333 Phil. 562

FIRST DIVISION

[G.R. No. 119601, December 17, 1996]

DANILO BUHAT, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

HERMOSISIMA, JR., J.:

Delicate and sensitive is the issue in this case, which is, whether or not the upgrading of the crime charged from homicide to the more serious offense of murder is such a substantial amendment that it is proscribed if made after the accused had pleaded "not guilty" to the crime of homicide, displaying as alleged by the defense, inordinate prejudice to the rights of the defendant.

On March 25, 1993, an information for HOMICIDE[1] was filed in the Regional Trial Court (RTC)[2] against petitioner Danny Buhat, "John Doe" and "Richard Doe". The information alleged that on October 16, 1992, petitioner Danilo Buhat, armed with a knife, unlawfully attacked and killed one Ramon George Yu while the said two unknown assailants held his arms, "using superior strength, inflicting x x x mortal wounds which were x x x the direct x x x cause of his death"[3].

Even before petitioner could be arraigned, the prosecution moved for the deferment of the arraignment on the ground that the private complainant in the case, one Betty Yu, moved for the reconsideration of the resolution of the City Prosecutor which ordered the filing of the aforementioned information for homicide. Petitioner however, invoking his right to a speedy trial, opposed the motion. Thus, petitioner was arraigned on June 9, 1993 and, since petitioner pleaded "not guilty", trial ensued.

On February 3, 1994, then Secretary of Justice Franklin M. Drilon, finding Betty Yu's appeal meritorious, ordered the City Prosecutor of Roxas City "to amend the information by upgrading the offense charged to MURDER and implead therein additional accused Herminia Altavas, Osmeña Altavas and Renato Buhat"[4]

On March 10, 1994, the Assistant City Prosecutor filed a motion for leave to amend information. The amendment as proposed was opposed by the petitioner.

> The amended information read:
>
> "The undersigned assistant City Prosecutor accuses DANNY BUHAT, of Capricho II, Barangay V, Roxas City, Philippines, HERMINIA ALTAVAS AND OSMEÑA ALTAVAS both resident of Punta Tabuc, Roxas City, Philippines, of the crime of Murder, committed as follows:
>
> That on or about the 16th day of October, 1992, in the City of Roxas,

> Philippines, the above-named accused, Danny Buhat armed with a knife, conspiring, confederating and helping one another, did and then and there wilfully, unlawfully and feloniously [sic] without justifiable motive and with intent to kill, attack, stab and injure one RAMON GEORGE YU, while the two other accused held the arms of the latter, thus using superior strength, inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Ramon George Yu in such amount as maybe [sic] awarded to them by the court under the provisions of the Civil Code of the Philippines.
>
> CONTRARY TO LAW."[5]

The prosecution had by then already presented at least two witnesses.

In an order,[6] dated June 2, 1994, the RTC denied the motion for leave to amend information. The denial was premised on (1) an invocation of the trial court's discretion in disregarding the opinion of the Secretary of Justice as allegedly held in *Crespo vs. Mogul*[7] and (2) a conclusion reached by the trial court that the resolution of the inquest prosecutor is more persuasive than that of the Secretary of Justice, the former having actually conducted the preliminary investigation "where he was able to observe the demeanor of those he investigated"[8]

The Solicitor General promptly elevated the matter to the Court of Appeals. He filed a petition for certiorari[9] assailing the aforecited order denying the motion for leave to amend information. Finding the proposed amendment as non-prejudicial to petitioner's rights, respondent court granted the petition for certiorari in a decision, dated March 28, 1995, the decretal portion of which reads:

> "THE FOREGOING CONSIDERED, herein petition is hereby granted: the Order dated June 2, 1994 is set aside and annulled; amendment of the information from homicide to murder, and including as additional accused Herminia Altavas and Osmeña Altavas is allowed; and finally, the writ of preliminary injunction we issued on January 30, 1995 is made permanent by prohibiting the public respondent from hearing aforementioned criminal case under the original information."[10]

Hence this petition raising the sole issue of whether or not the questioned amendment to the information is procedurally infirm.

The petition lacks merit.

The additional allegation of conspiracy is only a formal amendment, petitioner's participation as principal not having been affected by such amendment

---

Petitioner asseverates that the inclusion of additional defendants in the information on the ground of conspiracy "is a substantial amendment which is prohibited by Sec. 14, Rule 110 of the 1985 Rules on Criminal Procedure, because the allegation of conspiracy x x x is a substantial amendment saddling the [p]etitioner with the need

of a new defense in order to met [sic] a different situation at the trial [c]ourt"[11]

Petitioner cites the case of *People v. Montenegro*[12] as jurisprudential support. Indeed, we stated in the Montenegro case that "the allegation of conspiracy among all the private respondents-accused, which was not previously included in the original information, is x x x a substantial amendment saddling the respondents with the need of a new defense in order to meet a different situation in the trial court" [13]. And to explain the new defense theory as a bar to substantial amendment after plea, we cited the case of *People v. Zulueta*[14] where we elucidated, thus:

> "Surely the preparations made by herein accused to face the original charges will have to be radically modified to meet the new situation. For undoubtedly the allegation of conspiracy enables the prosecution to attribute and ascribe to the accused Zulueta all the acts, knowledge, admissions and even omissions of his co-conspirator Angel Llanes in furtherance of the conspiracy. The amendment thereby widens the battlefront to allow the use by the prosecution of newly discovered weapons, to the evident discomfiture of the opposite camp. Thus it would seem inequitable to sanction the tactical movement at this stage of the controversy, bearing in mind that the accused is only guaranteed two-days' preparation for trial. Needless to emphasize, as in criminal cases the liberty, even the life, of the accused is at stake, it is always wise and proper that he be fully apprised of the charges, to avoid any possible surprise that may lead to injustice. The prosecution has too many facilities to covet the added advantage of meeting unprepared adversaries."

This jurisprudential rule, however, is not without an exception. And it is in the same case of Zulueta that we highlighted the case of Regala v. Court of first Instance of Bataan[15] as proffering a situation where an amendment after plea resulting in the inclusion of an allegation of conspiracy and in the indictment of some other persons in addition to the original accused, constitutes a mere formal amendment permissible even after arraignment. In *Zulueta,* we distinguished the *Regala* case in this wise:

> "Some passages from 'Regala contra El Juez del Juzgado de Primera Instancia de Bataan' are quoted by petitioners. Therein the accused pleaded not guilty to an information for murder, and later the fiscal amended the indictment by including two other persons charged with the same offense and alleging conspiracy between the three. Five justices held that the amendment was not substantial. But that situation differs from the one at bar. The amendment there did not modify theory of the prosecution that the accused had killed the deceased by a voluntary act and deed. Here there is an innovation, or the introduction of another alternative imputation, which, to make matters worse, is inconsistent with the original allegations."[16]

Applying our aforegoing disquisition in the 1946 case of Regala, we likewise ruled in the 1983 case of *People v. Court of Appeals*[17] that a post-arraignment amendment to further allege conspiracy, is only a formal amendment not prejudicial to the rights of the accused and proper even after the accused has pleaded "not guilty" to the

charge under the original information. We held in said case of *People v. Court of Appeals:*

> "x x x The trial Judge should have allowed the amendment x x x considering that the amendments sought were only formal. As aptly stated by the Solicitor General in his memorandum, 'there was no change in the prosecution's theory that respondent Ruiz willfully, unlawfully and feloniously attacked, assaulted and shot with a gun Ernesto and Rogelio Bello x x x. The amendments would not have been prejudicial to him because his participation as principal in the crime charged with respondent Ruiz in the original informations, could not be prejudiced by the proposed amendments.'
>
> In a case (Regala vs. CFI, 77 Phil. 684), the defendant was charged with murder. After plea, the fiscal presented an amended information wherein two other persons were included as co-accused. There was further allegation that the accused and his co-defendants had conspired and confederated together and mutually aided one another to commit the offense charged. The amended information was admitted x x x
>
> xxx xxx xxx
>
> Otherwise stated, the amendments x x x would not have prejudiced Ruiz whose participation as principal in the crimes charged did not change. When the incident was investigated by the fiscal's office, the respondents were Ruiz, Padilla and Ongchenco. The fiscal did not include Padilla and Ongchenco in the two informations because of 'insufficiency of evidence.' It was only later when Francisco Pagcalinawan testified at the reinvestigation that the participation of Padilla and Ongchenco surfaced and, as a consequence, there was the need for the information of the informations x x x."

The aforegoing principle, by way of exception to the general rule, also appositely applies in the present controversy.

Petitioner undoubtedly is charged as a principal in the killing of Ramon George Yu whom petitioner is alleged to have stabbed while two unknown persons held the victim's arms. The addition of the phrase, "conspiring, confederating and helping one another" does not change the nature of petitioner's participation as principal in the killing.

Whether under the original or the amended information, petitioner would have to defend himself as the People makes a case against him and secures for public protection the punishment of petitioner for stabbing to death, using superior strength, a fellow citizen in whose help and safety society as a whole is interested. Petitioner, thus, has no tenable basis to decry the amendment in question.

Furthermore, neither may the amendment in question be struck down on the ground that Herminia Altavas, Osmeña Altavas and Renato Buhat would be placed in double jeopardy by virtue of said amendment. In the first place, no first jeopardy can be spoken of insofar as the Altavases are concerned since the first information did not precisely include them as accused therein. In the second place, the amendment to

replace the name, "John Doe" with the name of Renato Buhat who was found by the Secretary of Justice to be one of the two persons who held the arms of the victim while petitioner was stabbing him,[18] is only a formal amendment and one that does not prejudice any of the accused's rights. Such amendment to insert in the information real name of the accused involves merely a matter of form as it does not, in any way, deprive any of the accused of a fair opportunity to present a defense; neither is the nature of the offense charged affected or altered since the revelation of accused's real name does not change the theory of the prosecution nor does it introduce any new and material fact.[19] In fact, it is to be expected that the information has to be amended as the unknown participants in the crime became known to the public prosecutor.[20]

"Abuse of superior strength" having already been alleged in the original information charging homicide, the amendment of the name of the crime to murder, constitutes a mere formal amendment permissible even after arraignment

---

In the case of *Dimalibot v. Salcedo,*[21] we ruled that the amendment of the information so as to change the crime charged from homicide to murder, may be made "even if it may result in altering the nature of the charge so long as it can be done without prejudice to the rights of the accused." In that case, several accused were originally charged with homicide, but before they were arraigned, an amended information for murder was filed. Understandably raised before us was the issue of the propriety and legality of the afore-described amendment, and we ruled, thus:

> "x x x it is undisputed that the herein accused were not yet arraigned before the competent court when the complaint for homicide was amended so as to charge the crime of murder. x x x the amendment could therefore be made even as to substance in order that the proper charge may be made. x x x The change may also be made even if it may result in altering the nature of the charge so long as it can be done without prejudice to the rights of the defendant."[22]

Thus, at the outset, the main consideration should be whether or not the accused had already made his plea under the original information, for this is the index of prejudice to, and the violation of, the rights of the accused. The question as to whether the changing of the crime charged from homicide to the more serious offense of murder is a substantial amendment proscribed after the accused had pleaded "not guilty" to the crime of homicide was, it should be noted, categorically answered in the affirmative by us in the case of *Dionaldo v. Dacuycuy,*[23] for then we ruled:

> "x x x the provision which is relevant to the problem is Rule 110, Sec. 13 [now Sec. 14 under the 1985 Rules on Criminal Procedure] of the Rules of Court which stipulates:
>
> 'x x x The information or complaint may be amended, in substance or form, without leave of court, at any time before the defendants pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without