

NELSON UNAL, HERMOGENES LUMANGLAS AND LEOPOLDO TRINIDAD, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, AND THE HONORABLE ENRIQUE AGANA, JUDGE OF THE COURT OF FIRST INSTANCE OF QUE...

G.R. No. L-33393. May 18, 1972

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In their petition for certiorari filed on April 7, 1971, petitioners seek the setting aside of respondent court's questioned order denying their motion to quash the information charging them with the complex crime of multiple murder.

The information of March 2, 1971 filed in respondent court against the accused by special counsel Antonio R. Robles as acting provincial fiscal reads:

"The undersigned Acting Provincial Fiscal accuses NELSON UNAL alias 'BOY NELSON', HERMOGENES LUMANGLAS alias 'GENES', JOHN DOE alias 'OLDO', PETER DOE and RICHARD DOE, of the crime of Multiple Murder, defined and punished under Article 248 of the Revised Penal Code, committed as follows:

"That on or about the 23rd day of September 1970, in Sitio Lapulapu, Ibabang Cambuga, Municipality of Mulanay, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with two (2) carbines, Cal. 30 and Pistol, Cal. 45, conspiring and confederating together and mutually helping each other with intent to kill, and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously shoot the persons of Jose Marasigan, Ramon Baylon and Armando Mendoza, thereby inflicting upon the latter mortal gunshot wounds on their bodies which directly caused their instantaneous death.

"That in the commission of the above described crime, the aggravating circumstances of treachery, superior strength and use of motor vehicle are present.

"CONTRARY TO LAW."[1]

Citing the case of *People vs. Pineda*,[2] petitioners-accused moved respondent court to quash the information on the ground that "it should be split into three, because if charges three murders; and this case is not one of a single act producing two or more grave or less grave felonies,"[3] under Article 48 of the Revised Penal Code. Petitioners invoked the supreme importance of their quashal motion in that "(I)n a complex crime of two or more murders, the penalty to be applied according to Art. 48 must be the maximum, or death, which is the maximum penalty provided for murder (Art. 248 of the Revised Penal Code), irrespective of the presence of mitigating circumstances (Art. 63, par. 1, Revised Penal Code)."

The prosecution then opposed the motion on the ground that the firearms used by the accused-petitioners were automatic weapons, and with a single pressure on the trigger, the guns fired automatically and rapidly, killing the

three victims who were there sitting together." [4]

Respondent court per its order of March 23, 1971 sustained the opposition and denied the motion to quash and scheduled the case for arraignment and hearing on various dates in April, 1971.

Hence, this petition. In its resolution of April 13, 1971, the Court required respondents to comment on the petition and meanwhile restrained respondent court from proceeding with its scheduled arraignment and trial of the case under the challenged information.

The Solicitor General and the provincial fiscal of Quezon, Fernando M. Bartolome, jointly filed on behalf of respondents their comment of June 2, 1971, [5] wherein they manifested "(T)hat after going over the information, the undersigned believe that the filing of three separate informations for murder against the accused-petitioners will promote rather than prejudice justice; but since this case is now sub-judice before this Honorable Court, the undersigned pray that they be authorized to make the necessary amendment of the information," and consequently prayed of the Court

"* * * for permission to amend the original information, charging the accused-petitioners of the complex crime of triple murder, allowing them to file three separate amended informations charging the accused-petitioners with the crime of murder, and that this petition be dismissed."

Since the prosecution has now expressed its concurrence with the petitioners' motion that three separate informations for murder should be filed instead of the challenged single information for multiple murder, and the prosecution's appraisal after investigation of the nature of the criminal charge it should file as supported by the facts brought about in its inquiry should normally prevail, [6] the present action has been rendered moot and academic.

ACCORDINGLY, the case at bar is dismissed and the State's prayer for permission to file three separate amended informations charging petitioners-accused with three murders in lieu of the original information is hereby granted. The temporary restraining order heretofore issued is hereby lifted and respondent court shall proceed with the arraignment and trial on the basis of such amended informations to be filed by the prosecution. No costs. This resolution shall be immediately executory upon its promulgation.

Reyes, J.B.L., Acting CJ., Makalintal, Zaldivar, Fernando, Barredo, and Makasiar, JJ., concur.

Castro and Antonio, JJ., did not take part.

Concepcion, C.J., on official leave.

[1] Crim. Case No. 62-G of the Court of First Instance of Quezon, Gumaca Branch, entitled "People of the Phil., plaintiff vs. Nelson Unal alias 'Boy Nelson', Hermogenes Lumanglas alias 'Genes', John Doe alias 'Oldo', Peter Doe and Doe, accused."

[2] 20 SCRA 748 (July 21, 1967), and the subsequent cases of *People vs. Bakang*, 26 SCRA 840 (Jan. 31, 1969); *People vs. Bernal*, 28 SCRA 25 (May 8, 1969); and *People vs. Tilos*, 30 SCRA 735 (Nov. 29, 1969).

[3] Emphasis copied.

[4] Respondents' comment, Rollo, p. 26.

[5] Considered by the Court as a motion to dismiss.

[6] *People vs. Pineda*, supra, fn. 2.

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