

## THE PEOPLE OF THE PHILIPPINES AND CELSO M. GIMENEZ, ACTING CITY FISCAL OF MANDAUE CITY, PETITIONERS, VS. JOAQUIN BORROMEIO AND HONORABLE TEMISTOCLES BOHOLST, JR., CITY JUDGE OF M...

*G.R. No. 62737. June 29, 1983*

Ponente: MAKASIAR, J.

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### MAKASIAR, J.:

The Court resolved to give due course to the petition as well as to consider as answer the Comment of the Solicitor General and the case submitted for decision.

Petitioners seek to set aside the order of respondent Judge dated June 30, 1982 denying the verbal motion of the City Fiscal of Mandaue City to amend the information for grave coercion against private respondent Joaquin Borromeo by changing the date of the commission of the crime from "on or about the 24th day of June, 1981" to "on or about August 28, 1981," after the accused had been arraigned and entered a plea of not guilty and during the testimony of the complainant, as well as the order of July 28, 1982 denying the motion for reconsideration of the aforesaid order.

The original information dated February 18, 1982 as well as the first amended information dated March 19, 1982, for grave coercion alleges that "the crime was committed on or about the 24th day of June, 1981." The first amended information was admitted in an order dated March 24, 1982.

After the accused pleaded not guilty, at the trial on or about June 30, 1982 and during the testimony of the complainant who testified that the crime of grave coercion was committed on or about August 28, 1981, the prosecution orally moved to further amend the amended information by changing the date of the commission of the offense from June 24, 1981 to August 28, 1981.

In an order dated June 30, 1982, the respondent Judge denied the verbal motion to amend on the ground that the proposed amendment would impair the substantial rights of the accused as guaranteed by the Constitution, invoking the case of *People vs. Hon. Reyes* (G.R. No. L-32557, Oct. 23, 1981, 108 SCRA 23). The motion for reconsideration was likewise denied in an order dated July 28, 1982.

The petition is meritorious. The respondent Judge erred in relying on the case of *People vs. Reyes*, *supra*.

As opined by the Solicitor General in his comment dated May 9, 1982, the change of the date of the commission of the crime from June 24, 1981 to August 28, 1981 is more formal than substantial and would not prejudice the rights of the accused, as the said proposed amendment would not alter the nature of the offense of grave coercion (*Arevalo vs. Nepomuceno*, 63 Phil. 627). In said *Arevalo* case, the amendment which was allowed was the allegation in the information that B carried the revolver and C, the knife, instead of C carrying the revolver and B, the knife.

The difference in the dates is only about two (2) months and five (5) days, which disparity is amply comprehended within the allegation that the crime was committed "on or about." Nor will the amendment or correction cause any surprise on the accused, who has been furnished the affidavits of prosecution witnesses, all of which uniformly state that the date of the commission was August 28, 1981. In *U.S. vs. dela Cruz* (3 Phil. 331), the amendment in the information for brigandage sought to be made was to eliminate the words "led by one Silverio" and to substitute therefor the words "under the command of Luciano San Miguel" after the prosecution rested but before the presentation of the evidence of the defense. The Supreme Court allowed the said amendment holding that it did not prejudice in any sense the right of the accused as "it did not affect the essence of the crime charged, but merely an accidental detail of the same" and "it did not deprive the accused of an opportunity to produce evidence for their defense, if they had desired, in relation to the said amendment;. . ." Consequently, the accused is not thereby denied any opportunity to present evidence in his defense.

In the case of *Vega vs. Panis* (Sept. 30, 1981, 117 SCRA 269, 277), after arraignment, the Fiscal sought to amend the information so as to include the aggravating circumstances of dwelling and nighttime. The Court ruled that such an amendment is a matter of form and may be allowed, stating that:

"An amendment which neither adversely affects any substantial right of the accused (e.g. does not deprive him of the right to invoke prescription nor affects and/or alters the nature of the offense originally charged nor involves 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) is an amendment as to matter of form."

In the earlier case of *People vs. Joseph Casey* (Feb. 24, 1981, 103 SCRA 21, 31), where after arraignment the information was amended to include as one of the accused Ricardo Felix alias "Carding Tuwad" who was then armed with a firearm, which amendment was allowed by the Supreme Court, We ruled thus:

"The test as to whether a defendant is prejudiced by the amendment of an information has been said to be whether a defense under the information, as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. A look into Our jurisprudence on the matter shows that an amendment to an information introduced after the accused has pleaded not guilty thereto, which does not expose the accused to a charge which could call for a higher penalty, does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance -- not prejudicial to the accused and, therefore, not prohibited by Section 13, Rule 110 of the Revised Rules of Court."

Section 10 of Rule 110 of the Rules of Court states that "it is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which date the offense was committed as the information or complaint will permit."

The precise time is not an essential ingredient of the offense of grave coercion.

In the case of *People vs. Rivera* (1970, 33 SCRA 746), We ruled that the amendment of the information as to the date of the commission of the offense from March 2, 1964 to March 2, 1965, a difference of one (1) year or twelve (12) months, was merely a matter of form and does not prejudice the rights of the accused, reiterating the ruling in the case of *U.S. vs. Ramos* (1912, 23 Phil. 300) where the Fiscal was permitted to amend the date of the commission of the offense from June 16, 1910 to June, 1911.

The phrase "on or about" employed in the information does not require the prosecution "to prove any precise date but may prove any date which is not so remote as to surprise and prejudice the defendant. In case of surprise, the

Court may allow an amendment of the information as to time and an adjournment to the accused, if necessary, to meet the amendment" (U.S. vs. Dichao, 27 Phil. 420, 423 [1914]).

In the case of *People vs. Reyes*, supra, on which the respondent Judge relies, the change sought was from 1964 to 1969, a difference of five (5) years, which gap of five years "is so great as to defy approximation in the commission of one and the same offense."

This is not so in the case at bar where the difference is only, as aforesaid, two months and five days, which disparity allows approximation as to the date of the commission of the offense of grave coercion.

Moreover, as stressed by the Solicitor General, the error as to the date of the commission of the offense was discovered early and the motion to amend or correct the same was as immediate as to preclude any surprise or prejudice on the part of the accused.

WHEREFORE, THE PETITION IS HEREBY GRANTED, THE ORDERS OF RESPONDENT JUDGE DATED JUNE 30, 1982 AND JULY 28, 1982 ARE HEREBY SET ASIDE, AND THE RESPONDENT JUDGE IS HEREBY DIRECTED TO ADMIT THE ADDITIONAL AMENDMENT TO THE AMENDED INFORMATION FROM "JUNE 24, 1981 TO AUGUST 28, 1981." NO COSTS.

**SO ORDERED.**

Guerrero, De Castro and Escolin, JJ., concur.

Aquino, J., in the result.

Concepcion Jr., J., I concur. Let a copy of this decision be furnished the Minister of Justice.

Abad Santos, J., I concur and express the hope that fiscals should be meticulous in preparing informations. In this case the affidavits of prosecution witnesses uniformly mentioned August 28, 1981, as the date when the crime was committed. But the sloppy fiscal who wrote the informations still managed to state the wrong date twice both in the original as well as the first amended information. A slap on the wrist is well deserved.

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