Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, **Appellee,**	**G.R. No. 201572**
	Present:
-versus-	CARPIO, *J.*, Chairperson BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
RAEL DELFIN, **Appellant.**	Promulgated: JUL 09 2014

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DECISION

PEREZ, *J.*:

This is an appeal[1] assailing the Decision[2] 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:

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1 By way of an ordinary appeal pursuant to Section 3(c) of Rule 122 of the Rules of Court.

2 The decision was penned by Associate Justice Normandie B. Pizarro for the Seventh (7th) Division of the Court of Appeals with Associate Justices Amelita G. Tolentino and Rodil V. Zalameda concurring; *rollo*, pp. 2-14.

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.[3] The information reads:

> That on or about the 27th 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.
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> CONTRARY TO LAW.[4]

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:[5]

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.

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3 The case was docketed as Criminal Case No. 24311-MN and was raffled to Branch 170.
4 CA *rollo*, p. 7.
5 TSN, 5 September 2006.

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*,[6] 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[7] and a certain Rene Villanueva (Rene).[8]

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 27th; and returned to shore at 4:00 p.m. of 27 September 2000—not the 28th. 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[9] finding appellant guilty beyond reasonable doubt of the offense of murder under Article 248(1) of the RPC.[10] Based on its assessment and evaluation of the evidence on record, the RTC was convinced that it was the appellant who killed

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6 Records, pp. 99-101.
7 TSN dated 21 October 2008.
8 TSN dated 25 November 2008.
9 CA *rollo*, pp. 124-128. The decision was penned by Judge Hector B. Almeyda.
10 A**rt. 248**. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:
1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. x x x.

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 ₱50,000.00 and another ₱50,000.00 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 ₱50,000.00 consequential damages and replaced it with an award of ₱50,000.00 moral damages.[11] 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 27th 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

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11 CA *rollo*, p. 194.

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:[12]

> **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.
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> When an offense is committed by more than one person, all of them shall be included in the complaint or information.
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> **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.[13] In such cases, the erroneous allegation in the information is just deemed supplanted by the evidence presented during the trial[14] or may even be corrected by a formal amendment of the information.[15]

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12 Rules of Court, Rule 110, Sections 6 and 11.

13 *Rocaberte v. People*, G.R. No. 72994, 23 January 1991, 193 SCRA 152, 156.

14 *U.S. v. Cardona*, 1 Phil. 381, 383 (1902).

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

> **Section 14**. *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. **After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused**.
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> However, any 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.

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*.[16]

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:
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> > "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**

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (Emphasis supplied).

16 98 Phil. 698 (1956). Reiterated in *People v. Hon. Reyes*, 195 Phil. 94, 100-101 (1981).

> **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**.
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> "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*."
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> 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 prepare 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**."[17] (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*[18] of the Office of the City Prosecutor of Malabon-Navotas sub-station and the *Sworn*

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17 *People v. Opemia*, id. at 700-701.

18 Records, p. 5.

Statement[19] of Joan) all referred to the murder as having been committed on that date. Indeed, appellant never objected to such evidence during the trial and was even able to concoct an intelligent *alibi* in direct refutation thereof.

What clearly appears to this Court, on the other hand, is that the inaccurate allegation in the information is simply the product of a mere *clerical error*. This is obvious from the fact that, while all its supporting documents point to the murder as having been committed on the 27th of *September* 2000, the information's mistake is limited only to the *month* when the crime was committed.[20] Such an error is evidently not fatal; it is deemed supplanted by the evidence presented by the prosecution.

Hence, we sustain the information for murder, under which the appellant was tried and convicted, as valid.

Appellant's Defense of Alibi Unavailing; Appellant Properly Convicted of Murder

We also find unavailing the appellant's insistence on the credibility of his *alibi*. On this point, we quote with approval the following discourse of the CA, which we find to be consistent with time-honored jurisprudence:[21]

> Time and again, it has been stressed that the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight is given high respect, if not conclusive effect, unless it is ignored, misconstrued, misunderstood, or misinterpreted cogent facts and circumstances of substance which, if considered, will alter the outcome of the case.[22]
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> As correctly found by the trial court, the testimony of prosecution witness, Joan, was clear, candid, straightforward, positive and credible, as against the denial and alibi of the [appellant]. She positively identified the [appellant] as the perpetrator of the crime. x x x.
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> It should be emphasized that the testimony of a single eye-witness, if positive and credible, is sufficient to support a conviction even in a charge of murder.[23] Considering that Joan's account of how the

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19 Id. at 3.

20 *See* analogous cases in *People v. Rivera*, 144 Phil. 687, 692 (1970) and *U.S. v. Ramos*, 23 Phil. 300, 307 (1912).

21 *Rollo*, pp. 9-11.

22 See *People v. Quigod*, G.R. No. 186419, 23 April 2010, 619 SCRA 407, 416-417.

23 See *People v. Zeta*, 573 Phil. 125, 145 (2008).

> [appellant] killed [Emilio] was clear, credible, and positive, there is, thus, no compelling reason to disturb the trial court's reliance on her testimony.
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> As to the [appellant's] defense of denial and alibi, the same are unavailing and worthless in the face of the positive identification by the prosecution's witness x x x.
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> x x x. Moreover, for the defense of alibi to prosper, it must be proven that the [accused] was at some other place at the time the crime was committed and that it was physically impossible for him to be at the *locus criminis* at the time [the offense was committed].[24] x x x.
>
> At bench, the [appellant] has not shown the impossibility of his committing the crime as even, Rene, the witness who was supposed to corroborate his alibi, admitted that they went back home at 4:00 o'clock in the morning of September 27, 2000 and were already at Navotas City at the time the incident occurred. Thus, it was certainly possible for him to be present at the crime scene despite his allegations to the contrary. Hence, based on all the foregoing evidence, he is, without a doubt, the perpetrator of the crime.

Anent the appreciation of the qualifying circumstance of treachery against the appellant, we find it to be fully justified by the evidence on record. Again, we approve of the CA's observations on this matter:

> Concededly, the [appellant's] attack on the unarmed [Emilio] was sudden, unprovoked, unexpected and deliberate. Before the attack was made, [Emilio] was merely conversing with another on the phone. He was undoubtedly in no position and without any means to defend himself. By all indications, [Emilio] was left with no opportunity to evade the gunshots, to defend himself, or to retaliate. For this reason, the [RTC] correctly appreciated treachery as a circumstance to qualify the offense as Murder.[25]

All in all, we find no error in the conviction of the appellant.

Recoverable Damages

In line with prevailing jurisprudence,[26] we increase the amount of civil indemnity and moral damages payable by the appellant from ₱50,000.00 to ₱75,000.00.

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24 See *People v. Bucayo*, 577 Phil. 355, 361 (2008).
25 *Rollo*, p. 12.
26 *People v. Lopez*, G.R. No. 184596, 24 March 2014.

In addition to the foregoing, we require the appellant to also pay exemplary damages in the amount ₱30,000.00.[27]

The civil indemnity, moral damages and exemplary damages payable by the appellant are subject to interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid.

WHEREFORE, premises considered, the Decision dated 29 August 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04160 is hereby **AFFIRMED** with the following **MODIFICATIONS**: (1) that the amount of civil indemnity is increased from ₱50,000.00 to ₱75,000.00; (2) that the amount of moral damages is increased from ₱50,000.00 to ₱75,000.00; and (3) that the appellant must pay, in addition to civil indemnity and moral damages, exemplary damages in the amount of ₱30,000.00. The civil indemnity, moral damages and exemplary damages payable by the appellant are subject to interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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27 *People v. Dadao*, G.R. No. 201860, 22 January 2014.

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice