G.R. No. 247348 – Christian Cadajas *y* Cabias v. People of the Philippines

Promulgated: November 16, 2021

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DISSENTING OPINION

GAERLAN, *J.*

With due respect to the majority, I respectfully register my dissent from the *Decision* and vote for the reversal of the Court of Appeals' (CA) *Decision* dated September 17, 2018 and the *Resolution* dated May 9, 2019 in CA-G.R. No. 40298. To my mind, the records of the case casts a long shadow of doubt as to the guilt of the accused for the offenses charged.

To recall, both the *Decision* and *Resolution* of the CA had affirmed with modification the *Joint Decision* dated August 7, 2017 issued by the Regional Trial Court of Valenzuela City in Criminal Case Nos. 215-V-17 and 216-V-17 which found petitioner Christian Cadajas (Cadajas) guilty beyond reasonable doubt of the offense of child pornography under Section 4(c)(2) of Republic Act No. 10175, or the "Cybercrime Prevention Act of 2012" in relation to Sections 4(a) and 3(b) and (c)(5) of Republic Act No. 9775, or the "Anti-Child Pornography Act of 2009". The finding of guilt of Cadajas was anchored on three (3) key findings: *first*, that AAA, the purported victim, was a 14 year-old minor; *second*, that nude photographs of AAA were sent by her to her boyfriend, Cadajas, *via* the mobile application, Facebook Messenger, as was supposedly proven by a copy of the chat thread between AAA and Cadajas which was submitted as evidence; and *third*, that Cadajas supposedly induced AAA to send the aforementioned nude photographs.

A review of the circumstances of the case will, however, show that: (a) the chat thread between Cadajas and AAA should not have been admitted as evidence since the same was procured in violation of Cadajas' constitutionally guaranteed right to privacy; and (b) there exists reasonable doubt as to whether Cadajas did in fact induce AAA to send the aforementioned nude photographs or if the same were freely and voluntarily sent by her.

I. The Facebook Messenger Chat Between Cadajas and AAA Is Inadmissible as Evidence.

Central to the finding of guilt of Cadajas is the admission as evidence of the chat thread between him and AAA on Facebook Messenger. The chat

thread revealed an explicit conversation between the two (2) lovers, culminating with both sending nude photographs of themselves to each other. Cadajas, on appeal, argued that the chat thread was inadmissible in evidence considering that the same was "taken from his Facebook Messenger account,"[1] and was thus taken in violation of his right to privacy.[2] The *Decision*, however, rejected this contention and argued that: (a) Cadajas failed to raise the objection to admissibility in a timely manner, *i.e.*, during trial, and had thus already waived the same;[3] (b) the right to privacy, provided for in the Bill of Rights in the Constitution, may not be invoked against private individuals;[4] and (c) that Cadajas had no reasonable expectation of privacy as against AAA, having voluntarily given the password of his account to the latter.[5] With due respect, such findings are unsupported by law and jurisprudence.

A. An Appeal in a Criminal Case Permits an Appellate Court to Review the Admissibility of Evidence Submitted Albeit not Assigned as an Error on Appeal.

It is hornbook doctrine that **an appeal in a criminal case throws the entire case wide open** and confer upon the reviewing tribunal "full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[6] In *Epifanio v. People*,[7] this Court exercised such expansive and encompassing jurisdiction by **reviewing the admissibility of evidence despite the failure to object by the accused during trial**. Simply put, this Court is not precluded from reviewing the admissibility of the chat thread despite the belated objection thereto by Cadajas.

B. The Admission as Evidence of the Facebook Messenger Chat Thread Between Cadajas and AAA Violates the Latter's Right to Privacy.

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1 Decision, p. 6.
2 Id.
3 Id. at 10-11.
4 Id. at 6-9.
5 Id. at 9-10.
6 *People v. Alejandro, et al.*, 807 Phil. 221, 229 (2017).
7 552 Phil. 620, 628 (2007).

Jurisprudence provides that the right to privacy enshrined in our Constitution can be invoked and asserted against private individuals. Section 3, Article III of the Constitution provides:

> SECTION 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

While it is true that in *People v. Marti*,[8] this Court held that an act of a private individual, allegedly in violation of appellant's constitutional rights, cannot be invoked against the State, the same is not absolute and this Court had, on various occasions, ruled to the contrary.[9] Relevantly, in *Zulueta v. Court of Appeals*,[10] this Court held that evidence, albeit obtained by private individuals, in violation of the right to privacy and correspondence "renders the evidence obtained inadmissible 'for any purpose in any proceeding[;]'" to wit:

> Indeed[,] the documents and papers in question are inadmissible in evidence. **The constitutional injunction declaring ['']the privacy of communication and correspondence [to be] inviolable['] is no less applicable simply because it is the wife (who thinks herself aggrieved by her husband's infidelity) who is the party against whom the constitutional provision is to be enforced.** The only exception to the prohibition in the Constitution is if there is a ['']lawful order [from a] court or when public safety or order requires otherwise, as prescribed by law.['] Any violation of this provision renders the evidence obtained inadmissible ['']for any purpose in any proceeding.['] x x x[11] (Citations omitted, emphasis supplied.)

Thus, proceeding from the foregoing disquisition, I submit that Cadajas right to privacy was violated when his private social media account was accessed without his permission by BBB and a copy of his private conversation with AAA was made without his consent.

The *ponencia* argued, however, that the cited portion in *Zulueta*, case was mere *obiter dictum* and thus does not constitute a binding precedent that can be applied to the instant case. I respectfully disagree.

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8 271 Phil. 51, 58 (1991).

9 *Miguel v. People,* 814 Phil. 1073 (2017); *Dela Cruz v. People*, 776 Phil. 653 (2016); *People v. Lauga*, 629 Phil. 522 (2010); *People v. Malngan*, 534 Phil. 404, 440 (2006).

10 324 Phil. 63, 68 (1996).

11 Id. at 68.

In *Delta Motors Corporation, v. Court of Appeals,*[12] this Court defined the term "*obiter dictum*" as "an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it", to wit:

> The Court of Appeals likewise did not commit reversible error in deleting the phrase SIHI protested as *obiter dictum.*
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> **An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, ['']by the way,['] that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent.**
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> **The assailed phrase was indeed *obiter dictum* as it touched upon a matter not raised by petitioner expressly in its petition assailing the dismissal of its notice of appeal. It was not a prerequisite in disposing of the aforementioned issue.** The body of the resolution did not contain any discussion on such matter nor mention any principle of law to support such statement.[13] (Citations omitted, emphasis supplied.)

It must be noted that in the case of *Zulueta*, therein petitioner *Zulueta* raised as an argument that the CA erred when it affirmed the ruling of the trial court that: (a) she returned the documents owned by her husband, therein respondent Martin, and that, (b) the same documents cannot be used or submitted as evidence in a legal separation case and a case to disqualify respondent Martin from the practice of medicine, considering that supposedly, the same documents were already admitted as evidence in a separate disbarment case filed by respondent Martin against petitioner *Zulueta*'s lawyer; to wit:

> Petitioner Cecilia Zulueta is the wife of private respondent Alfredo Martin. On March 26, 1982, petitioner entered the clinic of her husband, a doctor of medicine, and in the presence of her mother, a driver and private respondent's secretary, forcibly opened the drawers and cabinet in her husband's clinic and took 157 documents consisting of private correspondence between Dr. Martin and his alleged paramours, greetings cards, cancelled checks, diaries, Dr. Martin's passport, and photographs. **The documents and papers were seized for use in evidence in a case for legal separation and for disqualification from the practice of medicine which petitioner had filed against her husband.**

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12 342 Phil. 173, 186 (1997).
13 Id. at 186.

> Dr. Martin brought this action below for recovery of the documents and papers and for damages against petitioner. The case was filed with the Regional Trial Court of Manila, Branch X, which, after trial, **rendered judgment for private respondent, Dr. Alfredo Martin, declaring him ['] the capital/exclusive owner of the properties described in paragraph 3 of plaintiff's Complaint or those further described in the Motion to Return and Suppress[']** and ordering Cecilia Zulueta and any person acting in her behalf to a immediately return the properties to Dr. Martin and to pay him P5,000.00, as nominal damages; P5,000.00, as moral damages and attorney's fees; and to pay the costs of the suit. The writ of preliminary injunction earlier issued was made final and petitioner Cecilia Zulueta and her attorneys and representatives were enjoined from [']using or submitting/admitting as evidence[']** the documents and papers in question. On appeal, the Court of Appeals affirmed the decision of the Regional Trial Court. Hence this petition.
>
> There is no question that the documents and papers in question belong to private respondent, Dr. Alfredo Martin, and that they were taken by his wife, the herein petitioner, without his knowledge and consent. For that reason, the trial court declared the documents and papers to be properties of private respondent, ordered petitioner to return them to private respondent and enjoined her from using them in evidence. **In appealing from the decision of the Court of Appeals affirming the trial court's decision, petitioner's only ground is that in Alfredo Martin v. Alfonso Felix, Jr., this Court ruled that the documents and papers (marked as Annexes A-1 to J-7 of respondent's comment in that case) were admissible in evidence and, therefore, their use by petitioner's attorney, Alfonso Felix did not constitute malpractice or gross misconduct, For this reason it is contended that the Court of Appeals erred in affirming the decision of the trial court instead of dismissing private respondent's complaint.**[14] (Citations omitted, emphasis supplied.)

From the foregoing, it is undeniable that the discussion of this Court in *Zulueta* as to the applicability of Section 3, Article III of the Constitution against private individuals cannot be considered as *obiter dictum* as it directly addresses the sole issue raised by petitioner *Zulueta* in the case, *i.e.*, that the decision of the lower courts should be reversed considering that the documents in questions were already admitted as evidence in a separate case. Thus, in dismissing the petition and affirming the ruling of the lower courts, this Court held that the right to privacy can be invoked against a private individual, *e.g.*, one's wife, and evidence acquired by a private party in violation of a person's right to privacy is inadmissible as evidence.

The majority also takes the position that Section 19 of Republic Act No. 10173, or the "Data Privacy Act of 2012" (DPA), provides that the rights enumerated in Sections 16, 17 and 18 of the DPA[15] are not applicable to

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14 Supra note 10 at 65-66.

15 Republic Act No. 10173 (2012), §§ 16-18. Data Privacy Act of 2012 [*hereinafter* "DPA"] provide: "SEC. 16. *Rights of the Data Subject.* – The data subject is entitled to:

"processing of personal information gathered for the purpose of investigations in relation to any criminal, administrative or tax liabilities of a data subject." Section 19 of the said Act, however, **did not provide for a blanket waiver**

(a) Be informed whether personal information pertaining to him or her shall be, are being or have been processed;

(b) Be furnished the information indicated hereunder before the entry of his or her personal information into the processing system of the personal information controller, or at the next practical opportunity:

(1) Description of the personal information to be entered into the system;
(2) Purposes for which they are being or are to be processed;
(3) Scope and method of the personal information processing;
(4) The recipients or classes of recipients to whom they are or may be disclosed;
(5) Methods utilized for automated access, if the same is allowed by the data subject, and the extent to which such access is authorized;
(6) The identity and contact details of the personal information controller or its representative;
(7) The period for which the information will be stored; and
(8) The existence of their rights, i.e., to access, correction, as well as the right to lodge a complaint before the Commission.

Any information supplied or declaration made to the data subject on these matters shall not be amended without prior notification of data subject: *Provided,* That the notification under subsection (b) shall not apply should the personal information be needed pursuant to a *subpoena* or when the collection and processing are for obvious purposes, including when it is necessary for the performance of or in relation to a contract or service or when necessary or desirable in the context of an employer-employee relationship, between the collector and the data subject, or when the information is being collected and processed as a result of legal obligation;

(c) Reasonable access to, upon demand, the following:

(1) Contents of his or her personal information that were processed;
(2) Sources from which personal information were obtained;
(3) Names and addresses of recipients of the personal information;
(4) Manner by which such data were processed;
(5) Reasons for the disclosure of the personal information to recipients;
(6) Information on automated processes where the data will or likely to be made as the sole basis for any decision significantly affecting or will affect the data subject;
(7) Date when his or her personal information concerning the data subject were last accessed and modified; and
(8) The designation, or name or identity and address of the personal information controller;

(d) Dispute the inaccuracy or error in the personal information and have the personal information controller correct it immediately and accordingly, unless the request is vexatious or otherwise unreasonable. If the personal information have been corrected, the personal information controller shall ensure the accessibility of both the new and the retracted information and the simultaneous receipt of the new and the retracted information by recipients thereof: *Provided,* That the third parties who have previously received such processed personal information shall he informed of its inaccuracy and its rectification upon reasonable request of the data subject;

(e) Suspend, withdraw or order the blocking, removal or destruction of his or her personal information from the personal information controller's filing system upon discovery and substantial proof that the personal information are incomplete, outdated, false, unlawfully obtained, used for unauthorized purposes or are no longer necessary for the purposes for which they were collected. In this case, the personal information controller may notify third parties who have previously received such processed personal information; and

(f) Be indemnified for any damages sustained due to such inaccurate, incomplete, outdated, false, unlawfully obtained or unauthorized use of personal information.

SEC. 17. *Transmissibility of Rights of the Data Subject.* – The lawful heirs and assigns of the data subject may invoke the rights of the data subject for, which he or she is an heir or assignee at any time after the death of the data subject or when the data subject is incapacitated or incapable of exercising the rights as enumerated in the immediately preceding section.

SEC. 18. *Right to Data Portability.* – The data subject shall have the right, where personal information is processed by electronic means and in a structured and commonly used format, to obtain from the personal information controller a copy of data undergoing processing in an electronic or structured format, which is commonly used and allows for further use by the data subject. The Commission may specify the electronic format referred to above, as well as the technical standards, modalities and procedures for their transfer."

of an individual's right to object to the initial processing of his or her personal information to begin with. In any event, it can be argued that the provisions of the DPA cannot be made to apply in the instant case as BBB cannot be considered as a personal information controller, *i.e.*, a person or organization who controls the collection, holding, processing or use of personal information, including a person or organization who instructs another person or organization to collect, hold, process, use, transfer or disclose personal information on his or her behalf,[16] or a personal information processor, *i.e.*, any natural or juridical person qualified to act as such under the DPA to whom a personal information controller may outsource the processing of personal data pertaining to a data subject.[17]

C. Cadajas had a Reasonable Expectation of Privacy with Respect to His Communications with AAA.

Cadajas had a reasonable expectation of privacy as to his private communications with AAA. The test to determine the presence of "reasonable expectation of privacy" was laid out in *Ople v. Torres*,[18] as follows: "(1) whether by his conduct, the individual has exhibited an expectation of privacy; and (2) whether this expectation is one that society recognizes as reasonable." In *Spouses Hing v. Coachuy, Sr., et al.*[19] the Court stressed that "the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis[,]" taking into consideration the attendant factual circumstances and the prevailing "[c]ustoms, community norms, and practices."[20] Here, the factual circumstances peculiar to the instant case warrants the conclusion that Cadajas had a reasonable expectation of privacy with respect to the chat thread *despite* having allegedly given his password thereto to AAA.

With one respect, the p*onencia* overlooked a crucial fact: it was BBB, not AAA, that violated Cadajas' right to privacy when the former secured a copy of the conversations therein without Cadajas' consent. Otherwise stated, as against BBB, Cadajas had a reasonable expectation of privacy.

To recall, the *ponencia*'s own narration of facts indicated that Cadajas sought to exclude everyone from access, except AAA (with whom he had

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16 DPA, § 3(h).
17 *See* DPA, § 3(i).
18 354 Phil. 948, 980 (1998).
19 712 Phil. 337, 350 (2013).
20 Id.

purportedly shared his password).[21] As recognized by the *ponencia*, the account itself was password protected,[22] and that BBB would only have such access whenever AAA "would forget to log out of her Facebook Messenger account[.]"[23] In fact, even AAA sought to exclude BBB from the chat thread as evidenced by the fact that she rushed to a computer shop to delete her messages after she found out that her mother knew about them.[24] Plainly, this points to no other conclusion than that Cadajas reasonably expected that BBB had no access to the chat thread or of the conversations found therein.

Accordingly, the chat thread should not have been admitted into evidence considering that Cadajas had a reasonable expectation of privacy as to who can access his social media account and that the chat thread came into possession of BBB in violation of Cadajas' constitutionally guaranteed right to privacy. On this score alone, Cadajas should be acquitted as the *corpus delicti* of the offense charged, the nude photographs in the chat thread, is inadmissible as evidence.

II. The Prosecution Failed to Establish Beyond Reasonable Doubt that Cadajas Induced AAA to Send Explicit Photographs.

Even assuming that the chat thread was admissible in evidence, the prosecution failed to prove beyond reasonable doubt that Cadajas induced AAA to send nude photographs.

Under Section 3(b) of the Anti-Child Pornography Act of 2009, "child pornography" pertains to "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." Section 3(c) defines "explicit sexual activities" as including, among others, the "lascivious exhibition of the genitals, buttocks, breasts, pubic area and/or anus[.]"

The aforementioned law makes unlawful any act "[t]o hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography[.]"[25] The proscription is echoed in Section 4(c)(2) of the Cybercrime Prevention Act of 2012.

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21 Decision, p. 10.
22 Id.
23 Id. at 2.
24 Id. at 3.
25 Republic Act No. 9775, Section 4(a), Anti-Child Pornography Act of 2009.

From the foregoing, there are four (4) elements that must be proven beyond reasonable doubt in order for a conviction for a violation of Section 4(c)(2) of the Cybercrime Prevention Act of 2012 in relation to Sections 4(a) and 3(b) and (c)(5) of the Anti-Child Pornography Act of 2009 to be valid; *viz.*:

(1) That the alleged victim is a child;

(2) That the child performed an act of child pornography as defined under Section 3(b) in relation to Section 3(c) of the Anti-Child Pornography Act of 2009;

(3) **That the purported victim was** hired, employed, used, persuaded, **induced**, or coerced to be part of the creation or production of child pornography; and

(4) That the hiring, employing, using, persuading, inducing, or coercing of the victim was achieved with the use of a computer system.

A review of the evidence on record as well as the attendant circumstances of the instant case will show that Cadajas did not induce AAA to send the nude photographs.

Case law provides that inducement is present whenever "the influence of the inducer over the mind" of another forces him or her to pursue a certain course of action.[26] In legal parlance, it is near-synonymous to undue influence or the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective."[27] A person can be said to be induced when he or she pursues a certain course of action which did not emanate from his or her mind, but in the mind of the inducer. Indispensably, therefore, there must be a showing that the inducer employed language calculated to exert "great dominance and influence over the person who acts; [the words] ought to be direct and as efficacious, or powerful as physical or moral coercion or violation itself."[28]

The *ponencia* held that that inducement naturally follows from the ten (10) year age gap between Cadajas (then twenty-four (24) years old at the time of the alleged commission of the crime) and AAA (then fourteen (14) years old). Supposedly, the disparity in age placed Cadajas "in a stronger position over the minor victim which enabled him to wield his will on the latter[,]"

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26 *People v. Bolivar*, 375 Phil. 1033, 1047 (1999).
27 *Caballo v. People of the Philippines*, 710, 805 Phil. 792 (2013).
28 Id.

especially considering that AAA, as a minor, is "not capable of giving rational consent to engage in any sexual activity."[29] With due respect, case law provides otherwise.

Can a 14 year-old give sexual consent to a lover many years older? This question has been resolved by this Court in *Bangayan v. People*,[30] where this Court held that a child between twelve (12) years old and below eighteen (18) years of age may have the capacity to give sexual consent even to an individual fifteen (15) years older. Two (2) things can be deduced: *first*, a child between 12 years old but below 18 years of age may give sexual consent, and *second*, the ability to give such sexual consent is not *ipso facto* eliminated by the fact that the sexual partner is over the age of eighteen (18) years of age and/or significantly older. Thus, in the said case, this Court directed trial courts that "evidence must be strictly scrutinized to determine the presence of sexual consent." Necessarily, this entails a careful understanding of the "emotional maturity and predisposition"[31] of AAA of sexual acts, and the impact of the relationship of AAA and Cadajas on such understanding.

A review of the conversation between Cadajas and AAA will show that the tenor thereof taken as a whole, does not evince inducement by the latter to the former. Rather, it is akin to the banter employed by couples before undertaking the highest expression of human intimacy and passion, to wit:

> **AAA (K): Hahaha gagi gusto ko sya pagtripan e di mo naman ako pinagtrtripan e**
>
> Cadajas (C): Gsto muh pagtrepan kita ngayon
>
> **K: Oo**
>
> **Ready ako sa ganyan.**
>
> C: Sge [sic] hubad
>
> **K: Nakahubad na hahaha**
>
> C: Tanggalin [sic] uh [sic] panti [sic] muh [sic] haha
>
> **K: Baliw hubad na lahat**
>
> x x x x
>
> C: Kala ko ba rdy
>
> K: Lah mukha akong tanga nun k[u]ng pipicturan ko

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29 Decision, p. 23.
30 G.R. No. 235610 (September 16, 2020).
31 Id.

Pero hahaha
Kuya nalilibugan ako hahaha

x x x x

K: **Magpasa ka din hahaha**

Lah bat lahat

Bi personal gusto ko kapag ganyan e

x x x x

C: Ako lang naman makakita saka ikaw bi
Tayong dalawa

K: Flash ko camera ko para makita whahaha nakakahiya.

x x x x

C: Nakaktampo k nman yan.

K: Bukas bi papakita ko[32]

Dissecting the conversation in the chat thread, it is readily apparent that Cadajas employed no language which would show *great dominance and influence*. The chat thread showed no language indicative of *exploitation and abuse* of a child—the policy consideration which undergirds the Anti-Child Pornography Act of 2009. In fact, the tenor of the conversation in the chat thread showed that AAA was not in any way induced to take and send the photographs. Notably, the entire conversation was prompted by AAA's sexually suggestive remark that she was ready to fool around with her then boyfriend Cadajas. Other factors to be considered as can be seen from the candid conversation between Cadajas and AAA were her: a) readiness to take off her clothes; b) request that Cadajas also send explicit photos of himself; c) offer to show Cadajas her private parts in person; and, d) act of sending four (4) nude photographs to Cadajas, which, when all taken together clearly militates against any conclusion that it was against AAA's will when she took and sent the photographs to Cadajas and that she was merely induced by Cadajas to do the same.

In resolving the instant case, the Court should have likewise considered the observations of the trial court:

> However, from the testimonies of the minor-complainant and her mother, it was impressed upon this court that the minor-complainant while barely fourteen (14) years old is a city lass who is not innocent of the ways

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32 *See* Exhibits "C" to "C-8".

> of the world. She admitted that she had three (3) boyfriends prior to the accused. And now, while the case she lodged against the accused is still pending before this court, again she has a new boyfriend. Notably, even her Facebook messenger conversation (Exhibit [']C['] – [']C-8 ['']) with the accused reveals that the minor-complainant is sexually daring. Moreover, she testified that the incident subject of these cases did not affect her at all."[33]

All things considered, a careful scrutiny of the evidence on record shows that AAA is not some sheltered lass who can be persuaded by the constant repetition of "*sige na*" or "*please*" by Cadajas. AAA freely, willingly and consciously agreed to send the nude photographs of herself to Cadajas and not only requested that he reciprocate and also send nude pictures of himself to her but also promised that she will show him her private parts in person. Such representations clearly go against any finding of inducement on the part of Cadajas. Considering the foregoing, it is evident that Cadajas guilt in the instant case was not established by evidence beyond reasonable doubt.

SAMUEL H. GAERLAN
Associate Justice

33 Reflections, Justice Alfredo Benjamin S. Caguiao dated October 12, 2021, p. 10.