

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
JULIANA UBA AND CALIXTA UBA, DEFENDANTS AND APPELLEES.***G.R. No. L-8596. May 18, 1956*

Ponente: LABRADOR, J.

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Appeal by the People against a judgment of the Court of First Instance of Misamis Occidental, absolving Juliana Uba and Calixta Uba of the offense of oral defamation of which they are charged in an information filed by the provincial fiscal.

On August 1, 1952, Demetria Somod-ong filed a complaint in the justice of the peace court of Oroquieta, Misamis Occidental, charging above-named Juliana and Calixta Uba with having uttered' in public against complainant certain defamatory words and expressions. The complaint was supported by the affidavits, of Pastora Somod-ong, Marciano Calibog and Anacoreta Rocaldo. The court found the existence of probable cause and forwarded the case to the Court of First Instance, where the provincial fiscal filed the information Charging the accused Juliana and Calixta Uba of serious oral defamation. However, instead of mentioning the complainant Demetria Somod-ong as the offended party, the information named Pastora Somod-ong as the person offended.

When the case came for trial both Demetria and Pastora testified for the prosecution. Demetria is the daughter of Pastora and when the latter testified she (declared that it was her daughter Demetria who was insulted by the accused. When Demetria testified she declared the the accused insulted her corroborating her mother's testimony. Two other witnesses testified that the accused insulted Demetria Somod-ong calling her lascivious and a prostitute. When the prosecution had rested, counsel for the accused promptly moved for the dismissal of the case on the ground that all the defamatory statements supposed to have been uttered by the accused were against Demetria, not against the offended party, Pastora. The (judge then ordered counsel for the parties to present the motion and the answer thereto in writing which they did. The judge sustained the motion to dismiss and entered decision acquitting the accused of the charge. Hence, this appeal.

The Solicitor General contends in this appeal that the trial court should have ordered the fiscal to amend the information by changing the name of the offended party so as to make it conform with the evidence. It is claimed that the change would merely be one of form, permitted by Section 13 of Rule 106, which provides:

"Sec. 13. Amendment.—The information or 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 mistake has been made in charging¹ the proper offense, the court may dismiss 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."

While it is probably true that the fiscal or his clerk made a clerical error in putting in the information the name of Pastora Somod-ong instead of that of Demetria Somod-ong, as the offended party, the mistake thus committed was on a very material matter in the case, such that it necessarily affected the identification of the act charged. The act of insulting X is distinct from a similar act of insult against Y, even if the insult is proffered by the same person, in the same language and at about the same time. Note that the pleading that give the court jurisdiction to try the offense is not the complaint of the offended party, but the information by the fiscal, because the charge is the utterance of insulting or defamatory language, not the imputation of an offense which can be prosecuted only at the instance of the offended party. (People vs. Marquez, 68 Phil., 521; Blanco vs. People, 70 Phil, 735.)

The case of Lahoylahoy, 38 Phil., 330, appears to us to be in point and decisive of the case. The reasons for the decision in that case were, first, because, to convict a person of robbing X when the person robbed is Y is violative of the principles of pleading and, second, because then the plea of double jeopardy would be of no avail to an accused. To this same effect is our decision in People vs. Balboa, 90 Phil., 5.

We, therefore, find that the court a quo did not err in dismissing the case for variance between the allegations of the information and the proof. But the evidence showed that the accused were guilty of another act, that of insulting Demetria Somod-ong. The Court should have, therefore, ordered the fiscal to file another information with Demetria Somod-ong as the offended party and hold the accused in custody to answer the new charge.

The order of dismissal is hereby affirmed, but the provincial fiscal of Misamis Occidental is hereby ordered to file a new information charging the same accused with the offense of serious oral defamation against Demetria Somod-ong. Judgment modified.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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