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**G.R. No. 256452 – PEOPLE OF THE PHILIPPINES, Petitioner, v.
WILLEM JOHANNES PEEK, Respondent.**

Promulgated:

February 25, 2025

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CONCURRING OPINION

DIMAAMPAO, J.:

At the outset, I commend the well-written *ponencia* of Justice Kho and its extensive discussion anent Republic Act No. 9208,¹ as amended by, Republic Act No. 10364.²

I fully concur that accused-appellant Willem Johannes Peek (Peek) must be held guilty of both rape and qualified trafficking in persons. Still, I write only to add further discourse on the essence of the crime of trafficking, especially in light of the equally well-reasoned dissent on the matter of Justice Lazaro-Javier.

While the Court has had more occasion to expound on the nature of this crime in recent years, it may still be further developed not only to guide the public but also to reinforce the will of Congress in passing this imperative protective legal measure.

Fairly recently, the Third Division of the Court had occasion to elucidate on the amendments introduced by Republic Act No. 10364 to the crime of qualified trafficking in persons. In *People v. Arraz*,³ the Court observed that the essence of the offense was not substantially altered and while some of the provisions were expanded to be more encompassing, others were simply renumbered, and the others remained wholly unchanged.

In her sponsorship speech of Senate Bill No. 2625, the predecessor bill of Republic Act No. 10364, Senator Legarda explained that the expansion of the definition of trafficking is part of their efforts to fill the policy gap

¹ Republic Act No. 9208 (2003), An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other Purposes, otherwise known as the “Anti-Trafficking in Persons Act of 2003.”

² Republic Act No. 10364 (2013), An Act Expanding Republic Act No. 9208, Entitled “An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations and for Other Purposes,” otherwise known as the “Expanded Anti-Trafficking in Persons Act of 2012.”

³ G.R. No. 262362, April 8, 2024 [Per J. Dimaampao, Third Division].



identified by law enforcement agencies which prevent convictions of this crime:⁴

Trafficking in Persons is a complex problem and its full dimensions are hard to measure. Furthermore, trafficking modes and patterns continue to evolve over time as perpetrators of the crime seek to outflank policies and regulations of government.

I recognize that it is by understanding the depth and scope of the problem that we will be able to address the issue of trafficking squarely.

As perpetrators become more innovative in their actions, so should government be more deliberate in its efforts to strengthen policies, improve on enforcement, and enhance interagency coordination, both at the local and international level.

Issues Identified

The Philippines is one among about 100 countries that have passed legislation on trafficking in persons. The Global Report on Trafficking in Persons reported that “47 countries reported making at least 10 convictions per year, with 15 making at least five times this number.”

The Philippines, on the other hand, has made only 33 convictions over a period of seven years. **Such dismal conviction rate, according to law enforcement agencies, may be attributed to a number of policy gaps that can only be addressed through a stronger anti-trafficking law.**

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Policy Reform

In the policy front, we need to harmonize policies and definitions on trafficking in persons, child labor, and forced labor. As such, Republic Act No. 9208 needs to be harmonized with pertinent provisions of Republic Act No. 9231 (on the worst forms of child labor), and Republic Act No. 7610 (on child abuse and discrimination). **Varying, if not conflicting definitions on trafficking weakens our capacity to prosecute and bring perpetrators to answer for their crimes.** (Emphasis supplied)

With this definition in mind, the Court in *Arraz*, took occasion to outline the constitutive elements for qualified trafficking under both Republic Act No. 9208 and Republic Act No. 10364:

According to jurisprudence, the elements for trafficking in persons are derived from Section 3 (a) of Republic Act No. 9208. Moreover, when the crime is qualified trafficking, the prosecution must likewise prove any of the qualifying circumstances under Section 6 of the same law. Taken together, the general elements for qualified trafficking in persons **under the original Republic Act No. 9208** are as follows:

⁴ 50 Journal, Senate, 15th Congress, First Regular Session (January 17, 2011), pp. 961–962.

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- (a) the act of recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;
- (b) through the means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- (c) for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs; and
- (d) any of the qualifying circumstances under Section 6 of Republic Act No. 9208 are present.

When the crime is committed **after the effectivity of Republic Act No. 10364** on February 28, 2013, the elements for qualified trafficking in persons are as follows:

- (a) the act of recruitment, **obtaining, hiring, providing, offering,** transportation, transfer, **maintaining,** harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;
- (b) through the means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- (c) for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs; and
- (d) any of the qualifying circumstances under Section 6 of Republic Act No. 9208 are present.

In relation to the foregoing, it bears emphasizing that when the victim of trafficking is a child, *i.e.*, "a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition," the second paragraph of Section 3 (a) expressly provides that the abovementioned first element need not be attended by any of the means enumerated under the second element. Withal, Section 6 (a) of Republic Act No. 9208 immediately treats such crimes as qualified trafficking. Consequently, **under the original Republic Act No. 9208**, when the crime is qualified trafficking in persons and the victim is a child, the prosecution only needs to prove the following:

- (a) the victim is a child;
- (b) who is recruited, transported, transferred or harbored, or received, with or without the child's consent or knowledge, within or across national borders;
- (c) for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of

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sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

On the other hand, when the crime is committed **after the effectivity of Republic Act No. 10364**, the following elements must be proved:

- (a) the victim is a child;
- (b) who is **adopted**, recruited, **obtained**, **hired**, **provided**, **offered**, transported, transferred, **maintained**, harbored, or received, with or without the child's consent or knowledge, within or across national borders;
- (c) for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs, **or when the adoption is induced by any form of consideration for exploitative purposes.**

Undoubtedly, the trafficking of child victims may be attended by any of the means enumerated under Section 3 (a) of Republic Act No. 9208, but its proof thereof is not crucial to convicting the accused. The rationale for this rule is simple: "a minor's consent is not given out of his or her own free will."⁵ (Emphasis in the original)

The same straightforward enumeration of elements is echoed in the *ponencia* as well.⁶

As applied to the present case, the *ponencia* posits that while Peek was charged with Section 4 (e) of Republic Act No. 9208, as amended, i.e., "maintain[ing] or hir[ing] a person to engage in prostitution or pornography[.]" the actual act he is guilty of is in harboring and receiving the minor victim for sexual exploitation, which is found in Section 4 (a).⁷

On this score, I wholeheartedly agree with this nuance recognized by the *ponencia*.

It bears stressing that Section 4 of the law lists a whole gamut of activities constitutive of trafficking in persons. It does not only list preparatory acts of engaging or "procuring" the trafficked individual, but also acts done after the trafficked individual is in the trafficker's custody. As the *ponencia* observes, trafficking is not limited to the movement from one place to another of an individual against their will or with their vitiated consent.⁸ It includes all other acts of exploitation after the fact. In other words, trafficking may be said to involve the whole "experience" as it were of coming into the custody

⁵ *People v. Arraz*, April 28, 2024 [Per J. Dimaampao, Third Division] at 20–22. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

⁶ *Ponencia*, pp. 16–17.

⁷ *Id.* at 17–18.

⁸ *Id.* at 19.

or control of the trafficker, the victim's maintenance or movement, their exploitation, and their subsequent sale.

To my mind, the essence of trafficking is exploitation. It is the commodification of human life, turning another person into a commercial product that can be acquired, used, and sold.

In the case at bench, the act of trafficking is not the hiring per se of the victim as a prostitute. Rather, Peek trafficked AAA by forcing her to meet him through the promise of a large sum, with the added threat of publishing her sensitive photos if she refuses, all for the purpose of sexually exploiting her. In my humble opinion, this falls squarely with the expansive definition of qualified trafficking under the amended law.

At this point, it behooves the Court to address the erudite observation of J. Lazaro-Javier that trafficking in persons necessarily includes at least three parties: the trafficked person, the customer, and the trafficker.⁹ J. Lazaro-Javier asserts that Peek did not "traffic" AAA as he procured her for his own benefit. Rather, he should be held guilty of "Use of Trafficked Persons", defined and penalized under Section 11 of the law.¹⁰

As above-adumbrated, however, this observation may not be wholly supported by the letter and intent of the law. Nowhere is it explicitly stated in the law that the presence of the "trafficker" or "pimp" is necessary before trafficking under Section 4 is said to occur. This is consistent with the above-proffered observation that trafficking covers not only acts done during the trafficked persons' captivity or custody in the hands of the trafficker, but also preparatory acts done to acquire the individual to be trafficked. Necessarily, prior to the acquisition of the trafficked individual, there is no customer to speak of, and yet the act itself constitutes trafficking.

If at all, it is only in Section 11 of the law where at least three parties may be involved, although the provision itself only punishes the customer:

SEC. 11. Use of Trafficked Persons. – Any person who buys or engages the services of a trafficked person for prostitution shall be penalized with the following: Provided, That the Probation Law (Presidential Decree No. 968) shall not apply:

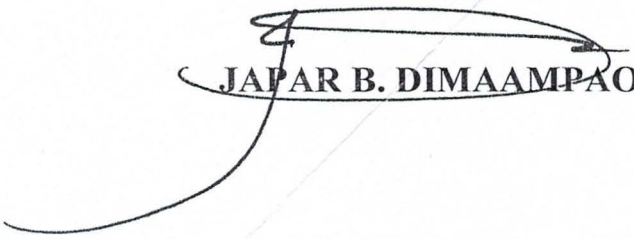
The use of the word "trafficked person" in the provision necessarily implies that the victim is already being trafficked by another. It is a loaded term that necessarily implies the existence of a prior act of trafficking.

⁹ Concurring and Dissenting Opinion of J. Lazaro-Javier, p. 5.

¹⁰ *Id.* pp. 6–7.

Consequently, considering that there was no third-party trafficker that hired out AAA to Peek, Section 11 finds no application.

With the foregoing disquisition, I express my concurrence with the *ponencia* and vote to **DENY** the appeal.


JAPAR B. DIMAAMPAO

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MARIA LUISA M. SANTILLA
Deputy Clerk of Court
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