Motion to Quash - Template

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Republic of the Philippines
National Capital Judicial Region
REGIONAL TRIAL COURT
Branch 147
Quezon City

PEOPLE OF THE PHILIPPINES,

Plaintiff,

– versus –

CRIMINAL CASE NO._____
For: Homicide

FERDIE "BABY M" R. MARKOS

Accused.

X----------X

MOTION TO QUASH INFORMATION

Accused-mova**nt FERDIE "BABY M" R. MARKOS**, represented by his counsel **Atty. Judas L. Roque**, to this honorable court, most respectfully avers:

1. Accused **FERDIE "BABY M" R. MARKOS** stands charged with the crime of Murder under Informartion which alleged:

"That on or about March 4, 2020, Quezon City within the jurisdiction of this court, the said accused, with intent to kill, did then and there willfully, unlawfully, feloniously, suddenly, unexpectedly, and treacherously, assault, attack and wound **FRANCISCO "ISKO" M. DOGAMOSO** from behind with the use of a broken glass, rendering him unconscious, and continued to inflict mortal wounds on the said **FRANCISCO "ISKO" M. DOGAMOSO**, causing his instantaneous death.

Contrary to law."

Based on the above-quoted Information, it appears that the allegations in the Amended Information is glaringly defective and should be quashed on the ground that:

a) The ultimate facts constituting qualifying circumstances are not alleged in the Information.

The said defective Infromation alleged:

"x x x with intent to kill, did then and there willfully, unlawfully, feloniously, suddenly, unexpectedly, and

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treacherously, assault, attack and wounded x x **x** from behind with the use of a broken glass x x x while the latter was already unconscious and unable to defend himself x x x"

In effect, the accused was charged with the crime of Murder, even though it did not sufficiently set forth the facts and circumstances describing how treachery attended the killing. There crime charged in the information, therefore, constitutes great prejudicial to the interest of accused-movant, hence, the latter seek to avoid.

2. In *People v. Dumbrique*[1], the Supreme Court held that:

Here, the averments of the information to the effect that the two accused *"**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 CAPING y MATO, by then and there hitting and beating his head with a baseball bat, thereby inflicting upon the latter mortal injury which directly caused his death"*** did not sufficiently set forth the facts and circumstances describing how treachery attended the killing. It should not be difficult to see that merely averring the killing of a person by hitting his head with a baseball bat, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the baseball bat as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from information.

3. In *People v. Valdez*[2], in reaching its conclusion, the CA held:

The averments of the information to the effect that the two accused "with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did xxx assault, attack and employ personal violence upon" the victims **"by then and there shooting [them] with a gun, hitting [them] on various parts of their bodies**

[1] People v. Dumbrique , G.R. No. 225595, August 6, 2019
[2] 679 Phil. 279 (2012).

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"which [were] the direct and immediate cause of [their] death[s]" did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings. It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the information.

4. In the case at bar, the allegation in the information is insufficient as it does not contain a specific allegation of every fact and circumstance necessary to constitute the crime of Murder. The elements constituting murder were not properly laid down. It is 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. Treachery cannot attend the case if it fails to show the requisites of its existence in the information. To merely state in the information that treachery was attendant is not enough because the usage of the term is not a factual averment but a conclusion of the law.[3]

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that the Information be **QUASHED** for being **Insufficient**.

Other reliefs that are just and equitable under the premises are likewise prayed for.

ATTY. JUDAS L. ROQUE
Counsel for the Accused
Roll No. 73239
IBP No. 287382-12-3-20
PTR No. 4261388-12-3-20/Quezon City
MCLE Compliance No. IV-000000345

[3] People v. Dasmariñas

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