PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AVA MA. VICTORIA CARIQUEZ Y CRUZ, AND LEEZEL FRANCO Y SAMSON, ACCUSED-APPELLANTS.

G.R. No. 129304. September 27, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

This is an appeal from the decision[1] of 19 March 1997, of the Regional Trial Court of Pasig City, Branch 163, in Criminal Case No. 110410 convicting accused-appellants Ava Ma. Victoria Cariquez y Cruz (hereafter AVA) and Leezel Franco y Samson (hereafter LEEZEL) of the crime of parricide and homicide, respectively.

In an Information[2] dated 30 May 1996, AVA and LEEZEL were initially charged with serious physical injuries under Section 10, Article VI of R.A. No. 7610.[3] However, on 31 May 1996 the victim, Mariel Cariquez y Cruz (hereafter ETHEL) died. On 30 August 1996 the information was amended to charge AVA and LEEZEL with the crime of parricide. The Amended Information[4] reads:

> The undersigned State Prosecutor of the Department of Justice, accuses AVA MA. VICTORIA CARIQUEZ Y CRUZ and LEEZEL FRANCO Y SAMSON of the crime of Parricide defined and penalized under Article 246 of the Revised Penal Code, as amended by Sec. 5 of R.A. 7659 committed in the manner herein narrated as follows:
> "That on or about the 27th day of May 1996, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, accused AVA MA. VICTORIA Y CARIQUEZ, being then the mother of a 2 1/2 years old child, MARIEL CARIQUEZ Y CRUZ, conspiring and confederating together with Leezel Franco Y Samson, and mutually helping and aiding one another, with intent to kill, evident premeditation, taking advantage of superior strength and treachery, did then and there, willfully, unlawfully and feloniously, beat and maul said MARIEL CARIQUEZ Y CRUZ in the different parts of her body, thereby inflicting upon her mortal wounds which directly caused her death."
>
> CONTRARY TO LAW.

The witnesses presented by the prosecution were Lilia Gojul, Michelle Torrente, Theresa Castillo, Dr. Antonio Vertido, Dr. Jose Joey Bienvenida, SPO3 Adonis Bacarra, Dr. Arsenio Pascual, and Benilda Almario. Lilia Gojul is AVA's sister. The relevant and material facts established by their testimonies are faithfully summarized in the Appellee's Brief, as follows:

> Mariel Cariquez y Cruz, fondly called Ethel, was two and a-half years old when she and her mother, Ava Cariquez, moved in sometime in January 1996 to No. 116 Royal Townhomes, San Rafael Mandaluyong City. Ava's sister, Lilia C. Gojul moved in with them (TSN, October 16, 1996, pp. 5-6, 32). She slept with the little girl in one of the two bedrooms on the house (TSN, Ibid., p. 12). Ava had a housemaid named Elizabeth Patao, who also watched over Mariel or Ethel (TSN, October 16, 1996, pp. 6,8). At the time, Ava had a live-in partner, Leezel Franco (TSN, October 16, 1996, pp. 5-6, 49). He was not the father of Ethel, however (TSN, ibid., p. 51).

Ava's household was not at all peaceful because almost everyday, Ava and Leezel quarreled, "nagbubugbugan" (TSN, October 16, 1996, pp. 9, 11; October 29, 1996, pp. 29, 40-41). Ava an Leezel were then taking or using drugs (TSN, October 16, 1996, p. 39).

In the middle of March 1996, Lilia Gojul left Ava's household and went to live in her home at Urduja Village, Novaliches, Quezon City (TSN, October 16, 1996, p. 6).

In the meantime, the little girl caught the attention of their neighbors as she was cute and friendly. While the neighbors became fond of "Ethel," they however found Ava and Leezel aloof snobbish (October 29, 1996, pp. 9, 30, 21).

On April 14, 1996, Lilia visited Ava and her niece at the Royal townhomes but she was shocked to see Ethel's appearance; her hair was shaven, her face was full of contusions, her neck had faded cigarette burns while her arms and legs had traces of pinching and maltreatment. She also had marks of "black-eye" on both eyes. Lilia also noticed Ethel's knees with contusions due to prolonged kneeling. (TSN, October 16, 1996, pp. 12, 13). When Lilia asked the little girl to identify who inflicted the injuries on her body, Ethel tearfully pointed to Ava and Leezel (TSN, October 16, 1996, p. 14). Lilia confronted Ava about her and Leezel's treatment of Ethel (Ibid., p. 13).

Neighbors were hearing the little girl crying everyday, morning, noon, evening, and even at 1:00 o'clock or 2:00 o'clock in the morning (TSN, October 29, 1996, p. 8, 29-30). Sometime in April, Michelle Torrente, an occupant of Unit 114, was aghast to see her shaven, with bruises all over her body and wounds in her arms and legs (TSN, ibid., pp. 10,130. Ethel also had cigarette burns, and when Michelle asked what happened, Ethel replied: "pinaso po ako." When Michelle further asked who burned her and caused her bruises, Ethel said, "Papa ko po," referring to Leezel Franco (TSN, ibid., pp. 11-13).

The little girl's shaven head and bruises were also noticed by Theresa Castill, an occupant of unit 115, adjacent to Ava's residence. When she asked Ethel's "yaya" why this was done to the little girl, the "yaya" answered, "parusa" (TSN, October 16, 1996, p. 150).

The next time that Lilia visited Ava and her daughter was on May 12, 1996. At the time, Ava's housemaid has already left the household. On that occasion, Lilia observed that Ethel was sickly and had even more contusions than the last time she saw her in April. Out of pity for the little girl, Lilia tried to persuade Ava that she take custody of Ethel (TSN, October 16, 1996, p. 15). Ava agreed to her suggestion and wrote a note where she passed on to Lilia Gojul the guardianship of Ethel Cariquez (TSN, ibid., pp. 16, 19; Exhibit A). However, on May 14, 1996, Lilia had to leave Ava's household without bringing Ethel with her (TSN, October 16, 1996, p. 21). Ethel cried silently when Lilia left (TSN, ibid., pp. 22, 36). Lilia heard nothing from them after that.

On May 27, 1996, around 3:00 or 4:00 o'clock in the afternoon, Ethel was brought in an ambulance from the Mandaluyong Medical Center to the Cardinal Santos Memorial Hospital at Greenhills, San Juan (TSN, November 14, 1996, pp. 8; 29). At the time, she was unconscious and was assisted by an ambu bag, unable to breathe on her own. Her body was limp and she had prominent bruises on the forehead and the right cheek (TSN, ibid., pp. 8, 16).

Dr. Jose Joey Bienvenida attended to her and in the course of taking her medical history, he interviewed the mother, Ava Cariquez. Ava at first told the doctor that it was her brother, the patient's uncle, who mauled the child and inflicted upon her serious injuries. Ava later changed her story, saying that the little girl actually fell from the stairs (TSN, ibid., pp. 9-10, 25-27).

A CT-scan was taken of the child and the results showed a combination of chronic and acute subdural hematoma on the left frontotemporoparietal (front side and apex) convexity of the brain.

Massive edema and musk effect in the left cerebral hemisphere and right fronte-parietal lobe were noted. A fracture was also noted on the left frontal bone (TSN, ibid., p. 11). Blood clot was found in almost the entire

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> cerebral hemisphere. He also found soft tissue injuries, i.e., hematoma and abrasions, in other parts of the body (TSN, ibid., p. 42). Dr. Bienvenida noted that the injury on the head was a "confluent injury," which means that it was sustained on different dates (TSN, ibid., p. 40); one portion of the injury was "resolving hematoma" which was at least two (2) years old, while the more acute injury was sustained within 24 hours from his examination (TSN, ibid., p. 41). Ethel was thereafter confined at the Intensive Care Unit of the hospital, attached to a respirator (TSN, ibid., p. 16). She was classified as a "brain-dead" patient (Ibid., p. 18).
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> Ethel's condition however grew worse and she eventually died on May 31, 1996 at about 10:20 in the morning. After her death, the life support system was removed (TSN, ibid., p. 18; Exhibit E). The cause of death was "cardio respiratory arrest secondary to multiple organ system failure, severe massive crania-cerebral trauma" (TSN, ibid., p. 23; Exhibit C-2).
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> Dr. Antonio Vertido, NBI Medico-Legal Officer, conducted an autopsy on the little girl's body (TSN, November 7, 1996, p. 4). The doctor made the following significant findings: fracture linear, right middle cranial fosse; abrasion, right forehead; contusion, right leg; contusion-abrasion left face; hematoma, forehead right and hematoma, scalp, right fronto-parietal (Exhibit D). In his autopsy report, Dr. Vertido concluded that the cause of death was Traumatic Head Injury, Severe (Exhibit D-2).[5]
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> AVA and LEEZEL were the witnesses presented by the defense.

According to AVA, during their breakfast at about 7:30 a.m. on 27 May 1996, she talked with LEEZEL about their up-coming concert on 1 June 1996 at Subic. Then, she went out of the house to make a telephone call. When she left the house, her daughter ETHEL was eating while LEEZEL was playing the guitar. When she returned she saw ETHEL playing with the food. She told ETHEL to hurry up as she was going with her to the office, but ETHEL stubbornly looked at her and continued to play with her food. She again told ETHEL to hurry up and finish her food. ETHEL still said "No." To her repeated order to do so, ETHEL also repeatedly said, "No." AVA then got a plastic belt and hit ETHEL with it on the buttocks a number of times, which made ETHEL cry. Since ETHEL continued to be hard-headed, AVA held her on the shoulder. ETHEL struggled and slipped from AVA's hold, got out of balance, and fell ETHEL hit the sofa and when she bounced back her head hit the edge of the cemented stairs. AVA got shocked and noticed LEEZEL stop playing his guitar and shout: "Ava yoong anak mo." AVA then held ETHEL and gave her mouth-to-mouth resuscitation. Seeing ETHEL's serious condition, LEEZEL suggested to AVA to bring ETHEL to the hospital, which they did, at first to the Mandaluyong City Hospital and because the hospital cannot provide the best medical care, to the Cardinal Santos Memorial Hospital, where she was brought to and confined at the hospital's Intensive Care Unit (ICU). Early on the morning of 28 May 1996, AVA went to the Mandaluyong Police Station to get her car and to find out the reason why her car was impounded. She was not able to get the car. Instead, she was detained at about 8:00 p.m. of 28 May 1996. AVA came to know that the police found drugs in her car, for which reason she was detained.[6] Three (3) days after her detention, Lilia Gojul, her sister, went to jail and asked her to sign some papers and asked her permission to take off the respirator of ETHEL in the hospital. She did not give her permission.[7]

On cross-examination, AVA declared that the cigarette burns on ETHEL's body were caused by sprinkling oil while their maid was cooking; LEEZEL had nothing to do with any of the child's bruises or injuries; when Lilia Gojul, her sister visited her in jail, the former told her that she should point to LEEZEL as the one responsible for ETHEL's death, otherwise, she will do something to her; and that she has no personal relation with LEEZEL. However, in her affidavit,[8] dated 1 June 1996, and in her reply-affidavit,[9] AVA pointed to LEEZEL as the one responsible for ETHEL's injuries, stating that when she returned home after making a phone call from outside the house, she found LEEZEL hit ETHEL with the buckle of a belt at the back and front of her head. She tried to stop him but he pushed her. As LEEZEL continued to hit ETHEL with the belt, what she did was to get the antenna of the TV and hit LEEZEL with it at his hand causing him to release the same. She then got hold of ETHEL but

because LEEZEL pushed her she fell to the floor with her daughter. This was repeated several times. When she noticed ETHEL was having difficulty in breathing, she ran to the comfort room in order to give ETHEL a shower to revive her, at the same time applying mouth to mouth resuscitation to her. She went out of the bathroom to bring ETHEL to the hospital.[10]

In her reply-affidavit AVA declared that when she returned home after making a telephone call, she found LEEZEL hit ETHEL with a buckle of his belt. That was not the first time that she saw him hit ETHEL; he used to hit her whenever he is high on drugs and ETHEL was noisy playing. On those occasions LEEZEL used to hit AVA and they end up fighting because AVA always tried to protect ETHEL from harm.

AVA tried to diminish the value of these admissions in her affidavit and reply-affidavit by testifying that she did not read them before signing and she signed under a state of shock.[11]

LEEZEL offered two versions for his defense. In his counter-affidavit[12] of 11 June 1996, he declared that during breakfast in the morning of 27 May 1996, he and AVA talked about the band and their concert in Subic. Thereafter, AVA told him that she was going to make a phone call outside of the house. Before leaving, she ordered ETHEL to hurry up with her food because she was to go with AVA to the latter's office. However, when AVA returned, ETHEL had not finished eating. AVA hit ETHEL very hard, whipped her with a belt, held her by the arms and pushed her, sending ETHEL to hit the corner of the sofa and then to bounce, causing her head to hit the end of the cemented stairs and to fall to the floor. ETHEL was on the verge of death. AVA was shocked. Seeing this, LEEZEL picked up ETHEL and brought her to the comfort room where he poured water on her. Thereafter, he and AVA brought ETHEL to the hospital.[13]

But, in his testimony in court LEEZEL declared that his statement in his counter-affidavit that AVA pushed ETHEL, causing the latter to fall and to hit the cemented stairs was only narrated to him by AVA and that he never witnessed the incident.[14] He further declared that he had nothing to do with ETHEL's injuries and the testimony of Lilia Gojul is not true. Lilia had an ulterior motive against him because on one occasion he prevented Catherine, Lilia's daughter from entering AVA's house and because of that, Lilia, her husband and her sons Caesar and Julius kicked him and hit him with a chair. Finally, LEEZEL claimed that he had no idea as to what happened to ETHEL; all that he saw was the child lying on the floor, and he then helped AVA bring the child to the hospital. In the hospital, he was asked by the police to go with them to the Complaints and Investigation Division of the Mandaluyong City Police, where he stayed for more than four hours. Since the police conducted no formal investigation on him, he left for home.[15]

In its decision[16] of 19 March 1997, the trial court found AVA and LEEZEL guilty of parricide and homicide, respectively. It decreed as follows:

> WHEREFORE, premises considered, this Court finds accused Ava Ma. Victoria Cariquez y Cruz and Leezel Franco y Samson guilty beyond reasonable doubt as principal for the crime of Parricide and homicide respectively and considering the mitigating circumstance that they did not intend to commit so grave a wrong as that committed and there being no aggravating circumstances on record, imposes upon-
>
> a)
>
> Ava Ma. Victoria Cariquez the penalty of reclusion perpetua;
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> b)
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> Leezel Franco the indeterminate penalty of eight (8) years and one (1) day of prision mayor a minimum to fourteen (14) years eight (8) months and one () day of reclusion temporal as maximum;
>
> c)

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To pay the costs.

Any detention service rendered by the accused should be credited in their favor computed pursuant to Batas Pambansa Blg. 85.

AVA and LEEZEL appealed to us from the decision.

In their Appellant's Brief, AVA and LEEZEL interpose this lone assignment of error:

THE LOWER COURT GRAVELY ERRED IN CONVICTING BOTH ACCUSED WITHOUT SUFFICIENT EVIDENCE FOR CONVICTION.

In support thereof, they argue that the prosecution's principal witness Lilia Gojul, as well as the other witnesses never saw how ETHEL sustained the injuries inflicted upon her; Lilia never testified that during her stay in AVA's house the child was the object of their quarrel; the prosecution's evidence is purely hearsay, conjectural and fails to show any conspiracy that they maltreated and caused ETHEL's death; her death was purely accidental; only circumstantial evidence is on record against them and there was no evil motive on their part to kill ETHEL.

They characterized the report of ETHEL to Lilia Gojul as to the former's shaven head and injuries as hearsay and cannot be considered an exception to the hearsay rule because it was not made on an impending death or with the thought of an impending death and was related to Lilia many days before the incident.

LEEZEL further asserts that only AVA was formally charged, hence, there is no case against him.

The trial court convicted AVA and LEEZEL on the basis of circumstantial evidence. Circumstancial evidence is sufficient to convict provided the following requisites are present, namely: (1) there is more than one circumstance; (2) the facts from which the inferences are derived from are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[17] The circumstantial evidence must constitute an unbroken chain of events so as to lead to a fair and reasonable conclusion that points to the guilt of the accused.[18] In the Appellee's Brief, the Office of the Solicitor General enumerates seven (7) circumstantial evidence which the trial court took in to account and relied upon as bases for its finding that AVA and LEEZEL, were criminally responsible for the death of ETHEL, to wit:

1.

In 14 April 1996, prosecution principal witness, Lilia Gujol, saw Ethel shaven, with many constusions on her face, black eyes, cigarette burns on her arms and neck, and several marks of maltretament on her legs and both knees as well as traces of pinching all over her body. When asked who caused her those injuries, the 2 year old girl pointed to her own mother, Ava, and her mother's live in partner, Leezel Franco;

2.

When Lilia next saw Ethel on 12 May 1996, Ethel had even graver injuries and was sickly. Again, Ethel pointed to appellants Ava and Leezel as the ones who caused her the injuries.

3.

Michelle Torrente, a resident of the unit adjacent to the townhouse unit occupied by Ava Cariquez, Leezel Franco and Ethel Cariquez, testified that she used to hear Ethel crying between 1:00 to 2:00 in the morning. She further testified that one day she saw Ethel with bruises and cigarettes burns and when asked what happened to her, Ethel replied, "pinaso po ako;" Ethel pointed to her Papa Leezel as the one who did it to her.

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4.

Theresa Castillo, another occupant of an adjacent unit, also testified that she often saw Ethel bruised and crying and sometime in April, saw her head shaven. When she asked the "yaya" why Ethel's hair was shaved, the "yaya" answered "parusa."

5.

Dr. Jose Bienvenida, the doctor who attended to Ethel at the Cardinal Santos Memoraial Hospital, opined that the injuries found on the head of Ethel were inflicted on different dates.

6.

Dr. Bienvenida further testified that in the course of taking the medical history of the child, he interviewed the mother, Ava Cariquez, who gave conflicting accounts as to how the child got injuries: while the mother initially said that her daughter was mauled by her uncle (AVA's brother), she later changed her story by claiming that the child fell from the stairs.

7.

Dr. Vertido testified that the cause of death was traumatic Head Injury, Severe

Aside from the foregoing circumstantial evidence, the trial court also took into account AVA's affidavit (Exhibit "R"), reply-affidavit (Exhibit "S"), and LEEZEL's counter-affidavit (Exhibit "T"), as well as the circumstances of the apprehension of the two by authorities for illegal possession of "shabu" and AVA's judicial admission that ETHEL slipped form her hold, fell and her head hit the cemented floor.

We are fully convinced from the evidence on record of the culpability of AVA and LEEZEL for ETHEL's maltreatment. The testimony of Lilia Gojul, Michelle Torrente and Theresa Castillo ineluctably show that AVA and LEEZEL tormented ETHEL. Where ETHEL dwelt was not a home; it was not even a house. It was hell. AVA and LEEZEL considered ETHEL not as a child with human dignity and an object of love as children should be, but an unwanted object against whom they could vent everything from frustrations to anger and hate. What Lilia saw on ETHEL was truly shocking -- an innocent child with shaven hair; with a face full of contusions; a neck with faded cigarettes burns; arms and legs with traces of pinching and maltreatment; "black-eyed" eyes; and contused knees due to prolonged kneeling.[19] When Lilia asked the little girl to identify who inflicted the injuries on her body, ETHEL tearfully pointed to AVA and LEEZEL.[20] Lilia confronted AVA about her and LEEZEL's maltreatment of the child.[21]

In April 1996 Michelle Torrente was aghast to see ETHEL's head shaven, with bruises all over her body and wounds in her arms and legs,[22] as well as cigarette burns. When she asked what happened, ETHEL replied: "pinaso po ako." When she further asked her who burned her and caused her bruises, ETHEL said, "Papa ko po," referring to LEEZEL.[23]

Theresa Castillo also noticed ETHEL's shaven head and body bruises. When she asked ETHEL's yaya why this was done to the child, the yaya answered, "parusa."[24]

The declarations of Lilia, Michelle and Theresa as to what they observed on ETHEL were not hearsay. They saw her and personally noticed the injuries and telltale marks of torture. While the answer of ETHEL as to who inflicted the injuries may have been, indeed, hearsay because ETHEL could not be confronted on that, yet it was part of the res gestae and, therefore, an exception to the hearsay rule pursuant to Section 42 of Rule 130 of the Rules of Court, which reads:

SEC. 42. Part of res gestae. Statements made by a person while a startling occurrence is taking place or

> immediately prior or subsequently thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae.

There are three requisites to the admission of evidence as constituting part of the res gestae. (1) that the principal act, the res gestae, be a startling occurrence; 2) the statements were made before the declarant had time to contrive or devise; and (3) that the statements must concern the occurrence in question and its immediately attending circumstances.[25] In this case the startling occurrences were the tortures inflicted on ETHEL, who when asked who caused them spontaneously pointed to AVA and LEEZEL. That some time may have lapsed between the infliction of the injuries and the disclosure, it must however, be pointed out that there has been no uniformity as to the interval of time that should separate the occurrence of the startling event from the making of the declarations. What is necessary is that the injuries sustained by ETHEL prior to the incident on 27 May 1996 were inflicted by AVA and LEEZEL. These acts are covered by and punished under R.A. No. 7610, under which they were originally prosecuted. However, the then Information was amended to charge them with parricide under Article 246 of the Revised Penal Code. The evidence on the prior incidents cannot legally justify a conviction for the physical injuries inflicted before 27 May 1996.

The issue then that must be resolved is who was or were responsible for the act on 27 May 1996, which caused or resulted in the death of ETHEL? On this the prosecution failed to offer any direct evidence. The circumstantial evidence the trial court appreciated related to acts or events which happened before 27 May 1996.

Yet, these prior acts are inseparable from that which happened on 27 May 1996. The latter was the coup de grace. Fortunately, for the prosecution, AVA offered two versions. The first was that she offered at the witness stand in open court, i.e., ETHEL's death was due to an accident. The second was narrated in her affidavit (Exhibit "R") and reply-affidavit (Exhibit "S"), where she pointed to LEEZEL as the culprit. We cannot allow her to disown her affidavit and reply-affidavit as the explanation given for that is very flimsy and incredible, and clearly concocted to exculpate LEEZEL and at the same to absolve herself under a claim of accident. Her affidavit and reply-affidavit were prepared at her instance long before she took the witness stand. In a manner of speaking they were given voluntarily and spontaneously long before the prospect of a court trial became imminent and the dismissal of the cases against her was her goal. That she told the truth in her affidavit and reply-affidavit cannot escape the verdict of rational minds.

AVA's story of "accident" cannot, likewise, work in her favor.

Accident is an exempting circumstance under Article 12 of the Revised Penal Code. In order that accident may exempt an accused from criminal liability, it must be shown that the accused was performing a lawful act with due care; the resulting injury was caused by mere accident; and there must be no fault or intent to cause the injury on the part of the accused.[26]

The defense of accident shifted to AVA the burden of the evidence and it was incumbent upon them to prove that they were exempt from criminal liability. It is at once evident from the story foisted to the trial court by AVA while she was on the witness stand that the requisites of accident as an exempting circumstance were not proven. On the contrary, the totality of her story proved beyond reasonable doubt that ETHEL was maltreated and pushed hard driving her head to the cemented stairs and causing the injuries which were the proximate cause of her death.

We agree with the trial court's appreciation of conspiracy against AVA and LEEZEL. The rule is well settled that in conspiracy the act of one is the act of all, and each of the conspirators is liable for the crimes committed by the other conspirators.[27] Proof of conspiracy need not be direct but may be inferred from proof of facts and circumstances.[28] If it is proved that two or more persons aimed by their acts towards the accomplishment of the

same unlawful object each doing a part so that their acts, though apparently independent were in fact connected, indicating a closeness of formal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved.[29] The facts and circumstances proven in this case unerringly lead us to a conclusion that AVA and LEEZEL conspired to maltreat, injure, inflict pain, torture ETHEL and they were united in that purpose and intention. The totality of their evil deeds demonstrated beyond doubt their resolve to pursue with persistence their common objective, which eventually resulted in the death of ETHEL. As amply demonstrated by the evidence, ETHEL's injuries, particularly that on the head, in addition to those on the body, were sustained not only on the date of the fateful incident but on dates before the day of the incident. Thus, Dr. Bienvenida testified that: he noted that the injury on the head was a "confluent injury," which means that it was sustained on different dates;[30] one portion of the injury was "resolving hematoma" which was at least two (2) days old, while the more acute injury was sustained within 24 hours from his examination.[31] Likewise, the result of the CT-Scan which was taken on the child showed a combination of chronic and acute subdural hematoma on the left fronto-temporoparietal (front side and apex) convexity of the brain. Massive edema and musk effect in the left cerebral hemisphere and right fronto-parietal lobe were noted. A fracture was also noted on the left frontal bone. Blood clot was found in almost the entire cerebral hemisphere. Also found were soft tissue injuries, i.e., hematoma and abrasions, in other parts of the body.[32] In the autopsy conducted by Dr. Vertido of the NBI, the doctor concluded as the cause of Ethel's death: "Traumatic Head Injury."[33]

Indisputably, AVA committed the crime of parricide under Article 246 of the Revised Penal Code, as amended by R.A. No. 7659, which is punished by reclusion perpetua to death. Considering that no modifying circumstances were proven, then pursuant to Article 63 of the Revised Penal Code, the lesser of the penalty, i.e., reclusion perpetua, was correctly imposed by the trial court on AVA. LEEZEL was correctly held liable for the crime of homicide only as he was a stranger to the victim, ETHEL. Previous to its amendment by R.A. 7610, the penalty for homicide under Article 249 of the Revised Penal Code, was reclusion temporal. As amended by R.A. 7610, the penalty for homicide in cases where the victim is a child below twelve (12) years of age is reclusion perpetua. The second paragraph of Section 10 of Article VI of R.A. 7610 provides, as follows:

> For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be reclusion perpetua when the victim is under twelve (12) years of age. xxx (Emphasis supplied)

Accordingly, the penalty of reclusion perpetua should be imposed upon LEEZEL. His claim that he was not charged in the amended information is absolutely wanting in basis. He was, although for parricide, but, he could legally be convicted of homicide, which is necessarily included in that charged.

WHEREFORE, the decision, dated 19 March 1997 of the Regional Trial Court of Pasig City, Branch 163, in Criminal Case No. 110410 finding accused-appellant Ava Ma. Victoria Cariquez y Cruz and Leezel Franco y Samson guilty beyond reasonable doubt as principal of the crime of Parricide and Homicide, as defined and penalized under Article 246 and Article 249 of the Revised Penal Code, respectively, and imposing, with respect to appellant Ava Cariquez, the penalty of reclusion perpetua, is hereby AFFIRMED, but MODIFIED as to the penalty for Leezel Franco y Samson and as so modified, he is hereby sentenced to suffer the penalty of reclusion perpetua. The decision is further MODIFIED by directing accused-appellants Ava Cariquez and Leezel Franco y Samson to pay jointly and severally the heirs of ETHEL Cariquez, except accused-appellant Ava Cariquez, the death indemnity in the amount of P50,000.00.

Costs against accused-appellants.

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SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, 18-29; Original Record (OR), 219-230. Per Judge Aurelio C. Trampe.

[2] Rollo, 4-5.

[3] Otherwise known as “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.”

[4] Rollo, 6-7.

[5] Rollo, 113-118.

[6] Rollo, 21-25.

[7] Id., 23.

[8] Exhibit “R,” OR, 201.

[9] Exhibit “S,” Id., 203.

[10] Rollo, 23-24.

[11] Id., 24.

[12] Exhibit “T,” OR, 207.

[13] Rollo, 25.

[14] Testimony of Leezel Franco, TSN, 28 February 1997, 51-52.

[15] Decision, dated 19, March 1997 of the RTC of Pasig City, Br. 163, Rollo, 24.

[16] Supra, note 1.

[17] Section 5, Rule 133, Rules of Court.

[18] People v. Tiozon, 198 SCRA 368 [1991]; People v. Alvero, 224 SCRA 16 [1993].

[19] TSN of 16 October 1996, 12-14.

[20] Ibid. 14.

[21] Id., 13.

[22] TSN of 29 October 1996, 10.

[23] Id., 11-13.

[24] Id., 30-31.

[25] People v. Sanchez, 213 SCRA 70 [1992]; People v. Taneo, 218 SCRA 494 [1993]; Anciro v. People, 228 SCRA 629 [1993].

[26] RAMON C. AQUINO and CAROLINA GRIÑO-AQUINO, THE REVISED PENAL CODE, vol. I (1997, ed.), 230.

[27] See People v. Veronas, 179 SCRA 423 [1989]; People v. Enriquez, 281 SCRA 103 [1997].

[28] See People v. Hermosa, 177 SCRA 574 [1989]; People v. Apongan, 270 SCRA 713 [1997].

[29] See cases cited in Gregorio, Fundamentals of Criminal Law Review, 1997 Ed., 46.

[30] TSN of 14 November 1996, 40-42,

[31] Id., 41.

[32] Id., 11 and 42.

[33] See OR, 133; Also TSN of 7 November 1996, 24-25.

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