

THIRD DIVISION

[G.R. No. 168852, September 30, 2008]

SHARICA MARI L. GO-TAN, PETITIONER, VS. SPOUSES PERFECTO C. TAN AND JUANITA L. TAN, RESPONDENTS.*

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Resolution^[1] dated March 7, 2005 of the Regional Trial Court (RTC), Branch 94, Quezon City in Civil Case No. Q-05-54536 and the RTC Resolution^[2] dated July 11, 2005 which denied petitioner's Verified Motion for Reconsideration.

The factual background of the case:

On April 18, 1999, Sharica Mari L. Go-Tan (petitioner) and Steven L. Tan (Steven) were married.^[3] Out of this union, two female children were born, Kyra Danielle^[4] and Kristen Denise.^[5] On January 12, 2005, barely six years into the marriage, petitioner filed a Petition with Prayer for the Issuance of a Temporary Protective Order (TPO)^[6] against Steven and her parents-in-law, Spouses Perfecto C. Tan and Juanita L. Tan (respondents) before the RTC. She alleged that Steven, in conspiracy with respondents, were causing verbal, psychological and economic abuses upon her in violation of Section 5, paragraphs (e)(2)(3)(4), (h)(5), and (i)^[7] of Republic Act (R.A.) No. 9262,^[8] otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004."

On January 25, 2005, the RTC issued an Order/Notice^[9] granting petitioner's prayer for a TPO.

On February 7, 2005, respondents filed a Motion to Dismiss with Opposition to the Issuance of Permanent Protection Order *Ad Cautelam* and Comment on the Petition,^[10] contending that the RTC lacked jurisdiction over their persons since, as parents-in-law of the petitioner, they were not covered by R.A. No. 9262.

On February 28, 2005, petitioner filed a Comment on Opposition^[11] to respondents' Motion to Dismiss arguing that respondents were covered by R.A. No. 9262 under a liberal interpretation thereof aimed at promoting the protection and safety of victims of violence.

On March 7, 2005, the RTC issued a Resolution^[12] dismissing the case as to respondents on the ground that, being the parents-in-law of the petitioner, they were not included/covered as respondents under R.A. No. 9262 under the well-

known rule of law "*expressio unius est exclusio alterius*." [13]

On March 16, 2005, petitioner filed her Verified Motion for Reconsideration [14] contending that the doctrine of necessary implication should be applied in the broader interests of substantial justice and due process.

On April 8, 2005, respondents filed their Comment on the Verified Motion for Reconsideration [15] arguing that petitioner's liberal construction unduly broadened the provisions of R.A. No. 9262 since the relationship between the offender and the alleged victim was an essential condition for the application of R.A. No. 9262.

On July 11, 2005, the RTC issued a Resolution [16] denying petitioner's

Verified Motion for Reconsideration. The RTC reasoned that to include respondents under the coverage of R.A. No. 9262 would be a strained interpretation of the provisions of the law.

Hence, the present petition on a pure question of law, to wit:

WHETHER OR NOT RESPONDENTS-SPOUSES PERFECTO & JUANITA, PARENTS-IN-LAW OF SHARICA, MAY BE INCLUDED IN THE PETITION FOR THE ISSUANCE OF A PROTECTIVE ORDER, IN ACCORDANCE WITH REPUBLIC ACT NO. 9262, OTHERWISE KNOWN AS THE "ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004". [17]

Petitioner contends that R.A. No. 9262 must be understood in the light of the provisions of Section 47 of R.A. No. 9262 which explicitly provides for the suppletory application of the Revised Penal Code (RPC) and, accordingly, the provision on "conspiracy" under Article 8 of the RPC can be suppletorily applied to R.A. No. 9262; that Steven and respondents 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; that respondents should be included as indispensable or necessary parties for complete resolution of the case.

On the other hand, respondents submit that they are not covered by R.A. No. 9262 since Section 3 thereof explicitly provides that the offender should be related to the victim only by marriage, a former marriage, or a dating or sexual relationship; that allegations on the conspiracy of respondents require a factual determination which cannot be done by this Court in a petition for review; that respondents cannot be characterized as indispensable or necessary parties, since their presence in the case is not only unnecessary but altogether illegal, considering the non-inclusion of in-laws as offenders under Section 3 of R.A. No. 9262.

The Court rules in favor of the petitioner.

Section 3 of R.A. No. 9262 defines "[v]iolence against women and their children" as "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."

While the said provision 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 RPC.

Indeed, Section 47 of R.A. No. 9262 expressly provides for the suppletory application of the RPC, thus:

SEC. 47. Suppletory Application. - For purposes of this Act, the **Revised Penal Code** and other applicable laws, shall have **suppletory application**. (Emphasis supplied)

Parenthetically, Article 10 of the RPC provides:

ART. 10. Offenses not subject to the provisions of this Code. - Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. **This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.** (Emphasis supplied)

Hence, legal principles developed from the Penal Code may be applied in a supplementary capacity to crimes punished under special laws, such as R.A. No. 9262, in which the special law is silent on a particular matter.

Thus, in *People v. Moreno*,^[18] the Court applied suppletorily the provision on subsidiary penalty under Article 39 of the RPC to cases of violations of Act No. 3992, otherwise known as the "Revised Motor Vehicle Law," noting that the special law did not contain any provision that the defendant could be sentenced with subsidiary imprisonment in case of insolvency.

In *People v. Li Wai Cheung*,^[19] the Court applied suppletorily the rules on the service of sentences provided in Article 70 of the RPC in favor of the accused who was found guilty of multiple violations of R.A. No. 6425, otherwise known as the "Dangerous Drugs Act of 1972," considering the lack of similar rules under the special law.

In *People v. Chowdury*,^[20] the Court applied suppletorily Articles 17, 18 and 19 of the RPC to define the words "principal," "accomplices" and "accessories" under R.A. No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," because said words were not defined therein, although the special law referred to the same terms in enumerating the persons liable for the crime of illegal recruitment.

In *Yu v. People*,^[21] the Court applied suppletorily the provisions on subsidiary imprisonment under Article 39 of the RPC to *Batas Pambansa (B.P.) Blg. 22*, otherwise known as the "Bouncing Checks Law," noting the absence of an express provision on subsidiary imprisonment in said special law.

Most recently, in *Ladonga v. People*,^[22] the Court applied suppletorily the principle

of conspiracy under Article 8 of the RPC to *B.P. Blg. 22* in the absence of a contrary provision therein.

With more reason, therefore, the principle of conspiracy under Article 8 of the RPC may be applied suppletorily to R.A. No. 9262 because of the express provision of Section 47 that the RPC shall be supplementary to said law. Thus, general provisions of the RPC, which by their nature, are necessarily applicable, may be applied suppletorily.

Thus, the principle of conspiracy may be applied to R.A. No. 9262. For once conspiracy or action in concert to achieve a criminal design is shown, the act of one is the act of all the conspirators, and the precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.^[23]

It must be further noted that Section 5 of R.A. No. 9262 expressly recognizes that the acts of violence against women and their children may be committed by an offender through another, thus:

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:

x x x

(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; x x x. (Emphasis supplied)

In addition, the protection order that may be issued for the purpose of preventing further acts of violence against the woman or her child may include

individuals other than the offending husband, thus:

SEC. 8. *Protection Orders.* - x x x The protection orders that may be issued under this Act shall include any, some or all of the following reliefs: