

RAFAEL REGIS, PETITIONER AND APPELLANT, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT AND APPELLEE.*G.R. Nos. 46064, 46089. December 24, 1938*

Ponente: AVANCEÑA, C.J.

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On April 30, 1931 Genaro P. Nemenzo, as municipal president of Pinamungahan, Cebu, Rafael Regis, as municipal treasurer, and Filomeno P. Nemenzo, as witness, signed an official payroll in the amount of P473.70, it being made to appear therein that certain persons worked as laborers in the street project between Sibago and Sambagon-Poblacion. On May 2, 1931 the same Genaro P. Nemenzo, as municipal president, Rafael Regis, as municipal treasurer, and Melquiades Fuentes, as witness, again signed another official payroll in the amount of P271.60 under similar circumstances, namely, that it was made to appear therein that certain persons worked as laborers in the said street project. In this way the two amounts of P473.70 and P271.60 were appropriated and taken from the municipal funds. As a matter of fact, no such work was done in said street project and the persons mentioned in both payrolls had not performed any labor.

Two informations were filed as a result of the foregoing facts: one against Rafael Regis, Genaro P. Nemenzo and Filomeno P. Nemenzo, for malversation of the sum of P473.70 through falsification of a public document; and another against Rafael Regis, Genaro P. Nemenzo and Melquiades Fuentes, also for malversation of the amount of P271.60 through falsification of a public document.

Upon petition of the parties, only one trial was held for the two informations with reference to the accused Genaro P. Nemenzo, Filomeno P. Nemenzo and Melquiades Fuentes. Rafael Regis, at his request, was tried separately. In the cases against Genaro P. Nemenzo, Filomeno P. Nemenzo and Melquiades Fuentes, Rafael Regis was presented as a witness for the prosecution.

The Court of First Instance that tried these two cases held that the offense of malversation through falsification of a public document was committed in both, in each of which Rafael Regis, as principal, was sentenced to the corresponding penalties. The other accused are not referred to, because the present appeal concerns only Rafael Regis.

The Court of Appeals to which the two cases were elevated held that the falsification and the malversation referred to in the two informations constitute independent offenses, the reason given being that the malversation could have been committed, as in fact it was committed, without the falsification which was effected only to conceal the malversation.

The Court of Appeals also ruled that the two acts of malversation and falsification committed respectively on April 30, 1931 and May 2, 1931 do not constitute different offenses although they took place on different dates, for the reason that there was but one intention to commit the offenses of falsification and malversation on both dates.

These two cases have been brought up to this court by certiorari proceedings filed by Rafael Regis.

Error is assigned by the petitioner on the part of the Court of Appeals for the latter's failure to acquit him, notwithstanding the fact that he testified as a witness for the prosecution to prove the responsibility of Genaro P. Nemenzo, in support of which contention Act No. 2709 is invoked. This Act refers to the discharge of a coaccused, before he testifies, in order to utilize him as a witness for the prosecution against the other accused. It is not applicable to a coaccused who was tried separately and who has already testified as a witness without having been previously discharged.

It is also here contended that the trial court and the Court of Appeals erred in not favorably ruling upon the petitioner's motion for new trial. It must be noted that in the Court of First Instance the petitioner moved for a new trial with a view to proving that the fiscal had promised to discharge him if he would testify as a government witness, which motion was denied by the court. This resolution is not erroneous. The facts intended by the petitioner to prove in the new trial do not affect the merits of the case, because even supposing that such promise was made to him, it does not by itself entitle him to acquittal, since he is guilty of the offenses with which he is charged.

The conclusion of the Court of Appeals that the falsifications committed on April 30, 1931 and on May 2 of the same year were not necessary means for the commission of the malversations on the same dates, is correct. Each falsification and each malversation constitute independent offenses which must be punished separately.

But the decision of the Court of Appeals is erroneous in so far as it holds that the falsifications and the malversations committed on April 30, 1931 and on May 2, 1931 constitute a single falsification and a single malversation. According to the facts stated, this criterion is contrary to the decision of this court in various cases (U. S. vs. Infante and Barreto, 36 Phil., 146; People vs. Villanueva, 58 Phil., 671; People vs. Fabrig, G. R. Nos. 40666 and 40667 [60 Phil., 1001] ; and People vs. Amboni, G. R. Nos. 41294-41297 [60 Phil., 1038], in which we have held that the falsifications and malversations committed on different dates constitute different offenses. The circumstances present in those cases are similar to those present in the offenses which are the subject matter of the two cases before us. The statement in the appealed decision that there was only one intention to commit the falsification and the malversation of April 30 and those of May 2, 1931 is not supported by the facts of the case. They were committed on different dates sufficiently distant from each other (April 30 and May 2, 1931). It does not appear that when the malversation and the falsification were committed on April 30, it was already the intention of the appellant to commit also the falsification and the malversation of May 2, 1931, the same being necessary to justify the finding that, although they were committed on different dates, a single intention determined the commission of both. The acts being independent from each other and executed by different voluntary actions, each constitutes an independent offense.

The appellant Rafael Regis is found guilty of the two offenses of falsification committed on April 30 and May 2, 1931 and of the two offenses of malversation committed on the same dates, and he is sentenced, for each offense of falsification, under article 300 of the former Penal Code, as amended by Act No. 2712, to the indeterminate penalty ranging from a minimum of two years of prision correccional to a maximum of eight years and one day of prision mayor to pay a fine of 5,000 pesetas, with corresponding subsidiary imprisonment in case of insolvency, and to perpetual disqualification to hold public office; and for each offense of malversation, he is sentenced, under section 2672 of the Revised Administrative Code, to the indeterminate penalty ranging from a minimum of six months to a maximum of two years of imprisonment, to pay a fine of P500, to indemnify the municipal government of Pinamungahan, Cebu, in the amounts of P473.70 and P271.60 respectively, with corresponding subsidiary imprisonment in case of insolvency, and to perpetual disqualification to hold public office. He is further sentenced to pay the proportional part of the costs. So ordered.

Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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