

## SECOND DIVISION

[ G.R. No. 201572, July 09, 2014 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAE DELFIN,  
APPELLANT.**

### **D E C I S I O N**

**PEREZ, J.:**

This is an appeal<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated 29 April 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04160. In the said Decision, the CA affirmed, with modification, the conviction of herein appellant Rael Delfin for murder under Article 248(1) of Act No. 3815 or the *Revised Penal Code* (RPC).

The antecedents:

On the night of 27 September 2000, one Emilio Enriquez (Emilio)—a 51-year-old fisherman from Navotas City—was killed after being gunned down at a store just across his home.

Suspected of killing Emilio was the appellant. On 13 March 2001, the appellant was formally charged with the murder of Emilio before the Regional Trial Court (RTC) of Malabon.<sup>[3]</sup> The information reads:

That on or about the 27<sup>th</sup> day of November 2000, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said weapon one EMILIO ENRIQUEZ, hitting the victim on his chest, thereby inflicting upon the victim gunshot wound, which caused his immediate death.

CONTRARY TO LAW.<sup>[4]</sup>

When arraigned, appellant entered a plea of not guilty. Trial thereafter ensued.

During trial, the prosecution presented the testimonies of one Joan Cruz (Joan) and a certain Dr. Jose Arnel Marquez (Dr. Marquez).

Joan is an eyewitness to the gunning of Emilio. She is also the live-in partner of the victim. The substance of her testimony is as follows:<sup>[5]</sup>

1. At about 10:45 p.m. of 27 September 2000, Joan was standing outside Emilio's house at R. Domingo St., Tangos, Navotas City. From there, Joan was able to see Emilio talking over the telephone at a store just across his house. Also at the store during that time was the appellant who was seated on a bench to the left of Emilio.
2. Joan then went inside Emilio's house. Almost immediately after going inside the house, Joan heard the sound of a gunshot. Joan rushed outside of the house and saw Emilio shot in the head and sprawled on the ground. Joan then saw the appellant, now holding a gun, firing another shot at Emilio.
3. Joan said that she was not aware of any previous misunderstanding between Emilio and the appellant; neither did she observe any altercation brewing nor hear any word spoken between Emilio and appellant prior to the shooting.

Dr. Marquez, on the other hand, is a Philippine National Police physician who examined *post mortem* the corpse of Emilio. He issued *Medico-Legal Report No. M-608-00*,<sup>[6]</sup> which revealed that Emilio died as a consequence of two (2) gunshot wounds: one that penetrated the left side of his head and another that penetrated his chest. Dr. Marquez testified to affirm the contents of his report.

The defense, for its part, relied on the testimonies of the appellant<sup>[7]</sup> and a certain Rene Villanueva (Rene).<sup>[8]</sup>

Appellant offered the *alibi* that he was fishing on the seas of Bataan on the date and time of the supposed shooting. According to the appellant, he left for the seas at about 3:00 p.m. of 27 September 2000 and only returned at around 4:00 a.m. of the next day. Appellant also testified that he was accompanied on this fishing trip by three (3) other individuals—one of which was Rene.

Rene initially corroborated on all points the testimony of appellant. However, Rene later admitted that he, the appellant and their other companions actually left for their fishing trip at 3:00 p.m. of 26 September 2000—not the 27<sup>th</sup>; and returned to shore at 4:00 p.m. of 27 September 2000—not the 28<sup>th</sup>. Thus, at the date and time of the supposed shooting, Rene and the appellant were already in Navotas City.

On 20 July 2009, the RTC rendered a Decision<sup>[9]</sup> finding appellant guilty beyond reasonable doubt of the offense of murder under Article 248(1) of the RPC.<sup>[10]</sup> Based on its assessment and evaluation of the evidence on record, the RTC was convinced that it was the appellant who killed Emilio and who did so with the use of *treachery*. Accordingly, the RTC sentenced the appellant to suffer the penalty of *reclusion perpetua* and to pay civil indemnity of P50,000.00 and another P50,000.00 as consequential damages.

Aggrieved, appellant appealed the RTC decision with the CA.

On 29 April 2012, the CA rendered a Decision affirming the conviction of the appellant. The CA, however, deleted the award of P50,000.00 consequential

damages and replaced it with an award of P50,000.00 moral damages.<sup>[11]</sup> Hence, this appeal.

In this appeal, appellant assails the validity of the information under which he was tried and convicted. He specifically points out to the discrepancy between the date of the commission of the murder as alleged in the information i.e., "*on or about the 27<sup>th</sup> day of November 2000*" and the one actually established during the trial i.e., 27 September 2000. Appellant protests that the failure of the information to accurately allege the date of the commission of the murder violated his right to be properly informed of the charge against him and consequently impaired his ability to prepare an intelligent defense thereon.

Appellant also insists on the credibility of his *alibi* over and above the version of the prosecution.

Lastly, appellant questions the appreciation of the qualifying circumstance of treachery against him.

### **OUR RULING**

We deny the appeal.

#### ***Variance In the Date of the Commission of the Murder as Alleged in the Information and as Established During the Trial Does Not Invalidate the Information***

We sustain the validity of the information under which the appellant was tried, and convicted, notwithstanding the variance in the date of the commission of the crime as alleged in the information and as established during the trial.

In crimes where the date of commission is not a material element, like murder, it is not necessary to allege such date with absolute specificity or certainty in the information. The Rules of Court merely requires, for the sake of properly informing an accused, that the date of commission be approximated:<sup>[12]</sup>

**Sec. 6. Sufficiency of complaint or information.** – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; **the approximate date of the commission of the offense**; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

**Sec. 11. Date of commission of the offense.** – **It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the**

**offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.**  
(Emphasis supplied).

Since the date of commission of the offense is not required with exactitude, the allegation in an information of a date of commission different from the one eventually established during the trial would not, *as a rule*, be considered as an error fatal to prosecution.<sup>[13]</sup> In such cases, the erroneous allegation in the information is just deemed supplanted by the evidence presented during the trial<sup>[14]</sup> or may even be corrected by a formal amendment of the information.<sup>[15]</sup>

The foregoing rule, however, is concededly not absolute. Variance in the date of commission of the offense as alleged in the information and as established in evidence becomes fatal when such discrepancy is so great that it induces the perception that the information and the evidence are no longer pertaining to one and the same offense. In this event, the defective allegation in the information is not deemed supplanted by the evidence nor can it be amended but must be struck down for being violative of the right of the accused to be informed of the specific charge against him. Such was this Court's ruling in the case of *People v. Opemia*.<sup>[16]</sup>

In *Opemia*, an information for theft of large cattle committed on 18 June 1952 was filed against four (4) accused. After all of the accused entered a plea of not guilty and during trial, the prosecution adduced evidence to the effect that the purported theft was committed in July of 1947. The prosecution thereafter moved for the amendment of the information to make it conform to the evidence with respect to the date of theft. The trial court rejected the motion and instead dismissed the information altogether. The dispute reaching us in due course, we sustained the trial court's dismissal of the information:

The amendment proposed in the present case consists in changing the date of the commission of the crime charged from June 18, 1952 to July, 1947. In not permitting the amendment the learned trial Judge said:

"It is a cardinal rule in criminal procedure that the precise time at which an offense was committed need not be alleged in the complaint or information, but it is required that the act be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint would permit (Rule 106, section 10). The reason for this rule is obvious. It is to apprise the accused of the approximate date when the offense charged was committed in order to enable him to prepare his defense and thus avoid a surprise. In the case at bar, the proof shows that the carabao was lost on July 25, 1947 and not on June 18, 1952 as alleged in the information. **The period of almost five years between 1947 and 1952 covers such a long stretch of time that one cannot help but be led to believe that another theft different from that committed by the *Defendants* in 1952 was also perpetrated by them in 1947. Under this impression the accused, who**

came to court prepared to face a charge of theft of large cattle allegedly committed by them in 1952, were certainly caught by sudden surprise upon being confronted by evidence tending to prove a similar offense committed in 1947. The variance is certainly unfair to them, for it violates their constitutional right to be informed before the trial of the specific charge against them and deprives them of the opportunity to defend themselves. Moreover, they cannot be convicted of an offense with which they are not charged.

"It is also a cardinal rule in criminal procedure that after the *Defendant* has entered his plea, the information or complaint may be amended only as to all matters of form when the same can be done without prejudice to the rights of the *Defendant* (Rule 196, section 13). **An amendment that would change the date of the commission of the offense from 1947 to 1952 is certainly not a matter of form. The difference in date could not be attributed to a clerical error, because the possibility of such an error is ruled out by the fact that the difference is not only in the year, but also in the month and in the last two digits of the year.** It is apparent that the proposed amendment concerns with material facts constituting the offense, and consequently it would be prejudicial to the substantial rights of the *Defendants*."

His Honor has we think adduced good reasons for considering the amendment as referring to substance and not merely to form. But even supposing it to be the contrary, its allowance, after the *Defendants* had pleaded, was discretionary with the court and would be proper only if it would not prejudice their rights. **We are not prepared to say that the court did not make good use of that discretion in disallowing the amendment, considering that the variance sought to be introduced thereby would appear to be really unfair to the *Defendants*, for as clearly explained by the court "it violates their constitutional right to be informed before the trial of the specific charge against them and deprives them of the opportunity to defend themselves."**<sup>[17]</sup> (Emphasis supplied).

In this case, however, we find applicable, not the exception in *Opemia*, but the general rule.

Despite their disparity as to the date of the alleged murder, we believe that there is no mistaking that both the information and the evidence of the prosecution but pertain to one and the same offense i.e., the murder of Emilio. We find implausible the likelihood that the accused may have been caught off-guard or surprised by the introduction of evidence pointing to commission of the murder on 27 September 2000, considering that all documentary attachments to the information (such as the *Resolution*<sup>[18]</sup> of the Office of the City Prosecutor of Malabon-Navotas sub-station and the *Sworn Statement*<sup>[19]</sup> of Joan) all referred to the murder as having been