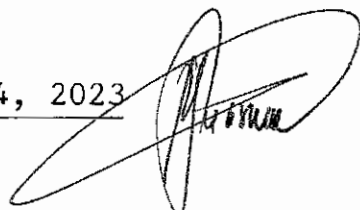


EN BANC

G.R. No. 238798 (CICL XXX, petitioner vs. People of the Philippines, respondent).

Promulgated: March 14, 2023



X-----X

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.

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.



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

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

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

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 of the CICL. In the absence of such determination, it should be presumed that the CICL acted without discernment.”

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

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 believe to exist, to facts of which the existence has not been so asserted.”

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.

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].

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,

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).

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)

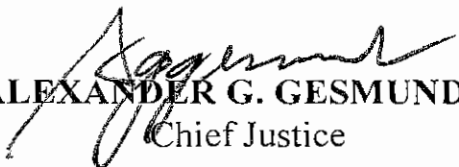
In this case, as discussed above, there is an **abundance of circumstantial evidence** which demonstrated that CICL XXX committed the crime, not only with criminal intent, but with discernment. He knew that what he was doing was wrong based on his acts, prior, during, and after the commission of the crime. As stated earlier, he devised a plan to attack the

¹⁹ *Dorado v. People*, supra note 6, at 250.

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.


ALEXANDER G. GESMUNDO
Chief Justice