EN BANC

G.R. No. 267163 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, **v. XXX**, Accused-appellant.*

Promulgated:

October 29, 2024

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CONCURRING OPINION

CAGUIOA, *J.*:

Accused-appellant XXX's (accused-appellant) conviction for rape should be affirmed.

I concur with the *ponencia* in convicting accused-appellant of rape notwithstanding his admission during the trial that he "knew of the cognitive deficiency of [his victim, AAA] when he committed the crime,"[1] which, had the said circumstance been alleged in the Information, would have qualified the crime under Article 266-B paragraph 10[2] of the Revised Penal Code. The Court simply affirms the policy of strict compliance with the well-established rule that qualified aggravating circumstances cannot be appreciated against the accused ***unless*** **they are first alleged in the Information.**

This principle proceeds from the accused's fundamental right to due process[3] and to be informed of the charge against him.[4] As narrated in the *ponencia*, the Information reads:

> That on or about February 25, 2015 at around 6:30 o'clock in the evening [in] Brgy. Balite, Municipality of Pura, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, [accused-appellant], did then and there willfully, unlawfully[,] and feloniously by

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* 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 *Ponencia*, p. 10.

2 REVISED PENAL CODE, art. 266-B states:

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> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
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> . . . .
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> 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.

3 CONST., art. III, sec. 1.

4 CONST., art. III, sec. 14(2).

> means of force and intimidation had carnal knowledge [of AAA], a [s]pecial [c]hild, minor, 16 years old, against her will and which ac[t] is greatly prejudicial to her normal growth and development as a minor.
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> CONTRARY TO LAW.[5]

As the *ponencia* adds: "On cross, [accused-appellant explained] that he knew AAA who used to call him *Uncle XXX*... [H]e was also aware that [AAA] was mentally challenged."[6]

Does accused-appellant's admission that he knew of AAA's mental disability constitute a waiver of his right to be informed of the nature and cause of the accusation against him? In other words, even if the ultimate facts and circumstances alleged in the Information are constitutive of only simple rape, can accused-appellant still be convicted of qualified rape because he waived his right to be informed of the aggravating circumstance that qualified the crime charged in his Information?

In answering the questions, some members of the Court cite *People v. Solar*[7] (*Solar*) where the Court stated that "defects in an Information with regard to its form may be waived by the accused,"[8] their argument being that accused-appellant may be deemed to have waived the requirement for the prosecution to allege such qualifying aggravating circumstance in the Information because of his admission as to AAA's mental disability.

This argument, however, is erroneous because *Solar* is not applicable.

First, the absence of a qualifying aggravating circumstance in the Information against accused-appellant, i.e., his knowledge of AAA's mental disability, is ***not*** a mere formal defect. The Court in *Villarba v. Court of Appeals*[9] squarely held that, "[f]actual allegations ***that constitute the offense*** are substantial matters."[10] Indeed, a qualifying aggravating circumstance changes the nature of the crime altogether from rape to qualified rape. In *Leviste v. Alameda*,[11] for example, the Court declared that an amendment of an Information to include a qualifying aggravating circumstance to change the crime charged from homicide to murder is a substantial amendment, to wit:

> The question to be resolved is **whether the amendment of the Information from homicide to murder is considered a substantial amendment**, which would make it not just a right but a duty of the prosecution to ask for a preliminary investigation.
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> **The Court answers in the affirmative.**

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5 *Ponencia*, p. 2.
6 *Id.* at 3.
7 858 Phil. 884 (2019) [Per J. Caguioa, *En Banc*].
8 *Id.* at 922.
9 874 Phil. 84 (2020) [Per J. Leonen, Third Division].
10 *Id.* at 103.
11 640 Phil. 620 (2010) [Per J. Carpio-Morales, Third Division].

> A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. The following have been held to be mere formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he [or she] has or will assume; (4) an amendment which does not adversely affect any substantial right of the accused; and (5) an amendment that merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts, and merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged.
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> The test as to whether a defendant is prejudiced by the amendment is whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. An amendment to an information which does not change the nature of the crime alleged therein does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance.[12] (Emphasis supplied, citation omitted)

Second, assuming *arguendo* that the failure to allege the accused's knowledge of a victim's mental disability was a formal defect in accused-appellant's Information, *Solar* still does not apply. In *Solar,* the issue was whether a broad term, i.e., "treachery," which was alleged in the Information, sufficiently informed the accused of the nature and cause of the charge against him. Stated differently, *Solar* involved the question of whether a circumstance already alleged in the Information, though couched as a legal conclusion and not in terms of ultimate facts, was sufficiently intelligible to the accused. **In contrast to the instant case, the qualifying aggravating circumstance was *not alleged at all*.**

Third, accused-appellant had no obligation or duty to dictate on, much less aid, the prosecution in determining the crime to charge him with. If the prosecution intended, whether deliberately or by oversight, to charge him with simple rape, then that was within the State's prerogative, which is presumed to be regular.

The question before the Court in the instant case highlights anew the tension between prosecutorial expediency and the Bill of Rights. As narrated in the *ponencia,* accused-appellant admitted that he knew of AAA's mental disability when he committed the offense. One therefore can ask, as did some members of the Court: what would be the harm of convicting him precisely of the offense he admitted committing, but was not charged with?

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[12] *Id.* at 641–642.

The harm lies in the possible railroading of the rights of other accused, especially considering that the rulings of the Court create binding precedents. The Information filed at the beginning of a criminal case in court sets the rules of the game—not only does it fulfill the right of the accused to be informed of the nature and cause of the accusation against him, it also ensures the accused's procedural due process rights. Containing the proceedings within the four corners of the Information prevents surprises during the trial, and thus affords the accused an opportunity to mount an adequate defense. In other words, before a person is deprived of life, liberty, or property in a criminal case, the Information ensures that there would be a real opportunity to be heard. Moreover, limiting convictions to the confines of the Information further guarantees the protection of the accused's rights as Informations are the basis to determine whether a second charge is proscribed by the right against double jeopardy.

To be sure, strict adherence to abstract principles such as the right to be informed of the nature and cause of the accusation easily lends itself to interpreting the Bill of Rights in a vacuum. But the judicial reality is that the interpretations of the Constitution are the way they are precisely because the Court considers the realities on the ground, meaning, the Court recognizes, as it must, that the State has law enforcement, investigative, and prosecutorial arms of the whole government working at its disposal and against an individual accused. The ***only*** protections the individual accused has against the vast machinery of the State are the Bill of Rights. Thus, this "vacuum" is precisely the space that protects ordinary citizens from abuses of the State and its vast machinery.

The Bill of Rights is to protect ordinary citizens against the abuses of the government.[13] "It might be true that in some cases criminals may succeed in evading the hand of justice, but such cases are accidental..."[14] In the Court's insistence to have the strictest interpretation of the rights in the Constitution in order to protect the innocent, some guilty persons may indeed escape liability. This, however, is just but an aspect of the Court's belief that it is "better to let the crime of a guilty person go unpunished than to condemn the innocent."[15]

Similarly, the same temptation affected the right to be protected against unreasonable searches and seizures. Once upon a time, the prevailing opinion was that the exclusionary rule was unnecessary and would only instigate anarchy. In *Moncado v. People*[16] (*Moncado*), criminal prosecution of those who secure illegal search warrants or make unreasonable searches would suffice to protect the constitutional guarantee—and that unlawfully acquired

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[13] *People v. Melencion*, G.R. No. 248925, September 14, 2020 [Notice, First Division]; *Beltran v. Samson*, 53 Phil. 570 (1929) [Per J. Romualdez, First Division].

[14] *Beltran v. Samson, id.* at 579.

[15] *Coffin v. United States*, 156 U.S. 432, 454 (1895).

[16] 80 Phil. 1 (1948) [Per J. Pablo, Second Division].

evidence, competent as such, could still be admissible. Justice Pablo, speaking for the Court in that case, argued passionately that illegal evidence still has probative value—why let murderers or traitors go free on a technicality?

> Let's focus on the present case. If the documents whose return the appellant requests prove his [or her] guilt of the crime of treason, why does the State have to return them and free him [or her] from the accusation? Is this not condoning and validating crime? Doesn't this constitute judicial approval of the commission of the crimes, the violation of the defendant's domicile committed by the members of the CIC and the treason committed by the appellant? Such a practice would encourage the crime rather than prevent its commission. Moreover, obtaining the documents docs not alter their probative value. If there had been a search warrant, the documents would be admissible evidence. There is no constitutional or legal provision that frees the accused from all criminal responsibility because there was no search warrant. Public vindication demands that offenders of the criminal law be punished. To release the guilty party simply because the evidence against him [or her] has not been legally obtained is to judicially punish the crime.[17]

"Public vindication demands that offenders of the criminal law be punished. To release the guilty party simply because the evidence against him [or her] has not been legally obtained is to judicially punish the crime."[18] After all, if all the other "hallmarks of due process" have been satisfied, what harm would result? Justice Pablo closes the *ponencia* in *Moncado* with the following passage:

> The guilty must receive their due punishment, even if the evidence against them was obtained illegally. And those who, in violation of the law and the Constitution, unduly seize such evidence must also be punished. This is how the law reigns, majestic and unscathed.[19]

It may be said that Justice Pablo and the majority then were enforcing expediency and swift justice—not interpreting the right against unreasonable searches and seizures in a vacuum. For many years this interpretation was considered "fair."

Ultimately, however, the Court in *Stonehill v. Diokno*[20] (*Stonehill*) ***reversed and abandoned*** *Moncado* and, citing United States jurisprudence, declared in relevant part:

> **The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest.** Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore constitutional in origin, **we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due**

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17 *Id.* Translated from the original Spanish.

18 *Id.*

19 *Id.*

20 126 Phil. 738 (1967) [Per C.J. Concepcion, *En Banc*].

> **Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforceable itself, chooses to suspend its enjoinment.** ***Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him [or her], to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice***.[21] (Emphasis supplied)

The Court in *Stonehill* further declared that "if the applicant for a search warrant has competent evidence to establish probable cause of the commission of a given crime by the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the requirements of the fundamental law."[22]

The same can be said here. If the prosecutor intends to convict the accused for qualified rape, "then there is no reason why the [prosecutor] should not comply with the requirements of the fundamental law." Indeed, strictly enforcing the requirement that a qualifying aggravating circumstance should be alleged in the Information before it can be appreciated as part of the accused's right to be informed of the nature and cause of the accusation is to "no longer permit it to be revocable at the whim of any [prosecutor] who, in the name of law enforceable itself, chooses to suspend its enjoinment."[23] It is only through strict enforcement that the accused's constitutional right can be guaranteed.

In more recent times, the accused's right to be informed of the nature and cause of the accusation was exhaustively discussed in the case of *Solar*, to quote:

> The Court stresses that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent. Further to this, the courts, in arriving at their decisions, are instructed by no less than the Constitution to bear in mind that no person should be deprived of life or liberty without due process of law. **An essential component of the right to due process in criminal proceedings is the right of the accused to be sufficiently informed, in writing, of the cause of the accusation against him [or her].** The rationale behind the requirement of sufficiently informing the accused in writing of the cause of the accusation against him [or her] was explained as early as 1904 in the case of *United States v. Karelsen*:
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> The object of this written accusation was —
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> **First. To furnish the accused with such a description of the charge against him [or her] as well enable him [or her] to make his [or her] defense; and second, to avail himself [or herself] of his [or her] conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so**

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21 *Id.*
22 *Id.*
23 *Id.*

that it may decide whether they are sufficient in law to support a conviction, if one should be had. (United States vs. Cruikshank, 92 U.S., 542.) In order that this requirement may be satisfied, facts must be stated; not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. **In short, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged.** For example, if a malicious intent is a necessary ingredient of the particular offense, then malice must be alleged. In other words, the prosecution will not be permitted to prove, under proper objection, a single material fact unless the same is duly set forth by proper allegation in his [or her] complaint. Proof or evidence of material facts is rendered admissible at the trial by reason of their having been duly alleged in the complaint. (Rex *vs.* Aspinwall, 2 Q.B.D. 56; Bradlaugh *vs.* Queen, 3 Q.B.D., 607.)

. . . .

There is a general opinion that a greater degree of certainty is required in criminal pleading than in civil. This is not the rule. The same rules of certainty apply both to complaints in criminal prosecutions and petitions or demands in civil cases. Under both systems[,] every necessary fact must be alleged with certainty to a common intent. Allegations of "certainty to a common intent" mean that the facts must be set out in ordinary and concise language, in such a form that persons of common understanding may know what is meant. (Emphasis and underscoring supplied)

This right to be informed of the cause of the accusation, in turn, is implemented through Sections 8 and 9, Rule 110, of the Revised Rules of Criminal Procedure, which provide:

SECTION 8. *Designation of the Offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, **and specify its qualifying and aggravating circumstances**. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SECTION 9. *Cause of the Accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

It is thus fundamental 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 information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. To repeat, the purpose of the law in requiring this 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.[24] (Emphasis supplied, citations omitted)

In *Solar*, the Court established the rule that any Information that alleges a qualifying or aggravating circumstance with "a broad term to embrace various situations" should "state the ultimate facts relative to such circumstance." The logic of liberality should apply with all the more reason here to accused-appellant **where the Information against him *altogether failed to state the qualifying circumstance* that he knew of the victim's mental disability at the time of the rape.**

ACCORDINGLY, considering that no qualifying circumstance was alleged in the Information, accused-appellant XXX should be convicted only of **simple rape**.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

[24] *People v. Solar*, *supra* note 7 at 925–927.