



Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE
PHILIPPINES,

Plaintiff-appellee,

-versus-

YYY,

Accused-appellant.

G.R. No. 262941

Present:

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,*
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,*
DIMAAMPAO,
MARQUEZ,
KHO, Jr.,* and,
SINGH,* JJ.

Promulgated:

February 20, 2024

X-----X

DECISION

M. LOPEZ, J.:

The repeal of a criminal act by its reenactment, even without a saving clause, would not destroy criminal liability.¹ The doctrine obtains chief

* On official business.

¹ See *United States v. Cuna*, 12 Phil. 241, 245 (1908) [Per J. Carson, *En Banc*].

consideration in this appeal assailing the conviction of the accused-appellant for child pornography with the use of a computer system.

ANTECEDENTS

On July 13, 2016, the United States of America (USA) Federal Bureau of Investigation (FBI) tracked the electronic mails (emails) of YYY² and obtained nude photos of minor girls being sold to online male customers. The FBI traced the coordinates of the emails that led to the northern part of Angeles City, Pampanga, Philippines. A male FBI undercover agent had an online chat with YYY who gave him the payment details and access to sexual webcam shows and indecent photos of minor girls. YYY proposed to the undercover agent a sexual meet up and bragged that she offers child pornography to foreigners. On July 27, 2016, the Legal Attaché of the US Embassy sent an Unclassified/Law Enforcement Sensitive Letter to the Philippine National Police (PNP) Headquarters in Camp Crame, Quezon City concerning YYY's illegal activities.³

Immediately, the acting chief of the PNP Anti-Trafficking in Persons Division Colonel Villamor Tuliao (Col. Tuliao) directed Police Senior Inspector Mary Gallano (PSI Gallano) to verify the report. PSI Gallano looked for the social media accounts of YYY and learned that she is selling her house in Mabalacat City, Pampanga. On August 6, 2016, PSI Gallano together with Police Senior Inspector Jigs Madato (PSI Madato) conducted a surveillance, proceeded to YYY's house, and posed as buyers. YYY introduced herself as owner of the property and invited PSI Gallano and PSI Madato for a house tour where they saw minor girls, a computer set with webcam, a vibrator, and children's panties. PSI Gallano and PSI Madato took pictures of the premises and confirmed that the room, curtain, and fixtures matched the photos from the FBI.⁴

On August 11, 2016, Col. Tuliao applied for a search warrant before the Regional Trial Court (RTC). Executive Judge Ramon Pamular (Judge Pamular) interviewed Col. Tuliao and PSI Gallano and examined the supporting documents.⁵ On even date, Judge Pamular issued a warrant authorizing the law enforcers to search the house of YYY in Mabalacat City, Pampanga for items related to child pornography: (a) computer sets, including a silver monitor encased in a pink casing connected to a black CPU; (b) laptops; (c) modems/routers connected either by cable or connected remotely; (d) computer speakers; (e) other communication/electronic devices connected

² In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 9262 (2004), Anti-Violence Against Women and Their Children Act of 2004, the names of the private offended parties, along with all other person circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

³ *Rollo*, p. 12.

⁴ *Id.* at 13, 40. PSI Madato is referred to as "PSI Magdato" in the CA decision.

⁵ *Id.* at 13.

or remote; (f) telephone sets, cellular/mobile phones, including an iPhone 6 plus; (g) Central Processing Units (CPUs); (h) digital storage devices such as SD cards, thumb drives, and external drives or webcams; (i) memory cards; (j) transaction receipts from money transfer providers such as Western Union, Cebuana Lhuiller, Moneygram, Xoom, and others; (k) sex toys; (l) pornographic pictures and images; (m) birth control pills; (n) lingerie or underwear; (o) condoms and lubricants; (p) cabinets; and (q) black Toyota Vios with a plate number ZLE 632.⁶

On August 16, 2016, at around 6:00 a.m., the police officers and barangay officials proceeded to YYY's house and implemented the search warrant.⁷ The operatives composed of Col. Tuliao, PSI Gallano, PSI Madato and evidence custodian Senior Police Officer 1 Edgard Siazon (SPO1 Siazon) retrieved and marked the following items: (a) one computer set (CPU, HP monitor, keyboard, AVR, lampshade, cord, wire, and speaker) marked as ECS "H," ECS "B," ECS "G," ECS "K," ECS "I," ECS "L," ECS "J," and ECS "H," respectively; (b) one set of wifi modem marked as ECS "A;" (c) two wallets without money and assorted receipts marked as ECS "C;" (d) one set of vibrator marked as ECS "O;" (e) assorted receipts marked as ECS "E;" (f) Hello Kitty poster marked as ECS "M;" (g) one unit of Samsung cellphone, official receipt of a vehicle, two compact discs, empty pills, and checks all marked as ECS "D;" and (h) one clear book marked as ECS "F." SPO1 Siazon inventoried the confiscated items in the presence of YYY, her live-in partner, and the barangay officials who attested that the search was made in a lawful, peaceful, and orderly manner. The authorities also rescued three minor children, namely, AAA, BBB, and CCC and handed them to the Department of Social Welfare and Development (DSWD).⁸

On August 22, 2016, the police officers returned the search warrant and presented the seized items to the RTC which, in turn, ordered the PNP Anti-Cybercrime Division to conduct a digital forensic examination. On September 15, 2016, the operatives interviewed the rescued minors. AAA narrated that she was left under the custody of her aunt YYY after her parents separated. YYY ordered AAA to enter a room, remove her clothes, and stand naked in front of a computer monitor with a webcam where her private parts were exposed to an unidentified old man. YYY likewise took pictures and videos of AAA in two separate occasions where she was made to touch her genitalia in front of a computer screen. YYY gave AAA money and brought her to the mall after each incident. On September 20, 2016, digital forensic examiner Senior Police Officer 2 Jocar Samenian (SPO2 Samenian) extracted from the seized computer set and cellphone the nude photos and videos of AAA who was touching her genitalia and waving at the camera. SPO2 Samenian also obtained a conversation between YYY and a foreign customer about the sale

⁶ *Id.* at 13–14.

⁷ *Id.* at 13–15.

⁸ *Id.* at 14–15, 37–39.

of AAA's nude pictures and videos.⁹

Accordingly, the operatives charged YYY with violation of Sections 4(a), (b), and (c) of Republic Act No. 9775,¹⁰ in relation to Section 16 of the same law and Section 4(c)(2) of Republic Act No. 10175¹¹ before the RTC docketed as Criminal Case No. R-ANG-18-01897-CR.¹² The Information reads:

That on or about August 2016 or sometime prior hereto, in the municipality of [REDACTED], Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly use, persuade, induce and order her own niece, minor AAA (6 years old), to get naked and to show her breast and vagina in front of a computer with a male customer, for the purpose of prostitution, pornography and other forms of sexual exploitation for money, profit or any other consideration, to the damage and prejudice of said minor.

That the offense was attended by the qualifying circumstances of minority, complainant AAA, being 6 years of age, that it was committed through the use of a computer system and that the offender is a guardian or a person who exercises authority over the trafficked person the above-named accused being the minor's aunt.

CONTRARY TO LAW.¹³

YYY pleaded not guilty and denied the accusation. YYY claimed that police officers and a DSWD social worker barged in her house on August 16, 2016 and forcibly took the three children from her custody. Thereafter, the operatives fabricated charges of child pornography and cybercrime offenses against her.¹⁴

On July 9, 2020, the RTC convicted YYY of child pornography qualified with the use of a computer system. The RTC gave credence to the veracity of AAA's testimony and the admissibility of seized contrabands, and rejected YYY's defense of denial:¹⁵

Indeed, accused YYY ordered AAA to take off her clothes and stand naked in front of the computer. Then, the accused demanded AAA to show her breasts in front of the computer. On the computer monitor, AAA saw an old man watching. The old man was speaking in English[.]

⁹ *Id.* at 15–16.

¹⁰ Republic Act No. 9775 (2009), Anti-Child Pornography Act of 2009.

¹¹ Republic Act No. 10175 (2012), Cybercrime Prevention Act of 2012.

¹² *Rollo*, pp. 10–11, 31.

¹³ *Id.*

¹⁴ *Id.* at 16, 59–61.

¹⁵ *Id.* at 31–79. The July 9, 2020 Decision in Criminal Case No. R-ANG-18-01897-CR was penned by Presiding Judge Maria Angelica T. Paras-Quiambae of Branch [REDACTED], Regional Trial Court, [REDACTED] City.

Aside from making AAA stand naked and making her show her breasts and vagina, accused YYY took a video of her. When AAA was sitting down, the accused instructed her to touch her vagina. Accused YYY took a video of AAA while she was instructing her to touch her vagina. Accused YYY made the video of AAA touching her vagina twice[.]

....

Child pornography is a detestable act that every society must seek to eliminate. The offenses involve sexual gratification at the expense of children, the supposed future shapers of our country. These offenses become worse when committed by parents, guardians and custodians of the victims, who are annihilating their very own blood[.]

In the face of the foregoing, there is moral certainty of the guilt of the accused for Violation of Sections 4(a), (b) and (c) of R.A. No. 9775 or the Anti-Child Pornography Act of 2009[.]

....

Child pornography is a form of child sexual exploitation. . . The production of child pornography creates a permanent record of a child's sexual abuse. When these images are placed on the internet and disseminated online, the victimization of the children continues in perpetuity[.] This often creates lasting psychological damage to the shield, including disruptions in sexual development, self-image, and developing trusting relationships with others in the future.¹⁶

The *fallo* of the decision reads:

WHEREFORE, premises considered, the court finds accused YYY GUILTY BEYOND REASONABLE DOUBT of the offense of Violation of Section[s] 4(a), (b) and (c) in relation to Section 16 of Republic Act (R.A.) [N]o. 9775 (otherwise known as the Anti-Child Pornography Act of 2009) and Section 4 (c) (2) of R.A. No. 10175 (otherwise known as the Cybercrime Prevention Act of 2012) embodied in the Information dated September 13, 2017.

Accordingly, accused YYY is hereby sentenced: (1) TO SUFFER the penalty of reclusion perpetua; and (2) TO PAY a fine of [2] million pesos (PHP 2,000,000.00).

Furthermore, accused YYY is hereby ordered to pay minor private complainant AAA moral damages in the amount of Fifty thousand pesos (PHP 50,000.00) and exemplary damages in the amount of One hundred thousand pesos (PHP 100,000.00).

No costs.

SO ORDERED.¹⁷

¹⁶ *Id.* at 72–79.

¹⁷ *Id.* at 79.

YYY elevated the case to the Court of Appeals (CA) docketed as CA-G.R. CR-HC No. 14444. YYY reiterated her defense of denial and maintained that the prosecution failed to prove the elements of child pornography. Moreover, YYY argued that the Information was defective due to uncertainty regarding the date of commission of the crime. YYY added that the seized items were inadmissible in evidence because the police officers illegally secured and enforced the search warrant.¹⁸

On February 28, 2022, the CA affirmed the RTC's decision that YYY is guilty of child pornography with the use of a computer system. The CA likewise ruled that the date of commission of crime is not required to be alleged with precision. Lastly, the CA held that the authorities validly obtained and implemented the search warrant:¹⁹

After a review of the evidence. . . , We affirm the appellant's conviction for the crime of Child Pornography. . . . Gauged from the confluence of the evidence presented by the prosecution, it is not difficult to conclude that appellant is engaged in the business of child pornography involving minor girls, and for which reason, she has violated Section[s] 4 (a), (b) and (c) of RA No. 9775.

Concomitantly, We afford credibility and probative value to the testimonies of the prosecution witnesses, especially that of the minor victim. It bears emphasizing that when the issue is one of credibility of witnesses, appellate courts would generally not disturb the findings of the trial court, since the latter is in a better position to decide the matter, for it heard the witnesses themselves and observed their deportment and manner of testifying during trial. . . **In this instance, AAA gave a clear narration of the subject incident, and was very responsive to the questions propounded to her, despite her minor age.** Certainly, said child is not expected to recall every detail of her traumatic experience at the hands of her very own aunt, for what is important is that she was able to establish appellant's complicity to the crime charged.

....

On the claim that the Information was defective, let it be stressed that the exact date of the commission of the crime is not a requisite to establish appellant YYY's culpability for Child Pornography, as what is only needed to be shown is the approximate date when she committed any of the acts enumerated under Section 4 of RA No. 9775. . . **In this case, the mere fact that the Information alleged that the crime was committed "on or about August 2016 or sometime prior thereto" is inconsequential, and did not deprive YYY of her right to prepare for her defense.** In any event, even

¹⁸ CA rollo, pp. 34-46.

¹⁹ Rollo, pp. 9-28. The February 28, 2022 Decision in CA-G.R. CR-HC No. 14444 was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Gabriel T. Robeniol and Angelene Mary W. Quimpo-Sale of the Eighth Division, Court of Appeals, Manila.

assuming, for the sake of argument, that the Information was defective, YYY is deemed to have waived any defect or insufficiency in the Information by not interposing the aforesaid issue before arraignment, and actually entering a plea.

....

Neither do We agree with appellant's contention that subject search warrant was illegally secured and enforced by the police operatives.

....

In this instance, it is indubitable that before issuing the subject search warrant, Judge Ramon Pamular was satisfied that a probable cause exist to hold appellant YYY liable for child pornography[,] and that the items sought to be seized which she used in perpetrating the crime were inside her house.

... Notably, Judge Pamular personally conducted a searching interview on the applicant, Col. Villamor Tuliao, and his witness, PSI Mary Gallano, and considered all the documentary evidence submitted by him. In turn, the testimonies given by Col. Tuliao and PSI Gallano were based on their personal knowledge, taking into account that PSI Gallano and PSI Jigs Magdato previously conducted a surveillance operation inside appellant's house where they were able to confirm and validate the FBI's report that she was engaged in the business of child pornography[.] In addition, averse to appellant's assertion, the aforesaid search warrant particularly described the place to be searched as well as the items to be seized. A perusal of the search warrant showed that it provided the exact address of appellant's house, and even itemized in detail the pieces of evidence to be confiscated thereat.²⁰

The *fallo* of the Decision reads:

WHEREFORE, premises considered, the Decision dated 09 July 2020 of the Regional Trial Court, Branch 59, Angeles City, Pampanga is **AFFIRMED**.

SO ORDERED.²¹ (Emphasis supplied)

Hence, this appeal. The parties opted not to file supplemental briefs considering that all issues have already been exhaustively discussed in their pleadings before the CA.²² YYY faults the CA and the RTC's appreciation of the victim's testimony and insists the insufficiency of the allegation in the information and inadmissibility of the confiscated items.

²⁰ *Id.* at 19–25

²¹ *Id.* at 27–28.

²² *Id.* at 82–83, 89–91.

J

Meantime, the Congress passed Republic Act No. 11930,²³ which expressly repealed the entire Republic Act No. 9775 or the Anti-Child Pornography Act of 2009 and Section 4(c)(1) of Republic Act No. 10175 or the Cybercrime Prevention Act of 2012. This supervening event impels the Court to discuss the legal consequences of the repeal of Republic Act No. 9775 relative to the criminal liability of the accused.

RULING

The repeal with reenactment in Republic Act No. 11930 of similar prohibited acts in Republic Act No. 9775 does not extinguish the criminal liability of the accused

As a rule, the explicit, categorical, definite, and absolute repeal of a penal law deprives the courts of their authority to punish an accused charged with a violation of the old law prior to its repeal. The unqualified repeal of a penal law renders legal what had been previously declared as illegal. Differently stated, the offense no longer exists as if the person who committed it never did so.²⁴ However, the rule is subject to exceptions. One is the inclusion of a saving clause in the repealing law which provides that the repeal shall have no effect on pending actions. Another exception is where the repealing law reenacts the former statute and punishes the act previously penalized under the old law. In such instance, the act committed before the reenactment continues to be an offense in the statute books and pending cases are not affected, regardless of whether the new penalty to be imposed is more favorable to the accused,²⁵ thus:

Where a clause or provision or a statute for that matter is simultaneously repealed and reenacted, there is no effect, upon the rights and liabilities which have accrued under the original statute, since the reenactment, in effect “neutralizes” the repeal and continues the law in force without interruption. The rule applies to penal laws and statutes with penal provisions. Thus, the repeal of a penal law or provision, under which a person is charged with violation thereof and its simultaneous reenactment penalizing the same act done by him under the old law, will neither preclude the accused’s prosecution nor deprive the court of its jurisdiction to hear and try his case. **As pointed out earlier,**

²³ Republic Act No. 11930 (2022), Anti-Online Sexual Abuse or Exploitation of Children (OSAEC) and Anti-Child Sexual Abuse or Exploitation Materials (CSAEM) Act.

²⁴ *Tuates v. Bersamin*, 439 Phil. 289, 295 (2002) [Per J. Austria-Martinez, Second Division].

²⁵ *Benedicto v. Court of Appeals*, 416 Phil. 722 (2001) [Per J. Quisumbing, Second Division]. See also *People v. Concepcion*, 44 Phil. 126, 132 (1922) [Per J. Malcolm, *En Banc*] citing *Ong Chang Wing and Kwong Fok v. United States*, 40 Phil. 1046 (1910), 218 US 272 (1910), and *People v. Concepcion*, 43 Phil. 653 (1922) [Per J. Johns, *En Banc*].

the act penalized before the reenactment continues to remain an offense and pending cases are unaffected.²⁶ (Emphasis supplied)

In this case, YYY allegedly committed the crime charged in August 2016 when the prevailing law is Republic Act No. 9775 or the Anti-Child Pornography Act of 2009. On July 30, 2022, the Congress enacted Republic Act No. 11930 or the Anti-Online Sexual Abuse or Exploitation of Children (OSAEC) and Anti-Child Sexual Abuse or Exploitation Materials (CSAEM) Act. Notably, Republic Act No. 11930 expressly repealed the entire Republic Act No. 9775²⁷ but at the same reenacted the unlawful acts defined as child pornography. Republic Act No. 11930 even expanded the scope of prohibited acts and made it a declared policy of the State to protect every child from all forms of abuse or exploitation, *whether committed with or without the use of information and communications technology (ICT)*, such as when the abuse or exploitation involves: (1) performances and materials through *online or offline means or a combination of both*; and (2) the inducement or coercion of a child to engage or be involved in child sexual abuse or exploitation materials through whatever means. A comparison of the unlawful acts defined in Republic Act No. 9775 and Republic Act No. 11930 does not hint on any intent to decriminalize child pornography:

Section 4 of Republic Act 9775

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;
- (b) To produce, direct, manufacture or create any form of child pornography;
- (c) To publish, offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;
- (d) To possess any form of child pornography with the intent to sell, distribute, publish or broadcast:

Section 4 of Republic Act 11930

SECTION 4. *Unlawful or Prohibited Acts.* — Regardless of the consent of the child, it shall be unlawful for any person to commit the following acts through online or offline means or a combination of both:

- (a) To hire, employ, use, persuade, induce, extort, engage, or coerce a child to perform or participate in whatever way in the creation or production of any form of OSAEC and CSAEM;
- (b) To produce, direct, manufacture, facilitate, or create any form of CSAEM, or participate in the production, direction, manufacture, facilitation or creation of the same;
- (c) To offer, sell, distribute, advertise, promote, export, or import, by any means, any form of CSAEM;

²⁶ *Id.* at 747.

²⁷ Republic Act No. 11930 (2022), sec. 44, Anti-Online Sexual Abuse or Exploitation of Children (OSAEC) and Anti-Child Sexual Abuse or Exploitation Materials (CSAEM) Act, provides: SEC. 44. *Repealing Clause.*— Republic Act No. 9775 and Section 4 (c) (1) of Republic Act No. 10175, otherwise known as the “Cybercrime Prevention Act of 2012,” are hereby repealed.

Provided, That possession of three (3) or more articles of child pornography of the same form shall be *prima facie* evidence of the intent to sell, distribute, publish or broadcast;

(e) To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts such as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;

(f) For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;

(g) For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;

(h) To engage in the luring or grooming of a child;

(i) To engage in pandering of any form of child pornography;

(j) To willfully access any form of child pornography;

(k) To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and

(l) To possess any form of child pornography.

(d) To knowingly publish, transmit and broadcast, by any means, any form of CSAEM;

(e) To permit or influence the child to engage, participate or assist in any form of CSAEM;

(f) To produce, direct, create, hire, employ or pay a facilitator to stream or livestream acts of child sexual abuse or exploitation;

(g) To stream or live-stream acts of, or any form of, child sexual abuse and exploitation;

(h) To recruit, transport, transfer, harbor, provide, or receive a child or to induce or influence the same, for the purpose of violating this Act;

(i) To introduce or match a child to a foreign national or to any person for the purpose of committing any of the offenses under this Act;

(j) For film distributors, theaters and ICT services by themselves or in cooperation with other entities, to distribute any form of CSAEM or to facilitate the commission of any of the offenses under this Act;

(k) To knowingly benefit from, financial or otherwise, the commission of any of the offenses of this Act;

(l) To provide a venue for the commission of prohibited acts under this section such as dens, private rooms, cubicles, cinemas, houses, private homes, or other establishments;

(m) To engage in the luring or grooming of a child: *Provided*, That grooming taking place offline as a prelude to violations under this Act shall also be penalized;

(n) To sexualize children by presenting them as objects of sexual fantasy, or making them conversational subjects of sexual fantasies, in any online or digital platform;

(o) To engage in pandering as defined under this Act;

(p) To willfully subscribe, join, donate to, or support an internet site that hosts OSAEC or the streaming or live-streaming of child sexual abuse and exploitation;

(q) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means of any brochure, flyer, or any material that promotes OSAEC and child sexual abuse or exploitation;

(r) To possess any form of CSAEM: *Provided*, That possession of three (3) or more CSAEMs is *prima facie* evidence of the intent to sell, distribute, publish or broadcast;

(s) To willfully access any form of CSAEM; and

(t) To conspire to commit any of the prohibited acts stated in this section:

Provided, That the investigation or prosecution of offenses under this Act shall be without prejudice to appropriate investigation and prosecution mechanisms under Republic Act No. 9208, otherwise known as the "Anti-Trafficking in Persons Act of 2003," as amended, and other related laws.

Obviously, even without a saving clause, the reenactment in Republic Act No. 11930 of prohibited acts considered as child pornography manifests the legislative intent to reserve the right of the State to prosecute and punish offenses in the repealed Republic Act No. 9775. The reenactment in Republic Act No. 11930 neutralizes the repeal and continues the criminal liability for transgressions of Republic Act No. 9775 without interruption. Corollarily, the courts retain the jurisdiction to decide pending criminal cases involving violations of Republic Act No. 9775 committed prior to its repeal. As such, the Court now determines the criminal liability of accused-appellant for child pornography with the use of a computer system.

The prosecution established all the elements of child pornography defined under Sections 4(a), (b), and (c), in relation to Section 16 of Republic Act No. 9775

The State guarantees the fundamental rights of children from all forms of neglect, cruelty, and other conditions prejudicial to their development.²⁸ Specifically, Republic Act No. 9775 protects children from all forms of

²⁸ Republic Act No. 9775 (2009), sec. 2, Anti-Child Pornography Act of 2009.

exploitation and abuse such as *child pornography*, which refers to “any representation, whether visual, audio or written combination thereof, by electronic, mechanical, digital, optical, magnetic, or any other means, of a child engaged or involved in real or simulated explicit sexual activities.”²⁹ The law defines a “*child*” as a person below 18 years of age or over, but is unable to fully take care of himself/herself or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.³⁰ Also, Sections 4(a), (b), and (c) of Republic Act No. 9775 made it unlawful for any person: “(a) [t]o hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography; (b) [t]o produce, direct, manufacture or create any form of child pornography; [or]; (c) [t]o publish, offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography.”

Thus, the crime of child pornography under Sections 4(a), (b), and (c) of Republic Act No. 9775 has the following elements: (1) the victim is a child; (2) the offender either: (i) hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography; or (ii) produce, direct, manufacture or create any form of child pornography; or (iii) publish, offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography; and (3) the child’s sexual activities were represented through visual, audio, or written combination, by electronic, mechanical, digital, optical, magnetic, or any other means.³¹ Here, the prosecution proved all these elements beyond reasonable doubt.

Foremost, the prosecution established AAA’s minority with the presentation of her original certificate of live birth stating that she was born on November 1, 2009. Thus, AAA was only 6 years old at the time of the incident in August 2016, and is considered a child within the protective mantle of the law.³² AAA also positively identified her aunt accused-appellant as the person who exploited her for pornography. AAA vividly recounted how accused-appellant ordered her to remove her clothes and stand naked while touching her genitalia in front of a computer exposing her private parts to male customers watching online:

Q: In question no. 21 you were asked, “Anong ginagawa mo sa loob ng kwarto?” And the answer given was “Nakahubad din po”, do you remember having said this?

A: Yes, ma’am.

Q: You said you were naked, who asked you to go inside the room?

²⁹ Republic Act No. 9775 (2009), sec. 3(b).

³⁰ Republic Act No. 9775 (2009), sec. 3(a).

³¹ See *Cadajas v. People*, G.R. No. 247348, November 16, 2021 [Per J. J. Lopez, *En Banc*].

³² *Rollo*, p. 67.

A: Tita YYY

Q: Who asked you to take off your clothes?

A: Tita YYY

....

Q: You said a while ago that Tita YYY was the one who asked you to take off your clothes and she made you do that in front of the computer?

A: Yes, ma'am.

Q: So she asked you to do that in front of the computer, what would you see in front of the computer at that time?

A: A man.

Q: Can you please tell us if this man was old or young?

A: Old.

Q: This man whom you saw, was he a foreigner or a Filipino?

A: A foreigner.

Q: Did he introduce himself to you?

A: No, ma'am.

....

Q: In question no. 23 of the Sinumpaang Salaysay you were asked, **"Pagkatapos hinubad ang damit mo, ano ang sumunod na nagyari,"** and the answer was **"Pinatayo ako ni Tita YYY sa harap ng computer. Tapos pinakita ang dede saka pepe ko sa computer,"** do you confirm this?

A: Yes, ma'am.³³ (Emphasis supplied)

Clearly, YYY committed the prohibited acts in Republic Act No. 9775 when she persuaded, induced, and coerced her niece AAA to perform in the creation of nude photos and videos, and when she subsequently offered to sell these child pornographic materials. Yet, YYY assailed her conviction on the ground that the testimony of AAA is incredible. On this point, we stress that the CA and the RTC's assessment on the credibility of the prosecution witness and the veracity of her testimony are given the highest degree of respect,³⁴ especially if there is no fact or circumstance of weight or substance that was overlooked, misunderstood or misapplied, which could affect the result of the case.³⁵ Moreover, the trial court had the best opportunity to determine the credibility of the prosecution witness, having evaluated her emotional state, reactions, and overall demeanor in open court.³⁶ As such, YYY's uncorroborated denial cannot prevail over the positive declaration of AAA. This negative defense is self-serving and undeserving of weight in law absent

³³ *Id.* at 70–72.

³⁴ *People v. Matignas*, 428 Phil. 834, 868–869 (2002) [Per J. Panganiban, *En Banc*].

³⁵ *People v. Orosco*, 757 Phil. 299, 310 (2015) [Per J. Villarama, Jr., Third Division], citing *People v. De Leon*, 608 Phil. 701, 721 (2009) [Per J. Peralta, Third Division].

³⁶ *People v. Gerola*, 813 Phil. 1055, 1064 (2017) [Per J. Caguioa, First Division].

✓

clear and convincing proof.³⁷ YYY likewise failed to prove any ill motive on the part of AAA to falsely testify against her. It is even unthinkable for AAA to accuse her own relative, and expose herself, along with her family, to shame, pity or even ridicule for a serious crime had she not been aggrieved.³⁸ The fact that the prosecution was uncertain as to the actual date the crime was committed does not cast doubt on AAA's credibility. The exact date of the crime has no substantial bearing on its commission. Neither date nor time of commission an essential element of the crime of child pornography. What is decisive is that the commission of the crime has been sufficiently proven. It is not necessary to allege the date in the information with ultimate precision. Besides, a victim of tender age is not expected to recall the exact date and time when her traumatic experience took place.³⁹

More telling is that the result of digital forensic examination supported the finding of child pornography. SPO2 Samenian retrieved from the seized computer set and cellphone the multiple naked pictures and explicit video clips of AAA. SPO2 Samenian also recovered an online conversation between accused-appellant and a foreign customer about the sale of AAA's nude photos and videos. In contrast, accused-appellant's bare assertion that the seized items were inadmissible in evidence because the police officers illegally secured and enforced the search warrant is unsophisticated.

The Revised Rules of Criminal Procedure provides that a search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he or she may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.⁴⁰ The requisites of a valid search warrant are: (1) probable cause is present; (2) the presence of probable cause is determined personally by the judge; (3) the complainant and the witnesses he or she may produce are personally examined by the judge, in writing and under oath or affirmation; (4) the applicant and the witnesses testify on facts personally known to them; and (5) the warrant specifically describes the person and place to be searched and the things to be seized.⁴¹ The probable cause for a valid search warrant has been defined as such "facts and circumstances which would lead a reasonably discreet and prudent [individual] to believe that an offense has been committed and that items, articles or objects sought in connection with the said offense or subject to seizure and, destruction by law is in the place to be searched."⁴² It must be shown by the best evidence that could be obtained under the circumstances. It

³⁷ *People v. Togahan*, 551 Phil. 997, 1013-1014 (2007) [Per J. Tinga, Second Division].

³⁸ *People v. Canoy*, 459 Phil. 933, 944 (2003) [Per Curiam, *En Banc*].

³⁹ *People v. ZZZ*, G.R. No. 232329, April 28, 2021 [Per J. Hernandez, Third Division], and *People v. Nuyok*, 759 Phil. 437, 448 (2015) [Per J. Bersamin, First Division].

⁴⁰ A.M. No. 00-5-03-SC, Rule 126, sec. 4.

⁴¹ *See Republic v. Sandiganbayan*, 325 Phil. 762, 821-822 (1996) [Per J. Francisco, Third Division].

⁴² *People v. Sapla*, 874 Phil. 240, 262 (2020) [Per J. Caguioa, *En Banc*].

demands more than bare suspicion and requires less than evidence which would justify conviction.

Here, Judge Pamular personally conducted an independent and probing interview on applicant Col. Tuliao and witness PSI Gallano. Judge Pamular asked Col. Tuliao and PSI Gallano with exhaustive questions and did not merely rely on their affidavits. Judge Pamular examined the totality of circumstances and was satisfied that probable cause exists about YYY's involvement in the business of child pornography. Similarly, Col. Tuliao and PSI Gallano testified on facts within their personal knowledge showing that the described contrabands related to the offense are to be found in YYY's house. Col. Tuliao and PSI Gallano submitted the FBI report, results of the surveillance operation, and location map which Judge Palomar considered in determining the specific items and particular place to be searched. More importantly, the police officers implemented the search warrant in a lawful, peaceful, and orderly manner. As the CA and the RTC aptly observed, the operatives introduced themselves, showed the search warrant to YYY, and duly apprised her of the purpose of their presence. The authorities started the search in the presence of accused-appellant and two barangay officials as witnesses, and only confiscated the items specifically stated in the warrant. Lastly, the police officers made a return of the search warrant and submitted the seized items before the trial court.

All told, there is overwhelming evidence that YYY is guilty of child pornography with the use of a computer system. Anent the penalty, any person found guilty of violating Sections 4(a), (b), and (c) of Republic Act No. 9775 shall suffer imprisonment of *reclusion temporal* in its maximum period and a fine of not less than PHP 1,000,000.00 but not more than PHP 2,000,000.00. Section 16 of Republic Act No. 9775 provides that the prescribed penalty shall be in its maximum duration "if the offender is a parent, ascendant, guardian, step-parent or collateral relative within the third degree of consanguinity or affinity, or any person having control or moral ascendancy over the child." Further, Section 4(c)(2) of Republic Act No. 10175 qualifies the crime if child pornography is "committed through a computer system" warranting the imposition of a penalty "one degree higher" than that prescribed in Republic Act No. 9775. Inarguably, the prosecution alleged and proved that accused-appellant has the custody and control of AAA at the time the crime was committed, and that the unlawful acts were perpetrated using a computer system.⁴³ Hence, the CA and the RTC correctly imposed the penalty of *reclusion perpetua* and a fine of PHP 2,000,000.00. As to the civil liability of the accused, the law and jurisprudence set the minimum amounts of civil

⁴³ Republic Act No. 10175 (2012), sec. 3(g), Cybercrime Prevention Act of 2012, defines a "computer system" as 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.

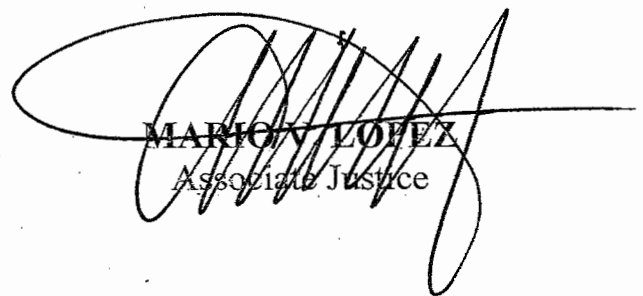
indemnity and damages but do not provide for a ceiling. Thus, the minimum amounts can be validly increased when the circumstances warrant. In view of the depravity of the crime that accused-appellant committed against AAA, we deem it proper to grant PHP 100,000.00 civil indemnity, and increase the moral damages from PHP 50,000.00 to PHP 100,000.00. The award of PHP 100,000.00 exemplary damages is retained. The purpose is to deter adults with perverse or aberrant sexual behavior from sexually abusing the children.⁴⁴

On a final note, the Court sends a strong message that child pornography, among other forms of sexual exploitation and abuse, presents an acute danger worldwide if facilitated through the internet. The sexually explicit images and videos of innocent children circulating online is a mode of re-victimization that traps them in a cycle of extreme, permanent, and continuing emotional and psychological torture that they will deeply suffer until their adult years.

ACCORDINGLY, the appeal is **DISMISSED**. The Court of Appeals' February 28, 2022 Decision in CA-G.R. CR-HC No. 14444 is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant YYY a.k.a. "[REDACTED]," a.k.a. "[REDACTED]" is found **GUILTY** of child pornography with the use of a computer system and is sentenced to suffer the penalty of *reclusion perpetua* and to pay a fine of PHP 2,000,000.00. She is also **ORDERED** to pay the victim PHP 100,000.00 as civil indemnity, PHP 100,000.00 as moral damages, and PHP 100,000.00 as exemplary damages.

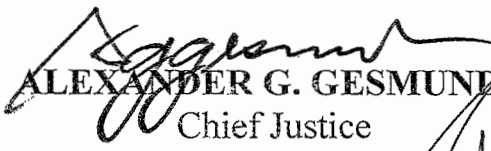
All damages awarded shall earn a 6% interest per annum from the finality of this Decision until full payment.

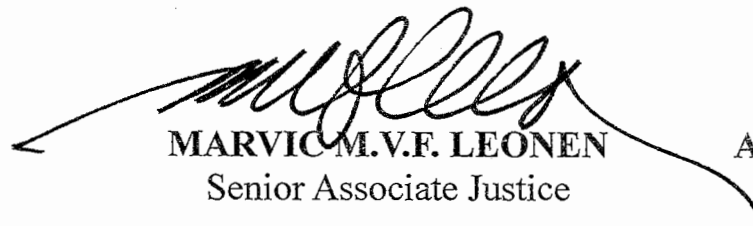
SO ORDERED.

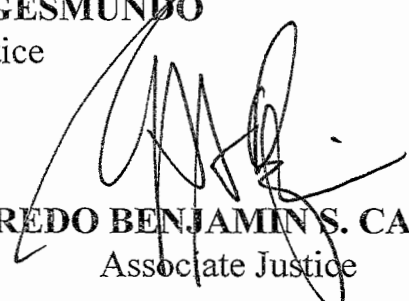

MARICEL LOPEZ
Associate Justice

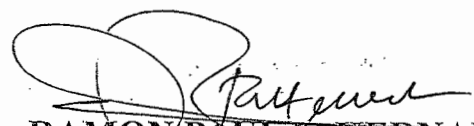
⁴⁴ *People v. Buclao*, 736 Phil. 325, 341 (2014) [Per J. Leonen, Third Division].

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice



MARVIC M.V.F. LEONEN
Senior Associate Justice



ALFREDO BENJAMINS S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

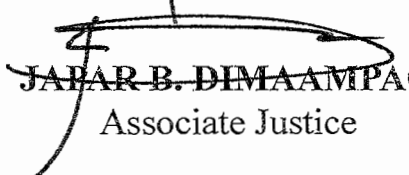
On official business
HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice

On official business
JHOSEP Y. LOPEZ
Associate Justice


JAMAR B. DIMAAMPAO
Associate Justice

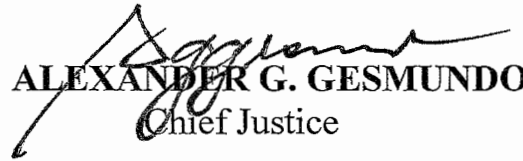

JOSE MIDAS P. MARQUEZ
Associate Justice

On official business
ANTONIO T. KHO, JR.
Associate Justice

On official business
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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