



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **August 17, 2022** which reads as follows:*

**“G.R. No. 252282 (People of the Philippines, appellee v. Child in Conflict with the Law (CICL),\* and Benjovie Guerrero y Apson a.k.a “Jovit,” accused; Benjovie Guerrero y Apson a.k.a “Jovit,” appellant).** – This appeal seeks to reverse and set aside the Decision<sup>1</sup> dated October 31, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11596 entitled *“People of the Philippines, plaintiff-appellee v. [CICL] and Benjovie Guerrero y Apson a.k.a “Jovit,” accused; Benjovie Guerrero y Apson a.k.a “Jovit,” accused-appellant,”* finding appellant Benjovie Guerrero y Apson alias “Jovit,” guilty of homicide and slight physical injuries.

**Antecedents**

Appellant, together with CICL, was charged with Slight Physical Injuries and Murder, *viz.*:

**Criminal Case No. Q-12-178929**

That on or about the 29<sup>th</sup> day of September 2012, in Quezon City, Philippines, the above-named accused Benjovie Guerrero y Apson @ “Jovit” conspiring with [CICL], 17 years old, a minor but acting with

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\* Pursuant to OCA Circular No. 97-2019 or the 2019 Supreme Court Revised Rules on Children in Conflict with the Law, which took effect on July 7, 2019 (amended A.M. No. 02-1-18-SC).

Section 52. *Confidentiality of Proceedings and Record.* - All proceedings and records involving children in conflict with the law from initial contact until final disposition of the case by the court shall be considered privileged and confidential. x x x

The court shall employ other measures to protect confidentiality of proceedings including non-disclosure of records to the media, the maintenance of a separate police blotter for cases involving children in conflict with the law and the adoption of a system of coding to conceal material information, which lead to the child's identity. The records of children in conflict with the law shall not be used in subsequent proceedings or cases involving the same offender as an adult.

<sup>1</sup> Penned by Associate Justice Priscilla J. Baltazar-Padilla (former member of this Court) and concurred in by Associate Justice Maria Elisa Sempio Diy and Associate Justice Walter S. Ong, *rollo*, pp. 3–22.

discernment, conspiring together, confederating with other persons whose true names, identities and other personal whereabouts have not as yet been ascertained and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one PAOLO TAPPEL y UNAY, a minor 17 years old, by then and there mauling him, thereby inflicting upon him physical injuries which have required and will require medical attendance for a period of less than nine (9) days and which have incapacitated and will incapacitate the said PAOLO TAPPEL y UNAY from performing his customary labor for the same period of time.

CONTRARY TO LAW.<sup>2</sup>

**Criminal Case No. Q-12-178930**

That on or about the 29<sup>th</sup> day of September 2012, in Quezon City, Philippines, the above-named accused Benjovie Guerrero y Apson @ "Jovit" conspiring with [CICL], 17 years old, a minor but acting with discernment, conspiring together, confederating with other persons whose true names, identities, and other personal whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill with the qualifying aggravating circumstances of treachery, abuse of superior strength and evident premeditation, did then and there willfully, unlawfully attack, assault and employ personal violence upon [the] person of one JESLIE DELA CRUZ y MARTINEZ, a minor, 13 years old, by then and there mauling her, causing her to collapse hitting her head on the pavement and lost (sic) her consciousness, thereby inflicting upon her serious and mortal wounds which were the direct and immediate cause(s) of [her] death, to the damage and prejudice of the heirs of JESLIE DELA CRUZ y MARTINEZ.

The above attendant circumstances were committed by the accused because accused persistently planned the commission of the crime prior to its commission until its execution and accused deliberately adopted sudden and unexpected attack against the victim to ensure the commission of the crime without risk to themselves from any defense the victim might take and the accused took advantage of their superior strength.

CONTRARY TO LAW.<sup>3</sup>

The cases were raffled to the Regional Trial Court (RTC), Branch 107, Quezon City presided by Judge Jose L. Bautista, Jr.

Appellant and CICL pleaded not guilty to both charges. CICL, however, subsequently changed his plea to both charges from "not guilty" to "guilty." Thus, the trial court issued a partial decision finding him

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<sup>2</sup> Id. at 4.

<sup>3</sup> Id..

guilty as charged and placing him under disposition measure. Following his completion thereof on October 25, 2016, the trial court considered the case closed and terminated insofar as he was concerned.<sup>4</sup> Meantime, trial ensued against appellant.

The prosecution presented the victim Paolo Tapel and his friends Rolando Aliga and Erson Valenzona. The mother of Jeslie Dela Cruz (Jeslie), Violeta Dela Cruz (Violeta), also testified. On the other hand, the defense presented appellant as its sole witness.

#### *Version of the Prosecution*

On September 29, 2012, 17-year-old Paolo testified that he and his 13-year-old girlfriend Jeslie were with their friends Rolando, Erson, Pia Bagoyo (Pia), and Marvin Nacalaria at the birthday party of their other friend Jun Jun Bueno. By 12:45 a.m., he (Paolo), Jeslie, and their friends were already walking home when a group of men approached them and started a fight with them. His group ran in different directions but the men followed them.<sup>5</sup> He tripped and fell to the ground. The men, including appellant, instantly milled around and mauled him. While he was being assaulted, Jeslie shielded him. The men, however, continued kicking and boxing him causing him to faint. As he woke up, he saw Jeslie faint. His friends rushed Jeslie to the hospital, but she was declared dead on arrival. Meanwhile, he was also brought to a hospital where he was treated for the abrasions he sustained on his right knee and upper lip.<sup>6</sup>

Rolando and Erson corroborated Paolo's testimony. Erson testified that appellant and his group were also at the party. During the party, CICL told him "*mainit kayo sa tropa ko.*" Rolando clarified that a certain "Balting" first attacked Paolo. Someone from appellant's group kicked him (Rolando), causing him to fall. Looking up from the ground, he saw Jeslie shielding Paolo from the joint assault of appellant and CICL. But the assailants mauled her, too. Meantime, he hid and watched in horror the ongoing affray. After a while, he saw Jeslie pass out. He (Rolando) brought Jeslie to a hospital where she was pronounced dead. Erson and the others went to the barangay hall to report the incident, and later proceeded to the hospital where Jeslie was earlier rushed to.<sup>7</sup>

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<sup>4</sup> Id. at 5.

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

<sup>6</sup> Id..

<sup>7</sup> Id. at 6-7.

He (Rolando), Erson, and the others were then invited to the police station to give their respective statements. There, Erson and Pia pointed to appellant and CICL as two (2) of the perpetrators. When appellant and CICL ran away, they got caught by the police.<sup>8</sup>

Violeta testified that her daughter Jeslie died of hemorrhage due to mauling per the autopsy report issued by the Philippine Orthopedic Hospital. She spent ₱60,000.00 in hospital and funeral bills, but the receipts were destroyed by flood.<sup>9</sup>

### *Version of the Defense*

Appellant denied the charges. He testified that while he attended the birthday party of Jun Jun, he went home at 6:00 p.m. and immediately slept as he was intoxicated. He awoke the next day when police officers forcibly opened the door of their house and arrested him. He got detained at Camp Karingal for 10 days. While he was there, he learned that his friend Jeslie died.<sup>10</sup>

### **The Trial Court's Ruling**

By Decision<sup>11</sup> dated July 11, 2018, the trial court found appellant guilty as charged, *viz.*:

**WHEREFORE**, premises considered, [judgment] is hereby rendered as follows:

- 1) In Criminal Case No. Q-12-178929, the Court finds accused Benjovie Guerrero y Apson "Jovit" **GUILTY** beyond reasonable doubt of Slight Physical Injuries penalized under Article 266 of the Revised Penal Code, as amended, and sentenced to suffer the penalty of Fifteen (15) days;
- 2) In Criminal Case No. Q-12-178930, the Court finds accused Benjovie Guerrero y Apson "Jovit" **GUILTY** beyond reasonable doubt of Murder penalized under Article 248 of the Revised Penal Code, as amended. He is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua*.

He is likewise ordered to pay the heirs of Jeslie Dela Cruz the following sums, to wit:

- 1) ₱100,000.00 as death indemnity;
- 2) ₱50,000.00 as moral damages; and
- 3) ₱25,000.00 as actual damages.

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<sup>8</sup> Id. at 6.

<sup>9</sup> Id. at 7.

<sup>10</sup> Id..

<sup>11</sup> Penned by Presiding Judge Jose L. Bautista, Jr., *CA rollo*, pp. 63-71.

The period of detention undergone by the accused is credited in full in the service of sentence.

Cost against the accused.

**SO ORDERED.**<sup>12</sup> (Emphases in the original)

It held that Paolo positively identified appellant as one of the men who attacked and mauled him and Jeslie. Erson and Rolando corroborated his testimony. Their concurrent identification carried more evidentiary weight than appellant's bare denial. The attack on Jeslie was attended by treachery as Jeslie was not given the opportunity to defend herself. The attack on her was also attended by abuse of superior strength. Jeslie was a frail young woman while appellant and his group were all men who were stronger than her.

### **Ruling of the Court of Appeals**

On appeal, the Court of Appeals affirmed with modification in its assailed Decision<sup>13</sup> dated October 31, 2019, *viz.*:

**WHEREFORE**, the instant appeal is hereby **DISMISSED**.

The assailed Decision of the Regional Trial Court of Quezon City dated July 11, 2018 is **AFFIRMED** with **MODIFICATION** in that accused-appellant BENJOVIE GUERRERO y APSON is found **GUILTY** beyond reasonable doubt of the crime of Homicide in Criminal Case No. Q-12-178930 and shall accordingly suffer an indeterminate prison term of ten (10) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. He is ordered to pay the heirs of JESLIE DELA CRUZ y MARTINEZ the amount of Fifty Thousand Pesos P50,000.00 as temperate damages; P50,000.00 as civil indemnity; and P50,000.00 as moral damages plus interest on all damages awarded at the legal rate of 6% per annum from the date of finality of the decision until fully paid.

The rest of the Decision **STANDS**.

**SO ORDERED.**<sup>14</sup> (Emphases in the original)

It concurred with the trial court that appellant was not only identified by Paolo but by Erson and Rolando, as well. As for Paolo, the trial court correctly held appellant guilty of slight physical injuries. Records indeed show that Paolo suffered abrasions on his knee and lip. He got treated at the

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<sup>12</sup> Id. at 71.

<sup>13</sup> Id. at 3-22.

<sup>14</sup> Id. at 21-22.

hospital but was released on the same day. There was no evidence that he got incapacitated for more than nine (9) days.<sup>15</sup>

As for the death of Jeslie, however, it held that there was no qualifying circumstance to elevate the offense to murder. The attack on Jeslie was not sudden or unexpected. It was Paolo who was the intended victim and who got attacked first. Jeslie knew what was going on when she decided to get in the middle of it and protect Paolo. It cannot also be said that appellant and his group deliberately took advantage of their strength and number in attacking Jeslie. The prosecution further failed to present evidence regarding the relative disparity in age, size, strength, and force between appellant and his group and Jeslie.

### **The Present Petition**

Appellant now prays anew for his acquittal. In accordance with the Resolution<sup>16</sup> dated September 14, 2020, appellant<sup>17</sup> and the Office of the Solicitor General (OSG)<sup>18</sup> manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

In the main, appellant argues that Paolo could not have identified him because Paolo fainted during the alleged attack. Paolo and Rolando also testified that it was a certain Balting who first attacked Paolo. In any event, there was no proof that he was the one who inflicted the head injury on Jeslie, which caused the latter's death. Erson is not a credible witness. It was unbelievable for someone to simply watch when their friends are being attacked. Too, how could Erson have identified him as one of the persons who attacked Jeslie and Paolo when he (Erson) failed to identify his own attacker.<sup>19</sup>

### **Our Ruling**

We affirm with modification.

#### ***Positive identification of appellant as the assailant***

When the issue is one of credibility of witnesses, the Court will generally not disturb the trial court's factual findings especially

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<sup>15</sup> Id. at 19–20.

<sup>16</sup> Id. at 28–29.

<sup>17</sup> Id. at 41–43.

<sup>18</sup> Through Assistant Solicitor General Nyriam Susan O. Sedillo-Hernandez and Associate Solicitor Mark Anthony A. Asuncion, id. at 31–32.

<sup>19</sup> CA rollo, pp. 50–53.

when affirmed in full by the Court of Appeals,<sup>20</sup> as in this case. For indeed, the trial court is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during the trial.<sup>21</sup> Here, records bear the concurrent identification by Paolo, Erson, and Rolando of appellant as one of the assailants, viz.:

**Paolo**

Q: Do you know who were those people who mauled you?

A: I only know some of them, ma'am.

Q: Who among them do you know?

A: [Balting]

Q: Who else?

A: Ewok.

Q: Who else?

A: They are the only ones I know including Jovit.<sup>22</sup>

x x x                      x x x                      x x x

**Rolando**

Q: So while you were on the pavement, Mr. witness, what did you see or observe, if there is any?

A: I saw that [Jeslie] Dela Cruz that she was trying to pacify Jovit and [CICL] but instead she was also mauled by the two.<sup>23</sup>

x x x                      x x x                      x x x

**Erson**

Q: And who was involved in this mauling incident?

A: Benjovie and [CICL], ma'am.

Q: Who are (sic) they mauling?

A: Paolo Tapel, ma'am, and Jeslie Dela Cruz.<sup>24</sup>

x x x                      x x x                      x x x

Q: How were you able to know that it was Benjovie and [CICL] who mauled Paolo and Jeslie?

A: I saw them, ma'am.

Q: And this [was] at [nighttime]. Is that correct?

A: Yes, ma'am.

<sup>20</sup> See *People v. Mabalo*, G.R. No. 238839, February 27, 2019 [Per J. Peralta, Third Division]; also see *People v. Bay-Od*, G.R. No. 238176, January 14, 2019 [Per J. Peralta, Third Division].

<sup>21</sup> Id.; Id.

<sup>22</sup> *Rollo*, p. 14.

<sup>23</sup> Id. at 10-11.

<sup>24</sup> Id. at 11.

Q: So how were you able to see them?

A: I saw it personally because it was clear, the place was lighted.<sup>25</sup>

Appellant's argument that Paolo could not have identified him is bereft of merit. Paolo did not immediately faint after he was attacked. He had the opportunity to see his attackers before he subsequently lost his consciousness. In any case, even if Paolo was not able to see who his attackers were, as discussed, Erson and Rolando saw who attacked and mauled Paolo and Jeslie, and they categorically and consistently identified appellant as one of those people.

Appellant further tries to discredit Erson by alleging that it was contrary to human experience for Erson to hide and simply watch his friends being attacked.

Again, we do not agree.

It is settled that there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling, or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus.<sup>26</sup> Hence, Erson's choice to hide and watch his friends being attacked does not destroy his credibility as a witness in this case.

At any rate, appellant failed to show that the prosecution witnesses were motivated by ill will to falsely testify against him. On this score, *People v. Amodia*<sup>27</sup> is apropos:

The RTC and CA found the identification made by Romildo and Luther to be clear, categorical, and consistent. We observed that in accepting the truth of the identification and the account of how the stabbing took place, the RTC and CA considered the witnesses' proximity to the victim and his assailants at the time of the stabbing - they were about three arm's length away and 15 meters away, respectively; the well-lighted condition of the crime scene; and the familiarity of these eyewitnesses with the victim and his assailants - they were all residents of the same area. Similarly, we also note that **no evidence was presented to establish that these eyewitnesses harbored any ill-will against Pablo and had no reason to fabricate their testimonies. The weight of jurisprudence is to accept these kinds of testimonies as**

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<sup>25</sup> Id. at 12.

<sup>26</sup> *People v. Bultron*, G.R. No. 253651 (Notice), October 4, 2021.

<sup>27</sup> 602 Phil. 889, 906-907 (2009) [Per *J. Brion*, Second Division].



**true for being consistent with the natural order of events, human nature and the presumption of good faith.** (Emphasis supplied)

Against the positive identification and categorical testimony of the prosecution witnesses, appellant offered nothing but denial and alibi. Unless substantiated by clear and convincing proof, denial is negative, self-serving, and undeserving of any weight in law.<sup>28</sup> On the other hand, for the defense of alibi to prosper, the accused must prove not only that he or she was at some other place when the crime was committed, but also that it was physically impossible for him or her to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.<sup>29</sup> Here, appellant himself alleged that he was at home, at the same barangay as the site when the incident happened. It is, therefore, not physically impossible for him to be at the *situs criminis* on that fateful day.

As between the narration of facts of the prosecution and the records of the case, which have the ring of truth, on the one hand, and statements of mere denial and alibi on the other, the former shall prevail.<sup>30</sup>

Lastly, appellant cannot evade liability by claiming that there was no proof that he delivered the fatal blow to Jeslie.

Records show that appellant and his cohorts acted with one design in mind, to attack and harm Paolo and his friends. As both Informations alleged, appellant acted in conspiracy with CICL and other unidentified individuals. Conspiracy is the unity of purpose and intention in the commission of a crime. There is conspiracy if at the time of the commission of the offense, the acts of two (2) or more accused show that they were animated by the same criminal purpose and were united in their execution, or where the acts of the persons indicate a concurrence of sentiments, a joint purpose and a concerted action.<sup>31</sup> Here, appellant and his group acted as one in attacking Paolo and his group.

As reiterated in *People v. Solar*,<sup>32</sup> once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of the law the act of one is the act of all. It is therefore inconsequential who delivered the fatal blow to the victim.

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<sup>28</sup> See *People v. Seguisabal*, G.R. No. 250330, March 18, 2021 [Per *J. Peralta*, First Division].

<sup>29</sup> *People v. Panis*, G.R. No. 234780, March 17, 2021 [Per *J. Hernando*, Third Division].

<sup>30</sup> See *People v. Fontalba, Jr.*, G.R. No. 252459 (Notice), February 15, 2022.

<sup>31</sup> See *People v. Solar*, G.R. No. 225595, August 6, 2019 [Per *J. Caguioa*, En Banc].

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

***Offense committed and Penalty***

In **Criminal Case No. Q-12-178929**, we agree with the concurrent findings of the trial court and Court of Appeals that appellant is guilty of Slight Physical Injuries penalized under Article 266 of the Revised Penal Code (RPC) as amended by Republic Act No. (RA) 10951, to wit:

Article 266. Slight physical injuries and maltreatment. — The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one (1) day to nine (9) days, or shall require medical attendance during the same period.
2. By *arresto menor* or a fine not exceeding Forty thousand pesos (P40,000.00) and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance.
3. By *arresto menor* in its minimum period or a fine not exceeding Five thousand pesos (P5,000.00) when the offender shall ill-treat another by deed without causing any injury.

Paolo sustained abrasions on his knee and lip as a result of the attack on his person by appellant and his group per the Medical Certificate issued by the Quezon City General Hospital. After treatment at the hospital, however, he was immediately released and there was no proof that he was incapacitated by the injuries he sustained.<sup>33</sup>

The trial court correctly meted a straight penalty of imprisonment of 15 days of *arresto menor* under Article 266 of the RPC, as amended by RA 10951.<sup>34</sup>

In **Criminal Case No. Q-12-178930**, however, we modify the ruling of the Court of Appeals and hold that appellant is liable for Murder under Article 248, *viz.*:

ARTICLE 248. Murder. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity.

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<sup>33</sup> *Rollo*, pp. 19–20.

<sup>34</sup> Also see *Vigil v. People*, G.R. No. 254562 (Notice), February 10, 2021.

x x x

x x x

x x x

There is treachery when the offender employs means, methods, or forms in the execution of the crime to ensure its commission without risk to himself or herself arising from the defense which the offended party might take. It requires: (a) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and (b) that said means of execution be deliberately or consciously adopted.<sup>35</sup> Both elements must be present. It is not sufficient that the attack was sudden, unexpected, and without any warning or provocation. There must also be a showing that the offender consciously and deliberately adopted the particular means, methods, and forms in the execution of the crime which tended directly to ensure such execution, without risk to himself or herself.<sup>36</sup>

It is apparent from the records that Paolo and his friends were merely walking home when appellant and his own group suddenly appeared out of nowhere and attacked Paolo and his friends. It cannot be denied that the attack was made swiftly, which gave them no time to defend themselves. As it was, Paolo and his friends were hit by appellant and his group. True, the intended victim here was Paolo and not Jeslie, but this does not make the attack made less treacherous.

In *People v. Bendecio*,<sup>37</sup> the Court appreciated treachery although the one killed was not the intended victim, thus:

x x x although appellant did not intend to kill Jonabel, treachery may still be appreciated in *aberratio ictus*, pursuant to the Court's ruling in *People v. Flora*. There, the accused fired his gun at his target, but missed, and hit two (2) other persons. The Court appreciated treachery as a qualifying circumstance and convicted the accused for murder and attempted murder because even if the death and injury of the two (2) other persons resulted from accused's poor aim, **accused's act of suddenly firing upon his victims rendered the latter helpless to defend themselves**. This is applicable here. **Just because Jonabel was not the intended victim does not make appellant's sudden attack any less treacherous.** (Emphases supplied and citations omitted)

Indeed, criminal liability is incurred by any person committing a felony, although the wrongful act done be different from that which he intended. In fine, although it was Paolo whom appellant intended to harm, he is still accountable for the death of Jeslie, which was the result of appellant's criminal intent. The qualifying circumstance that should have applied to the intended victim applies with more reason to the one who actually bore the attack.

<sup>35</sup> See *People v. Toro*, G.R. No. 245922, January 25, 2021 [Per J. Lazaro-Javier, Second Division].

<sup>36</sup> See *People v. Enriquez, Jr.*, G.R. No. 238171, June 19, 2019 [Per J. Caguioa, Second Division].

<sup>37</sup> G.R. No. 235016, September 8, 2020 [Per J. Lazaro-Javier, First Division].

More important, it is not disputed that Jeslie was only 13 years old when she was mauled to death, while appellant herein was of legal age and accompanied by at least two (2) more men. Jurisprudence is abound with the rule that the qualifying circumstance of treachery exists in the commission of the crime of murder when an adult person illegally attacks a child of tender years and causes his or her death.<sup>38</sup> In *People v. Mirasol*,<sup>39</sup> the Court appreciated treachery on the attack of a 15-year-old girl. The Court explained:

In a lame attempt to secure an acquittal, the accused-appellant argues that while AAA is a minor, she cannot be considered as a child of tender years since she is already fifteen (15) years old. Accused-appellant cited *People v. Salufrania*, wherein this Court held that a thirteen-year-old child is no longer considered a child of tender age at the time of his testimony.

The Court is not persuaded.

The ruling in *People v. Salufrania* have no bearing to the case at bar for the reason that it merely involves the competence of a child witness to testify under oath, and has nothing to do with the killing of a child.

In *Salufrania*, it was held that the thirteen-year-old child was no longer a child of tender years at the time of his testimony since the trial court found him to be intelligent, competent, and responsive to the questions propounded to him; and that he fully appreciated the meaning of an oath.

While in this case, it involves an adult person who illegally attacked a child which resulted to the latter's death and the inherent weakness of the child due to her minority that results in the absence of any danger on the part of the accused-appellant in order for the latter to accomplish his evil designs.

**In fact, in *People v. Umawid*, even if the minor was found to be capable of mounting a defense against his attacker, it was held that treachery may still be appreciated on account of his or her minority, considering that he was just 15 years of age when he was attacked.**

Considering that the information alleged that AAA, was a minor at the time of the commission of the crime and that the evidence presented supported the qualifying circumstance of treachery due to her minority, the constitutional right of accused-appellant to be informed of the nature and cause of accusation against him was not violated. (Emphasis supplied and citations omitted)

So must it be in this case.

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<sup>38</sup> *People v. Mirasol*, G.R. No. 239333 (Notice), June 8, 2020.

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

Similarly, contrary to the pronouncement of the Court of Appeals, the qualifying circumstance of abuse of superior strength is present in this case.

Abuse of superior strength is present whenever there is inequality of force between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime. Evidence must show that the assailants consciously sought the advantage or that they had the deliberate intent to use this advantage. The appreciation of the aggravating circumstance of abuse of superior strength depends on the age, size, and strength of the parties.<sup>40</sup>

As discussed, Jeslie was a 13-year-old girl. What chance did she have against the attack of three (3) men, at least one of them (appellant) of legal age? She remained crouched while appellant together with his co-accused incessantly mauled her. This is pure and simple abuse of superior strength.

Nevertheless, with the finding that treachery is present, the conclusion that the circumstance of abuse of superior strength is absorbed therein necessarily follows. Thus, the circumstance of abuse of superior strength should not be appreciated as a separate qualifying circumstance.<sup>41</sup>

In view of the presence of the qualifying circumstance of treachery, we reinstate the trial court's ruling that appellant is guilty of murder.

Murder is punishable by *reclusion perpetua* to death if committed through any of the attendant circumstances mentioned in Article 248 of the RPC, as amended by RA 7659.<sup>42</sup>

Applying Article 63(2) of the RPC,<sup>43</sup> the lesser of the two (2) indivisible penalties, *i.e.*, *reclusion perpetua*, shall be imposed provided there is no mitigating or aggravating circumstance which attended the killing, as in this case. Verily, the trial court correctly sentenced appellant to *reclusion perpetua*.

<sup>40</sup> *People v. Delos Santos*, G.R. No. 252274 (Notice), September 29, 2021.

<sup>41</sup> *People v. Rodriguez*, G.R. No. 248181 (Notice), May 5, 2021.

<sup>42</sup> An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes.

<sup>43</sup> Art. 63. Rules for the application of indivisible penalties. — x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

As for appellant's civil liabilities, *People v. Jugueta*<sup>44</sup> decreed:

- I. For those crimes like Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:

x x x                      x x x                      x x x

2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

- a. Civil indemnity — ₱75,000.00
- b. Moral damages — ₱75,000.00
- c. Exemplary damages — ₱75,000.00

x x x                      x x x                      x x x

VII. In all of the above instances, when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded.<sup>45</sup>

Pursuant thereto, appellant is liable to pay the heirs of Jeslie ₱75,000.00 each as civil indemnity, moral damages, and exemplary damages, and ₱50,000.00 as temperate damages as no receipts were presented to prove the expenses for Jeslie's wake and burial.

**FOR THESE REASONS**, the appeal is **DENIED**. The Decision dated October 31, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11596 is **AFFIRMED with MODIFICATION**:

1) In *Criminal Case No. Q-12-178929*, appellant **BENJOVIE GUERRERO y APSON a.k.a "JOVIT"** is found **GUILTY** of **Slight Physical Injuries** defined and penalized under Article 266 of the Revised Penal Code. He is sentenced to fifteen (15) days of *arresto menor*; and

2) In *Criminal Case No. Q-12-178930*, appellant **BENJOVIE GUERRERO y APSON a.k.a "JOVIT"** is found **GUILTY** of **Murder** defined and penalized under Article 248 of the Revised Penal Code. He is sentenced to *reclusion perpetua*. He is further ordered to **PAY** the heirs of **JESLIE DELA CRUZ y MARTINEZ** the following amounts:

- (1) **₱75,000.00** as civil indemnity;
- (2) **₱75,000.00** as moral damages;
- (3) **₱75,000.00** as exemplary damages; and
- (4) **₱50,000.00** as temperate damages.

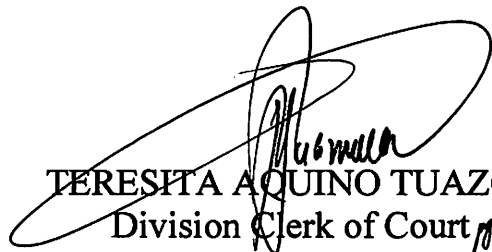
<sup>44</sup> 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

<sup>45</sup> Id. at 847-848, 853.

All monetary awards shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

**SO ORDERED.”**

By authority of the Court:

  
**TERESITA AQUINO TUAZON**  
 Division Clerk of Court *18 7/19*  
 19 JUL 2023

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 Special & Appealed Cases Service  
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\*BENJOVIE GUERRERO y APSON  
 a.k.a. "JOVIT" (reg)  
 Accused-Appellant  
 c/o The Director  
 Bureau of Corrections  
 1770 Muntinlupa City

THE DIRECTOR (reg)  
 Bureau of Corrections.  
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
 Regional Trial Court, Branch 107  
 1100 Quezon City  
 (Crim. Case No. Q-12-178929-30)

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 Supreme Court, Manila

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 CA-G.R. CR-HC No. 11596

\*with a copy of the CA Decision dated October 31, 2019  
*Please notify the Court of any change in your address.*  
 GR252282. 8/17/2022(171)URES(m)