

EN BANC

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

Promulgated:  
March 14, 2023

x

x

CONCURRING AND DISSENTING OPINION

LEONEN, J.:

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.

\* 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.

## I

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

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

The trial court eventually found XXX guilty of homicide, this despite the absence of any finding as to his discernment.<sup>7</sup> 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.<sup>8</sup>

On appeal, the Court of Appeals affirmed XXX's conviction albeit with modifications as to the penalty and award of damages.<sup>9</sup>

The Court of Appeals held that the prosecution established that the victim's death was caused by XXX hitting the victim on the head.<sup>10</sup> Further, it found that XXX was entitled to the privileged mitigating circumstance of minority.<sup>11</sup> Thus, his penalty was reduced one degree lower.<sup>12</sup> 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.<sup>13</sup>

XXX filed his motion for reconsideration but to no avail.<sup>14</sup>

---

<sup>1</sup> *Rollo*, pp. 7–25.

<sup>2</sup> 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*.

<sup>3</sup> *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.

<sup>4</sup> *Id.* at 7–8.

<sup>5</sup> *Id.* at 28.

<sup>6</sup> *Id.* at 29.

<sup>7</sup> *Id.* at 37.

<sup>8</sup> *Ponencia*, pp. 4–5.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> CA Decision, p. 9.

<sup>11</sup> *Id.* at 11.

<sup>12</sup> *Id.* at 14–15.

<sup>13</sup> *Id.* at 13–15.

<sup>14</sup> *Rollo*, pp. 53–54.

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]." <sup>15</sup>

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. <sup>16</sup>

The law provides alternative measures and opportunities allowing children in conflict with the law to rehabilitate without undergoing detention and incarceration. <sup>17</sup> 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." <sup>18</sup>

Moreover, the law is enacted in observance of international standards of child protection to which the Philippines is a signatory. <sup>19</sup> 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;*

<sup>15</sup> *Ponencia*, p. 16.

<sup>16</sup> Republic Act No. 9344 (2006), sec. 1.

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

<sup>18</sup> *Id.* at 248.

<sup>19</sup> 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.

- (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.<sup>20</sup>  
(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.”<sup>21</sup> 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.<sup>22</sup> This is *doli incapax*, which is a legal presumption that children of certain age are not capable of bearing criminal responsibility.<sup>23</sup>

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.<sup>24</sup>

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.”<sup>25</sup> 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.).

<sup>20</sup> 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).

<sup>21</sup> GERALDINE VAN BUEREN, ARTICLE 40: CHILD CRIMINAL JUSTICE 26 (1<sup>st</sup> ed., 2006).

<sup>22</sup> *Id.*

<sup>23</sup> DON CIPRIANI, CHILDREN’S RIGHTS AND THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY 42 (1<sup>st</sup> ed., 2009).

<sup>24</sup> 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).

<sup>25</sup> *Id.*

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.<sup>26</sup>

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.<sup>27</sup> Children above 15 years but below 18 years of age are likewise exempt from criminal liability, unless they acted with discernment.<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup> The prefrontal cortex "is responsible for cognitive analysis, abstract thought, and the moderation of correct behavior in social situations."<sup>31</sup> It enables a person to exercise good judgment.<sup>32</sup>

Brain maturation involves several processes but two of the most crucial of these are synaptic pruning and myelination.<sup>33</sup>

Synaptic pruning is the "selective elimination of unused connections between [neurons]."<sup>34</sup> Neurons are cells in the brain which "receive signals from sense organs or other neurons."<sup>35</sup> 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.<sup>36</sup> Synapses are the connection between neurons.<sup>37</sup> By

---

<sup>26</sup> *Id.*

<sup>27</sup> Republic Act No. 9344 (2006), sec. 6.

<sup>28</sup> Republic Act No. 9344 (2006), sec. 6.

<sup>29</sup> ELIZABETH SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 44 (1<sup>st</sup> ed., 2008).

<sup>30</sup> *Id.*

<sup>31</sup> Mariam Arain, et al., *Maturation of the adolescent brain*, 9 *NEUROPSYCHIATRIC DISEASE AND TREATMENT JOURNAL* 449, 453 (2013).

<sup>32</sup> *Id.*

<sup>33</sup> ELIZABETH SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 44–45 (1<sup>st</sup> ed., 2008).

<sup>34</sup> *Id.* at 45.

<sup>35</sup> STEPHEN M. KOSSLYN & ROBIN S. ROSENBERG, *INTRODUCING PSYCHOLOGY: BRAIN, PERSON, GROUP* 57 (4<sup>th</sup> ed., 2014).

<sup>36</sup> *Id.*

<sup>37</sup> ELIZABETH SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 45 (1<sup>st</sup> ed., 2008).

eliminating unused synapses, synaptic pruning improves brain functioning by reducing the number of unnecessary synapses, making information processing more efficient.<sup>38</sup>

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

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[.]”<sup>41</sup> Through these processes, the brain matures, which allows for an enhanced ability to solve problems and to process complex information.<sup>42</sup>

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

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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup>

Adolescent brains still undergo development, particularly in regions which control planning, regulate impulse, anticipate consequences, and weigh

---

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Mariam Arain, et al., *Maturation of the adolescent brain*, 9 NEUROPSYCHIATRIC DISEASE AND TREATMENT JOURNAL 454 (2013).

<sup>42</sup> *Id.* at 452.

<sup>43</sup> *Id.* at 453.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 454.

<sup>48</sup> STEPHEN M. KOSSLYN & ROBIN S. ROSENBERG, *INTRODUCING PSYCHOLOGY: BRAIN, PERSON, GROUP* 74, 270 (4<sup>th</sup> ed., 2014).

<sup>49</sup> Mariam Arain, et al., *Maturation of the adolescent brain*, 9 NEUROPSYCHIATRIC DISEASE AND TREATMENT JOURNAL 453 (2013).

<sup>50</sup> *Id.*

risk and reward.<sup>51</sup> 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.<sup>52</sup>

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.<sup>53</sup>

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*,<sup>54</sup> 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 of lack of fault or negligence on their part, that is, the exercise of the diligence of 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."<sup>55</sup>

<sup>51</sup> ELIZABETH SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 132 (1<sup>st</sup> ed., 2008).

<sup>52</sup> WALTER SINNOTT-ARMSTRONG, *THE NEUROSCIENCE OF MORALITY: EMOTION, BRAIN DISORDERS, AND DEVELOPMENT* 335–336 (1<sup>st</sup> ed., 2008).

<sup>53</sup> *Id.*

<sup>54</sup> 288 Phil. 780 (1992) [Per J. Regalado, *En Banc*].

<sup>55</sup> *Id.* at 793–794.

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.<sup>56</sup> 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.<sup>57</sup>

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.<sup>58</sup>

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.<sup>59</sup> *Dorado v. People*<sup>60</sup> 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 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

<sup>56</sup> ELIZABETH SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 38-40 (1<sup>st</sup> ed., 2008).

<sup>57</sup> *Id.* at 41-42.

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

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

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



an illicit act. On the other hand, discernment is the mental capacity to understand the difference between right and wrong.”<sup>61</sup>

Discernment is different from intent. *Guevarra v. Almodovar*<sup>62</sup> 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.<sup>63</sup> (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.”<sup>64</sup> There is no criminal intent because the unlawful act was produced by a mental illness.<sup>65</sup>

---

<sup>61</sup> *Id.* at 250.

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

<sup>63</sup> *Id.* at 432-434.

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

<sup>65</sup> *Id.*

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.<sup>66</sup> 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."<sup>67</sup>

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.<sup>68</sup>

This may be proven through direct or circumstantial evidence. In *Jose v. People*:<sup>69</sup>

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*.<sup>70</sup>

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

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

<sup>67</sup> *Id.* at 249.

<sup>68</sup> *Ponencia*, pp. 12–13.

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

<sup>70</sup> *Id.* at 113.

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.”<sup>71</sup> 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.

---

<sup>71</sup> *Ponencia*, p. 14.

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.<sup>72</sup>

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.<sup>73</sup>

*CICL XXX v. People*<sup>74</sup> 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.<sup>75</sup>

Overtaking 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.<sup>76</sup> 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:

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

<sup>73</sup> *Id.* at 248–253.

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

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

[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.<sup>77</sup> (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.<sup>78</sup> 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.<sup>79</sup>

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.

---

<sup>77</sup> *Id.*

<sup>78</sup> *Ponencia*, p. 2.

<sup>79</sup> 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).

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.<sup>80</sup> In *People v. Lababo*,<sup>81</sup>

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.<sup>82</sup> (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*."<sup>83</sup> The guidelines set by the *ponencia* elaborates on how to determine discernment in cases involving children in conflict with the law.<sup>84</sup>

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.<sup>85</sup> 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.

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

<sup>81</sup> *Id.* at 1056.

<sup>82</sup> *Id.* at 1076

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

<sup>84</sup> *Ponencia*, p. 23.

<sup>85</sup> *Id.* at 16.

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.<sup>86</sup>

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.<sup>87</sup> 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 [REDACTED] 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.<sup>88</sup>

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.<sup>89</sup> 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

---

<sup>86</sup> *Id.* at 6.

<sup>87</sup> *Id.* at 17.

<sup>88</sup> *Id.* at 17–18.

<sup>89</sup> *Id.* at 18.

should “consider the totality of facts and circumstances in each case.”<sup>90</sup> 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.



MARVIC M.V.F. LEONEN  
Senior Associate Justice

---

<sup>90</sup> *Id.* at 23