

JOAQUIN S. TORRES, PETITIONER AND APPELLANT, VS. THE SUPERINTENDENT OF SAN RAMON PRISON AND PENAL FARM, RESPONDENT AND APPELLEE.

G.R. No. 40373. November 24, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from the final decision of the Court of First Instance of Zamboanga, denying the petition of the appellant for a writ of habeas corpus.

The appellant, Joaquin S. Torres, was convicted on September 23, 1931, by the Court of First Instance of Davao, of the crimes of estafa on twenty separate informations to all of which he plead guilty, the aggregate of the penalties in the twenty cases being eight years and twenty days, if subsidiary imprisonment be included.

On July 5, 1933, the appellant filed a petition for a writ of habeas corpus in the Court of First Instance of Zamboanga, invoking the provisions of article 88, paragraph 2, of the former Penal Code, and contending that the court that sentenced him exceeded its jurisdiction in the penalty assessed.

Article 88, paragraph 2, reads as follows:

"Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period."

Whatever confusion may have existed in the interpretation and application of article 88, paragraph 2, *supra*, before the decision of this court in the case of *People vs. Garalde* (50 Phil., 823), that case, after a full review of the previous decisions, decided once and for all that article 88, paragraph 2, applies although the penalties were imposed for different crimes, at different times, and under separate informations. It is unnecessary to repeat here the argumentation of that decision which was adopted by unanimous vote of this court.

The doctrine laid down in that case has been uniformly followed in this court. To enumerate only a few, attention is called to the following recent decisions: *Gregorio Bogayong vs. Director of Prisons* (G. R. No. 37106, Resolution of March 26, 1932); *Liberato Maballos vs. Director of Prisons* (G. R. No. 38067, Resolution of September 9, 1932); *Mauro G. Rompal vs. Director of Prisons* (G. R. No. 37543, Order of June 4, 1932); *Estanislao M. Masin vs. Director of Prisons* (G. R. No. 38876, Resolution of January 19, 1933). In all of said cases, under circumstances, analogous to the facts set out in the petition under review, the writ of habeas corpus was granted on the ground that the trial court had no jurisdiction to assess a penalty in excess of that provided in article 88, paragraph 2, *aforesaid*.

The judgment of the court below is reversed with costs *de oficio*, and the lower court is directed to grant a writ of habeas corpus as prayed for in the petition.

Avanceña, C. J., Street, Malcolm, Villa-Real, Abad Santos, Hull, Imperial, and Diaz, JJ., concur.

DISSENTING

VICKERS, J.:

I dissent, not only because the ruling of the majority produces the absurd result of reducing the penalty of the petitioner to two years and three days for the misappropriation of P29,592, or less than one-half of what he would have received if he had been prosecuted on a single complaint for the total amount misappropriated, but also because I cannot agree with the decision of this court in the Garalde case relied on in the majority opinion.

In the case of the petitioner the fiscal had no right to split up the offense and to prosecute him on twenty different charges instead of prosecuting him once for the total amount of his misappropriation during the period in question.

The decision in the Garalde case overrules the decision of this court in *Celis vs. Warden of Bilibid* (18 Phil., 373), where the application of the provision of law now in question was considered and decided in an opinion written by Chief Justice Arellano, and is contrary to the later decisions of the Supreme Court of Spain. The Garalde decision rests upon the fallacy that paragraph 2 of article 88 of the Penal Code must be given effect at any cost, whereas in my view of the matter that provision of law was rendered inoperative by the new Code of Criminal Procedure (General Orders, No. 58).

The majority opinion mentions certain recent decisions of this court where the rule laid down in the Garalde case was followed, among them *Liberate) Maballo vs. Director of Prisons* (G. R. No. 38067) and *Mauro G. Rompal vs. Director of Prisons* (G. R. No. 37543).

In the Maballo case it appeared that the petitioner had been convicted by the municipal court of Manila in 1915 of a violation of Act No. 2159 in one case and of a violation of an ordinance in another case, and of theft by the same court in 1916 in seven cases; and by the Court of First Instance of Manila in five cases of theft in 1919 and in four cases of theft in 1920; that is, the petitioner had been convicted of different crimes in different courts in different years, and yet this court held that the trial judges were without jurisdiction to impose the penalties corresponding to the respective crimes committed by the petitioner, in excess of three times the penalty corresponding to the graver crime, notwithstanding the fact that it does not appear that this point was raised in any of the trials of the petitioner.

Mauro G. Rompal was convicted of estafa in twenty-three cases by the Court of First Instance of Leyte, eight times on September 5, 1928 and fifteen times on September 6, 1928. The total amount misappropriated by him was P2,580, and the total of his prison sentences, not including subsidiary imprisonment, was four years and twenty-three days. This court in habeas corpus proceedings reduced the penalty to two years and four months, and released him from custody.

Finally, it may be observed that the provision of the Penal Code in question has been omitted from the Revised Penal Code.

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