

CEFERINO M. REGALA, RECURRENTE, CONTRA EL JUEZ DEL JUZGADO DE PRIMERA INSTANCIA DE BATAAN, RECURRIDO.

G.R. No. L-781. November 29, 1946

Ponente: PABLO, J.

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PABLO, J.:

El recurrente es acusado en la causa criminal No. 4307 del Juzgado de Primera Instancia de Bataan por el delito de asesinato. En mayo 20, 1946 fue informado de la querella y se declaro no culpable. Los testigos, segun aquella, eran Wenceslao Cruz, Conrado Manalac y otros.

En junio 6, dia designado para la vista, el Fiscal Provincial en vez de aducir sus pruebas presento una querella enmendada incluyendo como acusados a los testigos nom-brados en la querella, Wenceslao Cruz y Conrado Manalac. En esta segunda querella se alego que entre el recurrente y sus dos co-acusados hubo conspiracion, confederacion y ayuda mutua para cometer el delito. Admitida por el juzgado la querella enmendada, el Fiscal Provincial presento inmediatamente una mocion en la que pidio el sobre-seimiento de la querella en cuanto a los acusados Conrado Manalac y Wenceslao Cruz para ser utilizados como testigos de la acusacion, alegando las cinco condiciones que requiere el articulo 9, Regla 115. A esta peticion accedid el Juez en su orden de 6 de junio de 1946.

En junio 14 el recurrente presento el aviso de apelacion contra dicha orden, y fue denegada el 19 del mismo mes.

En junio 26 el recurrente presento una mocion de re-consideracion que fue denegada en 11 de julio.

Alegando estos hechos, el recurrente presento su peticion original de certiorari pidiendo que sean anuladas por este Tribunal las ordenes de 6 de junio y 11 de Julio de 1946 del Juzgado de Primera Instancia de Bataan.

El recurrente alega que si no se diese curso a su citada apelacion se causaria irreparable dano a sus derechos sustanciales porque no tiene otro remedio facil, sencillo y adecuado. En caso de condena, el acusado puede apelar y en el juzgado ad queni puede discutir todos los errores cometidos por el juzgado inferior. Es el remedio ordinario que concede la legislacion vigente.

El recurrente alega que la orden del juez de 11 de julio denegando la mocion de reconsideracion es nula y de ningun valor porque dicho juez obro sin jurisdiccion, pues su nombramiento no ha sido aprobado por la Comision de Nombramientos, segun publico un periodico de la misma fecha. No consta en autos que el juez haya tenido cono-cimiento de tal desaprobacion antes de dictar su orden, impugnada de ilegal. Un juez que desempeia su cargo antes de enterarse de la desaprobacion de su nombramiento es un juez de facto. Todas sus actuaciones oficiales, como juez de facto, son tan validas para todos los fines legales y para toda clase de asuntos, como las de un juez de jure. (Tayko contra Capistrano, 53 Jur. Fil., 923.)

El recurrente y los disidentes arguyen que el juez, al permitir la inclusion de dos acusados y la adiccion de las palabras: "by conspiring, confederating and helping one another" en la querella enmendada, abuso de su discrecion con infraccion del articulo 13, Regla 106 porque se trata de una enmienda substancial. No creemos que

esa enmienda sea tal. 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 ejecucion del delito; pero no a la substancia del delito mismo. La forma de ejecucion 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.

"Los solicitantes en este expediente de certiorari, acusados en una querella por asesinato, alegan que el juzgado se excedio de su jurisdiccion y abuso de ella al permitir la enmienda de la querella. En la querella original se alegaba que Bruno Arevalo iba armado de cortaplumas y Cecilio Arevalo de revolver. En la querella enmendada, que fue admitida, se alega que Bruno Arevalo era el que llevaba el revolver y Cecilio Arevalo el cortaplumas.

"En nuestra opinion, el juzgado no abuso de su discrecion. La enmienda de la querella era meramente de forma. No afecta ni altera la naturaleza del delito, pues, sea Bruno o Cecilio el que haya causado la herida mortal, el delito seria el mismo. Tampoco afecta a la extension de la responsabilidad de los solicitantes, toda vez que, alegandose en la querella que ambos acusados conspiraron y se ayudaron el uno al otro para cometer el delito, serian responsables en la misma medida, sea uno u otro el que infirio la herida que produjo la muerte del occiso. Es, por tanto, una enmienda puramente de forma que no altera sustancialmente la querella ni afecta a los derechos de los acusados." (Arevalo y Arevalo contra Nepomuceno, 63 Jur. FiL, 665.)

Ademas, si el juez actuo con infraccion o no del Reglamento fue a lo mas un error de procedimiento, y no un abuso de discrecion, ni exceso o falta de jurisdiccion. Tal error, si lo es en realidad, puede ser corregido en apelacion, despues de dictada sentencia definitiva en primera instancia, y no en una accion de certiorari.

Solamente procede el remedio de certiorari cuando un tribunal, en el ejercicio de sus funciones judiciales, haya actuado sin jurisdiccion o con exceso de ella o con grave abuso de discrecion y que, en la tramitacion ordinaria, no tiene el recurrente el remedio sencillo y expedito de apelacion (Regla 67, articulo 1). Si por cada error cometido por un juzgado inferior se permitiese corregirlo por medio del recurso de certiorari, los asuntos serian interminables.

Se deniega la solicitud con las costas contra el recurrente.

Moran, Pres., Paras, Bengzon, y Padilla, MM., estan conformes.

CONCURRING

FERIA, J., with whom concurs TUASON, J.:

I concur in the result for the following reasons: According to section 1, Rule 67, certiorari lies when a tribunal or officer exercising judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion, and there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.

There is no doubt that appeal does not lie against an order of a court admitting or denying the amendment of a complaint or information, because such order is incidental or interlocutory and not final in character, that is, it does not put an end to the ordinary proceedings of the case in court. Interlocutory or incidental order may be impugned as erroneous in the appellate court, when appeal is taken from the judgment or order of the lower court which is final in character.

The question to determine, therefore, is whether or not the respondent judge acted (a) without or in excess of the court's jurisdiction, or (b) with grave abuse of discretion, in allowing the amendment of the information in this case.

(a) As to the first question, it is a well known rule that a court having jurisdiction over the offense charged and the territory wherein it was committed, has also jurisdiction to decide all questions incidental to the criminal proceeding, such as the sufficiency of a complaint or information, the authority of the fiscal to file or amend an information, or whether the defendant has been previously convicted or in jeopardy of being convicted or acquitted of the offense charged, or is insane. If the decision or resolution on such questions is not in conformity with or against the law, the court would commit an error, but not exceed its jurisdiction. A judge would act in excess of the court's jurisdiction if he performs or does an act which he has no power or authority to do, in connection with the proceeding over which the court has jurisdiction. But to decide erroneously a question which it is within the court's jurisdiction to decide, is not acting beyond or in excess of its jurisdiction. To hold otherwise would be to sustain the absurdity that a court acts within its jurisdiction if it decides a case in conformity with the law, and in excess of its jurisdiction if its decision is erroneous or contrary to law.

From the foregoing, it necessarily follows that the decision or order of the respondent judge allowing the amendment of the information after the defendant petitioner has pleaded would be erroneous if it is an amendment of substance and not of form, but it would not be an act beyond or in excess of the court's jurisdiction, because the court has power or jurisdiction to decide that question. The respondent judge has not, therefore, acted without or in excess of the court's jurisdiction in allowing the amendment of the information, however erroneous that resolution may be,

(b) With respect to the second, it goes without saying, for it is of common sense, that if a person has no power to do an act, and therefore no discretion to do or not to do it, it cannot be said that he has acted within, or with grave abuse of, his discretion in doing or not doing it. No one may abuse a thing that he does not have. If the respondent judge has no discretion to act in one way or another, as in the present case, he could not have acted with grave abuse of discretion, for he can not abuse a discretion which he does not have.

Therefore the question is reduced to whether or not the court has power to allow the amendment in substance of an information after the defendant has pleaded. If it has no power to permit such amendment, it does have discretion to allow it or not because discretion supposes power to do.

Section 13, Rule 106 of the Rules of Court, 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."

Wherefore, certiorari does not lie in the present case, and the petition is denied.

DISSENTING

HILADO, J., with whom concurs PERFECTO, J.:

I dissent.

Paragraph 6 of the petition alleges that on May 20, 1946, petitioner was arraigned upon the information first filed by the Provincial Fiscal under date of May 6, 1946. In that original information the act imputed upon the petitioner, and upon him alone, was that of having killed one Efrain Brillo by shooting with a firearm. After petitioner had thus been arraigned, the Provincial Fiscal presented an amended information dated June 5, 1946, charging three persons, namely, petitioner Ceferino M. Regala, one Conrado Manalac and one Wenceslao Cruz

with the act of having killed Efrain Brillo by shooting with a firearm, the amended information charging that said three accused conspired, confederated and helped one another in thus killing Efrain Brillo.

Paragraph 5 of the respondent's answer expressly admits that petitioner had already pleaded not guilty to the original information when the respondent court ordered the discharge of the two new defendants Conrado Manalac and Wenceslao Cruz. That discharge was so ordered upon "the Provincial Fiscal's motion of June 5, 1946, quoted in paragraph 8 of the petition.

It, therefore, appears that the amendment of the information was made by the Provincial Fiscal and allowed by the respondent court after the defendant (now petitioner) had pleaded not guilty to the original information.

Was the amendment merely formal, or was it substantial? To charge a person with having alone killed another is not the same as to charge him and two others with the killing. That the first act, is substantially—nay, essentially—different from the second is to my mind too obvious to require argument. The first act is the act of only one individual while the second is the act of three. The first act, if duly proven, will produce the conviction of only one person; while the second, if duly established, will result in the conviction of three. To say that the act of one person is substantially the same as the act of three persons, would virtually be tantamount to saying that one and three are the same. How, then, can the first and the second acts be substantially the same? Consequently, in the amended information petitioner was charged with an act entirely different and distinct from that charged against him in the original information. Hence, the amendment was not merely in form but in substance. The subsequent discharge of the accused Conrado Manalac and Wenceslao Cruz could not, of course, alter the principle.

The amendment does not refer merely to the form of execution of the crime. If the one executing were the same person in both cases, then the statement would be correct. But such is not the situation here—Ceferino M. Regala, Conrado Manalac and Wenceslao Cruz, the alleged perpetrators of the crime according to the amended information, are not the same as Ceferino M. Regala, the sole offender according to the original information.

To further support their thesis, the majority affirm that the form of execution is rather a matter of evidence than of allegations, and that the details alleged in the amended information could have been proven under the original information. We beg to point out the weakness of the argument: by proving the so-called details under the original information the conviction of the three killers could never have been attained for the simple reason that two of them were not being prosecuted under said original information; while by proving the allegations of the amended information (to test the strength of the argument we must suppose that Conrado Manalac and Wenceslao Cruz were not discharged) the conviction of all three defendants would have been secured. This difference between the two hypotheses spells the difference between the original and amended informations, a difference which necessarily involves a substantial change in the charge. The charge under the amended information is no less substantially different from the charge contained in the original information than the difference between three and one. The case of Arevalo and Arevalo vs. Nepomuceno (63 Phil., 627), is not in point. There the accused under the original and amended informations were the same two persons, Bruno Arevalo and Cecilio Arevalo, the only difference in the allegations consisting in the detail of which one of them was armed with a penknife and which was armed with a revolver, but in the original information, as well as in the amended one, the accused were the self-same two persons.

There it was rightly said that whether Bruno was armed with a penknife and Cecilio with a revolver or vice versa, since they were charged with having conspired and helped each other in the commission of the crime, both could be convicted to the same extent in one or the other case.

In the case at bar, if it had been alleged in the amended information that the accused Tlegala ordered Conrado

Ma-nalac and Wenceslao Cruz to kill Efrain Brillo and only the said Regala was charged with the crime, it might be contended with stronger reason that the change was merely in the form of execution. But such is not the case, as already demonstrated above.

Another substantial amendment involved in the change from the original to the amended information is the augmentation of the jeopardy or danger of punishment to which the accused was subjected. Under the original information, in order to convict him, the evidence must establish beyond reasonable doubt that he, by his own direct act, killed the victim. Under the amended information, after proof of conspiracy between him and his two co-accused, he could be convicted as co-author of the crime even without proof of his having personally and directly killed or physically participated in the killing of the victim, if sufficient evidence were adduced proving that the other two or anyone of the other two accused committed the direct act of killing. The amendment which gives rise to this difference of danger of punishment can not in any rational sense be called merely formal.

Neither can I agree with the view of the majority that we are here concerned at most with an error of procedure, and not an abuse of discretion. Neither can I subscribe to the corollary of said proposition, that the error is only corregible by appeal and not through certiorari. That we are dealing with the exercise—according to my theory, with a grave abuse—of the Court's discretion, is patent from the provision of Rule 106, section 13 which says that after plea and during the trial the information or complaint may be amended as to all matters of form (and may I add, as to matters of form only) by leave and "at the discretion of the court," when the same can be done without prejudice to the rights of the defendant.

Rule 106, section 13, in providing that after plea and during the trial the information or complaint may be amended "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, necessarily denies all power and discretion to the court, at that stage of the proceedings, to allow any amendment in substance.

The present Chief Justice of this court, in his Commentaries on the Rules of Court (Vol. II, 1940 ed., p. 389), in part says:

"Under this section, the amendment of the complaint or information, either in substance or in form, is as to the plaintiff, practically a matter of right, if made before the defendant pleads; thereafter, amendments are at the discretion of the court and then only as to matters of form. * * *" (Italics supplied.)

This leads to the conclusion that the respondent court acted with grave abuse of its discretion in allowing the amendment in question.

And I am of opinion, with all due respect to the majority, that this action of the lower court may and should be corrected by certiorari.

But it is said that appeal was the proper remedy. I understand this to mean that the accused, now petitioner, should go into trial under the amended information, await judgment and, if convicted, appeal therefrom, and only upon such appeal should he be allowed to complain against the error which, to my mind, was palpably committed by the respondent court. Supposing that upon that appeal it should be decided that the error was really committed by the trial court. What then would the appellate court do? To correct the error, it must declare that the amended information was erroneously admitted; and that the trial court had gravely abused its discretion in so admitting said pleading. In such a case the amended information

will necessarily be held illegally admitted; and I can not see how the appellate court can then avoid declaring invalid all the proceedings had thereunder, and to which the accused will have been so injuriously subjected.

The error under consideration is of such nature by reason of its incidence, that, if it should be declared to have

been committed, all the proceedings had under the amended information would have to be annulled and the case would need a re-trial. Such an error should, I think, be distinguished from an error corrigible upon appeal without need of annulling the proceedings in the court below and remanding the case for retrial. The first kind of error strikes at the very foundation of the proceedings below, while the second merely concerns details of such proceedings. In the first, appeal will fall far short of being a speedy and adequate remedy; in the second, it will not. It is in cases of the first class only where I think certiorari is the proper remedy. All other cases would fall under the second class, and we can safely say they constitute by far the greater number.

We must remember that this is not a civil case—it is a criminal prosecution for murder, during the progress and pendency of which—it may well last over one year—the accused, who is presumed to be innocent until validly convicted, will be subjected to the moral and nervous torture incident to the nature of the case, and even his personal liberty may be adversely affected if he be denied bail.

In view of the foregoing considerations, I submit that appeal would fall far short of being a speedy and adequate remedy for this petitioner.

If the amended information is held to be invalid for having been erroneously admitted, there should be no fear that this accused would go unpunished without trial. In such a case the amended information being invalid, the original information must be deemed never to have been superseded thereby and, therefore, still stands. The accused should then be prosecuted under the said original information. But if this court should hold that a mistake has been made in charging the proper offense in the original information, then in that case the Court of First Instance should be directed to dismiss the original information and order the filing of a new one charging the proper offense, provided the defendant would not be thereby placed in double jeopardy, pursuant to Rule 106, section 13, second paragraph.

I think petitioner is entitled to the writ of certiorari that he seeks, and that this court should annul the action of the respondent court in admitting the amended information and all proceedings had thereafter, with the proper instructions.

DISIDENTE

BRIONES, M.:

El artículo 13, Regla 106, del Reglamento de los Tribunales, prescribe lo siguiente:

"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."

* * * * *

Resulta evidente, de lo transcrito, que despues de haber contestado el acusado a la querella, esta no puede enmendarse sustancialmente, en su fondo, sino solo en cuestion de forma, previo permiso del tribunal, y aun ello solamente cuando puede hacerse sin perjuicio de los derechos del acusado. La cuestion, pues, que tenemos que determinar en el presente caso es (1) si la reforma de la querella, hecha despues de formulada por el acusado la contestation de "no culpable," es o no sustancial; y (2) si dicha reforma puede o no perjudicar los derechos del acusado.

No cabe duda de que la enmienda en cuestion es sustancial, de fondo. Evidentemente el Fiscal reformo la

querella, en el sentido de incluir como acusados a Conrado Manaiac y Wenceslao Cruz y alegando que estos conspiraron con el recurrente, Ceferino Regala, para cometer el delito de asesinato, a fin de poder pedir inmediatamente el sobreseimiento de la causa contra los nuevos acusados y utilizarlos como testigos de cargo contra dicho Regala. Efectivamente, esto fue lo que hizo el Fiscal, y en consecuencia el juzgado ordeno el sobreseimiento pedido decretando la liberation de los nuevos acusados y habilitandolos de esta. manera para ser testigos de la acusacion.

No es dificil imaginarse la situation del Fiscal. Sin los nuevos acusados como testigos de cargo, probablemente tuviera un caso muy floja. contra Regala. Esto, por un lado. Por otro, se debe presumir que Conrado Manaiac y Wenceslao Cruz no estarian dispuestos a declarar a favor de la acusacion incriminandose a si mismos, a menos que fuesen liberados previamente de toda responsabilidad al tenor del articulo 9, Regla 115, del Reglamento de los Tribunales. De ahi que el Fiscal se haya visto obligado a reformar la querella en el sentido indicado. ¿C6mo ha de ser, pues, de mera forma una enmienda que cambia tan radicalmente las posiciones juridicas respectivas del acu-sado y de la prosecution?

Que la enmienda es perjudicial a los derechos del recurrente, es cosa que salta a la vista. Por virtud de esa enmienda, que pennite al Fiscal amparar a Manaiac y Cruz con la coraza de la inmunidad, el recurrente tiene ahora que encararse con dos testigos que pueden pesar decisivamente en el resultado de la causa contra el.

Se arguye, sin embargo, que el remedio procedente no es el certiorari, sino la apelacion, cuando la causa se termine de modo adverso al acusado. Creo que esto es un error. Ea doctrina frmemente establecida que el certiorari procede, aun cuando sea factible la apelacion, cuando esta no ofrece un remedio expedito y adecuado. Tal es el .caso que nos ocupa. El abuso de discrecion cometido por el tribunal inferior puede afectar y trastornar radicalmente. el plan de defensa del acusado; asi que le interesa a este prevenir el dano antes de que ocurra, y esto solamente se puede conseguir por medio de un recurso rapido y eficaz como el certiorari. La apelacion seria, a lo mas, un remedio curativo. pero tardio, cuando el daño a los derechos del acusado ya se habn'a consumado, acaso irreparablemente. Entre ambas terapeuticas—la preven-tiva y la curativa—la primera es indudablemente la mejor, no solo en medicina, sino en todos los ordenes de la vida, Creo, pues, que el remedio solicitado debe concederse. Se deniega la solicitud.

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