



Republic of the Philippines
SUPREME COURT
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

**SILVERIO REMOLANO y
 CALUSCUSAN,**

Petitioner,

G.R. No. 248682

Present:

-versus-

**GESMUNDO, C.J. Chairperson,
 CAGUIOA,
 LAZARO-JAVIER,
 LOPEZ, M., and
 LOPEZ, J., JJ.**

PEOPLE OF THE PHILIPPINES

Respondent.

Promulgated:

OCT 06 2021

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DECISION

LAZARO-JAVIER, J.:

The Case

This petition for review on *certiorari* assails the Decision¹ dated December 12, 2018 and Resolution² dated July 30, 2019 of the Court of Appeals in CA-G.R. CR No. 40185, respectively, modifying petitioner's conviction in Criminal Case No. R-QZN-13-03453 from robbery to direct bribery, and denying his subsequent motion for reconsideration.

Antecedents

By Information³ dated September 23, 2013, petitioner Silverio Remolano y Caluscusan (Remolano) and his co-accused Rolando Tamor y Urbano (Tamor) were charged with robbery committed as follows, *viz.*:

¹ *Rollo*, pp. 50-60; Penned by Associate Justice Edwin D. Sorongon with Associate Justices Sesinando E. Villon and Germano Francisco D. Legaspi, concurring.

² *Id.* at 58-60.

³ *Id.* at 62.

The undersigned accuses SILVERIO REMOLANO Y CALUSCUSAN and ROLANDO TAMOR Y URBANO of the crime of Robbery (Extortion), committed as follows:

That on or about the 20th day of September 2013, in Quezon City, Philippines, the above-named accused, both taking advantage of their official position as Metro Manila Aide III, assigned along E. delos Santos Avenue corner New York Street, Cubao, Quezon City, conspiring together, confederating with and mutually helping each another (sic), with intent to gain and by means of intimidation, did then and there, willfully, unlawfully and feloniously rob/extort SPO1 Nomer V. Cardines in the following manner, to wit: while complainant was driving a Toyota Avanza along aforesaid location accused flagged down complainant for swerving violation and confiscated his driver's license and by means of intimidation extorted/demanded from the complainant the amount of P200.00, in exchange for non issuance of traffic violation receipt, thus creating fear in the mind of the complainant who was compelled to give to the accused the amount of P200.00, in marked money, to the damage and prejudice of the said offended party in the amount aforementioned.

Contrary to law.⁴

The case was raffled to the Regional Trial Court (RTC) – Branch 226, Quezon City. On arraignment, both accused pleaded not guilty.⁵ Trial ensued thereafter.

The Prosecution's Version

SPO1 Nomer V. Cardines (SPO1 Cardines), PO2 Mark Anthony B. Pornela, PO1 Dennis L. Lovitos (PO1 Lovitos), and PO3 Eden G. Pascua testified for the prosecution.⁶ Their testimonies may be summarized, in this wise:

On September 16, 2013, Police Superintendent Richard A. Albano, District Director of the Special Operations Unit - Philippine National Police (PNP), Quezon City, formed a team to conduct surveillance after receiving reports that Metro Manila Development Authority (MMDA) Traffic Aides Remolano and Tamor were engaged in extortion activities along Epifanio De Los Santos Avenue (EDSA).⁷

Thereafter, the surveillance team found that Remolano and Tamor would not issue traffic violation tickets to motorists whom they flagged for

⁴ *Id.* at 62.

⁵ *Id.* at 64.

⁶ *Id.* at 65.

⁷ *Id.* at 51.

swerving from EDSA towards New York Street, in exchange for money surreptitiously handed them.⁸

On September 20, 2013, the District Special Operations Unit in Camp Karingal, Quezon City, through Police Chief Inspector (PCI) Diogenes Amor (PCI Amor), coordinated with the MMDA Intelligence and Investigation Office Chief Security P/Supt. Elmer Cereno for the conduct of an entrapment operation against Remolano and Tamor.⁹ During the briefing, SPO1 Cardines was designated to pose as a civilian motorist who would intentionally commit a traffic violation at the exact location where MMDA Traffic Aides Remolano and Tamor were stationed. He was given two (2) Php100.00 bills with serial numbers HE122063 and PF253316¹⁰ as entrapment money.¹¹ The team then proceeded to execute the operation.

Around 8 o'clock in the evening, PO1 Lovitos, PCI Amor, and PSI Vicente Gil Palma positioned themselves in a dimly lit portion of EDSA corner New York Street, while SPO1 Cardines drove a Toyota Avanza which he intentionally swerved towards New York Street. Remolano immediately flagged down SPO1 Cardines and informed him of his illegal swerving violation to which the latter readily admitted.¹² SPO1 Cardines, though, told Remolano to pardon him as he was just in a hurry. Remolano replied "*Sige pagbibigyan kita pero bahala ka na sa amin ng kabuddy ko. Kahit magkano lang.*"¹³ SPO1 Cardines then handed Remolano the two (2) Php100.00 bills marked money. As soon as Remolano received the money, SPO1 Cardines activated the hazard signal of his vehicle, prompting his team members to close in. They introduced themselves as police officers and arrested Remolano and Tamor. After retrieving the marked money from Remolano, the team informed him and Tamor of their constitutional rights.¹⁴ They were brought to the police station for investigation. There, the palmar and dorsal portions of Remolano's hands were found positive for the presence of bright yellow ultraviolet fluorescent powder which came from the marked money.¹⁵

The Defense's Version

Remolano testified that on September 20, 2013, at 7:30 p.m., he, Tamor, and their co-traffic enforcers were manning the traffic along EDSA corner New York Street, Cubao, Quezon City. They noticed a Toyota vehicle without a license plate suddenly swerve towards New York Street. He flagged down

⁸ *Id.*

⁹ *Id.* at 65.

¹⁰ *Id.* at 66.

¹¹ *Id.* at 51.

¹² *Id.* at 51-52.

¹³ *Id.* at 66.

¹⁴ *Id.* at 52.

¹⁵ *Id.* at 66.

the vehicle and informed its driver of his violation. The driver told him “*pasensya ka na ayusin na lang natin ito*” and suddenly handed him money which he refused. To his surprise, however, several persons suddenly appeared and handcuffed him. When he asked for his violation, no one replied. He and his co-traffic enforcers were brought to Camp Karingal. But only him and Tamor were later on sent to Police Station 10, EDSA, Quezon City, for ultraviolet testing.¹⁶

Tamor corroborated Remolano’s testimony. After the police officers handcuffed Remolano, they also approached him and his co-traffic enforcers. All of them got apprehended and were brought to Camp Karingal, Quezon City without informing them of their supposed violation. On September 21, 2013, he and Remolano were charged with robbery and got detained.¹⁷

The Ruling of the Trial Court

As borne in its Judgment dated June 2, 2017,¹⁸ the trial court rendered a verdict of conviction only against Remolano as his co-accused Tamor got acquitted on reasonable doubt, thus:

WHEREFORE, in view of the foregoing premises, the prosecution having proved the GUILT of the accused Silverio Remolano y Caluscusan beyond reasonable doubt, this Court finds the said accused **GUILTY** and is hereby **CONVICTED** of the crime of Robbery as defined and penalized under paragraph 5[,] Article 294 of the Revised Penal Code and is thereby condemned to suffer the indeterminate penalty of imprisonment of **four (4) months and one (1) day of *arresto mayor* as Minimum to five (5) years of *prision correccional* as Maximum.**

On the other hand, for failure of the prosecution to prove the GUILT of the accused Rolando Tamor y Urbano beyond reasonable doubt, this Court finds the same accused **NOT GUILTY** and is hereby **ACQUITTED** of the crime of Robbery as defined and penalized under paragraph 5[,] Article 294 of the Revised Penal Code.

SO ORDERED.¹⁹

The trial court found that all the elements of Robbery under Article 293 of the Revised Penal Code (RPC) were present, *viz.*: (1) there was personal property belonging to another; (2) unlawful taking of that property; (3) intent

¹⁶ *Id.* at 66-67.

¹⁷ *Id.* at 66.

¹⁸ Penned by Presiding Judge Manuel B. Sta. Cruz, Jr.; *Id.* at 64-73.

¹⁹ *Id.* at 72-73.

to gain; and (4) intimidation.²⁰ It ruled that Remolano, for his personal benefit, unlawfully took personal property from SPO1 Cardines when he demanded and eventually received Php200.00 from SPO1 Cardines in exchange for Remolano not issuing him a traffic violation ticket.²¹

Regarding the element of intimidation, the trial court found that Remolano intimidated SPO1 Cardines by uttering “*Sige pagbibigyan kita pero bahala ka na sa amin ng kabuddy ko. Kahit magkano lang.*” instead of issuing a traffic violation ticket on Remolano.²²

The trial court did not give credence to Remolano’s claim that he refused the offer of SPO1 Cardines and that the latter merely forced him to receive the money.²³

The Proceedings Before the Court of Appeals

On appeal, Remolano faulted the trial court for finding him guilty of robbery despite the prosecution’s alleged failure to establish its elements beyond reasonable doubt. Specifically, Remolano argued that the element of intimidation could not have been present since his arrest was a result of an entrapment operation which had been carefully planned by the team of SPO1 Cardines.²⁴ Thus, even if it were true that he uttered “*Sige pagbibigyan kita pero bahala ka na sa amin ng kabuddy ko. Kahit magkano lang.*” these words did not convey intimidation or threat²⁵ and could not have created fear in the mind of SPO1 Cardines who was ready and willing to deliver the money to him --- and thereafter arrest him as soon as he received the money.²⁶

On the other hand, the People, through the Office of the Solicitor General (OSG), defended the verdict of conviction. It countered that although the money was ready for Remolano’s entrapment, SPO1 Cardines did not hand it over until the former employed intimidation and insinuated a pay-off for non-issuance of a traffic violation ticket.²⁷

The Ruling of the Court of Appeals

The Court of Appeals agreed with Remolano that the trial court erred in finding him guilty of robbery. It ruled that it would be preposterous to

²⁰ *Id.* at 68-69.

²¹ *Id.* at 69.

²² *Id.* at 69.

²³ *Id.* at 69-71.

²⁴ *Id.* at 85-86.

²⁵ *Id.* at 89.

²⁶ *Id.* at 91; The Appellee’s Brief was not attached to the *rollo*.

²⁷ Appellee’s Brief, CA *rollo*, pp. 49-62.

conclude that Remolano could have induced threat or intimidation by his words without any further threat of force or violence upon the person of SPO1 Cardines, an undercover police officer.²⁸

The Court of Appeals, nonetheless, rendered a verdict of conviction against Remolano for **direct bribery under Article 210 of the RPC**. It ruled that the allegations in the Information for robbery necessarily included the charge of direct bribery, and so did the evidence adduced during the trial below.²⁹ Specifically, the appellate court focused on the trial court's factual findings that Remolano was a public officer who, in consideration of Php200.00 which he solicited and received, refrained from issuing a traffic violation ticket to SPO1 Cardines despite his official duty to do so as a Traffic Aide. As such, Remolano's voluntary acceptance of the Php200.00 bribe in exchange for not performing his duty to issue a traffic violation ticket made him liable for direct bribery.

Thus, under Decision³⁰ dated December 12, 2018, the Court of Appeals decreed, *viz.*:

WHEREFORE, the appealed decision of the Quezon City Regional Trial Court (RTC), Branch 226 in *Criminal Case No. R-QZN-13-03453* is **MODIFIED** that accused-appellant **Silverio Remolano y Caluscusan** is found **GUILTY** of Direct Bribery. Accordingly, he is sentenced to suffer imprisonment of three (3) years of *prision correccional* medium (sic) as minimum to seven (7) years of *prision mayor* minimum (sic) as maximum and to pay a fine of ONE THOUSAND pesos (Php1,000.00).

SO ORDERED.³¹

Remolano's motion for reconsideration was denied under Resolution dated July 30, 2019.³²

The Present Petition

Remolano now seeks affirmative relief *via* the present petition for review on *certiorari*. He faults the Court of Appeals for convicting him of direct bribery -- an offense which was not purportedly charged in the Information filed against him. The verdict of conviction against him for direct

²⁸ Rollo, p. 54.

²⁹ *Id.* at 54-56.

³⁰ *Id.* at 155-169; Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Victoria Isabel A. Paredes and Walter S. Ong, concurring.

³¹ Rollo, p. 56.

³² *Id.* at 58-60.

bribery, therefore, deprived him of his constitutional rights to be informed of the nature and cause of accusation against him and to due process.³³ At any rate, robbery and direct bribery are two (2) distinct crimes; one does not necessarily include, nor is necessarily included in the other.³⁴

In response, the OSG posits, this time, that Remolano was correctly convicted of direct bribery. He cannot solely rely on the designation of the offense charged in the Information, much less, completely disregard the factual allegations therein.³⁵ His right to be informed of the charge against him and his right to due process had not been violated since the allegations in the Information itself expressly bore the elements of direct bribery.³⁶ He was able to intelligently answer and defend himself against the charge borne in the Information during the trial below.³⁷

Issue

Did the modification of the verdict of conviction against Remolano from robbery to direct bribery have the effect of depriving him of his right to be informed of the nature and cause of accusation against him, as well as his right to due process?

Ruling

We rule in the affirmative.

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.³⁸ But as the renowned proverb goes, "*with great power there must also come great responsibility.*"³⁹ Hence, in the course of reviewing a verdict of conviction in criminal cases, the appellate court must at all times ensure that the fundamental rights of the accused remain protected, and never jeopardized.

³³ *Id.* at 16-17.

³⁴ *Id.* at 36.

³⁵ *Id.* at 153.

³⁶ *Id.* at 152-153.

³⁷ *Id.* at 130.

³⁸ *Ramos v. People*, 803 Phil. 775-783.

³⁹ As popularized by the Spider-Man comic books written by the great Stan Lee.

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One of these fundamental rights is the constitutional right of the accused to be informed of the nature and cause of accusation against him or her, a right which comes to life during the arraignment.⁴⁰ Thus, when the allegations in the Information are read to the accused during the arraignment, the accused is consequently informed of the crime charged, its essential elements, and the manner of the commission thereof imputed on him or her. The ultimate purpose is to enable the accused to prepare for his or her defense based on the recitals of the Information read to him. It goes without saying, therefore, that the prosecution must also establish its case on the basis of the same Information read to the accused,⁴¹ who as such, may only be convicted of the crime charged and proved.

Here, Remolano was charged with and arraigned for the crime of robbery. After due proceedings, the trial court convicted him as charged. On appeal, the Court of Appeals found that the essential element of intimidation was lacking, hence, Remolano cannot be found guilty of robbery, but of direct bribery. It ratiocinated, thus:

xxx A reading of the information shows that it is sufficient for the charge of direct bribery under Article 210 of the Revised Penal Code, which has the following essential elements: (1) the offender is a public officer; (2) the offender accepts an offer or promise or receives a gift or present by himself or through another; (3) such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and 4) the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.

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As stated at the outset, the RTC erred in convicting accused-appellant for the crime of robbery-extortion because the indispensable element of intimidation is lacking. Nevertheless, the RTC's findings are still sufficient to support a conviction for direct bribery. It is clearly established from the records that accused-appellant is a public officer who in consideration of P200.00, which he has solicited and received, refrained from issuing a traffic violation ticket to SPO1 Cardenas, which act is clearly his duty as a Traffic Aide. In view

⁴⁰ Section 14, Article III of the Constitution provides:

1. No person shall be held to answer for a criminal offense without due process of law.
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; *People v. Sandiganbayan (Seventh Division)*, G.R. No. 240621, July 24, 2019.

⁴¹ *People v. Sandiganbayan (Seventh Division)*, G.R. No. 240621, July 24, 2019.

of the foregoing, it is with pristine clarity that accused-appellant's voluntary acceptance of the Php200.00 bribe in connection with his nonperformance of his duty to issue a traffic violation ticket makes him liable for the crime of direct bribery under the third paragraph of Article 210. (Emphases supplied)

As will be discussed below, the Court of Appeals gravely erred when it convicted Remolano of direct bribery.

The crime of robbery

Remolano was charged with robbery under Article 293, in relation to Article 294 (5) of the RPC, viz.:

ARTICLE 293. *Who are Guilty of Robbery.* — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

ARTICLE 294. *Robbery with Violence Against or Intimidation of Persons — Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

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5. The penalty of *prisión correccional* to *prisión mayor* in its medium period in other cases.

The correct designation of the offense is “simple robbery”.⁴² It is committed by means of violence against or **intimidation of persons**. The elements of simple robbery are: a) there is personal property belonging to another; b) that there is unlawful taking of that property; c) the taking is with intent to gain; and d) there is violence against or intimidation of persons or force upon things.⁴³

We focus on the fourth element.

Intimidation is defined as unlawful coercion; extortion; duress; putting in fear.⁴⁴ In robbery with intimidation of persons, the intimidation consists in causing or creating fear in the mind of a person or in bringing in a sense of mental distress in view of a risk or evil that may be impending, real or

⁴² *Sazon v. Sandiganbayan*, 598 Phil. 35, 45 (2009).

⁴³ *People v. Avancena y Cabanela*, 810 Phil. 672, 690 (2017).

⁴⁴ See *Sazon v. Sandiganbayan*, 598 Phil. 35, 47 (2009).

imagined. Such fear of injury to person or property must continue to operate in the mind of the victim at the time of the delivery of the money.⁴⁵

Here, it was not shown that Remolano caused fear in the mind of SPO1 Cardines which could have hindered the free exercise of the latter's will and compelled him to hand Php200.00 to Remolano. For perspective, an entrapment operation here was carefully planned and coordinated. Police officer SPO1 Cardines, as an undercover, posed as a private motorist in order to entrap Remolano and his co-traffic enforcers. SPO1 Cardines thus deliberately committed a traffic violation by illegally swerving his vehicle from EDSA towards New York Street. When Remolano flagged him down, SPO1 Cardines told Remolano to pardon him as he was just in a hurry to which Remolano replied, "*Sige pagbibigyan kita pero bahala ka na sa amin ng kabuddy ko. Kahit magkano lang.*"⁴⁶ It was at this point when SPO1 Cardines handed Remolano the two (2) Php100.00 marked money. As it was, Remolano could not have intimidated, *nay*, threatened SPO1 Cardines to give him money in exchange for not issuing the latter a traffic violation ticket. In truth, SPO1 Cardines intended from the very beginning to hand the two (2) Php100.00 marked money to Remolano so he could effect Remolano's arrest. This, after all was the objective of the whole entrapment operation. Thus, the Court agrees with the finding of the Court of Appeals that under the circumstances, the element of intimidation was clearly wanting.⁴⁷

As it was, the Court of Appeals did not find Remolano guilty of robbery but of another crime, that is, direct bribery under Article 210 of the RPC.⁴⁸ According to the appellate court, this crime anyway fitted into the allegations of the Information and the evidence on record likewise support a verdict of conviction therefor.

We cannot agree.

The crime of direct bribery

Indeed, the real nature of the criminal charge is determined not by the caption of the Information or the citation of the law allegedly violated, which are mere conclusions of law, but by the actual recital of facts in that Information.⁴⁹ Thus, to discharge its burden of informing the accused of the charge, the State must specify in the Information the details of the crime and any aggravating or qualifying circumstances surrounding its commission. It emanates from the presumption of innocence in favor of the accused who is

⁴⁵ *Sazon v. Sandiganbayan*, 598 Phil. 35, 47 (2009).

⁴⁶ Rollo, p. 66.

⁴⁷ *Id.* at 54.

⁴⁸ *Id.* at 56.

⁴⁹ *De La Cuesta v. Sandiganbayan*, G.R. Nos. 164068-69, 166305-06 & 166487-88, 721 Phil. 355, 380 (2013).

always deemed to have no independent knowledge of the details of the crime he or she is being charged with.⁵⁰ This has been the Court's edict for the longest time since *United States v. Lim San*.⁵¹

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 to say what the crime is or what it is named. x x x. (Emphases supplied)

Here, the Information⁵² was filed against Remolano on September 24, 2013. Both the caption and the prefatory clause therein unequivocally state that Remolano is charged with "**ROBBERY (Extortion)**".⁵³ The Information alleges:

That on or about the 20th day of September 2013, in Quezon City, Philippines, the above-named accused, both **taking advantage of their official position as Metro Manila Aide III**, assigned along E. delos Santos Avenue corner New York Street, Cubao, Quezon City, conspiring together, confederating with and mutually helping each another (sic), with intent to gain and **by means of intimidation**, did then and there, willfully, unlawfully and feloniously **rob/extort** SPO1 Nomer V. Cardines **in the following manner, to wit: while complainant was driving a Toyota Avanza along aforesaid location accused flagged down complainant for swerving violation and confiscated his driver's license and by means of intimidation extorted/demanded from the complainant the amount of P200.00,**

⁵⁰ See the *Dissenting Opinion of Justice Alfredo Benjamin S. Caguioa in De Lima v. Guerrero*, 819 Phil. 616, 1161 (2017).

⁵¹ 17 Phil. 273 (1910) Per J. Moreland, First Division; as cited by Justice Alfredo Benjamin S. Caguioa in his *Dissenting Opinion in De Lima v. Guerrero*, 819 Phil. 616, 1160-1161 (2017).

⁵² *Rollo*, p. 62.

⁵³ *Id.*

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in exchange for non issuance of traffic violation receipt, thus creating fear in the mind of the complainant who was compelled to give to the accused the amount of P200.00, in marked money, to the damage and prejudice of the said offended party in the amount aforementioned. (Emphasis supplied)

The next question: do these allegations also charge the crime of direct bribery as defined and penalized under Article 210 of the RPC, viz:

Art. 210. *Direct Bribery*. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine of [not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

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If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period to *prision mayor* in its minimum period and a fine of not less than three times the value of such gift.

Based on this provision, direct bribery requires the following elements: (1) the offender is a public officer; (2) the offender accepts an offer or a promise or receives a gift or present by himself or through another; (3) such offer or promise is accepted, or the gift or present is received by the public officer with a view to committing some crime, or in consideration of the execution of an unjust act which does not constitute a crime, or to refrain from doing something which is his or her official duty to do; and (4) the crime or act relates to the exercise of his or her functions as a public officer.⁵⁴

What is essential in bribery is that a “gift, present or promise has been given in consideration of the public officer’s commission of some crime, or any act not constituting a crime, or to refrain from doing something which it is his or her official duty to do.”⁵⁵ *People v. Francisco*⁵⁶ enunciated that the element in direct bribery that “the offender accepts an offer or a promise or receives a gift or present” proceeds from **a mutual and voluntary transaction**. Thus, for the offense to constitute bribery, the offended party

⁵⁴ *Catubao v. Sandiganbayan*, G.R. No. 227371, October 2, 2019.

⁵⁵ See *De Lima v. Guerrero*, 819 Phil. 616, 1069 (2017).

⁵⁶ G.R. No. 21390, 45 Phil. 820, 821 (1924).

should have had voluntarily offered to pay the accused.⁵⁷ This was reiterated in *Tad-y v. People*,⁵⁸ where the Court elucidated that the agreement between the public officer and the bribe-giver may be express or implied, as long as it has been shown that “*there has been a meeting of the minds to exchange official duties for money.*”⁵⁹

Now let us compare the facts alleged in the Information and the elements of **direct bribery**:

Factual Allegations in the Information	The Elements of Direct Bribery
official position as Metro Manila Aide III	(1) the offender is a public officer;
<ul style="list-style-type: none"> • by means of intimidation • rob/extort • creating fear in the mind of the complainant • who was compelled to give to the accused the amount of P200.00 	(2) the offender accepts an offer or a promise or receives a gift or present by himself or through another;
in exchange for non-issuance of traffic violation receipt	<p>(3) such offer or promise is accepted, or the gift or present is received by the public officer with a view to committing some crime, or in consideration of the execution of an unjust act which does not constitute a crime, or to refrain from doing something which is his or her official duty to do; and</p> <p>(4) the crime or act relates to the exercise of his or her functions as a public officer.</p>

Did the Information here sufficiently allege the second element “*the offender accepts an offer or a promise or receives a gift or present*”?

It did not.

There was no allegation in the Information that SPO1 Cardines voluntarily offered or gave the Php200.00 to Remolano as a consideration for the latter not to issue a traffic violation ticket against him. Neither was it averred that there was an agreement between the parties to exchange Remolano’s performance of his official duties for payment of money. In truth, the Information simply alleged that Remolano “*by means of intimidation extorted/demanded from the complainant the amount of P200.00, in exchange for non issuance of traffic violation receipt, thus creating fear in the mind of*

⁵⁷ *People v. Francisco*, March 26, 1924, 45 Phil. 820, 821 (1924).

⁵⁸ G.R. No. 148862, 504 Phil. 51, 68 (2005).

⁵⁹ See *Tad-y y Babor v. People*, 504 Phil. 51, 68 (2005).

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*the complainant who was compelled to give to the accused the amount of P200.00 xxx.*⁶⁰

Clearly, even if the Court were to disregard the caption and the prefatory clause of the Information, its allegations do not at all make out a case for direct bribery. To be sure, “intimidation,” “fear,” and “compelled to give” are anathema to the crime of direct bribery.

***Direct Bribery is Not Included
Nor Does it Necessarily
Include Robbery***

Another. Section 4, Rule 120 of the Rules on Criminal Procedure enunciates,⁶¹ thus:

Sec. 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, 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 that which is charged, or of the offense charged included in that which is proved.

Section 5 of the same Rule ordains when an offense includes or is included in another:

Sec. 5. When an offense includes or is included in another. — An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

In *U.S. v. Flores*,⁶² the Court had the occasion to distinguish bribery and robbery. There, an Information for bribery was filed against Flores alleging that he was a municipal police who obtained money from a Chinaman as consideration for not arresting the latter for violation of Act No. 1761 (The New Opium Law). The facts proven, though, showed that the Chinaman was not committing any crime when Flores threatened him and that the Chinaman did not voluntarily give money to Flores. On the contrary, Flores obtained the money from him through force and intimidation. The crime committed, therefore, was robbery not direct bribery. The Court, nonetheless, did not convict Flores of robbery. It ruled that an Information alleging that the injured

⁶⁰ Rollo, p. 62.

⁶¹ See *Maghilum v. People*, G.R. No. 227564 (Notice), July 3, 2017.

⁶² *U.S. v. Flores*, G.R. No. 6427, 19 Phil. 178, 184 (1911).

party parted with his property voluntarily bears allegations inconsistent with those necessary to charge robbery,⁶³ thus:

The information in this case charges bribery. It expressly negatives the essential elements of robbery, force or intimidation, or both, by asserting that it was the duty of the accused to make the arrest, indicating necessarily by such assertion that the Chinaman had committed a crime and that he ought to have been apprehended and presented. In such case the Chinaman parted with his money voluntarily in order to escape arrest, conviction and punishment. Bribery and robbery have little in common as regards their essential elements. In the former the transaction is mutual and-voluntary. In the latter case the transaction is neither mutual nor voluntary but is consummated by the use of force or intimidation.

The information in this case does not set forth facts constituting robbery, and the accused [cannot] be here convicted of that crime. xxx (Emphasis supplied)

Then, in the 1924 case of *People v. Francisco*,⁶⁴ the Court reiterated that the principal distinction between bribery and robbery “*is that in bribery the transaction is mutual and voluntary; in the case of robbery the transaction is neither voluntary nor mutual, but is consummated by the use of force or intimidation.*” Thus, if the offended party had voluntarily offered to pay the accused, the transaction constitutes bribery. But if the accused demanded payment accompanied with threats, he is guilty of robbery.⁶⁵

Verily, direct bribery is not necessarily included, nor includes, the crime of robbery, and *vice versa*. The element of violence, or force or intimidation in robbery under Article 293, in relation to Article 294 (5) of the RPC cancels out, and in fact, clashes with the element of voluntariness or mutual agreement in direct bribery under Article 210 of the RPC.

Here, the crime of direct bribery is not covered by Remolano’s indictment for the crime of robbery. Remolano, therefore, cannot be convicted of direct bribery. The variance between the allegations contained in the Information and the conviction resulting from trial will justify a conviction for either the offense charged or the offense proved **only** if either is included in the other.⁶⁶ As amply shown, this is not the case here. To convict Remolano for direct bribery, as the Court of Appeals did, violates the proscription found in the Constitution and our own Rules on Criminal Procedure.

⁶³ *Id.*

⁶⁴ G.R. No. 21390, 45 Phil. 820, 821 (1924).

⁶⁵ *Id.*

⁶⁶ *Malabanan v. Sandiganbayan*, 815 Phil. 183, 194 (2017).

By constitutional mandate, a person who stands charged with a criminal offense has the right to be informed of the nature and cause of the accusation against him. As a necessary adjunct of the right to be presumed innocent and to due process, the right to be informed was enshrined to aid the accused in the intelligent and effective preparation of his defense.⁶⁷ So must it be.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated December 12, 2018 and Resolution dated July 30, 2019 of the Court of Appeals in CA-G.R. CR No. 40185 are **REVERSED** and **SET ASIDE**. Petitioner Silverio Remolano y Caluscusan is **ACQUITTED** in Criminal Case No. R-QZN-13-03453, without prejudice to the filing of the appropriate charge against him after the conduct of preliminary investigation.

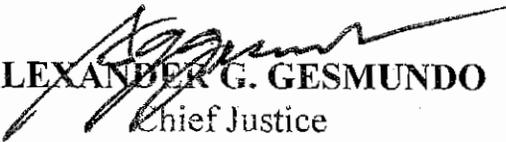
Let entry of judgment be issued immediately.

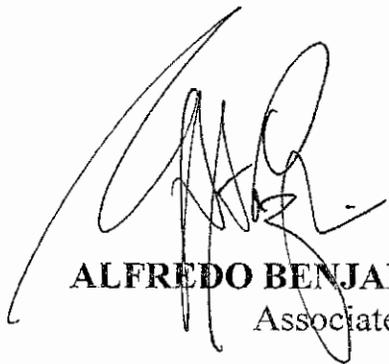
SO ORDERED.

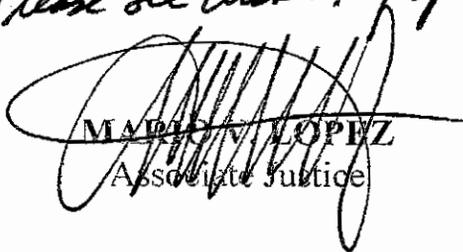

AMY C. LAZARO-JAVIER
Associate Justice

⁶⁷ See the *Dissenting Opinion of Justice Alfredo Benjamin S. Caguioa in De Lima v. Guerrero*, 819 Phil. 616, 1161 (2017).

WE CONCUR:


ALEXANDER G. GESMUNDO
 Chief Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

Please see dissenting opinion

MARIANO LOPEZ
 Associate Justice


JHOSEP V. LOPEZ
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
 Chief Justice

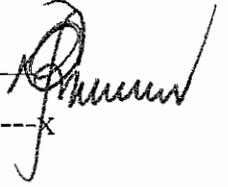


FIRST DIVISION

G.R. No. 248682 – SILVERIO REMOLANO y CALUSCUSAN,
Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

OCT 06 2021



X-----

DISSENTING OPINION

LOPEZ, J.:

*An indictment is not objectionable as ambiguous or obscure, if it be clear enough according to reasonable intendment or construction, though not worded with absolute precision. "And if there is no necessary ambiguity in the construction of an indictment, xxx. "we are not bound to create one, by reading the indictment in the only way which will make it unintelligible."*¹

The *ponencia* reversed the conviction of the accused for Direct Bribery on the ground that the constitutive elements of the crime were not sufficiently alleged in the information. The *ponencia* explained that the indictment failed to state whether the complainant made a "voluntary offer" to the accused or that the parties reached an "agreement". Moreover, the information did not recite that the accused "accepts an offer or a promise or receives a gift or present." Lastly, the *ponencia* pointed out that the indictment alleged "intimidation", "fear", and "compelled to give" which are inconsistent with direct bribery, thus:

Did the Information here sufficiently allege the second element "the offender accepts an offer or a promise or receives a gift or present"?

It did not.

There was no allegation in the Information that SPO1 Cardines voluntarily offered or gave the [P]200.00 to Remolano as a consideration for the latter not to issue a traffic violation ticket against him. Neither was it averred that there was an agreement between the parties to exchange Remolano's performance of his official duties for payment of money. In truth, the Information simply alleged that Remolano "by means of intimidation extorted/demanded from the complainant the amount of [P]200.00, in exchange for non[-] issuance of traffic violation receipt, thus

¹ *The Principles of Criminal Pleading* by Franklin Fiske Heard. Boston, Little, Brown and Company, (1879), pp. 105-106; citing *Regina v. Stokes*, 1 Denison C. C. 307; 2 C. & K. 536. *Commonwealth v. Butler*, 1 Allen, 4. *Per Lord Denman in O'Connell v. The Queen*, 11 Clark & Finnelly, 380, 381.; *Wright v. The King*, 1 Ad. & El. 448; and *Regina v. King*, 7 Q. B. 795.



creating fear in the mind of the complainant who was compelled to give to the accused the amount of [P]200.00 xxx.”

Clearly, even if the Court were to disregard the caption and the prefatory clause of the Information, its allegation[s] do not at all make out a case for direct bribery. To be sure, “intimidation”, “fear”, and “compelled to give” are anathema to the crime of direct bribery.² (Emphases supplied.)

I dissent.

The crime of Direct Bribery under Article 210 of the Revised Penal Code requires the confluence of the following elements: (1) that the accused is a public officer; (2) that he received directly or through another some gift or present, offer or promise; (3) that such gift, present or promise has been given in consideration of his commission of some crime, or any act not constituting a crime, or to refrain from doing something which is his official duty to do; and (4) that the crime or act relates to the exercise of his functions as a public officer.³ Here, the information against the accused recited facts sufficient to constitute the crime of Direct Bribery, to wit:

That on or about the 20th day of September 2013, in Quezon City, Philippines, the above-named accused, both **taking advantage of their official position** as Metro Manila Aide III, assigned along E. delos Santos Avenue corner New York Street, Cubao, Quezon City, conspiring together, confederating with and mutually helping each another, with intent to gain and by means of intimidation, did then and there, willfully, unlawfully and feloniously rob/extort SPO1 Nomer V. Cardines in the following manner, to wit: while complainant was driving a Toyota Avanza along aforesaid location accused flagged down complainant for swerving violation and confiscated his driver's license and by means of intimidation **extorted/demanded from the complainant the amount of [P]200.00, in exchange for non[-]issuance of traffic violation receipt**, thus creating fear in the mind of the complainant who was compelled to **give to the accused the amount of [P]200.00**, in marked money, to the damage and prejudice of the said offended party in the amount aforementioned.

Contrary to law. (Emphases supplied.)

In several cases, the Court held the accused responsible for Direct Bribery even if it was not alleged that the complainant made a “**voluntary offer**” to the accused or that the parties reached an “**agreement**”. This is clear from the Decisions in *Soriano, Jr. v. Sandiganbayan*,⁴ *Marifosque v. People*,⁵ *Acejas III v. People*,⁶ *Balderama v. People*,⁷ and *Mangulabnan v. People*.⁸

² G.R. No. 248682, *Remolano v. People*.

³ *Merencillo v. People*, 549 Phil. 544, 558-559 (2007); *Tad-y v. People*, 504 Phil. 51, 67-68 (2005).

⁴ 216 Phil. 177, 180-181 (1984).

⁵ 479 Phil. 219, 227-228 (2004).

⁶ 526 Phil. 262, 278-279 (2006).

⁷ 566 Phil. 412, 419 – 420 (2008).

⁸ G.R. No. 236848, June 8, 2020.

J

In *Soriano, Jr.*, the Court ruled that the accused cannot claim deprivation of the right to be informed of the nature and cause of the accusation against him given that the following allegations in the information make out a case of Bribery,⁹ viz.:

That on or about the 21st day of March 1983, at Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then and still is an Assistant City Fiscal of the Quezon City Fiscal's Office, detailed as the Investigating Fiscal in the case of [*MARIANNE Z. LACAMBRA versus THOMAS N. TAN*], docketed as I.S. No. 82-2964, for Qualified Theft, **taking advantage of his official position** and with grave abuse of authority, did then and there wil[ly]fully, unlawfully and feloniously **demand and request** from Thomas N. Tan the amount of FOUR THOUSAND PESOS (₱4,000.00) Philippine Currency, and actually received from said Thomas N. Tan the amount of TWO THOUSAND PESOS (₱2,000.00) Philippine Currency, **in consideration for a favorable resolution by dismissing the abovementioned case**, wherein said accused has to intervene in his official capacity as such Investigating Fiscal.

CONTRARY TO LAW.¹⁰(Emphases supplied.)

In *Marifosque*, the Court likewise convicted the accused for Direct Bribery based on the following allegations,¹¹ to wit:

That on or about October 13, 1990 in Legazpi City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused a public officer being a qualified member of the Police Force of Legazpi City, now under the Philippine National Police, **taking advantage of his official/public position** and committing the crime herein charged in relation to his office, did then and there willfully, unlawfully, and feloniously **demand, obtain and/or receive directly** from Yu Su Pong and Hian Hian Sy the total amount of FIVE THOUSAND EIGHT HUNDRED PESOS (₱5,800.00) Philippine Currency **in consideration for his recovery from alleged robbers**, eighteen Shellane gas[-]filled cylinder/s tanks, to the damage and prejudice of the aforementioned victims in the aforesaid amount.

CONTRARY TO LAW. (Emphases supplied.)

⁹ "The petitioner also claims that he cannot be convicted of [B]ribery under the Revised Penal Code because to do so would be violative of as constitutional right to be informed of the nature and cause of the accusation against him. Wrong. A reading of the information which has been reproduced herein clearly makes out a case of [B]ribery so that the petitioner cannot claim deprivation of the right to be informed." *Supra* note 3 at 181.

¹⁰ *Rollo*, p. 13.

¹¹ "There is no question that petitioner was a public officer within the contemplation of Article 203 of the Revised Penal Code, xxx. At the time of the incident, petitioner was a police sergeant assigned to the Legazpi City Police Station. He directly received the bribe money from Yu So Pong and his daughter Hian Hian Yu Sy in exchange for the recovery of the stolen cylinder tanks, which was an act not constituting a crime within the meaning of Article 210 of the Revised Penal Code. The act of receiving money was connected with his duty as a police officer."

J

In *Acejas III*, the Court held the accused liable for Direct Bribery under the following information,¹² thus:

That on or about January 12, 1994, or sometime prior thereto in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused VLADIMIR S. HERNANDEZ and VICTOR CONANAN, being then employed both as Immigration officers of the Bureau of Immigration and Deportation, Intramuros, Manila, hence are public officers, **taking advantage of their official positions** and committing the offense in relation to office, conspiring and confederating with Senior Police Officer 3 EXPEDITO S. PERLAS of the Western Police District Command, Manila, together with co-accused Atty. FRANCISCO SB. ACEJAS III, of the LUCENARIO, MARGATE, MOGPO, TIONGCO & ACEJAS LAW OFFICES, and co-accused JOSE P. VICTORIANO, a private individual, did then and there, willfully, unlawfully and feloniously **demand, ask, and/or extort** One Million (P1,000,000.00) PESOS from the spouses BETHEL GRACE PELINGON and Japanese TAKAO AOYAGI and FILOMENO PELINGON, JR., **in exchange for the return of the passport of said Japanese Takao Aoyagi confiscated** earlier by co-accused Vladimir S. Hernandez and out of said demand, the complainants Bethel Grace Pelingon, Takao Aoyagi and Filomeno Pelingon, Jr. produced, **gave and delivered** the sum of Twenty[-] Five Thousand ([P]25,000.00) Pesos in marked money to the above-named accused at a designated place at the Coffee Shop, Ground Floor, Diamond Hotel, Ermita, Manila, causing damage to the said complainants in the aforesaid amount of [P]25,000.00, and to the prejudice of government service. (Emphases supplied.)

In *Balderama*, the Court affirmed the Sandiganbayan's findings that the prosecution sufficiently established the elements of Direct Bribery based on the following allegations in the information,¹³ viz.:

That on or about February 15, 1992 or for sometime [sic] prior thereto in Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused all public officers, being all employees of the Land [T]ransportation Office assigned with the Field Enforcement Division, Law Enforcement Services, committing the offense in relation to their office and **taking advantage of their position**, did then and there willfully, unlawfully and feloniously **solicit, demand and receive** from Juan Armamento, a taxicab operator, the amount of [P]300.00 **in consideration for the said accused refraining from**

¹² "In sum, we find that the prosecution proved the elements of direct bribery. First, there is no question that the offense was committed by a public officer. BID Agent Hernandez extorted money from the Aoyagi spouses for the return of the passport and the promise of assistance in procuring a visa. Petitioner Acejas was his co-conspirator. Second, the offenders received the money as payoff, which Acejas received for the group and then gave to Perlas. Third, the money was given in consideration of the return of the passport, an act that did not constitute a crime. Fourth, both the confiscation and the return of the passport were made in the exercise of official duties."

¹³ "The Sandiganbayan found the above elements of direct bribery present. It was duly established that the accused demanded and received P300.00 as 'protection money' from respondent on several dates. As against the prosecution's evidence, all that the accused could proffer was alibi and denial, the weakest of defenses."

performing their official duty of conducting inspections on the taxicab units being operated by said Juan Armamento to determine any possible violation of LTO rules and regulations, thereby causing Juan Armamento and the public service damage and prejudice.

CONTRARY TO LAW. (Emphases supplied.)

Lastly, in *Mangulabnan*, the Court convicted the accused with the crime of Direct Bribery under the following information,¹⁴ to wit:

That on or about March 1998 or for sometime [*sic*] subsequent thereto, in the City of San Fernando, Pampanga, Philippines, accused RODRIGO R. FLORES, Presiding Judge of the Municipal Trial Court in Cities (MTCC), Branch 2, City of San Fernando, Pampanga, with Salary Grade 27, thus, within the jurisdiction of this Honorable Court, together with CANDELARIA MANGULABNAN, Court Interpreter and specially assigned as Chairman of the Revision Committee of the same MTCC of San Fernando City, Pampanga, while in the performance of their official functions, committing the offense in relation to their office, **taking advantage of their respective official positions**, and with grave abuse of authority, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously **demand and request** the amount of [P]20,000.00 from Dario Manalastas, a party to an election protest case filed by Alberto Guinto against Dario Manalastas where accused Rodrigo R. Flores and Candelaria Mangulabnan have to intervene in their official capacities since such case is pending before the Court where accused Rodrigo R. Flores is the Presiding Judge and Candelaria Mangulabnan is the Court Interpreter and Chairman of the Revision Committee, which amount accused Candelaria Mangulabnan actually received for accused Rodrigo R. Flores **in consideration of a decision in the case favorable to Dario Manalastas which is unjust**, since the decision should be based on the merits of the case and not the monetary consideration, the damage and prejudice of Dario Manalastas and public service.

CONTRARY TO LAW. (Emphases supplied.)

In this case, the recital of facts in the charge of Direct Bribery against the accused is similar with those alleged in the information in *Soriano, Jr., Marifosque v. People, Acejas III, Balderama, and Mangulabnan*. To be sure, they shared the common allegations of **“taking advantage of official position”, “demand and extort”, “give and delivered”, and “in consideration or in exchange”** of the performance of a crime or unjust act or refraining from

¹⁴ “[T]he elements constituting Direct Bribery have been sufficiently established considering that: (a) Mangulabnan and Judge Flores were indisputably public officers, xxx; (b) she acted as Judge Flores’ middleman in committing the crime, specifically by receiving Twenty Thousand Pesos (P20,000.00) from Manalastas and delivering it to Judge Flores; (c) the amount was given in exchange for the rendition of a judgment favorable to Manalastas, as may be inferred from Mangulabnan’s own admission that Judge Flores ordered the release of the decision only after receiving the Twenty Thousand Pesos (P20,000.00); and (d) the rendition of judgment relates to the functions of Judge Flores.

d

doing something which is the accused's official duty to do. The above-mentioned cases sustained a judgment of conviction even without any allegation that the complainant made a "*voluntary offer*" to the accused or that the parties reached an "*agreement*". Similarly, the element of Direct Bribery which pertains to the acceptance of gift, present, offer or promise is implicit from the averments in the information that the accused "*demanded*" and that the complainant "*give*" the amount of [P]200.00 "*in exchange for non[-]issuance of a traffic violation receipt.*" It is settled that the information need not use the exact language of the statute in alleging the acts or omissions complained of as constituting the offense. The test is whether it enables a person of common understanding to know the charge against him, and the Court to render judgment properly.¹⁵

Verily, the information against the accused charges all the essential elements of Direct Bribery. The *ponencia* cannot capitalize on the alleged intimidation, fear, and compulsion which may be regarded as surplusage and not as fatal variance. Indeed, convictions generally have been sustained as long as the proof upon which they are based corresponds to an offense that was clearly set out in the information. A part of the indictment unnecessary to and independent of the allegations of the offense proved may normally be treated as a useless averment that may be ignored.¹⁶ Here, the prosecution proved all the elements of Direct Bribery as sufficiently alleged in the information. As the Court of Appeals aptly observed:

Be that as it may, well-settled is the rule that the real nature of the criminal charge is not determined from the caption or preamble of the information or from the mere reference to a particular provision of law alleged to have been violated because they are conclusions of law, but on the recital of facts alleged in the body of the information. A reading of the information shows that it is sufficient for the charge of direct bribery under Article 210 of the Revised Penal Code, xxx.

xxxx

It is clearly established from the records that accused-appellant is a public officer who in consideration of [P]200.00, which he has solicited and received, refrained from issuing a traffic violation ticket to SPO1 Cardenas, which act is clearly his duty as a Traffic Aide. In view of the foregoing, it is with pristine clarity that [the] accused-appellant's voluntary acceptance of the [P]200.00 bribe in connection with his [*sic*] nonperformance of his duty to issue a traffic violation ticket makes him liable for the crime of direct bribery under the third paragraph of Article 210.

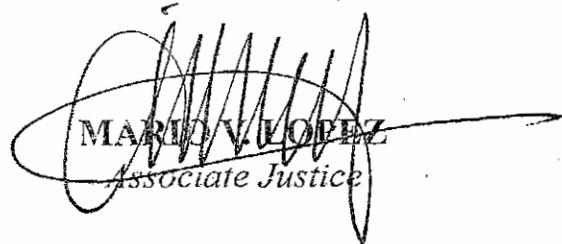
In sum, it can hardly be said that the accused was deprived of his constitutional right to be informed of the nature and cause of the accusation against him. Quite the contrary, the accused was fully apprised of the crime of Direct Bribery to suitably prepare his defense. To reiterate, there is no rule

¹⁵ *People v. Puig*, 585 Phil. 555, 562 (2008); citing *People v. Lab-co*, 424 Phil. 482, 497 (2002).

¹⁶ *United States v. Miller*, 471 U.S. 130 (1985).

that we are perforce to read the expressions of an indictment so as to make nonsense of it.¹⁷

FOR THESE REASONS, I vote to DENY the petition.



MARIO V. LOPEZ
Associate Justice

¹⁷ *The Principles of Criminal Pleading*, supra; citing *Regina v. King*, 7 Q. B. 795.

