I the husband is not entitled for anything from my wife.

(d) That neither of us can claim anything from the other from the time we verbally separated, that is from May 30, 1944 to the present when we made our verbal separation into writing.²⁸

This Court upheld the ruling of the trial court and explained that the condonation and consent was expressly made. Since Matubis consented to her husband's concubinage, she could no longer file a complaint for legal separation.²⁹

It may be fairly argued that adultery does not injure the general public because it involves marital infidelity, which is a matter between husband and wife only. *Arroyo, Jr. v. Court of Appeals*³⁰ elucidated the reason why adultery is punishable as a crime:

Enforcement of our law on adultery is not exclusively, nor even principally, a matter of vindication of the private honor of the offended spouse; much less is it a matter merely of personal or social hypocrisy. Such enforcement relates, more importantly, to protection of the basic social institutions of marriage and the family in the preservation of which the State has the strongest interest; the public policy here involved is of the most fundamental kind. In Article II, Section 12 of the Constitution there is set forth the following basic state policy:

²⁷ 109 Phil. 789 (1960) [Per J. Paredes, First Division].

²⁸ *Id.* at 790.

²⁹ The case of *Matubis v. Praxedes* was decided before the Family Code took effect.

³⁰ 280 Phil. 808 (1991) [Per J. Feliciano, First Division].

“The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x”

The same sentiment has been expressed in the Family Code of the Philippines in Article 149:

“The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom practice or agreement destructive of the family shall be recognized or given effect.”³¹

Our criminal law imposes a high standard in determining whether pardon was truly given by the offended spouse. Yet, the State has an interest in protecting the sanctity of family life.

Article II of the Constitution provides:

ARTICLE II

Declaration of Principles and State Policies

....

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

In addition, Article XV is dedicated solely to the family:

ARTICLE XV

The Family

Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Section 3. The State shall defend:

- (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

³¹ *Id.* at 823.

- (2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;
- (3) The right of the family to a family living wage and income; and
- (4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

Section 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

Thus, we must strike a balance between our Constitution and criminal laws. Perhaps sexual intercourse should not be the only act that can be considered as pardon in adultery. Other acts that would show reconciliation between the offending spouse and offended spouse should be considered as pardon because it aids in the preservation and protection of family life.

III

It is a basic principle that the State is the offended party in criminal actions. This is so because the commission of crimes is considered “a breach of the security and peace of the people at large, an outrage against the very sovereignty of the State.”³² Thus, “[c]rimes are punished as retribution so that society would understand that the act punished was wrong.”³³ As explained by this Court:

A criminal action, where “the State prosecutes a person for an act or omission punishable by law,” is thus pursued “to maintain social order.” It “punish[es] the offender in order to deter him [or her] and others from committing the same or similar offense, . . . isolate[s] him [or her] from society, reform[s] and rehabilitate[s] him [or her].” One who commits a crime commits an offense against all the citizens of the state penalizing a given act or omission: “a criminal offense is an outrage to the very sovereignty of the State[.]” Accordingly, a criminal action is prosecuted in the name of the “People” as plaintiff.³⁴ (Citations omitted)

Considering the underlying reason for the existence of criminal actions, it is difficult to reconcile how acts that constitute adultery and concubinage fall within their scope. Issues of marital infidelity are, at its core, private matters between two married individuals. When one engages in marital infidelity, it is only the family unit that is directly affected. In fact, such transgressions are rarely made known to the public, much less to the State.

³² *Baviera v. Paglinawan*, 544 Phil. 107, 119 (2007) [Per J. Sandoval-Gutierrez, First Division].

³³ *People v. Quintos*, 746 Phil. 809, 833 (2014) [Per J. Leonen, Second Division].

³⁴ *Ha Datu Tawahig v. Prosecutor Lapinid*, 850 Phil. 137, 159–160 (2019) [Per J. Leonen, Third Division].

The private nature of marital infidelity is emphasized in the Revised Penal Code, as “crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.”³⁵ The State, on its own, cannot initiate a criminal complaint for these crimes as it is not an offended party.

The reason is simple: Marital infidelity is not “a breach of the security and peace of the people at large, an outrage against the very sovereignty of the State.”³⁶

Adultery and concubinage are not “crimes” in the true sense of the word.

The relationship between two married individuals, including deviations from the marriage contract, is a private matter that does not require any government interference. There is no public interest to protect or act that requires penal sanctions. Thus, to allow private citizens to utilize the strong arm of the law to punish those who commit marital infidelity is a disproportionate remedy for the nature of the action.

IV

This debate between concubinage and adultery poses the question of whether we should now start looking at the issue from a “substantive sex equality approach.”³⁷ This approach is explained as:

[n]ot whether men and women are the same or different, are treated the same or differently, and whether the two fit, although that can indicate a substantive problem. It asks fundamentally whether a law promotes equality or inequality on the basis of sex in a domain in which the sexes are socially unequal, specifically whether gender hierarchy and sex-based dominance, or its progressive dissolution, is promoted.³⁸ (Citation omitted)

Our law and jurisprudence on concubinage and adultery discriminates on the basis of sex because of the harsher penalty that is imposed on women. Again, both crimes involve acts of marital infidelity but the elements that must be proven and the penalties imposable on the offender and the paramour differ. One act of sexual intercourse with a man not her husband equates to adultery, but one night with a woman not his wife is not sufficient to say that concubinage exists.

³⁵ REV. PEN. CODE, art. 344.

³⁶ *Baviera v. Prosecutor Paglinawan*, 544 Phil. 107, 119 (2007) [Per J. Sandoval-Gutierrez, First Division].

³⁷ Catharine A. MacKinnon, *The Road Not Taken: Sex Equality in Lawrence v. Texas*, 65 OHIO ST. L.J. 1081 (2004).

³⁸ *Id.* at 1085–1086.

Various provisions in our Constitution recognize that there should be fundamental equality between men and women, and that the State should take an active role in safeguarding fundamental equality. Article II, Section 14 and Article III, Section 1 provide:

ARTICLE II

Declaration of Principles and State Policies

....

Section 14. The State recognizes the role of women in nation-building, and **shall ensure the fundamental equality before the law of women and men.**

....

ARTICLE III

Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, **nor shall any person be denied the equal protection of the laws.** (Emphasis supplied)

In *Saudi Arabian Airlines v. Rebesencio*,³⁹ we discussed that:

Article II, Section 14 of the 1987 Constitution provides that “[t]he State . . . shall ensure the fundamental equality before the law of women and men.” Contrasted with Article III, Section 1 of the 1987 Constitution’s statement that “[n]o person shall . . . be denied the equal protection of the laws,” Article II, Section 14 exhorts the State to “ensure.” This does not only mean that the Philippines shall not countenance nor lend legal recognition and approbation to measures that discriminate on the basis of one’s being male or female. It imposes an obligation to *actively engage* in securing the fundamental equality of men and women.⁴⁰

To restate, guaranteeing fundamental equality is on a tier higher than mere protection of the law, and requires State intervention. Article III, Section 1 is a passive duty, while Article II, Section 14 requires active involvement by the State.

The Judiciary also has the positive duty of ensuring that men and women enjoy the equal protection of the laws. Article VIII of the Constitution provides:

³⁹ 750 Phil. 791 (2015) [Per J. Leonen, Second Division].

⁴⁰ *Id.* at 830–831.

ARTICLE VIII

Judicial Department

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to **settle actual controversies involving rights which are legally demandable and enforceable**, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

....

Section 5. The Supreme Court shall have the following powers:

....

(5) Promulgate rules concerning the protection and **enforcement of constitutional rights**, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (Emphasis supplied)

In *Halagueña v. Philippine Airlines, Inc.*,⁴¹ we declared as void the stipulation in the Collective Bargaining Agreement that provided for an earlier compulsory retirement age for female cabin attendants, but not for men. We further stated in *Halagueña*:

As a State Party to the CEDAW, the Philippines, including the judiciary as a State instrumentality, bound itself 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."⁴²

Courts are duty-bound to render decisions that do not discriminate women simply because they are women. Still, there are instances when courts are limited to what the law provides. In this case, the imposable penalty upon the wife is imprisonment, which is clearly excessive compared to the penalty imposed on husbands who are found guilty of concubinage. On this matter, the Court should apply Article 5 of the Revised Penal Code which provides:

⁴¹ G.R. No. 243259, January 10, 2023 [Per J. Leonen, *En Banc*].

⁴² *Id.*, citing Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, art. 5(a).

Article 5. *Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties.* – Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

Further, the Philippines is a signatory to the Convention on the Elimination of all Forms of Discrimination against Women, where it provides that “States Parties shall accord to women equality with men before the law.”⁴³

Lest I be misunderstood, I am not condoning acts that are harmful to the family. However, it is my opinion that it is high time we recognize that there are still laws that place women on a lower pedestal than men.

I recognize that our body of laws have come a long way to put women on equal footing with men. For example, we have the Anti-Violence Against Women and Their Children Act,⁴⁴ the Magna Carta of Women,⁴⁵ the Responsible Parenthood and Reproductive Health Act,⁴⁶ and the Safe Spaces Act,⁴⁷ to name a few. Yet, a lot of work still has to be done.

ACCORDINGLY, I vote to GRANT the Petition.



MARVIC M.V.F. LEONEN
Senior Associate Justice

⁴³ Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, art. 15.

⁴⁴ Republic Act No. 9262 (2004).

⁴⁵ Republic Act No. 9710 (2009).

⁴⁶ Republic Act No. 10354 (2012).

⁴⁷ Republic Act No. 11313 (2019).