Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

POLICE OFFICER 2 ARTHUR M. PINEDA, Petitioner,	**G.R. No. 228232**
	Present:
-versus-	LEONEN, *SAJ.*,* LAZARO-JAVIER, *Acting Chairperson*** LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** MAR 27 2023

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* [1] assails the following dispositions of the Court of Appeals in CA-G.R. CR No. 35683, entitled "*PO2 Arthur M. Pineda v. People of the Philippines,*" *viz.*:

1) Decision[2] dated July 14, 2016, affirming the conviction of petitioner Police Officer 2 Arthur M. Pineda (PO2 Pineda) for *Evasion through Negligence under Article 224 of the Revised Penal Code*; and

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* On official leave

** *Leonen, SAJ,* on official leave, *Lazaro-Javier, J.*, Acting Chairperson per Special Order No. 2950 dated March 22, 2023.

1 *Rollo*, pp. 12–34.

2 Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Elihu A. Ybañez and Ramon A. Cruz, *id.* at 38–57.

2) Resolution[3] dated November 14, 2016, denying petitioner's Motion for Reconsideration.

Antecedents

In Criminal Case No. 462935-CR, petitioner was charged before the Metropolitan Trial Court, City of Manila, Branch 17 with *Conniving with or Consenting to Evasion, viz.*:[4]

> That on or about July 30, 2010, in the City of Manila, Philippines, the said accused, a member of the Manila Police District-Philippine National Police and presently assigned at Raxabago Police Station (PS1) duly appointed, qualified and acting as such, and while performing his official duties or in relation thereto, having been entrusted with the custody and/or in charge of, and provide security to, said accused, then a detention prisoner, who was then confined at the Metropolitan Medical Center (Room 508), Masangcay, Tondo, this city, for sustaining a gunshot wound and who was the accused in Criminal Case No. 10-277283 for Murder pending before Branch 7 of the Regional Trial Court of Manila, did then and there willfully, unlawfully, feloniously and with grave abuse and infidelity, cause the escape of the said accused, by then and there leaving his place of assignment at the hospital from 11:15 a.m. (1115H) to 2:35 p.m. (1435H) per Log Book of Security Guards on duty (Randy M. Serra and Lino M. Lapizar), thereby giving opportunity to said accused to escape, as he in fact escaped, at about past 2:00 p.m., to the damage and prejudice of MARISSA M. CO, who was the complainant in said Criminal Case No. 10-277283 for Murder pending before Branch 7 of the Regional Trial Court of Manila.
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> Contrary to law.[5]

On arraignment, petitioner pleaded not guilty.[6]

The Prosecution's Version

Alicia Go Tan (Tan) testified that during the dates relevant to the present case, she was the head nurse of the Metropolitan Medical Center (hospital) located at Masangcay Street, Tondo, Manila. Patient Marcelino Nicolas (Nicolas) had been admitted and confined under hospital arrest for two weeks already when the incident happened. The police officers were posted outside his room, guarding him round the clock by shift.[7]

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3 Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Elihu A. Ybañez and Ramon A. Cruz of Court of Appeals, Manila, *id.* at 82–83.

4 *Rollo*, pp. 112–113.

5 *Id.*

6 *Id.* at 113.

7 *Id.*

On July 30, 2010, she was on duty on the fifth floor of the hospital from 7:00 a.m. until 3:00 p.m. At around 1:30 p.m., she removed the intravenous line attached to Nicolas per his request via buzzer and per instruction of Dr. Marietta Tanchoco Tan. Though Nicolas was stable, he was still in critical stage and needed supervision. He had never been handcuffed.[8]

She then went to the pharmacy of the hospital to request for a new intravenous set. Upon her return, she discovered that Nicolas, who was charged with the murder of one Roberto Co, had absconded. She reported his escape to her superior and supervisor, and to the Security Office, through Officer-in-Charge Joemar Boquiren (SO Boquiren).[9]

SO Boquiren immediately proceeded to the room occupied by Nicolas before the escape. Nicolas' daughter, who was sleeping in the room but had woken up, asked why her father was not there. She (Tan), together with two others, signed an Incident Report and submitted the same to the Medical Director's Office. She did not see petitioner in his post between 12:00 noon to 1:00 p.m. of even date. Too, he left his post for two hours and 30 minutes. She did not see him return to the hospital either after Nicolas escaped.[10]

The Defense's Version

Petitioner testified that on July 30, 2010, he arrived in complete police uniform at the hospital. He was detailed to secure patient Nicolas only on that day. He checked possible entries and exits in the room. He checked Nicolas inside his room and saw that Nicolas was still very weak. He then sought permission from one of the security guards of the hospital, who was doing a roving inspection at the time to eat lunch in a nearby canteen.[11]

He then went outside the hospital where he was approached by two barangay tanods and Punong Barangay Susan Duanan (Punong Barangay Duanan) to seek his assistance with regard to a snatching/robbery incident. He searched for possible places where the robber escaped and was unable to call for back-up since he did not have a radio or any means of communication at the time. He rendered police assistance until 2:00 p.m.[12]

When he returned to the hospital, he learned that Nicolas absconded. He called Police Chief Inspector Antonio Macam (PCI Macam), the Deputy Commander of Police Station 1, and requested for back-up to secure the possible exits in the hospital. Police Officer 1 Emmanuel Lapuz (PO1 Lapuz)

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8 *Id.* at 113–114.
9 *Id.* at 113.
10 *Id.* at 113–114.
11 *Id.* at 120.
12 *Id.*

and Police Officer 1 Prado arrived and they posted themselves at the possible exits of the hospital but they failed to locate Nicolas.[13]

Petitioner's testimony was corroborated by PCI Macam, PO1 Lapuz and Punong Barangay Duanan.[14]

By Decision[15] dated May 16, 2012, the Metropolitan Trial Court found petitioner guilty of *Conniving with or Consenting to Evasion*, *viz.*:

> WHEREFORE, the Court finds PO2 Arthur Pineda y Meimban guilty beyond reasonable doubt of the crime of *conniving with or consenting to evasion,* defined and penalized in Article 223 of the Revised Penal Code, and sentences him to an indeterminate penalty of four (4) months and one (1) day of *arresto mayor* as minimum to one (1) year one (1) month and eleven (11) days of *prision correccional* as maximum.
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> PO2 Arthur Pineda is further imposed the penalty of temporary special disqualification for a period of eight (8) years and one (1) day. The temporary special disqualification can be served simultaneously with imprisonment. PO2 Arthur Pineda y Meimban is deprived of the office, employment, profession or calling affected and he is disqualified from holding similar offices or employment. It shall deprive PO2 Arthur Pineda y Meimban the right to vote in any popular election for any public office or to be elected to such office. Moreover, PO2 Arthur Pineda y Meimban shall not be permitted to hold any public office during the period of his disqualification.
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> **SO ORDERED.**[16] (Italics and emphasis in the original).

It ordained that all the elements of the crime had been duly established, *viz.*: 1) petitioner, as a police officer, is a public officer; 2) per Memorandum dated July 23, 2010, he was in charge of Nicolas, a detention prisoner; 3) Nicolas escaped from his custody; and 4) he consented to the evasion when he left his post without being properly relieved therefrom by any incoming duty personnel since relaxation of imprisonment is considered infidelity.[17]

Ruling of the Regional Trial Court

By Decision[18] dated November 26, 2012, the Regional Trial Court, City of Manila, Branch 40, affirmed petitioner's conviction, albeit, for another crime - *Evasion through Negligence*, *viz.*:

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13 *Id.* at 120–121.
14 *Id.* at 123–124.
15 Penned by Presiding Judge Phoeve C. Meer of Metropolitan Trial Court, Branch 17, City of Manila, *id.* at 112–135.
16 *Id.* at 135.
17 *Id.* at 125–133.
18 Penned by Presiding Judge Alfredo D. Ampuan of Regional Trial Court, Branch 40, City of Manila, *id.* at 155–162.

> **IN VIEW OF THE FOREGOING**, the Decision dated May 16, 2012 of the Metropolitan Trial Court of Manila, Branch 29 in Criminal Case No. 462935-CR is hereby MODIFIED. Accused-appellant PO2 Arthur Pineda y Meimban is hereby pronounced guilty beyond reasonable doubt of the crime of Evasion through Negligence defined and penalized under Article 224 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of three (3) months of arresto mayor as minimum to one (1) year and two (2) months of prision correccional as maximum and temporary special disqualification for eight (8) years and one (1) day.
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> SO ORDERED.[19] (Emphasis in the original)

The Regional Trial Court observed that the Information did not allege that petitioner connived with or consented to the escape of the prisoner. On the contrary, the allegations therein in truth constitute the offense of Evasion through Negligence under Article 224 of the Revised Penal Code. Petitioner committed an act of negligence when he left his post without being properly relieved by another officer and thereby allowed Nicolas to escape.[20]

Petitioner's Motion for Reconsideration was denied under Order[21] dated April 12, 2013.

Ruling of the Court of Appeals

Under its assailed Decision[22] dated July 14, 2016, the Court of Appeals affirmed. It agreed that despite its caption "*Violation of Article 223 of the Revised Penal Code,*" the Information in fact suggested that the charge was actually for "*Violation of Article 224 of the Revised Penal Code.*"[23] Too, it affirmed the presence of all the elements of *Evasion through Negligence*.[24]

By the assailed Resolution[25] dated November 14, 2016, petitioner's Motion for Reconsideration was denied.

The Present Petition

Petitioner now assails anew his conviction for *Evasion through Negligence*. He essentially argues that since the Information did not bear the

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19 *Id.* at 162.
20 *Id.* at 160.
21 Penned by Presiding Judge Alfredo D. Ampuan of Regional Trial Court, Branch 40, City of Manila, *id.* at 178–181.
22 Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Elihu A. Ybañez and Ramon A. Cruz of Court of Appeals, Manila, *id.* at 38–57.
23 *Id.* at 55.
24 *Id.* at 56.
25 Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Elihu A. Ybañez and Ramon A. Cruz of Court of Appeals, Manila, *id.* at 82–83.

correct charge against him, his right to be informed of the nature and cause of the accusation against him was violated.[26] Too, the Regional Trial Court's decision, in effect, allowed for a complete change in the theory of the State, i.e., from *Conniving with/Consenting to Evasion* committed through *dolo* to *Evasion through Negligence* committed through *culpa*.[27] More, given the facts, he may only be held administratively liable for his infraction.[28] Even assuming he was criminally liable, the penalty of temporary special disqualification should be imposed only for a period equal to the principal penalty of imprisonment.[29]

By Resolution[30] dated March 13, 2017, the Court initially denied the petition for failure to sufficiently show that the Court of Appeals committed any reversible error in rendering the assailed dispositions. On petitioner's Motion for Reconsideration, however, the Court, under Resolution[31] dated June 7, 2017, ordered the case reinstated and the Office of the Solicitor General (OSG) to file its Comment thereon.

The OSG counters[32] that despite petitioner's conviction under a different provision of the Revised Penal Code, his constitutional right to be informed of the nature and cause of accusation against him was not violated as the allegations in the Information sufficiently described the crime of *Evasion through Negligence*.[33] In any case, he may no longer raise this issue on appeal since he failed to object thereto during the trial.[34] More important, the prosecution was able to establish his guilt beyond reasonable doubt. Thus, he must be held criminally, not only administratively, liable.[35] Finally, temporary special disqualification is a principal penalty separate and distinct from the other principal penalty of imprisonment. Hence, its duration is not dependent on the imposed period of imprisonment.[36]

In his Reply,[37] petitioner raises for the first time the argument that the Information does not comply with Rule 112, Section 4 of the Rules of Court, as amended since only the senior assistant city prosecutor signed the same, *sans* the approval or written authority from the city prosecutor.[38]

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26 *Id.* at 21–24.
27 *Id.* at 27.
28 *Id.* at 28.
29 *Id.* at 32–33.
30 *Id.* at 215–216.
31 *Id.* at 226–228.
32 By Solicitor General Jose C. Calida, Assistant Solicitor General Raymund I. Rigodon and Senior State Solicitor Henry Gerald P. Ysaac, Jr., *id.* at 234–254.
33 *Id.* at 240.
34 *Id.*
35 *Id.* at 241.
36 *Id.* at 253.
37 *Id.* at 265–276.
38 *Id.* at 267.

Issues

1) Was the Information validly filed against petitioner in conjunction with Secion 4, Rule 112 of the Rules of Court?

2) Was petitioner duly informed of the nature and cause of the accusation against him for which he was found guilty of?

3) Was petitioner correctly convicted of *Evasion through Negligence*?

Our Ruling

The Information was validly filed in conjunction with Section 4, Rule 112 of the Rules of Court

Section 4, Rule 112 of the Rules of Court, as amended, states in part, "[n]o complaint or information may be filed or dismissed by an investigating prosecutor **without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor** of the Ombudsman or his deputy."

Here, the Information was filed by Senior Assistant Prosecutor Renato F. Gonzaga who "*Approved [it] for the City Prosecutor*;" and signed by Senior Assistant Prosecutor Elseray Faith A. Noro, Chief, 2nd Division.[39]

In *Ongsingco v. Sugima and People*,[40] the Court upheld as valid the four Informations signed by Assistant City Prosecutor Adoc "*For the City Prosecutor*" and declared that such alleged defect, if at all, may no longer render the Informations invalid due to the accused's belated objection thereto, *viz.*:

> Accordingly, **in instances where the information is filed by an authorized officer, like a public prosecutor, without the approval of the city prosecutor appearing in the information,** but the resolution for filing of the information bears the approval of the city prosecutor, or his or her duly authorized deputy, and such lack of approval is timely objected to before arraignment, the court may require the public prosecutor to have the signature of the city prosecutor affixed in the information to avoid undue delay. **However, if the objection is raised after arraignment, at any stage of the proceeding or even on appeal, the same should no longer be a ground to declare the information as invalid, because it is no longer a question of jurisdiction over the case.** After all, the resolution of the investigating prosecutor attached to the information carries with it the

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[39] *Rollo*, p. 267.

[40] G.R. No. 217787, September 18, 2019 [Per J. Peralta, Third Division].

recommendation to file the information and the approval to file the information by the prosecutor, or his or her duly authorized deputy.

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In this particular case, **there is proof in the records that Prosecutor II Hirang filed the Informations with prior authority from the 1st Assistant City Prosecutor.** The records—which include those of the preliminary investigation accompanying the informations filed before the court, as required under Rule 112—**clearly show that 1st Assistant City Prosecutor (ACP) Jaime A. Adoc, signing in behalf of the City Prosecutor, approved the filing of four (4) counts of violation of B.P. 22, after it was recommended for approval by the Investigating Prosecutor.**

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Contrary to the dissent that the prior approval came from the 1st Assistant Prosecutor, who had no authority to file an Information on his own, the afore-quoted dispositive clearly indicates that **ACP Adoc approved the filing of the case "FOR THE CITY PROSECUTOR" and not on his own. It would be too late at this stage to task the prosecution, and it would amount to denial of due process, to presume that ACP Adoc had no authority to approve the filing of the subject Informations.** Had petitioners questioned ACP Adoc's authority or lack of approval by the city prosecutor before the MeTC, and not just for the first time before the Court, the prosecution could have easily presented such authority to approve the filing of the Information. (Emphases and underscoring supplied.)

As stated, Senior Assistant Prosecutor Renato F. Gonzaga here approved the Information "*for the City Prosecutor.*" In doing so, he asserted his supposed authority emanating from the City Prosecutor who on record had neither denied nor assailed it. As things stand, therefore, the senior assistant prosecutor's asserted authority on this score has not been disproved. At any rate, it is too late in the day for petitioner to raise this issue for the first time here and now and only in his reply to the comment of the OSG. On this score, his invocation of *People v. Garfin*[41] is misplaced. There, the accused, unlike herein petitioner, timely filed a motion to dismiss before the trial court, citing as ground therefor the lack of prior written authority or approval by the city prosecutor of the Information.

Petitioner was not duly informed of the nature and cause of the accusation for which he was found guilty of

Section 14(2), Article III[42] of the 1987 Constitution guarantees the right of the accused in all criminal prosecutions to be informed of the nature and

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41 See 470 Phil. 211, 229 (2004) [Per J. Puno, Second Division]

42 Section 14, Article III of the 1987 Constitution.
Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the

cause of the accusation against him or her. Thus, Section 6, Rule 110 of the Rules of Court ordains:

> **Section 6.** *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
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> When an offense is committed by more than one person, all of them shall be included in the complaint or information.

In *People v. Bayya,*[43] the Court explained the purpose of this provision, to wit:

> The purpose of the above-quoted rule is to inform the accused of the nature and cause of the accusation against him [or her], a right guaranteed by no less than the fundamental law of the land. Elaborating on the defendant's right to be informed, the Court held in *Pecho v. People* that the objectives of this right are:
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> 1. **To furnish the accused with such a description of the charge against him [or her] as will enable him to make the defense;**
> 2. To avail himself [or herself] of his conviction or acquittal for protection against a further prosecution for the same cause; and
> 3. **To inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had.**
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> It is thus imperative that the Information filed with the trial court be complete – to the end that the accused may suitably prepare his defense. **Corollary to this, an indictment must fully state the elements of the specific offense alleged to have been committed as it is the recital of the essentials of a crime which delineates the nature and cause of accusation against the accused.** (Emphasis and underscoring supplied.)

Verily, it is fundamental that **every element** of the offense charged **must be alleged** in the complaint or information. For the accused is presumed to have no independent knowledge of the facts that constitute the offense. The main purpose of requiring the various elements of a crime to be set out in an information is to enable the accused to suitably prepare his or her defense. It is of no moment how conclusive and convincing the evidence of guilt may be, but **an accused cannot be convicted of any offense, unless it is charged in**

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accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of the witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: *Provided,* that he has been duly notified and his failure to appear is unjustified.

[43] 384 Phil. 519, 525–526 (2000) [Per J. Purisima, En Banc] citing *People v. Ramos,* 357 Phil. 559, 574 (1998) [Per J. Regalado, En Banc].

the complaint or information on which he or she is tried or is necessarily included therein.[44]

Here, the offense of *Conniving with/Consenting to Evasion* under Article 223 of the Revised Penal Code bears the following elements: (1) the offender is a public officer; (2) he or she had in his or her custody or charge either a detention prisoner or prisoner by final judgment; (3) such prisoner escaped from his or her custody; and (4) he or she consented to the evasion or was in connivance with the prisoner in the latter's escape.[45]

We focus on the fourth element. It pertains to the manner by which the offense was committed by the accused, i.e., he or she consented to the evasion or was in connivance with the prisoner in the latter's escape. As it was, this element was conspicuously absent in the subject Information which alleged that the crime was committed *willfully, unlawfully, feloniously, and with grave abuse and infidelity, viz.*:[46]

> That on or about July 30, 2010, in the City of Manila, Philippines, the said accused, a member of the Manila Police District-Philippine National Police and presently assigned at Raxabago Police Station (PS1) duly appointed, qualified and acting as such, and while performing his official duties or in relation thereto, having been entrusted with the custody and/or in charge of, and provide security to, said accused, then a detention prisoner, who was then confined at the Metropolitan Medical Center (Room 508), Masangcay, Tondo, this city, for sustaining a gunshot wound and who was the accused in Criminal Case No. 10-277283 for Murder pending before Branch 7 of the Regional Trial Court of Manila, **did then and there willfully, unlawfully, feloniously and with grave abuse and infidelity, cause the escape of the said accused,** by then and there leaving his place of assignment at the hospital from 11:15 a.m. (1115H) to 2:35 p.m. (1435H) per Log Book of Security Guards on duty (Randy M. Serra and Lino M. Lapizar), thereby giving opportunity to said accused to escape, as he in fact escaped, at about past 2:00 p.m., to the damage and prejudice of MARISSA M. CO, who was the complainant in said Criminal Case No. 10-277283 for Murder pending before Branch 7 of the Regional Trial Court of Manila.
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> Contrary to law.[47] (Emphasis and underscoring supplied)

Grave abuse and infidelity, however, does not equate to consent or connivance as required under Article 223. For while *grave abuse and infidelity* suggests willful and deliberate intent by the accused to commit the crime, a form of assent from the accused to the prisoner's plan to abscond is further required. Thus, in *U.S. v. Bandino*,[48] the accused therein was convicted under Article 223 of the Revised Penal Code for permitting a convicted

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[44] See 357 Phil. 559, 575 (1998) [Per J. Regalado, En Banc]; 610 Phil. 203, 210 (2009) [Per J. Carpio Morales, Second Division]; 762 Phil. 558, 568 (2015) [Per J. Mendoza, Second Division].

[45] See 29 Phil. 459, 461 (1915) [Per J. Torres, En Banc].

[46] *Rollo*, pp. 112–113.

[47] *Id.*

[48] See 29 Phil. 459, 461 (1915) [Per J. Torres, En Banc].

prisoner to go out and buy some cigarettes near the place he was held in custody, allowing him the opportunity to escape. Too, in *People v. Revilla,*[49] the accused was convicted of the same offense for allowing the prisoner to sleep in his house every night, giving him the chance to abscond.

As for *Evasion through Negligence* under Article 224 of the Revised Penal Code, the following elements must be present: (1) the offender is a public officer; (2) he or she is charged with the conveyance or custody of either a detention prisoner or prisoner by final judgment; (3) such prisoner escaped from his or her custody; and (4) due to his or her negligence.[50]

Again, we focus on the fourth element i.e., **negligence**. We refer back to the allegation in the Information that the accused "did then and there willfully, unlawfully, feloniously and *with grave abuse and infidelity*, cause the escape of the said accused, by then and there leaving his place of assignment at the hospital from 11:15 a.m. (1115H) to 2:35 p.m. (1435H) per Log Book of Security Guards on duty (Randy M. Serra and Lino M. Lapizar), thereby giving opportunity to said accused to escape."

The allegation is self-explanatory. It is devoid of the requisite element of negligence. The allegation in fact speaks of the opposite of negligence such as "willfully, unlawfully, feloniously and *with grave abuse and infidelity*." More, the Information is captioned *Violation of Article 223 of the Revised Penal Code* (Conniving with/Consenting to Evasion).[51]

In sum, petitioner was not charged with either *Conniving with/Consenting to Evasion* under Article 223 of the Revised Penal Code nor with *Evasion through Negligence* under Article 224 of the Revised Penal Code. The allegations in the Information were neither here nor there. It was even replete with contradictions. Consequently, petitioner cannot be found guilty of either one of the aforesaid crimes. To do so would certainly violate his Constitutional right to be informed of the nature and cause of the accusation against him.

True, an accused may be convicted of a crime necessarily included in the crime charged pursuant to Section 4, Rule 120 of the Rules of Court, *viz.*:

> **Section 4.** *Judgment in case of variance between allegation and proof.* – When there is variance between the offense charged in the complaint or information and that proved, **and the offense as charged** is included in or **necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged,** or of the offense charged which is included in the offense proved. (Emphases supplied.)

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[49] C.A., 37 O.G. 1896.
[50] See 244 Phil. 366, 370–371 (1988) [Per J. Gutierrez, Jr., En Banc].
[51] *Rollo*, p. 55.

An offense charged necessarily includes the offense proved when **some of the essential elements or ingredients** of the former, as alleged in the complaint or information, **constitute the latter.**[52] For example, in several cases,[53] the Court convicted the accused of homicide though he or she was charged with murder for failure of the prosecution to prove the **additional** element of qualifying circumstances.

This is, however, inapplicable here.

For one, *Conniving with/Consenting to Evasion* under Article 223 of the RPC **does not necessarily include** *Evasion through Negligence* under Article 224 of the Revised Penal Code for the simple reason that some of the essential elements of the former **do not constitute** the latter. The absence of consent or connivance required by Article 223 **does not necessarily** mean negligence so as to constitute *Evasion through Negligence* under Article 224. To be sure, in *Rodillas v. Sandiganbayan*,[54] the Court categorically stated that these two offenses are distinct and separate crimes penalized under different provisions of the RPC, whose inculpatory elements, as discussed, are distinct and separate as well. Hence, it cannot be said that one necessarily includes, or is necessarily included in the other.

For another, these two offenses are **two different modes** of committing infidelity in the custody of prisoners with material differences and substantial distinctions. As stated, *Conniving with/Consenting to Evasion* under Article 223 requires **some form of agreement coupled with intent** to allow the prisoner to escape while *Evasion through Negligence* under Article 224 contemplates **lack of the diligence** required in custody of prisoners which culminates in the latter's escape. Thus, in *People v. Pareja,*[55] the Court pronounced that the accused, who was charged with rape through carnal knowledge, cannot be convicted of rape by sexual assault, due to the material differences and substantial distinctions between the two modes of rape, which may apply by analogy here.

It may be argued, nonetheless, that *Conniving with/Consenting to Evasion,* being an intentional felony, is the greater offense and thus necessarily includes *Evasion through Negligence,* which is the lesser offense, being a culpable felony. This theory finds support in *Sevilla v. People*,[56] citing *Samson v. Court of Appeals*,[57] where the Court held that an accused may nonetheless be convicted for a criminal negligent act though the information

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52 See Section 5, Rule 120 of the Rules of Court; see also 724 Phil. 759, 783–784 (2014) [Per J. Leonardo-De Castro, First Division].

53 See 4 Phil. 175, 177 (1905) [Per J. Mapa, First Division]; 3 Phil. 437, 439–440 (1904) [Per J. Torres, En Banc].

54 244 Phil. 366, 373–374 (1988) [Per J. Gutierrez, Jr., En Banc].

55 724 Phil. 759, 783 (2014) [Per J. Leonardo-De Castro, First Division].

56 G.R. No. 194390, August 13, 2014 [Per J. Reyes, First Division].

57 103 Phil. 277, 285 (1958) [Per J. Baustista Angelo, En Banc].

charged him or her exclusively of a willful offense "upon the theory that the greater includes the lesser offense." The Court therein thus convicted the accused of reckless imprudence resulting in falsification of public document under Article 365 of the Revised Penal Code albeit he was charged with falsification of public document under Article 171(4) of the same law.

But it is imprecise, if not incorrect, to apply such theory here where the "greater offense" does not only require criminal intent (*dolo*) but **further** necessitates some **form of agreement,** a **conspiracy** if you will, between the public officer and the prisoner. On this score, the Court's ratiocination on the concept of conspiracy under Article 8 of the Revised Penal Code *vis-a-vis* culpable felonies is *apropos*, *viz.*:

> The element of *intent* – on which this Court shall focus – is described as the state of mind accompanying an act, especially a forbidden act. It refers to the purpose of the mind and the resolve with which a person proceeds. It does not refer to mere *will,* for the latter pertains to the act, while *intent* concerns the result of the act. While motive is the "moving power" that impels one to action for a definite result, intent is the "purpose" of using a particular means to produce the result. On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose. **With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act. Stated otherwise, intentional felony requires the existence of *dolus malus* – that the act or omission be done "willfully," "maliciously," "with deliberate evil intent," and "with malice aforethought."** The maxim is *actus non facit reum, nisi mens sit rea* – a crime is not committed if the mind of the person performing the act complained of is innocent. As is required of the other elements of a felony, the existence of malicious intent must be proven beyond reasonable doubt.
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> **In turn, the existence of malicious intent is necessary in order for conspiracy to attach. Article 8 of the Revised Penal Code – which provides that "conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it" – is to be interpreted to refer only to felonies committed by means of *dolo* or malice. The phrase "coming to an agreement" connotes the existence of a prefaced "intent" to cause injury to another, an element present only in intentional felonies.** In culpable felonies or criminal negligence, the injury inflicted on another is unintentional, the wrong done being simply the result of an act performed without malice or criminal design. Here, a person performs an initial lawful feed; however, due to negligence, imprudence, lack of foresight, or lack of skill, the deed results in a wrongful act. **Verily, a deliberate intent to do an unlawful act, which is a requisite in conspiracy, is inconsistent with the idea of a felony committed by means of *culpa*.**[58] (Emphasis and underscoring supplied.)

Analogously, the deliberate intent to allow the prisoner to escape, which is a requisite in *Conniving with/Consenting to Evasion* is **inconsistent**

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[58] See *Villareal v. People,* G.R. Nos. 151258, February 1, 2012 [Per C.J. Serena, Special Second Division].

with the very idea of negligence (*culpa*) in *Evasion through Negligence.* To hold otherwise will violate and render nugatory the accused's right to be informed of the nature and charges of the accusation against him or her. To stress, the purpose of this Constitutional right is to enable the accused to adequately prepare his defense.

Here, petitioner was misled that the prosecution was charging him with *Conniving with/Consenting to Evasion* so he focused his defense on allegations of good faith, explaining that his extended absence from his post was because he was compelled to help in a local robbery incident and not pursuant to any agreement with Nicolas. To be sure, he only met Nicolas on even date, negating any probability of prior plans to let him abscond. The Regional Trial Court and Court of Appeals, to his surprise, convicted him of *Evasion through Negligence,* a separate and different offense, which required **a change in petitioner's defense**. To be acquitted of the latter offense, he has to establish that he exercised the necessary diligence in securing the prisoner in his custody. This, he failed to do, **precisely because** the Information **failed to inform him** of the **true** nature and causes of accusations against him.

A final point. It is settled that any ambiguity in the Information should always be resolved in favor of the accused.[59] Accordingly, when, as in this case, it is uncertain whether the Information sufficiently charged the petitioner of an offense, a verdict of acquittal is in order. So must it be.

ACCORDINGLY, the Petition is **GRANTED**. The Decision dated July 14, 2016 and Resolution dated November 14, 2016 of the Court of Appeals in CA-G.R. CR No. 35683 are **REVERSED**. Petitioner Police Officer 2 Arthur M. Pineda is **ACQUITTED** in Criminal Case No. 12-291698 (formerly Criminal Case No. 462935-CR).

Let entry of judgment be issued immediately.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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[59] See *People v. Ng Pek,* 81 Phil. 562, 565 (1948) [Per. J. Ozaeta, En Banc]; *Manlavi v. Judge Gacott,* 313 Phil. 738, 744 (1995) [Per J. Quiason, First Division].

WE CONCUR:

(On official leave)
MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest 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.

AMY C. LAZARO-JAVIER
Acting Chairperson, Second Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice