



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 8, 2023** which reads as follows:*

“G.R. No. 254949 (*Generoso Robin y Abejo v. People of the Philippines*).—The Court resolves to **DENY** with **FINALITY** the Motion for Reconsideration of the Court’s May 10, 2021 Resolution which affirmed the Court of Appeals in finding petitioner guilty beyond reasonable doubt of Rape by Sexual Assault (Statutory Sexual Assault) under Article 266-A (2) of the Revised Penal Code, as amended, in relation to Section 5 (b), Article III of Republic Act No. (RA) 7610, for failure to raise any substantial argument which would warrant the reconsideration sought.

The designation of the offense should, however, be modified. *People v. Tulagan*¹ instructs that “rape by sexual assault” is a misnomer, as it goes against the traditional concept of rape being carnal knowledge of a woman without her consent or against her will. Sexual assault is a broader term that includes acts that gratify sexual desire, while classic rape is particular and its commission involves only the reproductive organs of a man and a woman.² The proper designation of the offense should therefore be “Sexual Assault under Article 266-A(2) of the Revised Penal Code in relation to Section 5(b), Article III of R.A. No. 7610.”

Additionally, the modification of the penalty of imprisonment is in order. Sec. 5(b) of RA 7610 imposes the penalty of *reclusion temporal* medium. Applying the Indeterminate Sentence Law and considering the absence of any modifying circumstance, the medium range of the imposable penalty of *reclusion temporal* medium must be taken as the maximum of the indeterminate penalty. Significantly, the medium range of *reclusion temporal* medium is 15 years, 6 months, and 21 days to 16 years, 5 months, and 10 days.³ Thus, the maximum of the indeterminate penalty imposed by the lower

¹ 849 Phil. 197 (2019).

² Id. at 222.

³ *People v. XXX*, G.R. No. 233661, November 6, 2019.



courts, 15 years, 6 months, and 20 days, falls within the minimum range of *reclusion temporal* medium, and is thus short of one (1) day to be proper.

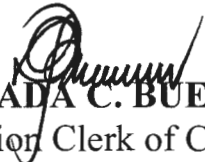
WHEREFORE, the Motion for Reconsideration is **DENIED** with **FINALITY**. The nomenclature of the crime is **MODIFIED** from Rape by Sexual Assault (Statutory Sexual Assault) under Article 266-A (2) of the Revised Penal Code, as amended, in relation to Section 5 (b), Article III of Republic Act No. 7610 to Sexual Assault under Article 266-A (2) of the Revised Penal Code, as amended, in relation to Section 5 (b), Article III of Republic Act No. 7610. The penalty is likewise **MODIFIED**. Generoso Robin y Abejo is sentenced to suffer the penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty-one (21) days of *reclusion temporal*, as maximum.

NO FURTHER pleadings, motions, letters or other communications shall be entertained herein.

Let an **ENTRY** of judgment in this case be issued immediately.

SO ORDERED.” *Rosario, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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FEB 17 2023

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Petitioner
5/F, DOJ Agencies Building
NIA Road cor. East Avenue, Diliman
1101 Quezon City

Court of Appeals (x)
Manila
(CA-G.R. CR No. 42866)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 73
Olongapo City, 2200 Zambales
(Crim. Case No. 2018-156FC))

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court



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NO FURTHER pleadings, motions, letters or other communications shall be entertained herein.

Let an **ENTRY** of judgment in this case be issued immediately. [For release]

The Judicial Records Office, this Court, is **DIRECTED** to report compliance herewith, within ten (10) days from notice hereof. [Internal Resolution - not for release]

SO ORDERED.” *Rosario, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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FEB 17 2023

The Chief (x)
Judicial Records Office
Supreme Court

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