

JOSE O. LONTOC, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 48896. December 29, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

La codicia rompe el saco,

Naghangdd ng karakot, nawaldn ng isang salop.

The poignant verity of these Spanish and Filipino proverbs is doubly felt by the petitioner. (1) As foremantimekeeper in the construction of the Carmona-Dasmarinas Road, he was accused of having unlawfully enriched himself by P10 thru falsification of the pay roll; or, in the language of the Penal Code, he committed the complex crime of estafa thru falsification of a public document. The Court of First Instance of Cavite found him guilty only of falsification thru reckless imprudence and sentenced him to suffer four months and one day of arresto mayor. (2) Not satisfied with that light sentence he appealed, and the Court of Appeals after reviewing the evidence found him guilty of the original charge and sentenced him to an indeterminate penalty of from eight years and one day to ten years, eight months, and one day of prision mayor and to pay a fine of P200 and the costs.

The case is now before us on certiorari to review the judgment of the Court of Appeals. The findings of that court, penned by Justice Bengson and concurred in by Justices Lopez-Vito, Montemayor, and Zulueta, read as follows:

"The People's evidence showed that during the months of March and April, 1939, the accused was foreman and timekeeper in the construction of the road Carmona-Dasmariñas, and as such was in charge of the daily time book for laborers and of the preparation of the corresponding pay roll; that in the pay roll Exhibit A prepared by him for the period March 20 to March 31, 1939, the name of Elias Siño appears as having worked daily thereon from March 20 to March 30, 1939, at the rate of one peso a day; that one Elias Siño was paid P10, and signed at the corresponding place in the pay roll, his signature being identified by Sofronio Bayla; that Sofronio Bayla did not know the person who so signed and took the money, but he (Bayla) was caused by defendant Jose O. Lontoc to countersign the pay roll so that the person who appeared as Siño may be paid; that the real Elias Siño never worked in the said public work, and has not received the amount of P10.

"In the lower court, the accused admitted that in preparing Exhibit A, he well knew that Elias Siño never worked as laborer on the road. He alleged, however, that he included Siño's name in said pay roll upon orders of Sofronio Bayla (who was his superior, being the superintendent), under the following circumstances: Bayla engaged the truck of one Bernardo Ebron to carry earth from the Baneal River to the culvert at station 7-800 of the Carmona-Dasmarinas road at the rate of one peso per trip; the truck made ten trips with Angel Sarmiento and Elias Siño as helpers; however, payment for Ebron's services could not be made by means of a voucher, because the District Engineer would disapprove it inasmuch as the truck had no license for 1939; so Bayla conceived the device of putting Siño on the pay roll to make the payment to Bernardo Ebron.

"Bayla denied defendant's version; and the lower court discredited it, not only because there was no reason for

Bayla to order such a dubious arrangement, for he could have hired another truck properly registered, but also because it appeared that Siño was a townmate and compadre of Lontok, and it was the latter who was more interested to pay him, and not Bayla to whom Siño was a complete stranger. We are inclined to agree with the trial judge, for the additional reason that if the facts had occurred as defendant related, he should have included the name of Bernardo Ebron in the pay roll—instead of Elias Siño. Furthermore, Elias Siño himself swore that he never received the money—which is a positive indication that someone in connivance with the accused posed as Elias Siño to get the wages and defraud the Government. And this leads us to disagree when His Honor says that the accused may not be convicted of estafa. Defendant must have received part, at least, of the amount in consideration for his active participation in the swindle. He knew the falsity, he presented a man who posed as Siño to Bay la, and induced the latter to identify the impostor as Siño. He is a principal in the defraudation.

"As to the falsification, there can be no doubt of appellant's guilt. And not being so inexperienced, as he would like us to believe, for it appears that he has already been convicted of a similar offense, he should be sentenced for falsification of public document, plain and simple, not through reckless imprudence. He could not plead mere negligence, for the pay roll bears this certification in his handwriting and above his signature:

"I hereby certify that the above laborers have rendered services in laying the concrete pipe culverts on station 7-800 and cementing the joint of the culverts and wing head wall on station 7-400 and repair and const, of temporary bridge over Embarcadero river and Paliparan road."

Counsel for the petitioner makes a heroic attempt to persuade us to review the evidence, reverse the findings of fact of the Court of Appeals, and declare his client innocent. That, counsel ought to know, we are powerless to do; for, under the law, in a case brought to us on certiorari like this, the findings of fact made by the Court of Appeals are final and conclusive.

It is contended that the petitioner cannot be held to have committed estafa because the Court of Appeals itself did not expressly find that he had actually received the P10 in question but merely said that "defendant must have received part, at least, of the amount in consideration for his active participation in the swindle. He knew the falsity, he presented a man who posed as Siño to Bayla, and induced the latter to identify the impostor as Siño. He is a principal in the defraudation." We think the appellate court's conclusion of law upon this point is correct. It was not necessary for the prosecution to prove that the money was paid to or actually received by the accused. From the finding that the accused falsified the pay roll, by which means the money in question was procured to be paid to one who was not entitled to receive it, no other conclusion can be drawn than that arrived at by the Court of Appeals, namely, that he is a principal in the defraudation.

This leads us to the main question of law involved in this case: Could the Court of Appeals legally find the appellant guilty of estafa thru falsification of a public document as originally charged against him after the lower court had found him guilty only of falsification thru reckless imprudence, thereby acquitting him of estafa?

Counsel for the petitioner maintains the negative and cites section 10 of Rule 120 of the Rules of Court; the case of *People vs. Abellera*, G.R. No. 46747 (Feb. 24, 1940); and *People vs. Orfida*, G.R. No. 46877 (Feb. 27, 1940).

Section 10 of Rule 120 reads as follows:

"Sec. 10. When judgment not to be reversed or modified. —No judgment shall be reversed or modified unless the appellate court after an examination of all the appeal papers is of the opinion that error was committed which injuriously affected the substantial rights of the appellant."

From this, petitioner argues that if the error committed by the trial court did not injuriously affect his substantial rights, the Court of Appeals could not reverse or modify it unless the reversal or modification would favor the appellant; and, he adds, "conversely, if the error is favorable to the appellant, there is no ground for the Court of

Appeals to modify or reverse such judgment." The argument is specious; and the petitioner has seen only one side of the medal—that referring to the reversal or modification in favor of the appellant. The other side of the medal—that referring to the reversal or modification adverse to the appellant—is the following section 11 of the same rule:

"Sec. 11. Power of appellate court on appeal.—Upon appeal from a judgment of the Court of First Instance, the appellate court may reverse, affirm, or modify the judgment and increase or reduce the penalty imposed by the trial court, remand the case to the Court of First Instance for new trial or re-trial, or dismiss the case."

That and not section 10 is the provision of law applicable to this case.

The cases of Abellera and Orfida are different from the instant case. In the first case Abellera was accused of infidelity in the custody of ballot boxes but was acquitted by the trial court. However, in acquitting him the judge took occasion to reprimand him for misconduct as Clerk of Court, consisting of misreading¹ some ballots during the hearing of the election case to favor one of the contestants, and of accepting free transportation and meals from one of the litigants. He appealed from that part of the decision reprimanding him, and the fiscal also filed a notice of appeal from the judgment of acquittal. After the Solicitor General had filed his brief for the People as appellant, the Court, upon motion of counsel for the accused, rejected it and ordered it returned on the ground that under the cases of *Kepner vs. U. S.*, 195 U.S., 100, and others the Government has no right to appeal from a judgment of acquittal. In deciding the case on the merit, the Court reiterated that ruling and refused to consider the plea of the Solicitor General to review the case and convict the appellant of the crime charged. It will at once be noted that in that case the accused was entirely acquitted by the trial court of the crime charged, whereas in the instant case the accused was convicted by the trial court of a lesser offense included within the original charge; and there the appeal of the accused was from a portion of the sentence which had no relation to the offense for which he was prosecuted, while here the appeal of the accused is from the judgment of conviction of a lesser offense which was included within the higher offense for which he was prosecuted.

In the second case, Francisco Orfida was prosecuted for malversation of public funds thru falsification of public documents. The trial court found him guilty only of malversation, and the Court of Appeals affirmed that judgment, disregarding the contention of the Solicitor General for the appellee that the appellant was guilty of the complex crime charged against him. From the confirmatory judgment of the Court of Appeals the Solicitor General appealed by certiorari to this Court, but the latter maintained the ruling that the Government has no right to appeal from the judgment of acquittal. That is obviously not the present case. Even assuming that there the Court of Appeals erred in not sustaining the Solicitor General's contention that the appellant could and should be held guilty of the higher offense originally charged against him, it was not within the power of this Court to correct such error thru an appeal by the Government, because it maintained that such an appeal did not lie.

We find that the decision of the Court of Appeals convicting the petitioner of the higher offense with which he was charged in the Court of First Instance is in accordance with the ruling laid down by this Court in a long line of decisions, from *U. S. vs. Abijan*, 1 Phil., 83, to *People vs. Ofindo*, 47 Phil., 1, which has been embodied in statutory form in section 11 of Rule 120 above quoted. The reason behind this rule is that when an accused appeals from the sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then celled upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the appellant. This rule is too well known for any lawyer to ignore. But if the numerous cases wherein this Court has convicted the appellants of a higher offense or has increased the penalty imposed on them by the trial court, have not been seen by some lawyers for accused-appellants as a red light indicative of danger or risk, let the bitter experience of the herein petitioner serve as a perpetual reminder to others to heed the moral lesson of the proverbs with which this opinion is prefaced.

There is, however, an error committed by the Court of Appeals prejudicial to the petitioner, which though not assigned by the latter we are bound to correct as a matter of justice; and that is the penalty imposed by said court for the offense of estafa thru falsification of a public document. The penalty prescribed by law for that offense is prision mayor to be applied in its maximum period plus a fine not to exceed P5,000. (Article 315, case No. 4, in connection with articles 171 and 48 of the Revised Penal Code.) In determining the penalty next lower in degree for the purpose of applying the Indeterminate Sentence Law, the Court of Appeals disregarded the ruling of this Court in the case of *People vs. Gonzales* (Apr. 20, 1942), G.R. No. 48293, 1 Off. Gaz., 297. We deem it unnecessary to re-examine the correctness of that ruling, which, the present writer believes, has been lucidly and amply demonstrated by the opinion penned by Mr. Justice Moran in that case. We may, however, take this opportunity to observe that aside from its correctness, its wisdom and justice are demonstrated by its application to the instant case. Were the contrary theory, or that applied by the Court of Appeals, to be followed, an enormous and notorious disparity between the pettiness of the amount malversed (P10) and the severity of the minimum penalty imposed by the Court of Appeals (eight years and one day) would result, which would shock the average man's sense of justice; whereas under our ruling in the *Gonzales* case the court is given wide latitude in fixing the minimum and the maximum penalties to be imposed to suit the facts and circumstances of each particular case and thereby more fully satisfy the behests of justice. Adhering to our ruling in that case, we find that the maximum of the indeterminate penalty that should be imposed against the petitioner should be within the maximum period of prision mayor, which ranges from ten years and one day to twelve years, and the minimum should be within that next lower in degree to prision mayor, namely, prision correccional, which ranges from six months and one day to six years.

Wherefore, the sentence of the Court of Appeals with regard to the fine (P200) is affirmed; but it is modified with regard to the, term of the indeterminate sentence, which is hereby reduced as follows: minimum, six months and one day of prision correccional; maximum, ten years and one day of prision mayor. No pronouncement as to costs in this instance.

Yulo, C. J., Moran, and Bocobo, JJ., concur.

DISSENTING

PARAS, J.,

I concur in the finding that the appellant should be and can be held guilty of the complex crime of estafa through falsification of a public document. I cannot agree, however, to the minimum period of the penalty fixed by the majority.

In accordance with articles 315, 171 and 48 of the Revised Penal Code, the penalty for the complex offense of estafa with falsification of which we are convicting the petitioner Lontoc, is prision mayor in its maximum period. What is the penalty next lower in degree for the purpose of fixing the minimum of the indeterminate penalty to be imposed upon the petitioner under the Indeterminate Sentence Law?

Under the decisions in *People vs. Co Pao*, 58 Phil., 545, *People vs. Gayrama*, 60 Phil., 796, and *People vs. Haloot*, 37 Off. Gaz., 2901, respectively penned by Justices Vickers and Diaz and Chief Justice Avancena, it is prision mayor in its medium period. On the other hand, in *People vs. Fuentes*, 4 Phil., 404, and *People vs. Gonzalez*, G.R. No. 48293, following the latest decision of the Supreme Court of Spain, it was held to be prision correccional in its maximum period. In the latter case this Court stated:

"But what is the penalty next lower to prision mayor when the latter is to be applied in its maximum period?"

There are two prevailing theories on this matter: (1) that the penalty next lower in degree should be prision mayor in its medium period, and (2) that it should be prision correccional in its maximum period. * * * In the instant case, the penalty provided by law is prision mayor which should be applied in its maximum period, because of the complex nature of the offense charged. There being two mitigating circumstances, the accused is entitled to the penalty next lower in degree. * * * The penalty next lower to prision mayor is prision correccional and this latter penalty should be applied in its maximum because of the circumstance above mentioned."

In the case of *People vs. Gonzalez*, I voted for the rule there enunciated but dissented from so much of the decision as held that the minimum of the indeterminate penalty might be fixed at any period within the full range of arresto mayor, and not only within the range of arresto mayor in its maximum period. In said case I did not detail the reasons for my dissent, but finding the case at bar to be similar in principle, I have decided to avail myself of the chance to discuss more elaborately my view.

Act No. 4103 provides that the minimum "shall not be less than the minimum imprisonment period of the penalty next lower to that prescribed by said Code for the offense." Act 4225, which amended Act 4103, provides that "the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense." This amendment was undoubtedly brought about by the dissenting opinion in *People vs. Mallari*, 60 Phil., 400, wherein it was held by the majority that the minimum might be taken not only from the range of this penalty next lower in degree but also from the range of the penalty prescribed for the offense, thereby, in the words of the dissenting opinion, leaving "it to the uncontrolled discretion of the trial judge to put the minimum penalty in the same period and the same degree as the maximum penalty."

The error of the majority in fixing the minimum of the indeterminate penalty in *People vs. Gonzalez*, arose from their failure to take into account the circumstance of complexity in considering the whole of prision mayor as the starting point in determining the penalty next lower in degree, on the mistaken belief that prision mayor in its entire extent is "the penalty prescribed by law, and not prision mayor in its maximum period which is only the penalty actually applied because of an attending circumstance." Prision mayor in its whole period is the penalty prescribed by article 171 of the Revised Penal Code for the offense of falsification of a public document by a public officer, but not for the complex offense of estafa through falsification of a public document. The penalty prescribed for the complex offense is, according to article 48, the penalty for falsification, which is prision mayor, to be imposed in its maximum period, or plainly speaking, prision mayor in its maximum period. This penalty is fixed regardless of the presence of any modifying (mitigating or aggravating) circumstances, which will only be considered when the court actually determines the degree of said penalty (prision mayor in its maximum period) from which the term of imprisonment to be imposed upon the defendant is to be taken. The penalty of prision mayor in its maximum period, in its whole range, should then be the starting point in determining the penalty next lower in degree. It is not true, as the majority believed, that prision mayor in its maximum period is the penalty actually imposed, for the latter penalty may be taken, in view of modifying (mitigating or aggravating) circumstances, from the maximum degree (11 years, 4 months and 1 day to 12 years), medium degree (10 years, 8 months and 1 day to 11 years and 4 months), or minimum degree (10 years and 1 day to 10 years and 8 months), of which prision mayor in its maximum period is composed. In other words, the penalty prescribed by law for the complex offense, which is the whole extent of prision mayor in its maximum period (10 years and 1 day to 12 years), is different from the penalty actually imposed, which may be taken from any of the three degrees composing the prescribed penalty after considering the presence of mitigating or aggravating circumstances. As stated by Mr. Justice Diaz in *People vs. Gayrama*, 60 Phil., 796, 809, "there can be no doubt but that the penalty

prescribed by law for the crimes committed by the appellant (homicide with assault upon agents of persons in authority) is reclusion temporal in its maximum period, on the ground that it is so expressly provided in said article 89 of the old Penal Code or article 48 of the Revised Penal Code."

Contrary to what the majority stated in *People vs. Gonzalez*, the circumstance of complexity is not a modifying (aggravating or mitigating) circumstance, in the sense that its presence elevates or lowers the penalty prescribed for an offense. It is a qualifying circumstance inherent and absorbed in two linked offenses by virtue of which the Code, instead of imposing two separate penalties for the two offenses, prescribes only one penalty. Article 48 was inserted in the Code for convenience, in order to avoid the necessity of specifying the given penalties for all imaginable complex offenses, and not to create merely an ordinary modifying circumstance. To make the point clear: Let us suppose that the Code did not have article 48 and, instead, it contained an article providing that the penalty of prision mayor in its maximum period shall be imposed upon any person who shall commit estafa with falsification. Can it then be alleged that this penalty is not the penalty prescribed for the complex offense? And yet this is exactly the position of the majority, simply because the lawmakers preferred a general provision covering all complex offenses to separate provisions penalizing every complex offense. In determining the penalty lower by one degree on account of the attendance of various mitigating circumstances, from which the maximum of the indeterminate penalty was taken, this Court deemed it necessary to consider the qualifying circumstance of complexity. Why should this circumstance be eliminated in fixing the same penalty in virtue of the Indeterminate Sentence Law ?

In the case of *People vs. Ducosin*, 59 Phil., 110, an example was given in which the penalty prescribed by the Penal Code is prision mayor in its medium and maximum periods. This Court said that the penalty next lower in degree is prision correccional in its maximum period to prision mayor in its minimum, that in fixing the maximum period of the indeterminate penalty, the rule is 'mandatory as to the consideration of aggravating or mitigating circumstances; and that although the court has a wide discretion in fixing the minimum, the same cannot be less than 4 years, 2 months and 1 day of prision correccional. In said example, the offense was less serious than that involved in the case at bar, because prision mayor in its medium and maximum periods was the prescribed penalty, and yet it was held that the minimum could not be less than 4 years, 2 months and 1 day; whereas in the instant case wherein the maximum has to be taken from prision mayor in its maximum period, it is held by the majority that the minimum of the indeterminate penalty can be as low as 6 months and 1 day. This in my opinion is absurd and devoid of any sense of proportion. In the case of *People vs. Mempin*, 40 Off. Gaz., 14th S., p. 28, Mr. Justice Laurel said:

"Pursuant to the Indeterminate Sentence Law, therefore, the appellant should be sentenced to an indeterminate penalty, the minimum period of which should not be less than two months and one day, nor more than four months (this being . the range of arresto mayor in its medium period, the penalty next lower in degree to the prescribed penalty which is prision correccional in its medium period) and the maximum, not less than two years, eleven months and eleven days, nor more than three years, six months and twenty days."

Wherefore, the minimum penalty to be imposed upon the petitioner in the case at bar should be taken from prision correccional in its maximum period (4 years, 2 months and 1 day to 6 years), which is the penalty next lower in degree to prision mayor in its maximum period, which in turn is the penalty prescribed for the complex offense committed by the petitioner.

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