

## **TWENTY-SECOND DIVISION**

**[ CA-G.R. CR NO. 01090-MIN, February 20, 2015 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RUFINO R. GETUEZA, JR., ACCUSED-APPELLANT.**

### **DECISION**

**CAMELLO, J.:**

Accused-appellant Rufino R. Getueza, Jr. files this appeal<sup>[1]</sup> assailing his conviction for Violation of Republic Act 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004 (VAWC) in Criminal Case No. 11-02-4259.

In an Information<sup>[2]</sup> dated 29 December 2010, accused-appellant was charged as follows:

That sometime in the month of July 2007 up to present at Sitio Kiongkog, Barangay Palabucan, Municipality of Libona, Province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the said accused who sired a child with the complainant, did then and there willfully, unlawfully, and feloniously commit an act of abuse against women and their children by then and there failing and depriving to provide financial support to LILYBETH B. PANIZALES and their children (sic) which financial support is legally due them, thereby causing them financial, emotional and psychological distress.

CONTRARY to and in violation of Republic Act No. 9262.

On arraignment, accused-appellant pleaded not guilty. Trial then ensued.

The following is the version of the prosecution.

Private complainant Lilybeth B. Panizales had an extra-marital affair with accused-appellant Rufino R. Getueza, Jr. since February 2006. In October 2006, she discovered that he was married, but admitted that she knew from the start of their relationship that he had four (4) children. In January the following year, she found out that she was pregnant. She told accused-appellant a month later. He pleaded her not to tell anybody that he was the father of the child. In May 2007, he gave her P4,000.00 to be used for the child's needs.

On 16 June 2007, she gave birth to AAA. Accused-appellant did not attend to her anymore. Neither did he give her any financial support until nine months later when he gave her P1,000.00 in March 2008. Later, he would give her P1,000.00 or P2,000.00 when they see each other, which was not very often, mostly at one or two months interval. The last time he gave her financial support was in December 2010 in the amount of P5,000.00. In the meantime, complainant filed her affidavit-

complaint in October 2010 against accused-appellant.

On 02 February 2011, an Information was filed charging accused-appellant with Violation of R.A. 9262, on the ground of economic abuse.

Accused-appellant then timely filed his Motion to Quash the Information, alleging that before he can be tried for economic abuse, it must first be established *a priori* that he has an obligation to the child. In other words, the filiation of the child must first be judicially declared, otherwise there could not be a crime of economic abuse. The motion was denied.<sup>[3]</sup>

After the prosecution formally rested its case, accused-appellant filed a demurrer to evidence, with leave of court, alleging that based on complainant's testimony, what she was actually demanding from accused-appellant is for him to recognize her child. There was actually no demand for financial support. Worse, there was no allegation that accused-appellant refused to give support. Instead, what he vehemently denies is the child's filiation. The trial court again denied the demurrer to evidence.<sup>[4]</sup>

For his defense, accused-appellant denied that he was the father of the child. He also denied having had relationship with private complainant.

On 16 May 2013, the trial court<sup>[5]</sup> rendered its Decision<sup>[6]</sup> convicting accused-appellant of the crime charged. The *falla* reads:

WHEREFORE, finding the accused guilty beyond reasonable doubt for committing Violence Against Women and their Children and for failing and depriving to provide financial support to PC and their children and without any mitigating circumstance and only the presence of the aggravating circumstance of fraud and abuse of confidence, and applying the Indeterminate Sentence Law, the court hereby sentences Rufino R. Getueza, Jr., to suffer the penalty of imprisonment of four (4) years, two (2) months and one (1) day, as minimum to six (6) years, as maximum and to pay the fine of Php100,000.00. The accused is further ordered to give support in arrears to "AAA", (through "PC"), in the amount of Php2,000.00 per month starting July 2007 until January 2011. The accused is further ordered to pay the additional current monthly support to AAA (through PC) in the amount of Php4,000.00, starting February 2011 (date of filing) and monthly thereafter, unless revoked, revised or modified, through proper motion. AAA shall continue to be under the parental authority of PC but accused is ordered to recognize AAA.

The accused is further ordered to pay PC the amount of Php50,000.00 as moral damages and the additional amount of Php25,000.00 as exemplary damages.

Finally, the accused is ordered to undergo mandatory psychological counselling or psychiatric treatment before a competent and recognized psychiatrist or psychologist or psychiatric counsellor and to report his compliance thereof within thirty (30) days from promulgation of the Judgment and every quarter thereafter.

Costs against the accused.

SO ORDERED.

Consequently, accused-appellant filed this appeal and assigned the following errors, to wit:

The lower court erred –

1. IN TAKING SCANT CONSIDERATION OF THE DEFENSES OF THE ACCUSED; AND

2. IN CONVICTING ACCUSED DESPITE THE LACK OF A PRIOR JUDGMENT DECLARING HIM AS THE FATHER OF THE CHILD.<sup>[7]</sup>

In essence, accused-appellant argues that the alleged legal basis of the criminal charge against him is the economic abuse as defined in R.A. No. 9262, which refers to acts that make or attempt to make a woman financially dependent which includes but is not limited to the withdrawal of financial support. The act thus complained of is the deprivation or threat 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. The provision is unambiguous that before the accused can be tried for such violation, it must be established *a priori* that he has a legal obligation to the child and by extension, to the mother herself. Verily, a separate proceeding must be had to establish beforehand the paternity of the child. Accused-appellant adds that in all pleadings, there is no admission by the accused that the child was his. The Certificate of Live Birth bears no signature of the supposed father. In short, there was no acknowledgment that the child is accused-appellant's.

The appeal is impressed with merit.

A careful review of the records shows that private complainant's aim in filing her affidavit-complaint is mainly to seek accused-appellant's acknowledgment of her child and financial support. Of course, in alleging accused-appellant's failure to give support, the prosecution based accused-appellant's charge on economic abuse. But the object of R.A. 9262 is the protection and safety of women and children who are victims of abuse or violence. Legal support is ancillary to the issuance of a protection order under R.A. 9262, but this should not be the main case filed under this special law. Moreover, under R.A. 9262, a protection order against a respondent in the case can include the grant of legal support for the wife and the child, but this again assumes that both are entitled to a protection order and to legal support.

Unfortunately, in this case, it is apparent that the true object of her action was to claim financial support from accused-appellant for her child, her basis being that he is the supposed father. Which he vehemently denies.

To be entitled to legal support, private complainant must, in a proper action, first establish the filiation of the child, if this is not admitted or acknowledged. The child's remedy, on the other hand, is to file through his mother, a judicial action for compulsory recognition. If filiation is beyond question, support follows as a matter of obligation. Alternatively, private complainant may directly file an action for