G.R. No. 225595 – *PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. ROLANDO SOLAR y DUMBRIQUE, Accused-Appellant.*

Promulgated:

August 6, 2019

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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 9th 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

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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.

> 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

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3 *Rollo*, p. 3.
4 Id. at 7.
5 G.R. No. 175602, January 18, 2012, 679 Phil 279-296.

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.
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> 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)
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> 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.

LUCAS P. BERSAMIN
Chief Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court