

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. ANTONIO JAVIER DICHAO, DEFENDANT AND APPELLEE.

G.R. No. 8781. March 30, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from an order of the Court of First Instance of the Fourteenth Judicial District sustaining a demurrer to an information and dismissing the case.

The information is as follows:

"The undersigned accuses one Antonio Javier Dichao of the crime of rape, committed as follows:

"On or about and during the interval between October, 1910, to August, 1912, in the municipality of Davao, District of Davao, Moro Province, P. I., the aforesaid accused did then and there, willfully, maliciously, and feloniously have sexual intercourse with, and did lie with, and carnally know a woman, Isabel de la Cruz, under 12 years of age, in the following manner, to wit: the aforesaid accused is the stepfather of the aforesaid Isabel de la Cruz and during the aforesaid period was the legal guardian of said Isabel de la Cruz; that by threats and corporal punishment upon said Isabel de la Cruz, the aforesaid accused, Antonio Javier Dichao, had sexual intercourse with and did lie with and carnally know said Isabel de la Cruz; as a result whereof the said Isabel de la Cruz gave birth on August 5, 1912, to a child. All contrary to law."

The demurrer alleged:

"That the facts therein set forth and contained do not constitute a public offense.

"That the said criminal complaint does not conform substantially to the prescribed form.

"That said complaint is vague and ambiguous."

We are of the opinion that the order appealed from must be affirmed. The allegations of an information should, if possible, be sufficiently explicit and certain as to time to inform the defendant of the date on which the criminal act is alleged to have been committed. Unless the accused is informed of the day, or about the day, he may be, to an extent, deprived of the opportunity to defend himself.

While section 7 of the Code of Criminal Procedure provides that "except when time is a material ingredient of an offense, the precise time of commission need not be stated in a complaint or information, but the act may be alleged to have been committed at any time before the filing thereof," this does not mean that the prosecuting officer may be careless about fixing the date of the alleged crime, or that he may omit the date altogether, or that he may make the allegation so indefinite as to amount to the same thing. Where the exact date cannot be fixed, or where the prosecuting officer is not thoroughly satisfied that he can prove a precise date, he should allege in the information that the crime was committed on or about a date named. Under such an allegation he is not required 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.

In the case of *United States vs. De Castro* (2 Phil Rep., 616), the information demurred to was as follows:

"The undersigned provincial fiscal accuses the defendant of the crime of bribery, committed as follows:

"That as municipal president of the town, in consideration of gifts of money, he permitted opium joints and gambling houses. This contrary to the law."

Among the many defects of this information the court. pointed out the following:

"The complaint is also defective in not stating the time at which the offense occurred. While it is not necessary, unless time is a material ingredient of the offense, that the precise time of the commission of the offense should be stated, still the act should be alleged to have been committed at some time before the filing of the complaint."

The decisions in the case of *United States vs. Enriquez* (1 Phil. Rep., 179), and *United States vs. Cardona* (1 Phil. Rep., 381), are not in conflict with the doctrine herein laid down, nor with the case of *United States vs. De Castro* from which the above quotation is made. In the first case the information alleged that the estafa complained of was committed on the 20th of November 1897. A demurrer was filed to the information on statutory grounds. It was over ruled and the defendant put upon trial. He was convicted and appealed to this court, bringing up on that appeal the questions arising on the order overruling the demurrer as well as on the merits. It is clear that the demurrer did not raise, so far as the information is concerned, the question of time, as in the case at bar, as the precise date upon which the crime was alleged to have been committed was set out in the information. The question presented to the Supreme Court was, therefore, not whether the information alleged the time with sufficient certainty. The question in that case was whether the allegations of the complaint sufficiently notified the defendant "of the transaction from which it is claimed the crime results, so that he can prepare his defense." The discussion in that case turned on whether the defendant, after reading the complaint, was, able to tell "to what acts of his done in the past the complaint refers." In determining that question the court discussed, among other things, the allegation with reference to the time when the estafa was committed. In that connection it was said:

"In this complaint the estafa is alleged to have been committed on November 20, 1897. Time, however, was not a material ingredient in the offense of estafa here charged, and under the provisions of article 7 of General Orders, No. 58, that date need not have been alleged."

After discussing the various elements of an information charging estafa necessary to identify the act which constitutes the crime, thereby notifying the defendant of the precise act of his complained of, the court concluded: "It is plain that the complaint did not restrict the Government to proof of any defined specific transaction, and consequently that the defendant had no notice of the transaction which was to be investigated."

In the Cardona case the theft of a carabao was alleged in the information to have taken place on the 25th of March of a certain year. The evidence introduced showed that the crime was committed on the 5th or 6th of March of the same year. The defendant in his brief claimed that the evidence introduced should have been restricted to the date mentioned in the information, or the 25th of March.

The court in response to this contention said: "The testimony as to the whereabouts of the defendant on March 25 was unimportant, as the evidence shows the robbery was committed about the 5th or 6th of March. The defendant in his brief claims that the evidence should be restricted to the date mentioned in the complaint, which was the 25th of March. In this case, however, the date was not a material ingredient of the offense, and under the provisions of section 7 of General Orders, No. 58, the Government was not limited in its proof to the date stated therein."

In these two cases, therefore, different questions are presented from those found in the case before us. In the first case the question of time as alleged in the information was discussed in an incidental way for the sole purpose of determining whether it of itself, or in connection with the other allegations, sufficiently identified the transaction which it was claimed constituted the estafa, so as to notify the defendant of the transaction referred to, the other allegations of the information not being sufficient of themselves to do so. In the Cardona case the question was raised by demurrer. The allegation in the information as to the time when the crime was committed was definite and certain. The only question raised on the appeal related to the alleged variance between the date of the crime as alleged in the information and that proved on the trial. In that case, as we have seen, the court said that, the time alleged not being, under section 7, a material ingredient of the offense, it did not have to be proved as laid. It did not hold that, if it had appeared to the trial court, on the trial, that the variance between the allegation of the information and the proof on the trial had been such as to surprise the defendant and prejudice him in his defense, the court would not have been authorized to amend the information and to grant an adjournment, if necessary, to give the defendant an opportunity to meet the charge as amended.

The same remarks apply to the case of *United States vs. Arcos* (11 Phil. Rep., 555), where the information alleged "that between the 2d and the 15th of August, 1906," the accused committed the crime described therein; and the case of *United States vs. Smith* (3 Phil. Rep., 20), in which the information charged "that the accused, in the month of December last," committed the crime therein set forth.

The question whether the allegations of the information are sufficiently definite as to time and the question which arises on a variance between the allegations and the proof are different in nature and legal effect, and are decided on different principles.

In the case before us the statement of the time when the crime is alleged to have been committed is so indefinite and uncertain that it does not give the accused the Information required by law. To allege in an information that the accused committed rape on a certain girl between October, 1910, and August, 1912, is too indefinite to give the accused an opportunity to prepare his defense, and that indefiniteness is not cured by setting out the date when a child was born as a result of such crime. Section 7 of the Code of Criminal Procedure does not warrant such pleading. Its purpose is to permit the allegation of a date of the commission of the crime as near to the actual date as the information of the prosecuting officer will permit, and when that has been done any date may be proved which does not surprise and substantially prejudice the defense. It does not authorize the total omission of a date or such an indefinite allegation with reference thereto as amounts to the same thing.

As before intimated, we are not to be understood as saying that a variance between the date of the commission of the crime as alleged in the information and that as proved on the trial warrants necessarily the acquittal of the accused. The result of what we intend to say is that, if such a variance occurs and it is shown to the trial court that the defendant is surprised thereby, and that, by reason of that surprise, he is unable to defend himself properly, the court may, in the exercise of sound discretion based on all the circumstances, order the information amended so as to set forth the correct date and may grant an adjournment for such a length of time as will enable the defendant to prepare himself to meet the variance in date which was the cause of his surprise.

The judgment appealed from is affirmed.

Arellano, C. J., and Araullo, J., concur.

Carson and Trent, JJ., concur in the result.

Order affirmed; demurrer sustained.

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