

SECOND DIVISION

[G.R. No. 140311, March 30, 2001]

**DENNIS T. GABIONZA, PETITIONER, VS. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

BELLOSILLO, J.:

May an Information be amended to change the material dates of the commission of the offense after the accused had been arraigned?

DENNIS T. GABIONZA seeks a review of the Decision of the Court of Appeals in CA-G.R. No. 49098-SP^[1] dismissing his petition for *certiorari* assailing the order of the Regional Trial Court in Crim. Case No. Q-93-50552^[2] which allowed the amendment of the Information charging him with violation of RA 1161 (*The Social Security Law*) as amended.

On 9 November 1993 an Information was filed against petitioner accusing him of violating Sec. 22, pars. (a) and (d), in relation to Sec. 28, par. (e), of RA 1161. It alleged that "in and about or during the period from January 1991 to May 1993" petitioner, President of the Manila City Bus Corporation, a compulsorily-covered employer under RA 1161, willfully and unlawfully failed, neglected and refused to remit to the Social Security System (SSS) contributions for SSS, Medicare and Employee Compensation (EC) amounting to P1,652,330.10 and the 3% penalty imposed thereon in the amount of P541,417.87.^[3]

Petitioner was arraigned on 7 December 1993. On 10 February 1998 or about four (4) years after he was arraigned, the public prosecutor filed a *Motion for Leave of Court to Amend Information*, to change the material dates stated in the Information from "January 1991 to May 1993" to "January 1991 to May 1992." Petitioner opposed the motion contending that the proposed amendment was substantial in nature, hence to allow the same would be a violation of his right to be informed of the cause and nature of the accusation against him, and would negate or prejudice defenses that were otherwise available to him.

On 31 March 1998 the trial court granted the motion and allowed amendment of the Information, ruling that the amendment pertained only to matters of form. It further ruled that the amendment would not prejudice the rights of the accused as the theory of the prosecution remained the same.^[4] On 2 September 1998 petitioner's motion to reconsider the order was denied.

Petitioner elevated the issue to the Court of Appeals in a petition for *certiorari* under Rule 65 seeking to annul the order of the trial court. On 9 June 1999 respondent Court of Appeals upheld the amendment and dismissed the petition. It held that the amendment "cannot be deemed an amendment in substance, as it will in no wise or

manner impair whatever defense or defenses the accused could or might have interposed in the original information, even as it will not render unavailable or inapplicable in the amended information, whatever evidence the accused might or could have adduced or presented in the original information."^[5] Hence this petition for review under Rule 45 of the 1997 Rules of Civil Procedure.

The proper procedure for the amendment of an Information is governed by Sec. 14, Rule 110, of the Rules on Criminal Procedure -

Sec. 14. Amendment. - The information or complaint may be amended, in substance or form, without leave of court at any time before the accused 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 accused x x x x

After the accused enters a plea, amendments to the Information may be allowed, as to matters of form, provided that no prejudice is caused to the rights of the accused. The test as to when the rights of an accused are prejudiced by the amendment of a Complaint or Information is when a defense under the Complaint or Information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have, would be inapplicable to the Complaint or the Information as amended.^[6]

On the other hand, an amendment which merely states with additional precision something which is already contained in the original information, and which, therefore, adds nothing essential for conviction for the crime charged is an amendment to form that can be made at any time.^[7] Jurisprudence allows amendments to information so long as: (a) it does not deprive the accused of the right to invoke prescription;^[8] (b) it does not affect or alter the nature of the offense originally charged;^[9] (c) it does not involve a change in the basic theory of the prosecution so as to require the accused to undergo any material change or modification in his defense;^[10] (d) it does not expose the accused to a charge which would call for a higher penalty;^[11] and, (5) it does not cause surprise nor deprive the accused of an opportunity to meet the new averment.^[12]

In the case at bar, it is clear that the questioned amendment is one of form and not of substance. The allegation of time when an offense is committed is a matter of form, unless time is a material ingredient of the offense. It is not even necessary to state in the Information the precise time the offense was committed unless time is a material factor.^[13] It is sufficient that the act is alleged to have been committed at any time as near to the actual date at which the offense was committed as the Complaint or Information will permit.^[14]

Thus, petitioner's argument that the amendment prejudiced his rights is untenable. We fail to see how his original defenses would be rendered inapplicable by the amendment, nor the prosecution's theory in anyway altered by the same. Petitioner failed to adduce any evidence in support of his allegation that the amendment would adversely affect his rights.

Petitioner invokes *Wong v. Yatco*,^[15] *People v. Opemia*^[16] and *People v. Reyes*^[17]