

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF
MARMOLITO CATELO Y RIVERA, PETITIONER-APPELLANT, VS.
CHIEF OF THE CITY JAIL, MANILA POLICE DEPARTMENT, MANILA,
RESPONDENT-APPE...**

G.R. No. 26703. September 05, 1967

Ponente: REYES, J. B. L., .J.

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REYES, J. B. L., .J.:

Direct appeal to this Court from an order of the Court of First Instance of Manila (Sp. Proc. No. 66451) dated August 18, 1966, denying a petition for habeas corpus as well as the release from custody of petitioner Marmolito Catelo y Rivera.

The records show that, as a result of police investigation of the killing of Manila Sheriff Avelino Concepcion, Jr., who was shot in Pandacan, Manila, on March 11, 1966, and died on March 14 as a result of the gunshot wounds received, charges for murder were fled by the Police with the City Fiscal's office against Manolito Gascon, Marmolito Catelo (herein appellant), Jose Simborio, Reynario Andanar, Justino Lazo, Jr. Lucilo Remo and Jesus Cainta. Simborio and Catelo could not be immediately arrested, but on April 19, Simborio surrendered to the police, and an information charging him with the commission of the murder in conspiracy with Catelo and others, was filed by the Fiscal's Office on April 20 in the sala presided by Judge Juan I. Bocar of the Manila Court of First Instance (Crim. Case No. 82116) No bail was recommended.

Appellant Catelo (who was not included as an accused in the information against Simborio, although mentioned therein as conspirator) remained at large for several months until arrested by police officers on August 10, 1966 and was booked at 5:00 p.m. The next day, August 11, at 9:00 a.m., the Fiscal's Office filed an amended information in Criminal Case No. 82116, including Catelo as a co-accused of Simborio in the same murder charge and case, together with the corresponding motion for admission of the amended information. The Court set the motion for hearing on August 13, 1966; but on that day, counsel for Catelo moved to be furnished a copy of the motion and prayed for time to file a written opposition thereto. The Court acceded and reset the hearing on the motion for August 20, 1966.

However, on August 15, five days before the scheduled hearing, Catelo filed a petition in the Court of First Instance for a writ of habeas corpus, averring that he had been detained since August 10, 1966, without any warrant of arrest or order of commitment; that the information against him was in violation of section 38-C of Republic Act No. 409, as amended by Republic Act No. 1201 (the Charter of the City Manila) and that his imprisonment in the City Jail was therefore illegal. The writ was issued and the case heard by Judge Manuel Barcelona. After trial, the Court held that the filing of the amended information was substantial compliance with Article 125 of the Revised Penal Code, ordaining that a person detained be charged in the proper court within 18 hours from and after his arrest, and ordered that petitioner should remain in custody.

His motion for reconsideration being denied on September 28, 1966, Catelo duly appealed to this Supreme Court.

Further action on the amended information was delayed when the Fiscal petitioned the Court of Appeals for writ of certiorari against Judge Bocar's admitting to bail the original accused Jose Simborio. The Court of Appeals issued a preliminary writ of injunction from trying the criminal case (No. 82116). Because of the writ Judge Bocar would not act at first upon the admission of the amended information including Catelo among those accused; but on October 1966, the amended information was finally admitted.

Main claim of the petitioner Catelo in this appeal is the alleged illegality of the filing of the amended information against him without first giving him a chance to be heard in a preliminary investigation. In support, said appellant invokes paragraph 1 of section 38-C of the Revised Manila Charter (Rep. Act No. 1201) providing that:

"SEC. 38-C. Preliminary investigation of cases cognizable by the Court of First Instance. -- In all cases brought to the Office of the City Fiscal involving crimes cognizable by the Court of First Instance, where the accused is not already in the legal custody of the police, no complaint or information shall be filed without first giving the accused a chance to be heard in a preliminary investigation, where such accused can be subpoenaed and appears before the investigating fiscal, with the right to cross-examine the complainant and his witnesses: Provided, That when the accused is detained, he may ask for a preliminary investigation, but he must sign a waiver of the provisions of Article One Hundred twenty-five of the Revised Penal Code, as amended; And provided, further, That if the case has already been filed in court, he may ask for a reinvestigation thereof later on with the same right to cross examine the witnesses against him; Provided, finally, That notwithstanding such waiver, the said investigation must, be terminated within seven days from its inception."

As pointed out by the Solicitor General in his brief for the State, Catelo was already in the legal custody of the police from the time he was arrested; hence, the first part of section 38-c, supra, does not apply to him, and the fiscal could file an information against him even without previous preliminary investigation. This step is expressly authorized by the first proviso of section 38-c of the Manila Charter. Being under arrest, all this petitioner had to do in order to obtain a preliminary investigation was to sign a waiver of the prescriptions of Article 125 of the Revised Penal Code, as amended. Since Catelo did not sign any such waiver, the Fiscal perforce had to surrender him to the Court by filing an amended information including him as an accused in Criminal Case No. 82116 of the Court of First Instance of Manila, even without first completing a preliminary investigation, because the law fixed a time limit of 18 hours^[1] for the Fiscal to do so (Art. 125, Rev. Penal Code). It is nowhere contended that this period was exceeded.

Appellant Catelo urges that the mere filing of the amended information was not sufficient, because it was not operative as a charge until the Court admitted the pleading. Normally, such would be the case; but here we can not disregard the fact that it was Catelo himself who delayed the admission of the amended information, with unfounded objections and he is not now in a position to complain of a delay that he himself has produced. So far as the record goes, we see no valid reason why the amended information should not have been accepted and the warrant of arrest issued in due course; hence, the appealed decision of Judge Barcelona correctly declared that there had been substantial compliance with legal requirements. Certainly, the Fiscal had done everything incumbent upon him, and the appellant's objection to the amended information was without legal basis, being predicated upon a portion of section 38-C of the Manila Charter that did not cover his case.

Since the information for murder was filed against this appellant within the 18-hour limit fixed by Republic Act 1083, our ruling in *Lino vs. Fugoso*, 74 Phil. 933, does not apply to him, and affords him no comfort. The habeas corpus was granted in the *Lino* case because the legal period for detention without warrant had been exceeded without an information being filed, and the belated presentation of the formal charge did not retroact nor validate a detention that had already become unlawful.

Petitioner finally questions the legality of his arrest without warrant by the Manila Police officers on August 10, 1966. Since the accused petitioner has already come under the jurisdiction of the Court of First Instance of Manila, upon the admission of the information (amended) against him on October 3, 1966, this Court is of the opinion that this particular issue should rather be sub-mitted to, and threshed out in, the Court below. This is all the more advisable because of the probability that the determination of the lawfulness of the questioned arrest will involve a detailed inquiry into the circumstances surrounding the same, and evidence thereon may have to be introduced and considered. For these reasons, this Court abstains for the present from making a ruling on the ques-tion.

WHEREFORE, the decision of the Court of First Instance of Manila, denying appellant Catelo's petition for discharge from custody is affirmed. Costs against appellant.

Concepcion, C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Murder being sanctioned by an afflictive penalty (See Rep. Act 1083).

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