

SYLLABI/SYNOPSIS

THIRD DIVISION

[G.R. No. 117154. March 25, 1999]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. ERNESTO A. BORROMELO, *accused-appellant*.

D E C I S I O N

PURISIMA, J.:

Appeal interposed by accused Ernesto Borromeo from the decision^{i[1]} of the Regional Trial Court, Branch 54, Manila, finding him guilty of Illegal Recruitment in Criminal Case No. 93-129374 and of Estafa in Criminal Case Nos. 93-129376 to 93-129384.

On November 9, 1993, Assistant Prosecutor Roy A. Cabatuando filed several Informations against the said accused, alleging:

In Criminal Case No. 93-129374 for Illegal Recruitment

That in or about and during the period compromised from February 16, 1993 up to July 28, 1993, inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true name, identities and present whereabouts are still unknown and helping one another, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did and there willfully and unlawfully for a fee, recruit and promise employment to JOCELYNE DEVEZA Y GARCIA, DONNA PATRICIA V. ANTONIO, WESLEY PAJARILLAGA, EDWIN ORTIZ, LEONARD BROZO, ROBERTO PEREZ Y BROZO, EDUARDO NANA, LAMBERTO PINGA Y CONCEPCION, BENJAMIN G. FULGENCIO and NESTOR DIZON without first having secured the required license or authority from the Department of Labor and Employment.

CONTRARY TO LAW.^{ii[2]}

In Criminal Case No. 93-129375 for Estafa

That on or about March 22, 1993, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another did then and there wilfully (sic), unlawfully and feloniously defraud DONNA PATRICIA V. ANTONIO in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to said DONNA PATRICIA V. ANTONIO to the effect that they had the power and capacity to recruit

and employ DONNA PATRICIA V. ANTONIO as factory worker for Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induce and succeeded in inducing said DONNA PATRICIA V. ANTONIO to give and deliver, as in fact she gave and delivered to said accused the amount of ₱15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain the amount of ₱15,000.00 which amount once in their possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said DONNA PATRICIA V. ANTONIO in the aforesaid amount of ₱15,000.00, Philippine Currency.

CONTRARY TO LAW.iii[3]

In Criminal Case No. 93-129376 for Estafa

That on or about and during the period comprised from March 1, 1993 to July 28, 1993, inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another did then and there wilfully, unlawfully and feloniously defraud EDWIN M. ORTIZ in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to the said EDWIN M. ORTIZ to the effect that they had the power and capacity to recruit and employ EDWIN M. ORTIZ as factory worker for Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirement thereof, and by means of other similar deceits, induce and succeeded in inducing said EDWIN M. ORTIZ to give and deliver, as in fact he gave and delivered to said accused the amount of ₱22,600 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain the amount of ₱22,600, which amount once in their possession, with intent to defraud, wilfully, unlawfully an feloniously misappropriated, misapplied and converted (sic) to their own personal use and benefit, to the damage and prejudice of said EDWIN M. ORTIZ in the aforesaid amount of ₱22,600.00. Philippine Currency.

CONTRARY TO LAW.iv[4]

In Criminal Case No. 93-129377 for Estafa

That on or about and during the period comprised from February 22, 1993 to March 15, 1993 inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another and then and there wilfully, unlawfully and feloniously defraud LEONARD S. BROZO in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to LEONARD S. BROZO to the effect that they had the power and capacity to recruit and employ LEONARD S. BROZO as factory worker for Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof and by means of other similar deceits, induce and succeeded in

inducing said LEONARD S. BROZO to give and deliver, as in fact she gave and delivered to said accused the amount of ₱15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain the amount of ₱15,000.00, which amount once in their possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said LEONARD S. BROZO in the aforesaid amount of ₱15,000.00, Philippine Currency.

CONTRARY TO LAW.v[5]

In Criminal Case No. 93-129378 for Estafa

That on or about and during the period comprised from February 22, 1993 and March 15, 1993, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another and then and there wilfully, unlawfully and feloniously defraud ROBERTO BROZO PEREZ in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to ROBERTO BROZO PEREZ to the effect that they had the power and capacity to recruit and employ ROBERTO BROZO PEREZ as factory worker for Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof and by means of other similar deceits, induce and succeeded in inducing said ROBERTO BROZO PEREZ to give and deliver, as in fact she gave and delivered to said accused the amount of ₱15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain the amount of ₱15,000.00, which amount once in their possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said ROBERTO BROZO PEREZ in the aforesaid amount of ₱15,000.00. Philippine Currency.

CONTRARY TO LAW.vi[6]

In Criminal Case No. 93-129379 for Estafa

That on or about and during the period comprised from March 1, 1993 to July 28, 1993, inclusive, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another did then and there wilfully, unlawfully and feloniously defraud LAMBERTO PINGA Y CONCEPCION in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to the said LAMBERTO PINGA Y CONCEPCION to the effect that they had the power and capacity to recruit and employ LAMBERTO PINGA Y CONCEPCION as factory worker for Taiwan and could facilitate the processing of the the pertinent papers if given the necessary amount to meet the requirement thereof, and by means of other similar deceits, induce and succeeded in inducing said LAMBERTO PINGA Y CONCEPCION to give and deliver, as in fact he gave and delivered to said accused the amount of ₱22,600 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain

the amount of ₱22,600, which amount once in their possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said LAMBERTO PINGA Y CONCEPCION in the aforesaid amount of ₱22,600.00. Philippine Currency.

CONTRARY TO LAW.vii[7]

In Criminal Case No. 93-129380 for Estafa

That on or about and during the period comprised from February 22, 1993 up to March 15, 1993 inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another and then and there wilfully, unlawfully and feloniously defraud NESTOR N. DIZON in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to NESTOR N. DIZON to the effect that they had the power and capacity to recruit and employ NESTOR N. DIZON as factory worker for Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof and by means of other similar deceits, induce and succeeded in inducing said NESTOR N. DIZON to give and deliver, as in fact he gave and delivered to said accused the amount of ₱15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain the amount of ₱15,000.00, which amount once in their possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said NESTOR N. DIZON in the aforesaid amount of ₱15,000.00, Philippine Currency.

CONTRARY TO LAW.viii[8]

In Criminal Case No. 93-129381 for Estafa

That on or about and during the period comprised from February 16, 1993 up to March 25, 1993 inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another and then and there wilfully, unlawfully and feloniously defraud WESLEY PAJARILLAGA in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to WESLEY PAJARILLAGA to the effect that they had the power and capacity to recruit and employ WESLEY PAJARILLAGA as factory worker for Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof and by means of other similar deceits, induce and succeeded in inducing said WESLEY PAJARILLAGA to give and deliver, as in fact he gave and delivered to said accused the amount of ₱15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain the amount of ₱15,000.00, which amount once in their possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their

own personal use and benefit, to the damage and prejudice of said WESLEY PAJARILLAGA in the aforesaid amount of ₱15,000.00, Philippine Currency.

CONTRARY TO LAW.[ix\[9\]](#)

In Criminal Case No. 93-129382 for Estafa

That on or about and during the period comprised from February 22, 1993 up to March 15, 1993 inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another and then and there wilfully, unlawfully and feloniously defraud BENJAMIN G. FULGENCIO in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to the said BENJAMIN G. FULGENCIO to the effect that they had the power and capacity to recruit and employ BENJAMIN G. FULGENCIO as factory worker for Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof and by means of other similar deceits, induce and succeeded in inducing said BENJAMIN G. FULGENCIO to give and deliver, as in fact he gave and delivered to said accused the amount of ₱15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain the amount of ₱15,000.00, which amount once in their possession, with intent to defraud, wilfully, unlawfully an feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said BENJAMIN G. FULGENCIO in the aforesaid amount of ₱15,000.00, Philippine Currency.

CONTRARY TO LAW.[x\[10\]](#)

In Criminal Case No. 93-129383 for Estafa

That on or about and during the period comprised from February 22, 1993 up to March 15, 1993 inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another and then and there wilfully, unlawfully and feloniously defraud EDUARDO NANA in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to the said EDUARDO NANA to the effect that they had the power and capacity to recruit and employ EDUARDO NANA as factory worker for Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof and by means of other similar deceits, induce and succeeded in inducing said EDUARDO NANA to give and deliver, as in fact he gave and delivered to said accused the amount of ₱15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain the amount of ₱15,000.00, which amount once in their possession, with intent to defraud, wilfully, unlawfully an feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said EDUARDO NANA in the aforesaid amount of ₱15,000.00, Philippine Currency.

CONTRARY TO LAW.xi[11]

And in Criminal Case No. 93-129384 for Estafa

That on or about March 19, 1993, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another and then and there wilfully, unlawfully and feloniously defraud JOCELYNE DEVEZA Y GARCIA in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he, she, they made to JOCELYNE DEVEZA Y GARCIA to the effect that they had the power and capacity to recruit and employ BENJAMIN G. FULGENCIO as factory worker for Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof and by means of other similar deceits, induce and succeeded in inducing said JOCELYNE DEVEZA Y GARCIA to give and deliver, as in fact she gave and delivered to said accused the amount of ₱15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same are false and fraudulent and were made solely, to obtain, as in fact they did obtain the amount of ₱15,000.00, which amount once in their possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said JOCELYNE DEVEZA Y GARCIA in the aforesaid amount of ₱15,000.00, Philippine Currency.

CONTRARY TO LAW.xii[12]

On January 17, 1994, with the accused entering negative pleas to all above accusations, upon arraignment with the assistance of counsel, trial ensued with the prosecution presenting Nestor Dizon, Edwin Ortiz, Lamberto Pinga, Benjamin Fulgencio, Jocelyn Deveza, Leonardo Brozo, Wesley Pajarillaga, and Roberto Perez as its witnesses.

For the defense, the accused took the witness stand as the lone witness on his behalf.

Testified on by the above-named witnesses and as summarized by the Solicitor General in the Appellees Brief, the version of the People runs as follows:

I

Complaint Nestor Dizon, xxx, is a *kumpadre* of William Ramos, brother-in-law of appellant Ernesto Borrromeo (p. 2, TSN, February 7, 1994). In February 1993, William (or Willy) Ramos xxx introduced Dizon to appellant and his wife Elizabeth Ramos at Willys house (pp. 2&4, 15&16, TSN, Feb. 7, 1994). Willy Ramos informed Dizon that appellant and his wife were in need of people to work as factory worker in Taiwan (p. 2, TSN, *ibid*). Dizon then verified from Elizabeth Borrromeo whether they really needed workers for Taiwan and she confirmed such information (p.2, TSN, *ibid*). Appellant also told Dizon that he can go to Taiwan but he has to wait for a while (p. 3, TSN, Feb. 7, 1994). Dizon immediately told appellant and his wife that he wanted to apply for the job as worker in a textile factory in Taiwan. The Borrromeo couple told Dizon that as part of his job application, he should give the amount of ₱40,000.00 (p. 3, TSN, *ibid*). They told Dizon that he can go to Taiwan sometime in April (1993) if he can give the

money. Consequently, Dizon accepted the condition requiring payment of the total amount of ₱15,000.00 (pp. 3-4, TSN, Feb. 2, 1994).

On February 22, 1993, at the house of Willy Ramos, at 1727 M. Natividad St. Dizon gave to Elizabeth Borrromeo, in the presence of appellant, ₱3,000.00 for his medical expenses (pp. 3-5, TSN, Feb. 2, 1994; Exh. A) and ₱12,000.00 (Exh. B) as downpayment for the ₱40,000.00, inclusive of the medical expenses (pp. 4-5, TSN, ibid.). Afterwards, Elizabeth issued two (2) receipts for the said amounts (Exhs. A and B). Appellant and his wife Elizabeth assured that he will be leaving sometime in April 1993. Dizon asked the spouses why they failed to send him abroad and they explained that they were still arranging the processing of his papers including passport, application papers, bio-data, birth certificate, marriage contract and other documents (pp. 5-6, TSN, Feb. 7, 1994). xxx

xxx xxx xxx

II

xxx Edwin Ortiz is a resident of 1718 M. Natividad St., Sta. Cruz, Manila (p. 15, TSN, Feb. 7, 1994). In February 1993, he was introduced to appellant by William (Willy) Ramos at the latters house at 1727 M. Natividad St., Sta. Cruz, Manila. Before such meeting, Willy Ramos had previously informed Ortiz that appellant and the latters wife Elizabeth, sister of William Ramos, are recruiting workers for Taiwan (pp. 15-16, TSN, Feb. 7, 1994). Thereafter, Ortiz talked to the spouses and they confirmed that they can send workers to Taiwan (p. 18, TSN, Feb. 7, 1994). Ortiz then told them that he was interested in applying for a job in Taiwan (pp. 17-18, TSN, Feb. 7, 1994). There and then, Ortiz applied with the Borrromeo spouses xxx

Eventually, the Borrromeo spouses told Ortiz and his fellow applicants that they each had to undergo medical examination and pay ₱15,000.00 and the ₱3,000.00 thereof will answer for the medical examination fees while the ₱12,000.00 will be for the processing of their papers (p. 19, TSN, Feb. 7, 1994). Consequently, Ortiz paid to appellant the ₱3,000.00 for the medical examination for which a receipt was issued (Exh. C) On March 3, 1993, he paid the amount of ₱8,000.00 (or ₱4,000.00 each) for himself and fellow job-applicant Lamberto Pinga to appellant who handed the money to his wife who then issued a receipt therefor (pp. 20-22, TSN, Feb. 7, 1994; Exhs. E, E-1).

Later, Ortiz paid another ₱10,000.00 (₱5,000 each) for himself and his co-applicant Lamberto Pinga who handed the money to his wife and the latter likewise issued in the name of Ortiz a receipt for the ₱10,000.00 (Exhs. D, D-1; pp. 20-23, TSN, Feb. 7, 1994). Subsequently, appellant promised to Ortiz and Lamberto Pinga that after the processing of their papers, they can go to Taiwan within the month of May 1993 xxx

xxx xxx xxx

III

Eduardo Nana, one of the complainants xxx . In the first week of February 1993, he learned from his friend Willy Ramos xxx that his sister Elizabeth Ramos Borrromeo and her husband Ernesto Borrromeo (appellant) needed workers to be sent abroad (pp. 19-21, TSN, Feb. 9, 1994). Nana told Willy Ramos that he was interested to apply (p. 20, TSN, Feb. 9, 1994). xxx

xxx xxx xxx

xxx Appellant his spouse confirmed that they can help Nana go abroad but he has to pay ₱3,000.00 and ₱12,000.00 for processing of documents (p. 21, TSN, Feb. 9, 1994). Nana agreed to pay the price and applied for job as a factory worker which according to the couple, fetched a salary of around \$800.00 a month (pp. 22-23, TSN, ibid).

On February 22, 1993, Nana paid ₱3,000.00 to Elizabeth Ramos-Borrromeo who then handed the amount to appellant who then counted the money (pp. 23-24, TSN, Feb. 9, 1994). Afterwards, she issued a receipt for the amount containing her signatures (pp. 24-25, TSN, Feb. 9, 1994; Exh. H). Such payment was made at the house of Willy Ramos xxx

Appellant assured Nana that if he completes payment of the additional ₱12,000.00, Nana could go to Taiwan (p. 25, TSN, ibid). Accordingly, Nana made a second payment in the amount of ₱12,000.00 to the Borrromeo couple on March 15, 1993 (Exh. I; pp. 25-26, TSN, Feb. 9, 1994). Subsequently, Elizabeth Ramos-Borrromeo issued a receipt for said amount where she signed both her and appellants name (pp. 23-30, TSN, Feb. 9, 1994). However, despite such payment, Nana was unable to go abroad as appellant and his wife had promised him (p. 26, TSN, Feb. 9, 1994). xxx

xxx xxx xxx

IV

On March 1, 1993, Lamberto Pinga met appellant xxx when he applied with him for a job in Taiwan as factory worker (pp. 2-4, TSN, Feb. 14, 1994). Appellant told Pinga that he had to pay the processing fee of the papers in the amount of ₱15,000.00 before could go to Taiwan (pp. 4-7, TSN, Feb. 14, 1994). Pinga made a partial payment of ₱3,000.00 on the same day for which a receipt in yellow pad dated March 1, 1993 was issued (pp. 4-5, TSN, Feb. 14, 1994, Exh. G).xxx

xxx xxx xxx

xxx He made another partial payment on March 17, 1993 jointly with Ortiz in the amount of ₱10,000.00 for himself and Edwin Ortiz (or ₱5,000.00 for each of them) for which receipt was issued (pp. 9-10, TSN, Feb. 14, 1994, Exh. D; D-1). At the time that he made the payments, appellants wife and brother-in-law were also present (pp. 9-12, TSN, Feb. 14, 1994). Later, Pinga made another payment in the amount of ₱1,600.00 to appellants brother-in-law William Ramos but no receipt therefor was issued (pp. 11-12, TSN, Feb. 14, 1994).

Notwithstanding his payments, nothing happened to Pingas application. xxx

V

Benjamin Fulgencio, one of the complainants in the subject Criminal Case is a resident of 1918 M. Natividad St., Sta. Cruz, Manila xxx. In 1993, he (sic) learned from Willy Ramos by phone that appellant, Ernesto Borromeo, Willys brother-in-law whom he had previously met 1989, and his wife Elizabeth Ramos-Borromeo were recruiting workers for Taiwan (pp. 2-4, TSN, ibid.). xxx

They eventually met at the house of Willy Ramos and Fulgencio verified from the Borromeo spouses whether they could really send workers in Taiwan. xxx They told him that as part of his application, he had to pay a total of ₱15,000.00, ₱3,000.00 and ₱12,000.00 of which will answer for the medical expenses and processing of papers, respectively (pp. 4-5, TSN, Feb. 21, 1994). The couple told him that the total amount to be paid is ₱40,000.00 and that the ₱15,000.00 is only partial payment while the ₱25,000.00 balance thereof will be paid through salary deductions when he is already in Taiwan (pp. 4-5, TSN, ibid.). Fulgencio acceded to the aforesaid condition and paid to appellant the ₱3,000.00 for which a receipt was issued to him but which receipt has been misplaced (pp. 5, TSN, Feb. 21, 1994). Appellant Fulencio was given the receipt for the ₱3,000.00 he paid to appellant to whom he gave the money but it was signed by Mrs. Borromeo (pp. 4-5, TSN, Feb. 21, 1994). Fulgencio likewise paid the ₱12,000.00 for which he was issued a receipt (pp. 5-6, TSN, Feb. 21, 1994, Exh. J, J-1). After such payment, appellant told Fulgencio that his salary will be \$800.00 monthly (pp. 6-7, TSN, Feb. 21, 1994). Thereafter, the couple told Fulgencio that he will be leaving for abroad sometime in April 1993 (p. 7, TSN, ibid.). However, when April 1993 came, Fulgencio was unable to leave for abroad and nothing resulted from his application (p. 7, TSN, Feb. 21, 1994). xxx

VI

Jocelyn Devesa is a resident of 1714 M. Natividad St., Sta. Cruz, Manila xxx In 1993, she (sic) learned from her friend and neighbor William (Willy) Ramos that his brother-in-law Ernesto Borromeo (appellant) and his wife Beth Borromeo, Willy's sister, were recruiting workers for Taiwan (p.2, TSN, Feb. 23, 1994). Jocelyn asked Willy whether they are licensed recruiters and he answered that they were (p. 6, TSN, Feb. 23, 1994). He told her they are connected with EER employment agency located at EDSA, Quezon City (p. 6, TSN, ibid.). xxx

xxx They talked about the expenses they will incur and the date of their departure in connection with the job in Taiwan (p. 3, TSN, Feb. 23, 1994). xxx She told the applicants, including Jocelyn, that the total amount is ₱45,000.00 and that the ₱15,000.00 should be made as partial payment while the ₱30,000.00 will be paid through salary deduction when they are already in Taiwan (p. 3, TSN, Feb. 23, 1994).

On March 19, 1993, Jocelyn Devesa paid the required ₱15,000.00 to appellant. He handed the amount to his wife Mrs. Beth Borromeo who then issued a receipt where the signature of Beth Borromeo appears over the printed name Ernesto Borromeo (Exh. "K", "K-1"; p.4, TSN, Feb. 23, 1994). The receipt was issued under her (Jocelyn) nickname "Joan" (Exh. "K" pp. 3-4, TSN, Feb. 23, 1994). xxx

VII

Leonardo Brozo, one of the complainants, similarly learned from his acquaintance William (Willy) Ramos that his brother-in-law Ernesto Borromeo and the latter's wife Beth Borromeo were recruiting persons to work abroad. xxx He (sic) then applied with them for a job as a laborer (p. 7, 13, TSN, Feb., 28, 1994). They told him to submit an NBI clearance and many others and to pay ₱15,000.00 out of the total ₱30,000.00, as applicant fee (p. 9, TSN, Feb. 28, 1994). On March 15, 1993, Brozo paid ₱12,000.00 for processing of his papers to appellant, who after counting the same turned it over to his wife Elizabeth Borromeo who then issued a receipt therefor (Exh. "L-1"; pp. 12-13, TSN, Feb. 28, 1994). He also paid on March 26, 1993 the amount of ₱3,000.00 to appellant who after counting the money turned it over to Elizabeth Borromeo who then issued a receipt therefor (Exh. "L", pp. 11-12, TSN, Feb. 28, 1994). The couple told Brozo that they will be the one to look for a job abroad for Brozo who will receive a salary of ₱30,000.00 (p. 13-14, TSN, Feb. 28, 1994). xxx After Brozo had paid the ₱15,000.00, appellant kept on promising Brozo that he can go abroad but appellant failed in his promise and Brozo was unable to go abroad. (p. 14, TSN, Feb. 28, 1994). xxx

xxx xxx xxx

VIII

xxx On February 16, 1993, (Wesley) Pajarillaga paid ₱3,000.00 for medical expenses (p. 9, TSN, March 2, 1994). He subsequently paid ₱7,000.00 on March 18, 1993 and ₱15,000.00 on March 25, 1993 to appellant xxx (pp. 9-10, TSN, March 2, 1994). Receipt for the ₱15,000.00 payment was issued but the same was lost by Pajarillaga (pp. 8-10, TSN, March 2, 1994). xxx

IX

In the first week of February 1993, Roberto Perez was introduced by Willy Ramos to Ernesto Borromeo, xxx Perez asked appellant if he was recruiting workers for Taiwan and the latter told Perez, he can help him go there (pp. 2-3, TSN, March 9, 1994). Perez told him that he was interested to go abroad if he pays ₱3,000.00 and ₱12,000 (pp. 3-4, TSN, March 9, 1994). Perez applied for a job as a factory worker with a salary of \$800.00 and paid the required payments (p. 4-5, TSN, March 9, 1994). He paid the ₱3,000.00 and ₱12,000.00 to appellant and his wife for which a receipt dated March 15, 1993 was issued (Exhs. "M", "M-1"; pp. 4 and 6, TSN, March 9, 1994).

On the aforesaid receipt, Elizabeth Borromeo printed her and appellant's respective names but it was only her signature which appeared thereon (p. 6, TSN, March 9, 1994). Since Perez was unable to leave for Taiwan despite his payments and despite appellant's promises, he checked from the POEA whether appellant and his wife were duly licensed recruiters (p. 7, TSN, March 9, 1994). They found out that they were not listed as licensed recruiters (p. 7, TSN, ibid). xxx"

For the defense, appellant placed reliance on mere denial, testifying thus:

xxx "that Elizabeth Ramos Borrromeo is his common-law wife and William Ramos is his brother-in-law. He denied being at the house of his brother-in-law at 1727 M. Natividad St., Sta. Cruz, Manila when the complainants were introduced to his common-law wife, neither was he present when the complainant allegedly gave money to Elizabeth Ramos Borrromeo. He does not even know who prepared the receipts evidencing the amounts given to Elizabeth Ramos Borrromeo. In other words, he was not a privy to all the transactions that allegedly transpired between the complainants and his common-law wife in the house of his brother-in-law. He further testified that if at all the name ER Borrromeo appears in any or all the receipts prepared by Elizabeth Ramos Borrromeo, it is not his name because his complete name is Ernesto Abeso Borrromeo. His initial is E.A. Borrromeo and the latter initial is what appears in all the receipts presented by the complainants during the direct and cross-examinations. He came to know the complainants only when they went to their house at 27 Maamo St., Sikatuna Village, Diliman, Quezon City accompanied by his brother-in-law, William Ramos. All the time he stayed at home taking care of their two children and his fighting cocks.

xxx Queried on how he was arrested, he answered that he was only invited by the NBI because of the problem of his wife. Several warrants of arrest were issued against his wife but when she could not be located because she was already in hiding, he was detained. Appellant declared that he cannot refund the money and the money was not given to me. "(TSN, pp. 2-20, May 4, 1994)xiii[13]

After trial, the lower court found the evidence for the prosecution enough to convict and handed down the judgment appealed from, convicting and sentencing the accused as follows:

"WHEREFORE, judgment is hereby rendered convicting the accused of the crime of illegal recruitment in Crim. Cases No. 94-129347 and of estafa in Crim Case No. 93-129376 to 93-129384 and sentences him to life imprisonment and to pay a fine of ₱100,000.00 in the illegal recruitment case as provided for by Art. 38 (b) and Art. 39 of the Labor Code as amended by P.D. 2018; and in other cases sentences him to an indeterminate term of imprisonment of Two (2) years and Four(4) months of prision correctional as the minimum and Eight (8) years of Prision mayor as the maximum except in cases 93-129376 and 93-129379 where the accused is sentenced in each case to an indeterminate term of imprisonment from Ten (10) years and One (1) day of prision mayor as minimum, and Seventeen (17) years, Four (4) months and One (1) day of reclusion temporal as maximum. The accused is also adjudged liable to the complainants in Crim. Cases No. 93-129376 to 93-129384 for estafa; to pay as civil liability the sum of ₱15,000.00 for each complainant except in Crim. Cases No. 93-129376 for each complainant except in Crim. Cases No. 93-129376 and 93-129379 where the accused is adjudged to pay ₱22,600.00 in each of the two cases (2) to the respective complainants thereof. Accused to pay the costs.

The accused is acquitted in Case No. 129375 for lack of evidence.

SO ORDERED."xiv[14]

To buttress his plea for acquittal, appellant theorized in his assignment of errors, that:

I

"THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE INSUFFICIENCY OF EVIDENCE." ^{xv[15]}

On March 20, 1997, appellant presented a motion to withdraw the appeal. Acting thereupon, the Court directed his counsel to confer with appellant and ascertain the voluntariness of subject motion, and whether appellant was aware of its legal consequences. After conferring with the accused on October 29, 1997, counsel prayed that the Motion to Withdraw the Appeal be disregarded.

The pivotal issue at bar being factual and evidentiary, the credibility of the witnesses assumes extreme importance. Well-entrenched to the point of being elementary is the doctrine that on the issue of credibility of witnesses, findings arrived at by the trial court are accorded great weight and respect on appeal because of the singular opportunity of the lower court to observe the demeanor of the witnesses on the witness stand.

"xxx Factual findings of fact of the trial court pertaining to the credibility of witnesses command great weight and respect since it had the opportunity to observe their demeanor while they testified in court." xxx (People v. Tanedo, 266 SCRA 34)

"Well-entrenched is the rule that findings of trial courts on credibility of witnesses deserve a high degree of respect. "(People v. Atad, 266 SCRA 262)"

"Findings of the trial court which are factual in nature deserves to be respected and affirmed by the appellate courts. xxx" (People v. Magallano, 266 SCRA 305)

"xxx Unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected." (People v. Ramirez, 266 SCRA 335)

"xxx The age old-rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. xxx (People v. Sarabia, 266 SCRA 471)

Factual findings and conclusions of the trial court are entitled to great weight and respect and should not be disturbed on appeal. xxx (People v. Cahindo, 266 SCRA 554)

"xxx appellate courts accord the highest respect to the assessment and testimonies of eyewitnesses by the trial court because of its unequal opportunity to observe on the stand their demeanor and manner of testifying and to detect whether they are telling the truth or not. xxx" (People v. Navales, 266 SCRA 569)

xxx It is doctrinally settled that the evaluation of the testimony of the witnesses by the trial court is received on appeal with the highest respect, because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth.(People v. Dinglasan, 267 SCRA 26)

xxx Absent any showing of a fact or any circumstance which the trial court failed to appreciate and which have changed the result if it were considered, the factual findings laid down by the trial court remain binding upon us. (People v. Valles, 267 SCRA 103)

After a thorough review and examination of the evidence on record, the Court finds no basis for disbelieving what the trial court of origin found and arrived at.

Appellant berates the trustworthiness of the complaining witnesses who narrated how appellant conspired with his wife, Elizabeth, and brother-in-law, Willy Ramos, in the commission of the crimes charged. This deserves scant consideration, however, because the *modus operandi* of the spouses, Ernesto Borromeo and Willy Ramos, brother-in-law of Ernesto, has been established beyond any iota of doubt, to wit: Willy Ramos recruited applicants as factory workers in Taiwan, and introduced his recruits to the spouses, Ernesto Borromeo and Elizabeth Borromeo, who assured all and sundry of their ability and preparedness to send workers abroad, upon payment of ₱15,000.00 for medical expenses and processing fees. Cajoled by such promise and misrepresentation, the poor applicants paid the amounts demanded of them, only to discover later that the malefactors were not licensed and authorized to recruit workers for overseas employment. This fact was indubitably attested to by the *Certification issued by the Philippine Overseas Employment Agency (Exhibit F)*. Ernesto Borromeo and Willy Ramos did not return the money of the complainants, who were unable to work abroad as promised by the appellant Ernesto Borromeo, his wife, Elizabeth Borromeo and brother-in-law, Willy Ramos.

As regards the theory of appellant that there was no documentary evidence evidencing that he had received, misappropriated, misapplied and converted the money of complainants for his personal use and benefit, the straight forward narrations by the complainants negate such submission of appellants. Complainants testified as follows:

Q. Now, did you actually pay the ₱3,000.00 for medical examination?

A. Yes, sir.

Q. To whom did you pay?

A. To Mr. and Mrs. Borromeo, sir.

Q. To whom did you actually handed the (sic) the money?

A. I gave it to Mr. Borromeo, sir, and then he gave it to his wife. (p. 19-20, TSN, February 7, 1994)

Q. When you testified, you said that the amount of ₱3,000.00 was given to the accused himself and according to you the accused counted the money and then it was given to the wife?

A. Yes, sir. (Cross-examination of Edwin Ortiz, p. 4, TSN, February 9, 1994).

Q. That was the first time you paid the amount of ₱3,000.00?

A. Yes, sir.

Q. To whom did you give that money?

A. To both the spouses, sir. (p. 23-24, TSN, Direct Examination of Edwin Nana, February 9, 1994)

Q. Did you actually give this ₱3,000.00 for medical expenses and the ₱12,000.00 for processing of the papers?

A. Yes, sir.

Q. To whom did you give that amount of ₱3,000?

A. To Mr. Borromeo. (p. 5, TSN, February 21, 1994, Direct Examination of B. Fulgencio)

In the case of *Lim v. Court of Appeals*, 271 SCRA 12, *convert* and *misappropriate* were held to mean:

an act of using or disposing of another's property as if it were one's own or devoting it to a purpose or use different from that agreed upon.

The following elements of estafa have been established: **1)** the accused defrauded another by **a)** abuse of confidence or **b)** by means of deceit and **2)** the offended party or third party suffered damage or prejudice capable of pecuniary estimation. (*Tan v. Court of Appeals*, 283 SCRA 30, citing *People v. Bautista*, 241 SCRA 216, *People v. Reyes*, 282 SCRA 105) In the cases under scrutiny, estafa was consummated when the appellant together with wife Elizabeth and brother-in-law Willy Ramos falsely pretended to be capable of sending workers abroad, and as convinced by the appellant and his co-conspirators, the said applicants delivered their placement fee to appellant and his wife.

With respect to the charge of illegal recruitment, no less than the Philippine Overseas Employment Administration confirmed that the spouses Borromeo, and Willy Ramos did not have any authority or license to recruit overseas workers. Neither was there a recruitment agency such as *EER Employment Agency*. In *People v. Recio*, 282 SCRA 274, it was held that: *illegal recruitment is committed when two requisites concur, to wit: 1) that the offender has no valid*

license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and 2) that the offender undertakes either any activity within the meaning of recruitment and placement under Article 13(b)xvi[16] or any prohibited practices enumerated under Article 34 of the Labor Code as amended.

And in the case of *People v. Senoron*, 267 SCRA 278, it was held that: *It is the lack of necessary license or authority that renders the recruitment activity unlawful or criminal.* So, also, in *People v. Tan Tiong Meng*, 271 SCRA 125, this Court held that:

xxx Accused-appellants acts of accepting placement fees from job applicants and representing to them that he could get them jobs in Taiwan constitute recruitment and placement. xxx.

There is illegal recruitment when one purports to have the ability to send a worker abroad though without authority or license to do so. (*People v. Villas*, 277 SCRA 391) Accused-appellant is likewise guilty of illegal recruitment in a large scale. His offense of illegal recruitment victimized three (3) or more persons, individually or as a group.xvii[17]

In the case of *People v. Manozca*, G.R. No. 109779, March 13, 1997; the Court said:

Prosecution also established that the accused by using the fictitious name Nesty Santiago and Manolito Santiago and falsely pretending to possess the power and capacity to obtain and provide work for complainants in Singapore, obtained from the complainants various sums of money knowing fully well that he did not have such power or capacity in violation of Article 315, paragraph 2 (a) of the Revised Penal Code. In Criminal Case No. 90-13964 the amount defrauded from Arnulfo Caampued by accused is ₱14,500.00 while in Criminal Case No. 90-13963 the amount defrauded from Norlito Hular is ₱12,636.00

Anent the defense of denial invoked by the accused the trial court erred not in rejecting the same. In the case of *People v. Magallano*, 266 SCRA 305, the Court rationalized:

Courts have generally viewed with disfavor the defense of denial on account of its aridity and the facility with which an accused could concoct the same to suit his defense.

All things studiedly viewed in proper perspective, the mind of the court can rest easy on finding of guilt of appellant.

As regards the imposable penalty for the crimes of appellant; Article 315 of the Revised Penal Code, provides:

Swindling (estafa).- Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. 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. xxx

Under Section 1 of Act 4103, xviii[18] the maximum term of the penalty is *that which, in view of the attending circumstances, could be properly imposed* under the Revised Penal Code, and the minimum should be *within the range of the penalty next lower to that prescribed for the offense*. The penalty next lower should be based on the penalty prescribed by the Revised Penal Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The minimum of the indeterminate penalty is left to the sound discretion of the court, to fix from within the range of the penalty next lower without reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence. xix[19]

In Criminal Case Nos. 93-129377, 93-129378, 93-129380-84, the amount involved in each case is ₱15,000.00. Since the penalty prescribed by law therefor is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower thereto is *prision correccional* minimum to *prision correccional* medium. Thus, the minimum of the indeterminate sentence to be meted here should be two (2) years, eleven (11) months and ten (10) days.

Explicit is the said Indeterminate Sentence Law, that the maximum of the penalty shall be *that which, in view of the attending circumstances, could be properly imposed* under the Revised Penal Code. Accordingly, the maximum of subject indeterminate sentence of six (6) years, eight (8) months and twenty (20) days of *prision mayor*.

In Criminal Case Nos. 93-129376 and 93-129379, the amount involved in each case is ₱22,600.00. Since the penalty prescribed by law therefor is *prision correccional maximum to prision mayor minimum, to be imposed in its maximum period*, the penalty next lower in degree should be four (4) years and two (2) months of *prision correccional*, and the maximum penalty therefor should be seven (7) years and four (4) months of *prision mayor*, in each case.

WHEREFORE, the judgment of conviction appealed from is **AFFIRMED**, and accused-appellant is hereby sentenced, as follows:

- (1) In Criminal Case No. 93-129374 for illegal recruitment, he is sentenced to suffer life imprisonment, and to pay a fine of ₱100,000.00;
- (2) In Criminal Case Nos. 93-129376 and 93-129379 for estafa, he is sentenced in each case, to an indeterminate penalty of four (4) years, two (2) months, as minimum, to seven (7) years and four (4) months, as maximum;
- (3) In Criminal Case Nos. 93-129377, 93-129378, 93-129380-84 for estafa, appellant is sentenced in each case, to an indeterminate penalty of two (2) years, eleven (11) months and ten (10) days, as minimum, to six (6) years, eight (8) months and twenty (20) days, as maximum, and to pay the complainants ₱15,000.00 each; and

(4) In Criminal Case No. 93-129375, appellant is ACQUITTED of the crime of estafa charged, for lack of evidence to prove his guilt beyond reasonable doubt.

Costs against accused-appellant.

SO ORDERED.

Romero (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

i[1] Penned by Judge Manuel T. Muro.

ii[2] Decision, p. 2.

iii[3] *Rollo*, p. 32.

iv[4] Orig. Rec. p. 34.

v[5] *Ibid*, p. 36.

vi[6] Orig. Rec. p. 38

vii[7] *Ibid*, p. 40.

viii[8] Orig. Rec. p. 42.

ix[9] Orig. Rec. p. 44.

x[10] *Ibid*, p. 46.

xi[11] Orig. Rec., p. 48

xii[12] *Ibid*, p. 50.

xiii[13] Brief for the Appellant, pp. 7-9, *Rollo*, pp. 36-38.

xiv[14] Decision, pp. 5-6, *Rollo*, pp. 20-21.

xv[15] Brief for the Accused-Appellant, p. 1, *Rollo*, p. 30.

xvi[16] 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.

xvii[17] People v. Garcia, 271 SCRA 621.

xviii[18] Otherwise known as the Indeterminate Sentence Law, as amended.

xix[19] People v. Gabres, 267 SCRA 581, 590 citing People v. Gonzales, 73 Phil 549, People v. Ducosin, 59 Phil 109 and People v. Joya, 98 Phil 238.