

[G.R. No. 238. April 12, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LEON BALLESTEROS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

This case comes before us in consultation. The defendant, Leon Ballesteros, was prosecuted for nine crimes of *estafa*, and by the judgment of April 9, 1898, was convicted of eight crimes of consummated *estafa* and one crime of frustrated *estafa*. For each of the consummated crimes he was condemned to two months and one day of *arresto mayor*, and for the frustrated crime to pay a fine of 150 pesetas, with the accessories, and to the return of the money obtained by the *estafa* to each one of the persons injured, and in case of failure to pay the indemnification and the fine to suffer subsidiary imprisonment within the period allowed by law. The department of public prosecution asked that the judgment be affirmed, but that the duration of the penalties imposed upon the defendant for the eight crimes of *estafa* should not exceed the triple duration of one of the penalties, under the provisions of rule 2 of article 88 of the Penal Code. It is necessary for us, therefore, to pass upon the question raised by counsel for the Government under the provisions of section 50 of General Orders, No. 58, and the general penal law.

Under the provisions of rule 2 of article 88 of the Penal Code above cited the judgments consulted should be affirmed, but the maximum penalty to be suffered by the defendant for the eight consummated crimes of *estafa* must not exceed three times the duration of one of them, to wit, six months and three days of *arresto mayor*. The fine must be 325 pesetas, the minimum of this punishment as a correctional penalty, but without subsidiary imprisonment in case of insolvency or in case of failure to pay the indemnity to the persons injured, inasmuch as the amounts obtained by the *estafa* did not exceed 12 1/2 pesetas from each. The costs of both instances will be assessed against the accused and the case will be

returned to the court below, with a certified copy of this decision, for compliance therewith.
So ordered.

Arellano, C. J., Cooper, Willard, Mapa, and Ladd, JJ., concur.

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