

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO SOLAR Y DUMBRIQUE, ACCUSED-APPELLANT.

G.R. No. 225595. August 06, 2019

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CAGUIOA, J:

Before the Court is an ordinary appeal[1] filed by the accused-appellant Rolando Solar y Dumbrique (Rolando) assailing the Decision[2] dated January 13, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05757, which affirmed the Judgment[3] dated September 3, 2012 of Regional Trial Court (RTC) of Las Piñas City, Branch 202 in Criminal Case No. 08-0616 finding Rolando guilty beyond reasonable doubt, but downgrading the crime from Murder to Homicide.

The Facts

An Information was filed against Rolando and Mark Kenneth Solar (Mark Kenneth) for the murder of Joseph Capinig y Mato (Joseph), the accusatory portion of which reads:

That on or about the 9[th] day of March 2008, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other, without justifiable motive, with intent to kill and with treachery and abuse of superior strength, did then and there knowingly, unlawfully and feloniously attack, assault and use personal violence upon one JOSEPH CAPINIG y MATO, by then and there hitting and beating his head with a baseball bat, thereby inflicting upon the latter mortal injury which caused his death.

The killing of the aforesaid victim is qualified by the circumstances of treachery and abuse of superior strength.

CONTRARY TO LAW.[4]

During the arraignment, Rolando pleaded not guilty while Mark Kenneth remained at large and hence was not brought to the RTC's jurisdiction.[5]

The prosecution presented an eyewitness, namely private complainant Ma. Theresa Capinig (Ma. Theresa), the wife of Joseph. The prosecution also presented Dr. Voltaire Nulud (Dr. Nulud), the doctor who conducted the medical examination on Joseph.

The version of the prosecution, as summarized by the CA, is as follows:

Ma. Theresa testified that on March 9, 2008, at around 2:00 a.m., she decided to follow her husband who left the house to get his cellphone from Rolando. Along the way, she saw Rolando and Mark Kenneth hit Joseph with a baseball bat on his nape. When Joseph fell down, the two simultaneously ganged up on him. She then shouted for help and the assailants ran away. Immediately, Joseph was rushed to the hospital but was pronounced "dead on arrival." According to Dr. Nulud, the death resulted from traumatic injuries on the brain caused by a blunt force applied on the head of the victim. The postmortem examination revealed two external injuries on the frontal region or in the forehead, which was a contusion, and a healing abrasion on the left infra

scapular region. Also, there was a subdural and subarachnoidal hemorrhage on the cerebral hemisphere of the brain or "doon xxx sa dalawang lobes ng brain ng victim." [6]

On the other hand, the version of the defense, as also summarized by CA, is as follows:

Rolando denied the accusation and claimed that he was attending a wake on the night of March 8, 2008, from 11:00 p.m. until 2:00 a.m. the following day. Joseph was also there drinking and playing cara y cruz with his group. After a while, Joseph approached him and offered to pawn a cellphone in exchange of cash. However, he refused because he also needed money. On his way home, he met Joseph who, upon seeing him, drew out a kitchen knife and tried to stab him thrice. Fortunately, he was not hit and he immediately ran away. [7]

Pre-trial and trial thereafter ensued.

Ruling of the RTC

After trial on the merits, in its Judgment [8] dated September 3, 2012, the RTC convicted Rolando of the crime of Murder. The dispositive portion of the said Judgment reads:

WHEREFORE, premises considered, this Court finds accused Rolando Solar [y] Dumbrique GUILTY beyond reasonable doubt for the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code.

Accordingly, said accused is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay the heirs of the deceased victim, Joseph Capinig, the amounts of P50,000.00 as civil indemnity for his death, P50,000.00 as moral damages, and P25,000.00 as exemplary damages, with subsidiary imprisonment in case of insolvency.

x x x x

SO ORDERED. [9]

The RTC found the testimony of Ma. Theresa, the sole eyewitness of the prosecution, to be clear, positive, categorical, and credible to establish Rolando's guilt for the crime charged. The RTC also held that the qualifying circumstance of treachery was present in the killing of Joseph, and hence, the crime committed by Rolando was Murder.

Aggrieved, Rolando appealed to the CA. In his Brief, [10] he stated that the prosecution failed to prove his guilt beyond reasonable doubt by failing to prove his identity as the perpetrator, and that there was lack of evidence to support a finding of conspiracy among the accused. He argued that since Ma. Theresa testified that it was Mark Kenneth who inflicted the fatal blow on the victim, a finding of conspiracy was necessary to convict him and there were no facts available to support such conclusion. Thus, Rolando prayed for his acquittal.

Ruling of the CA

In the assailed Decision [11] dated January 13, 2015, the CA modified the RTC's conviction of Rolando.

Similar to the findings of the RTC, the CA found Ma. Theresa's testimony credible and sufficient to establish the identity and culpability of Rolando. The CA also held that conspiracy may be deduced from the conspirators' conduct before, during and after the commission of the crime indicative of a joint purpose, concerted action and community of interests — that the facts of the present case reveal such concerted action to achieve the purpose of killing Joseph. [12]

Nevertheless, the CA downgraded the offense from Murder to Homicide, holding that the Information did not sufficiently set forth the facts and circumstances describing how treachery attended the killing. [13]

The CA also modified the award of damages to be paid to the heirs of Joseph. The CA ordered Rolando to pay the heirs of Joseph the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as temperate damages.[14]

Hence, the instant appeal.

Issue

For resolution of the Court are the following issues submitted by Rolando:

- (1) Whether the CA erred in convicting Rolando despite the prosecution's failure to prove his guilt beyond reasonable doubt;
- (2) Whether the CA erred in convicting Rolando despite the prosecution's failure to prove that conspiracy exists.

The Court's Ruling

The appeal is unmeritorious. The Court affirms the conviction of Rolando, not for the crime of Homicide as held by the CA, but for the crime of Murder as found by the RTC.

Whether the prosecution proved

Rolando's guilt beyond reasonable

doubt

In questioning his conviction, Rolando reiterates the arguments he raised in the CA, namely that: (1) the testimony of the lone eyewitness, Ma. Theresa, was insufficient to convict him because of her failure to positively identify him as the perpetrator of the crime; (2) the testimony of Ma. Theresa was marred with material and substantial inconsistencies; and (3) Ma. Theresa was a biased witness and her testimony was tainted with improper motive.[15]

The arguments deserve scant consideration.

It is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.[16] Thus, when the case pivots on the issue of the credibility of the witnesses, the findings of the trial courts necessarily carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.[17] Here, after examining the records of this case, the Court finds no cogent reason to vacate the RTC's appreciation of the evidence, which was affirmed in toto by the CA.

Further, and as pointed out by the CA, Ma. Theresa was able to positively identify Rolando as one of the perpetrators of the crime. She was only five meters away from the scene when it happened, and she knew Rolando since he was a childhood friend of her siblings.[18] That part of her testimony in which she said that she initially did not see who attacked her husband because it was dark referred to Mark Kenneth, not Rolando.[19] Thus, there is no merit in Rolando's contention that the prosecution failed to establish his identity as the perpetrator of the crime.

There is also no merit in Rolando's contention that Ma. Theresa's testimony should not be given credence for being marred with inconsistencies. Rolando avers:

In her direct testimony, Theresa was adamant that she saw accused Mark Kenneth hit her husband with a baseball bat. However, during the continuation of her testimony, she admitted that it was dark and she cannot see the face of the assailant. Moreover, she claimed that her husband was mauled by both the accused when the latter was already down on the ground. It should be noted, however, that when she was asked again what happened, she readily recounted that when she arrived at the scene, she saw her husband being hit by accused Mark Kenneth and when Joseph fell, she shouted for help and the assailants ran away, altogether omitting the part where both accused ganged up on Joseph.[20]

The supposed inconsistencies pointed out by Rolando were sufficiently explained by the prosecution. For one, Ma. Theresa already clarified that she did not recognize Mark Kenneth initially as she did not know him, and she was only able to identify him through the help of the barangay official who helped her.[21] Her initial testimony that "she saw Mark Kenneth hit her husband" was her narrating to the court of what she saw: Rolando was in front of her husband while the other person — later identified as Mark Kenneth — attacked her husband from behind.[22] The other supposed inconsistency, if at all to be considered one in the first place, changes little to the conclusion reached in this case. The essence of Ma. Theresa's testimony never changed, in that she repeatedly claimed that she saw her husband being attacked by assailants who only stopped when she shouted for help. The supposed "inconsistency" — on whether it was both Rolando and Mark Kenneth, or only the latter, who was/were attacking her husband — does not change the essence of her testimony and, in fact, even strengthens her credibility. The Court stresses that slight contradictions, in fact, even serve to strengthen the credibility of the witnesses, as these may be considered as badges of truth rather than indicia of bad faith; they tend to prove that their testimonies have not been rehearsed; nor are such inconsistencies, and even improbabilities, unusual, for no person has perfect faculties of senses or recall.[23]

In any event, Rolando does not deny that he had an encounter with Joseph on the date and at the place in question. The only difference between his version and that of the prosecution's is that he claims that it was Joseph who attacked him first but that he was able to run away.[24] The Court follows the established doctrine that as between a positive and credible testimony by an eyewitness, on the one hand, and a hollow denial, on the other, the former generally prevails over the latter.[25] Coupled with the fact that the findings of the trial courts necessarily carry great weight and respect, the Court therefore upholds the credibility of Ma. Theresa's testimony and declares it sufficient to establish the guilt of Rolando beyond reasonable doubt.

Finally, the Court affirms the findings of both the RTC and the CA that Rolando failed to prove any ill motive on the part of Ma. Theresa to implicate him. There is no evidence on record, apart from the empty imputations of ill motive by Rolando, that shows that Ma. Theresa was motivated by an improper motive to implicate Rolando for the crime. Thus, as the Court held in *People v. De Leon*: [26]

The credibility of the prosecution witnesses is not affected by their relationship with the deceased. The fact that witness Chito is the son of the victim while Annaluz's mother-in-law is the second cousin of the wife of the victim is of no consequence since mere relationship with the victim does not necessarily tarnish the testimony of a witness. When there is no showing of improper motive on the part of the witness in testifying against the accused, her relationship with the victim does not render her testimony less worthy of full faith and credence. In fact, relationship itself could even strengthen credibility in a particular case, for it is highly unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence to blame one who is innocent of the crime.[27] (Emphasis and underscoring supplied)

To repeat, the testimony of Ma. Theresa deserves full faith and credit. It is thus sufficient to establish the guilt of

Rolando beyond reasonable doubt.

Whether the CA erred in finding

that conspiracy existed between

Rolando and Mark Kenneth

Rolando also questions his conviction on the ground that the RTC and the CA erred in finding him to have acted in conspiracy with Mark Kenneth. He avers that the evidence on record reveals that it was Mark Kenneth who delivered the fatal blow, and thus he should be acquitted of the crime charged.

The contention is erroneous.

It is well-established that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[28] 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 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 malefactors indicate a concurrence of sentiments, a joint purpose and a concerted action.[29]

While it is true that the elements of conspiracy must be proved by the same kind of proof — proof beyond reasonable doubt — necessary to establish the physical acts constituting the crime itself,[30] this is not to say that direct proof of such conspiracy is always required. The existence of conspiracy need not, at all times, be established by direct evidence. Nor is it necessary to prove prior agreement between the accused to commit the crime charged.[31] Indeed, conspiracy is very rarely proved by direct evidence of an explicit agreement to commit the crime. Thus, the rule is well-settled that conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, where such conduct reasonably shows community of criminal purpose or design.[32]

In the present case, both the RTC and CA correctly inferred from the collective acts of the assailants that conspiracy exists despite the absence of direct evidence to the effect. As the CA correctly held:

x x x In this case, implied conspiracy between the accused can be deduced from the mode and manner in which they perpetrated the killing. First, Rolando and Mark Kenneth were together at the crime scene. Second, Rolando mauled the victim after Mark Kenneth hit him with a baseball bat. Third, as soon as they achieved their common purpose, both accused fled together. All these acts point to the conclusion that the accused conspired to commit the crime.[33]

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.[34] In this case, it is therefore inconsequential whether Rolando delivered a fatal blow or not.

On the issue of sufficiency of the
Information

In the assailed Decision, while the CA affirmed the RTC's finding that Rolando indeed killed Joseph, it

downgraded the offense from Murder to Homicide for failure of the Information to sufficiently state the particular facts establishing the existence of the qualifying circumstance of treachery. The CA reasoned:

Here, the averments of the information to the effect that the two accused "with intent to kill and with treachery and abuse of superior strength, did then and there knowingly, unlawfully and feloniously attack, assault and use personal violence upon one JOSEPH CAPINIG y MATO, by then and there hitting and beating his head with a baseball bat, thereby inflicting upon the latter mortal injury which directly caused his death" did not sufficiently set forth the facts and circumstances describing how treachery attended the killing. It should not be difficult to see that merely averring the killing of a person by hitting his head with a baseball bat, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the baseball bat as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the information.[35] (Emphasis and underscoring supplied; italics in the original)

While neither of the parties questioned the above finding of the CA in this appeal, the Court nevertheless addresses the same considering that:

x x x in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[36]

Accordingly, the Court deems it proper to review and discuss the relevant disquisition by the CA despite the issue not being one of those raised in the appeal.

In reaching its conclusion, the CA adhered to the ruling in the case of *People v. Valdez*,[37] (Valdez) where the Court held:

Treachery is the employment of means, methods, or forms in the execution of any of the crimes against persons which tend to directly and specially insure its execution, without risk to the offending party arising from the defense which the offended party might make. It encompasses a wide variety of actions and attendant circumstances, the appreciation of which is particular to a crime committed. Corollarily, the defense against the appreciation of a circumstance as aggravating or qualifying is also varied and dependent on each particular instance. Such variety generates the actual need for the State to specifically aver the factual circumstances or particular acts that constitute the criminal conduct or that qualify or aggravate the liability for the crime in the interest of affording the accused sufficient notice to defend himself.

It cannot be otherwise, for, indeed, the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information. x x x

x x x x

The averments of the informations to the effect that the two accused "with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did x x x assault, attack and employ personal violence upon" the victims "by then and there shooting [them] with a gun, hitting [them]" on various parts of their bodies "which [were] the direct and immediate cause of [their] death[s]" did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings. It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the

execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the informations.

To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice, for, as the Court fittingly said in *United States v. Lim San*:

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits x x x. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder." If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. (Emphasis supplied [in the original])

A practical consequence of the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail. The allegations in the information are controlling in the ultimate analysis. Thus, when there is a variance between the offense charged in the information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved. In that regard, an offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the information, constitute the latter; an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.[38]

A review of jurisprudence reveals that the ruling enunciated in *Valdez* was subsequently reiterated in the cases of *People v. Dasmariñas*[39] (*Dasmariñas*) and *People v. Delector*[40] (*Delector*).

On the other hand, there is a separate line of cases in which an allegation in the Information that the killing was attended "with treachery" is already sufficient to inform the accused that he was being charged with Murder instead of simply Homicide. In *People v. Batin*,[41] (*Batin*) for instance, the accusatory portion of the Information filed against the accused therein stated that:

x x x the x x x accused, conspiring together, confederating with and mutually helping each other, did, then and there, wilfully, unlawfully and feloniously, with intent to kill, with treachery, taking advantage of superior

strength, and with evident premeditation, attack, assault and employ personal violence upon the person of one EUGENIO REFUGIO y ZOSA, by then and there shooting him with a handgun, hitting him on the right side of his stomach, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death.[42] (Emphasis supplied)

The accused in Batin specifically claimed in his appeal that the foregoing charge did not allege the specific treacherous acts of the accused and that the phrase "with treachery" was a mere conclusion of law.[43] The accused thus argued that the Information failed to satisfy the test of sufficiency of Information as provided in Sections 8 and 9 of Rule 110 of the Rules of Court.[44] In ruling against the accused's contention, the Court in Batin stated:

We hold that the allegation of treachery in the Information is sufficient. Jurisprudence is replete with cases wherein we found the allegation of treachery sufficient without any further explanation as to the circumstances surrounding it. Here are some of the cases:

In *People v. Lab-eo*, Wilson Lab-eo was indicted for murder under the following Information:

That on or about October 21, 1996, at the Barangay Hall, Poblacion, Tadian, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with the use of a sharp knife, did then and there willfully, unlawfully and feloniously attack, assault, strike and stab Segundina Cay-no with a well-honed and pointed knife and thereby inflicting a mortal stab wound upon the victim as reflected in that medico-legal certificate, to wit:

Stab wound infrascapular area left, penetrating with massive hemathorax, which caused the death of the victim thereafter.

That the aggravating circumstances of evident premeditation, treachery, abuse of superior strength and craft attended the commission of the offense.

The accused in this case argued that the Information above, while captioned as "Murder," only charged him with homicide as written. This Court found nothing wrong with the Information, and ruled that the Information sufficiently charged the accused with murder, not even considering the absence of an explanation of the treachery stated therein, thus:

The fact that the qualifying circumstances were recited in the second paragraph and not in the first paragraph of the Information, as commonly done, is a matter of form or style for which the prosecution should not be faulted. That the Provincial Prosecutor decided to write the Information differently did not impair its sufficiency. Nothing in the law prohibits the prosecutor from adopting such a form or style. As long as the requirements of the law are observed, the Information will pass judicial scrutiny.

x x x x

The test of sufficiency of Information is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly. The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him. The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial. Significantly, the appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him because of the style or form adopted in the Information.

This Court went on to affirm the conviction of the accused therein with murder qualified by treachery.

The allegation in the Information of treachery as a qualifying circumstance was similarly assailed in *People v.*

Opuran, wherein the charge was as follows:

Criminal Case No. 4693

That on or about November 19, 1998, at nighttime, at Km. 1, South Road, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, said accused, with deliberate intent to kill and treachery, did, then and there willfully, unlawfully, and feloniously attack, assault and stab Demetrio Patrimonio, Jr., with the use of a bladed weapon (5" long from tip to handle with scabbard), thereby inflicting upon the victim fatal stab wounds on the back of his body, which wounds resulted to his instantaneous death.

All contrary to law, and with attendant qualifying circumstance of treachery.

This Court again rejected the argument of the defense by finding the allegation of treachery sufficient, and later on finding the accused therein guilty of murder qualified by treachery:

We do not find merit in appellant's contention that he cannot be convicted of murder for the death of Demetrio, Jr. because treachery was not alleged with "specificity" as a qualifying circumstance in the information. Such contention is belied by the information itself, which alleged: "All contrary to law, and with the attendant qualifying circumstance of treachery." In any event, even after the recent amendments to the Rules of Criminal Procedure, qualifying circumstances need not be preceded by descriptive words such as qualifying or qualified by to properly qualify an offense.

Finally, the following constitutes the Information in *People v. Bajar*:

That on or about the 16th day of August 1999, at about 8:00 o'clock in the evening, at sitio Mohon, Barangay Mambayaan, Municipality of Balingasag, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, then armed with a sharp bolo, with intent to kill, and with evident premeditation, and treachery, did then and there willfully, unlawfully and feloniously stab one [85-year-old] Aquilio Tiwanak, accused's father-in-law, hitting him on the different parts of his body, which caused his instantaneous death, to the damage and prejudice of the heirs of Aquilio Tiwanak in such amounts as may be allowed by law.

The aggravating circumstances of dwelling, taking advantage of superior strength, disregard of the respect due the victim on account of his age, habitual intoxication and relationship attended the commission of the crime.

CONTRARY to Article 248 of the Revised Penal Code, in relation [to] Article 14, paragraph 3 and 15, and Article 15 of the Revised Penal Code.

Like in the previous two cases, this Court found the Information to have sufficiently alleged treachery as a qualifying circumstance. Evidentiary facts need not be alleged in the information because these are matters of defense. Informations need only state the ultimate facts; the reasons therefor could be proved during the trial.^[45] (Emphasis supplied)

In short, there are currently two different views on how the qualifying circumstance of treachery should be alleged. On the one hand is the view that it is sufficient that the Information alleges that the act be committed "with treachery." The second view requires that the acts constituting treachery — or the acts which directly and specially insured the execution of the crime, without risk to the offending party arising from the defense which the offended party might make — should be specifically alleged and described in the Information.

The CA, in the assailed Decision in this case, took the second view and held that the Information did not specifically allege the acts constituting treachery. As a result, it downgraded the offense from Murder to Homicide.

The Court, however, reverses the ruling of the CA. The Court thus convicts Rolando for Murder instead of Homicide.

Rolando has waived his right to

question the defects in the

Information filed against him

The Court notes that the right to question the defects in an Information is not absolute. In fact, defects in an Information with regard to its form may be waived by the accused. For instance, in *People v. Palarca*,^[46] the accused was charged with rape, but the Information filed against him failed to specify that he had carnal knowledge of the victim through force or intimidation. When it reached the Court, it held that the accused therein may still be validly convicted of the crime despite the insufficiency of the Information, ratiocinating thus:

In any event, accused-appellant failed to interpose any objection to the presentation by the prosecution of evidence which tended to prove that he committed the rape by force and intimidation. While generally an accused cannot be convicted of an offense that is not clearly charged in the complaint or information, this rule is not without exception. The right to assail the sufficiency of the information or the admission of evidence may be waived by the accused-appellant. In *People v. Lopez*, we held that an information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein. Thus —

[F]ailure to object was thus a waiver of the constitutional right to be informed of the nature and cause of the accusation. It is competent for a person to waive a right guaranteed by the Constitution, and to consent to action which would be invalid if taken against his will. (1 ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 31-32 [1983 ed.]). This Court has, on more than one occasion, recognized waivers of constitutional rights, e.g., the right against unreasonable searches and seizures (*People v. Malasugui*, 63 Phil. 221 [1936]; *Viuda de Gracia v. Locsin*, 65 Phil. 689 [1938]); the right to counsel and to remain silent (*People v. Royo*, 114 SCRA 304 [1982]); the right to be heard (*Abriol v. Homeres*, 84 Phil. 525 [1949]; *People v. Dichoso*, 96 SCRA 957 [1980]); and the right to bail (*People v. Donato*, 198 SCRA 130 [1991]).^[47] (Emphasis and underscoring supplied)

Similarly, in the case of *People v. Razonable*,^[48] the Court held that if an Information is defective, such that it fails to sufficiently inform the accused of the nature and cause of the accusation against him, then it is the accused's duty to enforce his right through the procedural rules created by the Court for its proper enforcement. The Court explained:

The rationale of the rule, which is to inform the accused of the nature and cause of the accusation against him, should guide our decision. To claim this substantive right protected by no less than the Bill of Rights, the accused is duty bound to follow our procedural rules which were laid down to assure an orderly administration of justice. Firstly, it behooved the accused to raise the issue of a defective information, on the ground that it does not conform substantially to the prescribed form, in a motion to quash said information or a motion for bill of particulars. An accused who fails to take this seasonable step will be deemed to have waived the defect in said information. The only defects in an information that are not deemed waived are where no offense is charged, lack of jurisdiction of the offense charged, extinction of the offense or penalty and double jeopardy. Corollarily, we have ruled that objections as to matters of form or substance in the information cannot be made

for the first time on appeal. In the case at bar, appellant did not raise either in a motion to quash or a motion for bill of particulars the defect in the Information regarding the indefiniteness of the allegation on the date of the commission of the offense.[49] (Emphasis supplied)

To recall, in the present case, Rolando did not question the supposed insufficiency of the Information filed against him through either a motion to quash or motion for bill of particulars. He voluntarily entered his plea during the arraignment and proceeded with the trial. Thus, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. In other words, Rolando is deemed to have understood the acts imputed against him by the Information. The CA therefore erred in modifying Rolando's conviction in the way that it did when he had effectively waived the right to question his conviction on that ground.

It is for this reason that the Court modifies Rolando's conviction from Homicide to Murder — he failed to question the sufficiency of the Information by availing any of the remedies provided under the procedural rules, namely: either by filing a motion to quash for failure of the Information to conform substantially to the prescribed form,[50] or by filing a motion for bill of particulars.[51] Again, he is deemed to have waived any of the waivable defects in the Information filed against him.

Insufficiency of Informations

that merely mention or

enumerate the attending

circumstances

Despite the foregoing, the Court hereby establishes a policy, for the guidance of the Bench and the Bar, on how the qualifying circumstance of treachery — and other qualifying, aggravating, and attendant circumstances similar to it — should be properly alleged in an Information.

The Court stresses that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.[52] Further to this, the courts, in arriving at their decisions, are instructed by no less than the Constitution to bear in mind that no person should be deprived of life or liberty without due process of law.[53] An essential component of the right to due process in criminal proceedings is the right of the accused to be sufficiently informed, in writing, of the cause of the accusation against him.[54] The rationale behind the requirement of sufficiently informing the accused in writing of the cause of the accusation against him was explained as early as 1904 in the case of *United States v. Karelsen*:^[55]

The object of this written accusation was —

First. To furnish the accused with such a description of the charge against him as well enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. (*United States vs. Cruikshank*, 92 U.S., 542.) In order that this requirement may be satisfied, facts must be stated; not conclusions of law. Every crime is made

up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged. For example, if a malicious intent is a necessary ingredient of the particular offense, then malice must be alleged. In other words, the prosecution will not be permitted to prove, under proper objection, a single material fact unless the same is duly set forth by proper allegation in his complaint. Proof or evidence of material facts is rendered admissible at the trial by reason of their having been duly alleged in the complaint. (Rex vs. Aspinwall, 2 Q.B.D., 56; Bradlaugh vs. Queen, 3 Q.B.D., 607.)

x x x x

There is a general opinion that a greater degree of certainty is required in criminal pleading than in civil. This is not the rule. The same rules of certainty apply both to complaints in criminal prosecutions and petitions or demands in civil cases. Under both systems[,] every necessary fact must be alleged with certainty to a common intent. Allegations of "certainty to a common intent" mean that the facts must be set out in ordinary and concise language, in such a form that persons of common understanding may know what is meant.[56] (Emphasis and underscoring supplied)

This right to be informed of the cause of the accusation, in turn, is implemented through Sections 8 and 9, Rule 110, of the Revised Rules of Criminal Procedure, which provide:

SECTION 8. Designation of the Offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SECTION 9. Cause of the Accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

It is thus fundamental that every element of which the offense is composed must be alleged in the Information. No Information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.[57] The test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. In this examination, matters aliunde are not considered.[58] To repeat, the purpose of the law in requiring this is to enable the accused to suitably prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[59]

In addition, the Court remains mindful of the fact that the State possesses vast powers and has immense resources at its disposal. Indeed, as the Court held in *Secretary of Justice v. Lantion*,[60] the individual citizen is but a speck of particle or molecule vis-a-vis the vast and overwhelming powers of government and his only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need.[61]

In the particular context of criminal prosecutions, therefore, it is the State which bears the burden of sufficiently informing the accused of the accusations against him so as to enable him to properly prepare his defense.

With the foregoing principles in mind, the Court thus agrees with the ruling enunciated in *Valdez*, as subsequently reiterated in *Dasmariñas* and *Delector*. Consequently, the Court holds that it is insufficient for prosecutors to indicate in an Information that the act supposedly committed by the accused was done "with treachery" or "with

abuse of superior strength" or "with evident premeditation" without specifically describing the acts done by the accused that made any or all of such circumstances present. Borrowing the words of the Court in *Dasmariñas*, "to merely state in the information that treachery was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law."^[62]

An information alleging that treachery exists, to be sufficient, must therefore have factual averments on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make.^[63] The Information must so state such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged.^[64]

In this connection, the Court takes this opportunity to remind prosecutors of the crucial role they play in the justice system. Prosecutors are, in the words of Mr. Justice George Sutherland of the Supreme Court of the United States:

x x x the representative[s] not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.^[65]

Indeed, prosecutors perform the unique function, essential in the maintenance of the rule of law and peace and order, of ensuring that those who violate the law are brought to justice. The right of the State to prosecute, however, is not absolute. The Bill of Rights precisely "defines the limits beyond which lie unsanctioned state actions"^[66] and reserves certain areas for "the individual as constitutionally protected spheres where even the awesome powers of Government may not enter at will."^[67] The prosecutors — through whom this right of the State to prosecute is exercised — therefore do not have a blanket grant of authority to disregard the rights of citizens under the Constitution.^[68]

Therefore, prosecutors should bear in mind that in performing their functions, the constitutionally enshrined right of the accused to be informed of the cause of the accusation against him remains primordial. To this end, prosecutors are instructed to state with sufficient particularity not just the acts complained of or the acts constituting the offense, but also the aggravating circumstances, whether qualifying or generic, as well as any other attendant circumstances, that would impact the penalty to be imposed on the accused should a verdict of conviction be reached.

Moreover, prosecutors are enjoined to strictly implement the mandate of, and ensure compliance with Section 8 (a), Rule 112 of the Revised Rules on Criminal Procedure^[69] to attach to the Informations they will be filing in courts their resolutions finding probable cause against the accused.

Finally, trial courts are likewise enjoined to ensure that the accused is furnished a copy of the said resolutions finding probable cause against the accused. The trial court, on its own initiative, shall thus order the production of the records of the preliminary investigation in accordance with Section 8 (b), Rule 112 of the Revised Rules of Criminal Procedure.^[70]

These requirements are imposed to ensure that the accused is sufficiently apprised of the acts and circumstances with which he is being charged, with the end in view of respecting or fulfilling his right to be informed of the cause of the accusation against him.

In sum, the Court, continually cognizant of its power and mandate to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts,^[71] hereby lays down the following guidelines for the guidance of the Bench and the Bar:

- Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3 (e) (i.e., that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.

Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.

Alternatively, prosecutors may sufficiently aver the ultimate facts relative to a qualifying or aggravating circumstance by referencing the pertinent portions of the resolution finding probable cause against the accused, which resolution should be attached to the Information in accordance with the second guideline below.

- Prosecutors must ensure compliance with Section 8 (a), Rule 112 of the Revised Rules on Criminal Procedure that mandates the attachment to the Information the resolution finding probable cause against the accused. Trial courts must ensure that the accused is furnished a copy of this Decision prior to the arraignment.

- Cases which have attained finality prior to the promulgation of this Decision will remain final by virtue of the principle of conclusiveness of judgment.

- For cases which are still pending before the trial court, the prosecution, when still able, may file a motion to amend the Information pursuant to the prevailing Rules^[72] in order to properly allege the aggravating or qualifying circumstance pursuant to this Decision.

- For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, (i.e., whether he previously filed either a motion to quash under Section 3(e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.

In view of the foregoing, the Court thus reverses the assailed Decision of the CA.

Considering the Court's ruling in *People v. Jugueta*,^[73] the civil indemnity, moral damages, and exemplary damages awarded in the questioned Decision is hereby modified to P75,000.00 each. Temperate damages in the amount of P50,000.00 is likewise awarded to the heirs of Joseph.

WHEREFORE, premises considered, the Court hereby ADOPTS the findings of fact in the attached Decision dated January 13, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05757, and finds the accused-appellant Rolando Solar y Dumbrique GUILTY beyond reasonable doubt for the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code. He is thus sentenced to suffer the penalty of reclusion perpetua, and is ordered to pay the heirs of the victim Joseph Capinig y Mato SEVENTY-FIVE THOUSAND PESOS (P75,000.00) as civil indemnity, SEVENTY-FIVE THOUSAND PESOS (P75,000.00) as moral damages, SEVENTY-FIVE THOUSAND PESOS (P75,000.00) as exemplary damages, and FIFTY THOUSAND PESOS (P50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

Let copies of this Decision be furnished to the Secretary of the Department of Justice, as well as to the Head/Chief of the National Prosecution Service, the Office of the Solicitor General, the Public Attorney's Office, the

Philippine National Police, the Philippine Drug Enforcement Agency, the National Bureau of Investigation, and the Integrated Bar of the Philippines for their information and guidance. Likewise, the Office of the Court Administrator is DIRECTED to DISSEMINATE copies of this Decision to all trial courts, including the Court of Appeals.

SO ORDERED.

Bersamin, C.J., I dissent.

Carpio, Senior Associate Justice, Peralta, A. Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, and Zalameda, JJ., concur.

Perlas-Bernabe, J., Please see concurring opinion.

Leonen, J., I join dissent of C.J. Bersamin.

Jardeleza, J., no part.

Gesmundo, J., Please see separate concurring opinion.

J. Reyes, Jr., J., on leave.

[1] See Notice of Appeal dated February 5, 2015, rollo, pp. 10-11.

[2] Id. at 3-9. Penned by Associate Justice Mario V. Lopez with Associate Justices Noel G. Tijam (Retired Member of the Court) and Myra V. Garcia-Fernandez concurring.

[3] CA rollo, pp. 20-25. Penned by Judge Elizabeth Yu Guray.

[4] Rollo, p. 3, note 1 of the CA Decision.

[5] Id. at 4.

[6] Id.

[7] Id.

[8] Supra note 3.

[9] CA rollo, p. 25.

[10] Id. at 43-57.

[11] Supra note 2.

[12] Rollo, p. 6-7.

[13] Id. at 7.

[14] Id. at 8-9.

[15] CA rollo, pp. 50-54.

[16] People v. Gerola, 813 Phil. 1055, 1063-1064 (2017).

[17] People v. Aguilar, 565 Phil. 233, 247 (2007).

[18] Rollo, p. 5.

[19] Id. at 5-6.

- [20] CA rollo, p. 52.
- [21] Id. at 60.
- [22] Id.
- [23] Kummer v. People, 717 Phil. 670, 678 (2013).
- [24] CA rollo, p. 88.
- [25] People v. Piosang, 710 Phil. 519, 527 (2013).
- [26] 402 Phil. 851 (2001).
- [27] Id. at 868.
- [28] Siton v. Court of Appeals, 281 Phil. 536, 543 (1991).
- [29] People v. Aquino, 390 Phil. 1176, 1184-1185 (2000).
- [30] People v. Degoma, 284-A Phil. 736, 742 (1992).
- [31] Id.
- [32] Id.
- [33] Rollo, pp. 6-7.
- [34] People v. Peralta, 134 Phil. 703, 718 (1968).
- [35] Rollo, p. 7-8.
- [36] Ramos v. People, 803 Phil. 775, 783 (2017).
- [37] 679 Phil. 279 (2012).
- [38] Id. at 292-296.
- [39] G.R. No. 203986, October 4, 2017, 842 SCRA 39.
- [40] G.R. No. 200026, October 4, 2017, 841 SCRA 647.
- [41] 564 Phil. 249 (2007).
- [42] Id. at 252-253.
- [43] Id. at 266-267.
- [44] Id. at 267.
- [45] Id. at 268-271.
- [46] 432 Phil. 500 (2002).
- [47] Id. at 509.
- [48] 386 Phil. 771 (2000).
- [49] Id. at 780.
- [50] RULES OF COURT (Revised Rules of Criminal Procedure), Rule 117, Sec. 3 (e).

- [51] RULES OF COURT (Revised Rules of Criminal Procedure), Rule 116, Sec. 9.
- [52] CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."
- [53] CONSTITUTION, Art. III, Sec. 1.
- [54] CONSTITUTION, Art. III, Sec. 14 (2).
- [55] 3 Phil. 223 (1904).
- [56] *Id.* at 226-228.
- [57] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 719 (2003).
- [58] *Id.*
- [59] *Id.*
- [60] 379 Phil. 165 (2000).
- [61] *Id.* at 185.
- [62] *Supra* note 39 at 42.
- [63] *Id.* at 61.
- [64] *Id.*
- [65] *Suarez v. Platon*, 69 Phil. 556, 564-565 (1940), citing Mr. Justice George Sutherland in *Berger v. United States*, 295 U.S. 78, 88 (1935); 69 *United States Law Review* 309 (June, 1935, No. 6).
- [66] *Allado v. Diokno*, 302 Phil. 213, 237 (1994).
- [67] *Salonga v. Paño*, 219 Phil. 402, 429 (1985).
- [68] See *Allado v. Diokno*, *supra* note 66 at 238.
- [69] SECTION 8. Records. — (a) Records supporting the information or complaint. An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case.
- [70] SECTION 8. Records. — x x x
- (b) Record of preliminary investigation. — The record of the preliminary investigation, whether conducted by a judge or a prosecutor, shall not form part of the record of the case. However, the court, on its own initiative or on motion of any party, may order the production of the record or any of its part when necessary in the resolution of the case or any incident therein, or when it is to be introduced as an evidence in the case by the requesting party.
- [71] CONSTITUTION, Art. VIII, Sec. 5(5).
- [72] RULES OF COURT (Revised Rules of Criminal Procedure), Rule 110, Sec. 14 and Rule 117, Sec. 4.
- [73] *People v. Jugueta*, 783 Phil. 806 (2016).
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DISSENT

BERSAMIN, C.J.:

The Court of Appeals (CA) promulgated its decision dated January 13, 2015[1] in CA-G.R. CR-HC No. 05757 affirming the judgment of conviction of the accused-appellant rendered on September 3, 2012 by the Regional Trial Court (RTC), Branch 202, in Las Piñas City[2] but downgraded the crime from murder to homicide on the ground that the information did not allege murder.

Today, the Court affirms the finding of guilty but reverses the CA's downgrading of the offense, and finds the accused-appellant guilty of murder as found by the RTC on the basis that he had waived his right to assail the defects of the information filed against him and under which he had been arraigned.

I respectfully DISSENT.

I maintain that the CA correctly downgraded the offense from murder to homicide considering that the information did not charge murder, but only homicide. I insist that the accused-appellant could not be held guilty of murder if the information denied him due notice of what he was being charged with.

The information alleged as follows:

That on or about the 9[th] day of March 2008, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other, without justifiable motive, with intent to kill and with treachery and abuse of superior strength, did then and there knowingly, unlawfully and feloniously attack, assault and use personal violence upon one JOSEPH CAPINIG y MATO, by then and there hitting and beating his head with a baseball bat, thereby inflicting upon the latter mortal injury which caused his death.

The killing of the aforesaid victim is qualified by the circumstances of treachery and abuse of superior strength.

CONTRARY TO LAW.[3]

As can be seen, the information tersely averred that "[t]he killing of the aforesaid victim is qualified by the circumstances of treachery and abuse of superior strength." Such averment did not state any facts that described or set forth the acts constitutive of treachery and abuse of superior strength, the attendant circumstances that would have qualified the killing to murder. Such acts would have told him how he had mounted the lethal attack that led to the killing of the victim. It was to such terse information that the accused-appellant pleaded not guilty at his arraignment.

In my view, the CA correctly opined thusly:

Here, the averments of the information to the effect that the two accused "with intent to kill and with treachery and abuse of superior strength, did then and there knowingly, unlawfully and feloniously attack, assault and use personal violence upon one JOSEPH CAPINIG y MATO, by then and there hitting and beating his head with a baseball bat, thereby inflicting upon the latter mortal injury which directly caused his death" did not sufficiently set forth the facts and circumstances describing how treachery attended the killing. It should not be difficult to see that merely averring the killing of a person by hitting his head with a baseball bat, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the baseball bat as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of fact. In short, the particular acts and circumstances constituting

treachery as an attendant circumstance[s] in murder were missing from the information.[4]

In *People v. Valdez*,[5] a ruling that the CA cited to buttress its foregoing opinion, the Court emphatically held:

Treachery is the employment of means, methods, or forms in the execution of any of the crimes against persons which tend to directly and specially insure its execution, without risk to the offending party arising from the defense which the offended party might make. It encompasses a wide variety of actions and attendant circumstances, the appreciation of which is particular to a crime committed. Corollarily, the defense against the appreciation of a circumstance as aggravating or qualifying is also varied and dependent on each particular instance. Such variety generates the actual need for the State to specifically aver the factual circumstances or particular acts that constitute the criminal conduct or that qualify or aggravate the liability for the crime in the interest of affording the accused sufficient notice to defend himself.

It cannot be otherwise, for, indeed, the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.

...

The averments of the informations to the effect that the two accused "with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did . . . assault, attack and employ personal violence upon" the victims "by then and there shooting [them] with a gun, hitting [them]" on various parts of their bodies "which [were] the direct and immediate cause of [their] death[s]" did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings. It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the informations.

To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice, for, as the Court fittingly said in *United States v. Lim San*:

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. . . . That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder." If he performed the acts alleged, in the manner

stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. . . . (emphasis supplied [by the original])

A practical consequence of the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail. The allegations in the information are controlling in the ultimate analysis. Thus, when there is a variance between the offense charged in the information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved. In that regard, an offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the information, constitute the latter; an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

The majority opinion, written for the Court by Justice Caguioa, explains in justification of the reversal of the CA that:

x x x, Rolando did not question the supposed insufficiency of the Information filed against him through either a motion to quash or motion for bill of particulars. He voluntarily entered his plea during the arraignment and proceeded with the trial. Thus, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. In other words, Rolando is deemed to have understood the acts imputed against him by the Information. The CA therefore erred in modifying Rolando's conviction in the way that it did when he had effectively waived the right to question his conviction on that ground.

It is for this reason that the Court modifies Rolando's conviction from Homicide to Murder – he failed to question the sufficiency of the Information by availing any of the remedies provided under the procedural rules, namely: either by filing a motion to quash for failure of the Information to conform substantially to the prescribed form, or by filing a motion for bill of particulars. Again, he is deemed to have waived any of the waivable defects in the Information filed against him.

I submit that the foregoing explanation is far from persuasive.

The right of every accused to know from the information the charge to which he pleads and for which he stands to be tried, and upon which he is to be held criminally liable is a precious and fundamental one that is constitutionally guaranteed. The right, which should be respected by all means, should not be casually taken away or be easily denied only because he did not assail the information prior to arraignment and plea, as the majority opinion has found.

Therein lay the fallacy of the majority opinion. In the first place, the accused-appellant had no duty or obligation to remind the State by motion to quash on what charge he should be made to answer to. Indeed, if he was legally and genuinely presumed not to know of any act or omission that would soon be alleged against him, he could not even be expected to speak at all or be heard from. To insist otherwise was to annul the formidable presumption of his innocence. In the second place, he must be fully informed of every act or omission that could render him criminally liable because fully informing him thereof was of the essence of due process of law. He could not properly prepare his defense without being thereby fully informed. In the third place, the omission from the information of the acts constituting treachery and abuse of superiority did not emanate from him; hence, that the information actually filed against him did not fully or adequately inform him of his supposed crime should never be blamed on him.

If the State, not him, ought to know what crime he committed, and should tell him so, then the Court as the

bastion of fairness and constitutionalism should desist from treating so slightly his right to be informed. This is why the Court has fashioned Rule 110 of the Rules of Court as the means of respecting the right to be informed, providing therein as follows:

Section 8. Designation of the offense.— The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (8a)

Section 9. Cause of the accusation. – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstance and for the court to pronounce judgment. (9a)

I urge, therefore, that the Court must enforce the rules. Let us always hold the right of every accused to be informed of the charge brought against him in the highest esteem. If we cannot enforce the rules we have designed to enforce constitutionally guaranteed rights for the protection of the accused, let us stop fashioning them.

ACCORDINGLY, I vote TO AFFIRM the decision of the Court of Appeals downgrading the offense from murder to homicide.

[1] Rollo, pp. 3-9; penned by Associate Justice Mario V. Lopez, with Associate Justice Noel G. Tijam (later a Member of the Court, but since retired) and Associate Justice Myra V. Garcia-Fernandez concurring.

[2] CA rollo, pp. 20-25; penned by Judge Elizabeth Yu Guray.

[3] Rollo, p. 3.

[4] Id. at 7.

[5] G.R. No. 175602, January 18, 2012, 679 Phil 279-296.

CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur. Despite the failure of the Information in this case to sufficiently state the qualifying circumstance of Treachery in accordance with the form prescribed by the Rules of Criminal Procedure, the same must nevertheless be appreciated against accused-appellant Rolando Solar y Dumbrique (Solar) for his failure to assail such defect. As such, his conviction for Murder must be upheld.

To recount, Section 6, Rule 110 of the present Rules of Criminal Procedure provides that "[a] complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed." [1] In this relation, Section 9 of the same Rule states that "[t]he acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce

judgment." [2] According to case law, the failure to comply with this requirement subjects the Information to a motion to quash, and the test is whether or not the Information properly states the ultimate facts constitutive of the offense: [3]

Under the Constitution, a person who stands charged of a criminal offense has the right to be informed of the nature and cause of the accusation against him. The Rules of Court, in implementing the right, specifically require that the acts or omissions complained of as constituting the offense, including the qualifying and aggravating circumstances, must be stated in ordinary and concise language, not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged and the attendant qualifying and aggravating circumstances present, so that the accused can properly defend himself and the court can pronounce judgment. To broaden the scope of the right, the Rules authorize the quashal, upon motion of the accused, of an Information that fails to allege the acts constituting the offense. Jurisprudence has laid down the fundamental test in appreciating a motion to quash an Information grounded on the insufficiency of the facts alleged therein. We stated in *People v. Romualdez* [581 Phil. 462, 479 (2008)] that:

The determinative test in appreciating a motion to quash x x x is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters aliunde. As Section 6, Rule 110 of the Rules of Criminal Procedure requires, the information only needs to state the ultimate facts; the evidentiary and other details can be provided during the trial. [4]

The failure to sufficiently state the ultimate facts constitutive of the offense subjects the Information to a motion to quash grounded on Section 3 (a), Rule 117 of the Rules of Criminal Procedure:

Section 3. Grounds. — The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (Emphases and underscoring supplied)

The Information is subject to quashal because it cannot be discerned therefrom if there is an offense or what particular offense is being charged, hence, violative of the accused's constitutional right to be informed. Because of this constitutional violation, Section 9 of the same Rule further provides that the failure to assert this ground – similar to the grounds in Section 3 (b), (g), and (i) – would not be deemed as a waiver to assert the same:

Section 9. Failure to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

However, the ground to quash an Information under Section 3 (a), Rule 117 (i.e., that the facts charged do not constitute an offense) is different from the ground provided for under Section 3 (e), Rule 117 (i.e., that it does not

conform substantially to the prescribed form). This latter ground is subject to a waiver as it is not one of those grounds specifically provided for under Section 9 of the same Rule.

An Information which contains ultimate facts constitutive of the offense but states the qualifying or aggravating circumstance not in accordance with the prescribed form is only subject to quashal under Section 3 (e), Rule 117. As illustrated in this case, an Information which only states the term "Treachery", without the material averments relative thereto, is formally defective because a person of common understanding is not presumed to know the technical import of the same. As held in *People v. Delector*:^[5]

[T]he Court cannot uphold the judgments of the [Court of Appeals (CA)] and the [Regional Trial Court (RTC)] and convict the accused for murder. A reading of the information indicates that murder had not been charged against him. The allegation of the information that:

x x x the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one VICENTE DELECTOR alias TINGTING with the use of a firearm (revolver), which the accused had conveniently provided himself for the purpose, thereby inflicting upon the latter mortal wounds on the different parts of his body, which caused the untimely death of said Vicente Delector.

did not sufficiently aver acts constituting either or both treachery and evident premeditation. The usage of the terms treachery and evident premeditation, without anything more, did not suffice[,] considering that such terms were in the nature of conclusions of law, not factual averments.

x x x x

Treachery, which the CA and the RTC ruled to be attendant, always included basic constitutive elements whose existence could not be assumed. Yet, the information nowhere made any factual averment about the accused having deliberately employed means, methods or forms in the execution of the act – setting forth such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged – that tended directly and specially to insure its execution without risk to the accused arising from the defense which the offended party might make. To reiterate what was earlier indicated, it was not enough for the information to merely state treachery as attendant because the term was not a factual averment but a conclusion of law.^[6]

Hence, while an Information may convey an offense, the defective statement of a qualifying (or aggravating) circumstance still subjects the same to quashal under Section 3 (e), Rule 117. To reiterate, this latter ground, if not timely raised by the accused, may be deemed waived. Also, to remedy this defect, an accused may opt to move for a bill of particulars under Section 9, Rule 116.^[7]

In this case, notwithstanding the Information's non-statement of the material averments relative thereto, Solar's failure to avail of these remedies means that he had fully understood the import of the term "Treachery." Thus, it cannot be said that his right to be informed of the nature and cause of the accusation against him has been transgressed; and consequently, his conviction for the crime of Murder must be upheld.

To note, this situation should be distinguished from a situation wherein the Information completely lacks any allegation of Treachery. In this latter instance, when there is a total absence of any allegation of the qualifying/aggravating circumstance – and not a mere defect – then such qualifying/aggravating circumstance shall not be appreciated against the accused, regardless of whether or not the same is later proven during trial; this must be so otherwise, the accused would be caught completely off guard in utter defiance of his constitutional right to be informed.

In view of the above, I therefore agree with the ponencia's affirmance of Solar's conviction for the crime of Murder, including the guidelines therein adopted to heretofore implement the ponencia's disposition.

[1] Emphases supplied.

[2] Emphases and underscoring supplied.

[3] See *Go v. Bangko Sentral ng Pilipinas*, 619 Phil. 306 (2009).

[4] *Id.* at 316; emphases and underscoring supplied.

[5] G.R. No. 200026, October 4, 2017, 841 SCRA 647.

[6] *Id.* at 658-663.

[7] Section 9. Bill of particulars. — The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired.

SEPARATE CONCURRING OPINION

GESMUNDO, J.:

This Appeal[1] seeks the reversal and setting aside of the January 13, 2015 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05757. The CA affirmed with modification the September 3, 2012 Decision[3] of the Regional Trial Court of Las Piñas City, Branch 202 (RTC) in Criminal Case No. 08-0616 finding Ronaldo Solar y Dumbrique (appellant) guilty beyond reasonable doubt of the crime of Murder. However, the CA downgraded the conviction to Homicide due to the insufficient allegation in the Information of the qualifying circumstances.

An Information was filed against appellant and a certain Mark Kenneth Solar (Mark Kenneth) for the killing of Joseph Capinig y Mato (Capinig) before the RTC. The accusatory portion reads:

That on or about the 9[th] day of March 2008, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other, without justifiable motive, with intent to kill and with treachery and abuse of superior strength, did then and there knowingly, unlawfully and feloniously attack, assault and use personal violence upon one JOSEPH CAPINIG y MATO, by then and there hitting and beating his head with a baseball bat, thereby inflicting upon the later mortal injury which caused his death.

The killing of the aforesaid victim is qualified by the circumstances of treachery and abuse of superior strength.

CONTRARY TO LAW.[4] (emphases supplied)

During arraignment, appellant pleaded "not guilty," while Mark Kenneth remained at large.

Thereafter trial ensued.

In its September 3, 2012 Decision, the RTC found appellant guilty beyond reasonable doubt of the crime of Murder. It held that the testimony of the prosecution's witness was clear, positive, categorical and credible to establish that appellant did, indeed, kill Capinig with treachery. It gave credence to the prosecution's evidence that

appellant and Mark Kenneth hit Capinig's nape with a baseball bat and, when Capinig fell down, simultaneously ganged upon him.

Appellant assails the RTC decision arguing that the prosecution failed to prove there was conspiracy between him and Mark Kenneth, and its evidence wanting to prove his guilt beyond reasonable doubt.

In its January 13, 2015 Decision, the CA affirmed with modification the RTC Decision. It held that the prosecution witness sufficiently established the identity and culpability of appellant in the killing of Capinig. It also stated that there was a concerted action between appellant and Mark Kenneth, hence, conspiracy was present.

However, the CA, relying on *People v. Valdez, et al.*,^[5] downgraded the crime from Murder to Homicide because the Information did not sufficiently set forth the facts and circumstances describing how treachery attended the killing.

The ponencia explained that there are conflicting jurisprudence regarding the issue of whether the allegation of aggravating circumstances in the Information must be described with specificity.^[6] It concluded that appellant had waived his right to question the defects in the Information filed against him, including the supposed lack of particularity in description of the attendant circumstances. Thus, appellant is deemed to have understood the acts imputed against him in the Information and the CA erred in modifying appellant's conviction.^[7] Consequently, appellant should be convicted of the crime of Murder, instead of Homicide.

Nevertheless, the ponencia provided a procedure, for the guidance of the Bench and the Bar, that the attendant circumstances should be properly alleged in the Information.^[8] From the promulgation of the Decision, any Information, which alleges a qualifying or aggravating circumstance, must contain factual averments that would enable a person of common understanding to know the acts he supposedly committed; otherwise, the circumstances would not be appreciated even though these are subsequently proved in trial by the prosecution.

I concur with the ponencia.

Conflicting jurisprudence
as to the specificity of the
allegation of the attendant
circumstances

The Information filed against appellant simply stated that the killing of Capinig was "qualified by the circumstances of treachery and abuse of superior strength." Evidently, it did not contain factual allegations particularly describing the qualifying or aggravating circumstances. Jurisprudence provides opposing decisions as to the sufficiency of Information when the attendant circumstances are not described with specificity.

The first set of cases – *People v. Valdez*,^[9] *People v. Dasmariñas*,^[10] and *People v. Delector*^[11] – states that when the Information does not sufficiently set forth the facts and circumstances describing how the qualifying or aggravating circumstance of the crime was committed, the accused cannot be convicted of the graver crime, such as Murder. These cases essentially explain that the sole use of the term of an aggravating circumstance, such as treachery, without any particular act or circumstance, is nothing but a conclusion of law and not an averment of fact.^[12]

These cases further underscore that the requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged of.^[13]

I concurred in *People v. Dasmariñas* and *People v. Delector* that the accused therein could not be convicted of Murder, only of Homicide, not because of the lack of specific factual recitals in the Information on the qualifying circumstance, but for the reason that the prosecution failed to prove the two elements of treachery, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution was deliberately or consciously adopted, that is, the means, methods or forms of execution must be shown to have been deliberated upon or consciously adopted by the offender.[14] In those cases, the element – that the means of execution was consciously adopted – was not proven and was not even discussed by the CA Decisions therein. In *People v. Delector*, the OSG even conceded that treachery was not proven by the prosecution, hence, the accused therein only committed the crime of Homicide.

On the other hand, the second set of cases – *People v. Batin*,[15] *People v. Lab-eo*,[16] *People v. Opuran*,[17] and *People v. Bajar*[18] – states that the allegation of a qualifying or aggravating circumstance, such as treachery, in the Information without any further explanation is sufficient. These cases chiefly explain that the Revised Rules of Criminal Procedure, even after its amendment, do not require that qualifying circumstances be preceded by descriptive words to properly qualify an offense.

These cases also underscored that merely stating the qualifying or aggravating circumstance in the Information is sufficient because evidentiary facts need not be alleged in the Information as these are matters of defense. They emphasize that Informations need only state the ultimate facts; the reasons therefor could be proved during trial.[19]

The doctrine in the second set of cases was reiterated in *People v. Asilan*,[20] to wit:

Asilan also claims that his constitutional right to be informed of the nature and cause of accusation against him was infringed when he was convicted for Murder, since the manner by which he carried out the killing with the qualifying circumstance of treachery was not alleged in the Information against him. Thus, he asserts, he was effectively only charged with Homicide.

This Court does not find merit in Asilan's contention that he cannot be convicted of murder because his acts of treachery were not alleged with specificity in the Information. x x x

x x x x

This Court held that "[u]nder Section 6, the Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, and the place of the offense." The Information herein complied with these conditions. Contrary to Asilan's contention, the qualifying circumstance of "treachery" was specifically alleged in the Information. "The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him." Asilan never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him due to the insufficiency of the Information.

This Court completely agrees with the Court of Appeals' pronouncement that "since treachery was correctly alleged in the Information and duly established by the prosecution, x x x [Asilan]'s conviction for the crime of murder is proper." [21] (emphasis supplied)

Indeed, in the second set of cases, it was not required that the qualifying or aggravating circumstance be alleged with specificity. Notably, in the subsequent case of *People v. Feliciano, Jr., et al.*, [22] the inclusion of the phrase "wearing masks and/or other forms of disguise" in the Information does not violate the constitutional rights of the accused. Although concealment of identity was referred to as the aggravating circumstance, it was sufficiently stated by alleging disguise. "The inclusion of disguise in the [I]nformation was, therefore, enough to sufficiently

apprise the accused that in the commission of the offense they were being charged with, they tried to conceal their identity." [23]

Similarly, in *People v. Mercado*, [24] although the aggravating circumstance was "use of fire," it was not stated in the Information; rather, the phrase "causing third degree burns" was indicated. The Court ruled that it was a sufficient allegation of the aggravating circumstance, to wit:

A reading of the afore-quoted portion of the Information readily reveals that while the "use of fire" was not explicitly mentioned as a qualifying circumstance, the Information nevertheless narrate with sufficiency that Mercado was being accused of "causing x x x third degree burns [against the victims] which directly caused their instantaneous death." It escapes the mind of the Court how one could be accused of "causing x x x third degree burns" without necessarily saying that he or she used fire in the process. [25]

The Information may still sufficiently inform the accused even though the details of the attendant circumstance are not stated therein

The 1987 Constitution guarantees the right of the accused to be informed of the nature and cause of the accusation against him. Thus, Section 14(2), Article III of the Constitution states:

Section 14. x x x

x x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable. (emphasis supplied)

This right is reiterated under the Section 1(b), Rule 115 of the Revised Rules of Criminal Procedure:

Section 1. Rights of accused at the trial. — In all criminal prosecutions, the accused shall be entitled to the following rights:

x x x x

(b) To be informed of the nature and cause of the accusation against him.

I believe that the doctrine laid down in the second set of cases, wherein the Information need not particularly describe the facts and circumstances constituting the attendant circumstance, does not contravene the aforementioned right of the accused and is still good case law.

The former Rules of Criminal Procedure did not require qualifying and aggravating circumstances to be alleged in the Complaint or Information. According to jurisprudence, aggravating circumstances proven by the evidence, although not alleged in the Information, may be taken into account as such. Qualifying circumstances not alleged but proven are considered aggravating. However, this is no longer true. [26]

With the advent of the 2000 Revised Rules of Criminal Procedure, qualifying and aggravating circumstances must now be alleged in the Information. However, the question remains: whether it is sufficient to merely allege the

attendant circumstance or should the circumstance be described with particularity?

Section 6, Rule 110 of the Revised Rules of Criminal Procedure provides the requirement on the sufficiency of the Complaint or Information, viz.:

Section 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (emphasis supplied)

Under Section 6, the Information is sufficient if it contains: (1) the full name of the accused, (2) the designation of the offense given by the statute, (3) the acts or omissions constituting the offense, (4) the name of the offended party, (5) the approximate date, and (6) the place of the offense.[27] Thus, once all these allegations are contained in the Information, then it adequately informs the accused of the charges against him.

On the other hand, Sections 8 and 9, Rule 110 state that:

Section 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Section 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (emphases supplied)

In *People v. Aquino*,[28] the Court explained how Sections 8 and 9 of Rule 110 require the allegation of the attendant circumstances in the Information, as follows:

We therefore reiterate that Sections 8 and 9 of Rule 110 merely require that the Information allege, specify or enumerate the attendant circumstances mentioned in the law to qualify the offense. These circumstances need not be preceded by the words "aggravating/qualifying," "qualifying," or "qualified by" to be considered as qualifying circumstances. It is sufficient that these circumstances be specified in the Information to apprise the accused of the charges against him to enable him to prepare fully for his defense, thus precluding surprises during the trial. When the prosecution specifically alleges in the Information the circumstances mentioned in the law as qualifying the crime, and succeeds in proving them beyond reasonable doubt, the Court is constrained to impose the higher penalty mandated by law. This includes the death penalty in proper cases.[29] (emphases and underscoring supplied)

Section 6 states that the allegations must be contained in the Information so that it sufficiently informs the accused of the charges against him. In determining whether an Information is sufficient, Section 6 must be strictly complied with. In contrast, Sections 8 and 9 provide how the designation of the offense and the cause of the accusation should be indicated in the Information. With respect to the qualifying or aggravating circumstance, it is sufficient to allege, specify or enumerate this circumstance, as mentioned in the law, to qualify the offense. When these are alleged in the Information, the court is constrained to impose the higher penalty mandated by law. In effect, Sections 8 and 9 also guide the court in its judgment of whether to impose the higher penalty due to the existence of the qualifying or aggravating circumstance.

A plain reading of the present Revised Rules of Criminal Procedure shows that it is not required that there be an expanded allegation, including facts and details, of the attendant circumstances. Rather, as long as the qualifying or aggravating circumstance, e.g., as enumerated in Articles 14 and 248 of the Revised Penal Code, is alleged, specified, or enumerated therein, then it is sufficient allegation in the Information and the accused is properly informed of the charge against him or her.

An Information need only state the ultimate facts constituting the offense and not the finer details of why and how the crime was committed.[30] Thus, an allegation of ultimate fact of treachery or abuse of superior strength is sufficient. It is not required that evidentiary facts, such as the facts and circumstances that would explain the qualifying or aggravating circumstances of treachery and abuse of superior strength, also be contained in the Information. Indeed, these particular facts and circumstances regarding the attendant circumstances are matters of evidence that must be threshed out in the full-blown hearing.[31] To restate the rule, an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage — matters that are appropriate for the trial.[32]

It is often difficult to say what is matter of evidence, as distinguished from fact, necessary to be stated in order to render the Information sufficiently certain in identifying the offense. As a general rule, matters of evidence, as distinguished from facts essential to the description of the offense, need not be averred.[33]

Further, it is a well-settled rule that the test is whether the crime is sufficiently described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged. The *raison d'être* of the rule is to enable the accused to suitably prepare his defense. Another purpose is to enable accused, if found guilty, to plead his conviction in a subsequent prosecution for the same offense. The use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.[34]

Records attached to the
Information sufficiently
inform the accused

Likewise, I believe that even though an Information shall only state the qualifying or aggravating circumstance, without the explanatory facts and circumstances, the accused is still sufficiently informed of the charges against him. Section 7(a), Rule 112 of the Revised Rules of Criminal Procedure,[35] states:

SEC. 7. Records. —

(a) Records supporting the information or complaint. — An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case. (emphasis supplied)

Verily, when an Information is filed in court, it is required that the affidavits, counter-affidavits, other supporting evidence, and the resolution of the case be attached therewith. Thus, aside from the Information itself, an accused is further apprised of the details of the charges against him based on affidavits, evidence, and the resolution attached to the Information. The importance of the attachments to the Information filed in court was discussed in *Lim, Sr., et al. v. Judge Felix, et al.*,[36] to wit:

x x x By itself the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stereographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination [of probable cause].[37] (emphasis supplied)

Among the documents attached to the Information, the resolution of the prosecutor explains the facts and

circumstances of the charges against the accused, including those referring to the qualifying or aggravating circumstances. According to Section 4, Rule 112, the prosecutor prepares a resolution when he or she finds probable cause to hold respondent for trial. On the other hand, the 2008 Revised Manual for Prosecutors[38] (Manual) states the contents of a resolution, viz.:

e. Contents of the Body of the Resolution

In general, the body of resolution should contain:

1. A brief summary of the facts of the case;
2. A concise statement of the issues involved;
3. Applicable laws and jurisprudence; and
4. The findings, including an enumeration of all the documentary evidence submitted by the parties and recommendations of the investigating prosecutor.

All material details that should be found in the information prepared by the Investigating Prosecutor shall be stated in the resolution.[39] (emphasis supplied)

Thus, if the Information states qualifying or aggravating circumstances, then the prosecutor's resolution should contain all the material details regarding those circumstances. Further, the Manual states that a copy of the prosecutor's resolution should be furnished to the parties or to their counsel, as the case may be, to wit:

g. Parties Who Need to be Furnished with a Copy of the Resolution

The complete names and addresses of the complainant and the respondent shall be set out at the end of the resolution after the signature of the investigating prosecutor and the head of the Prosecutor's Office concerned under the phrase: "Copy furnished;"

If the parties are represented by counsel and the latter's appearance is entered formally in the record, the counsel, not the party, shall be given a copy of the resolution.

Likewise, the Manual states that it is only upon the service of the copy of the resolution to the parties or their counsel that the said resolution is promulgated, as follows:

N. PROMULGATION OF THE RESOLUTION; MODES OF SERVICE

The resolution shall be promulgated by furnishing the parties or their counsel a copy thereof by:

1. Personal service by process servers, law enforcement or barangay personnel; or
2. Registered mail with return card to the parties.[40] (emphasis supplied)

Thus, when an Information is filed in court, together with the affidavits, counter-affidavits, other evidence and the prosecutor's resolution, the accused or his counsel already has a copy of the prosecutor's resolution. When the Information states a qualifying or aggravating circumstance, the accused can simply refer to and review the prosecutor's resolution to determine the specific facts and circumstances surrounding the qualifying or aggravating circumstance. Thus, he is adequately informed of the charges against him.

Manifestly, the counsel of the accused, who receives the copy of the resolution, has the duty to explain to the client the import of the contents of the prosecutor's resolution, including the details with respect to the attendant circumstances. The accused or the counsel cannot raise as a defense that the Information did not describe with particularity the qualifying or aggravating circumstance because it is already explained in the prosecutor's

resolution, a copy of which is furnished them. Hence, the accused cannot invoke that his right to be sufficiently informed of the charges against him is violated by the State.

The right to be informed during arraignment

It must also be emphasized that the right to be informed of the accusations does not end upon filing of the Information. Rather, said right is fully realized upon the arraignment of the accused.

Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. The purpose of arraignment is, thus, to apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him. As an indispensable requirement of due process, an arraignment cannot be regarded lightly or brushed aside peremptorily. Otherwise, absence of arraignment results in the nullity of the proceedings before the trial court.[41]

Constitutional due process demands that the accused in a criminal case be informed of the nature and cause of the accusation against him. The rationale behind this constitutional guarantee are: First, to furnish the accused with the description of the charge against him as will enable him to make his defense; second, to avail himself of his conviction or acquittal, for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. In fulfillment of the aforesaid constitutional guarantee, Rule 116, Section 1(a) of the Rules of Court mandates that an accused be arraigned in open court and asked to enter a plea of guilty or not guilty of the crime charged.[42]

Consequently, arraignment is the formal process by which an accused is informed of the charges against him, including alleged qualifying or aggravating circumstances. During arraignment held in open court, the accused shall be furnished a copy of the Complaint or Information and it may be read in a language or dialect known to him.[43] At that moment, the accused is given an opportunity to clarify any unclear matter in the charges against him. The defense counsel must ensure that his client understands the allegations in the Complaint or Information, and any unclear matter must be thoroughly explained to him. Thus, if the accused wants an explanation as to the qualifying or aggravating circumstance, arraignment is the proper venue to properly clarify such matter. Indeed, the defense counsel must ensure that his client is sufficiently informed of the nature of the accusations so that the latter can enter a proper plea.

To reiterate, the right to be informed of the charges against the accused is not concluded upon the filing of the Information. It continues until the accused is formally arraigned. At that point, the defense counsel, as well as the prosecutor and the court, must ensure that the accused has understood the charges, including any aggravating or qualifying circumstance stated therein. If there are any unclear matters, these must be clarified to the accused so that a proper plea may be entered. Failure to raise any objection as to the sufficiency of the Information upon entering a plea during arraignment constitutes as a waiver to assail said Information.[44]

Procedure for prosecutors

Nevertheless, I concur with the procedure set forth in the ponencia. While the current Revised Rules of Criminal Procedure allow the allegation of qualifying or aggravating circumstance without setting forth the facts and circumstances surrounding it, the general terms of the provisions of Rule 110 create different interpretations that may confuse the Bench, the Bar and the public.

As discussed earlier, the first set of cases requires a strict reading of the Rules, wherein the qualifying or

aggravating circumstance is particularly explained, to sufficiently inform the accused of the allegations against him. On the other hand, the second set of cases does not require the extended details in alleging the qualifying or aggravating circumstance because these are evidentiary facts, matters of defense, which must be threshed out in a full-blown trial.

To finally settle the conflicting interpretations, I believe that the Court must conclusively choose only one interpretation of the general terms provided by the Rules of Court to be applicable in the future. Thus, I agree with the ponencia that, as a matter of procedure, strict and literal adherence to Rule 110 as to the specificity in the allegations of the qualifying or aggravating circumstance should be followed.

The prosecutors must be guided that the accused should be fully informed of the accusations against him, including any aggravating or qualifying circumstance. Thus, the only definite method would be to describe with particularity the said circumstance in the Information. Although the material details of the aggravating or qualifying circumstance were already discussed in the prosecutor's resolution, it is sound practice when dealing with the constitutional rights, specifically, the right of an accused to be informed of the charges against him, to allege in the Information the details concerning the qualifying or aggravating circumstance. It must be underscored that the Court has the constitutional power to promulgate rules regarding the protection and enforcement of the constitutional rights,[45] which includes the rights of the accused.

As pointed out earlier, the requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. Thus, the facts stated in the body of the Information should determine the crime of which he stands charged and for which he must be tried. The [I]nformation must sufficiently give him knowledge of what he had allegedly committed because he was presumed innocent and unaware of the illegal acts imputed against him.[46]

By requiring the prosecutors to specifically state the details of the aggravating or qualifying circumstance in the Information, the accused will readily and be fully informed of the accusations against him. I believe this to be more practical and a safer approach to respect the constitutional right of an accused to be informed of the allegations against him and to expedite court proceedings under the Rules of Court.

The procedure set
forth is prospective
in application

Likewise, I concur with the ponencia that the procedure set forth shall apply only to pending and future criminal cases. In other words, the procedure shall be prospective in application.

Past criminal cases, where the Information does not specifically elaborate the qualifying or aggravating circumstance, cannot benefit from this procedure. Section 9, Rule 117 of the Rules of Court states:

SEC. 9. Failure to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (emphasis supplied)

As early as *U.S. v. Sarabia*,[47] the Court has emphasized that an accused may not escape punishment when he was given every opportunity to be informed of the nature of the charge, viz.:

In fact, the law of criminal procedure is wisely planned so as to give to a defendant who is not advised as to the charge against him every opportunity to secure additional information in this regard. But it was never intended that a defendant who had been given these opportunities might neglect them and after a fair trial and a conviction supported by abundant testimony, say, as a means of escaping a deserved punishment, that he had never been informed of the nature of the charge against him.[48]

In *People v. Almendral*,^[49] the Court emphasizes that failure to raise the issue of defective Information, either through a motion to quash or a motion for bill of particulars, constitutes as a waiver to the said defect, to wit:

Moreover, appellant failed to raise the issue of the defective information before the trial court through a motion for bill of particulars or motion to quash the information. Such failure to object to the allegation in the information as to the time of commission of the rapes before appellant pleaded not guilty thereto amounted to a waiver of the defect in the information. Objections as to matters of form or substance in the information cannot be made for the first time on appeal.[50]

Similarly, in *People v. Palarca*,^[51] the Court explains that the right to assail the sufficiency of the Information may be waived by the accused by his failure to object, viz.:

x x x While generally an accused cannot be convicted of an offense that is not clearly charged in the complaint or information, this rule is not without exception. The right to assail the sufficiency of the information or the admission of evidence may be waived by the accused-appellant. In *People v. Lopez*, we held that an information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein. Thus —

[F]ailure to object was thus a waiver of the constitutional right to be informed of the nature and cause of the accusation. It is competent for a person to waive a right guaranteed by the Constitution, and to consent to action which would be invalid if taken against his will. x x x^[52]

Accordingly, when the accused fails to object to the defect in the sufficiency of the Information, such as in the case at bench, he waives the right to question such defect. Hence, the Information, which may have a deficiency in certain allegations, shall still sustain a conviction because of the lack of objections. Consequently, past criminal cases, which judgments have already become final and executory, cannot benefit from the proposed procedure of the ponencia because any defect in the Information, specifically in the allegation of qualifying or aggravating circumstance, is cured by the lack of objections as to the sufficiency of the Information at the earliest possible opportunity.

WHEREFORE, I vote to AFFIRM WITH MODIFICATION the January 13, 2015 Decision of the Court of Appeals, in CA-G.R. CR-HC No. 05757, that Ronaldo Solar y Dumbrique is GUILTY of the crime of Murder.

[1] Rollo, pp. 10-11.

[2] Id. at 3-9.

[3] CA rollo, pp. 20-25.

[4] Rollo, p. 3.

[5] 679 Phil. 279 (2012).

[6] Ponencia, pp. 7-14.

[7] Id. at 15.

- [8] Id. at 16.
- [9] Supra note 5.
- [10] G.R. No. 203986, October 4, 2017, 842 SCRA 39.
- [11] G.R. No. 200026, October 4, 2017, 841 SCRA 647.
- [12] Ponencia, pp. 9-10.
- [13] Id. at 10.
- [14] People v. Kalipayan, G.R. No. 229829, January 22, 2018.
- [15] 564 Phil. 249 (2007).
- [16] 424 Phil. 482 (2002).
- [17] 469 Phil. 698 (2004).
- [18] 460 Phil. 683 (2003).
- [19] People v. Batin, supra note 15, at 271.
- [20] 685 Phil. 633 (2012).
- [21] Id. at 649-650.
- [22] 734 Phil. 499 (2014).
- [23] Id. at 521.
- [24] G.R. No. 218702, October 17, 2018.
- [25] Id.
- [26] HERRERA, Remedial Law IV, 2007 Ed., p. 104.
- [27] See People v. Asilan, supra note 20, at 649-650.
- [28] 435 Phil. 417 (2002).
- [29] Id. at 426.
- [30] People v. Sandiganbayan (Fourth Division), et al., 769 Phil. 378, 391 (2015).
- [31] See Socrates v. Sandiganbayan, et al., 324 Phil. 151, 172 (1996).
- [32] Go v. Bangko Sentral ng Pilipinas, 619 Phil. 306, 317 (2009).
- [33] HERRERA, Remedial Law IV, 2007 Ed., p. 96.
- [34] Lazarte, Jr. v. Sandiganbayan, et al., 600 Phil. 475, 491-492 (2009).
- [35] Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure, A.M. No. 05-8-26-SC, (August 30, 2005).
- [36] 272 Phil. 122 (1991).
- [37] Id. at 133, citing People v. Judge Inting, et al., 265 Phil. 817, 821 (1990).

[38] The Manual for Prosecutors was recently amended in 2017; however, since the crime in the case at bench occurred in 2008, then the 2008 Manual for Prosecutors shall apply.

[39] Part IV.II.J.3.e, 2008 Revised Manual for Prosecutors, p. 97.

[40] Part IV.II.N, 2008 Revised Manual for Prosecutors, p. 102.

[41] *Taglay v. Judge Daray, et al.*, 693 Phil. 45, 57-58 (2012).

[42] *People v. Monteron*, 428 Phil. 401, 406 (2002).

[43] See Section 1(a) of Rule 116.

[44] See *Herrera v. Court of Appeals, et al.*, 427 Phil. 577, 587-588 (2002).

[45] CONSTITUTION, Art. VIII, Sec. 5.

[46] *People v. Petalino*, G.R. No. 213222, September 24, 2018.

[47] 4 Phil. 566 (1905).

[48] *Id.* at 569.

[49] 477 Phil. 521 (2004).

[50] *Id.* at 536.

[51] 432 Phil. 500 (2002).

[52] *Id.* at 509.

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