

[**G.R. No. 227424, November 03, 2020**]

PEOPLE OF THE PHILIPPINES V. ABIGAIL CAPILI Y ESTACIO, ET AL., ACCUSED; MARY ANN DELOS SANTOS Y GALAY & ROBERTO DE JOYA Y CARPIO, ACCUSED-APPELLANTS

Please take notice that the Court, First Division, issued a Resolution dated **November 3, 2020** which reads as follows:

"G.R. No. 227424 (People of the Philippines v. Abigail Capili y Estacio, et al., accused; Mary Ann Delos Santos y Galay & Roberto De Joya y Carpio, accused-appellants). - This appeal ^{assails the Decision} dated February 24, 2016 of the Court of Appeals (CA) which affirmed with modifications the conviction of Mary Ann Delos Santos y Galay (Delos Santos) and her co-accused for the crime of qualified trafficking in persons.

Facts of the Case

In an Information ^{dated August 24, 2004} Delos Santos, together with Elizabeth Ulanday (Ulanday), Analiza Dela Cruz (Dela Cruz), Butch Manuzon (Manuzon), Abigail Capili (Capili), Roberto De Joya (De Joya), and Noritaka Ota (Ota) were charged with *Qualified Trafficking in Persons* under Section 4(a), in relation to Section 6(a) and (c) of Republic Act No. (R.A.) 9208 otherwise known as the "Anti-Trafficking in Persons Act of 2003," committed as follows:

That on or about and sometime during the period comprised from the month of January 2004 to July 3, 2004, inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping one another, did then and there willfully, unlawfully and knowingly, for purposes of prostitution, pornography or sexual exploitation, in consideration of price, reward or promise, recruit and transport to Manila "AAA" and "BBB", both minors, 13 and 9 years old, respectively, under the pretext of providing them domestic employment.

That the crime is committed with the qualifying circumstances that the trafficked persons are below 18 years old and the act is committed by a syndicate and the aggravating circumstance of having committed the crime in consideration of price, reward or promise.

Contrary to law. ^{Contrary to law.}

During the pendency of the trial, Ulanday died while in prison. Hence, the case was dismissed as to her.

The prosecution presented three witnesses namely: (1) National Bureau of Investigation (NBI) agent Jeralyn Jalagat (Agent Jalagat); (2) Carla Cortes (Cortes); and (3) BBB, one of the minor victims. Their testimony, as culled from the records, are as follows:

While walking along Ermita, Manila, a woman allegedly approached Christian Kerremans (Kerremans), a Dutch National and the executive director and founder of SOS Child Care Foundation and offered to him young girls for sex and video pornography shooting.^[5]

On January 17, 2004, Kerremans and his assistant, Cortes, met with Liza Tagle (Tagle) and Delos Santos to discuss Tagle's offer. They learned that Delos Santos used to be Tagle's assistant in supplying children to foreigners.^[6]

Sometime in February 2004, Delos Santos invited Kerremans and Cortes in her house in Cavite and showed to them 10 girls. Kerremans and Cortes interviewed the girls and gathered information such as their names, ages, experiences with video shooting, their customers, and how much they are being paid.^[7]

In March 2004, Delos Santos again invited Kerremans and Cortes in her house and that time, Delos Santos showed them nine more girls. Kerremans and Cortes likewise interviewed the girls.^[8]

When they felt that they gathered enough information, Kerremans and Cortes reported the offer of Delos Santos to the Council for the Welfare of Children. The director therein forwarded the matter to the Philippine National Police (PNP). However, the PNP was slow to act, hence, the director contacted the NBI.^[9]

On June 4, 2004, Kerremans and Cortes reported to the NBI the information that they gathered regarding the group operating in Malate area who are engaged in child prostitution and the production of child pornographic videos. After receiving the information, NBI Interpol Division Chief Atty. Vic Diaz and Executive Officer Atty. De Castro planned an undercover operation where Kerremans was asked to act as a video producer and Agent Jalagat as his assistant.^[10]

In another meeting held near Aristocat Restaurant in Malate, Agent Jalagat and Kerremans met with Delos Santos who assured them that she can provide at least 40 children aged 7 to 16 years old for pornographic video production. According to her, the kids have experiences in pornographic video production in the past years and can do sexual acts such as blow job or oral sex.^[11]

On June 22, 2004, Kerremans, Cortes, and Agent Jalagat met with Ulanday who mentioned that she can also provide them with several other children to be used in the video production. Ulanday and Delos Santos offered to work together for the video pornography production. Thereafter, Kerremans and Cortes met with both Ulanday and Delos Santos where the latter urged Kerremans to start with the shooting immediately. Ulanday and Delos Santos told Kerremans that the shooting

should be set on a Saturday since the children are still in school. When told that they do not have enough crew for the shoot, Ulanday suggested the team of Capili who had provided her production management services in the past.^[12]

On June 26, 2004, Cortes met with Capili, Ulanday, and Dela Cruz wherein Capili talked about her experiences with child pornography video shooting. Ulanday, on the other hand, requested for P3,000.00 as advance payment for her services. On June 29, 2004, Kerremans and Cortes met with Capili in her residence in Park Avenue Mansion wherein the latter discussed how the shooting will be held. On June 30, 2004, Capili gave Kerremans and Cortes a proposal to render production management services and asked for an advance payment.^[13]

On July 3, 2004, the scheduled date for the shoot, the seven accused together with around 70 children met at the fountain area in Malate and boarded two buses going to Los Baños, Laguna. Capili asked for 1*20,000.00 as advance payment to which she signed an acknowledgement receipt. Upon arrival at the resort in Laguna, Capili asked that they transfer to another resort because the first one is not conducive for video shooting. Hence, the group transferred to Rosemary's Resort. Capili chose two children, BBB, as she was used to video shooting and another child, AAA. Capili rehearsed BBB while Manuzon and Dela Cruz groomed the other children. Ota was directing and De Joya was the one taking pictures and video.^[14]

In one of the rooms in Rosemary's Resort, Cortes and Nur Sidri (Sidri), another NBI agent, interviewed some of the children. After the interview, Delos Santos instructed the children that she brought to pose nude as a demo. Cortes and Sidri also interviewed Ulanday's recruits and they also posed nude afterwards.^[15]

Thereafter, Capili's group went to the room where Cortes and Sidri were and arranged it. They brought BBB first. Capili instructed BBB on what to do and how to pose. Eventually, BBB was shot nude on video. Ota was directing and De Joya was taking the video. When Agent Jalagat saw BBB actually being shot nude, she called upon her colleagues and the NBI raided the resort.^[16]

The defense presented all the accused as witnesses.

In her testimony, Capili narrated that Ulanday introduced her to Kerremans, a Dutch National allegedly connected with the National Geographic Channel and United Nations International Children's Emergency Fund (UNICEF). Since Kerremans is in need of a production team for his project on a documentary film about Filipino children involved in substance abuse, prostitution, and pornography, she tendered to Cortes a proposal to render production management services in the amount of P400,000.00. Three days later, Cortes called her to say that there will be an outing with the children and a demo shooting. She was paid P20,000.00. On the day of the shoot, Capili invited her cousin-in-law, De Joya, to help in the project. At the resort, Kerremans asked her to teach BBB on how to dress and change clothes. All the while, it was Sidri who was taking the pictures and videos. She was surprised when suddenly, the NBI arrested them. Capili insisted that she only complied with the

instructions of Kerremans and it was the latter who staged the whole outing.^[17]

Delos Santos testified that Cortes invited her to the outing. She knew Cortes to be the regular passenger of her husband who is a pedicab driver. Cortes asked her to bring her children because there will be school supplies to be distributed during the outing. At the resort, she helped Cortes in preparing food for the children when operatives of the NBI raided them. She admitted having received money from Cortes, but she explained that the same was intended for the school supplies.^[18]

De Joya corroborated the testimony of Capili. He stated that aside from Capili and Manuzon, he does not know any of the other accused. According to De Joya, Capili called him and asked him to help during the shoot in Laguna. At the resort, he helped interviewing the children in the swimming pool. Sidri gave him a camera but he refused because he did not know how to operate it. He later found Sidri taking a video of five children in a room. He felt nervous when he saw what Sidri was doing but he kept quiet because of fear. After lunch, he heard Kerremans ordering Capili to take the pictures of BBB. He saw Kerremans taking pictures of BBB while the latter was taking off her clothes. Sidri asked him to hold the camera. It was then that the NBI operatives arrived.^[19]

For his part, Ota recounted that he was invited by a fellow Japanese, Hasegawa, the live-in partner of Capili, to join the outing on July 3, 2004. Unfortunately, Hasegawa was not able to come. Upon arriving at the resort in Laguna, he was about to swim but when he went to the room to change his clothes, he saw Capili with another female doing something. He instead went to the toilet. While inside, someone knocked at the door and when he opened, NBI operatives entered and handcuffed him. When he was brought to the NBI Office, he was asked to produce P4,000,000.00 for his liberty.^[20]

Manuzon narrated that De Joya invited her to the outing. At the resort, she just sat on a corner and did not join any activity. While sitting, she was surprised when the NBI agents came out and arrested her.^[21]

Lastly, Dela Cruz testified that Ulanday invited her for an outing in Laguna sponsored by UNICEF. She brought her mother and her child. When they arrived in the resort, she saw someone taking photos. After two hours of swimming, an operative of the NBI arrested her for carrying a fan knife. According to her, she went to the resort because of the school supplies promised for the children.^[22]

On June 11, 2013, the Regional Trial Court (RTC) of Manila, Branch 29, rendered its Decision^[23] finding Capili, Delos Santos, De Joya, and Ota guilty beyond reasonable doubt for the crime of qualified trafficking of persons and imposed upon them the penalty of life imprisonment and ordered them to pay a fine of P2,000,000.00. Dela Cruz and Manuzon were acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt.^[24]

The RTC held that all the elements of trafficking of persons under Article 4 (a) of

R.A. No. 9208 are present in this case. [25] The RTC likewise found conspiracy among Ulanday, Delos Santos, Capili, De Joya, and Ota. [26] The trafficking is qualified because BBB is a minor at the time the offense was committed. Based on the evidence presented by the prosecution, Ulanday and Delos Santos offered Cortes and Kerremans minor children who they claimed are capable of performing sexual acts. Capili, on the other hand, offered her services in the form of production management with her cohorts De Joya and Ota. [27] Hence, the collective, concerted, and synchronized acts of the abovementioned accused, before, during, and after transporting the minors to Laguna constitute proof that they conspired with each other to attain a common objective of producing pornographic film involving minors. [28] The RTC debunked the claim of Capili that she was instigated by Kerremans to commit the crime. Instead, the arrest of the accused was through a valid entrapment operation. [29] As for Manuzon and Dela Cruz, the RTC found that the prosecution failed to establish their actual participation in the commission of the crime. Their mere presence at the scene of the incident is not enough to hold them liable as co-conspirators. [30]

Capili, Delos Santos, De Joya, and Ota appealed their conviction to the CA.

In its Decision [31] dated February 24, 2016, the CA affirmed the conviction of the accused but with modifications. Capili, De Joya, and Ota were held liable as accomplices and sentenced to suffer the penalty of imprisonment for 15 years and to pay a fine of P500,000.00 each while the conviction of Delos Santos stands but she was held to be not eligible for parole. In addition, Delos Santos, Capili, De Joya, and Ota were ordered to pay jointly and severally the amount of P500,000.00 as moral damages and P100,000.00 as exemplary damages, with interest at the rate of 6% per annum from the date of finality of the judgment until fully paid. [32]

The CA agreed with the RTC that based on the evidence presented, Delos Santos is guilty of qualified trafficking because it was her and Ulanday who offered the minor victims for the video pornography production. The qualifying circumstance of minority attended the crime because BBB was only nine years old at the time of the incident being born in 1994 as evidenced by her Certificate of Live Birth. [33] However, the CA only held Capili, De Joya, and Ota liable as accomplices in accordance with R.A. No. 10364 otherwise known as the "*Expanded Anti-Trafficking in Persons Act of 2012*" which inserted Section 4-B in R.A. 9208. According to the CA, Capili, De Joya, and Ota's participation in the outing is limited to the taking of pictures and videos of the children. These are acts which merely aid in the execution of the offense of qualified trafficking. [34]

On March 18, 2016, Delos Santos and De Joya filed their Notice of Appeal. [35] On November 21, 2016, the Court ordered the parties to file their respective supplemental briefs. [36] On January 23, 2017, the Office of the Solicitor General (OSG) manifests that it will no longer file a supplemental brief.