Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 235991

- *versus* -

AURELIO LIRA *y* DULFO, ATANACIO BARNOBAL *y* LIRA AND RUDRIGO TEDRANES *y* MNU,
Accused,

AURELIO LIRA *y* DULFO,
Accused-Appellant.

Present:

PERALTA, *C.J.*, *Chairperson*,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:

MAR 18 2021

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D E C I S I O N

PERALTA, *C.J.*:

On appeal is the July 18, 2016 Decision[1] and June 30, 2017 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 01893. The assailed Decision affirmed with modification the July 3, 2014 Joint Decision[3] of the Regional Trial Court *(RTC)*, Branch 38, Gamay, Northern Samar, in Criminal Case Nos. 11-114 and 11-115, finding accused-appellant Aurelio Lira *y* Dulfo

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1 Penned by Associate Justice Geraldine C. Fiel-Macaraig, with the concurrence of Associate Justices Edgardo L. Delos Santos (now a Member of the Supreme Court) and Edward B. Contreras; *rollo*, pp. 4-27.

2 Penned by Associate Justice Geraldine C. Fiel-Macaraig, with the concurrence of Associate Justices Edgardo L. Delos Santos (now a Member of the Supreme Court) and Edward B. Contreras; CA *rollo*, pp. 202-203.

3 *Id.* at 41-58.

(*Lira*) guilty beyond reasonable doubt, but downgrading the crime from Murder to Homicide.

The Facts

Lira and his companions were indicted for two (2) counts of Murder as defined and penalized under Article 248 of the Revised Penal Code (*RPC*). The accusatory portion of the Informations filed on November 29, 2011 alleged:

Criminal Case No. 11-114

> That on or about the 31st day of December 2010 at about 2:20 o'clock in the afternoon, in Sitio Bagacay Pio del Pilar, Municipality of Lapinig, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with short firearms, conspiring, confederating and mutually helping one another, with deliberate intent to kill thru treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack and shoot BRGY. CAPTAIN CARLOS L. DOLFO @ ALONG, with the use of a short firearms which the accused had provided themselves for the purpose, thereby inflicting upon said BRGY. CAPTAIN CARLOS L. DOLFO @ ALONG, several gunshot wounds which directly caused the death of the said victim.
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> CONTRARY TO LAW.[4]

Criminal Case No. 11-115

> That on or about the 31st day of December 2010 at about 2:20 o'clock in the afternoon, in Sitio Bagacay, Barangay Pio del Pilar, Municipality of Lapinig, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with a short firearms, conspiring, confederating and mutually helping one another, with deliberate intent to kill thru treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack and shoot ELISA DOLFO y ORTIZ, with the use of short firearms which the accused had provided themselves for the purpose, thereby inflicting upon said ELISA DOLFO y ORTIZ, several gunshot wounds which directly caused the death of the said victim.
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> CONTRARY TO LAW.[5]

In his arraignment, Lira pleaded not guilty to the offense charged in the informations while Atanacio Barnobal (*Barnobal*) and Rudrigo Tedranes (*Tedranes*) remained at large and hence, was not brought to the RTC's jurisdiction. Thereafter, trial on merits ensued only with respect to Lira.

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4 *Rollo*, pp. 5-6.

5 *Id.* at 6.

The prosecution presented the testimonies of Antonio Dagsa (*Dagsa*) and Arnel Dulfo (*Arnel*). The prosecution also presented Dr. Anita Jao Cui (*Dr. Cui*), the doctor who conducted the medical examinations on Carlos Dulfo[6] (*Carlos*) and Elisa Dulfo[7] (*Elisa*) and Maria Gloria Dulfo Ballesta (*Ballesta*), the daughter of the victims.

Version of the Prosecution:[8]

On December 31, 2010, between 2:00 to 2:30 pm, at Barangay (*Brgy.*) Can Maria, Lapinig, Norther Samar, Dagsa saw two persons lying along the highway. Dagsa thought that the persons lying on the ground met an accident. Later on, the persons were identified as Carlos Dulfo, the Punong Barangay of Brgy. Pio del Pilar, Lapining, Northern, Samar, and his wife, Elisa. Dagsa's passengers, who happened to be the nieces of the victims wanted to check on the conditions of Carlos and Elisa. Nevertheless, Dagsa insisted not to touch the victims and instead inform first their relatives at Brgy. Pio del Pilar. When Dagsa reached Brgy. Pio del Pilar, he looked for his Ate Rhea, the daughter of the victims, to inform her of what he saw along the highway.

Meanwhile, at Gamay District Hospital, Dr. Cui, testified that the victims were already dead when brought to the hospital. The postmortem examinations conducted by her concluded that Elisa died from a single gunshot wound, while Carlos expired due to multiple gunshot wound.

On the other hand, Arnel testified among other things, that on December 31, 2010, at around 2:20 in the afternoon, while on his way to Brgy. Potong, Lapinig, Northern Samar to fetch his wife, he saw Barnobal stopped a motorcycle. The motorcycle was being driven by Carlos together with his wife Elisa. Arnel then saw Barnobal grabbed Carlos to the side of highway and shot him twice with a firearm. When Carlos fell on the ground, Lira subsequently shot Carlos twice with a short firearm at the left side of the body and at the left side of the neck. While Lira was shooting Carlos, Barnobal just stood by pointing his gun to Carlos.

Further, Arnel narrated that Tedranes, the other companion of Lira and Barnobal, shoot Elisa, who was standing beside the highway. Arnel added that Carlos was shot ahead of Elisa and estimated his distance to the crime scene at around 40 meters.

The prosecution claims that the possible reason why Carlos and Elisa were killed, Arnel attributed it to politics because Carlos defeated Lira in the *barangay* elections.

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6 Also spelled as Dolfo in some parts of the Records.
7 Also spelled as Dolfo in some parts of the Records.
8 CA *rollo*, pp. 42-43.

Version of the Defense:[9]

In categorically denying the allegations claimed that, he was in his house at Brgy. Pio del Pilar, Lapinig the whole day of December 31, 2010. According to him, he gathered the piglets since their *barangay* was then flooded. He took his lunch at around 2:20 pm, about the same time, Dagsa arrived at their house and informed him that Kapitan Dulfo and his wife, Elisa, met a motorcycle accident along the highway somewhere in Sitio Bagacay. Afterwards, people in their *barangay* converged at his front yard. Lira pointed out that Arnel did not say any word regarding on what he claims he saw. Defendant Lira added that if one would originate from Brgy. Can Maria, he would not pass by the place of incident.

Further claim of Lira that he did not leave his house the whole day of December 31, 2010 was validated by Isidro Baleña (*Baleña*). Baleña is the first cousin of Lira. Baleña added that he saw Lira cleaned his house at around 10:00 a.m., while at about 2:20 p.m., he went to the house of Lira, who was then taking his lunch, to ask for chewing betel nut, locally known as '*mama.*' It was during that time that Dagsa arrived with the information.

Afterwards, people crowded the yard of Lira. Arnel came later from Brgy. Can Maria who uttered nothing. Baleña also testified that if one would originate from Brgy. Can Maria, he would first pass by Brgy. Pio del Pilar before he reaches the place of the incident. Baleña denounced the testimony of Arnel as truthful.

For Baleña, Lira was implicated in these cases because Lira refused to testify for the family of Carlos and Elisa.

Another witness, Edgar Dulfo (*Edgar*), testified that Lira was in his house the whole day of December 31, 2010. Among other things, he testified that after around 15 minutes from the time Dagsa brought them the information, Arnel who was just walking arrived from Brgy. Can Maria.

On July 3, 2014, the RTC convicted Lira of the crimes charged. The dispositive portion of the Joint Decision states:

> WHEREFORE, in view of all the foregoing, the court finds accused AURELIO LIRA *y* DULFO GUILTY BEYOND REASONABLE DOUBT of the crimes of Murder in the above-entitled cases and hereby imposes upon him the following penalties, to wit:

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9 *Id.* at 43-44.

1.) in Criminal Case No. 11-114, Aurelio D. Lira is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole; and

2.) in Criminal Case No. 11-115, Aurelio D. Lira is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility of parole.

Aurelio D. Lira Shall be credited for the full period of his confinement at the Sub-Provincial Jail in Laoang, Norther Samar.

Further, Aurelio Lira *y* Dulfo is ordered to pay the heirs of the victims as follows:

a.) in Criminal Case No. 11-114:

i.) the amount of [₱]75,000.00 as civil indemnity for the death of Carlos L. Dolfo;
ii.) the amount of [₱]50,000.00 as moral damages; and
iii.) the amount of [₱]30,000.00 as exemplary damages.

b.) in Criminal Case No. 11-115:

i.) the amount of [₱]75,000.00 as civil indemnity for the death of Elisa Dolfo y Ortiz;
ii.) the amount of [₱]50,000.00 as moral damages; and
iii.) the amount of [₱]30,000.00 as exemplary damages.

Aurelio Lira *y* Dulfo is likewise directed to pay the heirs of Carlos L. Dolfo and Elisa O. Dolfo the amount of [₱]25,000.00 as temperate damages.

All damages herein awarded shall earn 6% interest per annum from the date of finality of this decision until fully paid.

SO ORDERED[10]

In concluding the guilt of Dayrit, the RTC ratiocinated:

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Nonetheless, the court is convinced that the prosecution had duly established the qualifying circumstances of treachery and abuse of superior strength. Either of these circumstances will qualify the killings to murder. However, jurisprudence clarifies that when the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter. Therefore, treachery will qualify the killings to murder in these cases.

x x x x

Evidently, from the mode and manner of killing the victims, Lira, Barnobal and Tedranes were acting in concert and in coordination with each other. They had a joint purpose or common interest and are united in their execution. They are motivated by a single criminal impulse, that is killing their victims.

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10 *Id.* at 57-58.

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Though apparently, the alibi of Lira that he was at their house at the time the fateful event is somewhat corroborated by Isidro Baleña and Edgar Dulfo, their testimonies are however unworthy of credence. Indeed, a close evaluation of the testimonies of Lira, Baleña and Dulfo displays that they are not in harmony with each other and are contrary to natural sequence of events, thus, casting doubt on their credibility.

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The court finds Arnel a credible witness. His testimony was positive, straightforward and spontaneous. While the court admonished him on cross-examination, such admonition was in connection with his answering the questions before the court's interpreter could finish the interpretation.[11]

On appeal, the CA modified the RTC's conviction of Lira. The CA affirmed the findings of the RTC that the prosecution evidence convincingly proves beyond doubt that Lira is responsible for the victims' death.

Likewise, the CA agreed to the determination made by the RTC that the prosecution persuasively demonstrated a community of criminal design between Lira and his co-accused. According to the CA while there is no evidence of any previous agreement between the assailants to commit the crime, their concerted acts before and during the incident establish a joint purpose and intent to kill.

However, the CA downgraded the offense from Murder to Homicide, holding that the Informations did not give the particular acts constituting the circumstances of treachery and abuse of superior strength.

The CA also modified the award of damages deleting the award of exemplary damage in both the criminal case. The CA also ordered Lira to pay ₱25,000.00 as temperate damages in the respective criminal case.

Hence, the instant appeal.

Now before us, the People and Lira, manifested that that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.

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11 *Id.* at 46-53.

The appeal is unmeritorious. The Court affirms the conviction of Lira, not for the crime of Homicide as held by the CA, but for the crime of Murder as found by the RTC.

In questioning his conviction, Lira reiterates his argument contained in his Brief that the CA erred in according full weight and credence to the testimony of the alleged eyewitness, Arnel Dulfo, in finding him guilty beyond reasonable doubt of the crimes charged.

The argument deserves scant consideration.

Lira tries to discredit the testimony of the prosecution witness Arnel Dulfo claiming that there are inconsistencies in his testimony. The contention is untenable.

Time and again, the Court has held that the question of credibility of witnesses is primarily for the trial court to determine. Its assessment of the credibility of a witness is conclusive, binding, and entitled to great weight, unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered. Absent any showing that the trial judge acted arbitrarily, or overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, his assessment of the credibility of witnesses deserves high respect by the appellate court.[12]

After a careful review of the records, the Court finds no cogent reason to overturn the trial court's ruling, as affirmed by the appellate court, finding the testimony of Arnel as credible. According to the lower courts, the prosecution's witness testified in a categorical and straightforward manner, positively identifying Lira as part of the group who killed the victims.

Moreover, anent the alleged inconsistent and improbable statement of Arnel, the CA have reviewed the relevant portions of the transcripts of stenographic notes, and it can confidently conclude that these pertain to trivial matters that do not tend to diminish the probative value of the testimony at issue. Also, as pointed out by the CA, notwithstanding Arnel's inaccurate statements on minor details, he positively identified Lira as one of the perpetrators of the crimes charged, which he categorically and consistently claimed to have personally witnessed. The inaccuracies or contradictions are not sufficient to overthrow the probative value accorded by the trial court to his testimony.

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12 *People v. Elizalde y Sumagdon*, 801 Phil. 1008, 1020-1021 (2016).

Jurisprudence tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. In the instant case, no imputation of improper motive on the part of the prosecution witnesses was ever made by the accused-appellant.

Anent accused-appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the witness. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.[13]

With regard to the issue of conspiracy, the CA did not err in finding that the existence of conspiracy between Lira and his co-accused.

In *People v. Lababo, et al.*,[14] citing *Bahilidad v. People*,[15] the Court summarized the basic principles in determining whether conspiracy exists or not. Thus:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.
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> It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It can be proven by evidence of a chain of circumstances and may be inferred

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13 *People v. Bensurto,* 802 Phil. 766, 778 (2016).
14 G.R. No. 234651, June 6, 2018.
15 629 Phil. 567, 575 (2010).

from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[16] The CA correctly ruled that the prosecution convincingly demonstrated a community of criminal design between Lira and his co-accused. The CA held that:

> The acts orchestrated by accused-appellant together with his co-accused are indicative of his active participation in the criminal design, and the weapons used against the unarmed victims constitute direct evidence of a deliberate plan as well as demonstrate the singularity of their purpose-to kill them.
>
> In reiteration, accused-appellant and his co-accused were united in the execution of the crime and were synchronized in carrying out their common resolution of taking the victims' lives. Thus, the court *a quo* correctly appreciated the existence of conspiracy among them. Hence, accused-appellant ought to bear equal responsibility for the crimes charged, even for the death of Elisa, since in conspiracy, the act of one is the act of all.[17]

Evidence shows that the circumstances surrounding the killings, taken together necessarily lead to the conclusion that there was concerted action between Lira and his co-accused with the objective of killing Carlos and Elisa.

Now, the issue of sufficiency of the Information, in the assailed Decision, while the CA affirmed the RTC's finding that Lira indeed killed Carlos and Elisa, to downgraded the offense from Murder to Homicide for failure of the Information to sufficiently state the particular facts establishing the existence of the qualifying circumstance of treachery and abuse of superior strength. The CA held that:[18]

> In this case, the Informations merely described the killing of Carlos and his wife as having been committed with "xxx deliberate intent to kill thru treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack and shoot [the victims], with the use of short firearms, thereby inflicting upon [them] several gunshot wounds which directly [caused their death]." The Informations did not give the particular acts constituting the said circumstances.
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> In *People v. Valdez, et al.*[19] is particularly instructive in stating that "[i]t should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not *per se* treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term

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16 *People v. Peralta*, 435 Phil. 743, 764 (2002).
17 *Rollo*, pp. 20-21.
18 *Id.* at 23-24.
19 679 Phil. 279, 294 (2012).

> *treachery* constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the informations." Simply put, the phraseology in the informations, aside from being just an empty rhetoric, is merely a conclusion of law and not an averment of fact.

While neither of the parties questioned the above finding of the CA in this appeal, the Court will nevertheless address the same. Considering that, it must be stressed that 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.[20]

Thus, the Court deems it proper to review and discuss the relevant disquisition by the CA despite the issue not being one of those raised in the appeal. In reaching its conclusion, the CA adhered to the ruling in the case of *People v. Valdez*[21] where it was settled that 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 circumstance that aggravates his liability for the crime. A review of jurisprudence reveals that the ruling in *Valdez* was subsequently reiterated in the cases of *People v. Dasmariñas*[22] (*Dasmariñas*) and *People v. Delector*[23] (*Delector*).

Meanwhile, there is a separate line of cases in which an allegation in the Information that the killing was attended "with treachery" is already sufficient to inform the accused that he was being charged with Murder instead of simply Homicide. In *People v. Batin*[24] the Court held that:

> We hold that the allegation of treachery in the Information is sufficient. Jurisprudence is replete with cases wherein we found the allegation of treachery sufficient without any further explanation as to the circumstances surrounding it. Here are some of the cases:
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> In *People v. Lab-eo*, Wilson Lab-eo was indicted for murder under the following Information:
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> > That on or about October 21, 1996, at the Barangay Hall, Poblacion, Tadian, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with the use of a sharp knife, did then and there willfully, unlawfully and feloniously attack, assault, strike

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20 *Casilac v. People*, G.R. No. 238436, February 17, 2020.
21 *Supra* note 19.
22 819 Phil. 357 (2017).
23 819 Phil. 310 (2017).
24 564 Phil. 249 (2007).

> and stab Segundina Cay-no with a well-honed and pointed knife and thereby inflicting a mortal stab wound upon the victim as reflected in that medico-legal certificate, to wit:
>
> Stab wound infrascapular area left, penetrating with massive hemathorax, which caused the death of the victim thereafter.
>
> That the aggravating circumstances of evident premeditation, treachery, abuse of superior strength and craft attended the commission of the offense.

The accused in this case argued that the Information above, while captioned as "Murder," only charged him with homicide as written. This Court found nothing wrong with the Information, and ruled that the Information sufficiently charged the accused with murder, not even considering the absence of an explanation of the treachery stated therein, thus:

> The fact that the qualifying circumstances were recited in the second paragraph and not in the first paragraph of the Information, as commonly done, is a matter of form or style for which the prosecution should not be faulted. That the Provincial Prosecutor decided to write the Information differently did not impair its sufficiency. Nothing in the law prohibits the prosecutor from adopting such a form or style. As long as the requirements of the law are observed, the Information will pass judicial scrutiny.
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> x x x x
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> The test of sufficiency of Information is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly. 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. The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial. Significantly, the appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him because of the style or form adopted in the Information.

This Court went on to affirm the conviction of the accused therein with murder qualified by treachery.

The allegation in the Information of treachery as a qualifying circumstance was similarly assailed in *People v. Opuran*, wherein the charge was as follows:

> Criminal Case No. 4693
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> That on or about November 19, 1998, at nighttime, at Km. 1, South Road, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, said accused, with deliberate intent to kill and treachery, did, then and there willfully, unlawfully, and feloniously attack, assault and stab Demetrio Patrimonio, Jr., with the use of a bladed weapon

> (5" long from tip to handle with scabbard), thereby inflicting upon the victim fatal stab wounds on the back of his body, which wounds resulted to his instantaneous death.
>
> All contrary to law, and with attendant qualifying circumstance of treachery.

This Court again rejected the argument of the defense by finding the allegation of treachery sufficient, and later on finding the accused therein guilty of murder qualified by treachery:

> We do not find merit in appellant's contention that he cannot be convicted of murder for the death of Demetrio, Jr. because treachery was not alleged with "specificity" as a qualifying circumstance in the information. Such contention is belied by the information itself, which alleged: "All contrary to law, and with the attendant qualifying circumstance of treachery." In any event, even after the recent amendments to the Rules of Criminal Procedure, qualifying circumstances need not be preceded by descriptive words such as qualifying or qualified by to properly qualify an offense.

Finally, the following constitutes the Information in *People v. Bajar:*

> That on or about the 16th day of August 1999, at about 8:00 o'clock in the evening, at sitio Mohon, Barangay Mambayaan, Municipality of Balingasag, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, then armed with a sharp bolo, with intent to kill, and with evident premeditation, and treachery, did then and there willfully, unlawfully and feloniously stab one 85 year old Aquilio Tiwanak, accused's father-in-law, hitting him on the different parts of his body, which caused his instantaneous death, to the damage and prejudice of the heirs of Aquilio Tiwanak in such amounts as may be allowed by law.
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> The aggravating circumstances of dwelling, taking advantage of superior strength, disregard of the respect due the victim on account of his age, habitual intoxication and relationship attended the commission of the crime.
>
> CONTRARY to Article 248 of the Revised Penal Code, in relation [to] Article 14, paragraph 3 and 15, and Article 15 of the Revised Penal Code.

Like in the previous two cases, this Court found the Information to have sufficiently alleged treachery as a qualifying circumstance. Evidentiary facts need not be alleged in the information because these are matters of defense. Informations need only state the ultimate facts; the reasons therefor could be proved during the trial.[25] (Citations omitted)

In sum, there are two different views on how the qualifying circumstance of treachery should be alleged. First is the view that requires the

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25 *Id.* at 268-271.

acts constituting treachery or acts which directly and specially insured the execution of the crime, without risk to the offending party arising from the defense which the offended party might make, should be specifically alleged and described in the Information. Second is the view that it is sufficient that the Information alleges that the act be committed "with treachery."

In the present CA, the CA took the first view and held that the Information did not specifically allege the acts constituting treachery. Thus, it downgraded the offense from Murder to Homicide.

However, this Court modifies the ruling of the appellate court. The Court thus convicts Lira of Murder instead of Homicide.

The Court maintains that the right to question the defects in an Information is not absolute. In fact, defects in an Information with regard to its form may be waived by the accused. In the instant case, Lira has waived his right to question the defects in the Informations filed against him.

In *People v. Palarca*[26] the Court held that the accused therein may still be validly convicted of the crime despite the insufficiency of the Information.

The pronouncement of the Court provides:

> In any event, accused-appellant failed to interpose any objection to the presentation by the prosecution of evidence which tended to prove that he committed the rape by force and intimidation. 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 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. This Court has, on more than one occasion, recognized waivers of constitutional rights, *e.g.*, the right against unreasonable searches and seizures; the right to counsel and to remain silent; the right to be heard; and the right to bail.[27] (Citations omitted)

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26 432 Phil. 500 (2002).

27 *Id.* at 509.

Likewise, in *People v. Solar*,[28] citing *People v. Razonable*,[29] the Court held that if an Information is defective, such that it fails to sufficiently inform the accused of the nature and cause of the accusation against him, then it is the accused's duty to enforce his right through the procedural rules created by the Court for its proper enforcement. The Court explained:

> The rationale of the rule, which is to inform the accused of the nature and cause of the accusation against him, should guide our decision. To claim this substantive right protected by no less than the Bill of Rights, the accused is duty bound to follow our procedural rules which were laid down to assure an orderly administration of justice. Firstly, it behooved the accused to raise the issue of a defective information, on the ground that it does not conform substantially to the prescribed form, in a motion to quash said information or a motion for bill of particulars. An accused who fails to take this seasonable step will be deemed to have waived the defect in said information. The only defects in an information that are not deemed waived are where no offense is charged, lack of jurisdiction of the offense charged, extinction of the offense or penalty and double jeopardy. Corollarily, we have ruled that objections as to matters of form or substance in the information cannot be made for the first time on appeal. In the case at bar, appellant did not raise either in a motion to quash or a motion for bill of particulars the defect in the Information regarding the indefiniteness of the allegation on the date of the commission of the offense.[30]

In the present case, Lira did not question the supposed insufficiency of the Information filed against him through either a motion to quash or motion for bill of particulars. He voluntarily entered his plea during the arraignment and proceeded with the trial. Thus, he is deemed to have waived any of the waivable defects in the Informations, including the supposed lack of particularity in the description of the attendant circumstances. In other words, Lira is deemed to have understood the acts imputed against him by the Information. The CA therefore erred in modifying Lira's conviction in the way that it did when he had effectively waived the right to question his conviction on that ground.

It is for this reason that the Court modifies Lira's conviction from Homicide to Murder — he failed to question the sufficiency of the Information by availing any of the remedies provided under the procedural rules, namely: either by filing a motion to quash for failure of the Information to conform substantially to the prescribed form, or by filing a motion for bill of particulars. Again, he is deemed to have waived any of the waivable defects in the Information filed against him.

In *People v. Solar*,[31] the Court lays down the following guidelines for the guidance of the Bench and the Bar:

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28 G.R. No. 225595, August 6, 2019.
29 386 Phil. 771 (2000).
30 *Id.* at 780.
31 *Supra* note 28.

> 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 right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him 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 resolution should be attached to the Information in accordance with the second guideline below.
>
> 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 right to question the defective statement of the aggravating or qualifying circumstance in the Information, (*i.e.*, whether he 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.[32]

As regards to the award of damages, the civil indemnity, moral damages, and exemplary damages awarded in the assailed Decision is hereby modified to ₱75,000.00 each for both criminal cases. Temperate damage is also modified in the amount of ₱50,000.00 for both criminal cases. This is in line with our ruling in *People v. Jugueta.*[33] Likewise, the monetary awards

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32 *Supra.*

33 783 Phil. 806 (2016).

shall earn interest at the rate of 6% per *annum* from the date of finality of the Decision until fully paid.[34]

WHEREFORE, the appeal is **DENIED**. The July 18, 2016 Decision and June 30, 2017 Resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 01893, is **AFFIRMED** with **MODIFICATIONS**:

In Criminal Case No. 11-114, accused-appellant Aurelio Lira *y* Dulfo is found **GUILTY** beyond reasonable doubt of **MURDER** and is sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to indemnify the heirs of Carlos Dulfo the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages.

In Criminal Case No. 11-115, accused-appellant Aurelio Lira *y* Dulfo is found **GUILTY** beyond reasonable doubt of **MURDER** and is sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to indemnify the heirs of Elisa Dulfo the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages.

An interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded from the date of the finality of this Decision until fully paid.

SO ORDERED.

DIOSDADO M. PERALTA
Chief Justice

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34 See Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 283 (2013).

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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.

DIOSDADO M. PERALTA
Chief Justice