

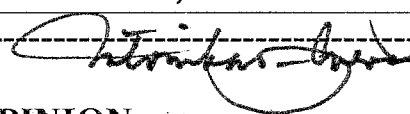
EN BANC

G.R. No. 254878 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee v. BBB254878, Accused-appellant.*

Promulgated:

October 22, 2024

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CONCURRING OPINION

CAGUIOA, J.:

I concur with the *ponencia* in convicting accused-appellant BBB254878 (accused-appellant) for the crime of Qualified Rape of a Minor. The twin circumstances of minority and relationship were both alleged in the Information (subject Information) and proven during trial. There is no violation of the right to be informed of the nature and cause of accusation against accused-appellant in this case. The use of the word “niece” in the subject Information is sufficient to inform accused-appellant that he is being charged with Rape qualified by relationship.

*Accused’s right to be informed
of nature and cause of
accusation*

The constitutional right to be informed, in writing, of the nature and cause of the accusation against an accused is an essential component of the right to due process and the presumption of innocence.¹ In *U.S. v. Karelsen*² the Court explained that a written accusation is necessary: (1) to furnish the accused with such a description of the charge against him or her as will enable him or her to make his or her defense; (2) to avail himself or herself of his or her conviction or acquittal for protection against a further prosecution for the same cause; and (3) 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.³

* In line with Amended Administrative Circular No. 83-2015 dated September 5, 2017, titled “Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances,” the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

¹ *People v. Solar*, 858 Phil. 884 (2019) [Per J. Caguioa, *En Banc*].

² 3 Phil 223 (1904) [J. Johnson, *En Banc*].

³ *Id.* at 226. Citations omitted.



To implement this constitutional right, Rule 110, Section 8 of the Revised Rules of Criminal Procedure⁴ requires that the Information 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. In turn, Section 9 of the same Rule states that the acts or omissions complained of as constituting the offense as well as the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute. Thus, an Information that contains plain statements of the acts committed by the accused and circumstances constituting the crime satisfy the requirements of due process. It is not necessary that the Information adopt the legal jargon of the statute.⁵ It is sufficient that it is written in simple and concise language understandable to an ordinary person.⁶

In *People v. Solar*⁷ (*Solar*), the Court *En Banc* emphasized that “every element of which the offense is composed must be alleged in the Information. No Information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **The test in determining whether the Information validly charges an offense is whether the material facts alleged in the complaint or [I]nformation will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered.** [The reason for this requirement] is to enable the accused to suitably prepare his [or her] defense, as he [or she] is presumed to have no independent knowledge of the facts that constitute the offense.”⁸

Following these jurisprudential guidelines, the subject Information sufficiently alleges the essential elements of the offense charged, including the qualifying circumstances of minority and relationship.

The term “niece” satisfies the requirements of due process

Under paragraph 1, Article 266-A of the Revised Penal Code, Rape is committed by a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and

⁴ A.M. No. 00-5-03-SC – Re: Revised Rules of Criminal Procedure (Rule 110-127, Revised Rules of Court).

⁵ *Villarba v. Court of Appeals*, 874 Phil. 84, 105 (2020) [Per J. Leonen, Third Division].

⁶ Rule 110, Section 9, Revised Rules of Criminal Procedure; *See also Villarba v. Court of Appeals*, *id.*

⁷ *Supra* note 1.

⁸ *People v. Solar*, *id.* at 927. Emphasis supplied. Citations omitted.



- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Paragraph 2, Article 266-B provides that the penalty for Rape committed under the afore-cited paragraph is *reclusion perpetua*. However, when the following circumstances are attendant, the penalty is increased to death, viz:

- 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
- 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;
- 3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;
- 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;
- 5) When the victim is a child below seven (7) years old;
- 6) When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;
- 7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;
- 8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;
- 9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and
- 10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Pertinent to the issue at hand is paragraph 2(1) of the above enumerated qualifying circumstances. The crux of the issue lies on the sufficiency of the allegation in the subject Information of the relationship between the victim, AAA and accused-appellant, as a component of the said qualifying circumstance.



For reference, the subject Information filed against accused-appellant reads:

The undersigned hereby accuses [accused-appellant] of [Brgy.] [REDACTED] City, Eastern Samar of the crime of Statutory Rape, committed as follows:

That sometimes (sic) [in] September, 2010 in the evening at [Brgy.] [REDACTED] City, Philippines and within the jurisdiction of this Honorable Court, the above-named [accused-appellant] with lewd design, did then and there [willfully], unlawfully and feloniously have carnal knowledge with [AAA], a minor being 8 years old only and his own [niece], against her will and consent, to the damage and prejudice of the herein victim.

CONTRARY TO LAW.⁹

As I see it, the twin circumstances of minority—a minor being 8 years old only—and relationship—“his own niece”—are clearly alleged in the subject Information. The simple allegation of “niece” in the Information is more than sufficient to apprise the accused of the special qualifying circumstance of relationship.

In *People v. Gonzales*¹⁰ (*Gonzales*), the Court *En Banc* recognized that a “niece” is defined as the female child of a brother or sister, or the daughter of one’s brother or sister, or of one’s brother-in-law or sister-in-law.¹¹ Applying this definition, the accused in *Gonzales* was found guilty of Rape qualified by minority and relationship and was sentenced to suffer the penalty of death.¹² The Court *En Banc* held that the all elements of the crime of rape, including the twin circumstances of minority and relationship, were sufficiently alleged in the Information and proven during trial.¹³

It is worth noting that the allegation of relationship in the Information in *Gonzales* is exactly the same with how the relationship between accused-appellant here and AAA was alleged in the subject Information. For reference, the information in *Gonzales* reads as follows:

That on or about the 15th day of August, 1997, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of force, violence and intimidation, did then and there [willfully], unlawfully and feloniously have incestuous carnal knowledge of his niece, the herein complainant, KATHERINE Gonzales y Makilan, 12 years of age, against the latter’s will.

ACTS CONTRARY TO LAW.¹⁴ (Emphasis supplied)

⁹ *Ponencia*, p. 2.

¹⁰ 393 Phil. 338 (2000) [*Per Curiam, En Banc*].

¹¹ *Id.* at 355.

¹² *Id.* at 357.

¹³ *Id.* at 352–355.

¹⁴ *Id.* at 349.

Thus, on the basis alone of the ruling in *Gonzales*, the *ponencia* correctly appreciates the twin circumstances of minority and relationship.

I recognize that there are also several cases¹⁵ where the Court's ruling is diametrically opposed to *Gonzales*. In these cases, both decided in Division and *En Banc*, the Court ruled that the allegation that the accused is the victim's niece is not specific enough to satisfy the special qualifying circumstance of relationship. The Information must further state that the accused is a relative by consanguinity or affinity within the third civil degree.¹⁶

These set of cases, however, overlooked the requirement under the Rules on Criminal Procedure that the allegations in the Information must be in their ordinary and concise language. To be sure, nothing is simpler and more concise than stating that the victim is the accused's own niece instead of replicating the phrase "a relative with the third degree of consanguinity or affinity" of the statute. Niece, as defined and understood by an ordinary person, refers to the daughter of one's brother or sister. Cambridge Dictionary defines niece as "a daughter of your brother or sister, or a daughter of your husband's or wife's brother or sister."¹⁷ Merriam-Webster Dictionary has the same definition, "a daughter of one's brother, sister, brother-in-law, or sister-in-law."¹⁸ Oxford English Dictionary likewise defines niece as "the daughter of your brother or sister; the daughter of your husband's or wife's brother or sister."¹⁹ Further, Black's Law Dictionary defines niece as "the daughter of one's brother or sister."²⁰ Clearly, by definition, niece falls within the special qualifying circumstance of relationship under Article 266-B of the Revised Penal Code.

In this case, by alleging that AAA is accused-appellant's own niece—which only means that AAA is the daughter of accused-appellant's brother or sister, brother-in-law or sister-in-law, and therefore falls within the third-degree relationship—the subject Information sufficiently apprised accused-appellant of the nature and cause of accusation against him, including the special qualifying circumstance of relationship, enabling him to aptly prepare his defense. As well, the trial court was informed of the nature and circumstances of the crime enough to determine the proper nomenclature of the crime and the penalty imposable therefor.

¹⁵ See *People v. Talan*, 591 Phil. 812 (2008) [Per J. Carpio, First Division]; *People v. Esperanza*, 453 Phil. 54 (2003) [Per C.J. Davide, *En Banc*]; and *People v. Ugang*, 431 Phil. 552 (2002) [Per C.J. Davide Jr., *En Banc*].

¹⁶ *Id.*

¹⁷ CAMBRIDGE DICTIONARY, "niece," available at <https://dictionary.cambridge.org/us/dictionary/english/niece> (last accessed on September 15, 2024).

¹⁸ MERRIAM-WEBSTER DICTIONARY, "niece," available at <https://www.merriam-webster.com/dictionary/niece> (last accessed on September 15, 2024).

¹⁹ OXFORD ENGLISH DICTIONARY, "niece," available at <https://www.oed.com/search/dictionary/?scope=Entries&q=niece> (last accessed on September 17, 2024).

²⁰ BLACK'S LAW DICTIONARY, "niece," available at <https://thelawdictionary.org/niece> (last accessed on September 17, 2024).



With the sufficiency of alleging “own niece” in the subject Information, it is no longer necessary that the subject Information refer to the degree of relationship between AAA and accused-appellant. To further add the phrase “a relative by consanguinity or affinity within the third civil degree,” would be redundant and downright legalese, and contrary to the mandate of the Revised Rules on Criminal Procedure that the Information use simple and concise language understandable by an ordinary person. Between the term “niece” and the phrase “relative by consanguinity or affinity within the third civil degree”, the former is obviously more understandable to an ordinary person.

Accordingly, the use of the word “own niece” in the subject Information against accused-appellant complies with the requirements of due process. There was no violation of accused-appellant’s constitutional right to be informed of the nature and cause of accusation against him. As the prosecution proved beyond reasonable doubt that AAA is accused-appellant’s niece, conviction for Qualified Rape of a Minor is proper.

During the deliberations of another case pending with the Court *En Banc* involving the same issue, it was raised that in Filipino culture the word niece can also be understood to refer to the daughter of any relative, thus purportedly highlighting the need to specify the degree of relationship to comply with the requirement to apprise the accused of the special qualifying circumstance.

I disagree.

That the word niece is sometimes regarded as a generic term based on customs or practices does not change its true meaning. Still, niece, by definition, refers to the daughter of a sister or brother, sister-in-law or brother-in-law. Whether the Information simply used the term “niece” or the phrase “a relative by consanguinity or affinity within the third civil degree,” the prosecution still bears the burden of proving, beyond reasonable doubt, that the relationship between the victim and the accused falls within the third civil degree of affinity or consanguinity before the special qualifying circumstance may be appreciated.

In short, if an Information uses the term “niece,” the accused is already informed of the special qualifying circumstance—and he can easily debunk that circumstance by testifying as to the real relationship, if any, he has with the victim. In other words, this is really a non-issue.

The principles laid down in Solar may be applied to the present case



Even if the Court were to recognize that by reason of Filipino culture and tradition, the word niece becomes a generic term for a daughter of any relative, I believe that this should not automatically preclude the Court from appreciating the special qualifying circumstance of relationship. The Court's ruling in *Solar* is instructive.

Solar involves the crime of murder and the issue of whether a mere mention of treachery or other qualifying circumstances enumerated under the law is sufficient to inform the accused of the nature and cause of the accusation against him or her. While the Court recognized in *Solar* that Informations that simply identify the qualifying circumstance without specifically describing the acts done by the accused that made any or all of such circumstances present are insufficient; it ruled that the accused has the duty to timely enforce his or her right through either a motion to quash or motion of bill of particulars. Failing to avail of these remedies before the accused enters his or her plea and proceeds to trial, he or she is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. This is because by not availing of these remedies under the Rules, accused is deemed to have understood the acts imputed against him or her in the Information,²¹ including the attending circumstances. As such, if proven during trial, the qualifying circumstance may be appreciated against the accused.²²

In this regard, the Court *En Banc* laid down the following guidelines for the Bench and the Bar:

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

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

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

²¹ *People v. Solar*, *supra* note 1.

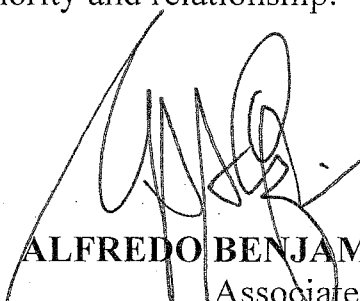
²² *Id.* at 931.



2. Prosecutors must ensure compliance with Section 8(a), Rule 112 of the Revised Rules on Criminal Procedure that mandates the attachment to the Information the resolution finding probable cause against the accused. Trial courts must ensure that the accused is furnished a copy of this Decision prior to the arraignment.
3. Cases which have attained finality prior to the promulgation of this Decision will remain final by virtue of the principle of conclusiveness of judgment.
4. For cases which are still pending before the trial court, the prosecution, when still able, may file a motion to amend the Information pursuant to the prevailing Rules in order to properly allege the aggravating or qualifying circumstance pursuant to this Decision.
5. For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his [or her] right to question the defective statement of the aggravating or qualifying circumstance in the Information, (*i.e.*, whether he [or she] previously filed either a motion to quash under Section 3(e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.²³ (Citation omitted)

In this case, if the Court were to regard niece as too generic or broad a term, then the afore-quoted guidelines in *Solar* applies squarely to this case. Following numbers 1 and 5 of the *Solar* guidelines, if accused-appellant failed to timely file a motion to quash the subject Information or a motion for bill of particulars, the special qualifying circumstance of minority and relationship, broadly alleged in the subject Information may still be appreciated against accused-appellant as it was proven during trial. In such a case, accused-appellant's conviction for Qualified Rape of a Minor would still be proper.

ACCORDINGLY, I vote to **CONVICT** accused-appellant for Qualified Rape of a Minor. The Decision correctly appreciates the special qualifying circumstance of minority and relationship.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

²³ *Id.* at 930-931.