Notes and Comments

Bill of Particulars in Criminal Cases

Our constitution offers an accused person numerous guarantees of a fair and adequate hearing. The provisions of the Rules of Court on criminal procedure whether pertaining to matters of substance or to mere formal requirements were designed to make effective these fundamental safeguards. Thus, while the State is interested in the repression of crimes, it is equally bound to see that no person is unlawfully deprived of life or liberty. (See Albrecht v. U. S. 273 U. . 1, 71 L. ed. 505; Ex parte Turman, 26 Tex. 708; 12 Moran 620, on Rule III, Sec. 1[b]). And as significant as the presumption of innocence that stands in favor of the accused is his right to be informed of the nature and cause of the accusation against him. The law places the duty and the responsibility on the prosecution of filing a legal charge (Higgin J. in State v. Varnado, 23 So. 2d 106, 118, December 11, 1944) in order (1) to furnish the accused with such description of the charge against him as will enable him to make his defense and avail himself of his conviction or acquittal against a further prosecution for the same cause, and (2) to inform the court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction. (U. S. v. Hess, 124 U. S. 483, 31 L. ed. 516; U. S. v. Cruikshank, 92 U. S. 542, 23 L. ed. 588). It is to insure the attainment of these objectives that the institution of the bill of particulars has been adapted in many states of the American Union.

The Rules of Court makes no provision for a bill of particulars in criminal cases. Nevertheless, an examination of our jurisprudence shows how much has been done towards the adoption of bill of particulars as an institution in our law of procedure.

Years ago, in U. S. v. Schneer, 7 Phil. 524, 525, the question was raised whether a bill of particulars was available in criminal cases, after an accused has pleaded to the information. The Supreme Court held as follows: "We know of no provision either in General Orders No. 58, or in the laws existing prior thereto which requires the Government to furnish such a bill of particulars, and we accordingly hold that it was not error on the part of the court below to refuse to do so."

Subsequently, in U. S. v. Cernias, 10 Phil. 682, against a charge of brigandage containing several counts, the defense raised an objection. The Supreme Court overruled the objection and held: "An information which accuses the defendant of a specific crime, and wherein the same

unlawful act is also set forth in various counts, each of which may in effect charge a separate offense, is rather in the nature of a bill of particulars and is not objectionable." The Supreme Court, in the latter case, impliedly recognized the novel institution of bill of particulars in criminal cases.

Recently, in Guinto v. Veluz, et al, G. R. No. L-980, decided December 21, 1946, the Supreme Court had occasion to pass upon a similar question. Before plea the prosecution added counts to the original information charging treason after the expiration of the period of limitation provided for in the People's Court Act. The issue was whether the added counts were an information in themselves or they were mere specifications or a bill of particulars, treason being a continuous offense and inspired by only one intent. The Supreme Court, justifying the bill went on to say: "A person charged with treason can only be convicted of the overt act or acts laid in the information, because, . . . a defendant has the right to be informed, not only of the nature of the accusation or of the offense charged, but also of the cause thereof, that is, the acts committed by the defendant constituting that offense."

The Veluz case was recently upheld and cited with approval in the case of Cabiling v. Saguin, et al, G. R. No. L-1103, decided July 28, 1947. The facts involved were identical with the Veluz case and the Supreme Court quoted lengthily from its prior ruling.

It will be noted in the foregoing cases that the prosecution came along voluntarily with a bill of particulars and the Supreme Court found no error in this practice. The Court impliedly sanctioned a pleading express provision for which cannot be found in any existing law or rule.

Suppose, however, that the defense should find a bill of particulars necessary to enable it to prepare the case, will the Supreme Court be willing to recognize this as a right and force the prosecution to furnish one? The question was novel and theretofore undecided before the Supreme Court considered the question in People v. Abad Santos, et al, G. R. No. L-447, decided June 17, 1946 (where the information for treason contained in counts 2 and 3 the phrase "and other similar equipments" and a motion to make the same more specific was filed. See also 22 Philippine Law Journal No. 4, page 217). This case speaks clearly on the subject. The People's Court ordered the prosecution to specify a cloudy phrase in the information and the people opposed and brought suit before the Supreme Court on certiorari. The Supreme Court held the actuation of the People's Court to be entirely legal, reviewed partially the history of bill of particulars in criminal cases in the Philippines, and went on to philosophize as follows: "And inasmuch as in criminal cases not only the liberty but even the life of the accused may be at stake, it is always wise and proper that the accused

should be fully apprised of the true charges against him, and thus avoid any possible surprise, which might be detrimental to his rights and interests and ambiguous phrases should not, therefore, be permitted in criminal complaints or informations . . ."

The foregoing discussion is as far as the Supreme Court has considered the subject. We have accomplished in this jurisdiction a result similar to a case where the bill of particulars is expressly authorized by law. It is unfortunate though that so vital an institution was not incorporated expressly in the Rules of Court, thus resulting in confusion among members of the profession. In the United States, some states have enacted laws expressly authorizing bill of particulars in criminal cases. (See for instance G. C., section 13437-6 of the State of Ohio; Art. 235, Code of Criminal Procedure of Louisiana).

The bill of particulars in civil cases is too well-known to be discussed. That it is no different in criminal cases, therefore, seems only reasonable. The Ohio Supreme Court has said: "In Ohio there is a dearth of decision as to the meaning of a bill of particulars as the term is used in G. C., section 13437-6. Its concept is well recognized in civil procedure, and no doubt, it is used in the criminal code with substantially the same meaning." (State v. Collett, 58 N. E. [2d] 416, 419 [1944]).

The bill of particulars in civil cases is used not to test the sufficiency of the statement of a cause of action in a complaint but to clarify points not averred with sufficient definiteness. (See Rule 16, sec. 1, Rules of Court). To test the existence or nonexistence of a cause of action, the motion to dismiss is provided for. (See Section 1, subsection [f], Rule 8, Rules of Court). Undoubtedly, a cause of action may exist and be recognized, but statements of the same may be so indefinite and so vague that a bill of particulars is in order. It must at once be clear that the motion to dismiss and the motion for a bill of particulars are two entirely different remedies, designed to accomplish varying results. Else, what point is there in providing for both separately in the Rules of Court?

The motion to quash and the motion for a bill of particulars in crimiual cases are designed to achieve the same purposes as the motion to dismiss and the motion for a bill of particulars, respectively, in civil cases. If the information does not charge an indictable offense or reasons appear why the accused should not be bound, then a motion to quash is in order. (Rule 113, sec. 2, Rules of Court). But if the information charges an indictable offense but the averments are so vague that the accused cannot prepare to plead or prepare for trial, then a motion for a bill of particulars is the proper remedy. (People v. Abad Santos, et al, *supra*)

These observations are supported by American authorities. The Supreme Court of Ohio in State v. Collett, *supra,* said of the office of a bill

of particulars in criminal cases: "That it contemplates something over and beyond the mere essentials of the averments necessary to state an offense is, in our judgment, ascertainable from the statute itself, which requires that the bill set up specifically the nature of the offense charged. In State of Ohio v. Lee, Ohio App. 20 O. G. 319, a bill was demanded and furnished where the indictment charged murder in the first degree. In so far as we are able to learn, there was no question in any of these cases as to the sufficiency of the indictment to charge an offense and the bill of particulars was allowed to further inform the defendants of the facts upon which the State would rely to establish the charge against the defendants."

In State v. Varnado (23 So. 2d 106, December 11, 1944) the Louisiana Supreme Court held, however, that an information charging that the accused "did intentionally conduct or assist in the conducting, as a business, of a game contest and contrivance whereby a person risked money and things of value in order to realize profit" was *quashable* for not having given the accused enough information to enable him to prepare for his defense and for not being sufficiently definite to serve as a bar to future prosecution. The theory is that since the information, couched as it was in the terms of the statute defining the offense of gambling (Art. 90, Criminal Code of Louisiana) did not aver such fact or facts constitutive of the offense, and, therefore, no legal charge having been presented, it cannot stand a motion to quash properly pleaded. (The court in support of its view cited State v. Vendin, 187 So. 666; State v. Kendrick, 13 So. 2d 387; State v. Morgan, 204 La. 499, 15 So. 2d 866; State v. Herbert, 205 La. 110, 17 So 2d 3. O'Neill, C. J. dissented believing that the accused's remedy was only a bill of particulars pursuant to Art. 235 of the Code of Criminal Procedure).

In the case of State v. Hann, 59 Ohio App. 178, 17 N. E. (2d) 392, the indictment was particularized by a bill which set up the type of poison, namely, arsenic, by which death was caused. The indictment here was sufficient in form. To specify what poison was used would ordinarily be considered as of no moment or consequence. But the court ordered that it be disclosed so that the accused may better map out his defense.

In State v. Collett, *supra,* the court held that the defense was entitled to a bill of particulars (the charge was murder in the first degree) so as to specify the hour of the day when the murder was committed, the exact place where it took place, and the means or manner of the commission of the offense. The court here said that the particulars sought should be given although the "indictment clearly was sufficient to charge the offense under the statute."

The United States Supreme Court also accords a similar recognition to the bill of particulars. We quote from the American Jurisprudence as follows: "As a general rule where

an indictment is substantially good but does not so exactly allege the nature and extent of the crime of which the defendant is accused as to enable him properly to prepare his defense without a bill of particulars, the court will order the prosecuting attorney to furnish such bill." (27 Am. Jur. 671, citing Kirby v. U. S. 174 U. S. 47, 19 S. Ct. 574, 43 L. ed. 890—an indictment under the Act of Congress of March 3, 1875 for knowingly and unlawfully receiving stolen property of the United States. The accused attacked the indictment for failing to allege the ownership by the United States of the stolen property and the name of the person from whom the defendant received the property. In remanding the case for new trial on account of the erroneous admission of certain evidence, the Supreme Court ruled that the indictment "is sufficient in law. If it appears at the trial to be essential in the preparation of his defense that he should know the name of the person from whom the government expected to prove that he received the stolen property, it would be in the power of the court to require the prosecution to give a bill of particulars: See also Dunlop v. U. S., 165 U. S. 486, 17 S. Ct. 375, 41 L. ed. 799). It has been held that even in the absence of an enabling statute, a court has inherent power, under its power and authority to regulate trials, to order that the accused be furnished with a bill of particulars upon his request therefor in a proper case. (State v. Davis, 39 R. I. 276, 97 A 818; Ann Cas 1918 C 563; State v. Lewis, 69 W. Va. 472, 72 S8E 475, Ann Cas 1913 A 1203—an information for simple larceny. Inasmuch as under such a common law offense a conviction may be had for larceny as principal or as a mere accessory for knowingly receiving stolen property as defined in the statute, defendant moved for a bill of particulars in order that the real accusation be made known to him. In granting the bill, the Supreme Court of Appeals of West Virginia said: "If told that Code, chapter 130, section 46, in words applies only to *action or motion,* I would answer that if that section (a remedial one) does not apply, it is a power inherent in court to regulate trial, and that the Constitution demands that the accused be fully and plainly informed of the character and cause of the accusation, and thus authorizes such discretion in the court. Anyhow there is much law applying this procedure to criminal cases" (page 475).

There are of course, various fundamental limitations to the granting of a bill of particulars. An application for a bill is, in the first place, addressed to the sound discretion of the court. (State ex rel. Drew v. Shaughnessy, 212 Wis. 32; 249 NW 522, 90 ALR368). A motion for a bill of particulars that, in its nature, is a request for a disclosure of evidence or of matters which are largely evidentiary in character and which, if furnished, would unduly limit the prosecution and might exclude material evidence, may properly be re-

fused. (Olmstead v. U. S., 277 U. S. 438, 72 L. ed. 944, 66 ALR 376 where it was held that evidence of private telephone conversations intercepted by means of tapping wires between the residences of some of the defendants is not violative of the constitutional guarantee against self-incrimination and its premature disclosure might unduly limit the prosecution in such of its evidence, the admission of which is not unconstitutional, and thus 'make society suffer and give criminals greater immunity than has been heretofore known"; Wong Tao v. U. S., 273 U. S. 77; 71 L. ed. 545—denial of a defendant's motion for a bill of particulars is not an abuse of discretion where the motion calls for a specified and detailed disclosure of the prosecution's evidence; People v. Cox, 340 Ill. 111, 72 NE 64, 69 ALR 1215—the charge was for murder based under the Illinois Act of 1923 penalizing the unlawful sale of liquors and beverages which caused death. Defendant's motion for a bill was denied not only upon the ground that the offense was alleged with such certainty as to apprise him of the specific charge but also upon the ground that the motion was in its nature a request for disclosure of evidence). A bill, as it presupposes a valid information or complaint, cannot create or cure a defect therein. It cannot be furnished the accused to enable him to demur to the indictment; nor if the indictment is not demurrable on its face, can the furnishing of a bill of particulars make it so. (27 Am. Jur. 678, cited in State v. Varnado, *supra*).

The failure of the Rules of Court to provide for a bill of particulars in criminal prosecution has been justified by the assertion that the relief sought is covered by Rule 113, section 2(d) taken in connection with sections 5 to 11 of Rule 106, Rules of Court. The two, however,—motion to quash and motion for a bill of particulars are distinct and separate remedies, the latter presupposing an information sufficient in law to charge an offense (Olmstead v. U. S., *supra;* Du Bois v. People, 200 Ill, 157, 66 ARR 658; Kelly v. People, 192 Ill, 119, 61 NE, 425); and to settle all confusion on the matter, we propose that a provision on bill of particulars in criminal cases be embodied in the Rules of Court.

A. C. C.