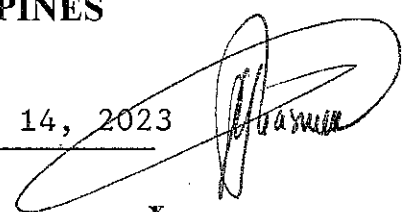


EN BANC

G.R. No. 238798 – XXX<sup>1</sup> v. PEOPLE OF THE PHILIPPINES

Promulgated: March 14, 2023



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DISSENT

LAZARO-JAVIER, J.:

*The Ponencia*

The *ponencia* disposes of the case, in this wise:

**WHEREFORE**, the Petition is **DENIED**. The Decision dated 29 November 2017 and the Resolution dated 19 March 2018 of the Court of Appeals in CA-G.R. CR No. 39196 finding XXX **GUILTY** of the crime of homicide under Article 249 of the Revised Penal Code, are **AFFIRMED**.

He is sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

He is likewise ordered to pay the heirs of AAA the following: (a) Php504,145.01 as actual damages; (b) Php50,000.00 as civil indemnity; and (c) Php50,000.00 as moral damages, with interest on all the damages awarded at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

The case is also remanded to the trial court for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

**SO ORDERED.**

It rationalizes, in my words:

**First.** Under Section 6 of Republic Act No. 9344 (Juvenile Justice and Welfare Act), a child above 15 years but below 18 years of age is exempt from criminal liability, unless the child is found to have

<sup>1</sup> In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 9344, the names of the private offended parties, along with other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.



acted with discernment, in which case, “*the appropriate proceedings*” in accordance with the Act shall be observed.

**Second.** In *Dorado v. People*,<sup>2</sup> the Court held that when a child in conflict with the law (CICL), above 15 but below 18 years old is charged with a crime, it is rebuttably presumed that the CICL acted without discernment and it is up to the prosecution to prove this **separate circumstance** beyond a reasonable doubt in order to obtain a conviction.

**Third.** As held in *Dorado*, discernment is independent of the *actus reus* and *mens rea* of homicide and must thus be proved beyond a reasonable doubt separately from these traditional elements of homicide.

Failure to disprove the rebuttable presumption of lack of discernment by proof beyond a reasonable doubt would lead to an acquittal. This is because a CICL is deemed by statute to lack “the mental capacity to understand the difference between right and wrong.”

*Dorado* (and the *ponencia* by extension) explains that this mental capacity is different from the *mens rea* element of intent in crimes by *dolo*. This is because discernment may co-exist with recklessness or negligence in quasi-offenses, *e.g.*, while the CICL did **not** intend to kill the deceased but was merely **reckless**, hence, there was no crime by *dolo*, the CICL is liable for the quasi-offense of recklessness since the CICL recognized that death may result from the reckless act.

I would also opine that discernment is **different** from the mental concept of voluntariness implicit in the *actus reus* of a crime by *dolo*. This is because a CICL may do an act voluntarily (without duress, coercion, or undue influence) but may still lack the recognition that the voluntary act was morally wrong.

**Fourth.** I infer from the *ponencia* that lack of proof beyond reasonable doubt of discernment is **not a defense** that a CICL is duty-bound to establish. Rather, it is **up to the prosecution** to show **positively** and **beyond a reasonable doubt** the presence of this **separate circumstance**. This is because the statute rebuttably presumes a CICL’s lack of discernment. *CICL XXX v. People*<sup>3</sup> supports this covert ruling in the *ponencia*.

<sup>2</sup> 796 Phil. 233 (2016) [Per J. Mendoza, Second Division].

<sup>3</sup> 859 Phil. 912; 116 OG No. 46, 7379 (November 16, 2020) [Per J. Caguioa, Second Division].

*Fifth.* The foregoing statute and case law must be **applied retroactively** to petitioner since they are **favorable** to him as an alleged criminal offender.

*Sixth.* Since records show here that the prosecution failed to overcome its burden to prove beyond a reasonable doubt that petitioner acted with discernment at the time of the commission of the crime, i.e., that petitioner, at the time of the commission of the crime, understood the difference between right and wrong and the consequences of his acts, the Court cannot but **acquit** him for the crime charged.

*Proposed recasting of the principles governing the retroactive application statutes, rule/regulation or case law favorable to criminal offenders*

Admittedly, when petitioner committed the crime as a minor in 2003, the law prevailing then was that discernment was not an element to be proven beyond reasonable doubt by the prosecution. This is because, while he was a minor when he perpetrated the criminal act, he was already 17 years old.

The relevant law then was Article 12(3), The Revised Penal Code and Article 189 of Presidential Decree 603, as amended:

ARTICLE 12. Circumstances Which Exempt from Criminal Liability. —

The following are exempt from criminal liability:

3. **A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against** in accordance with the provisions of article 80 of this Code. When such minor is adjudged to be criminally irresponsible, the court, in conformity with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education; otherwise, he shall be committed to the care of some institution or person mentioned in said article 80.

ARTICLE 189. Youthful Offender. Defined. — A youthful offender is a child, minor or youth, including one who is emancipated in accordance with law who is over nine years but under eighteen years of age at the time of the commission of the offense.

A Child nine years of age or under at the time of the commission of the offense shall be exempt from criminal liability and shall be committed to the care of his or her

father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision. **The same shall be done for a child over nine years and under fifteen years of age at the time of the commission of the offense, unless he acted with discernment, in which case he shall be proceeded against in accordance with Article 192.**

The provisions of Article 80 of the Revised Penal Code are hereby repealed by the provisions of this Chapter. (Emphasis supplied)

But the criminal case against petitioner was **overtaken in 2006** by the enactment of **Republic Act No. 9344, *Juvenile Justice and Welfare Act of 2006***, which **raised the minimum age of criminal responsibility**, and accordingly, **imposed** the requirement of discernment for the increased ages of above 15 years to below 18 years, thus covering petitioner's age:

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.

**A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.**

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws. (Emphasis supplied)

Unfortunately, neither the prosecution and the defense nor the trial court happened to canvass the **retroactive application** of this **new element** for any crime committed by a CICL. Hence, the case record is **bereft** of any **meaningful reference** to petitioner's discernment. In the proceedings before the trial court, the prosecution and the defense were oblivious of the enactment of Republic Act No. 9344 and were all working erroneously under the compelling shadow of the former rules.

The *ponencia* correctly applied the **principle of retroactivity of penal laws** that are **favorable to an accused**. This principle was exhaustively discussed in *Inmates of the New Bilibid Prison v. De*

*Lima*<sup>4</sup> but this case law **limited** the retroactive application to **penal laws** as defined therein and referred to by Article 22 of The Revised Penal Code:

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**But what exactly is a penal law?**

A penal provision or statute has been consistently defined by jurisprudence as follows:

**A penal provision defines a crime or provides a punishment for one.**

**Penal laws and laws which, while not penal in nature, have provisions defining offenses and prescribing penalties for their violation.**

**Properly speaking, a statute is penal when it imposes punishment for an offense committed against the state which, under the Constitution, the Executive has the power to pardon. In common use, however, this sense has been enlarged to include within the term "penal statutes" all statutes which command or prohibit certain acts, and establish penalties for their violation, and even those which, without expressly prohibiting certain acts, impose a penalty upon their commission.**

Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment.

**The "penal laws" mentioned in Article 22 of the RPC refer to substantive laws, not procedural rules. Moreover, the mere fact that a law contains penal provisions does not make it penal in nature.**

In the case at bar, petitioners assert that Article 22 of the RPC applies because R.A. No. 10592 is a penal law. They claim that said law has become an integral part of the RPC as Articles 29, 94, 97, 98 and 99 thereof. Edago, et al., further argue that if an amendment to the RPC that makes the penalties more onerous or prejudicial to the accused cannot be applied retroactively for being an ex post facto law, a law that makes the penalties lighter should be considered penal laws in accordance with Article 22 of the RPC.

We concur.

**While R.A. No. 10592 does not define a crime/offense or provide/prescribe/establish a penalty as it addresses the rehabilitation component of our correctional system, its provisions have the purpose and effect of diminishing the punishment attached to the crime. The further reduction on the length of the penalty of imprisonment is, in the ultimate analysis,**

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<sup>4</sup> G.R. No. 212719, June 25, 2019 [Pcr. J. Peralta, *En Banc*].

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**beneficial to the detention and convicted prisoners alike**; hence, calls for the application of Article 22 of the RPC.

The prospective application of the beneficial provisions of R.A. No. 10592 actually works to the disadvantage of petitioners and those who are similarly situated. It precludes the decrease in the penalty attached to their respective crimes and lengthens their prison stay; thus, making more onerous the punishment for the crimes they committed. Depriving them of time off to which they are justly entitled as a practical matter results in extending their sentence and increasing their punishment. Evidently, this transgresses the clear mandate of Article 22 of the RPC. (Emphases supplied)

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In addition to Article 22 of The Revised Penal Code, our case law has **consistently held** that “a penal statute, whether substantive or procedural, shall be given a **retroactive effect if favorable to the accused.**”<sup>5</sup> The **only test** under Philippine law for the retroactive application of a law is if it is **ultimately favorable to an accused.**

While I appreciate the simplicity and straight forwardness of the *favorable to the accused test*, I would like to propose a *more* exhaustive discussion on a **nuanced approach** to this **principle of retroactivity.**

My interest for this nuanced approach is not an idle soliloquy to beat an already dead horse or exhume a matter already vastly autopsied.

For one, I do **not** think that retroactivity has been canvassed in our jurisprudence with zest and vigor. Rather, our case law has been content applying this principle using only the test of “favorable to an accused” to the **exclusion** of other concerns or issues. While this test, as I have said, lends itself to a **simple** and **straightforward** result, it unfortunately **neglects** some factors that society also values. As an American jurist once observed, “[t]hese questions [of retroactivity] are among the most difficult of those which have engaged the attention of [the] courts....”<sup>6</sup> Why **retroactivity** is a **complex legal concept** among American jurists, but apparently **not** in the Philippines, may be traced to **three factors** that guide American jurisprudence in deciding whether to apply a penal law retroactively or not to do so:

- (i) retroactivity looks to the **prior history of the new penal law**, its **purpose** (i.e., whether to **enhance substantially the truth-finding function** of criminal trials), the **effect** of its **retroactive application** on the **administration of justice**,

<sup>5</sup> See *Santos v. People*, 443 Phil. 618 (2003) [Per J. Puna, Third Division].

<sup>6</sup> Chief Justice Charles Evans Hughes. *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 374 (1940).

whether retrospective operation will **further** or **retard** the **new rule's operation**, and **reliance** by the parties, especially the prosecution, on the old rule;<sup>7</sup>

- (ii) **retroactivity** has the important **practical** implication of **potentially impacting a number of criminal convictions** obtained under the then prevailing rule;<sup>8</sup> and
- (iii) retroactivity could **potentially affect** the prosecution's right to **procedural due process** of not having been heard on the **new but retroactive rule** but in **good faith relied upon the then prevailing old rule**.

A **nuanced approach** to the **retroactivity principle** leads me to believe that this principle has **substantive** and **procedural** dimensions important to both the prosecution and an accused. The **substantive** dimension addresses the **first two factors** mentioned above, while the **procedural** dimension pertains to the **third factor**.

**Substantively**, an accused may be given a **new defense** to raise, the prosecution may be required to prove an **added element**, or the change involves an **enhancement** of the **court's truth-finding function**. There should be **no objection** to this change in the penal law to benefit an accused **retroactively**. This **change** reflects the **legislature's intention to modify** what it views as criminal and non-criminal and how to arrive at such determination. **Courts are bound to respect this intention** in concrete cases **by applying it retroactively**. It should **not matter** that hundreds or even thousands of criminal convictions may be overturned as a result of the retroactive application. It is presumed that the **policy change** was **conscious** of the practical application to so many **other cases similarly situated**.

**Procedurally**, however, I believe that the **prosecution** must be given the **opportunity to meet the case** brought about by the retroactive application of the law. This means that though the prosecution may have the **new burden of proving a new element** or an **accused** has the **right to claim a new defense**, the prosecution ought to be given the opportunity to meet this new element or defense. In this regard, when the **prosecution justifiably relied upon the old rule** in prosecuting the case against an accused, the prosecution should have the **procedural rights** not only to *amend the Information* to allege the added elements of the new penal law but also to *present evidence* to prove the new element beyond reasonable doubt.

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<sup>7</sup> Linkletter v. Walker, 381 U.S. 618 (1965).

<sup>8</sup> Corr, John Bernard, "Retroactivity: A Study in Supreme Court Doctrine as Applied" (1983). Faculty Publications. 840. <https://scholarship.law.wvu.edu/facpubs/840> (last accessed August 16, 2021).


The Philippine law on retroactivity conclusively assumes that a favorable penal law to an accused should apply retroactively **by purpose and effect**. I believe nonetheless that **fairness** demands that the prosecution be given the opportunity to meet the case if it **justifiably relied upon the then prevailing rules**, and the trial court **judged the case relying upon the then prevailing rule**.

To illustrate, here, **had the prosecution of the criminal case and the decision of the trial court in the criminal case come before 2006 or prior to the enactment of Republic Act No. 9344**, I would have retorted that though we must require the prosecution to prove the **discernment** of the 17-year-old petitioner, the prosecution **should have been given the opportunity** to meet this new requirement and the trial court **should be obliged to consider** the evidence on this new element. It would **not have been enough to note the failure** of the prosecution and the trial court to deal with discernment and **fault them** for this omission.

**Unfortunately**, the prosecution of petitioner *and* the decision of the trial court **took place long after Republic Act No. 9344 had been in effect**. Thus, in the present case, there is **no reason** for the prosecution to claim **deprivation of procedural due process** as a **result of retroactivity**. There was an **obvious oversight** in taking no account of **discernment** as mandated in Republic Act No. 9344 **while petitioner's trial was ongoing**. The *ponencia* therefore **could not have been unfair** in pointing to this **lacuna** in both the prosecution evidence and the trial court's decision when it **automatically imposed the retroactivity principle** and on this ground **acquitted petitioner**.

### *Civil liabilities*

On top of the imposition of civil liabilities on petitioner the *ponencia* should also **already impose the civil liabilities on his parents** since their respective liabilities for the damages are equally **direct and primary**. The defense **did not present** evidence on this potential defense of the parent's *reasonable supervision over the child at the time the child committed the offense* during the trial, and they **cannot be allowed** to raise it belatedly when the judgment of damages is executed against them. The defense already had more than an **ample opportunity** to prove this exempting circumstance, **had it exercised reasonable diligence** in handling its case to meet.





The trial court received evidence on the damages from the prosecution; **reasonable diligence** should have dictated to petitioner and his lawyer that the damages would be borne by his parents as their **direct** and **primary** liability. This has been the law for a long time even before **2003**, the year the homicide was committed, and most especially when Republic Act No. 9344 took effect. It was the defense's fault that it did not raise the defense of *reasonable supervision over the child at the time the child committed the offense*, or its gender insensitive counterpart, that *they acted with the diligence of a good father of a family to prevent damages*.

Lastly, as held in *Libi v. Intermediate Appellate Court*,<sup>9</sup> the **direct** and **primary** liabilities of petitioner and his parents are **solidary**.

**ALL TOLD**, I vote to **grant** the petition, **reverse** and **set aside in part** the **Decision** dated November 29, 2017 and **Resolution** dated March 19, 2018 of the Court of Appeals in CA-G.R. CR No. 39196, and **acquit** petitioner of the crime charged.

On the civil aspect of the criminal case, I vote to **affirm** this **Decision** and **Resolution** of the Court of Appeals with **modification** that petitioner and his parents are **directly**, **primarily**, and **solidarily liable** to pay the heirs of AAA PHP 504,145.01 as actual damages, PHP 50,000.00 as civil indemnity, and PHP 50,000.00 as moral damages, with interest on all the damages awarded at the rate of 6% per annum from the date of finality of this judgment until fully paid.

Respectfully submitted.

  
AMY C. LAZARO-JAVIER

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<sup>9</sup> G.R. No. 70890, September 18, 1992 [Per J. Regalado, *En Banc*].

