

FELICISIMO ROCABERTE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND HON. ANDRES S. SANTOS, JUDGE, RTC, TAGBILARAN, BOHOL, RESPONDENTS.

G.R. No. 72994. January 23, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

The case at bar treats of the sufficiency of the averment in the information of the time of the commission of the felony of theft ascribed to petitioner Felicisimo Rocaberte and two (2) others. The information, filed in the Regional Trial Court of Bohol, City of Tagbilaran,[1] Judge Andres S. Santos, presiding, reads as follows:[2]

"The undersigned Assistant Provincial Fiscal hereby accused Felicisimo Rocaberte, Florencio Ranario and Flaviana Ranario of the crime of Theft, committed as follows:

That on or about the period from 1977 to December 28, 1983 at the off-shore of West Canayaon, municipality of Garcia-Hernandez, province of Bohol, Philippines * * , the above-named accused, conspiring, confederating and helping each other, with intent to gain and without the consent of the owner, did then and there, willfully, unlawfully and feloniously take, steal and carry away the following properties, to wit:

One (1) pc. sledge hammer, valued at

136.00

One (1) pc. H beam, valued at

400.00

Two (2) cut abrasive steel plates for cargo

berth cover protector

158.00

Ninety-nine (99) blocks of aluminum, alloy

anodes at P3,750.00 each block

P371,250.00

TOTAL

P371,944.00

in the total amount of THREE HUNDRED SEVENTY-ONE THOUSAND NINE HUNDRED FORTY-FOUR PESOS (P371,944.00), Philippine Currency, belonging to and owned by the Philippine Sinter Corporation, to the damage and prejudice of the latter in the aforestated amount.

Acts committed contrary to the provisions of Articles 308, 309 of the Revised Penal Code."

The accused, thru counsel de oficio, Atty. Lilio L. Amora, moved to quash the information,[3] alleging that the statement of the time of commission of the felony charged, "from 1977 to December, 1983, ** a period of seven years," or "about 2,551 days," was fatally defective: there was "so great a gap as to defy approximation in the commission of one and the same offense" (citing *Peo. v. Reyes*, 108 SCRA 203); "the variance is certainly unfair to the accused for it violates their constitutional right to be informed before the trial of the specific charge against them and deprives them of the opportunity to defend themselves ***" (invoking *Peo. v. Openia*, 98 Phil. 698).

The motion was denied[4] as was, too, the defendants' motion for reconsideration.[5] In the motion for reconsideration, the accused drew attention to Section 4, Rule 117 "of the 1985 Rules on Criminal Procedure," as a remedy that could be alternatively granted, viz.:

"SEC. 4. Amendment of complaint or information.--If the motion to quash is based on an alleged defect in the complaint or information which can be cured by amendment, the court shall order the amendment to be made. (2a)"

Felicisimo Rocaberte then instituted in this Court, thru his aforementioned counsel de oficio, the special civil action of certiorari at bar, impugning the denial by respondent Judge Santos of his motion to quash, or his refusal, at the very least, to direct the amendment of the information pursuant to Section 4, Rule 117 of the 1985 Rules of Court, *supra*. He is correct, and will be granted appropriate relief.

The rules of criminal procedure declare[6] that -

*** A complaint or information is sufficient if it states the name of the defendant; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.",

and -- as regards the time of the commission of the offense, particularly -- that:[7]

*** 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 the offense was committed as the information or complaint will permit."

In line with this last mentioned rule, a variance of a few months between the time set out in the indictment and that established by the evidence during the trial has been held not to constitute an error so serious as to warrant reversal of a conviction solely on that score. Hence, where the information sets the date of commission of a robbery at March 25, 1900, evidence was allowed to show that the offense was actually perpetrated on the 5th or

6th of March; and an amendment of an information so as to change the year therein stated to that following it, was allowed it appearing that the alteration impaired none of the defendant's rights.[8]

Where, however; there was a variance of several years between the time stated in the information, 1947, and the proof of its actual commission adduced at the trial, 1952, the dismissal of the case by the Trial Court was sustained by this Court, since to allow amendment of the indictment to conform to the evidence would be violative of defendant's constitutional right to be informed of the nature and cause of the accusation against him.[9]

Again, the statement of the time of the commission of the offense which is so general as to span a number of years, i.e., "between October, 1910 to August, 1912," has been held to be fatally defective because it deprives the accused an opportunity to prepare his defense.[10]

A defect in the averment as to the time of the commission of the crime charged is not, however, a ground for a motion to quash under Rule 116 of the Rules of Court. Even if it were, a motion for quashal on that account will be denied since the defect is one that can be cured by amendment; instead, the court shall order the amendment to be made by stating the time with particularity.[11]

The remedy against an indictment that fails to allege the time of the commission of the offense with sufficient definiteness is a motion for a bill of particulars, provided for in Section 6, Rule 116 of the Rules of Court of 1964.[12]

Bill of particulars. -- Defendant may, at the time of or before arraignment, move for or demand a more definite statement or a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to plead or prepare for trial. The motion shall point out the defects complained of and the details desired.

From all that has been said, the conclusion should be clear. The information against petitioner Rocaberte is indeed seriously defective. It places on him and his co-accused the unfair and unreasonable burden of having to recall their activities over a span of more than 2,500 days. It is a burden nobody should be made to bear. The public prosecutor must make more definite and particular the time of the commission of the crime of theft attributed to Rocaberte and his co-defendants. If he cannot, the prosecution cannot be maintained, the case must be dismissed.

WHEREFORE, the petition is GRANTED, and the writ of certiorari prayed for is ISSUED, ANNULING AND SETTING ASIDE the challenged Orders of respondent Judge dated August 12, 1985 and September 10, 1985 in Criminal Case No. 3851, and DIRECTING the amendment of the information in said case by the prosecution within such time as the respondent Judge may deem proper, failing which the criminal prosecution against the petitioner and his co-defendants shall be dismissed.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Dated June 19, 1984, docketed as Crim. Case No. 3851

[2] Rollo, p. 10, emphasis supplied

[3] Id., pp. 11-12; the motion to quash is dated January 2, 1985

[4] Id., p.15

[5] Id., pp.16-18

[6] Sec. 5, Rule 110, Rules of Court of 1964, emphasis supplied; the rule has not been modified by the 1985 and 1988 amendments of the rules of criminal procedure, except that the section has been renumbered, it now being Sec. 6 of Rule 110

[7] Sec. 10, Rule 110; neither has this section, now numbered Sec. 11, been modified by the 1985 and 1988 amendments of the rules of criminal procedure

[8] SEE Moran, Comments on the Rules, 1980 ed., Vol. 4, p. 38, citing U.S. v. Cardona, 1 Phil. 381 as well as U.S. v. Tan Guy, 36 Phil. 974; Santos v. Supt. of Phil. Training School, 55 Phil 345; U.S. v. Ramos, 23 Phil. 300; SEE, also, Gupit, Rules of Criminal Procedure, 1986 ed., pp. 74-75

[9] Peo. v. Opemia, 98 Phil. 698 (1956), cited in Gupit, op. cit., p. 75

[10] U.S. v. Dichao, 27 Phil. 421 (1914), cited in Gupit, op. cit., p. 75; Moran, op. cit., p. 37

[11] Last paragraph, Sec. 2, Rule 117, Rules of Court of 1964, now Sec. 4, Rule 117 under the 1985 amendments

[12] Now, under the 1985 and 1988 amendments, Section 10, Rule 116, reading: "Accused may, at or before arraignment, move for a bill of particulars to enable him properly to plead and to prepare for trial. The motion shall specify the alleged defects and the details desired."

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