

CLAUDIO J. TEEHANKEE, JR., PETITIONER, VS. HON. JOB B. MADAYAG AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 103102. March 06, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

In this special civil action for certiorari, prohibition and mandamus, petitioner principally seeks: (1) to nullify the order[1] of respondent judge admitting the amended information for murder filed in Criminal Case No. 91-4606; (2) to nullify the arraignment and the plea of not guilty entered by order of respondent judge when petitioner refused to be arraigned on the amended information for lack of preliminary investigation therefor; (3) to nullify the appointment of a counsel de oficio/PAO lawyer to represent petitioner; (4) to prohibit respondent judge from "over-speedy and preferential scheduling of the trial of the aforementioned criminal case;" and (5) to compel respondent judge to order a preliminary investigation of the crime charged in the amended information.

Petitioner was originally charged on July 19, 1991 in an information[2] for the crime of frustrated murder allegedly committed as follows:

"That on or about the 13th day of July 1991, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a handgun, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault and shoot one Maureen Navarro Hultman on the head, thereby inflicting gunshot wounds, which ordinarily would have caused the death of said Maureen Navarro Hultman, thereby performing all the acts of execution which would have produced the crime of Murder as a consequence, but nevertheless did not produce it by reason of cause or causes independent of her will, that is, due to the timely and able medical assistance rendered to said Maureen Navarro Hultman which prevented her death."

After the prosecution had rested its case, petitioner was allowed to file a motion for leave to file a demurrer to evidence. However, before the said motion could be filed, Maureen Navarro Hultman died.

Consequently, private prosecutor Rogelio A. Vinluan filed an omnibus motion[3] for leave of court to file an amended information and to admit said amended information. The amended information,[4] filed on October 31, 1991, reads:

"That on or about the 13th day of July, 1991, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said Claudio Teehankee, Jr. y Javier, armed with a handgun, with intent to kill and evident premeditation and by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said handgun Maureen Navarro Hultman who was hit in the head, thereby inflicting mortal wounds which directly caused the death of said Maureen Hultman."

Petitioner filed an opposition[5] thereto, as well as a rejoinder[6] to the reply[7] of the prosecution. On November 13, 1991, the trial court issued the questioned order admitting the amended information.

At the scheduled arraignment on November 26, 1991, petitioner refused to be arraigned on the amended information for lack of a preliminary investigation thereon. By reason of such refusal, respondent judge ordered that a plea of "not guilty" be entered for petitioner.

Thereafter, respondent judge ordered the prosecution to present its evidence. When petitioner's counsel manifested that he would not take part in the proceedings because of the legal issue raised, the trial court appointed a counsel de oficio to represent herein petitioner.

Petitioner now raises the following issues before us:

"(a) Whether or not an amended information involving a substantial amendment, without preliminary investigation, after the prosecution has rested on the original information, may legally and validly be admitted;

"(b) Whether or not a counsel de oficio may legally and validly be appointed to represent an accused who is represented by counsel of choice who refuses to participate in the proceedings because of a perceived denial of due process and after a plea for appellate remedies within a short period is denied by the trial court; and

"(c) Whether or not a particular criminal case may legally and validly be rushed and preferentially scheduled for trial over and at the expense and sacrifice of other, specially older, criminal cases." [8]

In our resolution of January 14, 1992, we required the Solicitor General to file a comment to the basic petition. It appearing from a further review of the record that the operative facts and determinant issues involved in this case are sufficiently presented in the petition and the annexes thereto, both in regard to the respective positions of petitioner and respondents, the Court has decided to dispense with the aforesaid comment to obviate needless delay in fairness to petitioner.

I. Petitioner avers that the additional allegation in the amended information, as herein underscored, that the accused ". . . did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said handgun Maureen Navarro Hultman who was hit in the head, thereby inflicting mortal wounds which directly caused the death of said Maureen Hultman x x x" constitutes a substantial amendment since it involves a change in the nature of the offense charged, that is, from frustrated to consummated murder. Petitioner further submits that "(t)here is a need then to establish that the same mortal wounds, which were initially frustrated (sic) by timely and able medical assistance, ultimately caused the death of the victim, because it could have been caused by a supervening act or fact which is not imputable to the offender." [9] From this, he argues that there being a substantial amendment, the same may no longer be allowed after arraignment and during the trial.

Corollary thereto, petitioner then postulates that since the amended information for murder charges an entirely different offense, involving as it does a new fact, that is, the fact of death whose cause has to be established, it is essential that another preliminary investigation on the new charge be conducted before the new information can be admitted.

We find no merit in the petition. There are sufficient legal and jurisprudential moorings for the orders of the trial court.

Section 14, Rule 110 of the 1985 Rules on Criminal Procedure provides:

"Sec. 14. Amendment. - The information or complaint may be amended, in substance or form, without leave of court, at any time before the accused 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 accused.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court

shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Rule 119, Section 11, provided the accused would not be placed thereby in double jeopardy and may also require the witnesses to give bail for their appearance at the trial."

The first paragraph provides the rules for amendment of the information or complaint, while the second paragraph refers to the substitution of the information or complaint.

It may accordingly be posited that both amendment and substitution of the information may be made before or after the defendant pleads, but they differ in the following respects:

1. Amendment may involve either formal or substantial changes, while substitution necessarily involves a substantial change from the original charge;
2. Amendment before plea has been entered can be effected without leave of court, but substitution of information must be with leave of court as the original information has to be dismissed;
3. Where the amendment is only as to form, there is no need for another preliminary investigation and the retaking of the plea of the accused; in substitution of information, another preliminary investigation is entailed and the accused has to plead anew to the new information; and
4. An amended information refers to the same offense charged in the original information or to an offense which necessarily includes or is necessarily included in the original charge, hence substantial amendments to the information after the plea has been taken cannot be made over the objection of the accused, for if the original information would be withdrawn, the accused could invoke double jeopardy. On the other hand, substitution requires or presupposes that the new information involves a different offense which does not include or is not necessarily included in the original charge, hence the accused cannot claim double jeopardy.

In determining, therefore, whether there should be an amendment under the first paragraph of Section 14, Rule 110, or a substitution of information under the second paragraph thereof, the rule is that where the second information involves the same offense, or an offense which necessarily includes or is necessarily included in the first information, an amendment of the information is sufficient; otherwise, where the new information charges an offense which is distinct and different from that initially charged, a substitution is in order.

There is identity between the two offenses when the evidence to support a conviction for one offense would be sufficient to warrant a conviction for the other, or when the second offense is exactly the same as the first, or when the second offense is an attempt to commit or a frustration of, or when it necessarily includes or is necessarily included in, the offense charged in the first information. In this connection, an offense may be said to necessarily include another when some of the essential elements or ingredients of the former, as this is alleged in the information, constitute the latter. And, vice-versa, an offense may be said to be necessarily included in another when the essential ingredients of the former constitute or form a part of those constituting the latter.[10]

Going now to the case at bar, it is evident that frustrated murder is but a stage in the execution of the crime of murder, hence the former is necessarily included in the latter. It is indispensable that the essential element of intent to kill, as well as qualifying circumstances such as treachery or evident premeditation, be alleged in both an information for frustrated murder and for murder, thereby meaning and proving that the same material allegations are essential to the sufficiency of the informations filed for both. This is because, except for the death of the victim, the essential elements of consummated murder likewise constitute the essential ingredients to convict herein petitioner for the offense of frustrated murder.

In the present case, therefore, there is an identity of offenses charged in both the original and the amended information. What is involved here is not a variance in the nature of different offenses charged, but only a change

in the stage of execution of the same offense from frustrated to consummated murder. This being the case, we hold that an amendment of the original information will suffice and, consequent thereto, the filing of the amended information for murder is proper.

Petitioner would insist, however, that the additional allegation on the fact of death of the victim Maureen Navarro Hultman constitutes a substantial amendment which may no longer be allowed after a plea has been entered. The proposition is erroneous and untenable.

As earlier indicated, Section 14 of Rule 110 provides that an amendment, either of form or substance, may be made at any time before the accused enters a plea to the charge and, thereafter, as to all matters of form with leave of court.

A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form.[11] Thus, the following have been held to be merely formal amendments, viz.: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction;[12] (2) an amendment which does not charge another offense different or distinct from that charged in the original one;[13] (3) additional allegations which do not 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; and (4) an amendment which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.[14]

We repeat that after arraignment and during the trial, amendments are allowed, but only as to matters of form and provided that no prejudice is caused to the rights of the accused.[15] The test of whether an amendment is only of form and an accused is not prejudiced by such amendment has been said to be whether or not a defense under the information as it originally stood would be equally available after the amendment is made, and whether or not any evidence the accused might have would be equally applicable to the information in the one form as in the other; if the answer is in the affirmative, the amendment is one of form and not of substance.[16]

Now, an objective appraisal of the amended information for murder filed against herein petitioner will readily show that the nature of the offense originally charged was not actually changed. Instead, an additional allegation, that is, the supervening fact of the death of the victim was merely supplied to aid the trial court in determining the proper penalty for the crime. That the accused committed a felonious act with intent to kill the victim continues to be the prosecution's theory. There is no question that whatever defense herein petitioner may adduce under the original information for frustrated murder equally applies to the amended information for murder. Under the circumstances thus obtaining, it is irremissible that the amended information for murder is, at most, an amendment as to form which is allowed even during the trial of the case.

It consequently follows that since only a formal amendment was involved and introduced in the second information, a preliminary investigation is unnecessary and cannot be demanded by the accused. The filing of the amended information without the requisite preliminary investigation does not violate petitioner's right to be secured against hasty, malicious and oppressive prosecutions, and to be protected from an open and public accusation of a crime, as well as from the trouble, expenses and anxiety of a public trial. The amended information could not conceivably have come as a surprise to petitioner for the simple and obvious reason that it charges essentially the same offense as that charged under the original information. Furthermore, as we have heretofore held, if the crime originally charged is related to the amended charge such that an inquiry into one would elicit substantially the same facts that an inquiry into the other would reveal, a new preliminary investigation is not necessary.[17]

We find nothing irregular in the appointment by the trial court of a counsel de oficio for herein petitioner whose

counsel of record refused to participate in the proceedings because of an alleged legal issue. Such issue having been demonstrated herein as baseless, we apprehend his refusal to participate in the trial as causative of or contributive to the delay in the disposition of the case. And, finally, for as long as the substantial rights of herein petitioner and other persons charged in court are not prejudiced, the scheduling of cases should be left to the sound discretion of the trial court.

WHEREFORE, it being clearly apparent that respondent judge did not commit the errors speciously attributed to him, the extraordinary writs prayed for are hereby DENIED and the instant petition is DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Davide, Jr., Romero, and Nocon, JJ., concur.
Bellosillo, J., no part.

[1] Annex A, Petition; Rollo, 18-19.

[2] Annex B, id.; ibid., 20-21.

[3] Annex C, id.; ibid., 22-23.

[4] Annex G, id.; ibid., 37-38.

[5] Annex D, id.; ibid., 27-29.

[6] Annex F, id.; ibid., 34-36.

[7] Annex E, id.; ibid., 30-33.

[8] Rollo, 4-5.

[9] Ibid., 10.

[10] Melo vs. People, 85 Phil. 766 (1950); Section 5, Rule 120, 1985 Rules of Criminal Procedure.

[11] Almeda vs. Villaluz, et al., 66 SCRA 38 (1975).

[12] Id., ibid.

[13] Guinto vs. Veluz, et al., 77 Phil. 801 (1946).

[14] Vega vs. Panis, et al., 117 SCRA 269 (1982).

[15] People vs. Montenegro, et al., 159 SCRA 236 (1988).

[16] 42 C.J.S., Indictment and Information 1250.

[17] People vs. Magpale, 70 Phil. 176 (1940).

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