

**ROLANDO DIONALDO, PETITIONER, VS. THE HONORABLE
AUXENCIO DACUYCUY, JUDGE, COURT OF FIRST INSTANCE,
BRANCH IV, PROVINCE OF LEYTE, RESPONDENT.**

G.R. No. L-55357. October 30, 1981

Ponente: ABAD SANTOS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/eff96076af24/>

ABAD SANTOS, J.:

In this petition We are asked to rule whether an information for the crime of homicide can be amended so as to charge the crime of murder after the accused had entered a plea of not guilty.

Petitioner Rolando Dionaldo stands charged with the crime of homicide in Criminal Case No. 3835 of the Court of First Instance of Leyte, Branch IV, presided by the respondent judge. After the accused had entered a plea of not guilty, the pro-prosecution filed a motion for leave to amend the information, attaching thereto an amended information charging the accused with murder qualified by treachery and evident premeditation — a more serious offense. No explanation was given in the motion for alleging evident premeditation but as to the allegation of treachery it was explained that, "the affidavit of the complaining witness indicates that the attack was sudden and it was only after they sustained the wounds consequent to the treacherous attack that they were forced to fight back to repel further aggression." It can thus be seen that all along this claimed circumstance was known to the prosecution but it was not alleged.

Counsel for the accused opposed the motion to amend the information but the respondent judge granted the motion; hence the petition to nullify the action of the respondent.

The petition is impressed with merit.

It is admitted that the provision which is relevant to the problem is Rule 110, Sec. 13 of the Rules of Court which stipulates:

"Section 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."

The petitioner invokes the first paragraph, whereas the respondent relies on the second.

To amend the information so as to change the crime charged from homicide to the more serious offense of murder after the petitioner had pleaded not guilty to the former is indubitably proscribed by the first paragraph of the above-quoted provision. For certainly a change from homicide to murder is not a matter of form; it is one of

substance with very serious consequences.

But can the amendment be justified under the second para-graph? The answer is, No. For the provision speaks not of amendment but of dismissal of the information. In other words the provision contemplates the filing of a substitute, not an amended information. But, it may be asked, can not the information for homicide against the petitioner be dismissed since no judgment has yet been rendered and another information for murder be filed? The answer, again, is, No. For the petitioner having pleaded not guilty to homicide, to dismiss the charge against him so as to file another charge for murder will place him thereby in double jeopardy.

We have not overlooked the fact that People of the Philippines, thru the Solicitor General, should have been made a party to this case. But the participation of the People while necessary is not indispensable under the circumstances. Besides an early resolution of this case is necessary to provide affirmative justice to the petitioner.

WHEREFORE, the petition is granted and the order of the respondent admitting the amended information is hereby set aside. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., and De Castro, JJ., concur.

Aquino, J., concurs in the result. Respondent judge relied on *Dimalibot vs. Salcedo*, 107 Phil. 843, where the amendment of the charge from homicide to murder, after the accused had pleaded guilty, was allowed.

The *Dimalibot* case is different from the instant case. The plea in the *Dimalibot* case was made during the preliminary investigation to a complaint for homicide filed in the justice of the peace court. That is not the plea contemplated in Section 9, Rule 117 of the Rules of Court. The plea in the instant case was made to an information filed in the Court of First Instance.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.