SECOND DIVISION

[G.R. No. 135382. September 29, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* LOURDES GAMBOA alias *Des* or *Lourdes Gamboa y Golfe*, BONIFACIO MIOZA (at large), MELBA MIOZA alias *Melba*, *Eva Mioza* (at large) and GLORIA SARMIENTO (at large), *accused.*

LOURDES GAMBOA alias *Des* or *Lourdes Gamboa y Golfe*, *accused-appellant.*

D E C I S I O N

BELLOSILLO, *J.*:

This is an appeal from the *Partial Decision* of the Regional Trial Court finding accused LOURDES GAMBOA alias *Des* or *Lourdes Gamboa y Golfe* guilty of *Illegal Recruitment in Large Scale* under RA 8042, otherwise known as *The Migrant Workers and Overseas Filipinos Act of 1995*, and imposing upon her life imprisonment and a fine of ₱500,000.00.[1]

From March 1996 to August 1997 the four (4) accused led by Bonifacio Mioza and Melba Mioza promised overseas employment for a fee to complaining witnesses Marissa Balina, Anna Marie Pili, Romulo Macaraeg, Ernesto Magadan, Domingo Magadan, Jr., Roger Castro and Nemia Beri. The accused were then holding office at Room 302, Ermita Building, Arquiza St., Ermita, Manila, where they conducted most of their recruitment activities. To entice complainants the accused represented to them that they were affiliated with Bemil Management Trading and Manpower Services, a duly licensed recruitment agency, and that they had the capacity to send workers to Taiwan, Brunei and Japan. Thus, on different dates, complainants went to the office of the accused and filed their applications together with their NBI Clearances, pictures and other supporting documents. The accused then collected from them placement fees: (a) Marissa Balina, ₱40,000.00, (b) Anna Marie Pili, ₱40,000.00, (c) Romulo Macaraeg, ₱25,000.00, (d) Ernesto Magadan, ₱20,000.00, (e) Domingo Magadan, Jr., ₱20,000.00, (f) Roger Castro, ₱24,000.00, and (g) Nemia Beri, ₱10,000.00, in addition to ₱900.00 for medicare and ₱70.00 for Pre-Departure Orientation Seminar (PREDOS).

However, despite the promises and assurances made by the accused, not one of the complainants was deployed for employment abroad, nor were they able to recover the money they paid to the accused. Hence, complainants lodged separate complaints against the accused before the Philippine Overseas Employment Administration (POEA).[2]

On 15 August 1997 PNP Senior Inspector Ligaya Cabal of the POEA-CIG Task Force Anti-Illegal Recruitment spearheaded a police operation to entrap the accused. Elements of the PNP together with some members of the media proceeded to Ermita Building and placed it under surveillance. Police Officer Cabal, who was in civilian clothes, went alone to the office of the accused in the third floor and posed as a job applicant. The accused inquired if she was applying as there was a vacancy for chambermaid in Brunei. When Officer Cabal answered yes, the accused forthwith furnished her bio-data and visa application forms and instructed her to fill them up.[3]

Officer Cabal promptly accomplished the bio-data and application forms. To obviate any suspicion on the part of the accused as to her true identity, she used the assumed name "Joy S. Garcia."[4] The accused then required Officer Cabal to pay the initial amount of ₱1,500.00 for medical and processing fees. At the instruction of the accused, a certain Teresita Reyoberos received the marked money from Officer Cabal and issued the corresponding receipt therefor.[5] The police dragnet having been laid, Officer Cabal with the use of her cellular phone made the pre-arranged signal to the police operatives waiting outside the building that the marked money had been delivered.[6] Accused Lourdes Gamboa and Teresita Reyoberos were thus apprehended, but the rest of their cohorts eluded arrest and remained at large.

Later, however, Teresita Reyoberos was not included in the criminal information after State Prosecutor Zenaida M. Lim found that she was also a job applicant at the office of the accused who merely acceded to the request of accused Melba Mioza to temporarily man the office in her absence.[7] Consequently, only Lourdes Gamboa was hailed to court and indicted for *Illegal Recruitment in Large Scale*.

In convicting accused-appellant Lourdes Gamboa of the crime charged, the trial court held -

x x x x the proofs adduced by the prosecution have clearly and conclusively demonstrated that the accused, conspiring and confederating with three others, has offered, enlisted and promised overseas employment to [complainants]. Against the mass of evidence arrayed by the prosecution, all that the accused could offer was her bare and unconfirmed denials and explanation x x x x The court, however, is not inclined to uphold and sustain the denials and explanations of the accused, which are negative in character and self-serving in nature. Her unconfirmed version cannot, certainly, outweigh and command greater evidentiary measure than the overwhelming testimonies of the Peoples principal witnesses, who narrated in vivid and clear-cut details the various aspects of her recruitment and placement activities.

x x x x the evidence for the People has likewise conclusively established that the accused is neither personally licensed nor authorized by the POEA to recruit workers for overseas employment (Exhibit B). Although the defense has shown that the license and authority of the Bemil Management Trading and Manpower Services to recruit, process and deploy land-based workers had been renewed and validated for the period from October 26, 1995 to October 25, 1997 (Exhibit 11), the evidence clearly indicates that the accused was neither an employee of, nor was she connected with, the said management and manpower services. It was not also proved that any of her cohorts from whom the accused derived her authority to recruit workers were authorized personnel of Bemil, notwithstanding the fact that the POEA has records of the officers and employees of Bemil from the highest to the lowest.

In this appeal, accused-appellant faults the court *a quo* in finding her guilty of *Illegal Recruitment in Large Scale*. The centerpiece of her defense is three-fold: *first*, the prosecution failed to prove conspiracy between her and the other accused; *second*, she was not responsible for the recruitment of the complaining witnesses nor for their non-deployment abroad since she was also a job applicant herself at the office of the other accused and was merely utilized as a worker thereat while waiting for her deployment abroad, just like Teresita Reyoberos; and *third*, she cannot be held liable for illegal recruitment since she never represented to the complainants that she had the capacity to send them abroad for employment.

We find no reason to reverse accused-appellants conviction, hence, we affirm.

Preliminarily, the proliferation of illegal job recruiters and syndicates preying on innocent people anxious to obtain employment abroad is one of the primary considerations that led to the enactment of *The Migrant Workers and Overseas Filipinos Act of 1995*.[8] Aimed at affording greater protection to overseas Filipino workers, it is a significant improvement on existing laws in the recruitment and placement of workers for overseas employment. Otherwise known as the Magna Carta of OFWs, it broadened the concept of illegal recruitment under the Labor Code[9]and provided stiffer penalties thereto, especially those that constitute economic sabotage, i.e., *Illegal Recruitment in Large Scale* and *Illegal Recruitment Committed by a Syndicate*.[10]

In a litany of cases we held that to constitute *Illegal Recruitment in Large Scale* three (3) elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Art. 13, par. (b), of the Labor Code, or any of the prohibited practices enumerated under Art. 34 of the same Code (now Sec. 6 of RA 8042); and, (c) the offender committed the same against three (3) or more persons, individually or as a group.[11]

In the case at bar, there can be no question that the foregoing elements were sufficiently proved by the prosecution. The POEA certified that accused Melba Mioza and her group, which included accused-appellant Lourdes Gamboa, were neither licensed nor authorized to recruit workers for overseas employment.[12] That they recruited seven (7) persons - herein complaining witnesses Marissa Balina, Anna Marie Pili, Romulo Macaraeg, Ernesto Magadan, Domingo Magadan, Jr., Roger Castro and Nemia Beri - not to mention Police Officer Ligaya Cabal, who disguised herself as a job applicant, whom accused-appellant likewise attempted to recruit. Evidently, the illegal recruiters gave complainants the impression that they had the power and ability to send the latter to work in various foreign destinations, when in fact they had none. Relying on their assurances and promises of employment abroad, complainants, with much hope and expectation for immediate deployment, agreed to part with their hard-earned money to expedite the processing and approval of their applications.

We find no cogent reason likewise to disturb the lower courts findings on the existence of a conspiracy since each accused played a part in the recruitment of complainants.[13] Indeed, the testimonies of the complaining witnesses indubitably show a delineation of roles among the accused. Bonifacio Mioza and Melva Mioza were the managers/heads of the illegal recruitment office. Gloria Sarmiento was the field recruiter actively enlisting prospective job applicants together with Bonifacio and Melba Mioza. Accused-appellant Lourdes Gamboa was the office assistant who answered the queries of applicants and performed clerical work. Conspiracy to defraud aspiring overseas contract workers was evident from the acts of the malefactors whose conduct before, during and after the commission of the crime clearly indicated that they were one in purpose and united in its execution. Direct proof of previous agreement to commit a crime is not necessary as it may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused pointing to a joint purpose and design, concerted action and community of interest.[14] As such, all the accused, including accused-appellant, are equally guilty of the crime of illegal recruitment since in a conspiracy the act of one is the act of all.

Accused-appellant assails the factual basis of the trial court in ruling that she engaged in illegal recruitment, arguing that she was just an applicant herself whom accused Melba Mioza utilized to help in the office work while waiting for deployment abroad. Her active participation however in the illegal recruitment process belies her profession of innocence. Complainant Roger Castro testified -

Q: What else happened?

A: x x x Melba Mioza told Lourdes to prepare the application form, madam.

Q: And what happened next?

A: I was taught by Lourdes how to fill up, madam?

Q: What?

A: The application form, madam.

Q: After filling up the application form, what did you do?

A: x x x Lourdes asked me if I have the money to pay, madam.

Q: And what did you tell her? x x x x

A: I was told that on the 29th after I have paid in a months time I will be able to leave, madam.

Q: And who was telling you these things?

A: It was Lourdes Gamboa who told me that, madam x x x x

Q: x x x but what were those documents being required of you to submit?

A: NBI Clearance, my passport and we have (sic) to undergo training as a bell boy, madam.

Q: Who told you to submit these documents?

A: Lourdes Gamboa, madam.[15]

Complaining witness Nemia Beri testified -

Q: What did Lourdes Gamboa tell you?

A: She told me just to apply with them because if I will apply for Taiwan, it will take a long time, while in their office just 2 to 3 weeks, [after] I submit the papers.

Q: Why, was she in what country?

A: In Brunei.

Q: As what?

A: Chambermaid.

Q: What else did she tell you as to your employment as chambermaid?

A: What I have to do is to submit all the necessary requirements to her and pay the amount x x x x

Q: So you submitted those documents, to whom did you say?

A: To Lourdes Gamboa.

Q: Who required you to undergo training?

A: Lourdes Gamboa, everytime I called her up when I am in Bicol, she always told me to come over in order to train.

Q: Apart from the documents and training, were you required to pay additional fees?

A: There is a need for me to pay ₱900.00 for medicare and ₱70.00 for PREDOS?

PROSECUTOR LIM: Where did you undergo training of PREDOS?

A: The PREDOS did not push through, I just paid the amount.

Q: To whom did you pay the amount?

A: To Lourdes Gamboa.

Q: How much did you pay to Lourdes Gamboa?

A: I paid her ₱70.00 x x x x

Q: How much did you pay for the medicare?

A: I paid ₱900.00.

Q: To whom did you pay ₱900.00?

A: I gave it to Lourdes Gamboa and in turn she gave it to Melba Mioza.[16]

Furthermore, during the police entrapment operation it was accused-appellant who actually recruited the *poseur* applicant, Officer Cabal -

Q: Now, you said you were met by Lourdes Gamboa at the office, what did she tell you, if any?

A: She told me if Im applying in that agency, the vacancy is as chambermaid in Brunei, madam.

Q: What else did she tell you?

A: So, she [asked] me if Im interested and I said yes, madam x x x x

Q: What else did she tell you?

A: She told me to fill up the bio-data form and visa application, madam x x x x

Q: Apart from these documents, these visa application form and bio-data, were you asked to fill up any document?

A: Upon payment, madam.

Q: Which payment?

A: The ₱ 1,500.00 marked money, madam.

Q: Who told you to pay?

A: Lourdes Gamboa, madam x x x x

Q: Now, did you actually pay the ₱1,500?

A: Yes, madam.

Q: To whom did you pay?

A: I paid to Ms. Lourdes Gamboa, madam.

Q: Who received the amount?

A: It was Teresita Reyoberos, madam.

Q: Upon whose instruction?

A: Lourdes Gamboa, madam.[17]

The precise degree of participation of accused-appellant Lourdes Gamboa in the illegal recruitment scheme is very clear from the foregoing testimonies. She was present when the complainants were being recruited and in fact personally recruited some of them, providing and assisting them in filling up the application forms, answering their queries, receiving documents and payments, and repeatedly assuring them that they would be able to leave for their respective jobs abroad. These acts demonstrated beyond any cavil of doubt that she was a *knowing* and *willing*participant in the recruitment activities of Melba Mioza and her group.

Moreover, accused-appellants bare denials and self-serving assertion that she was a mere job applicant herself certainly cannot prevail over the positive assertions of Officer Cabal and the complainants who had no ill motive to testify falsely against her.

At any rate, the lack of criminal intent on the part of an accused - assuming *ex-gratia argumenti* that accused-appellant was indeed unaware of the illegal nature of the recruitment business of her co-accused - is hardly a defense in the prosecution for illegal recruitment. It must be emphasized that *Illegal Recruitment in Large Scale* penalized under *The Migrant Workers and Overseas Filipinos Act of 1995*, a special law, is *malum prohibitum* and not *malum in se*. The criminal intent of the accused is not necessary and the fact alone that the accused violated the law warrants her conviction.[18]

Accused-appellant next insists that she did not represent to complainants or to Officer Cabal that she has the capacity to send them for overseas employment. That when she asked Officer Cabal, then disguised as a job applicant, if she was applying, the vacancy is for chambermaid in Brunei, she was merely echoing some facts known to her but was not in any way giving Officer Cabal any false representation. We are not persuaded. Suffice it to say that an illegal recruiter need not expressly represent to the victim that she has the ability to send workers abroad. It is enough that she gives the *impression* of her ability to enlist workers for job placement abroad in order to induce them to tender payment of fees, as what accused-appellant had done to the complainants in this case.[19]

Finally, it is doctrinal that the trial courts evaluation of the testimony of witnesses is accorded the highest respect, for the trial court has an untrammeled opportunity to observe directly the demeanor of a witness on the stand and, thus, to determine whether he or she is telling the truth.Such assessment is generally binding on this Court, except when the same has been reached arbitrarily; or when the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have affected the result of the case.

Considering therefore the evidence extant on record, we fully agree with the trial court that accused-appellant, in conspiracy with the other accused in this case, engaged in a recruitment business which, as herein discussed, was illegal and in large scale. Section 7 of RA 8042 prescribes the penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 in cases where the illegal recruitment constitutes an offense involving economic sabotage.[20] Indeed, the alarming incidents of such nefarious crime rationalizes the imposition of severe penalties under the axiom that extreme situations require extreme remedies.

WHEREFORE, the assailed *Partial Decision* of the trial court dated 18 August 1998 convicting accused-appellant Lourdes Gamboa alias*Des* or *Lourdes Gamboa y Golfe* of *Illegal Recruitment in Large Scale*, sentencing her to life imprisonment and to pay a fine of ₱500,000.00, and ordering her to restitute the sums of money collected from the complainants in this case in the total amount of ₱179,970.00, is AFFIRMED.As for accused Bonifacio Mioza, Melba Mioza and Gloria Sarmiento, who until now have remained at large, let this case be ARCHIVED without prejudice to its reinstatement as soon as the accused shall have been apprehended and brought to the jurisdiction of the court.

SO ORDERED.

Mendoza, Quisumbing, Buena, and *De Leon, Jr., JJ.,* concur.

[1] Decision penned by Judge Ramon P. Makasiar, RTC-Br. 35, Manila, promulgated 18 August 1998.

[2] Records, pp. 15-31.

[3] TSN, 18 February 1998, p. 46.

[4] *Id*., pp. 46-47.

[5] *Id*., p. 48-49.

[6] *Rollo* p. 20.

[7] Resolution of the Department of Justice dated 15 September 1997; Exh. 12.

[8] RA 8042, "An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress and for other Purposes." It took effect 15 July 1995.

[9] Sec. 6. Definition. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13 (f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder of authority, licensee or holder of authority: (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance; (b) To furnish or publish any false notice or information or document in relation to recruitment or employment; (c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code; (d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment; (e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency; (f) To engage in the recruitment and placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines; (g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or his duly authorized representative; (h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment; (i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment; (j) for an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency; (k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations; (l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the workers fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices, and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

[10] See Annotation, Illegal Recruitment of Overseas Filipino Workers as Economic Sabotage, by Jorge R. Coquia, 279 SCRA 199 (16 September 1997).

[11] People *v*. Enrique, G.R. No. 127159, 5 May 1999; People v. Reyes, G.R. Nos. 104739-44, 18 November 1997, 282 SCRA 105; People v. Diaz, G.R. No. 112175, 26 July 1996, 259 SCRA 441; People v. Calonzo, G.R. Nos. 115150-55, 27 September 1996, 262 SCRA 535; People v. Bautista, G.R. No. 113547, 9 February 1995, 241 SCRA 216; People v. Cabalang, G.R. No. 113917, 17 July 1995, 246 SCRA 530.

[12] Original Records, p. 32.

[13] People *v*. Garcia, G.R. No. 117010, 18 April 1997, 271 SCRA 621.

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

[15] TSN, 24 February 1998, pp. 5-6.

[16] TSN, 3 March 1998, pp. 4-7.

[17] TSN, 18 February 1998, pp. 46, 48-49.

[18] See Note 14, p. 692.

[19] People *v*. Gomez, G.R. Nos. 131946-47, 8 February 2000.

[20] Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage (Sec. 6, RA 8042).