

LUCIO DULPO, PETITIONER, VS. HON. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 74652. May 21, 1987*

Ponente: YAP, J.

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Petitioner Lucio Dulpo was an employee of the Post Office at Bacoor, Cavite, holding a temporary appointment as letter-carrier from August 26, 1983, until the termination of his employment on April 26, 1985. Upon the complaint of Mrs. Lorna Lacorte (formerly Mrs. Lorna Abelon) of Zapote, Bacoor, the accused letter-carrier was charged on July 10, 1985 before the Sandiganbayan in two separate informations for having feloniously taken and carried away two airmail letters allegedly containing international money orders for \$150 and \$100, received at the Bacoor Post Office on January 8 and January 21, 1985, respectively, and entrusted to him for delivery to the addressee.

After trial, the respondent Sandiganbayan, while absolving Dulpo as to the alleged asportation of the international money orders on the ground that it was not sufficiently proven that the letters contained said money orders, found him guilty of the crime of infidelity in the custody of documents under Article 226 of the Revised Penal Code for the loss of the two airmail letters and sentenced him in each of the cases "to suffer an indeterminate penalty ranging from two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum; to pay a fine of P500.00, plus costs; and to suffer the additional penalty of temporary special disqualification for a period ranging from ten (10) years, eight (8) months and one (1) day, as minimum, to sixteen (16) years, eight (8) months and one (1) day, as maximum".

Petitioner filed a motion for reconsideration and a motion for leave to file a second motion for reconsideration, both of which were denied by the Sandiganbayan, hence this petition.

Two assignments of error were raised by petitioner, namely: (1) the Sandiganbayan erred in finding the accused guilty beyond reasonable doubt of infidelity in the custody of documents; and (2) it erred in imposing too severe a penalty considering that what were involved were ordinary airmail letters.

The first assignment of error alleged by petitioner is devoid of merit. The finding of the Sandiganbayan as to the guilt of petitioner is amply supported by the evidence. The fact that the two letters in question were entrusted to, and received by, the accused letter-carrier, Lucio Dulpo, for delivery to the addressee is admitted by him. It is also a fact admitted by him that those letters were never delivered to the addressee. Dulpo's defense is that he could not deliver the letters because the addressee was unknown at the given address, hence, in accordance with standard procedure, he returned the said letter to the sender by putting them in the dispatch box in the post office. However, the burden of proof to establish such defense lies on the accused. He cannot rely simply on the presumption that official duty has been regularly performed, since there was evidence presented by the prosecution which negated such presumption. The complainant testified that upon verification from her son, she learned that the letters were not returned to, and received by, him. In fact, it was shown that the money orders

which were intended for the complainant apparently went to someone else as they were encashed by a certain Adela Bonavie, and someone had apparently signed complainant's name on the money order, putting her address as 1221 P. Sevilla Street, Caloocan City. The accused claimed, in his defense, that he recorded in a logbook which he kept for the purpose the fact that he returned the letters to the sender. However, he could not produce said logbook, saying that they were kept in the post office. The incumbent postmaster of Bacoor Post Office, who was subpoenaed at the request of the accused to bring the logbook in question to the court at the hearing on the petitioner's motion for reconsideration, brought only two logbooks, one bearing the date October 18, 1982, and the other with the date June 23, 1983, and stated to the court that these were the only books of the accused which he found in the post office and that he could not find any logbook of the accused for the year 1985. The court a quo accordingly did not give credence to the defense of the accused. We find no reason for disturbing the court's findings in this regard.

The second assigned error concerning the penalty imposed by the court a quo is well-taken. Article 226 of the Revised Penal Code provides for two ranges of penalty for infidelity in the custody of documents: prision mayor and a fine not exceeding P1,000 if the damage to a third party or to the public interest is serious, and prision correccional in its minimum and medium periods and a fine not exceeding P1,000 if such damage is not so serious. Considering the facts and circumstances of the case, we find that the proper penalty to be imposed on the accused should be that which is prescribed by paragraph 2 of Article 226, which is the lesser penalty. The Sandiganbayan itself did not sustain the charge in the informations that money orders were contained in the undelivered letters. Moreover, these letters were sent by ordinary airmail, not by registered mail. We do not find the cases cited by respondent - U.S. vs. Marino[1] and U.S. vs. Balilo[2] - to be controlling, since the letters involved in those cases were registered letters and the circumstances and facts established therein showed that the acts and deeds of the accused (who were both postmasters) were of such nature that they clearly undermined the public's faith and confidence in the postal service. We do not find a parallel situation in the case at bar. Accordingly, the appealed decision should be modified and the accused sentenced to an indeterminate penalty of six (6) months of arresto mayor, as minimum, to two (2) years, eleven (11) months and ten (10) days of prision correccional, as maximum, in each of the cases.

The petitioner's motion, dated January 7, 1987, praying that the "threefold rule" should be applied by the Court in sentencing him, is denied. Conviction for multiple felonies requires the imposition of multiple penalties.[3] The so-called threefold rule can only be taken into account in connection with the service of the sentence imposed, not in the imposition of the penalty[4].

WHEREFORE, with the modification above-mentioned, i.e. reducing the penalty of imprisonment imposed upon the petitioner Lucio Dulpo, the judgment of the Sandiganbayan is affirmed in other respects.

SO ORDERED.

Teehankee, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.
Fernan, J., on leave.

[1] 10 Phil. 652

[2] 17 Phil. 459.

[3] People v. Peralta, 25 SCRA 759.

[4] People v. Escares, 94 Phil. 1045.

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