

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONIO XAVIER, DEFENDANT AND APPELLANT.

G.R. No. 3642. October 07, 1907

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-3642/>

JOHNSON, J.:

This defendant, together with Juan Montes and Eugenio Napazendayao, was charged with the crime of estafa. After each of the defendants had pleaded "not guilty" to the crime charged, upon motion of the fiscal the said Montes and Napazendayao were discharged in order that they might be used as witnesses during the trial of the cause against the said Xavier, in accordance with the provisions of section 34 of General Orders, No. 58.

At the conclusion of the trial and after hearing the evidence, the judge of the lower court found the defendant guilty of the crime of estafa, in the manner and form charged in the said complaint, and sentenced him to be imprisoned for a period of four years of presidio correccional, to indemnify the Hongkong and Shanghai Banking Corporation in the sum of P2,000, Philippine currency, or in case of insolvency to suffer subsidiary imprisonment, in accordance with the provisions of the Penal Code, which subsidiary imprisonment should not exceed one-third of the original sentence, to suffer the accessory penalties provided for by the Penal Code, and to pay the costs. From this judgment the defendant appealed to this court, assigning the following as errors committed by the lower court:

"First. The facts proved in this case constitute the crime de falsedad (falsification).

"Second. The proof was not sufficient to convict the defendant of the crime charged.

"Third. That the court had no authority under the law to dismiss the codefendants.

"Fourth. The lower court should have granted a new trial."

With reference to the first assignment of error above noted, it is true that the evidence adduced during the trial of the cause demonstrates that the defendant might have been charged with the crime of falsification of a mercantile document, as well as that of estafa. In such case the punishment imposed by the law would have been much more severe than that provided for by the Penal Code for the crime of estafa.

Pacheco, in his commentaries on the Penal Code, in discussing the crime of estafa, says:

"It is very easy in the commission of the crime of estafa to commit other crimes—falsedades particularmente—in such cases they must be punished with the penalty corresponding. In such case—that is, when two different crimes concur—the manner of applying the penalties has already been opportunely explained."

However, in the present case, the defendant was charged with the crime of estafa, and the evidence, in our opinion, fully justifies that qualification of the crime. There is no doubt if the defendant had raised the objection in the lower court before the commencement of the trial that he should have been charged with the crime of the falsification of a mercantile document instead of with that of estafa, showing the court at the same time that the

punishment for the former offense would be much more severe than that for the latter, that the court might have acceded to his wishes. The qualification of the crime in the complaint in the lower court is fully justified by the evidence adduced during the trial.

The second assignment of error above noted presents a question of fact relating to the sufficiency of the evidence, upon which the lower court found the defendant guilty of the crime charged.

An examination of the evidence adduced during the trial of the cause, justifies the following finding of facts:

- That on the 26th day of May, 1906, a check numbered 163377, for the sum of P2,000, Philippine currency, payable to bearer, signed by Charles W. Briggs, was presented to the Hongkong and Shanghai Banking Corporation of the city of Iloilo by Eugenio Napazendayao for payment.
- That upon request the said Eugenio Napazendayao indorsed the said check and received the sum of P2,000 in payment thereof.
- That the said Charles W. Briggs did not sign the said check nor authorize nor give his consent that his name should be signed to the same by another person.
- That Antonio Xavier signed the name of Charles W. Briggs to said check, without the authority or consent or knowledge of the latter, and delivered said check to the said Eugenio Napazendayao, with instructions that he should take the same to the bank and receive payment thereon.
- That the said Antonio Xavier, in signing the name of Charles W. Briggs to the said check, attempted to imitate the signature of the said Briggs.
- That the said Eugenio Napazendayao, after receiving the money upon the said check from the bank, delivered the same to Antonio Xavier.
- That no part of the money so received upon the said check has been repaid to the said bank or to the said Briggs.

With reference to the third assignment of error above noted, to wit, that the lower court erred in dismissing the codefendants of the present appellant, it is sufficient, in answer to this assignment of error, to cite the provisions of section 34 of General Orders, No. 58, which provides that when two or more persons shall be included in the same charge, the court, at any time before the defendants have entered upon their defense, or upon the application of counsel for the Government, may direct any defendant to be discharged, that he may be a witness for the United States. The fiscal, in asking for the dismissal of the codefendants of the appellant in this cause, did so in accordance with the provisions of this section, and the lower court committed no error in granting the request of the said fiscal.

With reference to the fourth assignment of error above noted, to wit, that the lower court erred in not granting new trial, upon motion of the defendant, the record discloses that this motion was based upon an affidavit of Juan Montes and one Villanueva, the latter, on the 16th day of August, a few days after the lower court rendered his decision in said cause, declaring that all of his testimony given before the court during the trial was false. On the 17th day of August, the same Juan Montes made another affidavit in which he stated that his affidavit of the 16th was entirely false and that his testimony given on the trial was true in every particular; that the affidavit of the 16th was procured from him upon the request of Antonio Xavier and one Goles, the keeper of the prison in the city of Iloilo, and Guevara, the deputy sheriff in attendance upon the court of said province; that Xavier promised him immunity in all cases against him and to pay all his expenses if he would retract his former testimony and make the affidavit in question. The affidavit of Villanueva states no fact of importance upon which a new trial should be granted. The court committed no error in denying the motion for a new trial upon the evidence

presented.

The lower court, in its sentence, found the defendant guilty of the crime charged in the said complaint, under paragraph 5 of article 535 (Penal Code), in relation with paragraph 3 of article 534, and considering the abuse of confidence as an aggravating circumstance, sentenced the defendant to be imprisoned for a period of four years of presidio correccional, etc. We are of the opinion that the aggravating circumstance mentioned by the court can not be considered as an aggravating circumstance, for the reason that it is one of the elements of the crime charged in this cause. We are also of the opinion that the crime proven in this cause is punishable under paragraph 1 of article 535, in relation with paragraph 3 of article 534, and that the penalty should be presidio correccional in its minimum and medium grades.

It is the judgment of this court, therefore, that the sentence of the lower court be modified and that the defendant be sentenced to be imprisoned for a period of two years of presidio correccional, to indemnify the Hongkong and Shanghai Banking Corporation in the sum of P2,000, Philippine currency, or, in case of insolvency, to suffer subsidiary imprisonment in accordance with the provisions of the Penal Code, which shall not exceed one-third of the original sentence, to suffer the accessory penalties provided for by article 58 of the Penal Code, and to pay the costs. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.