

**CICL XXX, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.***G.R. No. 238798. March 14, 2023*

Ponente: ZALAMEDA, J.

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The society has endeavored to instill in us the concept of right and wrong from our first moment of consciousness. As adults, we abide by laws and rules premised on our recognition that obedience is right and proper, while defiance is wrong and sanctioned. We are cognizant, however, that children, with their malleable and developing minds, may not yet have the same level of awareness on the concept of right and wrong. As such, a different standard in determining a minor's culpability is employed, the guidelines for which is hereinafter set out.

The case before Us involves an assault that claimed the life of one, and tethered the freedom of another. The accused – a minor – disclaims responsibility for the death of the victim but the courts below found him culpable, his minority at the time of the assault notwithstanding. Did the accused cause the victim's untimely demise, and can his minority save him from a life behind bars?

We are tasked to resolve these questions in this Petition[1] for Review on Certiorari assailing the Decision[2] dated 29 November 2017 and Resolution[3] dated 19 March 2018 of the Court of Appeals (CA), which affirmed with modification the Judgment[4] dated 28 February 2014 of the Regional Trial Court of La Trinidad, Benguet, Branch 9, (RTC) finding petitioner CICL XXX guilty beyond reasonable doubt of the crime of homicide.

Summary of Facts and Antecedents

As narrated by the CA, CICL XXX was charged with the crime of Frustrated Murder before the RTC on 1 March 2004. The Information was later amended to Frustrated Homicide. When the victim, AAA, died on 26 November 2008, the Information was amended anew, this time, to Homicide, the accusatory portion of which reads:[5]

That on or about the 28th day of October, 2003 at xxxxxxxx, Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and feloniously, and with intent to kill, attack one [AAA], by hitting his left eye, ear and head with a blunt instrument, thereby inflicting fatal injuries on [AAA] which caused his death thereafter.

That the accused is a minor being seventeen (17) years of age at the time of the commission of the crime.

CONTRARY TO LAW.[6]

When arraigned, CICL XXX, assisted by his counsel, entered a plea of "not guilty." After the pre-trial conference, trial on the merits ensued.[7]

During the trial of the case, the prosecution presented the testimonies of EEE who is the brother of DDD and a friend of AAA, PO1 Loreto Pihoc, Dr. Romeo Concepcion, Dr. Manuel Kelly, Jr., BBB who is AAA's mother,

CCC who is AAA's sister, and Dr. Editha Francisco. On the other hand, the defense presented CICL XXX and YYY, the guardian of CICL XXX.[8]

The prosecution established that AAA testified against CICL XXX on 27 October 2003 during the hearing of the complaint for physical injuries filed by DDD against CICL XXX before the Punong Barangay in Brgy. xxxxxxxx, Baguio City. AAA allegedly saw CICL XXX hit DDD with a bucket inside a bar in Assumption, Baguio City.[9]

The next day, on 28 October 2003, at around 3:00 A.M., BBB awakened from sleep when someone shouted "Mama! Mama!" She woke up her husband and when they went outside the house, AAA was lying in front of their gate, his face and eyes bloodied. Her husband washed AAA's face with water and brought him inside the house. When asked what happened to him, AAA told them that CICL XXX and his companion were inside their house. When AAA asked what they were doing inside his house, CICL XXX replied they were looking for somebody. Thereafter, CICL XXX struck his eyes. After narrating the incident to his parents, AAA fell asleep.[10]

On 29 October 2003, AAA complained of dizziness. As his other eye was already popping out, AAA was brought to the Benguet General Hospital for treatment. On 30 October 2003, AAA was confined at the same hospital. The CT-Scan result showed that AAA suffered severe brain damage and was advised to transfer to another hospital. In the evening of the same date, he was transferred to Baguio General Hospital. Dr. Romeo Concepcion, the attending physician, remarked that when he first met AAA, the latter was conscious and coherent and had been blind on one eye with several abrasions on the head, face and shoulders. He wore an eye patch on his left eye and had several bluish discolorations on his forehead and both eyes. Based on the CT-Scan results, the victim had massive cerebral contusions and bleeding on spaces in the brain which may have been caused by any force or object hard enough to cause damage to the brain.[11]

On 31 October 2003, AAA's older sister, CCC, visited him at the hospital. AAA told her it was CICL XXX who mauled him. A few days later, AAA could no longer speak. He was later discharged from the hospital on 27 January 2004 in a vegetative state. After being bed-ridden for five years, AAA died on 26 November 2008. The Death Certificate issued by the Municipal Health Office of La Trinidad, Benguet stated that the immediate cause of death is "Metabolic Encephalopathy," the secondary cause is "Ischemic Infarction," and the underlying cause is "Acute Intraparenchymal Hemorrhages, Bifrontal and Right Temporal Lobes with Subarachnoid and Subdural Extension secondary to Blunt Trauma to the Head." Dr. Editha M. Francisco (Dr. Francisco), Municipal Health Officer of the Municipality of La Trinidad, Benguet, explained that "metabolic encephalopathy" is the disturbance in the brain function which may be due to "ischemic infarction," or brain tissue death secondary to loss of blood supply. Dr. Francisco explained that because of the blunt trauma to the head, there is bleeding within the brain (acute intraparenchymal hemorrhages) and outside the brain (subarachnoid).[12]

In his defense, CICL XXX denied the allegations against him. He admitted meeting AAA at the Barangay Hall of Brgy. xxxxxxxx, Baguio City during the hearing of the complaint filed against him by DDD. However, CICL XXX claimed he was drinking with his friends at a computer shop in Bonifacio, Baguio City from 7:00 P.M. to 12:00 A.M. on 27 October 2003. Thereafter, he and his friends transferred to another bar and stayed there until 4:00 in the morning of 28 October 2003. He then went home in Brgy. xxxxxxxx. CICL XXX admitted that he was only a student at that time. He quit school when the case was filed and returned home to Sagada to work as a xxxxxxxx.[13]

Ruling of the RTC

On 28 February 2014, the RTC rendered judgment[14] convicting CICL XXX for homicide. The dispositive portion reads:

WHEREFORE, premises considered, accused xxxxxxxxxxxxxxxxxxxx is hereby found GUILTY BEYOND REASONABLE DOUBT of the crime of HOMICIDE and is hereby sentenced to suffer the penalty of EIGHT (8) YEARS and ONE (1) DAY of [prison mayor] in its medium period, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of [reclusion temporal] in its medium period, as maximum. Accused is also ordered to pay Five Hundred Eighty-Seven Thousand Three Hundred Forty-Five ([PHP] 587,345.00) (sic) as actual damages; Seventy Five Thousand ([PHP] 75,000.00) Pesos as civil indemnity and Twenty Five Thousand ([PHP] 25,000) Pesos as temperate damages to the heirs of the victim. All damages awarded in this case should be imposed with interest at the rate of six (6%) percent [per annum] from the finality of this Judgment until fully paid (People vs. Asetre, [G.R. No. 175834, June 8, 2011]). The awards for damages however are without subsidiary penalties in case of insolvency.

In view of the prison term of the convict xxxxxxxxxxxxxxxxxxxx which is more than 3 years, he is considered a national prisoner (P.D. 29 and Supreme Court Circular No. 4-92-A), hence, he is ordered committed to the New Bilibid Prison at Muntinlupa City for the service of his prison term. By virtue thereof issue (sic) a corresponding commitment order.

Let his cash bond posted by his bondsman in the amount of [PHP] 24,000.00 covered by O.R. No. 21683153 be released accordingly upon proper receipt.

Furnish copy of this JUDGMENT to the attending prosecution of Benguet; the representative of the victim; and the accused and his counsel.

SO ORDERED.[15]

The RTC noted that the identification of CICL XXX was predicated principally on the statement uttered by AAA to his mother when the latter and her husband found AAA wounded and lying on the ground. The RTC admitted such statement as part of the res gestae.[16] The RTC also ruled that the elements of the crime of homicide are present in this case. CICL XXX's denial and alibi were likewise regarded as weak.[17]

Decision of the CA

In his appeal before the CA, CICL XXX argued that the proximate cause of AAA's death was not the injuries inflicted but the failure of the parents to give immediate medical attention and the unfortunate grave inadequacy of the medical treatment given to AAA. Also, CICL XXX insists the RTC erred in appreciating the statement allegedly uttered by AAA, identifying him as one of the assailants, as part of the res gestae.[18]

In its Decision[19] dated 29 November 2017, the CA affirmed the RTC's judgment with modification. The CA disposed:

WHEREFORE, in view of the foregoing, the appeal is DENIED. The Judgment dated February 28, 2014 of the La Trinidad, Benguet Regional Trial Court, Branch 39, in Criminal Case No. 04-CR-5253 is AFFIRMED with the following MODIFICATIONS:

- 1) Taking into account the minority of the accused-appellant and the absence of any other modifying circumstances attendant to the crime, accused-appellant xxxxxxxxxxxxxxxxxxxx is hereby sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of prison correccional, as minimum, to eight (8) years and one (1) day of prison mayor, as maximum.
- 2) The award of temperate damages is DELETED. Accused--appellant is ORDERED to pay the heirs of xxxxxxxxxxxxxxxxxxxx the following: [PHP] 504,145.01 as actual damages, [PHP] 50,000.00 as civil indemnity, and [PHP] 50,000.00 as moral damages, with interest on all the damages awarded at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.
- 3) Paragraph 2 of the dispositive portion of the assailed Decision is DELETED. The case is REMANDED to

the trial court for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

All other aspects of the assailed Decision STAND.

SO ORDERED.[20]

Contrary to the defense's claim that the proximate cause of the death of AAA was the failure of the parents to provide him immediate medical attention, the CA ruled that the prosecution was able to show that AAA sustained heavy injuries resulting from the blows delivered by CICL XXX to the head of AAA with the use of a blunt object as well as the nexus between the injury sustained by AAA and his death.[21] The CA also affirmed the RTC in appreciating the testimony of AAA's mother as part of the *res gestae*. [22]

The CA nevertheless noted that the RTC failed to appreciate the privileged mitigating circumstance of minority. The CA ruled that CICL XXX is entitled to the retroactive application of Republic Act No. (RA) 9344[23] or the Juvenile Justice and Welfare Act of 2006. Section 6 thereof exempts a child above fifteen (15) years of age but below eighteen (18) years of age from criminal liability unless the child is found to have acted with discernment, in which case, the appropriate proceedings shall be observed. The CA found that CICL XXX acted with discernment when he mauled the victim.[24]

The CA also ruled that CICL XXX shall be entitled to appropriate disposition under Section 51[25] of RA 9344.[26]

Issue

The issue for consideration is whether or not the CA gravely erred in affirming CICL XXX's conviction for the crime charged.

In essence, CICL XXX argues that: (a) the CA erred in giving weight to the testimonies of the prosecution witnesses which failed to substantiate material facts and circumstances to prove the guilt of the accused; (b) the declaration of the victim cannot be considered as part of the *res gestae*; (c) there was a failure to seek adequate and timely medical intervention which is an intervening circumstance that could have saved the victim; (d) the CA erred in awarding civil damages; and (e) the CA erred in not appreciating doubt in favor of the accused.[27]

Discussion

We now resolve.

At the onset, We affirm the lower courts in ruling that CICL XXX's authorship of the deadly attack against AAA was sufficiently established. The testimony of AAA's mother, BBB, about AAA's statement regarding CICL XXX as the perpetrator when they found him lying outside of their house, falls squarely under the *res gestae* exception to the hearsay rule.

Rule 130, Section 44 of the Revised Rules on Evidence[28] provides:

SECTION 44. Part of the *Res Gestae*. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto under the stress of excitement caused by the occurrence 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*.

As illustrated in *People v. Peña*, [29] the Court considered the statement of the victim who was repeatedly struck on his head with a gun, and subsequently shot in the head, as part of the *res gestae*. Notably, the police officers took his statement as to the identity of the perpetrator when he was already brought to the hospital. In so ruling,

the Court explained:

[The victim's] declaration is admissible as part of the *res gestae* since it was made shortly after a startling occurrence and under the influence thereof. Under the circumstances, the victim evidently had no opportunity to contrive his statement beforehand.

In *People v. Hernandez*, the infliction on a person of a gunshot wound on a vital part of the body should qualify by any standard as a startling occurrence. And the rule is that testimony by a person regarding statements made by another as that startling occurrence was taking place or immediately prior or subsequent thereto, although essentially hearsay, is admissible exceptionally, on the theory that said statements are natural and spontaneous, unreflected and instinctive, made before there had been opportunity to devise or contrive anything contrary to the real fact that occurred, it being said that in these cases, it is the event speaking through the declarant, not the latter speaking of the event.

In this case, it is clear that the pistol-whipping and the gunshot on the head of [the victim] qualified as a startling occurrence. Notably, [the victim] constantly complained of pain in his head while his statement was being taken by SPO1 Bautista, so much so that there was no opportunity for him to be able to devise or contrive anything other than what really happened.[30] (Emphasis supplied)

Similarly, AAA's declarations were uttered immediately after a startling occurrence, i.e., the gruesome attack wherein CICL XXX struck AAA's head and eyes with a blunt instrument. AAA narrated the circumstances of the startling occurrence to his mother immediately thereafter while under the stress of excitement caused by the attack. Hence, AAA's statements are admissible as part of *res gestae*.

We likewise sustain the ruling of the CA that the proximate cause of the death of AAA was the injury caused to him, and not the failure of his parents to immediately seek medical attention as claimed by the defense.

In *People v. Acuram*,^[31] the Court has ruled that the supposed delay in medical treatment does not break the connection between the overt criminal act, and the resulting injuries sustained by the victim:

The perceived delay in giving medical treatment to the victim does not break at all the causal connection between the wrongful act of the appellant and the injuries sustained by the victim: It does not constitute efficient intervening cause. The proximate cause of the death of the deceased is the shooting by the appellant. It is settled that anyone inflicting injuries is responsible for all the consequences of his criminal act such as death that supervenes in consequence of the injuries. The fact that the injured did not receive proper medical attendance would not affect appellant's criminal responsibility. The rule is founded on the practical policy of closing to the wrongdoer a convenient avenue of escape from the just consequences of his wrongful act. If the rule were otherwise, many criminals could avoid just accounting for their acts by merely establishing a doubt as to the immediate cause of death.[32]

As further discussed by the CA, the brain injury was caused by the force of the blow of the object used in hitting AAA's head, and not the perceived delay in seeking medical help, thus:

In contrast with the accused-appellant's assertion that the proximate cause of the death of the victim was the lack of medical attention and grave inadequacy of medical treatment, Dr. Kelly, Jr. opined that it would not make any difference if the Benguet General Hospital was equipped with the necessary instruments to treat the victim because the result and prognosis of the victim would still probably be the same. According to him, the victim would have died had there been no medical intervention because there would have been no way for the pressure inside the skull of the victim to go out. In time, the swelling in the brain and increase in the pressure in the brain would cause the demise of the patient.

Both Dr. Romeo Concepcion and Dr. Manuel Kelly, Jr. likewise unanimously observed that the cause of the brain injury of the victim was the force of the blow of a blunt object used in hitting his head.[33]

With CICL XXX's clear identification as the author of the attack, it is also undisputable that the elements of the crime of homicide are present in this case. Article 249 of the Revised Penal Code provides:

Article 249. Homicide. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

The elements of the crime of homicide are: (a) a person was killed; (b) the accused killed him/her without any justifying circumstance; (c) the accused had the intention to kill, which is presumed; and (d) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[34]

The foregoing requisites are extant in this case. It was established that CICL XXX hit AAA on the head with a blunt object which caused brain injury, and his subsequent death. The intent to kill is evident from the nature and location of the injury, conduct of the accused, and the circumstances under which the crime was committed. There is likewise no justifying circumstance, and it was not attended by any of the qualifying circumstances of murder, parricide, or infanticide.

However, as noted by the CA, the minority of CICL XXX warrants the retroactive application of RA 9344, as amended, insofar as it is beneficial to him. Section 6 thereof states:

SECTION 6. Minimum Age of Criminal Responsibility. – . . .

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.

Since CICL XXX was 17 years old at the time of the commission of the crime, it is imperative to determine whether he is exempt from any criminal liability. The answer, in turn, hinges on whether CICL XXX acted with discernment in the commission of the acts complained of.

How is discernment determined?

Discernment is defined as the capacity of the child at the time of the commission of the offense to understand the difference between right and wrong and the consequences of the wrongful act.[35] To further our understanding of discernment as a legal concept, a review of its jurisprudence and history provides an enlightening discourse.

Among the earliest discussions on discernment is the 1917 case of *US v. Maralit*.^[36] The Court stated that in establishing discernment, it must appear from the evidence that the accused acted with knowledge of the nature of his acts and of the results which would naturally follow therefrom. To establish the fact that a person acted with discernment, it is not necessary that some witness declare directly and in words that he acted with discernment. It is sufficient that, from the evidence as a whole, it is a necessary inference that he so acted. The trial court may take into consideration all the facts and circumstances presented by the record, together with the appearance of the accused as he stood and testified during trial.^[37]

In the 1939 case of *People v. Doqueña (Doqueña)*,^[38] the Court restated that discernment was the mental capacity to understand the difference between right and wrong. Discernment 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.^[39]

In *Guevarra v. Hon. Almodovar (Guevarra)*,^[40] the Court had the opportunity to distinguish discernment from criminal intent. A crime, whether committed by *dolo* or *culpa*, requires the distinct element of intelligence. This

intelligence necessarily includes the concept of discernment:

[T]he 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.

..

It is for this reason, therefore, why minors nine years of age and below are not capable of performing a criminal act. On the other hand, minors above nine years of age but below fifteen are not absolutely exempt. However, they are presumed to be without criminal capacity, but which presumption may be rebutted if it could be proven that they were "capable of appreciating the nature and criminality of the act, that is, that (they) acted with discernment." The preceding discussion shows that "intelligence" as an element of *dolo* actually embraces the concept of discernment as used in Article 12 of the RPC and as defined in the *aforecited* case of *People vs. Doqueña*, *supra*. It could not therefore be argued that discernment is equivalent or connotes "intent" for they refer to two different concepts. Intelligence, which includes discernment, is a distinct element of *dolo* as a means of committing an offense.

In evaluating felonies committed by means of *culpa*, three (3) elements are indispensable, namely, intelligence, freedom of action, and negligence. Obviously, intent is wanting in such felonies. However, intelligence remains as an essential element, hence, it is necessary that a minor above nine but below fifteen years of age be possessed with intelligence in committing a negligent act which results in a quasi-offense. For him to be criminally liable, he must discern the rightness or wrongness of the effects of his negligent act[.][41]

In *Remiendo v. People*,^[42] the Court reiterated *Doqueña* and *Guevarra* emphasizing that the prosecution is burdened to prove that the accused acted with discernment and that 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.^[43]

The Court in *Dorado v. People*^[44] (*Dorado*) further elucidated that 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 child in conflict with the law committed the alleged crime with discernment. Notably, *Dorado* also specified circumstances which would exhibit discernment, *viz.*:

"The discernment that constitutes an exception to the exemption from criminal liability of a minor [. . .] 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."

"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." 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." 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.[45] (Emphasis supplied)

The pronouncements in *Dorado* were recapitulated in *CICL XXX v. People*,[46] where the Court stressed that the prosecution must specifically prove as a separate circumstance that the alleged crime was committed with discernment, and 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 the minor acted with discernment.[47]

In *People v. ZZZ*,[48] the Court emphasized that discernment refers to the mental capacity of a minor to fully appreciate the consequences of his or her unlawful act. Discernment is determined by considering all the facts of each case.[49]

On the basis of the foregoing, this Court consistently held for more than a hundred years that in determining discernment, courts shall consider the totality of facts and circumstances in each case.[50] Further, discernment may be established by either direct or circumstantial evidence.[51] These circumstances include, but are not limited to: (i) 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 trial, (ii) the gruesome nature of the crime, (iii) the minor's cunning and shrewdness, (iv) the utterances of the minor, (v) his overt acts before, during and after the commission of the crime, (vi) the nature of the weapon used, (vii) his attempt to silence a witness, and (viii) his disposal of evidence or his hiding the corpus delicti.

Who determines discernment?

RA 9344, Section 22 as amended by RA 10630, Section 7[52] mandates the social worker to conduct an initial assessment to determine whether the child acted with discernment, viz.:

SECTION 22. Duties During Initial Investigation. — The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred.

....

The social worker shall conduct an initial assessment to determine the appropriate interventions and whether the child acted with discernment, using the discernment assessment tools developed by the DSWD. The initial assessment shall be without prejudice to the preparation of a more comprehensive case study report[.]

It must be emphasized, however, that the social worker's assessment is merely an initial or preliminary determination of discernment. The final discretion to determine the existence of discernment remains vested in the courts. As gleaned from congressional deliberations, the legislative intent was to give judges the discretion to determine whether or not the child acted with discernment:

COMMITTEE ON JUSTICE HOUSE OF REPRESENTATIVES

Representative Bateria: May I now terminate... but before I do that, may I just proceed to satisfy myself on the matter of the age of discernment.

Would you say that the age of discernment is... cannot be generalized that the age of discernment is independent, I mean, individualized. In other words, would discernment can happen to a younger one and another for another person it can be... he can have an age of discernment at a higher level, higher age, and how come we can... we must generalize?

Atty. Muryot (resource speaker): Thank you for that question, Your Honors. What the bills seek to do is not generalize but to put a minimum, a minimum age of criminal liability and then put a spread over that minimum wherein the judge will be given the discretion to determine whether or not the child has the discernment.

For instance, in some of the bills the minimum age is fixed at 12. But then there is a spread of up to 15 so that from 12 to below 15 the judge is still given a discretion to determine whether or not the child had acted with discernment. So if the child has acted with discernment, the judge can go on to find criminal liability on the part of the child. But if the judge feels that based on, let's say, the level of education or the level of mental development of a child discernment is not possible, then he can... he has the discernment to say the child should not be liable.[53] (Emphasis supplied)

Moreover, the legislature intended to have testimonies of social workers or child psychologists be appreciated as evidence by courts in determining discernment:

RECORDS OF THE SENATE

Senator Osmena: Mr. President, may I just beg the indulgence of the good Sponsor and Senator Pimentel, the Minority Leader. I am not a lawyer. May I know how we prove... First, what is "discernment"? and how does the prosecutor prove that somebody acted with discernment?

Senator Pangilinan: 'Mr. President, first, there is a legal definition for discernment. The Supreme Court, in a number of cases, has defined discernment as the ability, or in so many words, the capacity to distinguish between right and wrong. That is the legal definition of discernment. The next question is: who determine or what is the basis for determining that one has, in fact, acted with discernment? Testimonies from the social workers, for example, child psychologists when entered into the record during trial will be now used as testimonial evidence to establish whether or not discernment is present.[54] (Emphasis supplied)

Finally, Section 10 of the 2019 Supreme Court Revised Rule on Children in Conflict with the Law[55] now categorically provides:

SECTION 10. Determination of Discernment. — Discernment is preliminarily determined by a social worker and finally by the court.

The determination of discernment shall take into account the ability of a child to understand the moral and psychological components of criminal responsibility and the consequences of the wrongful act; and whether a child can be held responsible for essentially antisocial behavior. (Emphasis supplied)

There is no question that the social worker only renders a preliminary or initial assessment on the existence of discernment. The assessment of a social worker or psychologist is merely evidentiary and is not binding upon the court. Ultimately, the court finally determines discernment, based on its own appreciation of all the facts and circumstances in each case.

In the instant case, there is no mention of any preliminary assessment conducted by a social worker. However, the lack of assessment is understandable since RA 9344 was enacted in 2006 while the Information in this case was

originally filed in 2004. At the time of filing, there was no prescribed procedure for a local social welfare and development officer to render an initial assessment on discernment. In any event, the lack of initial or preliminary assessment does not preclude the court from rendering its own findings on discernment. Since the social worker's assessment is merely preliminary and considered as evidence, the court is not bound by the assessment and may still independently determine the existence of discernment, after considering all established facts and circumstances.

The totality of the facts and circumstances of this case lead to the conclusion that CICL XXX acted with discernment in the commission of the crime. CICL XXX was aware that his actions were wrong and would likely result in the death of AAA.

First, the gruesome nature of the attack committed against the victim indicates discernment on the part of CICL XXX.

To recall, on 28 October 2003, at around 3:00 A.M., AAA's mother heard someone shouting "Mama! Mama!" She and her husband immediately went outside their house and saw the victim lying in front of their gate, with his face and eyes bloodied. AAA related to his parents that CICL XXX, together with a companion, were at their house. It was CICL XXX who struck his eyes. After narrating the incident, AAA fell asleep. The next day, AAA complained of dizziness and one of his eyes was popping out. At the hospital, his CT-Scan result showed severe brain damage. The victim also became blind in one eye with several abrasions on the head, face, and shoulders. Based on the CT-Scan results, AAA had massive cerebral contusions and bleeding on spaces in the brain which may have been caused by any force or object hard enough to cause damage to the brain. A few days later, he could no longer speak. On 26 January 2004, he was discharged from the hospital in a vegetative state. After being bedridden for five years, the victim died on 26 November 2008.[56]

As observed by Chief Justice Alexander G. Gesmundo, CICL XXX acted with discernment when he mauled the victim with a blunt object which is hard enough to break a skull or shake a brain.[57] Justice Maria Filomena D. Singh likewise states that the brain injuries suffered by AAA palpably show the gruesome nature of the crime. Thus, the act totally speaks of discernment.[58] Justice Henri Jean Paul B. Inting also adds that the location of the wounds and deliberateness of their infliction upon AAA demonstrate CICL XXX's discernment. It has been held that the head of a person is a vital part of the body and the infliction of a heavy blow thereon may even establish intent to kill.[59] The testimonies of Dr. Romeo Concepcion and Dr. Manuel Kelly, Jr. also prove the severity of the wounds inflicted upon AAA which were sufficient to cause his death.[60]

Second, the circumstances showed CICL XXX's cunning and shrewdness. He perpetrated the attack early in the morning at around 3:00 A.M. while accompanied by a companion. They waited for the victim to get home and after striking the victim, they escaped before any witnesses could see them.

Third, CICL XXX's attack against the victim can be considered as an attempt to silence the latter or an act of retaliation for testifying against him in a separate mauling incident during the barangay proceedings. According to the prosecution, on 27 October 2003, or a day before the attack, the victim testified against CICL XXX during a hearing on the complaint for physical injuries filed by DDD. The victim allegedly saw him hit DDD with a bucket inside a bar in Baguio City.

Fourth, CICL XXX testified that he quit school when the instant case was filed. He then fled to his home in Sagada where he worked as a xxxxxxxxxxxx.[61] CICL XXX's overt acts of quitting school and returning home to Sagada are indicative of his awareness that what he did was wrong. CICL XXX's own testimony reveals his awareness that his actions were wrong. He dropped out of school because he was scared after he received a warning that he should watch his back:[62]

Q

And after October 2008 what occupation did you engage in?

A

After that I dropped out from school, I went home to Sagada to be a xxxxxxxx.

Q

Why did you drop out?

A

Because a case was filed against me so I just stopped.

Q

Why did you have to drop out?

A

Because somebody told me to watch my back because people might go after me. x x x

Q

Why did you take seriously that you have to quit?

A

I got scared.[63]

To suddenly quit school and flee to his home shows that CICL XXX had full knowledge of the gravity and consequences of his act.

Lastly, as noted by Associate Justice Inting, the records bear that at or near the time of the incident, CICL XXX was a second-year Nursing student. His level of education shows that he had the capacity to discern that inflicting bodily harm upon AAA was wrong, and it would likely result in his death.[64]

Also, there is testimony on record that CICL XXX was advised by his guardian, YYY, during the settlement conference for the incident involving DDD not to do the act complained of (i.e., mauling) again, and that CICL XXX should concentrate on his studies. This shows that CICL XXX was made aware that it is wrong to physically harm another person.[65]

Considering the foregoing reasons, We quote with approval the ruling of the CA that CICL XXX, who was then

already 17 years old, or only several months before reaching the age of majority, acted with clear discernment:

In the present case, it was clearly established that the accused-appellant acted with discernment when he and his unidentified companion went to the house of victim and waited for him to arrive home. When the victim arrived, he and his unidentified companion mauled the victim after the accused-appellant could not give a good explanation for intruding the victim's house. Accused-appellant further knew what he was doing and what he did was wrong when after mauling the victim, he and his companion left the latter bleeding and lying in front of the gate.[66]

Ultimately, a careful consideration of all facts and circumstances, particularly the gruesome nature of the attack, the chosen time and place, the attempt to silence the victim who previously acted as a witness, and his very behavior and level of education, indicates that he acted with discernment. As gleaned from these facts, he committed the crime with an understanding of its depravity and consequences.[67] Thus, CICL XXX is criminally liable for his act.

On the retroactive application of RA 9344, as amended, as well as the failure of the prosecution and trial court to take into account discernment

Associate Justice Amy C. Lazaro-Javier correctly pointed out that both "the prosecution and defense were oblivious of the enactment of RA 9344 and were all working erroneously under the compelling shadow of the former rules." [68] There was an obvious oversight on the part of the prosecution when it failed to take discernment into account as newly mandated by RA 9344. Likewise, the RTC failed to properly deal with the issue of discernment in its decision.[69]

However, the prosecution's failure to allege discernment in the Information and the trial court's failure to discuss discernment in its decision are not sufficient grounds to acquit CICL XXX.

While it is true that the circumstance of acting with discernment must be specifically alleged in the Information, the accused may waive the right to question the defects or insufficiency of said Information. As held in *People v. Solar*: [70]

The Court notes that the right to question the defects in an Information is not absolute. In fact, defects in an information with regard to its form may be waived by the accused. For instance, in *People v. Palarca*, the accused was charged with rape, but the Information filed against him failed to specify that he had carnal knowledge of the victim through force or intimidation. When it reached the Court, it held that the accused therein may still be validly convicted of the crime despite the insufficiency of the Information, ratiocinating thus:

In any event, accused-appellant failed to interpose any objection to the presentation by the prosecution of evidence which tended to prove that he committed the rape by force and intimidation. While generally an accused cannot be convicted of an offense that is not clearly charged in the complaint or information, this rule is not without exception. The right to assail the sufficiency of the information or the admission of evidence may be waived by the accused-appellant. In *People v. Lopez*, we held that an information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein. . .

Similarly, in the case of *People v. Razonable*, the Court held that if an Information is defective, such that it fails to sufficiently inform the accused of the nature and cause of the accusation against him, then it is the accused's duty to enforce his right through the procedural rules created by the Court for its proper enforcement. . .

. . . .

To recall, in the present case, Rolando did not question the supposed insufficiency of the Information filed against him through either a motion to quash or motion for bill of particulars. He voluntarily entered his plea during the arraignment and proceeded with the trial. Thus, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. In other words, Rolando is deemed to have understood the acts imputed against him by the Information. The CA therefore erred in modifying Rolando's conviction in the way that it did when he had effectively waived the right to question his conviction on that ground.[71]

The rule requiring an accused to timely raise objections to defects in the Information was further expounded by Chief Justice Gesmundo in his concurring opinion:

To reiterate, the right to be informed of the charges against the accused is not concluded upon the filing of the Information. It continues until the accused is formally arraigned. At that point, the defense counsel, as well as the prosecutor and the court, must ensure that the accused has understood the charges, including any aggravating or qualifying circumstance stated therein. If there are any unclear matters, these must be clarified to the accused so that a proper plea may be entered. Failure to raise any objection as to the sufficiency of the Information upon entering a plea during arraignment constitutes as a waiver to assail said Information.

....

Accordingly, when the accused fails to object to the defect in the sufficiency of the Information, such as in the case at bench, he waives the right to question such defect. Hence, the Information, which may have a deficiency in certain allegations, shall still sustain a conviction because of the lack of objections. Consequently, past criminal cases, which judgments have already become final and executory, cannot benefit from the proposed procedure of the ponencia because any defect in the Information, specifically in the allegation of qualifying or aggravating circumstance, is cured by the lack of objections as to the sufficiency of the Information at the earliest possible opportunity.[72] (Emphasis supplied).

In the present case, the defense did not interpose any objection to the amended Information charging CICL XXX with homicide. Even though the Information contained no allegation that CICL XXX acted with discernment, CICL XXX's failure to challenge the insufficiency meant his right to question the defect was waived. Hence, CICL XXX may still be convicted of homicide if discernment was established during trial.

On the other hand, regarding the lack of discussion on discernment in the trial court's decision, both the CA and this Court are not precluded from correcting this deficiency. It was held in *Encinares v. People*:^[73]

Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment, whether assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.^[74]

The basis for the CA's and this Court's determination of discernment on the part of CICL XXX is the records of this case, including those presented by the prosecution. Associate Justice Ramon Paul L. Hernando emphatically states that the circumstances and conditions necessary to infer discernment, as opposed to merely presuming, have been sufficiently established by the prosecution, which may then be rightly used as basis in convicting CICL XXX of the crime he consciously committed.^[75]

Also, as aptly stated by Associate Justice Jhosep Y. Lopez, allowing for the CA's determination as to the presence of discernment found in the record strikes a balance between the principle of retroactivity of penal laws favorable to an accused vis-à-vis the prosecution's burden to prove an added element of a crime, especially considering the

peculiar situation in this case.[76]

Here, the CA addressed the deficiency by including a discussion on discernment even though it was not raised as an error. After all, an appeal in a criminal case opens the entire case for review.

On the penalty and damages

We likewise affirm the penalty imposed by the CA. The penalty for the crime of homicide under Article 249 of the RPC is reclusion temporal with the duration of twelve (12) years, one (1) day to twenty (20) years. Considering the privileged mitigating circumstance of minority, the penalty is reduced by one degree pursuant to Article 68 of the RPC. Applying the Indeterminate Sentence Law, the proper imposable penalty shall be the indeterminate penalty of six (6) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.[77]

Section 38 of RA 9344 allows for the suspension of the sentence of minors notwithstanding said child reaching the age of majority at the time the judgment of conviction was pronounced. However, *Hubilla v. People*[78] has clarified that the sentence of the offender may only be suspended until he or she is 21 years old in accordance with Section 40 of the law. Thus, this is no longer applicable in this case.

At any rate, CICL XXX shall be entitled to the appropriate disposition under Section 51 of the same law which provides:

SECTION 51. Confinement of Convicted Children in Agricultural Camps and other Training Facilities. – A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

In *People v. Jacinto*,[79] the Court declared that Section 51 applies regardless of the age of the offender at the time of the promulgation of the judgment of conviction.

As ruled by the CA, in lieu of service in the regular penal institution, CICL XXX may serve his sentence in an agricultural camp or other training facilities. In view thereof, the case shall be remanded to the court of origin for its appropriate action in accordance with Section 51 of RA 9344.[80]

As to the damages, We affirm the CA's directive for CICL XXX to pay to the heirs of AAA, the following: (a) PHP 504,145.01 as actual damages; (b) PHP 50,000.00 as civil indemnity; and (c) PHP 50,000.00 as moral damages pursuant to *People v. Jugueta*. [81] All damages are subject to interest at the rate of six percent (6%) per annum from the date of the finality of the judgment until fully paid.

Guidelines on determining discernment

In view of the discussions on discernment in our jurisprudence through the years, there is a need to streamline the discernment determination process for crimes involving a child in conflict with the law. Thus, We provide the following guidelines:

1.

Discernment is the capacity of the child at the time of the commission of the offense to understand the difference between right and wrong and the consequences of the wrongful act.[82]

2.

The task of ascertaining discernment is undertaken preliminary by a social worker, and finally by the court. The determination of discernment shall take into account the ability of a child to understand the moral and psychological components of criminal responsibility and the consequences of the wrongful act; and whether a child can be held responsible for essentially antisocial behavior.[83] The assessment of a social worker is merely evidentiary and is not binding upon the court. Ultimately, the court finally determines discernment, based on its own appreciation of all the facts and circumstances in each case.

3.

In our jurisdiction, there is no presumption that a minor acts with discernment. The prosecution must specifically prove as a separate circumstance that the alleged crime was committed with discernment. 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.[84]

4.

In determining discernment, courts shall consider the totality of facts and circumstances in each case.[85] Such circumstances include, but are not limited to: (i) 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 trial, (ii) the gruesome nature of the crime, (iii) the minor's cunning and shrewdness, (iv) the utterances of the minor, (v) his overt acts before, during and after the commission of the crime, (vi) the nature of the weapon used, (vii) his attempt to silence a witness, and (viii) his disposal of evidence or his hiding the corpus delicti.

These guidelines encapsulate the carefully crafted rules and principles in dealing with children in conflict with law, taking into account their rights and special circumstances.

ACCORDINGLY, the Petition is DENIED. The Court of Appeal's 29 November 2017 Decision and 19 March 2018 Resolution in CA-G.R. CR No. 39196 are AFFIRMED.

CICL XXX is GUILTY of the crime of Homicide and is sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

He is also ORDERED to pay the heirs of AAA the following: (a) PHP 504,145.01 as actual damages; (b) PHP 50,000.00 as civil indemnity; and (c) PHP 50,000.00 as moral damages. All damages awarded shall earn a 6% interest per annum from the finality of this Decision until full payment.

The case is also remanded to the trial court for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.

Caguioa, Rosario, Dimaampao, Marquez, and Singh, JJ., concur.

Gesmundo, C.J., and Inting, J., please see concurring opinion.

Leonen, S.A.J., see separate opinion.

Hernando and Kho, JJ., see concurring and dissenting opinion.

Lazaro-Javier and M. Lopez, JJ., please see dissent.

Gaerlan, J., please see dissenting opinion.

J. Lopez, J., please see separate concurring opinion.

[1] Rollo, pp. 7-25.

[2] CA rollo, pp. 84-99. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Magdangal M. De Leon and Zenaida T. Galapate-Laguilles.

[3] Rollo, pp. 53-54.

[4] Id. at 29-39. Penned by Presiding Judge Francis A. Buliyat, Sr.

[5] CA rollo, p. 85.

[6] Records, pp. 250-251.

[7] CA rollo, p. 85.

[8] Id. at 85-86.

[9] Id. at 86.

[10] Id.

[11] Id. at 86-87.

[12] Id. at 87.

[13] Id.

[14] Rollo, pp. 29-39.

[15] Id. at 39.

[16] Id. at 37.

[17] Id. at 38.

[18] CA rollo, p. 89.

[19] Id. at 84-99.

[20] Id. at 97-98.

[21] Id. at 89-90.

[22] Id. at 92-93.

[23] Juvenile Justice and Welfare Act of 2006. Approved on 28 April 2006.

[24] CA rollo, pp. 94-95.

[25] SECTION 51. Confinement of Convicted Children in Agricultural Camps and other Training Facilities. – A child in conflict with the law may, alter conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised[,] and controlled by the BUCOR, in coordination with the DSWD.

[26] Id. at 95-96.

[27] Rollo, pp. 14-19.

[28] As amended by A.M. No. 19-08-15-SC, 2019 Amendments to the 1989 Revised Rules on Evidence, 08 October 2019.

[29] 427 Phil. 129 (2002) [Per J. Ynares-Santiago, First Division].

[30] Id. at 138. Citations omitted.

[31] 387 Phil. 142 (2000) [Per J. Quisumbing, Second Division].

[32] Id. at 153-154. Citation omitted.

[33] CA rollo, pp. 90-91.

[34] *Anisco v. People*, 890 Phil. 772, 782 (2020) [Per J. Delos Santos, Third Division].

[35] 2019 Supreme Court Revised Rule on Children in Conflict with the Law, A.M. No. 02-1-18-SC. Approved on 22 January 2019.

[36] 36 Phil. 155 (1917) [Per J. Moreland, En Banc].

[37] Id. at 158.

[38] 68 Phil. 580 (1939) [Per J. Diaz, En Banc].

[39] Id. at 582-583.

[40] 251 Phil. 427 (1989) [Per J. Paras, Second Division].

[41] Id. at 433-434.

[42] 618 Phil. 273 (2009) [Per J. Nachura, Third Division].

[43] Id. at 289.

[44] *Dorado v. People*, 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].

[45] Id. at 250-251.

[46] 859 Phil. 912 (2019) [Per J. Caguioa, Second Division].

[47] Id. at 922-923.

[48] 879 Phil. 629 (2019) [Per J. Leonen, Third Division].

[49] Id. at 647.

[50] Id. *Supra* note 36.

[51] See *People v. Lignes*, 874 Phil. 530, 539-540 (2020) [Per J. Peralta, First Division].

[52] An Act Strengthening the Juvenile Justice System in the Philippines, Amending for the Purpose RA 9344 [Approved on 1 October 2013].

[53] House of Representatives, Committee on Justice, TSN dated 23 November 2004, p. 24.

[54] Records of the Senate dated 22 November 2005, Vol. II Session 34, pp. 25-26.

[55] 2019 Supreme Court Revised Rule on Children in Conflict with the Law, A.M. No. 02-1-18-SC, 22 January

22, 2019.

[56] CA rollo, pp. 86-87.

[57] See Reflections of Chief Justice Gesmundo, p. 6.

[58] Reflections of Associate Justice Singh, p. 2.

[59] Reflections of Associate Justice Inting, p. 5, citing *People v. Balderas*, 342 Phil. 435, 452 (1997).

[60] *Id.* at 9.

[61] CA rollo, p. 87.

[62] See Reflections of Associate Justice Inting, p. 14.

[63] Records, pp. 506-507.

[64] See Reflections of Associate Justice Inting, p. 13.

[65] *Id.* at 9-10.

[66] CA rollo, pp. 94-95.

[67] See *supra* note 48 at 649.

[68] Reflections of Associate Justice Lazaro-Javier, p. 4.

[69] *Id.*

[70] 858 Phil. 884 (2019) [Per J. Caguioa, En Banc].

[71] *Id.* at 922-924.

[72] *Id.* at 953-958.

[73] G.R. No. 252267, 11 January 2021 [Per J. Perlas-Bernabe, Second Division].

[74] *Id.*

[75] Reflections of Associate Justice Hernando, p. 2.

[76] See Reflections of Associate Justice J. Lopez, p. 3.

[77] CA rollo, p. 95.

[78] 748 Phil. 441 (2014) [Per J. Bersamin, First Division].

[79] 661 Phil. 224 (2011) [Per J. Perez, First Division].

[80] CA rollo, p. 98.

[81] 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

[82] A.M. No. 02-1-18-SC, 2019 Supreme Court Revised Rule on Children in Conflict with the Law, 22 January 2019.

[83] *Id.*

[84] *CICL XXX v. People*, 859 Phil. 912, 928 (2019) [Per J. Caguioa, Second Division].

[85] Supra note 48.

CONCURRING OPINION

GESMUNDO, C.J.:

I concur with the ponencia. Nevertheless, I submit this Opinion to emphasize my position that the accused committed the crime with discernment, which has been integral in the resolution of this case.

The essential facts are as follows: In 2003, the accused, 17-year-old CICL XXX, went to the house of AAA (victim), mauled him, struck his eye, and left him bleeding while lying in front of the gate. When the victim's parents arrived, he revealed to them that CICL XXX inflicted the injuries. The victim suffered massive cerebral contusions and became bedridden for five years until he died in 2008.

CICL XXX was charged before the Regional Trial Court of La Trinidad, Benguet, Branch 9 (RTC). While his case was pending, Republic Act No. 9344 (R.A. No. 9344),^[1] or the Juvenile Justice and Welfare Act, took effect in June 2006. In 2014, CICL XXX was found guilty of Homicide. The Court of Appeals (CA) affirmed the conviction but reduced the penalty as the privileged mitigating circumstance of minority was appreciated in favor of CICL XXX. Insisting on his innocence of the crime of Homicide, CICL XXX elevated the case to this Court via a Rule 45 petition.

The ponencia affirms the guilty verdict against CICL XXX, upon finding that said accused acted with discernment when he perpetrated the crime.

I agree.

During the deliberations held on the case, it was intimated that CICL XXX should be acquitted due to his minority at the time of the commission of the crime and more relevantly, due to the failure of the prosecution to prove that CICL XXX acted with discernment as required under R.A. No. 9344.

It must be underscored that CICL XXX was 17 years old at the time he committed the crime. Crucial to note that the trial stage was concluded before the enactment of R.A. No. 9344 such that at the time of trial, the prosecution's duty to prove the separate circumstance of discernment when the accused is below 18 years old was not yet in existence. A careful perusal of the records of the case would disclose that the prosecution did not explicitly argue or adduce evidence that CICL XXX had acted with discernment. When the RTC rendered its Decision in 2014, after R.A. No. 9344 was enacted, it did not discuss the matter of discernment but proceeded to convict CICL XXX. When the case was elevated, the CA concluded that based on the records, the circumstance of discernment was present when CICL XXX and his companions seriously injured the victim.

The esteemed proponents who are of the view that discernment was wanting in this case argued that CICL XXX's acts merely showed an unequivocal intent to commit the crime, but did not necessarily prove discernment. It was submitted that since CICL XXX committed the crime when he was still 17 years old, he should be entitled to the exemption from criminal liability under R.A. No. 9344.

I respectfully disagree with such position. To my mind, the totality of factual circumstances reveals that CICL XXX knew the gravity and consequences of his actions, and thus, acted with discernment. Hence, his conviction for Homicide is rightfully affirmed by the Court.

The elements of Homicide are: (a) a person was killed; (b) the accused killed him without any justifying circumstance; (c) the accused had the intention to kill, which is presumed; and (d) the killing was not attended by

any of the qualifying circumstances of Murder, or by that of Parricide or Infanticide.[2] Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.[3] In this case, the elements of Homicide were found present by both courts a quo.

In 2006, R.A. No. 9344 was enacted while the case was pending before the RTC. Section 6 thereof states that a "child above fifteen (15) years but below eighteen (18) years of age" shall be "exempt from criminal liability" unless such accused "has acted with discernment." [4]

Discernment pertains to the "capacity of the child at the time of the commission of the offense to understand the difference between right and wrong and the consequences of the wrongful act." [5] In *Dorado v. People* [6] (*Dorado*), the Court held that a minor is presumed to have acted without discernment. [7] It held further:

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. 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. 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. [8] (Emphases and underscoring supplied)

This echoes the pronouncement in *Madali v. People* [9] where the Court stated that discernment "may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case." Moreover, in *People v. ZZZ*, [10] it declared that discernment is "determined by considering all the facts of each case."

Discernment is different from criminal intent. In order for an intentional felony to exist, it is necessary that the act be committed by means of *dolo* or *malice*. The term *dolo* or *malice* is a complex idea involving the elements of freedom, intelligence, and intent. The element of intent is described as the state of mind accompanying an act, especially a forbidden one. It refers to the purpose of the mind and the resolve with which a person proceeds. On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose. With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act. [11]

Thus, to my mind, discernment is closely associated with the element of intelligence, not the element of intent. For instance, it is possible for a child to purposely take the personal property of another but it may not constitute the crime of theft due to the absence of discernment in understanding that taking another's property without consent is inherently wrong.

In discernment or the "mental capacity to understand," [12] the difference between right and wrong can be inferred from the facts and circumstances presented by the prosecution. Inferences can be made from circumstantial evidence to prove a particular proposition. [13] Here, the entirety of the circumstantial evidence borne out by the

records show that CICL XXX acted with discernment.

Based on the foregoing, proof of discernment need not only be in the form of direct evidence. It may also be shown by circumstantial evidence, as in this case. Notably, circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[14]

According to Wigmore, circumstantial evidence may be grouped according to whether the facts constituting evidence of the act to be proved came before the act (prospectant/antecedent), at the time of the act (concomitant), or after the act (retrospectant).[15]

In the present case, several circumstances taken together sufficiently show that CICL XXX acted with discernment, as revealed by his actions before, during, and after his commission of the crime. These circumstances constitute factors or evident proof that he was aware of the wrongfulness of his actions and the consequences thereof.

Prospectant circumstantial evidence

Prior to the mauling incident, CICL XXX obviously harbored a grudge against the victim because the latter testified against him in another case. To stress, his assault on the victim was not due to a chance encounter but as retaliation against the victim. CICL XXX carefully planned to stealthily execute the crime during off-hours at the accused's house hidden from the view of onlookers. He also invited a companion to join him to ensure completion of the crime inside the house of the victim. Verily, CICL XXX did not even bother to respect the ancient tradition that a man's home is his castle, safe from intrusion even by the king.[16]

These precedent acts show the cunning means, akin to evident premeditation, with which he prepared his attack. They constitute prospectant evidence that reveal CICL XXX's discerning mind at work. They demonstrate his awareness and acceptance of the consequence of his wrongful actions even before committing the crime.

Concomitant circumstantial evidence

During the mauling incident, he was at the victim's house at around 3:00 a.m., at a place and time when the victim would naturally be unguarded and feel safe. The victim had his defenses down when he was in the refuge of his own house. When CICL XXX struck the victim, the force he exerted was so severe that it caused the victim's eyes to bleed and his brain to have massive cerebral contusions. The severity of the blow eventually led the victim to be incapacitated and be bedridden for five years until he died.

Explaining the cause of death, the municipal health officer said there was bleeding within and outside the brain due to the trauma to his head. Indeed, CICL XXX's presence at the victim's house at that time, the severity of the force exerted against the victim, and his retreat upon completing the attack constitute concomitant evidence that he acted with full understanding of what he was doing.

Retrospectant circumstantial evidence

Finally, after CICL XXX committed the crime, he quit school and fled to Sagada. These overt acts indubitably reveal that he knew that he would suffer the consequences of his actions. Indeed, if he did not know that what he did was wrong, there would have been no reason for him to flee. It has been truly said since long ago that the wicked flee, even when no man pursueth, but the righteous is as bold as the lion. In *People v. Macatangay*, [17] the Court stated that fleeing from the scene of the crime strongly indicates consciousness of one's wrongdoing.

Wigmore elucidates that retrospectant evidence can come in the form of "consciousness of guilt" or "hiding or running away after the event," [18] as CICL XXX had done. Indeed, this circumstantial evidence demonstrates

that CICL XXX knew the consequences of his wrongdoing, and thus, resorted to escapism by fleeing the scene, quitting his school, and leaving town.

Taken together, these circumstantial evidence as presented by the prosecution indubitably support the proposition that CICL XXX acted with discernment before, during, and after the commission of the crime. Clearly, he was cognizant of the wrongfulness of his acts against the victim and the consequence thereof.

In view of the timeline in this case, it is understandable that the element of discernment was not explicitly argued before the trial court. Nevertheless, a review of the evidence shows that the circumstances presented by the prosecution already reveal that discernment was in fact present. Evidently, the presumption that the accused acted without discernment has been overturned in CICL XXX's case.

Further, those who take the dissenting view cite the Dorado case to justify the exemption of CICL XXX from criminal liability. I believe, however, that this present case is not on all fours with the Dorado case. In that case, the accused fired his sumpak (improvised shotgun) and hit the victim between the eyes. The victim was operated on his forehead and was confined for a month at the hospital. As a result of the shooting incident, the victim lost his left eye while his right eye could only see some light. The Court acquitted the accused because the prosecution did not make an effort to prove that the accused acted with discernment at the time of the commission of the crime. In Dorado, the Court held that while the accused indeed committed a crime, there were no other circumstances which would show that the child in conflict with the law (CICL) acted with discernment, even impliedly or based on circumstantial evidence presented during trial, regarding events before or after the commission of the said crime.

As stated in that case, the following shall be considered in determining the discernment of the CICL:

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.[19] (Emphases supplied)

In this case, as discussed above, there is an abundance of circumstantial evidence which demonstrated that CICL XXX committed the crime, not only with criminal intent, but with discernment. He knew that what he was doing was wrong based on his acts, prior, during, and after the commission of the crime. As stated earlier, he devised a plan to attack the victim at night and no less than in the latter's own abode. He even brought a companion with him to ensure the commission of the crime. Ultimately, he struck excessive blows to the victim, which caused the latter to live in a vegetative state. After committing the crime, he quit school and fled to Sagada. If he was not aware of the wrongfulness or implication of his actions, he would not have left the vicinity. These evidently demonstrate the discernment of CICL XXX that what he committed was wrong.

For these reasons, I join my colleagues who affirm the CA's finding that CICL XXX, who was 17 years old at the time he committed the crime, acted with clear discernment. He fully understood the wrongfulness and repercussions of his actions, and thus, must bear the consequences thereof. Hence, he is not exempt from criminal liability. His conviction is correctly affirmed.

WHEREFORE, I vote to DENY the petition because the totality of factual circumstances show that CICL XXX acted with discernment in the commission of the crime.

[1] AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES. Approved: April 28, 2006.

[2] Homicide is defined and penalized under Article 249 of the Revised Penal Code; see elements in *Wacoy v. People*, 761 Phil. 570, 578 (2015) [Per J. Perlas-Bernabe, First Division].

[3] *CICL XXX v. People*, 859 Phil. 912, 929 (2019) [Per J. Caguioa, Second Division], citing *People v. Badriago*, 605 Phil. 894, 907 (2009) [Per J. Velasco, Jr., Second Division].

[4] Section 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 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.

[5] See Rule on Juveniles in Conflict with the Law, A.M. No. 02-1-18-SC. Section 4(j), November 24, 2009, as revised in the 2019 Supreme Court Revised Rule on Children in Conflict with the Law, Section 4(l), January 22, 2019.

[6] 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].

[7] *Id.* at 253; "[T]here can be no presumption of discernment on the part or the CICL. In the absence of such determination, it should be presumed that the CICL acted without discernment."

[8] *Id.* at 250-251.

[9] 612 Phil 582, 606 (2009) [Per J. Chico-Nazario, Third Division].

[10] G.R. No. 228828, July 24, 2019, 910 SCRA 325, 344 [Per J. Leonen, Third Division].

[11] *Jabalde v. People*, 787 Phil. 255, 272-273 (2016) [Per J. Reyes, Third Division].

[12] *Dorado v. People*, *supra* at 250.

[13] See *Wigmore on Evidence*, 3rd ed., Vol. 1 §25, p. 399 (1940). "Inferences from facts, which upon the strength of assertions are believed to exist, to facts of which the existence has not been so asserted."

[14] RULES OF COURT, Rule 133, Sec. 4, as cited in *People v. Tampus*, 607 Phil. 296, 311 (2009) [C.J. Puno, First Division].

[15] *Wigmore's Code of Evidence*, 3rd ed., Vol. 1 §43, pp. 442-444 (1940). See footnote stating that "every circumstance x x x precedent, concomitant, and subsequent, become parts of circumstantial evidence." See also §130, pp. 562-563.

[16] *City Engineer of Baguio v. Baniqued*, 592 Phil. 348, 349 (2008) [Per J. R.T. Reyes, Third Division].

[17] 200 Phil. 224, 229-230 (1982) [Per J. Relova, First Division].

[18] See *Wigmore on Evidence*, 3rd ed., Vol. 1 §43, p. 444 (1940).

[19] Dorado v. People, supra note 6, at 250.

G.R. No. 238798 - XXX,[*] Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

CONCURRING AND DISSENTING OPINION

LEONEN, SAJ.:

How we ought to live well is not merely a moral question we should address to an accused. In law, especially in our interpretation, it is also a question addressed to how we understand the norms of our society. We ought not to impose culpability on one whose morality emerges out of an environment far different from ours. Thus, the child surviving in poverty from parents whose concern is to survive cannot be judged from the viewpoint of our privileged life.

I thus agree that the required discernment of a child is separate from criminal intention. A child's maturity does not evolve from inevitable natural progression but from how they are nurtured.

The minimum age of criminal responsibility, which presumes that children of a certain age are not capable of incurring criminal liability, has scientific basis. Owing to the biological disposition and diminished decision-making capacity of adolescents, they are accorded unique status under our laws. They are not fully excused from criminal responsibility, but they are not treated as adults who take the full measure of penalty for their crimes.

The accused in this case did a reprehensible act but imposing a penalty meant for an adult will speak of a society that only has retribution in mind. Without proof of discernment, his rehabilitation and reintegration as a juvenile delinquent composes a society more humane.

That humane society can be ours. Thus, I dissent.

I

This Court resolves a Petition for Review on Certiorari[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals in CA G.R. No. 319196, which affirmed the conviction of XXX for homicide.[4]

In 2004, XXX was charged with the crime of frustrated homicide.[5] Pending trial, the victim died. The Information was subsequently amended, charging him with homicide.[6]

The trial court eventually found XXX guilty of homicide, this despite the absence of any finding as to his discernment.[7] The trial court, in imposing its penalty, failed to take into consideration that XXX was only 17 years old, a minor, at the time of the commission of the offense.[8]

On appeal, the Court of Appeals affirmed XXX's conviction albeit with modifications as to the penalty and award of damages.[9]

The Court of Appeals held that the prosecution established that the victim's death was caused by XXX hitting the victim on the head.[10] Further, it found that XXX was entitled to the privileged mitigating circumstance of minority.[11] Thus, his penalty was reduced one degree lower.[12] In addition, the Court of Appeals ordered the case to be remanded to the trial court so XXX may serve his sentence in an agricultural camp or other training facilities pursuant to Section 51 of Republic Act No. 9344.[13]

XXX filed his motion for reconsideration but to no avail.[14]

The ponencia upheld XXX's conviction. In so ruling, it concluded that the "totality of the facts and circumstances of this case lead to the conclusion that [XXX] acted with discernment in the commission of the crime. [XXX] was aware that his actions were wrong and would likely result in the death of [the victim]."[15]

With utmost respect, I disagree.

II

Republic Act No. 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006, governs children at risk and children in conflict with the law and covers crime prevention, rehabilitation, and reintegration.[16]

The law provides alternative measures and opportunities allowing children in conflict with the law to rehabilitate without undergoing detention and incarceration.[17] It seeks to advance the right of children in conflict with the 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." [18]

Moreover, the law is enacted in observance of international standards of child protection to which the Philippines is a signatory.[19] Under Article 40 of the United Nations Convention on the Rights of the Child:

Article 40

1. States Parties recognize the right of every child alleged as, accused of, 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, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

....

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a)

The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b)

Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.[20] (Emphasis supplied)

One basic principle enshrined in the United Nations Convention on the Rights of the Child is the concept of criminal responsibility relative to the "age at which children are able to understand the consequences of their actions." [21] Accordingly, there is a duty on state parties to establish a minimum age below which children are presumed not to have the capacity to incur criminal responsibility.[22] This is *doli incapax*, which is a legal presumption that children of certain age are not capable of bearing criminal responsibility.[23]

While state parties have the discretion in determining the minimum age, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, otherwise known as the Beijing Rules, provide guidance. The Beijing Rules links the minimum age for criminal responsibility to the child's development and maturity. Rule 4.1 states:

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.[24]

The Beijing Rules explains that the establishment of minimum age of criminal responsibility should depend on whether or not "a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behavior." [25] However, the age must not be too low as to render criminal responsibility meaningless. Thus,

If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.[26]

Compliant with these international instruments, Republic Act No. 9344 sets the minimum age of criminal responsibility. Under Section 6 of the law, children 15 years of age and below at the time of the commission of the offense are exempt from criminal liability, subject to intervention programs.[27] Children above 15 years but below 18 years of age are likewise exempt from criminal liability, unless they acted with discernment.[28]

The presumption of lack of discernment has scientific and biological grounding owing to the fact that a child's maturity is developed based on both nature and nurture. The neurobiological and psychological disposition of adolescents explains their tendency to act impulsively and recklessly, leading to poor choice behaviors.

Cognitive processes are not fully developed until adulthood. During adolescence, the brain structure and functions undergo crucial changes, especially in the frontal lobes.[29]

Within the frontal lobe is the prefrontal cortex, which is primarily involved in what psychologists call "executive functions" or advanced thinking processes relating to controlling impulses and weighing the consequences of decisions.[30] The prefrontal cortex "is responsible for cognitive analysis, abstract thought, and the moderation of correct behavior in social situations." [31] It enables a person to exercise good judgment.[32]

Brain maturation involves several processes but two of the most crucial of these are synaptic pruning and myelination.[33]

Synaptic pruning is the "selective elimination of unused connections between [neurons]." [34] Neurons are cells in the brain which "receive signals from sense organs or other neurons." [35] They are like computers which accept inputs in the form of signals, then operate on them, and produce outputs also in the form of signals.[36] Synapses are the connection between neurons.[37] By eliminating unused synapses, synaptic pruning improves brain functioning by reducing the number of unnecessary synapses, making information processing more efficient.[38]

Myelination is the development of myelin, a white fatty substance which acts as an insulation around the neural circuits in the brain.[39] Myelin is akin to plastic insulation on electrical wires and through myelination, there is a more efficient transmission of electrical impulses around the brain.[40]

Myelination increases during adolescence, strengthening the connection between the right and left hemispheres of the brain which enables a person to access "analytical and creative strategies to respond to complex dilemmas[.]" [41] Through these processes, the brain matures, which allows for an enhanced ability to solve problems and to process complex information.[42]

However, brain maturation does not occur immediately in the prefrontal cortex.[43] It takes place in a back-to-front pattern and the prefrontal cortex, which lies just behind the forehead, develops last.[44] Brain development will be complete only when an individual nears the age of 25 years.[45] This is one explanation why adolescents often display immaturity.[46] With an immature prefrontal cortex, even if adolescents know that an action is dangerous, they have a greater tendency to engage in reckless behaviors.[47]

Another crucial brain development during the adolescent period occurs in the amygdala — the structure which plays a special role in regulating strong emotions such as fear and anger.[48] The amygdala is part of the limbic system, the region involved in the expression of emotions and motivation, including fear, anger, and the fight or flight response.[49] Compared to adults, adolescents use less of their prefrontal cortices in decision making and rely more on the emotional region of their brains, such as the limbic system.[50]

Adolescent brains still undergo development, particularly in regions which control planning, regulate impulse, anticipate consequences, and weigh risk and reward.[51] Thus, the neurological disposition of adolescents does not enable them to make mature and thorough decisions.

Given the adolescents' immaturity, parents are expected to act as authority over their children and to enforce right behavior; thus:[52]

When children are young, parents serve as the local law. They create and enforce right behavior and act as the authority that oversees the development of an individual's morality. In many ways, parents can be conceptualized as external frontal lobes for their children, helping to interpret environmental demands, and to construct and execute appropriate responses. Given the behavioral consequences of having an immature frontal cortex, parents assume a number of frontal functions by instructing their children in the absence of their own abstract reasoning. Parents attempt to maintain control of where and with whom a child associates in order to minimize behavioral transgressions in the absence of the child's ability to make good decisions.[53]

This lends reason why parents are made civilly liable for the criminal acts of their child. Under Article 101 of the Revised Penal Code, a child's civil liability arising from a criminal act is imposed upon his or her parents. In *Libi v. Intermediate Appellate Court*,[54] this Court held that the civil liability of parents is direct and primary. Thus:

Accordingly, just like the rule in Article 2180 of the Civil Code, under the foregoing provision the civil liability of the parents for crimes committed by their minor children is likewise direct and primary, and also subject to the defense or lack of fault or negligence on their part, that is, the exercise of the diligence or a good father of a family.

That in both quasi-delicts and crimes the parents primarily respond for such damages is buttressed by the corresponding provisions in both codes that the minor transgressor shall be answerable or shall respond with his own property only in the absence or in case of insolvency of the former. Thus, for civil liability *ex quasi delicto* of minors, Article 2182 of the Civil Code states that "(i)f the minor causing damage has no parents or guardian, the minor . . . shall be answerable with his own property in an action against him where a guardian *ad litem* shall be appointed." For civil liability *ex delicto* of minors, an equivalent provision is found in the third paragraph of Article 101 of the Revised Penal Code, to wit:

"Should there be no person having such . . . minor under his authority, legal guardianship or control, or if such person be insolvent, said . . . minor shall respond with (his) own property, excepting property exempt from execution, in accordance with civil law." [55]

Aside from neurological and cognitive development, an adolescent undergoes significant psychological, interpersonal, and social shifts, which further shape their decision-making capacity. The environment that nurtured and shaped the mind of the child has a significant impact on the child's maturity.

For instance, adolescents, being susceptible to peer influence, tend to choose risky behaviors in exchange for peer approval.[56] Although adolescents may have the same ability to perceive risks as adults do, they have a higher likelihood of engaging in high-risk activities in anticipation of the potential rewards these activities give.[57]

There are environments whose norms are completely different based on the social and economic status of the child. A child can grow up in a comfortable or affluent society, with education and parents who sufficiently taught them to discern what is right from wrong. On the other hand, there are children who had to survive in a community where they had to do anything to survive, even behaviors unacceptable to people who grew up in a different socio-economic environment.

III

The reason behind the law's exemption of minors from criminal liability is the presumed lack of discernment.[58]

Discernment is the "mental capacity of a minor to fully appreciate the consequences of his unlawful act," taking into consideration the ambient facts of each case.[59] *Dorado v. People*[60] explains what constitutes discernment:

"The discernment that constitutes an exception to the exemption from criminal liability of a minor . . . 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."

"The basic reason behind the exempting circumstance is complete absence or 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."[61]

Discernment is different from intent. *Guevarra v. Almodovar*[62] expounds:

While both are products of the mental processes within a person, [intent] refers to the desired of one's act while [discernment] relate[s] 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.

....

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 [Revised Penal Code]; 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."

It is for this reason, therefore, why minors nine years of age and below are not capable of performing a criminal act. On the other hand, minors above nine years of age but below fifteen are not absolutely exempt. However, they are presumed to be without criminal capacity, but which presumption may be rebutted if it could be proven that they were "capable of appreciating the nature and criminality of the act, that is, that (they) acted with discernment." The preceding discussion shows that "intelligence" as an element of *dolo* actually embraces the

concept of discernment as used in Article 12 of the [Revised Penal Code] and as defined in the aforecited case of *People vs. Doquena*, supra. It could not therefore be argued that discernment is equivalent or connotes "intent" for they refer to two different concepts. Intelligence, which includes discernment, is a distinct element of *dolo* as a means of committing an offense.[63] (Citations omitted)

Intent refers to the sanity of the person. An accused "who suffers from insanity at the time of the commission of the offense charged cannot in a legal sense entertain a criminal intent and cannot be held responsible for his acts." [64] There is no criminal intent because the unlawful act was produced by a mental illness.[65]

Section 6 of Republic Act No. 9344 touches upon the discernment of children in conflict with the law, not their criminal intent. Specifically, children in conflict with the law falling between ages 15 and 18 years old who are presumed by law to have acted without discernment. The wording of the law is clear:

Section 6. Minimum Age of Criminal Responsibility —

....

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. (Emphasis supplied)

Consequently, when a child above 15 but below 18 years old is charged with a crime, there is no presumption that he or she acted with discernment.[66] It is then the prosecution's duty to "specifically prove as a separate circumstance that the [child in conflict with the law] committed the alleged crime with discernment." [67]

I agree with the ponencia when it stressed that the prosecution is the one who is burdened to prove the additional and separate element of discernment in circumstances when the accused is a child in conflict with the law.[68]

This may be proven through direct or circumstantial evidence. In *Jose v. People*: [69]

The reason for the exemption is that a minor of such age is presumed lacking the mental element of a crime — the capacity to know what is wrong as distinguished from what is right or to determine the morality of human acts; wrong in the sense in which the term is used in moral wrong. However, such presumption is rebuttable. 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.[70]

In addition, it is worthy to point out that the burden of the prosecution to prove that a child in conflict with the law committed the crime with discernment is distinct and independent from who will ultimately determine the presence, or the lack thereof, of discernment.

Section 22 of Republic Act No. 9344, as amended by Republic Act No. 10630 provides:

SEC. 22. Duties During Initial Investigation. — The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred.

....

The social worker shall conduct an initial assessment to determine the appropriate interventions and whether the child acted with discernment, using the discernment assessment tools developed by the DSWD. The initial assessment shall be without prejudice to the preparation of a more comprehensive case study report. The local

social worker shall 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. (Emphasis supplied)

The law itself characterizes the social worker's determination of discernment as initial. Meanwhile, Section 10 of the 2019 Supreme Court Revised Rule on Children in Conflict with the Law clarifies:

SECTION 10. Determination of Discernment. — Discernment is preliminarily determined by a social worker and finally by the court.

The determination of discernment shall take into account the ability of a child to understand the moral and psychological components of criminal responsibility and the consequences of the wrongful act; and whether a child can be held responsible for essentially antisocial behavior.

Essentially, the ponencia is correct in concluding that "the final discretion to determine the existence of discernment remains vested in the courts." [71] The reason being that the same is a finding of fact which the courts are duty bound to determine.

IV

It is possible for a child in conflict with the law to act with criminal intent but without discernment.

In *Dorado*, accused was charged with the crime of frustrated murder. The trial and appellate courts convicted him of the charge and held that accused had the intent to kill the victim when he fired his sumpak, which hit the portion between the victim's eyes. Upon appeal, this Court held that accused was only 16 years old at the time of the commission of the crime; thus, the provisions of the Juvenile Justice and Welfare Act must benefit him and he should be treated as a child in conflict with the law. [72]

Finding for the accused, this Court ruled that the presumption of lack of discernment under the law was not controverted by the prosecution. Intent is different from discernment. Even if accused intended to kill the victim, discernment cannot be presumed. This Court observed that the lower courts failed to provide a discussion on whether the accused acted with discernment when he committed the crime. Due to the lack of determination of discernment by the trial court, this Court cannot rule with certainty that the accused was criminally responsible. [73]

CICL XXX v. People [74] was resolved in the same vein. In *CICL XXX*, accused was charged with frustrated homicide after he poked a gun at the victim and later hitting him in the head after the gun failed to fire. The trial and appellate courts found him guilty. Before this Court, accused argued that he was only 17 years old at the time of the incident and he is presumed to have acted without discernment, which the prosecution failed to overcome. [75]

Overturning accused's conviction, this Court held that the accused is a child in conflict with the law. Thus, there is a presumption of lack of discernment, but the trial court and the Court of Appeals did not discuss whether accused acted with discernment. Moreover, both courts erred in equating intent with acting with discernment. The prosecution only established that the accused had criminal intent when he participated in the mauling of the victim, but ultimately, it did not prove that he acted with discernment. [76] Thus,

The testimonies of the prosecution witnesses, on the other hand, established only *CICL XXX*'s supposed

participation in the mauling of Redoquerio. To reiterate, these pieces of evidence only establish CICL XXX's intent, instead of his having acted with discernment. Furthermore, even if he was a co-conspirator, he would still be exempt from criminal liability as the prosecution failed to rebut the presumption of non-discernment on his part by virtue of his age.

It is well to emphasize that:

[f]or 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."

Again, there are no such pieces of evidence in the case at bar. As the presumption that CICL XXX acted without discernment was not successfully controverted, he must perforce be acquitted of the charge.[77] (Citations omitted)

Similar to these cases, petitioner must be acquitted for failure of the prosecution to prove, as a separate element, that he acted with discernment.

In this case, petitioner was 17 years old at the time he committed the crime in 2003.[78] The initial Information filed against him confirms his minority. However, Republic Act No. 9344, enacted in 2006, was yet to be passed at the time he committed the crime.

This notwithstanding, the retroactive application of the law must benefit him. Under Article 22 of the Revised Penal Code, penal laws which are favorable to the accused have retroactive effect if he or she is not a habitual criminal.[79]

Moreover, this specific instance was addressed by Resolution No. 03-2006 dated July 11, 2006 of the Juvenile Justice and Welfare Council which established the guidelines in implementing the transitory provisions of Republic Act No. 9344. It specifically made mention that the guidelines shall apply to children above 15 but below 18 years old at the time of the commission of the alleged offense, with pending cases but who were released on bail or on recognizance or under detention, and instructs that trial may proceed for the prosecution to prove discernment.

Notably, the law's application depends on the age of the child at the time he or she committed the offense, immaterial of their age at the time of the promulgation of conviction.[80] In *People v. Lababo*,[81]

Furthermore, the age of the child in conflict with the law at the time of the promulgation of judgment of conviction is immaterial. What matters is that the offender committed the offense when he/she was still of tender age. The promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the Act in order that he/she is given the chance to live a normal life and become a productive member of the community.[82] (Citation omitted)

Thus, applying the law, petitioner is presumed to have acted without discernment and the burden to controvert this lies with the prosecution.

To overturn the presumption, the prosecution should have shown that petitioner understood the significance of his act; meaning that he knew what he was doing was wrong. There must be evidence demonstrating discernment

such as "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." [83] The guidelines set by the ponencia elaborates on how to determine discernment in cases involving children in conflict with the law. [84]

Yet, the ponencia regrettably failed to apply the very same guidelines it set out in this case. In sustaining petitioner's conviction, the majority concluded that the acts of the petitioner demonstrate that he understood the import of his actions. [85] I disagree.

The prosecution miserably failed to discharge its burden. There is lack of proof that petitioner acted with discernment. This is bolstered by the fact that the trial court's Decision is bereft of any discussion, and therefore devoid of any determination, on the separate element of discernment. Worse, the trial court never even took into consideration the age of petitioner in determining his guilt. Hence, it did not apply the presumption which should have favored the accused.

The Court of Appeals, in affirming petitioner's conviction, merely concluded that he acted with discernment when he and his companion went to the victim's house and mauled him. [86]

While the act of mauling the victim indicates petitioner's intent to cause harm, it does not necessarily prove that he understood the consequences of his acts. Petitioner may have intended to injure the victim when he struck him in the face but there were neither allegations nor proof that he understood the wrongfulness of his act.

I also fail to see how the perpetration of the attack at 3:00 a.m. with a companion, which happened a day after the victim allegedly testified against petitioner before the punong barangay, correlates to petitioner's mental capacity to understand the difference between right and wrong. [87] At most, this can only show his mental desire to commit an offense. To reiterate, intent and discernment are different.

Too, petitioner's act of quitting school and returning to his home in xxxxxxxx cannot be taken to mean that he was aware that what he did was wrong. In fact, the quoted testimony of petitioner in the ponencia would reveal that he dropped out of school not because of his independent assessment of the gravity of the situation but because somebody threatened him and he got scared. [88]

Finally, the ponencia points out that petitioner was a second-year nursing student at the time of the incident, showing his level of education; ergo his capacity to discern. [89] However, I find this sweeping conclusion haphazardly biased and unjust.

Petitioner's level of education at the time of the commission of the crime, standing alone, fails to consider a crucial factor—the underlying social and economic realities that petitioner was exposed to—which shaped his ability to understand the moral and psychological components of criminal responsibility and the consequences of wrongful acts. His idea and understanding of what is good from bad, what is acceptable from unacceptable, what is right from wrong, is greatly affected by several factors; the environment he grew up in, the influence of his parents and peers, to name a few, all of which happened in his formative years.

I submit that in determining discernment for a child in conflict with the law, a wholistic approach should be had. The determination of discernment should "consider the totality of facts and circumstances in each case." [90] This however should not be interpreted as a means to limiting the courts into looking only at the four corners surrounding the commission of the crime, whether it is immediately before, during, after, or even post-commission during trial.

Equally important are the facts and circumstances pre-commission of the crime, especially the environment in

which the child's maturity was developed, to correctly determine if indeed the child committed the crime with discernment. To my mind, this would best serve the State's policy in protecting the best interests of the child and in promoting restorative justice for all children in conflict with the law.

As in this case, there was no direct and circumstantial evidence that petitioner acted with discernment. For lack of proof, he is exempted from criminal responsibility and his acquittal is in order. Nevertheless, petitioner is not excused from the civil liability arising from the act, which must be directed to his parents subject to the latter's defense.

ACCORDINGLY, I vote to GRANT the Petition for Review on Certiorari and ACQUIT petitioner XXX of the crime of homicide under Article 249 of the Revised Penal Code.

[*] In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act 10630, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

[1] Rollo, pp. 7–25.

[2] CA Decision, pp. 1–16. The November 29, 2017 Decision was penned by Justice Franchito N. Diamante and concurred in by Associate Justice Magdangal M. De Leon and Associate Justice Zenaida T. Galapate-Laguilles of the Court of Appeals, Former Fifth Division, Manila. The CA Decision is not attached to the rollo.

[3] Rollo, pp. 53-54. The March 19, 2018 Resolution was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justice Magdangal M. De Leon and Associate Justice Zenaida T. Galapate-Laguilles of the Court of Appeals, Former Fifth Division, Manila.

[4] Id. at 7-8.

[5] Id. at 28.

[6] Id. at 29.

[7] Id. at 37.

[8] Ponencia, pp. 4–5.

[9] Id. at 6.

[10] CA Decision, p. 9.

[11] Id. at 11.

[12] Id. at 14–15.

[13] Id. at 13–15.

[14] Rollo, pp. 53–54.

[15] Ponencia, p. 16.

[16] Republic Act No. 9344 (2006), sec. 1.

[17] *Dorado v. People*, 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].

[18] Id. at 248.

[19] The Philippines became a signatory to the United Nations Convention on the Rights of the Child on January 26, 1990. It was ratified on August 21, 1990.

[20] Convention on the Rights of the Child, art. 40, November 20, 1989, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (last accessed September 19, 2023).

[21] GERALDINE VAN BUEREN, ARTICLE 40: CHILD CRIMINAL JUSTICE 26 (1st ed., 2006).

[22] Id.

[23] DON CIPRIANI, CHILDREN'S RIGHTS AND THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY 42 (1st ed., 2009).

[24] Standard Minimum Rules for the Administration of Juvenile Justice, rule 4.1., November 29, 1985, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard--minimum-rules-administration-juvenile> (last accessed September 19, 2023).

[25] Id.

[26] Id.

[27] Republic Act No. 9344 (2006), sec. 6.

[28] Republic Act No. 9344 (2006), sec. 6.

[29] ELIZABETH SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 44 (1st ed., 2008).

[30] Id.

[31] Mariam Arain, et al., Maturation of the adolescent brain, 9 NEUROPSYCHIATRIC DISEASE AND TREATMENT JOURNAL, 449, 453 (2013).

[32] Id.

[33] ELIZABETH SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 44-45 (1st ed., 2008).

[34] Id. at 45.

[35] STEPHEN AND KOSSLYN & ROBIN S. ROSENBERG, INTRODUCING PSYCHOLOGY: BRAIN, PERSON, GROUP 57 (4th ed., 2014).

[36] Id.

[37] ELIZABETH SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 45 (1st ed., 2008).

[38] Id.

[39] Id.

[40] Id.

[41] Mariam Arain, et al., Maturation of the adolescent brain, 9 NEUROPSYCHIATRIC DISEASE AND

TREATMENT JOURNAL 454 (2013).

[42] Id. at 452.

[43] Id. at 453.

[44] Id.

[45] Id.

[46] Id.

[47] Id. at 454.

[48] STEPHEN M. KOSSLYN & ROBIN S. ROSENBERG, INTRODUCING PSYCHOLOGY: BRAIN, PERSON, GROUP 74, 270 (4th ed., 2014).

[49] Mariam Arain, et al., Maturation of the adolescent brain, 9 NEUROPSYCHIATRIC DISEASE AND TREATMENT JOURNAL 453 (2013).

[50] Id.

[51] ELIZABETH SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 132 (1st ed., 2008).

[52] WALTER SINNOTT-ARMSTRONG, THE NEUROSCIENCE OF MORALITY: EMOTION, BRAIN DISORDERS, AND DEVELOPMENT 335–336 (1st ed., 2008).

[53] Id.

[54] 288 Phil. 780 (1992) [Per J. Regalado, En Banc].

[55] Id. at 793–794.

[56] ELIZABETH SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 38-40 (1st ed., 2008).

[57] Id. at 41–42.

[58] Jose v. People, 489 Phil. 106, 113 (2005) [Per J. Callejo, Sr., Second Division].

[59] People v. ZZZ, 857 Phil. 629, 647 (2019) [Per J. Leonen, Third Division].

[60] 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].

[61] Id. at 250.

[62] 251 Phil. 427 (1989) [Per J. Paras, Second Division].

[63] Id. at 432–434.

[64] People v. Dungo, 276 Phil. 955, 962 (1991) [Per J. Paras, Second Division].

[65] Id.

[66] Dorado v. People, 796 Phil. 233, 246 (2016) [Per J. Mendoza, Second Division].

[67] Id. at 249.

[68] Ponencia, pp. 12–13.

[69] *Jose v. People*, 489 Phil. 106 (2005) [Per J. Callejo, Sr., Second Division].

[70] *Id.* at 113.

[71] Ponencia, p. 14.

[72] *Dorado v. People*, 796 Phil. 233, 245 (2016) [Per J. Mendoza, Second Division].

[73] *Id.* at 248–253.

[74] G.R. No. 237334, August 14, 2019 [Per J. Caguioa, Second Division].

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] Ponencia, p. 2.

[79] REV. PEN. CODE, art. 22 provides:

Article 22. Retroactive Effect of Penal Laws. — Penal laws shall have a retroactive effect in so far 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.

Guidelines to Implement the Transitory Provisions of R.A. No. 9344 (Juvenile Justice and Welfare Act of 2006), JJWC Resolution No. 03-06, (July 11, 2006).

[80] *People v. Lababo*, 832 Phil. 1056, 1076 (2018) [Per J. Velasco, Jr., Third Division].

[81] *Id.* at 1056.

[82] *Id.* at 1076.

[83] *Jose v. People*, 489 Phil. 106, 113 (2005) [Per J. Callejo, Sr., Second Division].

[84] Ponencia, p. 23.

[85] *Id.* at 16.

[86] *Id.* at 6.

[87] *Id.* at 17.

[88] *Id.* at 17–18.

[89] *Id.* at 18.

[90] *Id.* at 23.

G.R. No. 238798 —CICL XXX,[1] petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.

DISSENTING OPINION

CAGUIOA, J.:

The ponencia denies the present Petition for Review on Certiorari, filed by petitioner CICL XXX to assail the Decision of the Court of Appeals (CA), which affirmed his conviction for the crime of Homicide.

In light of CICL XXX's minority at the time of the commission of the crime in 2003, the core question is whether he committed the crime of Homicide with discernment. The ponencia lays down the guidelines to be established by jurisprudence in determining the existence of discernment.[2] Following these guidelines, the ponencia holds that the prosecution was able to discharge the burden of proving beyond reasonable doubt that CICL XXX acted with discernment when he mauled the victim, AAA[3], which eventually resulted in the latter's death.[4] According to the ponencia, the facts and circumstances of the case, particularly the gruesome nature of the attack, the chosen time and place, and the attempt to silence the victim who previously acted as a witness against him all indicate that CICL XXX acted with discernment.

I disagree in part. Because CICL XXX was a 17-year-old at the time of the commission of the crime in 2003, he should be acquitted since the prosecution failed to establish, as a separate element of the offense, that he acted with discernment.

Particularly, the law categorically states that "[a] child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability x x x unless he/she has acted with discernment." [5] Thus, as a rule, minors within this age range are presumed to have acted without discernment in the absence of proof to the contrary. The burden of putting forth such proof, therefore, lies with the prosecution, in line with its duty in criminal litigations to establish the guilt of the accused beyond reasonable doubt.

Even as I agree with the ponencia's guidelines in determining the presence of discernment, I write this Opinion because, in my view, discernment as an element of the offense was not established in this case.

Prior to the enactment of Republic Act (R.A.) No. 9344,[6] or the Juvenile Justice and Welfare Act of 2006, Article 12 of the Revised Penal Code (RPC) already considered minority as an exemption from criminal liability. While the minimum age of criminal responsibility at that time was nine years, those above nine but below 15 years of age, who acted without discernment, were likewise considered exempt. Article 12 of the RPC reads:

ARTICLE 12. Circumstances Which Exempt from Criminal Liability. — The following are exempt from criminal liability:

1.

An imbecile or an insane person, unless the latter has acted during a lucid interval.

When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his [or her] confinement in one of the hospitals or asylums established for persons thus afflicted, which he [or she] shall not be permitted to leave without first obtaining the permission of the same court.

2.

A person under nine years of age.

3.

A person over nine years of age and under fifteen, unless he [or she] has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of article 80 of this Code.

When such minor is adjudged to be criminally irresponsible, the court, in conformity with the provisions of this and the preceding paragraph, shall commit him [or her] to the care and custody of his [or her] family who shall be charged with his [or her] surveillance and education; otherwise, he [or she] shall be committed to the care of some institution or person mentioned in said article 80.

4.

Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

5.

Any person who acts under the compulsion of an irresistible force.

6.

Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

7.

Any person who fails to perform an act required by law, when prevented by some lawful or insuperable cause.
(Emphasis and underscoring supplied)

Discernibly, what R.A. No. 9344 did was only to adjust the minimum age of criminal responsibility, in line with the international standards on juvenile justice.[7] In this regard, the Court has well-settled principles in the determination of whether a minor acted with discernment in the commission of the crime, the foremost of which is that intent and discernment are distinct concepts, and it may therefore not be argued that one is equivalent to the other.

To fully appreciate the distinction between these concepts, a reference to the essential elements of a crime is necessary.

Intent, freedom of action, and intelligence are the essential elements of a crime, especially when committed by *dolo*. The absence of any of these elements constitutes any of the exempting circumstances as embodied in the above-quoted Article 12 of the RPC. It is in this light that a minor offender who acted without discernment is exempted from criminal liability — as the element of intelligence and freedom of action are lacking, to wit:

Article 12, paragraph 3 of the Revised Penal Code provides that a person over nine years of age and under fifteen is exempt from criminal liability, unless he [or she] acted with discernment. 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. 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 [or she] was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness.[8] (Emphasis, italics, and underscoring supplied)

This is best shown by examples wherein the law conclusively presumes that the offender acted without intelligence and freedom of action — cases involving minors below 15 years old. A 12-year-old boy may thus intentionally hurt his classmate using the scalpel in their school's laboratory, but the law nevertheless conclusively presumes that he lacks the mental faculties to have the mens rea required by law for the act to be punishable. For another, a 10-year-old girl may thus intentionally seize the cellphone of her seatmate — which, if committed by an adult already constitutes "taking" — but the law nonetheless conclusively presumes that she does not have the guilty mind necessary to be charged with theft.

These examples are related, if not similar, to cases of insane persons. Insane persons may have the intent to do certain acts, but the law exempts them from criminal responsibility given a defect in the mens rea which would have justified the criminal punishment.

Thus, while intent and discernment both refer to the mental state of the accused, they are not the same and the presence of one certainly does not necessarily connote the other. Thus, in the 2019 case of CICL XXX v. People of the Philippines,[9] it was ruled that the lower courts erred in convicting the child in conflict with the law when "they both equated 'intent to kill' — which was admittedly established through the evidence presented by the prosecution — with acting with discernment." [10]

Intent, in particular, refers to "a determination to do a certain thing," [11] while discernment pertains to "the capacity to know what is wrong as distinguished from what is right or to determine the morality of human acts; wrong in the sense in which the term is used in moral wrong." [12] Verily, while a minor offender may deliberately — or with intent — point and shoot a gun at another person, which eventually results in the victim's death, it does not necessarily follow that such minor offender possesses the discernment to fully understand that killing the victim is morally wrong. [13]

Following the foregoing discussions, the law thus creates a disputable presumption in favor of those 15 years old to below 18 years, i.e., that they did not act with a guilty mind. In other words, although their acts may satisfy the actus reus component of felonies, the law assumes that the mens rea component was not satisfied unless and until the prosecution is able to show proof beyond reasonable doubt to overturn said presumption.

For the ponencia, this disputable presumption was overturned by: (1) the gruesome nature of the act complained of, (2) the manner by which it was executed, (3) the fact that the attack can be considered a form of retaliation for the victim having testified against CICL XXX in a different case, (4) CICL XXX's level of education, and (5) the fact that CICL XXX quit school when the instant case was filed against him.

I disagree.

In particular, I disagree that the first two circumstances considered by the ponencia are indicative of CICL XXX's discernment. These circumstances demonstrate CICL XXX's intent — his "determination to do a certain thing" [14] — but not that he knew the moral value of this acts. In other words, CICL XXX may have purposely gone to AAA's house and waited for him to arrive, but these only prove the intent of CICL XXX to carry out the assault on AAA. CICL XXX may have inflicted severe injuries on the victim, but this fact is merely tangentially relevant

to the question of whether he knew the act to be morally wrong.

To be sure, CICL XXX did not carry any weapon at the time of the commission of the crime. There is no evidence, as well, as to how he struck AAA, or if he was even aware that he had dealt a fatal blow. It may be self-evident to adults, like the members of the Court, that what he did was wrong. But these do not apply to children in conflict with the law whom the law presumes to have acted without discernment.

Moreover, even if it were true that CICL XXX's attack on the victim was done in retaliation, it does not necessarily mean that such shows discernment. That the act was done in retaliation shows CICL XXX's reason for doing the act, but it does not address the question of whether he fully understood the moral value of his acts. The reason for the attack shows, therefore, CICL XXX's motive but not the presence of discernment.

I also take exception to the ponencia's ruling that CICL XXX's act of quitting school shows that he knew what he did was wrong. According to the ponencia itself, CICL XXX dropped out of school because he was scared after he received a warning that he should watch his back.[15] Despite this recognition that CICL XXX quit because he feared for his own life, the ponencia still makes the conclusion that "to suddenly quit school and flee to his home shows that CICL XXX had full knowledge of the gravity and consequences of his act." [16]

I would agree with the ponencia had CICL XXX stated that he ran away because, for example, he knew that what he did something wrong, or that he was afraid of the law, or of justice taking its course, or that he was bothered by his conscience. Flight, in the context of these reasons, indeed evinces an understanding of the moral consequences of his actions. However, it was clear from CICL XXX's testimony, as recognized by the ponencia, that the reason for CICL XXX's flight was fear of retaliation — a sense of danger — which had nothing to do with his conscience or his ability to distinguish moral right from wrong.

Therefore, while I agree with the ponencia to the extent that the circumstances of a case could be used to determine discernment, I disagree that the circumstances, as they are appreciable in the instant case, show beyond reasonable doubt that indeed CICL XXX acted with discernment.

At this juncture, it is well to recognize that at the time the felonious act was committed in this case in 2003, the disputable presumption was granted only by the RPC and the Child and Youth Welfare Code[17] (PD 603) to those over nine years of age but below 15. In the middle of the trial, however, or in 2006, R.A. No. 9344 was enacted which merely adjusted the ages set by the RPC and PD 603. The minimum age of criminal responsibility was raised from nine to 15, while the age of minors who can incur criminal liability upon a showing of discernment was adjusted from "9 to below 15" to "15 to below 18."

Stated simply, the requirement to prove discernment was already present as provided by both the RPC and PD 603 even before R.A. No. 9344 was enacted. Again, all that R.A. No. 9344 did was to merely adjust its application to children-in-conflict-with-the-law aged "15 to below 18" which, in turn, caused CICL XXX to be covered. Moreover, the trial of this case lasted for years under the regime of R.A. No. 9344 until Branch 9, Regional Trial Court of La Trinidad, Benguet (RTC) rendered its Judgment in 2014.

It cannot be said, therefore, that the prosecution may be excused from proving discernment, or that it was understandable for the RTC to not have discussed its presence or absence, as adverted to by some of the members of the Court during the deliberations of this case. To reiterate, R.A. No. 9344 (1) did not introduce a novel concept — proving discernment as a separate fact — to our criminal laws, and (2) had been in effect for a total of eight years already prior to the promulgation of the RTC Judgment. The Court has thus no valid reason to overlook either the prosecution or the RTC's shortcomings.

It is equally important to be clear that the issue here is not the sufficiency of the Information filed against CICL

XXX. It is true that when the prosecution filed an amended Information in 2008 due to the victim's death, that was an opportune time to also specifically allege that CICL XXX acted with discernment as, by that time, it was already a separate element of the offense given R.A. No. 9344's enactment in 2006. That said, it must nevertheless be clarified that I am not for CICL XXX's acquittal because of any insufficiency in the Information — as this is arguably waivable if not timely assailed. Rather, CICL XXX's acquittal must be anchored on the prosecution's failure to prove the presence of discernment. In other words, CICL XXX should be acquitted not because of any defect in the Information, but because of reasonable doubt following the prosecution's failure to prove an element to establish his criminal liability.

In this connection, it must be emphasized that the minimum age of criminal responsibility is imposed in order to protect the best interests of the child. In affixing the age, Congress assessed the emotional, mental, and intellectual maturity of minors, following the United Nations Standard Minimum Rules for the Administration of Juvenile Justice[18] (Beijing Rules). And, while the statutory limits on the age of the offender dictate when an accused is deemed absolutely exempt from criminal liability, and when the courts should determine discernment, the age of the offender is not a parameter for assessing his or her maturity.[19]

In other words, the presumption that minor offenders do not have discernment is borne out of the recognition that their faculties have not developed enough to fathom the moral significance of committing a crime.[20] This is consistent with the current system of laws that does not even entrust minors to have the discernment to vote or enter into a lifelong commitment like marriage. Even contracts, when entered into by a minor, have a voidable status. If the law does not expect maturity of minors in matters involving civil and political matters, it is then understandable that it would similarly create a presumption of lack of discernment for acts that may incarcerate them for the rest of their lives. Despite this, the law still institutes a balancing act between the interests of child offenders, on the one hand, and the interests of the State, on the other, to punish errant behavior and keep society safe. Thus, to reiterate, this presumption in favor of minors between 15 to below 18 is rebuttable and may be overcome by proof beyond reasonable doubt of discernment. It is just that such rebuttal was unsuccessful in this case.

In my view, without any further evidence from the prosecution, or even probing questions concerning discernment directed at CICL XXX, the Court cannot speculate as to his capacity to perceive that the consequences of his actions are morally wrong. Again, it bears reiterating that the intelligence ascribed to adults cannot fairly be applied to minors. While the immorality of CICL XXX's acts may be self-evident from the point of view of adults, such immorality cannot automatically be assumed to appear the same for the child--in-conflict-with-the-law.

In this connection, it has been pointed out that while the prosecution and the RTC did not ask probing questions to establish discernment, the CA nevertheless determined in its Decision that CICL XXX acted with discernment. In fact, the ponencia uses this determination by the CA to bridge the gap in the evidence to convict CICL XXX.

I believe this to be egregious error.

First of all, it is worth reiterating that the burden to prove discernment — much like all the elements of a crime alleged to have been committed — lies with the prosecution, not the courts. As the impartial arbiters between the State and the individual, between the interests of the People and the presumption of innocence, the courts cannot, and should not, supply the gaps in the prosecution's evidence to reach proof beyond reasonable doubt. Courts are part of the third branch of the government, not its second prosecutorial arm.

Second, I respectfully submit that the CA cannot determine the presence of discernment when the prosecution did not ask probing questions and the RTC did not even discuss the same. The CA merely relied on the records of the

case on appeal; it based its determinations on mere transcripts of stenographic notes, on testimonies which were already devoid of non-verbal cues. While intent may be deduced based on the records of case, I cannot fathom how the presence of discernment can be determined in the absence of: (1) the probing questions, as discussed, and (2) "evidence of physical appearance, attitude or deportment not only before and during the commission of the act, but also after and during the trial." [21]

To reiterate, none of these were discussed by the RTC, and the CA was also not in a position to personally determine the same as CICL XXX never testified in person before it. How could the CA, therefore, have determined the presence of discernment?

To be sure, the burden of the prosecution to establish the presence of discernment is a tall task, but one that is far from impossible, given the variety of methods that it may resort to capture an immediate and accurate assessment of whether the minor acted with discernment in the commission of the offense. For one, the rules and procedures in place provide for the mandatory initial assessment of a social worker with respect to discernment, which, in accordance with R.A. No. 9344, as amended, and later fleshed out by the 2019 Supreme Court Revised Rule on Children in Conflict with the Law, must be undertaken immediately after apprehension, and must be contained in the requisite case report. [22] This preliminary assessment enables the minor to be evaluated by a trained social worker who, at the earliest opportunity following the offense, may pointedly gauge and examine for either the presence or absence of discernment, as the case may be.

Another layer to this assessment is the law enforcement's own evaluation of the social worker's report, which is used to decide whether the child should go through intervention, diversion, or preliminary investigation. These clear requirements inform the prosecution with the circumstances attending the offense which may be pertinent to the determination of discernment. Thus, by the time the criminal case is initiated, the social worker and law enforcement had already laid the groundwork for proving that the child acted with discernment.

Despite this, the ponencia excuses both the prosecution and the RTC for not availing itself of any of these methods on the reasoning that R.A. No. 9344 became effective three years after the Information in this case had been filed. It is worth reiterating, however, that the prosecution and the RTC had eight more years from the time of the law's effectivity until the promulgation of the RTC's Judgment. The State had ample time to establish that CICL XXX acted with discernment. It had more than ample time to establish an element of his criminal liability, and to simply excuse the same would be to disregard a clear substantive right of an accused.

It must be noted here that failure of the prosecution to prove the presence of discernment cannot translate to the virtual impossibility of discharging said burden. Not only does R.A. No. 9344, as amended, and its related rules and regulations provide for the standards for determining discernment, but jurisprudence is replete with cases on how courts should ultimately arrive at this conclusion. Again, establishing discernment is not a novel concept introduced by R.A. No. 9344 — there are decided cases already regarding it under the regime of the RPC.

To end, I wish to be clear that I am for CICL XXX's acquittal not because I have determined that he did not act with discernment. Such determination I need not do, as the law already presumes the same. The point to emphasize is that the Court is not in the position to make such a finding, as the prosecution and the RTC's failures created a void in the evidence which this Court cannot and must not fill. Verily, as the Court cannot say with certainty that CICL XXX acted with discernment, there is thus reasonable doubt as to his criminal liability, and his acquittal is in order.

In view of the foregoing, I vote to GRANT the Petition. The petitioner CICL XXX should be ACQUITTED from the charge of Homicide.

[1] Real identity of the Child in Conflict with the Law (CICL) is withheld in accordance with Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006, as amended, and A.M. No. 02-1-18-SC, or the Revised Rule on Children in Conflict with the Law.

[2] Ponencia, p. 23.

[3] The name of the minor victim is withheld pursuant to Supreme Court Administrative Circular No. 83-2015, re: PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES, dated September 5, 2017.

[4] Ponencia, pp. 16-18.

[5] Republic Act No. 9344, Sec. 6.

[6] Dated April 28, 2006.

[7] Id. at Sec. 2(d).

[8] Llave v. People, 522 Phil. 340, 366-367 (2006).

[9] 859 Phil. 912 (2019).

[10] Id. at 926.

[11] Guevarra v. Almodovar, 251 Phil. 427, 432 (1989).

[12] Jose v. People, 489 Phil. 106, 113 (2005).

[13] See Dorado v. People, 796 Phil. 233 (2016).

[14] Id. at 252.

[15] See ponencia, pp. 17-18.

[16] Id. at 18.

[17] ARTICLE 189. Youthful Offender. Defined. — A youthful offender is one who is over nine years but under twenty-one years of age at the time of the commission of the offense.

A child nine years of age or under at the time of the offense shall be exempt from criminal liability and shall be committed to the care of his or her father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and under fifteen years of age at the time of the commission of the offense, unless he [or she] acted with discernment, in which case he [or she] shall be proceeded against in accordance with Article 192.

[18] See Sedfrey M. Candelaria, ACA Nimfa Cuesta-Vilches, and Rita Marie L. Mesina, The Juvenile Justice and Welfare Act of 2006: Changing Patterns and Responses for Juvenile Offending, ATENEO LAW JOURNAL (Vol. 52) (2007), p. 293.

[19] A/RES/40/33 (November 29, 1985). In the article of Klarise Anne C. Estorninos, Batang Bata Ka Pa: An Analysis of the Philippine Minimum Age of Criminal Responsibility in Light of International Standards, ATENEO LAW JOURNAL (Vol. 62) (2017), p. 268, she observes that:

B. It should be based on the emotional, mental, and intellectual maturity of the child

The requirement that the [minimum age of criminal responsibility (MACR)] should be based on the emotional, mental, and intellectual maturity was set by the Beijing Rules even before the [Convention on the Rights of the Child] came to be. These criteria show the importance of considering the psychological and socio-anthropological component of the juvenile justice system aside from the legal component. Many studies have shown that the part of the brain that is responsible for planning and impulse control, among others, is not fully developed until one is in their 20s. Hence, there is a need for a more lenient approach toward children who commit crimes.

The Philippine MACR was set at 15 because of certain studies. One study by the Pamantasan ng Lungsod ng Maynila (which studied the age of discernment of Filipino children in school) set the age at 15. Another study done by the Philippine Action for Youth Offenders, which studied the age of Filipino children out of school (a common status of youth in the Philippines), set the MACR at 18. As a compromise, Philippine legislators settled for 15 after studying the ages that different countries set. (Emphasis supplied)

[20] N.B. The Supreme Court of the United States held in *Roper v. Simmons*, 543 U.S. 551 (2005) that minors under 18 years of age and adults cannot be classified together for the following reasons: (1) "lack of maturity and an undeveloped sense of responsibility are found in youth more often than in adults" (p. 569); (2) "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure" (p. 569); and (3) "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed" (p. 570).

[21] *Llave v. People*, supra note 8, at 367.

[22] See also DSWD Administrative Order No. 10, s. 2007 titled "GUIDELINES FOR SOCIAL WORKERS IN THE HANDLING AND TREATMENT OF CHILDREN IN CONFLICT WITH THE LAW," which enumerates the steps to be undertaken by a social worker immediately after being notified by law enforcement of the apprehension of a CICL.

G.R. No. 238798 – XXX,[1] Petitioner v. PEOPLE OF THE PHILIPPINES, Respondent.

CONCURRING AND DISSENTING OPINION

HERNANDO, J:

The present case involves petitioner XXX, who was charged with the crime of homicide, in an Amended Information which reads:

That on or about the 28[th] day of October, 2003 at xxxxxxxxxxxxxxxxxxxxxxxxx,[2] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and feloniously, and with intent to kill, attack one AUGUSTINE OKKO, JR. y TAFALENG, by hitting his left eye, ear and head with a blunt instrument, thereby inflicting fatal injuries on AUGUSTINE OKKO, JR. y TAFALENG which caused his death thereafter.

That the accused is a minor being seventeen (17) years of age at the time of the commission of the crime.

CONTRARY TO LAW.[3]

In 2006, during the pendency of the case, Republic Act No. 9344,[4] or the Juvenile Justice and Welfare Act, was passed. Republic Act No. 9344 raised the minimum age of criminal responsibility to above fifteen (15) years old and exempted from criminal liability offenders under eighteen (18) years old who acted without discernment.

In 2014, the Regional Trial Court (RTC) rendered judgment convicting XXX. In 2017, the Court of Appeals (CA) affirmed the conviction but modified the penalty, taking into account the minority of XXX during the commission of the crime.

On appeal before this Court, the ponencia reverses the CA and the RTC decisions and acquits XXX due to the prosecution's failure to prove that XXX acted with discernment, a circumstance that cannot be presumed. As to the civil aspect of the case, the ponencia holds that the case must be remanded to the trial court for the proper determination of the liability, if any, of XXX's guardian.

Respectfully, I disagree with the ponencia.

A. As to the criminal aspect

As pointed out by Our esteemed colleagues, discernment is simply the mental capacity to differentiate right from wrong, and that while it cannot be presumed,[5] may nonetheless be inferred from "all the facts and circumstances accorded by the records in each case, the very appearance, the very attitude, the very comportment and behavior of the minor, not only before and during the commission of the act, but also after and even during the trial." [6]

I submit that XXX acted with discernment. Based on the findings of the trial and appellate courts, the attack happened at 3:00 a.m., when most people are usually asleep, therefore avoiding possible witnesses. One of the victim's eyes "appeared to be popping out;"[7] he became "blind on one eye, with several abrasions on the head, face, and shoulders,"[8] and "had several bluish discolorations on his forehead and both eyes." [9] The victim suffered "massive cerebral contusions and bleeding on spaces in the brain which may have been caused by any force or object hard enough to cause damage to the brain." [10] The attack was so vicious that the victim suffered massive injuries which caused his death. From these findings, it is not too hard to see that XXX, who was 17 years old at the time, intended the consequences of his acts, and knew that it was wrong.

Indeed, discernment cannot be presumed and the prosecution bears the burden to prove this element. However, while discernment cannot be presumed, it may nonetheless be inferred from the prevailing circumstances. It must be emphasized that the finding that XXX is guilty of the crime was never erected on the presumption that he probably acted with discernment. On the contrary, the Court merely acknowledged and recognized what has always been there based on empirical and factual findings of the trial court. In other words, the circumstances and conditions necessary to infer discernment, as opposed to merely presuming, have been sufficiently established by the prosecution, which may then be rightly used as basis in convicting XXX of the crime he consciously committed. This conclusion is further bolstered by the time-honored doctrine that findings of fact made by a trial court and their assessment of credibility of witnesses are accorded the highest degree of respect, more so if affirmed by the appellate court, due to their unique position of having observed that elusive, incommunicable evidence of the witnesses' deportment on the stand while testifying.

B. As to the civil aspect

With regard to this point, the ponencia holds that the case be remanded to the trial court, and to implead XXX's guardian, for the proper determination of civil liability, if any. This is based on Article 101 of the Revised Penal Code vis-à-vis Art. 2180 of the Civil Code, which hold liable persons, under whose legal authority or control over minors who incurred obligations and acted without discernment, fall.

I agree with the ponencia. Nonetheless, I wish to offer a broader view on the matter.

The ponencia referred to the landmark case of *Libi v. Intermediate Appellate Court*, [11] promulgated in 1992, which holds:

Under the foregoing considerations, therefore, we hereby rule that the parents are and should be held primarily liable for the civil liability arising from criminal offenses committed by their minor children under their legal authority or control, or who live in their company, unless it is proven that the former acted with the diligence of a good father of a family to prevent such damages. That primary liability is premised on the provisions of Article 101 of the Revised Penal Code with respect to damages ex delicto caused by their children 9 years of age or under, or over 9 but under 15 years of age who acted without discernment; and, with regard to their children over 9 but under 15 years of age who acted with discernment, or 15 years or over but under 21 years of age, such primary liability shall be imposed pursuant to Article 2180 of the Civil Code.[12] (Emphasis supplied)

Three years prior, or in 1989, Republic Act No. 6809[13] was passed, which amended Arts. 234 and 236 of the Family Code, lowering the age of majority from 21 to 18 years. Curiously, despite having been promulgated after the passage of the law, Libi retained the rule on direct and primary liability of parents even for persons aged over 18 but under 21. As stated in the footnote, this discrepancy is due to Sec. 3 of Republic Act No. 6809, which provides:

Section 3. Article 236 of the same Code is also hereby amended to read as follows:

....

"Nothing in this Code shall be construed to derogate from the duty or responsibility of parents and guardians for children and wards below twenty-one years of age mentioned in the second and third paragraphs of Article 2180 of the Civil Code."

Meanwhile, the second and third paragraphs of Art. 2180 of the Civil Code provide:

Article 2180.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

There is therefore an inconsistency on two levels: first, despite Republic Act No. 6809 having reduced the age of majority to 18 years and fully emancipating children who reach such age, Art. 236, as amended, still ascribes liability to parents and guardians for the damages caused by persons over 18 years old but below 21. Second, Art. 2180 speaks only of "minor children," and yet was still used by Libi as basis for the vicarious liability of parents and guardians arising from damages caused by persons over 18 but below 21, who are admittedly no longer minors, but fully emancipated adults qualified and responsible for all acts of civil life, in view of Republic Act No. 6809.

I submit that Republic Act No. 6809 is all-encompassing, in that in lowering the age of majority to 18, it releases a person from parental authority, qualifies, and makes him responsible for all acts of civil life. As a necessary effect therefore, it is my considered view that despite its clear wording, the third paragraph of Sec. 3 of Republic Act No. 6809 should be understood to cover only children below 18 years. This interpretation is in line with Art. 2180 of the Civil Code which, again, speaks only of "minor children." Ultimately, the declaration in Libi should be revisited, and the ponencia's reference thereto.

In the present case, while XXX is 17 years old at the time the crime was committed, it is my humble recommendation that a discussion on this matter be included for the harmonization and proper interpretation of these provisions.

[1] In line with the Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 9344, the complete name of the accused shall be replaced with fictitious initials and his or her personal circumstances, except for the fact of minority, shall be blotted out from the decision, resolution or order.

[2] Geographical location is blotted out pursuant to Supreme Court Amended Administrative Circular No. 83-2015.

[3] Ponencia, pp. 2–3.

[4] Republic Act No. 9344 (2006), Juvenile Justice and Welfare Act of 2006.

[5] *Dorado v. People*, 796 Phil. 233, 251 (2016) [Per J. Mendoza, Second Division].

[6] *Id.* at 250.

[7] Ponencia, p. 3.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 3–4.

[11] 288 Phil. 780 (1992) [Per J. Regalado, En Banc].

[12] *Id.* at 797–798.

[13] Republic Act No. 6809 (1989), An Act Lowering The Age of Majority From Twenty-One To Eighteen Years, Amending For The Purpose Executive Order Numbered Two Hundred Nine, And For Other Purposes.

G.R. No. 238798 - XXX[1] v. PEOPLE OF THE PHILIPPINES

DISSENT

LAZARO-JAVIER, J.:

The Ponencia

The ponencia disposes of the case, in this wise:

WHEREFORE, the Petition is DENIED. The Decision dated 29 November 2017 and the Resolution dated 19 March 2018 of the Court of Appeals in CA-G.R. CR No. 39196 finding XXX GUILTY of the crime of homicide under Article 249 of the Revised Penal Code, are AFFIRMED.

He is sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

He is likewise ordered to pay the heirs of AAA the following: (a) Php504,145.01 as actual damages; (b) Php50,000.00 as civil indemnity; and (c) Php50,000.00 as moral damages, with interest on all the damages awarded at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

The case is also remanded to the trial court for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.

It rationalizes, in my words:

First. Under Section 6 of Republic Act No. 9344 (Juvenile Justice and Welfare Act), a child above 15 years but below 18 years of age is exempt from criminal liability, unless the child is found to have acted with discernment, in which case, "the appropriate proceedings" in accordance with the Act shall be observed.

Second. In *Dorado v. People*,^[2] the Court held that when a child in conflict with the law (CICL), above 15 but below 18 years old is charged with a crime, it is rebuttably presumed that the CICL acted without discernment and it is up to the prosecution to prove this separate circumstance beyond a reasonable doubt in order to obtain a conviction.

Third. As held in *Dorado*, discernment is independent of the actus reus and mens rea of homicide and must thus be proved beyond a reasonable doubt separately from these traditional elements of homicide.

Failure to disprove the rebuttable presumption of lack of discernment by proof beyond a reasonable doubt would lead to an acquittal. This is because a CICL is deemed by statute to lack "the mental capacity to understand the difference between right and wrong."

Dorado (and the ponencia by extension) explains that this mental capacity is different from the mens rea element of intent in crimes by dolo. This is because discernment may co-exist with recklessness or negligence in quasi-offenses, e.g., while the CICL did not intend to kill the deceased but was merely reckless, hence, there was no crime by dolo, the CICL is liable for the quasi-offense of recklessness since the CICL recognized that death may result from the reckless act.

I would also opine that discernment is different from the mental concept of voluntariness implicit in the actus reus of a crime by dolo. This is because a CICL may do an act voluntarily (without duress, coercion, or undue influence) but may still lack the recognition that the voluntary act was morally wrong.

Fourth. I infer from the ponencia that lack of proof beyond reasonable doubt of discernment is not a defense that a CICL is duty-bound to establish. Rather, it is up to the prosecution to show positively and beyond a reasonable doubt the presence of this separate circumstance. This is because the statute rebuttably presumes a CICL's lack of discernment. *CICL XXX v. People*^[3] supports this covert ruling in the ponencia.

Fifth. The foregoing statute and case law must be applied retroactively to petitioner since they are favorable to him as an alleged criminal offender.

Sixth. Since records show here that the prosecution failed to overcome its burden to prove beyond a reasonable doubt that petitioner acted with discernment at the time of the commission of the crime, i.e., that petitioner, at the time of the commission of the crime, understood the difference between right and wrong and the consequences of his acts, the Court cannot but acquit him for the crime charged.

Proposed recasting of the principles governing the retroactive application statutes, rule/regulation or case law favorable to criminal offenders

Admittedly, when petitioner committed the crime as a minor in 2003, the law prevailing then was that discernment was not an element to be proven beyond reasonable doubt by the prosecution. This is because, while he was a minor when he perpetrated the criminal act, he was already 17 years old.

The relevant law then was Article 12(3), The Revised Penal Code and Article 189 of Presidential Decree 603, as amended:

ARTICLE 12. Circumstances Which Exempt from Criminal Liability. —

The following are exempt from criminal liability:

3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of article 80 of this Code. When such minor is adjudged to be criminally irresponsible, the court, in conformity with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education; otherwise, he shall be committed to the care of some institution or person mentioned in said article 80.

ARTICLE 189. Youthful Offender. Defined. — A youthful offender is a child, minor or youth, including one who is emancipated in accordance with law who is over nine years but under eighteen years of age at the time of the commission of the offense.

A Child nine years of age or under at the time of the commission of the offense shall be exempt from criminal liability and shall be committed to take care of his or her father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and under fifteen years of age at the time of the commission of the offense, unless he acted with discernment, in which case he shall be proceeded against in accordance with Article 192.

The provisions of Article 80 of the Revised Penal Code are hereby repealed by the provisions of this Chapter. (Emphasis supplied)

But the criminal case against petitioner was overtaken in 2006 by the enactment of Republic Act No. 9344, Juvenile Justice and Welfare Act of 2006, which raised the minimum age of criminal responsibility, and accordingly, imposed the requirement of discernment for the increased ages of above 15 years to below 18 years, thus covering petitioner's age:

SECTION 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 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. (Emphasis supplied)

Unfortunately, neither the prosecution and the defense nor the trial court happened to canvass the retroactive application of this new element for any crime committed by a CICL. Hence, the case record is bereft of any meaningful reference to petitioner's discernment. In the proceedings before the trial court, the prosecution and the defense were oblivious of the enactment of Republic Act No. 9344 and were all working erroneously under the compelling shadow of the former rules.

The ponencia correctly applied the principle of retroactivity of penal laws that are favorable to an accused. This principle was exhaustively discussed in *Inmates of the New Bilibid Prison v. De Lima*[4] but this case law limited the retroactive application to penal laws as defined therein and referred to by Article 22 of The Revised Penal Code:

xxx

But what exactly is a penal law?

A penal provision or statute has been consistently defined by jurisprudence as follows:

A penal provision defines a crime or provides a punishment for one.

Penal laws and laws which, while not penal in nature, have provisions defining offenses and prescribing penalties for their violation.

Properly speaking, a statute is penal when it imposes punishment for an offense committed against the state which, under the Constitution, the Executive has the power to pardon. In common use, however, this sense has been enlarged to include within the term "penal statutes" all statutes which command or prohibit certain acts, and establish penalties for their violation, and even those which, without expressly prohibiting certain acts, impose a penalty upon their commission.

Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment.

The "penal laws" mentioned in Article 22 of the RPC refer to substantive laws, not procedural rules. Moreover, the mere fact that a law contains penal provisions does not make it penal in nature.

In the case at bar, petitioners assert that Article 22 of the RPC applies because R.A. No. 10592 is a penal law. They claim that said law has become an integral part of the RPC as Articles 29, 94, 97, 98 and 99 thereof. Edago, et al., further argue that if an amendment to the RPC that makes the penalties more onerous or prejudicial to the accused cannot be applied retroactively for being an *ex post facto* law, a law that makes the penalties lighter should be considered penal laws in accordance with Article 22 of the RPC.

We concur.

While R.A. No. 10592 does not define a crime/offense or provide/prescribe/establish a penalty as it addresses the rehabilitation component of our correctional system, its provisions have the purpose and effect of diminishing the punishment attached to the crime. The further reduction on the length of the penalty of imprisonment is, in the ultimate analysis, beneficial to the detention and convicted prisoners alike; hence, calls for the application of Article 22 of the RPC.

The prospective application of the beneficial provisions of R.A. No. 10592 actually works to the disadvantage of petitioners and those who are similarly situated. It precludes the decrease in the penalty attached to their respective crimes and lengthens their prison stay; thus, making more onerous the punishment for the crimes they committed. Depriving them of time off to which they are justly entitled as a practical matter results in extending their sentence and increasing their punishment. Evidently, this transgresses the clear mandate of Article 22 of the RPC. (Emphases supplied)

xxx

In addition to Article 22 of The Revised Penal Code, our case law has consistently held that "a penal statute, whether substantive or procedural, shall be given a retroactive effect if favorable to the accused." [5] The only test under Philippine law for the retroactive application of a law is if it is ultimately favorable to an accused.

While I appreciate the simplicity and straight forwardness of the favorable to the accused test, I would like to propose a more exhaustive discussion on a nuanced approach to this principle of retroactivity.

My interest for this nuanced approach is not an idle soliloquy to beat an already dead horse or exhume a matter already vastly autopsied.

For one, I do not think that retroactivity has been canvassed in our jurisprudence with zest and vigor. Rather, our case law has been content applying this principle using only the test of "favorable to an accused" to the exclusion of other concerns or issues. While this test, as I have said, lends itself to a simple and straightforward result, it

unfortunately neglects some factors that society also values. As an American jurist once observed, "[t]hese questions [of retroactivity] are among the most difficult of those which have engaged the attention of [the] courts...."[6] Why retroactivity is a complex legal concept among American jurists, but apparently not in the Philippines, may be traced to three factors that guide American jurisprudence in deciding whether to apply a penal law retroactively or not to do so:

(i)

retroactivity looks to the prior history of the new penal law, its purpose (i.e., whether to enhance substantially the truth-finding function of criminal trials), the effect of its retroactive application on the administration of justice, whether retrospective operation will further or retard the new rule's operation, and reliance by the parties, especially the prosecution, on the old rule;[7]

(ii)

retroactivity has the important practical implication of potentially impacting a number of criminal convictions obtained under the then prevailing rule;[8] and

(iii)

retroactivity could potentially affect the prosecution's right to procedural due process of not having been heard on the new but retroactive rule but in good faith relied upon the then prevailing old rule.

A nuanced approach to the retroactivity principle leads me to believe that this principle has substantive and procedural dimensions important to both the prosecution and an accused. The substantive dimension addresses the first two factors mentioned above, while the procedural dimension pertains to the third factor.

Substantively, an accused may be given a new defense to raise, the prosecution may be required to prove an added element, or the change involve an enhancement of the court's truth-finding function. There should be no objection to this change in the penal law to benefit an accused retroactively. This change reflects the legislature's intention to modify what it views as criminal and non-criminal and how to arrive at such determination. Courts are bound to respect this intention in concrete cases by applying it retroactively. It should not matter that hundreds or even thousands of criminal convictions may be overturned as a result of the retroactive application. It is presumed that the policy change was conscious of the practical application to so many other cases similarly situated.

Procedurally, however, I believe that the prosecution must be given the opportunity to meet the case brought about by the retroactive application of the law. This means that though the prosecution may have the new burden of proving a new element or an accused has the right to claim a new defense, the prosecution ought to be given the opportunity to meet this new element or defense. In this regard, when the prosecution justifiably relied upon the old rule in prosecuting the case against an accused, the prosecution should have the procedural rights not only to amend the Information to allege the added elements of the new penal law but also to present evidence to prove the new element beyond reasonable doubt.

The Philippine law on retroactivity conclusively assumes that a favorable penal law to an accused should apply retroactively by purpose and effect. I believe nonetheless that fairness demands that the prosecution be given the opportunity to meet the case if it justifiably relied upon the then prevailing rules, and the trial court judged the case relying upon the then prevailing rule.

To illustrate, here, had the prosecution of the criminal case and the decision of the trial court in the criminal case

came before 2006 or prior to the enactment of Republic Act No. 9344, I would have retorted that though we must require the prosecution to prove the discernment of the 17-year-old petitioner, the prosecution should have been given the opportunity to meet this new requirement and the trial court should be obliged to consider the evidence on this new element. It would not have been enough to note the failure of the prosecution and the trial court to deal with discernment and fault them for this omission.

Unfortunately, the prosecution of petitioner and the decision of the trial court took place long after Republic Act No. 9344 had been in effect. Thus, in the present case, there is no reason for the prosecution to claim deprivation of procedural due process as a result of retroactivity. There was an obvious oversight in taking no account of discernment as mandated in Republic Act No. 9344 while petitioner's trial was ongoing. The ponencia therefore could not have been unfair in pointing to this lacuna in both the prosecution evidence and the trial court's decision when it automatically imposed the retroactivity principle and on this ground acquitted petitioner.

Civil liabilities

On top of the imposition of civil liabilities on petitioner the ponencia should also already impose the civil liabilities on his parents since their respective liabilities for the damages are equally direct and primary. The defense did not present evidence on this potential defense of the parent's reasonable supervision over the child at the time the child committed the offense during the trial, and they cannot be allowed to raise it belatedly when the judgment of damages is executed against them. The defense already had more than an ample opportunity to prove this exempting circumstance, had it exercised reasonable diligence in handling its case to meet.

The trial court received evidence on the damages from the prosecution; reasonable diligence should have dictated to petitioner and his lawyer that the damages would be borne by his parents as their direct and primary liability. This has been the law for a long time even before 2003, the year the homicide was committed, and most especially when Republic Act No. 9344 took effect. It was the defense's fault that it did not raise the defense of reasonable supervision over the child at the time the child committed the offense, or its gender insensitive counterpart, that they acted with the diligence of a good father of a family to prevent damages.

Lastly, as held in *Libi v. Intermediate Appellate Court*,^[9] the direct and primary liabilities of petitioner and his parents are solidary.

ALL TOLD, I vote to grant the petition, reverse and set aside in part the Decision dated November 29, 2017 and Resolution dated March 19, 2018 of the Court of Appeals in CA-G.R. CR No. 39196, and acquit petitioner of the crime charged.

On the civil aspect of the criminal case, I vote to affirm this Decision and Resolution of the Court of Appeals with modification that petitioner and his parents are directly, primarily, and solidarily liable to pay the heirs of AAA PHP 504,145.01 as actual damages, PHP 50,000.00 as civil indemnity, and PHP 50,000.00 as moral damages, with interest on all the damages awarded at the rate of 6% per annum from the date of finality of this judgment until fully paid.

Respectfully submitted.

[1] In line with the Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 9344, the names of the private offended parties, along with other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

[2] 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].

- [3] 859 Phil. 912; 116 OG No. 46, 7379 (November 16, 2020) [Per J. Caguioa, Second Division].
- [4] G.R. No. 212719, June 25, 2019 [Per J. Peralta, En Banc].
- [5] See Santos v. People, 443 Phil. 618 (2003) [Per J. Puna, Third Division].
- [6] Chief Justice Charles Evans Hughes, Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 374 (1940).
- [7] Linkletter v. Walker, 381 U.S. 618 (1965).
- [8] Corr, John Bernard. "Retroactivity: A Study in Supreme Court Doctrine as Applied" (1983). Faculty Publications. 840. <https://scholarship.law.wm.edu/facpubs/840> (last accessed August 16, 2021).
- [9] G.R. No. 70890, September 18, 1992 [Per J. Regalado, En Banc].

G.R. No. 238798 - CICL XXX,[1] petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.

CONCURRING OPINION

INTING, J.:

Before the Court is an appeal from the rulings of the Regional Trial Court of La Trinidad, Benguet (RTC) and the Court of Appeals (CA) that found accused CICL XXX guilty beyond reasonable doubt of the crime of Homicide.

The prosecution asserted that CICL XXX caused fatal injuries upon the victim, AAA, by hitting the latter's left eye, ear, and head, with a blunt instrument, resulting in AAA's death.[2] The incident occurred on October 28, 2003.[3] At that time, CICL XXX, who was born on December 15, 1985,[4] was only 17 years and 10 months old. Thus, CICL XXX was a minor at the time of the alleged commission of the offense.

The records reveal that the Information[5] against CICL XXX was filed on March 2, 2004 and docketed as Criminal Case No. 04-CR-5253. Trial was held from 2005 to 2013, and the RTC promulgated its judgment of conviction against CICL XXX on February 28, 2014.

While CICL XXX's trial was pending Republic Act No. 9344 (RA 9344) or the "Juvenile Justice and Welfare Act of 2006" passed into law and took effect on May 20, 2006.[6] Section 6 of RA 9344 states that 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."

It is settled that RA 9344 retroactively applies to crimes committed prior to its effectivity,[7] including the offense charged against CICL XXX. The retroactive application of RA 9344 to CICL XXX, who has not been shown to be a habitual criminal, is based on Article 22[8] of the Revised Penal Code and the well-entrenched principle in criminal law — *favorabilia sunt amplianda adiosa restringenda* (penal laws which are favorable to the accused are given retroactive effect).[9]

Discernment is not presumed.[10] Thus, the Prosecution in Criminal Case No. 04-CR-5253 bore the burden to prove beyond reasonable doubt, by direct or circumstantial evidence, that at the time of the alleged commission of the offense, CICL XXX, a minor at the age of 17 years and 10 months old, acted with discernment.[11] The Prosecution must specifically prove as a separate circumstance that CICL XXX committed the alleged crime with

discernment.[12]

The records bear that the Prosecution presented its evidence in Criminal Case No. 04-CR-5253 from November 15, 2005[13] to May 25, 2011.[14] It is therefore evident that the Prosecution was given ample opportunity to prove discernment on the part of CICL XXX luden as a separate circumstance beyond reasonable doubt.

The issue before the Court is whether the Prosecution was able to discharge its burden to prove beyond reasonable doubt that at the time of the commission of the alleged homicide, CICL XXX was acting with discernment.

The ponencia rules that the totality of the facts and circumstances of the present case leads to the conclusion that CICL XXX acted with discernment in the commission of the crime.[15]

I agree. The records establish beyond reasonable doubt that at the time of the commission of the offense, CICL XXX acted with discernment in inflicting injuries upon the victim, AAA, which resulted in the latter's death.

The Prosecution was able to prove beyond reasonable doubt that CICL XXX committed acts constituting homicide.

To begin, I concur with the ponencia[16] that the Prosecution was able to prove beyond reasonable doubt all the elements of homicide against CICL XXX, i.e., (1) that AAA was killed; (2) that CICL XXX killed AAA without any justifying circumstance; (3) that CICL XXX had the intention to kill, which is presumed by the death of AAA; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[17]

Here, it is a matter of record[18] and even admitted[19] by CICL XXX that AAA died on November 26, 2008. That CICL XXX was the one who killed AAA was also testified on by the mother of AAA, BBB. Particularly, BBB testified[20] that on the day of the incident, at around 3 a.m., she was roused by the cries of AAA. She found her son lying on the ground and severely injured right outside their house gate. She helped her son get up and while cleaning his wounds, AAA stated that CICL XXX mauled him in revenge because he testified against CICL XXX in a barangay case filed by DDD regarding a bar brawl incident a week prior to the mauling of AAA.

CICL XXX attempts to discredit the testimony of BBB by arguing that it is inadmissible hearsay for being merely based on what AAA narrated to his mother on the day of the incident.[21] This has no merit. As correctly pointed out by the ponencia,[22] the RTC and CA properly considered BBB's testimony as admissible in evidence for being part of the *res gestae*,[23] in accordance with Rule 130, Section 44[24] of the Rules of Court.

I agree with the ponencia that the statements made by AAA to his parents immediately after the mauling incident were made under circumstances where contriving a falsehood was impossible. AAA's statement that he was mauled by CICL XXX was made immediately after his parents found him lying on the ground, when AAA had just been injured and was even bleeding from his eye.[25] His statements to his parents, having been made under a state of nervous excitement or shock from his injuries, are trustworthy and worthy of credence. The admission of BBB's testimony to establish the identity of CICL XXX as the perpetrator of the crime is consistent with prevailing jurisprudence,[26] where the Court considered as part of the *res gestae* the victim's identification of his assailant while lying wounded, bleeding from his/her injuries, or being brought to the hospital.

It bears pointing out that CICL XXX himself corroborated BBB's statement that CICL XXX mauled AAA in revenge.[27] Verily, the barangay case filed by DDD against CICL XXX was stipulated during Pre-Trial.[28] CICL XXX also narrated the antecedents leading to the mauling of AAA in revenge. Particularly, CICL XXX stated on direct examination that on October 20, 2003,[29] about a week before the incident subject of this case occurred, CICL XXX was in a pub with his friends in Baguio City and was involved in a bar brawl with another

group in the said pub.[30] In the course of the bar brawl, CICL XXX hit DDD, whose left cheek became swollen.[31] Following the altercation, CICL XXX was brought to the police station[32] and DDD filed a complaint against CICL XXX with Barangay xxxxxxxx, Baguio City.[33] CICL XXX narrated that in the course of the barangay conciliation proceedings, AAA appeared and identified him as the one who inflicted injuries upon DDD.[34]

The foregoing corroboration of BBB's testimony supports the conclusion that it is admissible in evidence.[35]

Intent to kill was also proven by the Prosecution because AAA was hit in the head, a vital part of the body.[36] That the injury sustained by AAA would result in his death was likewise established by the testimony of Dr. Romeo Concepcion (Dr. Concepcion), a physician at Baguio General Hospital to whom AAA was referred to for treatment on October 31, 2003.[37]

CICL XXX has not offered any justifying circumstance in killing AAA. The killing was also not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Hence, all the elements of homicide concur, with CICL XXX as the perpetrator thereof.

CICL XXX raised denial and alibi as his defenses. Supposedly, he was out drinking with his friends in several establishments located in Baguio City from 7:00 p.m. of October 27, 2003 to 4:00 a.m. of October 28, 2003.[38] However, the defenses of alibi and denial are inherently weak as they constitute self-serving negative evidence and may be easily fabricated, and thus, cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[39] For the defense of alibi to prosper, the accused must prove with clear and convincing evidence that (1) he was in another place than the situs criminis at the time when the crime was committed, and (2) it was physically impossible for him to be at the scene of the crime when it was committed.[40]

CICL XXX's supposed alibi cannot prevail over the testimony of BBB, who positively identified him as the assailant.[41] CICL XXX supposedly drank from October 27, 2003 to 4:00 a.m. of October 28, 2003 with his friends named CN, IG, and CT, none of whom were presented in court to corroborate his testimony.[42] Further, it was not physically impossible for CICL XXX to be at the situs criminis, considering that the municipality of La Trinidad, Benguet, where the homicide happened, is only about 10 to 15 kilometers away from Baguio City.[43]

Thus, the Prosecution was able to prove all the elements of homicide beyond reasonable doubt against CICL XXX.

Discernment, defined as the mental capacity of a minor to understand right from wrong and to fully appreciate the consequences of his unlawful act, should be determined by considering all the circumstances disclosed by the records of the case, not only before and during the commission of the act, but also after and even during the trial.

Notwithstanding the Prosecution's evidence establishing the elements of homicide, RA 9344 requires it to also prove as a separate circumstance and beyond reasonable doubt that at the time of the commission of the unlawful act, CICL XXX acted with discernment.

A discussion on discernment is necessary.

Discernment, in the context of criminal laws involving minors, is more than the mere understanding between right and wrong.[44] Rather, it refers to the mental capacity of a minor to fully understand the nature of his act and to fully appreciate the consequences of his unlawful act.[45] It relates to the power of the minor to determine the morality of human acts, to distinguish a licit from an illicit act, and to appreciate the nature and criminality of the act.[46]

Particularly in homicide cases, an accused, who is a minor, acts with discernment when he had sufficient intelligence and was sufficiently endowed with judgment to know that the act which he committed was wrong and that it was likely to produce death.[47] Discernment signifies more than merely knowing the difference between right and wrong; it connotes that the minor accused killed with intention to kill and knowing that it is a crime to kill.[48]

In judging whether a minor accused acted with discernment, which may be known and should be determined by considering all the circumstances disclosed by the record of the case or from the evidence as a whole, the appearance of the accused, his attitude and his behavior and conduct, not only before and during the commission of the act, but also after and even during the trial, should be taken into consideration.[49] The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong.[50] Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness.[51] Circumstantial evidence of discernment may also 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.[52]

The determination of discernment should include all the means sanctioned by the Rules of Court in ascertaining matters in judicial proceedings such as judicial admissions, matters of judicial notice, stipulations made during the pre-trial and trial, as well as other admissions and presumptions.[53] The Court may take cognizance of any matter taken up during the trial or which has become part of the records of the case.[54]

In several instances, the level of education of the minor accused was considered to determine his capacity to act with discernment. Thus, in *People v. Doqueña*,[55] the Court upheld the trial court's finding that the minor accused therein acted with discernment in stabbing his victim, resulting in the latter's death, considering that the accused was a 7th grade pupil, one of the brightest in his school who always obtained excellent marks, and was even the captain of a company of cadet corps. Similarly, in *Llave v. People*,[56] therein minor accused was convicted of rape after the Court determined that he acted with discernment as established by, among others, the fact that the accused was an outstanding student who even received several awards and joined academic contests.

That the minor accused's level of education may be used as an indicator of discernment was also discussed during the plenary sessions of the Committee on Justice of the House of Representatives in passing RA 9344:

REP BATERINA. May I now...May I now terminate...but before I do that, may I just proceed to satisfy myself on the matter of age of discernment.

Would you say that the age of discernment is...cannot be generalized that the age of discernment is independent, I mean, individualized. In other words, would discernment can happen (sic) to a younger one and another for another person (sic) it can be...he can have an age of discernment at a higher level, higher age, and how come we can... we must generalize?

MR. MUYOT (resource speaker). Thank you for that question, Your Honors. What the bill seeks to do is not to generalize but to put a minimum, a minimum age of criminal liability and then put a spread over that minimum wherein the judge will be given the discretion to determine whether or not the child has the discernment.

For instance, in some of the bills the minimum age fixed is 12. But then there is a spread of up to 15 so that from 12 to below 15 the judge is still given a discretion to determine whether or not the child had acted with discernment. So if the child had acted with discernment, the judge can go on to find criminal liability on the part of the child. But if the judge feels that based on, let's say, the level of education or the level of mental development of a child discernment is not possible, then he can...he has the discernment to say that the child should not be liable.

Thank you, Mr. Chairman.[57] (*Italics supplied*)

Other indicators of discernment include the perpetration of the crime in a dark and isolated place;[58] committing the unlawful act while the accused had a chance to be alone with the victim;[59] being enraged when accused of having perpetrated the criminal act against the victim;[60] when the minor accused, together with his cohorts, took turns in incapacitating their victims to perpetrate the unlawful act;[61] or when one of the minors acted as a lookout while the crime was being committed.[62]

The records establish beyond reasonable doubt that CICL XXX acted with discernment in committing the unlawful act.

Based on the foregoing guidelines on discernment vis-à-vis a review of the records of the case, I agree with the ponencia that CICL XXX acted with discernment in inflicting harm upon AAA, resulting in the latter's death. In committing the unlawful act, CICL XXX was aware that his actions were wrong and would likely result in AAA's death.

First, the records bear that at or near the time of the incident, CICL XXX was a second year nursing student.[63] Being a nursing student, CICL XXX would have the necessary mental capacity to understand how the human body works, the fatality of wounds which may be inflicted upon the part of the human body as vital as the head, and that it is wrong to inflict severe injuries on a person's head, who may likely die from such injury. To my mind, CICL XXX's level of education may be taken as evidence that in mauling AAA, he understood that inflicting bodily harm upon AAA was wrong and would likely result in the latter's death.

Second, there is testimony on record that CICL XXX was advised by his guardian, YYY, that it is wrong to injure someone, that a similar incident of inflicting injury upon another should not be repeated, and that CICL XXX should instead concentrate on his studies.[64] This goes to show that CICL XXX was very much aware that it is wrong to physically harm another person.

CICL XXX testified that during the barangay conciliation proceedings in the case filed by DDD which was held on October 22, 2003, CICL XXX, accompanied by his guardian YYY, admitted that he injured DDD.[65] As CICL XXX and his family did not want the case to go to court, they agreed to amicably settle with DDD's parents by committing to pay his hospital and medication bills.[66] Meanwhile, CICL XXX's guardian, YYY, advised CICL XXX that he should not commit a similar act of physically injuring someone and should instead concentrate on his studies. As testified to by YYY:[67]

Q

So you actually talked before the settlement was put down in writing, as you said?

A

The mother of [DDD] and the Barangay Captain.

Q

Who else?

A

All of us there.

Q

How about Alwin, what did he say, if any?

A

He just kept quiet and listened to our advices.

Q

What advice?

A

That they will not do this again and concentrate on their studies.

Evidently, CICL XXX has been sufficiently informed by his very own guardian that physically injuring someone was wrong and should not be repeated. CICL XXX, being then 17 years and 10 months old, and who was even a nursing student, was surely sufficiently intelligent and mentally capacitated to understand what his own guardian advised him about. That physically injuring someone is wrong must still be in CICL XXX's mind when just six (6) days later, or on October 28, 2003, he committed a similar act of inflicting bodily harm upon another person, AAA.

Third, the location, deliberateness, and severity of the wounds inflicted upon AAA demonstrate CICL XXX's discernment. It has been held that the head of a person is a vital part of the body and infliction of a heavy blow thereon may even establish intent to kill.[68]

In this case, Dr. Manuel Kelly, Jr. (Dr. Kelly), a physician at Benguet General Hospital to whom AAA was referred to on October 30, 2003[69] due to blurring of vision and headache, categorically testified during cross-examination that the wounds suffered by AAA were not caused by a fall to the ground but by a hit, as the force was traverse and going directly to the area that is involved, i.e., right part of the eye of AAA, which then transferred to the brain muscle. The force was strong enough to cause movement inside the brain and break its vessels, viz.:

Q

The last time that you were supposed to be cross-examined, the records custodian of the Benguet General Hospital brought before this Court the records, which was requested of you, relative to the case of [AAA] I am showing to you this Clinical Face Sheet for one [AAA], would you please go over this and tell the Court whether or not that is the Clinical Face Sheet that refers to [AAA]?

A

Yes, ma'am, it is.

Q

These consists (sic) of 13 pages and the Face Sheet is captioned "clinical Face Sheet" and in the final diagnosis there is indicated here contusion, hematoma, what does that mean?

A

There is a bleeding on the part involved, so bleeding in the area.

Q

Which area?

A

Right part of the eye of the patient.

Q

And there is also indicated traumatic conjunctivitis, what does this mean?

A

There is an inflammation of the conjunctiva caused by the trauma or any injury one on the patient.

Q

It is caused by an injury also?

A

Yes.

Q

And there also indicated here intraparenchymal hemorrhage right frontal lobe. What is the relation of the third entries to the second entries?

A

That third entry is an injury caused by a blunt trauma to the eye in which the force was transferred to the brain muscle inside the skull or brain tissue I should say.

Q

Now, these entries under the column final diagnosis could have been caused by any kind of trauma inflicted on the area of the eye?

A

The injury inside the brain was caused by a trauma which the patient had on the head.

Q

And it could have been caused by a fall?

A

It cannot be caused by a fall because it was a hit. The only injury the patient had was when the patient was hit on the right side of the eye and the injury on the brain is caused by the traumatic injury in which the force that is accepted by the eye going to the brain tissue causes the injury.

Q

How did you know that it is caused by a hit?

A

If there is a force going directly to the area that is involved, the force is traverse. Meaning to say, the force would go backwards. Due to the force going backwards, it would cause a movement inside the brain in which it would break the small vessels inside it.

Q

But is it possible that if [AAA] had a great fall and hit a blunt instrument, could it have caused the injury?

A

There was no history that the patient had a previous history of fall. The patient had a history of injury in which he had an assailant.[70]

Dr. Concepcion similarly testified during his direct examination on the gravity of the wounds suffered by AAA, resulting in multiple bruises and fractures at the head area, lacerations of the brain, and severe contusion:

Q

You mentioned of this Glasgocoma Scale 13, could you further explain or elaborate this kind of condition?

A

The Glasgocoma Scale is a scale from 1 to 15 wherein 15 is the normal and best level, the lowest being 1 or 3-1, that is as far as the scale can go because it evaluates the eye movement, verbal and motor movement of the patient. On this scale, the patient was on Glasgocoma 13, he was conscious and coherent. However, there was lapse as far as his eyes are concerned because one of the eyes was affected. So this will actually give us, more or less, the gravity, it is not accurate but it will give us more or less how grave the injury sustained by the brain as manifested by the Glasgocoma scale. To given an interpretation if the patient is in coma which is on the Scale of 3, he is in other words vegetable...

Q

On the case of [AAA], what could have caused this condition of Glasgocoma 13?

A

Theoretically speaking, it could be anything that would injure the brain, whether by direct trauma, whether an internal blot because of hypertensive blood or anything that has something to do with the brain.

Q

In the situation of [AAA], did you find any injury in the brain of this patient?

A

Yes, the CT Scan was done which revealed blood inside the brain and a brain that was lacerated and on CT Scan it appeared very contused already. It is just like the consistency has changed already because of the trauma the brain suffered from the injury.

Q

So what might have caused this blood in the brain that you have seen after the CT Scan?

A

Well, it could be instances of trauma wherein there is a break in the blood vessel walls secondary to the hypertensive bleeds or aneurisms, as some would know.

Q

In this particular case of [AAA], what is the probable cause of the blood in the brain?

A

Based on history when the patient was brought to the hospital and the CT Scan findings of multiple hematomas in the brain as well as fractures. Of course, we would surmise that this came from the injury sustained by the patient when he was mauled.

Q

What particular part of the body?

A

The head.

Q

You found also fractures on what part of the body?

A

Several bruises of the brain from the occipital to the parietal area there were multiple actually.

Q

This injury on the head of the patient, what could have caused this injury?

A

Any form of objects (sic) that would probably be hard enough to break the skull or in other instances anything that could be hard enough to shake the brain and this may be in the form of fracture.[71]

Dr. Concepcion also testified during direct examination that the injuries suffered by AAA were sufficient to cause a person's death:

Q

So could you again tell us what caused this finding of yours?

A

Again any external force that could cause a break in the walls of the blood vessels, hence the egress of the sipping of the blood out of the blood vessel and pouring into these spaces as mentioned.

Q

This finding that you made, could it cause the death of a person?

A

Definitely, sir.[72]

The testimonies of Dr. Concepcion and Dr. Kelly prove the deliberateness and severity of the wounds inflicted upon AAA. The force used was strong enough to injure the brain, inflict multiple bruises and fractures at the head area of AAA, cause brain lacerations and severe contusion, and eventually lead to his death. Surely, CICL XXX, who was just two months short of being an adult at the time of the commission of the offense and even a second year nursing student at that, would understand that the head is a vital part of the body, that it should not be harmed, that it is wrong to inflict grave wounds on a person's head, and that doing so would result in death.

Fourth, BBB testified that the incident subject of the case happened sometime around 3:00 a.m. of October 28, 2003.[73] This indicates that the mauling of AAA was done while it was still dark and with no or few people around to witness the incident. In fact, BBB and her late husband[74] were sleeping in their bedroom at that time and were awakened only by the cries of AAA, "Mama! Mama!" to find out that their son was severely injured right outside their house gate. That AAA was mauled during the wee hours of morning, while people were still asleep, indicates CICL XXX's cognizance that his actions were wrong and had to be executed away from the public's eye.

Finally, CICL XXX's own testimony reveals that he is very much aware that his actions were wrong. CICL XXX particularly testified that he dropped out of school because a case was filed against him after the incident subject of this case.[75] According to CICL XXX, he dropped out of school because he was scared after he received a warning that he should watch his back:[76]

Q

And after October 2008 what occupation did you engage in?

A

After that I dropped out from school I went home to Sagada to be a guide.

Q

Why did you drop out?

A

Because a case was filed against me so I just stopped.

Q

Why did you have to drop out?

A

Because somebody told me to watch my back because people might go after me. x x x

X X X X

Q

Why did you take seriously that you have to quit?

A I got scared.

That CICL XXX was scared to the point of dropping out of school after a case was filed against him reveals his awareness of the wrongfulness of his actions. Similar to *Remiendo v. People*,^[77] CICL XXX's averse or negative reaction to imputations of crime against him is an indicator of discernment.

With the foregoing, I agree with the ponencia^[78] that CICL XXX's Petition for Review^[79] before the Court must be DENIED. The Decision^[80] dated November 29, 2017, and the Resolution^[81] dated March 19, 2018 of the Court of Appeals in CA-G.R. CR No. 39196, finding CICL XXX guilty of the crime of homicide, must be AFFIRMED.

[1] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes;" Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[2] CA rollo, p. 85.

[3] Records, p. 250.

[4] Id. at 43.

[5] Id. at 1.

[6] *Estioca v. People*, 578 Phil. 853, 875 (2008).

[7] Id. See also *Dorado v. People*, 796 Phil. 233, 245-253 (2016).

[8] Article 22 of the Revised Penal Code provides:

ART. 22. 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.

[9] *Dorado v. People*, supra.

[10] See Id. at 249. See also *CICL XXX v. People*, 859 Phil. 912 (2019).

[11] Id.

[12] Id.

[13] The Prosecution presented its first witness, EEE, on November 15, 2005 (Records, pp. 104-117).

[14] The Prosecution filed its Formal Offer of Evidence with the RTC on May 25, 2011 (Records, pp. 440-449).

[15] Ponencia, p. 16.

[16] Ponencia, p. 9.

[17] CICL XXX v. People, supra note 10, at 929.

[18] Records, p. 249.

[19] Id. at 257.

[20] Records, p. 237.

[21] Rollo, p. 14.

[22] Ponencia, p. 7.

[23] Res Gestae is explained in *People v. XXX*, 839 Phil. 252, 265-268 (2018) as follows:

Res gestae means the "things done." It "refers to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement." A spontaneous exclamation is defined as "a statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him. The admissibility of such exclamation is based on our experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him." In a manner of speaking, the spontaneity of the declaration is such that the declaration itself may be regarded as the event speaking through the declarant rather than the declarant speaking for himself.

[24] Section 44 of Rule 130 of the Rules of Court provides:

Section 44. Part of the res gestae. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto, under the stress of excitement caused by the occurrence 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.

[25] Records, pp. 222-224.

[26] See *People v. Hubilo*, 292-A Phil. 514, 525 (1993), *People v. Gado*, 358 Phil. 956, 967-968 (1998), and *People v. Salafranca*, 682 Phil. 470, 482-484 (2012), where the Court held that statements made by the victim while lying wounded and/or on the way to the hospital are admissible as part of res gestae.

[27] Records, p. 237.

[28] Id. at 83.

[29] The Transcript of Stenographic Notes of the hearing held on March 5, 2012 (Records, pp. 494-508) wrongfully indicate the date as "2008" instead of "2003." This error was rectified to make it conform to the Amended Information and should be reflected as "2003," per the Order dated October 16, 2012 of the RTC (Records, p. 520).

[30] Records, p. 497.

[31] Id. at 503-505.

[32] Id. at 498-499.

[33] Id. at 501-505.

[34] Id. at 504-505.

[35] *People v. Rivera*, G.R. No. 202126 (Notice), April 22, 2015.

[36] *People v. Balderas*, 342 Phil. 435, 452 (1997).

[37] Records, pp. 135-136.

[38] Id. at 505-506.

[39] *People v. Gonzales*, 853 Phil. 610, 621 (2019).

[40] Id.

[41] See *People v. Calinawan*, 805 Phil. 673, 682 (2017) and *People v. Badillos*, 832 Phil. 572, 582-586 (2018), where the defense of alibi could not prevail over the positive identification of the accused as the perpetrator of the crime by witnesses whose testimonies formed part of the *res gestae*.

[42] Records, p. 506.

[43] See *People v. Gomez*, 388 Phil. 462, 470 (2000), where it was held that courts may take judicial notice of geographical distances in relation to an accused's defense of alibi.

[44] *Llave v. People*, 522 Phil. 340, 366-368 (2006).

[45] Id. See also *United States v. Maralit*, 36 Phil. 155, 158-159 (1917).

[46] *Guevarra v. Almodovar*, 251 Phil. 427, 433 (1989).

[47] *United States v. Maralit*, *supra*.

[48] *People v. Surbida*, 113 Phil. 318, 320 (1961).

[49] *Llave v. People*, *supra* note 44, citing *People v. Doqueña*, 68 Phil. 580, 582-583 (1939). See also *United States v. Maralit*, *supra*.

[50] *CICL XXX v. People*, *supra* note 10.

[51] Id.

[52] Id.

- [53] See *Sy v. People*, G.R. No. 243617 (Notice), May 5, 2021.
- [54] *Id.*
- [55] *People v. Doqueña*, *supra* note 49.
- [56] *Llave v. People*, *supra* note 44.
- [57] Transcript of the Committee on Justice plenary session dated November 23, 2004, p. 24.
- [58] See *People v. ZZZ*, 857 Phil. 629, 649 (2019).
- [59] *BBB v. People*, G.R. No. 249307, August 27, 2020.
- [60] *Remiendo v. People*, 618 Phil. 273, 288-290 (2009).
- [61] *People v. Wile*, 784 Phil. 418, 450-452 (2016).
- [62] *People v. Cortezano*, 458 Phil. 304, 327-328 (2003).
- [63] Records, p. 20.
- [64] *Id.* at 541.
- [65] *Id.* at 503.
- [66] *Id.* at 539-540.
- [67] *Id.* at 541.
- [68] *People v. Balderas*, *supra* note 36.
- [69] Records, p. 177.
- [70] *Id.* at 172-174.
- [71] *Id.* at 149-150.
- [72] *Id.* at 135-136.
- [73] *Id.* at 193-195 and 222-224.
- [74] *Id.* at 237.
- [75] *Id.* at 506.
- [76] *Id.* at 506-507.
- [77] *Remiendo v. People*, *supra* note 60.
- [78] Ponencia, p. 24.
- [79] Rollo, pp. 7-25.
- [80] CA rollo, pp. 84-99.
- [81] Rollo, pp. 53-54.
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DISSENTING OPINION

LOPEZ, M., J.:

The majority concluded that CICL XXX acted with discernment and held him criminally and civilly liable for the crime of homicide, thus:

WHEREFORE, the petition is DENIED. The Decision dated 29 November 2017 and the Resolution dated 19 March 2018 of the Court of Appeals in CA-G.R. CR No. 39196 finding CICL XXX GUILTY of the crime of homicide under Article 249 of the Revised Penal Code, are AFFIRMED.

He is sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

He is likewise ordered to pay the heirs of AAA the following: (a) Php504,145.01 as actual damages; (b) Php50,000.00 as civil indemnity; and (c) Php50,000.00 as moral damages, with interest on all the damages awarded at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

The case is also remanded to the trial court for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.[1] (Emphasis in the original)

I dissent.

Republic Act (RA) No. 9344[2] or the "Juvenile Justice and Welfare Act of 2006" modifies the minimum age of criminal irresponsibility for minor offenders. The law amended paragraphs 2 and 3 of Article 12 of the Revised Penal Code (RPC) from "under nine years of age" and "over nine years of age and under fifteen" (who acted without discernment) to "fifteen (15) years of age or under" and "above fifteen (15) years but below eighteen (18) years of age" (who acted without discernment) in determining exemption from criminal liability. As the law now stands, a child above 15 years but below 18 years of age shall "be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment." [3] The law adopts the principle of restorative justice and gives minor offenders the chance to reform their ways through diversion and intervention measures. The policy is to protect the rights of children in conflict with law and to ensure that they are dealt with in an appropriate manner to promote their well-being. The basic reason behind the exempting circumstance is complete absence of intelligence and freedom of action of the offender which is an essential element of a felony. The statute is deeply rooted in the presumption under our penal law that minor offenders completely lack the intelligence to distinguish right from wrong, hence, their acts are deemed involuntary and unaccountable.

Case law retroactively applied RA No. 9344 to minor offenders who are already on trial when the law took effect. The stance is justified under Article 22 of the RPC which provides that penal laws shall have a retroactive effect insofar as they favor the accused who is not a habitual criminal. This is clear from *Sierra v. People*, [4] *Dorado v. People*, [5] and *People v. ZZZ*. [6] In *Sierra*, the Court found that petitioner committed qualified rape in 2000 or before RA No. 9344 took effect. The fact that petitioner was already 20 years old at the time of trial will not bar him from enjoying the benefit of total exemption under the law. The Court dismissed the criminal case because the prosecution did not present contrary evidence to prove that petitioner was above 15 years old when the crime was committed. [7] In *Dorado*, the Court acquitted the 16- year-old petitioner of frustrated murder absent evidence that he acted with discernment although he was already on trial when the law took effect. [8] In *ZZZ*, the minor accused-appellant was charged with rape with homicide committed in 1996. The Court applied RA No. 9344 and held that the accused-appellant acted with discernment in carrying out the crime because he understood its depravity and consequences. [9]

Here, CICL XXX is entitled to the retroactive application of RA No. 9344 notwithstanding his ongoing trial when the law took effect. There is no dispute that CICL XXX was only 17 years old at the time the alleged homicide was committed in 2003. Besides, nothing in the records indicates that CICL XXX is a habitual criminal. The gut question now is whether CICL XXX acted with discernment in the commission of the crime. On this point, it bears emphasis that discernment is the "mental capacity to understand the difference between right and wrong[.]"[10] Discernment must be determined taking into account all the facts and circumstances, the very appearance, attitude, comportment, and behavior of the minor before, during, and after the commission of the crime, the nature of the weapon used, the attempt to silence a witness, and disposal of evidence or hiding the corpus delicti.[11] The law presumes children in conflict with the law to have acted without discernment. The burden of proof is on the prosecution to establish discernment as a separate circumstance. Otherwise, minor offenders are exempted from criminal liability absent evidence that they knew and understood the results of their actions.

Notably, the Regional Trial Court was silent on the matter of discernment. On the other hand, the Court of Appeals ruled that CICL XXX "knew what he was doing and what he did was wrong" based on the following circumstances, to wit:

In the present case, it was clearly established that the accused--appellant acted with discernment when he and his unidentified companion went to the house of victim and waited for him to arrive home. When the victim arrived, he and his unidentified companion mauled the victim after the accused-appellant could not give a good explanation for intruding the victim's house. Accused-appellant further knew what he was doing and what he did was wrong when after mauling the victim, he and his companion left the latter bleeding and lying in front of the gate.[12]

However, the presence of CICL XXX at the crime scene and his participation in mauling the victim are insufficient to show that he fully appreciates the consequences of his actions. At most, these factual findings evinced intent or criminal design, but not discernment. To be sure, discernment is not synonymous with intent. While both are products of the mental processes, discernment relates to the moral significance that a person ascribes to their action while intent refers to the desire of one's act.[13] Hence, discernment cannot be presumed even if CICL XXX intended to harm his victim. Too, the testimony of CICL XXX that he was in a drinking spree with his friends before the incident and that he quit school and worked as a tour guide after the filing of the case are unequivocal and open to many interpretations. The actions cannot be construed as knowledge of the moral depravity of his actions and might be borne out of personal reasons. Further, there is no evidence that CICL XXX was armed with a weapon at the time of the assault. There is also no concrete account on how CICL XXX struck the victim or that he was aware that he delivered a fatal blow. CICL XXX did not even attempt to flee or avoid the authorities. Worse, the prosecution did not endeavor to elicit facts exhibiting discernment despite ample opportunity during the trial that went on for eight years from 2005 to 2013. As the ponencia aptly discussed, the prosecution was completely oblivious to the issue of discernment.[14] Taken together, the Court cannot speculate whether CICL XXX understood the depravity and consequences of his actions. The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass.[15] Distrust and suspicion, no matter how strong, should not be permitted to sway judgment.[16]

Anent the civil aspect of the case, it is settled that exemption from criminal liability does not include exemption from civil liability. Section 6 of RA No. 9344 is explicit, the civil liability of minor offenders shall be enforced in accordance with existing laws. Article 101 of the RPC provides that the civil liability of minor offenders, who acted without discernment, "shall devolve upon those having such a person their legal authority or control, unless it appears that there was no fault or negligence on their part." Absent such persons, the minors "shall respond with their own property, excepting property exempt from execution, in accordance with the civil law." Here, the

ponencia adjudged CICL XXX liable to pay damages in favor of the heirs of the victim.[17] Indeed, the Court had adjudged minor offenders civilly liable in the criminal case without any reference to their parents as held in the above cited cases of Sierra, Dorado, and ZZZ.

Corollarily, the moment the decision in the criminal action becomes final and executory, the heirs of the victim may move for the issuance of a writ of execution on the civil aspect of the case. The trial court has general supervisory control over the entire execution process, and such authority carries with it the right to determine every question which may be invariably involved in the enforcement of judgment.[18] The heirs of the victim may choose to enforce the decision on the civil aspect of the case against the parents or guardians of minor offenders pursuant to Section 6 of RA No. 9344 in relation to Article 101 of the RPC. At this point, the trial court must give the parents or guardians of minor offenders the chance to ventilate their defense of lack of fault or negligence. If the parents or guardians successfully established the defense of due diligence, the minor offenders must respond with their property not exempt from execution. I believe that this is the proper and practical approach especially in this case where CICL XXX was already 28 years old when the trial court convicted him in 2014. At present, CICL XXX is 37 years old and might have properties of his own to satisfy his civil liability instead of burdening his parents who may be at their retirement years.

ACCORDINGLY, I vote to GRANT the Petition and acquit CICL XXX.

[1] Ponencia, p. 24.

[2] Entitled "AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES," approved on April 28, 2006.

[3] See Section 6 of RA No. 9344.

[4] 609 Phil. 446 (2009) [Per J. Brion, Second Division].

[5] 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].

[6] 857 Phil. 629 (2019) [Per J. Leonen, Third Division].

[7] Supra note 4, at 462–471.

[8] Supra note 5, at 257.

[9] Supra note 6, at 649–652.

[10] *People v. Doqueña*, 68 Phil. 580, 583 (1939) [Per J. Diaz, First Division].

[11] *Llave v. People*, 522 Phil. 340, 366–368 (2006) [Per J. Callejo, Sr., First Division]; *Jose v. People*, 489 Phil. 106, 113 (2005) [Per J. Callejo, Sr., Second Division]; and *id.*

[12] Ponencia, p. 18.

[13] *Guevarra v. Almodovar*, 251 Phil. 427, 432–433 (1989) [Per J. Paras, Second Division].

[14] Ponencia, pp. 19–20.

[15] *People v. Asis*, 439 Phil. 707, 728 (2002) [Per J. Panganiban, En Banc], citing *People v. Marquita*, 383 Phil. 786, 798 (2000) [Per J. Quisumbing, Second Division]; *People v. Aquino*, 369 Phil. 101, 726 (1999) [Per Curiam,

En Banc]; and *People v. Geron*, 346 Phil. 14, 29 (1997) [Per J. Romero, Third Division].

[16] *People v. Torre*, 263 Phil. 458, 461 (1990) [Per J. Paras, Second Division], citing *People v. Ramos*, 245 Phil. 759, 760–761 (1988) [Per J. Padilla, Second Division].

[17] Ponencia, p. 24.

[18] *Gagoomal v. Spouses Villacorta*, 679 Phil. 441, 455–456 (2012) [Per J. Perlas-Bernabe, Third Division].

G.R. No. 238798 – XXX,[*] Petitioner, v. People of the Philippines, Respondent.

DISSENTING OPINION

GAERLAN, J.:

With due respect to my esteemed colleagues, I respectfully register my dissent from the Decision and vote to grant the Petition for Review on Certiorari^[1] filed by petitioner XXX for failure of the prosecution to prove, beyond reasonable doubt, that XXX acted with discernment when he committed the crime charged while he was still a minor.

In the Decision, the ponencia deftly lays down numerous principles relative to the determination of discernment, exhaustively encapsulated and streamlined in its Guidelines on determining discernment (Guidelines).^[2] The ponente summarized, to wit:

1.

Discernment is the capacity of the child at the time of the commission of the offense to understand the difference between right and wrong and the consequences of the wrongful act.^[3]

2.

The task of ascertaining discernment is undertaken preliminarily by a social worker, and finally by the court. The determination of discernment shall take into account the ability of a child to understand the moral and psychological components of criminal responsibility and the consequences of the wrongful act; and whether a child can be held responsible for essentially antisocial behavior.^[4] The assessment of a social worker is merely evidentiary, and is not binding upon the court. Ultimately, the court finally determines discernment, based on its own appreciation of all the facts and circumstances in each case.

3.

In our jurisdiction, there is no presumption that a minor acts with discernment. The prosecution must specifically prove as a separate circumstance that the alleged crime was committed with discernment. 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.^[5]

4.

In determining discernment, courts shall consider the totality of facts and circumstances in each case.[6] Such circumstances include, but are not limited to: (i) 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 trial, (ii) the gruesome nature of the crime, (iii) the minor's cunning and shrewdness, (iv) the utterances of the minor, (v) his overt acts before, during and after the commission of the crime, (vi) the nature of the weapon used, (vii) his attempt to silence a witness, and (viii) his disposal of evidence or his hiding the corpus delicti.

After applying the foregoing guidelines to the instant case, and after considering the totality of the facts and circumstances, the ponente concluded that XXX acted with discernment when he killed the victim Augustine T. Okko, Jr. (Okko), while XXX was still a 17-year-old minor.

On this conclusion, however, I respectfully beg to differ. After a careful study of the records of the case, it is of my belief that XXX's alleged discernment was not proven beyond reasonable doubt, when he, as a 17-year-old minor, struck the victim, which led to the latter's tragic demise.

The prosecution failed to perform its duty to prove, beyond reasonable doubt, that XXX acted with discernment.

In *CICL XXX v. People and Redoquerio*[7] (Redoquerio), the Court stated that there can be no presumption that a minor acts with discernment. The prosecution must specifically prove as a separate circumstance that the alleged crime was committed with discernment. 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. This rule has been adopted and enshrined in guideline number three of the Guidelines provided in the ponencia.

Thus, in the prosecution of crimes committed by minor offenders, discernment must be proven beyond reasonable doubt.

Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.[8]

Moreover, it is the prosecution which has the burden of proof, and mere speculations and conjectures are not sufficient.[9] In all criminal cases, the conscience must be satisfied that the accused is responsible for the crime charged.[10] If there is doubt, the accused must be favored.[11]

A perusal of the records of the instant case shows that the prosecution failed to perform its duty of proving, beyond reasonable doubt, that XXX acted with discernment at the time he committed the crime.

XXX was, as noted by the CA and shown in his birth certificate,[12] a 17-year-old minor at the time of the commission of the crime on October 28, 2003. During that time, Republic Act (R.A.) No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006" was yet to be enacted, and discernment was not yet a fact, which had to be proven beyond reasonable doubt.

XXX's trial, however, was overtaken on April 28, 2006 by the enactment of R.A. No. 9344, which raised the minimum age of criminal responsibility, and accordingly, imposed the requirement of discernment for the increased ages of above 15 years to below 18 years.[13]

R.A. No. 9344 was enacted to protect the rights of children in conflict with the law by ensuring that they are dealt with in an appropriate manner to promote their well-being. The law applies the principles of restorative justice, and gives minor offenders the chance to reform their ways through diversion and intervention measures.[14] In imposing the requirement of discernment for the increased ages of 15 years to 18 years, the law presumes that minor offenders completely lack the intelligence to distinguish right from wrong, so that their acts are deemed

involuntary ones for which they cannot be held accountable.[15]

Unmistakably, it was the duty of the prosecution to prove during trial that XXX acted with discernment. However, the prosecution miserably failed to discharge this duty.

There was a clear indifference by the prosecution to the issue of XXX's discernment when he committed the crime charged. The records are bereft of any effort by the prosecution, or even the trial court, to ascertain XXX's alleged discernment. This stark indifference by the prosecution[16] was even more highlighted when it decided to forego a chance to cross-examine the minor accused to propound probing questions to shed light on the issue of the minor accused's discernment.[17] Moreover, the absence of any meaningful reference to discernment in the decision of the trial court, who was in the ideal position to determine the existence of discernment, only shows that it was not established during trial.

On the other hand, the CA simply concluded that XXX acted with discernment when he and his companion went to the house of the victim, struck the latter, and left him bleeding in front of the gate. I believe, as will hereinafter be discussed, that this fact alone merely establishes the intent of XXX to commit the acts in question, but does not ipso facto prove that he acted with discernment.

To be sure, I agree with the ponencia that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment, whether assigned or unassigned. Thus, the ponencia correctly implied that the Court is not precluded from making its own finding of discernment despite the lack of any attempt by the prosecution or the trial court to ascertain the fact of discernment.

Nonetheless, even if We were to overlook the glaring omission by the prosecution and trial court in failing to even consider the issue of XXX's discernment, I respectfully submit that the evidence on record merely shows XXX's intent, but is insufficient to prove that he acted with discernment, beyond reasonable doubt.

Intent vis-à-vis discernment

As early as 1939, the Court, in *People v. Doqueña*,^[18] defined discernment as the mental capacity to understand the difference between right and wrong. The Court discussed that discernment 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 a minor, not only before and during the commission of the act, but also after and even during the trial.

Fifty years later, in *Guevarra v. Almodovar*,^[19] the Court had the occasion to distinguish discernment from intent in criminal cases:

x x x [T]he 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.

x x x x

It is for this reason, therefore, why minors nine years or age and below are not capable of performing a criminal act. On the other hand, minors above nine years of age but below fifteen are not absolutely exempt. However, they are presumed to be without criminal capacity, but which presumption may be rebutted if it could be proven that they were "capable of appreciating the nature and criminality of the act, that is, that (they) acted with discernment." The preceding discussion shows that "intelligence" as an element of *dolo* actually embraces the concept of discernment as used in Article 12 of the RPC and as defined in the aforecited case of *People vs. Doquena*, *supra*. It could not therefore be argued that discernment is equivalent or connotes "intent" for they refer to two different concepts. Intelligence, which includes discernment, is a distinct element of *dolo* as a means of committing an offense.

In evaluating felonies committed by means of *culpa*, three (3) elements are indispensable, namely, intelligence, freedom of action, and negligence. Obviously, intent is wanting in such felonies. However, intelligence remains as an essential element, hence, it is necessary that a minor above nine but below fifteen years of age be possessed with intelligence in committing a negligent act which results in a quasi-offense. For him to be criminally liable, he must discern the rightness or wrongness of the effects of his negligent act. x x x[20] (Emphases supplied)

In reiterating the distinction between discernment and intent, the Court stated in *Dorado v. People*[21] (*Dorado*) that discernment cannot be presumed "even if [the accused] intended to do away with [the victim]."[22]

In *Dorado*, as in the case at bar, R.A. No. 9344 was also enacted while trial against the minor accused for frustrated murder was pending before the Regional Trial Court. The accused fired his sumpak (improvised shotgun) and hit the victim between the eyes. The victim was operated on his forehead and was confined for a month at the hospital. As a result of the shooting incident, the victim lost his left eye while his right eye could only see some light. The Court acquitted the minor accused for failure of the prosecution to prove that he acted with discernment at the time of the commission of the crime, thus:

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. x x x

x x x x

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. x x x[23] (Emphasis supplied; citations omitted)

The difference between discernment and intent once again came into light in Redoquerio. The minor accused therein was tried for frustrated homicide when, motivated by revenge, he attempted to take the victim's life. The victim alleged that while he was at a store, he heard somebody say "[y]an si Glenn anak ni Purok Leader na humuli sa atin nuon." He looked back and saw accused with a couple of friends. The accused pointed a gun at the victim's face and pulled the trigger several times, but the gun did not fire. The accused then hit the victim's left temple and the top of the head with the gun. The accused's friends held the arms of the victim, while the accused punched him several times. The victim was also hit by one of the accused's companions with a stone, causing the victim to lose consciousness. The victim was in coma for seven days while he was confined at the hospital. The Court acquitted the accused for failure of the prosecution to prove discernment. The Court stated:

The testimonies of the prosecution witnesses, on the other hand, established only CICL XXX's supposed participation in the mauling of Redoquerio. To reiterate, these pieces of evidence only establish CICL XXX's intent, instead of his having acted with discernment. Furthermore, even if he was a co-conspirator, he would still be exempt from criminal liability as the prosecution failed to rebut the presumption of non-discernment on his part by virtue of his age.

It is well to emphasize that:

[f]or 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."

Again, there are no such pieces of evidence in the case at bar. As the presumption that CICL XXX acted without discernment was not successfully controverted, he must perforce be acquitted of the charge.[24]

Based on the above jurisprudence, it is clear that intent and discernment convey two distinct and independent concepts. To repeat, discernment cannot be presumed even if the accused intended to do away with the victim.

Intent refers to the "determination to do a certain thing,"[25] while discernment pertains to "the capacity to know what is wrong as distinguished from what is right or to determine the morality of human acts; wrong in the sense in which the term is used in moral wrong." [26]

To further establish the distinction between discernment and intent, I echo the statement made by Justice Alfredo Benjamin S. Caguioa that while a minor offender may deliberately – or with intent – point and shoot a gun at another person, which eventually results in the victim's death, it does not necessarily follow that such minor offender possesses the discernment to fully understand that killing the victim is morally wrong.[27]

Applying the foregoing discussion to the case at bar, I believe that XXX's actions clearly show his intent, but do not sufficiently show his discernment beyond reasonable doubt.

The evidence on record only shows XXX's intent, but is insufficient to prove discernment beyond reasonable doubt.

The ponencia points to the gruesome nature of XXX's attack against Okko to show that XXX acted with discernment. Respectfully, however, I am of the position that the infliction of severe injuries against the victim is merely tangentially relevant to the question of whether or not XXX knew his actions to be morally wrong, as shown by jurisprudence.[28]

To recall, the minor accused in Dorado fired a sumpak (improvised shotgun) and hit the victim between the eyes.

The victim was operated on his forehead and was confined for a month at the hospital. As a result of the shooting incident, the victim lost his left eye while his right eye could only see some light. Meanwhile, in Redoquerio, the accused pointed a gun at the victim's face and pulled the trigger several times, but the gun did not fire. The accused then hit the victim's left temple and the top of the head with the gun. The accused's friends held the arms of the victim, while the accused punched him several times. The victim lost consciousness and slipped into a coma for seven days while he was confined at the hospital. In both these cases, the nature of the attack and the injuries alone were not enough for the Court to conclude that the minor accused had acted with discernment, without further evidence to bolster such finding.

The ponencia also highlights the fact that XXX went to the victim's home at 3:00 a.m. to show XXX's cunning and shrewdness in perpetrating the attack. Yet, to my mind, the fact that XXX purposely went to Okko's house to wait for him to arrive only proves XXX's intent to carry out the assault. Furthermore, without further evidence to show that XXX purposely sought the cover of night time to catch the victim by surprise, the Court can only speculate as to how much this truly shows XXX's discernment in carrying out the attack.

As well, it was not shown with certainty whether or not XXX was carrying with him any weapon when he went to Okko's house. There was also no concrete evidence as to the exact circumstances of how XXX struck Okko, or if XXX was aware that what he had dealt was a fatal blow.

Moreover, XXX's attack against the victim can not be considered an attempt to silence the latter as Okko had already given his testimony against XXX during the barangay proceedings the day before the attack. While the attack may be viewed more as a retaliation for Okko's testimony against XXX, a minor accused's actions, when motivated by revenge, does not ipso facto prove discernment, as in the case of Redoquerio where the minor accused was motivated by revenge against the victim's father.

Further, XXX's decision to return home to Sagada to work as a tourist guide can not, without further evidence, be taken as an indication of his desire to flee his home to evade the authorities. His decision may very well have been borne out of his personal considerations, chief among them his alleged fear of reprisals,[29] whether or not unfounded. There is no clear indication that this was motivated by a desire to flee or evade prosecution for his actions. In fact, there is nothing in the records that indicate any attempt by XXX to avoid the authorities in the first place.

Finally, while XXX's level of education as a nursing student may indeed be considered, such circumstance does not immediately prove that he acted with discernment, without being supported by further evidence. XXX may very well have been a delinquent and misguided student who did not have the proper guidance that a minor child should receive, in order to reach the level of discernment required to make him criminally liable. As well, a simple statement of advise from XXX's guardian, AAA, during the proceedings before the barangay can hardly be said to be sufficient evidence to show that XXX had reached the level of discernment required to make him criminally liable.

These uncertainties, brought about by the prosecution's complete obliviousness to the issue of discernment, casts great doubt upon the question of whether or not XXX truly acted with the level of discernment contemplated under the law.

To my mind, the pieces of evidence discussed above surely could have served as convenient springboards for the prosecution to further probe into the issue of XXX's discernment. Unfortunately, without such deeper probing from the prosecution or the trial court, it is my view that the Court cannot hold XXX criminally liable without violating the legal presumption that a minor offender acted without discernment.

On this note, I humbly reiterate that it is the prosecution which has the burden of proving that a minor accused acted with discernment, beyond reasonable doubt. Mere speculations and conjectures are not sufficient. If there is doubt, the minor accused must be favoured.

In view of the foregoing, I respectfully vote to grant the Petition for Review on Certiorari filed by XXX.

[*] Real identity of the Child in Conflict with the Law (CICL) is withheld in accordance with Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006, as amended, and A.M. No. 02-1-18-SC, or the Revised Rule on Children in Conflict with the Law.

[1] Rollo, pp. 7-25.

[2] Ponencia, p. 23.

[3] Id., citing 2019 Supreme Court Revised Rule on Children in Conflict with the Law, A.M. No. 02-1-18-SC, approved on January 22, 2019.

[4] Id., citing 2019 Supreme Court Revised Rule on Children in Conflict with the Law, A.M. No. 02-1-18-SC, approved on January 22, 2019.

[5] Id., citing CICL XXX v. People and Redoquerio, G.R. No. 237334, August 14, 2019.

[6] Id., citing People v. ZZZ, G.R. No. 228828, July 24, 2019, 910 SCRA 325.

[7] Supra note 5.

[8] Daayata v. People, 807 Phil. 102, 104 (2017).

[9] People v. Tajada, 442 Phil. 369, 380 (2002).

[10] Boac v. People, 591 Phil. 508, 522 (2008), citing People v. Ganguso, 320 Phil. 324 (1995).

[11] People v. Arnado, G.R. Nos. 250100-02, March 21, 2022.

[12] Records, p. 43.

[13] REPUBLIC ACT No. 9344, Section 6.

[14] Id., Sections 3(f), 6, and 23.

[15] Sierra v. People, 609 Phil. 446, 461-462 (2009).

[16] See Dorado v. People, 796 Phil. 233 (2016).

[17] TSN dated October 9, 2012, pp. 1-3.

[18] 68 Phil. 580 (1939).

[19] 251 Phil. 427 (1989).

[20] Id. at 432-434.

[21] Dorado v. People, supra note 16.

[22] Id. at 251.

[23] Id. at 251-253.

- [24] CICL XXX v. People and Redoquerio, supra note 5.
- [25] Guevarra v. Hon. Almodovar, 251 Phil. 427, 432 (1989).
- [26] Jose v. People, 489 Phil. 106, 113 (2005).
- [27] Reflections of Justice Alfredo Benjamin S. Caguioa, p. 3.
- [28] See Dorado v. People, supra note 16; CICL XXX v. People and Redoquerio, supra note 5.
- [29] TSN dated March 5, 2012, pp. 11-14.

Modified

G.R. No. 238798 (XXX238798, Petitioner v. People of The Philippines, Respondent).[*]

CONCURRING OPINION

LOPEZ, J., J.:

I am one with the ponencia in affirming the Decision dated November 29, 2017 and Resolution dated March 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39196, ultimately upholding the conviction of XXX238798 for the crime of homicide.

In addition to the deft analysis in the ponencia, I wish to offer additional perspective on the conclusion to affirm XXX238798's conviction, especially in view of the circumstances in this case.

At its core, my position is that the acquittal of XXX238798 is not warranted simply because the Regional Trial Court (RTC) made no mention of discernment in its Judgment, especially since the CA, supported by evidence on record, ruled upon the same on appeal.

To begin, the retroactive application of Republic Act (R.A.) No. 9344, which took effect on May 20, 2006,[1] insofar as it is favorable to the accused is supported by jurisprudence.

XXX238798 was 17 years old at the time of the commission of the alleged offense in 2003, when the prevailing rule was Article 12, Paragraph 3 of the Revised Penal Code and Section 189 of Presidential Decree No. 603, which did not require proof of discernment if the accused is above 15 years old. Thus, the change brought about by Section 6 of R.A. No. 9344, which came into effect during the trial at the RTC, was beneficial in that it required proof of discernment if the accused is between 15 and 18 years old, otherwise, they are exempt from criminal liability.

Notably, in *People v. Dorado*,[2] where the acts constituting the crime and the subsequent trial took place in 2004, with the RTC rendering its Judgment in 2010, this Court remarked that "neither the RTC nor the CA paid much attention to Dorado's minority and how it affected his criminal responsibility." [3] Further, this Court emphasized that "[g]laringly, there was no discussion at all on whether Dorado acted with discernment when he committed the crime imputed against him." [4]

In *People v. ZZZ*, [5] while the act took place in 1996 and the accused was arrested in 2003, the trial court assigned a social worker to ZZZ during trial, who found that he acted with discernment. [6] Moreover, the RTC issued its judgment in 2013 finding that the accused therein acted with discernment, [7] which was affirmed by the CA. [8] Further, this Court upheld the finding of the RTC and CA that therein accused acted with discernment. [9]

In this case, while the act took place in 2003, trial was conducted from 2005 to 2013, with R.A. No. 9344 taking effect during trial, and thereafter, judgment was rendered by the RTC in 2014.

Admittedly, in this case, no determination was made by a social worker on the existence of discernment; neither was there mention of discernment on the part of the RTC in its Judgment rendered in 2014. Nevertheless, the CA ruled on the said issue, using facts already in the record, and determined that XXX238798 acted with discernment.

As such, the factual circumstances of this case rest in between the situation in *People v. ZZZ* where the issue of discernment was expressly considered as early as the trial court's ruling,[10] and that in *People v. Dorado* wherein "neither the RTC nor the CA paid much attention" to the minority of the accused.[11]

Due to and despite these peculiar circumstances, I concur with the ponencia to uphold the CA's action in the instant case, finding no reversible error in the same.

Moreover, it is my humble submission that the ruling of the CA on the presence of discernment on the part of XXX238798 did not violate principles of criminal law and procedure.

As pointed out in the ponencia, "the accused may waive the right to question the defects or insufficiency of said Information." [12] Notably, even if the original Information, which was filed in 2004, had not been amended from Frustrated Homicide to Homicide after the supervening death of the victim AAA238798 in 2008, objections could have been made against the original Information from the time R.A. No. 9344 took effect in 2006.

Moreover, as the ponencia also invokes, the settled rule that "an appeal in criminal cases opens the entire case for review" and the appellate court may thus "examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law." [13] I add that appeals also allow the reviewing court to "both questions of law and of fact whether or not raised by the parties." [14] Thus, the CA may properly tackle the issue of discernment despite neither of the parties having raised the same, especially as it is intrinsically connected to the issue of criminal liability in the case and is based on evidence on record.

At any rate, case law has previously remarked that the requirement that discernment be alleged in the Information is sufficiently complied with by the allegation that the offense was committed "with intent to kill," [15] which was already present in the instant amended Information. Such an allegation necessarily carries the conditions that must be proven [to] prove such an intent to kill, and for which the accused could be said to have been properly informed of the accusation against him. This notwithstanding, I am not unmindful of pronouncements of this Court clarifying that intent is different from discernment. [16]

It bears pointing out that allowing for the CA's determination as to the presence of discernment found in the record strikes a balance between the principle of retroactivity of penal laws favorable to an accused, vis-à-vis the prosecution's burden to prove an added element of a crime, especially considering the peculiar situation in this case. While lapses may have been committed by the prosecution and trial court in not addressing the issue of discernment despite the amendatory law taking effect while the trial was pending, the validity of the CA's determination of discernment should not be affected by such oversight, especially in view of the latitude allowed to the CA to decide criminal cases on appeal.

At any rate, the due process rights of the accused were not violated, as [during] the trial the defense had the opportunity to, and in fact did, adduce evidence and rebut the facts presented by the prosecution. The RTC then made a ruling on his criminal liability, regrettably without considering R.A. No. 9344 which was beneficial to the accused. What the CA did was merely consider the facts already in the record and apply them to the prevailing law and jurisprudence, to determine whether XXX238798 acted with discernment.

In other words, while the prosecution and trial court may not have set out to prove discernment on the part of XXX238798, which might have occurred due to some oversight or inadvertence, this was effectively remedied when the CA used evidence on record to conclude that XXX238798 acted with discernment. Moreover, courts are bound to receive evidence and examine facts. The facts form part of the evidence for which the legal concepts may come into play. Simply because the legal nomenclature of "discernment" was not used or sought to be proven in the trial court does not mean that courts on appeal can no longer examine the same facts to determine whether a different law or rule, even when not considered by the trial court, applies. Facts should not be tailored to fit to the requirements of the law, rather, the law should apply to the facts presented.

Further, I concur with the ponencia, and the observations of the majority, that there exists sufficient proof on record that XXX238798 acted with discernment and thus, should be held criminally liable. The totality of the sequence of events prior to the attack shows discernment on the part of XXX238798. This is because as AAA238798 testified against XXX238798 in a hearing before the punong barangay,[17] he was not just some any other stranger to XXX238798. Thus, in going to AAA238798's residence in the early hours, barely a day after AAA238798 testified against him for a separate incident, entering the house while supposedly looking for someone, striking AAA238798 in the head, and leaving after accomplishing the criminal act, it cannot be doubted that XXX238798 had the capacity to understand the difference between right and wrong, and understood the consequences of his acts.

Additionally, this Court has determined the presence of discernment when the following circumstances were present: (1) the crime was perpetrated in a dark and isolated place; (2) the accused fled to a different province after being tagged as a suspect; and (3) the use of force in perpetrating the act.[18]

To recall, the attack was perpetrated in AAA238798's residence in the early morning, at around 3:00 a.m.[19] After the attack, XXX238798 left the bloodied AAA238798 lying in front of their gate, then after the case against him was filed, he quit school and went to Sagada.[20] Further, the force used by XXX238798 ended up causing AAA238798's eyes to pop out, which led to massive cerebral contusions and bleeding on the brain, and severe brain damage, leaving him in a vegetative state and bedridden for five long years until he died.[21]

Thus, the totality of facts and circumstances in this case show that XXX238798 acted with discernment and thus, should be held criminally liable for his acts.

Accordingly, I vote to DENY the Petition for Review on Certiorari and affirm the conviction of XXX238798 for the crime of homicide.

[*] In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 9344, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

[1] *Declarador v. Gubaton*, 530 Phil. 738, 748 (2006) [Per J. Callejo, Sr., First Division].

[2] 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].

[3] *Id.* at 245.

[4] *Id.* at 251.

[5] 857 Phil. 629 (2019) [Per J. Leonen, Third Division].

[6] *Id.* at 639.

[7] Id.

[8] Id. at 640.

[9] Id. at 649.

[10] Id. at 639.

[11] *Dorado v. People*, 796 Phil. 233, 251-253 (2016) [Per J. Mendoza, Second Division].

[12] Ponencia, p. 19.

[13] Id. at 21.

[14] *Tan v. People*, 430 Phil. 685, 693 (2002) [Per J. Vitug, En Banc].

[15] *People v. Cordova*, 296 Phil. 163, 185 (1993) [Per J. Davide, Jr., Third Division], citing *People v. Nieto*, 103 Phil. 1133, 1133-1134 (1958) [Per J. Reyes, First Division]. See also *People v. Surbida*, 113 Phil. 318, 320 (1961) [Per C.J. Bengzon, En Banc].

[16] *Dorado v. People*, 796 Phil. 233, 251-253 (2016) [Per J. Mendoza, Second Division]. *Guevarra v. Almodovar*, 251 Phil. 427, 432-434 (1989) [Per J. Paras, Second Division].

[17] Ponencia, p. 3.

[18] *People v. ZZZ*, 857 Phil. 629 (2019) [Per J. Leonen, Third Division].

[19] Ponencia, p. 3.

[20] Id. at 3-4.

[21] Id. at 4.

CONCURRING AND DISSENTING OPINION

KHO, JR., J.:

I concur with the admissibility of the statement made by the victim, AAA, to his mother as part of the *res gestae* exception of the hearsay rule under Section 36, Rule 130 of the Revised Rules on Evidence (the prevailing rule when the criminal case against petitioner CICL XXX was tried).

Despite my concurrence on that matter, I respectfully dissent to the conviction of CICL XXX. As will be discussed in this Opinion, CICL XXX should be acquitted of Homicide due to (a) the prosecution's failure to allege discernment in the Information and duly prove its existence during trial; and (2) the failure of the trial court to actively determine the existence of discernment.

I.

As a brief background, this case stemmed from an Information^[1] filed before the Regional Trial Court of La Trinidad, Benguet, Branch 9 (RTC) charging CICL XXX with Homicide.

The prosecution alleged that on October 27, 2003, AAA testified against CICL XXX, then 17 years old, in a barangay hearing for a complaint for physical injuries filed by a certain BBB against the latter. The next day at 3:00 a.m., AAA's mother heard AAA shouting "Mama! Mama!" AAA's parents immediately went outside and

saw AAA lying in front of their gate with bloodied face and eyes. AAA narrated that he saw CICL XXX and a companion inside their house, and when he inquired on what they were doing there, the latter replied that they were looking for someone. AAA then followed them, but soon thereafter, CICL XXX struck his eyes.[2]

On October 29, 2003, AAA complained of dizziness and that one of his eyes appeared to be popping out. Thus, he was immediately brought to the hospital where it was found out that he was suffering from severe brain damage. After being bed-ridden for 5 years, AAA died due to "metabolic encephalopathy... secondary to ischemic infarction, and the underlying cause is Acute Intraparenchymal Hemorrhages, Bifrontal and Right Temporal Lobes with Subarachnoid and Subdural Extension secondary to Blunt Trauma to the Head." [3]

For his part, CICL XXX denied the charges against him. He claimed that he met AAA during the hearing of the complaint filed by BBB at the barangay. He further averred that he was drinking with his friends on October 27, 2003 until 4:00 a.m. the next day, and that afterwards, he went home to Barangay Dizon, Baguio City. He then claimed that he was a student at the time but quit school when the case was filed. He then went home to Sagada to work as a tourist guide instead.[4]

In a Decision[5] dated February 28, 2014, the RTC convicted CICL XXX of Homicide. This was affirmed by the Court of Appeals (CA) in a Decision[6] dated November 29, 2017. In convicting CICL XXX, the CA held that the prosecution sufficiently established that the ultimate cause of AAA's death was the force of the blow of a blunt object used in hitting his head. However, it found that CICL XXX was entitled to the privileged mitigating circumstance of minority, being only 17 years old when the crime was committed, and that he may serve his sentence in an agricultural camp or other training facilities pursuant to Republic Act No. (RA) 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006."

Aggrieved, CICL XXX appealed to the Court.

The ponencia denied the petition, and accordingly, affirmed CICL XXX's conviction of Homicide and his corresponding civil liability. Moreover, it remanded the case to the RTC for its appropriate action in accordance with Section 51 of RA 9344. In finding that the elements of Homicide were present in this case, the ponencia held that prosecution witnesses' testimonies may be admitted as part of the *res gestae*, and that the prosecution was able to prove that CICL XXX hit AAA in the head with a blunt instrument, causing brain injury which led to his death.[7]

On the other hand, the ponencia found that the exempting circumstance of minority was not present because CICL XXX acted with discernment based on the totality of circumstances of the case despite the prosecution's failure to allege discernment in the Information and the trial court's failure to discuss discernment in its decision.[8]

Anent the failure to allege discernment in the Information, the ponencia, applying *People v. Solar* (Solar),[9] held that defense's failure to interpose any objection to the amended Information resulted to the waiver of his right to question the defect. Anent the trial court's failure to discuss discernment, the ponencia held that the required finding of discernment was satisfied when the CA made its own finding considering that an appeal in criminal cases opens the entire case for review allowing appellate courts full discretion over the case.[10]

Finally, the ponencia held that CICL XXX is liable to the civil liabilities arising from his actions as a result of his conviction of Homicide, and accordingly, remanded the case to the RTC for its appropriate action in accordance with Section 51 of RA 9344.[11]

As adverted to, I express my agreement with the ponencia insofar as its discussion on the admissibility of the prosecution's testimony may be admitted as part of *res gestae*. However, as I have preliminarily discussed, I respectfully enter my dissent in relation to affirming CICL XXX's conviction, for reasons as will be explained

hereunder.

II.

In order to secure a conviction for Homicide, the following must be established by the prosecution: (a) a person was killed; (b) the accused killed him/her without any justifying circumstance; (c) the accused had the intention to kill, which is presumed; and (d) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[12]

In this case, the prosecution was able to establish that: (a) CICL XXX hit AAA with a blunt instrument in his eyes, which eventually resulted to the latter's death; and (b) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Notably, in establishing the foregoing facts, the prosecution resorted to the testimony of AAA's mother, who essentially stated that AAA told her that it was CICL XXX who struck him.

In this regard, Section 36, Rule 130 of the Revised Rules on Evidence (the prevailing rule when the criminal case against CICL XXX was tried) provides for what is known as the "hearsay rule", i.e., that "[a] witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules."

One of the recognized exceptions to the hearsay rule is when the testimony forms part of the *res gestae*. In this regard, Section 42, Rule 130 of the Revised Rules on Evidence reads:

Section 42. Part of *res gestae*. — Statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *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 (3) essential requisites to admit evidence as part of the *res gestae*, namely: (1) that the principal act, the *res gestae* be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.[13]

In this case, as aptly pointed out by the ponencia, all the aforesaid requisites were present as: (a) CICL XXX's act of hitting AAA in the eyes causing bleeding is a startling occurrence; (b) AAA related the incident to his mother immediately after the incident or before he had the opportunity to contrive or concoct a story; and (c) AAA's statements were made spontaneously and directly pertaining to the startling occurrence itself.

III.

Under ordinary circumstances, the foregoing is already sufficient to secure a conviction against an accused. However, a significant circumstance is obtaining in this case, particularly, the fact that CICL XXX was only 17 years old when the crime occurred.

In this regard, it is well to point out that Section 6 of RA 9344 adjusted the minimum age of criminal responsibility, as follows:

Section 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 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. (Emphasis and underscoring supplied)

RA 9344 was enacted into law on April 28, 2006 and took effect on May 20, 2006. Its intent is to promote and protect the rights of a child in conflict with the law or a child at risk by providing a system that would ensure "that children are dealt with in a manner appropriate to their well-being through a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care."

More importantly in the context of this case, RA 9344 modifies as well the minimum age limit of criminal irresponsibility for minor offenders; it changed what paragraphs 2 and 3 of Article 12 of the Revised Penal Code (RPC), as amended, previously provided – i.e., from "under nine years of age" and "above nine years of age and under fifteen" (who acted without discernment) – to "fifteen years old or under" and "above fifteen but below 18" (who acted without discernment) in determining exemption from criminal liability.

In providing such exemption, RA 9344 – as the old paragraphs 2 and 3, Article 12 of the RPC did – presumes that the minor offenders completely lack the intelligence to distinguish right from wrong, so that their acts are deemed involuntary ones for which they cannot be held accountable. RA 9344 also drew its changes from the principle of restorative justice that it espouses; it considers the ages 9 to 15 years as formative years and gives minors of these ages a chance to right their wrong through diversion and intervention measures.[14]

Consequently, the 2019 Supreme Court Revised Rules on Children in Conflict with the Law took effect on July 7, 2019.[15] Section 44 thereof provides for the guiding principle in rendering a judgment in Child in Conflict with the Law (CICL) cases, thus:

Section 44. Guiding Principles in Judging the Child. – Subject to the provisions of the Revised Penal Code, as amended, and other special laws, the judgment against a child in conflict with the law shall be guided by the following principles:

(1) The judgment shall be in proportion to the gravity of the offense, and shall consider the circumstances and the best interest of the child, the rights of the victims, and the needs of society in line with the demands of balance and restorative justice.

(2) Restrictions on the personal liberty of the child shall be limited to the minimum. x x x x

In *Dorado v. People (Dorado)*,[16] the Court, speaking through Justice Jose C. Mendoza, held that if a minor committed a crime, it cannot be presumed that he or she acted with discernment. As such, it is imperative upon the prosecution to prove as a separate circumstance that the CICL committed the crime with discernment,[17] thus:

"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."

"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." 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." 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.[18]

To be sure, discernment is the mental capacity of a minor to fully appreciate the consequences of his unlawful act – to understand the difference between right and wrong. 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.[19] The basic reason behind the exempting circumstance of lack of discernment is the complete absence of intelligence – freedom of action of the offender which is an essential element of a felony by *dolus* or *culpa*. Intelligence is the power to determine the morality of human acts to distinguish a licit from an illicit acts.[20]

In proving the existence of discernment, the Senate deliberations of RA 9344 instruct that the prosecution must specifically prove as a separate circumstance that the minor committed the alleged crime with discernment.[21] "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." [22] Failure to establish the same necessarily results to the acquittal of the CICL.

Since the existence of discernment is considered as a separate circumstance that needs to be proven at the trial, it goes without saying that such circumstance must likewise be sufficiently alleged in the Information charging a CICL with a crime. Relevant to this discussion are Sections 8 and 9, Rule 110 of the 2000 Revised Rules of Criminal Procedure which reads:

Section 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Section 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

In *People v. Lapore* (Lapore),[23] the Court, through Justice Jose P. Perez, held that aggravating or qualifying circumstances that were not alleged in the information cannot be appreciated against an accused, even if the same is duly proven beyond reasonable doubt during trial, and to rule otherwise would be to violate the accused's right to be informed of the nature and cause of accusation against him, viz.:

Sections 8 and 9 of Rule 110 of the Rules on Criminal Procedure provide that for qualifying and aggravating circumstances to be appreciated, it must be alleged in the complaint or information. This is in line with the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Even if the prosecution has duly proven the presence of the circumstances, the Court cannot appreciate the same if they were not alleged in the Information. Hence, although the prosecution has duly established the presence of the aforesaid circumstances, which, however, were not alleged in the Information, this Court cannot appreciate the same. x x x[24] (Emphasis and underscoring supplied)

While Lapore involves the propriety of alleging aggravating and qualifying circumstances in an Information in relation to the accused's right to be informed of the nature and cause of accusation against them, it is respectfully submitted that the logic stated therein is even more applicable insofar as the special circumstance of discernment is concerned, considering that the same is determinative of the CICL's criminal liability – in particular, if there is discernment, the CICL is criminally liable; otherwise, he is exempt from criminal liability.

Thus, when the accused is a child between 15 and 18 years of age, the prosecution must: first, duly allege the fact of discernment in the Information; and second, establish with proof beyond reasonable doubt not only the existence of all the elements of the crime charged, but also the existence of discernment on the part of the accused. Otherwise, the accused shall be exempt from criminal liability. More significantly, the responsibility of knowing whether a CICL acted with discernment is two-fold: (1) the prosecution's positive duty to allege discernment in the Information and duly prove its existence during trial; and (2) the trial court's positive duty to determine the existence of discernment.

IV.

A review of the records shows that the two-fold responsibility was not present in this case.

I expound.

First, records reveal that the prosecution not only failed to duly allege the existence of the circumstance of discernment when it amended the Information in this case on June 8, 2009,[25] it also failed to make any effort to prove discernment during trial.

Records show that while the Information was filed on March 1, 2004, or before RA 9344 took effect on May 20, 2006, the Information was amended to Homicide on June 8, 2009[26] and the prosecution only concluded the presentation of its evidence on March 28, 2011,[27] both after the effectivity of the same law. Thus, the prosecution had sufficient time after the effectivity of RA 9344 (i.e., on May 20, 2006) to amend the Information to include therein a specific allegation pertaining to the existence of discernment on the part of CICL XXX, and thereafter, prove such existence by proof beyond reasonable doubt. The prosecution, however, miserably failed to do so. In fact, the prosecution even voluntarily waived its right to cross-examine not only CICL XXX but also its witness.[28]

It must be emphasized that the prosecution should have applied provisions of RA 9344 (i.e., the amendments to the minimum age of responsibility) in favor of the accused in line with Article 22 of the RPC mandating that "[p]enal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving same."

Second, even if all the elements of the crime charged are proven beyond reasonable doubt, the prosecution's failure to sufficiently allege the existence of discernment in the Information against CICL XXX precludes the courts from issuing a judgment of conviction against the latter; to rule otherwise would be to violate his right to be

informed of the nature and cause of accusation against him.

In *Villarba v. Court of Appeals*,^[29] the Court, through now Senior Associate Justice Marvic M.V.F. Leonen, elucidated on this right, as follows:

The constitutional right to be informed of the nature and cause of the accusation against an accused further requires a sufficient complaint or information. It is deeply rooted in one's constitutional rights to due process and the presumption of innocence.

Due process dictates that an accused be fully informed of the reason and basis for their indictment. This would allow an accused to properly form a theory and to prepare their defense, because they are "presumed to have no independent knowledge of the facts constituting the offense they have purportedly committed."

In *Andaya v. People*, this Court explained that the purpose of a written accusation is to enable the accused to make their defense, to protect themselves against double jeopardy, and for the court to determine whether the facts alleged are sufficient in law to support a conviction. Hence, a complaint or information must set forth a "specific allegation of every fact and circumstances necessary to constitute the crime charged."

x x x x

It is critical that all of these elements are alleged in the information. Full compliance with this rule is essential to satisfy the constitutional rights of the accused; conversely, any deviation that prejudices the accused's substantial rights is fatal to the case. In *Enrile v. People*:

A concomitant component of this stage of the proceedings is that the Information should provide the accused with fair notice of the accusations made against him, so that he will be able to make an intelligent plea and prepare a defense. Moreover, the Information must provide some means of ensuring that the crime for which the accused is brought to trial is in fact one for which he was charged, rather than some alternative crime seized upon by the prosecution in light of subsequently discovered evidence. Likewise, it must indicate just what crime or crimes an accused is being tried for, in order to avoid subsequent attempts to retry him for the same crime or crimes. In other words, the Information must permit the accused to prepare his defense, ensure that he is prosecuted only on the basis of facts presented, enable him to plead jeopardy against a later prosecution, and inform the court of the facts alleged so that it can determine the sufficiency of the charge.

x x x x

Factual allegations that constitute the offense are substantial matters. Moreover, an accused's right to question a conviction based on facts not alleged in the Information cannot be waived. Thus, even if the prosecution satisfies the burden of proof, but if the offense is not charged or necessarily included in the information, conviction cannot ensue:

The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.^[30]

It bears reiterating that in crimes involving CICLs, the existence of discernment is equally important as the elements of the crime charged. Otherwise stated, if the existence of discernment on the part of the CICL: (a) is not alleged in the Information; (b) is not alleged in the Information but proven at the trial; or (c) is not alleged in the

Information and not proven at the trial, the CICL's acquittal will ensue on the ground that he is exempt from criminal liability. THIS CANNOT BE WAIVED.

At this juncture, I am aware that in the case of Solar, the Court En Banc, through Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), laid down the following guidelines:

In sum, the Court, continually cognizant of its power and mandate to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, hereby lays down the following guidelines for the guidance of the Bench and the Bar:

1.

Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3 (e) (i.e., that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.

Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.

Alternatively, prosecutors may sufficiently aver the ultimate facts relative to a qualifying or aggravating circumstance by referencing the pertinent portions of the resolution finding probable cause against the accused, which resolution should be attached to the Information in accordance with the second guideline below.

2.

Prosecutors must ensure compliance with Section 8 (a), Rule 112 of the Revised Rules on Criminal Procedure that mandates the attachment to the Information the resolution finding probable cause against the accused. Trial courts must ensure that the accused is furnished a copy of this Decision prior to the arraignment.

3.

Cases which have attained finality prior to the promulgation of this Decision will remain final by virtue of the principle of conclusiveness of judgment.

4.

For cases which are still pending before the trial court, the prosecution, when still able, may file a motion to amend the Information pursuant to the prevailing Rules in order to properly allege the aggravating or qualifying circumstance pursuant to this Decision.

5.

For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, (i.e., whether he previously filed either a motion to quash under Section 3 (e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.[31]

In my considered view, the Solar guidelines only apply in instances where there is a "defective" allegation in the Information, as in that case where the Information broadly alleged that the killing involved therein was attended "with treachery and abuse of superior strength" without, however, providing the factual allegations constituting such circumstances. Verily, the Solar guidelines do not apply if there is a total lack of factual allegations pertaining to key elements or circumstances that would affect the accused's criminal liability.

In this case, while CICL XXX's minority was alleged in the amended Information dated June 8, 2009, the same totally lacks any factual allegation pertaining to the existence of discernment. To be sure, the accusatory portion of such Information reads:

That on or about the 28[th] of October 2003 at xxxxx, Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and feloniously, and with intent to kill, attack one [AAA] which caused his death thereafter.

That the accused is a minor being seventeen (17) years of age at the time of commission of the crime.

CONTRARY TO LAW.[32]

Verily, absent any allegation pertaining to the existence of discernment on the part of CICL XXX, a CICL, in the Information, NO VALID JUDGMENT OF CONVICTION can be rendered against him.

Since discernment was not indicated in the Information nor was it mentioned during the trial of the case, the Court cannot make its own determination of discernment as it will clearly violate CICL XXX's right to due process, particularly, his right to be informed of the nature and cause of the accusation against him.

To emphasize, it is the duty of the prosecutor "to state with sufficient particularity not just the acts complained of or the acts constituting the offense, but also the aggravating circumstances, whether qualifying or generic, as well as any other attendant circumstances, that would impact the penalty to be imposed on the accused should a verdict of conviction be reached." [33] Thus, an allegation in the Information that the CICL "acted with discernment" in the commission of the crime if the accused is below 17 years old is essential as it will affect the child's criminal responsibility, as in this case.

As a basic principle in criminal law, the starting point of every criminal prosecution is that the accused has a constitutional right to be presumed innocent. Thus, the courts, in arriving at their decisions, are instructed by no less than the Constitution to bear in mind that no person should be deprived of life or liberty without due process of law. An essential component of the right to due process in criminal proceedings is the right of the accused to be sufficiently informed, in writing, of the cause of the accusation against him.[34] It is in pursuit of this purpose that the Rules of Court and jurisprudence require that the Information allege the ultimate facts constituting the elements of the crime charged, as well as the circumstances that would affect the penalty to be imposed on the accused. Details that do not go into the core of the crime need not be included in the Information, but may be presented during trial.[35] It is thus imperative that the Information filed with the trial court be complete – to the end that the accused may suitably prepare his defense.[36] This is because the accused is presumed to have no independent knowledge of the facts that constitute the offense.[37] Verily, failure to make a proper allegation in the Information will violate the right of the accused to be informed of the nature and cause of the accusation

against him.

Third, even assuming that there was a proper allegation of discernment in the Information, a circumspect examination of the records shows that what was only established by the prosecution was the intent of CICL XXX to commit the crime. In *CICL XXX v. People*,^[38] the Court, speaking through Justice Caguioa, eloquently explained that discernment and intent are two (2) different concepts, viz.:

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*. 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 x x x" 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 [thing]; an aim; the purpose of the mind, including such knowledge as is essential to such intent; x x x; the design resolve, or determination with which a person acts." [(46 CJS 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 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 x x x" (*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 x x x the infant (has) no intelligence, the law exempts (him) from criminal liability." [39] (Emphases supplied)

To reiterate, the presence of discernment cannot be presumed, it must be duly alleged in the Information, and thereafter, proven beyond reasonable doubt as a separate circumstance.[40] Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.[41] The importance of proving the guilt of the accused beyond reasonable doubt was explained in *People v. Claro*,[42] where the Court, through Justice Lucas P. Bersamin elucidated:

In every criminal case, the accused is entitled to acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.

In the face of all the foregoing, we have reasonable doubt of the guilt of the accused for rape. Reasonable doubt —

x x x is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.

The requirement of establishing the guilt of the accused in every criminal proceeding beyond reasonable doubt has a long history that even pre-dates our Constitutions. As summed up by jurisprudence of American origin:

The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation. The 'demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times, (though) its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798. It is now accepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of all the essential elements of guilt.' C. McCormick, *Evidence* 321, pp. 681-682 (1954); see also 9 J. Wigmore, *Evidence*, 2497 (3d ed. 1940). Although virtually unanimous adherence to the reasonable-doubt standard in common-law jurisdictions may not conclusively establish it as a requirement of due process, such adherence does 'reflect a profound judgment about the way in which law should be enforced and justice administered.' *Duncan v. Louisiana*, 391 U.S. 145, 155, 1451 (1968).

Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required. See, for example, *Miles v. United States*, 103 U.S. 304, 312 (1881); *Davis v. United States*, 160 U.S. 469, 488, 358 (1895); *Holt v. United States*, 218 U.S. 245, 253, (1910); *Wilson v. United States*, 232 U.S. 563, 569-570, 349, 350 (1914); *Brinegar v. United States*, 338 U.S. 160, 174, 1310 (1949); *Leland v. Oregon*, 343 U.S. 790, 795, 1005, 1006 (1952); *Holland v. United States*, 348 U.S. 121, 138, 136, 137 (1954); *Speiser v. Randall*, 357 U.S. 513, 525-526, 1342 (1958). Cf *Coffin v. United States*, 156 U.S. 432 (1895). Mr. Justice Frankfurter stated that '(i)t the duty of the Government to establish . . . guilt beyond a reasonable doubt. This notion-basic in our law and rightly one of the boasts of a free society-is a requirement and a safeguard of due process of law in the historic, procedural content of 'due process.' *Leland v. Oregon*, supra, 343 U.S., at 802-803 (dissenting opinion). In a similar vein, the Court said in *Brinegar v. United States*, supra, 338 U.S., at 174, that '(g)uilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.' *Davis v. United States*, supra, 160 U.S., at 488 stated that the requirement is implicit in 'constitutions . . . (which) recognize the fundamental principles that are deemed essential for the protection of life and liberty.' In *Davis* a murder conviction was reversed because the trial judge instructed the jury that it was their duty to convict when the evidence was equally balanced regarding the sanity of the accused. This Court said: 'On the contrary, he is entitled to an acquittal of the specific crime charged, if upon all the evidence, there is reasonable doubt whether he was capable in law of committing crime. . . . No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them . . . is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged.' *Id.*, at 484, 493, 360.

The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence-that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.' *Coffin v. United States*, supra, 156 U.S. at 453. As the dissenters in the New York Court of Appeals observed, and we agree, 'a person accused of a crime . . . would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.' 24 N.Y.2d, at 205, 299 N.Y.S.2d, at 422, 247 N.E.2d, at 259.

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in *Speiser v. Randall*, supra, 357 U.S., at 525-526: 'There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value-as a criminal defendant his liberty-this margin of error is reduced as to him by the process of placing on the other party the burden of . . . persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the factfinder of his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.' *Dorsen & Rezneck, In Re Gault and the Future of Juvenile Law*, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967).

Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be

diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.

Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, no matter how strong, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account. That is what we must be do herein, for he is entitled to nothing less.

Without the proof of his guilt being beyond reasonable doubt, therefore, the presumption of innocence in favor of the accused herein was not overcome. His acquittal should follow, for, as we have emphatically reminded in *Patula v. People*:

x x x in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.[43] (Emphases in the original)

As earlier stated, the prosecution's failure to allege in the Information the presence of discernment, and thereafter, establish the same beyond reasonable doubt during the trial of the case will necessarily result a finding that CICL XXX is exempt from criminal liability.

Finally, again even assuming *arguendo* that there was a sufficient allegation of discernment in the Information, the RTC made no pronouncement if CICL XXX acted with discernment. On the other hand, the CA, although stating that CICL XXX acted with discernment, failed to provide its basis for its findings.

In *Dorado*, the Court held that since there was no finding of discernment by the trial court, it cannot rule with certainty as to the CICL's criminal responsibility. Accordingly, it held that in the absence of such determination, it was presumed that the CICL acted without discernment, and hence, deemed exempted from criminal liability.[44]

Furthermore, in *CICL XXX v. People*,[45] the Court held that the RTC and CA erred in convicting CICL XXX as the discussion pertained to intent to kill, and not acting with discernment. Both the RTC and CA made no pronouncement if CICL XXX acted with discernment in committing the crime.[46]

In this relation, I respectfully express my disagreement with the ponencia's holding that the principle of retroactivity of penal laws should be balanced with the prosecution's burden to prove an added element of a crime, viz.:

Also, as aptly stated by Associate Justice Jhosep Y. Lopez, allowing for the CA's determination as to the presence of discernment found in the record strikes a balance between the principle of retroactivity of penal laws favorable to an accused vis-à-vis the prosecution's burden to prove an added element of a crime, especially considering the peculiar situation in this case.[47] (Emphasis supplied)

I respectfully submit that the above-cited statement of the ponencia flies in the face of well-settled principles of statutory construction.

To recall, Article 22 of the RPC states that "[p]enal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor x x x." The plain meaning rule or *verba legis* in statutory construction enjoins that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.[48] In this relation, well-settled is the rule that "criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted." [49] Applying these principles, nothing in the provisions of Article 22 of the RPC and RA 9344 makes any mention to favor or give leeway to the courts to strike a balance between the rights of the accused and the duty of the State to prove the elements of the crime. Even assuming that an ambiguity exists in the interpretation of these provisions of the law, the cited statement of the ponencia likewise runs contrary to the principle that "[a]ny criminal law showing ambiguity will always be construed strictly against the state and in favor of the accused." [50] Hence, there is no obligation for the courts to strike a balance between the rights of the accused, on one hand, and the obligation of the prosecution to prove an element, on the other. Taken together, such statement creates a dangerous precedent as it undermines well-entrenched principles which are meant to protect the accused from possible abuses of the law.

To end, it is fitting to remind public prosecutors of their crucial role in crafting the Information, and proving discernment in CICL cases. Verily, failure of the prosecution to do so would make all their efforts futile, and consequently, said lapses may result to denial of justice.[51]

In view of the foregoing, I respectfully vote to ACQUIT CICL XXX of the crime charged for the prosecution's failure to allege, much less prove, discernment.

[1] Records, pp. 250–251.

[2] CA rollo, p. 86.

[3] Id. at 86–87.

[4] Id. at 87.

[5] Rollo, pp. 29–39.

[6] CA rollo, pp. 84–99.

[7] See ponencia, pp. 7–10.

[8] Id. at 10–19.

[9] 858 Phil. 884 (2019) [Per J. Caguioa, En Banc].

[10] See ponencia, p. 21.

[11] Id. at 22.

- [12] *Anisco v. People*, G.R. No. 242263, November 18, 2020 [Per J. Delos Santos, Third Division]; citations omitted.
- [13] *Manulat, Jr. v. People*, 766 Phil. 724, 744 (2015) [Per J. Peralta, Third Division].
- [14] *Sierra v. People*, G.R. No. 182941, July 3, 2009.
- [15] See A.M. No. 02-1-18-SC dated January 22, 2019.
- [16] 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].
- [17] *Id.* at 249.
- [18] *Id.* at 250–251; citations omitted.
- [19] *People v. Jacinto*, 661 Phil. 224, 249 (2011) [Per J. Perez, First Division].
- [20] See *Llave v. People*, 522 Phil. 340, 344 (2006) [Per J. Callejo, Sr., First Division].
- [21] *Dorado v. People*, *supra*, at 248.
- [22] *Llave v. People*, *supra*, at 368.
- [23] 761 Phil. 196 (2015) [Per J. Perez, First Division].
- [24] *Id.* at 203; citations omitted.
- [25] Records, p. 252.
- [26] *Id.*
- [27] *Id.* at 494.
- [28] See rollo, pp. 29–39.
- [29] G.R. No. 227777, June 15, 2020 [Per J. Leonen, Third Division].
- [30] *Id.*; citations omitted.
- [31] *Solar v. People*, *supra* note 9, at 930–932; citations omitted.
- [32] Records, p. 252.
- [33] *People v. Solar*, *supra* note 9, at 929.
- [34] *People v. Solar*, *id.* at 925. See also Section 14(2), Article III of the 1987 CONSTITUTION.
- [35] *People v. Sandiganbayan* (Fourth Division), 769 Phil. 378, 382 (2015) [Per J. Jardeleza, Third Division].
- [36] *People v. Bayya*, 384 Phil. 519, 526 (2000) [Per J. Purisima, En Banc].
- [37] *People v. Alemania*, 440 Phil. 297, 307 (2002) [Per J. Ynares-Santiago, En Banc].
- [38] 859 Phil. 912 (2019) [Per J. Caguioa, Second Division].
- [39] *Id.* at 923–925; citations omitted.
- [40] *Id.* at 922.
- [41] *People v. Claro*, 808 Phil. 455, 464 (2017) [Per J. Bersamin, Third Division].

[42] Id.

[43] Id. at 464–469.

[44] Dorado v. People, supra note 16, at 253.

[45] Supra note 38.

[46] Id. at 926.

[47] See ponencia, p. 21.

[48] Villarica v. Social Security Commission, 824 Phil. 613, 628 (2018) [Per J. Gesmundo, Third Division].

[49] See Acharon v. People, G.R. No. 224946, November 9, 2021 [Per J. Caguioa, En Banc]; People v. Garcia, 85 Phil. 651, 656 (1950) [Per J. Tuason, En Banc]; emphasis supplied.

[50] People v. Sullano, 827 Phil. 613, 625 (2018) [Per J. Gesmundo, Third Division]; emphasis supplied.

[51] See People v. Flores, 442 Phil. 561, 576 (2002) [Per J. Carpio-Morales, En Banc].

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