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Department of Justice
Manila

REPUBLIC OF THE PHILIPPINES

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**NATIONAL
BUREAU OF INVESTIGATION**
and **WILFREDO D. KENG,**
Complainants,

- versus -

XVI-INV-18C-00049
For: Violation of Sec. 4(c)(4)
of R.A. No. 10175

**REYNALDO SANTOS, JR.,
MARIA ANGELITA RESSA,
MANUEL I. AYALA,
NICO JOSE NOLLEDO,
GLENDA M. GLORIA,
JAMES BITANGA,
FELICIA ATIENZA,
DAN ALBERT DE PADUA,
and JOSE MARIA G. HOFILEÑA,**
Respondents.

X-----X

RESOLUTION

This resolves the complaint for violation of Section 4(c)(4) of Republic Act No. 10175, otherwise known as the "Cybercrime Prevention Act of 2012," filed by the National Bureau of Investigation on complaint of Wilfredo D. Keng against REYNALDO SANTOS, JR., MARIA ANGELITA RESSA, MANUEL I. AYALA, NICO JOSE NOLLEDO, GLENDA M. GLORIA, JAMES BITANGA, FELICIA ATIENZA, DAN ALBER DE PADUA, and JOSE MARIA G. HOFILENA.

On 29 May 2012, complainant Keng discovered that Rappler, Philippines, Inc. published through online news platform and website of Rappler an article written by respondent Santos entitled "CJ Using SUVs of Controversial Businessman," as follows:

"Shady past?

At the time we were tracing the registered owner of the Chevrolet in early 2011, we got hold of an intelligence

report that detailed Keng's past. Prepared in 2002, it described Keng as a "naturalized Filipino citizen" whose exact birthdate is unknown. In the report, he was also identified as bearing the alias "Willy," using a surname also spelled as "Kheng."

The report stated that Keng had been under surveillance by the National Security Council for alleged involvement in illegal activities, namely "human trafficking and drug smuggling." He is supposedly close to lawmakers and had contacts with the US embassy at the time.

The document also said Keng was involved in a murder case for which he was "never jailed." It could be referring to the death of Manila Councilor Chika Go in 2002 where Keng had been identified as a mastermind. Go was also the architect of Keng's Reina Regente condominium residence in Binondo, Manila.

According to a [2002 Philippine Star report](#), Keng was also accused of smuggling fake cigarettes and granting special investors residence visas to Chinese nationals for a fee. [Keng has denied his involvement](#) in this illegal transaction, saying it's easy to get visas to the Philippines."

In 2012, complainant Keng requested that the article be taken down but the request was apparently turned down, and the same continued to be available online.

On 11 October 2017, complainant Keng, through counsel, requested the NBI to investigate and take appropriate actions against the persons responsible for the publication.

On 18 October 2017, a preservation request signed by HA Manuel Antonio M. Eduarte, Chief, NBI Cybercrime Division, was sent to the Chief Operating Officer of Rappler, Philippines, Inc., requesting the person/s concerned to preserve the said news article.

On 10 January 2018, complainant Keng filed an Affidavit-Complaint with the NBI. This was followed by a Supplemental Affidavit on 29 February 2018.

Complainant Keng states that the article complained of was published on 29 May 2012, subsequently updated, revised and/or edited on 19 February 2014, and continued to be published online in the website of Rappler. He contends that the article is defamatory.

By way of defense, respondents contend, among other things, that they cannot be charged with Cyber-Libel as R.A. No. 10175 was not yet in effect at the time of the publication of the article complained of and that at the time of its update, there was a standing Temporary Restraining Order (TRO) issued by the SC in *Disini et al. vs. Secretary of Justice et al.*, G.R. No. 203335, 11 Feb. 2014; and that the offense charged, assuming it was committed, has prescribed as more than one (1) year has elapsed after the publication of the article complained of. Further, respondent Ressa, Chief Executive Officer and Executive Editor of Rappler, Inc., alleges that most of the articles posted or published by Rappler's journalists are not subject to her review with the exception of some areas of priority and key investigative features.

Respondents Ayala, Nollado, Gloria, Bitanga, Atienza, De Padua, and Hofileña allege that they had no participation in the writing and publication of the article complained of.

We now resolve.

Republic Act No. 10175 provides:

Section 4. *Cybercrime Offenses.* — The following acts constitute the offense of cybercrime punishable under this Act:

(a) xxx

(c) Content-related Offenses:

(1) xxx

(4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

Section 6. All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: *Provided*, That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

A libel is defined as "a public and malicious imputation of a crime or of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit or contempt of a natural or juridical person or to blacken the memory of one who is dead." For an imputation to be libelous, the following requisites must concur: (a) it must be defamatory; (b) it must be malicious; (c) it must be given publicity; and (d) the victim must be identified or identifiable.

The publication complained of imputes to complainant Keng the commission of crimes. It is clearly defamatory. Under Article 354 of the Revised Penal Code, every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown. The presumed malice is known as malice in law. The recognized exceptions, where malice in law is not present, are the absolutely or qualifiedly privileged communications.

The class of absolutely privileged communications is narrow and is practically limited to legislative and judicial proceedings and other acts of state, including, it is said, communications made in the

discharge of a duty under express authority of law, or by or to heads of executive departments of the state, and matters involving military affairs (Reyes, *The Revised Penal Code*, Book Two, 2008 Ed., pp. 994-95). The qualifiedly privileged communications, on the other hand, include those specifically mentioned in Article 354 of the Revised Penal Code, to wit; (a) A private communication made by any person to another in the performance of any legal, moral or social duty; and (b) A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions. Also regarded as qualifiedly privileged are fair commentaries on matters of public interest, as these are protected by the constitutional guaranty of freedom of speech (*Vasquez vs. Court of Appeals*, G.R. No. 118971, 15 Sept. 1999).

The publication in question does not fall under any of the absolutely or qualifiedly privileged communications. It is not qualifiedly privileged as a "private communication made in the performance of any legal, moral or social duty." Neither is it a "fair and true report, made in good faith, without any comments or remarks, of any legislative proceedings" or of "any statement, report or speech delivered in said proceedings." Nor is it a "commentary" on matters of public interest, as the statement is not a mere expression of an opinion based on established facts but purports to be a fact which is not proven (see *Borjal vs. Court of Appeals*, 301 SCRA 1). Not being within the exceptions, the article complained of is presumed to be malicious.

While we agree with respondents that the first publication of the article on 29 May 2012 is not covered by the Cybercrime Act of 2012, considering that the law was promulgated only in September 2012, we cannot share the same view with respect to the 19 February 2014 publication. Under the "multiple publication rule," a single defamatory statement, if published several times, gives rise to as many offenses as there are publications. This is explained in *Soriano v. Intermediate Appellate Court*,¹ to wit:

¹ G.R. No. 72383, November 9, 1988, 167 SCRA 222.

"We follow the "multiple publication" rule in the Philippines. Thus, in the cases of *Montinola D. Montalvo* (34 Phil. 662, [1916]) and *United States v. Sotto* (36 Phil. 389 [1917]), this Court ruled that each and every publication of the same libel constitutes a distinct offense. Stated more succinctly for purposes of ascertaining jurisdiction under Art. 360 of the Revised Penal Code, as amended, every time the same written matter is communicated such communication is considered a distinct and separate publication of the libel."

Accordingly, we hold that the republication of the article as may have been modified or revised is a distinct and separate offense, for which the author, respondent Santos, should be prosecuted. Respondent Ressa, being the editor, should be included in the indictment (Art. 360, Revised Penal Code). Rappler, Inc. should also be included pursuant to Section 9 of R.A. No. 10175.

The other respondents may not be indicted, there being no showing of their participation in the commission of the offense or supervision or control over respondent Santos.

The offense charged has not prescribed. Under R.A. No. 10175, if libel is committed by, through and with the use of information and communications technologies, the nature of the crime changes and the use of information technologies qualifies it to cyber-libel.

The penalty for libel is *prision correccional* in its minimum and medium periods, or six (6) months and one (1) day to four (4) years and two (2) months (Art. 355, Revised Penal Code). As the crime of libel was committed by, through and with the use of information and communications technologies, the penalty is raised to one degree higher as prescribed under Section 6 of R.A. No. 10175. This would be *prision correccional* in its maximum period and *prision mayor* in its minimum period, or four (4) years, two (2) months and one (1) day to eight (8) years. Under R.A. No. 3326, which governs the prescription of offenses punished by special

laws, such as R.A. No. 10175, the prescriptive period of the offense charged is twelve (12) years (Sec. 1(d), R.A. No. 3326, as amended). Clearly the 19 February 2014 publication has not prescribed.

Finally, the TRO issued by the Supreme Court does not render innocent the commission of the act complained of during the period of its effectivity; it merely suspended the implementation of R.A. No. 10175 for the duration thereof.

WHEREFORE, it is respectfully recommended that REYNALDO SANTOS, JR., MARIA ANGELITA RESSA, and RAPPLER, INC. be charged with violation of Section 4(c)(4) of R.A. No. 10175 and that the complaint as against MANUEL I. AYALA, NICO JOSE NOLLEDO, GLENDA M. GLORIA, JAMES BITANGA, FELICIA ATIENZA, DAN ALBER DE PADUA, and JOSE MARIA G. HOFILENA be dismissed.

10 January 2019, Manila.

EDWIN S. DAYOG

Senior Assistant State Prosecutor

FLORENCIO D. DELA CRUZ, JR.

Assistant State Prosecutor

J. Dacpano
JEANNETTE M. DACPANO

Assistant State Prosecutor

APPROVED:

[Signature]
RICHARD ANTHONY D. FADULLON

Senior Deputy State Prosecutor
Officer-In-Charge Prosecutor General
(Per D.O. No. 384, dated June 29, 2018)

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