



Malversation of Public Funds through Falsification of Public Documents, however, is considered an ordinary complex crime under Article 48 of the Revised Penal Code.<sup>5</sup> Article 48 states:

ARTICLE 48. Penalty for Complex Crimes. — When a single act constitutes two or more crimes, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

Justice Villarama is of the opinion that the crime is bailable as a matter of discretion, considering that Article 48 raises the imposable penalty to that of the most serious crime in its maximum period.<sup>6</sup> The ponencia, however, disagrees and argues that Article 48 states the penalty *to be actually imposed*, or the penalty after a trial on the merits is conducted.<sup>7</sup> In the ponente's view, the crime should be bailable as a matter of right.<sup>8</sup>

Respondent was charged with Malversation of Public Funds *through* Falsification of Public Documents, not Malversation of Public Funds *and* Falsification of Public Documents. While it is true that “the information should charge each element of the complex offense with the same precision as if the two (2) constituent offenses were the subject of separate prosecutions[,]”<sup>9</sup> the singularity of the criminal intent must be taken into account in order to determine its penalty. Respondent was charged with a single complex crime, not two separate crimes. The crime carries only *one* imposable penalty.

The determination of an accused's liability in a complex crime is not new. In *Intestate Estate of Manolita Gonzales Vda. De Carungcong v. People, et al.*,<sup>10</sup> this court has stated that the complex crime of Estafa through Falsification of Public Documents is treated as *one* crime subject to a *single* criminal liability:

In considering whether the accused is liable for the complex crime of estafa through falsification of public documents, it would be wrong to consider the component crimes separately from each other. **While there may be two component crimes** (estafa and falsification of documents), both felonies are animated by and result from one and the same criminal intent for which **there is only one criminal liability**. That is the concept of a complex crime. In other words, while there are two crimes, **they are treated only as one, subject to a single criminal liability**.

<sup>5</sup> See *People v. Pantaleon, Jr., et al.*, 600 Phil. 186 (2009) [Per J. Brion, Second Division].

<sup>6</sup> J. Villarama, Jr., Dissenting Opinion on this case, p. 5.

<sup>7</sup> Ponencia, pp. 8–11.

<sup>8</sup> Id. at 10–11.

<sup>9</sup> *People v. Bulalayao*, G.R. No. 103497, February 23, 1994, 230 SCRA 232, 240 [Per J. Padilla, Second Division]. This case was also cited in the ponencia (Ponencia, p. 10).

<sup>10</sup> 626 Phil. 177 (2010) [Per J. Corona, Third Division].

As opposed to a simple crime where only one juridical right or interest is violated (*e.g.*, homicide which violates the right to life, theft which violates the right to property), a complex crime constitutes a violation of diverse juridical rights or interests by means of diverse acts, each of which is a simple crime in itself. Since only a single criminal intent underlies the diverse acts, however, the component crimes are considered as elements of a single crime, the complex crime. This is the correct interpretation of a complex crime as treated under Article 48 of the Revised Penal Code.

In the case of a complex crime, therefore, there is a formal (or ideal) plurality of crimes where the same criminal intent results in two or more component crimes constituting a complex crime for which there is only one criminal liability. (The complex crime of estafa through falsification of public document falls under this category.) This is different from a material (or real) plurality of crimes where different criminal intents result in two or more crimes, for each of which the accused incurs criminal liability. The latter category is covered neither by the concept of complex crimes nor by Article 48.

Under Article 48 of the Revised Penal Code, the formal plurality of crimes (*concursum delictuorum* or *concurso de delitos*) gives rise to a single criminal liability and requires the imposition of a single penalty:

Although [a] complex crime quantitatively consists of two or more crimes, **it is only one crime in law** on which a single penalty is imposed and the two or more crimes constituting the same are more conveniently termed as component crimes.

x x x

x x x

x x x

In [a] complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law as well as in the conscience of the offender. The offender has only one criminal intent. Even in the case where an offense is a necessary means for committing the other, the evil intent of the offender is only one.

For this reason, while a conviction for estafa through falsification of public document requires that the elements of both estafa and falsification exist, it does not mean that the criminal liability for estafa may be determined and considered independently of that for falsification. **The two crimes of estafa and falsification of public documents are not separate crimes but component crimes of the single complex crime of estafa and falsification of public documents.**

Therefore, it would be incorrect to claim that, to be criminally liable for the complex crime of estafa through falsification of public document, the liability for estafa should be considered separately from the liability for falsification of public document. Such approach would disregard the nature of a complex crime and contradict the letter and spirit of Article 48 of the Revised Penal Code. It would wrongly disregard the distinction between formal plurality and material plurality, as it improperly

treats the plurality of crimes in the complex crime of estafa through falsification of public document as a mere material plurality where the felonies are considered as separate crimes to be punished individually.<sup>11</sup> (Emphasis in the original)

Thus, while a complex crime constitutes two or more offenses whose elements must be pleaded and proved, it is considered by law as a single crime committed through a single criminal intent and punishable by a single penalty. In determining whether a complex crime is bailable as a matter of right or of discretion, what is considered is not the penalties of the two or more separate offenses that compose the complex crime, but the single penalty imposed by law for the complex crime.

## II

Our esteemed colleague Justice Diosdado M. Peralta now proposes that it is time to digress from settled canonical interpretations of the classification of the availability of bail for public officers charged with Malversation through Falsification. He now proposes that we change the long-standing interpretation of Article III, Section 13<sup>12</sup> of the Constitution in relation to Article 48 of the Revised Penal Code. I regret that I could not bring myself to agree with the proposed approach.

## III

The ponencia starts with creating a distinction between the concept of “prescribed” and “imposable” penalty. In the ponente’s view, “prescribed” penalty is the penalty provided by law for the crime charged. The “imposable” penalty is the penalty that will be declared after trial.<sup>13</sup> *Prescribed penalty* refers to the crime as charged, the statute that punishes the offense, and the penalty in the statute. *Imposable penalty* considers in addition the totality of the evidence presented.

Prescribed penalty, not imposable penalty, is what is considered for bail.

To this extent, I agree with both Justice Villarama and the ponencia.

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<sup>11</sup> Id. at 206–208, citing FLORENZ REGALADO, CRIMINAL LAW CONSPECTUS 172, 176 (3<sup>rd</sup> ed., 2007), III RAMON AQUINO AND CAROLINA GRIÑO AQUINO, THE REVISED PENAL CODE 662 (1997), and LUIS B. REYES, REVISED PENAL CODE, Book 1, 650 (15<sup>th</sup> ed. rev., 2001).

<sup>12</sup> CONST., art. III, sec. 13 provides:

SECTION 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

<sup>13</sup> Ponencia, pp. 8–11.

This is precisely what the Constitution provides. When the prescribed penalty is *reclusion perpetua*, bail is granted only after a showing that evidence of guilt is not strong.

Thus in Article III, Section 13 of the Constitution:

SECTION 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

The purpose of bail is to ensure the accused's presence at trial.<sup>14</sup> The underlying theory of denying bail in capital offenses is not only to prevent the risk of flight by the accused, but also to protect the community from potential danger due to the heinousness of the crime charged and to avoid delays in the service of punishment.<sup>15</sup> Regardless of these presumptions, determination of bail by the sovereign has already been fixed by the text of the Constitution. It is conclusive on courts. It cannot be reconsidered. The test of the Constitution reduces judicial discretion to a single variable: whether the evidence of guilt is strong.

#### IV

The ponencia posits that the penalty for the complex crime of Malversation through Falsification is *reclusion temporal* in its maximum period to *reclusion perpetua*. It then concludes that because it starts with *reclusion temporal*, necessarily, bail automatically is a matter of right.<sup>16</sup>

This would have been accurate except that Article 48 is as much a part of the Revised Penal Code as any other provision. The better interpretative approach is to allow all provisions to work together. Parsing pieces of legislation while backgrounding relevant provisions invites too much judicial discretion at the cost of undermining the results of legitimate constitutional processes in our political departments.

Article 48 provides:

ARTICLE 48. Penalty for Complex Crimes. — When a single act constitutes two or more crimes, or when an offense is a necessary

<sup>14</sup> See *Basco v. Judge Rapatalo*, 336 Phil. 214, 219 (1997) [Per J. Romero, Second Division], citing ROLANDO V. DEL CARMEN, CRIMINAL PROCEDURE, LAW AND PRACTICE 31 (3<sup>rd</sup> ed., 1995).

<sup>15</sup> See *Leviste v. Court of Appeals, et al.*, 629 Phil. 587, 594 (2010) [Per J. Corona, Third Division].

<sup>16</sup> See ponencia, pp. 8–10.

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means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

There is no doubt as to the prescribed penalty. It is “the penalty for the most serious crime” and “the same to be applied in its maximum period.”

What may understandably cause the apparent ambiguity is the phrase “shall be imposed” in this provision.

The ponencia interprets this to mean that the penalty mentioned in Article 48 is *post hoc*, i.e., after trial.<sup>17</sup> Justice Villarama reads this as *ex ante*, i.e., it is the penalty for the crime as charged.<sup>18</sup>

The trial court, in determining whether a complex crime is bailable as a matter of right or a matter of discretion, examines the penalty to be imposed in the complex crime charged. The court does not have the luxury of deciding which among the two component crimes the accused would be most guilty of. It considers the complex crime as two separate component crimes punishable by a single penalty. Respondent was charged with one complex crime of Malversation of Public Funds through Falsification of Public Documents. It is illogical to determine bail on the basis only of the single simple crime of Malversation or on the single simple crime of Falsification.

Article 48 is not only the penal provision that provides the penalty that “shall be imposed.” Several offenses containing this phrase are listed in the Revised Penal Code, among them being: Violation of Domicile, Inciting to Sedition, Falsification, Perjury, Grave Scandal, Indirect Bribery, Infanticide, and Estafa:

ARTICLE 128. Violation of Domicile. — The penalty of prisión correccional in its minimum period shall be imposed upon any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects found therein without the previous consent of such owner, or, having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so.

ARTICLE 142. Inciting to Sedition. — The penalty of prisión correccional in its maximum period and a fine not exceeding 2,000 pesos shall be imposed upon any person who, without taking any

<sup>17</sup> Ponencia, p. 10.

<sup>18</sup> J. Villarama, Jr., Dissenting Opinion on this case, p. 5.

direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end.

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ARTICLE 171. Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister. — The penalty of prisión mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

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ARTICLE 183. False Testimony in Other Cases and Perjury in Solemn Affirmation. — The penalty of arresto mayor in its maximum period to prisión correccional in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

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ARTICLE 200. Grave Scandal. — The penalties of arresto mayor and public censure shall be imposed upon any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code.

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ARTICLE 211. Indirect Bribery. — The penalties of arresto mayor, suspension in its minimum and medium periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

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ARTICLE 255. Infanticide. — The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

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ARTICLE 315. Swindling (Estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be.

Even if these offenses state the penalty that “shall be imposed,” there is no confusion as to what the prescribed penalties of these offenses are: the prescribed penalty is what is stated in the law.

Bail under the Constitution considers the offense *charged in the information*, not the offense of which the accused will eventually be convicted. “Punishable” within the context of the Constitution means the penalty prescribed by law for the offense charged. When an accused is charged with a complex crime, the penalty is what is stated in the Revised Penal Code or in special penal laws *in relation* to Article 48 of the Revised Penal Code. A complex crime is a single offense comprised of two or more offenses but with a *single* penalty. While the prosecution must prove all the elements charged, it must only prove a single criminal intent. The splitting of the penalties according to its separate component crimes undermines the singularity of the criminal intent, which makes it a complex crime.

## V

Finally, we must remember that there are two (2) aspects in criminal trial. First, there is the determination by the judge as to whether all the elements of the offense as well as the accused’s alleged participation can be inferred or proven beyond reasonable doubt by the admissible evidence presented. This is the objective part of trial. Thereafter, and second, the judge determines the proper penalty from a range provided by law. This sentencing part involves a higher degree of discretion. The first part looks at the acts. The second looks at the offender and his or her circumstances.

The only allowable range for Malversation through Falsification as charged in the Information is *reclusión perpetua*.

There is nothing inequitable in considering Malversation through Falsification of Public Documents of public funds exceeding ₱22,000.00 as an offense bailable only as a matter of discretion.

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Malversation of Public Funds, by itself, may be bailable as a matter of right since the prescribed penalty under the law is *reclusion temporal* in its maximum period to *reclusion perpetua*. However, the law raises the prescribed penalty to that of the more serious crime in its maximum period if it is committed through Falsification. The conversion of the offense to a complex crime serves to underscore the gravity of the offense.

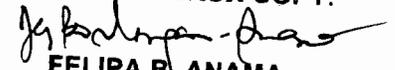
Like Plunder under Republic Act No. 7080<sup>19</sup> and Graft and Corruption under Republic Act No. 3019,<sup>20</sup> it is generally committed by public officers.<sup>21</sup> "Public office is a public trust."<sup>22</sup> Public officers are sworn to perform their duties with the highest fidelity. Malversation through Falsification, therefore, is a crime at par with Plunder and Graft and Corruption since it involves a public officer's betrayal of public trust. As an offense considered a violation of a constitutionally enshrined policy, it should be imposable with the highest penalty provided by law.

**ACCORDINGLY**, I join the opinion of Justice Martin S. Villarama, Jr. and vote to **GRANT** the Petition.



MARVIC M.V.F. LEONEN  
Associate Justice

**CERTIFIED XEROX COPY:**



FELIPA B. ANAMA  
CLERK OF COURT, EN BANC  
SUPREME COURT

<sup>19</sup> An Act Defining and Penalizing the Crime of Plunder, July 12, 1991.

<sup>20</sup> Anti-Graft and Corrupt Practices Act, August 17, 1960.

<sup>21</sup> See *People v. Pajaro, et al.*, 577 Phil. 441, 453-454 (2008) [Per J. Ynares-Santiago, Third Division]. Malversation may be committed by private individuals if the private individual conspires with a public officer to commit the crime.

<sup>22</sup> CONST., art. XI, sec. 1.