

DANIEL CABANGANGAN, PETITIONER VS. ROBERTO CONCEPCION, ARSENIO P. DIZON, AND DIONISIO DE LEON, ASSOCIATE JUSTICES OF THE COURT OF APPEALS, SECOND DIVISION, RESPONDENTS.

G.R. No. L-6353. May 26, 1954

Ponente: PARAS, C.J.

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PARAS, C.J.:

The petitioner Daniel Cabangangan was charged before the Court of First Instance of Samar with the crime of illegal possession of firearm in the following information dated November 21, 1950:

"That on or about the 28th day of September, 1950, and sometime prior thereto, in the municipality of Calbiga, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there wilfully, unlawfully and feloniously have in his possession and under his custody and control a home-made shotgun with an empty shell, and 6 rounds of ammunition for a caliber 38 pistol, without securing first the necessary license therefor."

On January 25, 1951, the prosecution filed with the following amended information:

"That on or about the period comprised between May, 1950, and September 28, 1950, in the municipality of Calbiga, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously have in his possession and under his custody and control a home-made shotgun with an empty shell, and 6 rounds of ammunition for a caliber 38 pistol, without securing first the necessary license therefor, and which the accused carried with him on September 28, 1950 and used to coerce one Antonio Pacuan."

When the petitioner was arraigned on June 29, 1951, the information read to him was not the amended information, but the original dated November 21, 1950. The amended information was filed, so as to allege the additional fact that the petitioner carried with him the firearm and ammunition and used the same to coerce Antonio Pacuan, obviously in order to pave the way for conviction under Republic Act No. 482. It appears from the record that, when the original information was read to the petitioner who pleaded not guilty, his attorney pointed out to the court that the arraignment was not under the amended information; and that, at the close of the trial, petitioner's counsel again reminded the court about the same fact. Yet the Court of First Instance of Samar found the petitioner guilty of illegal possession of firearm and ammunition; sentenced him to an indeterminate penalty of imprisonment ranging from 1 year and 1 day to 3 years and 1 month, and to pay the costs; and ordered the confiscation of the firearm and ammunition involved. From this judgment the petitioner appealed to the Court of Appeals wherein he contended that his conviction was erroneous for lack of arraignment upon the amended information dated January 25, 1951. The Court of Appeals, however, affirmed the judgment of the trial court on the ground that the petitioner was aware of the filing of the amended information and, in failing to object to the presentation of evidence proving the additional allegation therein, waived formal arraignment thereunder; and that, as the original information averred that petitioner's possession was unlawful and felonious, proof of the existence of said charge was admissible even under the original information. The petitioner has filed the present

petition for certiorari.

There is no question that the petitioner was not actually arraigned under the amended information of January 25, 1951. We believe that he had not waived his right thereto, in view of the fact that his counsel twice called the attention of the trial court to the omission, and this reminder amounted to an objection. As arraignment was mandatory, the petitioner having the constitutional right to be informed of the charge against him, his conviction—which would be only under the second information—suffers from a reversible defect. It is not correct to state that petitioner's felonious possession under Republic Act No. 482 could be established by proper evidence even under the original information, for the simple reason that the original information was superseded by the amended information.

Respondents' observation that the proper remedy is appeal by certiorari, and not the special civil action of certiorari, refers to form rather than to substance. Moreover, the petition herein contains allegations sufficient to make out an appeal under Rule 46 of the Rules of Court.

Wherefore, the appealed decision is reversed and the case is remanded to the court of origin for further proceedings in accordance with law. So ordered without costs.

Pablo, Montemayor, Reyes, A., Jugo, Bautista Angelo, and Labrador, JJ., concur.

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