

PABLO CALION, ET AL., PETITIONERS AND APPELLANTS, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT AND APPELLEE.

G.R. No. 14306. January 29, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

On June 13, 1951, Patrolman Jesus Cordero of Caloocan, Rizal, filed in the justice of the peace court of said municipality, a complaint charging Pablo Calion and four others with the crime of coercion because on June 12, 1951, they had forced Josef a de Castro Evangelista "to abandon against her will the house, and taking out her furnitures and other belongings", they subsequently occupied it.

Before the defendants could plead to the information, the fiscal submitted a motion asking that the case "be dismissed and the accompanying information for qualified trespass to dwelling be admitted and utilized in lieu of the pending complaint for coercion." The attached information alleged that the same defendants, on the same date, not being persons and or agents, of persons in authority, unlawfully and violently entered the house of Josefa de Castro Evangelista "by forcibly opening the door and pushing her to gain entrance thereto."

Over the objection of the accused, the judge granted the fiscal's motion. Then they filed a motion to dismiss the new information, on the ground that the court had no jurisdiction to entertain "the amendment or substitution." After such motion had been denied, they started in the Quezon City court of first instance, certiorari and prohibition proceedings, contending that the information for trespass to dwelling was in law and in fact an amendment to the original complaint for coercion (for the same incident), which amendment changed the nature of the offense, contrary to the ruling in *People vs. Gabitanan*, 43 Off. Gaz., 3209.

From the court's denial of their petition, the accused resorted to the Court of Appeals. But the matter was forwarded to us, because it involves questions of law only.

The burden of appellants contention rests on the assumption that the fiscal submitted, and the court accepted, an amended information. But such assumption has no basis. Another information was filed; obviously because the facts found by the fiscal could not sustain the allegations of the previous complaint for coercion. We agree with the trial judge that there was no amendment, but a dismissal of the first complaint and the presentation of a new information—a substitution, not an amendment. The situation was not controlled by section 13 of Rule 106.

Having discovered that the facts were different, the fiscal could present another suitable information, unless of course, the defendants had already been placed in jeopardy under the first complaint (admittedly they had not been), or unless harassment can be shown in the light of *Conde vs. Rivera*, 45 Phil., 650, *Conde vs. Judge of First Instance*, 45 Phil., 173 and similar precedents.

Other objections might conceivably be presented, but certainly not the objection that a different crime is described in the new information.

Judgment affirmed, with costs against appellants.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

Montemayor, J., took no part.

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