

FIRST DIVISION

[G.R. No. 122508. June 26, 1998]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. Elvis Sanchez, *accused-appellant*.

DECISION

VITUG, J.:

This appeal assails the 24th July 1995 decision [i\[1\]](#) of the Regional Trial Court of Baguio City, Branch 6, finding appellant Elvis Sanchez guilty beyond reasonable doubt of the crimes of illegal recruitment in large scale (Criminal Case No. 12357-R) and three (3) counts of estafa (Criminal Cases No. 12359-R, No. 12360-R and No. 12362-R) and sentencing him accordingly.

Appellant was charged, on 25 November 1993, with violation of Article 38(b) of Presidential Decree No. 442 (Labor Code), as amended, for illegal recruitment in large scale. The information averred -

That during the period from the month of November, 1992, to March 8, 1993, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, representing himself to have the capacity to contract, enlist and hire and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and feloniously for a fee, recruit and promise employment/job placement to the following persons:

- "1. Alice G. Kimay
- "2. Veronica Filog
- "3. Aaron John Acena
- "4. Nancy Fesset
- "5. Jerry Akia

"without first securing or obtaining license or authority from the proper government agency. [ii\[2\]](#)

Likewise filed against appellant on the same day (25 November 1993) were the corresponding five cases of estafa. Except for the names of the complainants and the amounts involved, the informations substantially contained like allegations to the effect -

That on or about the 8th day of March, 1993, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud one JERRY AKIA by way of false pretenses, which are executed prior to or simultaneously with the commission of the fraud, as follows, to wit: the accused knowing fully well that he/she/they is/are not

authorized job recruiters for persons intending to secure work abroad convinced said JERRY AKIA and pretended that he/she/they could secure a job for him/her abroad, for and in consideration of the sum of P15,000.00 when in truth and in fact they could not; the said JERRY AKIA deceived and convinced by the false pretenses employed by the accused parted away the total sum of P15,000 in favor of the accused, to the damage and prejudice of the said JERRY AKIA in the aforementioned amount of FIFTEEN THOUSAND PESOS, (P15,000.00), Philippine Currency. ⁱⁱⁱ[3]

The accused in all the charges brought up against him pleaded not guilty when arraigned. Since the cases involved a common factual background, a joint trial was conducted. Pending trial and before they could be put to the witness stand, Nancy Fesset and Veronica Filog, who were among those who filed Criminal Case No. 12357-R and the complainants in, respectively, Criminal Case No. 12358-R and Criminal Case No. 12361-R, left for abroad.

Alice Kimay, the 54-year-old complainant in Criminal Case No. 12357-R and Criminal Case No. 12360-R, used to be an elementary school teacher in Kalinga, Apayao. She left for Italy in 1985 to work as a baby-sitter and there stayed until 1990 when she returned to the Philippines. In November 1992, she learned from a certain Estela that a recruiter, named Elvis Sanchez, was in town recruiting workers for Taiwan. Alice passed on the information to her nephews and nieces, her co-complainants in Criminal Case No. 12357-R, namely, Aaron John Acena, Jerry Akia, Veronica Filog and Nancy Fesset. Being all interested in gaining employment abroad, the group went to see appellant at the Leisure Lodge in Magsaysay Avenue, Baguio City, where he was billeted. Appellant assured complainants that he could secure jobs for them abroad if they would each pay a placement fee and submit pertinent papers, like their bio-data, NBI clearances, medical certificates and passports, required for foreign travel. The applicants requested appellant to instead secure for them the passports upon their submission of NBI clearances and medical certificates.

Alice, who had applied for a domestic helper job in Taiwan, was able to deliver to appellant the required papers. Alice paid the placement fee of sixteen thousand pesos (P16,000.00) to appellant in two (2) installments evidenced by two (2) receipts. The first receipt, ^{iv}[4] dated 09 November 1992, was for the amount of five thousand pesos (P5,000.00) and the second receipt, ^v[5] dated 17 January 1993, was for eleven thousand pesos (P11,000.00). The receipts were both issued in Makati, Metro Manila. Appellant assured Alice that she would be able to leave by December 1992. Seeing that appellant had reneged on his promise to send her to Taiwan, Alice went to see him in his residence at Pateros, Metro Manila, where he merely gave another promise. Tired of appellants failed assurances, Alice and the other complainants ultimately went to the Philippine Overseas Employment Administration ("POEA") office in Magsaysay Avenue, Baguio City, where they were to learn that appellant was not a licensed recruiter. The complainants executed a joint affidavit ^{vi}[6] subscribed and sworn to by Atty. Justinian O. Licnachan before whom the corresponding criminal charges against appellant were submitted.

Jerry Akia, 28-year-old complainant in Criminal Case No. 12357-R and Criminal Case No. 12359-R, corroborated the testimony of Alice Kimay. Like the rest of the group, he also met with appellant at the Leisure Lodge in Baguio City. Along with his application for an electrician job in Saudi Arabia, he handed over to appellant five thousand pesos (P5,000.00) in partial payment of the required placement fee. Jerry later paid the balance of ten thousand pesos (P10,000.00) in appellants office in Guadalupe, Makati, Metro Manila. The receipt for the first payment was turned over to him only on 02 January 1993.vii[7] The receipt for the second installment was unfortunately lost by his father. Appellant did not live up to his promise to send Jerry abroad despite his submission of all required documents.

Aaron John Acena, 24-year-old complainant in Criminal Case No. 12357-R and Criminal Case No. 12362-R, came to know appellant, through Alice Kimay. He too went to see appellant at the Leisure Lodge in Magsaysay Avenue, Baguio City. The placement fee in his case was pegged at eighteen thousand pesos (P18,000.00). On 08 January 1993, Aaron went with Alice to see appellant in his office in Guadalupe, Makati, where he paid the amount of eighteen thousand one hundred seventy pesos (P18,170.00).viii[8] Aaron was thereupon told by appellant to follow up his flight booking with the Philippine Airlines. Aaron, indeed, was twice booked with the airline company, the first on 11 January 1993 and the second on 14 January 1993 but that was just about all. His departure for abroad never materialized. In the meantime, Aaron stayed with appellant in Pateros until March 1993. After a long wait and numerous follow-ups, Aaron decided to return to Baguio City. Ultimately, Aaron, along with the other complainants went to the POEA office in Baguio City and filed their complaint against appellant. After his arrest, appellant, his wife and his brother talked with Aaron about possibly settling the case.

The prosecution submitted a certification,ix[9] dated 22 November 1993, issued by Jose D. Matias, Attorney II, of the POEA Regional Extension Unit in Baguio City, to the effect that ELVIS SANCHEZ per existing and available records from (the) Office is not licensed nor authorized to recruit workers for overseas employment in the City of Baguio or any part of the Region. Matias attested in open court to the veracity of the certification.

Testifying in his defense, appellant denied having tried to recruit complainants for overseas employment. He asserted that he was not in Baguio City, let alone billeted in Leisure Lodge, during the period from October to December 1992. He said that his mother, Eutropia Sanchez, was at the time confined at the Philippine Heart Center whom he had to visit daily. He did meet complainants Alice Kimay, Jerry Akia and Aaron John Acena some time in September or October 1992 when they requested him to allow them to stay overnight at his house in Hermoso, Pateros, Metro Manila. After that, appellant saw complainants only during the interment of his mother. To help establish his claim that he was not billeted at the Leisure Lodge during the last quarter of 1992, appellant presented Caroline Castillo, hotel operations manager of Prime Hotel, who submitted to the court the hotel registry book for the period of October to December 1992.x[10] Caroline was connected with Leisure Lodge from 1986 up to May 1992 after

which she was transferred to the Prime Hotel even while maintaining her position as an overall supervisor in Leisure Lodge that required her to periodically check on the front desk clerk and the supervisor.

Assessing the evidence, the trial court found appellant guilty beyond reasonable doubt of illegal recruitment in large scale and of three counts of estafa. It adjudged:

Wherefore, judgment is rendered as follows:

"1. In Crim. Case No. 12357-R, the Court Finds the accused Elvis Sanchez guilty beyond reasonable doubt of the crime of Illegal Recruitment in a large scale as defined and penalized under Article 38 (b) in relation to Article 39 of PD 442 as amended by PD 2018 and sentences him to Life Imprisonment and to pay a Fine of P100,000 and to pay the costs.

"2. In Crim. Case Nos. 12359-R, 12360-R and 12362-R (3 counts) the Court Finds accused Elvis Sanchez guilty beyond reasonable doubt of the crime of Estafa as charged in each of the Informations in the aforesaid 3 cases as defined and penalized under Article 315 first paragraph in relation to No. 2 (a) of the same article and sentences him, applying the Indeterminate Sentence Law, to an imprisonment ranging from six (6) months and one (1) day of prision correccional as Minimum to six (6) years, eight (8) months and twenty (20) days of Prision Mayor as Maximum in each of the aforesaid 3 cases; to indemnify the offended parties, Jerry Akia the sum of P15,000 in Crim. Case 12359-R; Alice Kimay the sum of P16,000 in Crim. Case No. 12360-R and Aaron John Acena the sum of P18,170.00 in Crim. Case No. 12362-R as actual damages without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused Elvis Sanchez being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

"3. In Crim. Case No. 12358-R (Nancy Fesset, complainant) and Crim. Case No. 12361-R (Veronica Filog, complainant), the prosecution having failed to prove his guilt beyond reasonable doubt, the Court hereby acquits Elvis Sanchez of the offense of estafa charged in said Informations. Cost de oficio.

"The City Jail Warden is directed to release accused in so far as Crim. Case No. 12358-R and 12361-R only unless held for other cases.

"SO ORDERED.xi[11]

The Court finds no merit in the instant appeal.

Appellant argues that the trial court did not acquire territorial jurisdiction over the criminal cases since he has been able to convincingly prove his having been in Manila, not in Baguio City, at the time of the alleged commission of the offenses charged

against him. He brands the testimony given by the prosecution witnesses as being inconsistent, poorly chorused and inadequately coached and rues the fact that the trial court has merely considered the "inconsistencies" to be mere lapses in memory and minor discrepancies. This invocation is indeed one fine way of putting up, in reality, the defense of *alibi* for, in this so-called issue of "territorial jurisdiction over the cases," appellant actually is saying that he could not have met the complainants in Baguio City for the latter's possible deployment abroad because it would not be possible for him to be in two places at the same time.

The defense presented Caroline Castillo to state that appellant was never registered at the Leisure Lodge in Baguio City. Such fact, even if true, did not necessarily mean that appellant was not in Baguio City, nor at the lodge, at the time in question. Caroline herself said that she was no longer assigned at the Leisure Lodge from October to December 1992 and that, although she still supervised the front desk clerk, she was not always physically present thereat which could explain why she might have failed to recognize appellant. She admitted, moreover, that the registration of guests in the hotel registry did not require the presentation of identification cards and that the front desk clerk could instead merely rely on the name given by the guest.

Appellants own testimony to establish an *alibi* is itself feeble. The fact that his sick mother has been confined at the Philippine Heart Center during the "crucial months" of October to December 1992 could not have rendered highly unlikely, certainly not at all impossible, his taking a trip to Baguio City and briefly staying thereat.

Denial and *alibi*, if not substantiated by clear and convincing evidence, are negative and self-serving evidence bearing no real weight in law and jurisprudence.^{xii[12]} *Alibi* is one of the weakest defenses that can be resorted to by an accused not only because it is inherently unreliable but also because it can easily be fabricated.^{xiii[13]} It is practically worthless in the face of positive identification of the accused to be the perpetrator of a crime.^{xiv[14]} To be convincing, the *alibi* should preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of its commission.^{xv[15]}

Appellant has not disputed the fact that he had no previous quarrel with any of the complainants. It is well-settled that if the defense fails to prove any nefarious motive on the part of one who testifies against an accused, the presumption is that the witness has not been so moved and that his testimony should thereby be accorded faith and credit.^{xvi[16]} Most importantly, when an appeal knocks on the issue of credibility of witnesses, the chances are, unless strong compelling reasons dictate otherwise, the appellate court would rely, rather than not, on the evaluation made by the trial court which is in an excellent position to do that assessment.

The Court must thus take issue against appellant's contention that he did not undertake recruitment activities in Baguio City. By procuring workers in Baguio City and promising them employment overseas, appellant has maintained a recruitment activity thereat. It is immaterial that acts subsequent to the procurement of workers, such as receiving

placement fees and requiring documents for employment, are done in another place. Appellant should not forget that the latter acts would not have taken place if it is not for the singular act of enlisting workers and assuring them jobs in foreign shores.

Appellant bewails the testimony of the complainants. The "inconsistencies" he refers to pertain merely to the description of the complainants' relationship with one another. Alice Kimay has said that the other persons recruited by appellant are her nephews and nieces. Jerry Akia has stated, however, that while he would call Alice auntie, she really is not his aunt but a neighbor for a long time.^{xvii[17]} On the other hand, Aaron John Acena has testified that Alice's husband is a distant relative of his mother and quite close to Alice.^{xviii[18]} It is not a strange custom, and the Court can take judicial notice, that one would call or refer to another as a brother, an uncle or an aunt, a nephew or niece, either as a sign of respect or of close association. Furthermore, the matter is too insignificant to affect the credibility of the witnesses. What is really important is that the witnesses have been able to prove beyond reasonable doubt the case for illegal recruitment and to positively identify the accused as being the offender of the law.^{xix[19]}

Article 13(b) of the Labor Code defines recruitment and placement as 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. The essential elements then of the crime of illegal recruitment in large scale are that: (1) the accused engages in acts of recruitment and placement of workers defined under Article 13(b) 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 the securing of a license or an authority to recruit and deploy workers, either locally or overseas, and (3) the accused commits the unlawful acts against three or more persons, individually or as a group.^{xx[20]}

The series of acts done by appellant of promising complainants employment abroad, instructing them to comply with the documentary requirements therefor, requiring them to undergo tests such as the trade test undergone by Jerry Akia, using airline procedures for checking reservations and demanding the payment of fees for his services, have created an impression upon complainants that he is capable of providing them with work abroad.^{xxi[21]} It is not disputed that appellant has had no license or authority to engage in job recruitment. A license is that which is issued by the Department of Labor and Employment ("DOLE") authorizing a person or entity to operate a private employment agency, while an authority is that issued by the DOLE entitling a person or association to so engage in recruitment and placement activities as a private recruitment agency.^{xxii[22]} It is the lack of the necessary license or authority that renders the recruitment activity unlawful or criminal.^{xxiii[23]} Appellant is neither licensed nor authorized to recruit workers in Baguio City or any part of the Region for overseas work per the uncontroverted certification of the POEA to that effect. More than three complainants have come out to denounce appellants illegal venture.

Under Article 39 of the Labor Code, the offense of illegal recruitment in large scale, a crime deemed to involve economic sabotage, is punishable by life imprisonment and a fine of one hundred thousand pesos (P100,000.00). Conviction for the crime of illegal recruitment under the Labor Code does not preclude punishment under other statutes if some other crimes or felonies are committed in the process.^{xxiv[24]} Thus, a person convicted for illegal recruitment may also be convicted for the crime of estafa. The principal reason for this is that the former offense is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is an additional element for conviction.^{xxv[25]}

The elements of estafa in general are: (1) that the accused has defrauded another by abuse of confidence or by deceit, and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.^{xxvi[26]} These elements are present in the case at bench - (a) appellant has deceived complainants into believing that he is capable of providing them with work abroad, and (b) that, by reason of his false assurances, complainants have parted with money to their damage and prejudice - that thereby can render appellant liable for estafa under paragraph 2(a), Article 315, of the Revised Penal Code. This law imposes the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos. The amount involved in each of the three cases for estafa is within the above range. Under the Indeterminate Sentence Law, the maximum term of the penalty shall be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code, and the minimum shall be within the range of the penalty next lower to that prescribed for the offense.^{xxvii[27]} There being no mitigating or aggravating circumstances, the trial court did not err in imposing the indeterminate sentence of six (6) months and one (1) day of *prision correccional* minimum, as minimum penalty, to six (6) years eight (8) months and one (1) day of *prision mayor* minimum, as maximum penalty, for each of the three (3) counts of estafa.

WHEREFORE, the appealed decision of the trial court finding appellant Elvis Sanchez guilty beyond reasonable doubt of the crimes of illegal recruitment in large scale and three counts of estafa and sentencing him accordingly, as well as ordering the payment to the complainants of actual damages, is AFFIRMED. Costs against appellant.

SO ORDERED.

Davide, Jr., Bellosillo, Panganiban, and Quisumbing, JJ. concur.

ii[2] Rollo, p. 7.

iii[3] Rollo, p. 9.

iv[4] Exh. B, Record of Criminal Case No. 12357-R, p. 98.

v[5] Exh. C, *ibid.*

vi[6] Exh. D, *ibid.*, p. 96.

vii[7] Exh. E, *ibid.*, p. 99.

viii[8] Exh. F, *ibid.*, p. 100.

ix[9] Exh. A.

x[10] Exhs. 2 to 2-E, *ibid.*, pp. 101-106.

xi[11] Rollo, pp. 40-41.

xii[12] *People vs. Apongan*, 270 SCRA 713.

xiii[13] *People vs. Maozca*, 269 SCRA 513.

xiv[14] *People vs. Avillano*, 269 SCRA 553.

xv[15] *Ibid.*

xvi[16] *People vs. Salvame*, 270 SCRA 766; *People vs. Buemio*, 265 SCRA 582.

xvii[17] TSN, February 1, 1995, pp. 20-21.

xviii[18] TSN, February 9, 1995, p. 4.

xix[19] *People vs. Maozca*, *supra*.

xx[20] *Ibid.*, at p. 523.

xxi[21] *People vs. De Leon*, 267 SCRA 644, 651; *People vs. Benemerito*, 264 SCRA 677.

xxii[22] *Ibid.*

xxiii[23] *People vs. Seoron*, 267 SCRA 278.

xxiv[24] People vs. Calonzo, 262 SCRA 534, reiterating People vs. Turda, 233 SCRA 702.

xxv[25] People vs. Benemerito, *supra*.

xxvi[26] Ibid.

xxvii[27] Sec. 1, Act No. 4103, as amended.