

MELENCIO GIGANTONI Y JAVIER, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND INTERMEDIATE APPELLATE COURT, RESPONDENTS.

G.R. No. 74727. June 16, 1988

Ponente: YAP, C.J.

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YAP, C.J.:

This is an appeal by certiorari from the decision of the then Intermediate Appellate Court in AC-G.R. No. 01119 entitled "People of the Philippines v. Melencio Gigantoni y Javier," promulgated on November 13, 1985, which affirmed the decision of the Regional Trial Court, Branch 159, Pasig, Metro Manila, finding the accused guilty of usurpation of authority under Article 177 of the Revised Penal Code, with modification of the penalty by reducing the same to one (1) month and one (1) day of arresto mayor to one (1) year and one (1) day of prision correccional, after crediting the accused with a mitigating circumstance analogous to voluntary confession of guilt.

Petitioner Melencio Gigantoni y Javier, was charged before the Regional Trial Court of Rizal, Pasig, with the crime of usurpation of authority in violation of Article 177 of the Revised Penal Code upon an information alleging that the crime was committed as follows:

"That on or about the 14[th] and 15[th] day of May, 1981, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is not a bona fide agent of the CIS, Philippine Constabulary, did then and there willfully, unlawfully, knowingly and falsely represented himself as a bona fide agent of the CIS, Philippine Constabulary, said accused, knowing fully well his representation to be false."

After arraignment during which the accused pleaded not guilty and after trial, the lower court rendered judgment finding the accused guilty as charged. On appeal to the appellate court, the judgment was affirmed with modification only as to the penalty imposed.

The facts of the case, as recited in the decision of the appellate court, are as follows:

"During the period material to this case, or in 1981, accused-appellant Melencio Gigantoni was an employee of Black Mountain Mining Inc. and Tetra Management Corporation, which are both private companies doing business in the Philippines x x x. On May 14, 1981, as an employee of said companies, Gigantoni went to the office of the Philippine Air Lines (PAL) at Vernida Building, Legaspi Street, Makati, Metro Manila, allegedly to conduct verification of some travels made by Black Mountain's officials. Upon reaching the said PAL office, he falsely represented himself to the PAL legal officer as a PC-CIS agent investigating a kidnapping case, and requested that he be shown the PAL records particularly the passenger manifests for Manila-Baguio-Manila flights covering the period February 1 to 3, 1981. He explained that he was then at the 'tracking stage' of aforementioned kidnapping case, x x x To further convince the PAL officials of his supposed mission, Gigantoni exhibited his identification card purporting to show that he was a PC-CIS agent, xxx Thereupon, his aforesaid request was granted, and PAL legal officer Atty. Conrado A. Boro showed to him the requested PAL

records. Gigantoni then secured xerox copies of the requested manifest xxx and the used PAL tickets of one Cesar (Philippe) Wong, an SGV auditor, and that of a certain Daisy Britanico, an employee of Black Mountain. Thereafter, he left the PAL premises.

"When Gigantoni was no longer around, PAL general counsel Ricardo Puno, Jr., inquired from Atty. Boro about Gigantoni's purpose in securing copies of PAL records. They then became suspicious of the accused' real identity prompting them to conduct verification from the PC-CIS office. They subsequently learned from General Uy of PC-CIS that Gigantoni was no longer a CIS agent since June 30, 1980 as he had been dismissed from the service for gross misconduct x x x brought about by the extortion charges filed against him and his final conviction by the Sandiganbayan for the said offense. xxx Upon discovering the foregoing, Atty. Puno immediately alerted the NBI as Gigantoni would be coming back to the PAL office the following day. xxx

"On May 15, 1981, when Gigantoni returned to the Makati PAL office, he was brought by Atty. Puno to their conference room while awaiting for the arrival of the NBI agents who were earlier contacted. In the presence of Atty. Boro and a PAL security, Gigantoni was confronted by Atty. Puno as to his real identity. He later admitted that he was no longer with the CIS; that he was working for the Black Mountain Mining Corporation; and that he was just checking on a claim for per diem of one of their employees who had travelled, xxx

"Upon the arrival of NBI agents Teodoro Pangilinan, Lolito Utitco and Dante Crisologo, Attys. Puno and Boro turned over the person of Gigantoni to the NBI. They also submitted a complaint-affidavit against Gigantoni xxx. On that same day, after the investigation, arrest and booking conducted by the NBI, Gigantoni was charged before the Office of the Provincial Fiscal of Rizal, thru its office in Makati, with the crime of Usurpation of Authority."

The petitioner-accused raised substantially the same errors on appeal to respondent appellate court, to wit:

- The appellate court erred in interpreting that presumption that official duty has been regularly performed, its applicable in the case at bar;
- The appellate court erred in its interpretation of the difference between suspension and dismissal.

The gist of petitioner's contention is that he could not be guilty of the crime charged because at the time of the alleged commission of the offense, he was still a CIS agent who was merely suspended and was not yet informed of his termination from the service. Furthermore, he avers that the receipt by him of the notice of dismissal, if there was any, could not be established on mere presumption of law that official duty has been regularly performed.

Article 177 of the Revised Penal Code on usurpation of authority or official functions, under which the petitioner was charged, punishes any person: (a) who knowingly and falsely represents himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government; or (b) who, under pretense of official position, performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government or any agency thereof, without being lawfully entitled to do so. The former constitutes the crime of usurpation of authority under which the petitioner stands charged, while the latter act constitutes the crime of usurpation of official functions.

The question before us is — did petitioner knowingly and falsely represent himself as an agent of the CIS. Philippine Constabulary? Petitioner admits that he received a notice of his suspension from the CIS effective June 20, 1980. This admission is supported by the record (Annex "D") which shows the letter of Lt. Col. Sabas Edades to petitioner, dated June 23, 1980, regarding said action. Said official letter was also sent to the Commissioner of the Merit Systems Board, Civil Service Commission, the Minister of National Defense and the Commanding

General of the CIS. However, as to petitioner's alleged dismissal effective June 20, 1980, he denies having been informed thereof. The record is bereft of any evidence or proof adduced by the prosecution showing that the dismissal was actually conveyed to petitioner. That is why (he court, in convicting him, relied on the disputable presumption that official duty has been regularly performed, that is, that it is presumed that he was duly notified of his dismissal.

The failure of the prosecution to prove that petitioner was duly notified of his dismissal from the service negatives the charge that he "knowingly and falsely" represented himself to be a CIS agent. The constitutional presumption of innocence can only be overturned by competent and credible proof and never by mere disputable presumptions, as what the lower and appellate courts did when they presumed that petitioner was duly notified of his dismissal by applying the disputable presumption "that official duty has been regularly performed." It was not for the accused to prove a negative fact, namely, that he did not receive the order of dismissal. In criminal cases, the burden of proof as to the offense charged lies on the prosecution. Hence, it was incumbent upon the prosecution to establish by positive evidence the allegation that the accused falsely represented himself as a CIS agent, by presenting proof that he knew that he was no longer a CIS agent, having been duly notified of his dismissal. It is essential to present proof that he actually knew at the time of the alleged commission of the offense that he was already dismissed from the service. A mere disputable presumption that he received notice of his dismissal would not be sufficient.

The Solicitor General has argued in his memorandum, that it makes no difference whether the accused was suspended or dismissed from the service, "for both imply the absence of power to represent oneself as vested with authority to perform acts pertaining to an office to which he knowingly was deprived of." (*Italics supplied*). The observation of the Solicitor General is correct if the accused were charged with usurpation of official function (second part of Article 177), but not if he is charged merely with usurpation of authority (first part of Article 177). The information charges the accused with the crime of usurpation of authority for "knowingly and falsely representing himself to be an officer, agent or representative of any department or agency of the Philippine Government."

Petitioner is not accused of usurpation of official functions. It has not been shown that the information given by PAL to the accused was confidential and was given to him only because he was entitled to it as part of the exercise of his official function. He was not charged in the information for such an offense. In fact, it appears from the record of the case that the information, which was not claimed to be secret and confidential, was readily made available to the accused because PAL officials believed at the time that he was a CIS agent. And this was the only offense with which he was charged in the information, that he knowingly and falsely represented himself to be a CIS agent.

PREMISES CONSIDERED, the decision of the respondent Appellate Court affirming the judgment of conviction of the Regional Trial Court is reversed and set aside. Petitioner-accused, Melencio Gigantoni y Javier is hereby acquitted of the crime charged.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

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