

**JOINT RESOLUTION**

**E.P.P vs. Serlito Vilar aka "Father Tox" aka "Dipon Basodac" aka "Dipon Basodacs"**

**For: Rape Through Sexual Assault**

**NPS Docket No. VII-03-INV-24B-00390, 24B-00409 to 00414**

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affidavit and other countervailing evidence in support of his defense within ten (10) days from receipt of the said subpoena.

Atty. Cres Palpagan, Jr., counsel for Respondent, on March 3, 2024, submitted to this Office an Entry of Appearance with Motion for Production of Documents and Extension of Time for compliance. In it, respondent prays that he be given an additional period of fifteen (15) days from the expiration of the original period of ten (10) days reckoned from February 28, 2024 or until March 24, 2024 to submit his Counter-Affidavit and other countervailing evidence in support of the defense of respondent. Indeed, Respondent submitted his counter-affidavit dated March 25, 2024 which document was received by this Office on even date.

Pursuant to existing rules, laws and jurisprudence on the matter, the true identity and real name of minor complainant is hereby concealed to maintain and uphold the confidentiality rule and should not be disclosed to anybody. Thus, he is designated under a fictitious name **E.P.P.**

**FACTUAL ANTECEDENT:**

Complainant minor in his judicial affidavit alleged that he is twelve (12) years old, a student of Saint Peter Academy of Alegria, Incorporated and residing at Upper Cotcoton, Sta. Felomina, Alegria, Cebu; that he lodged the extant complaints against Respondent who is a priest serving mass at St. Francis Xavier in Alegria, Cebu and a resident of Brgy. Malatbo, Ginatilan, Cebu.

Complainant minor further alleged that before the mass, at 4:00 o'clock in the afternoon of **February 12, 2022**, has started, respondent already abused and sexually molested him; that on that day which is a Saturday, he was told by respondent to go inside the convent, specifically in the guest room of St. Francis Xavier, as the latter wanted him to do the massage of his body; that after he do the massaging, respondent held his neck and pushed him lying face down in bed; that his shirt was removed, his pants including his underwear were pulled down and then respondent inserted his penis into his anus and do the push and pull movement.

On **February 17, 2022** (Thursday), complainant met respondent inside the room with Wi-Fi connection at St. Francis Xavier convent as the latter told the former that he had a mass in other place to celebrate and he (respondent) wanted him (complainant) to go with him; that while inside the room, respondent touched complainant's penis and then kissed his shoulder which he felt uncomfortable; that complainant tried to go outside, however respondent locked the door then pulled his arms and let him sit down on the sofa; that respondent then caress complainant's penis including his body until he attained satisfaction of what he did.

On **February 26, 2022**, a Saturday, at about 1:00 P.M. to 2:00 P.M. at the guest room of St. Francis Xavier convent, again respondent told complainant to massage his body; that suddenly, respondent choked his neck and pressed his face in the bed, thus complainant have difficulty in breathing as respondent covered his face and head to prevent him from shouting for help; then respondent quickly removed the shirt, pants and underwear of complainant and then lay on his back and respondent inserted then his penis into the anus of complainant;

that after attaining satisfaction of his lustful desire, respondent then allowed complainant to get out from the room after the latter was given money by the former to buy food;

On **March 5, 2022**, a Saturday, at around 8:30 o'clock in the morning, upon orders of respondent, complainant met him in front of St. Francis Xavier church; that respondent arrived after a while and let complainant ride his vehicle in going to Malabuyoc church since he has a mass to celebrate thereat; however, it never did as they only roamed around Malabuyoc; that while roaming around the said place, respondent told complainant to fasten the seatbelt; that respondent then unzipped complainant's pants and inserted his hands inside his underwear and held his penis tightly while doing the push and pull movement to his penis until they get back to St. Francis Xavier church; that while outside the comfort room of St. Francis Xavier church, complainant in a standing position whose face was pressed against the wall, respondent then removed his pants and underwear and then inserted his penis into the anus of the complainant; that complainant was allowed only to go after respondent attained satisfaction of his lustful acts and desire; that worse, respondent even told complainant that he can do everything including that of dropping him out in school and remove his scholarship in the event he will tell anyone what he (respondent) did to him; that respondent went on further that he even knew the about the issues of his (complainant) father.

On **March 12, 2022**, a Saturday, around 1 P.M. to 2 P.M., respondent told complainant to come over to St. Francis Xavier convent as they will go somewhere; that when complainant arrived at the convent of the said church, he proceeded himself to the comfort room to pee; that respondent followed him there and forced complainant to stand still while his face was pressed against the wall; that respondent removed his pants and underwear and then inserted his penis into the anus of complainant; that the latter was only allowed to go after respondent was satisfied of his lustful act; that respondent again, told complainant of the following words "Remember of what I have told you, not to tell anyone of what I did to you"; that the molestation to complainant by respondent was repeatedly done every Saturdays at St. Francis Xavier convent; that complainant was molested and sexually abused during weekdays by respondent in the event he has a mass to celebrate in other places by bringing him there; that, in fact, the sexual molestation and abuse committed by respondent to complainant happened at Sto. Tomas de Villanueva church in Matutinao, Badian, Cebu, at Cuestas Resort in Malabago, Badian, Cebu and in a hotel in Cebu City, respectively.

That at the convent of Sto. Tomas de Villanueva in Matutinao, Badian, Cebu, there was a mass novena due to forthcoming fiesta thereat; that two (2) days before the fiesta, in the room of a deceased priest, complainant was raped by respondent for three (3) times as they went there thrice; that after respondent celebrated mass, complainant and respondent ate together, after which respondent asked him to massage his body; that while massaging, respondent removed his t-shirt and then choked complainant, laid him down in bed and removed his pants, underwear; that respondent let complainant stood, led his face down while respondent was on top of his back and then inserted his penis into his anus and thrust it in and out; that respondent rest for a while and soon after, he let complainant sit down and let his penis placed in the mouth of respondent while the latter does the push and pull motion of his head; that subsequently thereafter, complainant stood up and made him leaned his back at the cabinet

while the former in a kneeling position and sucked the penis of complainant while doing at the same time push and pull motion of his head; that after which, complainant and respondent went out from the convent and went to Alegria, Cebu using the vehicle of the latter; that while proceeding to Alegria, respondent does some sexual advances to complainant by touching and caressing his penis.

In the afternoon of April 27, 2023, the feast day of Malabago, Badian, Cebu, respondent have himself check-in at Cuestas Resort; that respondent then fetched complainant from his house at Sitio Cotcoton, Brgy. Sta. Felomina, Alegria, Cebu, as he wanted complainant to go with him as there was a service mass in Malabago, Badian; that before going to Brgy. Malabago, Badian, Cebu, since there was a novena mass to attend to, respondent and complainant went first to Maam Leonor in Saint Peter Academy in Alegria, Incorporated and ate dinner thereat; that complainant wanted not to sleep at Cuesta Resort however, he was prevailed upon due to representation of respondent by telling him that he will do nothing on him (complainant).

That while at Cuestas Resort, respondent molested and sexually abuse complainant again; that respondent lay on top of him, inserted his penis into his anus and do the push and pull movement; that after said incident, respondent let complainant sleep naked lying face down; that respondent was in the bath room taking a bath when complainant awoken and noticed that he was still naked; that after celebrating mass in Malabago, Badian, Cebu, on the way home while driving his vehicle, respondent again touched and masturbate the penis of complainant; furthermore, complainant alleged that there were sexual abuse done by respondent to his person however, he could no longer remember the date/s of incident; that every time after he was molested and sexually abuse, respondent will give him money amounted either to Five Hundred pesos (P500.00) or Two Hundred pesos (P200.00), respectively, or respondent will buy something for complainant;

As complainant could no longer bear the pain, he confided first to his co-members of the church choir about what respondent had done to him thus, a priest named Father Cui was told about the ordeal of complainant; that Father Cui talked to complainant concerning the incident and then informed his grandmother; that since respondent keeps on looking for complainant, the incident was then reported to the police; feeling scared as he does not want to bother his grandmother considering that his grandfather is sick, complainant thus keep only to himself of what have had happened to him, and he is hoping and expecting that respondent will stop bothering him.

### **SUPPORTING DOCUMENTS:**

To support the filing of these cases, complainant presented the following documents, viz:

- 1) Investigation Data Form signed by PSSG Mary Rose Libradilla dated February 13, 2024;
- 2) Worksheet Complaint signed by PSS Mary Rose Libradilla, Investigator-on-case dated January 2024;
- 3) Judicial Affidavit of private complainant minor dated January 25, 2024;



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- 4) Judicial Affidavit of Versedad Pinez dated January 25, 2024;
- 5) Judicial Affidavit PSS Mary Rose Libradilla dated January 25, 2024;
- 6) Request for Medical and Psychological Evaluation dated January 11, 2024;
- 7) Request for Psychological Evaluation dated January 15, 2024;
- 8) Police Certification issued by Alegria Police Station dated January 25, 2024;
- 9) Final Medico-Legal Report;
- 10) Certificate of Live Birth of [REDACTED];
- 11) Initial Psychological Evaluation Report of [REDACTED] and [REDACTED];
- 12) Social Case Summary Report dated January 11, 2024 issued by Municipal Social Welfare and Development Office of Alegria, Cebu.

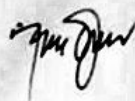
**VERSION OF RESPONDENT:**

Respondent in his counter-affidavit denies the allegations hurled against him as the same did not happen. Secondly, the evidence produced by complainant presented otherwise. Respondent, in fact, argued that the results of the general physical examination and ano-genital examination are very telling and impressive as they simply dispute and impeach the allegations that the sexual attacks described as involuntary, atrocious, or otherwise abusive, in several and separate situations in a number of places and circumstances, against the tender body of the complainant and the assumed resistance on each and every assault thus, if taken together would have certainly caused injury, such as laceration or tears the skin or tissues.

Respondent likewise proffered an argument that sexual assault allegedly committed sometime in the month of February 2022 are offensive and false considering that there could have been a finding of the presence of anal scars or skin tags in the perineum or anus showing healed fissures or lacerations during the physical/medical examination. In fact, there is no such findings whatsoever according to the evidence statement on Anal Scars and Tags by APSAC and RCPC, Anal Scars/Tags outside the midline have only been found in anally abused children and have not been found in selected children for non-abuse cases. Moreover, he posited the defense that the Initial Evaluation Report by the USC Kauban Psychological Center in Cebu City is premature and irrelevant as the findings of Post-Traumatic Stress Disorder (PTSD) and the alleged severe depressive symptoms using the BECK Depression Inventory Screenings, and the recommendations therein are misplaced. In fine, as can be gleaned in the counter-affidavit of Respondent, he posited therein several medical or scientific arguments as his defense to the charges filed by complainant minor.

**ISSUE/S**

Whether or not prima facie case exists with reasonable certainty of conviction that warrant for the indictment of Respondent for the crime of Rape through sexual assault.



## FINDINGS

After the submission of the counter-affidavit of respondent, this case is now deemed ripe for resolution. Gleaned from the counter-affidavit of respondent, he vehemently denies the material allegations hurled against him by minor complainant. In the Rules on Evidence, denial is a negative evidence in contradiction to positive ones. In fact, it is basic in law that negative assertions will not prevail over positive ones. Moreover, what respondent proffered, aside from his vehement denial of the allegations hurled against him, is the advancement of his defense which is more of a medical in nature. In this case, such defense/s of respondent are more of an evidentiary in nature which it can be threshed out only during a full-blown trial where the expert witness is put to the witness chair where questions are propounded to him/her concerning the matters as averred by respondent.

In the present cases filed against respondent, as contained in his judicial affidavit, complainant stated that he is twelve (12) years old; however, perusal of the records of the case disclosed that there are five (5) instances that the tragic incident happened to complainant, among others, February 12, 2022, February 17, 2022, February 26, 2022, March 5, 2022 and March 12, 2022, respectively, where the victim was still eleven (11) years old taking into account that he was born on February 9, 2011.

Indubitably, complainant herein falls within the definition of child or those persons below 18 years old or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition. (**People vs. Optana, G.R. No. 133922, February 12, 2001**). Likewise, the Implementing Rule and Regulations of R.A. 7610 deems a child an 18-year-old or over who, upon evaluation of a qualified physician, psychologist or psychiatrist, is incapable of taking of herself fully because of a physical or mental disability or condition or of protecting herself from abuse.

Relevantly, the pertinent law applicable in the extant case is Article 266-A of the Revised Penal Code which provision is quoted hereunder, viz:

**"Article 266-A. Rape: When And How Committed.** - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) xxxxx
- c) xxxxx
- d) xxxxx

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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On the other hand, Section 5(b), R.A. 7610, the elements of which are follows:

- 1) Accused commits sexual intercourse of lascivious conduct;
- 2) With child exploited in prostitution or subjected to Other Sexual Acts; and
- 3) The child, male or female, is or is deemed under 18 years of age.

Indubitably, the acts of Respondent of having inserting his penis into the anal orifice of minor on the dates of February 12, February 17, March 5 and March 12 all in the year 2022 when complainant was still eleven (11) years old and April 27, 2023 when complainant was twelve (12) years old falls exactly under Article 266-A of the Revised Penal Code. Moreover, all of the elements of Section 5(b) of R.A. 7610 are likewise present in this case of which respondent can be held accountable and liable as such criminally.

In fact, the Honorable Supreme Court in the case of **People vs. Tulagan, G.R. No. 227363 (2019)** made a comparison of the elements of rape under the Revised Penal Code and sexual intercourse with a child under Section 5(b) of R.A. 7610 where the offended party is between 12 years old and below 18 years old. Where the victim is under twelve (12) years old or demented which age is now raised to under sixteen (16) years old under R.A. 11648, respondent could be held liable for the crime of sexual assault under paragraph 2 of Article 266-A of the Revised Penal Code in relation to Section 5(b) of R.A. 7610 where the penalty is Reclusion Temporal in its medium period.

As regard to the incident that happened on February 17, 2024 inside the convent of St. Francis Xavier, Badian, Cebu, where complainant's age is eleven (11) years old, respondent is criminally liable for the crime of Lascivious conduct punished under the provision of Section 5(b) of R.A. 7610 where the penalty is Reclusion Temporal in its medium period to Reclusion Perpetua.

Department Circular Number 020 that took effect on March 31, 2023 provides that prima facie evidence is such status of evidence which on its own and if left uncontroverted, is sufficient to establish all of the elements of the crime.

Prescinding from the above foregoing, it is the opinion of the undersigned that prima facie evidence with reasonable certainty of conviction exists that warrant for the indictment of Respondent for the following cases, to wit:

1. Four (4) counts of Sexual Assault punished under paragraph 2 of Article 266-A of the Revised Penal Code in relation to Section 5(b) of R.A. 7610 for the incident happened inside the convent of St. Francis Xavier Church at Barangay Poblacion, Alegria, Cebu on February 12, 2022 at 4:00 o'clock in the afternoon, February 26, 2022 at around 1:00 to 2:00 o'clock in the afternoon, March 05, 2022 at 8:30 in the morning, March 12, 2022 at around 1:00 to 2:00 o'clock in the afternoon, respectively.
2. One (1) count of Sexual Assault punished under paragraph 2 of Article 266-A of the Revised Penal Code in relation to Section 5(b) of R.A. 7610 for the



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Prescinding from the above foregoing, it is the opinion of the undersigned that prima facie evidence with reasonable certainty of conviction exists that warrant for the indictment of Respondent for the following cases, to wit:

1. Four (4) counts of Sexual Assault punished under paragraph 2 of Article 266-A of the Revised Penal Code in relation to Section 5(b) of R.A. 7610 for the incident happened inside the convent of St. Francis Xavier Church at Barangay Poblacion, Alegria, Cebu on February 12, 2022 at 4:00 o'clock in the afternoon, February 26, 2022 at around 1:00 to 2:00 o'clock in the afternoon, March 05, 2022 at 8:30 in the morning, March 12, 2022 at around 1:00 to 2:00 o'clock in the afternoon, respectively.
2. One (1) count of Sexual Assault punished under paragraph 2 of Article 266-A of the Revised Penal Code in relation to Section 5(b) of R.A. 7610 for the

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incident happened sometime in the afternoon of April 27, 2023 at Cuestas Resort in Barangay Malabago, Badian.

3. One (1) count of Lascivious Conduct punished under the provision of Section 5(b), R.A. 7610 for the incident happened sometime on February 17, 2022 inside the convent of St. Francis Xavier Church at Barangay Poblacion, Alegria, Cebu.

**RECOMMENDATION**

**IN THE LIGHT OF THE FOREGOING**, it is most respectfully recommended after the approval of this Resolution, let an Information for four (4) counts of Sexual Assault punished Article 266-(A)(2) in relation to Section 5(b) of R.A. 7610 and one (1) count of Lascivious conduct punished under Section 5(b), R.A. 7610 be filed against Respondent before the Regional Trial Court stationed in Oslob, Cebu with recommended bail of Two Hundred Thousand Pesos (₱200,000.00) for each count. Moreover, let an Information of Sexual Assault punished Article 266-(A)(2) in relation to Section 5(b) of R.A. 7610 be filed against Respondent before the Regional Trial Court stationed in Barili, Cebu for the crime of with recommended bail of Two Hundred Thousand Pesos (₱200,000.00).

**MOST RESPECTFULLY SUBMITTED**

Cebu City, Philippines

April 3, 2024.



**JULIUS TORREON OMPAD**  
Assistant Provincial Prosecutor  
MCLE Compliance No. VII-0017873  
Valid until April 14, 2025

**APPROVED / DISAPPROVED:**



**LUDIVICO VISTAL CUTARAN**

Provincial Prosecutor

MCLE Compliance No. VII-0019413

Valid until April 2025

Copy furnished:

**THE CHIEF OF POLICE**

Alegria Police Station

Alegria, Cebu



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[REDACTED]  
**Complainant**  
[REDACTED]  
[REDACTED]

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**SERLITO VILAR AKA "FATHER TOX"**

Respondent  
c/o Saint Francis Xavier Church  
Alegria, Cebu  
and/or Brgy. Malatbo, Ginatlan, Cebu

OPP-Cebu

