

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BULU CHOWDURY, ACCUSED-APPELLANT.

G.R. Nos. 129577-80. February 15, 2000

Ponente: PUNO, J.

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PUNO, J.:

In November 1995, Bulu Chowdury and Josephine Ong were charged before the Regional Trial Court of Manila with the crime of illegal recruitment in large scale committed as follows:

"That sometime between the period from August 1994 to October 1994 in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, representing themselves to have the capacity to contract, enlist and transport workers for employment abroad, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously recruit the herein complainants: Estrella B. Calleja, Melvin C. Miranda and Aser S. Sasis, individually or as a group for employment in Korea without first obtaining the required license and/or authority from the Philippine Overseas Employment Administration." [1]

They were likewise charged with three counts of estafa committed against private complainants. [2] The State Prosecutor, however, later dismissed the estafa charges against Chowdury [3] and filed an amended information indicting only Ong for the offense. [4]

Chowdury was arraigned on April 16, 1996 while Ong remained at large. He pleaded "not guilty" to the charge of illegal recruitment in large scale. [5]

Trial ensued.

The prosecution presented four witnesses: private complainants Aser Sasis, Estrella Calleja and Melvin Miranda, and Labor Employment Officer Abbelyn Caguitlea.

Sasis testified that he first met Chowdury in August 1994 when he applied with Crafrtrade Overseas Developers (Crafrtrade) for employment as factory worker in South Korea. Chowdury, a consultant of Crafrtrade, conducted the interview. During the interview, Chowdury informed him about the requirements for employment. He told him to submit his passport, NBI clearance, passport size picture and medical certificate. He also required him to undergo a seminar. He advised him that placement would be on a first-come-first-serve basis and urged him to complete the requirements immediately. Sasis was also charged a processing fee of P25,000.00. Sasis completed all the requirements in September 1994. He also paid a total amount of P16,000.00 to Crafrtrade as processing fee. All payments were received by Ong for which she issued three receipts. [6] Chowdury then processed his papers and convinced him to complete his payment. [7]

Sasis further said that he went to the office of Crafrtrade three times to follow up his application but he was always told to return some other day. In one of his visits to Crafrtrade's office, he was informed that he would no longer be deployed for employment abroad. This prompted him to withdraw his payment but he could no longer find

Chowdury. After two unsuccessful attempts to contact him, he decided to file with the Philippine Overseas Employment Administration (POEA) a case for illegal recruitment against Chowdury. Upon verification with the POEA, he learned that Crafrtrade's license had already expired and has not been renewed and that Chowdury, in his personal capacity, was not a licensed recruiter.[8]

Calleja testified that in June 1994, she applied with Crafrtrade for employment as factory worker in South Korea. She was interviewed by Chowdury. During the interview, he asked questions regarding her marital status, her age and her province. Toward the end of the interview, Chowdury told her that she would be working in a factory in Korea. He required her to submit her passport, NBI clearance, ID pictures, medical certificate and birth certificate. He also obliged her to attend a seminar on overseas employment. After she submitted all the documentary requirements, Chowdury required her to pay P20,000.00 as placement fee. Calleja made the payment on August 11, 1994 to Ong for which she was issued a receipt.[9] Chowdury assured her that she would be able to leave on the first week of September but it proved to be an empty promise. Calleja was not able to leave despite several follow-ups. Thus, she went to the POEA where she discovered that Crafrtrade's license had already expired. She tried to withdraw her money from Crafrtrade to no avail. Calleja filed a complaint for illegal recruitment against Chowdury upon advice of POEA's legal counsel.[10]

Miranda testified that in September 1994, his cousin accompanied him to the office of Crafrtrade in Ermita, Manila and introduced him to Chowdury who presented himself as consultant and interviewer. Chowdury required him to fill out a bio-data sheet before conducting the interview. Chowdury told Miranda during the interview that he would send him to Korea for employment as factory worker. Then he asked him to submit the following documents: passport, passport size picture, NBI clearance and medical certificate. After he complied with the requirements, he was advised to wait for his visa and to pay P25,000.00 as processing fee. He paid the amount of P25,000.00 to Ong who issued receipts therefor.[11] Crafrtrade, however, failed to deploy him. Hence, Miranda filed a complaint with the POEA against Chowdury for illegal recruitment.[12]

Labor Employment Officer Abbelyn Caguitla of the Licensing Branch of the POEA testified that she prepared a certification on June 9, 1996 that Chowdury and his co-accused, Ong, were not, in their personal capacities, licensed recruiters nor were they connected with any licensed agency. She nonetheless stated that Crafrtrade was previously licensed to recruit workers for abroad which expired on December 15, 1993. It applied for renewal of its license but was only granted a temporary license effective December 16, 1993 until September 11, 1994. From September 11, 1994, the POEA granted Crafrtrade another temporary authority to process the expiring visas of overseas workers who have already been deployed. The POEA suspended Crafrtrade's temporary license on December 6, 1994.[13]

For his defense, Chowdury testified that he worked as interviewer at Crafrtrade from 1990 until 1994. His primary duty was to interview job applicants for abroad. As a mere employee, he only followed the instructions given by his superiors, Mr. Emmanuel Geslani, the agency's President and General Manager, and Mr. Utkal Chowdury, the agency's Managing Director. Chowdury admitted that he interviewed private complainants on different dates. Their office secretary handed him their bio-data and thereafter he led them to his room where he conducted the interviews. During the interviews, he had with him a form containing the qualifications for the job and he filled out this form based on the applicant's responses to his questions. He then submitted them to Mr. Utkal Chowdury who in turn evaluated his findings. He never received money from the applicants. He resigned from Crafrtrade on November 12, 1994.[14]

Another defense witness, Emelita Masangkay who worked at the Accreditation Branch of the POEA presented a list of the accredited principals of Crafrtrade Overseas Developers[15] and a list of processed workers of Crafrtrade Overseas Developers from 1988 to 1994.[16]

The trial court found Chowdury guilty beyond reasonable doubt of the crime of illegal recruitment in large scale. It sentenced him to life imprisonment and to pay a fine of P100,000.00. It further ordered him to pay Aser Sasis the amount of P16,000.00, Estrella Calleja, P20,000.00 and Melvin Miranda, P25,000.00. The dispositive portion of the decision reads:

"WHEREFORE, in view of the foregoing considerations, the prosecution having proved the guilt of the accused Bulu Chowdury beyond reasonable doubt of the crime of Illegal Recruitment in large scale, he is hereby sentenced to suffer the penalty of life imprisonment and a fine of P100,000.00 under Art. 39 (b) of the New Labor Code of the Philippines. The accused is ordered to pay the complainants Aser Sasis the amount of P16,000.00; Estrella Calleja the amount of P20,000.00; Melvin Miranda the amount of P25,000.00." [17]

Chowdury appealed.

The elements of illegal recruitment in large scale are:

(1)

The accused undertook any recruitment activity defined under Article 13 (b) or any prohibited practice enumerated under Article 34 of the Labor Code;

(2)

He did not have the license or authority to lawfully engage in the recruitment and placement of workers; and

(3)

He committed the same against three or more persons, individually or as a group. [18]

The last paragraph of Section 6 of Republic Act (RA) 8042 [19] states who shall be held liable for the offense, thus:

"The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable."

The Revised Penal Code which supplements the law on illegal recruitment [20] defines who are the principals, accomplices and accessories. The principals are: (1) those who take a direct part in the execution of the act; (2) those who directly force or induce others to commit it; and (3) those who cooperate in the commission of the offense by another act without which it would not have been accomplished. [21] The accomplices are those persons who may not be considered as principal as defined in Section 17 of the Revised Penal Code but cooperate in the execution of the offense by previous or simultaneous act. [22] The accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manner: (1) by profiting themselves or assisting the offenders to profit by the effects of the crime; (2) by concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery; and (3) by harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt at the life of the chief executive, or is known to be habitually guilty of some other crime. [23]

Citing the second sentence of the last paragraph of Section 6 of RA 8042, accused-appellant contends that he may not be held liable for the offense as he was merely an employee of Crafrade and he only performed the tasks assigned to him by his superiors. He argues that the ones who should be held liable for the offense are the officers having control, management and direction of the agency.

As stated in the first sentence of Section 6 of RA 8042, the persons who may be held liable for illegal recruitment are the principals, accomplices and accessories. An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer,[24] if it is shown that he actively and consciously participated in illegal recruitment.[25] It has been held that the existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally causes the corporation to commit a crime. The corporation obviously acts, and can act, only by and through its human agents, and it is their conduct which the law must deter. The employee or agent of a corporation engaged in unlawful business naturally aids and abets in the carrying on of such business and will be prosecuted as principal if, with knowledge of the business, its purpose and effect, he consciously contributes his efforts to its conduct and promotion, however slight his contribution may be.[26] The law of agency, as applied in civil cases, has no application in criminal cases, and no man can escape punishment when he participates in the commission of a crime upon the ground that he simply acted as an agent of any party.[27] The culpability of the employee therefore hinges on his knowledge of the offense and his active participation in its commission. Where it is shown that the employee was merely acting under the direction of his superiors and was unaware that his acts constituted a crime, he may not be held criminally liable for an act done for and in behalf of his employer.[28]

The fundamental issue in this case, therefore, is whether accused-appellant knowingly and intentionally participated in the commission of the crime charged.

We find that he did not.

Evidence shows that accused-appellant interviewed private complainants in the months of June, August and September in 1994 at Crafrade's office. At that time, he was employed as interviewer of Crafrade which was then operating under a temporary authority given by the POEA pending renewal of its license.[29] The temporary license included the authority to recruit workers.[30] He was convicted based on the fact that he was not registered with the POEA as employee of Crafrade. Neither was he, in his personal capacity, licensed to recruit overseas workers. Section 10 Rule II Book II of the Rules and Regulation Governing Overseas Employment (1991) requires that every change, termination or appointment of officers, representatives and personnel of licensed agencies be registered with the POEA. Agents or representatives appointed by a licensed recruitment agency whose appointments are not previously approved by the POEA are considered "non-licensee " or "non-holder of authority" and therefore not authorized to engage in recruitment activity.[31]

Upon examination of the records, however, we find that the prosecution failed to prove that accused-appellant was aware of Crafrade's failure to register his name with the POEA and that he actively engaged in recruitment despite this knowledge. The obligation to register its personnel with the POEA belongs to the officers of the agency.[32] A mere employee of the agency cannot be expected to know the legal requirements for its operation. The evidence at hand shows that accused-appellant carried out his duties as interviewer of Crafrade believing that the agency was duly licensed by the POEA and he, in turn, was duly authorized by his agency to deal with the applicants in its behalf. Accused-appellant in fact confined his actions to his job description. He merely interviewed the applicants and informed them of the requirements for deployment but he never received money from them. Their payments were received by the agency's cashier, Josephine Ong. Furthermore, he performed his tasks under the supervision of its president and managing director. Hence, we hold that the prosecution failed to prove beyond reasonable doubt accused-appellant's conscious and active participation in the commission of the crime of illegal recruitment. His conviction, therefore, is without basis.

This is not to say that private complainants are left with no remedy for the wrong committed against them. The Department of Justice may still file a complaint against the officers having control, management or direction of the business of Crafrade Overseas Developers (Crafrade), so long as the offense has not yet prescribed. Illegal

recruitment is a crime of economic sabotage which need to be curbed by the strong arm of the law. It is important, however, to stress that the government's action must be directed to the real offenders, those who perpetrate the crime and benefit from it.

IN VIEW WHEREOF, the assailed decision of the Regional Trial Court is REVERSED and SET ASIDE. Accused-appellant is hereby ACQUITTED. The Director of the Bureau of Corrections is ordered to RELEASE accused-appellant unless he is being held for some other cause, and to REPORT to this Court compliance with this order within ten (10) days from receipt of this decision. Let a copy of this Decision be furnished the Secretary of the Department of Justice for his information and appropriate action.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Information, Original Records, p. 2.

[2] Original Records, pp. 16-23.

[3] Resolution dated March 20, 1996, Original Records, pp. 63-69.

[4] Amended Information for Criminal Case No. 146336, Original Records, pp. 61-62; Amended Information for Criminal Case No. 146337, Original Records, pp. 89-90.

[5] Original Records, p. 95.

[6] Exh. "A", "B" and "C".

[7] TSN, May 14, 1996, pp. 5-17.

[8] Id., pp. 19-22.

[9] Exh. "E".

[10] TSN, May 15, 1996, pp. 6-21.

[11] Exh. "L", "M", "N".

[12] TSN, October 23, 1996, pp. 6-19.

[13] TSN, July 2, 1996, pp. 8-32.

[14] TSN, December 17, 1996, pp. 4-30.

[15] Exh. "7".

[16] Exh. "8".

[17] Rollo, p. 24.

[18] People vs. Peralta, 283 SCRA 81 (1997); People vs. Villas, 277 SCRA 391 (1997); People vs. Santos, 276 SCRA 329 (1997); People vs. Garcia, 271 SCRA 621 (1997).

[19] Migrants and Overseas Filipinos Act of 1995.

[20] Article 10, Revised Penal Code.

[21] Article 17, *supra*.

[22] Article 18, *supra*.

[23] Article 19, *supra*.

[24] The corporation also incurs criminal liability for the act of its employee or agent if (1) the employee or agent committed the offense while acting within the scope of his employment and (2) the offense was committed with at least some intent to benefit the employer. The liability is imputed to the corporation not because it actively participated in the malice or fraud but because the act is done for the benefit of the corporation while the employee or agent was acting within the scope of his employment in the business of the corporation, and justice requires that the latter shall be held responsible for damages to the individual who suffered by such conduct. [New York Central & Hudson River Railroad Co. vs. US, 212 U.S. 481, 53 L. ed. 613 (1909); US vs. Basic Construction Co., et al., 711 F.2d 570 (1983); US vs. Automated Medical Laboratories, Inc., 770 F.2d 399 (1985)].

[25] See *People vs. Goce*, 247 SCRA 780 (1995); *People vs. Alforte*, 219 SCRA 458 (1993).

[26] *State vs. Placzek*, 380 A.2d 1010 (1977); *Wainer vs. US*, 82 F.2d 305 (1936).

[27] *People vs. Mc Cauley*, 561 P.2d 335 (1977).

[28] *US vs. Gold*, 743 F.2d 800 (1984); *La Vielle vs. People*, 157 P.2d 621 (1945).

[29] Exh. "K", Certification dated July 1, 1996 signed by Ma. Salome S. Mendoza, Manager, Licensing Branch, POEA, Original Records, p. 147.

[30] Testimony of Labor Employment Officer Abbelyn Caguitla, TSN, July 2, 1996, pp. 27-28.

[31] *Abaca vs. CA*, 290 SCRA 657 (1998).

[32] *Supra* at 30.

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