

DENNIS T. GABIONZA, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 140311. March 30, 2001

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-140311/>

BELLOSILLO, J.:

May an Information be amended to change the material dates of the commission of the offense after the accused had been arraigned?

DENNIS T. GABIONZA seeks a review of the Decision of the Court of Appeals in CA-G.R. No. 49098-SP[1] dismissing his petition for certiorari assailing the order of the Regional Trial Court in Crim. Case No. Q-93-50552[2] which allowed the amendment of the Information charging him with violation of RA 1161 (The Social Security Law) as amended.

On 9 November 1993 an Information was filed against petitioner accusing him of violating Sec. 22, pars. (a) and (d), in relation to Sec. 28, par. (e), of RA 1161. It alleged that "in and about or during the period from January 1991 to May 1993" petitioner, President of the Manila City Bus Corporation, a compulsorily-covered employer under RA 1161, willfully and unlawfully failed, neglected and refused to remit to the Social Security System (SSS) contributions for SSS, Medicare and Employee Compensation (EC) amounting to P1,652,330.10 and the 3% penalty imposed thereon in the amount of P541,417.87.[3]

Petitioner was arraigned on 7 December 1993. On 10 February 1998 or about four (4) years after he was arraigned, the public prosecutor filed a Motion for Leave of Court to Amend Information, to change the material dates stated in the Information from "January 1991 to May 1993" to "January 1991 to May 1992." Petitioner opposed the motion contending that the proposed amendment was substantial in nature, hence to allow the same would be a violation of his right to be informed of the cause and nature of the accusation against him, and would negate or prejudice defenses that were otherwise available to him.

On 31 March 1998 the trial court granted the motion and allowed amendment of the Information, ruling that the amendment pertained only to matters of form. It further ruled that the amendment would not prejudice the rights of the accused as the theory of the prosecution remained the same.[4] On 2 September 1998 petitioner's motion to reconsider the order was denied.

Petitioner elevated the issue to the Court of Appeals in a petition for certiorari under Rule 65 seeking to annul the order of the trial court. On 9 June 1999 respondent Court of Appeals upheld the amendment and dismissed the petition. It held that the amendment "cannot be deemed an amendment in substance, as it will in no wise or manner impair whatever defense or defenses the accused could or might have interposed in the original information, even as it will not render unavailable or inapplicable in the amended information, whatever evidence the accused might or could have adduced or presented in the original information." [5] Hence this petition for review under Rule 45 of the 1997 Rules of Civil Procedure.

The proper procedure for the amendment of an Information is governed by Sec. 14, Rule 110, of the Rules on Criminal Procedure -

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 x x x x

After the accused enters a plea, amendments to the Information may be allowed, as to matters of form, provided that no prejudice is caused to the rights of the accused. The test as to when the rights of an accused are prejudiced by the amendment of a Complaint or Information is when a defense under the Complaint or Information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have, would be inapplicable to the Complaint or the Information as amended.[6]

On the other hand, an amendment which merely states with additional precision something which is already contained in the original information, and which, therefore, adds nothing essential for conviction for the crime charged is an amendment to form that can be made at any time.[7] Jurisprudence allows amendments to information so long as: (a) it does not deprive the accused of the right to invoke prescription;[8] (b) it does not affect or alter the nature of the offense originally charged;[9] (c) it does not involve 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;[10] (d) it does not expose the accused to a charge which would call for a higher penalty;[11] and, (5) it does not cause surprise nor deprive the accused of an opportunity to meet the new averment.[12]

In the case at bar, it is clear that the questioned amendment is one of form and not of substance. The allegation of time when an offense is committed is a matter of form, unless time is a material ingredient of the offense. It is not even necessary to state in the Information the precise time the offense was committed unless time is a material factor.[13] It is sufficient that the act is alleged to have been committed at any time as near to the actual date at which the offense was committed as the Complaint or Information will permit.[14]

Thus, petitioner's argument that the amendment prejudiced his rights is untenable. We fail to see how his original defenses would be rendered inapplicable by the amendment, nor the prosecution's theory in anyway altered by the same. Petitioner failed to adduce any evidence in support of his allegation that the amendment would adversely affect his rights.

Petitioner invokes *Wong v. Yatco*,[15] *People v. Opemia*[16] and *People v. Reyes*[17] in support of his cause. However, we hold that the ratio decidendi of the three (3) cases does not apply in the present case.

In *Wong* the prosecution amended the Information of a violation of Commonwealth Act No. 104 to change the dates of the violation from "May 3, 1954 to October 11, 1954" to "between January 2, 1955 and March 17, 1955." The Court disallowed the amendment because in 1954, the law punishing the act had not been published yet, therefore there was no crime in legal contemplation. The Court said that since an amended Information retroacted to the time of the original one, the proper course would have been not to amend the previous Information but to file another one. This crucial fact is not involved here.

In *Opemia* the Court held, "the period of almost five years between 1947 and 1952 covers such a long stretch of time that one may be led to believe that another theft different from that committed by the defendants in 1952 was also perpetrated by them in 1947. The variance is certainly unfair to them, for it violates their constitutional rights to be informed before the trial of the specific charge against them and deprives them of the opportunity to defend themselves."

In Reyes, this Court held that "the disparity of time between the years 1964 and 1969 is so great as to defy approximation in the commission of one and the same offense."

The last two (2) cases involved changes in dates which were so far removed from each other that substituting one for the other would clearly work to the detriment of the right of the accused to be informed of the nature and cause of the charges against him. This is not so in the present case. For one, a comparison of the amended Information (January 1991 to May 1992) and the original one (January 1991 to May 1993) shows that the period stated in the former is even shorter than and is included within the latter. Also, the averment "in or about and during the period" gives a sufficient approximation of the date of the commission of the offense. Therefore, the first Information had adequately informed petitioner of the period of time when the crime was committed. No surprise, ergo, no violation of rights, could spring from merely replacing the original period, more so with one that is shorter and included within the same.

Moreover, the imposable penalty will not increase as a result of the amendment. A reading of Sec. 28, par. (e), RA 1611, shows that it penalizes, among others, the failure or refusal of a compulsorily-covered employer from remitting compulsory contributions to the SSS. Neither time nor duration of the offense charged is a material ingredient of the offense. In fact, the penalty imposed for this violation is constant at six (6) years and one (1) day to twelve (12) years, regardless of the number of infractions.

Petitioner contends that because of the lapse of time between the filing of the Information and the amendment laches had set in.

We find no merit in this argument. "Laches" is defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that a party entitled to assert it either has abandoned it or declined to assert it.^[18] As the Solicitor General correctly pointed out, the principle of laches is inapplicable in this case. The provision in Sec. 14, Rule 110, of the Rules on Criminal Procedure is explicit that amendments as to form may still be made after arraignment or during trial. Since the questioned amendment was made "during trial," the same was made seasonably notwithstanding the lapse of four (4) years.

It may also be noted that even before the prosecution had the chance to present its principal evidence petitioner moved for the suspension of trial because he filed a petition for certiorari with the Court of Appeals questioning the denial of his motion to dismiss. Pre-trial was held only on 11 November 1997. As can be seen from the records, the prosecution did not unnecessarily waste time in filing the Motion for Leave of Court to Amend Information. Again, before the prosecution had the opportunity to present evidence, trial was suspended because of the filing of the instant case. This, coupled with the many postponements and resettings requested by petitioner, satisfactorily explains the reasonable delay in the amendment of the Information. Certainly, the prosecution cannot be faulted for not filing the amendment earlier since trial was suspended during the pendency of petitioner's recourse to the Court of Appeals and to this Court. Petitioner should not then bewail the delay in the amendment because such delay was principally upon his own behest.

WHEREFORE, the petition is DENIED. The assailed DECISION of the Court of Appeals in CA-G.R. No. 49098-SP affirming that of the trial court which allowed the amendment of the Information charging petitioner with violation of RA No. 1161, as amended, is AFFIRMED.

Considering the delay already incurred in the process, the trial court should immediately act on this case with deliberate dispatch upon its remand, which this Court DIRECTS. Costs against petitioner.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Decision penned by Justice Renato C. Dacudao, concurred in by Justices Ma. Alicia Austria-Martinez and Salvador J. Valdez, Jr.

[2] Decision penned by Judge Apolinario D. Bruselas, Jr, RTC-Br. 92, Quezon City.

[3] Original Records, p. 1.

[4] Id. p. 97.

[5] Rollo, pp. 30-38.

[6] People v. Montenegro, No. L-45772, 25 March 1988, 159 SCRA 236.

[7] Ibid.

[8] Vega v. Panis, No. L-40842, 30 September 1982, 117 SCRA 269.

[9] Ibid.

[10] Ibid.

[11] People v. Casey, No. L-30146, 24 February 1981, 103 SCRA 21

[12] Ibid.

[13] Sec. 11, Rule 110, Rules of Court.

[14] Ibid.

[15] 99 Phil 791 (1956).

[16] 98 Phil 698 (1956).

[17] No. L-32557, 23 October 1981, 108 SCRA 203.

[18] Republic v. Sandiganbayan, G.R. Nos. 112708-09, 29 March 1996, 255 SCRA 438.

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.