

EN BANC

G.R. No. 238798 – CICL XXX, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

March 14, 2023

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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. 9344² 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*”

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.

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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*

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.

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*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

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].

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.

¹⁴ *Ponencia*, pp. 19–20.

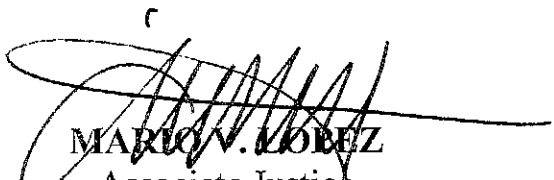
¹⁵ *People v. Asis*, 439 Phil. 707, 728 (2002) [Per J. Panganiban, *En Banc*], citing *People v. Marquita*, 383 Phil. 786, 798 (2000) [Per J. Quisumbing, Second Division]; *People v. Aquino*, 369 Phil. 701, 726 (1999) [*Per Curiam*, *En Banc*]; and *People v. Geron*, 346 Phil. 14, 29 (1997) [Per J. Romero, 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].

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


MARIO V. LOPEZ
Associate Justice