

FIRST DIVISION

[G.R. No. 113344. July 28, 1997]

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. FRANCISCO SANTOS y SANTAMARIA and ATANACIO LUTO y LIMBOY, *accused*,
ATANACIO LUTO y LIMBOY, *accused-appellant*.**

DECISION

VITUG, J.:

The appeal seeks a review of the decision^[1] of the Regional Trial Court of Manila, Branch XII, finding Francisco Santos y Santamaria and appellant Atanacio Luto y Limboy guilty beyond reasonable doubt of illegal recruitment in large scale; imposing on each of them the penalty of life imprisonment, as well as a fine of ₱100,000.00; and ordering both accused to pay, jointly and severally, four of their victims an indemnity of ₱35,000.00.

Luto and Santos were charged, in an information filed on 06 November 1989, with violation of Article 38(a) of Presidential Decree ("PD") 1412, amending certain provisions of Book I of PD 442 (Labor Code), in relation to Article 13(b) and (c) thereof, as further amended by PD 1693, PD 1920 and PD 2018. The two accused pleaded "not guilty" to the accusation.^[2]

The prosecution and the defense stipulated that the accused were not, at any time (particularly during the period in or about June 1989), registered, licensed or authorized by the Philippine Overseas Employment Administration ("POEA") to recruit workers for overseas employment.^[3]

The Solicitor General summed up the evidence presented at the trial by the prosecution.

"Sometime in the early part of 1989, appellant was introduced to Nenita Convucar by a certain Mr. Moran, a former officemate of her uncle (p. 2, TSN, Aug. 28, 1990). Appellant in turn introduced his co-accused Francisco Santos a.k.a. Mr. Paco Sta. Maria to Nenita Convucar as his business partner for some ten years already (p. 3, TSN, Aug. 28, 1990; pp. 5 & 7, TSN, Sept. 19, 1990). The duo, appellant and Santos, informed Convucar that Santos has employer in Singapore and Nigeria (p. 3, TSN, Aug. 28, 1990).

"After some negotiation, in the early part of June 1989, the trio agreed to engage in the recruitment of workers for overseas employment, (*Ibid.*). They used the business name NPC Philippine Austrian Friendship Center, an enterprise engaged in 'matching Filipina women to foreigner' using the residence cum office of its owner, Convucar, located in 1940 and 1938 Jorge Bacobo St., Malate, Manila as its recruitment office (pp. 3-4, TSN, Aug. 28, 1990, p. 6, TSN, Sept. 19, 1990). As is usual with recruitment companies, they advertised for overseas jobs, causing several applicants to trek to their office (pp.4-5, TSN, Aug. 28, 1990).

"Meantime, on July 24, 1989, Santos left for Singapore and during his absence, appellant and his wife took over the recruitment business (p. 4, TSN, Aug. 28, 1990; p. 6, TSN, Sept. 19, 1990).

"None of the applicants numbering at least thirty (30) was able to leave for overseas employment (p. 3, TSN, Aug. 28, 1990).

"Thus, complaints for Illegal Recruitment were filed against appellant and Santos only (Exh. 'L', p. 203,

Rec.). Among the victims of the illegal recruitment was Marina Parto, who testified that on July 3, 1989 she went to the house of Nenita Convucar at 1938 Jorge Bacobo St., Manila during which occasion, the latter introduced him to appellant and Santos who were recruiting workers for abroad (p. 5, TSN, May 9, 1990). She was interviewed by Santos and was told that she was qualified for the position of export assistant. She was told to pay P5,000.00 processing fee and P10,000.00 for plane ticket so she can be deployed to Singapore (p. 6, TSN, *Ibid.*). On July 11, 1989 Parto paid P5,000.00 to Francisco 'Paco' Santos for which a typewritten receipt in the stationery of DRACO International Distributing was issued duly signed by Paco Sta. Maria (pp. 6-7, TSN, May 9, 1990; Exh. 'A' p. 191, Rec.). On July 21, 1989, Parto paid another P2,000.00 to Paco Sta. Maria and the balance of P8,000.00 was paid to Convucar upon instruction of Santos. These payments were covered by receipt issued by Convucar dated July 26, 1989 (Exh. 'B', p. 192, Rec.; pp. 7-8, TSN, *Ibid.*) An employment contract (Exh. C, p. 193, Rec.) between Parto and Draco International Distributing was duly entered into with appellant and Convucar as witnesses (Exh. 'C', 6, p. 195, Rec.; p. 10, TSN, *Ibid.*). After the contract signing, Parto was told she would leave for employment after a week, but which never became a reality. Parto, when verified with the Philippine Overseas Employment Administration (POEA) whether Santos and appellant were authorized to recruit only to find out they were not (p. 12, TSN, *Ibid.*).

"On August 1, 1989, Rebecca S. Estrella, also applied as factory worker for overseas employment with Draco International at the prodding of two other applicants namely Aguilana Mercado and Teresita Jose (p. 3 & 7, TSN, May 22, 1990). At the recruitment office, Estrella met appellant and Convucar who received her application. Upon submission of her application, she was asked by appellant to 'produce money' in the amount of P5,000.00. Initially she gave P1,500.00 to appellant and Convucar (pp. 7-8, TSN, *Ibid.*; Exh. 'E' p.198, Rec.). On August 25, 1989, Estrella paid additional P3,500.00 to Convucar (pp. 3-4, *Ibid.*; Exh. 'F', p.199, Rec.). Estrella was promised by Santos and appellant that she would leave for abroad after three months, but that promise was never fulfilled (p. 5, TSN, *Ibid.*).^[4]

The frustrated applicants for overseas work finally went to the Western Police District to complain against Luto, Santos and Convucar.^[5] Convucar turned witness against her business partners Luto and Santos.

The defense, on its part, placed at the witness stand the accused themselves; no other witnesses were presented. The following narration was their version of the case.

A bookkeeper by profession, Santos had been engaged in the export and import business for ten consecutive years. His office was in Lagos, Nigeria, although, before his arrest, he likewise had an office in Makati. Luto was never associated with him in business, let alone, in the recruitment of workers. Luto was introduced to Santos in 1972 by the manager of the Manzano Cottage Industry at the Araneta Center in Cubao, Quezon City. Santos was one of the frequent buyers at the Manzano Cottage Industry.

Santos went to see Luto on the occasion of the latter's birthday in 1979. Santos asked Luto to allow him (Santos) and his wife to stay in Luto's house in San Mateo, Rizal. Luto agreed, and the couple stayed in his house until Santos wife gave birth. At one time in 1984, Luto and Santos ran into each other in Cubao, and the two sat down for a cup of coffee. Luto learned that Santos had become a "real businessman" with an office in Tuazon, Sampaloc, Manila.^[6] Luto accepted the offer of Santos to be a "part-time messenger" in the latter's export and import business. Luto held on until December 1984.^[7]

In June 1989, Luto met Nenita Convucar through a certain Jose Moran, husband of a Manila councilwoman, in one of the restaurants at the City Hall. In his second meeting with Convucar in her house at 1938-A J. Bocobo, Malate, Manila, in June of 1989, Luto was asked to help look for a foreign principal or employer so that Moran's son could be "deployed" for work abroad. Luto recommended Santos to her. On 24 June 1989, Luto, Santos and Convucar met at the Aristocrat Restaurant in Cubao. In the meeting, Santos and Convucar agreed that the latter would "recruit,

approve, receive money from applicants and issue receipts to applicants." Luto left the restaurant ahead of the two. He could not tell whether the agreement between Santos and Convucar materialized because he had nothing to do with it. He, however, would "dropped (sic) by" the office-residence of Convucar "very often" to check his "incoming communications." He had previously asked permission from Convucar to use her office-residence to be his "Manila contact office" in connection with his "local buy and sell" business and bookkeeping services.

On 27 September 1993, the trial court convicted Luto and Santos; it concluded:

"WHEREFORE, finding the prosecution's evidence sufficient to sustain the conviction beyond moral certainty, both accused having engaged in illegally recruiting herein complainants hence in accordance with the provisions of Article 38 and 39 of PD. 2018 that amended the New Labor Code, both accused Francisco Santos y Sta. Maria and Atanacio Luto y Limboy are hereby sentenced to each suffer the penalty of life imprisonment and for each one to pay P100,000.00 fine. Both accused shall be credited with the full extent of their preventive imprisonment.

"Both accused are hereby ordered to jointly and severally indemnify the victims the following sum:

"1. Marina Parto -the sum of P15,000.00

"2. Rebecca Estrella -the sum of P 5,000.00

"3. Teodora Gutierrez-the sum of P12,000.00

"4. Laurence Maa -the sum of P 3,000.00

"Both accused are hereby committed to the custody of the Director of Prison, National Penitentiary, Muntinlupa, Metro Manila through the City Jail Warden of Manila."^[8]

Santos did not interpose an appeal. In his case, Luto has come up to this Court to contend that the trial court has erred (a) in finding conspiracy among appellant Santos and Convucar in illegal recruitment despite an insufficiency of evidence, (b) in giving full faith and credence to the testimony of the prosecution witnesses and in discarding his evidence, (c) in ordering him to indemnify the complainants, and (d) in convicting him notwithstanding the prosecution's failure to prove his guilt beyond reasonable doubt.

Prefatorily, it might be stated that while this case has been heard and tried by Judge Procoro J. Donato and the decision has been handed down by Judge Romulo A. Lopez, no justifiable reason, nevertheless, is shown that would warrant the disregard of the findings and conclusions of the incumbent Judge nor render *per se* his decision a nullity.^[9]

The crime of illegal recruitment in large scale requires the concurrence of three elements; viz: That (1) the accused engages in the recruitment and placement of workers, defined under Article 13, or in any prohibited activities under Article 34, of the Labor Code; (2) the accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to having a license or an authority to recruit and deploy workers, either locally or overseas, and (3) the accused commits the offense against three or more persons, individually or as a group.^[10]

The stipulation, signed by appellant and Santos, along with their counsel, to the effect that the accused never did have a license to recruit workers, satisfies the second element of the crime.^[11] All that needs then to be established is the existence of the first and third elements.

Article 13(b) of the Labor Code defines "recruitment and placement" to be "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." That appellant did participate in the illegal recruitment activities of Santos and Convucar is sufficiently shown on record. Marina Parto testified:

"Q: What did you do Madam witness, after all these transactions? After you have given the money to Nenita Convucar, what happened next?

"A: I was not able to leave for abroad so I asked for the refund of my money but nothing happened.

"Q: To whom did you ask for refund?

"A: Atanacio Luto and Nenita Convucar, and Paco Sta. Maria.

"Q: Why did you not ask Convucar to refund you the amount of P10,000.00?

"A: Nenita Convucar told me that that amount of P8,000.00 was given to Atanacio Luto while the P2,000.00 was with Paco Santos Sta. Maria.

"Q: Do you have that receipt that these amounts you have given to accused Luto and Santos?

"A: That he received? Nenita Convucar was the one who received.

"Q: According to you Nenita Convucar gave the money to Luto and Santos?

"A: When I gave the P2,000.00 it was directly to Paco Santos Sta. Maria and the P8,000.00, Nenita told me that the P8,000.00 was given to Atanacio Luto and when I talked to Atanacio Luto he told me `yes, she gave the P8,000.00 to him' (sic).

"Q: Did you not ask any receipt that Luto received the said amount?

"A: No, sir, because I was not the one who gave to him. It was Nenita Convucar who gave that amount.

ATTY. GURAY

"Q: Why did you not ask Nenita Convucar whether he issued a receipt?

"A: Because Luto told me that he received that amount to (sic) Nenita Convucar and I told him to refund the money. And he told yes, I will refund the money." (Underscoring supplied.)^[12]

Another complainant, Rebecca Estrella, declared that it was appellant and Convucar who received her application for overseas employment. It was also appellant who demanded that she should "produce" the placement fee of P5,000.00. She thus handed over P1,500.00 to appellant and the remaining amount of P3,500.00 to Convucar.^[13]

A third witness, Teodora Gutierrez, identified Santos to be the person with whom she discussed the prospect of her employment abroad and to whom she had paid, upon demand, the sum of P5,000.00 as processing fee and another P7,000.00 for the plane fare. She, however, declared not to have seen appellant at the time.

Appellant himself conducted his own interviews of applicants.^[14] He, indeed, admitted having also acted as a witness in at least ten duly notarized labor recruitment documents. The trial court could not have erred in thus refusing to believe appellants asseveration, in order to justify his presence in the premises, that he merely used the house of Convucar as an office for his buy and sell business and as a "communication center" for his own activities.

The defense of denial, in any case, 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.^[15]

Regrettably, the Court would have to discard the factual settings of this case and settled legal principles if it were to accept the recommendation of the Solicitor General^[16] that, since only two applicants for employment abroad were able to so pinpoint Luto as an illegal recruiter,

appellant should only be held responsible for simple illegal recruitment under Article 38, in relation to Article 39, of the Labor Code. The prosecution was able to convincingly establish conspiracy among appellant, Santos and Convucar in inveigling workers to apply for jobs abroad.^[17] The act of each of them in conspiracy was the act of the other.^[18] Sufficiently shown was that the conspirators recruited definitely more than three persons, some thirty applicants altogether, purportedly for foreign employment. Appellant himself testified that he had signed as a witness to at least ten recruitment papers. Thirteen of the applicants filed the case for illegal recruitment against the two accused.^[19] Four of them testified at the trial although witness Laurence Maao^[20] did not come back for cross-examination, and his testimony was thus expunged from the record upon motion of the defense.^[21]

Appellant insinuates that Convucar has gotten away too easily from culpability. By the records, and even by her own admission, she does appear to be as guilty as appellant and Santos. It is unfortunate that the Court has not been accorded in this appeal the opportunity to properly allow it to look into this matter.^[22]

WHEREFORE, the questioned judgment finding appellant Atanacio Luto y Limboy guilty beyond reasonable doubt of the crime of illegal recruitment in a large scale is **AFFIRMED**, except for that portion ordering the payment of indemnity in favor of Lawrence Maao which is **DELETED**. Costs against appellant.

SO ORDERED.

Padilla, (Chairman), Bellosillo, and Kapunan, JJ., concur.
Hermosisima, Jr., J., on leave.

^[1] Penned by Hon. Judge Romulo A. Lopez.

^[2] Record, pp. 33 & 24.

^[3] Record, p. 46.

^[4] *Rollo*, pp. 224-228.

^[5] Record, p. 167.

^[6] TSN, 19 December 1990, pp. 2-4.

^[7] TSN, 23 January 1991, p. 2.

^[8] *Rollo*, pp. 36-37.

^[9] See *People vs. Rayray*, 241 SCRA 1.

^[10] *People vs. Bautista*, 241 SCRA 216.

^[11] See Sec. 4, Rule 118, Revised Rules on Criminal Procedure.

^[12] TSN, 09 May 1990, pp. 20-21.

^[13] TSN, 22 May 1990, pp. 7-8.

^[14] TSN, 09 May 1990, pp. 5, 16.

^[15] See *Batiquin vs. Court of Appeals*, 258 SCRA 334; *Vda. de Ramos vs. Court of Appeals*, 81 SCRA 393.

^[16] *Rollo*, pp. 243-244.

^[17] *People vs. Turda*, 233 SCRA 702.

^[18] See *People vs. Tatum, Sr.*, 250 SCRA 313.

^[19] Information; Records, pp. 1-2.

^[20] According to Laurence Maa, he came to know Francisco Santos through a friend who had applied for a job with Santos. The latter asked Maa to fill up a bio-data sheet to determine whether he could qualify as a waiter in Singapore with \$350.00 as salary. Santos demanded the amount of ₱5,000.00 but Maa gave him only ₱3,000.00. However, it was Convucar who issued the receipt therefor (TSN, 17 July 1990, pp. 3-5).

^[21] TSN, 24 September 1990, p. 1.

^[22] See *People vs. Devaras*, 228 SCRA 482; *Lim vs. Court of Appeals*, 222 SCRA 279.