

Clarification on the Information: A Discussion on the Learnings and Possible Shortcomings of the Ruling in the case of *People v. Solar*

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I. INTRODUCTION.....	243
II. BACKGROUND OF <i>PEOPLE V. SOLAR</i>	244
III. THE COURT’S CAVEAT	247
IV. THE DISSENTING OPINION	248
V. JURISPRUDENCE SUPPORTING THE PONENCIA’S RULING.....	249
VI. JURISPRUDENCE SUPPORTING THE DISSENTING OPINION.....	252
VII. CONCLUSION: <i>SOLAR</i> — A WELCOME DEVELOPMENT BUT WITH A MISSED OPPORTUNITY	256

I. INTRODUCTION

On 6 August 2019, the Supreme Court *en banc* promulgated the case of *People v. Rolando Solar y Dumbrique* (*Solar*),¹ a landmark case that clarified the degree

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1. *People v. Rolando Solar y Dumbrique*, G.R. No. 225595, Aug. 6, 2019, *available at* <http://sc.judiciary.gov.ph/8659> (last accessed Sep. 30, 2020).

of specificity required in alleging aggravating circumstances in an Information, in line with safeguarding the constitutional right of the accused to be informed of the nature and cause of the accusation against him or her. Here, the Court definitively ruled that an Information filed in court charging a certain accused of a crime must state with particularity not only the constitutive acts of the crime committed, but likewise the acts that tend to establish the existence of aggravating circumstances.² Because of the ruling in *Solar*, it is now inadequate to simply enumerate by name the aggravating circumstances that are alleged to exist. According to the Court —

Consequently, the Court holds that it is insufficient for prosecutors to indicate in an Information that the act supposedly committed by the accused was done ‘with treachery’ or ‘with abuse of superior strength’ or ‘with evident premeditation’ without specifically describing the acts done by the accused that made any or all of such circumstances present. Borrowing the words of the Court in Dasmariñas, ‘to merely state in the information that treachery was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.’

An information alleging that treachery exists, to be sufficient, must therefore have factual averments on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specially to ensure its execution without risk to the accused arising from the defense that the victim might make. The Information must so state such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged.³

In this Article, the ruling of the Court in *Solar* will be examined by analyzing the *ponencia* vis-à-vis the contrary view as embodied in the dissenting opinion of former Chief Justice Bersamin, as well as the cases on which these opposing views find basis. The Authors will also discuss a possible area of jurisprudence that the Court could have laid down a definitive ruling on using *Solar* as the pedagogical platform.

II. BACKGROUND OF *PEOPLE V. SOLAR*

The accused in *Solar* was charged with the crime of murder, as the death of the victim therein was alleged to have been attended by the qualifying circumstances of treachery and abuse of superior strength.⁴ The Information filed against him reads

2. *Id.* at 17.

3. *Id.* at 18-19 (citing *People v. Dasmariñas*, 842 SCRA 39, 42 & 61 (2017)).

4. *Solar*, G.R. No. 225595, at 2.

[t]hat on or about the 9th day of March 2008, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other, without justifiable motive, with intent to kill and with treachery and abuse of superior strength, did then and there knowingly, unlawfully[,] and feloniously attack, assault[,] and use personal violence upon one JOSEPH CAPINIG y MATO, by then and there hitting and beating his head with a baseball bat, thereby inflicting upon the latter mortal injury which caused his death.

The killing of the aforesaid victim is qualified by the circumstances of treachery and abuse of superior strength.

CONTRARY TO LAW.⁵

During the arraignment, the accused pleaded not guilty.⁶ After trial, the trial court found the accused guilty of murder, as it found that the killing was indeed attended by the qualifying circumstance of treachery.⁷ Upon appeal, however, to the Court of Appeals (CA), it affirmed the ruling of the trial court with modification, downgrading the crime from murder to homicide.⁸ It justified its position by ratiocinating that the Information failed to sufficiently inform the accused of the facts and circumstances describing how treachery attended the killing.⁹ Particularly, the CA said that “the use of the term treachery [did not] constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of fact[,]”¹⁰ mainly relying on the case of *People v. Valdez* (Valdez).¹¹

Upon appeal to the Court, it found that although *Valdez* indeed supported the ruling of the CA, jurisprudence on the matter had not been consistent.¹² The doctrine laid down in *Valdez*, affirmed by the Court in its subsequent rulings in *People v. Dasmariñas* (Dasmariñas)¹³ and *People v. Detector*

5. *Id.*

6. *Id.*

7. *Id.* at 3.

8. *Id.* at 4.

9. *Id.*

10. *Solar*, G.R. No. 225595, at 8 (emphasis omitted).

11. *Id.* at 9 (citing *People v. Valdez*, 663 SCRA 272, 286 (2012)).

12. *Solar*, G.R. No. 225595, at 14.

13. *Dasmariñas*, 842 SCRA at 39.

(Delector),¹⁴ was contradicted by another line of cases¹⁵ essentially holding that a mere enumeration of the aggravating circumstances in the Information would already be sufficient as far as fulfilling the right of the accused to be informed of the charges against him or her was concerned.

Realizing that there were two diverging schools of thought on the matter, the Court used *Solar* as the avenue to settle, once and for all, the rule regarding the required particularity of Informations with regard to the aggravating circumstances that allegedly attended the commission of the crime. The Court ultimately upheld the more stringent view, as supported by the rulings in *Valdez*, *Delector*, and *Dasmariñas*, and in effect abandoned the rulings in the other line of cases.¹⁶

According to the Court, in the “context of criminal prosecutions ... it is the State which bears the burden of sufficiently informing the accused of the accusations against him so as to enable him to properly prepare his defense.”¹⁷ The Court reasoned that the accused is presumed to have no independent knowledge of the facts that constitute the offence; hence, particularity of the Information — even as to the aggravating circumstances alleged to be present — is crucial in enabling the accused to properly prepare his or her defense.¹⁸

Thus, the Court ultimately ruled as insufficient the practice of prosecutors to simply enumerate or indicate that the act supposedly committed by the accused was done “with treachery” or “with abuse of superior strength” or “with evident premeditation” without specifically describing the acts done by the accused that made any or all of such circumstances present, as such are deemed conclusions of law.¹⁹

It is important to note, however, that the Court made an important caveat. Despite the foregoing discussions, the Court still reversed the ruling of the CA and reverted the conviction of the accused in *Solar* from homicide back to murder.

14. *Delector*, 841 SCRA at 647.

15. *See, e.g.*, *People v. Batin*, 539 SCRA 272 (2007); *People v. Opuran*, 425 SCRA 654 (2004); & *People v. Lab-ao*, 373 SCRA 461 (2002).

16. *Solar*, G.R. No. 225595, at 18.

17. *Id.* (emphasis omitted).

18. *Id.* (citing *Dela Chica v. Sandiganbayan*, 417 SCRA 242, 246 (2003)).

19. *Solar*, G.R. No. 225595, at 18 (citing *Dasmariñas*, 842 SCRA at 42).

III. THE COURT'S CAVEAT

Despite the ruling as to the insufficiency of the Information in alleging with particularity the existence of the aggravating circumstances, the Court still convicted the accused in *Solar* for murder — instead of homicide — because “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.”²⁰ Due to this failure of the accused in *Solar* to avail of the abovementioned remedies prior to his arraignment, the Court thus declared that he had already forfeited his right to question the waivable defects of the Information filed against him.²¹

In the guidelines it promulgated at the end of the decision in *Solar*, the Court reiterated the importance of availing the said procedural remedies:

- (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

20. *Solar*, G.R. No. 225595, at 16 (citing 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 9 & rule 117, § 3 (e)).

21. *Solar*, G.R. No. 225595, at 16.

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.²²

This “waiver” for failure to avail of the procedural remedies is the more contentious part of the Court’s decision in *Solar*.

IV. THE DISSENTING OPINION

While the Court’s attempt at clarifying the diverging jurisprudence on the required particularity in alleging the attendant qualifying circumstances was a welcome development, the Authors note that the Court — albeit probably unintentionally — was unsuccessful in streamlining jurisprudence in another, yet closely related, subject matter.

As discussed, the *ponencia* ultimately held that the defect in the Information in *Solar* was waivable.²³ When the accused took a plea without questioning the sufficiency of the Information either through: (1) a motion to quash on the ground of failure to substantially conform to the prescribed form; or through (2) a motion for bill of particulars, the accused ultimately admitted that he understood the accusations against him.²⁴

Former Chief Justice Lucas P. Bersamin (C.J. Bersamin) disagreed. He argued that

[t]he right of every accused to know *from the information* the charge to which he pleads and for which he stands to be tried, and upon which he is to be

22. *Solar*, G.R. No. 225595, at 20-21 (emphasis supplied).

23. *Id.* at 16.

24. *Id.*

held criminally liable is a precious and fundamental one that is constitutionally guaranteed. The right, which should be respected *by all means*, should not be casually taken away or be easily denied only because he did not assail the information prior to arraignment and plea, *as the majority opinion has found*.

Therein lay the fallacy of the majority opinion. In the first place, the accused-appellant had no duty or obligation to remind the State by motion to quash on what charge he should be made to answer to. Indeed, if he was legally and genuinely presumed not to know of any act or omission that would soon be alleged against him, he could not even be expected to speak at all or be heard from. To insist otherwise was to annul the formidable presumption of his innocence. In the second place, he must be fully informed of every act or omission that could render him criminally liable because fully informing him thereof was of the essence of due process of law. He could not properly prepare his defense without being thereby fully informed. In the third place, the omission from the information of the acts constituting treachery and abuse of superiority did not emanate from him; hence, that the information actually filed against him did not fully or adequately inform him of his *supposed* crime should never be blamed on him.

If the State, *not him*, ought to know what crime he committed, and should tell him so, then the Court as the bastion of fairness and constitutionalism should desist from treating so slightly his right to be informed.²⁵

Without delving into which was legally correct one between the dissenting opinion or the *ponencia* of *Solar*, the Authors note that both viewpoints are supported by law and jurisprudence.

V. JURISPRUDENCE SUPPORTING THE PONENCIA'S RULING

The ruling of the majority in *Solar* is not without precedent.

In *People v. Lopez*,²⁶ the accused was charged of rape by force and intimidation, but was convicted of rape on the ground that the woman was deprived of reason.²⁷ The information read: “*the above-named accused, with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully[,] and feloniously have carnal knowledge with [AAA], all against her will*

25. *People v. Rolando Solar y Dumbrique*, G.R. No. 225595, Aug. 6, 2019, at 5, available at <http://sc.judiciary.gov.ph/8704> (last accessed Sep. 30, 2020) (C.J. Bersamin, dissenting opinion).

26. *People v. Lopez*, 346 SCRA 469 (2000).

27. *Id.* at 471 & 476.

and consent.”²⁸ Such Information did not allege that the victim was the 16-year old niece of the victim who had a mental age of a 9-10 year old, and these special qualifying circumstances were not taken into consideration in computing the penalty imposed on the accused.²⁹ However, despite the Information only charging the accused of rape by force or intimidation, the Court *en banc* still convicted him of rape by having carnal knowledge of a woman deprived of reason or otherwise unconscious — a different mode of committing the crime.³⁰ The Court *en banc* used former Chief Justice Davide’s separate opinion in *People v. Moreno*³¹ as basis, to wit —

The evidence, however, established that the victim was an imbecile with the mental age of a six-year old child. The record does not disclose that appellant objected to the presentation and offer by the prosecution of evidence of such fact. Appellant’s failure 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.³²

The Court *en banc* thus ruled that because of the accused’s failure to object to the presentation of evidence relating to the mental retardation of the victim, he was considered to have waived his constitutional right to be informed of the nature and cause of the accusation against him.³³

The ruling in *Solar* likewise finds jurisprudential support in *People v. Galido*,³⁴ where the accused was convicted of rape by force and intimidation

28. *Id.* at 471. The name of the victim has been changed to a fictitious name to protect the identity of the sexual abuse survivor.

29. *Id.* at 477.

30. *Id.* at 476-77.

31. *People v. Moreno*, 294 SCRA 728 (1998).

32. *Id.* at 471 (citing *Moreno*, 294 SCRA at 747 (citing I ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 31-32 (1983 ed.); *People v. Malasugui*, 63 Phil. 221, 226 (1936); *Garcia v. Locsin*, 65 Phil. 689, 694 (1938); *People v. Royo*, 114 SCRA 304, 309 (1982); *Abriol v. Homeres*, 84 Phil. 525, 536 (1949); *People v. Dichoso*, 96 SCRA 957, 961 (1980); & *People v. Donato*, 198 SCRA 130, 155 (1991))). The case of *People v. Moreno* cited the cases mentioned to illustrate that the Court has recognized waivers of constitutional rights such as the right against unreasonable searches and seizures as pronounced in *Malasugui* and *Locsin*; the right to counsel and to remain silent in *Royo*; the right to be heard in *Abriol* and *Dichoso*; and the right to bail in *Donato*.

33. *Lopez*, 346 SCRA at 475.

34. *People v. Galido*, 426 SCRA 502 (2004).

despite the failure of the information to allege such element.³⁵ The Information stated “*the above-named accused, motivated by lust, with lewd design, did then and there, wilfully, unlawfully[,] and feloniously, have carnal knowledge with one [XXX], 14 years old, against her will and without her consent, to her damage and prejudice.*”³⁶ The Court, however, held that the failure to allege the element of force and intimidation was not a fatal omission that deprived the accused of the right to be informed of the crime charged against him.³⁷ This was because the complaint specifically charged the accused with rape through force and intimidation, which from the onset informed the accused of the charge against him.³⁸ To quote the Court,

[i]n other words, although the information failed to allege this essential element, the complaint, as in this case, nonetheless stated the ultimate facts which constitute the offense; and since the complaint forms part of the records and is furnished the accused, the latter may still suitably prepare his defense and answer the criminal charges hurled against him.³⁹

The ruling in *Galido* supports the second guideline laid down in *Solar*. To recall, the Court *en banc* stated as its second guideline that “[p]rosecutors 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[,]”⁴⁰ thereby further ensuring that the accused would be informed of the cause and nature of the accusation against him or her.

Similarly, in *People v. Palarca*,⁴¹ another rape case, the Information filed against the accused read as follows: “the abovenamed accused did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge with said [GGG], 70 years of age, against her will and consent.”⁴² While the Information also failed to allege the essential element of force and intimidation, the prosecution was able to prove its existence through the

35. *Id.* at 512 & 516.

36. *Id.* at 505. The name of the victim has been changed to a fictitious name to protect the identity of the sexual abuse survivor.

37. *Id.* at 504.

38. *Id.* at 511.

39. *People v. Candaza*, 491 SCRA 280, 288 (2006) (citing *Galido*, 426 SCRA at 512).

40. *Solar*, G.R. No. 225595, at 20-21.

41. *People v. Palarca*, 382 SCRA 741 (2002).

42. *Id.* at 747. The name of the victim has been changed to a fictitious name to protect the identity of the sexual abuse survivor.

presentation of evidence.⁴³ Because the accused did not interpose any objection, he was deemed to have waived his right to be informed of the nature and cause of the accusation against him.⁴⁴

The rulings in *Lopez, Galido, and Palarca* show that the Court has not been strict with regard to specificity and particularity of Informations, as it had already declared that the constitutional right to be informed of the cause of the accusation *may* be waived under certain circumstances. These cases prove that the right is not absolute and the cases of *Lopez* and *Palarca*, in particular, have categorically stated that the right may be waived upon the failure of the accused to object to the presentation of evidence, even though the element to be established by those pieces of evidence was not in the Information. These cases thus tend to lend support to the conclusions reached by the *ponencia* in *Solar*.

VI. JURISPRUDENCE SUPPORTING THE DISSENTING OPINION

In the same way, however, the point raised by the dissenting opinion is also supported by previously decided cases on the matter.

For instance, in *People v. Rodil*,⁴⁵ the Court did not convict the accused of the “complex crime of homicide with assault upon an agent of a person in authority”⁴⁶ even if the evidence on record established all the elements of the said crime.⁴⁷ The Court explained that it could not do so “for the simple reason that the information does not allege the fact that the accused then knew that, before or at the time of the assault, the victim was an agent of a person in authority.”⁴⁸ The Information filed against the accused read —

That on or about [24 April] 1971, in the Municipality of Indang, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a double-bladed dagger, with evident premeditation and treachery, and with intent to kill, did, then and there, willfully, unlawfully, and feloniously, attack and stab PC Lt. Guillermo Masana while the latter was in the performance of his official duties, inflicting upon him stab wounds on the different parts of his body which directly caused his death.

43. *Id.* at 747-48.

44. *Id.*

45. *People v. Rodil*, 109 SCRA 308 (1981).

46. *Id.* at 326.

47. *Id.*

48. *Id.*

Contrary to law.⁴⁹

The foregoing ruling would subsequently be reiterated in the 2017 case of *Guelos v. People*,⁵⁰ where the Court said that “the establishment of the fact that the petitioners came to know that the victims were agents of a person in authority cannot cure the lack of allegation in the Informations that such fact was known to the accused which renders the same defective.”⁵¹

Meanwhile, in complete contrast to the rape cases of *Lopez, Galido*, and *Palarca* discussed above was the ruling in the rape case of *People v. Dela Cruz*.⁵² In *Dela Cruz*, one of the Informations charged against the accused read: “the above-named accused, did then and there willfully, unlawfully and feloniously commit sexual abuse on his daughter either by raping her or committing acts of lasciviousness on her, which has debased, degraded and demeaned the intrinsic worth and dignity of his daughter, [ZZZ] as a human being.”⁵³ Despite the evidence presented to prove the charge, the Court *en banc* acquitted the accused and ratiocinated as follows —

The allegation in the information that the accused-appellant ‘willfully, unlawfully and feloniously commit sexual abuse on his daughter [ZZZ] either by raping her or committing acts of lasciviousness on her’ is not a sufficient averment of the acts constituting the offense as required under Section 8, for these are conclusions of law, not facts. The information in Criminal Case No. 15368-R is therefore void for being violative of accused-appellant’s constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him.

Although accused-appellant failed to call the attention of both the trial court and this Court regarding the defects of the information in Criminal Case No. 15368-R, the Court may *motu proprio* dismiss said information at this stage, pursuant to its ruling in *Suy Sui [v.] People*, because the information is a patent violation of the right of the accused to be informed of the nature and cause of the accusation against him and of the basic principles of due process.⁵⁴

49. *Id.* at 315.

50. *Guelos v. People*, 827 SCRA 223 (2017).

51. *Id.* at 245.

52. *People v. Dela Cruz*, 383 SCRA 410 (2002).

53. *Id.* at 414-15. The name of the victim has been changed to a fictitious name to protect the identity of the sexual abuse survivor.

54. *Id.* at 437.

Unlike in the other sexual abuse cases previously discussed, the Court *en banc* did not rule in *Dela Cruz* that the constitutional right to be informed of the nature of the accusation was waivable. To recall, in the other cases earlier discussed, the Court held that the failure of the accused to object to the presentation of evidence results in the waiver of the defect in the Information (i.e., the failure to state all of the elements of the crime in the Information). Whereas, in *Dela Cruz*, the Court adjudged the Information to be wholly void despite the absence of objection interposed as to the presentation of evidence.⁵⁵

Similar rulings would later on be laid down in *Dela Chica v. Sandiganbayan*,⁵⁶ a case involving a violation of Section 3 (e) of Republic Act No. 3019, and *Canceran v. People*,⁵⁷ a case involving theft.

In *Dela Chica*, the Information stated that the accused “wilfully, unlawfully and criminally [caused] undue injury to the government by making revisions in the completion of the municipal building without prior approval by the proper authorities resulting to cost deficiency of [₱]375,682.32, to the damage and injury of the government, in the amount aforesated.”⁵⁸ It is noteworthy that the Information simply lacked the allegation that the accused did the acts through “manifest partiality, evident bad faith, or gross inexcusable negligence[.]”⁵⁹ This is, to an extent, similar to the defects in the cases of *Galido* and *Palarca*, wherein the respective Informations lacked the allegation that the acts were done through “force and intimidation.” Yet, unlike in those cases, the Court in *Dela Chica* acquitted the accused and declared the Information void for being in violation of the accused’s right to be informed of the cause of the accusation.⁶⁰ In other words, the Court did not declare the accused in *Dela Chica* to have waived the said right by not interposing objections to the Information before arraignment. The Court elucidated that

—
Respondents, however, question petitioners’ right to raise the issue of the validity of the information at this stage, arguing that by entering a plea of not guilty during the arraignment, petitioners had waived all possible objections to the sufficiency of the information.

55. *Id.*

56. *Dela Chica v. Sandiganbayan*, 417 SCRA 242 (2003).

57. *Canceran v. People*, 761 SCRA 293 (2015).

58. *Dela Chica*, 417 SCRA at 244.

59. *Id.* at 245.

60. *Id.* at 249.

The argument is without legal basis. It is true that pursuant to Section 9, Rule 117 of the Revised Rules of Court, the failure of the accused to assert any ground for a motion to quash before he pleads to the information shall be deemed a waiver of the grounds for a motion to quash. Respondents, however, may have overlooked that the same section admits of certain exceptions, as when: (1) no offense was charged, (2) the court trying the case has no jurisdiction over the offense charged, (3) the offense or penalty has been extinguished, and (4) the accused would be twice put to jeopardy. In the present case, given that the information failed sufficiently to charge the offense, petitioners are not precluded from attacking its validity even after their arraignment.⁶¹

Finally, in *Canceran*, the accused was charged with “frustrated theft” but the prosecution was able to prove that the theft was ultimately consummated.⁶² In spite of this, the Court refused to convict the accused of consummated theft, and instead convicted him only of attempted theft as “there is no such crime [as ‘frustrated theft.’]”⁶³ Citing *United States v. Campo*,⁶⁴ the Court in *Canceran* pronounced —

[A]n accused cannot be convicted of a higher offense than that with which he was charged in the complaint or information and on which he was tried. *It matters not how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted in the courts of any offense, unless it is charged in the complaint or information on which he is tried, or necessarily included therein.* He has a right to be informed as to the nature of the offense with which he is charged before he is put on trial, and to convict him of an offense higher than that charged in the complaint or information on which he is tried would be an unauthorized denial of that right.⁶⁵

Once more, the Court essentially held that it was irrelevant what the evidence on record says; for as long as the Information failed to state all the elements of the crime, the accused should not be convicted of the said crime. This, again, is contrary to the Court’s decisions in *Lopez* and *Palarca* — cases where the Court held the right to be informed of the cause and nature of the accusation may be waivable.

61. *Id.* at 249 (citing *People v. Gonzales, Jr.*, 373 SCRA 283, 297-98 (2002)).

62. *Canceran*, 761 SCRA at 297.

63. *Id.* at 303.

64. *United States v. Campo*, 23 Phil. 368, 371 (1912).

65. *Canceran*, 761 SCRA at 303-04 (emphasis supplied).

VII. CONCLUSION: *SOLAR* — A WELCOME DEVELOPMENT BUT WITH A MISSED OPPORTUNITY

As earlier mentioned, the main doctrine of *Solar* is a welcome development to jurisprudence as it strengthens the right of the accused to be informed of the cause of the accusation against him or her. In addition, because of this ruling, prosecutors are now made aware that even in alleging the presence of the aggravating circumstances, particularity remains to be the goal as it has a direct impact on the accused's right to be informed. To this end, the Court reminded that

[i]n the particular context of criminal prosecutions, therefore, it is the State which bears the burden of *sufficiently* informing the accused of the accusations against him so as to enable him to properly prepare his defense.

With the foregoing principles in mind, the Court thus agrees with the ruling enunciated in *Valdez*, as subsequently reiterated in *Dasmariñas* and *Delector*. *Consequently, the Court holds that it is insufficient for prosecutors to indicate in an Information that the act supposedly committed by the accused was done 'with treachery' or 'with abuse of superior strength' or 'with evident premeditation' without specifically describing the acts done by the accused that made any or all of such circumstances present.* Borrowing the words of the Court in *Dasmariñas*, 'to merely state in the information that *treachery* was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.'

An information alleging that treachery exists, to be sufficient, must therefore have factual averments on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specially to ensure its execution without risk to the accused arising from the defense that the victim might make. The Information must so state such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged.

In this connection, the Court takes this opportunity to remind prosecutors of the crucial role they play in the justice system.

...

Indeed, prosecutors perform the unique function, essential in the maintenance of the rule of law and peace and order, of ensuring that those who violate the law are brought to justice. The right of the State to prosecute, however, is not absolute. The Bill of Rights precisely 'defines the limits beyond which lie unsanctioned state actions' and reserves certain areas for 'the individual as constitutionally protected spheres where even the awesome powers of Government may not enter at will.' The prosecutors — through whom this right of the State to prosecute is exercised — therefore

do not have a blanket grant of authority to disregard the rights of citizens under the Constitution.

Therefore, prosecutors should bear in mind that in performing their functions, the constitutionally enshrined right of the accused to be informed of the cause of the accusation against him remains primordial. *To this end, prosecutors are instructed to state with sufficient particularity not just the acts complained of or the acts constituting the offense, but also the aggravating circumstances, whether qualifying or generic, as well as any other attendant circumstances, that would impact the penalty to be imposed on the accused should a verdict of conviction be reached.*⁶⁶

Despite, however, ruling in favor of the citizen's right to be informed, with the concomitant reminder to the agents of the State to fully implement the right, the ruling of the majority of the Court had a caveat — namely, that nevertheless, when the accused decides to take a plea without questioning the sufficiency of the Information through the remedies provided under procedural rules, the defects in the Information as regards alleging the aggravating circumstances are already waived.⁶⁷

Unfortunately, as the Court finally settled, the diverging jurisprudence on the required particularity in alleging aggravating circumstances in the Informations, the Court — with due respect — missed an opportunity to likewise settle the conflicting jurisprudence related to its own caveat. While the *ponencia* of *Solar* is clear that the right to be informed may be waived *insofar as the errors in alleging the aggravating circumstances are concerned*, it remains unclear what other errors in the Information may be waived by the accused.

As demonstrated in the discussion above, there are cases, on the one hand, that say that even errors pertaining to the core elements of the crime may be waived by the accused. On the other hand, there are also cases that say these kinds of defects result in the blanket invalidity of the entire Information, thereby causing the acquittal of the accused despite the evidence on record saying otherwise. Should this conflict be raised in future litigation, the Court might be compelled to make another clarification on the sufficiency of an Information in order to reconcile the opposing views, similar to what has been done in *Solar* albeit on a wider scope.

66. *Solar*, G.R. No. 225595, at 18-19 (citing *Dasmariñas*, 842 SCRA at 42 & 61; *Allado v. Diokno*, 232 SCRA 192, 209 (1994); & *Salonga v. Cruz Paño*, 134 SCRA 438, 463 (1985)).

67. *Solar*, G.R. No. 225595, at 20.

Indeed, this is where the *ponencia* and the dissenting opinion in *Solar* differed. Regrettably, neither was able to tackle the issue head on. Perhaps, in the next case where it is proper, the Court will finally settle and identify, once and for all, which defects in an Information may be waivable, and which ones are ultimately offensive to the accused's constitutional right to be informed.