Supreme Court E-Library

However, taking into account the appellant's unlettered and simpleminded condition, his want of intellect, and his participating in a drinking spree immediately before the killing coupled with the pitiless finality and irrevocable nature of the death penalty, the court failed to muster the necessary votes for a death sentence and was constrained to lower the penalty to *reclusion perpetua.*

WHEREFORE, for want of necessary votes, the Court imposes on the accused-appellant the penalty of *reclusion perpetua.* The judgment of the lower court is further MODIFIED in that the appellant is ordered to pay the heirs of Telesfora Custodio the sum of TWENTY THOUSAND PESOS (P20,000.00) as moral damages and THIRTY THOUSAND PESOS (P30,000.00) as indemnity. The award of exemplary damages is deleted. Costs de oficio.

SO ORDERED.

Teehankee, C.J., Abad Santos, Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Cruz, and *Paras, JJ.,* concur.

EN BANC

[G.R. Nos. 58674-77. July 11, 1986]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. DOMINGO PANIS, Presiding Judge of the Court of First Instance of Zambales & Olongapo City, Branch III and SERAPIO ABUG,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; RECRUITMENT AND PLACEMENT; THE NUMBER OF PERSONS DEALT WITH IS NOT AN ESSENTIAL INGREDIENT OF THE ACT. — The view of the private respondents is that to constitute recruitment and placement, all the acts mentioned in Article 13(b) of P.D. 442 should involve dealings with two or more

Supreme Court E-Library

persons as an indispensable requirement. On the other hand, the petitioner argues that the requirement of two or more persons is imposed only where the recruitment and placement consists of an offer or promise of employment to such persons and always in consideration of a fee. The other acts mentioned in the body of the article may involve even only one person and are not necessarily for profit. Neither interpretation is acceptable. We fail to see why the proviso should speak only of an offer or promise of employment if the purpose was to apply the requirement of two or more persons to all the acts mentioned in the basic rule. For its part, the petitioner does not explain why dealings with two or more persons are needed where the recruitment and placement consists of an offer or promise of employment but not when it is done through "canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring (of) workers." As we see it, the proviso was intended neither to impose a condition on the basic rule nor to provide an exception thereto but merely to create a presumption. The presumption is that the individual or entity is engaged in recruitment and placement whenever he or it is dealing with two or more persons to whom, in consideration of a fee, an offer or promise of employment is made in the course of the "canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring (of) workers." The number of persons dealt with is not an essential ingredient of the act of recruitment and placement of workers. Any of the acts mentioned in the basic rule in Article 13(b) will constitute recruitment and placement even if only one prospective worker is involved. The proviso merely lays down a rule of evidence that where a fee is collected in consideration of a promise or offer of employment to two or more prospective workers, the individual or entity dealing with them shall be deemed to be engaged in the act of recruitment and placement. The words "shall be deemed" create that presumption.

DECISION

CRUZ, *J.*:

The basic issue in this case is the correct interpretation of Article 13(b) of P. D. 442, otherwise known as the Labor Code, reading as follows:

"(b) 'Recruitment and placement' refers to any act of canvassing, enlisting, contracting, transporting, hiring, or procuring workers, and

Supreme Court E-Library

includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement."

Four informations were filed on January 9, 1981, in the Court of First Instance of Zambales and Olongapo City alleging that Serapio Abug, private respondent herein, "without first securing a license from the Ministry of Labor as a holder of authority to operate a fee-charging employment agency, did then and there wilfully, unlawfully and criminally operate a private fee-charging employment agency by charging fees and expenses (from) and promising employment in Saudi Arabia" to four separate individuals named therein, in violation of Article 16 in relation to Article 39 of the Labor Code.[1]

Abug filed a motion to quash on the ground that the informations did not charge an offense because he was accused of illegally recruiting only one person in each of the four informations. Under the proviso in Article 13(b), he claimed, there would be illegal recruitment only "whenever two or more persons are in any manner promised or offered any employment for a fee."[2]

Denied at first, the motion was reconsidered and finally granted in the Orders of the trial court dated June 24 and September 17, 1981. The prosecution is now before us on *certiorari*.[3]

The posture of the petitioner is that the private respondent is being prosecuted under Article 39 in relation to Article 16 of the Labor Code; hence, Article 13(b) is not applicable. However, as the first two cited articles penalize acts of recruitment and placement without proper authority, which is the charge embodied in the informations, application of the definition of recruitment and placement in Article 13(b) is unavoidable.

---

[1] *Rollo*, p. 25

[2] *Rollo*, p. 11.

[3] *Rollo*, p. 1, pp. 20-21, p. 24.

Supreme Court E-Library

The view of the private respondents is that to constitute recruitment and placement, all the acts mentioned in this article should involve dealings with two or more persons as an indispensable requirement. On the other hand, the petitioner argues that the requirement of two or more persons is imposed only where the recruitment and placement consists of an offer or promise of employment to such persons and always in consideration of a fee. The other acts mentioned in the body of the article may involve even only one person and are not necessarily for profit.

Neither interpretation is acceptable. We fail to see why the proviso should speak only of an offer or promise of employment if the purpose was to apply the requirement of two or more persons to all the acts mentioned in the basic rule. For its part, the petitioner does not explain why dealings with two or more persons are needed where the recruitment and placement consists of an offer or promise of employment but not when it is done through "canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring (of) workers."

As we see it, the proviso was intended neither to impose a condition on the basic rule nor to provide an exception thereto but merely to create a presumption. The presumption is that the individual or entity is engaged in recruitment and placement whenever he or it is dealing with two or more persons to whom, in consideration of a fee, an offer or promise of employment is made in the course of the "canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring (of) workers."

The number of persons dealt with is not an essential ingredient of the act of recruitment and placement of workers. Any of the acts mentioned in the basic rule in Article 13(b) will constitute recruitment and placement even if only one prospective worker is involved. The proviso merely lays down a rule of evidence that where a fee is collected in consideration of a promise or offer of employment to two or more prospective workers, the individual or entity dealing with them shall be deemed to be engaged in the act of recruitment and placement. The words "shall be deemed" create that presumption.

Supreme Court E-Library

This is not unlike the presumption in article 217 of the Revised Penal Code, for example, regarding the failure of a public officer to produce upon lawful demand funds or property entrusted to his custody. Such failure shall be *prima facie* evidence that he has put them to personal use; in other words, he shall be deemed to have malversed such funds or property. In the instant case, the word "shall be deemed" should by the same token be given the force of a disputable presumption or of *prima facie* evidence of engaging in recruitment and placement. (*Klepp v. Odin Tp.*, McHenry County 40 ND N.W. 313, 314.)

It is unfortunate that we can only speculate on the meaning of the questioned provision for lack of records of debates and deliberations that would otherwise have been available if the Labor Code had been enacted as a statute rather than a presidential decree. The trouble with presidential decrees is that they could be, and sometimes were, issued without previous public discussion or consultation, the promulgator heeding only his own counsel or those of his close advisers in their lofty pinnacle of power. The not infrequent results are rejection, intentional or not, of the interest of the greater number and, as in the instant case, certain esoteric provisions that one cannot read against the background facts usually reported in the legislative journals.

At any rate, the interpretation here adopted should give more force to the campaign against illegal recruitment and placement, which has victimized many Filipino workers seeking a better life in a foreign land, and investing hard-earned savings or even borrowed funds in pursuit of their dream, only to be awakened to the reality of a cynical deception at the hands of their own countrymen.

WHEREFORE, the Orders of June 24, 1981, and September 17, 1981, are set aside and the four informations against the private respondent reinstated. No costs.

SO ORDERED.

Teehankee, C.J., Abad Santos, Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and *Paras, JJ.*, concur.