

Promulgated: March 14, 2023

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## DISSENTING OPINION

**GAERLAN, J.:**

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

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

1. Discernment is the capacity of the child at the time of the commission of the offense to understand the difference between right and wrong and the consequences of the wrongful act.<sup>3</sup>
2. The task of ascertaining discernment is undertaken preliminarily by a social worker, and finally by the court. The determination of discernment shall take into account the ability of a child to understand the moral and psychological components of criminal responsibility and the consequences of the wrongful act; and whether a child can be held responsible for essentially antisocial behavior.<sup>4</sup> The assessment of a social worker is merely evidentiary, and is not binding upon the court. Ultimately, the court finally determines discernment, based on its own appreciation of all the facts and circumstances in each case.
3. In our jurisdiction, there is no presumption that a minor acts with discernment. The prosecution must specifically prove as a separate circumstance that the alleged crime was committed with discernment. For a minor at such an age to be criminally liable, the prosecution is burdened

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\* 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>1</sup> *Rollo*, pp. 7-25.

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

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

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

to prove beyond reasonable doubt, by direct or circumstantial evidence, that he acted with discernment.<sup>5</sup>

4. In determining discernment, courts shall consider the totality of facts and circumstances in each case.<sup>6</sup> Such circumstances include, but are not limited to: (i) the very appearance, the very attitude, the very comportment and behavior of said minor, not only before and during the commission of the act, but also after and even during trial, (ii) the gruesome nature of the crime, (iii) the minor's cunning and shrewdness, (iv) the utterances of the minor, (v) his overt acts before, during and after the commission of the crime, (vi) the nature of the weapon used, (vii) his attempt to silence a witness, and (viii) his disposal of evidence or his hiding the *corpus delicti*.

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

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

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

In *CICL XXX v. People and Redoquerio*<sup>7</sup> (*Redoquerio*), the Court stated that there can be no presumption that a minor acts with discernment. The prosecution must specifically prove as a separate circumstance that the alleged crime was committed with discernment. For a minor at such an age to be criminally liable, the prosecution is burdened to prove beyond reasonable doubt, by direct or circumstantial evidence, that he acted with discernment. This rule has been adopted and enshrined in guideline number three of the *Guidelines* provided in the *ponencia*.

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

Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that

<sup>5</sup> *Id.*, citing *CICL XXX v. People and Redoquerio*, G.R. No. 237334, August 14, 2019.

<sup>6</sup> *Id.*, citing *People v. ZZZ*, G.R. No. 228828, July 24, 2019, 910 SCRA 325.

<sup>7</sup> *Supra* note 5.

of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.<sup>8</sup>

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

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

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

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

R.A. No. 9344 was enacted to protect the rights of children in conflict with the law by ensuring that they are dealt with in an appropriate manner to promote their well-being. The law applies the principles of restorative justice, and gives minor offenders the chance to reform their ways through diversion and intervention measures.<sup>14</sup> In imposing the requirement of discernment for the increased ages of 15 years to 18 years, the law presumes that minor offenders completely lack the intelligence to distinguish right from wrong, so that their acts are deemed involuntary ones for which they cannot be held accountable.<sup>15</sup>

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

There was a clear indifference by the prosecution to the issue of XXX’s discernment when he committed the crime charged. The records are bereft of

<sup>8</sup> *Daayata v. People*, 807 Phil. 102, 104 (2017).

<sup>9</sup> *People v. Tajada*, 442 Phil. 369, 380 (2002).

<sup>10</sup> *Boac v. People*, 591 Phil. 508, 522 (2008), citing *People v. Ganguso*, 320 Phil. 324 (1995).

<sup>11</sup> *People v. Arnado*, G.R. Nos. 250100-02, March 21, 2022.

<sup>12</sup> Records, p. 43.

<sup>13</sup> REPUBLIC ACT NO. 9344, Section 6.

<sup>14</sup> *Id.*, Sections 3(f), 6, and 23.

<sup>15</sup> *Sierra v. People*, 609 Phil. 446, 461-462 (2009).

any effort by the prosecution, or even the trial court, to ascertain XXX's alleged discernment. This stark indifference by the prosecution<sup>16</sup> was even more highlighted when it decided to forego a chance to cross-examine the minor accused to propound probing questions to shed light on the issue of the minor accused's discernment.<sup>17</sup> Moreover, the absence of any meaningful reference to discernment in the decision of the trial court, who was in the ideal position to determine the existence of discernment, only shows that it was not established during trial.

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

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

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

### *Intent vis-à-vis discernment*

As early as 1939, the Court, in *People v. Doqueña*,<sup>18</sup> defined discernment as the mental capacity to understand the difference between right and wrong. The Court discussed that discernment should be determined by taking into consideration all the facts and circumstances accorded by the records in each case, the very appearance, the very attitude, the very comportment and behavior of a minor, not only before and during the commission of the act, but also after and even during the trial.

Fifty years later, in *Guevarra v. Almodovar*,<sup>19</sup> the Court had the occasion to distinguish discernment from intent in criminal cases:

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<sup>16</sup> See *Dorado v. People*, 796 Phil. 233 (2016).

<sup>17</sup> TSN dated October 9, 2012, pp. 1-3.

<sup>18</sup> 68 Phil. 580 (1939).

<sup>19</sup> 251 Phil. 427 (1989).

x x x [T]he terms “intent” and “discernment” convey two distinct thoughts. While both are products of the mental processes within a person, the former refers to the desire of one’s act while the latter relate to the moral significance that person ascribes to the said act. Hence a person may not intend to shoot another but may be aware of the consequences of his negligent act which may cause injury to the same person in negligently handling an air rifle. It is not [correct], therefore, to argue, as petitioner does, that since a minor above nine years of age but below fifteen acted with discernment, then he intended such act to be done. He may negligently shoot his friend, thus did not intend to shoot him, and at the same time recognize the undesirable result of his negligence.

In further outlining the distinction between the words “intent” and “discernment,” it is worthy to note the basic reason behind the enactment of the exempting circumstances embodied in Article 12 of the RPC; the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused.

x x x x

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

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

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

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<sup>20</sup> Id. at 432-434.

<sup>21</sup> *Dorado v. People*, supra note 16.

<sup>22</sup> Id. at 251.

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

After a judicious study of the records, the Court finds that the prosecution did not make an effort to prove that Dorado, then a sixteen (16)-year old minor, acted with discernment at the time of the commission of the crime. The RTC decision simply stated that a privileged mitigating circumstance of minority in favor of Dorado must be appreciated as it was proven that he was a minor at the time of the incident. Glaringly, there was no discussion at all on whether Dorado acted with discernment when he committed the crime imputed against him.

**Discernment cannot be presumed even if Dorado intended to do away with Ronald. Discernment is different from intent. x x x**

x x x x

Considering that there was no determination of discernment by the trial court, the Court cannot rule with certainty that Dorado was criminally responsible. As earlier stated, there can be no presumption of discernment on the part of the CICL. In the absence of such determination, it should be presumed that the CICL acted without discernment. This is in accordance with Section 3 of R.A. No. 9344, to wit:

Section 3. Liberal Construction of this Act. — In case of doubt, the interpretation of any of the provisions of this Act, including its implementing rules and regulations (IRRs), shall be construed liberally in favor of the child in conflict with the law.

Accordingly, Dorado is deemed exempted from criminal liability. Nevertheless, he is not excused from the civil liability that arose from the act. x x x<sup>23</sup> (Emphasis supplied; citations omitted)

The difference between discernment and intent once again came into light in *Redoquerio*. The minor accused therein was tried for frustrated homicide when, motivated by revenge, he attempted to take the victim's life. The victim alleged that while he was at a store, he heard somebody say “[y]an si Glenn anak ni Purok Leader na humuli sa atin nuon.” He looked back and saw accused with a couple of friends. The accused pointed a gun at the victim's face and pulled the trigger several times, but the gun did not fire. The accused then hit the victim's left temple and the top of the head with the gun. The accused's friends held the arms of the victim, while the accused punched

<sup>23</sup> Id. at 251-253.

him several times. The victim was also hit by one of the accused's companions with a stone, causing the victim to lose consciousness. The victim was in coma for seven days while he was confined at the hospital. The Court acquitted the accused for failure of the prosecution to prove discernment. The Court stated:

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

It is well to emphasize that:

[f]or a minor at such an age to be criminally liable, the prosecution is burdened to prove beyond reasonable doubt, by direct or circumstantial evidence, that he acted with discernment, meaning that he knew what he was doing and that it was wrong. Such circumstantial evidence may include the utterances of the minor; his overt acts before, during and after the commission of the crime relative thereto; the nature of the weapon used in the commission of the crime; his attempt to silence a witness; his disposal of evidence or his hiding the *corpus delicti*.”

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

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

Intent refers to the “determination to do a certain thing,”<sup>25</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>26</sup>

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

<sup>24</sup> CACL XXX v. People and Redoquerio, supra note 5.

<sup>25</sup> Guevarra v. Hon. Almodovar, 251 Phil. 427, 432 (1989).

<sup>26</sup> Jose v. People, 489 Phil. 106, 113 (2005).

<sup>27</sup> Reflections of Justice Alfredo Benjamin S. Caguioa, p. 3.

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

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

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

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

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

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

Moreover, XXX's attack against the victim can not be considered an attempt to silence the latter as Okko had already given his testimony against XXX during the *barangay* proceedings the day before the attack. While the attack may be viewed more as a retaliation for Okko's testimony against

<sup>28</sup> See *Dorado v. People*, supra note 16; *CICL XXX v. People and Redoquerio*, supra note 5.



XXX, a minor accused's actions, when motivated by revenge, does not *ipso facto* prove discernment, as in the case of *Redoquerio* where the minor accused was motivated by revenge against the victim's father.

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

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

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

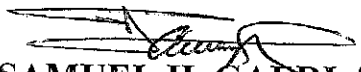
To my mind, the pieces of evidence discussed above surely could have served as convenient springboards for the prosecution to further probe into the issue of XXX's discernment. Unfortunately, without such deeper probing from the prosecution or the trial court, it is my view that the Court cannot hold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

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

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

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<sup>29</sup> TSN dated March 5, 2012, pp. 11-14.



**SAMUEL H. GAERLAN**  
Associate Justice