

FIRST DIVISION

[G. R. No. 127842. December 15, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. LEONORA DULAY, *accused-appellant*.

DECISION

PUNO, J.:

In separate informations filed before the Regional Trial Court of Tayug, Pangasinan, Branch 52, Leonora Dulay was accused of illegal recruitment in large scale and four counts of *estafa*. The four informations for *estafa*, docketed as Criminal Case Nos. T-1672, T-1673, T-1674 and T-1675, alleged that the accused violated paragraph 2(a), Article 315 of the Revised Penal Code, viz:

In Criminal Case No. T-1672:

That during the period from August to November, 1994, at Barangay Legaspi, municipality of Tayug, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, wilfully, unlawfully and feloniously, by means of false representation and fraudulent acts, received from the complainant RICHARD L. CASTULO the total sum of EIGHTEEN THOUSAND PESOS (P18,000.00), Philippine Currency, under an express promise to employ RICHARD L. CASTULO abroad (Taiwan) but said accused with intent to defraud and with abuse of confidence and despite repeated demands to comply with her promise or to return the amount received from the complainant failed and refused to do so, to the damage and prejudice of the said RICHARD L. CASTULO.¹¹

In Criminal Case No. T-1673:

That during the period from August to November, 1994, at Barangay San Roque, municipality of San Nicolas, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, wilfully, unlawfully and feloniously, by means of false representation and fraudulent acts, received from the complainant EDUARDO M. DRAPEZA the total sum of TWENTY THREE THOUSAND PESOS (P23,000.00), Philippine Currency, under an express promise to employ EDUARDO M. DRAPEZA

abroad (Taiwan) but said accused with intent to defraud and with abuse of confidence and despite repeated demands to comply with her promise or to return the amount received from the complainant failed and refused to do so, to the damage and prejudice of the said EDUARDO M. DRAPEZA.^[2]

In Criminal Case No. T-1674:

That during the period from August to November, 1994, at Barangay San Roque, municipality of San Nicolas, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, wilfully, unlawfully and feloniously, by means of false representation and fraudulent acts, received from the complainant ODON V. OROSA the total sum of TWENTY THREE THOUSAND PESOS (P23,000.00), Philippine Currency, under an express promise to employ ODON V. OROSA abroad (Taiwan) but said accused with intent to defraud and with abuse of confidence and despite repeated demands to comply with her promise or to return the amount received from the complainant failed and refused to do so, to the damage and prejudice of the said ODON V. OROSA.^[3]

In Criminal Case No. T-1675:

That during the period from August to November, 1994, at Barangay Legaspi, municipality of Tayug, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, wilfully, unlawfully and feloniously, by means of false representation and fraudulent acts, received from the complainant RICARDO C. ILASIN the total sum of TWENTY THREE THOUSAND PESOS (P23,000.00), Philippine Currency, under an express promise to employ RICARDO C. ILASIN abroad (Taiwan) but said accused with intent to defraud and with abuse of confidence and despite repeated demands to comply with her promise or to return the amount received from the complainant failed and refused to do so, to the damage and prejudice of the said RICARDO C. ILASIN.^[4]

In Criminal Case No. T-1676, a prosecution for illegal recruitment in large scale, the information reads:

That during the month from August to November, 1994, at Barangay San Roque and Barangay Legaspi, municipality of San Nicolas and municipality of Tayug, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously recruit RICARDO C. ILASIN, EDUARDO M. DRAPEZA, ODON V. OROSA and RICHARD L. CASTULO, for employment

abroad, without first securing the requisite license or authority from the Department of Labor and Employment.^[5]

Accused, assisted by her counsel *de officio*, pleaded not guilty to all of the charges against her.^[6] The prosecution then presented the alleged victims of the accused as witnesses in a consolidated hearing of the above indictments.

Complainant Eduardo Drapeza,^[7] jobless, testified that he first met the accused in August 1994 at Barangay San Roque, San Nicolas, Pangasinan. With accused at that time was Glory Orosa, Drapezas godmother. In that meeting, the accused asked Drapeza if he wanted to apply for a job in Taiwan as a worker in a thread factory. The accused informed Drapeza the amount of money needed to go to Taiwan. Drapeza told the accused to talk to his parents which she did a week later. Drapezas parents agreed after the accused explained the job Drapeza would get, its salary and the procedure to be followed. Drapeza advanced to the accused three thousand pesos (P3,000.00) to cover the expenses that would be incurred for his medical examination in Manila. Drapeza was not given any receipt.

After Drapezas physical examination, the secretary of the examining physician issued to him a receipt in the amount of eight hundred fifty pesos (P850.00). One week after his examination, the accused took this receipt from Drapeza when they saw each other again at San Roque, San Nicolas. On the same occasion, the accused asked Drapeza for five thousand pesos (P5,000.00) in payment for her services in processing complainants application. Drapeza paid and was given a receipt.^[8]

On September 1, 1994, Drapeza gave the accused fifteen thousand pesos (P15,000.00) in payment of his plane fare. A receipt was issued to Drapeza.^[9] Apparently, the accused informed Drapeza that his prospective employer would be coming to the Philippines and it was best for him to be ready with his ticket as he may be brought to Taiwan. Drapeza went with the accused to a travel agency in Makati to buy the plane ticket. They were not, however, able to buy the ticket for the accused alleged there was no ticket available.

When the accused returned to San Roque to get money from other job applicants, Drapeza inquired about his plane ticket. The accused answered in the affirmative but explained that she did not bring it with her. Drapeza never saw the accused again. He received news that she has been jailed for illegal recruitment.

Drapeza declared that the money he gave to the accused came from loans from a cousin bearing an interest of one *cavan* of *palay* for every one thousand pesos (P1,000.00) borrowed. This interest, he said, matures every harvest time. Since he was not able to get the Taiwan job, Drapeza expressed the fear that he may not be able to pay his loans.

Drapeza said that the accused did not show him any authority or license to recruit applicants for job placement abroad. Drapeza admitted that he did not demand from the accused her license because the latter explained to him that he would be employed in Taiwan through direct hiring.

Complainant Odon Orosa,^[10] a driver, testified that in August 1994, he was in the house of his sister-in-law, Clarita Salagubang, at San Roque, San Nicolas, Pangasinan. Orosa and the accused knew each other as they took part in the construction of Salagubangs house in 1986. The accused asked him if he wanted to work in Taiwan as a company driver. Orosa was assured that he could easily get employed in Taiwan if he could pay the accused one-half of the placement fees and the remainder, after he has started working in Taiwan. His wife, Glory, gave the accused five thousand pesos (P5,000.00), for which a receipt was issued.^[11] The accused returned in October and again asked for money from Orosa as payment for his plane ticket. Orosa handed nine thousand pesos (P9,000.00) to the accused and a receipt was again issued by the accused.^[12] Orosa also gave the accused three thousand pesos (P3,000.00) for his medical examination. The payment was not covered by a receipt. After one month, the accused asked Orosa for additional money for his plane ticket. Orosa, through his wife, paid another six thousand pesos (P6,000.00). The amount was receipted.^[13] Orosa was assured he could leave for Taiwan in January of the following year. January came but Orosa was not able to go to Taiwan. He later discovered that the accused was already in jail at Lingayen, Pangasinan for illegal recruitment. Orosa admitted that he did not ask the accused to show her license to recruit upon the assurance that he was going to Taiwan through direct hiring.

Complainant Ricardo Ilasin,^[14] a security guard, testified that he met the accused in June or July 1994 at Barangay Legaspi. The accused informed Ilasin that she was recruiting persons to work in Taiwan as caretakers of a piggery. The compensation was fifteen thousand pesos (P15,000.00) a month. The accused also told Ilasin that he could pay for her services through salary deduction. Hence, Ilasin contracted a loan and mortgaged the land of his father to meet the required expenses for his work abroad.

For his medical examination, Ilasin paid to the accused three thousand pesos (P3,000.00) without a receipt. He also gave five thousand pesos (P5,000.00) to the accused for her services for which a receipt was issued.^[15] In September 1994, the accused asked Ilasin to give fifteen thousand pesos (P15,000.00) for his airplane ticket. Ilasin paid the amount inside a travel agency in Makati where the accused tried to buy the ticket. However, the accused returned to Ilasin without the ticket on the pretext that there was no ticket available. The money paid for Ilasins airplane ticket was covered by a receipt.^[16] Ilasin did not see the accused again.

Like the other complainants, Ilasin did not ask the accused if she was authorized by the Philippine Overseas Employment Administration (POEA) to recruit employees. He said that the accused did not require him to fill up any application form or to submit pictures. As he was assured that he would be working abroad through direct hiring, he immediately trusted the accused.

Complainant Richard Castulo,^[17] also a security guard, alleged that he was in the house of Ilasin when the accused came to recruit workers. She told Castulo that she was looking for people to work as caretakers of a piggery in Taiwan on a direct hiring arrangement. The monthly compensation was fifteen thousand pesos (P15,000.00) and the period of employment was two years. In his desire to help his parents, Castulo accepted the offer. To process his application, Castulo was asked to pay five thousand

pesos (P5,000.00). On the same day, Castulo gave the amount to the accused for which a receipt^[18] was issued. A few days later, the accused required Castulo to pay ten thousand pesos (P10,000.00) for his plane ticket. Castulo gave the money at Ilasins house which transaction was evidenced by a receipt dated September 12, 1994.^[19] Castulo also paid two thousand pesos (P2,000.00) to the accused for his medical examination. The payment was receipted.^[20] Castulo again gave one thousand pesos (P1,000.00) to the accused for the processing of his passport and her transportation expenses. However, the payment was not covered by a receipt. Like the other complainants, Castulo was not able to leave for Taiwan on the date promised by the accused. All the money Castulo gave to the accused came from loans.

As a common witness in all of the above criminal cases, Glory Orosa,^[21] wife of complainant Orosa, testified that she was at the house of Virgilio Salagubang, her brother, when the accused recruited her husband. The accused promised to her husband a job in Taiwan as a driver. She personally delivered the money demanded by the accused for her services. She paid to the accused five thousand pesos (P5,000.00) as placement fee for which a receipt was issued,^[22] then nine thousand pesos (P9,000.00) for which another receipt was given.^[23] In addition, she gave to the accused six thousand pesos (P6,000.00) in full payment of her husband's plane ticket which was also receipted^[24] and three thousand pesos (P3,000.00) for medical fees for which no receipt was issued.

According to Glory, the accused promised her husband that he could leave for Taiwan in January of 1995. When they never heard from the accused, she and the relatives of the other complainants went to the house of the accused at Binaloan, Pangasinan. From her neighbors, they discovered that the accused was already in jail for illegal recruitment. Although in jail, the accused assured Glory that her husband could still go to Taiwan in due time.

The prosecution formally rested its case on November 28, 1994. The trial court ordered the defense to begin presenting its evidence on January 10, 1995. After numerous postponements,^[25] the accused showed a disinclination in defending herself. Her counsel *de parte* withdrew alleging that she did not take any effort to confer with him.^[26] A counsel *de oficio* was appointed to represent the accused. In the hearing of October 29, 1996, the accused simply remained on her seat and cried even after the court interpreter called her to take the witness stand.^[27] On November 7, 1996, the counsel *de oficio* of the accused manifested that he was submitting the case for decision without any evidence for the defense due to the non-cooperation of the accused. The trial court asked the accused to comment on the manifestation of her counsel but she just remained silent.^[28] Considering the manifestation of her counsel and the fact that the case had already dragged on for a long time in violation of the periods prescribed by the Supreme Court, the trial court declared the case submitted for decision.^[29]

After assessing the evidence of the prosecution, the trial court found the accused guilty of illegal recruitment in large scale in Criminal Case No. T-1676 and sentenced her to suffer the penalty of life imprisonment and to pay a fine of one hundred thousand pesos (P100,000.00). In the criminal cases for *estafa*, the accused was likewise found

guilty as charged and accordingly sentenced: (1) to suffer imprisonment of 2 years, 11 months and 10 days to 6 years, 8 months and 20 days and to pay Richard Castulo P18,000.00 plus interest as actual damages, P10,000.00 as moral damages, and P5,000.00 as exemplary damages in Criminal Case No. T-1672; (2) to suffer imprisonment of 4 years and 2 months to 8 years and to pay Eduardo Drapeza P23,000.00 plus interest as actual damages, P10,000.00 as moral damages, and P5,000.00 as exemplary damages in Criminal Case No. T-1673; (3) to suffer imprisonment of 4 years and 2 months to 8 years and to pay Odon Orosa P23,000.00 plus interest as actual damages, P10,000.00 as moral damages, and P5,000.00 as exemplary damages in Criminal Case No. T-1674; and (4) to suffer imprisonment of 4 years and 2 months to 8 years and to pay Ricardo Ilasin P23,000.00 plus interest as actual damages, P10,000.00 as moral damages, and P5,000.00 as exemplary damages in Criminal Case No. T-1675.

In challenging the judgment of the trial court in Criminal Case No. T-1676, appellant takes issue on the failure of the prosecution to establish her guilt beyond reasonable doubt.^[30] She contends that no evidence was presented by the prosecution showing that she lacked a license or authority to recruit by the Department of Labor and Employment (DOLE).

We agree. The elements of illegal recruitment in large scale are: (1) that the offender undertakes any recruitment activity defined under Article 13 (b) or any prohibited practice enumerated under Article 34 of the Labor Code; (2) that the offender does not have a license or authority to lawfully engage in the recruitment and placement of workers; and (3) that the offender commits the same against three or more persons, individually or as a group.^[31]

There is no doubt that the first and third elements of the crime charged against appellant were sufficiently proven by the prosecution.

The second element - - - that the offender does not have a license or authority to lawfully engage in the recruitment and placement of workers - - - involves a negative averment. In the 1939 case of *People v. Quebral*,^[32] we held that if the subject of the negative averment inheres in the offense as an essential ingredient thereof, the prosecution has the burden of proving it. A careful examination of the records will show that the prosecution completely failed to present any certification from the POEA to prove the negative averment that appellant is not licensed to recruit workers here and abroad. The testimonies of the complainants do not constitute proof beyond reasonable doubt of appellants lack of license. Drapeza admitted he did not ask appellant about her authority to recruit.^[33] Neither did Orosa^[34] nor Ilasin.^[35] In light of this fatal failure, we hold that appellant cannot be convicted of illegal recruitment in large scale in Criminal Case No. T-1676.

We now come to the appeal in the *estafa* cases, Criminal Case Nos. T-1672 to 1675. Appellant argues that, except for Castulo, the three complainants did not present any receipt for the money they gave to her. She contends that without these receipts, it cannot be ruled that Drapeza, Orosa and Ilasin suffered any prejudice. Appellant also urges that without proof of damage, the trial court erred in awarding actual damages in favor of the three complainants.

It is grossly inaccurate for appellant to contend that the payments made by complainants to her are not evidenced by receipts. The records show that these payments were evidenced by receipts marked as follows:

1. Exh. A - Receipt dated August 22, 1994 issued by appellant to Eduardo Drapeza in the sum of P5,000.00;
2. Exh. B - Receipt dated September 1, 1994 issued by appellant to Eduardo Drapeza in the amount of P15,000.00;
3. Exh. D - Receipt dated September 27, 1994 issued by appellant to Glory Orosa, the wife of Odon Orosa, in the amount of P5,000.00 for the payment of processing of the papers of Odon Orosa;
4. Exh. E - Receipt issued appellant to Glory Orosa, wife of Odon Orosa, in the sum of P9,000.00 as advance payment for plane ticket;
5. Exh. F - Receipt dated November 22, 1994 issued by appellant to Glory Orosa, in the sum of P6,000.00 for payment of the full price of the plane ticket;
6. Exh. G - Receipt issued appellant to Ricardo Ilasin for payment of P5,000.00 processing fee;
7. Exh. H - Receipt issued by appellant to Ricardo Ilasin the amount of P15,000.00 for payment of plane ticket;
8. Exh. I - Receipt issued by appellant to Richard Castulo evidencing payment of P5,000.00 for processing fee;
9. Exh. J - Receipt issued by appellant to Richard Castulo for P10,000.00 as full payment of plane ticket;
10. Exh. K - Receipt issued by appellant to Richard Castulo showing payment P2,000.00 for medical examination.^[36]

Be that as it may, we note that except for Ilasin, the complainants were awarded additional damages on the basis of claims unsupported by receipts. In Criminal Case No. T-1672, Castulo claimed that he gave appellant the amount of P1,000.00 for her transportation expenses and the processing of his passport. No receipt supports this allegation. In Criminal Case No. T-1673, Drapeza stated that he incurred P3,000.00 for his medical examination in Manila. Again, this allegation is not proved by any receipt. In Criminal Case No. T-1674, Orosa alleged that he paid to appellant P3,000.00 to cover his medical examination. The allegation was not proved by any receipt. In Criminal Case No. T-1675, Ilasin made no additional claim for damages other than those covered by receipts amounting to P20,000, but the trial court awarded him a total of P23,000.00 as actual damages. We note that the trial court granted actual damages based on the amounts alleged in the informations without considering the evidence presented to prove them.

We have held that to justify an award of actual damages, there must be competent proof of the amount of the loss. Credence can be given only to claims which are duly supported by receipts or other credible evidence.^[37] The respective claims of Castulo, Drapeza and Orosa for transportation expenses, passport fees and medical examination were not backed up by any credible evidence. They should be

disallowed. We hold that by way of actual damages, Castulo is entitled only to P17,000.00; Drapeza to P20,000.00; Orosa to P20,000.00; and Ilasin, only to P20,000.00.

Although the penalty for *estafa* is dependent upon the amount of the fraud,^[38] we find no reason to modify the penalties fixed by the trial court in Criminal Case Nos. T-1672 to 1675 considering that the modified amounts of damages we herein award are still within the same range of penalty imposed on the appellant as provided in the first paragraph of Article 315 of the Revised Penal Code.

Still on damages, we reverse the award of moral damages to Orosa, Ilasin and Castulo for lack of factual basis. They did not pray for moral damages and did not present evidence on the matter. Although moral damages are incapable of pecuniary estimation, it is necessary for the complainants to show that they incurred sufferings and injuries as a proximate result of appellants wrongful act or omission in order to warrant the award.^[39] A trial court may not order an accused to pay moral damages where no evidence, testimonial or otherwise, was presented to support such finding.^[40]

With regard to exemplary damages, it is basic that they may be imposed in criminal cases only when the crime was committed with one or more aggravating circumstances.^[41] There is no aggravating circumstance involved in the cases at bar, hence, the award of exemplary damages is improper.

WHEREFORE, judgment is hereby rendered as follows:

I. The judgment in Criminal Case Nos. T-1672 to T-1675 finding accused-appellant Leonora Dulay guilty beyond reasonable doubt of *estafas* AFFIRMED subject to the following MODIFICATIONS:

(a) In Criminal Case No. T-1672, the award of moral and exemplary damages to Richard Castulo is **DELETED**. The award of actual damages in his favor is **REDUCED** to seventeen thousand pesos (P17,000.00).

(b) In Criminal Case No. T-1673, the award of exemplary damages to Eduardo Drapeza is **DELETED**. The award of actual damages in his favor is **REDUCED** to twenty thousand pesos (P20,000.00).

(c) In Criminal Case No. T-1674, the award of moral and exemplary damages to Odon Orosa is **DELETED**. The award of actual damages in his favor is **REDUCED** to twenty thousand pesos (P20,000.00).

(d) In Criminal Case No. T-1675, the award of moral and exemplary damages to Ricardo C. Ilasin is **DELETED**. The award of actual damages in his favor is **REDUCED** to twenty thousand pesos (P20,000.00).

II. The judgment of the trial court in Criminal Case No. T-1676 is **REVERSED** and appellant is **ACQUITTED** from the charge of illegal recruitment.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

^[1] Original Record, Vol. 1-A, p. 1.

^[2] *Id.*, Vol. 1-B, p. 1.

^[3] *Id.*, Vol. 1-C, p. 1.

^[4] *Id.*, Vol. 1-D, p. 1.

^[5] *Id.*, Vol. 1, p. 1.

^[6] *Id.*, Vol. 1, p. 55.

^[7] TSN, November 14, 1995, pp. 2-18. Also Darapiza in the records.

^[8] Exhibit A, Envelope of Exhibits.

^[9] Exhibit B, Envelope of Exhibits.

^[10] TSN, November 16, 1995, pp. 2-11. Oroza in the records and in the decision of the trial court.

^[11] Exhibit E, Envelope of Exhibits.

^[12] Exhibit E, *id.*

^[13] Exhibit F, *id.*

^[14] TSN, November 16, 1995, pp. 11-18.

^[15] Exhibit G, Envelope of Exhibits.

^[16] Exhibit H, *id.*

^[17] TSN, November 16, 1995, pp. 19-26.

^[18] Exhibit I, Envelope of Exhibits.

^[19] Exhibit J, *id.*

^[20] Exhibit K, *id.*

^[21] TSN, November 21, 1995, pp. 3-10 and November 28, 1995, pp. 2-10.

^[22] Exhibit D, Envelope of Exhibits.

^[23] Exhibit E, *id.*

^[24] Exhibit F, *id.*

^[25] Original Record, Order, pp. 99, 102, 104, 110, 118, 125, 139, 146, 149, 162, 177, 178, and 183.

^[26] TSN, October 11, 1996, p. 3.

^[27] TSN, October 29, 1996, p. 2.

^[28] TSN, November 7, 1996, p.2.

^[29] Original Record, Order, p. 192.

^[30] Brief for Accused-Appellant, *Rollo*, pp. 59-71.

^[31] *People vs. Villas*, 277 SCRA 391 (1997); *People vs. Benedictus*, 288 SCRA 319 (1998).

^[32] 68 Phil. 564 (1939). See also Francisco, Ricardo J., *Evidence: Rules of Court in the Philippines*, 1993 ed., p. 392, citing 29 AmJur 2d, 184.

^[33] TSN, November 14, 1995, pp. 14-15.

^[34] TSN, November 16, 1995, pp. 8-9.

^[35] *Id.*, p. 16.

^[36] Brief for the Appellee, *Rollo*, pp. 125-127.

^[37] *People vs. Guillermo*, 302 SCRA 257 (1999). See also *People vs. Nialda*, 289 SCRA 521 (1998) and *People vs. Oliano*, 287 SCRA 158 (1998).

^[38] *People vs. Bautista*, 241 SCRA 216 (1995).

^[39] Article 2217, Civil Code.

^[40] *People vs. Ballabare*, 264 SCRA 350 (1996).

^[41] Article 2230, Civil Code of the Philippines.