

SECOND DIVISION

[G.R. No. 112175. July 26, 1996]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. ENGINEER RODOLFO DIAZ, *accused-appellant*.

DECISION

TORRES, JR., J.:

Rodolfo 'Erwin' Diaz seeks the mandate of this Court to review the decision dated September 2, 1993, of the Regional Trial Court, 11th Judicial Region, Branch 10, Davao City,^[1] in Criminal Case No. 26, 993-92 convicting him of the crime of Illegal Recruitment in Large Scale, and sentencing him to suffer life imprisonment and to pay a fine of P100,000.00 plus the costs.

In an Information dated August 15, 1992, Assistant City Prosecutor David W. Natividad of Davao City charged appellant of violating Articles 38 (a) and 38 (b) in relation to Article 39 of the Labor Code, as amended, as follows:

"That sometime in the month of July 1992, in the City of Davao, and within the jurisdiction of this Honorable Court, the abovementioned accused, purporting himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, particularly Brunei and Japan, did then and there, willfully, unlawfully recruit and promise employment/job placement abroad to Mary Anne Navarro, Maria Theresa Fabricante and Maria Elena Ramirez, without first securing the required license and/or authority from the Department of Labor and Employment.

CONTRARY TO LAW."^[2]

The antecedent facts found by the Court *a quo* reads:

"Mary Anne Navarro was 22 years old, single and a student of the University of the Immaculate Conception in 1992, taking up Bachelor of Science in Music, Davao City.

Maria Theresa Fabricante was 23 years old, single and jobless in 1992. She is accordingly a commerce graduate of the Notre Dame University in Cotabato City.

Maria Elena Ramirez was 27 years old, married and a businesswoman in 1992. She is accordingly a college graduate of the University of Mindanao in Davao City where she finished the course of Bachelor of Science in Commerce, major in management.

From the combined testimonies of these three complainants, the Court has gathered that this is what happened, which gave rise to this case:

In June 1992 they were all enrolled at the Henichi Techno Exchange Cultural Foundation in Davao City, studying Niponggo. Their teacher was Mrs. Remedios Aplicador.

One day Mrs. Aplicador told them that if they wanted to go and work abroad, particularly Brunei where they could earn a salary of "\$700.00 for four hours daily work," she would refer them to Mr. Paulo Lim who knew one Engr. Erwin Diaz who was recruiting applicants for Brunei (tsn 9-7-92 pp. 10-11 & tsn 9-8-92 p. 34).

Accompanied by Mrs. Aplicador, the three complainants went to Mr. Paulo Lim who explained to them that he was not the one recruiting workers but Engr. Diaz (tsn 9-8-92 p. 34). Mr. Lim informed them that his children had already applied with Engr. Diaz and that the requirements were bio-data, passport, medical checkup, I.D. and income tax return, and P2,500.00 for processing of their papers (tsn 9-7-92 pp. 11 & 23-24 & 9-8-92 pp. 46 & 58). Telling them that he knew "pretty well the recruiter" Engr. Diaz and that "We don't have to worry we can really go abroad and as a matter of fact he said that his three children were applying (to go) to Brunei," he offered to accompany them to Engr. Erwin Diaz at the office of the CIS (tsn, 9-7-92, p. 11). They asked Mr. Lim when he was available, and he said July 18 (1992), Saturday morning (tsn, 9-8-92, p. 34).

On July 18, Mr. Paulo Lim and Mrs. Remedios Aplicador accompanied the three complainants to Engr. Diaz who was then being detained in the CIS Detention Center in Davao City and introduced them to him. The complainants asked Engr. Diaz why he was "inside the cell," and he explained that four applicants had filed a case against him "because they could not accept that they were sick of hepatitis and that the CIS elements are just making money out of it" (tsn, 9-8-92, p. 35). They asked him if he was "recruiting applicants for Brunei" and "he said yes"; they also inquired what were the requirements, and he said four passport size pictures of each applicant, bio-data, income tax return, medical certificate, NBI clearance, passport, P2,500.00 for processing of the papers of each applicant, and P65,000.00 as placement fee, but only P20,000.00 for plane fare was to be paid by each applicant, the balance of P45,000.00 was to be paid by means of salary deductions (tsn, 9-7-92, p. 12; tsn, 9-8-92, p. 35 & p. 59). The P2,500.00 for processing of their respective applications was to be paid at the house of Engr. Diaz at 14 Aries Street, GSIS Heights, Davao City, with telephone no. 8-46-71 (tsn, 9-7-92, p. 12).

Mary Anne Navarro paid P2,300.00 to Engr. Diaz at his residence on July 22, 1992 (Exh. "C"). There is no explanation by her why she paid only P2,300.00 and not P2,500.00.

Maria Theresa Fabricante paid only P2,000.00 to Engr. Diaz also on July 22, 1992 (Exh. "E"). She paid only that amount because, according to her testimony, she already had a passport and Engr. Diaz said she was required to pay only P2,000.00, (tsn, 9-8-92, p. 35).

Maria Elena Ramirez paid to Engr. Diaz P2,500.00 but she lost her receipt (tsn, 9-8-92, p. 59). However, it was returned to her by Engr. Diaz on August 17, 1992 (Exh. "G").

Exhibit "G" is a RECEIPT signed by the three complainants acknowledging the return to them respectively of the amounts of P2,300.00, P2,000.00 and P2,500.00 by the accused and his wife who also signed it as witnesses (tsn, 9-8-92, p. 43).

After submitting to the accused all the required papers and undergoing medical examination (before the return of said amounts to the complainants), they asked him when they could leave. The accused told them to wait for three to four weeks as his papers were still being processed by the CIS (tsn, 9-7-92, p. 15). During this period when the accused had already been released from detention (testimony of the accused, tsn, 4-27-93, pp. 16-17), the complainants kept inquiring from him when they would be leaving for Brunei, going to his house several times where they saw many other applicants like them. But the accused just kept saying that his papers were still with the CIS (tsn, 9-7-92, p. 15).

When he was still detained, he told the complainants that "the name of his agency is confidential but the owner thereof is Erlinda Romualdez" who "used to be her (sic) mistress" assuring them that "we don't have to worry about it because he said it is government project and then he said he will escort us to Philippine Plaza Hotel for briefing before leaving for abroad and after the briefing at the Philippine Plaza Hotel we will proceed to POEA where we will sign a contract that is the time we will give him the amount of P20,000.00 and then we will proceed to the residence of Erlinda Romualdez where we will be staying for three days" (tsn, 9-8-92, pp. 40-41).

Mary Anne Navarro asked her father for P20,000.00 for her plane fare, and so they mortgaged their piano for P30,000.00 to Serve Loan Mart as evidenced by a promissory note for P30,000.00 (Exh. "D" & tsn, 9-7-92, p. 16).

From the borrowed P30,000.00, Mary Anne Navarro set aside P20,000.00 "for placement fee and the remaining P10,000.00 I used in buying traveling bag, dresses, shoes and of course make up (sic) because we were told that we will be working there as salesgirls. Then hairband, pair of earrings and ring" (tsn, 9-7-92, pp. 16-17). It was the accused who told them that they would be working in one of the department stores in Brunei and receiving a monthly pay of \$700.00 for working only four hours a day (tsn, 9-7-92, p. 17). Earlier, she said Engr. Diaz told her and her co-complainants herein that the P20,000.00 was for plane fare (tsn, 9-7-92, p. 12).

Maria Theresa Fabricante went home to Cotabato to secure the required P20,000.00. Her father sold a horse for P5,000.00. As for the balance of P15,000.00 "Our plan was to mortgage our five hectare land to a friend of my father."

"Q Was the land actually mortgage?

"A The money was ready for release.

"Q Now, was the money release?

"A No, sir.

"Q Why?

"A The money was supposed to be released on August 6, but before that date August 3, I came back to Davao and went to the office of POEA and verify whether Engr. Diaz was indeed a licensed recruiter.

"Q What did you find out when you go there?

"A He is not registered or in the list. His name does not appear on the list.

"Q With whom did you talk to with the POEA?

"A Atty. Evangelio.

"Q Now, upon learning that Mr. Diaz is not included in the masters list, what did you do?

"A After knowing that I went to my two companions Ma. Elena Ramirez and Mary Anne Navarro and informed them of what I found out that the agency represented by Engr. Diaz was a fake agency and I advised them they too should follow it up by themselves.

"Q Now, of your own knowledge, did they do?

"A Yes, sir.

"Q What about you?

""A Yes, sir, we set a date to go to the POEA but before that we agreed that we will go and see Engr. Diaz to get back the money that we paid as well as the papers.

"Q Did you actually go to Engr. Diaz?

"A Yes, sir.

"Q What happened?

"A We went to see Eng. Diaz and when we met him, he greet us by saying: "If you are ready to leave?" But we told him that we are not going to leave and we are withdrawing our applications because we found from the office of the POEA that he is a fake recruiter and so he got angry and said that if our purpose in going there was to withdraw, he said we can and we can get back our documents the next day but he said we will have to pay him charges. And we said, what for? He said for labor because he already secured a plane ticket for us and when I asked where the plane tickets are? He said it is in Cagayan" (tsn, 9-8-92, pp. 38-39).

At the POEA the three complainants learned that the "agency represented by Engr. Diaz was a fake agency" (tsn, 9-8-92, p. 38). The Philippine Overseas Employment Administration issued a CERTIFICATION (Exh. "A") which reads:

"This is to certify that Eng'r. Diaz a.k.a. Erwin, Rudy, Edwin, Rodolfo, Ariel Mateo of Aries St., GSIS Subd., Matina, Davao City; Mr. Paulo Lim and Remedios Aplicador both of Sto. Rosario St., Buhangin, Davao City were never granted an authority to conduct recruitment for overseas employment in Davao City or in any part of Region XI, and that the agency of the former known as Phil Jap Constr'n and Tanaka and Diaz Asso. were never been a licensed agency for overseas recruitment.

"This certification is being issued upon the written request of Ma. Elena Ramirez, Mary Anne Navarro and Ma. Theresa Fabricante for whatever legal purpose it may serve them best.

"14 August 1992 Davao City, Philippines.

(Sgd) GAUDENCIO DELA PEA

Unit Coordinator"

The three complainants withdrew their applications from Engr. Diaz without paying his charges. The amounts they paid for processing fees were all returned to them by Engr. Diaz (Exh. "G").^[3]

On September 2, 1993 the trial court rendered a decision finding the appellant guilty of the crime charged, the dispositive portion of which states:

"WHEREFORE, this Court finds the accused Rodolfo 'Erwin' Diaz guilty beyond reasonable doubt of the offense of large scale illegal recruitment and sentences him to suffer life imprisonment and to pay a fine of P100,000.00, plus the costs."

Accused appellant Diaz predicated the instant appeal on the following assignment of errors:

I

THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED NOT ONLY CONFINED HIMSELF TO FACILITATING THE PASSPORT AND MEDICAL EXAMINATION OF THE COMPLAINANTS BUT ALSO PROMISED THEM EMPLOYMENT ABROAD.

II

THE LOWER COURT ERRED IN NOT FINDING THAT THE ACCUSED WAS MERELY A

III

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED.^[4]

The foregoing assigned errors, being intertwined, shall be discussed together.

The crime of illegal recruitment, as defined under Articles 38 (a) in relation to Articles 13 (b) and 34 and penalized under Article 39 of the Labor Code, as amended by Presidential Decree 1920 and Presidential Decree 2018, is any recruitment activity, including the prohibited practices enumerated under Article 34, undertaken by a non-licensee or non-holder of authority.

Thus, in *People v. Cabacang*^[5] this Court ruled that the crime of illegal recruitment is committed when two elements concur, namely:

- 1] That the offender has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and,
- 2] That the offender undertakes either any activity within the meaning of recruitment and placement defined under Article 13(b), or any prohibited practices enumerated under Article 34.

Article 13 (b) of the Labor Code, provides for the statutory definition of "recruitment and placement, as follows:

"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."

In *People v. Panis*,^[6] we made the pronouncement that any of the acts mentioned in Article 13(b) will constitute recruitment and placement even if only one prospective worker is involved. The number of persons dealt with is not an essential ingredient of the act of recruitment and placement.

Article 38(a) clearly shows that illegal recruitment is an offense which is essentially committed by a non-licensee or non-holder of authority.

A non-licensee or non-holder of authority means any person, corporation or entity which has not been issued a valid license or authority to engage in recruitment and placement by the Secretary of Labor, or whose license or authority has been suspended, revoked or cancelled by the POEA or the Secretary.^[7]

Moreover, recruitment and placement activities of agents or representatives whose appointments by a licensee or holder of authority were not previously authorized by the POEA shall likewise constitute illegal recruitment.^[8]

We ruled in *People vs. Goce*, in this wise:

"Article 38 (b) of the Labor Code, as amended by Presidential Decree No. 2018, provides that any recruitment activity, including the prohibited practices enumerated in Article 34 of said Code, undertaken by non -licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 thereof. The same article further provides that illegal recruitment

shall be considered an offense involving economic sabotage if any of the qualifying circumstances exist, namely,

a] when illegal recruitment is committed by a syndicate, that is, if carried out by a group of three or more persons conspiring or confederating with one another; or,

b] when illegal recruitment is committed in large scale, that is, if committed against three or more persons individually or as a group.^[9]

Considering the clear import of the foregoing doctrine which spells the unmistakable intent of the specific provision applicable at bar, the instant case without doubt involves illegal recruitment in large scale.

The elements of the crime of illegal recruitment in large scale, which are undoubtedly present in this case are:

- 1] the offender is a non-licensee or non-holder of authority to engage in recruitment and placement activity,
- 2] the offender undertakes recruitment and placement activity defined under Article 13(b), or any prohibited practices enumerated under Article 34, and
- 3] illegal recruitment is committed against three or more persons individually or as a group.^[10]

As can be ascertained after a thorough reading of the records, appellant Diaz was neither a licensee nor a holder of authority to qualify him to lawfully engage in recruitment and placement activity.

Pursuant to the Certification issued by the POEA dated 14th of August 1992,^[11] duly signed by Gaudencio de la Pena, Unit Coordinator, appellant was never granted an authority to conduct recruitment for overseas employment.

As to the third element of the crime, there were obviously three persons who were victims of the appellant's nefarious act of large scale illegal recruitment.

Relative to the question of whether or not appellant Diaz was engaged in recruitment activity, it is clear from the testimonies of the three complainants that appellant undertook to recruit them, thus:

Maria Elena Ramirez testified in the following tenor:

Q: When you went to see Mr. Diaz, what happened?

A: We were introduced by Mr. Lim to Diaz; and then we asked Diaz if it is true that he's recruiting applicants for abroad. He said that he is recruiting applicants for Japan or Brunei and if we have P20,000 we can go to Brunei and we will be given priority if we have the amount.

Q: What else did you ask Mr. Diaz?

A: We asked him what were the requirements.

Q: And what did he answer?

A: Well, he told us that we are required to submit 8 copies of passport, ID photos, income tax return, passport, medical certificate and the amount of P2,500 and he further said that our placement fee will be P65,000 but all we have to pay in advance is the amount of P20,000 and the remaining balance of P45,000 shall be given through salary deductions.^[12]

Maria Theresa Fabricante testified in the following manner:

She declared:

Q: What else did you ask Mr. Diaz?

A: We asked him if he is indeed recruiting applicants for Brunei. And he said, Yes. After that we asked him what are the requirements and he told us that we need passport, four passport size ID pictures, income tax return and NBI clearance, and if we have diplomas to attach with other documents.

Q: What else did Mr. Diaz tell you to do?

A: He said that if we are interested, he will take care of the processing of the documents by giving him the amount of P2,500, and that he explained that our placement fee will be in the sum of P65,000 and we will just have to raise P20,000 for the processing of our visa, plane tickets and POEA expenses. [\[13\]](#)

She continued:

Q: What about your work in Brunei, what did you ask him?

A: I asked Engr. Diaz whether our work would be contract worker and he said yes and we did not have to worry about it because he said it was a government project and then he said he would escort us to Philippine Plaza Hotel for briefing before leaving for abroad and after the briefing we will proceed to the POEA where we would sign our contract and after signing that is the time we would give the amount of P20,000 and then we would proceed to the residence of Erlinda Romualdez where we would be staying for three days. [\[14\]](#)

The same thing was testified to by Mary Anne Navarro. Appellant told her that he was recruiting contract workers for abroad, particularly Brunei, and promised her a job opportunity if she can produce various amounts of money for expenses and processing of documents. [\[15\]](#)

Testifying in his behalf, appellant denied these complainants' allegations. He asserted that he never made a promise in favor of complainants for employment abroad but assisted them in the procurement of passports and medical certificates.

This Court is not, however, persuaded by appellant's bare denials.

Evidently, greater weight must generally be given to the positive testimonies of the prosecution witnesses than to the denial of the defendant in weighing contradictory declarations and statements. [\[16\]](#) We stated this rule with curt emphasis in *Goce (supra)* that

"The lame defense consisting of such bare denials by appellant cannot overcome the evidence presented by the prosecution proving her guilt beyond reasonable doubt." [\[17\]](#)

The acts of the appellant, which were clearly described in the lucid testimonies of the three victims, such as collecting from each of the complainants payment for passport, medical tests, placement fee, plane tickets and other sundry expenses, promising them employment abroad, contracting and advertising for employment, unquestionably constitute acts of large scale illegal recruitment.

Appellant sought refuge in the testimonies of his three witnesses that would give credence to the claim that he was only a facilitator of travel documents and not a recruiter.

The trial court did not give weight to appellant's allegations.

As observed by the trial court, the testimony of Edgar Macomao, is incredible which would raise serious doubts about his motive as a witness. [\[18\]](#) It also describes the testimony of Paulo

Lim as unclear and confusing.^[19] Neither was the testimony of Abednigo Neri given much credit by the trial court.

Admittedly, the findings of the trial court as to the credibility of witnesses are to be given great weight and a high degree of respect by the Appellate Court.

In *People vs. Reyes* (242 SCRA 264), we enunciated the rule that

"When the issue is the credibility of witnesses, appellate courts will in general not disturb the findings of the trial court unless certain facts or circumstances of weight have been overlooked, misunderstood or misapplied which, if considered, might affect the result of the case. This is because the trial court heard the testimony of the witnesses and observed their deportment and manner of testifying during trial."^[20]

In the case at bar, we see no reason to disturb these observations of the trial court. A careful scrutiny of the records reveals that no facts or circumstances had been overlooked or misapplied by the trial court which might affect the result of the case when considered.

As aptly pointed out by the Solicitor General, to wit:

"With the evidence on record, it is hard to believe that services promised by the appellant to the three complainants were to consist only of his assistance in the procurement of passports and medical certificates for each of them for they themselves could have easily secured these documents at a lesser cost. Moreover, the fact that the appellant still collected P2,000 from Theresa Fabricante who already had a passport belies his claim that his services were limited only to procuring a passport and medical certificate."^[21]

The accused's assertion that he only assisted in the processing of passport and medical certificate is nothing more than a frivolous excuse to divert the truth.

Likewise, it is the settled rule that a person is guilty of illegal recruitment when he gives the impression that he has the power to send workers abroad.^[22] Appellant Diaz manifestly gave that impression to the three complainants that he had the ability to send workers abroad. Misrepresenting himself as a recruiter of workers for Brunei, he promised them work for a fee and convinced them to give their money for the purpose of getting an employment overseas.

The findings of the trial court, to which we agree, were arrived at with meticulous care, to wit:

"There is no direct and express denial by Mr. Diaz of the following testimonies of the complainants:

1] That they had asked Mr. Diaz if he was 'recruiting applicants for Brunei' and he said 'Yes'.

2] That when asked what his requirements were, he said four passport size pictures, bio-data, income tax returns, medical certificates, NBI clearance, passport, P2,500 for processing fee, and P65,000 as placement fee, but only P20,000 for plane fare was to be paid as the balance of P45,000 was payable by salary deductions.

3] That he was asked by the complainants as to what agency he would be referring them, he said 'the name of the agency is confidential but the owner thereof is one Erlinda Romualdez, who used to be his mistress'; that the complainants did not have to worry because 'it is a government project and then he said he'd escort us to the Philippine Plaza Hotel for briefing before leaving for abroad and after the briefing we will proceed to POEA where we will sign our contract and after the signing that is the time we will

give the P20,000, and then we will proceed to the residence of Erlinda Romualdez where we will be staying for three days.'

4] That Mr. Diaz told the complainants that they would be working 'as salesgirls in one of the department stores in Brunei, that they will be getting \$700 a month and they will be only working four hours a day'

These are definitely prohibited practices or activities constituting large scale illegal recruitment according to the above quoted provisions of the law. There is no denial of these by the accused."^[23]

This Court is aware of a new law, R.A. 8042, otherwise known as Migrant Workers for Overseas Employment, which was approved on June 07, 1995. It is An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress and for Other Purposes. This new law, amends the pertinent provisions of the Labor Code of the Philippines and gives a new definition of the crime of illegal recruitment and provides for its higher penalty.

We are not in anyway applying the otherwise restrictive provisions of this new law as it is not applicable in the case at bar, considering the rule that crimes are punishable by the laws in force at the time of their commission.

In synthesis, considering the positive testimonies of the complainants against the negative bare denials of accused-appellant, no other conclusion could be arrived at but to sustain the conviction of accused-appellant finding the latter guilty of large scale illegal recruitment beyond reasonable doubt.

IN VIEW OF THE FOREGOING PREMISES, the Decision appealed from dated September 2, 1993 is hereby **AFFIRMED** in all respects, with costs against accused-appellant Rodolfo Diaz.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Mendoza, JJ., concur.

^[1] Penned by Judge Augusto V. Bрева.

^[2] Information, pp. 1-2, Record.

^[3] Decision, pp. 132-156, Record.

^[4] Brief for Appellant, pp. 67-83, *Rollo*.

^[5] G.R. No. 113917, July 17, 1995.

^[6] G.R. No. L-58674-77, July 11, 1986.

^[7] Sec. 1 d of Rules Implementing PD 1920.

^[8] Sec. 1, 2nd par., Rule V, Bk II, POEA Rules and Regulations on Overseas Employment.

^[9] G.R. No. 113161, August 29, 1995.

^[10] People vs. Bautista, G.R. No. 113547, Feb. 9, 1995, People vs. Coronacion, G.R. No. 97845, Sept. 29, 1994.

^[11] Exhibit "A", p. 40, Record.

[12] TSN, September 8, 1992, p. 59.

[13] *Ibid.*, p. 35.

[14] *Ibid.*, p. 41.

[15] TSN, Sept. 7, 1992, pp. 11-12.

[16] *People vs. Sulpicio Pajarres*, G.R. No. 100804, April 29, 1994; *People vs. Resuma*, G.R. Nos. 106640-42, June 15, 1994.

[17] G.R. No. 113161, August 29, 1995.

[18] Decision, p. 147, Record.

[19] *Ibid.*, p. 145, Record.

[20] G.R. No. 105204, March 9, 1995.

[21] Appellee's Brief, p. 17, *Rollo*.

[22] *People vs. Manungas*, G.R. No. 91552-55, March 10, 1994, *Flores vs. People*, G.R. Nos. 93411-12, July 20, 1992.

[23] Decision, pp. 152-153, *Supra*.