

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NAPOLEON DUQUE, ACCUSED-APPELLANT.

G.R. No. 100285. August 13, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Appellant Napoleon Duque was charged with and convicted of violating Section 38 in relation to Section 39 of P.D. No. 442, as amended, known as The Labor Code of the Philippines. The charge of illegal recruitment was set out in the information in the following terms:

"That on or about and/or sometime in January 1986, at Calamba, Laguna and within the jurisdiction of this Honorable Court, the above named accused well knowing that he is not licensed nor authorized by the proper government agency (POEA) to engage in recruitment of workers for placement abroad, did then and there wilfully, unlawfully and feloniously recruit Glicerio Teodoro, Agustin Ulat, Ernesto Maunahan, Norma Francisco, Elmo Alcaraz and Marcelino Desepida as workers abroad exacted and actually received money from the above-named victims, to their damage and prejudice.

Contrary to law."[1]

The evidence in chief of the prosecution consisted principally of the testimony of the following witnesses: Agustin Ulat, Elmo Alcaraz, Marcelino Desepida and Norma Francisco. Their testimonies were summarized in the trial court's decision as follows:

"x x x sometime in January 1986, he (Agustin Ulat) was invited by the accused to his house in Calamba, Laguna. Thereat accused informed him that he was recruiting workers for Saudi Arabia and that he was interested in getting (sic) him. Accused likewise presented to him that he (accused) was a licensed recruiter (TSN, 22 Oct. 1990, pp. 6-7). The accused told him to secure his birth certificate, an NBI clearance and medical certificate. He was able to secure an NBI clearance which he showed to the accused. The latter thereafter told him that he would secure the rest of his papers like passport, visa and medical certificate for him and for this, accused asked him to prepare the amount of P20,000.00. He did not have that money, so he mortgaged his lot for P20,000.00 to the cousin of the accused, Socorro Arlata. He immediately gave this amount to the accused who assured him that he would be able to leave within two months. The accused did not issue a receipt for that amount despite his request. He did not persist in asking the accused because he trusted him, accused coming from an affluent family and a member of a well-known Catholic organization, the 'Cursillo' (TSN, 22 Oct. 1990, pp. 4-9). However, accused failed to employ him at Saudi Arabia within two months despite repeated promise (sic) to do so. Thus, he demanded the return of his money but accused failed. Finally, he decided together with the other complainants, to file a complaint against accused before the Philippine Overseas Employment Agency (POEA). x x x.

Elmo Alcaraz, Marcelino Desepida and Norma Francisco individually testified to the following: sometime also in January 1986, they went to the house of accused for work abroad as the latter had earlier told them that he was recruiting workers for the Saudi Arabia. The accused asked money to process their papers. Alcaraz was able to give the accused on 22 February 1986 the amount of P5,000.00, but the accused failed to issue him a

receipt and he did not persist in asking for it because he trusted the accused (TSN, 5 Nov. 1990, pp. 5-7). Desepida was able to give the accused on 18 Feb. 1986, the amount of P7,000.00 as placement fee for which the accused did not issue a receipt although he promised to issue one the next day. However, the following day, when he reminded the accused of the receipt, he refused saying that he (Desepida) should trust [the accused]. Francisco was able to give the accused P9,000.00 on 21 February 1986 in the presence of the other applicants (TSN, 26 Nov. 1990, p. 5). But, the accused again failed to issue a receipt despite demand. She was told by the accused to trust him (Ibid., p. 6). However, the accused failed to return their money notwithstanding. Thus, all of them decided to file a complaint with the POEA against the accused. There, they executed a joint affidavit (Exh. "A")."[2]

During the trial, Duque denied the charges. He controverted the allegation that he had recruited complainants for overseas employment. He also denied that he had received any monies in consideration of promised employment. However, he acknowledged that his house had served as a meeting place for a certain Delfin and one Engr. Acopado who allegedly were the persons who had promised complainants work abroad.

On the basis of the positive identification by private complainants of appellant Duque as the person they had talked to for placement abroad, the person who had collected fees from them and who had received information from them needed for arranging their departure for abroad, the trial court concluded that accused Duque was primarily responsible for promising placement and inducing private complainants to part with their money. The prosecution also submitted a certification from the licensing branch of the Philippine Overseas Employment Administration ("POEA") stating that no records existed whatsoever of a grant to the accused of a license or authority to recruit for overseas employment. The dispositive part of the decision reads:

"Wherefore, this Court finds the accused guilty beyond reasonable doubt, [of] violation of [Art.]38 in relation to [Art.]39 of P.D. 442 otherwise known as the Labor Code of the Philippines, and hereby sentences the accused to suffer the penalty of reclusion perpetua and a fine of P100,000.00 without subsidiary imprisonment in case of insolvency and to indemnify the offended parties: Agustin Ulat the amount of P20,000.00; Marcelino Desepida the amount of P7,000.00; Norma Francisco the amount of P9,000.00; and Elmo Alcaraz the amount of P3,000.00 and the cost of suit."[3]

Before this Court, appellant Duque raises only one (1) issue: that of prescription of the criminal offense for which he was convicted.

The recruitment of persons for overseas employment without the necessary recruiting permit or authority from the POEA constitutes a crime penalized, not by the Revised Penal Code, but rather by a special law, i.e., Article 38 in relation to Article 290 of the Labor Code. Article 290 of the Labor Code provides, in relevant part, that:

"Art. 290. Offenses penalized under this Code and the rules and regulations issued pursuant thereto shall prescribe in three (3) years.

x x x x x x x x"

The Labor Code, however, does not contain any provisions on the mode of computation of the three-year prescriptive period it established.

The Solicitor General states, and we agree with him, that Act No. 3326, as amended, entitled "An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run" (emphasis supplied), supplied the applicable norm.[4] Section 2 of Act No. 3326, as amended, reads as follows:

"Section 2: x x x

x x x x x x x x

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and institution of judicial proceedings for its investigation and punishment."

Examination of the abovequoted Section 2 shows that there are two (2) rules for determining the beginning of the prescriptive period: (a) on the day of the commission of the violation, if such commission be known; and (b) if the commission of the violation was not known at the time, then from discovery thereof and institution of judicial proceedings for investigation and punishment. Appellant Duque contends that the prescriptive period in the case at bar commenced from the time money in consideration of promises for overseas employment was parted with by complainants. Duque thus contends that the prescriptive period began to run sometime in January 1986. The information was, however, filed by the Assistant Provincial Prosecutor of Laguna on 22 May 1990, i.e., more than four (4) years later. Duque concludes that the offense of illegal recruitment had accordingly prescribed by May 1990.

We are not persuaded. Article 38 of the Labor Code as amended reads as follows:

"Art. 38. Illegal Recruitment. -- (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Ministry of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

(c) The Minister of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-license or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Minister shall order the search of the office or premises and seizure of documents, paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishments and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.' (Under-scoring supplied)

It will be seen that illegal recruitment has two (2) basic elements, to wit: (a) recruitment activities as listed in Articles 38 and 34 of the Labor Code: and (b) the lack of the necessary license or authority from the POEA to engage in such activities. Recruitment for overseas employment is not in itself necessarily immoral or unlawful. It is the lack of necessary license or permit that renders such recruitment activities unlawful and criminal. Such lack of necessary permit or authority, while certainly known to appellant Duque back in January 1986, was not known to private complainants at that time. Indeed, private complainants discovered that appellant did not possess such authority or permit only when they went to the offices of the POEA for the purpose of filing a claim for return of the money they had delivered to appellant Duque. Since good faith is always presumed, the complainants were entitled to assume that appellant Duque was acting in good faith when he presented himself as a recruiter for overseas placement. Even if it be assumed arguendo that ordinary prudence required that a person seeking overseas employment ought to check the authority or status of persons pretending to be authorized or to speak for a recruitment or placement agency, the offended parties' failure to do so did not start the running of the

prescriptive period. In the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at the time, then prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts.

Appellant Duque assails Section 2 of Act No. 3326 as illogical or absurd. A literal reading of Section 2 appears to suggest that two (2) elements must coincide for the beginning of the running of the prescriptive period: first, the element of discovery of the commission of the violation of the special law; and second, the "institution of judicial proceedings for its investigation and punishment." It is then argued by appellant that because the co-existence of these two (2) requirements is necessary under Section 2 of Act No. 3326, the relevant prescriptive period would never begin to run.

Here appellant has a point. However, it should be noted, firstly, that the literal reading that appellant suggests, does not benefit appellant, for the prescriptive period in the case at bar had not in any case been exhausted since prosecution of appellant commenced only a few months after the POEA and the complainants had discovered that appellant had no governmental authority to recruit for overseas work and was merely pretending to recruit workers for overseas employment and to receive money therefor, i.e., that appellant did not even attempt to locate employment abroad for complainants. Secondly, we do not think there is any real need for such a literal reading of Section 2. As is well-known, initiation of proceedings for preliminary investigation of the offense normally marks the interruption of the period of prescription. Under appellant Duque's literal reading, the prescription period would both begin and be interrupted by the same occurrence; the net effect would be that the prescription period would not have effectively begun, having been rendered academic by the simultaneous interruption of that same period. A statute providing for prescription of defined criminal offenses is more than a statute of repose and constitutes an act of grace by which the State, after the lapse of a certain period of time, surrenders its sovereign power to prosecute the criminal act. A statute on prescription of crimes is an act of liberality on the part of the State in favor of the offender.[5] The applicable well-known principles of statutory interpretation are that statutes must be construed in such a way as to give effect to the intention of the legislative authority,[6] and so as to give a sensible meaning to the language of the statute and thus avoid nonsensical or absurd results,[7] departing to the extent unavoidable from the literal language of the statute. Appellant's literal reading would make nonsense of Section 2 of Act No. 3326.

In our view, the phrase "institution of judicial proceedings for its investigation and punishment" may be either disregarded as surplusage or should be deemed preceded by the word "until." Thus, Section 2 may be read as:

"Prescription shall begin to run from the day of the commission of the violation of the law; and if the same be not known at the time, from the discovery thereof;"

or as:

"Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and until institution of judicial proceedings for its investigation and punishment." (Emphasis supplied)

We believe and so hold that the applicable prescriptive period in the case at bar began to run from the time the recruitment activities of appellant Duque were ascertained by the complainants and by the POEA to have been carried out without any license or authority from the government. The discovery by the complainants and by the POEA was, as a practical matter simultaneous in character and occurred sometime in December 1989 when the complainants went to the POEA with the complaint for recovery of the placement fees and expenses they had paid to appellant Duque, and the POEA, acting upon that complaint, discovered and informed the private complainants

that Duque had operated as a recruiter without the essential government license or authority. Accordingly, the offense of illegal recruitment had not prescribed when the complaint was filed with the Provincial Prosecutor's Office in April 1990 and when the information was filed in court in May 1990.

It is relevant to note that the same result would be reached by giving supplemental effect to provisions of the Revised Penal Code in the application of Article 290 of the Labor Code.[8] Article 91 of the Revised Penal Code reads as follows:

"Art. 91. Computation of the prescription of offenses. -- The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago."
(Underscoring supplied)

Under the above-quoted Article 91, the prescriptive period in respect of the offense of illegal recruitment began to run on the date of discovery thereof by the private complainants and the authorities concerned (POEA) sometime in December 1989 and was interrupted on 16 April 1990 when the affidavit-sworn complaint was filed before the Office of the Provincial Prosecutor,[9] and certainly by May 1990 when the criminal information was filed in court by the Assistant Provincial Prosecutor of Laguna. Once more, the appellant's defense of prescription must fail.

Under Section 39 of the Labor Code as amended, the penalty of life imprisonment is properly imposable where the illegal recruitment is committed "in large scale," i.e., where it is "committed against three (3) or more persons individually or as a group." [10] In the case at bar, private complainants are more than three (3) in number. Moreover, appellant Duque had represented to the public at large, including private complainants, that he was a licensed recruiter.[11] Duque's house served as his business office and he asked the private complainants to see him in his house.[12] There, complainants were "briefed" as to the requirements for overseas employment before their supposed departure and were each required to secure a clearance from the National Bureau of Investigation.[13] Considerable sums were collected from each of the complainants supposedly to "facilitate" the processing of passports, medical certificates and other working papers.[14] Complainants were, in addition, shown documents which purported to be job placement orders. This organized modus operandi was repeated in respect of each of the complainants and presumably in respect of other persons who were similarly victimized by appellant. There is no question that the recruitment activities of Duque were organized and "large scale" in nature.¹⁴

WHEREFORE, the judgment of conviction rendered by the trial court is hereby AFFIRMED, with the sole modification that the penalty properly imposable and hereby imposed is life imprisonment and not reclusion perpetua. Costs against appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Rollo, p. 15; Records, p. 1.

[2] Rollo, pp. 15-16.

[3] Id., p. 18.

[4] See *Catuiria v. Court of Appeals*, 172 SCRA 136 (1989); *Balani v. Intermediate Appellate Court*, 142 SCRA 342 (1986); *People v. Terrado*, 125 SCRA 648 (1983); *People v. Ramos*, 83 SCRA 1 (1978).

[5] See *People v. Reyes*, 175 SCRA 597 (1989); *People v. Yu Hai*, 99 Phil. 725 (1956); *People v. Parel*, 44 Phil. 437 (1923); *People v. Moran*, 44 Phil. 387 (1923).

[6] *Tañada v. Cuenco*, 103 Phil. 1051 (1957); *Manila Race Horse Trainers Association, Inc. v. de la Fuente*, 88 Phil. 60 (1951).

[7] See, in particular, *Lamb v. Phipps*, 22 Phil 456 (1912); and *Lopez and Sons v. Court of Tax Appeals*, 100 Phil. 850 (1957).

[8] Article 10 of the Revised Penal Code reads:

"Art. 10. -- Offenses not subject to the provisions of this Code. -- Offenses which are or in the future may be punishable under special laws are not subject to the provision of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary."

[9] *Francisco v. Court of Appeals*, 122 SCRA 538 (1983); *People v. Cuaresma*, 172 SCRA 415 (1989).

[10] Article 38 (b), second paragraph, Labor Code. E.g., *People v. Bugaon*, 183 SCRA 62 (1990).

[11] TSN, 22 October 1990, pp. 6-7.

[12] Id., p. 3; TSN, 5 November 1990, p. 4.

[13] Id., p. 4

[14] Id., p. 5; TSN, 5 November 1990, p. 5; TSN, 19 November 1990, p. 6.

14 *People v. Bugaon*, *supra*.

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