

FIRST DIVISION

[G.R. No. 123162. October 13, 1998]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. NENITA T. JUEGO and WILFREDO GAERLAN, *accused*, NENITA T. JUEGO, *accused-appellant*.

DECISION

BELLOSILLO, J.:

NENITA JUEGO and WILFREDO GAERLAN were charged before the Regional Trial Court of Manila with Illegal Recruitment in Large Scale by twenty-six (26) individual complainants.^{i[1]} In addition, Nenita and Wilfredo were also charged with three (3) counts of Estafa by three (3)^{ii[2]} of the twenty-six (26) offended parties. Only Nenita stood trial as Wilfredo has eluded arrest and remains at large.

Of the twenty-six (26) complainants, only six (6)^{iii[3]} pursued the illegal recruitment case. Five (5)^{iv[4]} complaining witnesses were duly notified of the scheduled hearing but refused to sign the subpoena due to lack of interest to prosecute the case. The rest of the complainants were likewise duly notified but failed to appear and testify.^{v[5]}

In her defense, Nenita contended that the alleged recruiting firm, *AJ International Trade Link*, was a sole proprietorship of her husband Abelardo who, before his death in 1992, was engaged in real estate business and importation of cement and fertilizer from Iraq. Although Abelardo was given a special power of attorney by two (2) licensed agencies accredited by the Taiwan Labor he was not actually engaged in recruitment. The complainants had approached him for assistance because they knew he had many friends abroad. Complainants then came to her to follow up the status of their applications but she told them that her husband was still abroad. This was her sole participation in his professional affairs as she was a plain housewife. After Abelardo died complainants stopped asking her about their applications.

Nenita's testimony was corroborated by Jose Juego, the elder brother of Abelardo.

On 19 January 1995 the Manila Regional Trial Court rendered judgment adverse to Nenita T. Juego except as to one (1) count of estafa thus -

a) In Criminal Case No. 93-128140 finding accused Nenita Juego guilty beyond reasonable doubt of having committed the crime of illegal recruitment and accordingly sentencing her to serve the penalty of life imprisonment considering that the crime was committed in large scale and to restitute to herein complainants the payments made by them, as follows: (1) Anastacio Magleo - ₱21,315.00 (Exhs. "A," "B" and "C"); (2) Fernando Magalong - ₱11,065.00 (Exh. "D"); (3) Manuel Aquino - ₱7,500.00); (4) Raul Romero - ₱30,115.00 (Exhs. "E," "F," "G," "H," and "I"); (5) Jonas Macasieb - ₱5,200.00 (Exh. "J"); (6) Patricio Garin, Jr. - ₱4,500.00 (Exh. "K");

b) In Criminal Case No. 93-128141, finding accused Nenita Juego guilty beyond reasonable doubt of having committed estafa under Article 315 (2) (a) of the Revised Penal Code and hereby sentencing her in accordance with the 1st paragraph of Article 315 of the Revised Penal Code the indeterminate penalty of not less than two (2) years of *prision correccional* as minimum and not more than nine (9) years of *prision mayor* as maximum, with all the accessory penalties provided for by law and to pay the costs and to restitute to Anastacio Magleo the aggregate amount of ₱21,315.00 representing the payments made to accused;

c) In Criminal Case No. 93-128142, finding accused Nenita Juego not guilty on the ground of insufficiency of evidence;

d) In Criminal Case No. 93-128143, finding accused Nenita Juego guilty beyond reasonable doubt of estafa under Article 315 (2) (a) of the Revised Penal Code and hereby sentencing her in accordance with the 1st paragraph of Article 315 of the Revised Penal Code to serve the penalty of not less than two (2) years of *prision correccional* as minimum and not more than eight (8) years of *prision mayor* as maximum, with all the accessory penalties provided by law and to pay the costs and to restitute to Raul Romero the aggregate amount of ₱30,115.00 representing the payments made to accused.vi[6]

As regards accused Wilfredo Gaerlan, a warrant for his arrest stands.

The antecedents: Sometime in April 1992 **Anastacio Magleo** met Nenita in Laoac, Pangasinan, through his sister-in-law. Nenita convinced him to apply as factory worker in Taiwan with a salary of approximately \$500.00 a month with free accommodation. For this purpose, she persuaded him to give an initial payment for processing fee.

On 10 October 1992 Anastacio went to Nenita's office, *AJ International Trade Link*, at Amparo Building, Espaa St., Sampaloc, Manila, where he gave her an initial payment of ₱15,000.00. She issued a receiptvii[7] but signed the name of her husband Abelardo Juego thereon with the excuse that he was out of town. She told Anastacio that she would be able to send him to Taiwan that month but first he must pay the balance of the fee. She even showed him certain job orders from Taiwan and a Block Visa. Also, on the same day, Anastacio gave Wilfredo Gaerlan, secretary of Abelardo, ₱1,115.00 in payment for insurance as evidenced by a PHILAM temporary receipt.viii[8]

On 28 October 1992 Anastacio returned to the office of Nenita and gave her an additional ₱5,200.00 as evidenced by a receiptix[9] signed by her in the name of her husband. She assured Anastacio that in case he could not leave as she previously committed, he would go in the first week of November. When the promised date came, Wilfredo told him to wait. Anastacio just did what he was told and waited for more than a year. After biding his time and getting tired of waiting, he returned to the office of the *AJ International Trade Link* to withdraw his payments but could not find Nenita there. He eventually found her in the house of her brother-in-law where she tried to convince him not to withdraw his payments because there was a job order coming from Malaysia. He stubbornly insisted on a refund but to no avail.

Upon advice of a certain Engr. Toledo, a friend of Abelardo Juego, **Fernando Magalong** went on 3 September 1992 to the *AJ International Trade Link* to apply for a job. He conferred with Abelardo and Nenita, who told him there was a slot for him in Taiwan as a contract worker. She required him to submit an NBI clearance, his passport and pictures, and to pay ₱8,000.00. Fernando personally handed over the amount to her in the office. On 9 October 1992 he gave Wilfredo ₱1,115.00 for insurance as evidenced by a receipt of PHILAM Plans, Inc.x[10] and ₱950.00 for medical examination. He was not however able to leave for Taiwan. Having failed to get a refund, he filed a complaint with the National Bureau of Investigation against Nenita and Wilfredo.

Manuel Aquino was also referred to Nenita by Engr. Toledo. He met her in Laoac, Pangasinan. Nenita told Manuel that she could deploy him to Taiwan as a factory worker. Later he also met Abelardo who told him together with other applicants to undergo a seminar training for a day in Dagupan City. Engr. Toledo paid their training fees. The Juegos told him to prepare his passport, pictures, medical certificate and clearances from the NBI, police and barangay. They required him to pay ₱35,000.00 but could only give a down payment of ₱7,500.00 which he did in their office. He submitted all the required documents to Abelardo who then reminded him and his co-applicants to prepare their bank accounts and especially their clothes. While they waited for word as to their departure, Abelardo died but Nenita reassured them that she would take charge of processing their papers. They waited for more than a year but she was not able to send them abroad. In fact, she went into hiding to avoid them.

Raul Romero was recruited in January 1991 by some of the sub-recruiters of the Juegos. He and his companions were told by the Juegos that as workers in Taiwan they would earn \$700.00 per month and would depart in one (1) or three (3) months' time. He was required to submit all the necessary papers for his overseas employment and to pay a processing fee of ₱30,000.00. His payments which totalled ₱30,115.00 were evidenced by receipts,xi[11] three (3) of which were signed by Wilfredo, one (1) by Abelardo, and one (1) by Nenita. He and the other applicants waited for several months but were unable to leave. He wanted to confront Nenita but could not locate her until he was informed of her arrest and detention at the Western Police Headquarters. When they met she explained her predicament, that is, she could not withdraw the deposit of Abelardo from the bank since they were not legally married. As things turned out, she could not return even a portion of their payments.

Jonas Macasieb first met Nenita when he and other applicants went to her house in Laoac, Pangasinan in 1991. She told them that she and her husband had connections in Taiwan. Afterwards, they went to the office of Abelardo at the Amparo Bldg. in Espaa, Manila. He interviewed them individually inside his office while Nenita stayed outside. He instructed Jonas to submit his passport and clearances from the Mayor, NBI, police and barangay. On 26 August 1992 Jonas paid ₱5,200.00 as evidenced by a receipt.xii[12] He followed up his application four (4) times but he was told each time that there was no scheduled departure. He was repeatedly assured that he would be leaving very soon. His trip was set on 30 October 1992 only to be postponed. He waited patiently because Nenita assured him of an early departure. Unfortunately, he was not able to leave and when he tried to confront her he found the office closed.

Patricio Garin Jr. knew Nenita as a recruiter of workers for Taiwan. He was recommended to her by Engr. Toledo. In August 1992 Patricio went to the office of Nenita at the Amparo Bldg. to apply for employment abroad. He first talked to Wilfredo then to Abelardo and Nenita. She told him to submit his passport, clearances from the Mayor, NBI, police and barangay, result of physical and medical examination, and to pay the placement fee of ₱10,000.00. He could only give her a down payment of ₱4,500.00.^{xiii[13]} After submitting all the requirements she told him that once his papers were processed, he would leave last week of October 1992. Sometime in September 1992 he followed up his application but Nenita informed him that her husband was still in Taiwan. She then advised Patricio to take care of himself. By the end of October he returned to her office but was not able to talk to her. It was Wilfredo who told him that his departure had been postponed. He kept on following up his application until he learned that Abelardo had died. He was not able to talk to Nenita and Wilfredo because they were not anymore in the office. They had disappeared.

The Chief of the Licensing Branch of the Philippine Overseas Employment Administration issued a certification^{xiv[14]} that "Nenita Juego and Wilfredo Gaerlan in their personal capacities x x x is (sic) neither licensed nor authorized by this Administration to recruit workers for overseas employment."

Nenita T. Juego, in this appeal, insists that she has nothing to do with the recruitment activities of her deceased husband. Had she interfered therewith she would have signed the receipts in her own name.

We are not persuaded. Article 13, par. (b), of the Labor Code defines recruitment as referring to -

x x x 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.

Under Art. 38, par. (a), of the same Code, any recruitment activity including the prohibited practices enumerated in Art. 34, becomes illegal when undertaken by non-licensees or non-holders of authority.

As stated by the trial court, based on *People v. Naparan Jr.*,^{xv[15]} illegal recruitment is committed when these requisites concur: (a) that the offender has no valid license or authority required by law to enable one to engage in recruitment and placement of workers; and, (b) that the offender undertakes any activity within the meaning given to recruitment and placement by the pertinent provisions of the Labor Code. The certification issued by the POEA clearly showed that appellant did not possess the requisite license or authority. And despite the absence thereof she engaged in recruitment activities as overwhelmingly substantiated by the prosecution witnesses.

The complainants positively identified appellant as their recruiter for employment abroad, bringing into play the same *modus operandi* for all. They were one in stating that appellant

assured them that there were jobs for them in Taiwan and inveigled them into paying processing or placement fees. As against the hard evidence built by the prosecution, appellant's defense was a mere denial which the trial court found to be weak; so does this Court. Appellant's attack is ultimately directed against the credibility of the complainants, the best judge of which is the trial court. In the matter of weighing the evidence of the prosecution *vis-a-vis* that of the defense through an assessment of their respective merits, it is firmly settled that the findings of the trial court are given great weight and the highest degree of respect by the appellate court, and may be disregarded only where substantial errors have been committed or determinative facts have been overlooked which otherwise would have dictated a different conclusion or verdict.

Appellant's arguments that if she really participated in the recruitment activities of her husband she would have signed the receipts in her name and that her signature on a particular receipt was not genuine are irrelevant since her precise role in the illegal recruitment has been adequately demonstrated through other means. Moreover the prosecution could have dispensed with the presentation of the receipts. This Court has ruled in several cases that the absence of receipts in a case for illegal recruitment does not warrant the acquittal of the accused and is not fatal to the case of the prosecution. As long as the witnesses positively show through their respective testimonies that the accused is the one involved in the prohibited recruitment, he may be convicted of the offense despite the lack of receipts.^{xvi}[16]

Article 38, par. (b), of the Labor Code provides that illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group. And when so committed it is considered an offense involving economic sabotage punishable under Art. 39, par. (a), of the same Code with life imprisonment and fine of one hundred thousand pesos (P100,000.00). Appellant having originally recruited twenty-six (26) persons - although only six (6) pursued their case - without license or authority was properly convicted by the trial court in Crim. Case No. 93-128140 of illegal recruitment in large scale and properly sentenced to life imprisonment pursuant to Art. 39, par. (a) of the Labor Code. However, the trial court erroneously omitted the penalty of fine which the law requires to be imposed in addition to the life sentence. Thus, the correct penalty is life imprisonment and a fine of one hundred thousand pesos (P100,000.00). In addition, appellant should be made to indemnify the complainants in the amounts respectively paid by them.

In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment and estafa under par. 2 (a), Art. 315, of *The Revised Penal Code*, as the offense of illegal recruitment 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 crucial for conviction.^{xvii}[17] In other words, a conviction for offenses under the Labor Code does not bar punishment for offenses punishable by other laws.^{xviii}[18]

Swindling (estafa) is committed by any person who shall defraud another by using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transaction, or by means of other similar deceits executed prior to or simultaneously with the commission of the fraud.^{xix}[19]

The elements of this kind of estafa are: (a) that there must be a false pretense, fraudulent act or fraudulent means; (b) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, i.e., he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and, (d) that as a result thereof, the offended party suffered damage.xx[20] All these elements are present in the instant case: accused-appellant Nenita T. Juego deceived the complaining witnesses into believing that she had the authority and capability to send them abroad for employment; that there were available jobs for them in Taiwan for which they would be hired although there were none; and, that by reason or on the strength of such assurance, the complainants parted with their money in payment of the placement fee. All these representations of appellant were actually false and fraudulent; consequently she should be made liable under par. 2 (a), Art. 315 of *The Revised Penal Code*.xxi[21]

The penalty for estafa depends on the amount defrauded. The first paragraph of Art. 315 prescribes 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, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be."

In Crim. Case No. 128141, Anastacio Magleo was swindled by accused-appellant Nenita T. Juego in the amount of ₱21,315.00. The penalty prescribed by law is *prision correccional* in its maximum period to *prision mayor* in its minimum period. Applying the Indeterminate Sentence Law, there being neither mitigating or aggravating circumstances, the proper penalty to be imposed on accused-appellant is a prison term of four (4) years and two (2) months of *prision correccional* medium as minimum, to six (6) years and four (4) months of *prision mayor* minimum as maximum.

In Crim. Case No. 93-128143, accused-appellant also victimized Raul Romero in the amount of ₱30,115.00. Applying the Indeterminate Sentence Law and there being no modifying circumstances, the proper penalty to be imposed on accused-appellant is imprisonment of four (4) years and two (2) months and one (1) day of *prision correccional* maximum as minimum, to six (6) years eight (8) months and one (1) day of *prision mayor* minimum as maximum.

WHEREFORE, the judgment appealed from finding accused-appellant NENITA T. JUEGO guilty of Illegal Recruitment in Large Scale and two (2) counts of Estafa is **AFFIRMED** with the following MODIFICATIONS -

1. In Crim. Case No. 93-128240 (*Illegal Recruitment in Large Scale*), accused-appellant Nenita T. Juego is sentenced to suffer the penalty of life imprisonment, to pay a fine of ₱100,000.00 and to indemnify the complaining witnesses in the following amounts: (a) Anastacio Magleo, 21,315.00 (Exhs. "A," "B" and "C"); (b) Fernando Magalong, ₱11,065.00 (Exh. "D"); (c) Manuel

Aquino, ₱7,500.00; (d) Raul Romero, ₱30,115.00 (Exhs. "E," "F," "G," "H" and "I"); (e) Jonas Macasieb, ₱5,200.00 (Exh. "J"); and (f) Patricio Garin, Jr., ₱4,500.00 (Exh. "K").

2. In Crim. Case No. 93-128141 (Estafa), accused-appellant Nenita T. Juego is sentenced to an indeterminate prison term of four (4) years and two (2) months of *prision correccional* medium as minimum to six (6) years and four (4) months of *prision mayor* minimum as maximum.

3. In Crim. Case No. 93-128143 (Estafa), accused-appellant Nenita T. Juego is sentenced to an indeterminate prison term of four (4) years two (2) months and one (1) day of *prision correccional* maximum as minimum to six (6) years eight (8) months and one (1) day of *prision mayor* minimum as maximum.

In the service by accused-appellant of the various prison terms herein imposed, the provisions of Art. 70 of *The Revised Penal Code* shall be observed. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, Panganiban and Quisumbing, JJ., concur.

i[1] Anastacio Magleo, Patricio Garin, Jose Bernie de Guzman, Fernando Magalong, Marlon Uson, Norberto dela Cruz, Gerico Agsaoay, Julius Valdez, Jonas Macasieb, Mauro Esquivel, Max Serapion, Manuel Aquino, Jolly de la Cruz, Romulo Esperanza, Benjamin Aquino, Angelito dela Reyna, Francisco Quirimit, Isaias Manarin, Ramel Esperanza, Wilfredo Agsaoay, Gordon Garin, Eric Solomon, Rufino Sarmiento, Reynaldo Agustin, Raul Romero, and Marlon Matabang.

ii[2] Raul Romero, Anastacio Magleo and Marlon Matabang.

iii[3] Patricio Garin Jr., Fernando Magalong, Manuel Aquino, Jonas Macasieb, Anastacio Magleo and Raul Romero.

iv[4] Reynaldo Agustin, Marlon Uson, Norberto dela Cruz, Romulo Esperanza and Benjamin Aquino, Records, pp. 62, 134 and 153.

v[5] *Ibid.*

vi[6] Decision penned by Judge Zeus C. Abrogar; Rollo, pp. 26-27.

vii[7] Exh. "A."

viii[8] Exh. "C."

ix[9] Exh. "B."

x[10] Exh. "D."

xi[11] Exhs. "E," "F," "G," "H," and "I."

xii[12] Exh. "J."

xiii[13] Exh. "K."

xiv[14] Exh. "L."

xv[15] G.R. No. 98443, 30 August 1993, 225 SCRA 714.

xvi[16] People v. Pabalan, G.R. No. 115350, 30 September 1996, 262 SCRA 574 citing People v. Goce, G.R. No. 113161, 29 August 1995, 247 SCRA 780; People v. Sendon, G.R. Nos. 101579-82, 15 December 1993, 228 SCRA 489; and People v. Naparan, see Note 13.

xvii[17] People v. Manungas Jr., G.R. Nos. 91552-55, 10 March 1994, 231 SCRA 1.

xviii[18] People v. Bautista, G.R. No. 113547, 9 February 1995, 241 SCRA 216.

xix[19] Art. 315, par. 2 (a), The Revised Penal Code.

xx[20] Reyes, Luis B. The Revised Penal Code, Vol. 2, 13th Ed., p. 684.

xxi[21] People v. Benemerito, G.R. No. 120389, 21 November 1996, 264 SCRA 677.