



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **February 15, 2022** which reads as follows:*

“**G.R. No. 242884 (People of the Philippines v. XXX)**. - XXX was charged with lascivious conduct under Section 5(b) of Republic Act No. 7610<sup>1</sup> and two (2) counts of other acts of child abuse under Section 10(a) of the same law committed against his daughter AAA<sup>2</sup> before the Regional Trial Court (RTC), docketed as Criminal Case Nos. 02-0148-2014, 02-0149-2014, and 02-0150-2014, to wit:

*[Criminal Case No. 02-0148-2014]*

That on or about the 4<sup>th</sup> day of April, 2010 at [REDACTED], [REDACTED] and within the jurisdiction of this Honorable Court, the above-named accused, biological father of complainant, without any justifiable cause, with intent to abuse, arouse and gratify his sexual desire, did then and there willfully, unlawfully and feloniously commit lascivious conduct upon his legitimate daughter, AAA, a thirteen year old minor, by squeezing her breast, touching and pressing her vagina, which acts debase, humiliate, degrade and demean the intrinsic worth and dignity of said AAA.

CONTRARY TO LAW.

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<sup>1</sup> Entitled, “Special Protection of Children Against Abuse, Exploitation and Discrimination Act,” approved on June 17, 1992.

<sup>2</sup> The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances). The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act); R.A. No. 8505 (Rape Victim Assistance and Protection Act of 1998); R.A. No. 9208 (Anti-Trafficking in Persons Act of 2003); R.A. No. 9262 (Anti-Violence Against Women and Their Children Act of 2004); and R.A. No. 9344 (Juvenile Justice and Welfare Act of 2006).

*[Criminal Case No. 02-0149-2014]*

That on or about the 16<sup>th</sup> day of August, 2013 at about 6:30 o'clock in the evening at [REDACTED], [REDACTED], [REDACTED] and within the jurisdiction of this Honorable Court, the above-named accused, biological father of complainant, without any justifiable cause, did then and there willfully, unlawfully and feloniously commit child abuse upon his legitimate daughter, AAA, a sixteen (16) year old minor, by boxing her nape and eye, hitting her with a pipe and kicking her several times, thereby causing her physical injuries, which acts debase, degrade or demean the intrinsic worth and dignity of said AAA as a human being.

CONTRARY TO LAW.

*[Criminal Case No. 02-0150-2014]*

That on or about the 10<sup>th</sup> day of September, 2013 at about 6:00 o'clock in the evening beside [REDACTED], [REDACTED], [REDACTED], [REDACTED]s and within the jurisdiction of this Honorable Court, the above-named accused, biological father of complainant, without any justifiable cause, did then and there willfully, unlawfully and feloniously commit child abuse upon his legitimate daughter, AAA, a sixteen (16) year old minor, by attempting to punch her, forcefully pushing her, threatening her that he has a gun and dragging her towards the tricycle, thereby causing her physical injuries, which acts debase, degrade or demean the intrinsic worth and dignity of said AAA as a human being.

CONTRARY TO LAW.

XXX pleaded 'not guilty.' At the trial, the prosecution established that on April 4, 2010, AAA, who was then 13 years old, was inside the tricycle driven by XXX. AAA then sat in front of XXX because she wants to learn how to maneuver the tricycle. Suddenly, XXX mashed AAA's breast, placed his hands on her jogging pants, and touched her vagina. AAA cried but XXX threatened to harm her and her mother. After three years or on August 16, 2013, XXX confronted AAA at her school and suspected that she was not attending classes to meet her boyfriend. Thereafter, XXX aggressively punched AAA on her nape and eye. XXX also violently kicked AAA's arms, waist and thighs, and forced her to board the tricycle. AAA then reasoned out that she just went to her aunt's house to discuss a poem. Yet, XXX became more furious and struck AAA's thighs and stomach with a steel pipe. Afterwards, XXX drove the

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tricycle to the house of AAA's aunt. XXX continued to kick and punch AAA inside the tricycle while waiting for their relatives to come out. Later, AAA's uncle pacified XXX. On even date, AAA was brought to the hospital for physical examination. The physician found that AAA sustained periorbital hematoma in the right eye and abrasion on the lateral aspect left thigh. On September 10, 2013, XXX went to AAA's school again and excused her from class because her mother was sick. AAA hurriedly finished her exam because XXX kept on shouting at her inside the classroom. XXX forced AAA to go with him but she refused and ran towards the plaza. XXX was able to catch AAA and warned her that he has a gun.<sup>3</sup>

In contrast, XXX denied the accusations and claimed that it was impossible for him do any lascivious act to AAA while driving the tricycle. Moreover, XXX explained that he got mad at AAA after he discovered that she was skipping classes. XXX was only concerned that AAA might have a boyfriend at a young age. Also, XXX neither chased nor threatened AAA with a gun after she ran away to the plaza. Lastly, XXX averred that AAA fabricated the charges given the delay in filing the complaints.<sup>4</sup>

On February 15, 2017, the RTC convicted XXX in Criminal Case No. 02-0148-2014 and found that all the requisites of lascivious conduct are present. The RTC likewise ruled that XXX is guilty in Criminal Case No. 02-0149-2014 for other acts of child abuse. However, the RTC acquitted XXX in Criminal Case No. 02-0150-2014 based on reasonable doubt,<sup>5</sup> thus:

**WHEREFORE**, in view of all the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 02-0148-2014, the Court hereby finds herein accused XXX **GUILTY** beyond reasonable doubt, for the crime of *Lascivious Conduct* under *Article III, Section 5(b) of Republic Act No. 7610*, otherwise known as the '*Special Protection of Children against Abuse, Exploitation and Discrimination Act*', and hereby sentences him to suffer the penalty of imprisonment of Ten (10) years and One (1) day of *Prision Mayor*, as minimum to Seventeen (17) years and Four (4) months of *Reclusion Temporal*, as maximum. Accused is likewise ordered to pay AAA the amount of Thirty Thousand Pesos ([P] 30,000.00) as moral damages;

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<sup>3</sup> CA *rollo*, pp. 31-33.

<sup>4</sup> Id. at 33.

<sup>5</sup> Id. at 46-55.

2. In Criminal Case No. 02-0149-2014, the Court hereby finds herein accused XXX **GUILTY** beyond reasonable doubt, for the crime of *Child Abuse* defined and penalized under *Section 10(a)* of *Republic Act No. 7610* otherwise known as the '*Special Protection of Children against Abuse, Exploitation and Discrimination Act*' and hereby sentences him to suffer the penalty of imprisonment of Four (4) years, Nine (9) months and Eleven (11) days of *Prision Correccional* as minimum, to Six (6) years, Eight (8) months and One (1) day of *Prision Mayor* as maximum. Accused is likewise ordered to pay AAA the amount of Thirty Thousand Pesos ([P] 30,000) as moral damages; and

3. In Criminal Case No. 02-0150-2014, the Court hereby finds herein accused XXX **Not GUILTY** for the crime of *Child Abuse* defined and penalized under *Section 10(a)* of *Republic Act No. 7610*.

x x x x

SO ORDERED.

Aggrieved, XXX elevated the cases to the Court of Appeals (CA) docketed as CA-G.R. CR No. 39874. On April 2, 2018, the CA affirmed the RTC's findings but modified the penalties and award of damages,<sup>6</sup> viz.:

**WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 15 February 2017 of the Regional Trial Court of Batangas, Branch 13, Lipa City finding accused-appellant XXX guilty beyond reasonable doubt for violations of Sections 5(b) and 10(a) of Republic Act No. 7610 in *Crim. Cases Nos. 02-0148-2014* and *02-0149-2014* is **AFFIRMED** with the following **MODIFICATIONS**:

1. In *Crim. Case No. 02-0148-2014*, accused-appellant XXX is hereby sentenced to suffer the penalty of imprisonment of **reclusion perpetua without eligibility of parole**, to pay a fine of [P]15,000.00, and to pay private complainant AAA civil indemnity, moral damages and exemplary damages in the amount of [P]75,000.00 each;

2. In *Crim. Case No. 02-0149-2014*, accused-appellant XXX is hereby sentenced to suffer the indeterminate penalty of imprisonment of four (4) years, nine (9) months

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<sup>6</sup> CA rollo, pp. 106-140. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Samuel H. Gaerlan (now a Member of this Court) and Marie Christine Azcarraga-Jacob.

and 11 days of *prision correccional*, as minimum, to seven (7) years, four (4) months and one (1) day of *prision mayor*, as maximum, to pay a fine of Php15,000.00, and to pay private complainant AAA moral damages, exemplary damages and temperate damages in the amount of [P]20,000.00 each; and

3. In both criminal cases, the fine, civil indemnity and all damages shall be subject to interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED. (Emphases supplied)

Hence, this appeal. XXX reiterates that the prosecution failed to establish all the elements of lascivious conduct. As regards the other acts of child abuse, XXX points out that he only intended to discipline AAA.<sup>7</sup>

The appeal is unmeritorious.

Prefatorily, the Court has ruled that the age of the victim is taken into consideration in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty. Specifically, *'if the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, x x x, the crime should be designated as 'Lascivious Conduct under Section 5(b) of R.A. No. 7610,' and the imposable penalty is reclusion temporal in its medium period to reclusion perpetua.'*<sup>8</sup> Corollarily, in Criminal Case No. 02-0148-2014, the nomenclature of the crime should be Lascivious Conduct under Section 5(b) of RA 7610 considering that AAA was 13 years old at the time of the violation. Here, the prosecution proved all the elements of the offense, to wit: (1) the accused committed the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.<sup>9</sup>

It is undisputed that AAA was a minor at the time of the commission of the offenses and is, therefore, within the protective mantle of the law.<sup>10</sup> Also, XXX committed lascivious conduct to

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<sup>7</sup> *Rollo*, pp. 37-38.

<sup>8</sup> *People v. Ursua*, 819 Phil. 467, 480 (2017), citing *People v. Caoili*, 815 Phil. 839 (2017).

<sup>9</sup> *People v. Sumingwa*, 618 Phil. 650 (2009).

<sup>10</sup> Section 3 (a), Article I of RA 7610 provides:

(a) "**Children**" refers [to] persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition; xxx.

arouse or gratify his sexual desires,<sup>11</sup> when he intentionally fondled AAA's breasts and groped her vagina.<sup>12</sup> XXX's act of touching the vagina of AAA through her clothing for quite some time before letting go constitutes lascivious conduct. In this case, AAA categorically narrated the details of the incidents, to wit:

Q Now while you were then trying to learn to drive the tricycle, from 9:30 in the evening on April 4, 2010, and the accused was behind you, what happened?

A **He held the private parts of my body, Sir.**

x x x x

Q **You said he touched your private parts, what part of your body did he touch?**

A **My breasts and my private part, Sir.**

Q **Now, first, how did he touch your breasts?**

A **He was mashing my breasts, Sir.**

Q Where was he when he was mashing your breasts?

A At my back, Sir.

Q How many hands did he use?

A Two, Sir.

Q And while he was mashing your breasts, what was he saying, if he is [sic] saying anything?

A That I should not tell it to anyone, Sir.

Q And or else?

A He will hurt me and my mother, Sir.

x x x x

Q **You said that aside from mashing your breasts, he also touched your private part, your vagina, how did he do that?**

A **Just like what he did to my breasts, Sir.**

Q Did he put his hands inside your jogging pants?

A No, Sir.

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<sup>11</sup> *Sombilon, Jr., v. People*, 617 Phil. 187 (2009).

<sup>12</sup> Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of R.A. No. 7610 defines lascivious conduct as follows: "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or public area of a person."

Q So it's outside. But how many hands did he use?

A One, Sir.

Q And how long did he touch your private part?

A About half an hour, Sir.

x x x x

**Q And what were you saying to him while he was doing this?**

**A I did not say anything, I was just crying.**<sup>13</sup> (Emphases supplied.)

More importantly, it was proven that AAA was subjected to other sexual abuse because she indulged in lascivious conduct under XXX's coercion and influence.<sup>14</sup> XXX's moral ascendancy over AAA is an *indicium* of coercion.<sup>15</sup> More telling is that XXX threatened AAA with harm if she disclosed the incident. Likewise, XXX's intent to abuse was shown when he refused to stop touching the private parts of AAA even if she was already crying.

XXX's submission that it was impossible for him to perform the lascivious acts while driving the tricycle is unsophisticated. Suffice it to say that lust is no respecter of time and place.<sup>16</sup> Further, we stress that the CA and the RTC's assessment on AAA's credibility and the veracity of her testimony is given the highest degree of respect,<sup>17</sup> 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.<sup>18</sup> Moreover, the trial court had the best opportunity to determine the credibility of the victim, having evaluated her emotional state, reactions and overall demeanor in open court. In any event, AAA's credibility is enhanced absent evidence indicating that he harbored improper motive to falsely testify against XXX.<sup>19</sup> Contrary to XXX's theory, AAA's deferral in reporting the incident does not distort the veracity of her testimony. As intimated earlier, AAA was cowed into silence for fear that XXX might make

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<sup>13</sup> CA rollo, pp. 37-38.

<sup>14</sup> See *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005). In this case, the Supreme Court explained that the phrase, "other sexual abuse" covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult.

<sup>15</sup> *Supra*.

<sup>16</sup> *People v. Bugarin*, 339 Phil. 570 (1997).

<sup>17</sup> *People v. Matignas, et al.*, 428 Phil. 834 (2002).

<sup>18</sup> *People v. Orosco*, G.R. No. 209227, March 25, 2015, citing *People v. De Leon*, 608 Phil. 701, 721 (2009).

<sup>19</sup> *People v. Prades*, G.R. No. 127569, July 30, 1998.

good his threats. At any rate, the delay in prosecuting the crime is not an indication of a fabricated charge. Many victims never complain or file criminal charges against the abusers. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.<sup>20</sup>

Similarly, the Court finds XXX liable in Criminal Case No. 02-0149-2014 for other acts of child abuse under Section 10(a) of RA 7610 which reads: *'(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development x x x, shall suffer the penalty of prision mayor in its minimum period.'* Section 2 of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases defines the term 'child abuse' as the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child. In turn, the same section defines 'physical injury' as those that include but are not limited to lacerations, fractured bones, *burns*, internal injuries, severe injury or serious bodily harm suffered by a child. Clearly, when a child is subjected to physical abuse or injury, the person responsible therefor can be held liable under R.A. No. 7610 by establishing the essential facts above. Here, the prosecution duly proved the following allegations in the Information charging XXX of child abuse: (1) the minority of AAA; (2) the acts committed by XXX constituting physical abuse against AAA; and (3) the fact that said acts are punishable under R.A. No. 7610.<sup>21</sup> In particular, XXX's acts of punching AAA in the nape and right eye, kicking her arms, waist and thighs, and hitting her thighs and stomach with a steel pipe constituted physical abuse.

On this score, XXX invokes that he only intended to discipline AAA and was concerned that she might have a boyfriend at a young age. Quite the contrary, XXX's extreme measures were not designed to protect AAA from harm but to demean her intrinsic worth and dignity as a human being. The fact that XXX committed some of the abusive acts within the school premises and in the presence of their relatives bolstered his intention to humiliate AAA. Worse, the repeated abusive acts against AAA placed her in an embarrassing situation. In any event, XXX's suspicion that AAA might be skipping classes to meet up with her boyfriend can hardly be sufficient for him to lose self-control and inflict upon AAA injuries which are intrinsically cruel and excessive.

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<sup>20</sup> *People v. Pareja*, 724 Phil. 759, 799 (2014), citing *People v. Ogarte*, 664 Phil. 642 (2011).

<sup>21</sup> *Patulot v. People*, G.R. No. 235071, January 7, 2019.



As mentioned earlier, the penalty for lascivious conduct under Section 5(b) of RA 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. There being an aggravating circumstance of relationship, the maximum term of the prescribed penalty shall be imposed which is *reclusion perpetua*. However, the phrase '*without eligibility of parole*' in the dispositive portion of the CA's decision must be clarified. In A.M. No. 15-08-02-SC,<sup>22</sup> this Court set the guidelines for the use of the phrase '*without eligibility for parole*' to remove any confusion, to wit:

1. In cases where the death penalty is not warranted, there is no need to use the phrase '*without eligibility for parole*' to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and
2. When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of Republic Act (R.A.) No. 9346, the qualification of '*without eligibility for parole*' shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

Hence, there is a need to qualify that the accused is '*not eligible for parole*' only in cases where the imposable penalty should have been death were it not for the enactment of R.A. No. 9346 or the Anti-Death Penalty Law.<sup>23</sup> Here, XXX is guilty of lascivious conduct penalized with *reclusion perpetua* and there is no need to indicate that he was ineligible for parole. XXX is *ipso facto* ineligible for parole because he was sentenced to suffer an indivisible penalty. Anent the amount of fines and damages, the CA properly ordered XXX to pay a fine of ₱15,000.00,<sup>24</sup> and awarded the victim ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱75,000.00 exemplary damages.<sup>25</sup> The award of damages shall all earn interest at the rate of 6% per annum from finality of the decision until fully paid.<sup>26</sup>

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<sup>22</sup> Guidelines for the proper use of the phrase "without eligibility for parole" in indivisible penalties.

<sup>23</sup> Approved on June 24, 2006.

<sup>24</sup> R.A. No. 7610, Section 31. Common Penal Provisions – x x x (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

<sup>25</sup> *People v. XXX*, G.R. No. 235662, July 24, 2019; and *People v. XXX*, G.R. No. 233661, November 6, 2019.

<sup>26</sup> *Nacar v. Gallery Frames and/or Bordey, Jr.*, 716 Phil. 267 (2013).

On the other hand, the penalty for other acts of child abuse under Section 10(a) of RA 7610 is *prision mayor* in its minimum period which has a range of 6 years and 1 day to 8 years. Applying the Indeterminate Sentence Law, there being an aggravating circumstance of relationship, the maximum term of the indeterminate sentence must come from the maximum period of the prescribed penalty or 7 years, 4 months and 1 day to 8 years. The minimum term of the indeterminate sentence shall be within the range of the penalty next lower in degree than that prescribed which is *prision correccional* maximum or imprisonment of 4 years, 2 months and 1 day to 6 years. Hence, the CA correctly imposed the indeterminate penalty of 4 years, 9 months and 11 days of *prision correccional*, as minimum, to 7 years, 4 months, and 1 day of *prision mayor*, as maximum. As to the amount of fines and damages, the CA properly ordered XXX to pay a fine of ₱15,000.00, and awarded the victim ₱20,000.00 moral damages for emotional trauma due to abusive acts,<sup>27</sup> ₱20,000.00 exemplary damages in view of the presence of an aggravating circumstance,<sup>28</sup> and ₱20,000.00 temperate damages since it is undisputed that the victim sustained injuries although the actual expenses incurred could not be determine.<sup>29</sup> The award of damages shall all earn interest at the rate of 6% per annum from finality of this Resolution until fully paid.

**FOR THESE REASONS**, the appeal is **DISMISSED**. The Court of Appeals' Decision dated April 2, 2018 in CA-G.R. CR No. 39874 is **AFFIRMED** with **MODIFICATIONS**.

In Criminal Case No. 02-0148-2014, accused-appellant XXX is found **GUILTY** of Lascivious Conduct under Section 5(b) of Republic Act No. 7610 and is sentenced to suffer the penalty of *reclusion perpetua*. The accused-appellant is ordered to pay ₱15,000.00 fine, ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱75,000.00 exemplary damages, all with legal interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until full payment.

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<sup>27</sup> Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.


<sup>28</sup> Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

<sup>29</sup> Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

In Criminal Case No. 02-0149-2014, accused-appellant XXX is found **GUILTY** of other acts of child abuse under Section 10(a) of Republic Act No. 7610 and is sentenced to suffer the indeterminate penalty of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to seven (7) years, four (4) months, and one (1) day of *prision mayor*, as maximum. The accused-appellant is ordered to pay ₱15,000.00 fine, ₱20,000.00 moral damages, ₱20,000.00 exemplary damages, and ₱20,000.00 temperate damages, all with legal interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until full payment.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *of 10119*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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DEC 07 2022

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(CA-G.R. CR No. 39874)

The Hon. Presiding Judge  
Regional Trial Court, Branch 13  
Lipa City, 4217 Batangas  
(Crim. Case Nos. 02-0148-2014, etc.)

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