

**PEOPLE OF THE PHILIPPINES; HON. LEO D. MEDIALDEA, IN HIS CAPACITY AS JUDGE, COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXXVI, MAKATI, RIZAL; AND LILIA C. LOPEZ AS STATE PROSECUTOR...**

*G.R. No. L-41077. April 28, 1983*

Ponente: RELOVA, J.

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**RELOVA, J.:**

In our resolution of February 25, 1976, the petition for review filed by petitioners was treated as a Special Civil Action. It seeks (1) to annul and set aside the decision and resolution, dated December 18, 1974 and July 11, 1975, respectively, of the Court of Appeals; and, (2) to sustain in toto the orders, dated January 25, 1974 and June 15, 1974, of the trial Judge which allowed the retention of the allegation of conspiracy in reference to Criminal Cases Nos. 4747 and 4748 in the informations filed in Criminal Cases Nos. 9673 and 9674; or, in the alternative, to direct the trial judge to allow the amendment of the informations in Criminal Cases Nos. 4747 and 4748 so as to include Luis Padilla and Magsikap Ongchenco as co-accused of Sixto Ruiz and to dismiss the informations in Criminal Cases Nos. 9673 and 9674.

As a result of a shooting incident at Sta. Lucia Street, Mandaluyong, Rizal, on June 5, 1971, two informations for frustrated homicide were filed against Sixto Ruiz in the Court of First Instance of Rizal on February 21, 1972. In Criminal Case No. 4747, Ernesto Bello was named as the victim, while in Criminal Case No. 4748, Rogelio Bello was the complainant.

Upon arraignment, Sixto Ruiz pleaded "not guilty" to the two informations in said Criminal Cases Nos. 4747 and 4748. However, a reinvestigation of these two cases was made in the then Department of Justice, following which State Prosecutor Lilia C. Lopez filed a motion for leave of court to amend the informations on the ground that the evidence disclosed a prima facie case against Luis Padilla and Magsikap Ongchenco who acted in conspiracy with Sixto Ruiz.

Sixto Ruiz filed his opposition to motion, while Luis Padilla and Magsikap Ongchenco submitted their comment.

The trial Judge denied the motion to amend the information saying that allowance of the amendment alleging conspiracy would be amending the manner of committing the crime and thereby would constitute a substantial amendment.

As a consequence, State Prosecutor Lilia C. Lopez filed two new informations for frustrated homicide against Luis Padilla and Magsikap Ongchenco (Criminal Cases Nos. 9673 and 9674) alleging that the two conspired with Sixto Ruiz who was referred to as the accused in Criminal Cases Nos. 4747 and 4748.

Padilla and Ongchenco moved to quash the two new informations. The motion was denied by the lower court in its order of January 25, 1974, saying:

"[T]he informations in the above-entitled cases state the names of the accused Luis Padilla and Magsikap Ongchenco; the offense of frustrated homicide is clearly designated in each information; the acts or omissions constituting the offense charged are stated in ordinary and concise language without repetition sufficient to enable a person of common understanding to know what offense is charged and for the Court to pronounce proper judgment; the names and surnames of the persons, Ernesto Bello and Rogelio Bello, against whom the offenses were committed are stated in the informations; and that both offenses were committed on or about the 5th day of June, 1971, in the Municipality of Mandaluyong, Province of Rizal, Philippines.

"ACCORDINGLY, the motion to quash is hereby denied for lack of merit."

Likewise, Sixto Ruiz filed in said Criminal Cases Nos. 9673 and 9674 a motion to permit to quash and/or strike out the allegation of conspiracy in the two informations. The trial Judge, on June 15, 1974, ordered the striking out from the records the aforesaid motion and clarified that "the allegation of conspiracy in those cases does not alter the theory of the case, nor does it introduce innovation nor does it present alternative imputation nor is it inconsistent with the original allegations."

From these orders, of the lower court, Sixto Ruiz, Luis Padilla and Magsikap Ongchenco went to the Court of Appeals on a petition for certiorari with preliminary injunction (CA-G.R. No. 03146-SP) alleging that the trial Judge exceeded his jurisdiction or abused his judicial discretion in issuing the orders, dated January 25, 1974 and June 15, 1974, in Criminal Cases Nos. 9673 and 9674.

The Court of Appeals rendered its decision, the dispositive portion of which reads as follows:

"WHEREFORE, we hold that the respondent Judge exceeded his jurisdiction and/or abused his discretion in denying the motion of petitioner Sixto Ruiz for permission to file a motion to strike out the allegation of conspiracy in the informations filed in Criminal Cases Nos. 9673 and 9674 (CA Rollo, p. 89), in striking out from the records the motion of petitioner Sixto Ruiz to strike out the allegation of conspiracy inserted in the informations filed in Criminal Cases Nos. 9673 and 9674 (Ibid., p. 93), and in denying the motion for reconsideration filed by the petitioners, Luis Padilla and Magsikap Ongchenco (Ibid., p. 81).

"Accordingly, the petition for certiorari is hereby granted and the questioned orders of the respondent court dated January 25, 1974 and June 15, 1974 (Annexes K and Q, CA Rollo, pp. 76, 107) are partially annulled and set aside insofar as the petitioner Sixto Ruiz is concerned. The allegation of conspiracy implicating Sixto Ruiz and the reference to Criminal Cases Nos. 4748 and 4747 in the informations filed in Criminal Cases Nos. 9673 and 9674, respectively, are hereby ordered deleted and stricken out of the said informations and records of the said cases."

The motion for reconsideration filed by herein petitioners to the foregoing decision, dated December 18, 1974 of the Court of Appeals was denied "for lack of merit" in its resolution, dated July 11, 1975.

There is merit in this special civil action. The trial Judge should have allowed the amendment in Criminal Cases Nos. 4747 and 4748 considering that the amendments sought were only formal. As aptly stated by the Solicitor General in his memorandum, "there was no change in the prosecution's theory that respondent Ruiz wilfully, unlawfully and feloniously attacked, assaulted and shot with a gun Ernesto and Rogelio Bello . . . The amendments would not have been prejudicial to him because his participation as principal in the crime charged was not changed. On the other hand, respondent Padilla and Ongchenco, not having been charged with respondent Ruiz in the original informations, could not be prejudiced by the proposed amendments."

In a case (Regala vs. CFI, 77 Phil. 684), the defendant was charged with murder. After plea, the fiscal presented an amended information wherein two other persons were included as co-accused. There was further allegation that the accused and his co-defendants had conspired and confederated together and mutually aided one another to

commit the offense charged. The amended information was admitted, following which the fiscal sought the discharge of the two other co-defendants in order to utilize them as prosecution witnesses. The court granted the discharge. His appeal having been denied as well as his motion for reconsideration of the denial of the appeal, defendant filed a petition for a writ of certiorari. It was alleged that the admission of the amendment was an abuse of discretion. This Court held:

"La inclusion de dos acusados y la adición de las palabras: 'by conspiring, confederating and helping one another' en la querella enmendada es una enmienda de forma. En la primera querella se acusa al recurrente de autor y en la enmendada de coautor pero su responsabilidad es la misma en ambas. El cambio solo se refiere a la forma de ejecución del delito; pero no a la sustancia del delito mismo. La forma de ejecución es mas bien materia de pruebas y no de alegaciones, y los detalles alegados en la querella enmendada pudieron haberse probado bajo la querella original."

Otherwise stated, the amendments of Criminal Cases Nos. 4747 and 4748 would not have prejudiced Ruiz whose participation as principal in the crimes charged did not change. When the incident was investigated by the fiscal's office, the respondents were Ruiz, Padilla and Ongchenco. The fiscal did not include Padilla and Ongchenco in the two informations because of "insufficiency of evidence." It was only later when Francisco Pagcalinawan testified at the reinvestigation that the participation of Padilla and Ongchenco surfaced and, as a consequence, there was the need for the amendment of the informations or the filing of new ones against the two.

The fact that the trial court denied the motion of the prosecution to amend the informations in Criminal Cases Nos. 4747 and 4748 was no bar to the filing of the new informations. The allegation in Criminal Cases Nos. 9673 and 9674 filed against Luis Padilla and Magsikap Ongchenco that the two conspired and confederated with Sixto Ruiz merely describe the fact that the latter was already charged with the same offense. It is only a reference to the two cases already filed against Ruiz wherein he alone stands as the defendant. It does not make Ruiz a co-defendant of Padilla and Ongchenco in the two new informations. It is incorrect to say that the allegation of conspiracy in Criminal Cases Nos. 9673 and 9674 include Ruiz as a defendant in the said cases. In fact, and as aptly observed by the petitioners, the lower court did not order the arrest of Sixto Ruiz in Criminal Cases Nos. 9673 and 9674. Padilla and Ongchenco were the only ones against whom warrants were issued; nor was he arraigned in said cases. Padilla and Ongchenco were the only ones arraigned and they pleaded not guilty.

Thus, inasmuch as Ruiz is not a defendant in Criminal Cases Nos. 9673 and 9674, he can not file a motion to quash the same. He has no personality or standing in said cases and, therefore, it was improper for him to have filed the motion to quash.

ACCORDINGLY, the decision and resolution, dated December 18, 1974 and July 11, 1975, respectively, of the Court of Appeals are hereby SET ASIDE. Furthermore, the orders of the lower court, dated January 25, 1974 and June 15, 1974, allowing the retention of the allegation of conspiracy and the reference to Criminal Cases Nos. 4747 and 4748 in the informations filed in Criminal Cases Nos. 9673 and 9674, are SUSTAINED.

### **SO ORDERED.**

Teehankee (Chairman), Melencio-Herrera, and Plana, JJ., concur.

Vasquez, J., in the result. The complications that arose in this case could have been avoided if the trial granted, as he should have, the motion of Special Prosecutor Lopez to amend the two informations in CC Nos. 4747 and 4748 so as to include Padilla and Ongchenco as co-accused of Ruiz, and in conspiracy with the latter. The effect would be the same as the result upheld in the main opinion, if all the cases will be consolidated for joint trial.

Gutierrez, Jr., J., no part.

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