

796 Phil. 233

**SECOND DIVISION**

**[ G.R. No. 216671. October 03, 2016 ]**

**JERWIN DORADO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

**D E C I S I O N**

**MENDOZA, J.:**

This is a Petition for Review on *Certiorari* seeking to reverse and set aside the August 8, 2014 Decision<sup>[1]</sup> and the January 29, 2015 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 33581, which affirmed the July 5, 2010 Decision<sup>[3]</sup> of the Regional Trial Court, Taguig City, Branch 163 (RTC), in Criminal Case No. 127784, finding accused Jerwin Dorado (Dorado) guilty of the crime of Frustrated Murder.

*The Antecedents*

Dorado, Julius Ramos (*Ramos*), Jeffrey Confessor (*Confessor*) and Jayson Cabiasso (*Cabiasso*) were charged with the crime of frustrated murder, defined under Article 248 in relation to Article 6 of the Revised Penal Code (*RPC*) committed against Ronald Bonion (*Ronald*) before the RTC. They were also charged with violation of Section 10(a) of Republic Act (*R.A.*) No. 7610, or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, committed against Raniel Parino (*Raniel*). These cases were docketed, as Criminal Case Nos. 127784-85. The respective Informations read as follows:

Criminal Case No. 127784

x x x x

That on or about the 15<sup>th</sup> day of March 2004, in the Municipality of Taguig, Metro

Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another and with Jerwin Dorado y Felipe @ Ewing who is a 16 year old minor, and with two (2) unidentified companions whose true identities and present whereabouts are still unknown, with intent to kill by means of the qualifying circumstances of treachery and evident premeditation, aggravated by the circumstances of nighttime and with the use of an improvised shotgun (sumpak), a deadly weapon and unlicensed firearm, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with said deadly weapon, one Ronald Bonion y Bozar, thus performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless, did not produce it by reason of causes independent of the will of the accused, that is due to the timely and able medical assistance rendered to said victim which prevented his death.

Contrary to law.<sup>[4]</sup>

Criminal Case No. 127785

x x x x

That on or about the 15<sup>th</sup> day of March 2004, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another and with Jeffrey Confessor, Jayson Cabiasso, Jerwin Dorado y Felipe @ Ewing who is a 16 year old minor, and with two (2) unidentified companions whose true identities and present whereabouts are still unknown, did then and there wilfully, unlawfully and feloniously commit acts of cruelty upon the person of complainant Raniel Parino, a 15 year old minor by then and there hurling stones at the latter, which act is prejudicial to the normal growth and development of said child.

Contrary to law.<sup>[5]</sup>

On November 9, 2004, Dorado and his co-accused were arraigned and they all pleaded “not guilty” to the charges. Thereafter, the trial ensued.

*Evidence of the Prosecution*

The prosecution presented the victims, Ronald, Ronald's brother, Robert Bonion (*Robert*), Raniel Parino (*Raniel*) and Dr. Ronaldo Artes (*Dr. Artes*), as its witnesses. Their combined testimonies tended to establish the following:

On April 15, 2004, at around 11:00 o'clock in the evening, Ronald was talking to his friends Raniel, Delon Busar, Annan Luna, Jerome Amergo and a certain Erwin (*Ronald's group*) along A. Reyes Street, Lower Bicutan, Taguig. At that very time, Dorado, carrying a *sumpak*, and his friends, Confessor and Cabiasso (*Dorado's group*), arrived and threw stones and bottles at Ronald's group.

Ronald's group scampered for shelter toward the *talipapa* and hid inside to avoid being hit by the stones and bottles. When Ronald thought that Dorado's group was no longer in the vicinity, they came out of hiding. Dorado's group, however, was out there waiting for them. When they finally surfaced, Dorado's group resumed throwing stones at Ronald's group. During the commotion, Dorado fired his *sumpak* and hit Ronald between the eyes. Ronald fell unconscious for about ten (10) minutes while Dorado's group ran away. Thereafter, Ronald was brought to the Rizal Medical Center by Raniel and Delon Busan. He sustained the following injuries:

Xxx Ruptured Globe, OU; S/P Excision of prolapsed Uvea + Repair of Corneal & Scleral laceration, OD; S/P Enucleation & Evacuation of Foreign body's + Repair of Lower lid margin laceration, OS xxx.<sup>[6]</sup>

Ronald was operated on his forehead and was confined for a month at the Rizal Medical Center. As a result of the shooting incident, Ronald lost his left eye while his right eye could only see some light. Dr. Artes, the operating surgeon, testified that without medical intervention, Ronald could have died.

### *Evidence of the Defense*

The defense presented the accused Dorado and Ramos; Gloria Confessor and Jessie Confessor, the mother and brother of accused Confessor; Mark Matuguina; Jeffrey Quijano; Aurin Reyes, and Ofelia Ramos (*Ofelia*) as its witnesses, who collectively narrated the following:

On April 15, 2004, between 8:00 o'clock and 11:00 o'clock in the evening, Dorado was at home watching television with his siblings and his mother. Suddenly, the barangay *tanods*

arrived and blamed him for the shooting of Ronald. Dorado denied any participation in the incident and did not go with the *tanods*. No *sumpak* was taken from his house. He also denied that he was a gang member and that he went into hiding.

The witnesses for Ramos, Confessor and Cabiasso testified that they were not present in the crime scene when Ronald was shot.

Ofelia, on the other hand, testified that on April 15, 2004, between 10:00 and 10:30 o'clock in the evening, she was on her way to see her friend when she noticed five persons running in the opposite direction. Four of them entered an alley, while one stayed and shot the face of another teenager. She added that she would be able to recognize the assailant, but it was not Dorado.

### *The RTC Ruling*

On July 5, 2010, the RTC rendered its decision. In Criminal Case No. 127784, the trial court found Dorado guilty beyond reasonable doubt of the crime of frustrated murder; while in Criminal Case No. 127785, accused Dorado, Ramos, Confessor and Cabiasso were all acquitted as the crime was not proven beyond reasonable doubt. It noted that their participation in the crime was limited to the throwing of stones and bottles and there was no indication that they singled out Ronald as their target. The RTC also acquitted all the accused for the charge of violation of R.A. No. 7610 because the prosecution failed to establish Ronald's minority.

In finding Dorado guilty of frustrated murder, as defined under Article 248, in relation to Article 6, paragraph 2, of the RPC, the RTC gave credence to the testimonies of the prosecution witnesses that it was Dorado who shot Ronald with a *sumpak*. The trial court considered the qualifying circumstance of evident premeditation because of the following: Dorado's group had an ongoing feud with Ronald's group; when the assault began, Dorado was already holding a *sumpak*; after Ronald fled, Dorado waited intently for an opportunity to shoot him; and when Ronald came out, Dorado shot him on the face. The RTC, nevertheless, appreciated the privileged mitigating circumstance of minority in Dorado's favor as he was still a minor at the time of the incident. It, however, stated that Dorado was not entitled to a suspension of sentence because he was above twenty-one (21) years old at the time of the pronouncement of guilt. Thus, it disposed the case in this wise:

WHEREFORE, taking all the foregoing into consideration, it is hereby adjudged

that:

1. In Criminal Case No. 127784, CICL Jerwin Dorado y Felipe is hereby found GUILTY beyond reasonable doubt of the crime of Frustrated Murder, defined and penalized under Article 248, in relation to Article 6, 2<sup>nd</sup> paragraph, 2nd phrase of the Revised Penal Code and, taking into consideration the privileged mitigating circumstance of minority, is sentenced to suffer the penalty of six (6) months and one (1) day of *prision correctional*, as minimum, to eight (8) years of *prision mayor*, as maximum, with all the effects thereof as provided” by law. He is further ordered to pay the victim Php50,000.00 as civil indemnity; Php50,000.00 by way of moral damages; and to pay the costs, at the legal rate of interest from the time of the filing of the Information until fully paid. Accused Julius Ramos y Labanero, Jeffrey Confessor and Jayson Cabiasso are ACQUITTED on ground of reasonable doubt.
2. In Criminal Case No. 127785, CICL Jerwin Dorado y Felipe, accused Julius Ramos y Labanero, Jeffrey Confessor and Jayson Cabiasso are ACQUITTED on ground of reasonable doubt. No costs.

SO ORDERED.<sup>[7]</sup>

Aggrieved, Dorado elevated an appeal before the CA.

### *The CA Ruling*

In its assailed decision, dated August 8, 2014, the CA affirmed the RTC decision, finding that Dorado committed the crime of frustrated murder because he had the intent to kill Ronald when he fired his *sumpak* hitting the portion between the two eyes of the victim. It noted that Ronald would have died were it not for the timely medical attention. The appellate court also agreed with the RTC that Dorado’s act of waiting for Ronald to come out of the *talipapa*, where the latter was hiding, indicated evident premeditation.

The CA did not give credence to Dorado’s defense of alibi because his house was merely one

block away from the *talipapa*. It opined that it was not physically impossible for him to be at the crime scene at the time in question.

Dorado moved for reconsideration but his motion was denied by the CA in its assailed resolution, dated January 29, 2015.

Hence, this petition.

## **SOLE ISSUE**

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER FOR THE CRIME CHARGED.<sup>[8]</sup>

Dorado argues that his defenses of alibi and denial should be fully appreciated by the Court as there was enough evidence to support them; that he was at his home at the time of the incident; that defense witness Ofelia testified that he was not the one who shot Ronald; and that the barangay officials did not find the *sumpak* in his possession.

In its Comment,<sup>[9]</sup> the Office of the Solicitor General (OSG) countered that Dorado had the intent to kill when he fired the *sumpak* and hit Ronald between the eyes; that the felony would have caused the death of the victim, were it not for the timely medical intervention; and that Dorado's defenses of denial and alibi could not overcome the positive identification by the prosecution witnesses.

In his Reply,<sup>[10]</sup> Dorado reiterated that his defense was supported by Ofelia's testimony and that the CA committed a misapprehension of facts when it did not consider his defenses.

## **The Court's Ruling**

The Court finds merit in the petition.

*Dorado was a minor at the time of the commission of the crime*

A perusal of the records will readily show that Dorado was a sixteen (16) year old minor at

the time of the commission of the crime on March 15, 2004. The Informations filed against him consistently stated his minority.<sup>[11]</sup> For said reason, he must benefit from the provisions of R.A. No. 9344, or the Juvenile Justice and Welfare Act of 2006, as amended. Even though the said law was enacted on April 28, 2006, the same must still be retroactively applied for the benefit of Dorado pursuant to the well-entrenched principle in criminal law — *favorabilia sunt amplianda adiosa restringenda* (penal laws which are favorable to the accused are given retroactive effect).<sup>[12]</sup>

Curiously, neither the RTC nor the CA paid much attention to Dorado's minority and how it affected his criminal responsibility. Thus, the Court deems it proper to lay down the salient provisions of R.A. No. 9344 regarding the prosecution of a Child In Conflict with the Law (CICL).<sup>[13]</sup>

One of the significant features of R.A. No. 9344 is the increase of the minimum age of criminal responsibility, to wjt:

SEC. 6. Minimum Age of Criminal Responsibility. — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthdate.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.<sup>[14]</sup>

In sum, Section 6 of R.A. No. 9344 provides that the following minors shall be exempt from criminal liability:

1. Those below fifteen (15) years of age at the time of the commission of the crime; and ,

2. Those above fifteen (15) years but below eighteen (18) years of age who acted **without** discernment.

Thus, if a child falls under the above-cited ages, he or she shall be released and shall be subjected to an intervention program as may be determined by a local social welfare and development officer, pursuant to Section 20 of the said law.

Consequently, under R.A. No. 9344, only a child above fifteen (15) years but below eighteen (18) years of age who acted **with** discernment shall not be exempted from criminal responsibility.<sup>[15]</sup> Nevertheless, the said child does not immediately proceed to trial. Instead, he or she may undergo a diversion, which refers to an alternative, child-appropriate process of determining the responsibility and treatment of the CICL without resorting to formal court proceedings. If the diversion is unsuccessful or if the other grounds provided by law<sup>[16]</sup> are present, then the CICL shall undergo the appropriate preliminary investigation of his or her criminal case, and trial before the courts may proceed.

Once the CICL is found guilty of the offense charged, the court shall not immediately execute its judgment; rather, it shall place the CICL under suspended sentence. Notably, the suspension shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his or her guilt. During the suspension, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law. If the disposition measures are successful, then the court shall discharge the CICL. Conversely, if unsuccessful, then the court has the following options: (1) to discharge the child, (2) to order execution of sentence, or (3) to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.<sup>[17]</sup>

In other words, aside from increasing the minimum age of criminal responsibility, R.A. No. 9344 also provides for alternative measures to address the criminal tendencies of a minor. The law endeavors that a minor should be given several opportunities to mend his or her ways without resorting to detention and incarceration. A judgment for conviction shall only be executed if all the alternative measures prove to be ineffective. Indeed, the emphatic policies of R.A. No. 9344 emulate the right of every child alleged, accused of, adjudged, or recognized, as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and desirability of promoting his or her reintegration.<sup>[18]</sup>



*The Prosecution did not determine the discernment of Dorado at the time of the commission of the crime*

To recapitulate, R.A. No. 9344 provides that only those minors above fifteen (15) years but below eighteen (18) years of age who acted with discernment shall not be exempted from criminal responsibility. During the deliberations for Senate Bill No. 1402, the following discussions transpired:

Senator Pangilinan: xxx there is no criminal responsibility below 18 and above 15, provided that it can be shown that the individual did not act with discernment.

The President: Can we have it again?

Senator Pimentel: Yes, Mr. President.

The President: Beyond 15 up to below...

Senator Pangilinan: Up to below 18, yes, Mr. President.

The President: Is there an exemption from criminal liability?

Senator Pangilinan: Provided that the individual did not act with discernment, Mr. President.

The President: So we are actually raising the age to 18?

Senator Pangilinan: Yes, Mr. President. However, if he is above 15 and below 18 and he committed a criminal offense and **it is shown that he acted with discernment, then he is criminally liable.**

The President: So that there is **no presumption that if he committed a crime when he is 15 and above, that he has acted with discernment.**

Senator Pangilinan: There is no presumption, Mr. President. It has to be shown that discernment was in fact]..

Senator Pimentel: Which means, Mr. President, in actual law practice, that the prosecutor is under obligation to establish by competent evidence that this accused who is above 15 but below 18 acted with discernment as a **separate circumstance**.

Senator Pangilinan: That is correct.

The President: All right.<sup>[19]</sup> [Emphases supplied]

Based on the above-cited discussion, when a minor above fifteen (15) but below eighteen (18) years old is charged with a crime, it cannot be presumed that he or she acted with discernment. During the trial, the prosecution must specifically prove as a separate circumstance that the CICL committed the alleged crime with discernment.

Notably, R.A. Np. 9344 was enacted while Dorado's trial was pending before the RTC. Consequently, Resolution No. 03-2006, dated July 11, 2006, of the Juvenile Justice Welfare Council (JJWC)<sup>[20]</sup> must apply in the present case. It established the guidelines for the implementation of the transitory provisions of R.A. No. 9344 and it stated that one of the duties of the prosecution during the trial regarding the CICL was as follows:

4. For above 15 but below 18 years old at the time of the commission of the alleged offense, **with pending case** but released on bail or on recognizance or under detention
  - Trial may proceed for the prosecution to prove discernment.

JJWC Resolution No. 03-2006 is in accordance with Section 6 of R.A. No. 9344 because only those minors above fifteen (15) but below eighteen (18) years old who acted with discernment may be subjected to criminal prosecution. Hence, in the present case, the Court must decide whether the prosecution made a determination of discernment on the part of Dorado during the trial.

“The discernment that constitutes an exception to the exemption from criminal liability of a minor x x x who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong, and such capacity may be known and should be determined by taking into consideration all the facts and circumstances accorded by the

records in each case, the very appearance, the very attitude, the very comportment and behavior of said minor, not only before and during the commission of the act, but also after and even during the trial.”<sup>[21]</sup>

“The basic reason behind the exempting circumstance is complete absence of intelligence, freedom of action of the offender which is an essential element of a felony either by *dolus* or by *culpa*. Intelligence is the power necessary to determine the morality of human acts to distinguish a licit from an illicit act. On the other hand, discernment is the mental capacity to understand the difference between right and wrong.”<sup>[22]</sup> As earlier stated, the “prosecution is burdened to prove that the accused acted with discernment by evidence of physical appearance, attitude or deportment not only before and during the commission of the act, but also after and during the trial. The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor’s cunning and shrewdness.”<sup>[23]</sup> In an earlier case, it was written:

For a minor at such an age to be criminally liable, the prosecution is burdened to prove beyond reasonable doubt, by direct or circumstantial evidence, that he acted with discernment, meaning that he knew what he was doing and that it was wrong. Such circumstantial evidence may include the utterances of the minor; his overt acts before, during and after the commission of the crime relative thereto; the nature of the weapon used in the commission of the crime; his attempt to silence a witness; his disposal of evidence or his hiding the *corpus delicti*.<sup>[24]</sup>

After a judicious study of the records, the Court finds that the prosecution did not make an effort to prove that Dorado, then a sixteen (16)-year old minor, acted with discernment at the time of the commission of the crime. The RTC decision simply stated that a privileged mitigating circumstance of minority in favor of Dorado must be appreciated as it was proven that he was a minor at the time of the incident. Glaringly, there was no discussion at all on whether Dorado acted with discernment when he committed the crime imputed against him.

Discernment cannot be presumed even if Dorado intended to do away with Ronald. Discernment is different from intent. The distinction was elaborated in *Guevarra v. Almodovar*.<sup>[25]</sup> Thus:

Going through the written arguments of the parties, the surfacing of a corollary controversy with respect to the first issue raised is evident, that is, whether the term “discernment,” as used in Article 12(3) of the Revised Penal Code (RPC) is synonymous with “intent.” It is the position of the petitioner that “discernment” connotes “intent” (p. 96, Rollo), invoking the unreported case of *People vs. Nieto*, G.R. No. 11965, 30 April 1958. In that case We held that the allegation of “with intent to kill...” amply meets the requirement that discernment should be alleged when the accused is a minor between 9 and 15 years old. Petitioner completes his syllogism in saying that:

“If discernment is the equivalent of ‘with intent’, then the allegation in the information that the accused acted with discernment and willfully unlawfully, and feloniously, operate or cause to be fired in a reckless and imprudent manner an air rifle .22 caliber’ is an inherent contradiction tantamount to failure of the information to allege a cause of action or constitute a legal excuse or exception.” (Memorandum for Petitioner, p. 97, Rollo)

If petitioner’s argument is correct, then no minor between the ages of 9 and 15 may be convicted of a quasi-offense under Article 265 of the RPC.

On the contrary, the Solicitor General insists that discernment and intent are two different concepts. **We agree with the Solicitor General’s view**; the two terms should not be confused.

The word “intent” has been defined as:

“(a) design; a determination to do a certain things; an aim the purpose of the mind, including such knowledge as is essential to such intent; . . .; the design resolve, or determination with which a person acts.” (46 CJS Intent, p. 1103.)

It is this intent which comprises the third element of *dolo* as a means of committing a felony, freedom and intelligence being the other two. On the other hand, We have defined the term “discernment,” as used in Article 12(3) of the

RPC, in the old case of *People vs. Doquena*, 68 Phil. 580(1939), in this wise:

“The discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen years of age but over nine, who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong ...” (italics Ours)  
p. 583

From the foregoing, it is clear that the terms “intent” and “discernment” convey two distinct thoughts. While both are products of the mental processes within a person, the former refers to the desire of one’s act while the latter relate to the moral significance that person ascribes to the said act. Hence, a person may not intend to shoot another but may be aware of the consequences of his negligent act which may cause injury to the same person in negligently handling an air rifle. It is not correct, therefore, to argue, as petitioner does, that since a minor above nine years of age but below fifteen acted with discernment, then he intended such act to be done. He may negligently shoot his friend, thus, did not intend to shoot him, and at the same time recognize the undesirable result of his negligence.

In further outlining the distinction between the words “intent” and “discernment,” it is worthy to note the basic reason behind the enactment of the exempting circumstances embodied in Article 12 of the RPC; the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused. In expounding on intelligence as the second element of *dolus*, Albert has stated:

“The second element of *dolus* is intelligence; without this power, necessary to determine the morality of human acts to distinguish a licit from an illicit act, no crime can exist, and because . . . the infant (has) no intelligence, the law exempts (him) from criminal liability.<sup>[26]</sup>”  
(Emphasis Ours)

Considering that there was no determination of discernment by the trial court, the Court

cannot rule with certainty that Dorado was criminally responsible. As earlier stated, there can be no presumption of discernment on the part of the CICL. In the absence of such determination, it should be presumed that the CICL acted without discernment. This is in accordance with Section 3 of R.A. No. 9344, to wit:

Section 3. Liberal Construction of this Act. — In case of doubt, the interpretation of any of the provisions of this Act, including its implementing rules and regulations (IRRs), shall be construed liberally in favor of the child in conflict with the law.

Accordingly, Dorado is deemed exempted from criminal liability. Nevertheless, he is not excused from the civil liability that arose from the act.<sup>[27]</sup> Thus, the Court is tasked to determine the crime committed and the civil liability that results from it.

*Only Frustrated Homicide  
was committed as Evident  
Premeditation was not  
duly proven*

The crime of murder is committed when there is an unlawful killing of any person, which is not parricide or infanticide, and any of the qualifying circumstances under Article 248 of the RPC exists. On the other hand, a felony is in its frustrated stage when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.<sup>[28]</sup>

The prosecution witnesses positively identified Dorado as the person who shot Ronald between the eyes with a *sumpak*. The crime was not consummated as Ronald survived because of the medical assistance provided to him after he was immediately brought to the hospital by his friends. Dr. Artes testified that without the timely medical intervention, the shooting of Ronald could have led to his death. Accordingly, the CA and the RTC properly ruled that the crime committed was at its frustrated stage.

The Court is of the view, however, that the prosecution was unable to establish the element of evident premeditation to qualify the crime to frustrated murder. For evident premeditation to be appreciated, the following must be proven beyond reasonable doubt: (1)

the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.<sup>[29]</sup> For this aggravating circumstance to be considered, it is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out.<sup>[30]</sup>

In this case, evident premeditation was not established because, *first*, the prosecution evidence only referred to the matters that happened during the incident, and not to the preparations undertaken by Dorado beforehand to kill Ronald. There was no evidence on record which would indicate how and when Dorado hatched his plan to kill Ronald. The mere fact that Dorado was seen with a *sumpak* at the beginning of the . altercation does not unequivocally establish that he earlier devised a deliberate plot to murder Ronald. In order to be considered an aggravation of the offense, the circumstance must not merely be “premeditation” but must be “evident premeditation.”<sup>[31]</sup>

*Second*, the prosecution failed to show a sufficient lapse of time between such determination and execution to allow Dorado to reflect upon the circumstances of his act. Raniel simply testified that:

Q: Jerwin Dorado only? Did he had (sic) companions?

A: Also Jeffrey Confessor, Jayson Cabiasso, and I don't know the other who came, ma'am.

Q: Can you estimate how many they were?

A: About seven (7) up, ma'am.

Q: When they came, what did you do?

A: We ran because they were armed with sumpak ma'am.

Q: Who was armed with a sumpak?

A: Jerwin Dorado, (witness pointing to accused Jerwin Dorado)

Q: You said you ran, what did you do after you ran?

A: We hid, ma'am.

Q: Where did you hide?

A: We hide (sic) at the back of the talipapa, ma'am.

**Q: After you hid, what happened?**

**A: When we came out, stones were hurled to us and they fired the sumpak to Ronald.** <sup>[32]</sup> [Emphasis supplied]

As can be gleaned above, the prosecution witness did not testify on how long they hid at the back of the *talipapa* or how long Dorado's group waited for them to come out. As the lapse of time between the determination until the execution of the unlawful deed was unclear, it cannot be established that Dorado had sufficient time to reflect on his actions.

*Lastly*, Dorado did not have a cool thought and reflection when he shot Ronald. The RTC observed that there was an ongoing feud between Dorado's group and Ronald's group. <sup>[33]</sup> Certainly, Dorado would not have a calm and reflective mind - from the time Ronald's group hid inside the *talipapa* market until they moved out of hiding - as he was obscured by the heat or anger of the moment. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment. <sup>[34]</sup>

The OSG itself, in its Brief for Plaintiff-Appellee (With recommendation for reduction of penalty) <sup>[35]</sup> filed before the CA, submitted that "the shooting of Ronald was not attended by evident premeditation. <sup>[36]</sup> For said reason, the crime committed was only frustrated homicide.

### *Civil Liabilities*

Pursuant to the recent case of *People v. Jugueta*, <sup>[37]</sup> the crime of frustrated homicide entails the following awards of damages: P30,000.00 as civil indemnity and P30,000.00 as moral damages. In addition, the damages awarded shall earn legal interest at the rate of 6% per annum from date of finality of the judgment until fully paid.

**WHEREFORE**, the petition is **GRANTED**. The judgment of conviction of Jerwin Dorado is hereby **REVERSED** and **SET ASIDE** by reason of the exempting circumstance of minority. He is hereby referred to the local social welfare and development officer of the locality for the appropriate intervention program.

He is also ordered to pay the private complainant, Ronald B onion, civil indemnity in the amount of P30,000.00 and moral damages in the amount of P30,000.00.,

The amounts of damages awarded shall have an interest at the rate of 6% per annum from



the date of finality of judgment until fully paid.

Let copies of this decision be furnished the two houses of Congress for their information and guidance in future legislation regarding children in conflict with the laws.

**SO ORDERED.**

*Del Castillo, (Acting Chairperson), and Leonen, JJ., concur.*

*Carpio, on Official Leave.*

*Brion, J., on Leave.*

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<sup>[1]</sup> Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justice Rebecca De Guia-Salvador and Associate Justice Ricardo R. Rosario, concurring; *rollo*, pp. 68-79.

<sup>[2]</sup> *Id.* at 90-91.

<sup>[3]</sup> Penned by Judge Leili Cruz Suarez; *id.* at 38-46.

<sup>[4]</sup> *Id.* at 68-69.

<sup>[5]</sup> *Id.* at 69-70.

<sup>[6]</sup> *Id.* at 41.

<sup>[7]</sup> *Id.* at 45-46.

<sup>[8]</sup> *Id.* at 19.

<sup>[9]</sup> *Id.* at 98-113.

<sup>[10]</sup> *Id.* at 122-125.

<sup>[11]</sup> *Id.* at 69-70.

<sup>[12]</sup> *People v. Quiachon*, 532 Phil. 414, 427 (2006); see also Sections 64, 65, 66 and 67 of R.A. No. 9344.

<sup>[13]</sup> “Child in Conflict with the Law” refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

<sup>[14]</sup> Section 6 of R.A. No. 9344 was recently amended by R.A. No. 10630.

<sup>[15]</sup> SEC. 22. Duties During Initial Investigation, xxx After the initial investigation, the local social worker conducting the same may do either of the following:

(a) Proceed in accordance with Section 20 if the child is fifteen (15) years or below or above fifteen (15) but below eighteen (18) years old, who acted without discernment; and

(b) If the child is above fifteen (15) years old but below eighteen (18) and who acted with discernment, proceed to diversion under the following chapter.

<sup>[16]</sup> Section 33, R.A. No. 9344; Rule 53, Implementing Rules and Regulations of R.A. No. 9344.

<sup>[17]</sup> Sections 38-40, R.A. No. 9344.

<sup>[18]</sup> Section 2, R.A. No. 9344.

<sup>[19]</sup> Bill on Second Reading

(S.No. 1402 – Juvenile Justice & Delinquency Prevention Act of

2005), Interpellation by Senators Pimentel & Osme164na, Senate

Transcript of Session Proceedings No. 39 on November 22, 2005 of the 13<sup>th</sup> Congress, 2<sup>nd</sup> Regular Sess. at 24-25 (Senate TSP No. 43, Vol. II).

<sup>[20]</sup> The Juvenile Justice Welfare Council was created under Section 8 of R.A. No. 9344, as amended. It is tasked to ensure the effective implementation of the law and coordination among the involved agencies.

<sup>[21]</sup> *People v. Doqueña*, 68 Phil. 580, 583 (1939), citing *U. S. v. Maralit*, 36 Phil. 155 (1917); and *People v. Cortezano*, 458 Phil. 304, 327-328 (2003).

<sup>[22]</sup> *Llave v. People*, 522 Phil. 340, 366-367 (2006).

<sup>[23]</sup> *Id.* at 367.

<sup>[24]</sup> *Jose v. People*, 489 Phil. 106, 113 (2005).

<sup>[25]</sup> 251 Phil. 427, 431, 433 (1989).

<sup>[26]</sup> *Id.* at 431-433.

<sup>[27]</sup> See *Ortega v. People*, 584 Phil. 429 (2008).

<sup>[28]</sup> Article 6, paragraph 2 of the RPC.

<sup>[29]</sup> *People v. Villalba y Duran*, G.R. No. 207629, October 22, 2014, 739 SCRA 302, 320.

<sup>[30]</sup> *People v. Cabote*, 420 Phil. 867, 879 (200!).

<sup>[31]</sup> *People v. Abadies*, 436 Phil. 98, 106 (2002).

<sup>[32]</sup> *Rollo*, pp. 73-74.

<sup>[33]</sup> *Id.* at 42-43.

<sup>[34]</sup> *People v. Sube*, 449 Phil. 165, 178 (2003).

<sup>[35]</sup> *Rollo*, pp. 50-66.

<sup>[36]</sup> *Id.* at 60.

<sup>[37]</sup> G.R. 202124, April 5, 2016.