

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. PLACIDO OPEMIA, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-7987. March 26, 1956

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal by the prosecution from an order of dismissal.

It appears that on February 26, 1953, an information was filed in the Court of First Instance of Camarines Sur, charging four persons with theft of large cattle alleged to have been committed on or about June 18, 1952. After the defendants had pleaded not guilty and in the course of the trial, the caretaker of the stolen carabao, testifying as fourth witness for the prosecution, declared that the theft occurred sometime in July, 1947, whereupon the fiscal asked for permission to amend the information to make it conform to the evidence as regards the date of the commission of the crime. Instant objection to the proposed amendment was raised on behalf of the defendants on the ground that it would violate their substantial rights for the reason that the case, had already been pending for a long time and the trial had progressed to such an extent that their defense had already been revealed to the prosecution. Believing that the amendment would really prejudice the substantial rights of the accused the trial court sustained the objection. And the defense having also asked that the information be quashed on the ground of variance between its allegations and the evidence, the court verbally ruled that it was dismissing the said information and implemented the ruling by declaring the case dismissed in the judgment rendered, at the conclusion of the trial.

Appealing from the order of dismissal, the Solicitor General contends that instead of dismissing the case the lower court should have allowed the information to be amended.

Section 13 of Rule 106 provides:

"SEC. 13. Amendment.—The information of 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 judgment that a mistake has been made in charging the proper offense, the court may dismiss if 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."

The amendment proposed in the present case consists in changing the date of the commission of the crime charged from June 18, 1952 to July, 1947. In not permitting the amendment the learned trial Judge said:

"It is a cardinal rule in criminal procedure that the time at which an offense was committed need not be alleged in the complaint or information, but it is required that the offense be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint would permit (Rule 106,

section 10). The reason for this rule is obvious. It is to apprise the accused' of the approximate date when the offense charged was committed in order to enable him to prepare his defense and thus avoid a surprise. In the case at bar, the proof shows that the carabao was lost on July 25, 1947 and not on June 18, 1952 as alleged' in the information. The period of almost five years between 1947 and 1952 covers such a long stretch of time that one cannot help but be led to believe that another theft different from that' committed by the defendants in 1952 was also perpetrated by them in 1947. Under this impression the accused, who came to court prepared to face a charge of theft of large cattle allegedly committed by them in 1952, were certainly caught by sudden surprise upon being confronted by evidence tending to prove a similar offense committed in 1947. The variance is certainly unfair to them, for it violates their constitutional right to be informed before the trial of the specific charge against them and deprives them of the opportunity to defend themselves. Moreover, they can not be convicted of an offense with which they are not charged.

"It is also a cardinal rule in criminal procedure that after the defendant has entered his plea, the information or complaint may be amended only as to all matters of form when the same can be done without prejudice to the rights of the defendant (Rule 196, section 13). An amendment that would change the date of the commission of the offense from 1947 to 1952 is certain not a matter of form. The 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. It is apparent that the proposed amendment concerns with material facts constituting the offense, and consequently it would be prejudicial to the substantial rights of the defendants."

His Honor has adduced good reasons for considering the amendment as referring to substance and not merely to form. But even supposing it to be the contrary, its allowance, after the defendants had pleaded, was discretionary with the court and would be proper only if it would not prejudice their rights. We are not prepared to say that the court did not make good use of that discretion in disallowing the amendment; considering that the variance sought to be introduced thereby would appear to be really unfair to the defendants, for as clearly explained by the court "it violates their constitutional right to be informed before the trial of the specific charge against them and deprives them of the opportunity to defend themselves."

In any event, it appears from the judgment below that, with the proposed amendment disallowed and seeing that the prosecution could not contradict the testimony that created the necessity for the amendment, the trial court dismissed the case on the ground of variance between allegation and proof, so that the dismissal really amounted to an acquittal. In line, therefore, with our ruling in *Gandicela vs. Lutero*, 88 Phil., 299; *People vs. Diaz*, 94 Phil., 714; *People vs. Bangalao, et al.*, 94 Phil., 354; and *Catilo vs. Abaya*, 94 Phil., 1014 the defendants in the present case should be deemed to have already been acquitted and may not be tried again without being put twice in jeopardy of punishment for the same offense.

Wherefore, the appeal is dismissed, without special pronouncement as to costs.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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