

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RESURRECCION B. PEÑAS, DEFENDANT AND APPELLANT.***G.R. Nos. 46802-46812. September 23, 1939*

Ponente: DIAZ, J.

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The accused in the eleven cases above-cited appealed to this court to question the propriety and validity of the sentences that had been imposed upon him in each of them. The propositions raised by him in support of his contention that said sentences are improper and invalid are those inferred from the assignments of error attributed by him to the lower court and appearing in his brief. Said propositions may be summarized as follows: (1) Having already been practically convicted of the same crimes in criminal cases Nos. 12082 of the Court of First Instance of Iloilo, 2768 of the Court of First Instance of Oriental Negros, and 1270, 1271 and 1277 of the Court of First Instance of Cebu, he can no longer be prosecuted again as he is now in the eleven cases under consideration; (2) the eleven crimes imputed to him in the eleven cases in question in reality constitute but one crime: the complex crime of estafa through falsification of public documents; (3) the Court of First Instance of Occidental Negros had no jurisdiction to take cognizance of and try said cases, and (4) the eleven cases should have been dismissed in accordance with the provisions of article 70 of the Revised Penal Code.

(1)

The convictions of the appellant in cases Nos. 12082 of the Court of First Instance of Iloilo, 2758 of the Court of First Instance of Oriental Negros, and 1270, 1271 and 1277 of the Court of First Instance of Cebu referred to by him were not for the same crimes with which he was charged in the eleven cases above-cited. In the first case, that is, No. 12082 (Exhibits 1 and 2) of the Court of First Instance of Iloilo, the crime of which the appellant was convicted was that of infidelity in the custody of documents, which is entirely distinct from the various complex crimes of estafa through falsification, of which he was convicted in the eleven cases in Question.

As was stated in cases G. R. Nos. 46353, 46354 and 46355 entitled *People vs. Penas* (39 Off. Gaz., 54), all of which were, decided on December 5, 1938, wherein said Penas was charged with and convicted of estafa through falsification of public documents, there was no point of contact between the crimes therein stated and that of infidelity in the custody of documents of which he had been convicted in the above-mentioned case No. 12082, supra (Exhibits 1 and 2), except the fact that the public officer who committed them was the same, that is, he, Resurreccion B. Penas, and that both the falsified document in the former cases and the concealed and substituted one in the latter case were public or official documents, although not the same. This is also true with the eleven cases now under consideration. An acquittal or conviction of infidelity in the custody of public documents is certainly not a bar to a prosecution for falsification of a public document of a person acquitted or convicted of the former crime, if he happens to be guilty of falsification. This is all the more true because in order that a person concealing or destroying a public document may be punished in accordance with the provisions of article 226 of the Revised Penal Code, which defines and punishes infidelity in the custody of documents, he need not falsify said documents in any of the forms provided for in article 171. It is sufficient for him to remove, conceal or

destroy them, and thereby cause a serious or slight damage to a third party or to the public interest. And in order that a public officer may be punished, in turn, for falsification of public documents, it is not necessary for him to conceal, remove or destroy those that he falsified or may have falsified. The doctrine of double jeopardy and of previous conviction is not applicable to cases where the following requisites, among others, are not present, to wit: that the defendant or defendants must be the same in both cases, that is, in the former and in the latter; that the acts charged in both cases must be the same, or at least, the one must necessarily be included in the other; and that the offenses resulting from said acts likewise be the same, or at least identical. These requisites are not present in the eleven cases at bar if they are compared with the one referred to in said case No. 12082, for infidelity in the custody of documents.

With respect to case No. 2758 decided in *Oriental Negros*, Exhibits 4 and 5 show that the falsification therein imputed to the appellant was committed by him on January 8, 1937, and the acts of falsification imputed to him in the eleven cases appealed herein were committed by him about three months prior thereto, that is, between November 24, 1936, and January 3, 1937. It cannot be said, therefore, that said acts, to wit: the one committed in January and those committed on and after November 24, 1936, have been the result of a single intent to commit the complex crime of estafa through falsification, because neither is there evidence to prove this fact nor can it even be inferred from said Exhibits 4 and 5 that when the accused committed the falsifications on and after November 24, 1936, to January 3, 1937, he already proposed to commit the falsification of January 8, 1937. Consequently, since the facts alleged, which are admitted by the appellant, are independent of one another, and each was committed by means of different wilful acts, each of said acts constitutes and should constitute a distinct and independent offense, and the eleven offenses not only one (*People vs. Regis*, 39 Off. Gaz., 951).

The same reason exists for holding that the convictions of the appellant in cases Nos. 1270, 1271 and 1277 of the Court of First Instance of Cebu, which are the same ones appealed to this court and decided by it on December 5, 1938 (G. R. Nos. 46353, 46354, and 46355 [39 Off. Gaz., 54], have not created and cannot create jeopardy for the appellant. The acts of estafa through falsification in said three cases were committed on January 4, 1937, according to Exhibits 6, 7 and 8, and those committed in the eleven cases in question took place during the period intervening between November 24, 1936, and January 3, 1937.

(2)

As to the proposition that the eleven complex crimes of estafa through falsification, with which the appellant is charged in these eleven cases, constitute but one complex crime of estafa through falsification, the same is untenable because we cannot avoid taking into account the facts alleged in the eleven informations that gave rise thereto, inasmuch as they were admitted by the appellant upon arraignment, and on the other hand there are no other facts of record that contradict them. In the first information, that is, the one which gave rise to case No. 10948 of the Court of First Instance of Occidental Negros (G. R. No. 46802), it appears that the appellant committed the falsification and estafa with which he is charged therein, in the municipality of Cadiz, Province of Occidental Negros, between November 24 and December 26, 1936. In the information which gave rise to case No. 10968 of the same court (G. R. No. 46803), it appears that the falsification and estafa imputed to him therein were committed by him in the municipality of Victorias of said Province of Occidental Negros, between November 24 and December 26, 1936. The falsifications and estafa in the remaining nine cases, that is, cases G. R. Nos. 46804 to 46812, according to the informations attached thereto, were committed by him one after another, on different occasions, in the municipalities of San Carlos, Kabankalan, Bago, Hog, Bacolod, Silay, Talisay, Manapla and Saravia, within the period intervening between November 24, 1936, and January 3, 1937, it being manifest, therefore, not only that there was a solution of continuity, which indicates that said acts were not in obedience to a single purpose, but also that they are clearly independent of and distinct from one another, by

reason of the time and place of their commission, and also by reason of the falsified documents, which are distinct, and of the amounts which the appellant succeeded in misappropriating.

(3)

As to the proposition that the Court of First Instance of Occidental Negros had no jurisdiction to try the cases and render judgment therein, it should be stated that it is likewise untenable. In related and complex crimes, such as those which are the result of various acts committed in two different provinces, the Court of First Instance of the province where one of them is committed or performed has concurrent jurisdiction to try the cases instituted in it for the investigation and punishment thereof, by virtue of the reasons set forth in the cases of *United States vs. Cardell* (23 Phil., 207), and *United States vs. Santiago* (27 Phil., 408). The eleven estafa, which may be said to constitute the determining cause of the same number of falsifications committed by the appellant, were, like said falsifications, also committed by him in the Province of Occidental Negros and, naturally, within the jurisdiction of the court of origin of the eleven appealed cases under consideration.

(4)

Finally, as to the proposition that the lower court erred in failing to dismiss these cases, ignoring the provisions of article 70 of the Revised Penal Code, as amended by Commonwealth Act No. 217, it should be stated that what said article provides for is that if an accused has to serve more than three sentences, he cannot be sentenced to more than three times, the most severe penalty that may be imposed upon him for the various crimes he might have committed. Taking into account the penalty prescribed by the Revised Penal Code for the complex crimes of estafa through falsification, and the amount of the fraud, which is the determining factor of the duration of the penalty that may be imposed in simple cases of estafa, the penalty that should be imposed upon the appellant, following the rule established in article 48 of the Revised Penal Code, would be *prision mayor* in its maximum period, because between the two crimes of estafa and falsification committed by him, the penalty prescribed for falsification is more severe, being as it is *prision mayor* in its maximum period, that is, from ten years and one day to twelve years.

By virtue of the provisions of Act No. 4225, the appellant is entitled to an indeterminate sentence, the minimum of which must necessarily be taken from the medium period of *prision mayor* because it is the penalty next lower to that prescribed for his crime (*People vs. Co Pao*, 58 Phil., 545; *People vs. Gayrama*, 60 Phil., 796; *People vs. Haloot*, 37 Off. Gaz., 2901). Considering that no circumstance modifying liability was present in any of the cases of the appellant, the penalty deserved by him in each of said cases is from eight years and one day to ten years, eight months and one day of *prision mayor*, plus a fine of P500 and an indemnity equivalent to the amount defrauded by him. However, pursuant to the provision of said article 70 of the Revised Penal Code, as amended, we cannot fail to take into account the fact that in cases G. R. Nos. 46353, 46354 and 46355, decided on December 5, 1938 (39 Off. Gaz., 54), the penalty of from eight years and one day to ten years and one day of *prision mayor* plus fine and indemnity was imposed upon the accused-appellant, and that in case No. 12082 of the Court of First Instance of Iloilo the penalty of from six months and one day to four years and two months of *prision correccional* was likewise imposed upon him. Consequently, if in the first of the eleven cases referred to above, that is, the case bearing G. R. No. 46802, we have to impose upon the appellant the indeterminate penalty of from eight years and one day to ten years, eight months and one day of *prision mayor*, plus the fine and indemnity already stated, we would have to refrain from imposing upon him in their entirety the penalties he deserves in the remaining ten cases, that is, those cases bearing G. R. Nos. 46803 to 46812, because three times eight years and one day to ten years, eight months and one day is equal to twenty-four years and three days to thirty-two years and three days, and it has already been stated that a penalty more severe than this cannot be imposed upon him.

For all the foregoing, the appealed judgment is modified in the sense that the appellant is sentenced to suffer the indeterminate penalty of from eight years and one day to ten years, eight months and one day of prison mayor in case G. R. No. 46802, to indemnify the Commonwealth Government in an amount equivalent to the subject matter of the fraud, that is P200, and to pay a fine of P500, and in case G. R. No. 46803, although the penalty that may be imposed upon him should be equal to that imposed in said case G. R. No. 46802, because the complex crimes committed in them are of the same nature, we impose upon him only seven years, seven months and twenty-nine days, on the ground that, with this penalty the equivalent of three times eight years and one day to ten years, eight months and one day is already covered. As to the other remaining cases (G. R. Nos. 46804 to 46812), we refrain from imposing the penalties of imprisonment upon him for the same reasons. Let it not be inferred from this, however, that the appellant is relieved from paying a fine of P500 in each of them, and from indemnifying the Commonwealth Government, also in each of them, in the sums equivalent to those defrauded in said cases G. R. Nos. 46803 to 46812. Modified as above-stated, the appealed judgment is affirmed in all other respects, without any pronouncement as to costs in this instance. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, JJ., concur.

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