

EN BANC

G.R. No. 238798 – CICL XXX,¹ petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.

Promulgated:

March 14, 2023

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CONCURRING OPINION

INTING, J.:

Before the Court is an appeal from the rulings of the Regional Trial Court of La Trinidad, Benguet (RTC) and the Court of Appeals (CA) that found accused CICL XXX guilty beyond reasonable doubt of the crime of Homicide.

The prosecution asserted that CICL XXX caused fatal injuries upon the victim, AAA, by hitting the latter's left eye, ear, and head, with a blunt instrument, resulting in AAA's death.² The incident occurred on October 28, 2003.³ At that time, CICL XXX, who was born on December 15, 1985,⁴ was only 17 years and 10 months old. Thus, CICL XXX was a minor at the time of the alleged commission of the offense.

The records reveal that the Information⁵ against CICL XXX was filed on March 2, 2004 and docketed as Criminal Case No. 04-CR-5253. Trial was held from 2005 to 2013, and the RTC promulgated its judgment of conviction against CICL XXX on February 28, 2014.

While CICL XXX's trial was pending, Republic Act No. 9344 (RA 9344) or the "Juvenile Justice and Welfare Act of 2006" passed into law

¹ The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes;" Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

² CA rollo, p. 85.

³ Records, p. 250.

⁴ Id. at 43.

⁵ Id. at 1.

and took effect on May 20, 2006.⁶ Section 6 of RA 9344 states that 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.”

It is settled that RA 9344 retroactively applies to crimes committed prior to its effectivity,⁷ including the offense charged against CICL XXX. The retroactive application of RA 9344 to CICL XXX, who has not been shown to be a habitual criminal, is based on Article 22⁸ of the Revised Penal Code and the well-entrenched principle in criminal law — *favorabilia sunt amplianda adiosa restringenda* (penal laws which are favorable to the accused are given retroactive effect).⁹

Discernment is not presumed.¹⁰ Thus, the Prosecution in Criminal Case No. 04-CR-5253 bore the burden to prove beyond reasonable doubt, by direct or circumstantial evidence, that at the time of the alleged commission of the offense, CICL XXX, a minor at the age of 17 years and 10 months old, acted with discernment.¹¹ The Prosecution must specifically prove as a *separate* circumstance that CICL XXX committed the alleged crime with discernment.¹²

The records bear that the Prosecution presented its evidence in Criminal Case No. 04-CR-5253 from November 15, 2005¹³ to May 25, 2011.¹⁴ It is therefore evident that the Prosecution was given ample opportunity to prove discernment on the part of CICL XXX luden as a separate circumstance beyond reasonable doubt.

The issue before the Court is whether the Prosecution was able to discharge its burden to prove beyond reasonable doubt that at the time of the commission of the alleged homicide, CICL XXX was acting with discernment.

⁶ *Estioca v. People*, 578 Phil. 853, 875 (2008).

⁷ *Id.* See also *Dorado v. People*, 796 Phil. 233, 245-253 (2016).

⁸ Article 22 of the Revised Penal Code provides:

ART. 22. *Retroactive effect of penal laws.* — Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

⁹ *Dorado v. People*, *supra*.

¹⁰ See *Id.* at 249. See also *CICL XXX v. People*, 859 Phil. 912 (2019).

¹¹ *Id.*

¹² *Id.*

¹³ The Prosecution presented its first witness, EEE, on November 15, 2005 (Records, pp. 104-117).

¹⁴ The Prosecution filed its Formal Offer of Evidence with the RTC on May 25, 2011 (Records, pp. 440-449).

The *ponencia* rules that the totality of the facts and circumstances of the present case leads to the conclusion that CICL XXX acted with discernment in the commission of the crime.¹⁵

I agree. The records establish beyond reasonable doubt that at the time of the commission of the offense, CICL XXX acted with discernment in inflicting injuries upon the victim, AAA, which resulted in the latter's death.

The Prosecution was able to prove beyond reasonable doubt that CICL XXX committed acts constituting homicide.

To begin, I concur with the *ponencia*¹⁶ that the Prosecution was able to prove beyond reasonable doubt all the elements of homicide against CICL XXX, *i.e.*, (1) that AAA was killed; (2) that CICL XXX killed AAA without any justifying circumstance; (3) that CICL XXX had the intention to kill, which is presumed by the death of AAA; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.¹⁷

Here, it is a matter of record¹⁸ and even admitted¹⁹ by CICL XXX that AAA died on November 26, 2008. That CICL XXX was the one who killed AAA was also testified on by the mother of AAA, BBB. Particularly, BBB testified²⁰ that on the day of the incident, at around 3 a.m., she was roused by the cries of AAA. She found her son lying on the ground and severely injured right outside their house gate. She helped her son get up and while cleaning his wounds, AAA stated that CICL XXX mauled him in revenge because he testified against CICL XXX in a *barangay* case filed by DDD regarding a bar brawl incident a week prior to the mauling of AAA.

CICL XXX attempts to discredit the testimony of BBB by arguing that it is inadmissible hearsay for being merely based on what AAA narrated to his mother on the day of the incident.²¹ This has no merit. As correctly pointed out by the *ponencia*,²² the RTC and CA properly considered BBB's testimony as admissible in evidence for being part of

¹⁵ *Ponencia*, p. 16.

¹⁶ *Ponencia*, p. 9.

¹⁷ *CICL XXX v. People*, supra note 10, at 929.

¹⁸ Records, p. 249.

¹⁹ *Id.* at 257.

²⁰ Records, p. 237.

²¹ *Rollo*, p. 14.

²² *Ponencia*, p. 7.

the *res gestae*,²³ in accordance with Rule 130, Section 44²⁴ of the Rules of Court.

I agree with the *ponencia* that the statements made by AAA to his parents immediately after the mauling incident were made under circumstances where contriving a falsehood was impossible. AAA's statement that he was mauled by CICL XXX was made immediately after his parents found him lying on the ground, when AAA had just been injured and was even bleeding from his eye.²⁵ His statements to his parents, having been made under a state of nervous excitement or shock from his injuries, are trustworthy and worthy of credence. The admission of BBB's testimony to establish the identity of CICL XXX as the perpetrator of the crime is consistent with prevailing jurisprudence,²⁶ where the Court considered as part of the *res gestae* the victim's identification of his assailant while lying wounded, bleeding from his/her injuries, or being brought to the hospital.

It bears pointing out that CICL XXX himself corroborated BBB's statement that CICL XXX mauled AAA in revenge.²⁷ Verily, the *barangay* case filed by DDD against CICL XXX was stipulated during Pre-Trial.²⁸ CICL XXX also narrated the antecedents leading to the mauling of AAA in revenge. Particularly, CICL XXX stated on direct

²³ *Res Gestae* is explained in *People v. XXX*, 839 Phil. 252, 265-268 (2018) as follows: *Res gestae* means the "things done." It "refers to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement." A spontaneous exclamation is defined as "a statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him. The admissibility of such exclamation is based on our experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him." In a manner of speaking, the spontaneity of the declaration is such that the declaration itself may be regarded as the event speaking through the declarant rather than the declarant speaking for himself.

²⁴ Section 44 of Rule 130 of the Rules of Court provides:
Section 44. *Part of the res gestae.* — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto, under the stress of excitement caused by the occurrence with respect to the circumstances thereof, may be given in evidence as part of the *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*.

²⁵ Records, pp. 222-224.

²⁶ See *People v. Hübilo*, 292-A Phil. 514, 525 (1993), *People v. Gado*, 358 Phil. 956, 967-968 (1998), and *People v. Salafrañca*, 682 Phil. 470, 482-484 (2012), where the Court held that statements made by the victim while lying wounded and/or on the way to the hospital are admissible as part of *res gestae*.

²⁷ Records, p. 237.

²⁸ Id. at 83.

examination that on October 20, 2003,²⁹ about a week before the incident subject of this case occurred, CICL XXX was in a pub with his friends in Baguio City and was involved in a bar brawl with another group in the said pub.³⁰ In the course of the bar brawl, CICL XXX hit DDD, whose left cheek became swollen.³¹ Following the altercation, CICL XXX was brought to the police station³² and DDD filed a complaint against CICL XXX with *Barangay* ██████, Baguio City.³³ CICL XXX narrated that in the course of the *barangay* conciliation proceedings, AAA appeared and identified him as the one who inflicted injuries upon DDD.³⁴

The foregoing corroboration of BBB's testimony supports the conclusion that it is admissible in evidence.³⁵

Intent to kill was also proven by the Prosecution because AAA was hit in the head, a vital part of the body.³⁶ That the injury sustained by AAA would result in his death was likewise established by the testimony of Dr. Romeo Concepcion (Dr. Concepcion), a physician at Baguio General Hospital to whom AAA was referred to for treatment on October 31, 2003.³⁷

CICL XXX has not offered any justifying circumstance in killing AAA. The killing was also not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Hence, all the elements of homicide concur, with CICL XXX as the perpetrator thereof.

CICL XXX raised denial and alibi as his defenses. Supposedly, he was out drinking with his friends in several establishments located in Baguio City from 7:00 p.m. of October 27, 2003 to 4:00 a.m. of October 28, 2003.³⁸ However, the defenses of alibi and denial are inherently weak as they constitute self-serving negative evidence and may be easily fabricated, and thus, cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.³⁹ For the defense of alibi to prosper, the accused must prove with clear and convincing evidence that (1) he was in another place than the *situs*

²⁹ The Transcript of Stenographic Notes of the hearing held on March 5, 2012 (Records, pp. 494-508) wrongfully indicate the date as "2008" instead of "2003." This error was rectified to make it conform to the Amended Information and should be reflected as "2003," per the *Order* dated October 16, 2012 of the RTC (Records, p. 520).

³⁰ Records, p. 497.

³¹ Id. at 503-505.

³² Id. at 498-499.

³³ Id. at 501-505.

³⁴ Id. at 504-505.

³⁵ *People v. Rivera*, G.R. No. 202126 (Notice), April 22, 2015.

³⁶ *People v. Balderas*, 342 Phil. 435, 452 (1997).

³⁷ Records, pp. 135-136.

³⁸ Id. at 505-506.

³⁹ *People v. Gonzales*, 853 Phil. 610, 621 (2019).

criminis at the time when the crime was committed, and (2) it was physically impossible for him to be at the scene of the crime when it was committed.⁴⁰

CICL XXX's supposed alibi cannot prevail over the testimony of BBB, who positively identified him as the assailant.⁴¹ CICL XXX supposedly drank from October 27, 2003 to 4:00 a.m. of October 28, 2003 with his friends named CN, IG, and CT, none of whom were presented in court to corroborate his testimony.⁴² Further, it was not physically impossible for CICL XXX to be at the *situs criminis*, considering that the municipality of La Trinidad, Benguet, where the homicide happened, is only about 10 to 15 kilometers away from Baguio City.⁴³

Thus, the Prosecution was able to prove all the elements of homicide beyond reasonable doubt against CICL XXX.

Discernment, defined as the mental capacity of a minor to understand right from wrong and to fully appreciate the consequences of his unlawful act, should be determined by considering all the circumstances disclosed by the records of the case, not only before and during the commission of the act, but also after and even during the trial.

Notwithstanding the Prosecution's evidence establishing the elements of homicide, RA 9344 requires it to also prove as a separate circumstance and beyond reasonable doubt that at the time of the commission of the unlawful act, CICL XXX acted with discernment.

A discussion on discernment is necessary.

Discernment, in the context of criminal laws involving minors, is more than the mere understanding between right and wrong.⁴⁴ Rather, it refers to the mental capacity of a minor to fully understand the nature of

⁴⁰ *Id.*

⁴¹ See *People v. Calinawan*, 805 Phil. 673, 682 (2017) and *People v. Badillos*, 832 Phil. 572, 582-586 (2018), where the defense of alibi could not prevail over the positive identification of the accused as the perpetrator of the crime by witnesses whose testimonies formed part of the *res gestae*.

⁴² Records, p. 506.

⁴³ See *People v. Gomez*, 388 Phil. 462, 470 (2000), where it was held that courts may take judicial notice of geographical distances in relation to an accused's defense of alibi.

⁴⁴ *Llave v. People*, 522 Phil. 340, 366-368 (2006).

his act and to fully appreciate the consequences of his unlawful act.⁴⁵ It relates to the power of the minor to determine the morality of human acts, to distinguish a licit from an illicit act, and to appreciate the nature and criminality of the act.⁴⁶

Particularly in homicide cases, an accused, who is a minor, acts with discernment when he had sufficient intelligence and was sufficiently endowed with judgment to know that the act which he committed was *wrong* and that it was *likely to produce death*.⁴⁷ Discernment signifies more than merely knowing the difference between right and wrong; it connotes that the minor accused *killed with intention to kill* and *knowing that it is a crime to kill*.⁴⁸

In judging whether a minor accused acted with discernment, which may be known and should be determined by considering all the circumstances disclosed by the record of the case or from the evidence as a whole, the appearance of the accused, his attitude and his behavior and conduct, not only before and during the commission of the act, but also after and even during the trial, should be taken into consideration.⁴⁹ The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong.⁵⁰ Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness.⁵¹ Circumstantial evidence of discernment may also 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*.⁵²

The determination of discernment should include all the means sanctioned by the Rules of Court in ascertaining matters in judicial proceedings such as judicial admissions, matters of judicial notice, stipulations made during the pre-trial and trial, as well as other admissions and presumptions.⁵³ The Court may take cognizance of any matter taken up during the trial or which has become part of the records of the case.⁵⁴

In several instances, the level of education of the minor accused was considered to determine his capacity to act with discernment. Thus, in

⁴⁵ *Id.* See also *United States v. Maralit*, 36 Phil. 155, 158-159 (1917).

⁴⁶ *Guevarra v. Almodovar*, 251 Phil. 427, 433 (1989).

⁴⁷ *United States v. Maralit*, *supra*.

⁴⁸ *People v. Surbida*, 113 Phil. 318, 320 (1961).

⁴⁹ *Llave v. People*, *supra* note 44, citing *People v. Doqueña*, 68 Phil. 580, 582-583 (1939). See also *United States v. Maralit*, *supra*.

⁵⁰ *CICL XXX v. People*, *supra* note 10.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *Sy v. People*, G.R. No. 243617 (Notice), May 5, 2021.

⁵⁴ *Id.*

People v. Doqueña,⁵⁵ the Court upheld the trial court's finding that the minor accused therein acted with discernment in stabbing his victim, resulting in the latter's death, considering that the accused was a 7th grade pupil, one of the brightest in his school who always obtained excellent marks, and was even the captain of a company of cadet corps. Similarly, in *Llave v. People*,⁵⁶ therein minor accused was convicted of rape after the Court determined that he acted with discernment as established by, among others, the fact that the accused was an outstanding student who even received several awards and joined academic contests.

That the minor accused's level of education may be used as an indicator of discernment was also discussed during the plenary sessions of the Committee on Justice of the House of Representatives in passing RA 9344:

REP BATERINA. May I now...May I now terminate...but before I do that, may I just proceed to satisfy myself on the matter of age of discernment.

Would you say that the age of discernment is...cannot be generalized that the age of discernment is independent, I mean, individualized. In other words, would discernment can happen (*sic*) to a younger one and another for another person (*sic*) it can be...he can have an age of discernment at a higher level, higher age, and how come we can...we must generalize?

MR. MUYOT (*resource speaker*). Thank you for that question, Your Honors. What the bill seeks to do is not to generalize but to put a minimum, a minimum age of criminal liability and then put a spread over that minimum wherein the judge will be given the discretion to determine whether or not the child has the discernment.

For instance, in some of the bills the minimum age fixed is 12. But then there is a spread of up to 15 so that from 12 to below 15 the judge is still given a discretion to determine whether or not the child had acted with discernment. So if the child had acted with discernment, the judge can go on to find criminal liability on the part of the child. But if the judge feels that based on, let's say, *the level of education* or the level of mental development of a child discernment is not possible, then he can...he has the discernment to say that the child should not be liable.

Thank you, Mr. Chairman.⁵⁷ (*Italics supplied*)

Other indicators of discernment include the perpetration of the crime in a dark and isolated place;⁵⁸ committing the unlawful act while

⁵⁵ *People v. Doqueña*, supra note 49.

⁵⁶ *Llave v. People*, supra note 44.

⁵⁷ Transcript of the of the Committee on Justice plenary session dated November 23, 2004, p. 24.

⁵⁸ See *People v. ZZZ*, 357 Phil. 629, 649 (2019).

the accused had a chance to be alone with the victim,⁵⁹ being enraged when accused of having perpetrated the criminal act against the victim;⁶⁰ when the minor accused, together with his cohorts, took turns in incapacitating their victims to perpetrate the unlawful act,⁶¹ or when one of the minors acted as a lookout while the crime was being committed.⁶²

The records establish beyond reasonable doubt that CICL XXX acted with discernment in committing the unlawful act.

Based on the foregoing guidelines on discernment *vis-à-vis* a review of the records of the case, I agree with the *ponencia* that CICL XXX acted with discernment in inflicting harm upon AAA, resulting in the latter's death. In committing the unlawful act, CICL XXX was aware that his actions were wrong and would likely result in AAA's death.

First, the records bear that at or near the time of the incident, CICL XXX was a second year nursing student.⁶³ Being a nursing student, CICL XXX would have the necessary mental capacity to understand how the human body works, the fatality of wounds which may be inflicted upon the part of the human body as vital as the head, and that it is wrong to inflict severe injuries on a person's head, who may likely die from such injury. To my mind, CICL XXX's level of education may be taken as evidence that in mauling AAA, he understood that inflicting bodily harm upon AAA was wrong and would likely result in the latter's death.

Second, there is testimony on record that CICL XXX was advised by his guardian, YYY, that it is wrong to injure someone, that a similar incident of inflicting injury upon another should not be repeated, and that CICL XXX should instead concentrate on his studies.⁶⁴ This goes to show that CICL XXX was very much aware that it is wrong to physically harm another person.

CICL XXX testified that during the *barangay* conciliation proceedings in the case filed by DDD which was held on October 22, 2003; CICL XXX, accompanied by his guardian YYY, admitted that he injured DDD.⁶⁵ As CICL XXX and his family did not want the case to go to court, they agreed to amicably settle with DDD's parents by committing to pay his hospital and medication bills.⁶⁶ Meanwhile, CICL XXX's

⁵⁹ *BBB v. People*, G.R. No. 249307, August 27, 2020.

⁶⁰ *Remiendo v. People*, 618 Phil. 273, 288-290 (2009).

⁶¹ *People v. Wile*, 784 Phil. 418, 450-452 (2016).

⁶² *People v. Cortezano*, 458 Phil. 304, 327-328 (2003).

⁶³ Records, p. 20.

⁶⁴ Id. at 541.

⁶⁵ Id. at 503.

⁶⁶ Id. at 539-540.

guardian, YYY, advised CICL XXX that he should not commit a similar act of physically injuring someone and should instead concentrate on his studies. As testified to by YYY:⁶⁷

Q So you actually talked before the settlement was put down in writing, as you said?

A The mother of [DDD] and the *Barangay* Captain.

Q Who else?

A All of us there.

Q How about Alwin, what did he say, if any?

A He just kept quiet and listened to our advices.

Q What advice?

A That they will not do this again and concentrate on their studies.

Evidently, CICL XXX has been sufficiently informed by his very own guardian that physically injuring someone was wrong and should not be repeated. CICL XXX, being then 17 years and 10 months old, and who was even a nursing student, was surely sufficiently intelligent and mentally capacitated to understand what his own guardian advised him about. That physically injuring someone is wrong must still be in CICL XXX's mind when just six (6) days later, or on October 28, 2003, he committed a similar act of inflicting bodily harm upon another person, AAA.

Third, the location, deliberateness, and severity of the wounds inflicted upon AAA demonstrate CICL XXX's discernment. It has been held that the head of a person is a vital part of the body and infliction of a heavy blow thereon may even establish intent to kill.⁶⁸

In this case, Dr. Manuel Kelly, Jr. (Dr. Kelly), a physician at Benguet General Hospital to whom AAA was referred to on October 30, 2003⁶⁹ due to blurring of vision and headache, categorically testified during cross-examination that the wounds suffered by AAA were not caused by a fall to the ground but by a hit, as the force was traverse and going directly to the area that is involved, *i.e.*, right part of the eye of AAA, which then transferred to the brain muscle. The force was strong enough to cause movement inside the brain and break its vessels, *viz.*:

⁶⁷ *Id.* at 541.

⁶⁸ *People v. Balderas*, *supra* note 36.

⁶⁹ Records, p. 177.

- Q The last time that you were supposed to be cross-examined, the records custodian of the Benguet General Hospital brought before this Court the records, which was requested of you, relative to the case of [AAA] I am showing to you this Clinical Face Sheet for one [AAA], would you please go over this and tell the Court whether or not that is the Clinical Face Sheet that refers to [AAA]?
- A Yes, ma'am, it is.
- Q These consists (*sic*) of 13 pages and the Face Sheet is captioned "clinical Face Sheet" and in the final diagnosis there is indicated here contusion, hematoma, what does that mean?
- A There is a bleeding on the part involved, so bleeding in the area.
- Q Which area?
- A Right part of the eye of the patient.
- Q And there is also indicated traumatic conjunctivitis, what does this mean?
- A There is an inflammation of the conjunctiva caused by the trauma or any injury one on the patient.
- Q It is caused by an injury also?
- A Yes.
- Q And there also indicated here intraparenchymal hemorrhage right frontal lobe. What is the relation of the third entries to the second entries?
- A That third entry is an injury caused by a blunt trauma to the eye in which the force was transferred to the brain muscle inside the skull or brain tissue I should say.
- Q Now, these entries under the column final diagnosis could have been caused by any kind of trauma inflicted on the area of the eye?
- A The injury inside the brain was caused by a trauma which the patient had on the head.
- Q And it could have been caused by a fall?
- A It cannot be caused by a fall because it was a hit. The only injury the patient had was when the patient was hit on the right side of the eye and the injury on the brain is caused by the traumatic injury in which the force that is accepted by the eye going to the brain tissue causes the injury.
- Q How did you know that it is caused by a hit?

- A If there is a force going directly to the area that is involved, the force is traverse. Meaning to say, the force would go backwards. Due to the force going backwards, it would cause a movement inside the brain in which it would break the small vessels inside it.
- Q But is it possible that if [AAA] had a great fall and hit a blunt instrument, could it have caused the injury?
- A There was no history that the patient had a previous history of fall. The patient had a history of injury in which he had an assailant.⁷⁰

Dr. Concepcion similarly testified during his direct examination on the gravity of the wounds suffered by AAA, resulting in multiple bruises and fractures at the head area, lacerations of the brain, and severe contusion:

- Q You mentioned of this Glasgocoma Scale 13, could you further explain or elaborate this kind of condition?
- A The Glasgocoma Scale is a scale from 1 to 15 wherein 15 is the normal and best level, the lowest being 1 or 3-1, that is as far as the scale can go because it evaluates the eye movement, verbal and motor movement of the patient. On this scale, the patient was on Glasgocoma 13, he was conscious and coherent. However, there was lapse as far as his eyes are concerned because one of the eyes was affected. So this will actually give us, more or less, the gravity, it is not accurate but it will give us more or less how grave the injury sustained by the brain as manifested by the Glasgocoma scale. To given an interpretation if the patient is in coma which is on the Scale of 3, he is in other words vegetable...
- Q On the case of [AAA], what could have caused this condition of Glasgocoma 13?
- A Thereoretically speaking, it could be anything that would injure the brain, whether by direct trauma, whether an internal blot because of hypertensive blood or anything that has something to do with the brain.
- Q In the situation of [AAA], did you find any injury in the brain of this patient?
- A Yes, the CT Scan was done which revealed blood inside the brain and a brain that was lacerated and on CT Scan it appeared very contused already. It is just like the consistency has changed already because of the trauma the brain suffered from the injury.

⁷⁰ Id. at 172-174.

- Q So what might have caused this blood in the brain that you have seen after the CT Scan?
- A Well, it could be instances of trauma wherein there is a break in the blood vessel walls secondary to the hypertensive bleeds or aneurisms, as some would know.
- Q In this particular case of [AAA], what is the probable cause of the blood in the brain?
- A Based on history when the patient was brought to the hospital and the CT Scan findings of multiple hematomas in the brain as well as fractures. Of course, we would surmise that this came from the injury sustained by the patient when he was mauled.
- Q What particular part of the body?
- A The head.
- Q You found also fractures on what part of the body?
- A Several bruises of the brain from the occipital to the parietal area there were multiple actually.
- Q This injury on the head of the patient, what could have caused this injury?
- A Any form of objects (*sic*) that would probably be hard enough to break the skull or in other instances anything that could be hard enough to shake the brain and this may be in the form of fracture.⁷¹

Dr. Concepcion also testified during direct examination that the injuries suffered by AAA were sufficient to cause a person's death:

- Q So could you again tell us what caused this finding of yours?
- A Again any external force that could cause a break in the walls of the blood vessels, hence the egress of the sipping of the blood out of the blood vessel and pouring into these spaces as mentioned.
- Q This finding that you made, could it cause the death of a person?
- A Definitely, sir.⁷²

The testimonies of Dr. Concepcion and Dr. Kelly prove the deliberateness and severity of the wounds inflicted upon AAA. The force used was strong enough to injure the brain, inflict multiple bruises and fractures at the head area of AAA, cause brain lacerations and severe

⁷¹ Id. at 149-150.

⁷² Id. at 135-136.

contusion, and eventually lead to his death. Surely, CICL XXX, who was just two months short of being an adult at the time of the commission of the offense and even a second year nursing student at that, would understand that the head is a vital part of the body, that it should not be harmed, that it is wrong to inflict grave wounds on a person's head, and that doing so would result in death.

Fourth, BBB testified that the incident subject of the case happened sometime around 3:00 a.m. of October 28, 2003.⁷³ This indicates that the mauling of AAA was done while it was still dark and with no or few people around to witness the incident. In fact, BBB and her late husband⁷⁴ were sleeping in their bedroom at that time and were awakened only by the cries of AAA, "Mama! Mama!" to find out that their son was severely injured right outside their house gate. That AAA was mauled during the wee hours of morning, while people were still asleep, indicates CICL XXX's cognizance that his actions were wrong and had to be executed away from the public's eye.

Finally, CICL XXX's own testimony reveals that he is very much aware that his actions were wrong. CICL XXX particularly testified that he dropped out of school because a case was filed against him after the incident subject of this case.⁷⁵ According to CICL XXX, he dropped out of school because he was scared after he received a warning that he should watch his back:⁷⁶

Q And after October 2008 what occupation did you engage in?

A After that I dropped out from school I went home to Sagada to be a guide.

Q Why did you drop out?

A Because a case was filed against me so I just stopped.

Q Why did you have to drop out?

A Because somebody told me to watch my back because people might go after me. x x x

x x x x

Q Why did you take seriously that you have to quit?

A I got scared.

⁷³ Id. at 193-195 and 222-224.

⁷⁴ Id. at 237.

⁷⁵ Id. at 506.

⁷⁶ Id. at 506-507.

That CICL XXX was scared to the point of dropping out of school after a case was filed against him reveals his awareness of the wrongfulness of his actions. Similar to *Remiendo v. People*,⁷⁷ CICL XXX's averse or negative reaction to imputations of crime against him is an indicator of discernment.

With the foregoing, I agree with the *ponencia*⁷⁸ that CICL XXX's Petition for Review⁷⁹ before the Court must be **DENIED**. The Decision⁸⁰ dated November 29, 2017, and the Resolution⁸¹ dated March 19, 2018 of the Court of Appeals in CA-G.R. CR No. 39196, finding CICL XXX guilty of the crime of homicide, must be **AFFIRMED**.


HENRI JEAN PAUL B. INTING
Associate Justice

⁷⁷ *Remiendo v. People*, supra note 60.

⁷⁸ *Ponencia*, p. 24.

⁷⁹ *Rollo*, pp. 7-25.

⁸⁰ *CA rollo*, pp. 84-99.

⁸¹ *Rollo*, pp. 53-54.