403 Phil. 31

FIRST DIVISION

[G.R. No. 121777, January 24, 2001]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CAROL M. DELA PIEDRA, ACCUSED-APPELLANT.

D E C I S I O N

KAPUNAN, J.:

Accused-appellant Carol M. dela Piedra questions her conviction for illegal recruitment in large scale and assails, as well, the constitutionality of the law defining and penalizing said crime.

The Court affirms the constitutionality of the law and the conviction of the accused, but reduces the penalty imposed upon her.

The accused was charged before the Regional Trial Court of Zamboanga City in an information alleging:

> That on or about January 30, 1994, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having previously obtained from the Philippine Overseas Employment Administration, a license or authority to engage in recruitment and overseas placement of workers, did then and there, wilfully, unlawfully and feloniously, offer and promise for a fee employment abroad particularly in Singapore thus causing Maria Lourdes Modesto [y] Gadrino, Nancy Araneta y Aliwanag and Jennelyn Baez y Timbol, all qualified to apply, in fact said Maria Lourdes Modesto had already advanced the amount of P2,000.00 to the accused for and in consideration of the promised employment which did not materialized [sic] thus causing damage and prejudice to the latter in the said sum; furthermore, the acts complained of herein tantamount [sic] to economic sabotage in that the same were committed in large scale.[1]

Arraigned on June 20, 1994, the accused pleaded not guilty[2] to these charges.

At the trial, the prosecution presented five (5) witnesses, namely, Erlie Ramos, SPO2 Erwin Manalopilar, Eileen Fermindoza, Nancy Araneta and Lourdes Modesto. The succeeding narration is gathered from their testimonies:

On January 30, 1994, at exactly 10:00 in the morning, Erlie Ramos, Attorney II of the Philippine Overseas Employment Agency (POEA), received a telephone call from an unidentified woman inquiring about the legitimacy of the recruitment conducted by a certain Mrs. Carol Figueroa. Ramos, whose duties include the surveillance of suspected

illegal recruiters, immediately contacted a friend, a certain Mayeth Bellotindos, so they could both go to No. 26-D, Tetuan Highway, Sta. Cruz, Zamboanga City, where the recruitment was reportedly being undertaken. Upon arriving at the reported area at around 4:00 p.m., Bellotindos entered the house and pretended to be an applicant. Ramos remained outside and stood on the pavement, from where he was able to see around six (6) persons in the house's sala. Ramos even heard a woman, identified as Carol Fegueroa, talk about the possible employment she has to provide in Singapore and the documents that the applicants have to comply with. Fifteen (15) minutes later, Bellotindos came out with a bio-data form in hand.

On February 1, 1994, Ramos conferred with a certain Capt. Mendoza of the Criminal Investigation Service (CIS) to organize the arrest of the alleged illegal recruiter. Also present were other members of the CIS, including Col. Rodolfo Almonte, Regional Director of the PNP-CIS for Region IX, Eileen Fermindoza, and a certain SPO3 Santos. The group planned to entrap the illegal recruiter the next day by having Fermindoza pose as an applicant.[3]

On February 2, 1994, at around 8:00 p.m., Col. Almonte directed the case to SPO2 Erwin Manalopilar, a member of the Philippine National Police who was assigned as an investigator of the CIS, to conduct a surveillance of the area to confirm the report of illegal recruitment. Accordingly, he, along with Eileen Fermindoza, immediately proceeded to Tetuan Highway. The two did not enter the house where the recruitment was supposedly being conducted, but Fermindoza interviewed two people who informed them that some people do go inside the house. Upon returning to their office at around 8:30 a.m., the two reported to Capt. Mendoza who organized a team to conduct the raid.

The raiding team, which included Capt. Mendoza, SPO2 Manalopilar, Fermindoza and a certain Oscar Bucol, quickly set off and arrived at the reported scene at 9:30 that morning. There they met up with Erlie Ramos of the POEA. Fermindoza then proceeded to enter the house while the rest of the team posted themselves outside to secure the area. Fermindoza was instructed to come out after she was given a bio-data form, which will serve as the team's cue to enter the house.[4]

Fermindoza introduced herself as a job applicant to a man and a woman, apparently the owners of the house, and went inside. There, she saw another woman, later identified as Jasmine, coming out of the bathroom. The man to whom Fermindoza earlier introduced herself told Jasmine that Fermindoza was applying for a position. Jasmine, who was then only wearing a towel, told her that she would just get dressed. Jasmine then came back and asked Fermindoza what position she was applying for. Fermindoza replied that she was applying to be a babysitter or any other work so long as she could go abroad. Jasmine then gave her an application form.

A few minutes later, a certain Carol arrived. Jasmine informed Carol that Fermindoza was an applicant. Fermindoza asked Carol what the requirements were and whether she (Fermindoza) was qualified. Carol told Fermindoza that if she had a passport, she could fill up the application papers. Fermindoza replied that she had no passport yet. Carol said she need not worry since Jasmine will prepare the passport for her. While

filling up the application form, three women who appeared to be friends of Jasmine arrived to follow up the result of their applications and to give their advance payment. Jasmine got their papers and put them on top of a small table. Fermindoza then proceeded to the door and signaled to the raiding party by raising her hand.

Capt. Mendoza asked the owners of the house, a married couple, for permission to enter the same. The owners granted permission after the raiding party introduced themselves as members of the CIS. Inside the house, the raiding party saw some supposed applicants. Application forms, already filled up, were in the hands of one Mrs. Carol Figueroa. The CIS asked Figueroa if she had a permit to recruit. Figueroa retorted that she was not engaged in recruitment. Capt. Mendoza nevertheless proceeded to arrest Figueroa. He took the application forms she was holding as the raiding party seized the other papers[5] on the table.[6]

The CIS team then brought Figueroa, a certain Jasmine Alejandro, and the three women suspected to be applicants, to the office for investigation.[7]

In the course of their investigation, the CIS discovered that Carol Figueroa had many aliases, among them, Carol Llena and Carol dela Piedra. The accused was not able to present any authority to recruit when asked by the investigators.[8] A check by Ramos with the POEA revealed that the acused was not licensed or authorized to conduct recruitment.[9] A certification[10] dated February 2, 1994 stating thus was executed by Renegold M. Macarulay, Officer-in-Charge of the POEA.

The CIS likewise interviewed the supposed applicants, Lourdes Modesto, Nancy Araneta and Jennelyn Baez, all registered nurses working at the Cabato Medical Hospital, who executed their respective written statements.[11]

At the trial, Nancy Araneta, 23, recounted that she was at Jasmine Alejandro's house in the afternoon of January 30, 1994. Araneta had learned from Sandra Aquino, also a nurse at the Cabato Medical Hospital, that a woman was there to recruit job applicants for Singapore.

Araneta and her friends, Jennelyn Baez and Sandra Aquino, arrived at Jasmine's house at around 4:30 p.m. Jasmine welcomed them and told them to sit down. They listened to the "recruiter" who was then talking to a number of people. The recruiter said that she was "recruiting" nurses for Singapore. Araneta and her friends then filled up bio-data forms and were required to submit pictures and a transcript of records. They were also told to pay P2,000, and "the rest will be salary deduction." Araneta submitted her bio-data form to Carol that same afternoon, but did not give any money because she was "not yet sure."

On the day of the raid on February 2, 1994, Araneta was again at the Alejandro residence to submit her transcript of records and her picture. She arrived at the house 30 minutes before the raid but did not witness the arrest since she was at the porch when it happened.[12]

Maria Lourdes Modesto, 26, was also in Jasmine Alejandro's house on January 30, 1994. A friend of Jasmine had informed her that there was someone recruiting in Jasmine's house. Upon arriving at the Alejandro residence, Lourdes was welcomed by Jasmine.

Lourdes recalled that Carol Figueroa was already briefing some people when she arrived. Carol Figueroa asked if they would like a "good opportunity" since a hospital was hiring nurses. She gave a breakdown of the fees involved: P30,000 for the visa and the round trip ticket, and P5,000 as placement fee and for the processing of the papers. The initial payment was P2,000, while P30,000 will be by salary deduction.

Lourdes filled up the application form and submitted it to Jasmine. After the interview, she gave the initial payment of P2,000 to Jasmine, who assured Lourdes that she was authorized to receive the money. On February 2, 1994, however, Lourdes went back to the house to get back the money. Jasmine gave back the money to Lourdes after the raid.[13]

Denial comprised the accused's defense.

Carol dela Piedra, 37, is a housewife and a resident of Cebu City. Her husband is a businessman from Cebu, the manager of the Region 7 Branch of the Grollier International Encyclopedia. They own an apartment in Cebu City, providing lodging to students.

The accused claimed that she goes to Singapore to visit her relatives. She first traveled to Singapore on August 21, 1993 as a tourist, and came back to the Philippines on October 20 of the same year. Thereafter, she returned to Singapore on December 10, 1993.

On December 21, 1993, while in Singapore, the accused was invited to a Christmas party sponsored by the Zamboanga City Club Association. On that occasion, she met a certain Laleen Malicay, who sought her help. A midwife, Malicay had been working in Singapore for six (6) years. Her employer is a certain Mr. Tan, a close friend of Carol.

According to the accused, Malicay sent P15,000 home for her father who was then seriously ill. Malicay was not sure, however, whether her father received the money so she requested the accused to verify from her relatives receipt thereof. She informed the accused that she had a cousin by the name of Jasmine Alejandro. Malicay gave the accused Jasmine's telephone number, address and a sketch of how to get there.

The accused returned to the country on January 21, 1994. From Cebu City, the accused flew to Zamboanga City on January 23, 1994 to give some presents to her friends.

On January 30, 1994, the accused called up Jasmine Alejandro, Laleen Malicay's cousin, to inform her that she would be going to her house. At around noon that day, the accused, accompanied by her friend Hilda Falcasantos, arrived at the house where she found Jasmine entertaining some friends. Jasmine came down with two of her friends whom she introduced as her classmates. Jasmine told them that the accused was a

friend of Laleen Malicay.

The accused relayed to Jasmine Malicay's message regarding the money the latter had sent. Jasmine assured her that they received the money, and asked Carol to tell Malicay to send more money for medicine for Malicay's mother. Jasmine also told her that she would send something for Malicay when the accused goes back to Singapore. The accused replied that she just needed to confirm her flight back to Cebu City, and will return to Jasmine's house. After the meeting with Jasmine, the accused went shopping with Hilda Falcasantos. The accused was in the house for only fifteen (15) minutes.

On February 2, 1994, the accused went to the Philippine Airlines office at 7:30 in the morning to confirm her 5:30 p.m. flight to Cebu City. She then proceeded to Jasmine's residence, arriving there at past 8 a.m.

Inside the house, she met a woman who asked her, "Are you Carol from Singapore?" The accused, in turn, asked the woman if she could do anything for her. The woman inquired from Carol if she was recruiting. Carol replied in the negative, explaining that she was there just to say goodbye to Jasmine. The woman further asked Carol what the requirements were if she (the woman) were to go to Singapore. Carol replied that she would need a passport.

Two (2) minutes later, three (3) girls entered the house looking for Jasmine. The woman Carol was talking with then stood up and went out. A minute after, three (3) members of the CIS and a POEA official arrived. A big man identified himself as a member of the CIS and informed her that they received a call that she was recruiting. They told her she had just interviewed a woman from the CIS. She denied this, and said that she came only to say goodbye to the occupants of the house, and to get whatever Jasmine would be sending for Laleen Malicay. She even showed them her ticket for Cebu City.

Erlie Ramos then went up to Jasmine's room and returned with some papers. The accused said that those were the papers that Laleen Malicay requested Jasmine to give to her (the accused). The accused surmised that because Laleen Malicay wanted to go home but could not find a replacement, one of the applicants in the forms was to be her (Malicay's) substitute. Ramos told the accused to explain in their office.

The accused denied in court that she went to Jasmine's residence to engage in recruitment. She claimed she came to Zamboanga City to visit her friends, to whom she could confide since she and her husband were having some problems. She denied she knew Nancy Araneta or that she brought information sheets for job placement. She also denied instructing Jasmine to collect P2,000 from alleged applicants as processing fee.[14]

The accused presented two witnesses to corroborate her defense.

The first, Jasmine Alejandro, 23, testified that she met the accused for the first time only on January 30, 1994 when the latter visited them to deliver Laleen Malicay's message regarding the money she sent. Carol, who was accompanied by a certain Hilda

Falcasantos, stayed in their house for 10 to 15 minutes only. Carol came back to the house a few days later on February 2 at around 8:00 in the morning to "get the envelope for the candidacy of her daughter." Jasmine did not elaborate.

Jasmine denied that she knew Nancy Araneta or Lourdes Modesto. She denied that the accused conducted recruitment. She claimed she did not see Carol distribute bio-data or application forms to job applicants. She disclaimed any knowledge regarding the P2,000 application fee.[15]

The other defense witness, Ernesto Morales, a policeman, merely testified that the accused stayed in their house in No. 270 Tugbungan, Zamboanga City, for four (4) days before her arrest, although she would sometimes go downtown alone. He said he did not notice that she conducted any recruitment.[16]

On May 5, 1995, the trial court rendered a decision convicting the accused, thus:

> WHEREFORE, in view of all the foregoing consideration[s][,] this Court finds the accused Carol dela Piedra alias Carol Llena and Carol Figueroa guilty beyond reasonable doubt of Illegal Recruitment committed in a large scale and hereby sentences her to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P100,000.00, and also to pay the costs.
>
> Being a detention prisoner, the said accused is entitled to the full time of the period of her detention during the pendency of this case under the condition set forth in Article 29 of the Revised Penal Code.
>
> SO ORDERED.[17]

The accused, in this appeal, ascribes to the trial court the following errors:

> I
>
> WITH DUE RESPECT, THE LOWER COURT ERRED IN NOT FINDING SEC. 13 (B) OF P.D. 442[,] AS AMENDED[,] OTHERWISE KNOWN AS [THE] ILLEGAL RECRUITMENT LAW UNCONSTITUTIONAL.
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> II
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> WITH DUE RESPECT, THE LOWER COURT ERRED IN NOT HOLDING THAT THE APPREHENDING TEAM COMPOSED OF POEA AND CIS REPRESENTATIVES ENTERED INTO [sic] THE RESIDENCE OF JASMIN[E] ALEJANDRO WITHOUT ANY SEARCH WARRANT IN VIOLATION OF ARTICLE III, SECTION 2 OF THE PHILIPPINE CONSTITUTION, AND ANY EVIDENCE OBTAINED IN VIOLATION THEREOF, SHALL BE INADMISSIBLE FOR ANY PURPOSE IN ANY PROCEEDING AS PROVIDED UNDER ARTICLE III, SECTION 3, (2) OF THE SAME CONSTITUTION;
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> III

WITH DUE RESPECT, THE LOWER COURT ERRED IN IGNORING THAT WHEN SPO2 [sic] EILE[E]N FERMINDOZA ENTERED THE RESIDENCE OF JASMIN[E] ALEJANDRO, THERE WAS NO CRIME COMMITTED WHATSOEVER, HENCE THE ARREST OF THE ACCUSED-APPELLANT WAS ILLEGAL;

[IV]

WITH DUE RESPECT, THE LOWER COURT ERRED IN NOT DISCOVERING THAT SPO2 [sic] EILE[E]N FERMINDOZA WAS NOT ILLEGALLY RECRUITED BY THE ACCUSED-APPELLANT, HENCE, ACCUSED-APPELLANT SHOULD BE ACQUITTED;

V

WITH DUE RESPECT, THE LOWER COURT ERRED IN NOT DETECTING THAT NANCY ARANETA WAS NOT ILLEGALLY RECRUITED BY THE ACCUSED-APPELLANT, HENCE, ACCUSED SHOULD BE EXONERATED;

VI

WITH DUE RESPECT, THE LOWER COURT ERRED IN NOT REALIZING THAT MARIA LOURDES MODESTO WAS NOT ILLEGALLY RECRUITED BY THE ACCUSED-APPELLANT, HENCE, ACCUSED-APPELLANT SHOULD BE EXCULPATED;

VII

WITH DUE RESPECT, THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED-APPELLANT WAS CHARGED WITH LARGE SCALE ILLEGAL RECRUITMENT ON JANUARY 30, 1994, THE DATE STATED IN THE INFORMATION AS THE DATE OF THE CRIME, BUT ACCUSED WAS ARRESTED ON FEB. 2, 1994 AND ALL THE EVIDENCES [sic] INDICATED [sic] THAT THE ALLEGED CRIME WERE [sic] COMMITTED ON FEB. 2, 1994, HENCE, THE INFORMATION IS FATALLY DEFECTIVE;

VIII

WITH DUE RESPECT, THE LOWER COURT ERRED IN NOT FINDING THAT THE ALLEGED CRIME OF ILLEGAL RECRUITMENT WAS COMMITTED NOT ON [sic] LARGE SCALE, HENCE, THE PENALTY SHOULD NOT BE LIFE IMPRISONMENT;

IX

WITH DUE RESPECT, THE LOWER COURT ERRED IN NOT FINDING THAT THOSE EVIDENCES [sic] SEIZED AT THE HOUSE OF JASMIN[E] ALEJANDRO AND PRESENTED TO THE COURT WERE PLANTED BY A BOGUS ATTORNEY[,] ERLIE S. RAMOS OF THE POEA;

X

> WITH DUE RESPECT, THE LOWER COURT ERRED IN NOT DISCOVERING THAT ACCUSED-APPELLANT DID NOT RECEIVE ANY PAYMENT EVEN A SINGLE CENTAVO FROM THE ALLEGED VICTIMS WHO DID NOT SUFFER DAMAGE IN ANY MANNER, YET SHE WAS CONVICTED TO SERVE HER ENTIRE LIFE BEHIND PRISON BARS. SUCH PUNISHMENT WAS CRUEL AND UNUSUAL, HENCE, A WANTON VIOLATION OF THE CONSTITUTION.[18]

In the first assigned error, appellant maintains that the law defining "recruitment and placement" violates due process. Appellant also avers, as part of her sixth assigned error, that she was denied the equal protection of the laws.

We shall address the issues jointly.

Appellant submits that Article 13 (b) of the Labor Code defining "recruitment and placement" is void for vagueness and, thus, violates the due process clause.[19]

Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.[20] A criminal statute that "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," or is so indefinite that "it encourages arbitrary and erratic arrests and convictions," is void for vagueness. [21] The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning.[22]

We reiterated these principles in *People vs. Nazario*:[23]

> As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and become an arbitrary flexing of the Government muscle.

We added, however, that:

> x x x the act must be utterly vague on its face, that is to say, it cannot be clarified by either a saving clause or by construction. Thus, in *Coates v. City of Cincinnati*, the U.S. Supreme Court struck down an ordinance that had made it illegal for "three or more persons to assemble on any sidewalk and there conduct themselves in a manner annoying to persons passing by." Clearly, the ordinance imposed no standard at all "because one may never know in advance what `annoys some people but does not annoy others.'"

Coates highlights what has been referred to as a "perfectly vague" act whose obscurity is evident on its face. It is to be distinguished, however, from legislation couched in imprecise language--but which nonetheless specifies a standard though defectively phrased--in which case, it may be "saved" by proper construction.

Here, the provision in question reads:

ART. 13. Definitions.--(a) x x x.

(b) "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.

x x x.

When undertaken by non-licensees or non-holders of authority, recruitment activities are punishable as follows:

ART. 38. Illegal Recruitment. -- (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Ministry of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

x x x.

Art. 39. Penalties. - (a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein:

(b) Any licensee or holder of authority found violating or causing another to violate any provision of this Title or its implementing rules and regulations, shall upon conviction thereof, suffer the penalty of imprisonment of not less

> than five years or a fine of not less than P10,000 nor more than P50,000 or both such imprisonment and fine, at the discretion of the court;
>
> (c) Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine, at the discretion of the court;
>
> x x x.

In support of her submission that Article 13 (b) is void for vagueness, appellant invokes *People vs. Panis*,[24] where this Court, to use appellant's term, "criticized" the definition of "recruitment and placement" as follows:

> 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 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.

If the Court in *Panis* "had to speculate on the meaning of the questioned provision," appellant asks, what more "the ordinary citizen" who does not possess the "necessary [legal] knowledge?"

Appellant further argues that the acts that constitute "recruitment and placement" suffer from overbreadth since by merely "referring" a person for employment, a person may be convicted of illegal recruitment.

These contentions cannot be sustained.

Appellant's reliance on *People vs. Panis* is misplaced. The issue in *Panis* was whether, under the proviso of Article 13 (b), the crime of illegal recruitment could be committed only "whenever two or more persons are in any manner promised or offered any employment for a fee." The Court held in the negative, explaining:

> 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.
>
> 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.
>
> 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 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.

Evidently, therefore, appellant has taken the penultimate paragraph in the excerpt quoted above out of context. The Court, in *Panis*, merely bemoaned the lack of records that would help shed light on the meaning of the proviso. The absence of such records notwithstanding, the Court was able to arrive at a reasonable interpretation of the proviso by applying principles in criminal law and drawing from the language and intent of the law itself. Section 13 (b), therefore, is not a "perfectly vague act" whose obscurity is evident on its face. If at all, the proviso therein is merely couched in imprecise language that was salvaged by proper construction. It is not void for vagueness.

> An act will be declared void and inoperative on the ground of vagueness and uncertainty, only upon a showing that the defect is such that the courts are unable to determine, with any reasonable degree of certainty, what the legislature intended. x x x. In this connection we cannot pretermit reference to the rule that "legislation should not be held invalid on the ground of uncertainty if susceptible of any reasonable construction that will support and give it effect. An Act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it is passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith."[25]

That Section 13 (b) encompasses what appellant apparently considers as customary and harmless acts such as " labor or employment referral" ("referring" an applicant, according to appellant, for employment to a prospective employer) does not render the law overbroad. Evidently, appellant misapprehends concept of overbreadth.

A statute may be said to be overbroad where it operates to inhibit the exercise of individual freedoms affirmatively guaranteed by the Constitution, such as the freedom of speech or religion. A generally worded statute, when construed to punish conduct which cannot be constitutionally punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute.[26]

In *Blo Umpar Adiong vs. Commission on Elections*,[27] for instance, we struck down as void for overbreadth provisions prohibiting the posting of election propaganda in any place - including private vehicles - other than in the common poster areas sanctioned by the COMELEC. We held that the challenged provisions not only deprived the owner of the vehicle the use of his property but also deprived the citizen of his right to free speech and information. The prohibition in *Adiong*, therefore, was so broad that it covered even constitutionally guaranteed rights and, hence, void for overbreadth. In the present case, however, appellant did not even specify what constitutionally protected freedoms are embraced by the definition of "recruitment and placement" that would render the same constitutionally overbroad.

Appellant also invokes the equal protection clause[28] in her defense. She points out that although the evidence purportedly shows that Jasmine Alejandro handed out application forms and even received Lourdes Modesto's payment, appellant was the only one criminally charged. Alejandro, on the other hand, remained scot-free. From this, appellant concludes that the prosecution discriminated against her on grounds of regional origins. Appellant is a Cebuana while Alejandro is a Zamboangueña, and the alleged crime took place in Zamboanga City.

The argument has no merit.

At the outset, it may be stressed that courts are not confined to the language of the statute under challenge in determining whether that statute has any discriminatory effect. A statute nondiscriminatory on its face may be grossly discriminatory in its

operation.[29] Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.[30]

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws.[31] Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not *without more* a denial of the equal protection of the laws.[32] The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional* or *purposeful* discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory *design* over another not to be inferred from the action itself. **But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination."**[33] Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense.[34] The presumption is that the prosecuting officers regularly performed their duties,[35] and this presumption can be overcome only by proof to the contrary, not by mere speculation. Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant's prosecution.

> While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society x x x. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.[36]

Likewise,

> [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime,

> the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown.[37]

We now come to the third, fourth and fifth assigned errors, all of which involve the finding of guilt by the trial court.

Illegal recruitment is committed when two elements concur. First, the offender has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers. Second, he or she undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13 (b), or any prohibited practices enumerated under Article 34 of the Labor Code.[38] In case of illegal recruitment *in large scale*, a third element is added: that the accused commits said acts against three or more persons, individually or as a group.[39]

In this case, the first element is present. The certification of POEA Officer-in-Charge Macarulay states that appellant is not licensed or authorized to engage in recruitment and placement.

The second element is also present. Appellant is presumed engaged in recruitment and placement under Article 13 (b) of the Labor Code. Both Nancy Araneta and Lourdes Modesto testified that appellant promised them employment for a fee. Their testimonies corroborate each other on material points: the briefing conducted by appellant, the time and place thereof, the fees involved. Appellant has not shown that these witnesses were incited by any motive to testify falsely against her. The absence of evidence as to an improper motive actuating the principal witnesses of the prosecution strongly tends to sustain that no improper motive existed and that their testimony is worthy of full faith and credence.[40]

Appellant's denials cannot prevail over the positive declaration of the prosecution witnesses. Affirmative testimony of persons who are eyewitnesses of the fact asserted easily overrides negative testimony.[41]

That appellant did not receive any payment for the promised or offered employment is of no moment. From the language of the statute, the act of recruitment may be "for profit or not;" it suffices that the accused "promises or offers for a fee employment" to warrant conviction for illegal recruitment.

The testimonies of Araneta and Modesto, coming as they do from credible witnesses, meet the standard of proof beyond reasonable doubt that appellant committed recruitment and placement. We therefore do not deem it necessary to delve into the second and third assigned errors assailing the legality of appellant's arrest and the seizure of the application forms. A warrantless arrest, when unlawful, has the effect of invalidating the search incidental thereto and the articles so seized are rendered inadmissible in evidence.[42] Here, even if the documents seized were deemed inadmissible, her conviction would stand in view of Araneta and Modesto's testimonies.

Appellant attempts to cast doubt on the prosecution's case by claiming in her ninth

assigned error that Erlie Ramos of the POEA supposedly "planted" the application forms. She also assails his character, alleging that he passed himself off as a lawyer, although this was denied by Ramos.

The claim of "frame-up," like alibi, is a defense that has been invariably viewed by the Court with disfavor for it can easily be concocted but difficult to prove.[43] Apart from her self-serving testimony, appellant has not offered any evidence that she was indeed framed by Ramos. She has not even hinted at any motive for Ramos to frame her. Law enforcers are presumed to have performed their duties regularly in the absence of evidence to the contrary.[44]

Considering that the two elements of lack of license or authority and the undertaking of an activity constituting recruitment and placement are present, appellant, at the very least, is liable for "simple" illegal recruitment. But is she guilty of illegal recruitment *in large scale*? We find that she is not.

A conviction for large scale illegal recruitment must be based on a finding *in each case* of illegal recruitment of three or more persons whether individually or as a group.[45] In this case, only two persons, Araneta and Modesto, were proven to have been recruited by appellant. The third person named in the complaint as having been promised employment for a fee, Jennelyn Baez, was not presented in court to testify.

It is true that law does not require that at least three victims testify at the trial; nevertheless, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons.[46] In this case, evidence that appellant likewise promised her employment for a fee is sketchy. The only evidence that tends to prove this fact is the testimony of Nancy Araneta, who said that she and her friends, Baez and Sandra Aquino, came to the briefing and that they (she and her "friends") filled up application forms.

The affidavit[47] Baez executed jointly with Araneta cannot support Araneta's testimony. The affidavit was neither identified, nor its contents affirmed, by Baez. Insofar as it purports to prove that appellant recruited Baez, therefore, the affidavit is hearsay and inadmissible.[48] In any case, hearsay evidence, such as the said affidavit, has little probative value.[49]

Neither can appellant be convicted for recruiting CIS agent Eileen Fermindoza or even the other persons present in the briefing of January 30, 1994. Appellant is accused of recruiting only the three persons named in the information -- Araneta, Modesto and Baez. The information does not include Fermindoza or the other persons present in the briefing as among those promised or offered employment for a fee. To convict appellant for the recruitment and placement of persons other than those alleged to have been offered or promised employment for a fee would violate her right to be informed of the nature and cause of the accusation against her.[50]

In any event, the purpose of the offer of the testimonies of Araneta, Morales and Fermindoza, respectively, was limited as follows:

FISCAL BELDUA:

> Your Honor please, we are offering the oral testimony of the witness, as one of those recruited by the accused, and also to identify some exhibits for the prosecution and as well as to identify the accused.[51]

x x x

FISCAL BELDUA:

> We are offering the oral testimony of the witness, Your Honor, to testify on the fact about her recruitment by the accused and immediately before the recruitment, as well as to identify some exhibits for the prosecution, and also the accused in this case, Your Honor.[52]

x x x

FISCAL BELDUA:

> This witness is going to testify that at around that date Your Honor, she was connected with the CIS, that she was instructed together with a companion to conduct a surveillance on the place where the illegal recruitment was supposed to be going on, that she acted as an applicant, Your Honor, to ascertain the truthfulness of the illegal recruitment going on, to identify the accused, as well as to identify some exhibits for the prosecution.[53]

x x x

Courts may consider a piece of evidence only for the purpose for which it was offered, [54] and the purpose of the offer of their testimonies did not include the proving of the purported recruitment of other supposed applicants by appellant.

Appellant claims in her seventh assigned error that the information is fatally defective since it charges her with committing illegal recruitment in large scale on January 30, 1994 while the prosecution evidence supposedly indicates that she committed the crime on February 2, 1994.

We find that the evidence for the prosecution regarding the date of the commission of the crime does not vary from that charged in the information. Both Nancy Araneta and Lourdes Modesto testified that on January 30, 1994, while in the Alejandro residence, appellant offered them employment for a fee. Thus, while the arrest was effected only on February 2, 1994, the crime had already been committed three (3) days earlier on January 30, 1994.

The eighth and tenth assigned errors, respectively, pertain to the penalty of life imprisonment imposed by the trial court as well as the constitutionality of the law prescribing the same, appellant arguing that it is unconstitutional for being unduly

harsh.[55]

The penalty of life imprisonment imposed upon appellant must be reduced. Because the prosecution was able to prove that appellant committed recruitment and placement against two persons only, she cannot be convicted of illegal recruitment in large scale, which requires that recruitment be committed against three or more persons. Appellant can only be convicted of two counts of "simple" illegal recruitment, one for that committed against Nancy Araneta, and another count for that committed against Lourdes Modesto. Appellant is sentenced, for each count, to suffer the penalty of four (4) to six (6) years of imprisonment and to pay a fine of P30,000.00. This renders immaterial the tenth assigned error, which assumes that the proper imposable penalty upon appellant is life imprisonment.

WHEREFORE, the decision of the regional trial court is *MODIFIED*. Appellant is hereby declared guilty of illegal recruitment on two (2) counts and is sentenced, for each count, to suffer the penalty of four (4) to six (6) years of imprisonment and to pay a fine of P30,000.00.

SO ORDERED.

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

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[1] Records, p. 1.

[2] *Id*., at 28.

[3] TSN, July 11, 1994, pp. 3-13, 26-39.

[4] TSN, July 12, 1994, pp. 7-14, 35-56, 82-88, 102-110.

[5] The documents seized include: Exhibit "C," the application form of one Josilyn Villa, consisting of four (4) pages; Exhibit "D," the application form of one Shirley Estrada, consisting of nine (9) pages; Exhibit "E," the application form of one Cora Iglesia, with an annex of nine (9) pages; Exhibit "F," the application form of Jocelyn Santos. Exhibit "G," the application form of Jennifer Alejandro; Exhibit "H," the application form of one Geraldine Reyes; Exhibit "I," the application form of Lilibeth Estrada, consisting of six (6) pages; Exhibit "J," is the application form of Geraldine Sunga; Exhibit "K," is the diploma of Shirley Estrada, together with a photocopy of her passport; Exhibit "L," a certification that Jasmine Alejandro rendered services as Staff Nurse with the Camp Navarro General Hospital.

[6] TSN, July 12, 1994, pp. 88-101, 110-124.

[7] TSN, July 12, 1994, pp. 28-34.

[8] TSN, July 11, 1994, pp. 18-19; TSN, July 12, 1994, p. 18.

[9] TSN, July 11, 1994, pp. 21-22.

[10] Exhibit "A."

[11] Exhibits "M" and "N." Araneta and Baez executed a "Joint Affidavit."

[12] TSN, August 15, 1994, pp. 4-18.

[13] *Id*., at 21-35.

[14] TSN, September 19, 1994, pp. 5-39.

[15] TSN, September 28, 1994, pp. 4-8.

[16] TSN, October 13, 1994, pp. 2-7.

[17] Decision of the Regional Trial Court, p. 24.

[18] Brief for the Accused-Appellant, pp. 1-4.

[19] Constitution, Article III, Section 1.

[20] *Connally v. General Construction Co.,* 269 US 385, 70 L Ed 322 46 S Ct 126 (1926).

[21] *Colautti v. Franklin,* 439 US 379, 58 L Ed 2d 596, 99 S Ct 675 (1979).

[22] *American Communications Asso. v. Douds,* 339 US 382, 94 L Ed 925, 70 S Ct 674 (1950).

[23] 165 SCRA 186 (1988).

[24] 142 SCRA 664 (1986).

[25] *People vs. Rosenthal and Osmeña,* 68 Phil. 328 (1939).

[26] *Wright vs. Georgia,* 373 US 284, 10 L Ed 2d 349, 83 S Ct 1240 (1963).

[27] 207 SCRA 712 (1992).

[28] CONSTITUTION, ARTICLE III, Section 1.

[29] *American Motorists Ins. Co. v. Starnes,* 425 US 637, 48 L Ed 2d 263, 96 S Ct 1800 (1976).

[30] *Yick Wo v. Hopkins,* 118 US 356, 30 L Ed 1012, 18 S Ct 583 (1886), cited in *Genaro Reyes Construction, Inc. vs. Court of Appeals,* 234 SCRA 16 (1994).

[31] *Application of Finn*, 356 P.2d 685 (1960).

[32] *Snowden v. Hughes,* 321 US 1, 88 L Ed 497, 64 S Ct 397 (1943).

[33] *Ibid*.

[34] *Tan, Jr. vs. Sandiganbayan (Third Division)*, 292 SCRA 452 (1998).

[35] RULES OF COURT, RULE 131, Sec. 5 (m).

[36] *People v. Montgomery,* 117 P.2d 437 (1941).

[37] *State v. Hicks,* 325 P.2d 794 (1958).

[38] *Abaca vs. Court of Appeals,* 290 SCRA 657 (1998); *Darvin vs. Court of Appeals,* 292 SCRA 534 (1998); *People vs. Juego,* 298 SCRA 22 (1998).

[39] *People vs. Benedictus,* 288 SCRA 319 (1998); *People vs. Sadiosa,* 290 SCRA 92 (1998); *People vs. Sanchez,* 291 SCRA 333 (1998); *People vs. Saley,* 291 SCRA 715 (1998); *People vs. Ganaden,* 299 SCRA 433 (1998).

[40] *People vs. Badozo,* 215 SCRA 33 (1992).

[41] *People vs. Santos,* 276 SCRA 329 (1997).

[42] *E.g., Espano vs. Court of Appeals,* 288 SCRA 558 (1998)

[43] *Espano vs. Court of Appeals, supra*; *People vs. Alegro,* 275 SCRA 216 (1997).

[44] *Marco vs. Court of Appeals,* 273 SCRA 276 (1997).

[45] *People vs. Reyes,* 242 SCRA 264 (1995).

[46] *People vs. Ortiz-Miyake,* 279 SCRA 180 (1997).

[47] Exhibit "N."

[48] *See People vs. Manhuyod, Jr.,* 290 SCRA 257 (1998); and *People vs. Quidato, Jr.,* 297 SCRA 1 (1998).

[49] *Salonga vs. Paño,* 134 SCRA 438 (1985).

[50] CONSTITUTION, ARTICLE III, SECTION 14 (1); RULES OF COURT, RULE 115, SECTION 1 (b).

[51] TSN, August 15, 1994, p. 3.

[52] *Id*., at 20.

[53] TSN, July 12, 1994, pp. 79-80.

[54] *People vs. Lapay,* 298 SCRA 62 (1998).

[55] Section 19 (1), Article III of the Constitution states: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. x x x."
