

RAYMUND MADALI AND RODEL MADALI, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 180380. August 04, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this Petition for Review on Certiorari under Rule 45 of the Rules of Court, petitioners Raymund Madali (Raymund) and Rodel Madali (Rodel) seek the reversal of the 29 August 2007 Decision^[1] of the Court of Appeals in CA-G.R. CR No. 27757; and its 23 October 2007 Resolution,^[2] affirming with modifications the 28 July 2003 Decision^[3] of the Romblon, Romblon, Regional Trial Court (RTC), Branch 81, in Criminal Case No. 2179, finding petitioners guilty of homicide.

For the death of AAA,^[4] Raymund, Rodel and a certain Bernardino "Jojo" Maestro (Bernardino) were charged before the RTC with the crime of Murder. The accusatory portion of the Information reads:

That on or about the 13th day of April 1999, at around 11:00 o'clock in the evening, in the Barangay XXX, Municipality of Romblon, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, conspiring, confederating and mutually helping each other, did then and there by means of treachery and with evident premeditation, willfully, unlawfully and feloniously attack, assault, strike with a coconut frond and "lave inglesa" and strangle with a dog chain, one AAA, inflicting upon the latter mortal wounds in different parts of his body which caused his untimely death.^[5]

During the arraignment on 31 May 2000, the three accused, with the assistance of counsel, pleaded not guilty.^[6]

On trial, the prosecution presented eight witnesses, namely: (1) Jovencio Musa (Jovencio), 16 years old, the victim's cousin and the alleged lone eyewitness to the killing; (2) Senior Police Officer (SPO) 3 Rogelio Madali, the designated Deputy Chief of Police of the Romblon Police Station; (3) Police Officer (PO) 3 Nicolas Molo, the police investigator assigned to the case; (4) BBB, the mother of the deceased victim; (5) Dr. Carmen Lita P. Calsado, Chief of the Romblon District Hospital, the physician who issued the death certificate of AAA; (6) Emerson de Asis, the alleged companion of witness Jovencio on the night in question, who later became a hostile witness; (7) Michael Manasan, also a companion of witness Jovencio before the killing of the victim occurred; (8) Dr. Floresto Arizala, Jr., a forensic expert from the National Bureau of Investigation (NBI), Manila, who conducted the examination of the corpse of the victim after the same was exhumed.

As documentary and object evidence, the prosecution offered the following: (1) Exhibit "A" - Affidavit of Jovencio executed on 22 April 1999, detailing the circumstances prior to, during and after the killing of the victim perpetrated by Raymund, Rodel and Bernardino; (2) Exhibit "B" - Sinumpaang Salaysay of Jovencio dated 8 May 1999, a recantation of the 22 April 1999 Affidavit; (3) Exhibit "C" - Amended Affidavit of Jovencio dated 28 May 1999, which was substantially the same on material points as the 22 April 1999 Affidavit; (4) Exhibit "D" - Undated Reply Affidavit of Jovencio insisting that the death of the victim was authored by Raymund, Rodel and Bernardino; (5) Exhibit "E" - Joint Affidavit of prosecution witnesses SPO3 Rogelio Madali and a certain SPO2

Teresito M. Sumadsad; (6) Exhibit "F" - the coconut frond recovered by the police officers from the scene of the incident; (7) Exhibit "G" - a dog chain used as part of a strap that was tied to the victim's neck while he was hanging from a tree; (8) Exhibit "H" - the handkerchief that was tied around the victim's neck; (9) Exhibit "I" - empty bottles of gin; (10) Exhibit "J" - cellophanes with rugby; (10) Exhibit "K" - pictures taken from the crime scene including the picture of the body of the victim tied to a tree; (11) Exhibit "L" - Letter of Request for the NBI to conduct an examination of the body of the victim; (12) Exhibits "M" to "O" - NBI routing slips; (14) Exhibit "P" - Death Certificate issued by Dr. Carmen Lita P. Calsado; (15) Exhibit "Q" - Exhumation Report issued by Dr. Floresto P. Arizala, Jr.; (16) Exhibit "R" - the Autopsy Report submitted by Dr. Floresto P. Arizala, Jr.; (17) Exhibit "S" - Sketch of the head of the victim showing the injuries thereon; and (18) Exhibit "T" - handwritten draft of the exhumation report.

Taken together, the evidence offered by the prosecution shows that at around 5:30 in the afternoon of 13 April 1999, BBB, who made a living by selling goods aboard ships docked at the Romblon Pier, and who was constantly assisted by her 15-year-old son AAA, was on a ship plying her wares. AAA, together with Jovencio and Raymund, was there helping his mother.[7] Sometime later, Raymund and AAA left the ship. Jovencio stayed a little longer.[8]

At about 9:00 p.m. of the same day, Jovencio and another friend named Michael Manasan sat beside the Rizal monument in the Poblacion of Romblon, located between the Roman Catholic Church and Lover's Inn. Michael had just left Jovencio when Raymund, Rodel, Bernardino and the victim AAA arrived. After meandering around, the group proceeded to climb the stairs, atop of which was the reservoir just beside the Romblon National High School. The victim, AAA, ascended first; behind him were Rodel, Raymund, Bernardino and witness Jovencio. As soon as they reached the reservoir, Bernardino blindfolded AAA with the handkerchief of Raymund. Bernardino at once blurted out, "Join the rugby boys." AAA replied, "That's enough." Bernardino then struck AAA thrice with a fresh and hard coconut frond. AAA lost his balance and was made to stand up by Raymund, Rodel and Bernardino. Raymund took his turn clobbering AAA at the back of his thighs with the same coconut frond. AAA wobbled. Before he could recover, he received punches to his head and body from Rodel, who was wearing brass knuckles. The punishments proved too much, as AAA lost consciousness.

Not satisfied, Raymund placed his handkerchief around the neck of AAA, with its ends tied to a dog chain. With the contraption, the three malefactors pulled the body up a tree.

Stunned at the sight of his cousin being ill-treated, Jovencio could only muster a faint voice saying "Enough" every single-time AAA received the painful blows. Bernardino, who seemed to suggest finishing off the victim, remarked, "Since we're all here, let's get on with it." Before leaving the scene, the three assailants warned Jovencio not to reveal the incident to anyone, or he would be next.

Tormented and torn between the desire to come clean and the fear for his life, Jovencio hardly slept that night. He did not divulge the incident to anyone for the next few days. BBB, the victim's mother, was worried when her son did not come home. She started asking relatives whether they had seen her son, but their reply was always in the negative.

It was three days later that a certain Eugenio Murchanto reported to the police authorities about a dead man found in Barangay ZZZ near the Romblon National High School. When the policemen went there, they found the cadaver emitting a foul odor, with maggots crawling all over, hanging from a tree with a handkerchief tied around the neck and a dog chain fastened to the handkerchief. Also found in the area were paraphernalia for inhaling rugby, as well as empty bottles of gin and a coconut frond.

The provincial hospital refused to conduct an autopsy, since AAA's corpse was already decomposing and stank so

badly. It was through the intercession of the NBI that the body was eventually exhumed and examined by medico-legal experts. Dr. Floresto P. Arizala, Jr., who conducted the examination, opined that the victim died due to head injuries and not to asphyxiation by hanging. He declared that the victim was already dead when he was tied to the tree, and that the variety of injuries sustained by the victim could be attributed to more than one assailant.

Upon investigation, Jovencio narrated the incident and pointed to Raymund, Rodel and Bernardino as the perpetrators of the crime. Thereafter, Jovencio executed his first affidavit, which was dated 22 April 1999. Because of the threat made on him by a certain Wilson, an uncle of Raymund and Rodel, Jovencio executed a second affidavit dated 8 May 1999, repudiating his first affidavit. On 28 May 1999, Jovencio made his third sworn statement substantially reverting to his first affidavit.

The accused, on the other hand, advanced the defense of denial and alibi. They claimed they had nothing to do with the death of AAA, and that they were nowhere near the locus criminis when the killing occurred.

According to Rodel, 16 years old, he was with his father Rodolfo Madali in the house of a friend named Noel Mindoro, located more or less 14 kilometers from the place where the victim was slain where they spent the whole evening until the following morning. Rodel's testimony was corroborated by his father and Noel Mindoro.

On their part, Raymund, 14 years of age, and Bernardino declared that they were in their respective houses on the night in question. Raymund's place was allegedly five kilometers away from the scene of the crime, while Bernardino's was one kilometer away. Bernardino's testimony was supported by his father Bernardino Maestro, Sr. and by his neighbor Diana Mendez. Raymund's friend, Pastor Mario Fajiculay backed up the former's alibi.

Convinced by the version of the prosecution, the RTC rendered a guilty verdict against the three accused. On account of the prosecution's failure to prove the qualifying circumstances of treachery and evident premeditation, they were only convicted of homicide. The RTC observed that the incident was a sort of initiation, in which the victim voluntarily went along with the perpetrators, not totally unaware that he would be beaten. The RTC also appreciated the privileged mitigating circumstance of minority in favor of the three accused. The dispositive portion of the RTC decision reads:

WHEREFORE, finding the accused BERNARDO (sic) Jojo MAESTRO, JR., RODEL MADALI AND RAYMUND MADALI GUILTY beyond reasonable doubt of the crime of Homicide, they are hereby sentenced to suffer an indeterminate sentence of four (4) years, two (2) months and one (1) day to six (6) years and to indemnify the heirs of AAA jointly and severally the amount of PhP 50,000.00.[9]

On 6 August 2003, Bernardino applied for probation. Thus, only Raymund and Rodel elevated their convictions to the Court of Appeals.

In a Decision dated 29 August 2007, the Court of Appeals affirmed the findings of the RTC that Rodel and Raymund killed the victim. However, pursuant to Section 64 of Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006," which exempts from criminal liability a minor fifteen (15) years or below at the time of the commission of the offense, Raymund's case was dismissed. Rodel's conviction was sustained, and he was sentenced to six months and one day of prision correccional to eight years and one day of prision mayor, but the imposition of said penalty was suspended pursuant to Republic Act No. 9344. The judgment provides:

WHEREFORE, the Decision dated July 28, 2003, rendered by the Regional Trial Court of Romblon, Romblon (Branch 81) is Criminal Case No. 2179, is affirmed with the following MODIFICATIONS:

1) Appellant Raymund Madali is declared EXEMPT from criminal liability and the case, insofar as he is

concerned is hereby DISMISSED pursuant to R.A. No. 9344.

2) Appellant Rodel Madali is found guilty of homicide, the proper penalty for which is fixed at six (6) months and one (1) day of prision correccional to eight (8) years and one (1) day of prision mayor. Imposition of this penalty should, however, be SUSPENDED, also pursuant to R.A. No. 9344.

3) In addition to the civil indemnity imposed by the trial court in the amount of Fifty Thousand Pesos (P50,000.00), moral damages in the amount of Fifty Thousand Pesos (P50,000.00) is hereby awarded in favor of the heirs of the victim, AAA.

4) x x x x

5) Finally, this case is referred to the Department of Social Welfare and Development (DWSD) for further proceedings in accordance with R.A. No. 9344.[10]

Hence, the instant case.

Petitioners Raymund and Rodel assail both the RTC and the Court of Appeals' findings, which gave weight and credence to the account of the incident given by prosecution witness Jovencio, whose testimony according to them was replete with patent and substantial inconsistencies. First, petitioners set their sights on the conflicting affidavits executed by Jovencio. The first affidavit implicated the three accused in the death of AAA, which was controverted by the second affidavit where Jovencio denied having seen the three accused butcher the victim, while the third affidavit restated the material points in the first affidavit. Petitioners also pointed out the discrepancy between the first and the third affidavits, as the former stated that Jovencio was not seen by the three accused when they executed the victim; whereas in the latter affidavit, Jovencio stated he was with the three when the killing took place. Second, petitioners assert that the testimony of Jovencio relating to the alleged fact that his companions, Michael Manasan and Emerson de Asis, saw the three accused and the deceased during the night in question was debunked by the very testimonies of Michael Manasan and Emerson de Asis wherein they declared otherwise.

Moreover, petitioners contend that both the RTC and the Court of Appeals erred in disbelieving the defense of alibi they interposed, considering that the prosecution failed to muster the required quantum of proof, and that said defense was corroborated by testimonies of the other defense witnesses.

The elemental question in this case is the credibility of the parties and their witnesses.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimonies in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.[11] This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the lower courts had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[12]

The RTC and the Court of Appeals did not overlook any significant facts in the case.

This Court itself, in its effort to ferret out the truth based on the evidence on records has diligently pored over the transcripts of stenographic notes of this case and, like the RTC, finds the testimony of Jovencio credible. Subjected to the grueling examinations on the witness stand, Jovencio steadfastly pointed to Raymund, Rodel and Bernardino as the persons who slaughtered the victim. He testified as follows:

Q: Mr. Witness, will you tell us where were you on April 13, 1999?

x x x x

A: I was at the Rizal standing by.

x x x x

PROS. BENEDICTO continuing:

Q: While you were at Rizal on April 13, 1999 in the evening, [who was your companion]?

A: Only Michael.

Q: And what were you doing with Michael?

A: Only standing by there.

Q: Did anything happen while you were standing by with Michael?

A: None, sir.

Q: Did anyone arrive while you were there?

A: Yes, sir.

Q: Who?

A: Jojo [Bernardino] followed by Raymund then AAA, then Rodel.

Q: And what happened when they arrived?

A: They were also standing by there.

Q: How long did they stand by in that place?

A: I do not know how many hours?

Q: Then, what happened next?

A: Around 10:30 o'clock we went there.

Q: When you said we, to whom you are referring as your companions?

A: Jojo [Bernardino], Rodel, Raymund and AAA.

Q: What happened to Michael?

A: He went home.

Q: When you said you went there, to which place are you referring?

A: Near the high school at hagdan-hagdan.

Q: There are three (3) main streets in the Poblacion of Romblon, which street did you take in going to hagdan-hagdan near the high school?

A: In the middle.

Q: Did you climb the stairs?

A: Yes, sir.

Q: Who was ahead?

A: AAA.

Q: And who came next?

A: Rodel.

Q: Then, after Rodel, who?

A: Raymund.

Q: Then?

A: [Bernardino].

Q: [Bernardino] who?

A: Maestro.

Q: What is the relation of this Jojo Maestro to Bernardino Maestro you pointed a while ago?

A: That Jojo is his alias.

Q: Did you reach the top of the stairs?

A: Yes, sir.

Q: Upon reaching the top of the stairs, what did you do, if any?

A: [Bernardino] blindfolded AAA.

Q: With what?

A: Handkerchief.

Q: Where did he get that handkerchief?

A: From Raymund.

Q: After AAA, what is the family name of this AAA?

A: AAA.

Q: After AAA was blindfolded, what happened next?

A: Then [Bernardino] told him "Join the rugby boys!"

Q: Did AAA make any reply?

A: AAA said "That's enough."

Q: What happened after Jojo Maestro said you join the rugby boys?

A: AAA was struck by a coconut frond three (3) times.

Q: Who struck him with the coconut frond?

A: [Bernardino].

Q: What happened to AAA when he was struck three (3) times with the coconut fronds?

A: He was made to stand.

Q: After standing, what happened next?

A: AAA was again struck with the coconut frond by Raymund.

Q: Was AAA hit?

A: Yes, sir.

Q: Where?

A: Here (witness is pointing to the posterior aspect of his right thigh).

Q: What happened to AAA when he was hit by the coconut frond?

A: As if he became weak.

Q: How about Rodel, what did Rodel do, if any?

A: He boxed the body and the head.

Q: Of whom?

A: Of Rodel.

Q: Who was boxed by Rodel?

A: AAA.

Q: In Exhibit C you mentioned about llave inglesa, what is this llave inglesa?

A: Lead llave inglesa.

Q: And how does it look like?

A: I forgot already but it was a brass knuckle.

Q: Did Exh. C mention that Rodel punched him in different parts of his body with a llave inglesa causing him to fall to the ground, how did Rodel use this llave inglesa?

A: Worn in his hand (witness raising his right hand and motioning the left as if wearing something in his right hand), then punched him.

Q: When he was punched on different parts of his body by Rodel using llave inglesa, what happened to AAA?

A: He lost consciousness.

Q: When AAA lost consciousness, what did Bernardino Maestro, Raymund Madali and Rodel Madali do, if any?

A: Raymund used his handkerchief in tying the neck of my cousin.

Q: Who is this cousin of yours?

A: AAA.

Q: What is the family name?

A: AAA.

COURT:

How about Bernardino as part of the question?

PROS. BENEDICTO continuing:

Q: Bernardino, what did he do, if any?

A: The chain for the dog was tied to the handkerchief.

COURT:

How about Rodel?

A: They helped in lifting him and making him stand and hooked the tie to the tree.

Q: What is this tie which was hooked to the tree made of?

A: The chain.

Q: Referring to the dog chain?

A: Yes, sir.

Q: While all these things were happening, what was Jovencio Musa doing who is a cousin of AAA?

A: I got shock upon seeing it.

Q: Did Jovencio Musa utter anything or do something?

A: Everytime AAA was being struck I said "Enough!"

(Tama na!).

Q: How many times did you say that is enough?

A: Twice.

Q: How did the three (3) react to your saying "Tama na, tama na!"?

A: "It is already here so we will proceed."

COURT:

Translate that.

A: "Yari na ini, idiretso na."

x x x x

Q: After tying the dog chain to the tree, what happened next?

A: I was told by the three (3) that if I would reveal I would be the next to be killed.

Q: After that, what happened?

A: No more, we went home already.[13]

Jovencio saw at close range the incident as it was unfolding before his very eyes as he was there when it happened. He was in the company of the perpetrators and the victim. Thus, the incident could not have escaped his attention. The prosecution adequately established in graphic detail, through the eyewitness, the circumstances that transpired before, during and after the killing of AAA. At around 11:30 p.m. of 13 April 1999, Jovencio, together with the victim, as well as with Rodel, Raymund and Bernardino, went to a place near the Romblon National High School. Jovencio's earlier companion, Michael Manasan, did not go with the group, as he had

already left a little earlier. As they reached their destination, the group ascended the stairs leading to a reservoir near the said school. AAA was ahead, followed by Rodel, Raymund, Bernardino and Jovencio. Upon reaching the top, Bernardino blindfolded the victim with a handkerchief and told the latter, "Join the rugby boys!" The victim responded, "That's enough!" Bernardino then hit the victim thrice, using a green and hard coconut frond. Unable to withstand the beatings, the victim hit the ground and was lifted to his feet by Bernardino, Raymund and Rodel. With the same coconut frond, Raymund hit the victim on his right thigh. Rodel followed by punching the body and the head of the victim with a brass knuckle (llave inglesa) wrapped around the former's right fist. Feeling for his cousin, Jovencio shouted "Tama na! Tama na!" Bernardino responded, "Yari na ini, ideretso na," (We have come this far, we have to finish it.) The victim's strength was no match to the injuries he received. He passed out. Raymund then tied a handkerchief around the victim's neck, fastened a dog chain to the ends of the said handkerchief and, with the aid of Raymund and Rodel, hoisted the victim's body to and hanged it from a nearby tree. Shocked at what was happening, Jovencio just watched the whole incident, failing to muster enough courage to help his dying cousin.

The perpetrators warned Jovencio not to divulge to anyone what he saw, or he would be the next victim. Then they all left the place, leaving the victim's body hanging from a tree.

The testimony of Jovencio was substantiated by the medical findings indicating that the victim was hit in the head by hard blows, causing his death. Other pieces of evidence such as the coconut frond, the dog chain and the handkerchief found in the scene also supported Jovencio's account.

Against the damning evidence adduced by the prosecution, petitioners Raymund and Rodel could only muster mere denial. Unfortunately for them, their defense was much too flaccid to stay firm against the weighty evidence for the prosecution. Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence that deserves no weight in law. It cannot be given greater evidentiary value than the testimony of a credible witness who testifies on affirmative matters.[14] Between the self-serving testimonies of petitioners and the positive identification by the eyewitness, the latter deserves greater credence.[15]

Petitioners' alibi, which was supported by the testimonies of close relatives and friends, cannot overcome the convincing evidence adduced by the prosecution. Such corroborative testimonies of relatives and friends are viewed with suspicion and skepticism by the Court.[16]

Furthermore, for alibi to prosper, two elements must concur: (a) the accused was in another place at the time the crime was committed; and (b) it was physically impossible for him to be at the scene of the crime at the time it was committed. In the case under consideration, Raymund was within a 5-kilometer distance from the scene, while Rodel was within a 14-kilometer distance. Even assuming arguendo that Raymund and Rodel's defense were true, still, it was not physically impossible for them to be at the crime scene and to be participants in the gruesome crime. It was not difficult for them to travel from where they allegedly were and arrive at the scene during the killing episode.

Petitioners made an issue of the affidavit of recantation repudiating the earlier one laying the blame on them. The affidavit of recantation executed by a witness prior to the trial cannot prevail over the testimony made during the trial.[17] Jovencio effectively repudiated the contents of the affidavit of recantation. The recantation would hardly suffice to overturn the trial court's finding of guilt, which was based on a clear and convincing testimony given during a full-blown trial. As held by this Court, an affidavit of recantation, being usually taken ex parte, would be considered inferior to the testimony given in open court.[18] A recantation is exceedingly unreliable, inasmuch as it is easily secured from a poor and ignorant witness, usually through intimidation or for monetary consideration.[19] Considering the age, the social standing and the economic status of witness Jovencio, it is not

far-fetched that the combination of these factors impelled him to affix his signature to the recanting affidavit. Besides, Jovencio explained why he executed the second affidavit or the affidavit of recantation, which supposedly exonerated petitioners. He had been threatened by a certain Wilson, who was a relative of petitioners. Jovencio testified:

Q: Alright, in Exh. C specifically C-1, you mentioned that, you said that somebody fetched me in the evening of May 7, 1999 who told me that Rey Andrade wanted to talk to me regarding the incident, who was that somebody who fetched you in the house?

A: I do not know but he is known as Andrade.

x x x x

Q: What was the subject of your conversation with Andrade?

A: About the Nephew of Wilson.

x x x x

Q: How about this Wilson you were referring to?

A: Wilson all of a sudden arrived there.

Q: Did Wilson say anything?

A: Wilson said, if we will lose, all our expenses will be paid and if he wins I will be the next.[20]

Petitioners also place much premium on the alleged contradiction between Jovencio's narrative -- which claimed that Emerson de Asis and Michael Manasan saw the victim in the company of the malefactors immediately prior to the killing -- and the testimonies of these two witnesses denying such allegation.

Unfortunately, this is just a minor inconsistency. The common narration of Emerson de Asis and Michael Manasan that they did not see the perpetrators with the victim prior to the killing are too insignificant, since their narration did not directly relate to the act of killing itself. Said inconsistency does not dilute the declarations of Jovencio. Given the natural frailties of the human mind and its incapacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants.[21] As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.[22] The minor inconsistencies and contradictions only serve to attest to the truthfulness of the witnesses and the fact that they had not been coached or rehearsed.[23]

The declaration of Michael Manasan -- that he did not see the petitioners together with Jovencio and the victim immediately prior the incident -- does not help a bit the cause of petitioners. As the Court of Appeals correctly pointed out, Michael could not have seen the malefactors in the company of the victim because according to Jovencio, Michael had gone home earlier that evening.

In fine, this Court defers to the findings of the trial court, which were affirmed by the Court of Appeals, there being no cogent reason to veer away from such findings.

As to the criminal liability, Raymond is exempt. As correctly ruled by the Court of Appeals, Raymund, who was only 14 years of age at the time he committed the crime, should be exempt from criminal liability and should be

released to the custody of his parents or guardian pursuant to Sections 6 and 20 of Republic Act No. 9344, to wit:

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.

x x x x

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

SEC. 20. Children Below the Age of Criminal Responsibility. -- If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or, when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code."

Although the crime was committed on 13 April 1999 and Republic Act No. 9344 took effect only on 20 May 2006, the said law should be given retroactive effect in favor of Raymund who was not shown to be a habitual criminal. This is based on Article 22 of the Revised Penal Code which provides:

Retroactive effect of penal laws. -- Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

While Raymund is exempt from criminal liability, his civil liability is not extinguished pursuant to the second paragraph of Section 6, Republic Act No. 9344.

As to Rodel's situation, it must be borne in mind that he was 16 years old at the time of the commission of the crime. A determination of whether he acted with or without discernment is necessary pursuant to Section 6 of Republic Act No. 9344, viz:

SEC. 6. Minimum Age of Criminal Responsibility. - x x x.

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.

Discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act.[24] Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case.

The Court of Appeals could not have been more accurate when it opined that Rodel acted with discernment. Rodel, together with his cohorts, warned Jovencio not to reveal their hideous act to anyone; otherwise, they would

kill him. Rodel knew, therefore, that killing AAA was a condemnable act and should be kept in secrecy. He fully appreciated the consequences of his unlawful act.

Under Article 68 of the Revised Penal Code, the penalty to be imposed upon a person under 18 but above 15 shall be the penalty next lower than that prescribed by law, but always in the proper period.

The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. Pursuant to Article 68, the maximum penalty should be within prision mayor, which is a degree lower than reclusion temporal. Absent any aggravating or mitigating circumstance, the maximum penalty should be in the medium period of prision mayor or 8 years and 1 day to 10 years. Applying the Indeterminate Sentence Law, the minimum should be anywhere within the penalty next lower in degree, that is, prision correccional. Therefore, the penalty imposed by the Court of Appeals, which is 6 months and one day of prision correccional to 8 years and one day of prision mayor, is in order. However, the sentence to be imposed against Rodel should be suspended pursuant to Section 38 of Republic Act No. 9344, which states:

SEC. 38. Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application. Provided, however, That suspension of sentence 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/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

The Court of Appeals awarded P50,000.00 as civil indemnity and another P50,000.00 as moral damages in favor of the heirs of the victim. In addition, Rodel and Raymund are ordered to pay P25,000.00 as temperate damages in lieu of the actual damages for funeral expenses, which the prosecution claimed to have incurred but failed to support by receipts.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated 29 August 2007 in CA-G.R. No. 27757, exempting Raymund Madali from criminal liability is hereby AFFIRMED. With respect to Rodel Madali, being a child in conflict with the law, this Court suspends the pronouncement of his sentence and REMANDS his case to the court a quo for further proceedings in accordance with Section 38 of Republic Act No. 9344. However, with respect to the civil liabilities, Rodel Madali and Raymund Madali are solidarily liable to pay the heirs of the victim the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as temperate damages.

SO ORDERED.

Ynares-Santiago,(Chairperson), Chico-Nazario, Velasco, Jr., Nachura, and Peralta, JJ.

[1] Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., concurring; CA rollo, pp. 248-264.

[2] Id. at 308-309.

[3] Penned by Executive Judge Vedasto B. Marco.

[4] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[5] Records, p. 1.

[6] Id. at 148.

[7] TSN, 26 October 1999, p. 14.

[8] Id. at 14-15.

[9] Rollo, p. 147.

[10] Id. at 65.

[11] *People v. Matito*, 468 Phil. 14, 24 (2004).

[12] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.

[13] TSN, 8 October 1999, pp. 8-17

[14] *People v. Morales*, 311 Phil. 279, 289 (1995).

[15] *People v. Baccay*, 348 Phil. 322, 327-328 (1998).

[16] *People v. Diaz*, 338 Phil. 219, 230 (1997).

[17] *Alejo v. People*, G.R. No. 173360, 28 March 2008, 550 SCRA 326, 345.

[18] *People v. Nardo*, 405 Phil. 826, 843 (2001).

[19] Id. at 842.

[20] TSN, 8 October 1999, pp. 19-20.

[21] *People v. Emoy*, 395 Phil. 371, 383 (2000).

[22] Id.

[23] Id.

[24] Rule on Juveniles in Conflict with the Law.

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