Republic of the Philippines
Supreme Court
Manila

EN BANC

CHRISTIAN CADAJAS *y* CABIAS, **G.R. No. 247348**
Petitioner,

Present:
GESMUNDO, *C.J.*,
PERLAS-BERNABE,*
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,**
GAERLAN,
ROSARIO,
LOPEZ, J., *and*
DIMAAMPAO, *JJ.*

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
November 16, 2021

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D E C I S I O N

LOPEZ, J., *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court assailing the Decision[2] dated September 17, 2018 and Resolution[3] dated May 9, 2019 rendered by the Court of Appeals (*CA*) in CA-G.R. CR No. 40298, which affirmed with modification the August

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* On official leave.
** On leave.
1 *Rollo*, pp. 11-32.
2 Penned by Associate Justice Ramon A. Cruz, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Germano Francisco D. Legaspi, *id.* at 34-45.
3 *Id.* at 47.

7, 2017 Joint Decision[4] of the Regional Trial Court of Valenzuela City, Branch 270 (*RTC*) in Criminal Case Nos. 215-V-17 and 216-V-17, finding Christian Cadajas *y* Cabias (*petitioner*) guilty of violating Section 4(c)(2) of Republic Act (*R.A.*) No. 10175, in relation to Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775.

The Antecedents

Petitioner, who was then 24 years old, met the victim, AAA,[5] who was only 14 years old, in the canteen where he works. Their relationship started when the younger sibling of AAA told petitioner that AAA had a crush on him. Petitioner tried to evade AAA, but the latter started to stalk him. Later, AAA sent petitioner a request in his Facebook Messenger, which he accepted. The petitioner and AAA would then exchange messages on Facebook Messenger and after some time, petitioner courted AAA for two weeks, until they became sweethearts on April 2, 2016.[6]

Sometime in June 2016, BBB, the mother of AAA, learned of their relationship.[7] She discovered the relationship because AAA would borrow her cellphone to access the latter's Facebook account.[8] Her mother was thus able to read their messages whenever AAA would forget to log out her account. BBB disapproved of their relationship because AAA was still too young.[9] However, petitioner and AAA ignored her admonishment.

Sometime in October 2016, BBB was disheartened when she read that petitioner was sexually luring her daughter to meet with him in a motel. She confronted petitioner and told him to stay away because AAA was still a minor.[10]

At around 5:30 in the morning of November 18, 2016, BBB was shocked when she read the conversation between petitioner and AAA. She found that petitioner was coaxing her daughter to send him photos of the latter's breast and vagina. AAA relented and sent petitioner the photos he was

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4 Penned by Presiding Judge Evangeline M. Francisco, *id.* at 68-75.

5 The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

6 *Rollo,* p. 37.

7 *Id.* at 36.

8 *Id.* at 108.

9 *Id.* at 36.

10 *Id.*

asking. When AAA learned that her mother read their conversation, she rushed to a computer shop to delete her messages. BBB, however, was able to force her to open petitioner's Facebook messenger account to get a copy of their conversation.[11]

On the part of the petitioner, he admitted sending AAA the messages "*oo ready ako sa ganyan*" and "*sige hubad.*" He, however, denied having sent AAA, photos of his private part. On November 17, 2016, AAA asked petitioner to delete their messages from his account. He even told her "*bakit kasi hindi ka pa nagtitino, hayan tuloy nakita ng mama mo.*" On the same day, petitioner broke up with AAA because her mother did not like him.[12]

Petitioner later learned from his co-workers that two (2) criminal cases were filed against him.[13] He was charged for violation of Section 10(a) of R.A. No. 7610 and for child pornography as defined and penalized under Section 4(c)(2) of R.A. No. 10175 in relation to Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775. The two (2) informations that were filed against petitioner on December 27, 2016, read as follows:

Criminal Case No. 215-V-17

The undersigned Associate Prosecutor Attorney II accuses **CHRISTIAN CADAJAS** of "*Violation of Section 10(a) of R.A. No. 7610*" committed as follows:

That on or about November 16, 2016 in Valenzuela City and within the jurisdiction of the Honorable Court, the above-named accused, acting with lewd design, and abuse of minority, did, then and there, willfully, unlawfully and feloniously coerced [AAA] **(DOB: February 10, 2002) (POB: Valenzuela City), 14 years old,** a minor, to send pictures of her breasts and vagina through Facebook Messenger, which circumstances debased, degraded and demeaned the intrinsic worth and dignity of the child as a human being, thereby endangering her youth, normal growth and development.

CONTRARY TO LAW.[14]

Criminal Case No. 216-V-17

The undersigned Associate Prosecution Attorney II accuses **CHRISTIAN CADAJAS** of *Child Pornography Under Section* **4(c)(2) of R.A. No. 10175 (Cybercrime Prevention of 2012, in Relation to Sections 4(a) and 3(b) and (c)(5) of R.A. No. 9775"**, committed as follows:

That on or about November 16, 2016 in Valenzuela City and within the jurisdiction of the Honorable Court, the accused, the above-named accused, acting with lewd design, did, then and there, willfully, unlawfully

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11 *Id.*

12 *Id.* at 37-38.

13 *Id.* at 16.

14 Records, p. 1 (Criminal Case No. 215-V-17).

> and feloniously coerced, induced [AAA], **(DOB: February 10, 2002) (POB: Valenzuela City), 14 years old,** to send him pictures of her vagina and breasts, through Facebook Messenger using a mobile phone.
>
> **CONTRARY TO LAW.**[15]

Petitioner entered a plea of not guilty to both charges during arraignment.[16]

After trial, the RTC acquitted petitioner of the charge for violation of Section 10(a) of R.A. No. 7610, but found him guilty beyond reasonable doubt for violation of Section 4(c)(2) of R.A. No. 10175 in relation to Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775. As such, petitioner was sentenced to *reclusion temporal* and to pay a fine of ₱1,000,000.00.[17]

According to the RTC, petitioner was aware that AAA was still a minor when he obstinately prodded the latter to send him photos of her private parts. This is an explicit sexual activity, a lascivious conduct, which the minor victim, AAA, could not have done were it not for the persistent inducement of the petitioner.[18] Moreover, petitioner's violation of R.A. No. 9775 is a *malum prohibitum*.[19] As such, his claim that he was in a relationship with AAA finds no relevance.

On the other hand, the RTC dismissed the charge against petitioner for violation of Section 10(a) of R.A. No. 7610 holding that AAA is a city lass who was no longer innocent of the ways of the world. She herself attested that she was not affected by what happened. As such, the RTC ruled that the protective mantle of R.A. No. 7610 is wanting.[20] Thus, the RTC disposed the case as follows:

> **WHEREFORE**, in the light of the foregoing, judgment is hereby rendered as follows:
>
> In Criminal Case No. 215-V-17, finding accused CHRISTIAN CADAJAS y CABIAS NOT GUILTY and is hereby acquitted. The prosecution failed to prove beyond cavil of doubt all the elements of the offense as charged.
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> In Criminal Case No. 216-V-17, finding accused CHRISTIAN CADAJAS y CABIAS GUILTY of violation of Sections 4(a) and 3(b) and (c)(5) of RA 9775 and he is hereby sentenced to suffer the penalty of *reclusion temporal* and to pay a FINE of One Million Pesos.

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15 *Id.* at p. 1 (Criminal Case No. 216-V-17).
16 *Rollo*, p. 36.
17 *Id.* at 75.
18 *Id.* at 72-73
19 *Id.* at 73.
20 *Id.* at 71-72.

SO ORDERED.[21]

On appeal, the CA affirmed the RTC's judgment. The CA held that the minority of AAA was both established and was even admitted by the petitioner.[22] Furthermore, petitioner's conversation with AAA showed that he induced her to send him photos of her private parts.[23] These facts clearly evince that petitioner committed child pornography as defined and penalized under Section 4(c)(2) of R.A. No. 10175, in relation to Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775. The CA did not give credence to the sweetheart defense that was raised by petitioner as the violation committed by petitioner was a *malum prohibitum*.[24] As regards the penalty, the CA modified the same and sentenced petitioner to suffer the penalty of imprisonment for 14 years, eight months and one day, as minimum, to 18 years and three months, as maximum. The fine imposed was retained as it was within the range prescribed by law.[25] Thus, the CA disposed as follows:

> **WHEREFORE**, in view of the foregoing, the appeal is hereby **DISMISSED** for lack of merit. The Joint Decision dated August 7, 2017 issued by the Regional Trial Court of Valenzuela City, Branch 270 in Criminal Case No. 216-V-17 finding Christian Cadajas y Cabias guilty beyond reasonable doubt of violation of Section 4(a) and 3(b) and (c)(5) of Republic Act 9775 is **AFFIRMED** with **MODIFICATION** in that appellant is sentenced to an indeterminate penalty of 14 years, 8 months and 1 day, as minimum, to 18 years and 3 months, as maximum.
>
> **SO ORDERED.**[26]

Petitioner filed a Motion for Reconsideration, which the CA denied in its Resolution[27] dated May 9, 2019.

Undeterred, petitioner filed the instant Petition[28] before this Court.

Issues

I.

Whether the CA gravely erred in not finding that the evidence presented by the prosecution are inadmissible for violating petitioner's right to privacy.

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21 Records, p. 138 (Criminal Case No. 216-V-17).
22 *Rollo*, p. 40.
23 *Id.* at 42.
24 *Id.*
25 *Id.* at 42-43.
26 *Id.* at 43.
27 *Id.* at 47.
28 *Id.* at 11-32.

II.

Whether the CA gravely erred in convicting petitioner of violation of Section 4(c)(2) of R.A. No. 10175 in relation to Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775 despite the fact that the alleged act complained of does not constitute an offense penalized under the said statute.

III.

Whether the CA gravely erred in the interpretation of the unlawful and punishable acts under Section 4(c)(2) of R.A. No. 10175 in relation to Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775.

IV.

Whether the CA gravely erred in convicting petitioner of violation of Section 4(c)(2) of R.A. No. 10175 in relation to Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775 despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

Our Ruling

Upon a careful review of the records of this case, the Court finds the petition to be without merit.

On petitioner's right to privacy

One of the arguments raised by petitioner before this Court concerns the admissibility of the evidence presented by the prosecution, which was taken from his Facebook messenger account. He claims that the photos presented in evidence during the trial of the case were taken from his Facebook messenger account. According to him, this amounted to a violation of his right to privacy, and therefore, any evidence obtained in violation thereof amounts to a fruit of the poisonous tree.

We disagree.

The right to privacy is defined as "the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities." It is the right of an individual "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned." Simply put, the right to privacy is

"the right to be let alone."[29] In his Separate Concurring Opinion, Associate Justice Marvic Mario Victor F. Leonen expounded on the concept of privacy, as it has developed throughout the digital age, thus:

> Chief Justice Puno sparked judicial interest in the right to privacy. In his speech that I cited in my separate opinion in *Versoza v. People*,[30] he discussed the three strands of privacy in American Jurisprudence, namely, locational or situational privacy, informational privacy, and decisional privacy.
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> > Locational privacy, also known as situational privacy, pertains to privacy that is felt in a physical space. It may be violated through an act of trespass or through an unlawful search. Meanwhile, informational privacy refers to one's right to control "the processing—*i.e.*, acquisition, disclosure and use—of personal information."
> >
> > Decisional privacy, regarded as the most controversial among the three, refers to one's right "to make certain kinds of fundamental choices with respect to their personal and reproductive autonomy."[31]
>
> This speech has been influential in several of our jurisprudence.[32] To this day, we are still refining our concept of privacy, particularly the right to informational privacy.[33]
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> As early as *Morfe v. Mutuc*,[34] we have recognized the increasing importance of the protection of the right to privacy in the digital age. Such right is of particular importance given the nature of the internet and our inescapable dependence on it despite the possible disruption that it can bring. In my separate opinion in *Disini v. Secretary of Justice*,[35] I explained:
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> > The internet or cyberspace is a complex phenomenon. It has pervasive effects and are, by now, ubiquitous in many communities. Its possibilities for reordering human relationships are limited only by the state of its constantly evolving technologies and the designs of various user interfaces. The internet contains exciting potentials as well as pernicious dangers.
> >
> > The essential framework for governance of the parts of cyberspace that have reasonable connections with our territory and our people should find definite references in our Constitution. However, effective governance of cyberspace requires cooperation and harmonization with other approaches in other jurisdictions. Certainly, its scope and continuous evolution require that we calibrate our constitutional doctrines carefully: in concrete steps and with full and deeper understanding of incidents that involve various parts of this phenomenon. The internet is neither just one relationship nor is it a single technology. It is an interrelationship of many technologies and cultures.

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29 *Spouses Hing v. Choachuy, Sr.*, 712 Phil. 337, 348 (2013).

30 G.R. No. 184535, September 03, 2019.

31 J. Leonen, Separate Opinion in *Versoza v. People,* G.R. No. 184535, September 03, 2019. The speech entitled The Common Right to Privacy was delivered during the Forum on the Writ of Habeas Data and Human Rights, sponsored by the National Union of Peoples' Lawyers on March 12, 2008 at the Innotech Seminar Hall, Commonwealth Ave., Quezon City. It was also cited in Footnote 20 of *Vivares v. St. Theresa's College,* 744 Phil. 451 (2014) [Per J. Velasco, Third Division].

32 See *Vivares v. St. Theresa's College,* 744 Phil. 451 (2014) [Per J. Velasco, Third Division] and *De Lima v. Duterte*, G.R. No. 227635, October 15, 2019 [Per J. Bersamin, En Banc].

33 *Gamboa v. P/Suppt. Chan*, 691 Phil. 602 (2012) [Per J. Sereno, En banc].

34 130 Phil. 415 (1968) [Per J. Fernando, En Banc].

35 727 Phil. 28 (2014) [Per J. Abad, En Banc].

. . . .

> While the Internet has engendered innovation and growth, it has also engendered new types of disruption. A noted expert employs an "evolutionary metaphor" as he asserts:
>
> > [Generative technologies] encourage mutations, branchings away from the status quo — some that are curious dead ends, others that spread like wildfire. They invite disruption — along with the good things and bad things that can come with such disruption.
>
> Addressing the implications of disruption, he adds:
>
> > Disruption benefits some while others lose, and the power of the generative Internet, available to anyone with a modicum of knowledge and a broadband connection, can be turned to network-destroying ends . . . [T]he Internet's very generativity — combined with that of the PCs attached — sows the seeds for a "digital Pearl Harbor."
>
> The Internet is an infrastructure that allows for a "network of networks." It is also a means for several purposes. As with all other "means enhancing capabilities of human interaction," it can be used to facilitate benefits as well as nefarious ends. The Internet can be a means for criminal activity.
>
> Parallel to the unprecedented escalation of the use of the Internet and its various technologies is also an escalation in what has been termed as cybercrimes.[36]

Privacy scholars explain that the right to informational privacy, to a certain extent, requires "limitation on inspection, observation, and knowledge by others."[37] Thus, it has the following aspects: (1) to keep inalienable information to themselves; (2) to prevent first disclosure; and (3) to prevent further dissemination in case the information has already been disclosed. More recently, the European Union has paved the way for the fourth aspect —the right to be forgotten, or the right to prevent the storage of data.

As regards the first component of the right to informational privacy, a person has the right not to be exposed on the internet in matters involving one's private life, such as acts having no relation to public interest or concern. Closely related to the first component is the right to prevent first disclosure, allowing individuals to regulate the extent, time, and manner of disclosure, if at all, of their information. In case the data have been illegally disclosed, a person does not lose protection since they have the right to prevent their further dissemination. In some cases, one has the right to prevent the storage of their data, which gives one the right to be forgotten. Privacy scholars describe this right as "forced omission," or the process of making the information difficult to find on the internet.[38]

Under the 1987 Constitution, the right to privacy is expressly recognized under Article III, Sec. 3 thereof, which reads:

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36 J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28, 308-320 (2014) [Per J. Abad, En Banc].

37 C. Edwin Baker, *Autonomy and Informational Privacy, or Gossip: The Central Meaning of the First Amendment, in* 21 FREEDOM OF SPEECH 216 (Ellen Frankel Paul, Fred D. Miller, and Jeffrey Paul eds., 2004).

38 Separate Concurring Opinion, Associate Justice Marvic M.V.F. Leonen, pp. 3-6, Citations omitted.

> SECTION 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

While the above provision highlights the importance of the right to privacy and its consequent effect on the rules on admissibility of evidence, one must not lose sight of the fact that the Bill of Rights was intended to protect private individuals against government intrusions. Hence, its provisions are not applicable between and amongst private individuals. As explained in *People v. Marti*:[39]

> That the Bill of Rights embodied in the Constitution is not meant to be invoked against acts of private individuals finds support in the deliberations of the Constitutional Commission. True, the liberties guaranteed by the fundamental law of the land must always be subject to protection. But protection against whom? Commissioner Bernas in his sponsorship speech in the Bill of Rights answers the query which he himself posed, as follows:
>
> > First, the general reflections. The protection of fundamental liberties in the essence of constitutional democracy. Protection against whom? *Protection against the state. The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder.* (Sponsorship Speech of Commissioner Bernas, Record of the Constitutional Commission, Vol. 1, p. 674; July 17, 1986; Emphasis supplied)[40]

While the case of *Zulueta v. Court of Appeals*[41] (Zulueta) may appear to carve out an exception to the abovementioned rule by recognizing the rule on inadmissibility of evidence between spouses when one obtains evidence in violation of his/her spouse's right to privacy, such a pronouncement is a mere *obiter dictum* that cannot be considered as a binding precedent. This is because the petition brought to the Court in *Zulueta* simply asked for the return of the documents seized by the wife and thus, pertained to the ownership of the documents therein. Moreover, documents were declared inadmissible because of the injunction order issued by the trial court and not on account of Art. III, Sec. 3 of the Constitution. At any rate, violation of the right to privacy between individuals is properly governed by the provisions of the Civil Code, the Data Privacy Act (*DPA*),[42] and other pertinent laws, while

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39 271 Phil. 51 (1991).
40 *Id.* at. 61.
41 324 Phil. 63 (1996).
42 Republic Act No. 10173, Data Privacy Act of 2012.

its admissibility shall be governed by the rules on relevance, materiality, authentication of documents, and the exclusionary rules under the Rules on Evidence.

In this case, the photographs and conversations in the Facebook Messenger account that were obtained and used as evidence against petitioner, which he considers as fruit of the poisonous tree, were not obtained through the efforts of the police officers or any agent of the State. Rather, these were obtained by a private individual. Indeed, the rule governing the admissibility of an evidence under Article III of the Constitution must affect only those pieces of evidence obtained by the State through its agents. It is these individuals who can flex government muscles and use government resources for a possible abuse. However, where private individuals are involved, for which their relationship is governed by the New Civil Code, the admissibility of an evidence cannot be determined by the provisions of the Bill of Rights.

Here, the pieces of evidence presented by the prosecution were properly authenticated when AAA identified them in open court. As further pointed out by Associate Justice Rodil V. Zalameda during the deliberations of this case, the DPA allows the processing of data and sensitive personal information where it relates to the determination of criminal liability of a data subject,[43] such as a violation of R.A. No. 10175 in relation to R.A. No. 9775 and when necessary for the protection of lawful rights and interests of persons in court proceedings,[44] as in this case where the communications and photos sought to be excluded were submitted in evidence to establish AAA's legal claims before the prosecutor's office and the courts.

Be that as it may, the act of AAA cannot be said to have violated petitioner's right to privacy. The test in ascertaining whether there is a violation of the right to privacy has been explained in the case of *Spouses Hing v. Choachuy, Sr.*[45] as follows:

> In ascertaining whether there is a violation of the right to privacy, courts use the "reasonable expectation of privacy" test. This test determines whether a person has a reasonable expectation of privacy and whether the expectation has been violated. In *Ople v. Torres*, we enunciated that "the reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether, by his conduct, the individual has exhibited

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43 SEC. 19. *Non-Applicability.* – x x x Likewise, the immediately preceding sections are not applicable to processing of personal information gathered for the purpose of investigations in relation to any criminal, administrative or tax liabilities of a data subject.

44 SEC. 13. *Sensitive Personal Information and Privileged Information.* – The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases:

xxxx

(f) The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority.

45 *Supra* note 29 at 350.

> an expectation of privacy; and (2) this expectation is one that society recognizes as reasonable." Customs, community norms, and practices may, therefore, limit or extend an individual's "reasonable expectation of privacy." Hence, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case.[46]

Here, petitioner's expectation of privacy emanates from the fact that his Facebook Messenger account is password protected, such that no one can access the same except himself. Petitioner never asserted that his Facebook Messenger account was hacked or the photos were taken from his account through unauthorized means. Rather, the photos were obtained from his account because AAA, to whom he gave his password, had access to it. Considering that he voluntarily gave his password to AAA, he, in effect, has authorized AAA to access the same. He did not even take steps to exclude AAA from gaining access to his account. Having been given authority to access his Facebook Messenger account, petitioner's reasonable expectation of privacy, in so far as AAA is concerned, had been limited. Thus, there is no violation of privacy to speak of.

While the messages and photos were taken from the Facebook Messenger of petitioner because AAA was forced by BBB to do so, such does not deviate from the fact that petitioner allowed another person to access his account. When he gave his Facebook Messenger password to AAA, he made its contents available to AAA, and the latter would then have the latitude to show to other persons what she could access, whether she be forced to do so or not. The availability of accessing these photos limited the scope of his right to privacy, especially that these became essential in pursuing AAA's claims to protect her rights.

In any case, it bears pointing out that petitioner failed to raise his objection to the admissibility of the photos during the proceedings in the RTC. Basic is the rule that in order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds therefore be specified. Objection to evidence must be made at the time it is formally offered. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made. When a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[47]

As a complimentary principle, it is well-settled that no question will be

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46 *Id.* at 350.

47 *Spouses Tapayan v. Martinez*, 804 Phil. 523, 534-535 (2017).

entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel.[48]

By failing to timely raise his objection to the admissibility of the photos, petitioner is deemed to have already waived the same. Thus, the photos taken from his Facebook Messenger account are admissible in evidence.

On petitioner's liability

Petitioner was charged for violating Section 4(c)(2) of R.A. No. 10175[49] in relation to Sections 4(a) and 3(b) and (c)(5) of R.A. No. 9775,[50] which reads as follows:

x x x x

Section 4. *Cybercrime Offenses.* — The following acts constitute the offense of cybercrime punishable under this Act: x x x

(c) Content-related Offenses: x x x

(2) *Child Pornography.* — The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: Provided, That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.

x x x x

Section 4. *Unlawful or Prohibited Acts.* - It shall be unlawful for any person:

(a) To hire, employ, use, persuade, **induce or coerce a child to perform in the creation or production of any form of child pornography**

Section 3. *Definition of Terms.* – x x x

(b) "Child pornography" refers to any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of child engaged or involved in real or simulated explicit sexual activities.

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48 *S.C. Megaworld Construction and Development Corporation v. Parada*, 717 Phil. 752, 760 (2013).

49 An Act Defining Cybercrime, Providing for the Prevention, Investigation, Suppression and the Imposition of Penalties Therefor and for Other Purposes [CYBER CRIME PREVENTION ACT OF 2012].

50 An Act Defining the Crime of Child Pornography, Prescribing Penalties Therefor and for Other Purposes [ANTI-CHILD PORNOGRAPHY ACT OF 2009].

> **(c) "Explicit Sexual Activity" includes actual or simulated – x x x**
> (5) lascivious exhibition of the genitals, buttocks, breasts, pubic area and/or anus.[51]
>
> x x x x

From the foregoing, one can be convicted for committing child pornography upon proof of the following: (1) victim is a child; (2) victim was induced or coerced to perform in the creation or production of any form of child pornography; and (3) child pornography was performed through visual, audio or written combination thereof by electronic, mechanical, digital, optical, magnetic or any other means. This Court finds that the prosecution was able to prove these facts by proof beyond reasonable doubt.

Section 3(a) of R.A. No. 9775 defines a child to be as follows:

> (a) "Child" refers to a person below eighteen (18) years of age or over, but is unable to fully take care of himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.
>
> For the purpose of this Act, a child shall also refer to:
>
> > (1) a person regardless of age who is presented, depicted or portrayed as a child as defined herein; and
> > (2) computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child as defined herein.

The members of the Technical Working Group for the Pre-Bicameral Conference Committee on the Disagreeing Provisions of House Bill No. 6440 and Senate Bill No. 2317 (*Anti-Child Pornography Act of 2009*) explained the intent in defining "child" under the statute as follows:

> MS. GIRONELLA. Sir, in addition to that, I would just like to quote what Senator Defensor-Santiago said on the floor because she fully agreed with the expanded definition as seen in the House version, numbers (1) and (2). She said that she fully agrees to the extended definition of the term "child" so that adult website that display explicit images of legal-aged models in pigtails with the balloon or lollipop while surrounded by stuff animals could be prosecuted under the measure. While the law seeks to protect children, the extended definition punishes the depravity of the viewer. So, what we are after here talaga is the perpetrator. We don't care what age the child or the person is. What we're trying to penalize, what we're trying to prohibit is the pedophile from gravitating towards that kind of material.
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> Yes, Mr. Del Prado.

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51 Emphasis supplied.

> MR. DEL PRADO. We support that view. That's why it is specific here a person regardless of age. It is the representation that is deemed reprehensible and I think the public policy expression here is really to prohibit promoting the child as a sexual object and, therefore, it covers both the adult and children being subject of sexually explicit activity.[52]

Here, it was uncontroverted that AAA was only 14 years old at the time of the incident. This was established from the copy of her Certificate of Live Birth[53] that was presented in evidence. Moreover, petitioner was aware of this fact. It was undisputed that BBB confronted petitioner and told him to stay away because her daughter was still a minor.

It is likewise clear from the records of this case that petitioner induced AAA to send him photos of her private parts through Facebook Messenger. This is evident from their conversation, which the CA quoted as follows:

> AAA (K): Hahaha gusto ko siya pagtripan e di mo kasi ako pinagtritripan (sic) e.
> Cadajas (C): Gsto (sic) muh (sic) pagtrepan (sic) kita ngayon
>
> K: Oo
> Ready ako sa ganyan
> C: Sge (sic) hubad
>
> K: Nakahubad na hahaha
> C: Tangalin (sic) uh (sic) panti (sic) muh (sic) haha
>
> K: Baliw hubad na lahat
> C: Picturan uh (sic) pasa muh (sic) xkin (sic) bi
>
> K: Lah gagi bi wag
> Ayoko
> C: Uh ayaw muh (sic) pala sa mga treep (sic) KO (sic) ei (sic)
>
> x x x
>
> C: Tayo lang naman makakakita ie (sic)
> K: Hahahaha baka pagkalat mo
> Dede lang
>
> C: Ako din bi PSA (sic) mna (sic)
> HahAt (sic) bi
> K: Magpasa ka din hahaha
> Lah (sic) bat lahat
>
> x x x
>
> C: Hahaha hnde (sic) aman (sic) bi
> Lahat bi gusto ko

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52 JOURNAL, HOUSE 14TH CONGRESS 3RD SESSION 18 (September 10, 2009).
53 Records, p. 40.

Uo nga nkKaumay (sic) bi nslibugan (sic) ako
K: Gagi ayoko nga yung pepe

x x x

C: Buka muh (sic) nga kunti (sic) bi kunti (sic) lang tutok muh (sic)
Hah (sic)
K: Ayoko na.
Haha Christian haha OK nay an
C: She (sic) nah (sic) gsto (sic) KO (sic) mkita (sic) bi[54]

x x x

It is evident from the above-quoted conversation that petitioner induced AAA to engage in the lascivious exhibition of her breasts and vagina through Facebook Messenger. Notably, it was petitioner who was the one giving specific orders to AAA. He even asked AAA to send to him nude photos of her and for the latter to further spread her legs near the camera, so that petitioner can see her vagina. In her testimony, AAA further explained that it was because of the continuous prodding of petitioner, that forced her to send her nude photos to the latter, thus:

Q: What about those pictures? Can you tell us about those pictures that you are referring to?
A: Because he instructed me to send a picture to him of my breast and vagina, so I send him pictures, Sir.

Q: Okay, you send pictures of your breast and you [sic] vagina. What did you use in order to send him those pictures?
A: Cell phone, Sir.

Q: How did the accused convince you to do that?
A: He said magsend daw po ako ng picture.

Q: Was there a promise?
A: None, Sir.

Q: Just the accused merely telling you or commanding you to produce or take pictures of your private parts?
A: Yes, Sir.

Q: Why did you allow yourself to do that?
A: Napilitan lang po akong magsend ng ganun.

xxx xxx xxx

Q: Paanong napilitan kung hindi ka pinuwersa or hindi ka tinakot? Paano mo nasabing napilitan lang? Alam mong mali iyon at hindi naman pinapayagan na ganun, bakit mo sinend parin kung hindi ka naman niya pinilit o tinakot? Ano talaga ang nagtulak sayong magsend ng ganun? Ano ba ang pumasok sa isip mo, pumasok sa katawan mo nung ginawa mo iyon? Just be candid.

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54 Records, pp. 9-18 (Criminal Case No. 215-V-17).

A: Hindi ko po alam.

Q: Hindi mo alam kasi?
A: Naaano lang po ako sa sinabi niya, sa message po niya sakin na puro please magsend kana sige na puro ganun po.

Q: Sa pagkukumbinsi niya? Panay ang please?
A: Hindi po niya ako tinigilan nun e.

Q: Hindi siya tumitigil?
A: Hindi po.[55]

Further, while the conversation in the Facebook Messenger appears to show that AAA was already undressed while she was conversing with petitioner, it should be pointed out that they were merely exchanging messages on a mobile application. It is probable that AAA was merely bluffing to maintain petitioner's interest. In her testimony, AAA explained that she was not even serious when she sent some of her messages, thus:

Q: In fact, there is in this statement that you even type these words *kuya nalilibugan ako hahaha* is it true that? Did you type this?
A: Yes Sir, I typed that but that is not true, it is just a trip lang sa kanya.

Q: In that trip, in line with it is a four (4) smiley crying while laughing, smiley with tears meaning you are laughing?

Court:
You are just joking ganun ba?

Witness:
Yes, your Honor.[56]

Likewise, when AAA said *"Nakahubad na,"* the same cannot be said to be voluntary on her part as it was preceded by an order from petitioner to take her clothes off. Thus, it was clear from the wordings of the messages that petitioner induced AAA to send him photos of her private parts. Without petitioner's inducement, she would not have been compelled to actually undress and send petitioner, photos of her private parts.

Thus, contrary to petitioner's contention, his act of inducing AAA to send photos of her breasts and vagina constitutes child pornography and explicit sexual activity under Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775. While there was no showing that petitioner intended to sell AAA's photos to other people, this did not exonerate him from liability under the said provision. During the Pre-Bicameral Conference Committee meeting that led to the enactment of R.A. No. 9775 the members of the Technical Working Group made a distinction between the act of merely possessing child pornography

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55 TSN, April 10, 2017, pp. 5-7.
56 TSN, April 10, 2017, pp. 16-17.

materials from the act of making a profit out of it, to wit:

> MR. DESCALLAR. Madam Chair, I think x x x kasi doon sa House version amy (sic) distinction between producer, distributor x x x
>
> (MS. THELMA M. RETUBA TOOK OVER)
>
> MR. DESCALLAR. (Continuing) x x x distributor and user, client. So, pag ni-level natin siya on the same level, the producer, distributor can say "I'm just a client. I just possess with no intention to sell." So, I think, we should differentiate mere possession and with the other x x x with the intention to distribute or benefit, profit from pornography.
>
> COMMITTEE SECRETARY MANALIGOD. Madam Chair, may I just explain because this was a specific amendment of Senator Santiago. In the deliberations on the floor she stated that on Section 4(d), Senator Santiago noted that the possession of child pornography was not qualified by the adverb "knowingly". She explained that knowledge of child pornography does not attach to possession but only to access. Therefore, she believed that mere possession of child pornography is punishable and not subject to the defense that the possessor was not aware of the materials in his or her possession.
>
> MR. DESCALLAR. Papaano 'yun? Saan?
>
> MR. GIRONELLA. Earlier Madam Chair, I think there was a proposal to include the word "knowingly" before the word "possess". So, it would be "to knowingly possess" or "knowingly access". Chair Madrigal supports the position of Senator Defensor-Santiago that knowing possession of a pornographic material cannot be made a defense by the perpetrator. So, for us, the fact that he or she possesses a child pornography material is subject to the penalties of this law.
>
> And on the second point, on the point raised by Mr. Descallar, I think we also should separate a provision from the possessor's point of view as opposed to that producer's point of view. So, we cannot include reproduce.
>
> MR. DESCALLAR. With or without the intent to publish.
>
> MS. GIRONELLA. For the possessor.
>
> MR. DESCALLAR. Yes. Oo. Kasi in the House version, letter (f)...
>
> MR. MARALIT. Ihiwalay na lang natin.
>
> COMMITTEE SECRETARY GUEVARRA. Letter (f).
>
> MR. DESCALAR. x x x In the house version, "to knowingly possess, download, purchase, blah blah x x x "so, it's mere possession, separate x x x distinct from producing, distributing, selling or profiting from child pornography.
>
> MS. GIRONELLA. So, Sir, I think, what we can do...
>
> MR. MARALIT. Yeah, mere possession.

MS. GIRONELLA. x x x it would be x x x so, let's adopt x x x the proposal is to adopt section (d) of the Senate version with the following amendments: "To possess or knowingly access, download, purchase x x x or purchase with reasonable knowledge, any form of child pornography with or without the intent to publish, sell, distribute and broadcast;"

MR. DESCALLAR. I think we delete "or without". So, it will be "with the intent to publish" and you provide another provision for possession as, like for example in letter (f) of the House version which is mere possession. Letter (d) of the House is for possession, downloading, or distribution." So, separate x x x ano siya, separate siya, 'yung intent to publish or to distribute.

MS. GIRONELLA. Sir, can you please word the provision you're proposing.

COMMITTEE SECRETARY GUEVARRA. Okay. May we recognize Atty. Del Prado first.

MR. DEL PRADO. Na-discuss din po naming ito doon sa x x x first, we support x x x including the word "knowingly" before "possess". Iyong discussions po ditto, halimbawa po may nagpadala sa inyo ng e-mail with an attachment of child pornography na kung hindi natsi-check ng e-mail, it's been there for several months, hindi pa rin po 'yun dapat "knowing possession". So, pero kapag binuksan mo 'yan na x x x na-access mon a, alam mo na and then you keep it, so 'yun po 'yung sinasabi na "knowing possession".

And then doon naman po sa point of "with intent to sell, distribute," ang concern po ng law enforcement agents you are x x x we are adding another x x x the burden again of proving this intent kasi 'yung sinasabi nila we can x x x some jurisdictions, some countries do provide for the x x x parang sa drugs po iyong how many kilobytes. Pero sinasabi rin po naming, mahirap din pong mag term kasi po pagka ano 'yung personal and ano 'yung with intent to distribute. So, we really x x x it's either you possess and we punish that or you distribute and we punish that. Kasi kung hindi naman natin ma-prove 'yung kanyang distribution, then mayroon pa tayong fallback doon sa possession. So, ganoon na lang x x x 'yun po ang irerekomenda natin para hindi po additional burden 'yung to establish the intent.

COMMITTEE SECRETARY GUEVARRA. I think the reason why separate the two (2) to distinguish possession with the intent to sell and mere possession for personal use, mas grave ang penalty, 'no. Mas mabigat ang penalty for x x x pag may intent pa to sell. Pero kung hindi natin ma-prove 'yung intent to sell, pasok pa rin siya sa possession.

Now, we can just x x x alisin na lang natin 'yung "personal use", 'no, pero we retain the "intent to sell, 'no. Kasi if you prove "intent to sell," mas mabigat ang penalty.

MR. MARALIT. Tama.

COMMITTEE SECRETARY GUEVARRA. If you fail to prove "intent to sell," mas lighter kasi hindi mo naman dini-distribute, eh.

MR. DEL PRADO. I agree po doon sa graduation ng penalties. Ang sinasabi lang po natin if we include that phrase "with intent to sell" kailangan po nating i-prove 'yun. Whereas, kung nag-sell talaga siya, it's an objective culpable act that we can punish.

MS. GIRONELLA. Madam Chair, point of clarification. What are we talking about? Are we talking about section "b" of the Senate version, section (b) of the House version, section (f) of the House version? Parang naghalu-halo na, eh, kasi earlier we're talking about possession, 'di ba, tapos we went to production and then distribution.

COMMITTEE SECRETARY GUEVARRA. Oo.

MS. GIRONELLA. So, baka better nga talaga paghiwalayin natin 'yung "act of possession" which is punishable and then "act of production, distribution with the intent to sell" as a separate ano rin, 'di ba?

COMMITTEE SECRETARY GUEVARRA. But we already provide "to sell, offer, advertise" and "to produce, direct," 'di ba? We already provide for the unlawful acts, eh. It's different, eh. You produce, direct or to sell, it's different. Here, you possess, meaning, you are not the original owner.

MS. GIRONELLA. So, 'yung section (b) ng House version we're no longer considering it kasi I think that's the only provision with the phrase "with the intent of selling or distributing."

COMMITTEE SECRETARY GUEVARRA. That's why we are saying na x x x because you do not have provision on "knowingly possess" for personal use. Here in our version, we have. So, diniferentiate naming 'yung "with intent to sell" and "without intent to sell." So, 'yun siguro doon tayo nagkaiba.

In the Senate version, "possession, 'no, whatever x x x with or without intent to publish it" magkasama na lang together. In the House version, magkaiba because the intention is to penalize, to provide for stiffer penalties for those who possess with the intent to distribute it as against those who possess without intent x x x and to reproduce this but for his personal use.

MS. GIRONELLA. In the Senate version po kasi, Madam Chair, for clarification, we intend to punish mere possession. So, we don't need to prove that the person who knowingly possess pornographic material x x x a child pornographic material. And then secondly, I think we did away with the intention to sell because that would be a very hard fact to prove that the person had intent to sell it, unless nagkaroon ng outright act of selling it.

COMMITTEE SECRETARY GUEVARRA. No, not really. Because if you, by circumstantial evidence, if you reproduce so many copies and you reproduce or send or distribute to so many e-mails, 'no, e-mail addresses, the intent is there already. It's already the act of distributing.

MR. MARALIT. What our colleague here is saying that in case

there are many copies x x x

(MS. AGNES LUCIA V. TIBAY TOOK OVER)

MR. MARALIT (Continuing) x x x are many copies made, then it could give rise to a presumption, maybe a prima facie presumption that he has intent to sell, distribute. Yeah, we will have to put the presumption there because iyon nga, iyong intent medyo mahirap i-prove, although it could be x x x although the possession of so many could give rise to a prima facie presumption of intent to sell. In which case, if not controverted, then the intent to sell will be conclusively presumed, parang ganoon, siguro if you were to put that there.

COMMITTEE SECRETARY GUEVARRA. Kasi para sa akin, pagka may intent ka to distribute, to sell it, economic na ang reason mo, tapos at the expense of other people, mas dapat mas malaki ang penalty niya.

MR. MARALIT. I agree.

COMMITTEE SECRETARY GUEVARRA. Bahala na kasi, anyway naman kung hindi naman ma-prove iyong intent, punishable pa rin, hindi ba? Punishable pa rin siya.

MR. MARALIT. Yes, yes, mere possession. So the suggestion is siguro to differentiate the two. I think a clear differentiation of the two as well as iyong sa access, huwag natin isama ito, in my view, kasi mag-iiba ang x x x

COMMITTEE SECRETARY GUEVARRA. Kasi parang unfair doon sa mere possession, wala siyang intent to sell. Kasi unfair iyong penalty kung pareho. If we lump it together in one provision, it will be unfair.

MR. MARALIT. I agree.

COMMITTEE SECRETARY GUEVARRA. Because the other one has earned a lot or tiyak na mayroon siyang network para pagbigyan at kikita siya.

MR. MARALIT. Yeah like Hayden Kho

MR. DESCALLAR. I suggest that we adopt the House version na letter (d) and letter (f) with amendments, deleting the term "for personal use" in letter (f) so parang we distinguish distribution and with the intent to sell and for mere possession, deleting "for personal use", so mere possession is punishable.

COMMITTEE SECRETARY GUEVARRA. And in the case of letter (d) of the House version, knowledge of possession is not a requirement, basta ma-prove mo iyong intent to possess, download, with the intent. So there are two elements here – to possess or download or purchase or reproduce and then with intent. Kasi pagka wala siyang x x x so knowledge is immaterial ditto. Hindi kailangan ng knowledge kasi kapag mapu-prove mo iyong intent. Ngayon kung hindi mo ma-prove iyong intent, pasok naman siya sa "to knowingly possess".

> MR. MARALIT. Iyong suggestion ng colleague naming is, sabi niya, no proof of intent is necessary if we will provide here that there would rise a presumption of intent to sell, distribute, in case there are a number of copies, puwede natin i-craft na lang siguro maya-maya. Ngayon na. we will
> x x x
>
> MR. DESCALLAR. I move to adopt the House version, letter (d) and letter (f) with some amendments removing or deleting the term "for personal use" in letter (f).
>
> COMMITTEE SECRETARY GUEVARRA. Of course, with modifications siguro.
>
> MR. MARALIT. Yeah, we will craft the provisions. Can we suspend the session.[57]

It can be gleaned from the lengthy discussion of the members of the Technical Working Group that the authors of this statute intended to penalize even the mere possession, for personal use or enjoyment, of child pornography. The law, as enacted, considers possession with intent to sell, distribute, or publish[58] to be distinct and separate from mere possession.[59] If proven, a stiffer penalty would be imposed on those who were found to have intended to distribute or profit from child pornography. Thus, the foregoing shows the intention of the legislature to include as much violation for acts committed that would further spread the proliferation of pornography in the country, including possession thereof. Necessarily, as those who merely possess child pornographic materials are also punished by law, then R.A. No. 9775 could not be said to have limited its application only to those who are engaged in the business of child pornography.

It also bears emphasis that petitioner obtained the child pornographic materials by inducing AAA to send him photos of the latter's private parts. He did not come into possession of these photos because it was sent by another person. Rather, he came into possession of AAA's photos because of inducing AAA to exhibit her private parts to him. As the inducement to send photos of AAA's private parts was committed with the use of a mobile phone through Facebook Messenger, petitioner's act also falls within the purview of Section 4(c)(2) of R.A. No. 10175, which penalizes child pornography through the use of a computer system. A mobile phone is considered as a computer system under Section 3(g)[60] of R.A. No. 10175.

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57 JOURNAL, HOUSE 14TH CONGRESS 3RD SESSION 44-50 (September 10, 2009).

58 Section 4(d) of R.A. No. 9975

59 Section 4(l) of R.A. No. 9975

60 Section 3(g) of R.A. No. 10175 reads as follows:
Section 3. *Definition of Terms*. x x x
(g) Computer system refers to any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities including, but not limited to, computers and mobile phones. The device consisting of hardware and software may include input, output and storage components which may stand alone or be connected in a network or other similar devices. It also includes computer data storage devices or media.

On another matter, petitioner's heavy reliance on the sweetheart theory is misplaced. Invoking this defense would depend on the circumstances of each case. Jurisprudence explained that the said theory applies in felonies that were committed against or without the consent of the victim. This theory operates on the premise that the violation committed was consensual. Hence, the party invoking this theory bears the burden of proving that said party and the victim were lovers and that the latter consented to the commission of the act.[61]

In the recent case of *Bangayan v. People*,[62] the sweetheart theory was given serious consideration because the accused and the alleged victim were able to show that the alleged rape incident that happened between them was consensual, and a product of love. As noted by the court in that case, the accused and the alleged victim had two children and had lived together even after the filing of the rape charges.

As compared with the instant case, there was insufficiency of evidence to prove the application of the sweetheart theory. Lovers, when they are passionate with their feelings, engage in physical contact, as manifestations of their love towards one another. As they express their feelings towards one another, they express themselves and not just lust over the photos of private parts of their partners. While there may be instances of expressions of love in a virtual space, the same would usually be predicated by endearing words and not just advances of lust, as in this case.

Here, AAA was led to believe that she was in a relationship with petitioner. It was undisputed that it was AAA who relentlessly pursued the petitioner. Still, it can be gleaned from the facts that petitioner, who must be basking in her attention, took advantage of her innocence and vulnerability. The fact that AAA had three previous boyfriends should not even be taken against her for it is the rule under Section 54(a)(1), Rule 130 of the Revised Rules of Court that "the character of the offended party may be proved if it tends to establish in any degree the probability or improbability of the offense charged." It has been held in rape case, that this argument may be raised only to show that there was consent in a rape case. This does not apply when the woman's consent is immaterial such as in statutory rape or rape with violence or intimidation.[63] It must be added that consent would also be immaterial if the victim was persuaded, coerced or induced to do a particular act, as in this case. In his Separate Concurring Opinion, Justice Leonen made reference to his Dissenting Opinion in *Bangayan v. People,*[64] ultimately concluding that the sweetheart defense should not be allowed in cases involving child pornography, thus:

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61 *Malto v. People*, 560 Phil. 119, 140-141 (2007), citing *People v. Delantar*, 543 Phil. 107 (2007).
62 G.R. No. 235610, September 16, 2020.
63 *People v. Lee*, 432 Phil. 338, 362 (2002).
64 *Supra* note 54.

xxxx

> [S]exual intercourse is a complex act which is not only physical or sensual. Beyond that, it comes with the complexity of intimacy, relationship, and reproductive consequences.
>
> Sexual intimacy may be primarily done for procreation or solely for pleasure. How sexuality and intimacy is expressed, what constitutes sex, and with whom to be intimate with is a person's choice.
>
> Therefore, consent to sex does not only cover the physical act. Sex does not only involve the body, but it necessarily involves the mind as well. It embraces the moral and psychological dispositions of the persons engaged in the act, along with the socio-cultural expectation and baggage that comes with the act. For instance, there are observed differences in sexual expectations and behaviors among different genders, and more so, among individuals. The wide range of sexual desire and behavior are not only shaped by biology, but by culture and prevailing norms as well. Full and genuine consent to sex, therefore, is "preceded by a number of conditions which must exist in order for act of consent to be performed."
>
> Part and parcel of a valid consent is the ability to have the intellectual resources and capacity to make a choice that reflects [their] judgments and values. For someone to give sexual consent, [they] must have reached a certain level of maturity.
>
> This observation becomes more apparent in determining the validity of sexual consent given by adults compared to children. Sexual consent is not a switch, but a spectrum. As a child grows into adolescence, and later to adulthood, the measure of sexual consent shifts from capacity to voluntariness. Under the law, sexual consent from a child is immaterial, because [they are] deemed incapable of giving an intelligent consent. However, this presumption is relaxed as the child matures. In our jurisdiction, the gradual scale begins when the child reaches the age of 12 years old. From this age, the law may admit voluntariness on the part of the child.
>
> Nevertheless, voluntariness or informed sexual consent of a child must be determined cautiously. Cases involving younger victims must be resolved through more stringent criteria. Several factors, such as the age of the child, [their] psychological state, intellectual capability, relationship with the accused, their age difference, and other signs of coercion or manipulation must be taken into account in order to protect the child.

x x x x

> It is for the same reason that we cannot allow the sweetheart defense in child pornography. The sweetheart defense is a common, distasteful, and much abused in acts of lasciviousness and rape, aiming to establish that fact that the sexual act was consensual. Under the pretense of a romantic relationship, it is not unimaginable that a child will be easily induced or coerced to engage in explicit sexual acts. Engaging in such a relationship does not remove the special protection of a child. This is especially true in the digital age and space, where a child's interaction with others easily evades supervision. Had AAA not been careless in logging out from her mother's device, the latter would not have found out about their relationship.[65]

It should be pointed out that AAA was only 14 years old at the time of the incident while petitioner was 24 years old. Such huge age disparity placed petitioner in a stronger position over AAA, which enabled him to wield his will on the latter.[66] Judicial notice must also be taken of the fact that minors, especially those who are between the ages of 12 and 18 years, are curious about their sexuality. They are that stage in their lives when they are dealing with their raging hormones. Nonetheless, this should not be taken to mean that they are now capable of giving rational consent to engage in any sexual activity. In a society where birth control and sex education are taboo subjects, these sexually curious teenagers are left to their own devices. Unfortunately, the only source of information available to them are those from the internet or from their friends, who are also not knowledgeable on the subject. For this reason, minors have been acknowledged to be vulnerable to the cajolery and deception of adults, such as in this case.[67]

Unless and until these minors are given proper guidance and/or taught about sex and its consequences, and until it be shown that their actions arise from their feelings of love towards their partner, they cannot be considered to be truly capable of giving an educated and rational consent to engage in any form of sexual activity. Thus, to minimize the risk of harm to minors from the detrimental consequences of their attempts at adult sexual behavior, the State, as *parens patriae*, is under the obligation to intervene and protect them from sexual predators like petitioner in this case.[68] This must be so if We are to be true to the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth.[69] This is also in harmony with the declared policy of the State in R.A. No. 9775, which provides:

> x x x The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual, emotional, psychological and social well-being. Towards this end, the State

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65 *Supra* note 30.

66 See *Fianza v. People*, 815 Phil. 379, 391-392 (2017), citing *Caballo v. People*, 710 Phil. 792 (2013).

67 *Fianza v. People*, *id.* at 392, citing *Malto v. People*, *supra* note 61.

68 See *Fianza v. People*, *supra* note 66, citing *Malto v. People*, *supra* note 61, at 139-141.

69 *People v. Malto*, *supra* note 61, at 141.

shall:

> (a) Guarantee the fundamental rights of every child from all forms of neglect, cruelty and other conditions prejudicial to his/her development;
> (b) Protect every child from all forms of exploitation and abuse including, but not limited to:
>
> > (1) the use of a child in pornographic performances and materials; and
> > (2) the inducement or coercion of a child to engage or be involved in pornography through whatever means; x x x[70]

Article 3(1) of the United Nations Convention on the Rights of a Child of which the Philippines is a signatory is similarly emphatic that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, it is the best interests of the child that shall be the primary consideration.

Article 1 of Presidential Decree No. 603, otherwise known as, "The Child And Youth Welfare Code" is likewise clear and unequivocal that every effort should be exerted by the State to promote the welfare of children and enhance their opportunities for a useful and happy life.

This Court, however, concurs with petitioner's argument, and as pointed out by Associate Justice Alfredo Benjamin S. Caguioa in his Dissenting Opinion,[71] that a violation of Section 4(c)(2) of R.A. No. 10175, in relation to Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775 falls under the class of offenses known as *mala in se*, where criminal intent must be proven by proof beyond reasonable doubt. The difference between the concept of *mala in se* and *malum prohibitum* were succinctly explained as follows:

> Criminal law has long divided crimes into acts wrong in themselves called acts *mala in se*; and acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*. **This distinction is important with reference to the intent with which a wrongful act is done. The rule on the subject is that in acts *mala in se*, the intent governs; but in acts *mala prohibita*, the only inquiry is, has the law been violated?** When an act is illegal, the intent of the offender is immaterial. When the doing of an act is prohibited by law, it is considered injurious to public welfare, and the doing of the prohibited act is the crime itself.
>
> A common misconception is that all *mala in se* crimes are found in the Revised Penal Code (RPC), while all *mala prohibita* crimes are provided by special penal laws. In reality, however, there may be *mala in se* crimes under special laws, such as plunder under R.A. No. 7080, as amended.
>
> Similarly, there may be *mala prohibita* crimes defined in the RPC,

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70 R.A. No. 9775, Section 2.
71 Dissenting Opinion, Associate Justice Alfredo Benjamin S. Caguioa.

such as technical malversation.

> The better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act. **If the punishable act or omission is immoral in itself, then it is a crime *mala in se*; on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reasons of public policy, then it is *mala prohibita*.** In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.[72]

In the ratification speech on Anti-Child Pornography Act of 2009, the principal author explained the need for the promulgation of this law, to wit:

> This Bill is much awaited by all the sectors involved in the protection and promotion of the rights of children not only in the Philippines but also in the international community, and, I believe, by the children themselves whose voices resonate in the silence of their hearts and in the equanimity of their spirits. Knowing how this bill could be of great consequence to the building of their self-worth and the realization of their hope for a bright future, this representation takes pride in sponsoring this noble piece of legislation in support of their call to stop the menace of child pornography. Evidently, child pornography is such a disgusting crime which operates with surprising efficiency, swiftness and dispatch as it rides along with technologically advanced communication highways such as the internet.
>
> What appalls us more is the fact that such meaningless violence against the honor and dignity of our children knows no boundaries: political or geographical. Child pornography transcends national and international boundaries even without actual physical movement of children from one place of victimization to another. Verily, while it could be done in the secrecy of her room and abode, its evil resounds in every corner of society.[73]

Even during the pre-bicameral conference committee hearing, the Technical Working Group had a lengthy discussion on the title of the statute to emphasize the depravity of the acts being penalized, to wit:

> So, let's start with the title of the bill. So, we just put in the remarks column that the Senate version was adopted as the working draft. So, that's the first x x x that's the first remarks, first remark. So, okay, let us go to the title of the bill. So, which of the provision x x x which of the title would you think will aptly or will cover, will cover the purpose, the intent of the bill? So, I suggest that we adopt the House version because there's still no crime defining child pornography and if we are not just prohibiting. When you say crime, it's really punishable. Unlike when you just prohibit, a prohibition

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[72] *Dungo v. People*, 762 Phil. 630, 658-659 (2015), (Emphasis supplied), citing LUIS B. REYES, THE REVISED PENAL CODE CRIMINAL LAW-BOOK ONE 56 (17th ed. 2008), *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001), *Tan v. Ballena,* 519 Phil. 503, 527-528 (2008), *Garcia v. CA*, 319 Phil. 591 (2008), Art. 220 of the Revised Penal Code, *Ysidoro v. People*, 698 Phil. 813 (2012), and *Teves v. COMELEC*, 604 Phil. 717, 729 (2009).

[73] Bicameral Conference Committee Report, on S. No. 2317 and H. No. 6440 (Anti-Child Pornography Act of 2009) pp. 267-268.

may only take x x x the penalty may not be penalty at all but just a warning or form of fines. But when it says crime, it attaches criminal liability. It attaches punishment, fines and even other liabilities.

MS. GIRONELLA. Conferring with Atty. Maralit, 'no, most of our special laws penalizing or defining a crime is usually called penalizing or punishing the specific act. You only use the term "defining" when it refers to specific rights that you're granting an individual. For example, Presidential Decree No. 133, which is x x x I'm sorry, Presidential Decree 704 which is a decree punishing illegal fishing. So, that's the usual term that they used. That's why we adopted the word "prohibiting child pornography and imposing penalties, thereof."

COMMITTEE SECRETARY GUEVARRA. Although kasi sa legislative...this is a legislative enactment unlike those mentioned by our counterpart that those provisions x x x those are executive issuances, promulgations.

MR. MARALIT. Yes, but we have also examples of statutes titled this way. "An Act Prohibiting the Demand of Deposits or Advanced Payments For the Confinement or For Treatment of Patients in Hospitals and Medical Clinics in Certain Cases." That is BP Bilang 702 which is a statute. Usually, the word "defining" is used in defining rights like this statute, Republic Act No. 7438, "An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation." So in our view, it's either prohibiting or punishing, or penalizing, to make a strong message to the violators, would-be violators of this law that Congress is serious with these violations of law.

That is our positions.

COMMITTEE SECRETARY GUEVARRA. Okay. Although we also, we already passed several legislations defining crimes, new crimes, 'yung mga bago pa na hindi pa talaga legislated, walang specific law na x x x (interrupted)

MR. MARALIT. Let's just have a compromise. Why don't we say, "prohibiting and defining?" that would be fine with us, if it's okay with you, "defining and prohibiting and imposing penalties thereof."

COMMITTEE SECRETARY GUEVARRA. We use imposing or prescribing? We prescribe the penalties for the crime.

MR. MARALIT. "Prescribe." "Prescribe" is better.

COMMITTEE SECRETARY GUEVARRA. So, for record purposes, the title of the reconciled bill shall be, "An Act Defining and Prohibiting the Crime" x x x "Defining and Prohibiting Child Pornography, Prescribing Penalties Therefor and For Other Purposes."

MR. MARALIT. Can we make "penalizing" rather than "prohibiting"?

COMMITTEE SECRETARY GUEVARRA. Okay, yeah. That's x x x I was about to suggest because penalizing is more ano x x x

> MR. MARALIT. Yes, more forceful.
>
> COMMITTEE SECRETARY GUEVARRA. x x x more forceful than in prohibiting.
>
> MR. MARALIT. Yeah. Thank you.
>
> COMMITTEE SECRETARY GUEVARRA. Okay, So, that the title of the reconciled bill shall be "An Act Defining and Penalizing Child Pornography x x x
>
> MR. MARALIT. The crime, the crime.
>
> COMMITTEE SECRETARY GUEVARRA. x x x the Crime of Child Pornography, Prescribing Penalties Therefor and For Other Purposes." I repeat, "An Act Defining and Penalizing the Crime of Child Pornography, Prescribing Penalties therefor and For Other Purposes."
>
> MR. MARALIT. Okay.[74]

From the foregoing, it is decisively clear that the crime of child pornography as defined and penalized under R.A. No. 9775 should be classified as a crime *mala in se*. As *parens patriae,* this act of grooming minors for sexual abuse should not be tolerated. We should not be complicit in reinforcing this belief upon the minors that sex with children is acceptable and thereby fuel a pedophile's fantasies prior to committing sexual abuse, which clearly happened in the instant case. Contrary to the appreciation of evidence of the other members of this Court, the circumstances of this case showed the intent of petitioner to abuse AAA and engage in acts of child pornography by inducing the latter to exhibit her private parts to him. Petitioner, being the one with mental maturity, should have known that it was not just legally, but inherently wrong for AAA, a minor, to show her private parts, particularly, through a mobile device. If indeed, petitioner loved AAA, he should have protected her dignity, being a minor. However, as the exchanges of petitioner and AAA would show, it was through petitioner's prodding that led to AAA's act of exhibiting her private parts. Thus, this Court concurs with the findings of the courts *a quo* that the prosecution was able to establish beyond reasonable doubt that petitioner induced or coerced the minor victim to perform in the creation of child pornography and that the same was done through a computer system.

All told, the courts *a quo* did not err in finding petitioner guilty beyond reasonable doubt for violation of Section 4(c)(2) of R.A. No. 10175, in relation to Sections 4(a), 3(b) and (c)(5) of R.A. No. 9775.

As regards the proper penalty to be imposed, Sections 4 and 8[75] of R.A.

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74 JOURNAL, HOUSE 14TH CONGRESS 3RD SESSION 134-136 (September 10, 2009).

75 Section 8 of R.A. No. 10175 partly reads as follows:
Section 8. *Penalties.* — x x x
Any person found guilty of any of the punishable acts enumerated in Section 4(c)(2) of this Act shall

No. 10175 both explicitly provide that the proper penalty to be imposed for child pornography committed through a computer system should be one degree higher than that provided for in R.A. No. 9775. Under Section 15(b)[76] of R.A. No. 9775, the penalty to be imposed is *reclusion temporal* in its maximum period and a fine of not less than ₱1,000,000.00 but not more than ₱2,000,000.00. The rationale for this rule was succinctly explained in the case of *Disini Jr. v. The Secretary of Justice*,[77] to wit:

> It seems that the above merely expands the scope of the Anti-Child Pornography Act of 2009[31] (ACPA) to cover identical activities in cyberspace. In theory, nothing prevents the government from invoking the ACPA when prosecuting persons who commit child pornography using a computer system. Actually, ACPA's definition of child pornography already embraces the use of "electronic, mechanical, digital, optical, magnetic or any other means." Notably, no one has questioned this ACPA provision.
>
> Of course, **the law makes the penalty higher by one degree when the crime is committed in cyberspace**. But no one can complain since the intensity or duration of penalty is a legislative prerogative and there is rational basis for such higher penalty. **The potential for uncontrolled proliferation of a particular piece of child pornography when uploaded in the cyberspace is incalculable.**[78]

One degree higher than the penalty of *reclusion temporal* is the indivisible penalty of *reclusion perpetua*. Accordingly, the penalty imposed by the CA should be modified to *reclusion perpetua* as it is in accordance with the provisions and intent of R.A. No. 10175.

Finally, the Court finds no compelling reason to modify the fine imposed by the courts *a quo* as it is within the allowable range imposed by law.

WHEREFORE, the petition is **DENIED**. Consequently, The Decision dated September 17, 2018 and Resolution dated May 9, 2019 both rendered by the Court of Appeals in CA-G.R. CR No. 40298 are **AFFIRMED with MODIFICATION**. Petitioner Christian Cadajas y Cabias is guilty beyond reasonable doubt of the crime of child pornography under Section 4(c)(2) of R.A. No. 10175, in relation to Sections 4(a) and 3(b) and (c)(5) of R.A. No. 9775. He is sentenced to *reclusion perpetua*, with all its accessory penalties and to pay a fine in the amount of One Million Pesos (₱1,000,000.00).

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be punished with the penalties as enumerated in Republic Act No. 9775 or the "Anti-Child Pornography Act of 2009": *Provided,* **That the penalty to be imposed shall be one (1) degree higher than that provided for in Republic Act No. 9775, if committed through a computer system.** (Emphasis supplied)

[76] Section 15(b) of R.A. No. 9775 reads as follows:

Section 15. *Penalties and Sanctions.* - The following penalties and sanctions are hereby established for offenses enumerated in this Act: x x x

(b) Any person found guilty of violating Section 4(a), (b) and (c) of this Act shall suffer the penalty of *reclusion temporal* in its maximum period and a fine of not less than One million pesos (₱1,000,000.00) but not more than Two million (₱2,000,000.00).

[77] 727 Phil. 28 (2014).

[78] *Id.* at 107. (Emphasis supplied)

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

See separate concurring opinion

On official leave
ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

See Dissenting Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

See Separate Opinion

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

I join the Dissent of Justice Caguioa

HENRI JEAN PAUL B. INTING
Associate Justice

With Separate Concurring Opinion

RODIL V. ZALAMEDA
Associate Justice

See Dissenting opinion

On leave
MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice

Certified True Copy
ANNA-LI R.PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc,Supreme Court