

ANTONIO DIMALIBOT, PETITIONER AND APPELLANT, VS. ARSENIO N. SALCEDO, RESPONDENT AND APPELLEE.*G.R. No. 15012. April 28, 1960*

Ponente: BAUTISTA ANGELO, J.

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On February 20, 1958, Ramon Dimalibot et al., were charged with homicide for the killing of Bartolome Hernandez before the Justice of the Peace Court of Candelaria, Quezon. After conducting the first stage of preliminary investigation and having found probable cause against the accused, the justice of the peace court issued a warrant for their arrest recommending a bail bond of P8,000.00 for each of the accused. Accordingly, the accused were arrested and were released after having filed the required bond.

When the case was called for the second stage of the preliminary investigation, the accused, after having been informed of the nature of the charge, pleaded not guilty, but waived their right to present evidence. Thereupon, the justice of the peace court forwarded the case to the court of first instance as required by law.

The provincial fiscal, after a review of the affidavits of the witnesses for the prosecution that were filed in support of the charge, filed a petition with the court stating that said affidavits show that the killing complained of was perpetrated with the qualifying circumstances of treachery, taking advantage of superior strength, and employing means to weaken the defense of the victim, and praying that an order be issued directing the return of the record to the court of origin so that the chief of police may reinvestigate the case and file an amended complaint for murder which is the proper charge. The petition was favorably acted upon and, accordingly, the record of the case was returned to the Justice of the Peace Court of Candelaria in order that proper action may be taken as above adverted to. Complying with said order, the chief of police on October 7, 1958 filed an amended complaint for murder against the accused, and having found probable cause for the new charge, the justice of the peace court ordered the re-arrest of the accused but without fixing any bail bond for their provisional liberty since the new charge is a capital offense. The second stage of the preliminary investigation was set for November 29, 1958, but it was postponed to give the accused an opportunity to test the legality of the complaint as amended.

On December 3, 1958, one Antonio Dimalibot filed on behalf of the accused a petition for a writ of habeas corpus with the Court of First Instance of Quezon alleging, among others, that the amended complaint was illegal and the accused should be released from custody. The provincial fiscal contested the petition and, after trial, the court denied the same. Hence the present appeal.

It is contended that the Court of First Instance of Quezon erred in ordering the return of the case to the court of origin so that the chief of police may reinvestigate the case and file an amended complaint for murder which was the proper charge against the accused considering the allegations contained in the supporting affidavits of the prosecution witnesses, because such act was not authorized by law. Hence, petitioner avers, the warrant for the re-arrest of the accused issued on the strength of the amended information was without authority of law and, therefore, their confinement is illegal.

There is no merit in this claim. Section 13, Rule 106 of the Rules of Court, reads as follows:

"SEC. 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 lie 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 above section contains two parts: one authorizes the amendment of an information or complaint, in substance or form, without leave of court, at any time before the defendant pleads, and thereafter, only as to matters of form. The other provides that, 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 in double jeopardy.

Here these rules properly apply, since it is undisputed that the herein accused were not yet arraigned before the competent court when the complaint for homicide was amended so as to charge the crime of murder. Upon the authority of said rules, the amendment could therefore be made even as to substance in order that the proper charge may be made. The claim that such amendment can only refer to matters of specification affecting the elements constituting the crime is not correct, for there is nothing in the rule to show that the nature of the amendment should only be limited to matters of specification. The change may also be made even if it may result in altering the nature of the charge so long as it can be done without prejudice to the rights of the defendant.

This clearly appears from the second part of section, 13 of Rule 106 which says that, if it appears before judgment that a mistake has been made in charging the proper offense, the court may dismiss the original information and order the filing of a new one provided the defendant may not be placed in double jeopardy. If a new information may be ordered at any time before judgment no reason is seen, why the court may not order the amendment of the information if its purpose is to make it conformable to the true nature of the crime committed. It is in line with this interpretation that this Court allowed the amendment of the information in the case of *Melo vs. The People of the Philippines, et al.*, (85 Phil., 766; 47 Off. Gaz., No. 9, 4631, 4632) wherein the Court made the following ruling:

"Brushing aside technicalities of procedure and going into the substance of the issues raised, it may readily be stated, that the amended information was rightly allowed to stand. Rule 106, section 13, 2d paragraph, is as follows:

'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.'

"Under this provision, it was proper for the court to dismiss the first information and order the filing of a new one for the reason that the proper offense was not charged in the former and the latter did not place the accused in a second jeopardy for the same or identical offense."

The claim that there was no mistake in charging the offense of homicide because when the same was filed on February 20, 1958 the additional declarations or testimonies of witnesses regarding the qualifying circumstances necessary to make the amendment were not yet, furnished the prosecuting officer is incorrect, because the record

shows that the evidence necessary to show said qualifying circumstances was already available at the very inception when the information was filed, only that a mistake was committed therein by the chief of police when he charged the accused with homicide. Thus, in the petition filed by the fiscal asking for the reinvestigation of the case, he stated that there was a "discrepancy between the evidence on record and the information charged" because the affidavits of the prosecution witnesses show that the victim was stabbed to death while he was being held in the arms and in the neck by the other accused. This shows that the evidence on the qualifying circumstances was already present when the complaint for homicide Was filed on February 20, 1958, and the so-called additional "declarations and testimonies" furnished in October, 1958 were adduced only to clarify or make more precise the evidence already contained in the affidavits of the state witnesses.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

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

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