SECOND DIVISION

[G. R. No. 119594. January 18, 2000]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* BENZON ONG y SATE alias "BENZ ONG," *accused-appellant.*

D E C I S I O N

MENDOZA, *J*.:

This is an appeal from the decision1[1]of the Regional Trial Court, Branch 5, Baguio City, finding accused-appellant Benzon Ong y Sate, alias Benz Ong, guilty of (1) illegal recruitment committed in large scale and sentencing him to suffer life imprisonment, pay a fine of ₱100,000.00, without subsidiary imprisonment in case of insolvency, and pay the costs; and (2) seven counts of estafa for which he was sentenced to suffer, on each count, an indeterminate prison term ranging from four years and two months of *prision correccional,* as minimum, to eight years of *prision mayor,* as maximum, in two cases, and to nine years of *prision mayor*, as maximum, in five cases, and to indemnify the eight private complainants in the aggregate amount of ₱277,500.00 with interest at the legal rate counted from July 25, 1994, until fully paid.

In Criminal Case No. 13146-R, the information for illegal recruitment in large scale2[2] alleged -

> That sometime during and between the period from November, 1993 to January, 1994, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, representing himself to have the capacity to contract, enlist, hire and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and feloniously, for a fee, recruit and promise employment/job placement to the following persons:
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> 1. Noel Bacasnot y Baldivino;
> 2. Ruth A. Eliw;
> 3. Samuel Bagni;
> 4. Francisca Cayaya;
> 5. Teofilo S. Gallao, Jr.;
> 6. Sally Kamura;
> 7. Paul G. Esteban;
> 8. David Joaquin; and
> 9. Solidad M. Malinias

1[1] Per Judge Salvador J. Valdez, Jr., now Associate Justice of the Court of Appeals.

2[2] *Rollo*, p. 8.

> in Taiwan, without first obtaining or securing license or authority from the proper governmental agency.
>
> CONTRARY TO LAW.

In Criminal Case Nos. 13147-R to 13154-R, eight informations for estafa were filed. Save for the dates of commission of the crime, the names of the complainant and the amounts involved, the informations uniformly alleged -

> That sometime in [date],[3] in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously defraud one [name][4] by way of false pretenses, which are executed prior to or simultaneously with the commission of the fraud, as follows, to wit: the accused knowing fully well that he/she/they is/are not authorized job recruiters for persons intending to secure work abroad convinced said [name] and pretended that he/she/they could secure a job for him/her abroad, for and in consideration of the sum of [amount],[5] when in truth and in fact they could not; the said [name], deceived and convinced by the false pretenses employed by the accused, parted away the total sum of [amount], in favor of the accused, to the damage and prejudice of the said [name] in the aforementioned amount of [amount in words][6] [amount], Philippine Currency.
>
> CONTRARY TO LAW.

All indictments being based on the same facts, the cases were tried jointly. Accused-appellant entered a plea of not guilty to each of the charges, whereupon trial commenced.

The evidence for the prosecution established the following facts:

3[3] 1) January, 1994. ; 2) January, 1994. ; 3) May 10, 1994. ; 4) January, 1994. ; 5) January, 1994. ; 6) March 7, 1994. ; 7) November 30, 1993. ; 8) January, 1994.

4[4] 1) Ruth Eliw y Adais (Crim. Case No. 13147-R) ; 2) Samuel Bagni (Crim. Case No. 13148-R) ; 3) Francisca Cayaya (Crim. Case No. 13149-R) ; 4) Teofilo S. Gallao, Jr. (Crim. Case No. 13150-R) ; 5) Sally Kamura (Crim. Case No. 13151-R) ; 6) Paul G. Esteban (Crim. Case No. 13152-R) ; 7) David Joaquin (Crim. Case No. 13153-R) ; 8) Solidad M. Malinias (Crim. Case No. 13154-R)

5[5] 1) ₱40,000.00 (Forty thousand pesos) ; 2) ₱40,000.00 (Forty thousand pesos) ; 3) ₱20,000.00 (Twenty thousand pesos) ; 4) ₱40,000.00 (Forty thousand pesos) ; 5) ₱40,000.00 (Forty thousand pesos) ; 6) ₱30,000.00 (Thirty thousand pesos) ; 7) ₱30,000.00 (Thirty thousand pesos) ; 8) ₱40,000.00 (Forty thousand pesos)

6[6] See footnote 5.

Complainant **Noel B. Bacasnot** is an optometrist by profession. In September 1993, he met accused-appellant at the insurance office of Zaldy Galos at Laperal Building in Session Road, Baguio City. Accused-appellant represented to Bacasnot that he had contacts in Taiwan, Republic of China, who were looking for workers. Factory workers would be paid ₱15,000.00 a month, while construction workers would be paid ₱1,200.00 a day. According to him, his mother was in Taiwan and could help Bacasnot get a job as an optometrist with a salary of as much as ₱50,000.00 to ₱80,000.00 a month. A week later, accused-appellant told Bacasnot that, after talking to his mother, he thought it would be better if he (Bacasnot) worked initially as a factory worker for six months. Bacasnot agreed. He was charged ₱30,000.00 for placement fee, of which ₱15,000.00 was to be paid at once and the balance of ₱15,000.00 to be deducted from his salary once he got a job in Taiwan. As Bacasnot did not have enough money, he was allowed to pay ₱10,000.00 as downpayment for his placement and processing fee which accused-appellant received on January 31, 1994 (Exh. A)7[7] at the Kimsam Eatery on Session Road. Bacasnot was assured by accused-appellant that upon completion of his papers, he would leave for Taiwan within three to four months thereafter.8[8]

On the other hand, upon learning of job opportunities abroad, **complainants Ruth A. Eliw, Sally Kamura** and **Solidad Malinias** also sought the assistance of accused-appellant. They were charged a higher placement fee of ₱40,000.00 each, and payments were made to accused-appellant at the Gallaos Optical Clinic, where Bacasnot treated patients, at 159 Magsaysay Avenue, Baguio City. Accused-appellant later accompanied complainants to Manila purportedly for interview and medical examination at the Steadfast Recruitment Agency with which accused-appellant claimed to be connected. However, instead of taking them to a recruitment agency, accused-appellant took them to an office in United Nations Avenue where three men, allegedly Taiwanese nationals, interviewed them and later took them to a clinic where they were examined.9[9]

Eliw, Kamura and Malinias each paid accused-appellant the amount of ₱25,000.00 on January 21, February 13 and March 30, 1994 (Exhs. D-1 and K),10[10] respectively. On May 30, 1994, each of them paid the balance of ₱15,000.00 (Exh. D).11[11] In a handwritten agreement (Exh. D) prepared by Almi G. Bacasnot (wife of Noel B. Bacasnot), accused-appellant acknowledged payment of ₱45,000.00, representing the balance of ₱15,000.00 from each of complainants and promised them that they would leave for Taiwan in three weeks. The agreement reads:

7[7] RTC Records, p. 70.

8[8] TSN (Noel B. Bacasnot), pp. 2-17, Sept. 28, 1994; See Sworn statement of Noel B. Bacasnot dated June 28, 1994 (Exh. B), RTC Records, pp. 71-72.

9[9] TSN (Solidad Malinias), pp. 2-17, Oct. 4, 1994; TSN (Ruth A. Eliw), pp. 2-15, Oct. 5, 1994; pp. 2-8, Oct. 10, 1994; TSN (Sally Kamura), pp. 24-33, Oct. 11, 1994.

10[10] RTC Records, pp. 77 & 87.

11[11] *Id.*, p. 76.

AGREEMENT

I, BENSON ONG, OF LEGAL AGE, RECEIVED THE AMOUNT OF FORTY FIVE THOUSAND PESOS ONLY (₱45,000.00) AS RECRUITMENT FULL PAYMENT ADDITIONAL TO SEVENTY FIVE THOUSAND PESOS (₱75,000.00) WHICH WAS FIRST GIVEN TO ME FROM

1. SALLY KAMURA
2. RUTH ELIW
3. SOLIDAD MALINIAS

IN A CONDITION THAT I SHOULD LET THEM SIGN THE ABOVE NAMES THE CONTRACT OF EMPLOYMENT FOR TAIWAN NOT MORE THAN THREE WEEKS (JUNE 3 TO JUNE 24, 1994).

HEREBY, IF I COULD NOT LET THEM HAVE THE CONTRACT OF EMPLOYMENT FOR TAIWAN, I WILL RETURN THE MONEY WITHIN ONE MONTH THE AMOUNT OF (₱120,000.00) ONE HUNDRED TWENTY THOUSAND PESOS ONLY AFTER THE CONDITION ON THE DATE OF JULY 24, 94.

SIGNED ON THE MONTH OF MAY IN THE 30th DAY OF THE YEAR 1994.

APPLICANTS NAME AND SIGNATURE

SOLIDAD M. MALINIAS (Sgd.)
RUTH ELIW (Sgd.) RECEIVED AND AGREED BY:
SALLY KAMURA (Sgd.)

(Sgd.)
BENSON ONG
RECEIVER

WITNESSES:

(Sgd.)
ALMI G. BACASNOT

(Sgd.)
NOEL B. BACASNOT

Accused-appellant never fulfilled his promise. When complainants sought to inquire about their application, they discovered that accused-appellant no longer held office at the place in the upper story of Marios Restaurant on Session Road. Apparently, accused-appellant was already into hiding.

A week before June 27, 1994, Eliw chanced upon accused-appellant and she was told that Kamura and Malinias had passed the interview and medical examination in Manila. Accused-appellant then asked Eliw to pay an additional amount of ₱5,000.00 for processing. Instead of paying, Eliw denounced accused-appellants recruitment activities to the local office of the National Bureau of Investigation. On June 25, 1994, the NBI confirmed from the Philippine Overseas Employment Administration-Regional Extension Unit (POEA-REU) in the Cordillera Autonomous Region that accused-appellant had not been licensed to recruit for overseas employment. On June 27, 1994, a team composed of an NBI agent and three special investigators conducted an entrapment operation. Eliw handed the ₱1,500.00 marked money to accused-appellant, promising to pay the balance of ₱3,500.00 later. At that instance, the NBI group nabbed accused-appellant and placed him under arrest. He was subjected to paraffin test and found positive for the presence of fluorescent powder.12[12]

Complainants **Samuel Bagni, Teofilo Gallao, Jr., Paul Esteban** and **David Joaquin** were likewise swindled. Accused-appellant collected ₱25,000.00 from Bagni on January 17, 1994 (Exh. M)13[13] and ₱15,000.00 on May 9, 1994 (Exh. M-1).14[14] From Gallao he collected ₱25,000.00 on January 31, 1994 (Exh. I)15[15] and ₱15,000.00 on May 9, 1994 (Exh. I-1).16[16] He collected various amounts from the others, as follows: from Esteban, ₱7,500.00 on November 30, 1993 (Exh. E)17[17] and ₱30,000.00 on March 7, 1994 (Exh. F);18[18] from Joaquin, ₱7,500.00 on November 30, 1993 (Exh. E),19[19] ₱7,500.00 on December 28, 1993 (Exh. E-1),20[20] and ₱15,000.00 on March 6, 1994 (Exh. E-2).21[21] Joaquin was with Esteban when he was introduced

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12[12] TSN (Ruth A. Eliw), supra.; See Sworn statement of Ruth A. Eliw dated June 30, 1994 (Crim. Case No. 13147-R), Records, p. 3; See Joint affidavit of arrest of NBI Senior Agent Dave D. Alunan, Spec. Invs. III Darwin A. Lising, Roy D. De Guzman and Ferdie H. dela Cruz dated June 28, 1994, RTC Records, p. 3; See Affidavits of Ruth A. Eliw, Sally Kamura and Solidad Malinias all dated June 27, 1994, RTC Records, pp. 7, 11 and 14.

13[13] RTC Records, p. 89.

14[14] *Id.*, p. 90.

15[15] *Id.*, p. 84.

16[16] *Id.*, p. 85.

17[17] *Id.*, p. 78.

18[18] *Id.*, p. 81.

19[19] See footnote 17.

20[20] *Id.*, p. 79.

21[21] *Id.*, p. 80.

to accused-appellant through Alice Sabala on November 15, 1993, at the Laperal Building on Session Road, Baguio City where they made their first and second payments. Joaquins third payment was made at the Bombay Bazaar on Magsaysay Avenue and he, together with Esteban, was supposed to leave in March 1994. On the other hand, Gallao was a technician at the Gallaos Optical Clinic. He came to know accused-appellant through Bacasnot who is the husband of Gallaos cousin, Almi Gallao Bacasnot. Bagni, meanwhile, met accused-appellant through Bacasnot, Bagnis brother-in-law. Gallao and Bagni were scheduled to leave by June 15, 1994. As with Eliw, Kamura and Malinias, both Gallao and Bagni gave the downpayment of their fees to accused-appellant at Gallaos Optical Clinic. The balance of their fees was paid at the house of accused-appellant at 83 Happy Homes, Baguio City.

Accused-appellant failed to comply with his commitment to send complainants Bacasnot, Eliw, Kamura, Malinias, Bagni, Gallao, Esteban and Joaquin to Taiwan as he could no longer be located after collecting placement fees from them.22[22]

Earlier, at the instance of complainant Bacasnot, Atty. Justinian O. Licnachan, POEA-REU Legal Officer of the Cordillera Autonomous Region, issued a certification dated June 24, 1994 (Exh. C)23[23] which read:

> This is to certify that BENZ ONG a.k.a. "BENZON ONG SATE & JOHNSON ONG SATE", per existing and available records from this office, is not licensed nor authorized to recruit workers for overseas employment in the City of Baguio or any part of the region. He is neither in possession of the required Provincial Recruitment Authority.

Complainant Francisca Cayaya failed to testify despite due notice to her. Her complaint for estafa was, therefore, dismissed.24[24] On the other hand, the complaint for estafa of complainant Bacasnot, which should have been filed with the Municipal Trial Court in view of the amount (₱10,000.00) involved, was nonetheless allowed because it arose out of the same facts as the case for illegal recruitment.

For his defense, accused-appellant **Benzon Ong y Sate** admitted having met complainant Bacasnot through Zaldy Galos. He got to know the other complainants through Bacasnot and one Patring Esteban (sister of complainant Paul Esteban), his partner in the video rental business. He introduced himself to Bacasnot as one from Taiwan and told Bacasnot that his mother and brother were based in Taiwan. Accused-appellant testified that when complainants sought his

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22[22] TSN (Noel B. Bacasnot), p. 6, Sept. 28, 1994; TSN (David Joaquin), pp. 2-12, Oct. 3, 1994; TSN (Paul Esteban), pp. 12-17, Oct. 3, 1994; TSN (Teofilo Gallao, Jr.), pp. 9-24, Oct. 10, 1994; TSN (Samuel Bagni), pp. 33-42, Oct. 11, 1994; See Affidavits of Samuel Bagni, Teofilo Gallao, Jr., Paul Esteban and David Joaquin all dated June 27, 1994, RTC Records, pp. 8, 10, 12 and 13.

23[23] RTC Records, p. 73.

24[24] Crim. Case No. 13149-R.

help, he advised them to go to the POEA but complainants claimed that they do not know anyone at said office. He then offered to scout for a recruitment agency in Manila. Accused-appellant accompanied complainants to Steadfast Recruitment Agency in Manila and introduced them to a certain Marilyn Pagsibigan, Marketing Manager of the agency. He came to know about the agency through a friend in Manila, one Ernesto Sy. He denied collecting placement fees from the complainants and claimed that his signatures on the receipts had been forged. He also claimed that on June 27, 1994, he was at the Gallaos Optical Clinic to collect the payment for the betamax player which Bacasnot had previously ordered and which accused-appellant had delivered a week earlier. Bacasnot told accused-appellant that Eliw wanted to buy the betamax player for ₱10,000.00. As Eliw had only ₱1,500.00, accused-appellant at first refused to accept the payment. When Eliw assured him she would pay the balance, accused-appellant finally agreed to receive the payment. As accused-appellant received the money, he was nabbed by NBI agents who identified themselves and asked accused-appellant to go with them to the NBI office. He was later charged with illegal recruitment.25[25]

On November 23, 1994, the trial court rendered its decision convicting accused-appellant of illegal recruitment committed in large scale and of seven counts of estafa. The dispositive portion of its decision reads:26[26]

> WHEREFORE, the Court finds and declares the accused BENZON ONG y SATE alias Benz Ong, guilty beyond reasonable doubt of the crime of illegal recruitment in large scale as charged in Crim. Case No. 13146-R and hereby sentences him to suffer life imprisonment, to pay a fine of ₱100,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs.
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> The Court also finds and declares the same accused BENZON ONG y SATE, alias Benz Ong, guilty beyond reasonable doubt of the crime of estafa on seven counts and hereby sentences him:
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>> (a) In Crim. Case No. 13147-R, to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to NINE (9) YEARS of prision mayor, as maximum; and to pay the costs;
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>> (b) In Crim. Case No. 13148-R, to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to NINE (9) YEARS of prision mayor, as maximum; and to pay the costs;
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>> (c) In Crim. Case No. 13150-R, to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision

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25[25] TSN (Benzon Ong y Sate), pp. 2-15, Oct. 17, 1994.2

26[26] *Rollo*, pp. 38-39.

correccional, as minimum, to NINE (9) YEARS of prision mayor, as maximum; and to pay the costs;

(d) In Crim. Case No. 13151-R, to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to NINE (9) YEARS of prision mayor, as maximum; and to pay the costs;

(e) In Crim. Case No. 13152-R, to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to EIGHT (8) YEARS of prision mayor, as maximum; and to pay the costs;

(f) In Crim. Case No. 13153-R, to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to EIGHT (8) YEARS of prision mayor, as maximum; and to pay the costs; and

(g) In Crim. Case No. 13154-R, to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to NINE (9) YEARS of prision mayor, as maximum; and to pay the costs.

In the service of his sentence, the accused shall be credited with his preventive imprisonment under the terms and conditions prescribed in Article 29 of the Revised Penal Code, as amended.

The said accused BENZON ONG y SATE, alias Benz Ong, shall furthermore indemnify the below-named persons the amounts indicated opposite their names, to wit:

1.	Noel Bacasnot	------	₱10,000.00
2.	Ruth Eliw	------	40,000.00
3.	Samuel Bagni	------	40,000.00
4.	Teofilo Gallao, Jr.	------	40,000.00
5.	Sally Kamura	------	40,000.00
6.	Paul Esteban	------	37,500.00
7.	David Joaquin	------	30,000.00
8.	Solidad Malinias	------	40,000.00

> all amounts to bear interest at the legal rate from July 25, 1994, the date of the filing of the indictments, until fully paid.
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> SO ORDERED.

Hence, this appeal. Accused-appellant contends that

> I. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE COMPLAINING WITNESSES.
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> II. THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY WHEN THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

First. Accused-appellant claims that when complainants filled out their respective bio-data, application forms and other documents for employment in Taiwan, they knew that they were applying for employment abroad through the Steadfast Recruitment Agency. He claims that he merely suggested to them the opportunity to work overseas but that he never advertised himself as a recruiter.

The contention has no merit

Accused-appellant is charged with violation of Art. 38 of the Labor Code, as amended by Presidential Decree No. 2018, which provides that any recruitment activity, including the prohibited practices enumerated in Art. 34 of said Code, undertaken by persons who have no license or authority to engage in recruitment for overseas employment is illegal and punishable under Art. 39. Under Art. 13(b) of the Labor Code, "recruitment and placement" refer 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, is considered engaged in recruitment and placement. On the other hand, "referral" is defined as the act of passing along or forwarding of an applicant for employment after an initial interview of a selected applicant for employment to a selected employer, placement officer or bureau.27[27]

On the other hand, illegal recruitment is considered an offense involving economic sabotage if any of these qualifying circumstances exist, namely, (a) when illegal recruitment is committed by a syndicate, *i.e.,* if it is carried out by a group of three or more persons conspiring and/or confederating with one another; or, (b) when illegal recruitment is committed in large scale, *i.e.*, if it is committed against three or more persons individually or as a group. The essential elements of the crime of illegal recruitment in large scale are: (1) the accused engages in acts of recruitment and placement of workers defined under Art. 13(b) or in any prohibited activities under Art. 34 of the Labor Code; (2) the accused has not complied with the guidelines issued by

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27[27] People *v.* Goce, 247 SCRA 780 (1995) the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, either locally or overseas; and (3) the accused commits the unlawful acts against three or more persons, individually or as a group. As defined, a "license" is that which is issued by the Department of Labor and Employment authorizing a person or entity to operate a private employment agency, while an "authority" is that issued by the DOLE entitling a person or association to so engage in recruitment and placement activities as a private recruitment agency. It is the lack of the necessary license or authority that renders the recruitment unlawful or criminal.28[28]

To prove illegal recruitment, it must be shown that the accused-appellant gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed.29[29] Accused-appellant represented himself to complainants as one capable of deploying workers abroad and even quoted the alleged salary rates of factory and construction workers in Taiwan. He advised Bacasnot to accept a job as a factory worker first because it would be then easier for him to transfer jobs once he got to Taiwan. Accused-appellant said his mother, who was based in Taiwan, could help Bacasnot. Bacasnot paid accused-appellant an initial placement fee agreeing to pay the balance through salary deductions once he was employed. Accused-appellant also promised jobs to Eliw and the other complainants. He accompanied them to Manila so that they could be interviewed and physically examined at the Steadfast Recruitment Agency with which accused-appellant represented he was connected. These acts of accused-appellant created the distinct impression on the eight complainants that he was a recruiter for overseas employment.30[30] There is no question that he was neither licensed nor authorized to recruit workers for overseas employment. Nor is there any question that he dealt with complainants. What he claims is that he merely "suggested" to complainants to apply at the Steadfast Recruitment Agency, which is a recruitment agency.

Even if accused-appellant did no more than "suggest" to complainants where they could apply for overseas employment, his act constituted "referral" within the meaning of Art. 13(b) of the Labor Code. Indeed, the testimonial and documentary evidence in the record shows that accused-appellant did more than just make referrals. The evidence shows that he made misrepresentations to them concerning his authority to recruit for overseas employment and collected various amounts from them for placement fees. Clearly, accused-appellant committed acts constitutive of large scale illegal recruitment.

Second. Accused-appellant denies that the signatures in the receipts of payments are his. To be sure, the presentation of the receipts acknowledging payments is not necessary for the successful prosecution of accused-appellant. We have already ruled that the absence of receipts in a case for illegal recruitment does not warrant the acquittal of the accused-appellant and is not fatal to the

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28[28] People *v.* Sanchez, 291 SCRA 333 (1998)

29[29] People *v.* Goce, *supra*.

30[30] People *v.* Peralta, 347 Phil. 379 (1997) case of the prosecution. As long as the prosecution is able to establish through credible testimonial evidence that the accused-appellant has engaged in illegal recruitment, a conviction for the offense can very well be justified.31[31]

The prosecution evidence proves beyond reasonable doubt that accused-appellant was engaged in illegal recruitment committed in large scale. He was positively identified by complainants as the person who had recruited them for employment in Taiwan. He succeeded in inveigling them into paying various amounts to him for their placement fees. Their testimonies dovetail with each other in material points. There is no showing that any of complainants had any ill-motives to testify against accused-appellant. Their testimonies were straightforward, credible and convincing.32[32] In contrast, accused-appellant failed to present evidence to rebut the evidence of the prosecution. He failed to present the person allegedly responsible for the recruitment of the complainants. As a result of his failure to do so, he risked the adverse inference and legal presumption that he did not present such witnesses because their testimonies would actually be adverse if produced.33[33] For, indeed, accused-appellant could have adduced evidence to prove that he was an employee of the Steadfast Recruitment Agency, a duly authorized agency. He could have presented the manager of the agency to corroborate his claim that complainants actually applied to the agency and not through him. Instead, he merely interposed denials in his defense.

As against the positive and categorical testimonies of the complainants, accused-appellants mere denials cannot prevail.34[34] He was aptly meted out the penalty of life imprisonment and to pay the fine of ₱100,000.00 under Art. 39(a) of the Labor Code.

Third. Accused-appellant contends that the elements of estafa have not been proven by the prosecution, specifically, the requirement that complainants must have relied on the false pretenses of accused-appellant, because complainants knew that he was not a licensed recruiter.

The contention has no merit. The following elements of estafa are present in these cases, to wit: (1) the accused has defrauded the offended party by means of abuse of confidence or by deceit; and (2) as a result, damage or prejudice, which is capable of pecuniary estimation, is caused to the offended party or third person. Accused-appellant misrepresented himself to complainants as one who can make arrangements for job placements in Taiwan, and by reason of his misrepresentations, false assurances and deceit, complainants were induced to part with their money, thus causing them damage and prejudice.

31[31] People *v.* Saley, 291 SCRA 715 (1998)

32[32] People *v.* Gharbia, G.R. No. 123010, July 20, 1999.

33[33] See People *v.* Enriquez, G.R. No. 127159, May 5, 1999.

34[34] People *v.* Mercado, G.R. Nos. 108440-42, March 11, 1999.

Moreover, it is settled that a person who is convicted of illegal recruitment may, in addition, be convicted of estafa under Art. 315(2)(a) of the Revised Penal Code. There is no problem of double jeopardy because illegal recruitment is *malum prohibitum*, in which the criminal intent is not necessary, whereas estafa is *malum in se* in which the criminal intent of the accused is necessary.35[35]

WHEREFORE, the decision appealed from is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ.,* concur.

35[35] People *v.* Saley, *supra*; People *v.* Sadiosa, 290 SCRA 92 (1998); People *v.* Guiang, 285 SCRA 404 (1998)