Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff-Appellee,

-versus-

BIENVINIDO UDANG, SR. y SEVILLA,[1]
Accused-Appellant.

G.R. No. 210161

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:
January 10, 2018

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DECISION

LEONEN, *J.*:

A single act may give rise to multiple offenses. Thus, charging an accused with rape, under the Revised Penal Code, and with sexual abuse, under Republic Act No. 7610, in case the offended party is a child 12 years old and above, will not violate the right of the accused against double jeopardy.

This resolves an appeal from the October 9, 2013 Decision[2] of the Court of Appeals in CA-G.R. CR HC No. 01032 affirming the conviction of accused-appellant, Bienvinido Udang, Sr. y Sevilla (Udang), for two (2)

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1 While the RTC documents referred to him as "Bienvinido Udang, Sr.," the CA referred to him as "Bienvenido Udang, Sr."

2 *Rollo*, pp. 3–14. The Decision was penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Marie Christine Azcarra-Jacob and Edward B. Contreras of the Twenty-third Division, Court of Appeals, Cagayan de Oro City.

counts of rape defined under Article 266-A, paragraph 1 of the Revised Penal Code.[3] Udang was sentenced to suffer the penalty of *reclusion perpetua* on both counts and ordered to pay the private complainant civil indemnity, moral damages, and exemplary damages.

On December 8, 2005, two (2) Informations for child abuse were filed against Udang before the Regional Trial Court of Cagayan de Oro City. The first was docketed as Family Case No. 2006-140, the accusatory portion of which read:

> The undersigned Prosecutor II accuses BIENVINIDO UDANG for the crime of CHILD ABUSE, committed as follows:
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> > That in the later of December, 2003, at more or less 9:00 o'clock in the evening, at Lumbia, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and sexually abuse one [AAA], 14 yrs. old, minor by committing the following acts, to wit: accused together with Bienvinido Udang, Jr., Betty Udang and the offended party dr[a]nk three (3) bottles of pocket size of [T]anduay rum in the house of the accused and when offended party became intoxicated, accused brought and carried her inside the room and undressed her by removing her . . . clothes and panty and accused placed himself on top of her and have sexual intercourse with offended party herein, which acts of the accused had clearly debased, degraded or demeaned the intrinsic worth and dignity of the said minor as a human being.
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> Contrary to and in Violation of Article 266-A in relation to Sec. 5 (b) of R.A. 7610.[4]

The second Information, docketed as Family Case No. 2006-141, read:

> The undersigned Prosecutor II accuses BIENVINIDO UDANG for the crime of CHILD ABUSE, committed as follows:
>
> > That in the later part of September, 2002, at more or less 9:00 o'clock in the evening, at Lumbia, Cagayan de

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[3] REV. PEN. CODE, art. 266-A(1) provides:
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) When the offended party is deprived of reason or otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority; and
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

[4] RTC records, p. 3.

> Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously, and sexually abuse one [AAA], 14 yrs. old, minor by committing the following acts, to wit: accused together with his [daughter] Betty Udang, Renato Yana and the offended party dr[a]nk five (5) bottles of pocket size [T]anduay rum in the house of the accused and when offended party became intoxicated, accused brought her inside his room, her clothings (sic) were removed and then and there accused placed himself on top of her and have sexual intercourse with the offended party herein, which acts of the accused had clearly debased, degraded or demeaned the intrinsic worth and dignity of the said minor as a human being.
>
> Contrary to and in Violation of Article 266-A in relation to Sec. 5 (b) of R.A. 7610.[5]

Udang pleaded not guilty to both charges during his arraignment on June 26, 2006.[6] Joint trial then ensued.

Testimonies from prosecution witnesses, private complainant, AAA, and Dr. Darlene T. Revelo (Dr. Revelo) of the Department of Obstetrics and Gynecology of the Northern Mindanao Medical Center, Cagayan de Oro City, proved the following version of the facts.

One evening in September 2002, AAA, then 12 years old,[7] drank alcoholic beverages with Udang's children, her neighbors: Betty Udang (Betty) and Bienvinido Udang, Jr. (Bienvinido, Jr.), at their house in Lumbia, Cagayan de Oro City.[8]

After drinking five (5) bottles of Tanduay rum, AAA became intoxicated. She later realized that she was being carried by Udang into a dark room where he laid her on the bed, undressed her, and started kissing her.[9] Udang then went on top of AAA and inserted his penis into her vagina.[10]

After the incident, Udang went out to report for duty as barangay tanod while AAA remained inside his house as she was still too weak to move.[11]

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5 Id. at 15.
6 *Rollo,* p. 5, Court of Appeals Decision.
7 Id. AAA was born on May 20, 1990.
8 Id. at 5 and 9.
9 Id. at 10.
10 Id. at 11.
11 Id.

One (1) year and three (3) months after, in December 2003, AAA, who by then was already 13 years old, again had some drinks at Udang's house. This time, she was with Bienvinido, Jr. and Udang himself. When AAA felt sleepy, she went into one (1) of the rooms inside the house.[12] While AAA was lying in bed, Udang, who had followed her into the room, went on top of her, undressed her, and inserted his penis into her vagina until he ejaculated.[13] After having sexual intercourse with AAA, Udang went out to report for duty as barangay tanod. AAA, too tired, remained lying in bed.[14]

On April 14, 2004, AAA had herself physically examined by Dr. Revelo at the Northern Mindanao Medical Center in Cagayan de Oro City. Dr. Revelo found that AAA had hymenal lacerations in the 4, 7, and 10 o'clock positions,[15] as well as "excoriations" or reddish superficial scratched marks between her thighs and genitalia.[16] According to Dr. Revelo, these lacerations "could have been caused by trauma, frictions, infections, and also sexual intercourse."[17] Although in AAA's case, the hymenal lacerations were old and already healed.[18]

The defense presented as witnesses Udang and his daughter, Betty. Monera Gandawali (Gandawali) and Emirald Orcales (Orcales), fellow inmates of AAA at the Cagayan de Oro City Jail, also testified in Udang's defense. Their testimonies proved the following version of the facts.

Udang's daughter, Betty, denied drinking with AAA in September 2002. She also belied the claim that her father, Udang, and her brother, Bienvinido, Jr., had drinks with AAA in December 2003. However, she alleged that AAA once went to their house to invite her to sniff some rugby, an offer which she refused. She maintained that AAA only wanted to get back at her father for having AAA arrested after she was caught grappling with Betty's grandmother because the latter tried to stop AAA from sniffing rugby inside Udang's house.[19]

After Udang caused the arrest of AAA for sniffing rugby,[20] AAA was detained at the Cagayan de Oro City Jail where she, Gandawali, and Orcales, became fellow inmates.[21]

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12 Id.
13 Id. at 12.
14 Id.
15 CA *rollo*, p. 38, Trial court Decision.
16 TSN dated December 8, 2006, p. 8.
17 *Rollo*, p. 12.
18 CA *rollo*, p. 38.
19 Id. at 40.
20 TSN dated November 11, 2010, p.7.
21 *Rollo*, p. 6, Court of Appeals Decision.

Gandawali testified that sometime in 2007, she had the chance to talk to AAA when the latter became anxious for receiving a subpoena to testify in the cases she filed against Udang. During their conversation, AAA disclosed that she was never actually raped by Udang and that it was actually her stepfather who wanted to implicate him.[22]

For her part, Orcales testified that she did not know Udang personally. She claimed that she only knew Udang when AAA divulged her desire to write to Udang and ask for his forgiveness. AAA likewise disclosed to Orcales that it was not Udang but a security guard who had raped her and that it was AAA's mother who had forced her to testify against Udang in retaliation for her arrest for sniffing rugby.[23]

In his defense, Udang denied ever raping AAA. He testified that he was at home with his mother and other siblings at the time of the alleged incident in September 2002. As for the alleged second incident in December 2003, Udang claimed that he was again at home with his mother and siblings, Susan Udang and Cito Udang. He asserted that at 9:00 p.m., he reported for duty as barangay tanod with his colleagues, Ruel Labis and Carlo Banianon. Udang saw no reason for AAA to falsely charge him with rape since no animosity existed between them.[24]

Branch 22, Regional Trial Court, Cagayan de Oro City found for the prosecution and convicted Udang of rape under Article 266-A(1) of the Revised Penal Code,[25] instead of sexual abuse under Section 5(b) of Republic Act No. 7610.[26] It ratiocinated that while the allegations in the first and second Informations satisfied the elements of rape under the first and third paragraphs of Article 266-A, respectively, the charges can only be

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22 CA *rollo*, p. 39, Trial court Decision.

23 Id. at 40.

24 Id. at 39.

25 REV. PEN. CODE, art. 266-A(1) partly provides:
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) When the offended party is deprived of reason or otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority[.]

26 Rep. Act No. 7610 (1992), sec. 5 as amended by Rep. Act No. 8353 (1997), provides:
Section 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
. . . .
(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under [paragraph (d), Article 266-A of the Revised Penal Code, as amended by the Anti-Rape Law of 1997] and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]

one (1) for rape under the first paragraph of Article 266-A because "[an] accused cannot be prosecuted twice for a single criminal act."[27]

The trial court found that the prosecution "indubitably established"[28] Udang's act of raping AAA since she "categorically narrated"[29] how he took advantage of her while she was intoxicated and that had she resisted his advances, she would be mauled by Betty. That AAA was raped was also supported by Dr. Revelo's finding of hymenal lacerations and excoriations on AAA's thighs and genitalia.[30]

The trial court did not give credence to Udang's defense of denial and alibi, stating that he could have requested his family members and fellow barangay tanods, who were allegedly with him at the time of the incidents, to corroborate his testimony but that he failed to do so. Without the corroborating testimony of these alleged companions, his testimony was, for the trial court, "self-serving and unworthy to be believed."[31]

The trial court likewise discounted Gandawali's and Orcales' testimonies for being hearsay.[32] As for Betty, the trial court found her testimony "bare"[33] and "unsupported by evidence."[34]

In the Regional Trial Court March 12, 2012 Joint Decision,[35] Udang was sentenced to suffer the penalty of *reclusion perpetua* on both counts of rape under the first paragraph of Article 266-A of the Revised Penal Code. He was also ordered to pay AAA civil indemnity, moral damages, and exemplary damages. The dispositive portion of this Decision read:

> WHEREFORE, the foregoing premises considered[,] judgment is hereby rendered finding the accused BIENVINIDO UDANG y SEVILLA:
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> 1. ***GUILTY*** beyond reasonable doubt of the crime of rape as defined and penalized under Article 266-A, Par. 1 of the Revised Penal Code in FC-Criminal Case No. 2006-140 and is hereby sentenced to suffer imprisonment of reclusion perpetua, and to pay "AAA" ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.
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> 2. ***GUILTY*** beyond reasonable doubt of the crime of rape as defined and penalized under Article 266-A, Par. 1 of the Revised Penal

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27 CA *rollo,* p. 41, Trial court Decision.
28 Id. at 42.
29 Id.
30 Id. at 42–44 and TSN dated December 8, 2006, p. 8.
31 CA *rollo*, p. 44.
32 Id. at 45.
33 Id.
34 Id.
35 Id. at 36–46. The Joint Decision was penned by Judge Richard D. Mordeno of Branch 22, Regional Trial Court, Cagayan de Oro City.

> Code in FC-Criminal Case No. 2006-141 and is hereby sentenced to suffer imprisonment of reclusion perpetua, and to pay "AAA" ₱50,000.00 as civil indemnity, ₱50,000.000 as moral damages and ₱30,000.00 as exemplary damages.
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> SO ORDERED.[36] (Emphasis in the original)

Udang appealed before the Court of Appeals, maintaining that he did not rape AAA. He also claimed that the judge who penned the Decision, Judge Richard D. Mordeno (Judge Mordeno), was not the judge who personally heard the witnesses testify and was not able to observe their demeanor during trial.[37] Udang argued that Judge Mordeno, therefore, was not in the position to rule on the credibility of AAA, given her "unbelievable story"[38] of rape.

Udang emphasized that AAA's testimony was not credible for if she was allegedly raped in his house in September 2002, she would not have gone to the same house to have drinks with her supposed rapist a year after, in December 2003, on the risk of being raped again.[39] He highlighted AAA's ill motive against him for having caused her detention in the Cagayan de Oro City Jail for sniffing rugby in his house.[40] Finally, he emphasized that Dr. Revelo's testimony established that the lacerations found in AAA's genitalia could have been caused by trauma other than rape.[41]

In its ruling, the Court of Appeals found that although Judge Mordeno was not the one who conducted trial, Udang's guilt was nonetheless proven beyond reasonable doubt based on the records of the case and AAA's "categorical, convincing and consistent" testimony.[42]

That AAA returned to Udang's house a year after she was allegedly raped was, for the Court of Appeals, not as bizarre as Udang would make it appear. The Court of Appeals reasoned that "there is no standard form of behavior that can be expected of rape victims after they have been defiled because people react differently to emotional stress."[43]

Finally, the Court of Appeals rejected Udang's claim that AAA charged him with rape as vengeance for her arrest for sniffing rugby. It explained that "ill motives become inconsequential if there is an affirmative

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36 CA *rollo*, p. 46, Trial court Decision.
37 Id. at 25. Appellant's Brief.
38 Id. at 26.
39 Id. at 29–30.
40 Id. at 30–32.
41 Id. at 32–33.
42 *Rollo*, p. 9, Court of Appeals Decision.
43 Id. at 12.

and credible declaration from the rape victim which clearly established the liability of the accused."[44]

Thus, the Court of Appeals affirmed the trial court Decision *in toto* and dismissed Udang's appeal in its October 9, 2013 Decision,[45] the dispositive portion of which read:

> WHEREFORE, premises considered, the appeal is DISMISSED. The March 12, 2012 Joint Decision of the Regional Trial Court, 10th Judicial Region, Branch 22 of Cagayan de Oro City in FC Criminal Case Nos. 2006-140 and 2006-141 is hereby AFFIRMED *in toto*.
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> **SO ORDERED.**[46] (Emphasis in the original)

The case was brought on appeal before this Court through a Notice of Appeal filed on October 23, 2013.[47] In its February 26, 2014 Resolution,[48] this Court directed the parties to file their respective supplemental briefs.

In their respective manifestations, the Office of the Solicitor General,[49] representing the People of the Philippines, and accused-appellant Udang[50] requested this Court to treat their appeal briefs filed before the Court of Appeals as their appeal briefs before this Court. This Court noted the parties' respective manifestations in its July 7, 2014 Resolution[51] and the case was considered submitted for decision.

Udang denies ever raping AAA and maintains his innocence, just as he did before the Court of Appeals. For him, AAA is not a credible witness and her story of rape is unbelievable. He claims that AAA should not have returned to his house a year after the alleged first incident to have drinks with him and his son, Bienvinido, Jr., had he really raped her. He also emphasizes how the rape charges were made only after he caused AAA's arrest for sniffing rugby in his house. He points out how two (2) of AAA's fellow inmates in the Cagayan de Oro City Jail, Gandawali and Orcales, even attested to his innocence based on AAA's confession that he did not rape her. Thus, the accused prays for his acquittal.

In its Brief for the Appellee,[52] the Office of the Solicitor General argues that Udang was correctly convicted of two (2) counts of rape

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44 Id. at 13.
45 Id. at 3–14.
46 Id. at 13.
47 Id. at 15–17.
48 Id. at 21.
49 Id. at 27–31. Manifestation and Motion (In Lieu of Supplemental Brief).
50 Id. at 32–35. Manifestation with Motion.
51 Id. at 36.
52 CA *rollo*, pp. 57–76.

punished under Article 266-A(1) of the Revised Penal Code. It claims that "testimonies of child-victims of rape are to be given full weight and credence"[53] because "a girl of tender years,"[54] like AAA at the time of the reported incidents, "is unlikely to impute to any man a crime so serious as rape, if what she claims is not true."[55] It adds that "when a woman, more so when she is a minor, says she has been raped, she says in effect all that is required to prove the ravishment."[56]

The principal issue for this Court's resolution is whether or not accused-appellant, Bienvinido Udang, Sr. y Sevilla, was correctly convicted of rape punished under the first paragraph of Article 266-A of the Revised Penal Code.

The appeal is affirmed with modification. Based on the Informations, Udang was charged with two (2) counts of sexual abuse punished under Section 5(b) of Republic Act No. 7610. Hence, he could only be convicted of sexual abuse under the Informations filed in this case and not for rape under the Revised Penal Code. Furthermore, upon examination of the evidence presented, this Court finds Udang guilty of two (2) counts of sexual abuse. Thus, the penalty erroneously imposed on him—*reclusion perpetua* for each count of rape—should be reduced accordingly.

I

Udang attempts to raise doubt in his conviction because the judge who penned the trial court decision, Judge Mordeno, was not the judge who heard the parties and their witnesses during trial. For Udang, Judge Mordeno was in no position to rule on the credibility of the witnesses, specifically, of AAA, not having observed the manner by which the witnesses testified.

Ideally, the same trial judge[57] should preside over all the stages of the proceedings, especially in cases where the conviction or acquittal of the accused mainly relies on the credibility of the witnesses. The trial judge enjoys the opportunity to observe, first hand, "the aids for an accurate determination"[58] of the credibility of a witness "such as the witness' deportment and manner of testifying, the witness' furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath."[59]

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53 Id. at 71.
54 Id.
55 Id.
56 Id.
57 *People v. Court of First Instance of Quezon, Br. X,* G.R. No. L-48817, October 29, 1993, 227 SCRA 457, 461 [Per J. Bellosillo, First Division].
58 *People v. Diaz*, 331 Phil. 240, 252 (1996) [Per J. Davide, Jr., Third Division].
59 Id.

However, inevitable circumstances—the judge's death, retirement, resignation, transfer, or removal from office—may intervene during the pendency of the case.[60] An example is the present case, where the trial judge who heard the witnesses, Judge Francisco D. Calingin (Judge Calingin), compulsorily retired pending trial.[61] Judge Calingin was then replaced by Judge Mordeno, who proceeded with hearing the other witnesses and writing the decision. Udang's argument cannot be accepted as this would mean that every case where the judge had to be replaced pending decision would have to be refiled and retried so that the judge who hears the witnesses testify and the judge who writes the decision would be the same.[62] What Udang proposes is impracticable.

As early as 1915, this Court ruled in *United States v. Abreu*[63] that in the absence of a law expressly prohibiting a judge from deciding a case where evidence was already taken, no such prohibition may be implied. In *Abreu*, Judge Jose C. Abreu (Judge Abreu) refused to resolve a case where the witnesses were already heard by the former presiding judge who had resigned, arguing that the witnesses were heard by a judge whose authority had been superseded by the then newly enacted Act No. 2347.

In rejecting Judge Abreu's argument, this Court held that the legislature could not have intended to render void all the acts undertaken by judges prior to the enactment of Act No. 2347.[64] According to this Court, Act No. 2347's purpose was "simply to change the *personnel* of the judges"[65] and that it specifically provided that all cases and judicial proceedings pending decision or sentence under the jurisdiction of the old courts shall be continued until their final decision.[66]

Further, this Court explained that with the existence of the transcript of records, which are presumed to be a "complete, authentic record of everything that transpires during the trial,"[67] there is "little reason for asserting that one qualified person may not be able to reach a just and fair conclusion from [the] record as well as another."[68] Thus, it compelled Judge Abreu to proceed with deciding the cases where evidence was already taken by the former presiding judge.

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60 *See In Re: Transfer of Hearing of A.M. No. 07-11-592-RTC*, 572 Phil. 1, 5 (2008) [Per J. Reyes, R.T., Third Division].
61 As per the Office of the Court Administrator.
62 *United States v. Abreu*, 30 Phil. 402, 410 (1915) [Per Curiam, En Banc].
63 Id.
64 Id. at 410.
65 Id. at 408.
66 Id.
67 Id. at 415.
68 Id.

In *People v. Court of First Instance of Quezon, Br. X*,[69] a decision acquitting the accused was penned by a trial judge temporarily detailed to Branch 10 of the Court of First Instance of Quezon. However, the decision was later on promulgated by a different judge who was subsequently appointed permanently. The People of the Philippines then opposed the judgment of acquittal, arguing that it was void for being promulgated without authority as the temporary detail of the judge who penned the decision had already expired.

This Court rejected the reasoning that "[j]urisdiction is vested in the court, not in the judges, so that when a complaint or information is filed before one branch or judge, jurisdiction does not attach to said branch of the judge alone, to the exclusion of the others."[70] Jurisdiction having attached with the court, the judgment of acquittal was deemed valid, regardless of the fact that one judge wrote it and another promulgated it.

Applying the foregoing, the trial court decision convicting Udang is valid, regardless of the fact that the judge who heard the witnesses and the judge who wrote the decision are different. With no showing of any irregularity in the transcript of records, it is presumed to be a "complete, authentic record of everything that transpire[d] during the trial,"[71] sufficient for Judge Mordeno to have evaluated the credibility of the witnesses, specifically, of AAA.

II

However, this Court disagrees with the trial court's ruling that charging Udang with both rape, under Article 266-A(1) of the Revised Penal Code, and sexual abuse, under Section 5(b) of Republic Act No. 7610, would violate his right against double jeopardy.

The right against double jeopardy is provided in Article III, Section 21 of the Constitution:

> Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.[72]

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69 *People v. Court of First Instance of Quezon, Br. X*, G.R. No. L-48817, October 29, 1993, 227 SCRA 457, 461 [Per J. Bellosillo, First Division].

70 Id. at 461.

71 *United States v. Abreu*, 30 Phil. 402, 415 (1915) [Per Curiam, En Banc].

72 CONST., art. III, sec. 21.

The first sentence of the provision speaks of "the same offense," which this Court has interpreted to mean offenses having identical essential elements.[73] Further, the right against double jeopardy serves as a protection: first, "against a second prosecution for the same offense after acquittal";[74] second, "against a second prosecution for the same offense after conviction";[75] and, finally, "against multiple punishments for the same offense."[76]

Meanwhile, the second sentence of Article III, Section 21 speaks of "the same act," which means that this act, punished by a law and an ordinance, may no longer be prosecuted under either if a conviction or acquittal already resulted from a previous prosecution involving the very same act.

For there to be double jeopardy, "a first jeopardy [must] ha[ve] attached prior to the second; . . . the first jeopardy has been validly terminated; and . . . a second jeopardy is for the same offense as that in the first."[77]

A first jeopardy has attached if: first, there was a "valid indictment";[78] second, this indictment was made "before a competent court";[79] third, "after [the accused's] arraignment";[80] fourth, "when a valid plea has been entered";[81] and lastly, "when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent."[82] Lack of express consent is required because the accused's consent to dismiss the case means that he or she actively prevented the court from proceeding to trial based on merits and rendering a judgment of conviction or acquittal.[83] In other words, there would be a waiver of the right against double jeopardy if consent was given by the accused.[84]

To determine the essential elements of both crimes for the purpose of ascertaining whether or not there is double jeopardy in this case, below is a comparison of Article 266-A of the Revised Penal Code punishing rape and Section 5(b) of Republic Act No. 7610 punishing sexual abuse:

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73 *See People v. Judge Relova*, 232 Phil. 269, 283 (1987) [Per J. Feliciano, First Division].
74 *People v. Dela Torre*, 430 Phil. 420, 430 (2002) [Per J. Panganiban, Third Division].
75 Id.
76 Id.
77 *See People v. Cawaling*, 355 Phil. 1, 24 (1998) [Per J. Panganiban, First Division].
78 Id.
79 Id.
80 Id.
81 Id.
82 Id.
83 *See People v. Salico,* 84 Phil. 722, 726 (1949) [Per J. Feria, En Banc].
84 Id.

Rape under Article 266-A(1) of the Revised Penal Code	**Sexual abuse under Section 5(b) of Republic Act No. 7610**
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) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority[.]	SECTION 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following: . . . . (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.] (Underscoring provided)

The provisions show that rape and sexual abuse are two (2) separate crimes with distinct elements. The "force, threat, or intimidation" or deprivation of reason or unconsciousness required in Article 266-A(1) of the Revised Penal Code is not the same as the "coercion or influence" required in Section 5(b) of Republic Act No. 7610. Consent is immaterial in the crime of sexual abuse because "the [mere] act of [having] sexual intercourse . . . with a child exploited in prostitution or subjected to . . . sexual abuse"[85] is already punishable by law. However, consent exonerates an accused from a rape charge as exhaustively explained in *Malto v. People*:[86]

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[85] Rep. Act No. 7610, sec. 5(b).

[86] 560 Phil. 119 (2007) [Per J. Corona, First Division].

VIOLATION OF SECTION 5 (B), ARTICLE III OF RA 7610 AND RAPE ARE SEPARATE AND DISTINCT CRIMES

Petitioner was charged and convicted for violation of Section 5 (b), Article III of RA 7610, not rape. The offense for which he was convicted is punished by a special law while rape is a felony under the Revised Penal Code. They have different elements. The two are separate and distinct crimes. Thus, petitioner can be held liable for violation of Section 5 (b), Article III of RA 7610 despite a finding that he did not commit rape.

CONSENT OF THE CHILD IS IMMATERIAL IN CRIMINAL CASES INVOLVING VIOLATION OF SECTION 5, ARTICLE III OF RA 7610

Petitioner claims that AAA welcomed his kisses and touches and consented to have sexual intercourse with him. They engaged in these acts out of mutual love and affection. But may the "sweetheart theory" be invoked in cases of child prostitution and other sexual abuse prosecuted under Section 5, Article III of RA 7610? No.

The sweetheart theory applies in acts of lasciviousness and rape, felonies committed against or without the consent of the victim. It operates on the theory that the sexual act was consensual. It requires proof that the accused and the victim were lovers and that she consented to the sexual relations.

For purposes of sexual intercourse and lascivious conduct in child abuse cases under RA 7610, the sweetheart defense is unacceptable. *A child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person.*

The language of the law is clear: it seeks to punish

> [t]hose who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse.

Unlike rape, therefore, *consent is immaterial in cases involving violation of Section 5, Article III of RA 7610.* The mere act of having sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense. It is a *malum prohibitum*, an evil that is proscribed.

A child cannot give consent to a contract under our civil laws. This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully. Those of tender years deserve its protection.

> The harm which results from a child's bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law should protect her from the harmful consequences of her attempts at adult sexual behavior. For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. (Otherwise, sexual predators like petitioner will be justified, or even unwittingly tempted by the law, to view her as fair game and vulnerable prey.) In other words, a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse.
>
> This must be so if we are to be true to the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth. This is consistent with the declared policy of the State
>
> > **[T]o provide special protection to children from all forms of abuse**, neglect, cruelty, **exploitation** and discrimination, **and other conditions prejudicial to their development; provide sanctions for their commission** and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination.
>
> as well as to
>
> > **intervene on behalf of the child** when the parents, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation, and discrimination or when **such acts against the child are committed by the said parent, guardian, teacher** or person having care and custody of the same.
>
> This is also in harmony with the foremost consideration of the child's best interests in all actions concerning him or her.
>
> > **The best interest of children shall be the paramount consideration in all actions concerning them**, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principles of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. **Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.**[87] (Emphasis in the original, citations omitted)

People v. Abay[88]—insofar as it ruled that charging an accused with both rape, under Article 266-A(1) of the Revised Penal Code, and sexual

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[87] Id. at 138–142.

[88] *People v. Abay*, 599 Phil. 390 (2009) [Per J. Corona, First Division].

abuse, under Section 5(b) of Republic Act No. 7610, violates his or her right against double jeopardy[89]— must therefore be abandoned.[90] As held in *Nierras v. Dacuycuy*:[91]

> [A] single criminal act may give rise to a multiplicity of offenses and where there is variance or differences between the elements of an offense in one law and another law as in the case at bar there will be no double jeopardy because what the rule on double jeopardy prohibits refers to identity of elements in the two (2) offenses. Otherwise stated prosecution for the same act is not prohibited. What is forbidden is prosecution for the same offense. Hence, the mere filing of the two (2) sets of information does not itself give rise to double jeopardy.[92]

In *People v. Judge Relova*:[93]

> [T]he constitutional protection against double jeopardy is *not* available where the second prosecution is for an offense that is different from the offense charged in the first or prior prosecution, although both the first and second offenses may be based upon the same act or set of acts.[94]

The only time that double jeopardy arises is when the same act has already been the subject of a previous prosecution under a law or an ordinance. This is not the situation in the present case.

All told, the trial court erred in ruling that prosecuting an accused both for rape, under Article 266-A(1) of the Revised Penal Code, and sexual abuse, under Section 5(b) of Republic Act No. 7610, violates his or her right to double jeopardy.

III

Moreover, contrary to the trial court's determination, the Informations actually charged Udang with sexual abuse, under Section 5(b) of Republic Act No. 7610, and not with rape, under Article 266-A(1) of the Revised Penal Code.

Based on the Informations, the charge against Udang was "child abuse,"[95] defined in Section 3 of Republic Act No. 7610 as "the

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89 Id. at 395–396.

90 Other cases citing the *Abay* doctrine are: *People v. Dahilig*, 667 Phil. 92 (2011) [Per J. Mendoza, Second Division]; and *People v. Matias*, 687 Phil. 386 (2012) [Per J. Perlas-Bernabe, Third Division].

91 *Nierras v. Dacuycuy,* 260 Phil. 6 (1990) [Per J. Paras, En Banc].

92 Id. at 13, citing *People v. Miraflores*, 115 SCRA 570 (1982) [Per J. Escolin, Second Division].

93 *People v. Judge Relova*, 232 Phil. 269, 283 (1987) [Per J. Feliciano, First Division]

94 Id. at 278.

95 RTC records, p. 3 and 15.

maltreatment, whether habitual or not, of [a] child" and includes "any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being." The allegations in the Informations stated that Udang "sexually abuse[d]"[96] AAA by having sexual intercourse with her while she was intoxicated, thus, "debas[ing], degrad[ing], or demean[ing] the intrinsic worth of AAA."[97] While the Informations stated that the acts were "[c]ontrary to and in [v]iolation of Article 266-A in relation to Sec. 5 (b) of R.A. 7610,"[98] the factual allegations in the Informations determine the crime being charged.[99]

Given that the charges against Udang were for sexual abuse, this Court examines whether or not the elements of sexual abuse under Section 5(b) of Republic Act No. 7610 are present in this case. Section 5(b) of Republic Act No. 7610 reads:

> SECTION 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> . . . .
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period[.]

To wit, the elements of sexual abuse are: first, "the accused commits the act of sexual intercourse or lascivious conduct";[100] second, "the said act is performed with a child exploited in prostitution";[101] and, finally, that "the child, whether male or female, is below 18 years of age."[102]

All the elements of sexual abuse are present in this case.

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96 Id.
97 Id.
98 Id.
99 *See Malto v. People*, 560 Phil. 119, 135–136 (2007) [Per J. Corona, First Division].
100 *Amployo v. People*, 496 Phil. 747, 758 (2005) [Per J. Chico-Nazario, Second Division].
101 Id.
102 Id.

As an adult and the father of AAA's friend, Betty, Udang had influence over AAA, which induced the latter to have drinks and later on have sexual intercourse with him. AAA, born on May 20, 1990,[103] was 12 and 13 years old when the incidents happened. The following transcript of stenographic notes shows AAA's "categorical, convincing and consistent"[104] testimony as to how Udang sexually abused her in September 2002:

> Q. In September, 2002 AAA, what unusual incident that happened between you and the accused?
> A. Yes.
> Q. What is that AAA?
> A. We are drinking in their house.
>
> Q. You are saying in the house of Bienvenido Udang, Sr.?
> A. Yes.
> Q. Where was it located?
> A. We are neighbors.
> Q. So, in crossing Lumbia, Cagayan de Oro City?
> A. Yes.
> Q. And you said that you were drinking, what were you drinking in the house of B[ie]nvenido Udang, Sr.?
> A. Tanduay.
> Q. And who were your companions, if any, at that time?
> A. Betty, myself and Bienvenido, Jr.
> . . . .
> Q. So, how many Tanduay bottles were you really drinking in September, 2002?
> A. Five.
> Q. What happened next while you were in the house of the accused?
> A. They let me drink until I was drunk and carried me to the room.
> Q. And when you were carried to the room, what happened next?
> A. Then he undressed me.
> Q. Let us clarify this, who carried you to the room?
> A. Bienvenido Udang, Sr.
> Q. When he carried you to the room, you said you were undressed, who undressed you?
> A. Bienvenido Udang, Sr.
> Q[.] And what happened next?
> A. He kissed me and then went on top of me.
> Q. And when he was on top of you, what, if any, was your position then?
> A. I was lying down.
> Q. By the way, you said that you were undressed at that time, AAA, so at that time you had no upper garments?
> A. No more.
> Q. How about your lower garment?
> A. No more.
> Q. How about Bienvenido Udang, Sr., what was the state of his dress?
> A. I could not remember because it was already night and it was dark.
> Q. When he went on top of you, what was the state of his dress at that time?
> A. I did not notice.

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[103] *Rollo*, p. 5, Court of Appeals Decision.
[104] Id at 9.

Q. When Bienvenido Udang[,] Sr. went on top of you while you were lying down, what was Bienvenido Udang, Sr. do[ing]?
A. I am shy.

Pros. Sia-Galvez:
We would like to manifest at this juncture, your honor, that the witness is hesitant in answering [the] question because of the feeling of embarrassment, your honor.

(To witness) AAA, would you want your mother inside this court room or we will have her stay outside this court room?

A. She will stay.
Q. Can we continue, AAA?
A. Yes.

. . . .
Q. Let us go back, when Bienvenido Udang[,] Sr. was on top o[f] you and you were lying down, what happened next?
A. He inserted his penis on my vagina.
. . . .
Q. So, you felt [his] penis entering your vagina?
A. Yes.
Q. And how many times, if any, did he do that [i]n September, 2002?
A. Only once.[105]

As for the sexual abuse in December 2003, AAA testified:

Q. In December, 2003, AAA, what incident, if any, happened between you and the accused?
A. Yes, there was.
Q. What incident was that?
A. The same thing, we had a drinking session with Bienvenido Udang, Sr., and Jr.
Q. And when was this happened?
A. In the house.
. . . .
Q. You said that you were drinking in the house of the accused, what were you drinking then?
A. Tanduay
Q. And you said it happened again, where did it happened (sic)?
A. In their house, in a room.
. . . .
Q. And when you were inside the room, what happened next?
A. I was lying down and after a while, they went inside.
Q. You are referring to?
A. Bienvenido Udang, Sr.
Q. And when they were inside the room, what happened next?
A. The same thing, he undressed me and inserted his penis into my vagina?
Q. How many times?
A. Until he had an ejaculation.[106]

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105 Id. at 9-11.
106 Id. at 11–12.

This Court finds AAA credible not because of the generalization that she was a child of tender years incapable of fabricating a story of defloration but because of her categorical narration of her experience and her straightforward explanation that she was intimidated by Betty to have drinks with her father. Thus, she was compelled to return to the accused's house even after she was raped. AAA testified that Betty, her "friend," "sold"[107] her to Udang; Betty, who was taller than AAA, even threatened to "maul" her had she resisted:

> Q. After the September, 2002 incident, did you tell any person about the incident?
>
> A. No, I did not tell it to anyone because if I tell, his child will maul me.
>
> Q. And after the said incident, you still went back to their house, is that correct?
>
> A. Yes, because his child wanted me to go.
>
> Q. And you were drinking Tanduay with the accused.
>
> A. Yes, because if [I] will not drink, his child Betty will maul me.
>
> Q. Was (sic) this Betty already mauled you?
>
> A. Yes, because whenever she asked me to buy cigarette, she maul (sic) me because she was taller than me before.[108]

To this Court, Betty's threat of violence was enough to induce fear in AAA.

AAA's delay in reporting the incidents did not affect her credibility. Delay is not and should not be an indication of a fabricated charge because, more often than not, victims of rape and sexual abuse choose to suffer alone and "bear the ignominy and pain" of their experience.[109] Here, AAA would not have revealed the incidents had she not been interviewed by the police when she was arrested for sniffing rugby:

> Q. To whom for the first time did you reveal these two incidents that happened to you?
>
> A. Only when Bienvenido Udang, Sr. ha[d] me arrested.
>
> Q. Why did Bienvenido Udang, Sr. have you arrested?
>
> A. Because his child let me used to sniff "rugby".

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[107] CA *rollo*, p. 28, Appellant's Brief citing TSN dated December 7, 2007, pp. 16–17.

[108] Id. at 26-27.

[109] *See People v. Bahuyan*, 308 Phil. 346, 358 (1994) [Per J. Romero, Third Division]. *See also People v. Errojo*, 299 Phil. 51, 61 (1994) [Per J. Nocon, Second Division].

Q. What is the name of that child?

A. Betty Udang.

Q. Do you mean to say that you also use "rugby"?

A. No, I am not using "rugby", but I used it for the first time when his child let me used then (sic).

Q. Were you, in fact, being arrested (sic) at that time when Bienvenido Udang, Sr. have you arrested?

A. Yes.

Q. Who arrested you?
A. I was arrested by the police and I told the police about the incident because I wanted to go out but the police needed a signature in order for me to go out.

Q. Whose signature is needed?

A. Bienvenido Udang, Sr.

Q. How come those two incidents of sexual abuse by Bienvenido Udang, Sr.

A. I reported the incidents to the police because they interviewed me.[110]

With AAA's categorical testimony, the prosecution discharged its burden of proving Udang's guilt beyond reasonable doubt and has made a *prima facie* case for two (2) counts of sexual abuse against him. In other words, the prosecution presented the "amount of evidence which would be sufficient to counterbalance the general presumption of innocence, and warrant a conviction."[111] The burden of evidence then shifted to the defense to counter the prosecution's *prima facie* case. Explaining the difference between "burden of proof" and "burden of evidence," this Court in *Bautista v. Sarmiento*[112] said:

> When a *prima facie* case is established by the prosecution in a criminal case . . . the burden of proof does not shift to the defense. It remains throughout the trial with the party upon whom it is imposed—the prosecution. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial. This burden of going forward with the evidence is met by evidence which balances that introduced by the prosecution. Then the burden shifts back.[113] (Citation omitted)

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110 CA *rollo*, pp. 30–31, Appellant's Brief citing TSN dated December 7, 2007, p. 23.

111 *Bautista v. Sarmiento*, 223 Phil. 181, 185 (1985) [Per J. Cuevas, Second Division], citing WORDS & PHRASES PERMANENT EDITION 33, p.545.

112 *Bautista v. Sarmiento*, 223 Phil. 181, 185 (1985) [Per J. Cuevas, Second Division].

113 Id. at 186.

Unfortunately Udang failed to present evidence sufficient to counter the prosecution's *prima facie* case against him.

To destroy AAA's credibility, Udang capitalizes on the fact that he was charged only after he had AAA arrested for sniffing rugby. However, given AAA's affirmative and credible testimony, Udang's allegation of ill motive is deemed inconsequential.

While prosecution witness Dr. Revelo testified that the lacerations found in AAA's genitalia could have been "introduced by other operation"[114] aside from sexual intercourse, Udang had nothing but denials and alibis as defenses. If, as Udang testified, he was with his mother, siblings, and some barangay tanods during the alleged incidents, he could have presented them as witnesses to corroborate his testimony, but he did not. Neither is Betty's testimony that Udang never had drinks with AAA sufficient to acquit her father. Udang's and Betty's testimonies are "self-serving"[115] and were correctly disregarded by the trial court.

As correctly held by the trial court and by the Court of Appeals, the testimonies of Gandawali and Orcales, AAA's fellow inmates at the Cagayan de Oro City Jail, were hearsay, hence, inadmissible in evidence.[116] This is because Gandawali and Orcales had no personal knowledge of the incidents as they were not there when the incidents happened.

In sum, this Court is morally convinced that Udang committed two (2) counts of sexual abuse under Section 5(b) of Republic Act No. 7610, with each count punishable by *reclusion temporal* in its medium period to *reclusion perpetua*. Applying the Indeterminate Sentence Law[117] and absent any mitigating or aggravating circumstance in the present case, the maximum imposable penalty for each count should be the penalty prescribed by law in its medium period[118] which is *reclusion temporal* in its maximum period ranging from 17 years, four (4) months, and one (1) day to 20

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114 CA *rollo*, p. 32, Appellant's Brief.

115 Id. at 44.

116 RULES OF COURT, Rule 130, sec. 36 provides:
Section 36. *Testimony generally confined to personal knowledge; hearsay excluded.* — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

117 Rep. Act No. 4103 (1965), as amended.

118 REV. PEN. CODE, art. 64(1) provides:
Article 64. *Rules for the Application of Penalties Which Contain Three Periods.* — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:
1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

years.[119] On the other hand, the minimum term of the imposable penalty shall be the next penalty lower in degree than that prescribed by law which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period. This minimum term ranges from eight (8) years and one (1) day to 14 years and eight (8) months.[120] Udang shall serve the penalties successively.[121]

Further, AAA is entitled to ₱50,000.00 as civil indemnity.[122] The award of moral damages is likewise retained at ₱50,000.00.[123] However, the award of exemplary damages is deleted given the absence of any aggravating circumstance in this case.[124]

WHEREFORE, the appeal is **DENIED**. The Court of Appeals October 9, 2013 Decision in CA-G.R. CR HC No. 01032 is **AFFIRMED with MODIFICATION**. Bienvinido Udang, Sr. y Sevilla is found **GUILTY** beyond reasonable doubt of two (2) counts of sexual abuse, under Section 5(b) of Republic Act No. 7610, and is sentenced to suffer the penalty of twelve (12) years of *prision mayor* as minimum to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal* as maximum for each count. Furthermore, the accused shall pay AAA ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages for each count of sexual abuse, all amounts shall earn interest at the legal rate of six percent (6%) per annum from the finality of this Decision until full payment. The award of exemplary damages is deleted.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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119 *People v. Matias*, 687 Phil. 386, 391 (2012) [Per J. Perlas-Bernabe, Third Division].

120 Id.

121 REV. PEN. CODE, art. 70 partly provides:
Article 70. *Successive Service of Sentences; Exception.* — When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; otherwise, said penalties shall be executed successively, following the order of their respective severity, which shall be determined in accordance with the following scale:
1. Death.
2. *Reclusión perpetua.*
3. *Reclusión temporal.*
4. *Prisión mayor.*
5. *Prisión correccional.*
6. *Arresto mayor.*
7. *Arresto menor.*
. . . .

122 *See Malto v. People*, 560 Phil. 119, 143–144 (2007) [Per J. Corona, First Division].

123 Id. at 144.

124 Id. citing CIVIL CODE art. 2230, which provides that "[i]n criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

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