

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO GIMENEA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 8168. March 25, 1913*

Ponente: TRENT, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-8168/>**TRENT, J.:**

In this case Francisco Gimenea, sergeant, and Clemente Sarosad and Urbano Senieres, privates, of the Constabulary, were convicted in the Court of First Instance of Cebu for bribery under article 382 of the Penal Code. Gimenea was sentenced to imprisonment for one year and three months of presidio correccional, to the accessory penalties provided by law, to a fine of P200, and to the payment of one-third the costs of the cause. The other two defendants were each sentenced to imprisonment for three months of arresto mayor, to the accessory penalties, to a fine of P100, and to the payment of one-third the costs. All the defendants appealed, but while the case was pending in this Supreme Court, Clemente Sarosad and Urbano Senieres withdrew their appeals, and the judgment of the lower court as to them has therefore become final, leaving only the appeal of Francisco Gimenea to be considered.

Escolastico Cabilao, a resident of the municipality of Cebu, was afflicted with leprosy and was gathered in by the officials of the Insular Bureau of Health to be transported to Culion. While awaiting transportation to the leper colony, he was confined in a hospital at Cebu with a number of other leprosy persons under a guard of Constabulary soldiers, among whom was the appellant, whose duty it was to hold them in quarantine. On the night of May 17, Cabilao attempted to escape but was caught in the act by the sentry and forced to go back upstairs where he was quartered.

The prosecution introduced the testimony of Escolastico Cabilao, his son-in-law Marcelino Perez, and his sons Castor Cabilao and Emeterio Cabilao. The substance of the testimony of these witnesses is to the effect that an arrangement had been made between Gimenea and the old man to allow him to escape from the hospital. One evening when Perez and his brother-in-law arrived at the hospital with their father's supper, the old man told them that the matter had been arranged and that they were to give Gimenea P10. Upon leaving the hospital, Gimenea ordered a soldier named Aranas to follow them to get the money. The P10 was delivered to Aranas at the house of the witnesses for the prosecution in the presence of Perez, his wife, and his brothers-in-law above named. This was on the 17th of April. On the following evening when they arrived with their father's supper, Gimenea told them to return at 10 o'clock and bring the money with them to deliver to their father, as he would surely be able to escape early the following morning. They were further instructed to inform the guard that they were bringing tobacco to their father, as it was strictly against the rules to allow communication with the lepers at such a late hour. They returned at 10 o'clock with P90, consisting of four P20 bills and one P0 bill. The guard ordered them to halt and asked them what brought them there, to which they replied that they had some tobacco to deliver to their father. Gimenea was there and said to the sergeant who was in charge of the guard at the time, "Let them talk two minutes." Perez, who gave the money to his father-in-law, told him that when they turned him loose to give them the money. They then left the hospital and going around to the rear of the building waited there according to

the arrangement for their father, whom they were to take that same night to a farm belonging to him located up in the mountains. They waited there until 2 o'clock in the morning, when, becoming discouraged at the nonappearance of their father, they went home. In the meantime, the old man had delivered the money to Gimenea and at about 1 or 2 o'clock in the morning went downstairs with Gimenea. The latter removed the grating of a window and just as the old man stepped out he was stopped by a sentry, whereupon Gimenea told him to go back and they would try it again. The next morning Perez informed the lieutenant of the Constabulary in charge of the whole matter.

The defense introduced a number of Constabulary soldiers, among whom were all three of the defendants. Faustino Broan, Benigno Encabo, Clemente Sarosad, and the appellant, all testified that on the morning of the 19th of April at a quarter of 3 Cabilao attempted to leave the hospital; that he was caught in the attempt and made to go back upstairs. Encabo, who was on guard from 9 to 11, testified that a vehicle came up to the hospital which he halted, ordering the occupants to descend; that Perez descended and requested permission to talk with Cabilao, and Bongo who was the sergeant in charge of the guard at the time gave him permission to talk for two minutes. Gimenea testified that about two weeks before the attempted escape he borrowed P10 from Perez, but denied sending the soldier Arañas for the money. Later he admitted that he had sent Arañas for the money. He further admitted that the old man had talked with him and the defendant Senieres regarding the possibility of getting his freedom and had requested them to make a recommendation to that effect, but denied that Cabilao had offered him any money. It was agreed between the witnesses who testified to the fact, that at the time Cabilao attempted to leave the hospital there were three soldiers on guard. Broan testified that he was one; that he did not leave his post when he heard the old man trying to get out of the hospital, but simply called the corporal of the guard; that while the corporal was reprimanding the old man for coming downstairs, Gimenea came up followed by the other sentry on guard; that no one called Gimenea, who had been sleeping near the hospital. Encabo testified that he was the soldier who had come up to the scene of the disturbance with Gimenea but testified that he was not on duty at the time as his turn came at 3 o'clock, or about fifteen minutes after the time of the disturbance. He said that a soldier from another company was on guard at the time.

In rebuttal, the prosecution introduced Victorino Ranas (alias Aranas), a Constabulary soldier, who testified that he went to the house of Perez on April 17 by orders of Gimenea, received from Perez P10 in the presence of three men and one woman, and took this money, according to his instructions, to the house of one Sabino Dapat where Gimenea awaited him; that he delivered the money to Gimenea and that he (witness) did not receive any of it.

It will be noted that the witnesses for the defense, admitted that Cabilao had talked with the appellant concerning his desire to be set free several days before the night of the attempted escape; that the appellant admits receiving P10 from Perez in the manner set forth by the prosecution, but denies that it was on the 17th of April. It is admitted that Perez came to the hospital at 10 o'clock that night and talked with his father-in-law for "two minutes." It is admitted that Cabilao came downstairs on the night in question, and that Gimenea was there at the time without having been called by any one. But it is denied that there was any connivance between the appellant and the witnesses for the, prosecution in the frustrated plan of setting Cabilao, sr., at liberty.

The testimony of the witnesses for the prosecution is not, as urged by counsel for the appellant, inconsistent and contradictory. Only two such alleged inconsistencies are pointed out. One is to the effect that Cabilao, sr., testified that P150 had been agreed upon as to the amount to be paid for the assistance of the defendants, while at other times it is testified that P10 and P90 were the amounts actually paid. There is no inconsistency here. There is no contradiction as to the amount actually paid, and that is the important point. The other alleged inconsistency is to the effect that Perez first stated that Sarosad and Gimenea had made the demand on him for money, while later on he said that Senieres had talked to Cabilao, sr., in reference to the matter. There can be no inconsistency here.

The same cannot be said of the testimony of the witnesses for the defense. In addition, Victorino Ranas positively declared that it was on the 17th of April that he went to the house of Perez for the P10, that he was ordered to go there by Gimenea, and that there were three men and one woman present when the money was delivered to him. This agrees exactly with the testimony of the relatives of Cabilao.

The result is that it has been established beyond any question of a doubt that the appellant did agree to aid Cabilao in making this escape from the hospital, and that the Cabilao family sent P10 to him by the soldier Ranas on April 17 which he accepted, and that he also received P90 from Escolastico Cabilao on the night of April 18 when the latter attempted to escape; and that these amounts were paid to him for his assistance in effecting the escape of Cabilao from the hospital.

The lower court sentenced the appellant under article 382 of the Penal Code, which reads as follows :

"Art. 382. Any public officer who shall agree to commit any injustice not constituting a crime in connection with the exercise of the powers of his office, in consideration of any offer or promise or of any gift or present received by such officer, personally or through the mediation of another, shall, if the injustice be committed, suffer the penalty of presidio correccional in its medium and minimum degrees and pay a fine of not less than the value of the gift and not more than three times such value; if the injustice shall not have been committed, a penalty ranging from arresto mayor in its maximum degree to presidio correccional in its minimum degree and a fine of not less than the value of the gift and not more than double such value shall be imposed."

Section 1 of Act No. 1711 provides in part as follows:

"The Director of Health and his authorized agents are hereby empowered to cause to be apprehended, and detained, isolated, segregated, or confined, all leprosy persons in the Philippine Islands, and upon application of the Director of Health it shall be the duty of every Insular, provincial, or municipal official having police powers to cause to be arrested and delivered to the Director of Health, or his agent, any person alleged or believed to be a leper, and it shall be the duty of such officers to assist in the conveyance of any person so arrested to such place as the Director of Health or his agents may require, in order that such person may be subject to medical inspection, and such other procedure as may be necessary to establish a diagnosis, and thereafter to assist in removing such person to a place for detention, treatment, isolation, or segregation, if so required by the Director of Health or his agents: * * *"

Section 6 of the same Act reads:

"Any person violating any of the last five preceding sections shall, upon conviction, be punished by a fine not to exceed two hundred pesos, or imprisonment for not to exceed six months, or both, in the discretion of the court."

Escolastico Cabilao had been arrested by direction of the Bureau of Health and was being conveyed to the Culion leper colony. While awaiting transportation he was being detained in the hospital at Cebu, and the appellant, among others, was designated to see that he was properly kept in quarantine. This was in brief the task assigned to the appellant; and it was his duty, within the meaning of section 1 of Act No. 1711. By cooperating in an attempt to accomplish what it was actually his duty to prevent, there was an open and notorious violation of the said section 1 of Act No. 1711, penalized by section 6 of the same Act, as above quoted. The appellant's acts, therefore, properly come under the provisions of article 381 of the Penal Code, which reads as follows:

"ART. 381. Any public officer who shall agree to commit any criminal act in connection with the exercise of the powers of his office, in consideration of any offer or any promise or any gift or present received by such officer, personally or through the mediation of another, shall suffer the penalties of presidio correccional in its minimum and medium degrees and a fine of not less than the value of the gift and not more than three times such amount, without prejudice to the imposition of the penalty corresponding to the crime agreed upon, if the

same shall have been committed."

Viada, volume 2, page 642, in discussing article 381, says that to constitute the crime of bribery as provided in this article, four things are necessary: (1) That the defendant be a public officer according to the meaning of this term in article 401; (2) that he has received either personally or through another gifts or presents or accepted offers or promises; (3) that such reception of gifts or presents or acceptance of offers or promises has been for the purpose of executing a crime; and (4) that the act constituting the crime relates to the exercise of the office which the public officer discharges. All these concur in the present case.

The judgment of the lower court as to the appellant Francisco Gimenea is therefore modified, and he is sentenced to one year eight months and twenty-one days of presidio correccional, to a fine of P300, to the corresponding subsidiary imprisonment in case of insolvency, to the accessory penalties provided by law, and to the payment of one-third the costs of the cause.

Arellano, C J., Torres and Moreland, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.