

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RESURRECCION B. PEÑAS, DEFENDANT AND APPELLANT.

G.R. Nos. 46353-46355. December 05, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

The appellant was convicted on three separate charges for estafa with falsification of public documents by the Court of First Instance of Cebu and sentenced in each case to an indeterminate penalty of four years, two months and one day of prision correccional to ten years and one day of prision mayor, to pay a fine of P100, to indemnify the Government of the Commonwealth of the Philippines in the sum of P200 and to pay the costs. He appealed from these decisions of conviction and attributes to the lower court the following errors:

- In not declaring that he was placed in double jeopardy.
- In not declaring that the acts alleged in each of the three cases constitute only one offense.
- In not acquitting him in each case.

The informations in the three cases read as follows:

(G. R. No. 46353)

"That on or about January 4, 1937, in the City of Cebu, Philippines, the accused Resurreccion B. Peñas, who was then assistant postmaster of Barotac Viejo, Iloilo, and as such had in his possession and custody a blank money order book, wilfully, criminally and illegally, with abuse of his official position, falsified money order No. 419, series No. 6990, by making it appear that said money order was issued in the municipality of Barotac Viejo, Iloilo, in favor of the accused Resurreccion B. Peñas, in the amount of \$100, payable at the post office of the City of Cebu; he also imitated and forged the signature of the postmaster of Barotac Viejo, Sulpicio Peñafiel, thus causing false facts to appear on said money order No. 6990, such as the intervention of persons who in fact did not intervene nor had any knowledge of the issuance of said money order, for the herein accused Resurreccion B. Penas did not deposit in the post office of Barotac Viejo, Iloilo, the sum of \$100 or its equivalent of P200, nor did the postmaster; Sulpicio Peñafiel, intervene or have any knowledge of the issuance of said money order; that after falsifying money order No. 6990, the accused went to the post office of Cebu and, with intent of gain, presented the money order and collected the amount of P200 appearing therein, to the damage and prejudice of the Insular Government.

"Contrary to article 315 in connection with article 171 of the Revised Penal Code."

(G. R. No. 46354)

"That on or about January 4, 1937, in the City of Cebu, Philippines, the accused Resurreccion B. Peñas, who was then assistant postmaster of Barotac Viejo, Iloilo, and as such had in his possession and custody a blank money order book, wilfully, criminally and illegally, with abuse of his official position, falsified money order No. 419, series No. 6991, by making it appear that said money order was issued in the municipality of Barotac

Viejo, Iloilo, in favor of the accused Resurreccion B. Peñas, in the amount of \$100, payable at the post office of the City of Cebu; he also imitated and forged the signature of the postmaster of Barotac Viejo, Sulpicio Peñafiel, thus causing false facts to appear on said money order No. 6991, such as the intervention of persons who in fact did not intervene nor had any knowledge of the issuance of said money order, for the herein accused Resurreccion B. Peñas did not deposit in the post office of Barotac Viejo, Iloilo, the sum of \$100 or its equivalent of P200, nor did the postmaster, Sulpicio Peñafiel, intervene or have any knowledge of the issuance of said money order; that after falsifying money order No. 6991, the accused went to the post office of Cebu and, with intent of gain, presented the money order and collected the amount of P200 appearing therein, to the damage and prejudice of the Insular Government.

"Contrary to article 315 in connection with article 171 of the Revised Penal Code."

(G. R. No. 46355)

"That on or about January 4, 1937, in the City of Cebu, Philippines, the accused Resurreccion B. Peñas, who was then assistant postmaster of Barotac Viejo, Iloilo, and as such had in his possession and custody a blank money order book, wilfully, criminally and illegally, with abuse of his official position, falsified money order No. 419, series No. 6992, by making it appear that said money order was issued in the municipality of Barotac Viejo, Iloilo, in favor of the accused Resurreccion B. Peñas, in the amount of \$100, payable at the post office of the City of Cebu; he also imitated and forged the signature of the postmaster of Barotac Viejo, Sulpicio Peñafiel, thus causing false facts to appear on said money order No. 6992, such as the intervention of persons who in fact did not intervene nor had any knowledge of the issuance of said money order, for the herein accused Resurreccion B. Peñas did not deposit in the post office of Barotac Viejo, Iloilo, the sum of \$100 or its equivalent of P200, nor did the postmaster, Sulpicio Peñafiel, intervene or have any knowledge of the issuance of said money order; that after falsifying: money order No. 6992, the accused went to the post office of Cebu, and, with intent of gain, presented the money order and collected the amount of P200 appearing therein, to the damage and prejudice of the Insular Government.

"Contrary to article 315 in connection with article 171 of the Revised Penal Code."

(1) Previous to his prosecution in the herein three cases, the appellant was charged with and found guilty of infidelity in the custody of documents for which he was sentenced to an indeterminate penalty of six months and one day to four years and two months of prision correccional and to pay a fine of P500, plus costs. The facts constituting the crime of infidelity in the custody of documents, like those alleged in the information in the case wherein the appellant was convicted of said crime, are entirely distinct from those constituting the complex crime of estafa with falsification of public documents with which he was charged in the said three cases. There is no point of similarity between the two offenses except that in both crimes the perpetrator is a public officer and that the document concealed, removed or destroyed in the case of infidelity in the custody of documents and that falsified in the case of falsification are public or official documents. The conviction or acquittal in a case of infidelity in the custody of documents is no bar to the prosecution for the crime of falsification of the same documents. This is so because, one who conceals or destroys an official or public document in order to be punishable under the provisions of article 226 of the Revised Penal Code, which prohibits and penalizes infidelity in the custody of documents, need not falsify these documents in any of the ways provided in article 171 of the said Code. It is enough that he should remove, conceal or destroy said documents. In order that a public officer may be punished for the crime of falsification of a public document, it is not necessary that he should remove, conceal or destroy the falsified document. The doctrines of double jeopardy and previous conviction do not apply to cases wherein the following requisites are not present: that the defendant or defendants in both the former and later cases are the same; that the acts complained of in the two cases are likewise the same, and that the offenses are also the same or identical. (Secs. 24 and 26 of General Orders, No. 58; U. S. vs. Claveria, 29 Phil., 527; U. S. vs. Bayona Vitog, 37 Phil., 42; U. S. vs. Ching Po, 23 Phil, 578; U. S. vs. Lim Tigdien and Esteves, 30 Phil., 222.)

(2) On the dates alleged in the three informations, the appellant was assistant postmaster in the municipality of Barotac Viejo, for which reason he was aware that no money order could be bought or issued for a sum greater than \$100, as expressly provided in section 1968 of the Administrative Code. In accordance, therefore, with said provision of the law, in order to issue a money order for P600, it was necessary to make three separate money orders.

As shown by Exhibits A, B and C, which are the falsified money orders subject of the three informations, the appellant falsified the same on a single date: November 24, 1936, and he collected them also on a single date, January 4, 1937—from which it is inferred that the three acts of falsification and the said three acts of appropriation of the sum of P200 in each case proceed from a single purpose of the appellant, namely, to appropriate for himself the sum of P600. If he had to resort to this means falsifying three money orders, it was because he was aware that he could not do otherwise, in view of the legal provision, which he was supposed to know, limiting the issuance of money orders to sums not greater than \$100 or P200. When, for the attainment of a single purpose which constitutes an offense, various acts are executed, such acts must be considered only as one offense. Under this view, the appellant committed only the complex crime of estafa with falsification of three postal money orders which are, without doubt, official and public documents, the falsification being the means he employed to appropriate, as he did, for himself the sum of P600, to the prejudice of the Government.

Considering that the law prescribes a more severe penalty for the crime of falsification (art. 171, Revised Penal Code) than for estafa (art. 315, case 3, Revised Penal Code), we should impose on the appellant, in conformity with the provisions of article 48 of the said Code, the maximum of prision mayor, this being the penalty prescribed for the crime of falsification of public documents when committed by public officers.

Wherefore, under the Indeterminate Sentence Law, the penalty that should be imposed on the appellant in the said three cases is that of eight years and one day to ten years and one day of prision mayor (People vs. Co Pao, 58 Phil., 545; People vs. Gayrama, 60 Phil., 796; People vs. Haloot, 37 Off. Gaz., 2901), to indemnify the Government of the Commonwealth of the Philippines in the sum of P600, and to pay a fine of P2,000 and the costs.

(3) Having arrived at this conclusion, we consider it unnecessary to discuss the third error assigned by the appellant to the lower court.

In view of the foregoing, the appealed judgments are modified as expressed in this decision. So ordered.

Avanceña, C. J., Imperial, Laurel, and Concepcion, JJ., concur.

DISSENTS IN PART

VILLA-REAL, J.:

I dissent only from that part of the majority opinion declaring that the penalty next lower in degree, from which must be taken the minimum to be imposed on the appellant in accordance with the Indeterminate Sentence Law as amended by Act No. 4225, is prision mayor in its medium degree, because the complex crime committed by him is penalized by the Revised Penal Code with the maximum degree of prision mayor, plus a fine not to exceed P5,000. (Arts. 171 and 48 of the Revised Penal Code.) It is my opinion that the penalty should be taken from prision correccional in accordance with the procedure outlined in my dissenting opinion in the case of People vs. Haloot (37 Off. Gaz., 2901), for the reasons therein stated.

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