

EN BANC

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

Promulgated:

February 25, 2025

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CONCURRENCE AND DISSENT

LAZARO-JAVIER, J.:

To recall, complainant AAA,* a 15-year-old minor at the time of the incidents, testified that she met accused-appellant Willem Johannes Peek (Peek) via Facebook Messenger. She admitted that they became sweethearts. Peek asked her, on numerous occasions, to send him her nude pictures for which he paid her PHP 1,000.00, PHP 5,000.00, and PHP 10,000.00, respectively. Though she asked him to stop asking for pictures, he threatened to upload her nude photos on her Facebook page if she did not comply.¹

After paying AAA the PHP 10,000.00, Peek asked her to meet up in person in [REDACTED]. AAA went to Peek's apartment with her 33-year-old sister.² There, they ate and drank wine with Peek. When AAA's sister went out, Peek undressed AAA, inserted his penis into her vagina, and sucked her breasts. He thereafter inserted his penis into her anus. Then, he forced her to do the "69" position. AAA cried and told Peek she did not want to do it, but he pushed her head into his scrotum. Whenever she would shout, he would insert his tongue into her mouth. He would not let her out of the apartment. She was only able to escape when he fell asleep. AAA and her sister reported the incident to the police.³

Peek countered that it was AAA's sister with whom he was chatting on Facebook. She would send him nude photos of hers and AAA. They always asked him for money for birthdays, Christmas, or their bills. On the day they met in person, he denied ever sexually abusing AAA and posited that he fell asleep after eating.⁴ Peek was thus charged under two separate Informations

* In line with Amended Administrative Circular No. 83-2015, as mandated by Article 266(A) of the Revised Penal Code as amended by Republic Act No. 8353, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

¹ Draft *ponencia*, p. 3.

² CA Decision dated July 19, 2019, p. 3.

³ Draft *ponencia*, p. 3.

⁴ CA Decision dated July 19, 2019, pp. 6-8.

with sexual abuse under Article III, Section 5(b) of Republic Act No. 7610 and qualified trafficking in persons, viz.:⁵

CR-FMY Case No. 2017-1126
(Sexual Abuse)

That on or about January 31, 2017, at 9:30 in the evening, [at] [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design and by the use of force and intimidation, did then and there, willfully, unlawfully[,] and feloniously remove the shortpants, panty, brassiere and upper garment of the offended party, [AAA], a minor, 15 years of age, born on [REDACTED], 2001, and mash her breasts, touch her face, and other parts of her body, and had sexual intercourse with her by, inserting his penis into her vagina, against her will, which acts demeaned her dignity as a child and is detrimental to her development into a normal human being, to her damage and prejudice.

Contrary to law.

CR-FMY Case No. 2017-1127
(Qualified Trafficking in Persons)

That on January 31, 2017 and the dates prior thereto, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, for the purpose of sexual exploitation, taking advantage of the offended party's vulnerability by reason of her poverty, by giving her benefits in monetary form in order to achieve her consent, did then and there willfully, unlawfully and criminally receive and harbor [AAA], 15 years old, for the purpose of having sexual intercourse with her, to her great damage and prejudice.

Contrary to law, qualified by the circumstance of minority of the offended party.

I concur with the conviction of Peek for rape under Section 266-A(1)(a) in relation to Article 266-B of the Revised Penal Code. It was established to a moral certainty by AAA's clear and categorical testimony. I also agree that, following *People v. Tulagan*,⁶ the offense committed here is rape regardless whether the minor is below 12 years old or more.

I, however, respectfully diverge from the Majority's conviction of Peek for qualified trafficking in persons under Section 4(e) in relation to Section 6(a) and (d) of Republic Act No. 9208,⁷ as amended by Republic Act No. 10364,⁸ for purportedly receiving and harboring AAA for purposes of having sexual intercourse with her.

⁵ Draft *ponencia*, p. 2.

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

⁷ Otherwise known as the Anti-Trafficking in Persons Act of 2003.

⁸ Otherwise known as the Expanded Anti-Trafficking in Persons Act of 2012.

Section 3(a) of Republic Act No. 9208, as amended, defines trafficking in persons as follows:

SEC. 3. *Definition of Terms.* – As used in this Act:

- (a) *Trafficking in Persons* – refers to the 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.

Section 4(e), on the other hand, penalizes the act of maintaining or hiring a person to engage in prostitution as an act of trafficking in persons, viz.:

SEC. 4. *Acts of Trafficking in Persons.* – It shall be unlawful for any person, natural or juridical, to commit any of the following acts: . . .

- (e) To maintain or hire **a person to engage in prostitution or pornography**. . . . (Emphasis supplied)

In convicting Peek of violation of Section 4(e) of Republic Act No. 9208, as amended, the majority ordained that all the elements of qualified trafficking in persons were present, viz.: (a) AAA was only 15 years old when the crime was committed; (b) Peek received and harbored AAA in [REDACTED]; (c) the main purpose of which is for sexual exploitation.⁹ Citing the United Nations Office on Drugs and Crime Issue Paper, the *ponencia* defined “harboring” as the accommodation of a person at the point of departure, transit, or destination, before or at the place of exploitation, or it may refer to steps taken to conceal a person’s whereabouts. Meanwhile, “receipt” is the arrival of the person, the meeting of a person at an agreed place, or to gaining control over a person.¹⁰

With due respect, I cannot agree with the characterization of Peek’s acts as trafficking in persons. Section 4(e) of Republic Act No. 9208, as amended, under which Peek is being convicted, refers to maintaining or hiring a person *to engage in prostitution or pornography*. The Information alleged that Peek

⁹ *Draft ponencia*, p. 19.

¹⁰ *Id.* at 18.

received and harbored AAA *for sexual exploitation*. Section 3(c) and (f) define “prostitution” and “sexual exploitation” as follows:

SEC. 3. *Definition of Terms.* – As used in this Act: . . .

(c) *Prostitution* – refers to any act, transaction, scheme or design *involving the use of a person by another, for sexual intercourse or lascivious conduct* in exchange of money, profit or any other consideration.

. . . .

(f) *Sexual Exploitation* – refers to *participation by a person in prostitution*, pornography or the production of pornography, in exchange for money, profit or any other consideration where the participation is caused or facilitated by any means of intimidation or threat, use of force, or other forms of coercion, abduction, fraud, deception, debt bondage, abuse of power or of position or of legal process, taking advantage of the vulnerability of the person, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person; *or in sexual intercourse or lascivious conduct* caused or facilitated by any means as provided in this Act. (Emphasis supplied)

From these definitions as well as the description of prohibited acts under Republic Act No. 9208, trafficking in persons, in essence, contemplates an *illegal commercial transaction* involving three parties: *first*, the trafficked person; *second*, the customer who may be held liable under Section 11 of Republic Act No. 9208, as amended, for use of trafficked persons; and *third*, the person who transacts the trafficked individual to the customer, for which the former may be held liable under Section 4 of Republic Act No. 9208, as amended, for trafficking in persons.

I humbly opine that Peek may not be penalized for qualified trafficking in persons for the simple reason that he did not “traffic” AAA. The act of maintaining or hiring a person engaged in prostitution under Section 4(e) of Republic Act No. 9208, as amended, does not pertain to “hiring” the latter for one’s personal benefit. Rather, it is for purposes of “transacting” the person engaged in prostitution to third persons or those who “use” the trafficked person for sexual intercourse or lascivious conduct as contemplated by the definition of “prostitution.” Here, however, Peek neither “hired” nor “maintained” AAA for a third party. Rather, Peek himself exploited AAA. In sum, the *second element* for qualified trafficking in persons is not present, i.e., Peek did not commit any of the acts of trafficking under the law, hence, he cannot be convicted of qualified trafficking in persons.

Thus, in *People v. XXX and YYY*,¹¹ the Court convicted the accused therein of violations of Section 4(e) of Republic Act No. 9208 for making their own children, who were under their custody, perform acts of cybersex for different foreign customers in exchange for pecuniary consideration.

¹¹ 835 Phil. 1083 (2018) [Per J. Perlas-Bernabe, Second Division].

In *People v. Arraz*,¹² the accused was convicted of qualified trafficking in persons in violation of Section 4(a) and (e) of Republic Act No. 9208, for compelling his domestic helper to strip and commit sexual acts via the internet for foreign customers.

Finally, in *People v. XXX*,¹³ XXX was convicted both of rape and qualified trafficking in persons under Section 4(e) of Republic Act No. 9208 committed against 14-year-old AAA. XXX himself had carnal knowledge of AAA through force for which he was found guilty of Rape. On the other hand, he was also convicted of qualified trafficking in persons for making AAA render sexual services to a male customer in exchange for PHP 2,000.00.

These cases illustrate a common denominator: the accused who was convicted of qualified trafficking in persons under Section 4(e) acted as the pimp, not the customer.

Indeed, if Congress intended to penalize those who engage the services of trafficked persons under Section 4(e), there would have been no reason to separately penalize the use of trafficked persons under Section 11 for such would have already been subsumed by Section 4(e). Basic is the rule in statutory construction that “[t]he whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.”¹⁴

During deliberations, my esteemed and learned colleague, Associate Justice Japar B. Dimaampao (Justice Dimaampao), voiced his agreement to the Majority, noting that the law does not explicitly require the presence of the “trafficker” or “pimp” for trafficking under Section 4 to exist. It was submitted that trafficking, under the expanded definition proffered by Republic Act No. 10364, 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.¹⁵

I agree with this erudite observation. To be clear, whether receiving or harboring a trafficked person for the purposes enumerated by the law constitutes trafficking in person is not the issue here. Rather, the ambiguity that comes to fore is whether the individual who sexually exploited the victim

¹² 925 Phil. 462 (2022) [Per J. M.V. Lopez, Second Division].

¹³ 921 Phil. 758 (2022) [Per J. Hernando, Second Division].

¹⁴ *Eizmendi, Jr. et al. v. Ramos, Jr.*, 839 Phil. 902 (2019) [Per C.J. Peralta, Third Division].

¹⁵ Reflections of Justice Dimaampao, p. 5.

through any of the means under Republic Act No. 9208, as amended, may be held liable for trafficking in persons.

As discussed, I submit that the answer is no.

Instead of qualified trafficking in persons under Section 4(e) of Republic Act No. 9208, as amended, I humbly propose to convict Peek of use of trafficked persons under Section 11 of the same law, viz.:

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:

(a) *Prision Correccional* in its maximum period to *prision mayor* or six (6) years to twelve (12) years imprisonment and a fine of not less than Fifty thousand pesos (P50,000.00) but not more than One hundred thousand pesos (P100,000.00): *Provided, however*, That the following acts shall be exempted thereto:

(1) **If an offense under paragraph (a) involves sexual intercourse or lascivious conduct with a child, the penalty shall be *reclusion temporal* in its medium period to *reclusion perpetua* or seventeen (17) years to forty (40) years imprisonment and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00); . . . (Emphasis supplied)**

Doing so would not violate Peek's constitutional right to be informed of the nature and cause of the accusation against him for the Information adequately set forth the facts constituting the charge. Indeed, as the Court taught in *People v. Solar*,¹⁶ the accused's right to be informed of the nature and charges against him or her is not violated where the Information clearly alleges the facts constituting the offense regardless whether the provision of law cited is incorrect:

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he [or she] stands charged. It in no way aids him [or her] in a defense on the merits. . . . That to which his [or her] attention should be directed, and in which he [or she], above all things else, should be most interested, are the facts alleged. **The real question is not did he [or she] commit a crime given in the law some technical and specific name, but did he [or she] perform the acts alleged in the body of the information in the manner therein set forth.** If he [or she] did, it is of no consequence to him [or her], either as a matter of procedure or of substantive right, how the law

¹⁶ 858 Phil. 884 (2019) [Per J. Caguioa, *En Banc*], citing *United States v. Lim San*, 017 Phil 273 (1910) [Per J. Moreland, First Division].

denominates the crime which those acts constitute. **The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. . . . If he [or she] performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named.** (Emphasis supplied)

Notably, the Information here, albeit denominated as “Qualified Trafficking in Persons” alleged acts constituting the use of trafficked persons, i.e., Peek, taking advantage of the minor victim’s vulnerability by reason of her poverty, had sexual intercourse with her in exchange for monetary benefits, viz.:

CR-FMY Case No. 2017-1127
(Qualified Trafficking in Persons)

That on January 31, 2017 and the dates prior thereto, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, for the purpose of sexual exploitation, taking advantage of the offended party’s vulnerability by reason of her poverty, by giving her benefits in monetary form in order to achieve her consent, did then and there willfully, unlawfully and criminally receive and harbor [AAA], fifteen (15) years old, for the purpose of having sexual intercourse with her, to her great damage and prejudice.

Contrary to law, qualified by the circumstance of minority of the offended party.

Here, the positive testimony of AAA established the foregoing allegations in the Information: (a) she was only 15 years old, hence, a child, at the time of the incident; (b) Peek paid her PHP 10,000.00, so she agreed to meet up with him during which they also talked about having sexual intercourse; and (c) though she eventually changed her mind and no longer wished to be intimate with Peek, he fulfilled his carnal desires by forcing her to have sex with him and to commit other lascivious acts. Clearly, Peek is guilty of use of trafficked persons. Under Section 11(a)(1) of Republic Act No. 9208, as amended, when the use of trafficked persons is committed against a child, i.e., a person below 18 years old,¹⁷ the penalty shall be *reclusion temporal* in its medium period to *reclusion perpetua* or 17 years to 40 years imprisonment and a fine of at least PHP 500,000.00 to PHP 1,000,000.00.

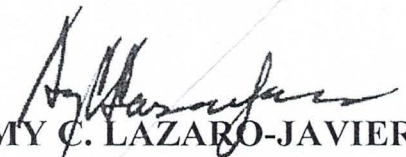
It was posited, however, that considering that there was no third-party trafficker who hired AAA for Peek, use of trafficked persons could not have been committed.¹⁸ The existence or identity of the trafficker, however, is not relevant in use of trafficked persons so long as all the elements of the offense

¹⁷ Republic Act No. 9208, as amended, Section 3(b).

¹⁸ Reflections of Justice Japar B. Dimaampao, p. 5.


have been established, *as here*. As earlier discussed, it was established that Peek *bought or engaged the services* of AAA, a minor, for sexual exploitation. As the subject of such illegal transaction, AAA is clearly a trafficked person.

Accordingly, I vote to sustain Peek's conviction for rape but suggest that instead of qualified trafficking in persons, he should be convicted of use of trafficked persons under Section 11(a) of Republic Act No. 9208, as amended.



AMY C. LAZARO-JAVIER
Associate Justice

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