REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
BRANCH 46, MANILA

PEOPLE OF THE PHILIPPINES
Plaintiff,

-versus-

Criminal Case No. R-MNL-19-01141-CR
For: Violation of Section 4(C)(4), of R.A. 10175

REYNALDO SANTOS, JR.,
MARIA ANGELITA RESSA,
AND RAPPLER, INC.,
Accused,
x----------x

DECISION

Before this Court is an Information charging accused **REYNALDO SANTOS, JR.** and **MARIA ANGELITA RESSA** for ***Violation of Section 4 (c)(4) of Republic Act No. 10175*** or the ***Cybercrime Prevention Act of 2012***, which alleges:

> *"That on or about 19 February 2014, the above named accused, did then and there willfully, unlawfully and knowingly re-publish an article entitled "CJ Using SUVs of Controversial Businessman" quoted hereunder:*
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> *"Shady past?*
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> *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."*
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> *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 the website of Rappler, Inc. with malicious intent and evil motive of attacking, injuring and impeaching the reputation of one Wilfredo D. Keng, with residence at Carriedo Street, Manila, within the jurisdiction of this Honorable Court, as a businessman, and as a private citizen, thereby exposing him to public hatred, contempt, ridicule, discredit and dishonor.

CONTRARY TO LAW."

On 14 May 2019, both Accused Reynaldo Santos, Jr. and Maria Angelita Ressa were arraigned, assisted by their counsel de parte, Atty. Theodore O. Te of the Free Legal Assistance Group. Both accused refused to enter a plea. Thus, the Court entered separate pleas of not guilty for each of the accused.[1]

On even date, the case was referred to the Philippine Mediation Center for appropriate mediation proceedings. The same resulted to unsuccessful mediation as per Mediator's Report dated 4 June 2019.

On 21 June 2019, pre-trial ensued wherein the prosecution and the defense stipulated on the following:[2]

1. The identity of both accused as the persons named in the Criminal Information;

2. Territorial jurisdiction of the Court;

3. That accused Maria Angelita Ressa is the Chief Executive Officer and Executive Editor of Rappler Inc.;

4. That Accused Reynaldo Santos, Jr. is a Researcher/Reporter of Rappler, Inc. from May 29, 2012 until his separation on mid-August 2016;

5. That the Article specified in the Information was published on the website of Rappler, Inc. on May 29, 2012;

6. That the said Article was updated on February 9, 2014;

[1] Order dated 14 May 2019.

[2] Pre-trial Order dated 21 June 2019 and Amended Pre-trial Order dated 23 July 2019.

7. That the said Article is still available in the website of Rappler, Inc.;

8. That Rappler, Inc. is a juridical entity registered with Securities and Exchange Commission;

9. That the Criminal Information and the Resolution issued by the Department of Justice dated January 10, 2019 do not bear any amount on pecuniary damage;

10. That as appearing on the last paragraph of page 7 of the Resolution dated January 10, 2019, said Resolution recommended the filing of charges against both accused in this case, but dismissed the charges against seven (7) others;

11. The Complaint which was made through referral by the National Bureau of Investigation on March 1, 2018 was received by the DOJ Prosecution Docket Section on March 2, 2018.

Thereafter, trial proceeded.

EVIDENCE FOR THE PROSECUTION

The prosecution presented Marcelino Malonzo, Senior Agent Christopher M. Paz, Ma. Florina G. Cureg, Atty. Leonard De Vera, Katerina Francisco and the private complainant Wilfredo Keng as its witnesses.

When **MARCELINO MALONZO** was presented, both the prosecution and the defense stipulated that: (1) the witness read the article subject matter of the present criminal information; and (2) that he executed and submitted the affidavit before the Department of Justice during the preliminary investigation of the case.[3]

Malonzo is a retired pensioner.[4] Prior to his retirement in 1997, he worked as a bank manager with Security Bank and Bank of Commerce.[5] He joined the Rural Bank of Norzagaray, thereafter, until he reached the age of sixty (60).[6]

Private complainant, Wilfredo Keng was known to him personally because the former was his client at the Bank of Commerce, Port Area Branch in Manila for the year 1994-1997.[7]

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[3] Order dated 23 July 2019.
[4] TSN dated 23 July 2019, p. 10.
[5] *Ibid.*
[6] *Ibid.* p. 11.
[7] *Ibid.* pp. 11-12.

Malonzo testified that he personally read and perused the subject article and he immediately surmised that, as the title clearly suggests, the late Chief Justice Corona had used a vehicle belonging to a certain Wilfredo Keng. Also, he gathered that based on what is written in the article, this Wilfredo Keng had been accused of smuggling fake cigarettes and was alleged to have been involved in human trafficking and drug smuggling. He stated that he immediately made prejudices against Wilfredo Keng because of the Rappler article.[8]

He testified that he read the subject article on January 2018 at lunch time.[9] Then he read it again on 4 July 2018 when he executed his Affidavit of Reader[10], using his daughter's laptop.[11] He personally prepared the said affidavit but the same was encoded by his daughter.[12]

When Malonzo saw a news item on television particularly TV Patrol in ABS-CBN, that prompted him to read Rappler.[13] When he heard the name Mr. Keng, he recalled a client of his from 1997.[14] He tried to reach him but Keng was not available.[15] He called up Patty Keng, private complainant's daughter, because he wanted to confirm whether the person in the news referred to as Willy Keng is his father.[16] Patty Keng confirmed that it was in fact his father.[17]

The witness further testified that he had another conversation with Patty Keng when she called him and asked if he can be a witness, to issue an affidavit stating that he have read the Rappler article.[18] He consented to testify. [19] He met Atty. Steve Cabales, who introduced himself as the lawyer of Keng at his office in Alabang. Then, he was accompanied by the said lawyer to the Department of Justice on 5 July 2018 where he took an oath before a prosecutor, whose name he cannot recall. [20]

The prosecution and the defense entered into stipulation on the supposed testimony of **SA CHRISTOPHER M. PAZ**, Chief, Digital Forensics Laboratory of the National Bureau of Investigations that: (1) the witness conducted a forensic examination on the article subject

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[8] Exhibit "J" for the prosecution.
[9] Supra note 4, pp. 17-18.
[10] Supra note 8.
[11] Supra note 4, p. 18.
[12] *Ibid.* p. 12.
[13] *Ibid.* pp. 24 and 30.
[14] *Ibid.* p. 31.
[15] *Ibid.* p. 33.
[16] *Ibid.* p. 57.
[17] *Ibid.* p. 35.
[18] *Ibid.* p. 58.
[19] *Ibid.* p. 42.
[20] *Ibid.*

matter of the information; and (2) he confirmed that the report came from the Rappler's website.[21]

The prosecution next presented **MA. FLORINA G. CUREG** of the Philippine Drug Enforcement Agency (PDEA). She is an Information Systems Analysts in the Intelligence and Investigation Services of PDEA. She testified that she knows Director Randy R. Pedroso because he used to be their director prior to his transfer to Region 10, Regional Office.[22] She worked with him for almost about five (5) years.[23]

She identified two letters issued by PDEA, one is dated 15 August 2016[24] signed by Director Randy G. Pedrozo and the other one is dated 20 May 2019[25] signed by Director General Aaron N. Aquino.[26]

She testified that she was the one who drafted the May 20, 2019 letter,[27] however she does not know personally the person referred to therein and in the August 15, 2016 letter.[28]

She further testified that the verification she referred to in the letter dated 20 May 2019 consisted simply of checking PDEA's system and the documents available.[29] Their system consists of all the information that they gathered from their counterparts, i.e., AFP, PNP, NICA and from other law enforcement agencies in general and some of the data are from the information that were gathered by their drug enforcement officers or intelligence officers nationwide.[30]

The prosecution next presented **ATTY. LEONARD DE VERA** and he testified that Willie D. Keng became his client in 2005.[31] He is still his counsel on other cases but not in the instant case.[32] When Atty. De Vera learned that Keng has already filed this case in 2016, through another counsel, he told Keng that he cannot be a counsel in this case because he had tried to negotiate with Rappler, through Marites Vitug, to publish a clarification or retraction of what then appeared to be in his opinion, libelous, defamatory allegations against him, contained in the 2014 article.[33]

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[21] Order dated 23 July 2019.
[22] TSN dated 16 August 2019, p. 9.
[23] *Ibid.* p. 13.
[24] Exhibit "H-4" for the prosecution.
[25] Exhibit "P" for the prosecution.
[26] Supra note 22, pp. 10 and 15.
[27] *Ibid.* p. 22.
[28] *Ibid.* p. 24-25.
[29] *Ibid.* p. 26.
[30] *Ibid.* pp. 29-30.
[31] TSN dated 27 August 2019.
[32] *Ibid.*
[33] *Ibid.* p. 9.

Atty. De Vera testified that Keng previously consulted him about the allegedly libelous article.[34] He advised him to try to talk to Rappler, to look for a mediator so that instead of going to court, a possible negotiation can be made for the purpose of taking down the defamatory allegations in the article or at least a clarification, if not a total retraction. Atty. De Vera was discouraging litigation because he always gave the same advice to most of his clients that if it can be resolved through negotiation specially in dealing with the media, it is better to negotiate because it is very hard to make and pick-up a fight with them. They always have the last say.[35]

Thereafter, Mr. Keng asked him if he could help him find a mediator.[36] Atty. De Vera suggested to him that he happened to know Marites Vitug, exactly what was her position at that time with Rappler he was not aware of, but he heard from some of their mutual friends that Vitug was then connected in some way, some form, some manner with Rappler. He called Marites Vitug, sometime in August 2016, after he obtained from the PDEA a certification that Mr. Keng had no derogatory record with respect to the drugs allegations.[37]

He sent that letter to Marites Vitug through email.[38] She responded and told him that she would assign a writer, in the person of Katerina Francisco, to contact him.[39]

Atty. De Vera and Francisco were able to contact each other. He told her that there were many errors in the Article that appeared under Rappler's publication. Among which was, the drug smuggling of Keng. He said that he has a PDEA record showing that Keng has no derogatory record on drugs. He further told her that the other allegations are defamatory, namely, the alleged murder or killing of former councilor, Manila Councilor Chika Go, the alleged involvement of Keng in human trafficking as he was neither investigated nor there is any record in any government agency of his involvement. The same holds true for the allegations on cigarette smuggling and tax evasion. He told her to at least publish their side if she does not want to take down the article. And Francisco said that she already wrote an article and the same was already with her editors.[40]

The witness made numerous follow-ups within the period of seven (7) months from August 2016 until February 2017 with Vitug and Francisco regarding the publication of the article written by the latter.[41]

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[34] *Ibid.* p. 9-10.
[35] *Ibid.* p. 11.
[36] *Ibid.*
[37] *Ibid.* p. 12.
[38] *Ibid.* pp. 13 and 16.
[39] *Ibid.* pp. 17 and 20.
[40] *Ibid.* pp. 31, 33-35.
[41] *Ibid.* pp. 34-44.

On 9 September 2019, the prosecution and the defense entered into stipulations and admissions as to the supposed testimony of **KATERINA SABELINA FRANCISCO** that: (1) she was a former researcher writer for Rappler, Inc., specifically for the duration where there was communication between her and Atty. Leonard De Vera from September 14, 2016 up to February 18, 2017; (2) that she would be testifying on the same matters testified to by Atty. De Vera relating to their communication as reflected on Exhibits "S" to "S-23-A"; (3) that she would testify that there was a story drafted already and that it was referred to her editors but there was no action thereafter; (4) that as of last follow-up text made by Atty. De Vera on 18 February 2017, there's still no clarificatory article that was published; (5) that as of 1 November 2017, she is no longer connected with Rappler, Inc.

The last witness for the prosecution is the private complainant **WILFREDO D. KENG**, who is a businessman, with interests in several companies based in the Philippines and in China, i.e., Century Peak Metals Holdings Corporation, Colony Investors (SPV-AMC), Inc., Good Earth Plaza and U-Need Shopping Center, among others. These companies are involved in various industries, including mining, leasing, property development, land investment, manufacturing, production and merchandising, among others.[42]

Keng testified that in his line of work, he has been recognized as a diligent and self-made entrepreneur in his business circles and with his employees. Even if he did not seek it, Forbes ranked him as one of the Philippines' Top 40 Richest individuals in the country, and was described by the Daily Tribune as a "low-key figure in business with a massive fortune." He has also been commended for his contributions to the community, in particular, for his donations for scholarships and sports amounting to about Php2,000,000.00 each year, over several years, to different colleges and universities, such as the University of the Philippines.[43]

He described himself as "low-key" because he is a very private person and intentionally stays out of the limelight. Hence, before Rappler and the accused published their malicious article against him, people who are outside of his business circles ordinarily were not aware of him.[44]

He testified that the Wilfredo Dy Keng being referred to in the subject article is him.[45] He justified that the article identifies Wilfredo Dy Keng as the president of Century Peak Metals Holdings Corp., Century Hua Guang Smelting, Inc., Colony Investors (SPV-AMC), Inc., Good Earth Plaza, U-Need Shopping Center, Carriedo Plaza, and Balikbayan

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[42] Judicial Affidavit of Wilfredo D. Keng marked as Exhibit "AA" for the Prosecution, pp. 1-3.
[43] *Ibid.* p. 3.
[44] *Ibid.* p. 5.
[45] *Ibid.*

Shopping Mall, among others. He is or was, at some point, president of these companies. Except for wrongly describing him as a "naturalized Filipino," when he is actually a natural-born Filipino, the article clearly refers to him by stating the above credentials.[46]

Upon reading the subject article, Keng averred that he was completely shocked. He was angry and upset because he did not commit the crimes imputed to him in the article or any other crime. He has never been questioned or investigated by any law enforcement agency regarding any involvement in a crime, especially as regards the murder of a certain Chika Go. He has never even received summons in any criminal case. Yet, in the article, he was identified as a person with a shady past.[47]

The witness identified his NBI Clearance[48] dated 17 September 2019 showing that he has no derogatory record on file. He, likewise, identified two (2) PDEA letters dated 15 Agust 2016[49] and 20 May 2019,[50] which state that he has no derogatory record on file with PDEA for violation of Republic Act No. 9165.[51]

In relation to Rappler's republication of the article, Keng sought the advice of his lawyer, Atty. Leonard De Vera. He was advised to notify Rappler that the allegations in its article are false, and asked its officers to take down or retract the article. Also to demand from Rappler to present a fair and well-balanced news report by also publishing his side of the story. He requested Atty. De Vera to contact Rappler on his behalf to carry out his recommended courses of action. Accordingly, Atty. De Vera contacted Rappler, through its editor-at-large, Marites Vitug and requested her to take down the article from the website and publish his side of the story. [52]

Atty. De Vera, likewise, secured the certifications by PDEA and sent the letter from PDEA dated 15 August 2016 to Rappler, through Vitug. The latter referred Atty. De Vera to one of Rappler's writers, Katerina Francisco. After interviewing Atty. De Vera, Francisco informed him that she already wrote an article, which she submitted to her editors at Rappler. Rappler, however, never published the article despite Atty. De Vera's continuous follow up with Vitug and Francisco from August 2016 to February 2017.[53]

Because of the said non-publication of Francisco's article, Keng felt humiliated and defamed about Rappler's unfair treatment towards

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[46] *Ibid.* p. 6.
[47] *Ibid.* p. 8.
[48] Exhibit "BB" for the prosecution.
[49] Exhibit "H-4" for the prosecution.
[50] Exhibit "P" for the prosecution.
[51] Supra note 42.
[52] *Ibid.* p. 13.
[53] *Ibid.* pp. 13-14.

him. Rappler never bothered to ask for his side of the story regarding the imputations of crimes against him before publishing the article. Someone who identified himself as a reporter, called him once during the closing stages of former Chief Justice Renato C. Corona's impeachment trial in 2012, only to ask whether his vehicle with plate number ZWK 111 was the vehicle being used by then CJ Corona during the impeachment trial, to which he answered in the negative. He remembers lending CJ Corona one of his vehicles but he returned it to him before the impeachment trial began.[54]

Because of Rappler's refusal to either take down the article or publish Francisco's article, he obtained the legal services of Andres Padernal & Paras Law Offices, which helped him file a criminal complaint for cyberlibel with the National Bureau of Investigation against the persons responsible for the publication of the malicious article, namely (a) Santos; (b) Ressa, Rappler's Editor-in-Chief; and (c) Benjamin Bitanga, Rappler's chairman. He later secured the legal services of Villa and Cruz Law Offices for the proceedings in the Department of Justice.[55]

Keng explained that he only filed a case against Santos, Ressa and Bitanga in 2017 instead of in 2012 when the article was first published because his lawyer advised him against it. His lawyer explained to him that it is difficult to make an enemy out of the media. As a businessman, he did not want to be exposed to more bad publicity, so he decided to just endure it, thinking that it will eventually fade. However, despite his silence and the absence of any provocation on his part, Rappler and the accused republished the article in 2014. This made him realize that Rappler and the accused were out to attack him. At that point, he strongly felt that he had to do something because he was not the only one affected by their malicious imputations. His wife and daughters also felt humiliated and deeply bothered by the false image that Rappler and the accused painted of him. He feared that even his own daughters would doubt his character if he did nothing to clear his name or to stand up for himself.[56]

Keng further testified that because of Rappler's publication of the subject article, his wife and his two (2) daughters have been ridiculed and judged by friends and acquaintances and labeled as associated with drug lords and smugglers. He and his family can no longer fully enjoy their lives since he has been thrust into the limelight as an alleged criminal, if not a peddler of crime. He feels sorry that his daughters are also going through the public humiliation that he is suffering.[57]

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[54] *Ibid.* pp. 14-15.
[55] *Ibid.* p. 15
[56] *Ibid.* pp. 16-17.
[57] *Ibid.* p. 10.

Keng's daughters were approached by different persons to comment upon the malicious allegations against him in the article. Their own reputations have been severely misjudged and injured. In fact, his eldest daughter, Patricia, who ran as a nominee of the Wow Pilipinas Partylist in this year's elections, lost the contest by a narrow margin. Since they were previously confident that she would win, due to the massive support of her followers, he believes her loss was due to the statements the accused published against him in the article.[58]

With respect to his business, Keng asserted that the article has had a negative impact on his occupation as a businessman. As the president of a publicly-listed corporation, he cannot afford to have the image that he is connected to murderers, human traffickers, drug-dealers and smugglers. Based on his personal business experience, it is customary when doing business with other persons and entities, especially for important projects, that these corporations conduct due diligence on their prospective partners before entering contracts with them. Based on human nature and experience, a rational businessman would not choose to work or transact with someone who has been accused of such malevolent crimes, and instead pick other individuals, who have clean records, to engage in business with.[59]

With respect to his peers' reaction after reading the subject article, he testified that while some have hesitantly touched upon the subject of the article, they did not ask him whether accused's defamatory statements are true, for fear of offending him. He also noticed a slight difference in the way he has been treated since then. Due to the accused's publication of the article, not only in 2012, but again in 2014, he has gained notoriety.[60]

Keng prayed that moral damages and exemplary damages be awarded to him in the amount of Php25,000,000.00, respectively. He, likewise, prayed for an award of Php719,000.00 as attorney's fees.

EVIDENCE FOR THE DEFENSE

The defense presented Atty. Leo Edwin D. Leuterio and Ma. Rosario F. Hofileña.

ATTY. LEO EDWIN D. LEUTERIO is presently assigned at the Legal Service of the National Bureau of Investigation as the deputy director. He identified the Memorandum[61] addressed to the Director of NBI, Atty. Dante Gierran, Deputy Director for Investigation Jun de

[58] *Ibid.*
[59] *Ibid.* pp. 10-11.
[60] *Ibid.* p. 11.
[61] Exhibit "1" for the defense.

Guzman and Chief of the Cybercrime Division containing the legal opinion issued by the Legal Service Division of the NBI.[62]

The defense next presented **MA. ROSARIO F. HOFILEÑA** and she testified that she is currently connected with Rappler as journalist since 2012, in fact, she is one of the founders.[63] She is one of the Senior Editors at Rappler and heads one section which is called Newsbreak, which handles in-depth and investigative stories of Rappler.[64]

Hofileña explained that as editor of Newsbreak, she has to generate story ideas, so, she work very closely with reporters, as well as section editors. Her work involves a lot of shepherding and editing of stories and seeing to it that the section is sustainable, that she is within budget and that stories are delivered on deadline. She is also in-charge of the training that involves mentoring of reporters, training the new hires and seeing to it that they follow the standards of Rappler.[65]

When asked about her responsibilities as a senior editor for Rappler she explained that there is a pool of editors. They have what they call a central desk which has seven (7) or eight (8) editors and it is the central desk that processes all stories that go, to what they call the Nation section. But for Newsbreak, she works with the senior editors especially when they deal with sensitive stories, they see to it that there are at least two (2) or three (3) editors to review a story before it is published.[66]

She described the current organizational structure of Rappler as a news organization. She explained that Accused Ressa is the CEO and Executive Editor. As such, Ressa oversees the entire organization. She looks at the big picture and worries about the financials. She is not involved in day to day operations. She does not dip her fingers into stories because her obsession is disinformation and terrorism. She is accountable and reports to the board of trustees and she sees that they remain competitive and that she is aware of global trends.[67]

Hofileña explained that the executive editor position in Rappler is not the equivalent of the editor-in-chief in the newspaper.[68] Rappler has no editor-in-chief.[69] As executive editor, Accused Ressa does not edit stories.[70] Below her would be the managing editor in the person of Glenda Gloria. In the absence of Ressa, who always travels, Gloria then heads the newsroom, oversees all sections in Rappler. All the managers

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[62] TSN dated 16 December 2019, pp. 11 and 16.
[63] *Ibid.* p. 22.
[64] *Ibid.* p. 24.
[65] *Ibid.* p. 25.
[66] *Ibid.* pp. 25-26.
[67] *Ibid.* pp. 26-27.
[68] *Ibid.* pp. 27-28.
[69] *Ibid.* p. 51.
[70] *Ibid.* p. 28

report to her, in the same way that they report to Ressa. Both of them oversee the financials of Rappler. Under Gloria would be the section heads who are really editors.[71]

The witness explained that if an article involves a controversial story, Ressa would normally consult with the other editors. Rappler is not the typical newspaper hierarchical organization, it is a flat organization, consultative and democratic. If it will involve a decision that will affect the entire organization and its image, it is automatic that they consult each other. But the witness clarified that when there is a stalemate, that the organization cannot arrive at a categorical decision and the corporation has to make a decision, Accused Ressa is the one to ultimately break the tie.[72]

Hofileña testified that she first met Ressa when she was with ABS-CBN and when she was still with Newsbreak, when it was a magazine then. They did the story with ABS and she interviewed Ressa. When Ressa decided to put up Rappler after she left ABS, she asked her if she wants to join and without hesitation, she said yes, because it is an organization that is going to be run by journalists and not big business unlike other existing media organizations.[73]

Accused Santos, on the other hand, was her colleague at Newsbreak magazine and he was one of the researchers and writers. When Rappler was created, Santos was among those they hired as their researchers.[74]

Since Rappler started in 2012, they only have three (3) libel suits, including the present case.[75] The other two (2) cases were dismissed at the level of prosecution.[76]

Rappler has a policy on how to deal with libel suits. They are very careful with their stories. They have standards and they stress to their reporters the importance of journalistic core values which include accuracy, truth telling, fairness, and balance. When they say fairness and balance that would include having to get the other side whenever there is derogatory information that is reported about it.[77]

She explained the meaning of the two (2) dates appearing on the subject article. The first date which says "Published 7:39 A.M. May 29, 2012" is when the editor or editors have edited the story and it's published on the site.[78] The second notation which states "Updated 5:42

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[71] *Ibid.*
[72] *Ibid.* pp. 55-56.
[73] *Ibid.* p. 30.
[74] *Ibid.* pp. 30-31.
[75] *Ibid.* p. 32.
[76] *Ibid.* p. 33.
[77] *Ibid.* pp. 33-34.
[78] *Ibid.* p. 37-38.

P.M. February 19, 2014" means that whenever there are changes made on the previous republished story, that woud be recorded. So, anyone who touches the story or reads the story again and closes the story in their system and saves the story, it would be recorded and it would indicate an update. In the subject article, there was a typographical error that was identified, that was seen by one of their reporters and she pointed it out to the editors and the latter gave her the go signal to correct the said error.[79]

On the last portion of the article, there is a notation at the very end: "With reports from Aries Rufo/Rappler.com" which means that the story itself is not just the product of Accused Santos. It had inputs from Aries Rufo, who was a consultant with Rappler, who already passed away.[80]

The witness confirmed the testimony of Atty. De Vera that he contacted Rappler regarding the subject article and got in touch with Marites Vitug.[81] The witness assigned Katerina Francisco to interview Atty. De Vera and she wrote a story and that draft is in their system but the same was not posted because it was buried by more urgent news.[82]

The defense opted not to present Accused Reynaldo Santos, Jr and Maria Angelita Ressa.

RULING OF THE COURT

After a careful evaluation of the evidence presented by both the prosecution and the defense, the Court finds the prosecution's evidence sufficient in establishing the guilt of both Accused Reynaldo Santos, Jr. and Maria Ressa beyond reasonable doubt for Violation of Section 4(c)(4) of Republic Act No. 10175.

Cyberlibel is punishable under ***Section 4 (c)(4) of Republic Act No. 10175***, otherwise known as ***Cybercrime Prevention Act of 2012***, which provides:

> *Section 4. Cybercrime Offenses. – The following acts constitute the offense of cybercrime punishable under this Act:*
>
> *xxx xxx*
>
> *(c) Content-related Offenses:*
>
> *xxx xxx xxx*

[79] *Ibid.* p. 38.
[80] *Ibid.* pp.39-40.
[81] *Ibid.* pp. 42-43.
[82] *Ibid.* pp. 43-47.

(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.

xxx xxx xxx

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."[83]

By adopting the definition of libel as embodied in the Revised Penal Code, Section 4 (c)(4) also adopts the elements of libel as defined in Article 353 in relation to Article 355 of the Code. Thus, the elements of libel are: (a) the allegation of a discreditable act or condition concerning another; (b) publication of the charge; (c) identity of the person defamed; and (d) existence of malice.[84] In addition to the aforementioned four (4) elements, the act must be committed through the use of a computer system or any similar means which may be devised in the future,[85] so that said act may constitute cyberlibel.

In this case, the prosecution was able to establish the presence of all the elements of cyberlibel.

FIRST ELEMENT: Discreditable act or condition concerning another

As to the first requisite, the Court finds the subject article defamatory. An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead.[86] In determining whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.[87] Moreover, a charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses,

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[83] The Revised Penal Code, Article 353.

[84] Disini, Jr. v. Secretary of Justice, G.R. Nos. 203335, 203299, 203306, 203359, 203378, 203391, 203407, 203440, 203453, 203454, 203469, 203501, 203509, 203515 & 203518, February 18, 2014.

[85] Section 4 (c)(4), RA 10175.

[86] Lagaya y Tamondong v. People, G.R. No. 176251, July 25, 2012.

[87] *Ibid.* citing the case of Buatis, Jr. v. People, 520 Phil. 149, 160 (2006).

or are sufficient to impeach their honesty, virtue, or reputation, or to hold the person or persons up to public ridicule.[88]

A thorough reading of the subject article reveals that, clearly, there were several crimes imputed upon the person of Keng. Human trafficking and drug smuggling were the first illegal activities attributed to Keng, as quoted hereunder:

> *"xxx xxx xxx 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. xxx xxx xxx"*

In the next paragraph of the subject article, another imputation of crime was made against Keng, namely, murder, to wit:

> *"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. xxx xxx xxx"*

Another crime is the smuggling of fake cigarettes and the alleged involvement of Keng in the illegal transaction of granting special investors residence visas to Chinese nationals for a fee, as the quoted portion of the article shows:

> *"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 transation, saying it's easy to get visas to the Philippines."*

A reading of the above-quoted portions of the subject article, leads to no other conclusion except that in writing said article, Accused Santos, Jr., ascribes unto Keng commissions of crimes such as drug smuggling, human trafficking and murder which tends to dishonor, discredit or put him in ridicule. The article has created in the minds of ordinary readers that Keng has a disgraceful reputation. In fact, prosecution's witness, Malonzo stated categorically that he immediately made prejudices against Wilfredo Keng because of the subject article.[89] He averred that after reading the same, he gathered that Wilfredo Keng had been accused of smuggling fake cigarettes and was alleged to have been involved in human trafficking and drug smuggling.[90]

In refuting all those imputations, the prosecution presented two (2) letters from PDEA dated 15 August 2016[91] and 20 May 2019[92] stating

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[88] Sazon y Ramos v. Court of Appeals, G.R. No. 120715, March 29, 1996, citing the case of Lacsa v. Intermediate Appellate Court, 161 SCRA 427 (1988).
[89] Exhibit "J" for the prosecution.
[90] *Ibid.*
[91] Exhibit "H-4" for the prosecution.
[92] Exhibit "P" for the prosecution.

that Keng has no derogatory record on file at PDEA for violation of RA 9165 and that Keng has no pending drug case in court and his name is not reflected in the PDEA National Drug Information System, respectively.

Likewise, the prosecution submitted the NBI Clearance of Keng dated 17 September 2019[93] showing that he has no criminal record.

SECOND ELEMENT:
Publication of the charge

The element of publication is likewise established in this case. In libel, publication means making the defamatory matter, after it is written, known to someone other than the person against whom it has been written.[94] In this case, both the prosecution and the defense stipulated that the subject article was published in the website of Rappler, Inc. on 29 May 2012 and was updated on 19 February 2014.[95]

The publication involved in this case dated 19 February 2014 is actually a republication. The Supreme Court already settled in the case of ***Brillante v. CA***[96] that a single defamatory statement, if published several times, gives rise to as many offenses as there are publications. This is the "multiple publication rule" which is followed in our jurisdiction, as pronounced by the Supreme Court as early as in the case of ***Soriano v. IAC***.[97] Up to this date, the High Court has not overturned said ruling, thus, applying the principle and legal maxim *stare decisis et non quieta movere* under Statutory Construction, which means one should follow past precedents and should not disturb what has been settled,[98] this Court is required to apply the same.

Bearing in mind that, as above-discussed, cyberlibel constitutes prohibited acts of libel under Revided Penal Code (RPC), the doctrines applicable to ordinary libel is, likewise, applicable to cyberlibel. In view thereof, the doctrine of republication is applicable in this case.

A plain reading of the subject article shows that it was originally published on Rappler's website on 29 May 2012 and was updated on 19 February 2014. The Court considers the update a republication of the article. An update connotes that a change was made to the article. Said updated version was the one published and still available on the website of Rappler, Inc. The Court is of the conclusion that the original version was replaced by the updated one considering that it is no longer accessible in the Rappler's website. In other words, the original article

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[93] Exhibit "BB" for the prosecution.
[94] Soriano v. People, G.R. No. 225010, November 21, 2018 citing Buatis v. People, 520 Phil. 149 (2006).
[95] Amended Pre-trial Order dated 23 July 2019.
[96] G.R. Nos. 118757 & 121571. October 19, 2004.
[97] G.R. No. 72383, November 9, 1988.
[98] Agpalo, Statutory Construction, 2009 (6th ed.).

published on 29 May 2012 can no longer be found. Only the 19 February 2014 version presently exists and accessible on the internet. Clearly, there was republication of the updated version of the subject article. Malonzo, in fact, testified to have read the 2014 republication of the subject article. [99]

The defense, in its attempt to contest that there was republication of the article, maintained that the same was merely updated because there was a correction of an alleged typographical error.[100] Hofileña, however, failed to adduce evidence indicating the error she was referring to. She failed to substantiate her testimony with documentary evidence, making it self-serving and deserving of scant consideration from this Court.

In any case, the testimony of Hofileña regarding said typographical error is hearsay. It is striking that the defense did not present Accused Santos, Jr., being the author of the subject article, to confirm the existence of the typographical error. They also did not present the reporter who allegedly corrected such error.[101]

In presenting witness Hofileña, the defense did not adduce any evidence to establish her personal involvement in the writing of the article or in updating it. This makes her testimony on the correction of the typographical error and updating of the article hearsay. As such, said testimony is inadmissible.

The Court wants to stress that in the above-mentioned case of ***Brillante v. CA***[102], the Supreme Court ruled that each publication constitutes one offense of libel without qualification as to whether it was modified or not. Applying the said ruling, as long as the defamatory statement is published several times, it gives rise to as many offenses as there are publications.[103] In this case, the fact remains that in the republished article dated 19 February 2014 the defamatory statements can still be found giving rise to the present indictment.

THIRD ELEMENT:
Identity of the person defamed

With respect to the third element, there is no doubt that the article was referring to Wilfredo Keng as he was particularly named therein. Moreover, the corporations mentioned in the article (i.e., Century Peak Metals Holdings Corp, Century Hua Guang Smelting Inc., and Colony Investors Inc., among others) were the same corporations to which Keng

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[99] Supra note 8.
[100] Supra note 80.
[101] Supra note 62, pp. 38-39.
[102] Supra note 96.
[103] *Ibid.*

is or became the president.[104] Thus, there is no doubt that the identity of the Keng was established in this case.

FOURTH ELEMENT:
Existence of malice

The element of malice is, likewise, present in this case. Malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm.[105] It is present when it is shown that the author of the libelous remarks made such remarks with knowledge that it was false or with reckless disregard as to the truth or falsity thereof.[106]

Malice, however, does not necessarily have to be proven. There are two types of malice — malice in law and malice in fact. [107] Malice in law is a presumption of law.[108] The Supreme Court, in the case of ***Disini, Jr. v. The Secretary of Justice***,[109] already settled that there is malice in law in case the offended party is a private individual, thus:

> "*But, where the offended party is a private individual, the prosecution need not prove the presence of malice. The law explicitly presumes its existence (malice in law) from the defamatory character of the assailed statement.*"

Here, the prosecution sufficiently established that Keng is a private person being a businessman, with interests in several companies based in the Philippines and China.[110] Thus, the prosecution is discharged of its burden in proving actual malice. Considering that Keng is neither a public official nor a public figure, the law explicitly presumes the existence of malice from the defamatory character of the assailed statement.[111] For their defense, the accused must show that they have a justifiable reason for the defamatory statements even if it were in fact true.[112] Lamentably, the defense miserably failed in this regard.

The Revised Penal Code and the Cybercrime Law, on the other hand, impose a stricter standard on malice to convict the author of the defamatory statement where the offended party is a public figure.[113] The

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[104] Exhibits "T" – "T-2", "U" – "U-2", "V"-2" for the prosecution.
[105] Yuchengco v. Manila Chronicle Publishing Corp., G.R. No. 184315, November 25, 2009 citing the case of United States v. Cañete, 38 Phil. 253, 264 (1918).
[106] *Ibid.* citing the case of Vasquez v. Court of Appeals, 373 Phil. 238, 254 (1999).
[107] *Ibid.* citing the case of Lawson v. Hicks, 38, Ala. 279.
[108] Yuchengco v. Manila Chronicle Publishing Corp., G.R. No. 184315, November 25, 2009.
[109] Supra note 84.
[110] Exhibit "AA" for the prosecution.
[111] Supra note 84.
[112] *Ibid.*
[113] *Ibid.*

Supreme Court held in the case of ***Disini v. Secretary of Justice***[114] that:

> "*The defense of absence of actual malice, even when the statement turns out to be false, is available where the offended party is a public official or a public figure, as in the cases of Vasquez (a barangay official) and Borjal (the Executive Director, First National Conference on Land Transportation). Since the penal code and implicitly, the cybercrime law, mainly target libel against private persons, the Court recognizes that these laws imply a stricter standard of "malice" to convict the author of a defamatory statement where the offended party is a public figure. Society's interest and the maintenance of good government demand a full discussion of public affairs.*"

Unlike in the afore-quoted case, the person involved here is a private individual and not a public figure.

In any case, the Court finds that malice in fact is obtaining in this case. There is "actual malice" or malice in fact when the offender makes the defamatory statement with the knowledge that it is false or with reckless disregard of whether it was false or not.[115] The reckless disregard standard used here requires a high degree of awareness of probable falsity.[116] There must be sufficient evidence to permit the conclusion that the accused in fact entertained serious doubts as to the truth of the statement he published.[117]

In the present case, Accused Santos, Jr. wrote the subject article sans verification as to the veracity of the allegations stated therein. The article imputes various crimes upon the person of Keng which was sufficiently proven during trial to be untrue. Thus, the Court is of the conclusion that accused Santos, Jr. did not bother to verify with any law enforcement agency whether Keng is actually involved in any of the aforementioned crimes before publishing the subject article.

This utter lack of verification is contrary to the standard maintained by Rappler, as testified to by Hofileña, stressing the importance of journalistic core values that is accuracy, truth telling, fairness and balance.[118] She emphasized that fairness and balance is all about getting the other side of the story.[119] The circumstances surrounding the publication of the article however, are not in accordance with these purported core values.

It was well-established in the testimony of Atty. De Vera, and even bolstered by no less than Rappler writer Francisco and senior editor

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[114] *Ibid.*
[115] Disini citing the case of Vasquez v. CA, 373 Phil. 238 (1999).
[116] Supra note 84.
[117] *Ibid.*
[118] Supra note 62, pp. 33-34.
[119] *Ibid.*

Hofileña, that Keng, through the former, requested Rappler to publish Keng's story.[120] Vitug, in fact, assigned a reporter, in the person of Francisco, to interview Atty. De Vera.[121] However, Rappler, Inc., despite numerous follow-ups made by Atty. De Vera,[122] did not publish the same, as admitted by Hofileña, on the ground that there were more urgent news at the time.[123] In fact, several follow-ups were made by Atty. De Vera from August 2016 to February 2017 or close to a period of seven (7) months, giving them all the opportunity to verify, issue a clarificatory article, or at least, publish the side of Keng. They did not. If it is true that Rappler, Inc. and the individuals composing it are after fairness and balance, they will publish Keng's side of the story for clarification despite the existence of more urgent news.

It is noteworthy that after the first publication of the subject article in Rappler's website, Keng did not immediately pursue any legal action against both accused.[124] Instead, he asked his lawyer to notify Rappler that the allegations in its article are false and to demand for a presentation of a fair and well-balanced report by also publishing his side of the story.[125] Keng gave Rappler and the accused a chance to publish a clarificatory article or accurate statements but they chose to disregard the same. Atty. De Vera testified that he sent the PDEA certification, stating that Keng had no derogatory record with respect to the drugs allegations, to Marites Vitug.[126] And Hofileña testified that the story drafted by Francisco was not posted on their website because they have to verify first the said PDEA certification.[127] She justified their action by stating that they have to countercheck and see whether there is a basis for that certification and just because a document is sent by anyone from the government, it does not mean that they have to take it as a truth.[128]

The Court is convinced that both accused are aware of the probable falsity of the subject article considering the fact that Atty. De Vera pointed out to Francisco the inaccuracies in the subject article and the receipt by Vitug of the said PDEA certification. Despite such awareness, however, both accused did not bother to publish the clarificatory article and they just let the libelous article remain in their website. A news organization who claims to adhere to accuracy, fairness and balance in terms of reporting, would have retracted, or at the very least, issued a clarificatory article if there have been some indications of falsity to its previous article. Both accused, however, did not. The Court

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[120] Supra note 42, 81 and 82.
[121] Supra note 39.
[122] Supra note 42.
[123] Supra note 82.
[124] Supra note 56.
[125] Supra note 52.
[126] Supra note 53.
[127] TSN dated 16 December 2019, pp. 44-45.
[128] *Ibid.*

finds that the subject article was republished with reckless disregard of whether it was false or not. This clearly shows actual malice.

FIFTH ELEMENT:
Committed through a computer system

Section 4 (c) (4) establishes the computer system as another means of publication.[129] Computer system, as defined under ***Section 3 (g) of RA 10175***, refers to:

> *"any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities including, but not limited to, computers and mobile phones. The device consisting of hardware and software may include input, output and storage components which may stand alone or be connected in a network or other similar devices. It also includes computer data storage devices or media."*

Evidently, the libelous act was committed through a computer system considering that during pre-trial, it was admitted as a fact, by both the prosecution and the defense, that the subject article was published at Rappler's website.

THE OFFENSE HAS NOT
YET PRESCRIBED

Among the theories advanced by the defense is that the present action filed by Keng against both accused has already prescribed. In support thereto, it presented as evidence the NBI Memorandum dated 5 February 2018.[130] However, said evidence does not bear weight in this case.

A close perusal of the said memorandum reveals that it emanated from the Legal Service of the National Bureau of Investigation and is addressed to their director. Thus, it is merely an internal memorandum containing the legal opinion on the cyberlibel case filed by Keng against the accused before the said agency. It is not relevant and does not bind the Court.

It is worthy to note that NBI is a government agency under the Department of Justice which belongs to the Executive Branch of the Government. As part of the said branch, its main task is to implement the law, considering especially that NBI is a law enforcement agency. The interpretation of the law is a task that belongs to the courts.

[129] Supra note 85.
[130] Exhibit "1" for the defense.

As above-discussed, republication is present in this case, thus, the reckoning period for the determination whether the offense already prescribed or not is on the date of the republication which is 19 February 2014.

The Supreme Court already ruled in the case of ***Panaguiton, Jr. v. Department of Justice***[131] that Act No. 3326 applies to offenses punishable by special laws which do not provide for their own prescriptive periods, to wit:

> *"There is no question that Act No. 3326, appropriately entitled An Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin, is the law applicable to offenses under special laws which do not provide their own prescriptive periods."*

A painstaking review of RA No. 10175 reveals that it does not provide for its own prescriptive period, thus the provisions of ***Act No. 3326*** is controlling. ***Section 1*** of the same provides that:

> *"SECTION 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offences punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offence punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months."*

Since R.A. 10175 did not specifically provide for a penalty for cyberlibel, the penalty under ***Section 6*** of said act must be referred to which is one degree higher than that prescribed under the Revised Penal Code for ordinary libel as provided under the above-mentioned provision which states, to wit:

> *"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."*

Article 355 of the Revised Penal Code provides for the imposable penalty for libel:

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[131] G.R. No. 167571, November 25, 2008.

> *"Art. 355. Libel by means of writings or similar means. – A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prision correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party."*

As validated by the ***Implementing Rules and Regulation of RA No. 10175,*** the penalty for cyberlibel is prision correccional in its maximum period to prision mayor in its minimum period, as quoted hereunder:

> *"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 shall be punished with* ***prision correccional in its maximum period to prision mayor in its minimum period*** *or a fine ranging from Six Thousand Pesos (P6,000.00) up to the maximum amount determined by Court, or both, in addition to the civil action which may be brought by the offended party. xxx xxx xxx" (emphasis supplied)*

Considering that prision correccional in its maximum period and prision mayor in its minimum period is 4 years, 2 months and 1 day to 8 years, the offense shall prescribe after **TWELVE (12) YEARS** following the provision of ***Section 1 of Article 3326.***

The instant case was filed in Court on 5 February 2019, which is well within the period of twelve (12) years and clearly, prescription has not yet set in.

It is worth stressing that this case is one for Cyberlibel punished under Section 4(c) (4) of R.A. 10175, an offense separate and distinct from the ordinary libel punished under Article 355 of the Revised Penal Code. R.A. 10175 provides for a higher and distinct penalty as well. And precisely because a higher penalty is prescribed, cyberlibel is considered as a more serious offense than ordinary libel. Thus the one-year prescriptive period for ordinary libel does not apply. The only reference made by R.A. 10175 to the Revised Penal Code is in so far as the elements of libel are concerned.

LIABILITY OF ACCUSED RESSA AND SANTOS, JR.

Considering that cyberlibel constitutes prohibited acts of libel under the Revised Penal Code, the persons responsible under ***Article 360*** of the same are the very same persons to be held liable for cyberlibel, thus:

> ***Article 360.*** *Persons responsible. - Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.*
>
> *The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.*
>
> *xxx xxx xxx*

From the foregoing, not only the person who published, exhibited or caused the publication or exhibition of any defamation in writing shall be responsible for the same, all other persons who participated in its publication are liable, including the editor or business manager of a daily newspaper, magazine or serial publication, who shall be equally responsible for the defamations contained therein to the same extent as if he were the author thereof.[132] An editor or manager of a newspaper, who has active charge and control over the publication, is held equally liable with the author of the libelous article,[133] this is because it is the duty of the editor or manager to know and control the contents of the paper, and interposing the defense of lack of knowledge or consent as to the contents of the articles or publication definitely will not prosper.[134] The liability, therefore, of both accused is statutory in nature, as clearly provided in Article 360 of the RPC, in relation to RA 10175.

A perusal of the article dated 19 February 2014 will show the name of Accused Santos, Jr. as the author of the said article. And during pre-trial, both the prosecution and the defense admitted that Accused Ressa is the chief executive officer and executive editor of Rappler, Inc.[135] Having identified Santos, Jr. as author of the subject article and Ressa as editor of the corporation which published the same, the criminal liability of both accused on the republication of the subject article cannot be denied.

During the presentation of their evidence, the defense, through its witness Hofileña, explained that accused Ressa, though she is the executive editor of Rappler, does not edit stories and her position is not equivalent to that of an editor-in-chief in newspaper.[136] However, in explaining that Rappler is a flat organization, Hofileña testified that in instances wherein an article involves a controversial story, Ressa consults with other editors.[137] In the testimony of Hofileña, it was admitted that it is Accused Ressa who ultimately makes the decision

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[132] Bautista v. Cuneta-Pangilinan, G.R. No. 189754, October 24, 2012.
[133] Tulfo v. People, .G.R. Nos. 161032 and 161176, September 16, 2008.
[134] *Ibid.*
[135] Amended Pre-trial Order dated July 23, 2019.
[136] Supra note 62, p. 28.
[137] Supra note 62, p. 54.

when the organization reaches an impasse.[138] Through this declaration, it is evident that she controls and approves the articles that are to be posted on Rappler's website.

To the mind of the Court, Rappler's scheme of not using the term "editor-in-chief" in its organizational structure is a clever ruse to avoid liability of the officers of a news organization who can be held responsible for libel under Article 360 of the Revised Penal Code, in relation to RA 10175. They used the nomenclature "executive editor" instead, although clearly the nature of the functions she discharges is still that of an editor as contemplated by law.

In addition, the defense theory that Accused Ressa has no participation is untenable. It should be stressed that neither the publisher nor the editor can disclaim liability for libelous articles that appear on their paper by simply saying that they had no participation in the preparation of the same.[139]

In fact, in the case of ***Fermin v. People***[140], the Supreme Court already settled that when the accused has already been identified to be the editor, proof of participation in the publication of the article is no longer required, thus:

> *"xxx xxx xxx proof of knowledge of and participation in the publication of the offending article is not required, if the accused has been specifically identified as "author, editor, or proprietor" or "printer/publisher" of the publication xxx xxx xxx"*

Aside from being an editor, their witness Hofileña admitted that Accused Ressa is, likewise, liable in her capacity as the business manager of Rappler, Inc. It is worth mentioning that Ressa is not only the executive editor of Rappler, but also its chief executive officer, as admitted during pre-trial. Hofileña explained that, as such, Ressa oversees the entire organization and takes care of its financials.[141] Ressa, clearly, has the absolute management responsibility over Rappler, Inc.

In the case of ***State v. Mason***,[142] which the Supreme Court has cited in multiple libel cases, the question of the responsibility of the manager or proprietor of a newspaper was discussed,[143] to wit:

> *"The question then recurs as to whether the manager or proprietor of a newspaper can escape criminal responsibility solely on the ground that the libelous article was published without his*

[138] *Ibid.*, p. 55-56.
[139] Supra note 133.
[140] G.R. No. 157643, March 28, 2008.
[141] Supra note 67.
[142] 26 L.R.A.,779; 26 Oreg.,273, 46 Am. St., Rep., 629
[143] U.S. v. Ocampo, 18 Phil 1 (1910).

knowledge or consent. When a libel is published in a newspaper, such fact alone is sufficient evidence prima facie to charge the manager or proprietor with the guilt of its publication.

The manager and proprietor of a newspaper, we think ought to be held prima facie criminally for whatever appears in his paper; and it should be no defense that the publication was made without his knowledge or consent xxx xxx xxx

One who furnishes the means for carrying on the publication of a newspaper and entrusts its management to servants or employees whom he selects and controls may be said to cause to be published what actualy appears, and should be held responsible therefore, whether he was individually concerned in the publication or not xxx xxx xxx

We think, therefore, the mere fact that the libelous article was published in the newspaper without the knowledge or consent of its proprietor or manager is no defense to a criminal prosecution against such proprietor or manager."

In ***Tulfo v. People***[144] citing the case of ***Commonwealth v. Morgan***,[145] the Supreme Court held that it devolves upon the proprietor that no libelous articles are published in the conduct of his business, thus:

"It is the duty of the proprietor of a public paper, which may be used for the publication of improper communications, to use reasonable caution in the conduct of his business that no libels be published."

Being the editor and business manager of Rappler, Inc., the claim that Ressa had no participation in the subject article does not shield her from liability. In ordinary libel, absence of participation is not a defense because the provision in the Revised Penal Code plainly and specifically states the responsibility of those involved in publishing newspaper and other periodicals.[146] The same principle also applies in this case. It is not a matter of whether she was actually involved in preparing or editing the subject article, because the law simply states that she, as editor and business manager, is liable "AS IF" she was the author, in accordance with Article 360 of the Revised Penal Code, in relation to RA 10175.

The defendant in a libel case, however, shall be acquitted if there is proof that the libelous statement is true and that the article was published with good motives and for justifiable ends, as provided under ***Article 361 of the Revised Penal Cod***e, to wit:

Article 361. Proof of the truth. – In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and moreover, that it was

[144] Supra note 133.
[145] 107 Mass., 197.
[146] Supre note 133.

published with good motives and for justifiable ends, the defendant shall be acquitted.

xxx xxx xxx

In such cases, if the defendant proves the truth of the imputation made by him, he shall be acquitted.

It is notable that the defense did not present both Accused Santos, Jr. and Ressa to refute the charge against them. Being the author of the subject article, Accused Santos, Jr. could have proven the veracity of the imputations he made upon the person of Keng by testifying on the basis of the allegations he made on the article. Santos, Jr. and Ressa, the latter being the executive editor of Rappler, Inc., are both in the best position to testify that the article was published with good motives and for justifiable ends. But as the records of this case show, both accused did not take the witness stand.

Nonetheless, it has been a long standing rule that the silence of an accused should not be taken against him.[147] But such rule is not without exception. In the early case of ***People v. Resano,***[148] the Supreme Court explained that when the prosecution has established a prima facie case, it may be necessary for the accused to take the stand to make a complete destruction of the prosecution's prima facie case, thus:

"But as herein earlier stated, he did not take the witness stand to personally refute the charge and accusation against him. He, of course, has a right not to do so and his failure and or refusal to testify shall not in any manner prejudice or be taken against him. But where the prosecution has already established a prima facie case, more so when the offense charged is grave and sufficient enough to send accused behind bars for life or may even warrant the imposition of the supreme penalty of death, then in order to meet and destroy the effects of said prima facie case and so as to shift the burden of producing further evidence to the prosecution, the party making the denial must produce evidence tending to negate the blame asserted to such a point that, if no more evidence is given, his adversary cannot win the case beyond a reasonable doubt. In such situation, it may be necessary for the accused to have a complete destruction of the prosecution's prima facie case, that he take the stand since no hardship will in any way be imposed upon him nor advantage be taken of him. If he fails to meet the obligation which he owes to himself, when to meet it is the easiest of easy things he has to do, then he is hardy indeed, if he demands and expects that same full and wide consideration which the state voluntarily gives to those who, by reasonable effort seek to help themselves."

It is crucial to emphasize that the Court, in its Order dated 15 November 2019 denying the Demurrer to the Prosecution's Evidence filed by all the accused, already ruled that the evidence for the

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[147] People v. Resano, G.R. No. L-57738, October 23, 1984; People v. Lucas, G.R. No. 80102, January 22, 1990; People v. Orillosa, G.R. No. 148716-18, July 7, 2004.
[148] *Ibid.*

prosecution is competent and sufficient to sustain the indictment for Violation of Section 4 (c)(4) of Republic Act No. 10175 against all the accused. In other words, the prosecution was able to establish a prima facie case against herein accused. Notwithstanding such ruling, both Santos, Jr. and Ressa did not testify to rebut the prosecution's evidence.

CORPORATE LIABILITY
OF RAPPLER, INC.

As to the liability of Rappler, Inc., ***Section 9 of RA No. 10175*** provides for instances when a corporation may be held liable for purposes of paying a fine, thus:

> *SECTION 9. Corporate Liability. — When any of the punishable acts herein defined are knowingly committed on behalf of or for the benefit of a juridical person, by a natural person acting either individually or as part of an organ of the juridical person, who has a leading position within, based on: (a) a power of representation of the juridical person provided the act committed falls within the scope of such authority; (b) an authority to take decisions on behalf of the juridical person: Provided, That the act committed falls within the scope of such authority; or (c) an authority to exercise control within the juridical person, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable in Section 7 up to a maximum of Ten million pesos (PhP10,000,000.00).*
>
> *If the commission of any of the punishable acts herein defined was made possible due to the lack of supervision or control by a natural person referred to and described in the preceding paragraph, for the benefit of that juridical person by a natural person acting under its authority, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable in Section 7 up to a maximum of Five million pesos (PhP5,000,000.00).*
>
> *The liability imposed on the juridical person shall be without prejudice to the criminal liability of the natural person who has committed the offense.*

Based on the foregoing provision, a corporation may be held liable for purposes of fine if the following concur:

1. When any of the punishable acts are knowingly committed on behalf of or for the benefit of a juridical person;
2. Said act is committed by a natural person acting individually or as part of an organ of the juridical person, who has a leading position within; and
3. The position of the natural person is based on (a) the power of representation of the juridical person provided the act committed falls within the scope of such authority; (b) an authority to take decisions on behalf of the juridical person;

or (c) an authority to exercise control within the juridical person.

The prosecution, in this regard, failed to prove the corporate liability of Rappler, Inc. under Section 9 of R.A. 10175. The prosecution failed to establish the above-enumerated elements.

Aside from the fact that it was not alleged in the information, the prosecution never attempted to adduce evidence to impute any corporate liability on Rappler, Inc.; thus, Rappler, Inc. cannot be held liable for payment of a fine under the Cybercrime Prevention Act of 2012.

AS TO THE AWARD OF DAMAGES

The fact that there is no allegation of damages in the information is of no legal consequence.[149] Every person criminally liable for a felony is also civilly liable.[150] It has, therefore, been held that even if the information is silent as to damages, the offender is still liable for them, unless a waiver or the reservation of the civil action is made.[151]

Here, Keng did not waive or reserve his right to file a separate civil action but he actually intervened in the instant criminal action by securing the services of three (3) private prosecutors, which was not objected to by the defense. It is elementary that where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in prosecution of the offense.[152]

Generally, a criminal case has two aspects, the civil and the criminal.[153] This notion is rooted in the fundamental theory that when a criminal act is committed, two (2) different entities are offended: (1) the State, whose law has been violated; and (2) the person directly injured by the offender's act or omission.[154]

While an act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another. Viewing things pragmatically, we can readily see that what gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, done intentionally or negligently, whether or not the same be punishable by

[149] Roa v. De La Cruz, G.R. No. L-13134, February 13, 1960.
[150] Article 100, Revised Penal Code.
[151] Supra Note 149, citing the case of People v. Oraza, 83 Phil., 633.
[152] Section 16, Rule 110 of Rules of Criminal Procedure.
[153] Guy v. Tulfo, G.R. No. 213023, April 10, 2019 citing the case of Heirs of Burgos v. Court of Appeals, 625 Phil. 603, 609 (2010).
[154] *Ibid.* citing the case of Banal v. Tadeo, Jr., 240 Phil. 327, 331 (1987).

law. In other words, criminal liability will give rise to civil liability only if the same felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof.[155]

MORAL DAMAGES

Moral damages is the amount awarded to a person who have experienced physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.[156] It is given to ease the victim's grief and suffering, and should reasonably approximate the extent of the hurt caused and the gravity of the wrong done.[157]

The amount of moral damages that courts may award depends upon the set of circumstances for each case. There is no fixed standard to determine the amount of moral damages to be given. Courts are given the discretion to fix the amount to be awarded in favor of the injured party, so long as there is sufficient basis for awarding such amount.[158]

In the case at hand, Keng maintains that he is entitled to moral damages in the amount of Php25,000,000.00. He avers that he suffered serious anxiety, sleepless nights and mental anguish because Rappler and the accused ruined his reputation. He and his family have been publicly ridiculed and judged, and his reputation as a businessman has been unjustly tarnished.[159] Also, he argues that the loss of his eldest daughter in the election was due to the statements published by the accused.[160] Moreover, since the article was published he can feel a lingering doubt among his colleagues and associates on whether said article was true. He claims that he also noticed a slight difference in the way he has been treated since then and he gained notoriety.[161]

This Court recognizes the pain and suffering of Keng and finds his testimony credible.

The Court acknowledges the injury inflicted on his reputation as a businessman. As a president of publicly-listed corporations it may create a negative impact on his image if he has been regarded as murderer, human trafficker, drug-dealer and smuggler. It could discourage other businessmen to conduct business with him.

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[155] Banal v. Tadeo, Jr., G.R. No. L-78911-25, December 11, 1987.
[156] Punongbayan-Visitacion v. People, G.R. No. 194214, January 10, 2018.
[157] *Ibid.*
[158] Guy v. Tulfo, G.R. No. 213023, April 10, 2019.
[159] Supra note 4, pp. 18-19.
[160] *Ibid.* p. 11.
[161] *Ibid.*

The Court also gives weight and credibility on the testimony of Keng on the suffering inflicted by the publication dated 19 February 2014 on his family especially his daughters. Considering the imputations made upon the person of Keng, his wife and his two (2) daughters have been ridiculed and judged by friends and acquaintances and labelled as associated with drug lords and smugglers.[162]

In the case of ***Tulfo v. People***,[163] the Court finds that the sense of kinship runs deeply in a typical Filipino family, thus:

> *"The Court can perhaps take judicial notice that the sense of kinship runs deeply in a typical Filipino family, such that the whole family usually suffers or rejoices at the misfortune or good fortune, as the case may be, of any of its member. Accordingly, any attempt to dishonor or besmirch the name and reputation of the head of the family, as here, invariably puts the other members in a state of disrepute, distress, or anxiety. This reality adds an imperative dimension to the award of moral damages to the defamed party."*

As such, an award Php200,000.00 as moral damages is only proper and should be awarded to Keng.

EXEMPLARY DAMAGES

Exemplary damages should also be awarded to Keng.

Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.[164] It is imposed as a punishment for highly reprehensible conduct and serves as a notice to prevent the public from the repetition of socially deleterious actions.[165] Such damages are required by public policy, for wanton acts must be suppressed.[166] They are an antidote so that the poison of wickedness may not run through the body politic.[167]

As above-discussed, both accused published the libelous article without first verifying the truth of the allegations therein. Despite the fact that Atty. De Vera pointed out the inaccuracies in the statements contained in the article and the receipt by Vitug of the PDEA certification showing that Keng has no derogatory records relating to drugs, which would have raised doubts as to the veracity of the statements in the article, both accused did not bother to publish the clarificatory article drafted by Francisco.

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[162] Supra note 42 p. 10.
[163] Supra note 133.
[164] Article 2229, Civil Code of the Philippines.
[165] Supra note 118, citing the case of Torreon v . Aparra, Jr., G.R. No. 188493, December 13, 2017.
[166] *Ibid.* citing the case of Spouses Timado v . Rural Bank of San Jose, Inc., 789 Phil. 453, 459 (2016).
[167] *Ibid.*, citing the case of Octot v. Ybañez , 197 Phil. 76, 82 (1982).

Thus, to ensure that this conduct will no longer be repeated, an award of Php200,000.00 as exemplary damages is warranted.

ATTORNEY'S FEES

The Court cannot award attorney's fees in favor of Keng for lack of factual basis, considering that the prosecution failed to offer any proof of expenses incurred by Keng in securing the services of lawyers.

A FINAL NOTE

The right of every person to freedom of speech is a right guaranteed by our Constitution. It is a right to speak freely without fear of retribution or retaliation. The right of the press to freely report news and opinion without undue restraint is guaranteed no less. These rights are imbued with vast powers to advance the COMMON GOOD, TO EFFECT change and influence the minds of others IN THE HOPE OF BUILDING A SOCIETY where every person can be free. But when abused, THIS FREEDOM can SOW animosity and ENGENDER divisiveness and resentment THAT MAY LEAD TO disorder and chaos.

In the case of ***Tulfo v. People,***[168] no less than our Supreme Court has acknowledged the influence the press has in our community and society when it declared that:

> *"The press wields enormous power. Through its widespread reach and the information it imparts, it can mold and shape thoughts and opinions of the people. It can turn the tide of public opinion for or against someone, it can build up heroes or create villains.*
>
> *It is in the interest of society to have a free press, to have liberal discussion and dissemination of ideas, and to encourage people to engage in healthy debate. It is through this that society can progress and develop."*

In the same decision, the Supreme Court recognized the responsibility that comes with a free press by declaring that:

> *"Those who would publish under the aegis of freedom of the press must also acknowledge the corollary duty to publish responsibly. To show that they have exercised their freedom responsibly, they must go beyond merely relying on unfounded rumors or shadowy anonymous sources. There must be further investigation conducted, some shred of proof found to support allegations of misconduct or even criminal activity. It is in fact too easy for journalists to destroy the reputation and honor of public officials, if they are not required to make the slightest effort to verify their*

[168] Supra note 133.

accusations. Journalists are supposed to be reporters of facts, not fiction, and must be able to back up their stories with solid research. The power of the press and the corresponding duty to exercise that power judiciously cannot be understated."

With the evolution of government and society, it has been accepted and established that the exercise of the right to free speech and of the press is not absolute as it comes with enormous responsibility to ensure that another person's right is respected.

Today we live in an age of technology providing limitless avenues in the exercise of this right to free speech. The internet has allowed us to express our ideas and opinions to an audience way beyond our borders. With a single click of a button or touch of a screen a post, blog, opinion or article written on the internet can be seen by hundreds or thousands in just a few minutes or even seconds. Technology has empowered speech in ways we never imagined before.

With technology, the pressing question of whether the exercise of the right to free speech is absolute once more comes to fore. Time and again this issue has been put at the center of heated debates and endless discussions. Can a person speak freely or write an article or opinion without being held accountable for what he or she has written or said? Can this right be invoked at all times even if a person has trampled upon the rights of another?

In the recent case of ***Tulfo v. People,***[169] the Supreme Court emphasized:

> *"Among the advantages brought by modern technology is the ease by which news can be shared and disseminated through different social media outlets. News matters are now simultaneously cascaded in real-time. Society is swamped with a myriad of information involving a wide array of topics. News dissemination has always been in a constant state of flux. Occurrences across the globe, or the lack thereof, are immediately subject of the news written by journalists.*
>
> *More often than not, journalists are at the forefront of information publication and dissemination. Owing to the nature of their work, they have the prerogative to shape the news as they see fit. This Court does not turn a blind eye to some of them who twist the news to give an ambiguous interpretation that is in reckless disregard of the truth."*

In the same case, the Supreme Court stressed that:

> *"Crafting inaccurate and misleading news is a blatant violation of the Society of Professional Journalists Code of Ethics. The Society of Professional Journalists is a journalism organization dedicated toward stimulating high standards of ethical behavior, promoting the*

[169] Supra note 158.

free flow of information vital to a well-informed citizenry, and inspiring and educating current and future journalists through professional development. Its Code of Ethics espouses the practice that journalism should be accurate and fair, and mandates accountability and transparency in the profession.

As such, journalists should observe high standards expected from their profession. They must take responsibility for the accuracy of their work, careful never to deliberately distort facts or context by verifying information before releasing it for public consumption.

This case comes at a time when the credibility of journalists is needed more than ever; when their tried-and-tested practice of adhering to their own code of ethics becomes more necessary, so that their truth may provide a stronger bulwark against the recklessness in social media. Respondents, then, should have been more circumspect in what they published."

Indeed, the Constitution guarantees freedom of expression and of the press. But this is a freedom burdened with responsibility for even the Journalists' Code of Ethics exhorts all journalists to "recognize the duty to air the other side and the duty to correct substantive errors promptly."[170]

Here, Rappler and both accused did not offer a scintilla of proof that they verified the imputations of various crimes in the disputed Article upon the person of Keng apart from a sweeping and unexplained reference to a purported "intelligence report" and a "2002 Philippine Star Report". They did not verify the veracity of these alleged reports at all. They just simply published them as news in their online publication in reckless disregard of whether they are false or not and with sheer indifference of its impact upon the reputation of Keng.

What further militates against the defense of both accused is that Keng pleaded to them to publish a clarificatory article, or at the very least, to air his side of the story. As stated earlier, they did not.

Let it be noted that Keng did not just peremptorily institute this criminal case against both accused. He reached out to the news organization and asked them to air his side of the story in accordance with the ethics of their profession as journalists. For close to seven (7) months, private complainant Keng, thru his lawyer Atty. De Vera, negotiated with Rappler which culminated in the preparation of a clarificatory article by one of their writers. Yet again, both accused did nothing.

Having exhausted all avenues to reach an acceptable resolution of this dispute, Keng had no other recourse but to protect and vindicate his rights and reputation by filing the instant criminal action before the courts of justice. After the prosecution established a prima facie case for online

[170] Supra note 133.

libel against both accused, both accused opted not to testify so their side can be heard.

Thus, the court is mandated to decide solely on the basis of the evidence presented by the parties and to apply the law. No more, no less.

The right to free speech and freedom of the press cannot and should not be used as a shield against accountability. The law sets out parameters for this accountability. If a person is found violating this law in accordance with the parameters it provides, then he or she is penalized and will be held accountable.

The Courts are tasked to strike a balance between the enforcement of one's right to speak his mind and the protection of another's right against defamation of his honor and reputation without regard to the stature of the personalities involved. This is what happened here.

As this Court is mandated to dispense justice, it shall do so not only to protect the Fourth Estate's freedom of expression and of the press, but also equally to protect the rights of private individuals, such as Keng.

This case is not one involving the government or any of its officials as complainant. It is simply a case filed by a private individual against a prominent online news organization for malicious and defamatory imputations upon his person. He pleaded for justice after being maliciously and publicly branded in the worldwide web as a human trafficker, a drug and contraband smuggler, and worst, a murderer.

With the internet and social media pervading this day and age, it can be said that the keyboard is now mightier than the pen and thus mightier than the sword. The proverbial admonition "to think before you click" becomes even more relevant when it comes to online news organizations with a vast plantilla of journalists under its employ.

If a private individual, a so-called "netizen", can be held accountable for any defamatory posts or comments in the internet, so too must accountability and journalistic responsibility be brought to bear upon online news organizations since the extent of its influence, as powered by the internet, goes beyond the physical limitation of printed publications.

THERE IS NO CURTAILMENT OF THE RIGHT TO FREEDOM OF SPEECH AND OF THE PRESS. Each person, journalist or not has that constitutionally guaranteed right to freely express, write and make known his opinion. But with the highest ideals in mind what society

expects is a RESPONSIBLE FREE PRESS. It is in ACTING RESPONSIBLY that freedom is given its true meaning.

The exercise of a freedom should and must be used with due regard to the freedom of others. As Nelson Mandela said "for to be free is not merely to cast off one's chains but to live in a way that respects and enhances the freedom of others."

WHEREFORE, premises considered, judgment is hereby rendered finding accused **REYNALDO SANTOS, JR.** and **MARIA ANGELITA RESSA GUILTY** beyond reasonable doubt for Violation of Section 4 (c)(4) of Republic Act No. 10175 or the Cybercrime Prevention Act of 2012 and are each hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from **SIX (6) MONTHS and ONE (1) DAY of *prision correccional* as MINIMUM to SIX (6) YEARS of *prision correccional* as MAXIMUM.**

Both accused **REYNALDO SANTOS, JR.** and **MARIA ANGELITA RESSA** are, likewise, ordered to pay private complainant Wilfredo Keng, jointly and severally, the following:

1. **TWO HUNDRED THOUSAND PESOS (Php200,000.00)** as and by way of **MORAL DAMAGES**

2. **TWO HUNDRED THOUSAND PESOS (Php200,000.00)** as and by way of **EXEMPLARY DAMAGES**.

As to the corporate liability of **RAPPLER INCORPORATED,** the Court hereby finds **NO CORPORATE LIABILITY** under Section 9 of Republic Act No. 10175.

The Motion of the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression for Leave to File Amicus Curiae Brief filed by David Kaye, thru Felix J. Mariñas, Jr. is only NOTED.

SO ORDERED.

Promulgated on June 15, 2020
Manila, Philippines.

RAINELDA H. ESTACIO-MONTESA
Presiding Judge

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