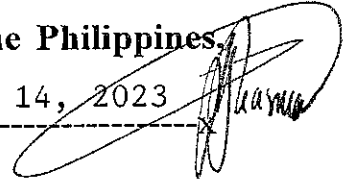


G.R. No. 238798 (XXX238798, Petitioner v. People of The Philippines, Respondent).*

Promulgated: March 14, 2023

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J. J. Lopez:

I am one with the *ponencia* in affirming the Decision dated November 29, 2017 and Resolution dated March 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39196, ultimately upholding the conviction of XXX238798 for the crime of homicide.

In addition to the deft analysis in the *ponencia*, I wish to offer additional perspective on the conclusion to affirm XXX238798's conviction, especially in view of the circumstances in this case.

At its core, my position is that the acquittal of XXX238798 is not warranted simply because the Regional Trial Court (RTC) made no mention of discernment in its Judgment, especially since the CA, supported by evidence on record, ruled upon the same on appeal.

To begin, the retroactive application of Republic Act (R.A.) No. 9344, which took effect on May 20, 2006,¹ insofar as it is favorable to the accused is supported by jurisprudence.

XXX238798 was 17 years old at the time of the commission of the alleged offense in 2003, when the prevailing rule was Article 12, Paragraph 3 of the Revised Penal Code and Section 189 of Presidential Decree No. 603, which did not require proof of discernment if the accused is above 15 years old. Thus, the change brought about by Section 6 of R.A. No. 9344, which came into effect during the trial at the RTC, was beneficial in that it required proof of discernment if the accused is between 15 and 18 years old, otherwise, they are exempt from criminal liability.

Notably, in *People v. Dorado*,² where the acts constituting the crime and the subsequent trial took place in 2004, with the RTC rendering its Judgment in 2010, this Court remarked that "neither the RTC nor the CA paid much attention to Dorado's minority and how it affected his criminal responsibility."³ Further, this Court emphasized that "[g]laringly, there was

* 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 all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

¹ *Declarador v. Gubaton*, 530 Phil. 738, 748 (2006) [Per J. Callejo, Sr., First Division].

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

³ *Id.* at 245.



no discussion at all on whether Dorado acted with discernment when he committed the crime imputed against him.”⁴

In *People v. ZZZ*,⁵ while the act took place in 1996 and the accused was arrested in 2003, the trial court assigned a social worker to ZZZ during trial, who found that he acted with discernment.⁶ Moreover, the RTC issued its judgment in 2013 finding that the accused therein acted with discernment,⁷ which was affirmed by the CA.⁸ Further, this Court upheld the finding of the RTC and CA that therein accused acted with discernment.⁹

In this case, while the act took place in 2003, trial was conducted from 2005 to 2013, with R.A. No. 9344 taking effect during trial, and thereafter, judgment was rendered by the RTC in 2014.

Admittedly, in this case, no determination was made by a social worker on the existence of discernment; neither was there mention of discernment on the part of the RTC in its Judgment rendered in 2014. Nevertheless, the CA ruled on the said issue, using facts already in the record, and determined that XXX238798 acted with discernment.

As such, the factual circumstances of this case rest in between the situation in *People v. ZZZ* where the issue of discernment was expressly considered as early as the trial court’s ruling,¹⁰ and that in *People v. Dorado* wherein “neither the RTC nor the CA paid much attention” to the minority of the accused.¹¹

Due to and despite these peculiar circumstances, I concur with the *ponencia* to uphold the CA’s action in the instant case, finding no reversible error in the same.

Moreover, it is my humble submission that the ruling of the CA on the presence of discernment on the part of XXX238798 did not violate principles of criminal law and procedure.

As pointed out in the *ponencia*, “the accused may waive the right to question the defects or insufficiency of said Information.”¹² Notably, even if the original Information, which was filed in 2004, had not been amended

⁴ *Id.* at 251.

⁵ 857 Phil 629 (2019) [Per J. Leonen, Third Division].

⁶ *Id.* at 639.

⁷ *Id.*

⁸ *Id.* at 640.

⁹ *Id.* at 649.

¹⁰ *Id.* at 639.

¹¹ *Dorado v. People*, 796 Phil. 233, 251–253 (2016) [Per J. Mendoza, Second Division].

¹² *Ponencia*, p. 19.

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from Frustrated Homicide to Homicide after the supervening death of the victim AAA238798 in 2008, objections could have been made against the original Information from the time R.A. No. 9344 took effect in 2006.

Moreover, as the *ponencia* also invokes, the settled rule that “an appeal in criminal cases opens the entire case for review” and the appellate court may thus “examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.”¹³ I add that appeals also allow the reviewing court to “both questions of law and of fact whether or not raised by the parties.”¹⁴ Thus, the CA may properly tackle the issue of discernment despite neither of the parties having raised the same, especially as it is intrinsically connected to the issue of criminal liability in the case and is based on evidence on record.

At any rate, case law has previously remarked that the requirement that discernment be alleged in the Information is sufficiently complied with by the allegation that the offense was committed “with intent to kill,”¹⁵ which was already present in the instant amended Information. Such an allegation necessarily carries the conditions that must be proven [to] prove such an intent to kill, and for which the accused could be said to have been properly informed of the accusation against him. This notwithstanding, I am not unmindful of pronouncements of this Court clarifying that intent is different from discernment.¹⁶

It bears pointing out that 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. While lapses may have been committed by the prosecution and trial court in not addressing the issue of discernment despite the amendatory law taking effect while the trial was pending, the validity of the CA’s determination of discernment should not be affected by such oversight, especially in view of the latitude allowed to the CA to decide criminal cases on appeal.

At any rate, the due process rights of the accused were not violated, as [during] the trial the defense had the opportunity to, and in fact did, adduce evidence and rebut the facts presented by the prosecution. The RTC then made a ruling on his criminal liability, regrettably without considering R.A. No. 9344 which was beneficial to the accused. What the CA did was merely

¹³ *Id.* at 21.

¹⁴ *Tan v. People*, 430 Phil. 685, 693 (2002) [Per J. Vitug, *En Banc*].

¹⁵ *People v. Cordova*, 296 Phil. 163, 185 (1993) [Per J. Davide, Jr., Third Division], citing *People v. Nieto*, 103 Phil 1133, 1133–1134 (1958) [Per J. Reyes, First Division]. See also *People v. Surbida*, 113 Phil. 318, 320 (1961) [Per C.J. Bengzon, *En Banc*].

¹⁶ *Dorado v. People*, 796 Phil. 233, 251–253 (2016) [Per J. Mendoza, Second Division]. *Guevarra v. Almodovar*, 251 Phil. 427, 432–434 (1989) [Per J. Paras, Second Division].

consider the facts already in the record and apply them to the prevailing law and jurisprudence, to determine whether XXX238798 acted with discernment.

In other words, while the prosecution and trial court may not have set out to prove discernment on the part of XXX238798, which might have occurred due to some oversight or inadvertence, this was effectively remedied when the CA used evidence on record to conclude that XXX238798 acted with discernment. Moreover, courts are bound to receive evidence and examine facts. The facts form part of the evidence for which the legal concepts may come into play. Simply because the legal nomenclature of “discernment” was not used or sought to be proven in the trial court does not mean that courts on appeal can no longer examine the same facts to determine whether a different law or rule, even when not considered by the trial court, applies. Facts should not be tailored to fit to the requirements of the law, rather, the law should apply to the facts presented.

Further, I concur with the *ponencia*, and the observations of the majority, that there exists sufficient proof on record that XXX238798 acted with discernment and thus, should be held criminally liable. The totality of the sequence of events prior to the attack shows discernment on the part of XXX238798. This is because as AAA238798 testified against XXX238798 in a hearing before the *punong barangay*,¹⁷ he was not just some any other stranger to XXX238798. Thus, in going to AAA238798’s residence in the early hours, barely a day after AAA238798 testified against him for a separate incident, entering the house while supposedly looking for someone, striking AAA238798 in the head, and leaving after accomplishing the criminal act, it cannot be doubted that XXX238798 had the capacity to understand the difference between right and wrong, and understood the consequences of his acts.

Additionally, this Court has determined the presence of discernment when the following circumstances were present: (1) the crime was perpetrated in a dark and isolated place; (2) the accused fled to a different province after being tagged as a suspect; and (3) the use of force in perpetrating the act.¹⁸

To recall, the attack was perpetrated in AAA238798’s residence in the early morning, at around 3:00 a.m.¹⁹ After the attack, XXX238798 left the bloodied AAA238798 lying in front of their gate, then after the case against him was filed, he quit school and went to Sagada.²⁰ Further, the force used by XXX238798 ended up causing AAA238798’s eyes to pop out, which led

¹⁷ *Ponencia*, p. 3.

¹⁸ *People v. ZZZ*, 857 Phil 629 (2019) [Per J. Leonen, Third Division].

¹⁹ *Ponencia*, p. 3.

²⁰ *Id.* at 3–4.

to massive cerebral contusions and bleeding on the brain, and severe brain damage, leaving him in a vegetative state and bedridden for five long years until he died.²¹

Thus, the totality of facts and circumstances in this case show that XXX238798 acted with discernment and thus, should be held criminally liable for his acts.

Accordingly, I vote to **DENY** the Petition for Review on *Certiorari* and affirm the conviction of XXX238798 for the crime of homicide.


JHOSEP V. LOPEZ
Associate Justice

²¹ *Id.* at 4.