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FIRST DIVISION

[G.R. No. L-41045. November 28, 1975]

THE PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE COURT OF FIRST INSTANCE OF QUEZON, BRANCH V, ERNESTO BUSTO, PAULO CORALDE, DONY GRANDE, and JOSE ASTEJADA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DISMISSAL OF INFORMATION FOR FAILURE TO CHARGE AN OFFENSE; REFILING OF VALID INFORMATION IS FISCAL'S PROPER COURSE. — Where the trial judge rendered a "decision" of acquittal which was really a mere dismissal of the information for failure to charge an offense and was not a decision on the merits with factual findings, the fiscal's proper course is not the filing of a petition for review on *certiorari* with the Supreme Court but the refiling of a valid information against the accused.

2. ID.; ID.; SUFFICIENCY OF INFORMATION FOR CRIME OF DIRECT ASSAULT; KNOWLEDGE BY ACCUSED OF POSITION OF AUTHORITY OF PERSON ATTACKED MUST BE ALLEGED. — An information for the crime of direct assault is deficient if it does not allege the essential element of the crime that the accused had *knowledge* of or *knew* the position of authority held by the person attacked, in this case, that of a barrio councilman (and hence the agent of a person in authority under Article 152 of the Revised Penal Code as amended by Republic Act No. 1978). The information must allege that the accused *knew* the *position* of authority held by the offended party although it is not necessary to allege further that the accused also knew that such position is that of a person in authority, since "this is a matter of law."

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RESOLUTION

TEEHANKEE, *J.*:

The petition filed by the provincial fiscal of Quezon on behalf of the People seeks a review on *certiorari* of the "decision" of respondent court dated June 17, 1975, acquitting private respondents as accused in the information filed against them for direct assault upon an agent of a person in authority "not for any other reason than the fact that the information under which they are being tried charges no offense at all."

Honorable Filemon O. Juntereal (now deceased) then presiding judge of respondent court, after summarizing in his "decision" the testimonies of the prosecution and defense witnesses expressly held in his "decision" that.

> "This case need not be decided on the merits of the respective contentions of the prosecution and the defense. No attempt will be made on this point.
>
> "Of importance in this case is the lack of allegation in the complaint or in the information that the offended party was an agent of a person in authority and that such fact was known to the accused. The absence of such allegation is fatal in this case."

and issued his verdict above quoted that the information charges no offense at all.

The trial judge correctly cited *People vs. Austria,* 94 Phil. 900, in support of his action, but failed to follow the correct procedure indicated therein of simply dismissing the information for failure to charge an offense, so that the fiscal could properly file a valid information charging the offense.

Private respondents failed to comment on the petition despite their counsel having requested an extension of time to do so, which expired on September 18, 1975.

The Solicitor General in his comment of November 4, 1915 duly observed that "(I)t is patent that the acquittal of the accused

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herein is not on the merits. There is want of factual finding upon which their conviction or acquittal could have been based."

It need only be observed that contrary to the fiscal's contention, the information was deficient in that it did not allege an essential element of the crime of direct assault that the accused had *knowledge* of or *knew* the position of authority held by the person attacked, *viz.* that of a barrio councilman (and hence the agent of a person in authority under Article 152 of the Revised Penal Code as amended by Republic Act No. 1978).[1]

What was held in *People vs. Balbar*, 21 SCRA, 1119, 1123, cited by the fiscal is that it is sufficient that the information alleged that the accused *knew* the *position* of authority, held by the offended party, in that case a public school teacher, then engaged in the performance of her official duties, and that it is not necessary to allege further that the accused also knew that such position was that of a person in authority, since "this is a matter of law" thus:

"Complainant was a teacher. The information sufficiently alleges that *the accused knew that fact*, since she was in her classroom and engaged in the performance of her duties. He therefore knew that she was a person in authority, as she was so *by specific provision of law. It matters not that such knowledge on his part is not expressly alleged,* complainant's status as a person in authority being a *matter of law* and *not of fact*, ignorance whereof could not excuse non-compliance on his part (Article 3, Civil Code). This article applies to all kinds of domestic laws, whether civil or penal (*De Luna vs. Linatoc*, 74 Phil. 15 and whether substantive or remedial (*Zulueta vs. Zulueta,* 1 Phil. 254) for reasons of expediency, policy and necessity." (emphasis furnished)

Since the "decision" of acquittal was really a mere dismissal of the information for failure to charge an offense and was not a decision on the merits with factual findings as per the trial judge's own disavowal, it is patent that the fiscal's proper course

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[1] See *U.S. vs. Alvear,* 35 Phil. 626; *People vs. Rellin*, 77 Phil. 1038; Vol. II, Padilla's Revised Penal Code 10th Ed., p. 225.

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is not the present petition but the refiling of a valid information against respondents-accused, as herein indicated.

ACCORDINGLY, the petition is dismissed, without prejudice to the refiling of a valid information against respondents-accused as hereinabove indicated.

Makasiar, Esguerra, Muñoz Palma, and *Martin, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-41054. November 28, 1975]

JOSE L. GAMBOA and UNITS OPTICAL SUPPLY COMPANY, *petitioners, vs.* **COURT OF APPEALS and BENJAMIN LU HAYCO,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; COMPLEX CRIMES; INTENTION OF THE CODE. — Article 48 of the Revised Penal Code, as amended by Act No. 4000, provides that "when a *single act* constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." The intention of the Code in installing this particular provision is to regulate the two cases of concurrence or plurality of crimes which in the field of legal doctrine are called "real plurality" and "ideal plurality."

2. ID.; ID.; "IDEAL PLURALITY" DISTINGUISHED FROM "REAL PLURALITY". — There is plurality of crimes or "*concurso de delitos*" when the actor commits various delictual acts of the same or different kind. "Ideal plurality" or "*concurso ideal*" occurs when a single act gives rise to various infractions of law. This is illustrated by Article 48 of the Revised Penal Code: (a) when a single act constitutes two or more grave or less grave