CRIMINAL PROCEDURE

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This annual survey covers the decisions of the Supreme Court on Criminal Procedure for the year 1960. Most of the cases merely reiterate the same settled principles laid down by the Court in its previous rulings. The few deviations and modifications are attributable to the presence of facts peculiar only to a particular case, rather than a decisive about-face in the earlier rulings of the high court. Perhaps, as has been correctly observed by one writer, the principles of Criminal Procedure are intimately linked with the fundamental rights given to an individual under the Bill of Rights, and as long as no amendment is made on the civil rights of the individual as guaranteed in the Constitution, there is much reason to believe that the Supreme Court will not make any substantial deviations from its previous stand. But, of course, the law, being the growing and living mass that it is, there really is no way of being sure about future decisions. We can only speculate.

PROSECUTION OF OFFENSES

A. *Complaint*

Section 1 of Rule 106 provides that "all criminal actions must be commenced either by complaint or information . . ." and according to section 2 of the same rule a "complaint is a sworn written statement charging a person with an offense, subscribed by the *offended party*, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated." These two sections must be taken together in relation to the last paragraph of Article 360 of the Revised Penal Code which provides that "No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de* oficio shall be brought except *at the instance of*, and upon *complaint expressly filed by the offended party*," and the first and third paragraphs of Article 344 of the same Code requiring that "The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the *offended spouse* . . . The offenses of seduction, abduction, rape, acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party, or her parents, grandparents, or guardian . . ."

Thus, in the case of *People v. Francisco Aranda*,[1] it appears that two criminal complaints were filed one for "trespass to dwelling with unjust vexation and grave oral slander" which was filed on April 1, 1954 in the Justice of the Peace Court of Taal, Batangas and another information for "act of lasciviousness" was filed on July 20, 1954 in the Court of First Instance of Batangas which was subscribed to by the First Assistant Provincial Fiscal. Both com-

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[1] G.R. No. L-12661, January 30, 1960.

plaint and information were not subscribed and sworn to by the offended party. According to the court, such an omission is fatal, for without the complaint of the offended party, the Court of First Instance acquired no jurisdiction to hear, determine and render judgment. The fact that at the beginning of the first paragraph of the information, it recites that it is filed at the "instance of the offended party" is not sufficient compliance with the legal requirement.[2] The fact that, after the prosecution and the defense rested their case and the defendant appealed from the judgment rendered, prosecution moved for the inclusion in the record of the case of the complaint subscribed and sworn to by the offended party, which motion was granted by the lower court, did not cure the defect. For according to the court, the defendant's appeal had already been perfected by filing of the motion of appeal, and after a party has perfected his appeal, the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal.[3] The leave granted by the court to the prosecution to attach in the record of the case the complaint subscribed and sworn to by the offended party, after it had lost its jurisdiction by virtue of the defendant's perfected appeal, amounted to allowing the prosecution to present additional evidence and constituted reversible error. The Court granted the defendant's motion to quash.

B. *Amendment*

Section 13, of Rule 106 provides: "The information or complaint may be amended, in *substance or form*, without leave of court, at any time *before the defendant 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 prejudice to the rights of the defendant...." In the case of *Pablo Calion, et al. v. People*,[4] a policeman and four others were charged with coercion, for having forced a certain Josefa Evangelista to abandon her house against her will, taking out her furniture and occupying the house themselves. Before the defendant could plead to the information, the fiscal moved to dismiss and in lieu of the complaint for coercion, he filed an information for qualified trespass to dwelling. The fiscal's motion was granted. The defendant moved to dismiss the new information for lack of jurisdiction to entertain the amendment. Upon denial of the motion of the defendants, they filed with the Court of First Instance of Quezon City a petition for certiorari and prohibition, contending that the information for trespass to dwelling was in law and in fact an amendment of the criminal complaint for coercion, which amendment changed the nature of the offense contrary to the ruling in the case of *People v. Gabilanan*.[5] The petition was denied, hence this appeal. The Supreme Court in affirming the lower court, held that the new information was not an amendment of the former complaint. It was actually another information for another offense. The information for trespass to dwelling was filed obviously because the facts found by the fiscal could not sustain the allegation of the previous complaint for coercion. The first complaint was actually dismissed, after the fiscal realized that the facts constitute a different offense. This situation is not covered by Section 13, of Rule 106. The Court added that since the information was filed before the defendants pleaded, the defense of double jeopardy did not lie.

[2] People v. Palabas, G.R. No. L-8027, August 31, 1954.
[3] Director of Prisons v. Teodoro, 51 O.G. 4038.
[4] G.R. No. L-14306, January 29, 1960.
[5] 43 O.G. 3209.

People v. Labatete[6] illustrates how an amended information would prejudice the rights of the defendant. It appears in this case that on January 7, 1957, an information for estafa was read to the accused, to which he pleaded not guilty. During the trial, the accused moved to dismiss the information on the ground that the facts alleged therein do not consttiute a crime. The lower court sustained the motion and the information was dismissed. Subsequently, the fiscal filed an amended information which contained additional facts, to wit: in the original information, only the improvements and products were alleged to have been mortgaged to the offended party; whereas in the amended information, the accused was charged not only with having mortgaged the improvements and products, but also the land itself. *Held:* If the amended information were to be admitted, the accused will be deprived of his defense against double jeopardy because by the amended information, he is sought to be made responsible for the same act of borrowing for which he had already begun to be tried and acquitted by the dismissal of the information. As the law permits amendment only when amendment can be done without prejudice to the rights of the defendant, the amended information should be denied. When the trial court finds that the accused cannot be found guilty of any offense under the original information, judgment entered is not one of dismissal but of acquittal and whether the judgment is correct or not, the same constitutes a bar to the presentation of an amended information sought to be introduced by the fiscal. The court denied the admission of the amended information.

C. *Duplicity of Offenses*

Section 12 of Rule 106 states: "A complaint or information must charge but one offense, *except only in those cases in which existing laws prescribe a single punishment for various offenses.*"

The case of *People v. Dommador Camerino*[7] is a good example of an exception provided under the above cited section. This is an appeal by the Government from an order of the Court of First Instance of Cavite dismissing the criminal case charging the defendants with sedition. The information described in detail the manner in which the alleged seditious acts were performed, specifying the dates and the places where they were committed and the persons who were victims thereof, under 14 different overt acts of sedition. Defendants moved to quash the information, raising among others that more than one offense was charged. The trial court, sustaining the reasons of the defendants, dismissed the information. In setting aside the order, the court held: The accused herein were being charged with one offense—sedition. The 14 different acts or specifications charging some or all of the accused with having committed the offense charged therein, were included in the information merely to describe and narrate the different and specific acts the sum total of which constitutes the crime of sedition. Different and separate acts constituting different and separate offenses may serve as a basis for prosecuting the accused to hold them criminally liable for said different offenses. Yet, those different acts or offenses may serve merely as a basis for the prosecution of one single offense like that of sedition. The information is valid and the order set aside.

[6] G.R. No. L-12917, April 27, 1960.
[7] G.R. No. L-13484, May 20, 1960.

PRELIMINARY INVESTIGATION

As now provided, the preliminary investigation has two stages:[8] the first, consisting of a preliminary investigation or examination of the complainant and his witnesses[9] to determine whether the accused is probably guilty of the offense charged and if so, to issue a warrant for his arrest; and the second, the procedure outlined in Section 11 whereby the accused after his arrest is informed of the complaint or information and of the substance of the evidence presented against him and the presentation of evidence in his behalf, if he so desires.[10] The purpose of the first stage is to determine whether or not there is reasonable ground for the issuance of a warrant of arrest[11] and of the second, whether or not the accused should be released or held for trial before the competent court.[12]

The "preliminary investigation" under Section 1 is not the preliminary investigation proper, but merely a "previous inquiry or examination made before the arrest of the defendant."[13] The preliminary investigation proper to which the defendant is entitled as a part of the due process of law in those cases in which the statute provides for it, is that established by Section 11 and consists in the right of the defendant, after his arrest, to "be informed of the complaint or information filed against him of the substance of the testimony and evidence presented against him," and to be allowed to "testify or to present witnesses or evidence in his favor."[14]

These two sections were again revisited by the Supreme Court in the case of *Gloria Abrera v. Ludolfo Muñoz and Corazon Flordeliza.*[15] It appears in this case that the respondent Corazon Flordeliza filed a complaint for serious oral defamation against petitioner in the Jusice of the Peace of Oas, Albay. The respondent Justice of the Peace conducted the first stage of the preliminary investigation and admitted petitioner to bail. Thereafter, the case was set for the second stage of the preliminary investigation, during which petitioner's counsel asked permission to cross-examine the prosecution witnesses who had testified prior to the arrest of petitioner. The respondent judge denied this on the ground that the preliminary investigation was then already on its second stage. Thereafter, petitioner presented her evidence. After her testimony, the prosecution asked to be allowed to cross-examine her, to which petitioner's counsel objected. The respondent judge allowed the prosecution to cross-examine petitioner and her witnesses. Accused then filed in the lower court the petition for certiorari subject of this appeal. The issue is whether the prosecution could cross-examine the defense witnesses presented at the second stage of the preliminary investigation. *Held:* An accused is not entitled to cross-examine the witnesses presented against him in the preliminary investigation before his arrest, this being a matter that depends on the sound discretion of the judge or investigating officer concerned.[16] As to whether the prosecution could be allowed to cross-examine the defense witnesses, when they take the stand pursuant to Section 11, Rule 108 of the Rules of Court, a consideration of the basic function of a preliminary investigation convinces this court that this can be done. A preliminary investigation is held to determine

[8] MORAN, COMMENTS ON THE RULE OF COURT, Vol. 2, 1957 ed., p. 655.
[9] *Supra*, note 8.
[10] People v. Ramilo, 52 O.G. 1431.
[11] People v. Peji Bautista, 67 Phil. 518; People v. Datu Galantu et al., 39 O.G. 1182.
[12] Hashmin v. Boncan, 71 Phil. 216; Biron v. Cea, 73 Phil. 673.
[13] *Supra*, note 8.
[14] People v. Moreno, 77 Phil. 546.
[15] G.R. No. L-14743, July 26, 1960.
[16] Dequito v. Arellano, 81 Phil. 128; Bustos v. Lucero, 81 Phil. 640.

whether there are sufficient grounds which engender a well-founded belief that the accused is probably guilty of the offense charged and should be held to await trial in the proper court, and conversely, whether the evidence against him is so insubstantial as to warrant his immediate discharge. Being entrusted with this grave responsibility, the powers of the investigating official should not be curtailed to an extent which would render him inadequately equipped to discharge his functions. Cross-examination, whether by the judge or by the prosecution, supplies the gap by permitting an instant contrast of falsehoods and opposing half-truths, from which the examining judge is better able to form a correct synthesis of the real facts. Order affirmed.

ARRAIGNMENT

Section 1, Rule 112 provides: "The defendant must be arraigned before the court in which the complaint or information has been filed unless the cause shall have been transferred elsewhere for trial. The arraignment must be made by the court or clerk, and shall consist in reading the complaint or information to the defendant and delivering to him a copy thereof, *including a list of witnesses*, and asking him whether he pleads guilty or not guilty as charged. *The prosecution may, however, call at the trial witnesses other than those named in the complaint or information.* (Underscoring ours.)

The above section prescribes the manner by which the arraignment of the accused shall be made. The provision is designed to give effect to the constitutional provision which guarantees the accused the right to be informed of the nature and cause of the accusation against him.[17] The requirement is mandatory and non-observance thereof is ground for reversal of the judgment and remanding of the case for new trial.[18]

In the case of *Villacorta v. Villarosa*[19] the Supreme Court interpreting Section 1, Rule 112 said that the rules expressly permit the prosecution to present unlisted witnesses at the trial without any previous consent from the court. In an earlier case, the court held that the accused in a criminal prosecution is not entitled to know in advance the names of all the witnesses for the prosecution. The reason being, that *the success of the prosecution might be endangered if such right be granted to the accused, for the known witnesses might be subjected to pressure or coerced not to testify.* The time for the accused to know them is when they take the witness stand. The fact that some of the prosecution witnesses who are not listed in the information were present in the courtroom and heard the testimony of the other witnesses does not disqualify them from being witnesses.[20]

DOUBLE JEOPARDY

Section 9, Rule 113 of the Rules of Court enumerates the different cases when the defense of double jeopardy may be invoked by the accused in a criminal prosecution. They are the following: (1) former conviction (*autrefois convict*); (2) previous acquittal (*autrefois acquit*); (3) "the case against him dismissed or otherwise terminated without the express consent of the defendant; provided that, in any of these cases, the following conditions are present: (1) "by a court of competent jurisdiction" (2) "upon a valid complaint or information or other formal charge sufficient in form and substance

[17] Article III, Sec. 1(17), Phil. Const.; Rule III, Sec. 1(2).
[18] U.S. v. Palisoc. 4 Phil. 207.
[19] G.R. No. L-13417, September 30, 1960.
[20] People v. Palacio et al., G.R. No. L-13933, May 25, 1960.

to sustain a conviction" (3) "after the defendant had pleaded to the charge." The presence of these circumstances is a "bar to another prosecution for the same offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information." [21]

A. *Former Conviction*

In *People v. Narvas*,[22] the accused driver of a passenger truck, thru reckless imprudence, ran over and killed a carabao and caused damage to property. He was tried, convicted and sentenced to jail for 15 days under the first information. Subsequently a second information was filed charging damage to property through reckless imprudence. The Court held that the defense of double jeopardy lies. The allegations in the two information are almost identical, such that "if the prosecution proved all the material allegations of the second information, the accused could have been convicted (and, therefore, had been in danger of being convicted) of the offense for which he is being prosecuted now."

B. *Dismissal of case without express consent.*

In the case of *Sangalang v. People*,[23] this is a petition for prohibition to restrain respondent judge from trying the petitioners on the ground of double jeopardy. It appears that petitioner Magdalena Sangalang was, together with Enriqueta Pascoquin, Nicodemus Domingo and Bayani de la Cruz, charged with qualified theft alleged to have been committed by taking and carrying away 15,000 empty jute bags belonging to the NARIC. After the prosecution had rested its case, all the accused filed their respective motions for dismissal based on insufficiency of evidence. Sustaining the motion filed by the petitioner and Bayani de la Cruz, the court dismissed the case as against them. Four years later, the petitioner and one Leandro Castelo were charged again, this time with the crime of estafa alleged to have been committed by them by inducing one Enriqueta Pascoquin (one of the accused in the criminal case for theft) to buy certain NARIC invoices for 15,000 empty sacks, which invoices turned out to be fictitious and falsified. The petitioner filed a motion to quash the information on the ground of double jeopardy. Sustaining the motion, the court dismissed the case against her. This order was not appealed and has therefore, become final. Thereafter, a third information against herein petitioner was filed for the same offense of estafa. Again, the petitioner filed a motion to quash invoking double jeopardy. The respondent Judge, however, denied the motion and ordered the petitioner's arraignment. Hence, this petition for prohibition. The issue is whether or not the respondent judge committed grave abuse of discretion in ordering the petitioner's arraignment. In resolving the issue, the Court held, that an order sustaining the motion to quash on the ground of double jeopardy constitutes a bar to another prosecution for the same cause. The record clearly shows, that in the criminal case for estafa, the petitioner's motion to quash on the ground of double jeopardy was sustained and the case was dismissed as against her. The law makes it a legal duty for prosecuting officers to file the charges against whomsoever the evidence may show to be responsible for an offense, but in the performance of their functions, they are equally duty bound to exercise a high degree of prudence and discrimination to the end that no one shall be twice put in

[21] People v. Ylagan, 58 Phil. 851.
[22] G.R. No. L-14191, April 27, 1960.
[23] G.R. No. L-16160, October 31, 1960.

jeopardy for the same offense. In this way, the danger, annoyance and vexation suffered by the accused may be avoided. The petition was granted.

In the case of *People v. Duran*,[24] it appears that on June 4, 1956, the Chief of Police of Balangiga, Samar filed in the Justice of the Peace Court a complaint against Duran, for serious slander by deed, in that in the presence of other councilors, the accused slapped the offended party. The accused Duran waived his right to a preliminary investigation and the case was elevated to the Court of First Instance of Samar. On October 19, 1956, an information was filed in the Court of First Instance by the Assistant Provincial Fiscal charging the defendant with the crime of serious slander by deed.

On November 27, 1957, the accused filed a motion to quash, claiming that the complaint and affidavits of the witness for the prosecution filed with the inferior court did not state that the accused ever slapped the offended party, so that the offense charged did not constitute grave slander by deed, while the information filed in the Court of First Instance sufficiently charged the offense. The motion was denied. After the prosecution rested its case, the defense moved again to dismiss the case on the ground that the prosecution failed to prove his case beyond reasonable doubt. The court ordered the dismissal of the information *but on a different ground*, i.e., that it did not acquire jurisdiction over the same because the serious slander by deed charged does not impute any crime and the complaint was not subscribed and sworn to by the offended party himself as required by Article 360 of the Revised Penal Code. The government appealed the dismissal. *Held:* The dismissal was erroneous. As the grave slander by deed charged in this case does not impute any crime, public or private, to the offended party, his complaint was not necessary to confer jurisdiction on the court. But this erroneous dismissal notwithstanding, we cannot now remedy the error, because this appeal by the Government places him in double jeopardy.[25] In this case, it cannot be said that the accused consented to the dismissal of the case, since the ground on which it was granted was different. He moved to quash on the ground that his guilt was not proved beyond reasonable doubt, not on the ground of lack of jurisdiction.

C. *Upon a valid complaint or information sufficient in form and substance to sustain a conviction.*

In the case of *People v. Capistrano*,[26] an appeal was made from the decision of the Court of First Instance of Rizal finding appellant guilty for the violation of Circular No. 60, Sec. 2 (a) of the Central Bank, in relation to Section 34 of Republic Act No. 265. It appears that on October 6, 1956, the defendant Caridad Capistrano was accused before the Court of First Instance of Rizal of concealing in her person Philippine notes while she was to leave the Philippines for Hongkong. She was convicted as charged. On appeal, the decision was reversed by the Supreme Court (L-12724) upon the ground that, for the circular mentioned in the information to be deemed infringed, it is necessary to allege that the outgoing Philippine resident or transient visitor has taken or is about to take out of the Philippines, Philippine coins and notes, without the necessary license issued by the Central Bank. An examination of the information does not show any averment of this element. *This omission makes the charge alleged in the information insufficient to constitute an offense*

[24] G.R. No. L-13334, April 29, 1960.
[25] People v. Hernandez, G.R. No. L-4213, November 23, 1953; People v. Ferrer, G.R. No. L-9072.
[26] G.R. No. L-14363, August 31, 1960.

for which appellant may be convicted and rendered amenable to the penalty prescribed by law. Consequently, appellant was acquitted. Soon after this decision had become final and executory, the Provincial Fiscal of Rizal filed the present information charging her of the same offense. Defendant moved to quash the information upon the ground of double jeopardy, but the motion was denied. In due course ,the court rendered the decision appealed from. The issue is whether or not the Government is barred from prosecuting the appellant once again. The court resolved the issue in the negative holding that, in order that a former judgment may bar a subsequent prosecution, it is necessary that said judgment be rendered: (a) by a court of competent jurisdiction; (b) *upon a valid complaint or information sufficient in form and substance to sustain a conviction;* (c) after arraignment; (d) after the defendant had pleaded to the charge, and that the second prosecution be for the "offense charged or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information." Pursuant to the Supreme Court's decision, in the case L-12724, the failure of the prosecution to allege in the information in that case that the notes described therein were sought to be taken out of the Philippines "without the necessary license issued by the Central Bank" rendered the charge in said information "insufficient to constitute an offense for which appellant may be convicted and rendered amenable to the penalty prescribed by law". Consequently, the defendant was not placed in jeopardy of punishment in said case, and hence, cannot now be deemed to be twice in jeopardy of punishment for the same offense. It cannot be said that the offense charged in the case at bar is the same as the one charged in the former information or an attempt to commit the same or a frustration thereof, or includes or is included in the offense charged in said information, no offense whatsoever, from a legal viewpoint, having been charged therein. Decision affirmed.

D. *Offense which necessarily includes or is necessarily included in the offense charged.*

The case of *People v. Rodriguez*,[27] lays down the rule that the offense of rebellion necessarily includes the crime of illegal possession of firearms and ammunition which he must have in rebellion activity. It appears in this case that on October 30, 1956, accused was charged with illegal possession of firearm and ammunition before the Justice of the Peace Court of Calamba, Laguna. Accused filed a motion to quash on the ground that the crime with which he is now charged is a component element or ingredient of the crime of rebellion with which he had been charged in a criminal case in the Court of First Instance of Manila. The Justice of the Peace finding probable cause, ordered the transmittal of records to the Court of First Instance of Laguna. Upon arraignment, the accused agai nfiled a motion to quash ,alleging the defense of double jeopardy, as an essential ingredient of the crime with which he was already charged is made the basis of a separate complaint. Is there double jeopardy?

The Court ruled in the affirmative. The present charge for illegal possession of firearms and ammunitions cannot be prosecuted independently of the charge of rebellion, which necessarily includes illegal possession of firearms and ammunition, which he must have used as a means or in furtherance of subversive ends or rebellion activity. It does not matter that in the rebellion

[27] G.R. No. L-13981, April 25, 1960.

charge was no allegation that the firearm in question was one of those used in rebellion and without license, so long as the records show that one of the firearms was used in furtherance of rebellion. Nor is it of consequence that there is no allegation in the rebellion charge that the carrying of firearm was without license, for it can be assumed that he was then a dissident. The fact that in the preliminary investigation, the accused attempted to exculpate himself by denying the *animus possidendi* of firearms, is not incompatible with the defense of double jeopardy.

In the case of *People v. Buling*,[28] it appears that on December 3, 1956, accused was charged in the Justice of the Peace Court of Cabalian, Leyte with the "crime of less serious physical injuries for having inflicted wounds on the complaining witness Isidro Balaba which according to the complaint would require medical attendance for a period from 10 to 15 days and will incapacitate the said Balaba from the performance of his customary labors for the same period of time. Accused pleaded guilty and was sentenced to 1 month and 1 day of *arresto mayor* and to pay damages of ₱20 with subsidiary imprisonment in case of insolvency. Accused served the full term.

However, Balaba's injuries did not heal within the period estimated and so on February 20, 1957, the fiscal filed an information against the accused before the Court of First Instance of Leyte, charging him of serious physical injuries. The information alleges that the wounds inflicted by the accused require medical attendance and incapacitated him for a period of from 1½ months to 2½ months. The Court convicted him of this offense. Hence this appeal. The issue then is whether the prosecution and conviction of Buling for less serious physical injuries is a bar to the second prosecution for serious physical injuries.

The Supreme Court decided in the affirmative. There was double jeopardy according to the court. The tribunal distinguished this case with the case of *Melo v. People* [29] in that in the case at bar there was no new fact which supervened, like the death of the victims, which changes the character of the offense into one which was not in existence at the time the case for less serious physical injuries was filed. What actually happened here was that while in the first prosecution no X-Ray examination was made of the complaining witness, in the second prosecution for serious physical injuries, there was one made which examination brought out the true injuries of the offended party, which injuries, however, were already in existence at the time the first information was filed, so that actually no new fact was in existence such as to justify the filing of a new complaint and apply the doctrine in the Melo case which laid down the rule that "Where after the first prosecution a new fact supervened for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitutes a new and distinct offense, the accused cannot be said to be in second jeopardy if indicted for the new offense." [30] The general rule on double jeopardy was applied, and the court admonished prosecuting officials to make a thorough examination first of parties before filing a complaint so as to avoid similar instances where by reason of the important constitutional provision on double jeopardy, the accused cannot be held to answer for graver offense committed.

[28] G.R. No. L-13315, April 27, 1960.
[29] G.R. No. L-3580, March 22, 1950; People v. Manolong, 85 Phil. 829.
[30] The cases of Melo and Manolong overruled the case of People v. Tarok, 73 Phil. 260.

Pleas

Section 1, Rule 114 provides: "The defendant shall plead to the complaint or information either by a plea of guilty or not guilty, submitted in open court and entered of record; but a failure so to enter it shall not affect the validity of any proceeding in the cause."

A. *Plea of guilty made freely and voluntarily.*

In the case of *People v. Ala*[31] the Supreme Court had occasion again to restate the principle that where the plea is made freely and voluntarily, accused is liable for the consequences of his plea. This is a review of a decision of the Court of First Instance of Rizal, sentencing appellant to the extreme penalty—death. The facts show that Primitivo Ala is accused, together with Nicolas Mojica, of murder. Upon arraignment, Ala pleaded guilty to the charge, whereas Mojica entered a plea of not guilty. Asked by the court: "Have you understood the information as read and translated to you by the court interpreter?" Ala answered in the affirmative. The court further asked: "And in pleading guilty are you doing so freely and voluntarily, without having been coerced, intimidated, or promised any reward or immunity by any person?" Ala gave the same answer. Still the court inquired: "Are you aware of the fact that in pleading guilty you are liable to be sentenced in accordance with the provisions of the law governing the case?" Ala's reply was: "Yes, your Honor." Forthwith, the lower court rendered the decision subject of review. It appears that after due trial, Nicolas Mojica was, likewise, convicted and sentenced to the same penalty meted out to Ala. The Court after an appreciation of the evidence available, affirmed the decision, stating that where, as in the present case, the plea was made freely and voluntarily, without having been coerced, intimidated or promised any reward or immunity by any person, the accused is liable for the consequences of his plea.

The case of *People v. Yamson*[32] was also a review of a death penalty imposed upon the appellants by the Court of First Instance of Rizal. The facts appear that the accused killed a co-inmate in the Bilibid Prisons at Muntinlupa, Rizal. Forthwith, they were charged before the above court for murder. The information enumerates 5 aggravating circumstances which attended the commission of the crime. At their arraignment, both accused, with assistance of counsel *de oficio*, entered a plea of guilty. Thereafter, the trial court rendered a judgment finding them guilty as charged and sentenced both to suffer the maximum penalty. Elevated to the Supreme Court for review, the tribunal stated that a plea of guilty is an admission of all the material facts alleged in the complaint or information. A plea of guilty when formally entered in arraignment, is sufficient to sustain a conviction for any offense charged in the information, without the necessity of requiring additional evidence, since by so pleading, the defendant himself has supplied the necessary proof.[33] It matters not even if the offense is capital, for the plea, covers both the crime and its attendant circumstances.[34] While the better practice, especially in cases wherein grave crimes are charged, is to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime, after the entry of a plea of guilty, however,

[31] G.R. No. L-15633, August 31, 1960.
[32] G.R. No. L-14189, October 25, 1960.
[33] People v. Valencia, 59 Phil. 42. People v. Palupe, 69 Phil. 702.
[34] People v. Acosta, G.R. No. L-7449, March 23, 1956.

it lies in the sound discretion of the trial judge whether he will take additional evidence or not, in any case wherein he is satisfied that a plea of guilty has been entered by the accused, with full knowledge of the meaning and consequence of his act.[35] In the present case, the trial judge must have been fully satisfied that the appellants entered the plea of guilty with full knowledge of the meaning and consequences of their act. The record does not reveal that appellants or counsel ever complained or protested at the time of arraignment that they did not understand the information and the effect of their plea of guilty. The decision was affirmed.

Where the accused merely made an offer to plead guilty to a lesser offense, the plea of guilty cannot be considered a mitigating circumstance. But where the accused, having signified his intention to plead guilty to a lesser offense than that charged, the information is accordingly amended and the accused enters a plea of guilty to the amended information, the plea of guilty will be considered a mitigating circumstance.[36]

State Witness

Section 9, Rule 115 lays down the rule on the requirements to be observed before one of the defendants may be discharged to be witness for the prosecution:

"When two or more persons are charged with the commission of a certain offense, the competent court, at any time before they have entered upon their defense, may direct any of them to be discharged with the latter's consent that he may be a witness for the government when in the judgment of the court:

"a) There is absolute necessity for the testimony of the defendant, whose discharge is requested:

"b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;

"c) The testimony of said defendant can be substantially corroborated in its material points;

"d) Said defendant does not appear to be the most guilty;

"e) Said defendant has not at any time been convicted of any offense involving moral turpitude."

The discharge of a co-accused that he may be utilized as a witness for the prosecution is a matter of sound discretion with the trial court to be exercised upon the conditions set forth in the above section. The discharge contemplated in this section may be effected at any stage from the filing of the information to the time the defense starts to offer any evidence. Once the discharge is ordered, any future development showing that any or all of the five conditions have not actually been fulfilled may not affect the legal consequences of the discharge, as provided by Section 11.[37] The Court has the exclusive responsibility to determine whether the conditions prescribed in the rule exist. The rule is completely silent as to any authority of the prosecution in the premises, although authority may be inherent in the office of the prosecuting attorney to propose.[38]

[35] U.S. v. Jamad, 37 Phil. 305.
[36] People v. Mancera, G.R. No. L-13290, June 30, 1960.
[37] People v. Mendiola, 81 Phil. 740.
[38] People v. Hon. Filomeno Ibañez, G.R. No. L-5442, April 20, 1953.

In the case of *People v. Borja*,[39] it appears that Bernardo Borja, Floro Tandang, Joaquin Odog, Pedro Bagao, Pedring Taganon, and Teofilo Bag-ao were charged in the Court of First Instance of Surigao with the crime of murder, for having killed Manuel Ibañez on January 13, 1943 in Mainit, Surigao. On April 8, 1957, the accused, claiming that the execution of the deceased for which they were charged, was done in furtherance of the guerrilla movement, filed a petition for amnesty under Proclamation No. 6 of the President. On May 2, 1957, while said petition was pending, the Provincial Fiscal moved to exclude from the information Tandang and Odog to be utilized as state witness. The lower court denied the motion. Hence this appeal. The Supreme Court in deciding against the motion of the prosecution said that under Section 9 of Rule 115, it is well settled that the discharge or exclusion of the co-accused from the information in order to be used as a state witness is a matter of sound discretion of the court[40] to be exercised by it upon the conditions therein set forth. The expedient should be availed of, only where there is absolute necessity for the testimony of the accused whose discharge is requested, as when he alone has knowledge of the crime, and when his testimony would simply corroborate or otherwise strengthen the evidence of the prosecution.[41] In this case, there were, however, prosecution witnesses who could testify so that there was no need to discharge the witnesses. As regards the prosecution's claim that the exclusion of Tandang and Odog was necessary to prove the personal motive or reason of their co-accused in killing the deceased, the court held that the proof of motive is not absolutely indispensable or necessary to establish the commission of the crime.[42] It is true, according to the court, that motive is essential in cases falling under the Amnesty Proclamation, but the exclusion for the purpose of establishing the motive of the co-accused is a matter to be taken up when the case is submitted to the Amnesty Commission for consideration.

The case of *People v. Manigbas, et al.*[43] is an appeal from the decision of the Court of First Instance of Batangas finding the appellants guilty of murder with assault upon an agent of a person in authority, for the killing of Esteban de Guzman, chief of police of Rosario, Batangas, and attempted murder for the assault and wounding of Cayetano Ilagan, policeman and companion of the deceased Esteban de Guzman. It appears that in the evening of July 9, 1954, Esteban de Guzman, accompanied by policeman Cayetano Ilagan passed in front of the town market. They were suddenly fired upon by certain persons hidden behind the post of the gate. De Guzman was hit in the heart and lungs and fell dead on the spot. Cayetano was hit on the left thigh. According to Tomas Carandang (also an accused) who was ordered discharged to be utilized as state witness in both cases, it was appellant, Manigbas, who planned the liquidation of De Guzman and induced his men, the other appellants herein to execute it. The appellants impugned as improper the discharge of Tomas Carandang in order that he may be utilized as state witness. The Supreme Court ruled that the discharge of a co-accused to be utilized as a state witness is a matter within the discretion of the trial court to be exercised upon the conditions set forth in the law.[44] In this case, it has not been shown that such discretion has been misapplied. At any rate, an error of the court in the

[39] G.R. No. L-14327, January 30, 1960.
[40] U.S. v. Abanzado, 37 Phil. 558; People v. Hon. Ibañez, *supra*.
[41] 2 MORAN, p. 827, '57 ed.
[42] U.S. v. Recafort, 1 Phil. 173; U.S. v. Balinon, 18 Phil. 578; U.S. v. Valdez, 30 Phil. 293.
[43] G.R. Nos. L-10352-53, September 30, 1960.
[44] People v. Hon. Ibañez, *supra*.

discharge of an accused does not affect the competency of the accused as witness nor the admissibility of his testimony.[45] Such testimony may warrant conviction if corroborated to such an extent that its trustworthiness becomes manifest. In the present case, Carandang's testimony finds ample corroboration in the written confessions of the other co-accused Mendoza and Eliseo Carandang, who confirmed the truth of their contents in open court.

In another recent case, the Supreme Court reiterated the rule that the provisions of Section 9, Rule 115, are aimed at preventing the unnecessary or arbitrary exclusion from the information of persons guilty of the crime charged, but it has no bearing on the admissibility of their testimony or their competency as witnesses.[46]

The Court also laid down the rule that even if an accused actually participated in the offense charged in the information, he may still be made a witness for the State. The Rules merely require that he does not appear to be the most guilty.[47]

JUDGMENT IN CASE OF VARIANCE BETWEEN ALLEGATION AND PROOF

Section 4, Rule 116 provides: "When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included or necessarily includes the offense proved, the defendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved." And Section 5 of the same rule provides: "An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And the offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter."

The case of *Esguerra v. People*[48] provided another occasion for an interpretation of the above-cited sections. This case is a review of the decision of the Court of Appeals finding the appellant guilty of estafa through false pretenses, under par. 3 (2-a), of Art. 315 of the Revised Penal Code. It appears that the accused, upon representations that he had copras ready for delivery, took and received the sum of ₱4,400 from the complainant, but in spite of repeated demands, the said accused failed to deliver the copra or return the amount received. Thus, an information for estafa was filed against him. In view of the ambiguity in the information, a motion to quash was filed by the accused. At the hearing of the motion, the fiscal and the private prosecutor both assured the accused that he was being charged under par. 1 (b) of Article 315 (misappropriation involving unfaithfulness or abuse of confidence). The trial court admitted the correction and accused went to trial with that understanding and assurance. After trial, the lower court found the accused guilty under Article 315, par. 1 (b) and sentenced him accordingly. On appeal, the Court of Appeals held appellant guilty of estafa under par. 3 (s-a) of Article 315. Hence this review. The issue, therefore, is whether the appellant who

[45] People v. Pardo, 45 O.G. 2027; People v. Faltado et al., 46 O.G. 6079.
[46] People v. Dagundong, G.R. No. L-10398, June 30, 1960; People v. De Leon et al., G.R. No. L-13384, June 30, 1960.
[47] People v. Hon Froilan Bayona et al., G.R. No. L-14426, May 20, 1960.
[48] Esguerda v. People, G.R. No. L-14313, July 26, 1960.

had entered trial for the crime of misappropriation and conversion committed with unfaithfulness and abuse of confidence, could, on appeal, be convicted of estafa through false pretenses. *Held:* It is undisputed that the information contains no allegation of misrepresentation, bad faith or false pretenses, essential elements in the crime of which appellant was found guilty by the Court of Appeals. This is so, because, as already stated, the fiscal and the private prosecutor avowedly were prosecuting the accused for the crime of misappropriation and conversion committed with unfaithfulness and abuse of confidence for which he went to trial and was convicted by the lower court. It is true the information states that "the accused upon representation (not misrepresentation) that he had copras ready for delivery received" the sum of ₱4,400. Nowhere does it appear in the information that these "representations" were false or fraudulent, or that the accused had no such copra at the time he allegedly made such "representations." The falsity or fraudulentness of the pretense or act being the very constitutive element of the offense, allegation to that effect, either in the words of the law or in any other language of similar import, must be made in the information if the right of the accused to be informed of the nature and cause of the accusation against him is to be preserved. Pertinent on this point is Section 4, of Rule 11 of the Rules of Court which provides that an accused may be convicted of an offense provided it is included in the charge or of an offense charged which is included in that proved. *Stated differently, an accused can be convicted of an offense only when it is both charged and proved. In other words, variance between the allegation and proof cannot justify conviction for either the offense charged or the offense proved unless either is included in the other.* On the merits, there is reason to believe that the responsibility of the appellant is only civil in nature. The receipt signed by the appellant, together with the findings of the Court of Appeals that the appellant used to supply copra not only to complainant but also to other copra exporters clearly indicate that the transaction was that of sale of copra for future delivery. Obviously, an advance payment is subject to the disposal of the vendor. If the transaction fails, the liability arising therefrom is of a civil nature. Accused acquitted.

NEW TRIAL

Section 1, Rule 117 states: "At any time before the final entry of judgment of conviction, the court may on motion of the defendant, or on its own motion with the consent of the defendant, grant a new trial."

In the case of *Provincial Fiscal of Rizal v. Muñoz-Palma*,[49] it was held that a letter to a Judge begging for a reconsideration of her decision amounted to a petition for new trial. It appears that the accused was charged with, and convicted of, qualified seduction by Judge Cecilia Muñoz-Palma. He wrote a letter to the respondent judge begging the latter to reconsider the decision. The letter was referred to accused's counsel for such action as he may deem proper. After hearing, the respondent Judge amended her decision. *Held:* The respondent Judge has ample discretion to amend *motu-propio* her original decision before it becomes final and to consider the letter of the accused as a petition for new trial which suspended the running of the period of appeal.

[49] G.R. No. L-15325, August 31, 1960.

A. *Pro-Forma Rule not Applicable in Criminal Cases.*

In the case of *People v. Colmenares et al.*[50] it appears that the defendants were charged in the Justice of the Peace Court of La Castellaña, for theft of 15 cavans of palay, belonging to complainant Pedro Mansale. The Justice of the Peace found the accused guilty of theft and sentenced each of them to pay a fine of ₱200 and in case of insolvency, to suffer subsidiary imprisonment. Defendant Lorico received a copy of the decision on April 27 and Colmenares on April 29, 1955. On May 2, 1955, accused filed a motion to reconsider the judgment on the ground that in accordance with a documentary evidence presented during the trial, it appears that the case involved question of ownership of land from which the palay allegedly stolen was raised. The motion was set for hearing on May 27. The private prosecutor opposed the hearing and petitioned to strike out the same, on the ground that it was *pro-forma*. Appeal bonds were filed by the accused on May 28, 1955. Upon the docketing of the case in the Court of First Instance, the Assistant Provincial Fiscal immediately presented a motion to dismiss the appeal, on the ground that the decision of the Justice of the Peace sentencing the accused, having been received by the latter on April 29, 1955 and the motion for reconsideration having been denied on May 28, 1955, a period of more than 15 days had elapsed when the appeal was perfected, for the reason that the motion for reconsideration did not interrupt the period of perfecting an appeal, it being a *pro-forma* motion and therefore, the decision of the Justice of the Peace Court had become final when the appeal was entered. The Court of First Instance sustained this motion to dismiss the appeal. From this order, an appeal was brought to the Court of Appeals, which endorsed the case to the Supreme Court as involving exclusively questions of law. *Held:* Rule 37 is applicable only to civil cases. The rule regarding new trial in criminal cases is contained in Rule 117. The *pro-forma* rule is, therefore, not applicable in criminal cases under consideration. Order dismissing the appeal reversed and the case remanded to the Court of First Instance for trial on the merits.

The Supreme Court has reiterated the rule in the case of *People v. Dagundong*[51] that a motion for new trial may be granted when it is made to appear that there is no evidence sustaining the judgment of conviction other than the testimony of the recanting witness.

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[50] G.R. No. L-13284, February 29, 1960.
[51] G.R. No. L-10398, June 30, 1960, *supra*.