

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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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

¹ Emphases supplied.

² Emphases and underscoring supplied.

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

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:

⁴ Id. at 316; emphases and underscoring supplied.

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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

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

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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.


ESTELA M. PERLAS-BERNABE
 Associate Justice

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. **CERTIFIED TRUE COPY**


EDGAR O. ARICHETA
 Clerk of Court En Banc
 Supreme Court