

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT VS. EDUARDO ABESAMIS, DEFENDANT AND APPELLEE.

G.R. No. L-5284. September 11, 1953

Ponente: REYES, J.

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REYES, J.:

On April 1, 1950, the Provincial Fiscal of Isabela filed with the Court of First Instance of that province the following information against Eduardo A. Abesamis:

"The undersigned Provincial Fiscal accuses EDUARDO A. ABESAMIS, of the crime of DIRECT BRIBERY, provided for and penalized under article 210, of the Revised Penal Code, committed as follows:

"That on or about the 13th day of August, 1947, in the municipality of Echague, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused being then the Justice of the Peace of Echague and Angadanan, Isabela, and as such is a public officer, did then and there willfully, unlawfully and feloniously, demand and receive from Marciana Sauri the amount of P1,100, with the agreement that he would dismiss the case for Robbery in Band with Rape against Emiliano Castillo, son of said Marciana Sauri, which was then pending in his Court.

"Contrary to law."

Dismissed in that court on a motion to quash on the grounds "that the facts alleged in the information do not sufficiently charge the crime of Direct Bribery," the case has been appealed to this Court by the Solicitor General.

The information denominates the crime charged as "direct bribery" under article 210 of the Revised Penal Code—presumably under the first and second paragraphs thereof, which read:

"ART. 210. Direct Bribery.—Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of prision correccional in its minimum and medium periods and a fine not less than the value of the gift and not more than three times such value, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

"If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided, in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of arresto mayor in its maximum period and a fine of not less than the value of the gift and not more than twice such value."

The crime charged does not come under the first paragraph. To fall within that paragraph the act which the public officer has agreed to perform must be criminal. To dismiss a criminal complaint, as the accused is alleged to have agreed to do in the present case, does not necessarily constitute a criminal act, for the dismissal may be proper, there being no allegation to the contrary. (U.S. vs. Gacutan, 28 Phil., 100).

It is possible, under the allegations of the information to regard the crime charged as falling within the second paragraph of article 210. This paragraph, however, distinguishes between two cases: one in which the act agreed to be performed has been accomplished, but there is telling whether the information is for one or the other. The information is, therefore, defective in that aspect.

But while the information is insufficient to hold the accused for trial for direct bribery under the first or second paragraph of article 210, it is a sufficient indictment for indirect bribery under article 211. And since it is the allegations of fact rather than the denomination of the offense by the provincial fiscal that determine the crime charged, the information in the present case may be sustained as one for indirect bribery under the said article 211 of the Revised Penal Code. Such being the case, the information in question should not have been dismissed.

Wherefore, the order appealed from is revoked and the case remanded to the court of origin for further proceedings, with costs against the appellee.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

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