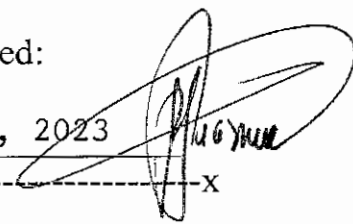


EN BANC

G.R. No. 238798 – CICL XXX,<sup>1</sup> *petitioner*, versus PEOPLE OF THE PHILIPPINES, *respondent*.

Promulgated:

March 14, 2023



X-----X

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.<sup>2</sup> 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<sup>3</sup>, which eventually resulted in the latter's death.<sup>4</sup> 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.”<sup>5</sup> 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

<sup>1</sup> 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.

<sup>2</sup> *Ponencia*, p. 23.

<sup>3</sup> 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.

<sup>4</sup> *Ponencia*, pp. 16-18.

<sup>5</sup> Republic Act No. 9344, Sec. 6.



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,<sup>6</sup> 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.

---

<sup>6</sup> Dated April 28, 2006.



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.<sup>7</sup> 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.<sup>8</sup> (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”

<sup>7</sup> Id. at Sec. 2(d).

<sup>8</sup> *Llave v. People*, 522 Phil. 340, 366-367 (2006).

— 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*,<sup>9</sup> 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.”<sup>10</sup>

Intent, in particular, refers to “a determination to do a certain thing,”<sup>11</sup> 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.”<sup>12</sup> 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.<sup>13</sup>

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

---

<sup>9</sup> 859 Phil. 912 (2019).

<sup>10</sup> *Id.* at 926.

<sup>11</sup> *Guevarra v. Almodovar*, 251 Phil. 427, 432 (1989).

<sup>12</sup> *Jose v. People*, 489 Phil. 106, 113 (2005).

<sup>13</sup> See *Dorado v. People*, 796 Phil. 233 (2016).



circumstances demonstrate CICL XXX's *intent* — his “determination to do a certain thing”<sup>14</sup> — 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.<sup>15</sup> 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.”<sup>16</sup>

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.

---

<sup>14</sup> Id. at 252.

<sup>15</sup> See *ponencia*, pp. 17-18.

<sup>16</sup> Id. at 18.



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<sup>17</sup> (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.

---

<sup>17</sup> 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.



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<sup>18</sup> (*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.<sup>19</sup>

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.<sup>20</sup> 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

---

<sup>18</sup> 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.

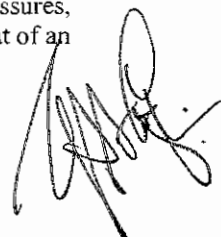
<sup>19</sup> A/RES/40/33 (November 29, 1985). In the article of Klarise Anne C. Estorninos, *Batang Bata Ka Pa: An Analysis of the Philippine Minimum Age of Criminal Responsibility in Light of International Standards*, ATENEO LAW JOURNAL (Vol. 62) (2017), p. 268, she observes that:

*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)

<sup>20</sup> *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).



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."<sup>21</sup>

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

---

<sup>21</sup> *Llave v. People*, supra note 8, at 367.





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.<sup>22</sup> 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.

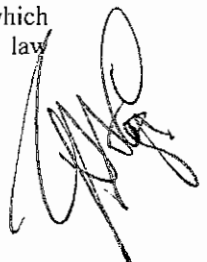
Despite this, the *ponencia* excuses both the prosecution and the RTC for not availing itself of any of these methods on the reasoning that R.A. No. 9344 became effective three years after the Information in this case had been filed. It is worth reiterating, however, that the prosecution and the RTC 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.

---

<sup>22</sup> 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.



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



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice