FOURTH JUDICIAL REGION
ORIENTAL MINDORO
BRANCH XXXIX (39)
Calapan City
-oOo-

THE PEOPLE OF THE PHILIPPINES,
Plaintiff

-versus-

RUSTOM SINIBULAN @ KA BOBBY, @ KA BAYANI, @ KA SILANG, @ KA ARTHUR, ETC.
Accused.

CRIM. CASE NO. C-06-8525

-for-

MULTIPLE MURDER AND MULTIPLE FRUSTRATED MURDER

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ORDER

Even before the accused could be arraigned, the following pleadings and counter-pleadings were respectively filed by the contending parties in this case:

1. Motion to Quash/Recall Warrant of Arrest and Motion to Dismiss the Case dated November 3, 2008, filed by counsel for accused Atty. Remigio D. Saladero;

2. Motion to Quash Information and Warrant of Arrest dated November 10, 2008 filed by counsel for accused Karen Ortiz, Dina Capetillo, and Doris Cuario;

3. Motion to Quash/Recall Warrant of Arrest and Motion to Dismiss the Case dated November 17, 2008, filed by counsel for accused Nestor P. San Jose, Sr., Crispin Zapanta, Rogelio Galit, Arnaldo M. Seminiano, and Emmanuel Dionoda;

4. Motion to Quash/Recall Warrant of Arrest and Motion to Dismiss the Case dated November 24, 2008 filed by counsel for accused Luz Baculo, Lucio Amarante, Henry Halawig, Emmanuel Asuncion, Bayani Cambronero, Armando Albarillo, Romeo Revilla, Helen Espinili Asdolo, Pedro "PJ" Santos, Jr., Doris T. Cuario, Romeo E. Legaspi, Rolando C. Mingo, Dina Jean A. Capetillo, Orly E. Marcellana and Agaton Bautista;

5. Consolidated Comment and/or Opposition to the Motion to Quash/Recall Warrant of Arrest and Motion to Dismiss the Case dated November 27, 2008 filed by Assistant Provincial Prosecutor Humilito A. Dolor;

6. Omnibus Motion to Quash Information and Warrants of Arrest dated December 3, 2008 filed by counsel for accused Edwin Egar, Melchor Abesamis, Emmanuel Dioneda and Mario Caraig;

7. Reply to the Prosecution's Consolidated Comment and/or Opposition dated December 8, 2008 filed by Atty. Remigio D. Saladero, Jr. himself;

8. Supplemental Reply to the Prosecution's Consolidated Comment and/or Opposition dated December 9, 2008 filed by counsel for accused Atty. Remigio D. Saladero, Jr.;

9 Reply to the Prosecution's Consolidated Comment and/or Opposition dated December 11, 2008 filed by counsel for accused Nestor P. San Jose, Sr., Crispin Zapanta, Rogelio Galit, Arnaldo M. Seminiano and Emmanuel Dioneda;

10. Motion to Quash/Recall Warrant of Arrest and Motion to Dismiss the case dated December 18, 2008 filed by counsel for accused Renato Alvarez, Karen Ortiz, Sheryll Villegas, Joel Castro, Garizaldy Constantino, Samuel Dizon, Revelina Bayona and Amelita Sto. Tomas;

11. Comment and/or Opposition to the Motion to Quash/Recall Warrant of Arrest and Motion to Dismiss the Case dated December 19, 2008 filed by Assistant Provincial Prosecutor Humilito A. Dolor;

12. Consolidated Comment and/or Opposition (To: Motion to Quash/Recall Warrant of Arrest and Motion to Dismiss the Case, dated January 28, 2009, filed by Assistant Provincial Prosecutor Humilito A. Dolor;

The arguments contained in the pleadings separately filed by the accused through their respective counsels, which are mostly repetitive, verbose and longwinded statements, are substantially of the following tenor:

a. *No preliminary investigation was conducted in this case in serious violation of the constitutional right to due process of the accused.*

b *The Amended Information is a patent nullity for there was no hearing on the motion to admit Amended information;*

c. *The information, on its face, is a patent nullity. The trial court did not acquire jurisdiction over the multiple murder and multiple frustrated murder case.*

From the foregoing reasons, the accused are one in praying that the Court declare the warrants of arrest issued against them as void *ab initio* and that the instant case be dismissed.

On the other hand, the government prosecutor demurred and insisted that contrary to the allegations of the accused, a preliminary investigation was indeed conducted prior to the filing of the instant case in Court and that all the accused were validly arrested by virtue of validly issued warrants of arrest. Moreover, the government prosecutor stressed that there is sufficient evidence to establish probable cause against all of the accused.

I.

Anent the ***first issue***, the defense argues that since no preliminary investigation was conducted by the government prosecutor, the constitutional rights of the accused were blatantly violated and disregarded. Hence, the proceedings had in this case, including the issuance of the warrant of arrest against the accused, are all null and void.

This Court is not persuaded.

Elementary is the rule that lack of preliminary investigation is not a ground to quash or dismiss a complaint or information. Much less does it affect the Court's jurisdiction. The absence of a preliminary investigation does not affect the court's jurisdiction over the case nor impair the validity of the information or otherwise render it defective. The remedy of the accused in such case is to call the attention of the court to the lack of a preliminary investigation and demand, as a matter of right that one be conducted (*Orquinaza v. People*, G.R. No. 165596, November 17, 2005).

In this case, granting *arguendo* that no preliminary investigation was conducted by the government prosecutor prior to the filing of the information before the Court, the accused could not use this deficiency as a ground to dismiss the amended information. As suggested by *Orquinaza*, what the accused should have done in this case is to file with the Court the

appropriate pleading to apprise the same of the lack of a preliminary investigation and pray that one be conducted in accordance with the Rules. In this connection, Section 7, Rule 112, last paragraph thereof, provides that if the case has been filed in Court without a preliminary investigation having been conducted, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation. The five-day period to file the motion for preliminary investigation is mandatory, and an accused is entitled to ask for preliminary investigation by filing the motion within the said period. The failure to file the motion within the five-day period amounts to a waiver of the right to ask for preliminary investigation. Unfortunately for the accused in this case, the five-day reglementary period provided by the Rules already lapsed without the defense filing the necessary pleading.

II.

On the *second issue*, the defense capitalizes on the alleged lack of hearing on the motion to admit Amended Information filed by the prosecution. The defense further advances that since the motion to admit amended information was not set for hearing, the accused were not duly notified at all of the amendment, which violated their right to due process.

Section 14, Rule 110 of the Rules of Court provides:

> ***"Amendment or substitution.—A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea x x x.***
>
> ***However, an amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.***
>
> ***x x x."***

Perusal of the amended information filed by the government prosecutor would show that the same was filed before the accused were arraigned. It neither downgraded the nature of the offense as charged in the original information nor did the amended information exclude any accused from the information. On the contrary, the original information was amended by the government prosecutor in order to disclose the true names of the accused who were described as "*John Does*" in the original

information. Hence, in accordance with the Rules, the motion to admit amended information filed by the government prosecutor need not be set for hearing for the simple reason that leave of court is not required when the filing of an amendment to an information is a matter of right, as in this case.

However, the defense stressed in their pleadings that what should be made applicable instead is the second paragraph of said Section, which requires that a motion be filed by the government prosecutor, with notice to the offended party, and with leave of court. According to the defense,

> "x x x *However, the second paragraph thereof provides the exception, which is, amendment may only be made before plea upon motion of the prosecutor, with notice to the offended party and with leave of court when the amendment downgrades the nature of the offense charged or excludes any accused from the information. In this case, amendment must be with leave of court, meaning that the motion must be set for hearing, and the offended party must be notified thereof.*
>
> *By parity of reasoning, the second paragraph should likewise apply where the amendment seeks to include an accused not included at all in the original information, such as in the instant case. If exclusion of an accused from an information requires notice to the offended party, with more reason should such notice be given to the person sought to be included as accused in an amended information, so that he could adequately prepare for whatever legal remedies he can avail of under existing laws. Any such notice will only be effective if the motion to admit amended information is set for hearing.*"

Again, this Court is not persuaded.

Mere reading of the entirety of Section 14, specifically the second paragraph thereof, would readily show that the above position of the defense is rather misplaced. *First*, it has already been held that the inclusion of additional names as accused in an information falls under the category of a formal amendment and the same can be done without causing prejudice to the rights of the accused although no leave of court was secured by the government prosecutor beforehand (*Nanzan v. People of the Philippines, etc.*, CA-G.R. S.P. No. 100409). *Second*, the safeguards embodied in the second paragraph of Section 14, which requires that the downgrading of the nature of the offense charged or the exclusion of any accused from the complaint or information be made only upon motion by the prosecutor, with notice to the offended party and with leave of court,

rights of the offended party, who would definitely be prejudiced as a result of such kinds of amendments. This conclusion is further supported by the last part of said paragraph which provides that *"[t]he Court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, **especially the offended party*** (Emphasis supplied)." On the other hand, in cases where the nature of the offense charged is upgraded or when additional names are included as accused in an amended information, the rights of the offended party would not be prejudiced in the same manner as contemplated under the situations cited in the second paragraph of Section 14. Moreover, if the Court were to follow the reasoning of the defense that "x x x *notice be given to the person sought to be included as accused in an amended information, so that he could adequately prepare for whatever legal remedies he can avail of under existing laws,*" the same would lead to an absurd result, *i.e.*, a motion for admission should always be filed by the prosecution and that the same should be heard first before ANY further proceeding on an information could be held in Court! Of course, this cannot be the intention of the Rules. The conduct of a preliminary investigation prior to the filing of an information already provides ample protection to the rights of the accused. And as discussed earlier, the Rules provide effective remedies in favor of the accused in cases wherein no preliminary investigation was conducted by the government prosecutor prior to the filing of the information before the Court. *Third*, had the framers of the Rules really intended the second paragraph of Section 14 to cover situations in which the name of another accused is included in the amended information, they could have easily provided so. But as the said paragraph is presently worded, it appears that they had not. Under the legal maxim in statutory construction of ***EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS***, the express mention of one thing in a law, as a general rule, means the exclusion of others not expressly mentioned. Hence, with the present situation not falling under the circumstances contemplated by the second paragraph of Section 14, the argument of the accused that since exclusion of an accused from an information requires notice to the offended party, with more reason should such notice be given to the person sought to be included as accused in an amended information, deserves no consideration at all.

III.

Under the Constitution, an accused has the right to be informed, before trial, of the nature of the offense with which he or she is

charged. Regardless of how conclusive and convincing the evidence of guilt may be, there can be no conviction, unless the offense is charged (or is necessarily included) in the complaint or information (*People of the Philippines v. Manalili*, G.R. No. 121671, August 14, 1998). Corollary to this right, the Rules of Court requires that a complaint or information must charge but one offense.

Section 13, Rule 110 of the Rules provides:

> ***"Duplicity of the offense.—A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses."***

As explained by jurisprudence, the purpose of this rule is to give the accused the necessary knowledge of the indictment to enable him to prepare his defense. The State should not heap upon the accused two or more charges in one complaint or information which might confuse him in his defense.

Complementing the above Rule is Section 3, Rule 117, which provides as follows:

> ***"Grounds.—The accused may move to quash the complaint or information on any of the following grounds:***
>
> *x x x*
>
> ***(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law.***
>
> ***x x x."***

In this case, perusal of the Amended Information would indubitably show that the accused are being charged for multiple murder and multiple frustrated murder involving six (6) different individual victims. The conclusion is therefore inescapable that each act of murder and frustrated murder should have been charged in separate informations in order to avoid duplicity considering that the crimes allegedly committed cannot be covered by Article 48 of the Revised Penal Code (*People v. Pacificador*, G.R. No. 126515.

of the accused, "*the prosecution is in effect charging herein accused x x x with three murders and three frustrated murders of six individual victims named in the Information, in only one amended information, in flagrant disregard of the above-cited proscription by the Rules.*"

A C C O R D I N G L Y, in view of the foregoing, the Amended Information in the above-entitled case is hereby ordered **QUASHED.**

The immediate release of the accused who are presently detained at the Oriental Mindoro Provincial Jail (OMPJ) in connection with this case are hereby ordered unless they are being held for other charge/s for which they have not posted the necessary bail.

Costs *de officio.*

SO ORDERED.

City of Calapan, February 5, 2009.

MANUEL C. LUNA, JR.
Judge