

GREGORY JAMES POZAR, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, RESPONDENT.

G.R. No. 62439. October 23, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

In an Information dated July 22, 1980 and filed with the City Court of Angeles City, Branch I, docketed thereat as Criminal Case No. CAT-326, petitioner, an American citizen and a permanent resident of the Philip-pines, was charged with the crime of Corruption of a Public Official, allegedly committed as follows:

"That on or about the 17th day of December, 1979, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then an applicant for probation after he was convicted of an offense by a competent court, did then and there willfully, unlawfully, and feloniously give to the complainant, Mr. Danilo Ocampo, the City Probation Officer, the sum of P100.00 in a paper bill with Serial Nos. BC530309, under circumstances that would make the said City Probation Officer Mr. Danilo Ocampo liable for bribery.

"ALL CONTRARY TO LAW."

Upon arraignment, petitioner pleaded not guilty to the said information and, after trial, the City Court in its decision of May 15, 1981 found the petitioner guilty of the crime of corruption of a public official, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Gregory Pozar guilty of the offense of Corruption of a Public Official as charged in the Information, and the Court pursuant to Article 212, in relation to Article 211 of the Revised Penal Code, hereby sentences the accused Gregory James Pozar to an imprisonment of three (3) months and one (1) day of Arresto Mayor, and hereby censures him for his actuation in this matter, with costs against the accused.

The one hundred peso bill is hereby forfeited in favor of the Republic of the Philippines.

SO ORDERED."

The decision was appealed to the Court of Appeals (now Intermediate Appellate Court) and subsequently, the appellate court affirmed the same in toto. Petitioner's motion for reconsideration was denied on October 19, 1982 and on December 21, 1982, petitioner filed the instant petition for review of the decision of the respondent court, relying on the constitutional precept that "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved," (Article IV, Sec. 19) and that the State, having the burden of establishing all the elements of the crime with which the accused is charged, must prove the guilt of the accused beyond reasonable doubt, has failed to present and establish the required quantum of proof against the accused petitioner, hence he is entitled to an acquittal.

The evidence for the prosecution are stated in the decision of the respondent court, thus:

"The prosecution presented as its witnesses Mr. Ricardo Manalo, Mrs. Primitiva Francisco and Mr. Danilo Ocampo. Upon the other hand, the defense placed on the witness stand appellant himself and his counsel Atty. Reynaldo Suarez.

Ricardo Manalo, Clerk at the Probation Office of Angeles City, declared that he started working at the Probation Office since May 2, 1978 and came to know appellant because the latter had gone to said office in connection with his application for probation; that at about noontime of December 17, 1979, appellant came to the office looking for Probation Officer Danilo Ocampo and since the latter was out at the time, appellant gave him a closed envelope bearing the name of Ocampo for delivery to the latter; that two days later, he gave the envelope to Ocampo who opened the same in his presence; that the envelope contained some official papers connected with appellant's application for probation and attached thereto was a hundred peso bill; that Ocampo then remarked: 'This is something bad'; that the opening of the envelope was done on December 19, 1979; that Ocampo kept the envelope and its contents, including the one hundred peso bill, but within a week's time gave them to him with instructions to give the same to appellant but the latter never came to the office and so he returned them to Ocampo; that although he later saw appellant about two weeks after December 17, 1979, when the latter came to the office to sign some papers, he never mentioned to appellant the one hundred peso bill (pp. 2-15, t.s.n., September 16, 1980).

Manalo further declared that at the time the envelope with the one hundred peso bill was given to him by appellant for delivery to Ocampo, he already had an inkling or knowledge that the Probation Office will recommend for the grant of appellant's application for probation because he was the one who makes the final typing of a post-sentence investigation report and before said final typing Ocampo usually talks to him, so that he knows whether the recommendation was for a grant or denial of an application (pp. 16-19, t.s.n., September 16, 1980).

Mrs. Primitiva Francisco, Assistant Probation Officer of the Angeles City Probation Office, declared that she knows appellant because the latter was one of the applicants for probation in 1979 and she was the one assigned to investigate appellant's case; that as Assistant Probation Officer in the Investigation of applications for probation and in the case of appellant, she requested him to submit certain pertinent documents required by their office, such as barangay, police and court clearances, residence certificate, etc.; that she prepared appellant's post-sentence Investigation Report (Exhs. "B" to "B-5"); that she first saw appellant on December 7, 1979, when she interviewed him on his social and personal history and his version of the offense, among others; that she gave the list of documents which are to be submitted to the office; that the second time she saw appellant was on December 21, 1979 but appellant was out at the time and when she saw that he was in his car that broke down in front of the Pampagueña she tried to call him but the car left as she was about to reach the place (pp. 2-21, tsn, January 26, 1981).

Mrs. Francisco further declared that at the time she saw appellant on December 21, 1979, the latter was asking permission to leave for Baguio City but she told him to talk with Probation Officer, Mr. Ocampo, on the matter; that she then prepared a draft of the Post-Sentence Investigation report and thereafter had a conference with Ocampo who told him not to delete the bribery incident from the report; that it was first from Manalo and later from Ocampo that she became aware of the bribery or more accurately corruption of a public official, committed by appellant (pp. 21-25, t.s.n., January 26, 1981).

The third prosecution witness was complainant himself, Danilo Ocampo, who declared that he has been the Probation Officer of the Angeles City, Probation Office since 1977 and that his employees thereat were Ricardo Manalo, Primitiva Francisco and Ramon de Leon; that at about 9:00 o'clock in the morning of December 19, 1979, he received a closed letter envelope from his clerk, Manalo, at the Probation Office at Merlan Building,

Angeles City, Manalo informing him that the same came from appellant; that he opened the envelope on the presence of Manalo and found that the same contained xerox copies of the pass-port (Exh. "D") and visa (Exh. "D-1") of appellant and inserted with said documents was a hundred peso bill with Serial No. BC530309 (Exh. "A"); that the envelope given him by Manalo was addressed to him, Mr. Danilo Ocampo, Probation Officer, in handwritten form; that he could not, however, produce said envelope the same having been misplaced; that he kept the one hundred peso bill as the same was an evidence against appellant; that when he met Atty. Reynaldo Suarez, appellant's counsel, at the Angeles City Court on January 14, 1980, he told the latter about the envelope received from appellant containing the passport, visa and the one hundred peso bill inserted with said documents and intimated to the lawyer that the client should not have inserted said one hundred peso bill (pp. 46-57, t.s.n., September 16, 1980).

Ocampo further declared that the Post-Sentence Investigation Report was prepared by Mrs. Francisco who conducted the investigation; that the first time he saw appellant was on December 10, 1979, when the latter was seeking permission to go to Baguio City and being a foreigner, he required him to submit to his office copies of the latter's passport and visa; that the second time he met appellant was in March, 1980, when the hearing of appellants application for probation was conducted at Branch I of the Angeles City Court; that he never required appellant to give money, so that when he saw the one hundred peso bill (Exh. "A") in the envelope handed him by Ma-nalo, he was very much surprised; that he intended to confront appellant but was unable to do so but was able to inform Atty. Suarez, appellant's lawyer, about the matter when he met him at the City Court; that at the time the envelope containing the docu-ments and money was handed to him on December 19, 1979, the Post-Sentence Investigation Report was not yet finished and that the same was submitted to the City Court by Mrs. Francisco on February 5, 1980; that the fact that appellant enclosed a one hundred peso bill in the envelope was mentioned in said report (pp. 60-73, t.s.n., September 16, 1980).

Ocampo further testified that at the time of the hearing of appellant's applica-tion or petition for probation, the Presiding Judge of Branch I of the City Court held a conference in the courts chamber with appellant's counsel, the trial fiscal and himself, during which they discussed the bribery incident mentioned in the report; that the presiding judge of Branch I, after some clarifications regarding the incident in question, suggested that complainant should lodge a complaint against appellant and the fiscal should conduct the corres-ponding preliminary investigation to deter-mine whether there was a prima facie case (pp. 75-76, 82-86, t.s.n., September 16, 1980).

Finally, Ocampo declared that he approved the Post-Sentence Investigation Report recommending the granting of appel-lant's application for probation, notwithstanding the bribery or corruption incident mentioned in said report, because appellant's act was not yet a disqualifi-cation under the law, as he was still presumed innocent until he is found guilty by the court (pp. 90-91, t.s.n., December 8, 1980).

The appealed decision tersely cited the evidence for the defense in the following manner:

"The evidence for the defense is that the one hundred peso bill the accused-appellant placed in the envelope delivered to the Probation Officer was allegedly intended to take care of the expenses in the xerox copying or reproduction of docu-ments that may be needed by the Probation Office." (p. 7, CA Decision).

Considering that the findings of fact in the decision of the respondent court which affirmed the decision of the trial court, do not mention nor indicate the circumstances surrounding the incident and the filing of the information against the petitioner other than the admitted fact that the one hundred peso bill was placed in the envelope together with the visa and passport of the petitioner which he handed on December 17, 1979 to Mr. Ricardo Manalo and which the latter in turn handed on December 19, 1979 to Probation Officer Danilo Ocampo, in fairness to the petitioner, We quote hereunder the decision of the trial court which recited the said

circumstances that led to the filing of the Information against the petitioner, to wit:

"From the evidence presented, the following facts appear to the court to be indubitable; That the accused was convicted of the crime of less Serious Physical Injuries, and the crime of Oral Defamation of the City Court of Angeles City, Branch I, and the said accused was sentenced to an imprisonment of 15 days of Arresto Menor and to pay a fine of P50.00 and to pay the complaining witness the amount of P500.00 as moral and exemplary damages. After he was sentenced, he, on November 28, 1979 filed an Application for Probation. That after filing the application for Probation, the accused, together with his lawyer Atty. Reynaldo Suarez, went to the Probation Office purposely to inquire for the requirements needed for his client's petition for probation. Unfortunately, Atty. Suarez and his client did not reach the Probation Officer Mr. Danilo Ocampo. It was Mr. Manalo, a clerk of the Probation Office, whom they reached, and they were requested to come back to the office regarding their inquiry inasmuch as the Probation Officer was not in the office. Later, Atty. Suarez called through the telephone the Probation Office, and, on that occasion, he was able to talk with the Probation Inspector, Mrs. Primitiva Francisco. He was inquiring from Mrs. Francisco the necessary documents regarding the application for probation of his client, and Mrs. Francisco suggested that he would come over the office in order to give him all the necessary information. The lawyer just instructed Mrs. Francisco to give a list of the requirements to Mr. Pozar, the accused, who was then in the Office of the Probation Officer, and, accordingly, Mrs. Francisco handed to Mr. Pozar a list of the documents needed in his probation (see Exhibit E for the prosecution, and Exhibit 3 for the defense). It also appears that all the requirements listed in the list given by Mrs. Francisco were given to Mrs. Francisco, and at times to Mr. Manalo. The person who conducted the investigation was actually Mrs. Francisco. On December 10, 1979, Pozar had an occasion to see the Probation Officer, Mr. Danilo Ocampo, and in that meeting, aside from the fact that he was asking permission from the Probation Officer to go to Baguio, the Probation Officer required him to furnish the Probation Office the xerox copy of his visa, and his I.D. picture, inasmuch as it was explained to him these were needed, he being a foreigner. On December 17, 1979 Mr. Pozar went to the Probation Office looking for the Probation Officer, and when the Probation Officer was not there, he handed to Mr. Manalo an envelope addressed to the Probation Officer and asked and requested Mr. Manalo to give the same to Mr. Ocampo. It was on December 19, 1979 when Mr. Manalo handed the envelope given by Mr. Pozar to Mr. Danilo Ocampo, and when Danilo Ocampo opened it in the presence of Mr. Manalo, he found enclosed in the envelope a xerox copy of the applicants passport, xerox copy of his visa, and attached also with the same document was a one hundred peso bill. It would seem that Mr. Ocampo asked Mr. Manalo to keep the one hundred peso bill and return it to Mr. Pozar, but when Mr. Pozar did not arrive to the office, Mr. Manalo gave it back to Mr. Ocampo. Mr. Danilo Ocampo kept the one hundred peso bill, but made it a point that this incident regarding the receiving of the one hundred peso bill be included in the post-sentence investigation report which was being prepared by Mrs. Francisco. At that time when the one hundred peso bill was given, the post-sentence investigation report was not yet finished. The record shows that the same was submitted to the court only on February 8, 1980. At the hearing of the application for probation in March 1980, when the Pre-siding Judge of City Court of Angeles City, Branch I, noted and saw from the report the alleged incident of the accused's giving the one hundred peso bill he called for a conference and in that conference, he suggested that the matter should be investigated by the Office of the City Fiscal. Acting upon such suggestion, Danilo Ocampo formally filed an Information Sheet against the accused Gregory Pozar (Exhibit 2). It is also a fact admitted by the defense that after the one hundred peso bill was handed and the Probation Officer was not able to return the same, he informed Atty. Suarez at the sala of City Court Branch II sometime on January 14, 1980." (pages 8-9)

As stated earlier, petitioner was found guilty of the offense of Corruption of Public Official as defined and penalized in the Revised Penal Code as follows:

"Art. 212. Corruption of Public Officials. - The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given the gifts or presents as described in the pre-ceding articles."

The preceding Articles of the Revised Penal Code are Articles 210 and 211 which define and penalize the offenses of direct bribery and indirect bribery, and they provide as follows:

"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 of 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 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.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of arresto mayor in its medium and maximum periods and a fine not less than the value of the gift and not more than three times such value.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts, or any other persons performing public duties."

"Art. 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."

It is well to note and distinguish direct bribery from indirect bribery. In both crimes, the public officer receives gift. While in direct bribery, there is an agreement between the public officer and the giver of the gift or present, in indirect bribery, usually no such agreement exist. In direct bribery, the offender agrees to perform or performs an act or refrains from doing something, because of the gift or promise; in indirect bribery, it is not necessary that the officer should do any particular act or even promise to do an act, as it is enough that he accepts gifts offered to him by reason of his office. (The Revised Penal Code by Luis P. Reyes, 1975 Ed., p. 332).

In the case at bar, We find that the Information against the petitioner charged that the accused "did then and there willfully, unlawfully, and feloniously give to the complainant, Mr. Danilo Ocampo, the City Probation Officer, the sum of one hundred (P100.00) pesos in a paper bill with serial No. BC530309, under circumstances that would make the said City Probation Officer, Mr. Danilo Ocampo, liable for bribery." The trial court found the accused guilty of the offense of Corruption of a Public Official as charged in the Information and pursuant to Article 212, in relation to Article 211 of the Revised Penal Code, sentenced the accused to an imprisonment of three (3) months and one (1) day of arresto mayor and public censure. This is erroneous.

The trial court erred in finding the accused guilty of the crime of Corruption of Public Official as consummated offense (which is affirmed by the respondent appellate court) for it is clear from the evidence of the prosecution as recited in both decisions of the trial and appellate courts, that the complainant Probation Officer did not accept the one hundred peso bill. Hence, the crime would be attempted corruption of a public official. (See The Revised Penal Code by Justice Ramon Aquino, 1976 Ed., Vol. II, p. 1168, citing the cases of Uy Matiao, 1 Phil. 487; Camacan, 7 Phil. 329; Tan Gee, 7 Phil. 738; Sy-Guikao, 18 Phil. 482; Te Tong, 26 Phil. 453; Ng Pek, 81 Phil. 562; Ching, CA-G.R. No. 439-R, July 31, 1947). Attempted corruption of a public official is punished with

destierro and is cognizable by inferior courts (See Revised Penal Code by Justice Aquino, Vol. II, 1976 Ed., citing the cases of Uy Chin Hua v. Dinglasan, 86 Phil. 617; Santos y Bautista, 87 Phil. 687; Dalao v. Geronimo, 92 Phil. 1042; Ng Pek, 81 Phil. 562).

Be that as it may, the crucial point is whether the prosecution has established beyond reasonable doubt that the one hundred peso bill was given to bribe and corrupt the City Probation Officer or that it will be used to defray expenses in xeroxing or copying of whatever documents needed by the Probation Office in connection with petitioner's application for probation then pending in said office.

The evidence on record disclose that the petitioner was required by the Assistant Probation Officer, Primitiva Francisco, to submit in connection with his probation application the Court Information (complaint), Court decision, Custody Status (recognizance or bail bond), clearances from the Police, the Court, Barangay Certificate, I.D. pictures (3 copies), residence certificate, and told to report once a week on Mondays. (Exhibit "E"). This was on December 7, 1979.

Aside from these documents, the Probation Officer required of the petitioner on December 10, 1979 when the latter was asking permission to go to Baguio to submit to the office a copy of his visa and passport. Mrs. Francisco also testified that the petitioner was asking permission from her to leave for Baguio. And according to the petitioner, during all the time he was applying for probation, he made more or less 12 visits in the office as he was directed to report every Monday at 10:00 o'clock in the morning. He reported for 6 to 7 consecutive weeks and there were times that he went there unscheduled for conference and clarification of the various requirements he needed. During all the time he went there, he met Manalo, Mrs. Francisco and Mr. Ocampo himself. Mrs. Francisco and Mr. Ocampo interviewed him. He submitted all the requirements to the Probation Officer; at times, he submitted them directly to Mrs. Francisco, and at other times to Mr. Manalo, and also to Mr. Ocampo. Other than those listed in the list given by Mrs. Francisco, he was required to submit xerox copy of his passport, his visa and his pictures. He explained that he gave the requirements to the person who was interviewing him, primarily Mrs. Francisco, of the documents needed. Later, he submitted to the office xerox copy of the original. He likewise submitted his two passports, and later xerox copy of his passports. When Mrs. Francisco was asking for the original, which documents are in the possession of his lawyer at his office, he had to return to get the originals."(Decision of Trial Court, p. 5). Petitioner's travail is, therefore, quite evident.

From the foregoing, We can fairly deduce that the procedure for processing petitioner's application for probation in the Probation Office at Angeles City was not precise, explicit and clear cut. And since the accused petitioner is a foreigner and quite unfamiliar with probation rules and procedures, there is reason to conclude that petitioner was befuddled, if not confused so that his act of providing and advancing the expenses for whatever documentation was needed further to complete and thus hasten his probation application, was understandably innocent and not criminal.

In fine, the facts and circumstances on record amply justify and support the claim of the defense as against the conjectures, speculation and supposition recited in the decision of the trial court and quoted with approval in the appealed decision under review. The Government's own evidence as indicated in the Post-Sentence Investigation Report that the giving of the one hundred pesos (P100.00) was done in good faith, is vital for it belies petitioner's criminal intent. There being no criminal intent to corrupt the Probation Officer, the accused petitioner is entitled to acquittal of the crime charged. We hold and rule that the prosecution has not proved the guilt of the accused beyond reasonable doubt. There is not that moral certainty required to convict him. Even the complainant himself, the Probation Officer, filed the complaint only on the suggestion of the presiding judge of the Angeles City Court during the hearing on petitioner's application for probation, the complaint having been filed in the City Fiscal's Office on June 10, 1980 after a lapse and delay of six (6) months.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the judgment appealed from is hereby REVERSED. The accused petitioner is hereby ACQUITTED. No costs.

SO ORDERED.

Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), see dissent.

Aquino, J., in the result.

Abad Santos, J., no part.

DISSENTING OPINION

MAKASIAR, J.:

1. As stated by the Solicitor General, the pretension of the petitioner that he was confused with respect to the requirements and/or processing of his application for probation pending before the complaining witness Probation Officer Danilo Ocampo of Angeles City, is incredible. As early as December 7, 1979, about ten (10) days before December 17, 1979 (the delivery of the P100 peso bill inside a closed letter envelope), petitioner was already interviewed by Mrs. Primitiva Francisco, Assistant Probation Officer of the Probation Office of Angeles City, who gave him the list of documents to be submitted to the office. Hence, petitioner already knew then what papers were required of him.

Then again, when petitioner saw complainant Probation Officer Ocampo on December 10, 1979, asking permission to go to Baguio City, Probation Officer Ocampo required him to submit to his office copies of petitioner's passport and visa only, with which petitioner complied by submitting through Probation Clerk Ricardo Manalo the required xerox copies of his passport and visa on December 17, 1979, contained in a closed letter envelope together with the bribe money, which closed, letter envelope was addressed to Probation Officer Ocampo.

2. His claim that the P100 peso bill contained in the aforesaid closed letter envelope was for xerox copies of other documents that may be required of him by the Probation Office, is belied by the aforesaid fact that as early as December 7, 1979, Assistant Probation Officer Francisco already gave him the list of documents that he should submit to the Probation Office, and that on December 10, 1979, Probation Officer Ocampo also required him to submit xerox copies only of his passport and visa as he was a foreigner, in connection with his request for permission to go to Baguio City.

3. If, as he alleged, the P100 bill was intended for xerox copies of other documents that may be required of him, he should have, as stated by the Solicitor General in his comment and memorandum, given the same to the clerk Ricardo Manalo of the Probation Office, with instructions that the same should cover whatever xerox copies of other documents may be needed. Or he should have attached or clipped the P100 bill to a note addressed to Probation Officer Ocampo that the said money is to cover expenses for xerox copies of other documents that may be required of him.

4. Petitioner could have just given the P100 bill to his lawyer, Atty. Reynaldo Suarez, with instructions that the same should be paid for whatever xerox copies of other documents that may be required of him in connection with his application for probation.

5. Petitioner saw Assistant Probation Officer Francisco on December 21, 1979; but on said date petitioner did not bother to ask either Assistant Probation Officer Francisco or the Probation Clerk Ricardo Manalo, whether the P100 bill was spent for xerox copies of other documents. He went there that day, December 21, 1979, precisely to reiterate his request for permission to leave for Baguio City and Assistant Probation Officer Francisco advised him to talk to Probation Officer Ocampo whom he did not even try to see that day, December 21, 1979.

6. Petitioner could not presume that his application for probation would be favorably acted upon because he was still then being subjected to an investigation by Assistant Probation Officer Francisco who submitted her post-sentence report to the City Court only on February 5, 1980. Said report included the statement about the bribe money. Probation Officer Ocampo had to recommend in March, 1980 approval of petitioner's application for probation; because at that time he had not yet filed the complaint with the City Fiscal's Office for corruption of public officer against petitioner who, as stressed by Probation Officer Ocampo, was presumed innocent until adjudged guilty of such corruption.

Hence, the conviction of petitioner should be affirmed but only for attempted corruption of a public officer, because Probation Officer Ocampo did not accept the money; otherwise, said probation officer would be equally guilty as the corruptor.

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