

**THE HON. BENJAMIN A.G. VEGA, PRESIDING JUDGE, BRANCH IV,  
CITY COURT OF OLONGAPO, AND THE CITY FISCAL OF OLONGAPO,  
PETITIONERS, VS. THE HONORABLE DOMINGO D. PANIS, PRESIDING  
JUDG...**

*G.R. No. L-40842. September 30, 1982*

Ponente: CONCEPCION JR., J.

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**CONCEPCION JR., J.:**

Petition for certiorari with mandamus to annul and set aside the decision of the respondent Judge of the Court of First Instance in Civil Case No. 1607-0 of the Court of First Instance of Zambales, entitled: "Leopoldo Lazo, petitioner, versus The Hon. Benjamin A.G. Vega, etc., et al., respondents," which annulled and set aside all the proceedings had in Criminal Case No. 8-73 of the City Court of Olongapo, entitled: "People of the Philippines, plaintiff, versus Leopoldo Lazo, accused;" and to direct the City Court of Olongapo to proceed with the trial of its Criminal Case No. 8-73.

The facts are not disputed. On February 25, 1972, Felicitas Vargas filed a complaint for Attempted Rape against Leopoldo Lazo with the Court of First Instance of Zambales which was docketed therein as Criminal Case No. 745.[1] Acting upon the complaint, the Hon. Augusto M. Amores, Presiding Judge of Branch I of the Court of First Instance of Zambales, referred the complaint to Executive Judge Cesar B. Villanueva of the Olongapo City Court for preliminary investigation and examination.[2] After the preliminary investigation, Judge Cesar B. Villanueva found that "only the crime of Acts of Lasciviousness has been proven to have been committed and that there is probable cause to believe that accused is probably guilty thereof," and ordered the issuance of a warrant for the arrest of the accused. He further ordered that "the records of this case be transmitted to the Clerk of Court, City Court, for raffle and assignment to some other branches of this Court, for trial on the merits and/or further proceedings." [3]

The case was assigned to Branch IV of the City Court of Olongapo, presided by the herein petitioner, Judge Benjamin A.G. Vega, and on December 15, 1972, Judge Vega issued an order directing that "the records of instant case be forwarded to the City Fiscal for appropriate action in the premises in order that the Court can proceed for trial on the merits." [4]

Accordingly, on January 1, 1973, Assistant City Fiscal Purita H. Cortes filed an information with the court charging Leopoldo Lazo with the crime of Acts of Lasciviousness. The case was docketed therein as Criminal Case No. 8-73 of the City Court of Olongapo.[5]

Upon arraignment, Leopoldo Lazo pleaded "Not Guilty."

On March 30, 1973, Assistant City Fiscal Purita H. Cortes filed a motion to admit an Amended Information to include an allegation that the offense was committed with the aggravating circumstances of "dwelling" and "night time." The accused opposed the admission of the amended information upon the ground that he had already

entered a plea and the amendment is prejudicial to his rights, but the court admitted the amended information. The accused filed a motion for the reconsideration of the order, but his motion was denied.[6]

Thereafter, trial on the merits proceeded. After the prosecution had presented its evidence and rested its case, the accused Leopoldo Lazo filed a motion to dismiss Criminal Case No. 8-73 upon the ground that the City Court had not acquired jurisdiction over the case in view of the absence of the necessary complaint for Acts of Lasciviousness duly signed by the complainant or her parents, grandparents or guardian.

On June 12, 1974, upon motion of the Prosecution and over the objection of the defense, the presiding judge tentatively admitted additional prosecution evidence, to wit: the folder containing the proceedings in Criminal Case No. 745 of the Court of First Instance of Zambales; the complaint subscribed to and filed by Felicitas Vargas for the crime of Attempted Rape; and a document entitled "Salaysay na kusang loob na ibinigay ni Felicitas Vargas kay Pfc. Arturo Doble sa loob ng Tanggapan ng Pulisya sa Lungsod ng Olongapo nitong ika-21 ng Febrero, alas 3:30 ng hapon." Thereafter, the presiding judge denied the motion to dismiss on September 26, 1974. The accused moved for the reconsideration of the order, but his motion was denied on November 22, 1974. Whereupon, the accused Leopoldo Lazo filed a petition for certiorari and prohibition, with a prayer for a writ of preliminary injunction, with the Court of First Instance of Zambales, to annul and set aside the proceedings in Criminal Case No. 8-73, for lack of jurisdiction.

At the pre-trial conference, the parties agreed to narrow down the issues to the following: (1) Whether or not the City Court acquired jurisdiction to try Criminal Case No. 8-73; (2) Whether or not the respondent Judge acted with grave abuse of discretion amounting to lack of jurisdiction in admitting, over the objection of the accused, the amended information to include the allegation that the crime was committed with the aggravating circumstances of "dwelling" and "night time", after the said accused had entered a plea of "Not Guilty" to the original information; and (3) Whether or not the respondent Judge acted with grave abuse of discretion amounting to lack of jurisdiction in allowing and admitting in evidence the records of Criminal Case No. 745 of the Court of First Instance of Zambales, the complaint and the affidavit of Felicitas Vargas after the prosecution had rested its case and after the accused had filed a motion to dismiss the case against him.

After a hearing, judgment was rendered, granting the writ prayed for, and all proceedings conducted in Criminal Case No. 8-73 were nullified and set aside, upon the ground that the City Court of Olongapo had not acquired jurisdiction over the case since there was no valid complaint for Acts of Lasciviousness filed.[7]

Hence, the present recourse.

(1) The petitioners contend that the City Court of Olongapo has jurisdiction to try Criminal Case No. 8-73 as the information filed against Leopoldo Lazo for Acts of Lasciviousness was legally sufficient, the offended party having already filed her complaint for Attempted Rape, upon which a preliminary investigation had already been conducted by the City Court of Olongapo upon orders of the Court of First Instance of Zambales, and after the preliminary investigation it was determined that it only warranted the prosecution of the accused for Acts of Lasciviousness; and that the respondent judge gravely abused his discretion amounting to lack of jurisdiction when he disregarded the ruling in the case of *U.S. vs. Garcia*, 27 Phil. 254.

The case of *U.S. vs. Garcia*, is of little importance. In this cited case, Benita Dizon filed a formal complaint charging her husband, Francisco Garcia, and Ursula Buan with the crime of concubinage with the justice of the peace court. A preliminary investigation was held and the justice of the peace, finding that a crime had been committed and that there was probable cause to believe that Garcia and Buan had committed the crime, issued an order directing them to appear before the Court of First Instance to answer the charge. The provincial fiscal upon the record, which included the complaint filed by Dizon, prepared and presented to the court an information

charging them with the same offense. Garcia and Buan appealed from the decision, subsequently rendered, claiming that the trial court did not acquire jurisdiction of the persons of the appellants and the subject matter of the action because the information was signed by the fiscal and not by the offended party. The Court therein ruled that the requirement that the prosecution for the crime of concubinage must be instituted by the filing of a complaint by the aggrieved person is sufficiently observed when the latter files a complaint in the justice of the peace court, which is made the basis for the usual preliminary investigation.

In that case, there was no variance between the offense charged in the complaint of the offended party and the information filed by the fiscal. Both complaint and information charged the accused therein with the crime of concubinage. In the instant case, however, the complaint signed by Felicitas Vargas, which was made the basis for the preliminary investigation, was one for Attempted Rape; whereas the original information and amended information filed by the City Fiscal of Olongapo were both for Acts of Lasciviousness.

However, the respondent Judge of First Instance committed an error in finding that the City Court of Olongapo had not validly acquired jurisdiction over Criminal Case No. 8-73. The filing of the complaint for Attempted Rape by the offended party as required by Article 344 of the Revised Penal Code was sufficient to confer jurisdiction upon the court. Although the complaint, which was made the basis for the preliminary investigation was for Attempted Rape, and the information and amended information, subsequently filed after the said preliminary investigation, were for Acts of Lasciviousness, it is not necessary to procure the filing of a complaint for Acts of Lasciviousness because Attempted Rape includes abusos deshonestos or Acts of Lasciviousness. When the charge is consummated, frustrated or attempted rape, the defendant may be convicted of Acts of Lasciviousness.[8] It results that the respondent Court of First Instance erred in setting aside all the proceedings had in Criminal Case No. 8-73 of the City Court of Olongapo.

2. In his petition for certiorari to set aside the proceedings made in Criminal Case No. 8-73, filed with the respondent Court of First Instance of Zambales (Civil Case No. 1607-0), the herein private respondent, Leopoldo Lazo also claimed that the City Court of Olongapo had no jurisdiction to allow the amendment of the original information for Acts of Lasciviousness after the accused had already been arraigned.

This contention is without merit. Under Section 13, Rule 110 of the Rules of Court, an information may be amended even after arraignment at the sound discretion of the court and when the same can be done without prejudice to the rights of the accused. The said section reads, as follows:

"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 a mistake has been made in charging 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 the information against Leopoldo Lazo, in the instant case, was amended after the accused had been arraigned, the amendment of the information to include the allegation that the crime was committed with the aggravating circumstances of "dwelling" and "night time" is an amendment as to a matter of form, and, hence, may be allowed. "An amendment which neither adversely affects any substantial right of the accused (e.g. does not deprive him of the right to invoke prescription nor affects and/or alters the nature of the offense originally charged nor invokes a change in the basic theory of the prosecution so as to require the accused to undergo any material change or modification in his defense) is an amendment as to a matter of form." [9] The additional

allegations that the crime was committed with the aggravating circumstances of "dwelling" and "night time" do not have the effect of charging another offense different or distinct from the charge contained in the original information. The new allegations relate only to the range of the penalty that the court might impose in case of conviction. The additional allegations do not also alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume.

Besides, these aggravating circumstances of "dwelling" and "night time" are generic aggravating circumstances in the crime of Acts of Lasciviousness which, if proven, may be taken into consideration in the imposition of the penalty although they are not alleged in the information.[10]

3. The claim that the lower court erred in allowing the prosecuting attorney to introduce new evidence is devoid of any merit, for while the prosecution had rested, the trial was not yet terminated and the cause was still under the control and jurisdiction of the court and the latter, in the exercise of its discretion, may receive additional evidence. Section 3(c), Rule 119 of the Rules of Court clearly provides that, in the furtherance of justice, the court may grant either of the parties the right and opportunity to adduce new additional evidence bearing upon the main issue in question.

WHEREFORE, the petition is GRANTED and the decision issued by the Court of First Instance of Zambales on May 20, 1975 in Civil Case No. 1607-0, entitled: "Leopoldo Lazo, petitioner, versus The Hon. Benjamin A.G. Vega, etc., et al., respondents," is hereby annulled and set aside. The City Court of Olongapo is directed to proceed with the trial of Criminal Case No. 8-73, entitled: "People of the Philippines, plaintiff, versus Leopoldo Lazo, accused." With costs against Leopoldo Lazo.

**SO ORDERED.**

Barredo, (Chairman), Guerrero, De Castro, Escolin, and Abad Santos, JJ., concur. Aquino, J., see attached concurrence.

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[1] Rollo, p. 30.

[2] Id., p. 31.

[3] Id., p. 32.

[4] Id., p. 33.

[5] Id., p. 34.

[6] Id., p. 10.

[7] Id., pp. 23-25, 28.

[8] People vs. Mariano, 50 Phil. 587.

[9] People vs. Rivera, L-27825, June 30, 1970, 33 SCRA 746.

[10] People vs. Martinez Godinez, 106 Phil. 597.

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## CONCURRING OPINION

**AQUINO, J.:**

I concur with the following observations:

1. City Judge Vega is not a proper petitioner in this case. The petitioner should be the People of the Philippines represented by the city fiscal of Olongapo City. A judge is never joined as a petitioner in a certiorari case to annul a decision or order which set aside the proceeding conducted by the said judge.
2. The complaint for attempted rape was filed in the Court of First Instance because the offense was punishable by prision mayor. It could have been filed in the city court or in the city fiscal's office for purposes of preliminary investigation. If filed in the city fiscal's office, the fiscal would require the complainant to execute her affidavit as required by Republic Act No. 5180, as amended. If it turned out that the offense was acts of lasciviousness, the fiscal should require the complainant to sign a complaint for that offense and file it in the city court together with the corresponding information.
3. Strictly speaking, the complaint in private offenses or crimes against chastity does not confer jurisdiction on the court. Jurisdiction is conferred by law. The complaint charging a private offense starts the criminal action because the private crime cannot be prosecuted de officio.

This point was ignored in cases of robbery with rape, a crime against property, where this Court, in spite of the absence of a complaint of the offended woman, in some instances convicted the accused of rape, a crime against chastity which can only be prosecuted upon a complaint filed by the victim or the persons named in article 344 of the Revised Penal Code.

4. As correctly opined by Justice Concepcion, the fiscal erred in filing an amended information just for the purpose of alleging nocturnity and dwelling as aggravating circumstances. Without such amendment, said circumstances could be proven during the trial if the accused does not interpose any objection.

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