

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. GERARDO RIVERA AND THE HONORABLE JUDGE LORENZO RELOVA, IN HIS CAPACITY AS PRE-SIDING JUDGE OF THE COURT OF FIRST INSTANCE OF BATAN...

G.R. No. L-27825. June 30, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Original action for a writ of certiorari and mandamus, against respondent Court's order denying the prosecution's petition to amend the original information for grave threats against respondent-accused so as to allege the true and actual date of commission of the offense on March 2, 1964, rather than March 2, 1965 as inadvertently alleged in the original information.

On June 20, 1966 the original information was filed with respondent court against respondent Rivera as accused, charging him for grave threats, alleged by the prosecution to have been committed as follows:

"That on or about the 2nd day of March, 1965, in the Municipality of Batangas, Province of Batangas of this, Philippines Honorable Court, within, the above the jurisdiction named accused, motivated by personal resentment, which he entertained against one Ricardo Rivera, did then and there wilfully, unlawfully, feloniously, and, in a letter, seriously threatened to kidnap the wife and the daughter of said Ricardo Rivera if the latter would not give him P25,000.00, the accused thus threatening to inflict upon the persons of the wife and the daughter of Ricardo Rivera of a wrong amounting to a crime, that is, to kidnap them, although the said accused failed to attain his purpose."[1]

Upon arraignment held on August 24, 1966, respondent entered a "not guilty" plea. Trial was set by respondent court, with the prosecution initially presenting the complainant as a wit-ness on February 22, 1967, who testified that the incident complained of occurred in March, 1964, (not March, 1965 as alleged in the original information).

On March 9, 1967, the prosecution filed a formal petition for admission of its amended information, the sole amendment consisting of changing the year of commission of the offense from March 2, 1965 to March 2, 1964 on the grounds of clerical error and of having the information conform to the evidence in its possession with respect to the year of commission of the crime charged.

Respondent court, on respondent's opposition, denied on April 12, 1967 admission of the amended information, ruling that it was unfair to respondent and concerned material facts constituting the offense and would consequently be prejudicial to the substantial rights of respondent-accused. It denied the prosecution's motion for reconsideration and reset the continuation of the trial on August 2, 1967 and other dates thereafter, unless the matter was elevated to this Court.

Upon the prosecution's resort to this Court, we issued a writ of preliminary injunction restraining respondent court until further orders from continuing with the trial of the case.

The clear issue, then, is whether or not under Rule 110, section 13 of the Rules of Court,[2] the amendment sought after respondent-accused's plea and during the trial, is merely formal and may be permitted without prejudice to the rights of respondent-accused.

We hold that the amendment sought by the prosecution merely to state the true and actual year of commission of the offense charged on March 2, 1964 rather than March 2, 1965 as inadvertently alleged through oversight in the information is a matter of form which does not prejudice or impair the rights of respondent-accused.

1. The rule consistently applied by the Court is that after the accused's plea is entered, amendments that touch upon matters of substance are not permitted and the information or complaint may be amended only as to formal matters by leave and at the trial court's discretion, when the same can be done without pre-judice to the rights of the accused. Thus, an amendment which neither adversely affects any substantial right of the accused (e. g. does not deprive him of the right to invoke prescription[3] nor affects and/or alters the nature of the offense originally charged nor involves a change in the basic theory of the prosecution so as to require the accused to undergo any material change or modification in his defense) is an amendment as to a matter of form.[4]

2. Here, all the elements of the crime of grave threats as defined in Article 282 of the Revised Penal Code and penalized by paragraph 1 thereof were duly alleged in the original information, viz., (1) that respondent-accused threatened complainant with the infliction of a wrong on the latter's wife and daughter (2) that such wrong amounted to a crime, the threat being to kidnap them and (3) the threat was made in a letter (which calls for imposition of the maximum penalty). The amendment which sought the correction of an obviously typographical or clerical error in the last digit of the year alleged (from 1965 to 1964, the month and day being left exactly the same) did not affect the nature and essence of the crime as originally charged. Neither did it involve any change in the basic theory of the prosecution so as to cause surprise to respondent and require him to effect any material change or modification in his defense. Any evidence respondent might have would be equally applicable to the information in the original form as in the amended form. It is obvious from the stated facts, and respondent makes no contrary assertion, that no defense of prescription of the offense is available to respondent whether the original information alleging the commission of the offense on March 2, 1965 stands or the same is amended to allege one year earlier, 1964 as the date of commission of the crime charged. As in *U. S. vs. Ramos*,[5] therefore, where the Court held that error was committed by permitting the fiscal to amend the date of the year of the complaint, by striking out the last word (1911) and substituting in lieu thereof '1910' (the crime having been committed on June 16, 1910 and not in June, 1911)", the amendment here would cause no impairment of or prejudice to the rights of respondent-accused.

3. Respondent Court erroneously relied on the cases of *People vs. Opemia*[6] and *Wong vs. Yatco*[7] to rule that the amendment would impair the substantial rights of respondent-accused as "he must have been caught by surprise upon being confronted by evidence tending to prove a similar offense committed in 1964." Both cases involved amendments of substance and not merely of form which respondent court failed to appreciate properly. In *Opemia*, in an appeal from the trial court's order of dismissal, where the proposed amendment would have changed the date of the commission of the offense from 1947 to 1952, the Court upheld the trial court's exercise of its discretion in disallowing the amendment on the ground that "(T)he difference in date could not be attributed to a clerical error, because the possibility of such an error is ruled out by the fact that the difference is not only in the year but also in the month and in the last two digits of the year." In any event, the Court pointed out, the trial court's dismissal order rendered at the conclusion of the trial on the ground of variance between allegation and proof, really amounted to an acquittal, which could no longer be appealed by the prosecution without placing the accused in double jeopardy. In *Wong*, the State was allowed by the trial court "to amend the information (for violation of Corn. Act No. 104) by stating that the offense was committed between January 2,

1955 and March 17, 1955 (and not from May 3, 1954 to October 11, 1954, as originally charged) on an original information dated December 28, 1954." The Court, on certiorari, set aside the amendment as one of substance, "especially as the offense charged was not yet punishable (for lack of publication) on December 28, 1954, when the original information was filed "and that while it was true that after the information was filed, the law had become effective, "the law can have no retroactive effect . . . and the proper course was not to amend the previous information but to file another one."

4. A further decisive factor in the case at bar is that the pleadings before us fail to show that respondent-accused had opportunely and timely made any objection to the testimony of the complainant at the opening day of trial that the threat was made against him in March, 1964 by reason of the same being at variance with the allegations of the information that the crime charged was committed in March, 1965. The testimony of the complainant is already in the record without objection from respondent-accused, and the prosecution is therefore entitled to effect the amendment to make the information conformable to the testimony presented and the documentary evidence in its Possession.[8]

5. When the prosecution moved for admission of the amendment, respondent-accused, aside from asserting general grounds of impairment of his substantial rights, (above shown to be untenable) opposed the amendment on the ground that "(I)t is not true that the difference in date was due to clerical error, because a preliminary investigation was conducted by the Provincial Fiscal and all the documentary evidence showing the date the offense was allegedly committed, were submitted to him." [9] On respondent's own premises, therefore, since the documentary evidence showing the date the offense of grave threats was allegedly committed by him was submitted at his preliminary investigation and the original information duly alleged that the threat made by him was documented, i. e. "in a letter," he could in no way claim unfairness or prejudice through the amendment, for he was duly apprised from the beginning - and through the testimony of the complainant admitted at the trial without objection on his part - that he was being charged and tried for the crime of grave threats allegedly committed by him on March 2, 1964 and not in March, 1965, i. e. that he was being charged for only one crime of grave threats committed on March 2, 1964 (inadvertently originally alleged to have been committed in March, 1965) rather than the prosecution confronting him "with evidence tending to prove a similar offense committed in 1964", aside from another committed in 1965, as baselessly speculated by respondent court.

The Court, in *U.S. vs. Bungaoil*, [10] where the information alleged that the therein accused stole a cow in February, 1915, whereas the evidence at the trial established that it was stolen seven years earlier in 1908, pointed out through the late Justice Moreland that "a variance between the allegations of the information and the evidence of the prosecution with respect to the time when the crime was committed would not result in an acquittal of the accused; but if the accused interposed timely objection to such variance and showed that it was prejudicial to his interests in that it deceived him and prevented him from having a fair opportunity to defend himself, the trial court might grant an adjournment for such time as would enable the defendant to meet the change in date which was the cause of his surprise," and that the accused must take advantage of the variance "some time during the trial by appropriate objection and satisfy the trial court that he had been prejudiced by reason thereof" so that the trial court may "take such measures (as an adjournment) as would give the defendant an opportunity to produce such witnesses or evidence as the variance .. made necessary." [11]

Respondent court therefore committed a grave abuse of discretion in denying the amendment of the information, and the writ prayed for should be granted. A note of advertence is due, however, to the prosecution service that it is preferable that they exercise greater care in the preparation of the information and checking the allegations thereof before filing, to avoid similar clerical errors and oversights which lead only to unnecessary delays of the trial, as well as errors of substance which would be beyond amendment and result in a miscarriage of justice.

ACCORDINGLY, the writ of certiorari and mandamus prayed for is hereby granted. Respondent court's order of April 12, 1967 is set aside and it is directed to permit the amended information dated March 7, 1967 as presented by the prosecution. With costs against respondent-accused.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, and Barredo, JJ., concur.
Villamor, J., on leave.

[1] Information in Crim. Case No. 2545 of the Court of First Instance of Batangas, entitled "People vs. Gerardo Rivera."

[2] "Section 13. Amendment. -- The information or complaint may be amended, in substance or form, without leave of court, at any time before the defendant pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the defendant.

If it appears at any time before the judgment that a mistake has been made in charging the proper offense, the court may dismiss the original complaint or information and order the filing of a new one charging the proper offense, provided the defendant would not be placed thereby in double jeopardy, and may also require the witnesses to give bail for their appearance at the trial."

[3] U.S. vs. Bungaoil, 34 Phil. 835 (1916); see dissenting opinion of Justice Trent.

[4] See Reyes vs. People, L-21528-29, Mar. 28, 1969; 27 SCRA 686; Luansing vs. People, L-23289, Feb. 28, 1969; 27 SCRA 305; People vs. Bautista, L-26057 and L-26092, Apr. 25, 1968, 23 SCRA 219; Barot vs. Bayona, L-13853, July 27, 1960; Angeles vs. Encarnacion, L-5966, Oct. 3, 1952; Arevalo vs. Nepomuceno, 63 Phil. 627 (1936); U. S. vs. Alabot, 38 Phil. 698 (1918), U. S. vs. de la Cruz, 3 Phil. 331 (1904).

[5] 23 Phil. 300 (1912); notes in parentheses supplied.

[6] 98 Phil. 764 (1956).

[7] 99 Phil. 791 (1956).

[8] See Reyes vs. People, *supra*, fn. 3.

[9] Respondent's opposition to petition to amend, Annex B, petition.

[10] *Supra*, fn. 3; citing also U.S. vs. Dichao, 27 PHIL. 421 (1914).

[11] Note in parentheses supplied.

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