FIRST DIVISION

[G.R. No. 123906. March 27, 1998]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs*. ROWENA HERMOSO BENEDICTUS, *accused-appellant*.

D E C I S I O N

DAVIDE, JR., *J.*:

In an informationi[1]

1 filed on 20 October 1993 before the Regional Trial Court of Malolos, Bulacan, and assigned to Branch 76 thereof, the accused-appellant was charged with the crime of illegal recruitment under Article 38 in relation to Articles 34 and 39 of the Labor Code of the Philippines, as amended, allegedly committed as follows:

> That in or about the month of December, 1992, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a non-licensee or non-holder of authority from the Department of Labor and Employment to recruit and/or place workers under local or overseas employment, did then and there wilfully, unlawfully and feloniously, with false pretenses, undertake illegal recruitment activities, placement or deployment for a fee of Napoleon dela Cruz, Ernesto Vasquez, Evangeline Magpayo, Crisanta Vasquez, Evelyn de Dios and Mercy Magpayo for overseas employment.
>
> Contrary to law.

Upon arraignment, the appellant entered a plea of not guilty.

At the trial on the merits, the prosecution presented as witnesses the complaining victims Napoleon de la Cruz, Crisanta Vasquez, Evelyn de Dios, Mercy Magpayo, and Evangeline Magpayo, as well as Barangay Captain Emerlito Calara. The defense had only the appellant as its witness.

The Office of the Solicitor General summarized in the Appellees Briefii[2] the evidence for the prosecution as follows:

> On December 15, 1992, complainants Napoleon de la Cruz, Crisanta Vasquez, Evelyn de Dios, Mercy [Magpayo] and Evangeline Magpayo met appellant in the house of Crisanta Vasquez located at Bambang, Bulacan. There, appellant told them that she was recruiting workers for deployment in Taiwan. She promised them that they would be sent to Taiwan on January 15, 1993. Napoleon dela

> Cruz gave the amount of P2,700.00 as placement fees. He also submitted the requirements like marriage contract, employment certificate and six (6) copies of 2x2 ID pictures (TSN, August 4, 1994, pp. 2-11). Crisanta Vasquez gave the amount of P1,500.00 as processing fee since she already had a passport (TSN, November 29, 1994, p. 6). Evelyn de Dios gave the total amount of P4,400.00 representing P3,000.00 as her and her husbands placement fees and P1,400.00 for their passports (TSN, November 29, 1994, pp. 20-21). Mercy [Magpayo] gave P2,600.00 representing placement fee, passport and others (TSN, November 29, 1994, pp. 29-30). Evangeline Magpayo gave P2,350 (*Ibid*. p. 37). When appellant failed to send complainants to Taiwan on the promised date, January 15, 1993, complainants, together with appellant, went to the Barangay Hall and in front of the Barangay Captain, appellant signed a document (Exhs. C and 1) and promised to return the money to them.
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> Complainants, on March 29, 1993, signed a Magkakasamang Salaysay (Exhs. B to B-2) and filed a complaint before the Fiscals office (TSN, August 11, 1994, p. 3). In support of their complaint, they submitted a certification from the POEA dated July 21, 1994 (Exh. A) to the effect that appellant, in her personal capacity, was neither licensed nor authorized to recruit workers for overseas employment (TSN, August 4, 1997, pp. 11-12).iii[3]

We adopt this summary as our own, as it is fully supported by the transcripts of the stenographic notes of the testimonies of the witnesses for the prosecution.

Upon the other hand, the appellant denied having recruited the complainants. She claimed that she had only borrowed money from them. In support of her claim, she presented the Affidavit of Desistanceiv[4] executed by the complainants when she and her sister had paid them her debt.

The trial court gave full credit to the version of the prosecution and found unmeritorious appellants defense. It noted that in appellants statement before Barangay Captain Emerlito Calara,v[5] she had promised to return to the complainants the money she had taken from them. There was nothing in said statement that showed that such money was a debt. As to the Affidavit of Desistance, the trial court rejected the same, for it was signed by the complainants after all of them testified in court and were paid by the appellant.

The trial court likewise observed that the appellant had failed to refute the statement in the certification issued by the POEA that she was not licensed to recruit workers for overseas employment, and that she had even admitted in open court that she was not licensed to do so.

Accordingly, in its decision of 7 February 1996,vi[6] the trial court convicted the appellant of the crime of illegal recruitment in large scale and sentenced her to suffer life imprisonment and to pay a fine of P100,000.

The appellant seasonably filed her notice of appeal. In her Appellants Brief,vii[7] she imputes upon the trial court the commission of this single error, to wit:

> THE TRIAL COURT GRAVELY ERRED IN FINDING [HER] GUILTY OF THE CRIME OF ILLEGAL RECRUITMENT IN A LARGE SCALE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

She anchors her appeal chiefly on the Affidavit of Desistance executed by the complainants. She claims that it creates serious doubts as to her liability and proves that she was not engaged in recruitment activities. Finally, she alleges that the POEA certification is a mere fabrication and should not have been given any probative value; and, in any event, the prosecution failed to prove that she had no license or authority to recruit workers.

The Office of the Solicitor General supports the trial courts decision and prays that the assailed decision be affirmed *in toto*.

The appeal is without merit.

The Affidavit of Desistance deserves scant consideration. In the first place, it was executed after the complainants testified under oath and in open court that they were offered job placements abroad and were made to pay placement or processing fees. In the second place, the affidavit did not expressly repudiate their testimony in court on the recruitment activities of the appellant. In fact, the appellant admitted that the complaining witnesses executed it after she had paid them back the amounts they had given her.viii[8] The affidavit was more of an afterthought arising from personal consideration of pity.

We have said before that courts should not attach persuasive value to affidavits of desistance, especially when executed as an afterthought.ix[9] Moreover, it would be a dangerous rule for courts to reject testimonies solemnly taken before the courts of justice simply because the witnesses who had given them later on changed their mind for one reason or another, for such rule would make solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witnesses.x[10] It must always be remembered that a criminal offense is an outrage to the sovereign State. To the State belongs the power to prosecute and punish crimes. While there may be a compromise upon the civil liability arising from an offense, such compromise shall not extinguish the public action for the imposition of the legal penalty.xi[11]

Finally, the appellant failed to refute the testimony of Barangay Captain Calara that the complainants filed the case against her because she recruited them and later reneged on her assurances.

The challenge against the POEA certification (Exh. A) that the appellant was neither licensed nor authorized to recruit workers for overseas employment must likewise fail.

The trial court correctly ruled that the said certification is a public document issued by a public officer in the performance of an official duty; hence, it is a *prima facie* evidence of the facts therein stated pursuant to Section 23 of Rule 132 of the Rules of Court. In any event, as said court noted, the appellant admitted in open court that she was not licensed or authorized to recruit workers.xii[12]

Recruitment is defined in Article 13(b) of the Labor Code 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.

Illegal recruitment is defined in Article 38 of the Labor Code 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 officers 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.
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> 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.

It can be gleaned from the foregoing that there is illegal recruitment in large scale when a person (a) undertakes any recruitment activity defined under Article 13(b) or any prohibited practice enumerated under Article 34 of the Labor Code; (b) does not have a license or authority to lawfully engage in the recruitment and placement of workers; and (c) commits the same against three or more persons, individually or as a group.xiii[13] Paragraph (b) of Article 38, explicitly provides that illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage. Under Article 39 of the Labor Code the penalty of life imprisonment and a fine of P100,000 shall be imposed if illegal recruitment constitutes economic sabotage.

The appellant promised the five complainants that there were jobs available for them in Taiwan. She exacted money from them for alleged passports, as well as for placement fees. There was a certification from the POEA that the appellant was not licensed to recruit workers for overseas job placements, which she likewise admitted in her testimony. All these point to the inescapable conclusion that she was engaged in illegal recruitment in large scale. Thus, the trial court correctly found the appellant guilty beyond reasonable doubt of the crime of illegal recruitment in large scale. The penalty imposed upon her is in accordance with Article 39 of the Labor Code.

WHEREFORE, the instant appeal is DISMISSED and the decision of the Regional Trial Court of Malolos, Bulacan, Branch 76, in Criminal Case No. 3363-M-93 is hereby AFFIRMED *in toto.*

SO ORDERED.

Bellosillo, Vitug, Panganiban and Quisumbing, JJ., concur.

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i[1] Original Record (OR)

ii[2] *Rollo*, 92-103.

iii[3] *Id.*, 95-97.

iv[4] Exh. D, also Exh. 2; OR, 96.

v[5] Exh. C, also Exh. 1; OR, 61.

vi[6] Per Judge Roland B. Jurado. OR, 105-111; *Rollo*, 33-39.

vii[7] *Rollo*, 48-55.

viii[8] TSN, 25 October 1995, 9.

ix[9] Castillo *v.* Calanog, 199 SCRA 75, 81 [1991]; People *v.* Ballabare, 264 SCRA 350, 363 [1996].

x[10] People *v.* Mangulabnan, 200 SCRA 611, 623 [1991]; People *v.* Romero, 224 SCRA 749, 757 [1993]; People *v.* Agbayani, G.R. No. 122770, 16 January 1998.

xi[11] People *v.* Romero, *supra* note 10 at 757-758 citing Article 2034 of the Civil Code.

xii[12] TSN, 25 October 1995, 10.

xiii[13] People *v.* Comia, 236 SCRA 185, 193 [1994]; People *v.* Benemerito, 264 SCRA 677, 691-692 [1996]; People *v.* Buemio, 265 SCRA 582, 597 [1996].