

EL PUEBLO DE FILIPINAS, RECURRENTE, CONTRA FORTUNATO BORROMEY Y OTROS, RECURRIDOS.

G.R. No. L-1518. November 27, 1947

Ponente: PABLO, J.

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PABLO, J.:

En la Causa Criminal No. 3595, *People of the Philippines versus Rufino Reyes*, por traicion, se presento una querella, cuyo tercer cargo es del tenor siguiente:

"III

"That in or about the month of May, 1944, the herein accused, acting as informer or agent of the Japanese Imperial Forces, for the purpose of giving and with intent to give aid and comfort to the enemy, led and accompanied an armed patrol of Japanese soldiers and other agents and informers to a raid in the Municipality of Malabon, Province of Rizal, and then and there caused and participated in the apprehension and arrest of four (4) Chinese residents thereof, suspected of publishing and circulating anti-Japanese leaflets, who were subsequently brought by the accused and his companions to Fort Santiago, Manila."

En la vista de la causa, el Ministerio Fiscal descubrio por la declaracion de sus testigos que los hechos denunciados tuvieron lugar en Navotas y no en Malabon, como se alego en la querella, inmediatamente, pidio permiso para enmendarla y poner en lugar de Malabon, Navotas. El Tribunal lo denego diciendo: "The Court believes that as far as Count No. 3 is concerned, the accused is not informed of the charge in that count." Al reanudarse la sesion despues de un receso, el Fiscal pidio la reconsideracion de la resolucio, y el Tribunal del Pueblo, despues de oir los argumentos de ambas partes, la denego por la razon siguiente: "this defendant was not duly informed of the charge committed in Navotas."

No hay ningun cambio en los hechos relacionados en el cargo III de la querella. El que la redacto hizo constar que tuvieron lugar en Malabon porque asi declararon los testigos que le dieron informe, los cuales con la mejor buena fe creyeron indudablemente que estos sucesos tuvieron lugar en dicho municipio. Como Navotas y Malabon son colindantes no era facil asegurar si el lugar en donde se cometio el delito esta dentro de la jurisdiccion territorial de Malabon o de Navotas. Aqui mismo en Manila, todo el mundo conoce los distritos de Binondo y Tondo; pero habra lugar o lugares que nadie puede asegurar si esta en Binondo o Tondo. Solamente cuando hay seales o mojones publicamente conocidos es cuando puede una persona decir con exactitud si un acontecimiento ha tenido lugar en uno o en otro distrito. No seria raro si en una causa de asesinato cometido por Pedro en una calle en Manila se declarase por unos testigos que tuvo lugar en Binondo y otros en Tondo. El nombre del lugar en que se cometio el delito no tiene importancia. Si durante la vista se descubre que tuvo lugar en Tondo y no en Binondo como se alego en la querella, se puede y se debe permitir la enmienda de la querella.

En el caso presente, los testigos y el acusado mismo antes de la preparacion de la querella informaron que los hechos alegados en el cargo III tuvieron lugar en Malabon. Durante el curso de la vista se descubrio por la declaracion de otros testigos que el lugar del delito no esta dentro del municipio de Malabon sino de Navotas. La

enmienda debe permitirse. No es perjudicial al acusado. Ya se le informo al acusado de la naturaleza de los hechos cometidos por el como espia, lo que aparece relatado en el cargo III de la querella. El delito de que se le acusa no cambia de naturaleza por el simple cambio del nombre del lugar en que se cometio porque despues de todo el Tribunal del Pueblo tiene jurisdiccion en todo el territorio de Filipinas. Si se tratase de una simple falta que tiene que juzgarse por un Juzgado de Paz, el cambio de Navotas por Malabon es esencial porque el Juzgado de Paz de Malabon no tiene jurisdiccion sobre las faltas cometidas en Navotas.

Parte de la declaracion del acusado es del tenor siguiente:

"Towards May 1944, twenty Japanese military police and several members of the Chinese Association carried out a raid at Malabon Municipality, in the house of some Chinese engaged in the plantation of vegetables. These Chinese were suspected of printing leaflets against the Japanese and the Chinese Association. The raid was carried out in the morning and four Chinese were arrested and a firearm confiscated. These four Chinese were brought to Fort Santiago." (Annex C de la solicitud.)

Si la casa asaltada por los japoneses, ayudados por el acusado, esta en Navotas—y no en Malabon como declaro el mismo acusado en su affidavit—no es sustancial la enmienda: se reduce a simple error de nombre que no cambia la naturaleza de la acusacion.

"An offense which has no essential connection with the place in which it is committed, although charged to have been committed in a particular location, may be proved to have been committed anywhere within the jurisdiction. Accordingly, in a prosecution for homicide resulting from an abortion, the place of the commission of the crime is not an ingredient of the offense, and is alleged merely for the purpose of indicating venue. In the proof of offenses wherein the place of the commission of the offense is not of the essence of the crime charged, the exact location within the jurisdiction is not required to be charged in the indictment, and a variance as to the name of the street or highway where the crime occurred is not material. The fact that an offense has been charged to have been committed in one place, while the evidence tends to prove that an element of the offense was committed in another place, but within the jurisdiction of the court, does not present a material variance. Nor is it necessary, when a particular town or place is alleged, where it appears that the offense was committed within the jurisdiction of the court, to prove the place as alleged." (Wharton's Criminal Evidence, 11th Ed., Vol. 2, pp. 1860-1861.)

En E. U. contra Betiong (2 Jur. Fil., 129) la querella no expreso el lugar en que se cometio el delito. El Tribunal Supremo declaro que este defecto debe corregirse por medio de enmienda. En E. U. contra Celis (9 Jur. Fil., 736) el procesado alego que, en razon a que el lugar de la comision del delito no fue especificamente mencionado en la querella, carecia de jurisdiccion el Juzgado sentenciador. El lugar fue demostrado por las pruebas. Se confirmo la sentencia condenatoria. En E. U. contra Gabalde (11 Jur. Fil., 677) no se alego con precision el lugar de la comision del delito, pero fue demostrado por las pruebas. Se condeno al acusado. Y en E. U. contra Tan Goy (36 Jur. Fil., 1038) el Tribunal Supremo dijo:

"A menos que la fecha o el lugar constituyan un elemento esencial del delito que se acusa, las discrepancias entre las alegaciones y las pruebas referentes a la fecha y al lugar en que se ha cometido el delito imputado no constituyen un error que de lugar a la revocacion de la sentencia en apelacion, cuando las pruebas demuestran que el delito se ha cometido realmente dentro de la jurisdiccion territorial del juzgado, y dentro del periodo que, para la persecucion del delito que se alega, esta señalado por la ley, y cuando no hay razon alguna para creer que el acusado ha sido engañado por las alegaciones hechas en cuanto al delito por el cual ha sido enjuiciado, o que ha sido injustamente sorprendido con la presentacion de pruebas que acreditan que el delito se ha cometido en una fecha o un lugar diferentes de la fecha y lugar que se expresan en la querella."

La jurisprudencia americana registra varios casos de la misma naturaleza y son:

"Where an information was originally filed locating defendant's place of business on correct street, but at the

wrong number, the trial judge was justified in permitting it to be amended by correcting the number and the filing of an amended information alleging the correct number." (People vs. Berridge et al., 180 N. W., 381.)

"On motion of the county attorney, the court permitted the original information to be amended by inserting the words 'about a quarter of a mile west of the place where western avenue intersects G avenue in Capitol Hill, in said city, county, and state,' and striking therefrom the words, 'designated as Western and G Avenue, said city, county, and state.'

"The effect of the amendment was to change the place to which the whisky was alleged to have been conveyed from the intersection of Western and G Avenues to a point about a quarter of a mile west of said intersection. This amendment, having been made over the objection and exception of the defendant, is alleged to have been particularly prejudicial to him, in that it materially changed the description of the offense, and also because the information was not required to be reverified after the amendment was made.

"It is sufficient to state that, in the opinion of the court, the amendment did not materially alter the offense as charged in the original information." (Thayer vs. State, 183 Pac., 931.)

"Under Pen. Code, Sec. 1008, as amended by St. 1911, p. 436, providing that an indictment or information may be amended by the district attorney without leave of court before the defendant pleads, and thereafter, in the discretion of the court, where it can be done without prejudice to the substantial rights of the defendant, but that an indictment cannot be amended to change the offense charged nor an information to charge an offense not shown by the evidence taken at the preliminary examination, it was not error to permit the district attorney at the trial to amend an information charging a sale of intoxicating liquor in K. township, situated in the third supervisorial district, to allege that such township was situated in the Fifth supervisorial district, even if an allegation as to the district was proper or necessary; as such description was not an essential constituent of the crime, the gist or gravamen of which is the selling of liquor within the limits of no-license territory." (People vs Perry, 143 Pac., 798.)

"The first error urged on our attention relates to the amendment to the information which the court permitted during the trial. The information had first given the legal numbers of McCormick's farm as section 24, town 1, range 21 west, in Norton county. The amendment changed the range number to 23. The legal numbers of the McCormick farm were immaterial and surplusage; they hardly amounted even to matter of form. At the preliminary examination the state's evidence was developed, and defendant was fully apprised of the offense charged against him. So, too, by the information. It charged him with felonious theft of a set of harness 'belonging to R. E. McCormick in Norton county. * * * The allowance of the amendment was therefore not erroneous." (State vs. Frey, 208 Pac., 574.)

A la luz de todos los precedentes citados, es obvio que el Tribunal recurrido al denegar la peticion de enmienda presentada por el Ministerio Fiscal ha abusado de su discrecion concedida por el articulo 13, Regla 106.

Se concede el recurso. Se ordena al Tribunal recurrido que permita la enmienda de la querella.

Moran, Pres., Feria, y Bengzon, MM., estan conformes.

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