

AURORA T. AQUINO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 91896. November 21, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review seeking the reversal of the November 15, 1989 decision of the Court of Appeals, which affirmed a trial court decision finding the accused-petitioner, Aurora Aquino, guilty of illegal recruitment.

The information filed against the accused-petitioner reads:

"That on or about and during the period comprised between May 23, 1974 to May, 1975, both dates inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and knowingly, being then a private individual, recruit workers for employment abroad without first obtaining the required license or authority from the Ministry of Labor, in violation of the said Article 25, Presidential Decree 442." (Rollo, pp. 17-18)

Upon arraignment, the accused pleaded not guilty. Thereupon the trial ensued.

The facts according to the prosecution are as follows:

"1. Sometime in January of 1973, Rodrigo Nicolas, a laborer from Sta. Cruz, Manila, met appellant Aurora Aquino when he applied at her Manila Hotel Office in response to a published notice of alleged recruitment of workers for Guam. At such meeting, he applied for the position of carpenter. One week later, he gave appellant P1,000.00 as part payment of the P1,500.00 required of him (pp. 9-11, TSN, June 20, 1979). A second payment of the P500.00 was made by Nicolas to appellant on September 24, 1974 (pp. 35-36, TSN, *ibid.*). Of the total, P1,500.00 Nicolas paid, P1,000.00 was later refunded directly to him by appellant (pp. 12-14, TSN, *ibid.*) and the balance of P500.00 was included in an alleged "group refund check" for P5,270.00 which could not be cashed for lack of funds (pp. 34-35, TSN, *ibid.*).

2. On or about March 12, 1973, Braulio Sapitula, a farmer from Agoo, La Union, having learned that Mrs. Aurora T. Aquino, (known hereafter as Appellant) was recruiting applicants for employment in Guam, likewise applied for the position of carpenter at appellant's Manila Hotel Office and plunked down FIVE HUNDRED (P500.00) PESOS as his initial payment of the recruitment fees. A second payment of ONE THOUSAND (P1,000.00) PESOS was delivered to appellant by Sapitula on February 5, 1975 (p. 1, Decision).

3. Sometime in May of 1973, Aurelio Costales, a resident of Sampaloc, Manila, met appellant at the Greenwich Travel Agency, where Costales likewise applied for a job in Guam and made a partial payment of P800.00 for the usual P1,500.00 recruitment fees appellant charged job applicants (pp. 5-6, TSN, Jan. 4, 1980). A second payment of P550.00 was given by Costales to appellant on September 24, 1974 (pp. 35-36, *Ibid.*). Later on, Costales, disappointed at not being able to go to Guam, asked for a refund of his money. He was paid P700.00 by appellant, and the balance of P650.00 was allegedly part of the alleged "group refund check" for P5,270.00 issued by appellant which was dishonored for lack of funds (pp. 15-17, *Ibid.*).

4. Sometime in June, 1974, Benito Vertudez, a resident of Gen. Trias, Cavite, applied for a Guam job at appellant's agency. At such time he filled out an application form and paid P70.00 for "mailing expenses" (pp. 39-44, TSN, June 14, 1979). Thereafter, in the course of following up his application to work in Guam, Vertudez paid appellant P500.00 in September, 1974, and another P500.00 in September, 1974 (pp. 51-52, Ibid). Due to appellant's inability to get him a job in Guam, Vertudez asked for the return of his money. He was issued a check for the amount of P1,070.00 by appellant, but said check like the alleged "group refund check" was dishonored for lack of funds (p. 54, Ibid).

5. On November 2, 1978, a complaint was filed against appellant for violation of the Provisions of Article 24, of P.D. No. 442, otherwise known as the labor Code of the Philippines, before the Regional Trial Court of Manila, Branch VIII." (Rollo, pp. 44-48)

The accused-appellant's version, on the other hand, shows that:

"Aurora T. Aquino, 51 years old businesswoman, disclosed that in 1973, she was a licensed contractor authorized to hire laborers as evidenced by a Labor Contractor's License (New) dated 22 May, 1973, Exh. 5, page 257, record; 21-22 tsn, July 24, 1984; said license was issued after payment of P6,000.00 for the year 1973-1974 (Exh. 5-A, page 256, record); in the recruitment of workers, she was appointed by several employers of Guam and London as their representative in the Philippines, like the Special Power of Attorney executed by George J. Viegas, dated November 29, 1973, in the territory of Agana, Guam (Exh. 6, page 258, record) authorizing her to recruit Filipinos for Guam and likewise, for London (Exh. 7, 7-A, page 260, record); she knows Benito Vertudes of General Trias, Cavite being one of the applicants for Guam and also Braulio Sapitula of Sta. Fe. Agoo, La Union include (sic) Alfredo Empredo of Pasay City, Rodrigo Nicolas of Sta. Cruz, Manila (30-31, tsn, ibid.) all of them having applied in 1973 for employment for abroad, hence, she processed their application and submitted thereafter, their application to her employer abroad, George J. Viegas (32 tsn, ibid); they were not able to leave for Guam because her employer had some trouble with his contract with the government of Guam (33 tsn, ibid); she refunded P500.00 to Sapitula (Exh. 1; 34 tsn, ibid); she refunded Alfredo Empredo on Jan. 28, 1974 P300.00 (Exh. 8, page 261, record), refunded P500.00 to Benito Vertudes (Exh. 9, page 262, record), the amount of P2,200.00 in the form of check (Exh. 10, page 265, record), handwritten receipt of P5,270.00 (Exh. 11, page 264, ibid) which was received by Aurelio Costales (41-42, TSN, Ibid); she refunded them when said applicants cannot leave for Guam by issuing Exh. 11 for amounts indicated in the receipts (Exhs. 8, 9, 10 (44 TSN, Ibid); she does not violated (sic) Art. 25, P.D. 442 for illegal recruitment because she is a duly licensed labor contractor because when she acted on the applications of the complaining witnesses, she acted as representative in the Philippines of her employer George Viegas (45 TSN, Ibid) and the money covered by the personal check (Exh. 11) belongs to the complainants; the receipts which she issued dated October 24, 1973, August 15, 1973, December 15, 1973, August 14, 1974 and June 19, 1974 show that on said dates she was a duly licensed contractor (47-48 TSN, Ibid); on its expiration on 18 May, 1974, she applied for a renewal of her license by writing a letter to the Bureau of Labor addressed to Minister Blas Ople (Exh. 12, dated Feb. 4, 1975; page 265, record; 5 TSN, August 14, 1984); which was a follow up of her renewal letter dated July 4, 1974 and was just waiting for the renewal of her license, so that meanwhile, she was able to talk with Under-Secretary Amado Inciong concerning said renewal's delay and at the time, Sec. Ople was in Italy, hence, she was told by said Under-Secretary Inciong to proceed with her operation 'until such time as the Secretary will go home.' (6-7 TSN, Ibid); when she did not receive any reply to her Feb. 12, 1975 renewal communication she next made another follow-up letter dated March 3, 1975 addressed to Minister Ople (Exh. 13, NOTE: 3 TSN, October 29, 1985 not submitted and offered) and another letter dated April 29, 1975 [Exh. 14; Note: not submitted and offered, 3 TSN, Oct. 29, 1985); she next waited for the renewal, but was not able to receive any reply from the Department of Labor, hence, she stopped operations (13-14 TSN, Ibid) in 1976 (p. 15 TSN, Ibid); applicants Benito Vertudes, Sapitula, Empredo, Nicolas, were not able to leave for Guam (15-16 TSN, Ibid);" (Decision, pp. 4-5, Record, pp. 294-295). (Rollo, pp. 19-22)

After trial, the lower court found the accused guilty; the dispositive portion of its decision reads:

"WHEREFORE, in view of the foregoing, the Court finds accused Aurora T. Aquino, GUILTY beyond reasonable doubt of Illegal Recruitment in violation of Art. 25, PD 442 and penalized under Art. 39 par. (b), Labor Code, sans mitigating circumstance, and applying the Indeterminate Sentence Law, hereby sentences her to an indeterminate imprisonment of FOUR (4) YEARS up to SEVEN (7) YEARS and fine of P20,000.00, with the accessory penalties of the law; to indemnify the complainants in the total amount of P5,270.00 with the legal rate of interest reckoned from the filing of instant information on Dec. 1, 1978 until fully paid, but without subsidiary imprisonment in case of insolvency; and finally, to pay the cost of the proceeding.

Due to the gravity of the sentence, it is further ordered that accused serves her imprisonment at the National Penitentiary at Muntinlupa, Rizal." (Rollo, p. 22)

The accused-petitioner appealed the decision of the lower court to the Court of Appeals. After submission of memorandums, the Court of Appeals affirmed the decision of the lower court.

The dispositive portion of the decision reads:

"WHEREFORE, the guilt of appellant of the crime charged having been established beyond reasonable doubt, the appealed decision is hereby AFFIRMED in all aspects. No costs." (Rollo, p. 25)

The petition for review was initially denied by this Court on March 21, 1990. A motion for reconsideration was filed by the petitioner on April 5, 1990. On May 9, 1990, we gave due course to the motion for reconsideration.

The petitioner relies on the following reasons for the allowance of her petition:

I

The Court of Appeals erred in not dismissing the case for want of jurisdiction by the Regional Trial Court of Manila.

II

The Court of Appeals erred in holding that the accused illegally recruited the complainants after her license expired on May 18, 1974.

III

Even if the Regional Trial Court of Manila had jurisdiction, the Court of Appeals erred in sustaining the indemnification by the accused petitioner of the sum of P5,270.00 in favor of the complainants.

The jurisdiction of a Court is determined by the allegations of the information as to the situs of the crime. If the information alleges that the crime was committed in the place where the court is seated, then the court has jurisdiction, in the first instance, to hear the case. (*Colmenares v. Villar*, 33 SCRA 186 [1970]); *People v. Galano*, 75 SCRA 193 [1977])

In this case, the then accused never raised the ground of lack of jurisdiction in the proceedings before the lower court and before the Court of Appeals. Only after she received the decision of the Court of Appeals affirming the decision of the lower court, did the appellant question the jurisdiction of the court a quo.

In the interest of sound administration of justice, such practice cannot be tolerated. If we are to sanction this argument, then all the proceedings had before the lower court and the Court of Appeals while valid in all other respects would simply become useless.

In the landmark case of *Tijam v. Sibonghanoy* (23 SCRA 29 [1968]), we held that a party who has affirmed and invoked the jurisdiction of a court to secure an affirmative relief, may not afterwards deny that same jurisdiction to escape a penalty. A party's active participation in the proceedings before the court without jurisdiction will estop the party from assailing such lack of jurisdiction. (*Echaus v. Blanco*, 179 SCRA 704 [1989]; *Crisostomo v. Court of Appeals*, 32 SCRA 54 [1970]; *Libudan v. Gil*, 45 SCRA 17 [1972]; and *People v. Casuga y Munar*, 53 SCRA 278 [1973])

Anent the second issue, the Court on the basis of the evidence on record finds the accused-petitioner not guilty of illegal recruitment.

Although as a general rule, the findings of fact of the Court of Appeals are conclusive upon the Supreme Court, this is, however, not without exceptions.

In certain instances, the Supreme Court may review the findings of fact of the Court of Appeals as when the inference made is manifestly mistaken or when the judgment is based on misapprehension of facts or when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which if properly considered, would justify a different conclusion. (*Moran v. Court of Appeals*, 133 SCRA 88 [1984]; *Sacay v. Sandiganbayan*, 142 SCRA 593 [1986]; *Manlapaz v. Court of Appeals*, 147 SCRA 236 [1987])

There are relevant factual circumstances which the Court of Appeals manifestly misconstrued, thus, necessitating the Court to re-examine the facts.

The information charges the accused-petitioner with violating Article 25 of the Labor Code which provides:

"Travel agencies prohibited to recruit. - Travel agencies are prohibited from engaging in the business of recruitment and placement of workers for overseas employment whether for profit or not.

The Secretary of Labor shall issue rules and regulations establishing the requirements and the procedures for the issuance of a license or authority.

Every existing authority or license to hire or recruit workers on the date of effectivity of this Code shall remain valid for the duration indicated therein unless sooner cancelled, revoked, or suspended for cause by the Secretary of Labor. However, said authority or license to hire or recruit may be renewed provided that the holders thereof shall comply with all applicable provisions of this Code and its implementing rules and regulations."

While the charge is for a violation of Article 25, the Solicitor General states that it was really Article 24 which was violated (Rollo, pp. 43, 53-54). Article 24 reads:

"Authority or license to recruit. - No individual or entity may engage in the business of a private fee-charging employment agency without first obtaining a license from the Department of Labor."

"No individual or entity may operate a private non-fee charging employment agency without first obtaining an authority from the Department of Labor."

There is no dispute that the accused-petitioner had a valid license before May 18, 1974. She contends that her license was not renewed, not because of any violations, but because of a Ministry of Labor policy phasing out all private recruitment agencies. She never received any letter from the Labor Ministry about any illegal activities and never was her office raided. She claims that her activities were above-board and states that the Ministry was merely implementing a policy that no new application for a license to operate shall be entertained upon the effectivity of the Code and that all private employment agencies would be phased out within four years from that date. She argued that the phrase "no new application" should not include renewal of old applications.

The information was filed against Ms. Aquino because she "wilfully, unlawfully, and knowingly x x x recruit(ed) workers for employment abroad without first obtaining the required license or authority x x x." The Solicitor General contends that when Ms. Aquino continued to charge and collect fees from her applicants/recruits after May 18, 1974, she engaged in illegal recruitment violative of Article 24 of the Labor Code.

We must emphasize that this case involves a criminal prosecution for a violation of a penal provision. We are not concerned with whether or not the accused-petitioner's license should be renewed nor with the administrative actions taken by the Labor Department against recruitment agencies. By no stretch of the imagination should an acquittal in this case mean that the Court does not support the legitimate activities of the Government against illegal recruiters preying on the gullibility of poor laborers, seamen, domestics, and other workers who see employment abroad as the only way out of their grinding poverty. We simply apply the principles of Criminal Law that an accused is presumed innocent until proven guilty and that the burden of establishing guilt must be satisfactorily met by the prosecution beyond reasonable doubt.

Does the receipt of payments, after the expiration of the license, for services rendered before said expiration constitute illegal recruitment? We believe that it does not, at least not for purposes of criminal prosecutions.

Recruitment refers to the offering of inducements to qualified personnel to enter a particular job or employment. The advertising, the promise of future employment and other come-ons took place while Ms. Aquino was still licensed. True, the payments for services rendered are necessary consequences of the applications for overseas employment. However, it is asking too much to expect a licensed agency to absolutely at the stroke of midnight stop all transactions on the day its license expires and refuse to accept carry-over payments after the agency is closed. In any business, there has to be a winding-up after it ceases operations. The collection of unpaid accounts should not be the basis of a criminal prosecution.

Thus, in the case of the complainant Braulio Sapitula, the recruitment took place at the very latest on February 12, 1973, when Sapitula went to the office of the petitioner at the annex of Manila Hotel, and correspondingly, filed his application papers for overseas employment (Rollo, p. 28); as for Rodrigo Nicolas when he met the petitioner in January, 1973 (Rollo, p. 30); and Aurelio Costales, when sometime in May, 1973, he submitted his application papers for overseas employment at the office of the accused at the Manila Hotel annex. (Rollo, pp. 30-31) Other than receipt of carry-over payments, there is no evidence of recruiting activities after May 18, 1974.

It has been suggested that once a license expires, the recruiter should turn over all continuing activities such as collections of unpaid accounts to another licensed agency in order to give teeth to the campaign against illegal recruiters. There is nothing to prevent the law from being amended to avoid the problem exemplified by this case but certainly no speculations on what could have been done should enter into the resolution of a criminal case.

The Government did not question the legality of the payments as such. The prosecution is based on the date of the prohibited activity, not on the payments being illegal exactions even if effected during the correct period. The payments are necessary in order to defray the expenses entailed in any overseas contract of employment. They are intended for administrative and business expenses and for the travelling expenses of the applicants once cleared for overseas travel.

In the case of one complainant, Benito Vertudes, the prosecution alleges that he filed his application paper sometime in June of 1974, a month after the expiration of Aquino's license to operate (Rollo, p. 47). On the other hand, the petitioner in her testimony before the lower court stated that Vertudes applied in 1973, within the period when her license to operate the employment agency had not yet expired. (Rollo, p. 20)

This accusation against the petitioner constitutes a negative allegation where the negative fact of recruiting

without a license forms an essential element of the crime charged. Hence, it was incumbent upon the prosecution to satisfactorily establish the date when Vertudes was recruited.

It has not been clearly established that the petitioner is guilty of recruiting Benito Vertudes after May 18, 1974.

The prosecution relied on the sole testimony of Benito Vertudes, that he applied sometime in June of 1974. His testimony was flatly denied by the petitioner who gave an earlier date. No other evidence was proffered by the prosecution particularly in relation to the recruitment of Benito Vertudes. (Rollo, pp. 29-30)

In the absence of any corroborating evidence to support such particular fact, and considering that the prosecution's main theory is that collection of carry-over payments constitutes recruitment, the Court is constrained to resolve the issue in favor of the accused consistent with the rule on the construction of penal laws, that they are strictly construed against the government and liberally in favor of the accused. (See *People v. Yu Hai*, 99 Phil. 725 [1956])

Article 25 (it should be Article 24) of the Labor Code, the violation of which was imputed to Aurora Aquino, states only that no person may operate a private fee - charging employment agency without the necessary license.

Inferentially, it is the operation of this kind of employment agency without the proper license which constitutes the act of illegal recruitment.

If the factual circumstances are otherwise, as when the accused does not operate any employment agency, then all activities including the acceptance of the application papers and the collection of payment would constitute acts of recruitment within the meaning of the law. Or if accused continued to operate as before, even after the license is denied renewal, this would be punishable under the law.

The facts of this case, however, conspicuously show that the recruitment activities, namely the continued operation of the Greenwich Travel Agency, the advertisements that the agency was recruiting workers for overseas employment and the active solicitation of workers ceased upon the non-renewal of Aurora Aquino's license to operate the said agency.

After May 18, 1974, Aquino closed her office at the Manila Hotel Annex and settled in her residential home in Quezon City from where she conducted the winding-up of her business.

Two of the complainants, namely, Aurelio Costales and Rodrigo Nicolas filed affidavits of desistance although these affidavits were not filed in the case at bar but in another criminal case of estafa filed against the petitioner.

This, notwithstanding, the causes of action of the two criminal cases arose from the same factual circumstances. The importance of these affidavits cannot just be ignored.

As a rule, affidavits of desistance should not be given too much credit. Under the circumstances of this case, however, they serve to create serious doubts as to the criminal liability of the petitioner. At the very least, they call for a second look at the records of the case and the basis for the judgment of conviction. (*People v. Lim*, 190 SCRA 706 [1990])

Anent the final argument questioning the order of the trial court, affirmed by the Court of Appeals, which required Aquino to pay the complainants the sum of P5,270.00 as reimbursements of the payments made by the latter, the court after considering the records of the case resolved to affirm the order of the Court of Appeals with modification.

The petitioner professes that she has reimbursed the complainants by issuing them a group-check in the amount of P5,270.00. She states that if indeed the check bounced as alleged by the complainants, then why did not the

complainants present the dishonored check or the bank's return slip to show that the checks were not encashed. (Rollo, p. 12)

If that be the case, then the resultant query would be: why did the petitioner not produce the check issued by her to the complainants to show that it had been honored by the drawee bank and correspondingly deducted from her account, evidencing therefore, the fact of payment?

The petitioner issued a check to reimburse the complainants for the sums of money paid by the latter by virtue of the "failed" overseas contract.

The controversy arose when the check was dishonored by the drawee bank due to lack of funds. The petitioner, on the other hand, claims full satisfaction of the sum owed by her since she already issued a check in favor of the complainants.

The argument of the petitioner is unconvincing.

It has been the consistent ruling of this Court that the issuance of a check is not payment until the check has been encashed. Although a check, as a negotiable instrument, is regarded as a substitute for money, it is not money. Hence, its mere delivery does not, by itself, operate as payment. (PAL v. Court of Appeals, 181 SCRA 557 [1990])

To this end, it was de rigueur for the petitioner to have presented the check she issued to the complainants which had been honored by the drawee bank in order to show that the amount covered by the check has been received evidencing, therefore, full satisfaction of the sums of money owed to the complainants.

The records reveal nothing of this sort. Nowhere during the proceedings before the lower court did the accused present any evidence showing that the check was actually encashed. In the absence of any evidence regarding this matter, the conclusion of the Court of Appeals must be sustained.

In view, however, of the affidavits of desistance executed by Aurelio Costales and Rodrigo Nicolas where both admitted that the petitioner had satisfied her monetary obligations to them (Rollo, pp. 107-108), in the amount of P650.00 and P500.00 respectively, these sums should be deducted from the total amount of P5,270.00. (Rollo, p.18)

WHEREFORE, the judgment of conviction is hereby REVERSED and accused-petitioner Aurora Aquino is ACQUITTED of the crime of illegal recruitment. The accused-petitioner is, however, ordered to pay to the remaining complainants the sum of FOUR THOUSAND ONE HUNDRED SEVENTY PESOS (P4,170.00), with legal rate of interest reckoned from the filing of the information on December 1, 1978 until fully paid.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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