

**SSGT. JOSE M. PACOY, PETITIONER, VS. HON. AFABLE E. CAJIGAL,
PEOPLE OF THE PHILIPPINES AND OLYMPIO L. ESCUETA,
RESPONDENTS.**

G.R. No. 157472. September 28, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Certiorari under Rule 65 of the Rules of Court filed by SSGT. Jose M. Pacoy[1] (petitioner) seeking to annul and set aside the Orders dated October 25, 2002[2] and December 18, 2002[3] issued by Presiding Judge Afable E. Cajigal (respondent judge) of the Regional Trial Court (RTC), Branch 68, Camiling, Tarlac in Criminal Case No. 02-42.

On July 4, 2002, an Information for Homicide was filed in the RTC against petitioner committed as follows:

That on or about the 18[th] day of March 2002, in the Municipality of Mayantoc, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused with intent to kill, did then and there wilfully, unlawfully and feloniously shot his commanding officer 2Lt. Frederick Esquita with his armalite rifle hitting and sustaining upon 2Lt. Frederick Esquita multiple gunshot wounds on his body which caused his instantaneous death.

With the aggravating circumstance of killing, 2Lt. Frederick Esquita in disregard of his rank.[4]

On September 12, 2002, upon arraignment, petitioner, duly assisted by counsel de parte, pleaded not guilty to the charge of Homicide. Respondent Judge set the pre-trial conference and trial on October 8, 2002.[5]

However, on the same day and after the arraignment, the respondent judge issued another Order,[6] likewise dated September 12, 2002, directing the trial prosecutor to correct and amend the Information to Murder in view of the aggravating circumstance of disregard of rank alleged in the Information which public respondent registered as having qualified the crime to Murder.

Acting upon such Order, the prosecutor entered his amendment by crossing out the word “Homicide” and instead wrote the word “Murder” in the caption and in the opening paragraph of the Information. The accusatory portion remained exactly the same as that of the original Information for Homicide, with the correction of the spelling of the victim’s name from “Escuita” to “Escueta.”[7]

On October 8, 2002, the date scheduled for pre-trial conference and trial, petitioner was to be re-arraigned for the crime of Murder. Counsel for petitioner objected on the ground that the latter would be placed in double jeopardy, considering that his Homicide case had been terminated without his express consent, resulting in the dismissal of the case. As petitioner refused to enter his plea on the amended Information for Murder, the public respondent entered for him a plea of not guilty.[8]

On October 28, 2002, petitioner filed a Motion to Quash with Motion to Suspend Proceedings Pending the

Resolution of the Instant Motion[9] on the ground of double jeopardy. Petitioner alleged that in the Information for Homicide, he was validly indicted and arraigned before a competent court, and the case was terminated without his express consent; that when the case for Homicide was terminated without his express consent, the subsequent filing of the Information for Murder in lieu of Homicide placed him in double jeopardy.

In an Order[10] dated October 25, 2002,[11] the respondent judge denied the Motion to Quash. He ruled that a claim of former acquittal or conviction does not constitute double jeopardy and cannot be sustained unless judgment was rendered acquitting or convicting the defendant in the former prosecution; that petitioner was never acquitted or convicted of Homicide, since the Information for Homicide was merely corrected/or amended before trial commenced and did not terminate the same; that the Information for Homicide was patently insufficient in substance, so no valid proceedings could be taken thereon; and that with the allegation of aggravating circumstance of “disregard of rank,” the crime of Homicide is qualified to Murder.

Petitioner filed a Motion to Inhibit with attached Motion for Reconsideration. In his Motion to Inhibit, he alleged that the respondent judge exercised jurisdiction in an arbitrary, capricious and partial manner in mandating the amendment of the charge from Homicide to Murder in disregard of the provisions of the law and existing jurisprudence.

In his Motion for Reconsideration, petitioner reiterated that the case against him was dismissed or otherwise terminated without his express consent, which constitutes a ground to quash the information for murder; and that to try him again for the same offense constitutes double jeopardy. Petitioner stated that contrary to respondent judge's conclusion that disregard of rank qualifies the killing to Murder, it is a generic aggravating circumstance which only serves to affect the imposition of the period of the penalty. Petitioner also argued that the amendment and/or correction ordered by the respondent judge was substantial; and under Section 14, Rule 110 of the Revised Rules of Criminal Procedure, this cannot be done, since petitioner had already been arraigned and he would be placed in double jeopardy.

In his Order dated December 18, 2002,[12] the respondent judge denied the Motion to Inhibit and granted the Motion for Reconsideration, thus:

WHEREFORE, in view of the foregoing, the Motion to Inhibit is hereby DENIED while the Motion for Reconsideration is hereby GRANTED.

Unless ordered otherwise by the Highest Court, the presiding judge shall continue hearing this case. Further, the Order dated October 25, 2002 is reconsidered and the original information charging the crime of homicide stands.[13]

In granting the Motion for Reconsideration, respondent judge found that a close scrutiny of Article 248 of the Revised Penal Code shows that “disregard of rank” is merely a generic mitigating[14] circumstance which should not elevate the classification of the crime of homicide to murder.

On April 30, 2003, petitioner filed herein petition for certiorari on the following grounds:

THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND EXCEEDED HIS JURISDICTION IN ORDERING THE AMENDMENT OF THE INFORMATION FROM HOMICIDE TO MURDER.

THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND VIOLATED THE LAW IN DENYING THE MOTION TO QUASH THE INFORMATION FOR MURDER.

THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND EXCEEDED HIS JURISDICTION AND VIOLATED THE LAW IN ORDERING THE REINSTATEMENT OF THE

INFORMATION FOR HOMICIDE WHICH WAS ALREADY TERMINATED.[15]

Petitioner alleges that despite having entered his plea of not guilty to the charge of Homicide, the public respondent ordered the amendment of the Information from Homicide to Murder because of the presence of the aggravating circumstance of “disregard of rank,” which is in violation of Section 14, Rule 110 of the Revised Rules of Criminal Procedure; that the public respondent’s ruling that “disregard of rank” is a qualifying aggravating circumstance which qualified the killing of 2Lt. Escueta to murder is erroneous since, under paragraph 3, Article 14 of the Revised Penal Code, disregard of rank is only a generic aggravating circumstance which serves to affect the penalty to be imposed upon the accused and does not qualify the offense into a more serious crime; that even assuming that disregard of rank is a qualifying aggravating circumstance, such is a substantial amendment which is not allowed after petitioner has entered his plea.

Petitioner next contends that the respondent judge gravely abused his discretion when he denied the Motion to Quash the Information for Murder, considering that the original Information for Homicide filed against him was terminated without his express consent; thus, prosecuting him for the same offense would place him in double jeopardy.

Petitioner further argues that although the respondent judge granted his Motion for Reconsideration, he did not in fact grant the motion, since petitioner's prayer was for the respondent judge to grant the Motion to Quash the Information for Murder on the ground of double jeopardy; that his Motion for Reconsideration did not seek the reinstatement of the Information for Homicide upon the dismissal of the Information for Murder, as he would again be placed in double jeopardy; thus, the respondent judge committed grave abuse of discretion in reinstating the Homicide case.

In his Comment, the Solicitor General argues that the respondent judge's Order reinstating the Information to Homicide after initially *motu proprio* ordering its amendment to Murder renders herein petition moot and academic; that petitioner failed to establish the fourth element of double jeopardy, i.e., the defendant was acquitted or convicted, or the case against him was dismissed or otherwise terminated without his consent; that petitioner confuses amendment with substitution of Information; that the respondent judge's Order dated September 12, 2002 mandated an amendment of the Information as provided under Section 14, Rule 110 of the Revised Rules of Criminal Procedure; and that amendments do not entail dismissal or termination of the previous case.

Private respondent Col. Olimpio Escueta, father of the victim, filed his Comment alleging that no grave abuse of discretion was committed by the respondent judge when he denied petitioner's Motion to Quash the Amended Information, as petitioner was not placed in double jeopardy; that the proceedings under the first Information for homicide has not yet commenced, and the case was not dismissed or terminated when the Information was amended.

In his Reply, petitioner reiterates his contention that the amendment of the charge of Homicide to Murder after his arraignment would place him in double jeopardy, considering that said amendment was without his express consent; and that such amendment was tantamount to a termination of the charge of Homicide.

The parties filed their respective Memoranda.

Generally, a direct resort to us in a petition for certiorari is highly improper, for it violates the established policy of strict observance of the judicial hierarchy of courts. However, the judicial hierarchy of courts is not an iron-clad rule.[16] A strict application of the rule of hierarchy of courts is not necessary when the cases brought before the appellate courts do not involve factual but legal questions.[17]

In the present case, petitioner submits pure questions of law involving the proper legal interpretation of the provisions on amendment and substitution of information under the Rules of Court. It also involves the issue of double jeopardy, one of the fundamental rights of the citizens under the Constitution which protects the accused not against the peril of second punishment but against being tried for the same offense. These important legal questions and in order to prevent further delay in the trial of the case warrant our relaxation of the policy of strict observance of the judicial hierarchy of courts.

The Court's Ruling

The petition is not meritorious.

We find no merit in petitioner's contention that the respondent judge committed grave abuse of discretion in amending the Information after petitioner had already pleaded not guilty to the charge in the Information for Homicide. The argument of petitioner --

Considering the fact that the case for Homicide against him was already terminated without his express consent, he cannot anymore be charged and arraigned for Murder which involve the same offense. The petitioner argued that the termination of the information for Homicide without his express consent is equivalent to his acquittal. Thus, to charge him again, this time for Murder, is tantamount to placing the petitioner in Double Jeopardy.[18]

is not plausible. Petitioner confuses the procedure and effects of amendment or substitution under Section 14, Rule 110 of the Rules of Court, to wit --

SEC. 14. Amendment or substitution. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

x x x

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.

with Section 19, Rule 119 of which provides:

SEC. 19. When mistake has been made in charging the proper offense. - When it becomes manifest at any time before judgment that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged or any other offense necessarily included therein, the accused shall not be discharged if there appears good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information.

First, a distinction shall be made between amendment and substitution under Section 14, Rule 110. For this purpose, *Teehankee v. Madayag*[19] is instructive, viz:

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:

- Amendment may involve either formal or substantial changes, while substitution necessarily involves a

substantial change from the original charge;

- 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;
- 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
- 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.[20]

In the present case, the change of the offense charged from Homicide to Murder is merely a formal amendment and not a substantial amendment or a substitution as defined in Teehankee.

While the amended Information was for Murder, a reading of the Information shows that the only change made was in the caption of the case; and in the opening paragraph or preamble of the Information, with the crossing out of word "Homicide" and its replacement by the word "Murder." There was no change in the recital of facts constituting the offense charged or in the determination of the jurisdiction of the court. The averments in the amended Information for Murder are exactly the same as those already alleged in the original Information for Homicide, as there was not at all any change in the act imputed to petitioner, i.e., the killing of 2Lt. Escueta without any qualifying circumstance. Thus, we find that the amendment made in the caption and preamble from "Homicide" to "Murder" as purely formal.[21]

Section 14, Rule 110 also provides that in allowing formal amendments in cases in which the accused has already pleaded, it is necessary that the amendments do not prejudice the rights of the accused. The test of whether the rights of an accused are prejudiced by the amendment of a complaint or information is whether 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 information.[22] Since the facts alleged in the accusatory portion of the amended Information are identical with those of the original Information for Homicide, there could not be any effect on the prosecution's theory of the case; neither would there be any possible prejudice to the rights or defense of petitioner.

While the respondent judge erroneously thought that “disrespect on account of rank” qualified the crime to murder, as the same was only a generic aggravating circumstance,[23] we do not find that he committed any grave abuse of discretion in ordering the amendment of the Information after petitioner had already pleaded not guilty to the charge of Homicide, since the amendment made was only formal and did not adversely affect any substantial right of petitioner.

Next, we determine whether petitioner was placed in double jeopardy by the change of the charge from Homicide to Murder; and subsequently, from Murder back to Homicide. Petitioner's claim that the respondent judge committed grave abuse of discretion in denying his Motion to Quash the Amended Information for Murder on the ground of double jeopardy is not meritorious.

Petitioner's Motion to Quash was anchored on Section 3, Rule 117 of the Rules of Court, which provides:

SEC. 3. Grounds. - The accused may move to quash the complaint or information on any of the following grounds:

x x x x

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

Section 7 of the same Rule lays down the requisites in order that the defense of double jeopardy may prosper, to wit:

SEC. 7. Former conviction or acquittal; double jeopardy. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Thus, there is double jeopardy when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first.[24]

As to the first requisite, the first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.[25]

It is the conviction or acquittal of the accused or the dismissal or termination of the case that bars further prosecution for the same offense or any attempt to commit the same or the frustration thereof; or prosecution for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.[26]

Petitioner's insistence that the respondent judge dismissed or terminated his case for homicide without his express consent, which is tantamount to an acquittal, is misplaced.

Dismissal of the first case contemplated by Section 7 presupposes a definite or unconditional dismissal which terminates the case.[27] And for the dismissal to be a bar under the jeopardy clause, it must have the effect of acquittal.

The respondent judge's Order dated September 12, 2002 was for the trial prosecutor to correct and amend the

Information but not to dismiss the same upon the filing of a new Information charging the proper offense as contemplated under the last paragraph of Section 14, Rule 110 of the Rules of Court -- which, for convenience, we quote again --

If it appears at anytime 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 section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

and Section 19, Rule 119, which provides:

SEC. 19.-When mistake has been made in charging the proper offense - When it becomes manifest at any time before judgment that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged or any other offense necessarily included therein, the accused shall not be discharged if there appears good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information.

Evidently, the last paragraph of Section 14, Rule 110, applies only when the offense charged is wholly different from the offense proved, i.e., the accused cannot be convicted of a crime with which he was not charged in the information even if it be proven, in which case, there must be a dismissal of the charge and a substitution of a new information charging the proper offense. Section 14 does not apply to a second information, which involves the same offense or an offense which necessarily includes or is necessarily included in the first information. In this connection, the offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form a part of those constituting the latter.[28]

Homicide is necessarily included in the crime of murder; thus, the respondent judge merely ordered the amendment of the Information and not the dismissal of the original Information. To repeat, it was the same original information that was amended by merely crossing out the word "Homicide" and writing the word "Murder," instead, which showed that there was no dismissal of the homicide case.

Anent the last issue, petitioner contends that respondent judge gravely abused his discretion in ordering that the original Information for Homicide stands after realizing that disregard of rank does not qualify the killing to Murder. That ruling was again a violation of his right against double jeopardy, as he will be prosecuted anew for a charge of Homicide, which has already been terminated earlier.

We are not convinced. Respondent judge did not commit any grave abuse of discretion.

A reading of the Order dated December 18, 2002 showed that the respondent judge granted petitioner's motion for reconsideration, not on the ground that double jeopardy exists, but on his realization that "disregard of rank" is a generic aggravating circumstance which does not qualify the killing of the victim to murder. Thus, he rightly corrected himself by reinstating the original Information for Homicide. The requisite of double jeopardy that the first jeopardy must have attached prior to the second is not present, considering that petitioner was neither convicted nor acquitted; nor was the case against him dismissed or otherwise terminated without his express consent.[29]

WHEREFORE, the petition is DISMISSED, there being no grave abuse of discretion committed by respondent Judge.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Spelled as Pakoy in Certification/Verification attached to the Petition, rollo, p. 24 and as it appears corrected in the Information, records, p. 1.

[2] Id. at 96-99.

[3] Id. at 162-163.

[4] Id. at 1.

[5] Id. at 82.

[6] Id. at 83.

[7] Id. at 1.

[8] Records, p. 85.

[9] Id. at 88-92.

[10] Id. at 96-99.

[11] We note that the Motion to Quash was filed on October 28, 2002 but the Order was dated October 25, 2002.

[12] Records, pp. 162-163.

[13] Id. p. 163.

[14] Should have been aggravating.

[15] Rollo, p.13.

[16] *Mangaliag v. Catubig-Pastoral*, 474 SCRA 153, 161 (2005).

[17] Id. at 162.

[18] Memorandum (For the Petitioner), rollo, p. 136.

[19] G.R. No. 103102, March 6, 1992, 207 SCRA 134.

[20] *Teehankee v. Madayag*, supra note 17, at 139-141.

[21] *People v. Navarro*, 159 Phil. 863, 869-870 (1975).

[22] *Poblete v. Sandoval*, G.R. No. 150610, March 25, 2004, 426 SCRA 346, 356 citing *People v. Montenegro*, No. L-45772, March 25, 1988, 159 SCRA 236, 241.

[23] Article 14 of the Revised Penal Code provides:

ARTICLE 14. Aggravating circumstances- The following are aggravating circumstances:

x x x

- That the act be committed with insult or in disregard due to the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation

(emphasis supplied).

[24] *People v. Cawaling*, 355 Phil. 1, 24 (1998) citing *Guerrero v. Court of Appeals*, 327 Phil. 496, 506 (1996) and *People v. Leviste*, 325 Phil. 525, 537.

[25] *People v. Cawaling*, *supra* note 22, at 24.

[26] *Bulaong v. People*, 124 Phil. 141, 144 (1966).

[27] *People v. Molero*, 228 Phil. 375, 384 (1986).

[28] RULES OF COURT, Rule 120, Sec. 5.

[29] *Tan, Jr. v. Sandiganbayan*, 354 Phil. 463, 472 (1998).

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