Supreme Court E-Library

So, why is it that Ateneo continues to operate and conduct researches through its Institute of Philippine Culture when it undisputedly loses not an insignificant amount in the process? The plain and simple answer is that private respondent is not a contractor selling its services for a fee but an academic institution conducting these researches pursuant to its commitments to education and, ultimately, to public service. For the institute to have tenaciously continued operating for so long despite its accumulation of significant losses, we can only agree with both the Court of Tax Appeals and the Court of Appeals that "education and not profit is [IPC's] motive for undertaking the research projects."[25]

WHEREFORE, premises considered, the petition is *DENIED* and the assailed Decision of the Court of Appeals is hereby *AFFIRMED* in full.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and *Francisco, JJ.,* concur.

SECOND DIVISION

[G.R. No. 117010. April 18, 1997]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ENGR. CARLOS GARCIA y PINEDA, PATRICIO BOTERO y VALES, LUISA MIRAPLES (at large),** *accused,* **PATRICIO BOTERO y VALES,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; DOCTRINE OF *FALSUS IN UNO, FALSUS IN OMNIBUS*; RARELY ADHERED TO BY THE COURTS.**— Under present jurisprudence, the

[25] Court of Tax Appeals Decision, p. 10, and Court of Appeals Decision, p. 5 (quoted above); *Rollo*, pp. 52 and 41.

Supreme Court E-Library

doctrine of *falsus in uno, falsus in omnibus* is rarely adhered to by the courts. It is possible to admit and lend credence to the testimony of a witness whom the Court has earlier found to have willfully perjured himself. "x x x (T)he testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case." In the case at bar, we hold that the trial court did not err in giving credence to the testimony of Esclada against appellant Botero since it was corroborated on its material points by the testimony of other witnesses. In fact, Esclada's testimony against Botero is trustworthy as he gave it after his conscience bothered him for not telling the truth.

2. **CRIMINAL LAW; PENAL PROVISIONS OF THE LABOR CODE; ILLEGAL RECRUITMENT; ELEMENTS OF THE CRIME.**— Beyond any reasonable doubt, appellant Botero engaged in recruitment and placement activities in that he, through Ricorn, promised the complainants employment abroad. Under the Labor Code, recruitment and placement refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and 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." All the essential elements of the crime of illegal recruitment in large scale are present in this case, to wit: "(1) the accused engages in the recruitment and placement of workers, as defined under Article 13 (b) or in any prohibited activities under Article 34 of the Labor Code; (2) accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, either locally or overseas; and (3) accused commits the same against three (3) or more persons, individually or as a group." It is a fact that Ricorn had no license to recruit from DOLE. In the office of Ricorn, a notice was posted informing job applicants that its recruitment license is still being processed. Yet, Ricorn already entertained applicants and collected fees for processing their travel documents.

Supreme Court E-Library

3. **ID.; ID.; ID.; ILLEGAL RECRUITMENT IN LARGE SCALE; COMMITTED IN CASE AT BAR.**— Appellant Botero is guilty of the crime of illegal recruitment in a large scale considering it was proven that he, together with his cohorts, were able to defraud the six complainant-witnesses in this case. Under Article 38 (b) of the Labor Code, illegal recruitment in large scale is perpetrated if committed against three (3) or more persons individually or as a group. And under Article 39 (a) of the same Code, accused-appellant's crime is punishable by life imprisonment and a fine of one hundred thousand pesos (P100,000.00).

4. **ID.; ID.; ID.; ID.; LIABILITY OF CORPORATE OFFICIALS.**— For engaging in recruitment of workers without obtaining the necessary license from the POEA, Botero should suffer the consequences of Ricorn's illegal act for "(i)f the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation; x x x." The evidence shows that appellant Botero was one of the incorporators of Ricorn. For reasons that cannot be discerned from the records, Ricorn's incorporation was not consummated. Even then, appellant cannot avoid his liabilities to the public as an incorporator of Ricorn. He and his co-accused Garcia held themselves out to the public as officers of Ricorn. They received money from applicants who availed of their services. They are thus estopped from claiming that they are not liable as corporate officials of Ricorn. Section 25 of the Corporation Code provides that "(a)ll persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all the debts, liabilities and damages incurred or arising as a result thereof; Provided, however, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Tomas J. Caspe for accused-appellant.

Supreme Court E-Library

DECISION

PUNO, *J.*:

Before us is an appeal from the decision of the Regional Trial Court in Criminal Case No. 93871 convicting accused-appellant Patricio Botero of *illegal recruitment in large scale* and sentencing him to suffer the penalty of life imprisonment.[1]

In an Information dated July 21, 1992, accused-appellant Patricio Botero together with *Carlos P. Garcia and Luisa Miraples* were charged with the crime of illegal recruitment in large scale defined by Article 38 (b) and penalized under Article 39 (a) of the Labor Code, as amended by Presidential Decree Nos. 1920 and 2018, committed as follows:

"That on or before March 2, 1992, and subsequently thereafter, in the Municipality of Mandaluyong, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding each other, representing themselves to have authority, license and/or permit to contract, enlist and recruit workers for overseas employment, did then and there willfully, unlawfully and feloniously for a fee, recruit and promise job placement/ employment abroad to the following individuals, to wit:

1. Gloria Silaras y Barbero
2. Rolando Consigna y Ogana
3. Ma. Carmen Daluaidao
4. Zosimo La Puebla, Jr.
5. Mario Espada y Melodia
6. Arnel Santilla y Villalos
7. Elsa Delubio
8. Abener Siriban y Abatuan
9. Franklin Cabingan y Casalla
10. Jose Erwin Estinoso
11. Edgardo Belen y Juanillo
12. Ariel Rivada y Pascual
13. Sunny Pinco y Pascua
14. Rolando Santiago y Magno

[1] Decision penned by Presiding Judge Jose R. Hernandez, Branch 158, National Capital Judicial Region, Pasig, Metro Manila.

Supreme Court E-Library

15. Alfredo Estinoso y Estrada
16. Luisito Vargas y Quizon

without first securing the required license or authority from the Department of Labor and Employment.

Contrary to law."[2] (Italics supplied.)

Accused Garcia and Botero pleaded not guilty upon arraignment on January 19, 1993 and March 31, 1993, respectively. Miraples remained at large as the warrant of arrest against her was returned unserved. A joint trial was conducted against the two (2) accused considering that their cases involve the same parties and issues.[3]

Six (6) out of the sixteen (16) complainants testified as prosecution witnesses.[4] These complainants were *Edgardo Belen, Gloria Silaras, Alfredo Estinoso, Jose Erwin Esclada, Elsa Delubio* and *Ariel Rivada.* They testified that on various dates in March 1992, they went to Ricorn Philippine International Shipping Lines, Inc. (hereinafter *Ricorn*), an entity which recruits workers for overseas employment, with office at Rm. 410, Jovan Building, 600 Shaw Blvd., Mandaluyong, Metro Manila. They applied as seamen, cook, waiter, chambermaid or laundrywoman overseas. [5] Esclada applied to accused Botero. All the other complainants coursed their application to accused Garcia who represented himself as president of *Ricorn.*[6] Complainants were required to submit their NBI and police clearance, birth certificate, passport, seaman's book and Survival of Life at Sea (SOLAS).[7] As they did not have the last three (3) documents,

---

[2] *Rollo*, p. 3.

[3] *Rollo*, p. 3.

[4] *Ibid.*

[5] TSN dated February 15, 1993, pp. 4, 9; TSN dated February 17, 1993, p. 3; TSN dated March 3, 1993, p. 3; TSN dated March 8, 1993, p. 4.

[6] TSN dated February 9, 1993, p. 10; TSN dated February 15, 1993, p. 4; TSN dated February 9, 1993, p. 6; TSN dated February 24, 1993, p. 13. TSN dated March 3, 1993, pp. 3, 9, 11; TSN dated March 8, 1993, pp. 8, 9, 11; TSN dated April 27, 1993, p. 3; Decision, p. 2; *Rollo*, p. 20.

[7] TSN dated February 9, 1993, p. 11.

Supreme Court E-Library

they were asked to pay five thousand pesos (P5,000.00) as processing fee. They paid to *Ricorn's* treasurer, Luisa Miraples.[8] They were issued receipts signed by Miraples. The receipts were under *Ricorn's* heading.[9]

Garcia and Botero assured complainants of employment after the May 11, 1992 election. Accused Botero, as the vice-president of Ricorn, followed-up their passports, seaman's book and SOLAS. He told some applicants to wait for their papers and informed the others that their papers were in order.

After the election, complainants went back to *Ricorn* to check on their applications. They discovered that *Ricorn* had abandoned its office at Jovan Building for non-payment of rentals.[10] Hoping against hope, they went back to the building several times to recover their money. Their persistence was to no avail for Garcia and Botero were nowhere to be found. They then went to the Mandaluyong Police Station and filed their complaints.[11] They also checked with the Securities and Exchange Commission (SEC) and discovered that *Ricorn* was not yet incorporated. They also found that *Ricorn* was not licensed by the Department of Labor and Employment (DOLE) to engage in recruitment activities.[12]

Accused Garcia testified that he is an electrical engineer by profession. According to him, the group of Teresita Celso, Patricio Botero, Alice Mayonte, Luisa Miraples and Edna Hemolaga approached him at a baptismal party to join *Ricorn.* He was asked to contribute one hundred thousand pesos

[8] TSN dated February 9, 1993, p. 11; TSN dated February 15, 1993, p. 4; TSN dated February 17, 1993, p. 3, TSN dated February 24, 1993, pp. 4, 6; TSN dated March 3, 1993, pp. 3, 10, 13; TSN dated March 8, 1993, pp. 4, 13.

[9] TSN dated February 15, 1993, p. 7; TSN dated February 24, 1993, p. 7; Exhibits "B", "D", "E" "G", "H", "J", and "K".

[10] TSN dated February 15, 1993, p. 5; TSN dated February 17, 1993, p. 4; TSN dated February 24, 1993, p. 5; TSN dated March 3, 1993, pp. 4, 5; TSN dated March 3, 1993, p. 5.

[11] TSN dated February 15, 1993, p. 6.

[12] TSN dated February 15, 1993, p. 6; TSN dated March 3, 1993, p. 5; Exhibits "A" and "I".

Supreme Court E-Library

(P100,000.00). He told them he would borrow the money from his brother in the United States.

In February 1992, accused Garcia saw the group again in a small apartment in San Juan which they utilized as their office. He met them once more at *Ricorn's* office at Jovan Bldg. where there were many applicants for overseas jobs. This time, they asked him to become *Ricorn's* president and to contribute only twenty thousand pesos (P20,000.00). He declined the offer. Allegedly, he already knew that *Ricorn* was not licensed by the Philippine Overseas Employment Agency (POEA) or registered as a corporation with the Securities and Exchange Commission (SEC). He denied he issued receipts to complainants in this case.[13]

Accused-appellant Botero is a marine engineer by profession but was working as a barber when the trial took place. He testified that he became acquainted with *Ricorn* when he applied for overseas employment as a machinist. He dealt with accused Garcia who claimed to be the President of *Ricorn.* Eventually, he gained the trust of Garcia and became an employee of Ricorn. Three (3) times a week, he reported for work at Jovan Building.[14] As a former seaman, he was familiar with the processing of passport, seaman's book and SOLAS. His job consisted in following-up these documents. He left *Ricorn* when he discovered it was not licensed by the POEA nor was it registered with the SEC.[15] He denied he recruited the complainants and received any money from them.[16] However, on cross-examination, he admitted that in February 1992, he met Garcia in TADE recruitment agency. Garcia convinced him to become one of the incorporators of *Ricorn.* He gave money to Garcia for *Ricorn's* registration with the SEC. They held office at Jovan Building from March 2, 1992 to April 20, 1992.[17]

---

[13] TSN dated January 19, 1993, p. 3.

[14] TSN dated October 6, 1993, p. 7.

[15] *Ibid.*, p. 8.

[16] *Ibid.*, p. 7.

[17] *Ibid.*, p. 6.

Supreme Court E-Library

After trial, accused Garcia and Botero were convicted in a decision dated April 19, 1995, to wit:

"WHEREFORE, in view of the foregoing, accused CARLOS P. GARCIA and PATRICIO BOTERO are found guilty beyond reasonable doubt of the offense of illegal recruitment on (sic) a large scale constituting economic sabotage under Article 38(b) and punishable under Article 39(a) of the Labor Code as amended and are sentenced to suffer the penalty of life imprisonment and to pay a fine of P100,000.00 each. They are also ordered to indemnify and pay jointly and severally each of the six (6) complainants the amount of P5,000.00. Both accused are also ordered to pay the cost of suit.

SO ORDERED."[18]

The case against accused *Miraples* was archived by the court.[19] She has remained at large.

Only accused Botero, thru counsel, filed a Notice of Appeal. In his Brief, he raises the following assignments of error, to wit:[20]

"I

"THE LOWER COURT ERRED IN HOLDING THAT THE EVIDENCE PRESENTED BY THE PROSECUTION AGAINST ACCUSED-APPELLANT PATRICIO BOTERO IS SUFFICIENT FOR CONVICTION.

II

"THE LOWER COURT ERRED IN NOT HOLDING THAT IN TRUTH AND IN FACT THE ACCUSED-APPELLANT PATRICIO BOTERO DID NOT CONSPIRE WITH CO-ACCUSED CARLOS P. GARCIA.

III

"THE LOWER COURT ERRED IN NOT HOLDING THAT ACCUSED-APPELLANT PATRICIO BOTERO IS NOT

---

[18] Decision, p. 8; *Rollo*, p. 26.

[19] Original Record, p. 215.

[20] Appellant's Brief, p. 1; *Rollo*, p. 60.

Supreme Court E-Library

RESPONSIBLE FOR ILLEGAL RECRUITMENT ACTIVITIES OF CO-ACCUSED CARLOS P. GARCIA.

IV

"THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF JOSE ERWIN ESCLADA WHICH IS NOT ADMISSIBLE FOR BEING INCONSISTENT, HIGHLY IMPROBABLE AND EXAGGERATED AND IN NOT GIVING WEIGHT TO THE ACCUSED-APPELLANT PATRICIO BOTERO'S EVIDENCE."

We sustain appellant's conviction.

Appellant Botero predicates his appeal on the alleged insufficiency of evidence to support his conviction. More particularly, he assails the credibility of witness Esclada.

Esclada initially testified that he dealt with accused Garcia when he filed his application with *Ricorn* as a seaman. On cross-examination, however, he admitted it was really accused Botero with whom he transacted, *viz*:

"Q But I thought you stated earlier on the third time, you talked to a certain Edna because Carlos Garcia is not around (sic) on the same time, it was Carlos Garcia who instructed you to give P5,000.00.

"A I have told a lie, sir. My conscience could not take it.

"COURT TO THE WITNESS

"Q So, what is the truth now because I will put you in jail?

"A *When I applied at Ricorn (Phil.) with Mr. Botero, Mr. Garcia was not around but it was Botero who said that my papers were alright.*"[21]

In effect, accused-appellant Botero wants this court to apply the doctrine of *falsus in uno, falsus in omnibus* (false in one part, false in everything) and to disregard the entire testimony of Esclada.

---

[21] TSN dated February 24, 1993, p. 12.

Supreme Court E-Library

Under present jurisprudence, this maxim of law is rarely adhered to by the courts.[22] It is possible to admit and lend credence to the testimony of a witness whom the Court has earlier found to have willfully perjured himself. "x x x (T)he testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case."[23] In the case at bar, we hold that the trial court did not err in giving credence to the testimony of Esclada against appellant Botero since it was corroborated on its material points by the testimony of other witnesses. In fact, Esclada's testimony against Botero is trustworthy as he gave it after his conscience bothered him for not telling the truth.

We reject appellant Botero's pretense that he is also a victim rather than a culprit in this case. He insist he was a mere applicant of *Ricorn* and not a conspirator of the other accused who defrauded the complainants. He claims that even as a *Ricorn* employee, he merely performed "minimal activities" like following-up applicants' passports, seaman's book and SOLAS, and conducting simple interviews. He denies he had a hand in the selection of workers to be employed abroad.[24] These submissions are at war with the evidence on record. His co-accused Garcia introduced him to the complainants as the vice-president of *Ricorn.* He used a table with a nameplate confirming he was the vice-president of *Ricorn.*[25] He procured the passports, seaman's books and SOLAS for the applicants. It was from him that the complainants inquired about the status of their applications.[26] He also admitted he gave money to accused Garcia for *Ricorn's* incorporation.

---

[22] Lagunsad *v.* Court of Appeals, 229 SCRA 596, 599 (1994) citing People *v.* Pacis, 130 SCRA 540 (1984), People *v.* Surban, 123 SCRA 218 (1983).

[23] People *v.* Cura, 240 SCRA 203, 234 (1995) citing People *v.* Refuerzo, 82 Phil. 576 (1949).

[24] Appellant's Brief, p. 17; *Rollo*, p. 77.

[25] TSN dated February 24, 1993, p. 6.

[26] TSN dated February 17, 1993, p. 6; TSN dated February 24, 1993, pp. 6, 10; TSN dated March 3, 1993, pp. 9, 14; TSN dated April 21, 1993, p. 2; TSN dated April 27, 1993, p. 3; TSN dated May 11, 1993, p. 2.

Supreme Court E-Library

Beyond any reasonable doubt, appellant Botero engaged in recruitment and placement activities in that he, through *Ricorn,* promised the complainants employment abroad. Under the Labor Code, *recruitment and placement* refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and 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."[27]

All the essential elements of the crime of illegal recruitment in large scale are present in this case, to wit:

"(1) *the accused engages in the recruitment and placement of workers, as defined under Article 13 (b)* or in any prohibited activities under Article 34 of the Labor Code;

"(2) *accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, either locally or overseas;* and

"(3) *accused commits the same against three (3) or more persons, individually or as a group."*[28]

It is a fact that *Ricorn* had no license to recruit from DOLE. In the office of *Ricorn,* a notice was posted informing job applicants that its recruitment license is still being processed. Yet, *Ricorn* already entertained applicants and collected fees for processing their travel documents.[29]

For engaging in recruitment of workers without obtaining the necessary license from the POEA, Botero should suffer the consequences of *Ricorn's* illegal act for *"(i)f the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation,*

---

[27] Article 13 (b), Labor Code of the Philippines, 1996 ed.

[28] People *v.* Bautista, 241 SCRA 216, 220 (1995).

[29] TSN dated February 24, 1993, p. 5.

Supreme Court E-Library

partnership, association or entity responsible for violation; x x x"[30] The evidence shows that appellant Botero was one of the incorporators of *Ricorn.* For reasons that cannot be discerned from the records, *Ricorn's* incorporation was not consummated. Even then, appellant cannot avoid his liabilities to the public as an incorporator of *Ricorn.* He and his co-accused Garcia held themselves out to the public as officers of *Ricorn.* They received money from applicants who availed of their services. They are thus estopped from claiming that they are not liable as corporate officials of Ricorn.[31] Section 25 of the Corporation Code provides that *"(a)ll persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all the debts, liabilities and damages incurred or arising as a result thereof:* Provided, however, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality."

Appellant Botero is guilty of the crime of illegal recruitment in a large scale considering it was proven that he, together with his cohorts, were able to defraud the six complainant-witnesses in this case. Under Article 38 (b) of the Labor Code, illegal recruitment in large scale is perpetrated if committed against three (3) or more persons individually or as a group. And under Article 39 (a) of the same Code, accused-appellant's crime is punishable by life imprisonment and a fine of one hundred thousand pesos (P100,000.00).

Finally, it is fruitless for appellant to deny he conspired with his co-accused to commit the crime at bar. The fact that all the accused were co-conspirators in defrauding the complainants could be inferred from their acts. They played different roles in defrauding complainants: accused Garcia was the president, appellant Botero was the vice-president and

---

[30] Article 39 (d), Labor Code of the Philippines, 1996 ed.

[31] Albert *v.* University Publishing Co., Inc., 13 SCRA 84 (1965); Vda. de Salvatierra *v.* Hon. Garlitos etc., and Refuerzo, 103 Phil. 757, 764 (1958).

Supreme Court E-Library

accused-at-large *Miraples* was the treasurer of Ricorn.[32] Each one played a part in the recruitment of complainants. They were indispensable to each other.

IN VIEW WHEREOF, the decision of the Regional Trial Court convicting accused-appellant Patricio Botero of the crime of illegal recruitment in large scale is affirmed in all respects. Costs against accused-appellant.

SO ORDERED.

Regalado (Chairman), Romero, Mendoza, and *Torres, Jr., JJ.,* concur.

EN BANC

[G.R. No. 117818. April 18, 1997]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMAN DERILO, ISIDORO BALDIMO y QUILLO, alias "Sido," LUCAS DOÑOS, ALEJANDRO COFUENTES, and JOHN DOE,** *accused.* **ISIDORO BALDIMO y QUILLO, alias "Sido,"** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; MITIGATING CIRCUMSTANCES; PLEA OF GUILTY; MUST BE A SPONTANEOUS ADMISSION OF GUILT.—** The late plea of guilty entered by herein appellant cannot be considered mitigating because the plea made is not "of a similar nature and analogous" to the plea of guilty contemplated in paragraph 7 of Article 13. A plea of guilty is considered mitigating on the rationale that an accused spontaneously and willingly admits his guilt at the first opportunity as an act of repentance. An accused should not

[32] People *v.* Alforte, 219 SCRA 458, 468 (1993).