

FIRST DIVISION

[G.R. No. 120835-40. April 10, 1997]

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. TAN TIONG MENG
alias "TOMMY TAN", *accused-appellant*.**

DECISION

PADILLA, J.:

Accused-appellant Tan Tiong Meng alias "Tommy Tan" was charged with Illegal Recruitment in Large Scale and six (6) counts of estafa.

The information for large scale illegal recruitment reads:

"That on or about the period comprising June 1993 to August, 1993, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, using a business name RAINBOW SIM FACTORY, a private employment recruiting agency, and misrepresenting himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad with the ability to facilitate the issuance and approval of the necessary papers in connection therewith, when in fact he did not possess the authority or license from the Philippine Overseas Employment Administration to do so, did, then and there, wilfully, unlawfully and knowingly for a fee, recruit in a large scale and promise employment in Taiwan to the following persons, to wit:

Ernesto Orcullo y Nicolas - ₱15,000.00

Manuel Latina y Nicanor - ₱15,000.00

Neil Mascardo y Guiraldo - ₱15,000.00

Librado C. Pozas - ₱15,000.00

Edgardo Tolentino y Vasquez - ₱15,000.00

Gavino Asiman - ₱15,000.00

as in fact, the said persons gave and delivered the abovestated amount, respectively, to the herein accused who know fully well that the aforesaid persons could not be sent to Taiwan, to the damage and prejudice of said aforementioned private complainants."^[1]

The informations for estafa aver substantially the same allegations as follows:

"In Criminal Case No. 277-93:

That on or about June 7, 1993, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of false representations that he can secure an employment in Taiwan for Ernesto Orcullo y Nicolas as a factory worker induced the latter to entrust to him the amount of ₱15,000.00, in consideration of the promised employment, but the herein accused, once in possession of the amount, with intent to defraud, with grave abuse of confidence and without fulfilling his promise, did, then and there, wilfully, unlawfully and knowingly, misapply, misappropriate and convert the same to his own personal use and benefit and notwithstanding repeated

demands made upon him for the return of the amount, accused herein failed and refused to do so, to the damage and prejudice of Ernesto Orcullo y Nicolas in the amount of ₱15,000.00, Philippine Currency."^[2]

The other informations for estafa involve the following complainants and amounts.

- 1) Neil Mascardo - ₱15,000.00
- 2) Manuel Latina - ₱15,000.00
- 3) Ricardo Grepo - ₱20,000.00
- 4) Librado Pozas - ₱15,000.00
- 5) Gavino Asiman - ₱15,000.00

Accused-appellant pleaded not guilty to all the informations and all seven (7) cases were tried jointly.

On 12 May 1995, the Regional Trial Court, Branch 88, Cavite City rendered a decision^{*} the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 278-93, the Court finds the accused GUILTY beyond reasonable doubt of the crime of illegal recruitment in large scale defined and penalized under Article 38 of the Labor Code, as amended in relation to Article 39 thereof, and hereby sentences him to a penalty of life imprisonment, and to pay a fine of ₱100,000, without subsidiary imprisonment in case of insolvency;
2. In Criminal Case No. 277-93, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Estafa defined and penalized under Article 315 (2) (a) of the Revised Penal Code and hereby sentences him to a penalty of imprisonment of two (2) years as minimum, to six (6) years as the maximum; and to pay ERNESTO ORCULLO the sum of ₱15,000 as actual damages and ₱15,000 as moral and exemplary damages;
3. In Criminal Case No. 279-93, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Estafa defined and penalized under Article 315 (2) (a) of the Revised Penal Code, and hereby sentences him to a penalty of imprisonment of two (2) years as minimum, to six (6) years as the maximum, and to pay NEIL MASCARDO the sum of ₱15,000 as actual damages and ₱15,000 as moral and exemplary damages;
4. In Criminal Case No. 280-93, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Estafa defined and penalized under Article 315 (2) (a) of the Revised Penal Code and hereby sentences him to a penalty of imprisonment of two (2) years as minimum, to six (6) years as maximum; and to pay MANUEL LATINA the sum of ₱15,000 as actual damages, and ₱15,000 as moral and exemplary damages;
5. In Criminal Case No. 343-93, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Estafa defined and penalized under Article 315 (2) (a) of the Revised Penal Code, and hereby sentences him to a penalty of imprisonment of two (2) years as minimum, to six (6) years as maximum; and to pay RICARDO GREPO the sum of ₱20,000 as actual damages and ₱20,000 as moral and exemplary damages;
6. In Criminal Case No. 365-93, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Estafa defined and penalized under Article 315 (2) (a) of the Revised Penal Code, and hereby sentences him to a penalty of imprisonment of two (2) years as minimum, to six (6) years as maximum and to pay LIBRADO POZAS the sum of ₱15,000 as actual damages and ₱15,000 as moral and exemplary damages;
7. In Criminal Case No. 371-93, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Estafa defined and penalized under Article 315 (2) (a) of the Revised Penal

Code, and hereby sentences him to a penalty of imprisonment of two (2) years as minimum, to six (6) years as maximum; and to pay GAVINO ASIMAN the sum of ₱15,000 as actual damages and ₱15,000 as moral and exemplary damages.

In addition to the foregoing penalties, the accused being an alien, shall be deported without further proceedings after service of sentence.

In the service of his sentence, the accused shall be credited with the full time during which he underwent preventive imprisonment, provided he voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited with only four-fifths (4/5) thereof (Article 29, RPC, as amended by RA No. 6127 and BP Blg. 85).

SO ORDERED."^[3]

On appeal to this Court, accused-appellant assigns a single error allegedly committed by the trial court, thus:

"THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE OF ILLEGAL RECRUITMENT IN A LARGE SCALE UNDER CRIMINAL CASE NO. 278-93 AND ESTAFA IN CRIMINAL CASE NOS. 277-93, 279-93, 280-93, 343-93, 365-93, AND 371-93."^[4]

The case for the prosecution averred the following facts:

Gavino Asiman testified that a certain Jose Percival Borja who was a friend of his relative informed him that a job recruiter would be at Borja's house at Capt. Villareal St., Cavite City, in case anyone was interested in an overseas job in Taiwan. Asiman further recalled that on 18 August 1993, he and his friend, Librado Pozas went to Borja's house where they met the accused-appellant who told them he could get them jobs as factory workers in Taiwan with a monthly salary of ₱20,000.00. Accused-appellant required them to submit their passport, bio-data and their high school diploma as well as to pay ₱15,000.00 each for placement and processing fees. The former issued two (2) receipts which he signed in the presence of Asiman and Pozas.^[5] Accused-appellant assured them that they could leave for Taiwan twelve (12) days later. Asiman stated that they filed the complaints for illegal recruitment when they learned that accused-appellant was arrested for illegal recruitment activities.

Librado Pozas corroborated the testimony of Asiman. He added that Borja had no participation in the offense as his house was merely used as a meeting place by accused-appellant.

Neil Mascardo testified that he met accused-appellant through a friend and also through Jose Borja. Mascardo narrated that on 7 July 1993, he went to Borja's house to meet accused-appellant who assured him of getting him an employment in Taiwan at the Rainbow Ship Co., a marble and handicraft factory with a monthly salary of ₱20,000.00. He further testified that he paid ₱15,000.00 to accused-appellant for placement and processing fees as shown by a receipt signed by accused-appellant.^[6] Accused-appellant first told him he could leave on 15 July 1993. When he later inquired about his departure date, accused-appellant told him he could leave by the end of July 1993. After July, accused-appellant told him he would leave on 15 August 1993 together with his uncle Manuel Latina. When he failed to leave on the last mentioned date and accused-appellant told him he would leave on 28 August 1993, Mascardo told accused-appellant he wanted his money back. Accused-appellant told him that a refund was not possible since he had already sent the money to his brother-in-law in Taiwan. Mascardo decided to file a complaint for illegal recruitment on 28 August 1993. On 31 August 1993, he, Manuel Latina and

Ernesto Orcullo went to the Philippine Overseas Employment Administration (POEA) where they found out that accused-appellant was not a licensed or authorized overseas recruiter.

Ricardo Grepo testified that on 11 August 1993, he went to Borja's house where he met with accused-appellant who received from him ₱15,000.00 for placement and processing fees. Accused-appellant told him he could get a job as a factory worker in Taiwan with a monthly salary of ₱20,000.00. Accused-appellant gave him a signed typewritten receipt^[7] and assured him he could leave for Taiwan on 28 August 1993. Accused-appellant later told him that his visa was not yet ready and he thereafter learned from Jose Borja that accused-appellant had been arrested for illegal recruitment activities. Grepo filed his complaint on 30 August 1993.

Lucita Mascardo-Orcullo testified that she is the wife of Ernesto Orcullo, one of the complainants. She stated that on 7 June 1993, she went with her husband to Borja's house where they gave Ernesto's passport and other papers to accused-appellant who assured them that Ernesto could get a job as a factory worker in Taiwan. Lucita further averred that they paid ₱15,000.00 to accused-appellant for placement and processing fees as shown by a receipt signed by accused-appellant.^[8]

Dionisa Latina testified that she is the wife of complainant Manuel Latina. She stated that on 9 June 1993, she and her husband went to Borja's house to meet accused-appellant who told them that Manuel could get a job at a toy factory in Taiwan. They paid ₱15,000.00 to accused-appellant who issued a receipt^[9] and assured them Manuel could leave on 30 June 1993. After said date, accused-appellant kept on promising them that Manuel would be able to leave for Taiwan. The promises were never fulfilled.

Angelina de Luna, a Senior Labor Employment Officer of the POEA, testified that their office received a subpoena from the trial court requiring the issuance of a certification stating whether or not Tan Tiong Meng alias Tommy Tan was authorized by the POEA to recruit workers for overseas employment. De Luna presented a certification signed by Ma. Salome S. Mendoza, Chief, Licensing Branch of the POEA dated 7 July 1994 stating that accused-appellant is neither licensed nor authorized by the POEA to recruit workers for overseas employment.^[10]

Accused-appellant Tan Tiong Meng alias Tommy Tan was the only witness for the defense. He testified that he is a Singaporean national married to Estelita Oribiana, a Filipino-Chinese. He added that he works as a sales representative for Oribiana Laboratory Supplies, a company owned by his brother-in-law which sells laboratory equipment to various schools in Cavite.

Tan alleged that Jose Percival Borja was introduced to him by a certain Malou Lorenzo at the office of their laboratory supplies in Sta. Cruz, Manila. Lorenzo allegedly told him that Borja needed his help in processing job applications for abroad. When he talked to Borja, the latter told him that he could help in convincing applicants that they could work in Taiwan. Borja offered him a ₱1,000.00 commission from the amount paid by each applicant.

Tan admitted having received money from all the complainants but he said that all the money was turned over to Borja after deducting his commission. Tan likewise admitted that he and his wife are respondents in about seventy (70) cases of estafa and illegal recruitment but that it was Lorenzo who was the main recruiter.

The prosecution presented Jose Percival Borja as a rebuttal witness. Borja testified that Tan was introduced to him by Malou Lorenzo. Accused-appellant told him that they were direct recruiters for jobs in Taiwan and that he has relatives there. Tan's offer was attractive considering that he charged only ₱15,000.00 while the prevailing rate for job placements was ₱45,000.00-₱60,000.00. Borja added that he even told his friends and relatives to apply with

accused-appellant. Tan had told him that he sometimes comes to Cavite to deliver laboratory equipment. When Tan called him up to tell him he was in the area, Borja told him to come to his house. It was at his house where Tan accepted money from several job applicants most of whom he (Borja) did not know. When Borja realized that Tan had cheated the applicants, he helped set up a trap and had Tan arrested by his neighbor Tony Guinto, a Cavite City policeman. Borja later learned that Tan had victimized several people in Batangas and Metro Manila.

In the present appeal, accused-appellant would have the Court believe that he merely acted as a collector of money for the principal recruiter Borja who made the representations that he (Tan) could give the applicants jobs in Taiwan. He maintains that he merely received commissions from the transactions and that the deceit was employed not by him but by Borja who introduced him as a job recruiter.

The Court is not impressed by such bizarre pretensions.

Several revealing circumstances belie the version for the defense, namely:

1. Neil Mascardo testified that accused-appellant told him he could no longer return his money because he had already sent it to his brother-in-law Lee Shut Kua in Taiwan;
2. All the receipts issued to complainants were signed by accused-appellant;
3. Tan admitted that he and his wife are respondents in about seventy (70) cases for estafa and illegal recruitment in Batangas; ^[11]
4. Tan executed a sworn statement dated 13 September 1993 before SPO2 Eduardo G. Nover, Jr. in the presence of his lawyer Atty. Florendo C. Medina wherein he admitted receiving ₱15,000.00 from Gavino Asiman; ^[12]
5. The complainants all pointed to Tan and not Borja as the one who had represented to them that he could give them jobs in Taiwan.

There is no showing that any of the complainants had ill-motives against Tan other than to bring him to the bar of justice. The testimonies of the witnesses for the prosecution were straight-forward, credible and convincing. The constitutional presumption of innocence in Tan's favor has been overcome by proof beyond reasonable doubt and we affirm his convictions.

The Labor Code defines recruitment and placement thus:

"(A)ny 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." ^[13]

It is clear that accused-appellant's acts of accepting placement fees from job applicants and representing to said applicants that he could get them jobs in Taiwan constitute recruitment and placement under the above provision of the Labor Code.

The Labor Code prohibits any person or entity, not authorized by the POEA, from engaging in recruitment and placement activities thus:

"(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 x x x x

(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."^[14]

The POEA having certified that accused-appellant is not authorized to recruit workers for overseas employment, it is clear that the offense committed against the six (6) complainants in this case is illegal recruitment in large scale punishable under Article 39 (a) of the Labor Code with life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00).

Accused-appellant's guilt of six (6) separate crimes of estafa has likewise been proven.

The argument that the deceit was employed by Jose Percival Borja and not by accused-appellant is specious, even ridiculous. All the complainants agreed that it was accused-appellant Tan who assured them of jobs in Taiwan. The assurances were made intentionally to deceive the would-be job applicants to part with their money.

In *People v. Calonzo*,^[15] the Court reiterated the rule that a person convicted for illegal recruitment under the Labor Code can be convicted for violation of the Revised Penal Code provisions on estafa provided the elements of the crime are present. In *People v. Romero*^[16] the elements of the crime were stated thus:

- a) that the accused defrauded another by abuse of confidence or by means of deceit, and
- b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

Both elements have been proven in this case.

One final point. The names of a certain Malou Lorenzo and Chit Paulino have been mentioned by accused-appellant as being illegal recruiters whom he contends are either the main recruiters or their agents. It also appears that accused-appellant's wife Estelita Oribiana who is a co-accused in the other illegal recruitment complaints may be a part of a large syndicate operating in Batangas, Cavite and Metro Manila. There is nothing on the record to show that attempts were made to investigate these three (3) people.

The campaign and drive against illegal recruiters should be continuous and unrelenting. Government should not be content with bringing to justice but a number of these diabolic denizens of society who thrive on the dreams of our countrymen of having a better life. Only when the last of their tribe has been convicted and punished can the government rightfully claim that it has fulfilled the constitutional mandate to protect the rights and promote the welfare of workers.^[17]

WHEREFORE, the judgment appealed from finding accused-appellant Tan Tiong Meng alias "Tommy Tan" guilty of illegal recruitment in large scale and six (6) counts of estafa, is hereby AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.
Hermosisima, Jr., J., on leave.

^[1] *Rollo*, p. 10.

^[2] *Rollo*, p. 14.

^[3] *Rollo*, pp. 35-37.

^[4] *Rollo*, p. 51.

^[5] Exhibits "B" and "I", Original Records.

^[6] Exhibit "D", Original Records.

^[7] Exhibit "G", Original Records.

^[8] Exhibit "L", Original Records.

^[9] Exhibit "M", Original Records.

^[10] Exhibit "K", Original Records.

^[11] TSN, 9 November 1994, p. 15.

^[12] Exhibit "A", Original Record.

^[13] Article 13(b).

^[14] Article 38, Labor Code.

^[15] G.R. Nos. 115150-55, 27 September 1996.

^[16] G.R. No. 97044-46, 6 July 1994, 233 SCRA 713.

^[17] Constitution, Article II, Sec. 18.