

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FAUSTINO GARALDE, DEFENDANT AND APPELLANT.*G.R. Nos. 27420-27421. October 05, 1927*

Ponente: AVANCEÑA, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-27420-27421/>**AVANCEÑA, C.J.:**

On January 2 and February 4, 1926 the appellant Faustino Garalde, being assistant postmaster in charge of the post-office in the municipality of Bangui, Ilocos Norte, received two postal money orders mailed from Paauhau, Hawaii, payable to Paula Agustinez, for the sum of \$60 and \$100, respectively. The appellant signed and entered in the "Registered Package Received," the receipt for registered parcel No. 88109, within which was registered letter No. 276 for Paula Agustinez which contained the two money orders mentioned. The appellant himself was the one who opened the registered package. It also appears that the appellant himself addressed the proper registry notice to Paula Agustinez which referred to letter No. 276. Below the words "received payment" on the said two money orders the name of Paula Agustinez appears with a finger-print and, in addition, the names of two witnesses on each. On the same dates on which these money orders were received the appellant presented them to treasurer and postmaster Saturnino Quevedo in payment of his collections for that day. But, it appears that Paula Agustinez did not receive the amounts stated in the two money orders, nor did she put her finger-print on them, nor did the two witnesses with names appear on each of them sign them.

These facts have been fully proven.

Two informations were filed against the appellant, each for the crime of estafa with falsification of commercial documents. In each of these cases the lower court rendered its decision, the respective dispositive parts reading as follows:

"Wherefore, the court also finds that said accused is guilty of estafa with falsification of official document, and sentences him to the penalty of ten years and one day prision mayor, with perpetual disqualification from holding public office, and to indemnify the Bureau of Posts, or the post-office at Bangui, Ilocos Norte, in the sum of \$60, equivalent to P120, with the costs; it being understood that the penalty hereby imposed is conditional, that is, he shall suffer the same if the judgments rendered in criminal cases Nos. 4306, 4307, 4308, 4345 and 4309 of this court are revoked or modified, so that the total penalty including that herein imposed is not greater than is provided for by article 88 of the Penal Code; at all events, the accused is civilly liable." (Cause No. 4315, G. R. No. 27420.)

"Wherefore, the court finds that the accused Faustino Garalde is guilty of estafa with falsification of official document, and sentences him to the penalty of ten years and one day prision mayor, with perpetual disqualification from holding public office; and to indemnify the Bureau of Posts, or the post-office at Bangui, Ilocos Norte, in the sum of P200, with the costs; it is understood that the penalty hereby imposed is conditional, that is, he shall suffer the same if the judgments rendered in criminal cases Nos. 4306, 4307, 4308, 4345, 4309 and 4315 are reversed or modified, so that the total penalty including that herein imposed in criminal case No.

4316 is not greater than is provided for by article 88 of the Penal Code; at all events, the accused is civilly liable." (Cause No. 4316, G. R. No. 27421.)

We are of opinion that the acts proved in each of these causes constitute the crimes of falsification of public documents and malversation of government funds, which should be punished separately. The appellant has just been sentenced by this court, in two separate cases (Nos. 27040 and 27041)[1] to eight years and one day prison mayor in each of them for falsification of public document and to two years imprisonment also in each case for the crime of malversation.

In this instance, the Attorney-General submits an interpretation of article 88 of the Penal Code, which reads:

"ART. 88. When all or any of the penalties corresponding to the several violations of the law cannot be simultaneously executed, the following rules shall be observed with regard thereto:

"1. In the imposition of the penalties, the order of their respective severity shall be followed so that they may be executed successively or as nearly as may be possible, should a pardon have been granted as to the penalty or penalties first imposed, or should they have been served out.

* * * * *

"2. 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.

"Such maximum period shall in no case exceed forty years.

"In applying the provisions of this rule the duration of perpetual penalties (pena perpetua) shall be computed at thirty years."

More particularly, the question is whether paragraph 2 of this article is applicable only when the penalties for different violations are imposed in one and the same proceeding, or in every case, although the penalties were imposed in different proceedings.

This provision was an innovation introduced into the Spanish Penal Code of 1870, which, with some modifications, is the one at present in force in the Philippines. Previous legislation, adopting the theory of absolute accumulation of crimes and penalties, established no limitation whatever and, accordingly, all the penalties for all the violations were imposed, even if they amounted to hundreds of years. Thus it is that when this innovation was adopted, it was heartily approved, because it did away with the absurdity of a man being sentenced to imprisonment for a longer period than his natural life.

However, the decisions of the Supreme Court of Spain were not uniform in the interpretation of this provision. During the first years it was applied indiscriminately. But later on, the Law of Criminal Procedure was adopted in Spain, article 300 of which provides that each crime must be proceeded against separately, except allied crimes, which should be the subject of but one proceeding. Then the question arose as to whether paragraph 2 of this article (89 of the Spanish Penal Code) was applicable to all cases, or only when the crimes were tried in one single proceeding. And the Supreme Court of Spain, solving this particular question declared that it was applicable in all cases, because whether the culprit was tried and convicted in one or several proceedings, the reasons for the legal precept are the same, namely, to avoid the successive serving of the temporal penalties of deprivation of liberty, thus changing their essence and converting them into a perpetual penalty, out of proportion to the nature of the crimes and contrary to the juridical ends of penalty. (Decisions of November 14, 1881 and May 24, 1882.)

But in its decision of May 23, 1888, the Supreme Court of Spain changed this doctrine and declared that this

article was applicable only to those crimes which were the subject of the same proceeding. This change was confirmed in another decision rendered on April 8, 1903.

Neither has our own jurisprudence been uniform on this point. In the case of *United States vs. Carrington* (6 Phil., 20) this court applied paragraph 2 of article 88 to crimes which had been separately tried and were the subject of different judgments. The decision in that case was rendered on March 26, 1906, and it ignored the change of doctrine of the Supreme Court of Spain adopted since 1888, following the original one laid down in the decisions of 1881 and 1882 to which we have made reference. But, in the case of *Celis vs. Warden of Bilibid* (18 Phil., 373), this court, on February 10, 1911, also changed its former doctrine, declaring that said paragraph 2 of article 88 of the Penal Code was applicable only to crimes included in the same proceeding, citing the decision of the Supreme Court of Spain of 1903, which is also cited hereinabove. Lately, however, that is, in the case of *United States vs. Galaraga* (G. R. No. 17197),[(1)] in a decision rendered by a division of this court, paragraph 2 of article 88 was applied to crimes which were the subject of different proceedings.

The decisions on the matter being as above stated, both in Spain as well as in the Philippines, we are confronted with the necessity of defining once more our view on this question so diversely decided in previous cases.

We cannot adopt the doctrine of the Supreme Court of Spain, applying this provision only to crimes which are the subject of one and the same proceeding, as was done in the case of *Celis vs. Warden of Bilibid*. We have no procedural statute providing that allied crimes must be the subject of but one proceeding. On the contrary, we have a plain and conclusive procedural provision, section 11 of General Orders No. 58, which says that each information must not charge more than one crime. Thus, following our rules on criminal procedure, we can never have a case of several crimes being the subject-matter of one proceeding, and in no case can we apply this legal provision. It is true that according to our jurisprudence, when more than one crime is charged in an information and such multiplicity is not duly objected to, judgment may be rendered and punishment imposed for each and every one of the crimes charged. But, if we are to reserve the application of paragraph 2 of article 88 to such anomalous cases only, we would be applying it without any rational basis, because the basis would then be a violation of our procedural law and an arbitrary choice of the prosecuting attorney, in charging more than one crime in an information.

With respect to paragraph 2 of article 88 then, we have the alternative of either applying it to all cases, or not at all. The latter would mean the complete repeal of this provision. But, without an express legislative intention, we do not feel justified in repealing this provision established by law in favor of the accused.

We find it necessary to return to the old rule laid down in the case of *United States vs. Carrington*, *supra*. After all we find it more in keeping with the ends of penalty, which should be proportionate to the malice of the culprit and the effect and result of the act, and should not be made to depend upon any other consideration foreign to the crime itself, such as a procedural technicality. On the other hand, the general terms of this statutory provision do not permit of distinctions based on difference of procedure, because the same is justified only by related laws which were not in force at the time the Penal Code went into effect, and which, as it is reasonable to suppose, did not enter the mind of the legislator. Besides, in the case now before us, the adoption of the doctrine followed in *Celis vs. Warden of Bilibid*, *supra*, would mean, in view of our present law of criminal procedure, a retrocession to the legislation prior to the Spanish Penal Code of 1870, in which greater penalties could be imposed than the convict could humanly suffer. And that would almost exactly be the appellant's case, who is 24 years old and against whom seven complaints of the same tenor have been filed, each for the crimes of falsification of public documents and malversation of public funds, if we do not apply paragraph 2 of article 88 of the Penal Code in his favor, as his total penalty would be about seventy years imprisonment.

As this provision of the law is favorable to the accused, we hold, as the Supreme Court has held in similar cases, that article 7 of this Code is no bar to its application to the crime of malversation, of which the appellant is also convicted in these cases as in the two others above-mentioned, Nos. 27040 and 27041 (U. S. and Igle vs. Hocbo, 12 Phil., 304; U. S. vs. Parrone, 24 Phil., 29; U. S. vs. Almencion, 25 Phil., 648; People vs. Moran, 44 Phil., 387; People vs. Parel, 44 Phil., 437).

We, therefore, find that paragraph 2 of article 88 of the Penal Code should be applied to the two causes involved in this appeal; and inasmuch as the appellant has been sentenced in the two cases above-mentioned to various terms of imprisonment totaling twenty years and two days, the gravest of which being eight years and 1 day, he is hereby sentenced to only four years and one day prison mayor, disregarding the rest of the penalty provided by law as being in excess of thrice the gravest penalty imposed upon him, and affirming the judgments appealed from as regards the disqualification and indemnity, which may be simultaneously served; provided, however, that in case of insolvency, by analogy, he is not to suffer subsidiary imprisonment, since his imprisonment would be in excess of thrice the duration of the gravest penalty imposed on him; with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] Promulgated September 29, 1927, not reported.

[(1)] Promulgated August 23, 1921, not reported.

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.