

44 Phil. 275

[G. R. No. 19603. December 29, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
CATALINO TEVES, DEFENDANT AND APPELLANT.**

D E C I S I O N

OSTRAND, J.:

The defendant is accused of the crime of falsification of public documents, the information alleging:

“That on or about the period between January 1st and April 30th, 1921, in the municipality of Dumaguete, Province of Oriental Negros, P. I., and within the jurisdiction of this court the said accused being the warden of the provincial prison of this province did at that time and place wilfully, unlawfully and feloniously commit the crime of falsification of public documents by making an untruthful statement of facts and by simulating the intervention of persons who had not intervened in various public documents, to wit: In the provincial voucher No. 350 of February, 1921; in the provincial voucher No. 724 of March, 1921; and in the provincial voucher No. 1075 of April, 1921; stating therein facts which were not true, by means of which falsification the accused made it appear and simulated that he had purchased from a Chinese person, Tan Juanco, of Dumaguete on the aforesaid dates and place and under the provincial voucher No. 350, 1,170 liters of rice-corn at P0.13 per liter and 122 gantas of beans at P0.75 a ganta, for the amount of P236.10; under provincial voucher No. 724, 150 liters of rice-corn at P0.13 a liter, 75 gantas of beans at P0.75 a ganta, 65 kilos of dry fish at P0.73 a kilo, and two sacks of sugar at P6.90 a sack, for the sum of P254.12; and under the provincial voucher No. 1075, 138 gantas of beans at P0.70 a ganta, 85 kilos of dry fish at P0.66 a kilo and a sack of salt at P4 a sack, for the sum of 3P155.85; when as a matter of fact the aforesaid accused had

bought from said Tan Juanco only 114 gantas of rice-corn on January 8, 1921, for the sum of P80; that by means of said falsification the accused succeeded in collecting from the Government P566.07 more than he was entitled to, manifestly contrary to law.”

As will be seen, the information charges three separate offenses but the defendant did not demur to it, or object, and under the doctrine established in the case of United States vs. Balaba (37 Phil., 260), he must be considered to have waived the right secured to him under section 21 of General Order No. 58. The trial court found him guilty on all three counts and, taking into consideration the aggravating circumstance of having taken advantage of his position as a public functionary, sentenced him to suffer ten years and one day of *prision mayor* and to pay a fine of 250 *pesetas* for each offense; to indemnify the provincial treasury of Oriental Negros in the sum of P566.07, to be perpetually disqualified for public office and to pay the costs. From this judgment he appeals and presents six assignments of error.

The first assignment is to the effect that the trial court erred in taking into consideration the aggravating circumstance that advantage was taken by the defendant of his public position. This point is well taken; the defendant was convicted under article 300 of the Penal Code which prescribes the penalty of *prision mayor* and a fine for “any public officer, employee or notary who, by taking advantage of his official position, shall be guilty of falsification of a document.” The taking advantage of official position being a necessary element of the crime, it cannot, of course, also be taken into consideration as an aggravating circumstance. The penalty imposed by the court below must, accordingly, be reduced to that of the medium of *prision mayor*, there being no aggravating or extenuating circumstance.

The second error assigned is that the court erred in convicting the accused of three separate offenses in the same judgment, the penalty imposed thus resulting disproportionate to the crime. This assignment is without merit; in the case of United States vs. Balaba, *supra*, this court held (quoting syllabus) : “The accused having made no objection to the information on the ground that it charged more than one offense, the prosecution properly submitted evidence as to the commission of each and all of the offenses charged; and the court properly entered judgment of conviction of each and all of these offenses which were established by the introduction of competent evidence at the trial, and should, thereupon, have imposed the prescribed penalties for each and all of the offenses of which the accused was convicted in accord with the provisions of article 87 of the Penal Code.”

The penalty which we must impose upon the defendant may seem severe, but it is that prescribed by law and its measure does not lie within the discretion of the court; for his relief by way of a reduction of the penalty, recourse must be had to a petition for executive clemency.

The remaining assignments of error relate to the admissibility of certain documents offered by the prosecution and objected to by the defense principally on the ground that they were not properly certified or authenticated. Standing alone, the documents might be of doubtful admissibility, but taken in connection with the oral evidence they were, in our opinion, properly admitted.

With the sole modification that the term of imprisonment imposed by the lower court be reduced from ten years and one day to eight years and one day of *prision mayor* for each of the three offenses charged in the information, the judgment appealed from is affirmed, with the costs against the appellant. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.