

SYLLABI/SYNOPSIS

SECOND DIVISION

[G.R. Nos. 108440-42. March 11, 1999]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. VICENTE MERCADO y MERCADO alias VICENTE TAN, *accused-appellant*.

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^{i[1]} of the Regional Trial Court of Manila, Branch XLI, finding accused-appellant Vicente Mercado y Mercado alias Vicente Tan guilty of (1) illegal recruitment committed in large scale and sentencing him to suffer life imprisonment, pay a fine of ₱100,000.00, and indemnify private complainants in actual damages amounting to a total of ₱190,000.00; and (2) estafa for which he was sentenced to suffer an indeterminate prison term ranging from six (6) years and two (2) months of *prision mayor*, as minimum, to ten (10) years of *prision mayor*, as maximum, and to indemnify private complainant Nelson Tamares in the sum of ₱45,000.00 by way of actual damages. Another case for estafa filed against accused-appellant was dismissed for lack of evidence.

The facts are as follows:

In Criminal Case No. 92-105275, the information for illegal recruitment in large scale alleged

That in or about the period comprised between May 1, 1991 and April 5, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, real 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 then and there wilfully and unlawfully, for a fee, recruit and promise employment/job placement abroad to the following persons: Antonio Peralta y Bragado, Ruth Enriquez y Bagui, Ignacio Rivera y Dionisio, Danilo Rivera y Buenaventura, Domingo Baetiong y Palamaro, Nelson Tamares y Veranga, Jimmy Elep y Asis without first having secured the required license or authority from the Department of Labor and Employment.

Contrary to law.^{ii[2]}

Two other informations for estafa were also filed. In Criminal Case No. 92-105276, it was charged

That in or about the period comprised between January 10, 1992 and March 25, 1992 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 then and there wilfully, unlawfully and feloniously defraud NELSON TAMARES Y VERANGA in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to said Nelson Tamares y Veranga to the effect that the power and capacity to recruit and employ him as a contract worker in Macao 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, induced and succeeded in inducing said Nelson Tamares y Veranga to give and deliver, as in fact they gave and delivered to said accused the amount of ₱18,680.00/ and \$1,200.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain as in fact they did obtain the amount of ₱18,680.00/and \$1,200.00 which amount once in their possession, with intent to defraud, they wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said Nelson Tamares y Veranga in the aforesaid amount of ₱18,680.00 and \$1,200.00 or its equivalent in Philippine currency.

Contrary to law.[iii\[3\]](#)

In Criminal Case No. 92-105277, it was alleged

That in or about the period comprised between May 1, 1991 and March 25, 1992 in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, real identities and present whereabouts are still unknown and helping one another did then and there wilfully, unlawfully and feloniously defraud JIMMY ELEP Y ASIS in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which they made to said Jimmy Elep y Asis to the effect that they had the power and capacity to recruit and employ him as contract worker in Macao, China 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, induced and succeeded in inducing said Jimmy Elep y Asis to give and deliver, as in fact gave and delivered to said accused the amount of ₱61,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and was made solely to obtain, as in fact they did obtain the amount of ₱61,000.00 which amount once in possession, with intent to defraud they wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit to the damage and prejudice of said Jimmy Elep y Asis in the aforesaid amount of ₱61,000.00, Philippine currency.

Contrary to law.[iv\[4\]](#)

As said indictments are founded on the same facts, the cases were tried jointly. On July 22, 1992, accused-appellant Vicente Mercado entered a plea of not guilty to each of the charges, whereupon trial commenced.

The prosecution presented Danilo Rivera as its first witness. Rivera testified that Ricky de los Santos introduced him to accused-appellant Vicente Mercado, an overseas worker recruiter. Ricky gave him an application form which he filled out and signed in accused-appellants house in Singalong, Manila. (Ricky de los Santos is accused-appellants cousin.) Rivera wanted to work as a factory worker in Hong Kong. Ricky gave the application to accused-appellants wife Baby Tan, who told Rivera to be ready with his money and the necessary papers. In February 1992, Rivera paid ₱20,000.00 to Baby Tan, for which he was given a receipt by Baby Tan. The payment was made in accused-appellants house. Present were accused-appellant and Toto Bellosillo, who is accused-appellants sister-in-law. Accused-appellant assured Rivera that the latter would get a job which would give him \$500.00 a month. On the day of his departure for Hong Kong (March 4, 1992), Rivera gave to Baby Tan at the airport ₱30,000.00 more. Rivera testified that before leaving for Hong Kong, accused-appellant and his wife made him sign a waiver, which he was not able to read as he was asked to sign in a hurry otherwise he could not get his passport. v[5] Since he was given his passport, he did not bother to ask for a receipt. After one day in Hong Kong, Rivera and his companions were accompanied to Macao by a certain Sally. Two days later, accused-appellant and his wife Baby Tan arrived. Rivera and his companions were asked to wait, but after fifteen days of waiting, they were told by Sally that accused-appellant and his wife did not really know anybody in Macao. On March 27, 1992, Rivera returned to the Philippines.

Antonio Peralta likewise testified for the prosecution. Peralta said that he and accused-appellants cousin, Ricky de los Santos, were frequent visitors in accused-appellants house, which also served as a recruitment office. Accused-appellant Vicente Mercado was the manager of the business, while his wife was the treasurer. During one of Antonios visits to accused-appellants house in January 1992, accused-appellant Vicente Mercado told him that if he wished to apply for placement abroad, he could fill out a bio-data form and return it to him together with the sum of ₱40,000.00 for plane ticket and placement fee. If he was not around, Peralta could pay the amount to Quinses Toto Bellosillo, accused-appellants sister-in-law. Peralta said that in March 1992 he accomplished the form, stating therein that he was applying for a job in Macao, and paid ₱40,000.00 to Toto Bellosillo. No receipt was issued to him. Instead, he was told that there was no need for a receipt as Peralta could see his companions had already been sent overseas. He was assured that he would be called as soon as the trip was ready. But before he could be called, Peralta received a call from Danilo Rivera and Domingo Baetiong from Macao and was told that there was no job available for any of them in that place. Peralta, therefore, lost no time in going to accused-appellants agency and asking for the return of his money. But accused-appellant was not around. Toto Bellosillo told him that she had no money and that her sister, Baby Tan, was still abroad. In April 1992, following the return of accused-appellant, Peralta filed a complaint with the police. Accused-appellant was asked to come to the police headquarters for questioning. Peralta, together with Danilo Rivera and Ignacio Rivera, signed affidavits in which they allege that they were victims of illegal recruitment. Peralta claimed that at the police station, accused-appellant Vicente Mercado told them that he was willing to refund their money. vi[6]

Nelson Tamares also testified. Nelson said that in January 1992, he was accompanied by his wifes classmate to accused-appellant Vicente Mercado to apply for a job as factory worker in Korea. Like the other prosecution witnesses, Tamares was made to fill out an application form and assured of earning around \$500.00 a month in Korea. He said that he paid ₱45,000.00 to

Baby Tan for which he was given a receipt indicating his payment in two installments. The first payment was for \$1,000.00 which, at the prevailing rate of exchange at the time, was equivalent to ₱26,320.00. Then, on February 25, 1992, he again paid ₱18,680.00 to Baby Tan. Present on both days were accused-appellant and Toto Bellosillo. On March 3, 1992, Tamares and seven other persons left for Hong Kong. Although he wanted to work in Korea, he was told by accused-appellant that Korea had become strict in enforcing immigration laws. Tamares and his group were met in Hong Kong by Baby Tan. The following day, accused-appellant arrived and took them to Macao where they were made to wait for two weeks. However, after two weeks, there was still no work for them. Tamares, therefore, returned to the Philippines. Upon inquiry at the Philippine Overseas Employment Agency (POEA), Tamares learned that accused-appellant, Baby Tan, and Toto Bellosillo had no license to recruit. Tamares and his companions filed a complaint at Police Station No. 5 and gave their statements. Tamares said that a lawyer of accused-appellant offered to pay him ₱20,000.00.vii[7] On cross-examination, he said that accused-appellants friend, Aling Amor, made him sign a waiver just as he was about to depart from the airport.viii[8]

Domingo Baetiong likewise testified. He was also accompanied by Ricky de los Santos to accused-appellants house, where he accomplished an application form given to him by accused-appellant. Baetiong was told that he could have a job as factory worker in Macao for which the monthly salary was \$500.00. Initially, he paid to accused-appellant and his wife ₱40,000.00, for which he was given a receipt. Later on, at the airport, Baetiong paid ₱10,000.00 to accused-appellant. No receipt was issued for this amount. On March 5, 1992, Baetiong and his companions were taken to Hong Kong and from there to Macao. After eleven (11) days he became impatient and returned to the Philippines as there was no job available. Baetiong proceeded to the Police Precinct and filed a complaint against accused-appellant. He said on cross-examination that he too was made to sign a waiver, which he was not able to read because he was hurried to do so at the airport.ix[9]

Ignacio Rivera, Baetiongs brother-in-law, was likewise presented by the prosecution. He testified that he met accused-appellant Vicente Mercado at the latters house in February 1992. He was assured of a job as a factory worker in Macao at a monthly salary of \$500.00. Ignacio later went back to the office and paid ₱40,000.00 to Quinses Bellosillo. No receipt was issued as according to Quinses Bellosillo, only Baby Tan was authorized to issue receipts and she was in Hong Kong. Ignacio testified that he was present when accused-appellant was arrested by policemen in April 1992 and that he also executed a sworn statement against accused-appellant Vicente Mercado.x[10]

Jocelyn Turla, Senior Labor Employment Officer of the POEA, was presented in court. Her testimony was dispensed with as the parties stipulated that accused-appellant Vicente Mercado did not have a license to recruit workers for jobs abroad.xi[11]

Accused-appellant testified in his defense. He denied that he was engaged in the recruitment business. He said his business was buying and selling Ready-To-Wear clothes (RTW). On cross-examination, he explained that, as manager of the business, he went to Macao three times a year to import RTWs because it was cheaper to buy them there. He claimed that he had a residence in Macao. He admitted he saw all the complainants in Macao on different dates.xii[12] He further

admitted he knew that his wife received ₱20,000.00 from Danilo Rivera and various sums from the other complainants, but he claimed he had nothing to do with his wife's activities. He further claimed that the complainants knew that they were being sent overseas simply on the chance that they might find employment.

On November 23, 1992, the trial court rendered a decision, the dispositive portion of which reads:[xiii\[13\]](#)

Wherefore, judgment is hereby rendered as follows -

a) In Criminal Case No. 92-105275, finding the accused Vicente Mercado y Mercado alias Vicente Tan guilty beyond reasonable doubt for the crime of Illegal Recruitment committed in large scale and hereby sentences the said accused to suffer the penalty of life imprisonment and to pay a fine of ₱100,000.00 and to indemnify the complainants (1) Danilo Rivera the sum of ₱50,000.00; (2) Antonio Peralta the sum of ₱40,000.00; (3) Domingo Baetiong the sum of ₱50,000.00; and (4) Ignacio Rivera the sum of ₱50,000.00, as and by way of actual damage.

b) In Criminal Case No. 92-105276, finding the accused Vicente Mercado y Mercado alias Vicente Tan guilty beyond reasonable doubt for the crime of Estafa and hereby sentences the said accused to suffer an indeterminate sentence ranging from six (6) years and two (2) months of prision mayor as minimum to ten (10) years also of prision mayor as maximum and for the said accused to indemnify Nelson Tamares the sum of ₱45,000.00 as and by way of actual damage.

c) For lack of evidence, accused is hereby acquitted of the crime charged in Criminal case No. 92-105277.

Accused-appellant contends that

I.

THE COURT A QUO GRAVELY ERRED IN BELIEVING THE NARRATION OF THE PROSECUTIONS WITNESSES IN SPITE OF THE ABSENCE OF DOCUMENTARY EVIDENCE IN SUPPORT THEREOF.

II.

THE COURT A QUO ERRED IN GIVING CREDIBILITY TO PROSECUTIONS WITNESSES IN SPITE OF THE INCREDIBILITY OF THEIR TESTIMONIES.

III.

THE COURT A QUO GRAVELY ERRED IN RULING THAT THERE IS ENOUGH EVIDENCE TO SUPPORT THE CONVICTION OF THE ACCUSED BEYOND REASONABLE DOUBT.[xiv\[14\]](#)

Accused-appellant concedes that complainants were victims of illegal recruitment, but he claims that the evidence against him is purely testimonial and not documentary and that it is insufficient to convict. He argues that based on the evidence of the prosecution, the culprit is his wife, Baby Tan, who is at present abroad, but he had no participation in the illegal activities of his wife and his sister-in-law. He also claims the acts imputed to him in the affidavits of Antonio Peralta and Nelson Tamares do not constitute illegal recruitment. He assails the testimonies of the prosecution witnesses as incredible and inconsistent and asserts that the prosecution witnesses failed to identify him. Finally, he argues that the trial court failed to give evidentiary value to the waivers executed by Danilo Rivera and Nelson Tamares, which amount to affidavits of desistance.

Accused-appellants contentions are without merit.

First. In Criminal Case No. 92-105275, accused-appellant was charged with illegal recruitment committed in large scale under Art. 38(a) and (b) of the Labor Code in relation to Art. 13(b) and (c) of the said Code. These provisions state:

Art. 38. *Illegal Recruitment.* (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Ministry of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Art. 13. *Definitions.*

(b) 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.

(c) Private fee-charging employment agency means any person or entity engaged in the recruitment and placement of workers for a fee which is charged, directly or indirectly, from the workers or employers or both.

The essential elements of illegal recruitment committed in large scale are: (1) that the accused engaged in acts of recruitment and placement of workers as defined under Article 13(b) or in any prohibited activities under Article 34 (Prohibited Practices) of the Labor Code; (2) that the accused had not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the requirement to secure a license or an authority to recruit and deploy workers, either locally or overseas; and (3) that the accused committed the unlawful acts against three (3) or more persons, individually or as a group.^{xv[15]}

Accused-appellants part in the illegal recruitment of workers is clear from the testimonies of the complainants which belie his claim that it was only his wife Baby Tan and sister-in-law Quines Bellosillo (also known as Toto Bellosillo) who engaged in such illegal activity. Danilo Rivera testified:

Q How about the accused since according to you he was around when this receipt was prepared, do you recall if a conversation between you and the accused took place also on the same occasion?

A Yes, Sir.

Q What did you talk about, Mr. Witness?

A He told me to hurry up with the money so that we can leave.

Q When you said we who are you referring to?

A My companions Rod, Tomeng, Becho, Arnold.

Q What did you tell Mr. Mercado, the accused, when he told you to hurry up with the money?

A I told him to give the ticket and I will give the money.

Q What else did Vicente Mercado tell you if any, Mr. Witness?

A He told me that the salary is good and high.

Q How much?

A More than \$500.00.

Q Who told you that amount, Mr. Witness?

A The accused.

Q What else did the accused tell you aside from those things?

A We have an overtime pay.

Q And how much would be the rate for that overtime?

A \$200.00 for the overtime.^{xvi}[16]

Antonio Peralta similarly testified:

FISCAL:

Q When for the first time did you come to know the accused Vicente Mercado, Mr. Witness?

A I came to know Mr. Mercado last October of 1991.

COURT:

Q What date?

A I cannot recall, Your Honor.

Proceed.

FISCAL:

Q Where did you come to know him?

A In their residence at 1015 Paris Street.

Q How did you happen to be there on that date, Mr. Witness?

A I happened to go there with Ricky delos Santos. Mr. Ricky delos Santos happens also to meet the cousin of the wife Baby Tan.

Q Why were you and Ricky delos Santos in the residence of the accused Vicente Mercado on that date, Mr. Witness?

A I have no purpose whatsoever. I just went with Ricky delos Santos whenever he goes to the house of Vicente Mercado.^{xvii}[17]

....

Q How did you know that there is an office there?

A There are so many applicants for job placement abroad and whenever I ask they are recruiting so I concluded that it must be a recruitment office.

Q Then what is the position of the accused in that office, if you know?

A As I know he is the manager and the wife as the treasurer.

Proceed.

FISCAL:

Q How did you come to know that the accused Vicente Mercado is the manager of that office, Mr. Witness?

A Whenever there is an applicant there he is the one giving instructions to the wife, Baby Tan.

Q Would you still recall what were those instructions for example, Mr. Witness?

A One such as I recall is this, okey, you receive the money and then you give the receipt.

Q For how many times have you been going to the residence of the accused Vicente Mercado, Mr. Witness?

A Five times, I began last October, once in November, once last December, once last January and once on the latter part of February.

Q Sometime in February, Mr. Witness, do you recall having engaged in conversation with the accused?

A Yes, Sir.

Q What was the subject matter of your conversation?

A Vicente Mercado told me just in case you would like to apply for placement abroad, I will give you a bio-data you fill it up. In case I am not around, pointing to Toto Bellosillo, you could always give your bio-data to Toto Bellosillo and in case you have the money you can give the money to her.^{xviii}[18]

....

Q When was that when he told you that if you are interested that he can help you?

A January, Your Honor.

Q 1992?

A Yes, Sir.

Q Then what happened when he told you that?

A I received the biodata form.

Q Who gave you that?

A Mr. Mercado, Your Honor.^{xix[19]}

....

Q Who told you to give the placement fee?

A Mr. Mercado also told me that, Your Honor.

Proceed.

FISCAL:

Q Why were you giving the placement fee, Mr. Witness?

A On the middle part of February, I went at 1015 Paris Street and at that time Mr. Mercado told me that in case I am going to give any placement fee I give to Toto Bellosillo because by this week, I am referring to February, I am going to accompany some job applicants in going abroad.^{xx[20]}

....

Q To the office of the accused?

A Yes, Sir.

Q And who was there, Mr. Witness?

A I saw Vicente Mercado.

Q Who else?

A Toto Bellosillo.

Q What happened when you saw these two in the office of Mr. Mercado?

A They asked me whether I have already the money for placement fee.

Q Who asked you?

A Mr. Mercado.

Q What did he ask you?

A He asked me if I could provide with the money.

Q How much did he tell you to prepare?

A ₱40,000.00.

Q For what purpose is the ₱40,000.00?

A For plane ticket and as placement fee.

Q Were you able to give the amount of ₱40,000.00?

A Not yet.

COURT:

Q Why did you apply for specific job that they required you to pay the ₱40,000.00?

A There was no specific job told us, Your Honor.

Q Then why are you be required to pay ₱40,000.00?

A Mr. Mercado just told me that we will go to Hongkong as tourist and then proceed to Macao as dealers of casino.[xxi\[21\]](#)

On the other hand, Nelson Tamares testified that he paid ₱45,000.00 to accused-appellants wife for the processing of his papers for overseas employment. Nelson Tamares said:[xxii\[22\]](#)

FISCAL:

Q Why did you and the friend of your wife accompany you to the house of Mr. Mercado?

A To apply for a job.

Q And who was applying for a job, Mr. Witness?

A I was the one.

Q Why did you go there to apply for a job?

A Because that is their office.

Q What kind of office is that?

A Its only a house.

Q Upon arriving in the house of Mr. Mercado, what happened there, Mr. Witness?

A Baby Tan and the accused told me to fill up the application form.

Q Did you fill up the application form?

A Yes, Sir.

Q What job did you apply for, Mr. Witness?

A As factory worker.

Q What country?

A Korea.

Q Who told you that, Mr. Witness?

A Mr. Mercado.

Q And how much will you earning there as factory worker in Korea?

A \$500.00 a month.

Q After you have filled up the application form, what happened next?

A I was told to prepare the money.

Q Who told you that?

A The husband and wife.

Q How much did they require you to prepare?

A ₱45,000.00.

Q For what?

A For the processing of the papers?

Q Who told you that?

A The husband and wife.

Q Who told you that?

A Baby Tan and Vicente Mercado.

Q Who is Vicente Mercado?

A Vicente Mercado, the accused.[xxiii\[23\]](#)

....

Q Who was there when you gave the money to Baby Tan?

A The three of them.

Q Name them?

A Toto Bellosillo, Baby Tan and Vicente Mercado.[xxiv\[24\]](#)

....

Q After you have given the amount of P45,000.00 to Baby Tan, what happened next?

A They told me that we were able to leave.

Q Who told you that, Mr. Witness?

A Baby Mercado and Vicente Mercado.[xxv\[25\]](#)

....

Q I thought you stated that you applied for Korea, will you please explain, Mr. Witness?

A Mr. Mercado told us that it became strict in Korea so that we can leave we will go to Macao first.[xxvi\[26\]](#)

....

Q And upon arriving at the hotel, what else happened at the hotel?

A Baby Tan was there and on the following day Vicente Mercado arrived.

Q Mr. Vicente Mercado followed you in Macao?

A Yes, Sir.

Q What happened next, Mr. Witness?

A When we are in the hotel, Mr. Mercado conducted us to Macao in a ferry boat.

Q Were you able to arrive in Macao?

A Yes, Sir.

Q What happened next upon arrival in Macao?

A We were brought to the apartment.

Q Who brought you there, Mr. Witness?

A Mr. Mercado.

Q Upon arriving at the apartment in Macao, what else happened next, Mr. Witness?

A We were told to wait.

Q Who told you to wait?

A Baby Tan and Vicente Mercado.

Q How many days?

A Two weeks.

Q After two weeks, Mr. Witness, what happened?

A I went home because there was no work and we were hungry.

Q Upon arriving at the Philippines, what did you do, Mr. Witness?

A We went to the POEA.

Q Why did you go to the POEA?

A To verify if they are licensed.

Q And then what did you find out from the POEA?

A They are not licensed.^{xxvii[27]}

Another complainant, Domingo Baetiong, testified:

FISCAL:

Q Mr. Baetiong, do you know the accused Vicente Mercado?

A Yes, mam.

Q When for the first time did you come to know him?

A On March 2, 1992.

Q Where did you first see him, Mr. Witness?

A In their house.

Q Where is that Mr. Witness?

A Paris St., corner Leon Guinto, Malate, Manila.

Q Why did you happen to be there?

A Because I received information that he is sending workers abroad.

Q Were you alone when you went there?

A I was accompanied by Ricky delos Santos.

Q Who is this Ricky?

A Relative of Vicente Mercado.

Q Why did you go there?

A Because I want to take chances overseas.

Q What do you mean by that, Mr. Witness?

A To go abroad.

Q For what purpose, Mr. Witness?

A To work.

Q Were you able to see the accused on that date?

A Yes, mam.

Q Were you able to talk to him?

A Yes, mam.

Q What did you talk about?

A I filled up an application.

COURT:

Q What did you tell him?

A Because I wanted to go abroad.

FISCAL:

Q What was the reply of Mercado, if there was any?

A He said, yes.

Q What happened next?

A He gave me an application form.[xxviii\[28\]](#)

....

Q After you have accomplished the application form, what happened next?

A Mr. Mercado told me to prepare money.[xxix\[29\]](#)

....

Q Why did you go to Macao Mr. Witness according to your passport?

A I was brought there by Mr. Mercado.

Q For what purpose you was brought for Macao?

A Because according to him, there was a job there.

Q And what happened to you in Macao?

A We stayed in the apartment.

Q For how many days?

A Eleven days, (11).

Q What happened next after the lapse of eleven (11) days?

A I went back to the Philippines.

Q Why did you come back to the Philippines?

A Because there was no job there. xxx[30]

Lastly, Ignacio Rivera testified:

Q When for the first time, did you come to meet Mr. Mercado?

A In the month of February.

Q Of what year?

A Of that year.

Q Where did you first see him?

A In their house.

Q Where is that?

A Malate.

Q What did you talk about, if there was any when you met him for the first time in February?

A About his sending workers abroad.

Q How did you know that he was sending workers abroad?

A Through our neighbors.

COURT

Q What is the name?

A Ricky delos Santos.

FISCAL

Q Why did you happen to be there on that particular date in the house of Mr. Mercado?

A I asked Ricky to accompany me to inquire if he is really sending workers for abroad.

Q From whom did you inquire?

A From spouses.

COURT

Q Who are they?

A Baby Tan and Mercado.

FISCAL

Q What was the result of your inquiry?

A They explained to me that he is sending workers to Macao including the salary.^{xxxix}[31]

.....

FISCAL

Q What was your supposed job in Macao?

A Factory worker.

Q Who told you that?

A Mr. Mercado.

Q After Mr. Mercado explained to you this thing, what else happened?

A They told me to prepare money.

COURT

Q Even without filing an application?

A There was no application form given to me.

FISCAL

Q How much did he require you to prepare?

A ₱50,000.00

Q For what purpose was that?

A For processing papers and passport.

Q Who told you that, Mr. Witness?

A Mr. Mercado.[xxxii\[32\]](#)

Complainants were thus positive and categorical: accused-appellant, together with his wife and sister-in-law, recruited them for work in Hong Kong and Korea. They did not just meet him in Macao because he was there buying ready-to-wear garments (RTW) which he was to sell in Manila. They were either sent there through his agents or taken there by accused-appellant himself.

Indeed, complainants had no motive to testify falsely against accused-appellant. Accused-appellant admitted he knew of no reason why they should falsely accuse him of illegal recruitment. In his words:

Atty. Sangalang

Q Do you know of any reason why these five complainants filed a case of illegal recruitment against you instead of your wife and Toto Bellosillo?

A I dont know, sir.

It hardly needs to be said that against the positive and categorical testimonies of the complainants, accused-appellants mere denials cannot prevail.

Second. The defense argues that the affidavits of Antonio Peralta and Nelson Tamares show that accused-appellant had no part in the illegal recruitment of workers. This is not true. They are merely incomplete, due no doubt to the fact that they were given *ex parte*. Moreover, as can be seen from the testimonies of these complainants quoted earlier, accused-appellant was clearly one of those who recruited them without license. Between an affidavit and the testimony given in open court, the latter prevails because affidavits taken *ex parte* are generally considered to be inferior to the testimony given in open court.[xxxiii\[33\]](#)

The fact that it was Baby Tan and not the accused-appellant who signed the receipts is of no moment. Accused-appellant, his wife Baby Tan, and sister-in-law Quinses Bellosillo (who is also known as Toto Bellosillo) acted in concert with one another as only those in conspiracy would. What we said in *People v. Alfort*[xxxiv\[34\]](#) applies to this case:

The five culprits including accused-appellant represented themselves as a group; hence, when private complainants paid the sums of money to accused-appellant, the issuance of the receipts by the other members would be entirely reasonable and proper. In fact, this delineation of their respective roles strongly shows that the group were acting in concert in the defraudation of private complainants.

Accused-appellants denial cannot prevail over the positive assertions of complainants, who had no motive to testify falsely against him except to tell the truth.

Accused-appellant also points to certain inconsistencies in the complainants testimonies, allegedly casting doubts on the plausibility of their charges. According to him, these undermine the credibility of the complainants and their testimonies.

There is no merit in this contention. We have consistently ruled that minor discrepancies in testimonies do not affect the credibility of prosecution witnesses. What is important is the fact that accused-appellant was positively identified by the complainants as one of those who made misrepresentations, collected fees from them, and who pretended to make arrangements for job placements abroad for them. Indeed, the denials of the accused cannot be given greater evidentiary weight than the positive declarations of credible witnesses who testify on affirmative matters.[xxxv\[35\]](#)

Nor is it true that the prosecution witnesses failed to identify accused-appellant in court as one of those who recruited them. As the foregoing excerpts from the transcripts of stenographic notes clearly show, the complainants positively identified accused-appellant as one of those who committed the crimes charged in the informations. Moreover, they pointed to him in open court. Although it appears from the transcripts that the court did not require accused-appellant to identify himself for purposes of record, such is of no considerable consequence under the circumstances. As aptly pointed out by the Solicitor General, there is no doubt as to accused-appellants identity as he was the only accused in the case being heard as named in the informations. There were no other accused on trial for this case. Undoubtedly, when the transcripts state witness pointing to the accused, they were referring to accused-appellant and no one else.

Third. The acts of accused-appellant as described in the testimonies of the complainants constitute recruitment and placement under Art. 13(b) of the Labor Code, to wit:

(A)ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: *Provided*, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

As the POEA certified that accused-appellant, his wife, and sister-in-law were not authorized to recruit workers for overseas employment, there is no doubt that accused-appellant is guilty of illegal recruitment (Art. 38(a)). Moreover, since three or more persons had been recruited by accused-appellant, he is guilty of illegal recruitment in large scale (Art. 38(b)), punishable under Article 39 of the same Code with life imprisonment and a fine of one hundred thousand pesos.

In Criminal Case No. 92-105276, accused-appellant was charged with and convicted of violating Art. 315(2)(a) of the Revised Penal Code which provides:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud;

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.

In *People v. Calonzo*,^{xxxvi}[36] the Court reiterated the rule that a person convicted of illegal recruitment under the Labor Code can be convicted of violation of the Revised Penal Code provisions on *estafa*, provided the elements of the crime are present. In *People v. Romero*,^{xxxvii}[37] the elements of the crime were stated, thus: (a) that the accused defrauded another by abuse of confidence or by means of deceit; and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Both elements have been proven in this case. The evidence for the prosecution shows that accused-appellant was able to make private complainant Nelson Tamares part with his hard-earned money upon his fraudulent misrepresentation that he can provide Tamares with work abroad.

Accused-appellant contends, however, that the testimonies given by the prosecution witnesses are not sufficient to convict him. He points out that the evidence against him is purely testimonial and not documentary. There is no merit in this contention. In *People v. Pabalan*,^{xxxviii}[38] we said:

Although not all of the amounts testified to by complainants were covered by receipts, the fact that there were no receipts for some of the amounts delivered to him does not mean that appellant did not accept or receive such payments. This Court has ruled in several cases that the absence of receipts in a criminal 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 had positively shown through their respective testimonies that the accused is the one involved in the prohibited recruitment, he may be convicted of the offense despite the want of receipts.

The Statute of Frauds and the rules of evidence do not require the presentations of receipts in order to prove the existence of a recruitment agreement and the procurement of fees in illegal recruitment cases. The amounts may consequently be proved by the testimony of witnesses.^{xxxix}[39]

For the same reason, we see no reason to disturb the award of actual damages by the trial court. Although not all the complainants were able to produce receipts, they were all able to duly prove by their respective testimonies that accused-appellant was involved in the entire recruitment process and that he got their money.^{xl}[40]

Fourth. Accused-appellant finally contends that complainants signed waivers in which they did not only absolve his wife and others (*i.e.*, accused-appellant and Quinses Bellosillo) but acknowledged that they went abroad as tourists, knowing full well that they were merely taking chances that they might be able to work abroad. The waivers are dated March 3, 1992, March 4, 1992, and March 5, 1992. These were the dates the complainants who signed the waivers left for abroad. The dates confirm their claim that they did not have a chance to read the waivers before

signing them because they were asked to sign them at the airport immediately before departure.
The waivers read:

03/03/92

WAIVER

AKO, SI NELSON TAMARES AY KUSANG LOOB NA PUMAPAYAG NA MAGLAKBAY SA BANSANG MACAU/KOREA BILANG TURISTA, ANUMAN ANG MANGYARI SA AKIN DOON AT MAPABALIK AKO SA ANO PA MANG DAHILAN AY HINDI AKO MAGHAHABOL NG ANUMAN KINA BABY TAN AT SILA AY KUSANG LOOB NA IBABALIK ANG HALAGANG (P10,000) TEN THOUSAND PESOS ONLY, HALAGANG NATIRA SA PERANG NAGASTOS KO.

(Sgd). Nelson Tamares^{xli}[41]

DATE: 03/05/92

WAIVER

AKO, SI DOMINGO BAETIONG AY KUSANG LOOB NA PUMAPAYAG NA MAGLAKBAY SA BANSANG SEOUL, KOREA/HONGKONG/MACAO BILANG TURISTA, ANUMAN ANG MANGYARI SA AKIN DOON AT MAPABALIK AKO SA ANO PA MANG DAHILAN AY HINDI AKO MAGHAHABOL NG ANUMAN KAY BABY TAN AT SIYA AY KUSANG LOOB NA IBABALIK ANG HALAGANG (P10,000.00) TEN THOUSAND PESOS ONLY, HALAGANG NATIRA SA PERANG NAGASTOS KO.

(Sgd.): Domingo Baetiong^{xlii}[42]

03/04/92

WAIVER

AKO SI DANILO RIVERA AY KUSANG LOOB NA PUMAPAYAG NA MAGLAKBAY SA BANSANG HONGKONG BILANG TURISTA. ANUMAN ANG MANGYARI SA AKIN DOON AT MAPABALIK AKO SA ANO PA MANG DAHILAN AY HINDI AKO MAGHABOL NG ANUMAN KAY BABY TAN AT SIYA AY KUSANG LOOB NA IBABALIK ANG HALAGANG (P10,000.00) TEN THOUSAND PESOS ONLY, HALAGANG NATIRA NA PERANG NAGASTOS KO.

(Sgd.) Danilo Rivera^{xliii}[43]

The trial court correctly found accused-appellant guilty of the crimes of illegal recruitment in large scale and of *estafa*. However, the penalty imposed in the case for *estafa* needs to be modified.

Art. 315 of the Revised Penal Code, in part, provides:

ART. 315. *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. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be;

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means.

In accordance with the ruling in *People v. Gabres*,^{xliv[44]} the minimum penalty should be reduced to four (4) years and two (2) months of *prision correccional* (the maximum of the minimum term of the indeterminate sentence), while the maximum penalty should be eight (8) years of *prision mayor* plus a period of two (2) years (one (1) year for each additional ₱10,000) or a total maximum period of ten (10) years of *prision mayor*.

WHEREFORE, the decision appealed from is AFFIRMED with the MODIFICATION that in Criminal Case No. 92-105276, accused-appellant is sentenced to an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.

SO ORDERED.

Bellosillo (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

i[1] Per Judge Domingo D. Panis.

ii[2] *Rollo*, p. 2.

iii[3] *Rollo*, p. 4

iv[4] *Rollo*, p. 5.

v[5] TSN, pp. 3-17, Aug. 25, 1992.

vi[6] TSN, pp. 19-31, Aug. 25, 1992.

vii[7] TSN, pp. 33-39, Aug. 25, 1992.

viii[8] *Id.*, p. 42.

ix[9] TSN, pp. 6-19, Sept. 7, 1992.

x[10] TSN, pp. 24-30, Sept. 7, 1992.

xi[11] TSN, p. 18, Aug. 25, 1992.

xii[12] TSN, pp. 3-23, Nov. 4, 1992.

xiii[13] *Rollo*, p. 84.

xiv[14] *Rollo*, p. 59.

xv[15] *People v. Maozca*, 269 SCRA 513, 523 (1997); *People v. Bautista*, 241 SCRA 216 (1995).

xvi[16] TSN, p. 10, Aug. 25, 1992.

xvii[17] TSN, pp. 20-21, Aug. 25, 1992.

xviii[18] TSN, pp. 21-22, Aug. 25, 1992.

xix[19] *Id.*, p. 22.

xx[20] TSN, p. 24, Aug. 25, 1992.

xxi[21] *Id.*, pp. 20-26.

xxii[22] TSN, pp. 25-26, Aug. 25, 1992.

xxiii[23] TSN, pp. 34-35, Aug. 25, 1992.

xxiv[24] *Id.*, p. 35.

xxv[25] *Id.*, p. 36.

xxvi[26] *Ibid.*

xxvii[27] TSN, pp. 37-38, Aug. 25, 1992.

xxviii[28] TSN, pp. 6-7, Sept. 7, 1992.

xxix[29] *Id.*, p. 8.

xxx[30] *Id.*, p. 12.

xxxi[31] TSN, pp. 24-25, Sept. 7, 1992.

xxxii[32] TSN, pp. 25-26, Sept. 7, 1992.

xxxiii[33] *People v. Marcelo*, 223 SCRA 24 (1993).

xxxiv[34] 219 SCRA 458, 468 (1993).

xxxv[35] *People v. Sendon*, 228 SCRA 489 (1993).

xxxvi[36] 262 SCRA 534 (1996).

xxxvii[37] 233 SCRA 713 (1994).

xxxviii[38] 262 SCRA 574 (1996).

xxxix[39] *Id.*, at 584-585.

xl[40] See *People v. Comia*, 236 SCRA 185 (1994).

xli[41] Exh. 5; Records, p. 150.

xlii[42] Exh. 7; Records, p. 151.

xliii[43] Exh. 1; Records, p. 148.

xliv[44] 267 SCRA 581, 595-596 (1997).