

EN BANC

G.R. No. 238798 – XXX,¹ Petitioner v. PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

March 14, 2023



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CONCURRING AND DISSENTING OPINION

HERNANDO, J.:

The present case involves petitioner XXX, who was charged with the crime of homicide, in an Amended Information which reads:

That on or about the 28th day of October, 2003 at [REDACTED] [REDACTED],² 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 AUGUSTINE OKKO, JR. y TAFALENG, by hitting his left eye, ear and head with a blunt instrument, thereby inflicting fatal injuries on AUGUSTINE OKKO, JR. y TAFALENG which caused his death thereafter.

That the accused is a minor being seventeen (17) years of age at the time of the commission of the crime.

CONTRARY TO LAW.³

In 2006, during the pendency of the case, Republic Act No. 9344,⁴ or the Juvenile Justice and Welfare Act, was passed. Republic Act No. 9344 raised the minimum age of criminal responsibility to above fifteen (15) years old and exempted from criminal liability offenders under eighteen (18) years old who acted without discernment.

In 2014, the Regional Trial Court (RTC) rendered judgment convicting XXX. In 2017, the Court of Appeals (CA) affirmed the conviction but modified the penalty, taking into account the minority of XXX during the commission of the crime.

¹ In line with the Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 9344, the complete name of the accused shall be replaced with fictitious initials and his or her personal circumstances, except for the fact of minority, shall be blotted out from the decision, resolution or order.

² Geographical location is blotted out pursuant to Supreme Court Amended Administrative Circular No. 83-2015.

³ *Ponencia*, pp. 2–3.

⁴ Republic Act No. 9344 (2006), Juvenile Justice and Welfare Act of 2006.

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On appeal before this Court, the *ponencia* reverses the CA and the RTC decisions and acquits XXX due to the prosecution's failure to prove that XXX acted with discernment, a circumstance that cannot be presumed. As to the civil aspect of the case, the *ponencia* holds that the case must be remanded to the trial court for the proper determination of the liability, if any, of XXX's guardian.

Respectfully, I disagree with the *ponencia*.

A. As to the criminal aspect

As pointed out by Our esteemed colleagues, discernment is simply the mental capacity to differentiate right from wrong, and that while it cannot be presumed,⁵ **may nonetheless be inferred from "all the facts and circumstances accorded by the records in each case, the very appearance, the very attitude, the very comportment and behavior of the minor, not only before and during the commission of the act, but also after and even during the trial."**⁶

I submit that XXX acted with discernment. Based on the findings of the trial and appellate courts, the attack happened at 3:00 a.m., when most people are usually asleep, therefore avoiding possible witnesses. One of the victim's eyes "appeared to be popping out,"⁷ he became "blind on one eye, with several abrasions on the head, face, and shoulders,"⁸ and "had several bluish discolorations on his forehead and both eyes."⁹ The victim suffered "massive cerebral contusions and bleeding on spaces in the brain which may have been caused by any force or object hard enough to cause damage to the brain."¹⁰ The attack was so vicious that the victim suffered massive injuries which caused his death. From these findings, it is not too hard to see that XXX, who was 17 years old at the time, intended the consequences of his acts, and knew that it was wrong.

Indeed, discernment cannot be presumed and the prosecution bears the burden to prove this element. However, while discernment cannot be presumed, it may nonetheless be inferred from the prevailing circumstances. It must be emphasized that the finding that XXX is guilty of the crime was never erected on the presumption that he probably acted with discernment. On the contrary, the Court merely acknowledged and recognized what has always been there based on **empirical and factual findings of the trial court**. In other words, the circumstances and conditions necessary to **infer** discernment, as opposed to merely presuming, have been sufficiently established by the prosecution, which may then be rightly used as basis in convicting XXX of the crime he consciously committed. This conclusion is further bolstered by the time-honored doctrine

⁵ *Dorado v. People*, 796 Phil. 233, 251 (2016) [Per J. Mendoza, Second Division].

⁶ *Id.* at 250.

⁷ *Ponencia*, p. 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3-4.

that findings of fact made by a trial court and their assessment of credibility of witnesses are accorded the highest degree of respect, more so if affirmed by the appellate court, due to their unique position of having observed that elusive, incommunicable evidence of the witnesses' deportment on the stand while testifying.

B. As to the civil aspect

With regard to this point, the *ponencia* holds that the case be remanded to the trial court, and to implead XXX's guardian, for the proper determination of civil liability, if any. This is based on Article 101 of the Revised Penal Code *vis-à-vis* Art. 2180 of the Civil Code, which hold liable persons, under whose legal authority or control over minors who incurred obligations and acted without discernment, fall.

I agree with the *ponencia*. Nonetheless, I wish to offer a broader view on the matter.

The *ponencia* referred to the landmark case of *Libi v. Intermediate Appellate Court*,¹¹ promulgated in 1992, which holds:

Under the foregoing considerations, therefore, we hereby rule that the parents are and should be held primarily liable for the civil liability arising from criminal offenses committed by their minor children under their legal authority or control, or who live in their company, unless it is proven that the former acted with the diligence of a good father of a family to prevent such damages. That primary liability is premised on the provisions of Article 101 of the Revised Penal Code with respect to damages *ex delicto* caused by their children 9 years of age or under, or over 9 but under 15 years of age who acted without discernment; and, with regard to their children over 9 but under 15 years of age who acted with discernment, **or 15 years or over but under 21 years of age**, such primary liability shall be imposed pursuant to Article 2180 of the Civil Code.¹² (Emphasis supplied)

Three years prior, or in 1989, Republic Act No. 6809¹³ was passed, which amended Arts. 234 and 236 of the Family Code, lowering the age of majority from 21 to 18 years. Curiously, despite having been promulgated after the passage of the law, *Libi* retained the rule on direct and primary liability of parents even for persons aged over 18 but under 21. As stated in the footnote, this discrepancy is due to Sec. 3 of Republic Act No. 6809, which provides:

Section 3. Article 236 of the same Code is also hereby amended to read as follows:

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¹¹ 288 Phil. 780 (1992) [Per J. Regalado, *En Banc*].

¹² *Id.* at 797-798.

¹³ Republic Act No. 6809 (1989), An Act Lowering The Age of Majority From Twenty-One To Eighteen Years, Amending For The Purpose Executive Order Numbered Two Hundred Nine, And For Other Purposes.

“Nothing in this Code shall be construed to derogate from the duty or responsibility of parents and guardians for children and wards below twenty-one years of age mentioned in the second and third paragraphs of Article 2180 of the Civil Code.”

Meanwhile, the second and third paragraphs of Art. 2180 of the Civil Code provide:

Article 2180.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

There is therefore an inconsistency on two levels: *first*, despite Republic Act No. 6809 having reduced the age of majority to 18 years and fully emancipating children who reach such age, Art. 236, as amended, still ascribes liability to parents and guardians for the damages caused by persons over 18 years old but below 21. *Second*, Art. 2180 speaks only of “minor children,” and yet was still used by *Libi* as basis for the vicarious liability of parents and guardians arising from damages caused by persons over 18 but below 21, who are admittedly no longer minors, but fully emancipated adults qualified and responsible for all acts of civil life, in view of Republic Act No. 6809.

I submit that Republic Act No. 6809 is all-encompassing, in that in lowering the age of majority to 18, it releases a person from parental authority, qualifies, and makes him responsible for all acts of civil life. As a necessary effect therefore, it is my considered view that despite its clear wording, the third paragraph of Sec. 3 of Republic Act No. 6809 should be understood to cover only children below 18 years. This interpretation is in line with Art. 2180 of the Civil Code which, again, speaks only of “minor children.” Ultimately, the declaration in *Libi* should be revisited, and the *ponencia*'s reference thereto.

In the present case, while XXX is 17 years old at the time the crime was committed, it is my humble recommendation that a discussion on this matter be included for the harmonization and proper interpretation of these provisions.


RAMON PAUL L. HERNANDO
Associate Justice