

EN BANC

G.R. No. 225595 (*People of the Philippines v. Ronaldo Solar y Dumbrique*)

Promulgated:

August 6, 2019

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SEPARATE CONCURRING OPINION

GESMUNDO, J.:

This Appeal<sup>1</sup> seeks the reversal and setting aside of the January 13, 2015 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05757. The CA affirmed with modification the September 3, 2012 Decision<sup>3</sup> 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<sup>th</sup> 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.<sup>4</sup> (emphases supplied)

<sup>1</sup> *Rollo*, pp. 10-11.

<sup>2</sup> *Id.* at 3-9.

<sup>3</sup> *CA rollo*, pp. 20-25.

<sup>4</sup> *Rollo*, p. 3.

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.*,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Consequently, appellant should be convicted of the crime of Murder, instead of Homicide.

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<sup>5</sup> 679 Phil. 279 (2012).

<sup>6</sup> *Ponencia*, pp. 7-14.

<sup>7</sup> *Id.* at 15.



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.<sup>8</sup> 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*,<sup>9</sup> *People v. Dasmariñas*,<sup>10</sup> and *People v. Delector*<sup>11</sup> – 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.<sup>12</sup>

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

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<sup>8</sup> Id. at 16.

<sup>9</sup> Supra note 5.

<sup>10</sup> G.R. No. 203986, October 4, 2017, 842 SCRA 39.

<sup>11</sup> G.R. No. 200026, October 4, 2017, 841 SCRA 647.

<sup>12</sup> *Ponencia*, pp. 9-10.

he is always presumed to have no independent knowledge of the details of the crime he is being charged of.<sup>13</sup>

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.<sup>14</sup> 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*,<sup>15</sup> *People v. Lab-ao*,<sup>16</sup> *People v. Opuran*,<sup>17</sup> and *People v. Bajar*<sup>18</sup> – 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.<sup>19</sup>

The doctrine in the second set of cases was reiterated in *People v. Asilan*,<sup>20</sup> to wit:

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<sup>13</sup> Id. at 10.

<sup>14</sup> *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

<sup>15</sup> 564 Phil. 249 (2007).

<sup>16</sup> 424 Phil. 482 (2002).

<sup>17</sup> 469 Phil. 698 (2004).

<sup>18</sup> 460 Phil. 683 (2003).

<sup>19</sup> *People v. Batin*, supra note 15, at 271.

<sup>20</sup> 685 Phil. 633 (2012).

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."<sup>21</sup> (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.*,<sup>22</sup> 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."<sup>23</sup>

<sup>21</sup> Id. at 649-650.

<sup>22</sup> 734 Phil. 499 (2014).

<sup>23</sup> Id. at 521.

Similarly, in *People v. Mercado*,<sup>24</sup> 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.<sup>25</sup>

*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)

<sup>24</sup> G.R. No. 218702, October 17, 2018.

<sup>25</sup> Id.

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.<sup>26</sup>

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)

<sup>26</sup> HERRERA, Remedial Law IV, 2007 Ed., p. 104.

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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.<sup>27</sup> 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*,<sup>28</sup> 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.<sup>29</sup> (emphases and underscoring supplied)

<sup>27</sup> See *People v. Asilan*, supra note 20, at 649-650.

<sup>28</sup> 435 Phil. 417 (2002).

<sup>29</sup> Id. at 426.

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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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

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

<sup>30</sup> *People v. Sandiganbayan (Fourth Division), et al.*, 769 Phil. 378, 391 (2015).

<sup>31</sup> See *Socrates v. Sandiganbayan, et al.*, 324 Phil. 151, 172 (1996).

<sup>32</sup> *Go v. Bangko Sentral ng Pilipinas*, 619 Phil. 306, 317 (2009).

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evidence, as distinguished from facts essential to the description of the offense, need not be averred.<sup>33</sup>

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.**<sup>34</sup>

*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,<sup>35</sup> 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.*,<sup>36</sup> to wit:

<sup>33</sup> HERRERA, Remedial Law IV, 2007 Ed., p. 96.

<sup>34</sup> *Lazarte, Jr. v. Sandiganbayan, et al.*, 600 Phil. 475, 491-492 (2009).

<sup>35</sup> Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure, A.M. No. 05-8-26-SC, (August 30, 2005).

<sup>36</sup> 272 Phil. 122 (1991).

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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].<sup>37</sup> (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<sup>38</sup> (*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.**<sup>39</sup> (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

<sup>37</sup> Id. at 133, citing *People v. Judge Inting, et al.*, 265 Phil. 817, 821 (1990).

<sup>38</sup> 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.

<sup>39</sup> Part IV.II.J.3.e, 2008 Revised Manual for Prosecutors, p. 97.

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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.<sup>40</sup> (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.

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<sup>40</sup> Part IV.II.N, 2008 Revised Manual for Prosecutors, p. 102.

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*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.<sup>41</sup>

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.<sup>42</sup>

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.<sup>43</sup> 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

<sup>41</sup> *Taglay v. Judge Daray, et al.*, 693 Phil. 45, 57-58 (2012).

<sup>42</sup> *People v. Monteron*, 428 Phil. 401, 406 (2002).

<sup>43</sup> See Section 1(a) of Rule 116.

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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.<sup>44</sup>

*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

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<sup>44</sup> See *Herrera v. Court of Appeals, et al.*, 427 Phil. 577, 587-588 (2002).

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,<sup>45</sup> 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.<sup>46</sup>

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:

<sup>45</sup> CONSTITUTION, Art. VIII, Sec. 5.

<sup>46</sup> *People v. Petalino*, G.R. No. 213222, September 24, 2018.

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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*,<sup>47</sup> 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.<sup>48</sup>

In *People v. Almendral*,<sup>49</sup> 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.<sup>50</sup>

Similarly, in *People v. Palarca*,<sup>51</sup> 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

<sup>47</sup> 4 Phil. 566 (1905).

<sup>48</sup> *Id.* at 569.

<sup>49</sup> 477 Phil. 521 (2004).

<sup>50</sup> *Id.* at 536.

<sup>51</sup> 432 Phil. 500 (2002).

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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<sup>52</sup>

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.

  
ALEXANDER G. GESMUNDO  
Associate Justice

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<sup>52</sup> Id. at 509.

CERTIFIED TRUE COPY

  
EDGAR O. ARICHETA  
Clerk of Court En Banc  
Supreme Court