

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. AMANDO AUSTRIA, DEFENDANT AND APPELLEE.*G.R. No. L-6216. April 30, 1954*

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3e1f384520ad/>**BAUTISTA ANGELO, J.:**

Amando Austria was accused before the Court of First Instance of Ilocos Norte in two separate information, one of murder and the other of illegal possession of firearm. Because the weapon used by the accused in killing the deceased in the crime of murder is the same unlicensed firearm for which he was charged in the case for illegal possession of firearm, the two cases were tried jointly by agreement of the parties and with the approval of the court.

After the prosecution had presented its evidence, counsel for the defense filed an oral motion to dismiss the case for illegal possession of firearm on the ground that the facts alleged in the information do not constitute an offense, invoking in support thereof Republic Act No. 482 which exempts from criminal liability persons found in possession of unlicensed firearms unless they are used or carried in the person of the possessor. The court denied the motion. With this denial, trial was resumed with the defense presenting its evidence in both cases. And when the case were submitted for decision, the court convicted the accused in the case of homicide but dismissed that for illegal possession of firearm on the ground that the information does not charge an offense under Republic Act No. 482.

Later, another information was filed against the accused also for illegal possession of firearm where in it was alleged for the first time that the accused carried the firearm in his person and used it in killing one Alejo Austria. Counsel for the accused filed a written motion to quash this information pleading double jeopardy in his behalf. This motion was denied by Judge Jose P. Flores, then presiding the court but, on motion for reconsideration, Judge Antonio Belmonte, who took over the court, sustained the motion to quash and dismissed the case on the ground that if it be continued it would place the accused in double jeopardy. Not satisfied with this order, the fiscal took the present appeal.

The issue posed in this appeal is: Is the dismissal of the information filed in the first case for illegal possession of firearm against the accused a bar to a subsequent prosecution for the same offense?

It should be noted that the court dismissed the first case for illegal possession of firearm upon the sole ground that the information did not contain facts sufficient to constitute an offense. Bear in mind that information was filed in connection with Republic Act No. 482 which exempts from criminal liability persons found in possession of unlicensed firearms unless the firearm is used or carried in his person by the possessor. And we already held in a recent case that in order that an information under that Act may be deemed sufficient it must allege that the accused was using the unlicensed firearm or carrying it in his person at the time he was caught by the authorities with the unlicensed weapon (People vs. Santos Lopez y Jacinto,[*] G. R. No. L-1603, November 29, 1947). And these essential allegations not having been averred in the information, the court rightly dismissed the case on the

ground that the information did not allege facts sufficient to constitute an offense.

With this background, it is evident that the plea of double jeopardy cannot be entertained either under our rules or under our jurisprudence. Thus, section 9, Rule 113, expressly provides that the dismissal of a case against the defendant can only be considered as a bar to another prosecution for the same offense when the case against him is dismissed "upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction." And elaborating on the scope of this provision, we find the following rulings: As a general rule, one is not put in jeopardy if the information under which he is tried is entirely void because it charges no offense at all known to law. (16 C. J. sec. 379, p. 243; U. S. vs. Balmori, 1 Phil., 660.) Accordingly, if an information is dismissed and the accused discharged on a demurrer, or on petition of the fiscal or the accused, or on the court's own motion because the information or complaint is either void or fatally defective, or what amounts to the same thing, when it does not charge the proper offense, such dismissal and the consequent discharge of the accused is not a bar to his prosecution for the same offense. (U. S. vs. Montiel, 7 Phil., 272; People vs. Nargatan, 48 Phil., 470; People vs. Mirasol, 43 Phil., 860; 16 C. J., pp. 241-6; Hopt. vs. Utah, 104 U. S., 631; Murphy vs. Massachusetts, 177 U. S., 155; U. S. vs. Openheimer, 24 U. S., 85, 61 Law Ed. 161.)

It is true that the motion to quash was interposed by counsel for the accused after the prosecution had presented its evidence and that a portion of that evidence tended to prove that the weapon for which the accused was prosecuted for illegal possession of firearm had been used in killing his victim in the homicide case, to which evidence, as the record shows, the accused, or his counsel, did not interpose any objection. This fact, however, cannot have the effect of validating a void information, or of proving an offense which does not legally exist. Such is the situation that obtains in the present case. The information was not merely defective but it does not charge any offense at all. Technically speaking, that information does not exist in contemplation of law.

We are not unmindful of the doctrine laid down in the cases of Serra vs. Mortiga, 11 Phil., 762, U. S. vs. Estrana, 16 Phil., 520, and United States vs. Destrito and De Ocampo, 23 Phil., 28, cited with approval in the case of People vs. Abad Santos, 76 Phil., 744, wherein this court held that "Any defect in the accusation other than that of lack of jurisdiction over the subject matter may be cured by good and sufficient evidence introduced by the prosecution, and admitted by the trial court, without any objection on the part of the defense, and the accused may be legally convicted of the crime or offense intended to be charged and so established by the evidence." But this doctrine does not apply to our case because we are concerned here with an information which charges no offense at all, and not with one which is merely defective.

The present case should be likened to one where, "When the offense proved is more serious than, and includes the offense charged, as when the offense charged is less serious physical injuries and the offense proved is serious physical injuries the accused may be convicted of the former but not of the latter offense of which he has not been informed." (U. S. vs. De Guzman, 8 Phil., 21), or to the rule which requires that "a qualifying circumstance which constitutes one of the essential elements of the offense like alevosia in murder should be pleaded, otherwise it should be considered merely as an aggravating circumstance if proved (U. S. vs. Campo, 23 Phil., 368). The philosophy behind this ruling is that an accused cannot be convicted of a charge of which he has not been informed.

Wherefore, the order appealed from is set aside, and the case is remanded to the lower court for further proceedings, without costs.

Pablo, Bengzon, Jugo, and Conception, JJ., concur. Reyes, J., concurs in the result.

[*]79 Phil., 658.

DISSENTING

PARAS, C. J.,:

The defendant-appellee was charged in the Court of First Instance of Ilocos Norte with the crime of illegal possession of firearm under Republic Act No. 482, in an information which failed to allege that the firearm was used by or carried in the person of the appellee. After the prosecution had presented its evidence tending to show that the firearm had been used by the appellee in killing one Alejo Austria, to which evidence the appellee or his counsel did not interpose any objection, a motion to quash was filed on the ground that the information did not contain facts sufficient to constitute an offense, in that it failed to allege that the firearm was used or carried by the appellee. This motion was denied and the defense accordingly presented its evidence. The court thereafter rendered a decision dismissing the information for the reason that it did not charge an offense under Republic Act No. 482.

Subsequently another information was filed against the appellee for the same illegal possession of firearm, it being now alleged that he carried said firearm in his person and used it in killing Alejo Austria. Counsel for the appellee filed a written motion to quash, based on double jeopardy. This was denied by the then presiding Judge Jose P. Flores but, on motion for reconsideration, the next presiding Judge, Antonio Belmonte, sustained the motion and dismissed the case on the ground invoked by the appellee. The fiscal has appealed.

I am of the considered opinion that the appealed order is correct. The information in the first case was valid, although fatally defective for failing to allege an essential element of the crime of illegal possession of firearm; but as said fatal defect was supplied by necessary evidence during the trial; without objection on the part of the defense, the court below could have rendered a judgment of conviction against the appellee. As already held in *People vs. Abad Santos*, 76 Phil., 744, "any defect in the accusation other than that of lack of jurisdiction over the subject matter may be cured by good and sufficient evidence introduced by the prosecution, and admitted by the trial court, without any objection on the part of the defense, and the accused may be legally convicted of the crime or offense intended to be charged and so established by the evidence." This Court cited with approval the decision in *U. S. vs. Estrana*, 16 Phil., 520, in which the accused was prosecuted for the crime of perjury in an information which failed to allege that the false testimony involved was material, this allegation being an essential element of the crime of perjury under section 3 of Act No. 1687; but as no objection to the sufficiency of the complaint was raised during the trial, this Court held that the fatal defect could have been supplied by competent testimony. To quote:

"The complaint in the case at bar is fatally defective for the want of an allegation that the testimony, alleged to be false, was material to the issues involved in the murder case. Our statute (section 3 of Act No. 1687, supra) specifically makes materiality an essential element of the crime of perjury and without this the crime can not legally exist. As no objection to the sufficiency of the complaint was raised this fatal defect could have been supplied by competent testimony on the trial. (*United States vs. Estrana*, 16 Phil., 520, 529.)

The case at bar is on all fours with the case of *U. S. vs. Estrana*, in that in both cases the information failed to allege an essential element of the offenses respectively charged therein: in the first, that the appellee carried or used the firearm; and in the second, that the alleged false testimony was material.

I vote, therefore, for the dismissal of the appeal.

Montemayor, J., concurs.

LABRADOR, J.:

I concur in the dissent of Chief Justice Paras. The grounds upon which the majority decision are based are too technical to subserve the ends of justice.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.