

THE PROVINCIAL FISCAL OF NUEVA ECIJA, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF NUEVA ECIJA AND FELICIANO VALDERAMA, RESPONDENTS.

G.R. No. L-1418. August 30, 1947

Ponente: HILADO, J.

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HILADO, J.:

Feliciano Valderama, one Bolong, Francisco (alias Inggo), Jose Simbulan (alias Peping), Enting, Eugenio (alias Geniong Dusa), and Arsenio (alias Bulahap) were charged in an information filed with the Court of First Instance of Nueva Ecija by the Provincial Fiscal as follows:

"That on or about the 8th day of October, 1946, in the municipality of Gapan, province of Nueva Ecija, P.I., and within the jurisdiction of this Court, the above-named accused, Feliciano Valderama, together with one Bolong, Francisco alias Inggo, Jose Simbulan alias Peping, Enting, Eugenio alias Geniong Dusa and Arsenio alias Bulahap, who have not as yet been apprehended, all with arms, conspiring together and mutually aiding one another, by means of violence against and intimidation of persons and with intent to gain, did then and there voluntarily, maliciously, illegally and criminally take and carry away the following personal properties:

2 pairs of West Point Clothes valued at P40.00

1 Blanket valued at 20.00

1 hat (Bangkuang) valued at 1.00

P61.00

belonging to Inocencio Mateo and

1 blanket valued at P20.00

1 shirt (Indian Head) valued at 10.00

1 pair of slippers valued at 5.00

1 pair of rope (Guyuran) valued at 4.00

P39.00

belonging to Leonides Pablo in the aggregate sum of P100, against their will and to their damage and prejudice in the said sum of P100."

On March 4, 1947, the other accused not having been apprehended, only Feliciano Valderama was arraigned. He

pleaded not guilty to the information. Thereupon, the prosecution called the first witness Leonides Pablo, who gave his testimony. After the conclusion of this witness's testimony, the prosecution called its second witness named Emerenciana de San Jose "to prove the robbery committed in the house of Inocencio Mateo," as petitioner alleges in paragraph 3 of the petition.

According to the respondent judge's order (Annex B of the petition), "after arraignment and while the second witness for the prosecution was testifying, the defense counsel objected to her testimony tending to prove that a robbery was committed in the house of Inocencio Mateo, after the first witness had testified to a robbery committed in the house of Leonides Pablo." This objection provoked the raising of a question which gave rise to the present petition for certiorari and mandamus. That question is whether or not the defendant Feliciano Valderama in not moving to quash the information upon the ground that more than one offense was charged therein before pleading thereto, waived all objection upon that ground later in the proceedings.

The respondent judge ruled in his aforesaid order Annex B that under Rule 113, section 10, waiver of objection for duplicity can only be predicated upon failure to move to quash upon such ground where the duplicity "clearly appears on the face of the information." His Honor was of opinion that in the above-quoted information said defect is not clearly apparent.

Whether two offenses of robbery are alleged in the information, or only one, we do not decide. But even hypothetically supposing that the former is the case, that the information would have been subject to objection for duplicity if timely made, the fact is that for failure to raise the objection before pleading to the information, the defendant "shall be taken to have waived" such objection. Rule 113, section 10 partly provides:

"* * * 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 * * *."

Upon this point, we should consider as of decisive importance a very radical innovation introduced by Rule 113, sections 1, 2, and 10, in relation with General Orders No. 58, upon the subject "demurrer and pleas", particularly sections 19 and 21. Section 19 provided that "If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day", to demur or plead to the complaint or information. Section 21 provided:

"The defendant may demur to the complaint or information when it appears on the face thereof—

* * * * *

"3. That more than one offense is charged; except only in those cases in which existing laws prescribe a single punishment for various allied offenses."

* * * * *

On the other hand, Rule 113, section 1—evincing an aim at a speedier trial than General Orders No. 58 did—directs that,

"Upon being arraigned the defendant shall immediately (*italics supplied*), unless the court grants him further time, either move to quash the complaint or information or plead thereto, or do both. If he moves to quash, without pleading, and the motion is withdrawn or overruled he shall immediately plead" (*italics supplied*).

Section 2 provides:

"* * * The defendant may move to quash the complaint or information on any of the following grounds:

* * * * *

"(e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;"

* * * * *

Section 10 mandatorily ordains:

"* * * 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. * * *"

The mandatory provision last above quoted did not exist in General Orders No. 58. Neither was there an equivalent provision therein.

And in the jurisprudence which developed from the above-quoted provisions of section 21 of General Orders No. 58, it came to be held that when the accused does not demur upon the ground of duplicity and goes to trial under the complaint or information charging him with more than one offense, he could not be heard to complain on appeal against that defect. (U. S. vs. Zapanta, 13 Phil., 409; U. S. vs. Balaba, 37 Phil., 260; U. S. vs. Jamad, 37 Phil., 305; People vs. Alafriz, 53 Phil., 583; People vs. Benito, 57 Phil., 587.) In other words, he was held to have waived the objection. On the other hand, Rule 113, section 10, dispenses entirely with the necessity of the defendant without objection going to trial down to the final judgment of the trial court, in order to hold him to have waived all objections based upon any ground on which a motion to quash could have been made. If he does not move to quash the complaint or information before he pleads thereto "he shall (*italics supplied*) be taken to have waived all objections which are grounds for a motion to quash * * *." If we are now to require, before declaring the waiver to have taken place, that the defendant first go to trial down to the final judgment of the trial court, as before, we would be writing the very important innovation thus introduced by said section 10 entirely off the Rules of Court. Mark that said provision uses "shall" characteristic of mandatory precepts. We are clearly of opinion that this provision denied the trial judge all discretion in the matter, and made it his peremptory duty to take the defendant as having waived the objection, and to proceed with the already commenced trial accordingly. So long as this rule remains in force, it must be obeyed not alone by the parties and counsel in criminal cases, but more particularly by the judges who are to take cognizance of, try and decide them.

Wherefore, judgment will be entered ordering the respondent judge to proceed with the trial of the above-mentioned case, which has already been commenced, upon the information already referred to by continuing the examination of the second witness for the prosecution, Emerenciana de San Jose, its conclusion, and proceeding with the rest of the evidence of one and the other party in the usual manner, down to final judgment. No costs will be allowed. So ordered.

Moran, C.J., Feria, Pablo, Briones, and Tuason, JJ., concur.

CONCURRING

PADILLA, J.:

I concur in the result. I do not think that the testimony of a witness to prove that robbery was committed in the house of Inocencio Mateo, after a witness had testified that robbery was committed in the house of Leonides Pablo, would necessarily have the effect of charging the defendant with two robberies. Whether two offenses are charged in an information must not be made to depend upon the evidence presented at the trial but upon the facts alleged in the information. I am of the opinion that the facts alleged in the information do not clearly show that

two robberies are charged. For that reason, failure by the defendant to move to quash the information on the ground of duplicity of offenses charged could not constitute a waiver. Hence the order of the respondent Court requiring the petitioner Provincial Fiscal of Nueva Ecija to choose or elect which of the two offenses he would stand on is not only erroneous but also constitutes a grave abuse of discretion; and as there is no other plain, adequate and speedy remedy in the ordinary course of law, for no appeal may be taken from the order complained of, the writ applied for herein must be granted. The order must be set aside, and the respondent Court directed to proceed with the trial of the case until final judgment allowing the second witness Emerenciana de San Jose to testify.

PARAS, J.:

I concur.

DISSENTING

PERFECTO, J.:

Petitioner prays that respondent judge be ordered to proceed to try criminal case No. 398 of the Court of First Instance of Nueva Ecija under the information as filed by petitioner on December 7, 1946, and that we set aside the order of respondent judge dated March 18, 1947.

The main question in this case is whether the facts alleged in the information, quoted in the above order, alleges one offense, as contended by the defense, or two offenses, as petitioner pretends. There is no quarrel as to the legal effects in each case and as to what should be the logical outcome of either contention.

As drafted and as we read it, we do not have any doubt that defense's position is entirely correct.

No complete copy of the information was filed with us, so we have to rely on the following paragraphs, presumably contained in the body of the information as quoted in the order of the lower court dated March 18, 1947, marked as Annex B of the petition:

"That on or about the 8th day of October, 1946, in the municipality of Gapan, Province of Nueva Ecija, P. I., and within the jurisdiction of this Court, the above-named accused, Feliciano Valderama, together with one Bolong, Francisco alias Inggo, Jose Simbulan alias Peping, Enting, Eugenio alias Geniong Dusa and Arsenio alias Bulahap, who have not as yet been apprehended, all with arms, conspiring together and mutually aiding one another, by means of violence against and intimidation of persons and with intent to gain, did then and there voluntarily, maliciously, illegally and criminally take and carry away the following personal properties:

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belonging to Inocencio Mateo and

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1 shirt (Indian Head) at 10.00

1 pair of slippers valued at 5.00

1 pair of rope (Guyuran) valued at 4.00

P39.00

belonging to Leonides Pablo in the aggregate sum of P100.00, against their will and to their damage and prejudice in the said sum of P100.00."

All the above appear in the order under the following statement: "When the case reached the Court of First Instance, these defendants were accused of robbery (*italics ours*) committed according to the information as follows:"

The text of the information unmistakably convey the idea that only one robbery was committed, although with two victims, Inocencio Mateo and Leonides Pablo, the owners of the articles stolen.

No matter what the intention of the drafter of the information, the facts alleged therein show that only one robbery was committed. The reasons are:

- There is singleness of date, October 8, 1946.
- There is singleness of place, the Municipality of Gapan.
- There is singleness of jurisdiction, the jurisdiction of the lower court.
- There is singleness of act between the several accused, who are alleged to have conspired together and mutually aided one another.
- There is singleness in the intent to gain.
- There is singleness in the taking and carrying away of the articles.
- And, finally, there is singleness in the word "robbery," used in singular number, in the order Annex B, which should have taken it from the first paragraph of the information which usually contains the allegation that the signer of the information accuses defendants with the crime imputed to them.

In case there is any doubt as to the ideas conveyed by the information and there is any ambiguity as to whether it alleges only one offense, as read by counsel for the defense, or two or more offenses, as contended by the provincial fiscal, the doubt and ambiguity must be decided against the writer of the information, according to a well-known principle of documentary interpretation. And the rule appears to be more compelling if we take into consideration that the provincial fiscal had the inescapable duty, by constitutional mandate, of informing the accused "of the nature and cause of the accusation against him." (Section 1 [17], Article III of the Constitution.)

If during the trial, it appeared that the prosecution's purpose was to charge the accused with two offenses, as happened to have been revealed in the case in question, the lower court acted correctly in issuing the order of March 18, 1947, Annex B of the petition, and which is attached to this opinion as appendix and part thereof.

For all the foregoing, we are of opinion that the petition is completely without merit and should be denied.

BENGZON, J.:

I concur in the foregoing dissent.

Annex B

REPUBLIC OF THE PHILIPPINES
IN THE COURT OF FIRST INSTANCE OF NUEVA ECIJA
SIXTH JUDICIAL DISTRICT

CRIMINAL CASE NO. 398.—THE PEOPLE OF THE PHILIPPINES, complainant, versus FELICIANO VALDERAMA, accused

ORDER

It appears that in a criminal complaint filed by the Chief of Police of Gapan, Nueva Ecija, the above-named defendant together with several others were charged with two robberies with violence, one in the house of Inocencio Mateo and another in the house of Leonides Pablo. Supporting affidavits attest to this fact. When the case reached the Court of First Instance, these defendants were accused of robbery committed according to the information as follows:

"That on or about the 8th day of October, 1946, in the municipality of Gapan, province of Nueva Ecija, P. I., and within the jurisdiction of this Court, the above-named accused, Feliciano Valderama, together with one Bolong, Francisco alias Inggo, Jose Simbulan alias Peping, Enting, Eugenio alias Geniong Buso and Arsenio alias Bulahap, who have not as yet been apprehended, all with arms, conspiring together and mutually aiding one another, by means of violence against and intimidation of persons and with intent to gain, did then and there voluntarily, maliciously, illegally and criminally take and carry away the following personal properties:

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1 pair of rope (Guyuran) valued at 4.00

39.00

belonging to Leonides Pablo in the aggregate sum of P100, against their will and to their damage and prejudice in the said sum of P100."

After arraignment and while the second witness for the prosecution was testifying, the defense counsel objected to her testimony tending to prove that a robbery was committed in the house of Inocencio Mateo, after the first witness had testified to a robbery committed in the house of Leonides Pablo.

The Provincial Fiscal argued that the defense counsel having failed to raise the question of duplicity before the defendants pleaded, they thereby waived the objection on the ground of duplicity (section 10, Rule 113). He further argued that in prohibiting the allegation of more than one offense in the same information, the law seeks to give the accused a chance to properly prepare his defense—which purpose has been subserved in the present information which mentions the two offended parties, Inocencio Mateo and Leonides Pablo; and that at any rate, only one offense is charged in the information.

For his part, defense counsel contends that the information does not charge two crimes and that he had a right to assume that only one crime was charged in the information notwithstanding that two offended parties are named therein, as it was the duty of the Fiscal to do. He further moves that the Provincial Fiscal be required to elect on which offense to stand, whether the robbery committed in the house of Leonides Pablo or that committed in the house of Inocencio Mateo.

Although section 10, Rule 113 in declaring that when an accused pleads without moving to quash the information, he would be deemed to have waived all objections which are grounds for a motion to quash, the court believes that this rule in so far as duplicity is concerned is applicable only where the duplicitousness clearly appears on the face of the information. Moreover, general principle of waiver, be it implied or express, requires that the party deemed waiving has knowledge of the right he does waive. The mere mention of two victims of robbery in the information does not necessarily imply two separate and distinct offenses as they could have been held up simultaneously, thus giving rise only to one offense. Under the circumstances, the following rule is considered controlling:

"Necessity for Election.—(a) In General. When one offense is charged and the evidence tends to show that more than one has been committed within the period of limitations prior to the presentation of the indictment, and either of them would support the charge in the indictment, the prosecution may be required to elect upon which it will rely for a conviction, although the charges are only misdemeanors: since, while the different acts may be proper as evidence in aid of the particular charge in the indictment, defendant is entitled to know which specific act is relied on for a conviction in order that he may properly meet the charge, and in order that a conviction shall not be a matter of choice between offenses." (16 C. J., p. 860, section 2169.)

On the other hand, the cases holding that a failure to demur would authorize the court to convict the defendants for as many offenses as there are charged in the information and proven (37 Phil., 260, 305; 50 Phil., 771; 53 Phil., 583; 57 Phil., 587) are applicable only where two offenses are clearly charged in the information and the accused proceeded with the trial without objection on the ground of duplicity,—conditions not existing in the present case.

Wherefore, the Provincial Fiscal is hereby required to choose which of the two offenses, robbery in the house of Inocencio Mateo or the robbery in the house of Leonides Pablo, he could elect to stand on, reserving to the Government the right to prosecute the other crime not so elected.

It is so ordered.

Cabanatuan, Nueva Ecija, March 18, 1947.

JUAN P. ENRIQUEZ

Judge

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