

EN BANC

G.R. No. 256452 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,
v. WILLEM JOHANNES PEEK, Accused-appellant.

Promulgated:

February 25, 2025

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CONCURRING OPINION

LEONEN, J.:

I concur with the well-written *ponencia* of my esteemed colleague, Associate Justice Antonio T. Kho, Jr. Willem Johannes Peek (Peek) committed the crime of rape and not sexual abuse under Article III, Section 5(b) of Republic Act No. 7610. I contribute the following observations.

Two separate Informations were filed against Peek charging him with sexual abuse and qualified trafficking in persons under Republic Act No. 9208, as amended by Republic Act No. 10364.¹

According to the prosecution, sometime in October 2016, AAA256452, a 15-year-old minor, and Peek, a 68-year-old adult, met through Facebook Messenger and eventually became sweethearts. Peek started asking AAA256452 for nude photos, to which the latter complied by sending him photos of her naked body, breasts, and vagina. In exchange for the photos, Peek gave AAA256452 money in the amount of PHP 1,000.00, PHP 5,000.00, and PHP 10,000.00, respectively. AAA256452 asked Peek to stop asking for pictures, but the latter got angry and threatened to upload her nude photos on her Facebook page.²

Later, Peek asked AAA256452 if they could meet in person in ██████████ City. They then talked about what will they do when they meet “including having sexual intercourse.”³ AAA256452 relented and agreed to meet Peek for PHP 10,000.00.⁴

On January 31, 2017, AAA256452, together with her sister, went to Peek’s apartment where they ate and drank wine. When AAA256452’s sister went out of the apartment, Peek forced AAA256452 to have sexual

¹ *Ponencia*, p. 2.

² *Id.* at 3.

³ *Id.*

⁴ *Id.*

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intercourse with him. Despite AAA256452's plea for Peek to stop, the latter inserted his penis into her vagina and anus. AAA256452 screamed, but Peek would insert his tongue in her mouth whenever she tried to do so. After Peek fell asleep, AAA256452 went out and informed her sister of what happened. Together, they reported the incident to the police.⁵

For his part, Peek denied the allegations against him and insisted that AAA256452 voluntarily sent him the nude photos in exchange for money. AAA256452 allegedly expressed her excitement to see him when he informed her that he would go to [REDACTED] and further "told him that she will make him happy in bed."⁶ According to Peek, when AAA256452 and her sister visited him in his apartment, they only ate dinner, and he went to sleep after. Later, Peek's landlord knocked on his door and told him that a police officer was looking for him. Following this, the police officer arrested Peek and brought him to the police station.⁷

Subsequently, AAA256452 submitted an Affidavit of Recantation.⁸

On April 7, 2018, the Regional Trial Court rendered a Joint Decision convicting Peek of the crimes charged.⁹ The Court of Appeals sustained Peek's conviction but modified the penalty imposed.¹⁰

The *ponencia*, while affirming the conviction of Peek, decreed that the proper designation of the offense committed was not sexual abuse, but rape as defined and penalized under the Revised Penal Code.¹¹

I agree with the *ponencia*.

I

Article 266-A of the Revised Penal Code defines and penalizes the crime of rape. It states:

Article 266-A. *Rape; When And How Committed*. — Rape is Committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;

⁵ *Id.* at 3–4.

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 4–5.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 7–12.

- c) By means of fraudulent machination or grave abuse of authority; and
 - d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
- 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

On the other hand, Section 5(b) of Republic Act No. 7610 punishes sexual intercourse committed against a child exploited in prostitution or subject to other sexual abuse:

SECTION 5. *Child Prostitution and Other Sexual Abuse.*— Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

....

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]

In *People v. Tulagan*¹² this Court discussed the difference between these two crimes. These pertain not only to the employment of force, threat or intimidation as an element, but likewise the circumstance of the offended party, such that in Section 5(b) of Republic Act No. 7610 what is involved is a “child exploited in prostitution or other sexual abuse[.]”¹³ *Tulagan* expounded:

Second, when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through “force, threat or intimidation,” then he will be prosecuted for rape under Article 266-A (1) (a) of the RPC. In contrast, in case of sexual intercourse with a child who is 12 years old or below 18 and who is deemed “exploited in prostitution or other sexual abuse,” the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and the victim indulged in sexual intercourse either “for money, profit or any other

¹² 849 Phil. 197 (2019) [Per J. Peralta, *En Banc*].

¹³ *Id.* at 244.



consideration or due to coercion or influence of any adult, syndicate or group,” which deemed the child as one “exploited in prostitution or other sexual abuse.”

....

As can be gleaned above, “force, threat or intimidation” is the element of rape under the RPC, while “due to coercion or influence of any adult, syndicate or group” is the operative phrase for a child to be deemed “exploited in prostitution or other sexual abuse,” which is the element of sexual abuse under Section 5 (b) of R.A. No. 7610. The “coercion or influence” is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute. Considering that the child has become a prostitute, the sexual intercourse becomes voluntary and consensual because that is the logical consequence of prostitution as defined under Article 202 of the RPC, as amended by R.A. No. 10158 where the definition of “prostitute” was retained by the new law[.]”¹⁴

In this case, it appears that accused-appellant Willem Johannes Peek employed threat and intimidation in the commission of his bestial act. To be sure, AAA256452 agreed to meet accused-appellant for two reasons: first, the PHP 10,000 accused-appellant promised to give her; and second, his threat that he would post her nude photos on Facebook should she decline. Once they were alone in his apartment, accused-appellant forced himself into AAA256452 and had nonconsensual sexual intercourse with her.¹⁵ These facts, as established by the prosecution, suffice to prove that accused-appellant committed the crime of rape as defined under Article 266-A of the Revised Penal Code.

II

I also concur that accused-appellant should be convicted of qualified trafficking under Republic Act No. 9208 as amended by Republic Act No. 10364.¹⁶ Section 3 (a) of the law defines trafficking in persons as:

[T]he 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 by 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 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.

¹⁴ *Id.* at 242–245.

¹⁵ *Ponencia*, pp. 8–12.

¹⁶ Expanded Anti-Trafficking in Persons Act of 2012.

The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as ‘trafficking in persons’ even if it does not involve any of the means set forth in the preceding paragraph.¹⁷

Republic Act No. 9208, as amended, enumerates the various acts considered as trafficking. These acts include, but are not limited to, the recruitment, obtaining, hiring, maintaining, harboring or receiving of “a person . . . for the purpose of prostitution, pornography, or sexual exploitation[.]”¹⁸ Under Section 6(a) of Republic Act No. 9208, when any of these acts have been committed against a child, the crime shall be considered as qualified trafficking in persons.¹⁹

Jurisprudence dictates that in cases involving trafficking in persons, it is imperative for the prosecution to prove the following elements:

(1) 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;”

(2) The means used include “by 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[;]”

(3) The purpose of trafficking includes “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[.]”²⁰

I also agree with the *ponencia* that when the victim is a child as defined under the law and it was proven that “[t]he recruitment, transportation, transfer, harboring, adoption or receipt” was done for the purpose of exploitation, the offender may be convicted of trafficking in persons without the need of establishing any of the means set for in the first paragraph of Section 3(a).²¹

It is undisputed that AAA256452 was 15 years old at the time accused-appellant harbored and received her in his apartment. It was also proven that accused-appellant’s acts were done for the purpose of sexually molesting

¹⁷ Republic Act No. 9208 as amended by Republic Act No. 10364, sec. 3(a).

¹⁸ Republic Act No. 9208 as amended by Republic Act No. 10364, sec. 4(a).

¹⁹ Republic Act No. 9208, sec. 6(a).

Section 6. *Qualified Trafficking in Persons*. - The following are considered as qualified trafficking:

(a) When the trafficked person is a child[.]

²⁰ *People v. Casio*, 749 Phil. 458, 474 (2014) [Per J. Leonen, Second Division].

²¹ *Ponencia*, pp. 16–17.

AAA256452. With these proven facts, I concur in convicting accused-appellant of qualified trafficking in persons.

III

On a final note, it is unfortunate that no Information was filed against accused-appellant for violation of Republic Act No. 9775, or the Anti-Child Pornography Act of 2009 in relation to Republic Act No. 10175 or the Cybercrime Prevention Act of 2012.

Section 4 of Republic Act No. 9775 enumerates the acts which the law considers as prohibited. In particular, paragraph (a) states:

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[.]

Under Republic Act No. 10175, when the crime of child pornography is committed using a computer system, “the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.”²²

Republic Act No. 9775 defines child pornography as “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.”²³ Meanwhile, the term “explicit sexual activit[y]” includes “lascivious exhibition of the genitals, buttocks, breasts, pubic area and/or anus[.]”²⁴

In *Cadajas v. People*²⁵ this Court laid down the elements of child pornography:

From the foregoing, one can be convicted for committing child pornography upon proof of the following: (1) victim is a child; (2) victim

²² Republic Act No. 10175, Cybercrime Prevention Act of 2012, sec. 4(c).

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

....

(c) Content-related Offenses:

(1) Cybersex. — The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.

(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.

²³ Republic Act No. 9775, Anti-Child Pornography Act of 2009, sec. 3(b).


²⁴ Republic Act No. 9775, Anti-Child Pornography Act of 2009, sec. 3(c)(5).

²⁵ 915 Phil. 220 (2021) [Per J. J.Y. Lopez, *En Banc*].

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.²⁶

It is apparent that accused-appellant's act of communicating with AAA256452 online through Facebook Messenger and soliciting nude photos from her fall under the prohibited acts under Republic Act No. 9775 in relation to Republic Act No. 10175. If the prosecution had been more diligent, it should have filed separate items of Information for child pornography. This was a violation separate from and carries different penalties from that of qualified trafficking.

ACCORDINGLY, I vote to **DENY** the appeal.



MARVIC M.V.F. LEONEN
Senior Associate Justice

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²⁶ *Id.* at 235.



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