EN BANC

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

Promulgated:

March 14, 2023

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CONCURRING AND DISSENTING OPINION

KHO, JR., *J.*:

I concur with the admissibility of the statement made by the victim, AAA, to his mother as part of the *res gestae* exception of the hearsay rule under Section 36, Rule 130 of the Revised Rules on Evidence (the prevailing rule when the criminal case against petitioner CICL XXX was tried).

Despite my concurrence on that matter, I respectfully dissent to the conviction of CICL XXX. As will be discussed in this Opinion, CICL XXX should be acquitted of Homicide due to (*a*) the prosecution's failure ***to allege*** discernment in the Information and duly ***prove*** its existence during trial; and (*2*) the failure of the trial court ***to actively determine*** the existence of discernment.

I.

As a brief background, this case stemmed from an Information[1] filed before the Regional Trial Court of La Trinidad, Benguet, Branch 9 (RTC) charging CICL XXX with Homicide.

The prosecution alleged that on October 27, 2003, AAA testified against CICL XXX, then 17 years old, in a barangay hearing for a complaint for physical injuries filed by a certain BBB against the latter. The next day at 3:00 a.m., AAA's mother heard AAA shouting "*Mama! Mama!*" AAA's parents immediately went outside and saw AAA lying in front of their gate with bloodied face and eyes. AAA narrated that he saw CICL XXX and a companion inside their house, and when he inquired on what they were doing there, the latter replied that they were looking for someone. AAA then followed them, but soon thereafter, CICL XXX struck his eyes. [2]

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[1] Records, pp. 250-251.

[2] CA *rollo*, p. 86.

On October 29, 2003, AAA complained of dizziness and that one of his eyes appeared to be popping out. Thus, he was immediately brought to the hospital where it was found out that he was suffering from severe brain damage. After being bed-ridden for 5 years, AAA died due to "*metabolic encephalopathy... secondary to ischemic infarction, and the underlying cause is Acute Intraparenchymal Hemorrhages, Bifrontal and Right Temporal Lobes with Subarachnoid and Subdural Extension secondary to Blunt Trauma to the Head.*"[3]

For his part, CICL XXX denied the charges against him. He claimed that he met AAA during the hearing of the complaint filed by BBB at the *barangay*. He further averred that he was drinking with his friends on October 27, 2003 until 4:00 a.m. the next day, and that afterwards, he went home to Barangay Dizon, Baguio City. He then claimed that he was a student at the time but quit school when the case was filed. He then went home to Sagada to work as a tourist guide instead.[4]

In a Decision[5] dated February 28, 2014, the RTC convicted CICL XXX of Homicide. This was affirmed by the Court of Appeals (CA) in a Decision[6] dated November 29, 2017. In convicting CICL XXX, the CA held that the prosecution sufficiently established that the ultimate cause of AAA's death was the force of the blow of a blunt object used in hitting his head. However, it found that CICL XXX was entitled to the privileged mitigating circumstance of minority, being only 17 years old when the crime was committed, and that he may serve his sentence in an agricultural camp or other training facilities pursuant to Republic Act No. (RA) 9344, otherwise known as the "*Juvenile Justice and Welfare Act of 2006.*"

Aggrieved, CICL XXX appealed to the Court.

The *ponencia* denied the petition, and accordingly, affirmed CICL XXX's conviction of Homicide and his corresponding civil liability. Moreover, it remanded the case to the RTC for its appropriate action in accordance with Section 51 of RA 9344. In finding that the elements of Homicide were present in this case, the *ponencia* held that prosecution witnesses' testimonies may be admitted as part of the *res gestae*, and that the prosecution was able to prove that CICL XXX hit AAA in the head with a blunt instrument, causing brain injury which led to his death.[7]

On the other hand, the *ponencia* found that the exempting circumstance of minority was not present because CICL XXX acted with discernment based on the totality of circumstances of the case despite the prosecution's failure to

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3 Id. at 86-87.
4 Id. at 87.
5 *Rollo*, pp. 29-39.
6 CA *rollo*, pp. 84-99.
7 See *ponencia*, pp. 7-10.

allege discernment in the Information and the trial court's failure to discuss discernment in its decision.[8]

Anent the failure to allege discernment in the Information, the *ponencia*, applying *People v. Solar* (*Solar*),[9] held that defense's failure to interpose any objection to the amended Information resulted to the waiver of his right to question the defect. Anent the trial court's failure to discuss discernment, the *ponencia* held that the required finding of discernment was satisfied when the CA made its own finding considering that an appeal in criminal cases opens the entire case for review allowing appellate courts full discretion over the case.[10]

Finally, the *ponencia* held that CICL XXX is liable to the civil liabilities arising from his actions as a result of his conviction of Homicide, and accordingly, remanded the case to the RTC for its appropriate action in accordance with Section 51 of RA 9344.[11]

As adverted to, I express my agreement with the *ponencia* insofar as its discussion on the admissibility of the prosecution's testimony may be admitted as part of *res gestae*. However, as I have preliminary discussed, I respectfully enter my dissent in relation to affirming CICL XXX's conviction, for reasons as will be explained hereunder.

II.

In order to secure a conviction for Homicide, the following must be established by the prosecution: (*a*) a person was killed; (*b*) the accused killed him/her 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.[12]

In this case, the prosecution was able to establish that: (*a*) CICL XXX hit AAA with a blunt instrument in his eyes, which eventually resulted to the latter's death; and (*b*) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Notably, in establishing the foregoing facts, the prosecution resorted to the testimony of AAA's mother, who essentially stated that AAA told her that it was CICL XXX who struck him.

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[8] Id. at 10-19.
[9] 858 Phil. 884 (2019) [Per J. Caguioa, *En Banc*].
[10] See *ponencia*, p. 21.
[11] Id. at 22.
[12] *Anisco v. People*, G.R. No. 242263, November 18, 2020 [Per J. Delos Santos, Third Division]; citations omitted.

In this regard, Section 36, Rule 130 of the Revised Rules on Evidence (the prevailing rule when the criminal case against CICL XXX was tried) provides for what is known as the "hearsay rule", *i.e.*, that "*[a] witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules*."

One of the recognized exceptions to the hearsay rule is when the testimony forms part of the *res gestae*. In this regard, Section 42, Rule 130 of the Revised Rules on Evidence reads:

> Section 42. *Part of res gestae.* — Statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

There are three (3) essential requisites to admit evidence as part of the *res gestae*, namely: (1) that the principal act, the *res gestae* be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.[13]

In this case, as aptly pointed out by the *ponencia*, all the aforesaid requisites were present as: (*a*) CICL XXX's act of hitting AAA in the eyes causing bleeding is a startling occurrence; (*b*) AAA related the incident to his mother immediately after the incident or before he had the opportunity to contrive or concoct a story; and (*c*) AAA's statements were made spontaneously and directly pertaining to the startling occurrence itself.

III.

Under ordinary circumstances, the foregoing is already sufficient to secure a conviction against an accused. **However, a significant circumstance is obtaining in this case, particularly, the fact that CICL XXX was only 17 years old when the crime occurred.**

In this regard, it is well to point out that Section 6 of RA 9344 adjusted the minimum age of criminal responsibility, as follows:

> 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.

[13] *Manulat, Jr. v. People*, 766 Phil. 724, 744 (2015) [Per J. Peralta, Third Division].

> **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, <u>unless he/she has acted with discernment</u>, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.**
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> The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws. (Emphasis and underscoring supplied)

RA 9344 was enacted into law on April 28, 2006 and took effect on May 20, 2006. Its intent is to promote and protect the rights of a child in conflict with the law or a child at risk by providing a system that would ensure "*that children are dealt with in a manner appropriate to their well-being through a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.*"

More importantly in the context of this case, RA 9344 modifies as well the minimum age limit of criminal irresponsibility for minor offenders; it changed what paragraphs 2 and 3 of Article 12 of the Revised Penal Code (RPC), as amended, previously provided – *i.e.*, from "under nine years of age" and "above nine years of age and under fifteen" (who acted without discernment) – to "fifteen years old or under" and "above fifteen but below 18" (who acted without discernment) in determining exemption from criminal liability.

In providing such exemption, RA 9344 – as the old paragraphs 2 and 3, Article 12 of the RPC did – presumes that the 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. RA 9344 also drew its changes from the principle of restorative justice that it espouses; it considers the ages 9 to 15 years as formative years and gives minors of these ages a chance to right their wrong through diversion and intervention measures.[14]

Consequently, the 2019 Supreme Court Revised Rules on Children in Conflict with the Law took effect on July 7, 2019.[15] Section 44 thereof provides for the guiding principle in rendering a judgment in Child in Conflict with the Law (CICL) cases, thus:

> Section 44. *Guiding Principles in Judging the Child.* – Subject to the provisions of the Revised Penal Code, as amended, and other special laws, the judgment against a child in conflict with the law shall be guided by the following principles:

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[14] *Sierra v. People*, G.R. No. 182941, July 3, 2009.

[15] See A.M. No. 02-1-18-SC dated January 22, 2019.

> (1) The judgment shall be in proportion to the gravity of the offense, and shall consider the circumstances and the best interest of the child, the rights of the victims, and the needs of society in line with the demands of balance and restorative justice.
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> (2) Restrictions on the personal liberty of the child shall be limited to the minimum. x x x x

In *Dorado v. People* (*Dorado*),[16] the Court, speaking through Justice Jose C. Mendoza, held that if a minor committed a crime, it cannot be presumed that he or she acted with discernment. **As such, it is imperative upon the prosecution to prove as a separate circumstance that the CICL committed the crime with discernment**,[17] thus:

> "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."
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> "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:
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> > 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*.[18]

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16 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].

17 Id. at 249.

18 Id. at 250-251; citations omitted.

To be sure, discernment is the mental capacity of a minor to fully appreciate the consequences of his unlawful act – to understand the difference between right and wrong. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case.[19] The basic reason behind the exempting circumstance of lack of discernment is the complete absence of intelligence – freedom of action of the offender which is an essential element of a felony by *dolus* or *culpa*. Intelligence is the power to determine the morality of human acts to distinguish a licit from an illicit acts.[20]

In proving the existence of discernment, the Senate deliberations of RA 9344 instruct that the prosecution **must specifically prove as a separate circumstance** that the minor committed the alleged crime with discernment.[21] "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."[22] Failure to establish the same necessarily results to the acquittal of the CICL.

Since the existence of discernment is considered **as a separate circumstance** that needs to be proven at the trial, it goes without saying that such circumstance must likewise be sufficiently alleged in the Information charging a CICL with a crime. Relevant to this discussion are Sections 8 and 9, Rule 110 of the 2000 Revised Rules of Criminal Procedure which reads:

> Section 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
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> Section 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

In *People v. Lapore* (*Lapore*),[23] the Court, through Justice Jose P. Perez, held that aggravating or qualifying circumstances that were not alleged in the information cannot be appreciated against an accused, even if the same is duly

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[19] *People v. Jacinto*, 661 Phil. 224, 249 (2011) [Per J. Perez, First Division].
[20] See *Llave v. People*, 522 Phil. 340, 344 (2006) [Per J. Callejo, Sr., First Division].
[21] *Dorado v. People*, supra, at 248.
[22] *Llave v. People*, supra, at 368.
[23] 761 Phil. 196 (2015) [Per J. Perez; First Division]

proven beyond reasonable doubt during trial, and to rule otherwise would be to violate the accused's right to be informed of the nature and cause of accusation against him, *viz.*:

> Sections 8 and 9 of Rule 110 of the Rules on Criminal Procedure provide that for qualifying and aggravating circumstances to be appreciated, **it must be alleged in the complaint or information. This is in line with the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Even if the prosecution has duly proven the presence of the circumstances, the Court cannot appreciate the same if they were not alleged in the Information.** Hence, although the prosecution has duly established the presence of the aforesaid circumstances, which, however, were not alleged in the Information, this Court cannot appreciate the same. x x x[24] (Emphasis and underscoring supplied)

While *Lapore* involves the propriety of alleging aggravating and qualifying circumstances in an Information in relation to the accused's right to be informed of the nature and cause of accusation against them, it is respectfully submitted that the logic stated therein is even more applicable insofar as the special circumstance of discernment is concerned, considering that the same is determinative of the CICL's criminal liability – in particular, if there is discernment, the CICL is criminally liable; otherwise, he is exempt from criminal liability.

Thus, when the accused is a child between 15 and 18 years of age, the prosecution must: ***first***, duly allege the fact of discernment in the Information; and ***second***, establish with proof beyond reasonable doubt not only the existence of all the elements of the crime charged, but also the existence of discernment on the part of the accused. Otherwise, the accused shall be exempt from criminal liability. More significantly, the responsibility of knowing whether a CICL acted with discernment is two-fold: (1) the ***prosecution's positive duty to allege*** discernment in the Information and duly ***prove*** its existence during trial; and (2) the ***trial court's positive duty to determine*** the existence of discernment.

IV.

A review of the records shows that the two-fold responsibility was not present in this case.

I expound.

First, records reveal that the prosecution not only failed to duly allege the existence of the circumstance of discernment when it amended the

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[24] Id. at 203; citations omitted.

Information in this case on June 8, 2009,[25] it also failed to make any effort to prove discernment during trial.

Records show that while the Information was filed on **March 1, 2004**, or before RA 9344 took effect on **May 20, 2006**, the Information was amended to Homicide on **June 8, 2009**[26] and the prosecution only concluded the presentation of its evidence on **March 28, 2011**,[27] both after the effectivity of the same law. Thus, the prosecution had sufficient time after the effectivity of RA 9344 (*i.e.*, on May 20, 2006) to amend the Information to include therein a specific allegation pertaining to the existence of discernment on the part of CICL XXX, and thereafter, prove such existence by proof beyond reasonable doubt. The prosecution, however, miserably failed to do so. In fact, the prosecution even voluntarily waived its right to cross-examine not only CICL XXX but also its witness.[28]

It must be emphasized that the prosecution should have applied provisions of RA 9344 (*i.e.*, the amendments to the minimum age of responsibility) in favor of the accused in line with Article 22 of the RPC mandating that "[p]enal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving same."

Second, even if all the elements of the crime charged are proven beyond reasonable doubt, the prosecution's failure to sufficiently allege the existence of discernment in the Information against CICL XXX precludes the courts from issuing a judgment of conviction against the latter; to rule otherwise would be to violate his right to be informed of the nature and cause of accusation against him.

In *Villarba v. Court of Appeals*,[29] the Court, through now Senior Associate Justice Marvic M.V.F. Leonen, elucidated on this right, as follows:

> The constitutional right to be informed of the nature and cause of the accusation against an accused further requires a sufficient complaint or information. It is deeply rooted in one's constitutional rights to due process and the presumption of innocence.
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> **Due process dictates that an accused be fully informed of the reason and basis for their indictment. This would allow an accused to properly form a theory and to prepare their defense, because they are "presumed to have no independent knowledge of the facts constituting the offense they have purportedly committed."**

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[25] Records, p. 252.
[26] Id.
[27] Id. at 494.
[28] See *rollo*, pp. 29-39.
[29] G.R. No. 227777, June 15, 2020 [Per J. Leonen, Third Division].

In *Andaya v. People*, this Court explained that the purpose of a written accusation is to enable the accused to make their defense, to protect themselves against double jeopardy, and for the court to determine whether the facts alleged are sufficient in law to support a conviction. **Hence, a complaint or information must set forth a "specific allegation of every fact and circumstances necessary to constitute the crime charged."**

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It is critical that all of these elements are alleged in the information. Full compliance with this rule is essential to satisfy the constitutional rights of the accused; conversely, any deviation that prejudices the accused's substantial rights is fatal to the case. In *Enrile v. People*:

> A concomitant component of this stage of the proceedings is that the Information should provide the accused with fair notice of the accusations made against him, so that he will be able to make an intelligent plea and prepare a defense. Moreover, the Information must provide some means of ensuring that the crime for which the accused is brought to trial is in fact one for which he was charged, rather than some alternative crime seized upon by the prosecution in light of subsequently discovered evidence. Likewise, it must indicate just what crime or crimes an accused is being tried for, in order to avoid subsequent attempts to retry him for the same crime or crimes. In other words, the Information must permit the accused to prepare his defense, ensure that he is prosecuted only on the basis of facts presented, enable him to plead jeopardy against a later prosecution, and inform the court of the facts alleged so that it can determine the sufficiency of the charge.
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> x x x x

Factual allegations that constitute the offense are substantial matters. **Moreover, an accused's right to question a conviction based on facts not alleged in the Information cannot be waived.** Thus, even if the prosecution satisfies the burden of proof, but if the offense is not charged or necessarily included in the information, conviction cannot ensue:

> **The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein.** To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.[30]

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[30] Id.; citations omitted.

It bears reiterating that in crimes involving CICLs, the existence of discernment is equally important as the elements of the crime charged. Otherwise stated, **if the existence of discernment on the part of the CICL: (*a*) is not alleged in the Information; (*b*) is not alleged in the Information but proven at the trial; or (*c*) is not alleged in the Information and not proven at the trial, the CICL's acquittal will ensue on the ground that he is exempt from criminal liability. *THIS CANNOT BE WAIVED.***

At this juncture, I am aware that in the case of *Solar*, the Court *En Banc*, through Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), laid down the following guidelines:

> In sum, the Court, continually cognizant of its power and mandate to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, hereby lays down the following guidelines for the guidance of the Bench and the Bar:
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> 1. Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3 (e) (*i.e.*, that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.
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>   Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.
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>   Alternatively, prosecutors may sufficiently aver the ultimate facts relative to a qualifying or aggravating circumstance by referencing the pertinent portions of the resolution finding probable cause against the accused, which resolution should be attached to the Information in accordance with the second guideline below.
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> 2. Prosecutors must ensure compliance with Section 8 (a), Rule 112 of the Revised Rules on Criminal Procedure that mandates the attachment to the Information the resolution finding probable cause against the accused. Trial courts must ensure that the accused is furnished a copy of this Decision prior to the arraignment.
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> 3. Cases which have attained finality prior to the promulgation of this Decision will remain final by virtue of the principle of conclusiveness of judgment.

Ara

4. For cases which are still pending before the trial court, the prosecution, when still able, may file a motion to amend the Information pursuant to the prevailing Rules in order to properly allege the aggravating or qualifying circumstance pursuant to this Decision.

5. For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, (*i.e.*, whether he previously filed either a motion to quash under Section 3 (e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.[31]

In my considered view, the *Solar* guidelines only apply in instances where there is a "***defective***" allegation in the Information, as in that case where the Information broadly alleged that the killing involved therein was attended "with treachery and abuse of superior strength" without, however, providing the factual allegations constituting such circumstances. Verily, the *Solar* guidelines do not apply if there is a ***total lack of factual allegations pertaining to key elements or circumstances that would affect the accused's criminal liability.***

In this case, while CICL XXX's minority was alleged in the amended Information dated June 8, 2009, the same totally lacks any factual allegation pertaining to the existence of discernment. To be sure, the accusatory portion of such Information reads:

> That on or about the 28th of October 2003 at [redacted], Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and feloniously, and with intent to kill, attack one [AAA] which caused his death thereafter.
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> That the accused is a minor being seventeen (17) years of age at the time of commission of the crime.
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> CONTRARY TO LAW.[32]

Verily, absent any allegation pertaining to the existence of discernment on the part of CICL XXX, a CICL, in the Information, *NO VALID JUDGMENT OF CONVICTION* can be rendered against him.

Since discernment was not indicated in the Information nor was it mentioned during the trial of the case, the Court cannot make its own

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[31] *Solar v. People*, supra note 9, at 930-932; citations omitted.
[32] Records, p. 252.

determination of discernment as it will clearly violate CICL XXX's right to due process, particularly, his right to be informed of the nature and cause of the accusation against him.

To emphasize, it is the duty of the prosecutor "**to state with sufficient particularity** not just the acts complained of or the acts constituting the offense, but also the aggravating circumstances, whether qualifying or generic, **as well as any other attendant circumstances, that would impact the penalty to be imposed on the accused** should a verdict of conviction be reached."[33] Thus, an allegation in the Information that the CICL "acted with discernment" in the commission of the crime if the accused is below 17 years old is **essential** as it will affect the child's criminal responsibility, as in this case.

As a basic principle in criminal law, the starting point of every criminal prosecution is that the accused has a constitutional right to be presumed innocent. Thus, the courts, in arriving at their decisions, are instructed by no less than the Constitution to bear in mind that no person should be deprived of life or liberty without due process of law. An essential component of the right to due process in criminal proceedings is the right of the accused to be sufficiently informed, *in writing*, of the cause of the accusation against him.[34] It is in pursuit of this purpose that the Rules of Court and jurisprudence require that the Information allege the ultimate facts constituting the elements of the crime charged, as well as the circumstances that would affect the penalty to be imposed on the accused. Details that do not go into the *core* of the crime need not be included in the Information, but may be presented during trial.[35] It is thus imperative that the Information filed with the trial court be complete – **to the end that the accused may suitably prepare his defense.**[36] This is because the accused is **presumed to have no independent knowledge of the facts that constitute the offense.**[37] Verily, **failure to make a proper allegation in the Information will violate the right of the accused to be informed of the nature and cause of the accusation against him.**

Third, even assuming that there was a proper allegation of discernment in the Information, a circumspect examination of the records shows that what was only established by the prosecution was the intent of CICL XXX to commit the crime. In *CICL XXX v. People*,[38] the Court, speaking through Justice Caguioa, eloquently explained that discernment and intent are two (2) different concepts, *viz.*:

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33 *People v. Solar*, supra note 9, at 929.
34 *People v. Solar*, id. at 925. See also Section 14(2), Article III of the 1987 CONSTITUTION.
35 *People v. Sandiganbayan (Fourth Division)*, 769 Phil. 378, 382 (2015) [Per J. Jardeleza, Third Division].
36 *People v. Bayya*, 384 Phil. 519, 526 (2000) [Per J. Purisima, *En Banc*].
37 *People v. Alemania*, 440 Phil. 297, 307 (2002) [Per J. Ynares-Santiago, *En Banc*].
38 859 Phil. 912 (2019) [Per J. Caguioa, Second Division].

Discernment cannot be presumed even if Dorado intended to do away with Ronald. Discernment is different from intent. The distinction was elaborated in *Guevarra v. Almodovar*. Thus:

> Going through the written arguments of the parties, the surfacing of a corollary controversy with respect to the first issue raised is evident, that is, whether the term "discernment," as used in Article 12(3) of the Revised Penal Code (RPC) is synonymous with "intent." It is the position of the petitioner that "discernment" connotes "intent" (p. 96, *Rollo*), invoking the unreported case of *People vs. Nieto*, G.R. No. 11965, 30 April 1958. In that case We held that the allegation of "with intent to kill x x x" amply meets the requirement that discernment should be alleged when the accused is a minor between 9 and 15 years old. Petitioner completes his syllogism in saying that:
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> > "If discernment is the equivalent of 'with intent,' then the allegation in the information that the accused acted with discernment and willfully unlawfully, and feloniously, operate or cause to be fired in a reckless and imprudent manner an air rifle .22 [caliber] is an inherent contradiction tantamount to failure of the information to allege a cause of action or constitute a legal excuse or exception." (Memorandum for Petitioner, p. 97, *Rollo*)
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> If petitioner's argument is correct, then no minor between the ages of 9 and 15 may be convicted of a quasi-offense under Article 265 of the RPC.
>
> On the contrary, the Solicitor General insists that discernment and intent are two different concepts. **We agree with the Solicitor General's view**; the two terms should not be confused.
>
> The word "intent" has been defined as:
>
> > "[a] design; a determination to do a certain [thing]; an aim; the purpose of the mind, including such knowledge as is essential to such intent; x x x; the design resolve, or determination with which a person acts." [(46 CJS 1103.)]
>
> It is this intent which comprises the third element of [*dolo*] as a means of committing a felony, freedom and intelligence being the other two. On the other hand, We have defined the term "discernment," as used in Article 12(3) of the RPC, in the old case of *People vs. Doquena*, 68 Phil. 580 (1939), in this wise:
>
> > **"The discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen**

> **years of age but over nine, who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong x x x"** (italics Ours) p. 583

> From the foregoing, **it is clear that the 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. 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 x x x the infant (has) no intelligence, the law exempts (him) from criminal liability."[39] (Emphases supplied)

To reiterate, the presence of discernment *cannot be presumed*, ***it must be duly alleged in the Information***, and thereafter, ***proven beyond reasonable doubt*** as a separate circumstance.[40] Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.[41] The importance of proving the guilt of the accused beyond reasonable doubt was explained in *People v. Claro*,[42] where the Court, through Justice Lucas P. Bersamin elucidated:

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[39] Id. at 923-925; citations omitted.
[40] Id. at 922.
[41] *People v. Claro*, 808 Phil. 455, 464 (2017) [Per J. Bersamin, Third Division].
[42] Id.

In every criminal case, the accused is entitled to acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.

In the face of all the foregoing, we have reasonable doubt of the guilt of the accused for rape. Reasonable doubt —

> x x x is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. **It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.** The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. **If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.**

The requirement of establishing the guilt of the accused in every criminal proceeding beyond reasonable doubt has a long history that even pre-dates our Constitutions. As summed up by jurisprudence of American origin:

> **The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation. The 'demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times, (though) its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798. It is now accepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of all the essential elements of guilt.'** C. McCormick, Evidence 321, pp. 681-682 (1954); see also 9 J. Wigmore, Evidence, 2497 (3d ed. 1940). Although virtually unanimous adherence to the reasonable-doubt standard in common-law jurisdictions may not conclusively establish it as a requirement of due process, such adherence does 'reflect a profound judgment about the way in which law should be enforced and justice

administered.' *Duncan v. Louisiana,* 391 U.S. 145, 155, 1451 (1968).

Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required. See, for example, *Miles v. United States*, 103 U.S. 304, 312 (1881); *Davis v. United States*, 160 U.S. 469, 488, 358 (1895); *Holt v. United States*, 218 U.S. 245, 253, (1910); *Wilson v. United States*, 232 U.S. 563, 569-570, 349, 350 (1914); *Brinegar v. United States*, 338 U.S. 160, 174, 1310 (1949); *Leland v. Oregon*, 343 U.S. 790, 795, 1005, 1006 (1952); *Holland v. United States*, 348 U.S. 121, 138, 136, 137 (1954); *Speiser v. Randall*, 357 U.S. 513, 525-526, 1342 (1958). *Cf. Coffin v. United States*, 156 U.S. 432 (1895). **Mr. Justice Frankfurter stated that '(i)t the duty of the Government to establish . . . guilt beyond a reasonable doubt. This notion-basic in our law and rightly one of the boasts of a free society-is a requirement and a safeguard of due process of law in the historic, procedural content of 'due process.'** *Leland v. Oregon, supra*, 343 U.S., at 802-803 (dissenting opinion). In a similar vein, the Court said in *Brinegar v. United States, supra*, 338 U.S., at 174, that **'(g)uilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into** rules of evidence **consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.'** *Davis v. United States, supra*, 160 U.S., at 488 stated that the requirement is implicit in 'constitutions . . . (which) recognize the fundamental principles that are deemed essential for the protection of life and liberty.' In Davis a murder conviction was reversed because the trial judge instructed the jury that it was their duty to convict when the evidence was equally balanced regarding the sanity of the accused. This Court said: 'On the contrary, he is entitled to an acquittal of the specific crime charged, if upon all the evidence, there is reasonable doubt whether he was capable in law of committing crime. . . . No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them . . . is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged.' *Id.*, at 484, 493, 360.

The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence-that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.' *Coffin v. United States, supra*, 156

U.S., at 453. As the dissenters in the New York Court of Appeals observed, and we agree, 'a person accused of a crime . . . would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.' 24 N.Y.2d, at 205, 299 N.Y.S.2d, at 422, 247 N.E.2d, at 259.

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in *Speiser v. Randall, supra*, 357 U.S., at 525-526: 'There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value-as a criminal defendant his liberty-this margin of error is reduced as to him by the process of placing on the other party the burden of . . . persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. **Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the factfinder of his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.'** Dorsen & Rezneck, In Re Gault and the Future of Juvenile Law, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967).

Moreover, **use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.**

Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, *no matter how strong*, should

> not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account. That is what we must be do herein, for he is entitled to nothing less.
>
> Without the proof of his guilt being beyond reasonable doubt, therefore, the presumption of innocence in favor of the accused herein was not overcome. His acquittal should follow, for, as we have emphatically reminded in *Patula v. People*:
>
>> x x x in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. **The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.**[43] (Emphases in the original)

As earlier stated, the prosecution's failure to allege in the Information the presence of discernment, and thereafter, establish the same beyond reasonable doubt during the trial of the case will necessarily result a finding that CICL XXX is exempt from criminal liability.

Finally, again even assuming *arguendo* that there was a sufficient allegation of discernment in the Information, the RTC ***made no pronouncement*** if CICL XXX acted with discernment. On the other hand, the CA, ***although stating that CICL XXX acted with discernment, failed to provide its basis for its findings***.

In *Dorado*, the Court held that since there was no finding of discernment by the trial court, it cannot rule with certainty as to the CICL's criminal responsibility. Accordingly, it held that in the absence of such

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[43] Id. at 464-469.

determination, it was ***presumed*** that the CICL acted without discernment, and hence, deemed exempted from criminal liability.[44]

Furthermore, in *CICL XXX v. People*,[45] the Court held that the RTC and CA erred in convicting CICL XXX as the discussion pertained to intent to kill, and not acting with discernment. Both the RTC and CA made no pronouncement if CICL XXX acted with discernment in committing the crime.[46]

In this relation, I respectfully express my disagreement with the *ponencia*'s holding that the principle of retroactivity of penal laws should be balanced with the prosecution's burden to prove an added element of a crime, *viz.:*

> Also, as aptly stated by Associate Justice Jhosep Y. Lopez, allowing for the **CA's determination as to the presence of discernment found in the record strikes a balance between the principle of retroactivity of penal laws favorable to an accused *vis-à-vis* the prosecution's burden to prove an added element of a crime, especially considering the peculiar situation in this case.**[47] (Emphasis supplied)

I respectfully submit that the above-cited statement of the *ponencia* flies in the face of well-settled principles of statutory construction.

To recall, Article 22 of the RPC states that "[p]enal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor x x x." The plain meaning rule or *verba legis* in statutory construction enjoins that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.[48] In this relation, well-settled is the rule that "**criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations.** In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted."[49] Applying these principles, nothing in the provisions of Article 22 of the RPC and RA 9344 makes any mention to favor or give leeway to the courts to strike a balance between the rights of the accused and the duty of the State to prove the elements of the crime. Even assuming that an ambiguity exists in the interpretation of these provisions of the law, the cited statement of the *ponencia* likewise runs contrary to the principle that "**[a]ny criminal law showing ambiguity will always be construed strictly against the state**

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44 *Dorado v. People*, supra note 16, at 253.
45 Supra note 38.
46 Id. at 926.
47 See *ponencia*, p. 21.
48 *Villarica v. Social Security Commission*, 824 Phil. 613, 628 (2018) [Per J. Gesmundo, Third Division].
49 See *Acharon v. People*, G.R. No. 224946, November 9, 2021 [Per J. Caguioa, *En Banc*]; *People v. Garcia*, 85 Phil. 651, 656 (1950) [Per J. Tuason, *En Banc*]; emphasis supplied.

and in favor of the accused."[50] Hence, there is no obligation for the courts to strike a balance between the rights of the accused, on one hand, and the obligation of the prosecution to prove an element, on the other. Taken together, such statement creates a dangerous precedent as it undermines well-entrenched principles which are meant to protect the accused from possible abuses of the law.

To end, it is fitting to remind public prosecutors of their crucial role in crafting the Information, and proving discernment in CICL cases. Verily, failure of the prosecution to do so would make all their efforts futile, and consequently, said lapses may result to denial of justice.[51]

In view of the foregoing, I respectfully vote to **ACQUIT** CICL XXX of the crime charged for the prosecution's failure to allege, much less prove, discernment.

ANTONIO T. KHO, JR.
Associate Justice

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[50] *People v. Sullano*, 827 Phil. 613, 625 (2018) [Per J. Gesmundo, Third Division]; emphasis supplied.

[51] See *People v. Flores*, 442 Phil. 561, 576 (2002) [Per J. Carpio-Morales, *En Banc*].