

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ESTELA ROMUALDEZ AND LUIS MABUNAY, DEFENDANTS AND APPELLANTS.

G. R. No. 31012. September 10, 1932

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from the following decision of the Honorable E. P. Revilla, Judge of the Court of First Instance of Manila:

"Estela Romualdez and Luis Mabunay are charged with the crime of falsification of public and official documents, committed, according to the information, as follows:

" 'That in or about the month of February, 1927, in the City of Manila, Philippine Islands, the accused Estela Romualdez, who, by appointment of the Supreme Court of the Philippine Islands, was then taking part in the discharge of public functions as secretary to the Honorable Norberto Romualdez, one of the Justices of the Supreme Court, and by reason of said duty had under her care the compositions and other papers and documents having reference to the examinations for the admission of candidates to the bar held in the months of August and September, 1926, which were then kept in the archives of the said court, confabulating with her coaccused, Luis Mabunay, and acting in common accord with him, who was then one of the candidates who took the said Bar Examinations, willfully, illegally, and criminally extracted from the said archives of the Supreme Court certain public and official documents, to wit: the compositions, which were written, prepared and submitted by the accused, Luis Mabunay, in that examination. Once in possession of the same, the said accused Estela Romualdez and Luis Mabunay, conspiring together and acting in common accord, willfully, illegally and criminally erased the grade of fifty-eight (58%) given by the correctors Alfonso Felix and M. Guevara to the composition in Remedial Law, which was written and prepared by the accused Luis Mabunay, and in its place wrote sixty-four (64%); and also erased the grade of sixty-three (63%) given by correctors Jeronimo Samson and Amado del Rosario to the composition in Civil Law written and prepared by the said Luis Mabunay, and in its place wrote seventy-three (73%), and by means of these alterations the said accused Estela Romualdez and Luis Mabunay were able to change the relative merits of those compositions, thereby attributing to the said correctors, statements and declarations contrary to what they really made, and the accused Estela Romualdez and, Luis Mabunay thus succeeded by means of the falsifications made by them in the aforesaid public and official documents in making it appear that Luis Mabunay obtained the general average required by the rules of the Supreme Court, and in securing the latter's admission to the practice of law, as in fact he was admitted, to the great prejudice of the public'

"Upon arraignment the accused pleaded not guilty.

"Both the prosecution and the defense produced an abundance of evidence, oral and documentary, the presentation of which consumed considerable of the court's time.

"UNDISPUTED FACTS

"There is no question whatsoever as to the following facts which are not disputed either by the prosecution or by the defense:

"The accused Estela Romualdez was appointed upon the recommendation of Justice Norberto Romualdez of the Supreme Court of the Philippine Islands as his secretary on November 1, 1921, and continued as such until September 15, 1928.

"The accused Luis Mabunay was one of the candidates duly admitted to the bar examinations held in 1926.

"The clerk of the Supreme Court, Mr. Vicente Albert, who was appointed to that office on July 11, 1912, acts every year as the secretary ex officio of the examination committee for admission to the bar.

"The Supreme Court of the Philippine Islands designated Justice Norberto Romualdez as chairman of the examination committee for admission to the bar in the year 1926, and upon recommendation of Clerk Vicente Albert, he appointed the following as members of the examination committee, with their respective subjects: Attorney Francisco Ortigas, Civil Law; Judge Vicente Nepomuceno, Mercantile Law; Attorney Godofredo Reyes, Criminal Law; Judge Jose Abreu, Remedial Law; Attorney C. A. DeWitt, International Law; Attorney-General Delfin Jaranilla, Political Law; and Attorney Carlos Ledesma, Legal Ethics.

"Upon recommendation also of clerk of court Mr. Vicente Albert, a committee of correctors was appointed, composed of the following attorneys: Amado del Rosario, Assistant Director of Civil Service, and Jeronimo Samson, deputy clerk of the Supreme Court, as correctors in Civil Law; Rafael Amparo, Secretary of Justice Johnson, and Fulgencio Vega, Secretary of Justice Malcolm, as correctors in Mercantile Law; Cecilio Apostol, Assistant City Fiscal, and Remo, of the Bureau of Audits, as correctors in Penal Law; Marciano Guevara, of the Bureau of Audits, and Alfonso Felix, Assistant City Fiscal, as correctors in Remedial Law; Juan Lantin, of the Executive Bureau, and the accused Estela Romualdez, as correctors in Political Law; Rufino Luna, of the Executive Bureau, and Zoilo Castrillo, of the Bureau of Lands, as correctors in International Law; and Anatolio Mafialac, of the Bureau of Lands, and Jeronimo Samson, as correctors in Legal Ethics. On account of illness, Mr. Remo was substituted by Jeronimo Samson as corrector in Penal Law. All said correctors were designated by clerk of court Albert with the approval of the chairman of the examination committee.

"The work of the members of the examination committee was limited to the preparation of the questions in their respective subjects and of a memorandum or note of the articles, legal provisions and jurisprudence showing the sources from which the questions were taken. The work of reviewing and grading the compositions was entrusted to the correctors designated for each subject. Each corrector was furnished with this note or memorandum, and a set of rules, patterned after those of the Civil Service, was prepared by corrector Amado del Rosario to guide the correctors in grading the examination papers.

"The correctors worked separately in reviewing and grading the papers on the subject assigned to them, noting the grades given to each answer, not on the composition, but in a separate note book, which were later checked with the grades given by the other corrector in the same subject, for the purpose of determining the general average to be given to the composition.

"The report of the examination committee on the final result of the bar examination for the year 1926 was submitted, under date of March 2, 1927, to the Supreme Court and was published on the fifth of said month. In the list of successful candidates (Exhibit C-5) there appeared the name of candidate Luis Mabunay with a general average of 75 %. The grades of Mabunay in each subject, according to the list Exhibit C-2, which was prepared after the publication of the result of the examination, are: 73 in Civil Law, 77 in Mercantile Law, 69 in Penal Law, 76 in Political Law, 86 in International Law, 64 in Remedial Law, 80 in Legal Ethics and Practical Exercises. However, a later revision of the composition of Luis Mabunay showed that the grades of seventy-three (73) in Civil Law (Exhibit B-1), and sixty-four (64) in Remedial Law (Exhibit B-2) had been

written on the first page of said compositions after striking out the grades of sixty-three (63) theretofore given to the composition in Civil Law, Exhibit B-1, and fifty-eight (58) theretofore given to the composition in Remedial Law, Exhibit B-2. The investigation of this irregularity by the City Fiscal of Manila led to the filing of the information in this case.

"Admission of the accused Estela Romuladez

"Before the prosecuting attorney had finished presenting his evidence tending to show the identity of the person who altered the grades appearing on the first pages of the compositions Exhibits B-1 and B-2, the accused Estela Romualdez spontaneously and with the conformity of her attorneys made of record an admission as follows (p. 395, s. n.):

" 'In Exhibit B-1 the words seventy-three and the figures 73 % inclosed in parenthesis are in my regular handwriting, and in Exhibit B-2 the words sixty-four and the figures 64 fo inclosed in parenthesis appearing in said composition are also in my regular handwriting.'

"Authority of the accused Estela Romualdez to alter or change the grades

"In view of the admission made by the accused Estela Romualdez that she was the person who wrote on the compositions Exhibits B-1 and B-2 the words and figures alleged to have been falsified, it now appears that the burden of establishing the authority under which said changes and alterations were made is on the accused. On this point the evidence for the defense tended to show that the accused Estela Romualdez, both in her capacity as private secretary of the chairman of the examination committee and as corrector and at the same time supervisor of the correctors, was authorized by said chairman to revise the compositions already reviewed by the other correctors and to change the grades given by them.

"Justice Romualdez, testifying as a witness for the defense, said that he considered the accused Estela Romualdez and Deputy Clerk Samson as supervisors of the correctors; and explaining the powers of the former he said (page 721, 8. n.):

" 'As such supervisor I think there was an occasion when I gave her to understand that in order to do justice to the compositions, she could review the compositions already graded by the other correctors; provided, I want to add, that the new revision was done in order to do justice to the compositions and before the names of the candidates were known.'

"Referring to the alterations made by the accused Estela Romualdez of the grades given by the corresponding correctors to compositions Exhibits B-1 and B-2, this same witness testified that said alterations were made within the limits of the powers he had given to said accused (pages 723, 726, s. n.).

"For her part the accused Estela Romualdez, testifying as a witness in her own behalf, said that the chairman of the examining committee, gave her to understand that she 'was authorized to correct any composition in any subject' in the bar examinations of the year 1926 and that she had never corrected any composition after the name of the corresponding candidate was identified (pages 782, 783, s. n.). She denied having known Luis Mabunay, and said that the first time she saw him was on the first day of the trial of this case (page 783, s. n.).

"Contention of the Prosecuting Attorney

"The contention of the prosecuting attorney with respect to the accused Estela Romualdez may be summarized in two following propositions: 1st-that Justice Romualdez, as chairman of the examination, committee, did not have authority to delegate to his secretary, the accused Estela Romualdez, the power to revise compositions in subjects in which she was not a corrector and which had already been graded by the other correctors, and much less the power to alter or change the grades given to and written on said compositions; and 2nd-that granting that the chairman of the examination committee had such authority, the accused Estela Romualdez did not exercise the same in the manner prescribed by said chairman, namely, in order to do justice to the compositions

and on the condition that the revision and the changes of grades should be made before the names of the candidates, to whom the compositions belonged, were known.

"In support of the first proposition, the prosecuting attorney maintains that Justice Romualdez was appointed by the Supreme Court as chairman of the bar examination committee of the year 1926, so that he would supervise the examinations in accordance with law and the rules, and that precisely, in accordance with the rules the chairman can not by himself exercise the individual powers of the committee, among which were the powers to review, and to change or alter the grades given to the compositions.

"As to the second proposition, the prosecuting attorney maintains that the evidence adduced by the prosecution, specially the testimony of the Deputy Clerk Samson, shows that the accused Estela Romualdez made the changes in the grades given by the correctors to compositions Exhibits B-1 and B-2, in order to favor the accused Luis Mabunay, to whom she knew said compositions belonged, thus violating the conditions imposed upon her by the chairman of the examination committee when she was given said authority.

"As to the accused Luis Mabunay, the prosecuting attorney also maintains that the evidence for the prosecution shows that he was in connivance with the accused Estela Romualdez in the alteration by the latter of his grades in Civil Law and Remedial Law for the purpose of raising to 75 % the general average of 72.8 which he had obtained.

"Theory of the Defense

"In reply to the contention of the prosecuting attorney, the defense argues that the power of supervision given by Justice Romualdez to his secretary, the accused Estela Romualdez, is not contrary to law, rules or precedents. This assertion is based on the testimony of said Justice that the appointment of a committee of attorneys in accordance with section 2 of the rules had not been followed by the Supreme Court for a number of years prior to 1926, and that when said court designated Justice Romualdez as chairman of the examination committee without designating the examiners, it left that function to said chairman, and conferred upon him ample powers to do what in his judgment was most in line with justice and the law, and that no Court of First Instance has jurisdiction to determine the propriety or illegality of the procedure employed by the chairman of the examination committee, or of the powers conferred by him upon his secretary, inasmuch as said chairman was responsible only to the Supreme Court for his acts.

"The defense also claims that the accused Estela Romualdez could not have known to whom compositions Exhibits B-1 and B-2 belonged at the time of making the alteration of the grades appearing on the first pages thereof, because, according to the testimony of said accused, corroborated by that of Catalina Pons, who was one of those who helped in the preparation of the list of candidates Exhibit C-1, the envelopes containing the names and the identification numbers of the candidates were opened just one day before the publication of the result of the examination, and that in order to finish this work and to place the names of the candidates on said list, they had to work continuously from 8 o'clock in the morning until 8 o'clock in the evening on the day prior to the publication of the result of the examinations.

"Considerations on the evidence and contentions of both parties

"Upon an examination of the testimony of Justice Romualdez, as a witness for the defense, the court finds that the accused Estela Romualdez, as secretary of the chairman of the examination committee, and Jeronimo Samson, as deputy clerk of the Supreme Court were considered by said chairman not only as correctors in the subjects assigned to them but also as supervisors of the correctors (page 721, s. n.), both of them with equal powers and authority so that neither could consider himself superior to the other (page 727, s. n.). It appears, however, that while the chairman of the committee gave his secretary, the accused Estela Romualdez, to understand that she 'was authorized to revise the compositions already graded by the other correctors provided the new revisions were made for the purpose of doing justice to the compositions and that the same were made before the names of the candidates were known' (pages 721, 722, s. n.), he did not do the same with respect to

Deputy Clerk Jeronimo Samson, to whom he said nothing about this matter (page 768, s. n.). It also appears that the accused Estela Romualdez had never informed the chairman of the committee about the corrections or alterations made by her in compositions Exhibits B-1 and B-2; neither did the latter examine said compositions to determine whether or not their merits justified the changes so made, and he only knew of said changes upon the filing of the information against his said secretary (page 728, s. n.). For her part, she made no report to the chairman of the examination committee of any error or injustice committed by any corrector, and she only told him during the progress of the work of grading the papers that they were being graded very strictly and that 'she feared that some injustice might be committed' (page 729, s. n.), and for that reason Justice Romualdez told his secretary, Estela Romualdez, that 'should a case of the kind come to her knowledge, she should take special notice of the same in order to do justice,' that is to say, if any person should bring to her attention any such case in which, in her opinion, some injustice had been committed, she was authorized to put things in order (page 781, s. n.) and the revision in such cases was left to the judgment of his secretary (page 780, s. n.).

"The powers conferred in the manner above stated, by Justice Romualdez as chairman of the examination committee upon his secretary, Estela Romualdez, gave her so ample a discretionary power of supervision that in its exercise she could act independently, not only of the correctors and of her cosupervisor Jeronimo Samson, but also of the examination committee. Now, granting that Justice Romualdez, as chairman of the committee appointed by the Supreme Court to conduct the bar examinations of 1926, was authorized to confer such power of supervision upon his secretary Estela Romualdez, in what manner did she exercise that power when she made the changes in the compositions in question?

"The accused Estela Romualdez who, according to her own admission, made the alterations of the grades originally given by the correctors to compositions of Exhibits B-1 and B-2, is the only person who could give an account of and explain the circumstances under which said alterations were made. But said accused, testifying as a witness in her own behalf, was not able to explain how and under what circumstances she made those alterations. When pressed by the fiscal during the cross-examination to state the circumstances under which she came across those compositions Exhibits B-1 and B-2 the accused Estela Romualdez said: 'If I were to make any statement with reference to the circumstances under which I came across these compositions, you would compel me to tell a lie, because I do not really remember' (page 823, s. n.). Neither does the accused remember why she did not put her initials under or at the side of those alterations she made on compositions Exhibits B-1 and B-2, limiting herself to say, when she saw the other compositions (Exhibits 3-1, X, X-1 and X-2) bearing her initials which were exhibited to her by the fiscal, that she placed her initials on said compositions because she graded them as corrector, and she did not put her initials on compositions Exhibits B-1 and B-2 because she revised them in her capacity as supervisor (pages 824- 832, s. n.). She also said that, as corrector, she had instructions to put her initials when writing the original grade on any composition, but as supervisor 'she was under no obligation' to put her initials (page 830, s. n.) and that the chairman of the examination committee 'has not gone into such minor details' (page 831, s. n.). Upon being questioned by the fiscal as to why she wrote the altered grade on composition Exhibit B-2 on the same line and immediately before the initials of the correctors she said: 'Because on that occasion it pleased me to do so' (page 836, s. n.). Neither does the accused remember whether or not she exercised her supervisory authority with respect to the other five compositions forming part of those marked as Exhibits B-1 and B-2 (page 840, s. n.) ; and when asked by the fiscal for an explanation as to why the increase given by her to the grades originally given to said compositions had the effect of raising the general average of the compositions of the same candidate to 75%, the accused answered that 'the fiscal ought to know that in this life there are happy coincidences' (page 848, s. n.). With these answers and others appearing in her testimony, the accused instead of giving a satisfactory explanation of her conduct, has demonstrated that with the encouragement given by Justice Romualdez to the effect that the new revision of the compositions was left to her discretion (page 780, s. n.) she assumed that the powers exercised by her in the bar examinations of 1926 were such that she could revise any composition in any subject already graded and increase or decrease the grades given by the correctors; in other words, that she could, at her pleasure, do or undo the work done by the correctors without the necessity of accounting to anybody for it (page 834, s. n.), or of keeping a note or memorandum of the

compositions so revised and the alteration of the grades.

"The evidence, however, shows that Justice Romualdez himself in reviewing, in his capacity as chairman of the examination committee, the compositions of the candidates who filed motions for reconsideration of the grades given them, after the publication of the result of the examinations, performed his work with such diligence and zeal that he noted in a memorandum book (Exhibit F) not only the grades given to each answer of the candidate, but also the total grade obtained by the candidate in the revision, together with such other data which would explain the increase of the grades of this or that candidate.

"The court is loath to believe that Justice Romualdez had given his secretary to understand that she had such unlimited powers, or that the Supreme Court in designating said Justice as chairman of the bar examination committee of the year 1926, authorizing him to confer such powers upon his secretary, because it is an undisputed fact that his designation was made so that he should conduct the examinations in accordance with law and the rules.

"But, even granting that when the accused Estela Romualdez altered the grades given by the correctors to compositions Exhibits B-1 and B-2 she acted in the exercise of the powers conferred upon her by the chairman of the examination committee, is there any ground in support of her claim that she made those alterations only to do justice to the compositions, and without knowing the name of the candidate to whom they belonged?

"Without giving any weight to the testimony of the witness for the prosecution, Juan Villaflor, which, according to the defense is not worthy of credit because of the contradictions and inconsistencies therein noted, the record contains other evidence establishing certain facts from which such knowledge can be inferred.

"It has been proved that after the revision and grading of all the compositions numbering over 8,000, a list, Exhibit C-1, was prepared in pencil. This list was prepared with the intervention of the said Jeronimo Samson and Josephine Stevens, assisted by Catalina Pons, Juan Villaflor and the accused Estela Romualdez. However, before the preparation of this list, sometime during the first day of February, 1927, the sealed envelopes containing the identification numbers attached to each composition were opened. Said numbers were written either on the upper part of each envelope or on the first page of the composition, and that work lasted several days (pages 162, 163, s. n.). In the list Exhibit C-1 the numbers of the candidates contained in the envelopes attached to the compositions were first written (page 166, s. n.), and then the grades in each subject, followed by the general average (pages 71, 184, s. n.), leaving in blank the space intended for the names (page 166, s. n.). Deputy Clerk Samson wrote on an adding machine the grades in each composition as they were read out by one of the helpers, and then the corresponding general average as computed by him (page 71, s. n.) and, at the same time, Josephine Stevens wrote said grades in the space corresponding to each subject (page 188, s. n.). The roll of paper used by Deputy Clerk Samson on the adding machine was presented as Exhibit C-6.

"After the list Exhibit C-1 containing the grades in each subject and the general average of each candidate, who was theretofore known by his identification number only, was prepared, the envelopes containing the names corresponding to the identification numbers written on said list were taken from the safe of the office of the clerk, and the names of the candidates were inserted in said list by those who assisted in the preparation thereof (pages 166, 167, s. n.) among whom was the accused Estela Romualdez, who admitted, upon cross-examination, having written many of the names appearing on several pages of said list (pages 859-861, s. n.). After said list Exhibit C-1 was prepared the examination committee submitted to the Supreme Court a report recommending the admission to the bar and not only for those candidates with a general average of 75% or more, but also of those who had obtained a general average of 70 or more but below 75%, and said automatic increase was ordered noted on said list Exhibit C-1. However, this recommendation was not approved by the Supreme Court on the ground that said automatic increase was arbitrary (pages 73, 74, s. n.), and for that reason the clerk of court, Mr. Albert, instructed his deputy, Mr. Samson, to prepare another list containing only the names of the candidates who had originally obtained a general average of 75% without having obtained less than 60% in any subject, and in pursuance thereof the typewritten list Exhibit C-5 was

prepared (page 77, s. n.), which was approved by the Supreme Court and published on March 5, 1927. In this list Luis Mabunay is included with an average of 75%.

"Eight or ten days after the publication of the result of the examinations the list Exhibit C-2 was prepared in the same form as Exhibit C-1 taking the grades directly from the compositions; while one of the helpers read them, Deputy Clerk Samson listed them on the adding machine and computed the general average of each candidate. The roll of paper used by Deputy Samson on this occasion was also presented and marked as Exhibit C-7.

"Both rolls, Exhibits C-6 and C-7, as well as the lists Exhibits C-1 and C-2, were kept in the office of Justice Romualdez and were only taken out when the investigation of the irregularities in the examinations of 1926 was commenced (page 81, s. n.). And only in the course of that investigation it was discovered that the grades of candidate Luis Mabunay, identified with number 898 in roll Exhibit C-6 and in the list Exhibit C-1, which had been prepared simultaneously, did not agree, because, while roll Exhibit C-6 shows that the grade in Civil Law of candidate No. 898 is 63, the list Exhibit C-1 shows that the grade of the same candidate is 73; and while roll Exhibit C-6 shows that the grade of candidate No. 898 was 58 (in Remedial Law), his grade in the list Exhibit C-1 is 64 (in the same subject), a difference also being noted between the general average of candidate No. 898 in Exhibit C-6, which is 72.8%, and his general average on Exhibit C-1, which is 75% (pages 73, 74, s. n.). This discovery led to the revision of the compositions of Luis Mabunay in the examinations of 1926, which were united to his personal record (Exhibit B), which showed that the grades given to, and written by the respective correctors on the compositions of said candidate in Civil Law Exhibit B-1 and Remedial Law Exhibit B-2 had been altered, and further, that the grades that appeared on said compositions before the alterations were identical with those that appeared on the roll, Exhibit C-6. An ocular inspection of page 29 of said Exhibit C-1 shows at first glance that the numbers 73, 64, and 75 in the columns corresponding to Civil Law, Remedial Law and General Average, respectively, were written after erasing with rubber what was there originally written. It may also be noted, upon an examination of the alterations appearing on the first pages of compositions Exhibits B-1 and B-2, that the grades originally written by the correctors, authenticated by their initials, had been stricken out in such a way that it is difficult to make out said original grades, leaving, however, intact, the initials of the correctors.

"From these facts it is inferred: First, that the person who erased and altered the grades written by the correctors on the first pages of compositions Exhibits B-1 and B-2 wished to make it appear that said alterations had been made by the correctors themselves; second, that said alterations were made after the grades written by the correctors had been noted on the adding machine in roll Exhibit C-6 and on the list Exhibit C-1 which were prepared simultaneously; third, that after said alterations had been made, and in order that the grades so altered should agree with the grades already written on the list Exhibit C-1, the grades in Civil Law and Remedial Law were erased with rubber, and in place thereof were written the grades now appearing in said compositions. The accused Estela Romualdez having admitted that she was the author of such alterations, the only logical inference from her admission and the facts above set out, is that she was also the person who erased not only the grades originally written by the correctors on the compositions Exhibits B-1 and B-2 but also those appearing in the columns corresponding to Civil Law and Remedial Law on the list Exhibit C-1, and the same person who wrote the grades now appearing in said columns, and which agree with those written by her on compositions Exhibits B-1 and B-2. Now, if the accused Estela Romualdez erased in the manner stated the grades originally written, and substituted for them the grades now appearing in said compositions Exhibits B-1 and B-2 as well as in the columns corresponding to Civil Law and Remedial Law in the list Exhibit C-1, it cannot be doubted that in making such erasures and alterations she not only acted with the intent of concealing her identity, but she also knew the number and the name of the candidate to whom said composition belonged, because at that time the numbers and the names of the candidates were already written on the list Exhibit C-1, and that list was kept in the office of Justice Romualdez (page 83, s. n.), where she had complete and absolute control as private secretary and supervisor of the examinations.

"Participation of the accused Luis Mabunay

"Discarding the testimony of witness Juan Villaflor in which he says that one Luis Mabunay called up the accused Estela Romualdez on the telephone a few days before the publication of the results of the examinations, there is, indeed, no direct proof in the record showing the participation of the accused Luis Mabunay. However, there is other evidence for the prosecution establishing certain facts which show strong indications that he cooperated in the act before or at the time of its execution by his coaccused. It has been proved beyond a reasonable doubt that the accused Luis Mabunay was one of the candidates who took the bar examinations in 1926; that the general average obtained by him, according to the computation appearing on the roll Exhibit C-6 of the adding machine and that originally written in the list Exhibit C-1 was 72.8%; that after the Supreme Court denied the recommendation of the examination committee that all grades from and between 70% and 75% be automatically raised to 75%, his name, nevertheless, appeared in the list of successful candidates which was published on March 5, 1927 (Exhibit C-5), and that said inclusion was due to the increase of these grades in Civil Law (Exhibit B-1) and Remedial Law (Exhibit B-2), which was made by his coaccused by erasing and altering the grades theretofore given by the correctors.

"It is true that the accused Estela Romualdez, in her desire to show that she had no motive whatsoever for favoring his coaccused Luis Mabunay, testified that she did not know him and that the first time she saw him was on the first day of the trial of this case. However, in view of her inability to explain why precisely the compositions of said Luis Mabunay had been benefited by the revision, and in view of the admission of Justice Romualdez that the power to revise conferred upon Estela Romualdez could be exercised by her in the compositions already graded by the correctors in all cases of injustice which came to her knowledge, or which might be brought to her attention (page 781, s. n.), her testimony lacks foundation, because it is absurd to believe that her revision of the compositions of her coaccused Luis Mabunay was due only and solely to a happy coincidence.

"Furthermore, the accused Mabunay made no effort to contradict the evidence for the prosecution with reference to his withdrawal of the amount of ₱600 from his savings account in the Philippine Trust Company on the second day of March, 1927, or three days before the publication of the result of the examinations (Exhibit I) which, when correlated with the deposit of the sum of ₱400 made by the accused Estela Romualdez in her current account (Exhibit H) with the Bank of the Philippine Islands on the seventh day of said month of March, 1927, may, perhaps, give an explanation of the motive of said accused for increasing the grades of Mabunay with just the necessary points to reach the lowest passing general average. It is also true that Estela Romualdez testified that said amount had been sent to her by her cousin named Prisca Magpayo Redona from the province for the purchase of merchandise for sale at the latter's store (page 791, s. n.), but the testimony in that respect was not corroborated either by her said cousin, or by any other persons mentioned by her as the bearers of said amount, or by the corresponding check or postal money order, as she had done when referring to other deposits in the bank.

"Conclusion

"In view of the foregoing considerations, the court finds that the allegations of the information are sufficiently supported by the evidence and that the accused, Estela Romualdez and Luis Mabunay are guilty beyond a reasonable doubt; the former as principal and the latter as accomplice, of the crime of falsification of official documents with which they are charged and, therefore, a judgment is rendered sentencing Estela Romualdez, who was a Government employee at the time of the commission of the crime, to suffer, in accordance with article 300 of the Penal Code, as amended by section 1 of Act No. 2712, six years and one day of prisión mayor with the accessory penalties of the law, to pay a fine of 1,000 pesetas, without subsidiary imprisonment in view of the nature of the penalty, and also to suffer the penalty of perpetual disqualification from public office; and her coaccused Luis Mabunay, who was a private individual with respect to said examination, to suffer, under the provisions of article 301 as amended by section 2 of Act No. 2712 and article 67 of the Penal Code, the penalty of four months and one day of arresto mayor, with the accessory penalties of the law, and to

pay a fine of 250 pesetas, with subsidiary imprisonment in case of insolvency, and each to pay one-half part of the costs."

The appellant Estela Romualdez through her attorneys makes the following assignments of error:

"I. The trial court erred in finding the accused, Estela Romualdez, guilty of the crime of 'falsification of public and official documents' and in sentencing her to suffer imprisonment without due process of law, contrary to section 3, Act of Congress of August 29, 1916, entitled 'An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands, and to Provide a More Autonomous Government for those Islands'.

"II. The trial court erred in not finding, that the accused Estela Romualdez, was fully authorized to make the alterations she in fact made on the composition papers of Luis Mabunay, Exhibits B-1 and B-2 of the Government, and in denying full credit to the uncontradicted testimony of Mr. Justice Norberto Romualdez, chairman of the bar examining committee for the year 1926, concerning the authority granted her.

"III. The trial court erred in failing to extend to the accused Estela Romualdez a fair and impartial trial."

The attorneys for the appellant Luis Mabunay allege that the trial court committed the following errors:

"I. The lower court erred in not crediting the uncontradicted testimony of Justice Romualdez with reference to his authority as chairman of the bar examination committee of the year 1926, to confer upon the accused Estela Romualdez, the powers he in fact conferred upon her, in connection with said examination.

"II. It also erred in not crediting the uncontradicted testimony of Justice Romualdez as to the fact that he, as chairman of the bar examination committee of 1926, really and truly conferred upon the accused Estela Romualdez the powers which she exercised in that examination.

"III. It also erred in concluding that the accused Estela Romualdez did not exercise the powers conferred upon her by the chairman of the bar examination committee of 1926, within the limits fixed by said chairman, to wit: that the new revision and grading of the compositions be made in order to do justice thereto, arid before the names of the corresponding candidates were known.

"IV. It likewise erred in concluding that the accused Estela Romualdez changed the general average and the grades of candidate Luis Mabunay in Civil Law and Remedial Law on the list Exhibit C-1.

"V. The lower court erred in not admitting the expert testimony of Wm. J. Rhode, Felicisimo Feria, and Claro M. Recto, as well as Exhibits 26 and 27, containing the opinion of said lawyers as to the grades to which said compositions Exhibits B-1 and B-2 were justly entitled.

"VI. It also erred in not concluding that Jeronimo Samson used the same powers exercised by the accused in the bar examination of 1926.

"VII. Granting that the accused Estela Romualdez knew that compositions Exhibits B-1 and B-2 belonged to her coaccused Luis Mabunay when she reviewed and regraded them, the court erred in concluding that said act constitutes the offense charged in the information.

"VIII. Granting that Justice Romualdez, as chairman of the bar examination committee of 1926, was not authorized by the Supreme Court to confer upon Estela Romualdez the powers which she exercised in that examination, the court erred in concluding that she altered the grades of said compositions willfully and feloniously.

"IX. The lower court also erred in concluding that Estela Romualdez intended to conceal her identity when she revised and regraded compositions Exhibits B-1 and B-2.

"X. It also erred in concluding that the accused Estela Romualdez, in exercising her powers as supervisor of

the correctors in said bar examinations, revised compositions Exhibits B-1 and B-2 only, in order to regrade them.

"XI. It also erred in suggesting that her motive, in revising and regrading said compositions Exhibits B-1 and B-2, was the fact that she had received from her coaccused Luis Mabunay the sum of P400.

"XII. Granting that the accused Estela Romualdez committed the offense of falsification with which she is charged, the lower court erred in concluding that Luis Mabunay participated in its commission."

In addition to the usual brief for each of the accused, the attorneys for the appellants filed a joint memorandum on July 10, 1929. The Attorney-General filed a brief on behalf of the People of the Philippine Islands and a reply to the memorandum for the defense.

The court at that time consisted of nine members, one of whom, Justice Romualdez, was disqualified to sit in this case. Upon a consideration of the case on its merits, four justices were in favor of affirming the decision of the trial court and the same number were in favor of acquitting the defendants. The court being unable to reach a decision in the usual course, an attempt was made on February 11, 1930 to break the deadlock, as is evidenced by the following resolution:

"The court having under consideration again the case of People vs". Romualdez, et al., No. 31012, those participating being all the members of the court, except Mr. Justice Romualdez, who was disqualified, it was moved that following precedents elsewhere, particularly in the United States Supreme Court, to the effect that when there is an equal division in the court and there is no prospect of a change in the vote the judgment appealed from stand affirmed, and in accordance with the action taken in the case of Nacionalista Party vs. Municipal Board of Manila, No. 21265-the judgment in the case at bar be affirmed. Mr. Chief Justice Avancefia and Messrs. Justices Malcolm, Ostrand, and Johns voted in favor of the motion. Messrs. Justices Johnson, Street, Villamor, and Villa-Real voted against the motion. Mr. Justice Johnson based his dissent on the peculiar statutory provisions in force in the Philippine Islands. For want of a majority, the motion was lost.

"The court thereupon directed that the clerk retain the record in the case until the further order of the court."

On January 12, 1931 Luis Mabunay filed a motion praying that the case against him be considered separately and he be absolved from the complaint. This motion was denied by the court. He renewed his motion on August 1, 1931. This motion was also denied on the ground that no severance had been asked for in the lower court, and for the further reason that there was a prospect that the membership of the court would soon be increased.

The membership of the court was finally increased to eleven, and due to the death or retirement of three justices only six of the former members remained. On June 23, 1932 Courtney Whitney as attorney for Estela Romualdez filed a petition praying that this case be set for a rehearing before the court as newly constituted. This motion was granted. On July 2, 1932 he filed a motion for the dismissal of the information, alleging that because of the inability of the court to reach a determination from the facts as to the guilt or innocence of the defendant-appellant Estela Romualdez, she had been denied her right to a speedy trial. This motion was denied.

After a reargument of the case, the attorney for Estela Romualdez filed an addiMonal memorandum, to which the Attorney-General filed a reply.

Under the first, assignment of error, the attorneys for Estela Romualdez maintain that even if the lower court's findings of fact be justified by the evidence of record, "they fail to sustain that any criminal offense, recognized under the laws of the Philippine Islands, has been committed." They contend that the appointment of the committee of attorneys by Justice Romualdez to read and grade the examination papers was not warranted by law, and that therefore the alteration by the defendant Estela Romualdez, under the circumstances alleged in the information, of the grades in question did not constitute a crime.

The testimony of Justice. Romualdez, who was a witness for the defense, completely refutes this contention. He testified that the bar examining committee was composed of two groups of attorneys: Those that were appointed to prepare the questions, and those that were appointed to grade the papers. He further testified that the court was informed of the way in which the examination was conducted and that it approved thereof. There were more than a thousand candidates and some eight thousand papers. According to the contention of appellant's attorneys only the seven attorneys appointed to prepare the questions or the court itself could lawfully grade these papers. Such a contention is clearly untenable. The attorneys that prepared the questions did not intervene in the grading of the papers, but they prepared a key to the questions, which served the other group of attorneys, the readers or "correctors", as a guide in grading the papers. The intervention of the "correctors" was just as legal as that of the attorneys that prepared the questions, and the intervention of the two groups of attorneys was perfectly regular and valid.

It is also contended that the examination papers which the defendant Estela Romualdez altered were not public or official documents. That contention is likewise without merit. As stated by her attorneys, the examination of candidates for admission to the bar is a judicial function. It cannot therefore be maintained with any show of reason that the papers submitted by the candidates in the course of the examination were not public and official documents, or that the alteration, under the circumstances alleged in the information, of the grades given to such papers by the "correctors" was not a crime. (In re Del Rosario, 52 Phil., 399, where this court refers to the falsification of his examination papers as "the falsification of public documents"; People vs. Castro and Doe, 54 Phil., 41, where the conviction of Castro for the falsification of his examination papers was affirmed.)

In accordance with the established practice of the court to have one of its members each year make all the necessary arrangements for the bar examination, the Chief Justice in 1926 designated Justice Romualdez for that purpose, and in pursuance thereof he appointed one group of attorneys to prepare the questions and another group to grade the papers. If any of these attorneys were designated by the clerk of the court, it was with the advice and consent and on the authority of Justice Romualdez.

The phrase "falsification of a document" is not used in articles 300 and 301 of the Penal Code in the ordinary acceptance of the words. It has a technical meaning, and according to article 300 may be committed in the following eight ways:

- "1. By counterfeiting or imitating any handwriting, signature, or rubric.
- "2. By causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.
- "3. By attributing to persons who have participated in an act or proceeding statements other than those in fact made by them.
- "4. By making untruthful statements in a narration of facts.
- "5. By altering true dates.
- "6. By making any alteration or intercalation in a genuine document which changes its meaning.
- "7. By issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or by including in such a copy a statement contrary to, or different from, that of the genuine original.
- "8. By intercalating any instrument or note relative to the issuance thereof in a protocol, registry or official book." The acts of the accused are covered by paragraphs 2, 3, and 6. She made the alterations in the grades in such a way as to make it appear that the "correctors" had participated therein, because she blotted out the

grades of the "correctors" and wrote new and increased grades opposite their initials, without indicating by her own initials that she had made the alterations. She in that way attributed to the "correctors" statements other than those in fact made by them. Her only explanation of why she altered the grades in that way was¹ that it pleased her to do so.

A decision in point has just come to hand. It is reported in 180 N. E., 725, and is referred to in the American Bar Association Journal for August, 1932, p. 497. A bill was presented in the Massachusetts Senate prohibiting the marking of the examination papers of applicants for admission to the bar by any person not a member of the board of bar examiners. The Senate wished to know whether such a bill, if enacted, would be an unconstitutional interference with the functions of the Judicial Department, and asked the Justices of the Supreme Judicial Court for an advisory opinion. They replied that such a law would be unconstitutional. In the course of the opinion they said: "If the judicial department decides that the marking of the written examinations may be performed by competent persons not members of the board but acting under the direction of such members, that pertains directly to the ascertainment of the qualifications of applicants. It is a definite attribute of the judicial department and not an immaterial incident." It was also stated that the plan of employing assistants to aid the bar examiners' in marking the papers had been approved by the Supreme Judicial Court.

In the second assignment of error, the attorney for Estela Romualdez maintains that the trial court erred in not finding that she was fully authorized to make the alterations she in fact made on the examination papers of Luis Mabunay, Exhibits B-1 and B-2, and in denying full credit to the uncontradicted testimony of Justice Norberto Romualdez, chairman of the bar examining committee for the year 1926, concerning the authority granted her.

In the first place, we find it difficult to believe that Justice Romualdez ever gave the accused the authority which she claims to have received; and in the second place, even if it be assumed that he gave her the alleged authority, she did not exercise it in accordance with the terms thereof.

The defense would have us believe that Justice Romualdez regarded his secretary, Estela Romualdez, and the deputy clerk, Jeronimo Samson, who were themselves "correctors" as supervisors of the other "correctors", and that he authorized Estela Romualdez to revise any grade to correct an injustice, without consulting or notifying the other supervisor, Samson, or the "correctors" who had graded the paper, without requiring her to initial the alteration, or to make any record thereof or any report to him or to anybody else.

Justice Romualdez was designated by the Chief Justice to conduct the examination in accordance with the law and the Rules of Court. He himself had no such authority as he is alleged to have given his secretary. He is presumed to have discharged his duties in accordance with the law, and it is inconceivable that he would without any warrant of law give or attempt to give his secretary the unlimited authority which she claims to have received, thereby enabling her to alter at will any grade on any paper, without making any record thereof or any report to anybody. The mere statement of such a claim shows that it is preposterous.

No such authority was given to Samson, who according to Justice Romualdez was regarded by him as a supervisor of equal rank with Estela Romualdez. Samson was never notified that he was regarded as a supervisor, and he never acted in that capacity.

Let us notice how this unlimited authority is alleged to have been granted to the accused Estela Romualdez.

It was not in writing or evidenced by any memorandum. It was not even a positive statement. Justice Romualdez testified that he believed that on a certain occasion he gave his secretary to understand that if a case should be brought to her attention she might revise any grade to prevent an injustice,' so long as she did not know the name of the candidate to whom the paper belonged. When asked where she was when the pretended authority was given to her, the accused could not remember.

There was according to the theory of the defense nothing to prevent Samson from revising the revision of Estela Romualdez, because she did not initial the changes made by her, and he was supposed to be a supervisor of equal rank.

If it be admitted for the sake of argument that the accused Estela Romualdez was given the authority which she claims to have received, nevertheless she was not authorized to change the grades now in question, because when she made the changes she already knew that the papers belonged to her coaccused Luis Mabunay. The evidence fully sustaining that conclusion is carefully set forth by the trial court, and it is unnecessary for us to review it. The testimony of Justice Romualdez to the effect that the accused acted within the authority granted her in changing the grades in question was a mere expression of opinion. It was clearly inadmissible and not binding on the court. The accused Estela Romualdez did not even attempt to explain under what circumstances she raised the grades of her co-accused so as to enable him to obtain the necessary general average of 75 per cent. She did not confer with the "correctors" who had graded the papers in question. She did not attempt to explain how she arrived at the increased grades, or how she came to revise the grades in question, how she happened to pick these two papers out of eight thousand. She could not point to any other grades that had been altered by her.

Under the second assignment of error the attorney for Estela Romualdez also alleges that she freely and voluntarily admitted from the start of the trial of her case that the alterations had been made by her, and concludes therefrom that she acted in good faith. We cannot agree either with the statement of fact or the conclusion. The accused Estela Romualdez did not admit that the alterations were made by her until after the prosecuting attorney had presented three hundred and fifty pages of testimony and announced his readiness to prove by three handwriting experts that the alterations were in the handwriting of the accused. The evidence shows that before the trial defendant's attorney obtained from the fiscal's office a photograph that had been made for the purpose of comparing a specimen of defendant's handwriting and that of the altered grades. The fact that the defendant Estela Romualdez made the alterations under the circumstances which we have mentioned, when she already knew that the papers belonged to Mabunay, disproves any contention that she acted in good faith.

In the case of the United States vs. Ballesteros (25 Phil., 634), this court said:

"When the unlawful acts charged against an accused are established by competent evidence, criminal intent may be and will be presumed, unless such intent is rebutted by the introduction of evidence sufficient to overcome this presumption, and satisfactorily disclosing the absence of such criminal intent."

The third assignment of error made by the appellant Estela Romualdez is that the trial court erred in failing to extend to her a fair and impartial trial. We shall not waste much time on this assignment of error, which is utterly without merit. The record itself completely refutes any such contention. If the learned trial judge erred, it was in permitting the attorneys for the defendants too great latitude in arguing their objections. Arguments four and five pages long were incorporated into the stenographic record of the evidence. The record shows a most unjustifiable attack on the good faith of the fiscal and a persistent effort to embarrass him in presenting his evidence against the accused.

The appellant Luis Mabunay makes twelve assignments of error. They are for the most part embraced in the assignments of error of his coaccused which we have already considered. There remain only his fifth, eleventh, and twelfth assignments of error. In his fifth assignment of error it is alleged that the lower court erred in not admitting the expert testimony of attorneys Wm. J. Rhode, Felicisimo Feria, and Claro M. Recto, and in rejecting Exhibits 26 and 27, which contain the opinion of said attorneys as to the correct grades which the examination papers Exhibits B-1 and B-2 deserved.

The lower court sustained the objection to the admission of the testimony of these three attorneys on the ground

that it was not the best evidence, and suggested that the defense might call the members of the examining committee that prepared the questions in Remedial Law and Civil Law' and the key thereto. The attorneys for the defense did not see fit to adopt the suggestion of the court. It is not true therefore that, the lower court deprived the accused of an opportunity of showing that the examination papers in question deserved the increased grades which the defendant Estela Romualdez gave them. The attorneys that prepared the questions and the key to the answers were certainly the persons best qualified to decide whether or not the questions were correctly answered. The opinion of other attorneys, who had nothing to do with the examination, would only lead to confusion. We find no merit in this assignment of error.

The eleventh assignment of error is that the trial court erred in insinuating that the motive of the accused Estela Romualdez in reviewing and regrading the examination papers Exhibits B-1 and B-2 was the fact that she had received four hundred pesos from her coaccused Luis Mabunay.

The twelfth assignment of error is that if it be assumed that the accused Estela Romualdez committed the crime of falsification imputed to her in the information, the court erred in concluding that the accused Luis Mabunay participated in its commission.

For the sake of convenience we shall consider these two assignments of error together.

In the first place we should like to say that there is no evidence to show that Estela Romualdez ever reviewed the examination papers of her coaccused. So far as the evidence shows, she merely raised his grades in -two subjects, thus giving him by "a happy coincidence", to use her own words, a passing mark. She could not or would not enlighten the court as to why she raised the grades of Luis Mabunay so as to enable him to be admitted to the bar. As already stated, the record does not show that she raised the grades of any other candidate.

The evidence shows that Luis Mabunay had failed in two previous examinations, and that he failed in the examination in question, receiving a general average of only 72.8%. The bar examining committee recommended that not only those having the required general average of 75 per cent be admitted, but also that those who had received between 70 and 75 per cent. This is referred to in the record as "an automatic increase". It was not automatic but arbitrary, and was disapproved by the Supreme Court, and the committee was directed to prepare a new list and to include therein only those who had obtained a general average of 75 per cent. The name of Luis Mabunay was included in the new list submitted three days later, notwithstanding the fact that he had obtained a general average of only 72.8 per cent, precisely because Estela Romualdez had in the meantime raised the grades now in question so that he appeared to have obtained the general average required for admission to the bar.

The evidence shows that on March 2, 1927 Luis Mabunay withdrew P600 from the Philippine Trust Co., and that on March 7, 1927 Estela Romualdez deposited P510 in the Bank of the Philippine Islands. Luis Mabunay did not testify, and he did not present any evidence to show for what purpose he withdrew P600 from the bank immediately after the first list was disapproved.

In the case of the United States vs. Tria (17 Phil., 303, 307), Justice Moreland speaking for the court said:

"An accused person sometimes owes a duty to himself if not to the State. If he does not perform that duty he may not always expect the State to perform it for him. If he fails to meet the obligation which he owes to himself, when to meet it is the easiest of easy things, he is hardy indeed if he demand and expect that same full and wide consideration which the State voluntarily gives to those who by reasonable effort seek to help themselves. This is particularly so when he not only declines to help himself but actively conceals from the State the very means by which it may assist him."

In the famous case of the Commonwealth vs. Webster (5 Cushing, 295, 316), Chief Justice Shaw laid down the

following rule:

"When pretty stringent proof of circumstances is produced, tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they existed, and shorn-, if such was the truth, that the suspicious circumstances can be accounted for consistently with his innocence, and he fails to offer such proof, the natural conclusion is, that the proof, if produced, instead of rebutting, would tend to sustain the charge. But this is to be cautiously applied, and only in cases where it is manifest that proofs are in the power of the accused, not accessible to the prosecution."

Estela Romualdez showed that of the sum of P510 P100 was paid to her by her mother and P10 by her brother, but she could not satisfactorily prove where the remaining P400 came from. She said it was sent to her by her cousin, Prisca Magpayo Redona, for the purchase of goods, but she could not name the person that brought the money to her, or explain why she deposited it in the bank. She did not attempt to show that she had paid it out by means of checks for the purchase of goods for her cousin. She did not call her cousin as a witness.

"An accused person runs the risk of an inference against him because of failure to produce evidence. The inference, unless the failure to produce evidence is explained away, is that the tenor of the specific unproduced evidence would not support the party's case." (U. S. vs. Sarikala, 3? Phil., 486.)

In the case just cited the court quoted with approval the following rule as stated by Dean Wigmore in his work on Evidence, Vol. IV, p. 3148:

"The failure to produce evidence, in general, other than his own testimony, is open to inference against a party accused, with the same limitations applicable to civil parties. Here the effect of the burden of proof has sometimes tended to confuse. It is true that the burden is on the prosecution, and that the accused is not required by any rule of law to produce evidence; but nevertheless he runs the risk of an inference from nonproduction. This seeming paradox, which has been already sufficiently noticed in treating of the general principle, has misled a few courts to deny that any inference may be drawn."

The alterations in the grades made by Estela Romualdez were made for the sole use and benefit of her coaccused Luis Mabunay. They were made willfully and illegally, and after the Supreme Court had rejected those candidates that had received less than 75 per cent. The alterations were therefore made after Mabunay had failed, and he withdrew the money after he had had time to learn from his coaccused that he had failed. It wag under those circumstances incumbent upon the accused Mabunay to present evidence to show for what purpose he withdrew the six hundred pesos from the bank. As this court said in the case of Worcester vs. Ocampo (22 Phil., 42) :

"When the circumstances in proof tend to fix the liability on a party who has it in his power to offer evidence of all the facts as they existed and rebut the inferences which the circumstances in proof tend to establish, and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting would support the inferences against him, and the court is justified in acting upon that conclusion."

The case of In re Del Rosario (52 Phil., 399), is directly in point. Felipe del Rosario failed for the third time in the bar examination of 1926. He then filed a motion for the revision of his grades, based on an alleged mistake in computation. This motion was granted, and he was admitted to the bar. It was subsequently found that alterations had been made in his examination papers, and he and Juan Villaflor were prosecuted for the falsification of a public document. Villaflor assumed full responsibility for the commission of the crime, and testified that Del Rosario did not know anything about the making of the alterations. The trial court acquitted Del Rosario, but upon a review of the case for the purpose of taking disciplinary action against him Justice Malcolm, speaking for the court in banc, said:

"It is asking a great deal of the members of the court to have them believe that Felipe del Rosario was totally unaware of the illegal machinations culminating in the falsification of public documents, of which he was the

sole beneficiary."

The attorney's certificate of Felipe del Rosario was cancelled.

In the case of *People vs. Bella Bautista* (53 Phil., 158), the accused was charged with the falsification of a public document. The evidence showed that in the Register of Attorneys the name of an attorney had been erased, and that the accused had written his own name in that space, although he had not been admitted to the bar. The accused contended that he wrote his name in the register under the direction of an employee of the court, and that he acted in good faith. He was convicted, and on appeal the decision was affirmed. This court in its decision said: "The trial court suggests in the opinion that the offense committed required the participation of some unfaithful employee of the court. But this fact, as the court found, did not lessen the criminal responsibility of the appellant."

It is alleged in the information that the accused conspired together and acted in common accord in the commission of the crime. As the Attorney-General says, a conspiracy can seldom be proved except by circumstantial evidence, but once it is proved, the acts of one of the conspirators are the acts of all. (*U. S. vs. Ipil*, 27 Phil., 530.)

"The existence of the assent of minds which is involved in a conspiracy may be, and, from the secrecy of the crime, usually must be, inferred by the jury from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, "were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. Evidence of actual participation, rather than of passive acquiescence, is desirable. But proof of acquiescence in, or consent to, the actions of others is relevant to show the criminal intention of the passive party, and generally the smallest degree of consent or collusion among parties lets' in the act or words of one against the others." (*Underhill on Criminal Evidence*, pp. 795, 796.)

For the foregoing reasons, we find that the conclusions of the trial court are fully justified by the evidence.

As the accused Estela Romualdez took advantage of her official position in committing the crime, the trial court found her guilty of a violation of article 300 of the Penal Code, as amended by Act No. 2712, and sentenced her to suffer six years and one day of prision mayor, and the accessory penalties provided by law, to pay a fine of 1,000 pesetas, and to suffer perpetual disqualification to hold any public office.

The penalty provided by the Penal Code is prision mayor in full extent, or from six years and one day to twelve years, and the penalty under the Revised Penal Code being the same, and there being no aggravating or mitigating circumstance present in the commission of the crime, the penalty should be imposed in the medium degree, which is from eight years and one day to ten years. The penalty imposed on the appellant Estela Romualdez is therefore increased to eight years and one day of prision mayor.

The trial court found the defendant Luis Mabunay guilty as an accomplice under article 301 of the Penal Code, the crime not being connected with the performance of his duties as an employee of the Government, and sentenced him to suffer four months and one day of arresto mayor, and the accessory penalties provided by law, and to pay a fine of 250 pesetas, with subsidiary imprisonment in case of insolvency. The defendants were each sentenced to pay one-half of the costs.

We find that the lower court erred in holding that Luis Mabunay was merely an accomplice. He was a conspirator and coprincipal of Estela Romualdez. The penalty provided by article 301 of the Penal Code, as amended by Act No. 2712, is prision correccional in the maximum degree, but that "has been changed by the Revised Penal Code to prision correccional in the medium and maximum degrees, and the medium degree of that penalty is from three years, six months, and twenty-one days to four years, nine months and ten days. The prison sentence of Luis

Mabunay is therefore increased to three years, six months, and twenty- one days of prisidn correcdonal.

The decision of the trial court is modified as hereinabove stated. In all other respects it is affirmed, with the costs against the appellants.

Ostrand, Abad Santos, Hull, Imperial, and Butte, JJ., concur.

CONCURRING

AVANCEÑA, C. J.,

I agree with the majority opinion. My vote regarding the defendant, Estela Romualdez, is based on the ground that she did not act under the authority alleged to have been given her by Justice Norberto Romualdez. She made the alteration after the candidates' names were already known. She did not act in. the interests of justice, inasmuch as among the compositions of 1,056 candidates she examined those of her coaccused Luis Mabunay only, and she failed to show or to allege that before examining his compositions she had reasons for believing that Mabunay's case was meritorious.

CONCURRING

MALCOLM, J.,

I concur with the comprehensive opinion of the majority in its principal features, but more especially am I in accord with the views expressed by the Chief Justice. My position will bear a word of explanation.

The charge is that of falsification "of a public document by the accused Estela Romualdez, secretary to Justice Romualdez, acting in conspiracy with Luis Mabunay, a candidate in the 1926 bar examinations, by altering the grades of the candidate so that it was feloniously made to appear that he had passed the bar examinations. The finding was of guilt in a decision by the trial judge, concerned almost entirely with questions of fact. Speaking to these questions, since this case should be considered exactly in the same manner as any other case, these findings are entitled to our most respectful consideration. Not desiring to enlarge upon the findings, it is only necessary to observe that the changes made in the papers of the candidate Mabunay have been admitted by the accused Estela Romualdez to have been made by her in her ordinary handwriting. Added to this we have the testimony of Justice Romualdez as follows: "As supervisor, I believe that there were occasions when I made her understand that in order to do justice to the candidates, she could revise papers already graded by the other correctors, provided that the new revision was made before the name of the candidate concerned was known." In this connection it has been demonstrated beyond cavil by a series of damaging and fatal circumstances that during the three-day interval between the making of the first report of the bar examinations and the second report when the names of the candidates were known, the accused Estela Romualdez made changes in the grades of Luis Mabunay in express contravention of the authority alleged to have been given her by Justice Romualdez and in bad faith. Not alone were the erasures on the papers made in a manner difficult to be deciphered, leaving below the erasures the initials of the readers; not alone did the accused fail to place her own initials over the changes; not alone was there no attempt to show why the grades were increased to give exactly a general average of 75 per cent, but there are two

other circumstances entirely inconsistent with innocence. The first is that two of the readers, namely, Jeronimo Samson, the deputy clerk of court, and Estela Romualdez were supposed to have identical authority, yet Samson never understood that he had any right to change grades without the knowledge of the readers in the particular subject; when Samson acted as a substitute reader, changes were made with the knowledge' and consent of the other reader and Samson placed his initials under the new grades. The second question is how Estela Romualdez could remember having made erasures in the grades¹ in two papers out of eight thousand to the advantage of one candidate out of more than one thousand, but could not recall any other similar incident and could not offer any explanation of why the grades of the one candidate merited an increase. I am, therefore, constrained to conclude that the findings of fact, along the line above indicated, made in the trial court and here confirmed by other judges who have minutely examined the record, must be taken as conclusively established.

The legal features of the case offer no particular difficulties. Articles 300 and 301 of the old Penal Code were violated. Examination papers leading to admission to the bar constitute a part of judicial proceedings and are in the nature of public documents. These documents were altered and their meaning changed to permit a candidate in the bar examinations illegally to be admitted to the bar.

A number of cases growing out of the bar scandal of 1926 have reached this court and have resulted in convictions. Basically there is no difference in fact and in law between the principles governing those cases and the principles governing the case before us. If the accused in those cases merited punishment, the accused Estela Romualdez and Luis Mabunay are equally guilty.

DISSENTING

STREET, J., with whom concur VILLAMOR AND VILLA-REAL, JJ.,

It is the opinion of the undersigned that the acts imputed to Estela Romualdez do not constitute the crime of falsification of a public document, and with respect to Luis Mabunay there is no proof connecting him in any way whatever with the acts of Romualdez. As a preliminary to the demonstration of these conclusions it appears desirable to give a few words of explanation to show how the situation arose with which the court is here confronted.

Under the American occupation, prior to the year 1921, high school graduates were eligible to take the course in law in any accredited law school in the Philippine Islands. In that year, however, the court decided to require two years of college work as a prerequisite to matriculation in a law school, thereby materially "raising the standard of education for lawyers. But in order not to affect adversely the rights of those who were already qualifying under the prior rule, the requirement for two years of college work was made effective beginning with the examinations in 1927. It resulted that 1926 was the last year in which examinations could be taken under the old rule, and there were nearly 1,100 candidates who presented themselves for examination in that year.

It has been the usage of this court to place the bar examinations for each year in the hands of a member of the court designated by the Chief Justice; and it is made the duty of this member to appoint the examiners and to superintend the giving of the examinations. In the year 1926 Justice Norberto Romualdez was named to conduct the examinations, and he appointed the requisite number of members of the bar to prepare the questions in the

several subjects of examination. In view of the great number of papers to be read in that year, it was quite evident that able lawyers could not be expected to read so many papers as the work as could be foreseen, would undoubtedly have taken up months of their time. Justice Romualdez, therefore, upon the suggestion of our clerk, decided to adopt the plan followed in the Bureau of Civil Service, which is, to appoint readers (referred to in the record as "correctors") to read and grade the examination papers in conformity with the written guides prepared by the examiners. These readers (as we shall call them) were qualified lawyers chosen from the Government, service, chiefly from the personnel of the Supreme Court and of the Bureau of Justice.

The reading of the papers occupied a period of about six months, and the report presented by the examiners was not finally passed upon by the court until March 5, 1927. The questions in the examination in Civil Law were prepared by Francisco Ortigas, and the questions in Remedial Law were prepared by Judge J. C. Abreu. The two readers primarily chosen to read and grade the papers in Civil Law were Jeronimo Samson and Amado del Rosario, and the readers in Remedial Law were Alfonso Felix and Marciano Guevara.

As Justice Romualdez had general charge of the examinations, his niece, Estela Romualdez, who was also his secretary and who had been admitted to the bar in 1925, was selected as one of the readers. In addition to her duties as, mere reader, Justice Romualdez confided to her the custody of the examination papers and other apparatus of examination, which were kept under key in his office when not in use. Samson was at this time a deputy clerk of this court, and because of his official position he and Miss Romualdez were charged with the supervision of the clerical work connected with the examinations.

In the conduct of the bar examinations it is important that the examiner or reader of the papers should have no knowledge of the personality of the author of any composition when the same is read and graded, and a device had been adopted in the clerk's office which was supposed to accomplish this end. This was that the name of the candidate was not permitted to appear on the composition. Instead, there was assigned in the clerk's office a number to each candidate, and this number was written on the outside of a small envelope affixed to the composition when it was turned in by the candidate. Sealed within the same envelope was a small slip of paper containing the corresponding name of the candidate. A record of the names and numbers was also kept in the clerk's office. Every step in the reading, grading, and collating of the examination papers was therefore supposedly taken before the names of the different candidates were known.

When the work of the various readers in this case had been collated in the latter part of February, but before the names of the various candidates had yet been written in the list showing the results, the committee of the bar examiners was called together. Upon assembling the committee found that the percentage of candidates passing was exceedingly low, being around ten per centum of the total number of candidates. This result was no doubt partly due to the hasty way in which a great number of immature candidates had rushed in in the hope of being admitted to the bar before the standards of the examination were raised, and in part also doubtless to the fact that the readers had applied the straight-edge pretty firmly in judging the grades. The committee of the bar examiners therefore thought it proper to suggest to the court the propriety of admitting all the candidates who had made as much as 70 per centum, and a recommendation to this effect was submitted to the court. With this suggestion the court did not agree, and a new list had to be made up, showing as passing the names only of those who had made the requisite average of 75 per centum in all subjects without falling below 60 per centum in any.

Among the candidates in these examinations was the accused Luis Mabunay, to whom, at the examinations, was assigned number 898. In the list submitted by the bar examiners recommending that all be admitted who had made a general average of 70, Luis Mabunay appeared as receiving 72.8 per centum; and when the court decided that the passing grade could not be lowered, the result was naturally fatal to him as a candidate. But in the list later submitted to the court containing only the names of those who had made an average of 75 the same Luis Mabunay

appeared as having received the requisite per cent. Upon this showing his name was therefore passed as a successful candidate.

The explanation is that, in the interval between the submission of the first recommendation of the bar examiners and the submission of the later list, the grades corresponding to Luis Mabunay were raised by Miss Romualdez in an amount sufficient to give him a general average of 75 per centum. In this connection it appears that in the subject of Civil Law Jeronimo Samson and Amado del Rosario had assigned to Luis Mabunay 63 per centum as the value of his composition in that subject, and this number was written on the composition cover and accredited by the initials of the two examiners. This credit was raised by Miss Romualdez to 73. Likewise in Remedial Law the readers Alfonso Felix and Marciano Guevara had given 58 as the value of the paper. This credit was changed by Miss Romualdez to 64. In effecting these changes Miss Romualdez in each case obliterated the original grades by the use of pen and ink, and wrote thereunder in her own hand "73" and "64" in words and figures. She did not sign her name to this alteration but left intact the initials of the original graders. No attempt was made by her to imitate the script used by the graders, and the making of these changes was admitted by her.

Justice Romualdez, testifying as a witness in the case, stated that he authorized Miss Romualdez, upon finding any error made by the readers, to correct it, provided that this should be done before the names of the candidates should be known. Miss Romualdez testified that the changes effected by her in the papers of her coaccused were made under this authority. Furthermore, at the trial of the case, she offered to prove by three able lawyers of the Manila bar that the grades actually assigned by her to the papers referred to were fully merited by the answers given. The trial court refused to admit this testimony, and there is nothing before us to show whether the changes made were in conformity with the merit of the papers or not.

The case for the prosecution supposes that the changes above referred to were made by Miss Romualdez in bad faith and that she was corrupted by Luis Mabunay to make the changes in his papers for the purpose of securing his successful completion of the examinations when in fact he had failed. In this connection proof was submitted showing that on March 2, 1927, Luis Mabunay withdrew from his savings account in the Philippine Trust Co. the sum of P600, and that on March 7, 1927, Miss Romualdez deposited a sum of money to her credit in the Bank of the Philippine Islands, among the items of which deposit was the sum of P400.

It appears that there are two persons bearing the name of Luis Mabunay in the City of Manila. The individual who was candidate in the bar examinations of 1926, and who is one of the two accused in this case, was, at the time with which we are here concerned, assistant chief of the administrative division of the Executive Bureau. The other Luis Mabunay was, at the same time, a clerk in the law office of Vicente Romualdez, who is a brother of Miguel Romualdez, father of the accused Estela Romualdez. In the early stages of this prosecution confusion existed concerning these two individuals. So much so that the fiscal, when this proceeding was begun, was under the impression that the Luis Mabunay who was joined as co-defendant in this case was the Luis Mabunay who was employed in the office of Vicente Romualdez. On the other hand Estela Romualdez says that prior to his appearance in court, she had never seen her codefendant Luis Mabunay and had never known that there was such a person in existence. This point of the confusion over these two individuals has a bearing on the case against Luis Mabunay, but is not otherwise important.

An incident connected with the examinations now under consideration is found in certain corrections made by our then deputy clerk, Jeronimo Samson, in the grades given by a reader named Remo who was relieved from duty as a reader. Samson has the complete confidence of the court, and nobody has called in question the good faith of his work throughout. Well, after Remo was relieved, Samson took the papers in hand that Remo had already graded and in a number of cases changed his grades in precisely the same way in which Miss Romualdez changed the two papers of Luis Mabunay. In some of these corrections Samson did not append his own initials, and although

in one of the corrections made by Miss Romualdez the obliteration of the original grade was more complete than in the case of the grades obliterated by Samson, the manner of correction was substantially the same.

The dominating question in the case against Miss Romualdez is, in our opinion, whether Justice Romualdez gave her authority to revise the grades in the two papers marked "898". If that authority was in fact given, no case of falsification is made out against this accused; for, although she may have abused the authority and increased the grades in question for a corrupt purpose, her delinquency would have the character of an abuse of authority only. That this authority was given we do not entertain the slightest doubt, and the reason for crediting Justice Romualdez' statement on this point rests not only upon his character but upon the circumstances under which that statement was made in court. Of course a person will sometimes testify falsely or distort the truth for the purpose of assisting another; but experience shows that the most powerful motive which operates upon people as witnesses is the motive of self-protection. When the testimony of Justice Romualdez was delivered in court, the full extent of the irregularities attendant upon the examination of 1926 were generally known; and the slightest consideration of self-interest would have indicated to Justice Romualdez that he would do himself a service by not testifying as a witness. However, in the face of all these considerations, Justice Romualdez, in the interest of truth, did not hesitate to go into court and state that he in fact gave his niece authority to revise the grades. And what necessity can there be for us to debate the question of the truthfulness of Justice Romualdez when the fiscal who prosecuted this case more than once stated in open court that he had never doubted the veracity of the witness in this case?

Upon this point we quote textually from the transcript of the proceedings in the lower court:

"FISCAL GUEVARA. We have never doubted the veracity of the witness."

* * * * *

"FISCAL GUEVARA. On the other hand, as we have already stated, we do not doubt the veracity of the witness in this case."

But it is said that the authority granted by Justice Romualdez contemplated a revision of the grades in good faith and was coupled with the condition that the revision to be effected by her should be accomplished before the names of the candidates should be known. But the fact that the authority may have been coupled with this condition could not alter the character of the authority. She was made judge of the conditions under which the revision should be entered upon, as well as judge of the extent of the revision, and the violation by her of Justice Romualdez' directions on these points could not have the effect of obliterating the authority. However gross may have been her delinquency the offense could be nothing more than an abuse of authority.

In the course of these proceedings the evidence has been thoroughly combed by the prosecution to discover indications that Miss Romualdez acted in bad faith. Thus it is said that bad faith is shown in circumstances such as these: That she did not affix her initials to her corrections; that she used black ink to obliterate the grade that had been altered, and that she confessed her inability to recall the exact considerations which led her to increase the grades allowed by the original reader. All these considerations, and others equally trivial, as it seems to us, come with very poor grace from a court that had refused to permit the accused to prove by the testimony of experts that the examination papers whose grades were altered by her were in fact entitled at least to the grades which she affixed to them, if not more. What circumstance could possibly show more effectually the good faith of Miss Romualdez in increasing the grades than the fact, if it be a fact, that the papers merited the higher grades given by her to the candidate. But the merit of the grades must remain, by the action of the court in this case, like the location of the grave of Moses, forever unknown; and this long drawn-out litigation will shed no light upon what seems to the undersigned to be the most vital question with which the court should have concerned itself, namely, whether the grades assigned by Miss Romualdez to two of the papers of Luis Mabunay were right or wrong. One

of the reasons suggested for sustaining the objection against the proffered testimony of experts to show the propriety of the grades given is that the court itself could judge of the true value of the papers without the assistance of expert testimony, but no attempt had been made by the prosecution or by the court to demonstrate from the papers themselves that the grades assigned to them by Miss Romualdez were unmerited. Why should the court concern itself so meticulously with the circumstances indicative of possible bad faith when the grades raised are before us, affording the best evidence of their character.

In *United States vs. Michelena* (4 Phil., 492), it was held by this court that a person who makes a false statement in a certificate of merit in an application for an examination by the Civil Service Board cannot be convicted of the falsification of a public document, but of an offense punishable by *arresto mayor* under article 311 of the Penal Code. This decision was repeated in *United States vs. Dumandan* (8 Phil., 61). These decisions apparently attracted the attention of our lawmakers as indicating that the penalties affixed by the Spanish Code to certain offenses against the Civil Service were too light; and on August 26, 1907, the Philippine Commission adopted a law now incorporated in section 2674 of the Administrative Code. One of the provisions of this section punishes any person who shall falsely rate, grade, estimate, or report upon the examination or standing of any person examined by the Bureau of Civil Service. But that provision is limited to Civil Service examinations, and cannot be applied to bar examinations. Therefore, when confronted with the irregularity, or supposed irregularity, presented in this case, the fiscal's office was unable to proceed with the prosecution under section 2674 of the Administrative Code, and was compelled to fall back upon article 300 of the Penal Code which deals with the falsification of public documents.

The suggestion contained in the opinion of the court to the effect that Justice Romualdez had no authority to authorize Miss Romualdez to revise grades is in our opinion wholly untenable. He had as much authority to authorize her to revise grades as he had to authorize her to read and grade papers in the first place, there being no difference whatever in point of principle between the two acts. Now, the alteration of a grade by one authorized to revise is on exactly the same footing in law, under No. 6 of article 300 of the Penal Code, as the giving of a false grade, under No. 4 of the same article, by one who is authorized to grade. Does the court mean to suggest by this decision that the assigning of an untrue grade in bad faith by any reader authorized to grade examination papers constitutes a falsification of a public document? Legal literature does not furnish the slightest hint that would afford a basis for such a ruling. But this would be no more untenable than the conclusion reached by the court in this case that the alteration of a grade in bad faith by a person authorized to revise constitutes falsification of the document. A person charged with the duty of grading or revising examination papers exercises a power involving judgment and discretion. Such duty is evidently of a quasi-judicial nature; and a violation of such duty constitutes an abuse of authority rather than the falsification of a public document. And if the law in its present state, as thus interpreted, should appear to be inadequate, the Legislature might safely be relied upon to extend to bar examiners and readers the provisions already applicable to examiners under the Civil Service Law. This court is not called upon to legislate, and it should not distort the severe provisions relating to falsification for the purpose of covering delinquencies not fairly included therein.

With respect to the connection of Luis Mabunay with this case, we do not hesitate emphatically to say that, in our opinion, there is no item of proof connecting this accused with the irregularity imputed to Miss Romualdez. It is true that this Luis Mabunay was the person whose interests were primarily served by Miss Romualdez in raising the grades above mentioned; and if there were independent proof connecting him with the offense, the fact that his interests were so served would supply the explanation of the acts committed. But in the absence of adequate proof, this circumstance supplies no basis upon which to convict him. The only fact supposedly pointing to him as the guilty suborner of Estela Romualdez is that he drew out six hundred pesos from a savings account on March 2, 1927; but there is no proof that any of this money ever reached Miss Romualdez or that he was ever in

communication with her in any way.

The fact that Luis Mabunay did not testify as a witness in his own behalf cannot be used as an affirmative admission, and the logical propriety of his assumed guilt is no substitute for proof. It is true that some authority can be cited for the proposition, always guardedly advanced, that where there is some evidence, showing an incriminatory fact, and the accused is in a position to dissipate the inference drawn from that evidence, his failure to do so may be used as an admission of the injurious inference. But the application of that rule presupposes the existence of some incriminatory evidence; and in this case, to the mind of the undersigned, there is no proof, even weak, connecting this accused with the offense charged.

To present in a few words the legal basis of this dissent, we are unable to agree with the court in extending the concept of falsification to cover an abuse of authority on the part of a reviser of examination papers, a person who is clothed with a discretion in appraising the work revised. The circumstance that the cases against Felipe del Rosario and Jose Bautista should be cited as authority in the opinion of the court merely shows that there is no legal warrant in past jurisprudence for the decision now made; for the acts of falsification in those cases were not done by an examiner, reader, or reviser, but by the individual who was prosecuted or by some unauthorized individual acting at his instance. Moreover, the falsifications there accomplished were effected after the examinations had been concluded and the documents falsified had been committed to the archives of the court.

In the infancy of jurisprudence a sentiment had its birth in the mind of some jurist-poet which is still thought fit to be inscribed over the Temple of Justice: *Fiat Justitia Ruat Coelum*. The decision of the court in this case is a reminder that junctures sometimes occur in human affairs when even courts of last resort are constrained to ignore the suggestion expressed in this motto. Fortunately such occasions are rare; and we are unable to see any necessity in the present case requiring a departure from accepted doctrines.

For the reasons stated we dissent from the decision in this case. Judgment modified.

RESOLUTION OF THE MOTION OF THE APPELLANT ESTELA ROMUALDEZ FOR RECONSIDERATION

October 5, 1982

VICKERS, J.:

The attorney for the appellant Estela Romualdez submits in support of his motion for reconsideration the following propositions:

"First Proposition

"The court has erred in finding defendant guilty of falsification of public and official documents in view of the authority to revise the examination papers extended by Mr. Justice Romualdez.

"Second Proposition

"The court has erred in finding with respect to Mr. Justice Romualdez that 'he himself had no such authority as is alleged to have been given his secretary,' in view of the inconsistency of such finding" with its other findings.

"Third Proposition

"The court has erred in not extending any consideration to the question as to the true merit of the examination papers of Luis Mabunay Exhibits B-1 and B-2.

"Fourth Proposition

"The court has erred in finding as a fact that 'the accused Estela Romualdez did not admit that the alterations were made by her until after the prosecuting attorney had presented 350 pages of testimony and announced his readiness to prove by three handwriting experts that the alterations were in the handwriting of the accused.'

"Fifth Proposition

"The court has erred in finding as a fact that the defendant 'when she made the changes already knew that the papers belonged to her co-accused, Luis Mabunay.'

"Sixth Proposition

"The court has erred in finding the existence of a conspiracy between defendants, Estela Romualdez and Luis Mabunay.

"Seventh Proposition

"The court has erred in ignoring the statutory provisions of section 16 of the Code of Civil Procedure, prescribing the manner of conducting bar examinations.

"Eighth Proposition

"The court has erred in failing to recognize the right of defendant at least to the benefit of a reasonable doubt and by its judgment it has apparently nullified the principle that a person accused of crime is presumed innocent until his guilt is established beyond a reasonable doubt.

"Ninth Proposition

"The court has erred in failing to extend to the defendant her constitutional and statutory right to a speedy trial.

"Tenth Proposition

"During the period from the time this cause was submitted on appeal to this Honorable Court, defendant has suffered punishment neither ordained, recognized nor authorized by any law on our statute books.

"Eleventh Proposition

"The court has erred in imposing upon the defendant a sentence of punishment above and beyond such as is authorized under our Revised Penal Code."

The first ten propositions raise questions which were discussed in the arguments and duly considered in the decision of this case. No reason has been adduced that would justify us in changing our decision.

In support of his eleventh proposition, the attorney for the appellant points out that the penalty of perpetual disqualification from public office is not included in article 171 of the Revised Penal Code, which corresponds to article 300 of the Penal Code. He overlooks the fact, however, that the penalty of prision mayor under the Revised Penal Code, as well as under the Penal Code, carries with it certain accessory penalties.

The penalty provided in article 300 of the Penal Code, as amended by section 1 of Act No. 2712, for a public officer or employee or notary, who by taking advantage of his official position shall be guilty of the falsification of a document, is prision mayor and a fine in a sum not less than 250 and not more than 12,500 pesetas, and in addition thereto perpetual disqualification from any public office.

Article 61 of the Penal Code provides that the penalties of prision mayor, prision correctional, and arresto mayor shall carry with them suspension of the right to hold public office and the right of suffrage during the term of the

sentence.

Article 42 of the Revised Penal Code provides that the penalty of prision mayor shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

According to article 32 of the Revised Penal Code, the perpetual or the temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

In other words article 42 of the Revised Penal Code perpetually disqualifies the offender from the right of suffrage, and article 32 provides that the offender shall not be permitted to hold any public office during the period of his disqualification; whereas under article 300 of the Penal Code the offender is perpetually disqualified from holding public office, but under article 61 his right of suffrage is only suspended during the term of the sentence. Under both the Penal Code and the Revised Penal Code the offender is perpetually disqualified from holding public office. The provisions of the Revised Penal Code are, therefore, not favorable to the appellant.

For the foregoing reasons, the motion of the appellant Estela Romualdez is denied.

Avanceña, C. J., Malcolm, Ostrand, Abad Santos, Hull, Imperial, and Butte, JJ., concur.

DISSENTING

STREET, J.,

I adhere to my views expressed in my dissenting opinion in the main case. @

Villamor and Villa-Real, JJ., dissent.

Motion denied.

RESOLUTION OF THE MOTION OF THE APPELLANT ESTELA ROMUALDEZ FOR A NEW TRIAL

October 5, 1932

VICKERS, J.:

On September 22, 1932, the attorney for the appellant Estela Romualdez filed a motion for a new trial on the following grounds:

"(a) That defendant-appellant, Estela Romualdez, has just discovered new evidence material to the defense in this case; which could not have been discovered and produced at the trial below with reasonable diligence;

"(b) That the judgment of this court is contrary to law." Affidavits of Godofredo Reyes and of appellant's

attorney are attached to the motion. The evidence which the appellant wishes to present is the testimony of Godofredo Reyes, who was a member of the bar examination committee in 1926.

After considering the motion and the affidavits presented in support thereof, we find that it is without merit. In the first place the evidence which it is proposed to present is not newly discovered, evidence within the technical meaning of that phrase, and in the second place this evidence, if admitted, would not affect the result of this case.

In the case of *United States vs. Luzon* (4 Phil., 343) and *United States vs. Quijano* (11 Phil., 368), it was held that a motion for a new trial, based upon newly discovered evidence, will not be granted unless the following conditions exist: (1) The evidence must have been discovered since the trial; (2) it must be such that with the use of reasonable diligence on part of the defendant it could not have been secured at the former trial; (3) it must be material, and not merely collateral, or cumulative, or corroborative, or impeaching; (4) it must be such as ought to produce a different result on the merits of another trial; and (5) it must go to the merits and not rest on a merely technical defense.

For the foregoing reasons, the appellant's motion for a new trial is denied.

Avaceña, C. J., Malcolm, Ostrand, Abad Santos, Hull, Imperial, and Butte, JJ., concur.

CONCURRING

STREET, J.,

While not questioning the propriety of the resolution I adhere to the views expressed in the dissenting opinion in the main case.

Villamor and Villa-Real, JJ.:

We concur with Justice Street.

Motion denied.

RESOLUTION OF THE MOTION FOR RECONSIDERATION AND NEW TRIAL OF THE APPELLANT LUIS MABUNAY

October 5, 1932

VICKERS, J.:

The appellant Luis Mabunay asks for the reconsideration of the decision of this court of September 10, 1932 for the following reasons:

- (1) The court relied on mere suspicion and conjecture in convicting Mabunay.
- (2) From the fact that the accused Mabunay did not testify at the trial of this case, nothing against his innocence should be inferred.

The motion for reconsideration raises only questions which have been carefully considered and decided, and it is unnecessary to restate our findings and conclusions.

The attorney for the appellant calls attention to the Spanish text of section 59 of General Orders No. 58 reading as follows:

"En todas las causas criminales las pruebas admitidas deberan ser concluyentes para demostrar el hecho que se trata de probar. Al querellante corresponded proponer y practicar las pruebas que demuestren la culpabilidad, y debera ser presentada la prueba mas concluyente de que sea susceptible la causa."

This does not seem to us an exact translation of the original of this section in English, which should prevail. It is as follows:

"In all criminal prosecutions the evidence admitted must be relevant to the fact at issue, the burden of proof of guilt shall be upon the prosecution, and the best evidence must be produced of which the case is susceptible."

With respect to the second ground of the motion for reconsideration, based upon paragraph 3 of section 15 of General Orders No. 58, which provides that the neglect or refusal of a defendant to be a witness shall not in any manner prejudice or be used against him, it is sufficient to refer to the decision in question. The attorney for the appellant appears to make no distinction between the failure of the defendant to testify and explain a certain fact and the failure of the defendant to present any other witness in explanation of that fact.

After having elected not to testify in his own behalf or to present any other witness to explain for what purpose he withdrew the money in question from the Philippine Trust Company, the appellant Mabunay, now that he has been convicted by the lower court and his conviction has been affirmed by this court, prays that he be granted a new trial in order that he may testify himself and present other witnesses to testify as to that fact. The appellant is clearly not entitled to a new trial. for such reason.

For the foregoing reasons, the motion of the appellant Luis Mabunay is hereby denied.

Avanceña, C. J., Malcolm, Ostrand, Abad Santos, Hull, Imperial, and Butte, JJ., concur.

Street, Villamor, and Villa-Real, JJ., dissent.

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