

EDILBERTO BAROT, ETC., PETITIONER, VS. HON. JULIO VILLAMOR, ETC., ET AL., RESPONDENTS.*G. R. No. L-13131. February 28, 1959*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari seeking to set aside the order of respondent judge entered on August 5, 1957 ordering the city fiscal to file a second amended information setting forth therein certain additional facts required by the accused to apprise them of the real nature of the offense described in the information.

On July 2, 1956, an information was filed before the Court of First Instance of Manila against Vicente Villanueva, Francisco T. Koh, Santos Llorca, Eloy T. Koh, Dolores Siy-Hai Pin, Jose Uy Eng alias Jose Villanueva Uy, Procopio Eleazar and Vicente Alunan, charging them with a violation of Section 16 of Republic Act No. 85. On July 3, 1956, the information was amended by the city fiscal by alleging therein certain additional facts in the alternative form as authorized by said Act. Vicente Alunan filed a motion to quash this amended information on July 12, 1956, which was denied, the court stating that the facts alleged therein were clear enough to apprise the accused of the real charge. The court however ordered the fiscal to file a second amended information in order that the clarification asked for may be made.

Alunan was arraigned on January 5, 1957 on which occasion he pleaded not guilty to the charge contained in the amended information. Despite the denial of his first motion to quash, Alunan again filed on June 19, 1957 another motion to quash alleging this time that the amended information "is not sufficiently specific to enable him to know what offense is intended to be charged against him, and, fails absolutely to conform to the prescribed form, and violates his constitutional right to be informed of the nature and cause of the accusation as well as his constitutional right to defend himself and his corollary right to prepare for trial." This motion was opposed by the city fiscal contending, among other things, that the grounds alleged therein have already been waived by the accused when he pleaded not guilty to the charge. The second motion to quash was denied on August 5, 1957 but the court ordered the fiscal to further amend the information in order that the alleged inconsistent allegations contained therein may be corrected. The city fiscal moved to reconsider this order on the main ground that, should the information be further amended as directed by the court, it may place the accused in double jeopardy considering that he had already been arraigned and pleaded not guilty. And when this motion was denied, the government interposed the present petition for certiorari.

Section 10, Rule 113, of the Rules of Court provides that "if the defendant does not move to quash the complaint or information before he pleads thereto, he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense, or the court is without jurisdiction of the same." In other words, except when the complaint or information does not charge an offense or the court is without jurisdiction of the same, all objections which are grounds for a motion to quash if not urged before the defendant pleads shall be deemed waived (*Suy Sui vs. People* 49 Off. Gaz. 967).

The facts of the instant case call for the application of the rule above pointed out. Thus, it appears that the original information was filed on July 2, 1956. This information was amended on July 3, 1956. On July 10, 1956 accused Vicente Alunan filed his first motion to quash alleging that the information was ambiguous as it does not conform to the requirement that it must apprise the accused clearly of the nature of the offense with which he is charged. This motion was denied, the court stating that said amended information was clear enough to enable the accused to understand the real nature of the charge. Then, on January 5, 1957, Alunan pleaded not guilty to the amended information, and on June 20, 1957 he filed his second motion to quash reiterating practically the same ground of ambiguity he relied on in his previous motion.

Evidently, having pleaded not guilty to the amended information, Alunan can no longer file a second motion to quash on the ground that it does not apprise him of the true nature of the offense charged for the same is deemed to have been waived by him when he was arraigned and pleaded not guilty. The trial judge should have denied the second motion to quash and should have proceeded with the trial of the case as ordained by Section 1, Rule 11, of the Rules of Court. This is in line with the ruling we laid down in a recent case:

"And in line with the above view, the Rules specifically direct that if defendant moves to quash before pleading, and the motion is overruled, he shall immediately plead"; (sec 1, Rule 113) which means, obviously, that trial shall go on. As stated in *Collins vs. Wolfe*, 4 Phil., 534 the appellant Domingo Manuel, after the denial of his motion, 'should have proceeded with the trial of the causes in the court below, and if final judgment is rendered against him he can then appeal, and upon such appeal present the question which he is now seeking to have decided.'" (*People vs. Manuel*, G. R. Nos. L-6794-95, August 11, 1954)

Wherefore, the order of respondent judge of August 5, 1957 is hereby set aside. The case is remanded to the lower court for further proceedings. No costs.

Paras, C. J., Padilla, Montemayor, Reyes, A. Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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