THIRD DIVISION

[G.R. No. 125903. November 15, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* ROMULO SAULO, AMELIA DE LA CRUZ, and CLODUALDO DE LA CRUZ, *accused.*

ROMULO SAULO, *accused-appellant.*

D E C I S I O N

GONZAGA-REYES, *J.*:

Accused-appellant, together with Amelia de la Cruz and Clodualdo de la Cruz, were charged with violation of Article 38 (b) of the Labor Code[1] for illegal recruitment in large scale in an information which states

CRIM. CASE NO. Q-91-21911

The undersigned Assistant City Prosecutor accuses ROMULO SAULO, AMELIA DE LA CRUZ and CLODUALDO DE LA CRUZ, of the crime of ILLEGAL RECRUITMENT IN LARGE SCALE (ART. 38(b) in relation to Art. 39(a) of the Labor Code of the Philippines, as amended by P.D. No. 2018, committed as follows:

That on or about the period comprised from April 1990 to May 1990 in Quezon City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, by falsely representing themselves to have the capacity to contract, enlist and recruit workers for employment abroad, did, then and there, wilfully, unlawfully and feloniously for a fee, recruit and promise employment/job placement abroad to LEODEGARIO MAULLON, BENY MALIGAYA and ANGELES JAVIER, without first securing the required license or authority from the Department of Labor and Employment, in violation of said law.

That the crime described above is committed in large scale as the same was perpetrated against three (3) persons individually or as [a] group penalized under Articles 38 and 39 as amended by PD 2018 of the Labor Code (P.D. 442).

CONTRARY TO LAW.[2]

In addition, accused were charged with three counts of estafa (Criminal Case Nos. Q-91-21908, Q-91-21909 and Q-91-21910). Except for the names of the complainants, the dates of commission of the crime charged, and the amounts involved, the informations[3] were identical in their allegations

CRIM. CASE NO. Q-91-21908

The undersigned Assistant City Prosecutor accuses ROMULO SAULO, AMELIA DE LA CRUZ AND CLODUALDO DE LA CRUZ of the crime of ESTAFA (Art. 315, par. 2 (a) RPC), committed as follows:

That on or about the period comprised from April 1990 to May 1990, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent of gain, by means of false pretenses and/or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did, then and there wilfully, unlawfully and feloniously defraud one BENY MALIGAYA, in the following manner, to wit: on the date and in the place aforementioned, accused falsely pretended to the offended party that they had connection and capacity to deploy workers for overseas employment and that they could secure employment/placement for said Beny Maligaya and believing said misrepresentations, the offended party was later induced to give accused, as in fact she did give the total amount of P35,000.00, Philippine Currency, and once in possession of the said amount and far from complying with their commitment and despite repeated demands made upon them to return said amount, did, then and there wilfully, unlawfully and feloniously and with intent to defraud, misappropriate, misapply and convert the same to their own personal use and benefit, to the damage and prejudice of said offended party in the aforementioned amount and in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty to all the charges against him. Meanwhile accused Amelia de la Cruz and Clodualdo de la Cruz have remained at large.

During trial, the prosecution sought to prove the following material facts and circumstances surrounding the commission of the crimes:

Benny Maligaya, having learned from a relative of accused-appellant that the latter was recruiting workers for Taiwan, went to accused-appellants house in San Francisco del Monte, Quezon City, together with Angeles Javier and Amelia de la Cruz, in order to discuss her chances for overseas employment. During that meeting which took place sometime in April or May, 1990, accused-appellant told Maligaya that she would be able to leave for Taiwan as a factory worker once she gave accused-appellant the fees for the processing of her documents. Sometime in May, 1990, Maligaya also met with Amelia de la Cruz and Clodualdo de la Cruz at their house in Baesa, Quezon City and they assured her that they were authorized by the Philippine Overseas Employment Administration (POEA) to recruit workers for Taiwan. Maligaya paid accused-appellant and Amelia de la Cruz the amount of P35,000.00, which is evidenced by a receipt dated May 21, 1990 signed by accused-appellant and Amelia de la Cruz (Exhibit A in Crim. Case No. Q-91-21908). Seeing that he had reneged on his promise to send her to Taiwan, Maligaya filed a complaint against accused-appellant with the POEA.[4]

Angeles Javier, a widow and relative by affinity of accused-appellant, was told by Ligaya, accused-appellants wife, to apply for work abroad through accused-appellant. At a meeting in accused-appellants Quezon City residence, Javier was told by accused-appellant that he could get her a job in Taiwan as a factory worker and that she should give him P35,000.00 for purposes of preparing Javiers passport. Javier gave an initial amount of P20,000.00 to accused-appellant, but she did not ask for a receipt as she trusted him. As the overseas employment never materialized, Javier was prompted to bring the matter before the POEA.[5]

On April 19, 1990, Leodigario Maullon, upon the invitation of his neighbor Araceli Sanchez, went to accused-appellants house in order to discuss his prospects for gaining employment abroad. As in the case of Maligaya and Javier, accused-appellant assured Maullon that he could secure him a job as a factory worker in Taiwan if he paid him P30,000.00 for the processing of his papers. Maullon paid P7,900.00 to accused-appellants wife, who issued a receipt dated April 21, 1990 (Exhibit A in Crim. Case No. Q-91-21910). Thereafter, Maullon paid an additional amount of P6,800.00 in the presence of accused-appellant and Amelia de la Cruz, which payment is also evidenced by a receipt dated April 25, 1990 (Exhibit B in Crim. Case No. Q-91-21910). Finally, Maullon paid P15,700.00 to a certain Loreta Tumalig, a friend of accused-appellant, as shown by a receipt dated September 14, 1990 (Exhibit C in Crim. Case No. Q-91-21910). Again, accused-appellant failed to deliver on the promised employment. Maullon thus filed a complaint with the POEA.[6]

The prosecution also presented a certification dated July 26, 1994 issued by the POEA stating that accused are not licensed to recruit workers for overseas employment (Exhibit A in Crim. Case No. Q-91-21911).[7]

In his defense, accused-appellant claimed that he was also applying with Amelia de la Cruz for overseas employment. He asserts that it was for this reason that he met all three complainants as they all went together to Amelia de la Cruz house in Novaliches, Quezon City sometime in May, 1990 in order to follow up their applications. Accused-appellant flatly denied that he was an overseas employment recruiter or that he was working as an agent for one. He also denied having received any money from any of the complainants or having signed any of the receipts introduced by the prosecution in evidence. It is accused-appellants contention that the complainants were prevailed upon by accused-appellants mother-in-law, with whom he had a misunderstanding, to file the present cases against him.[8]

The trial court found accused-appellant guilty of three counts of estafa and of illegal recruitment in large scale. It adjudged:

WHEREFORE, this Court finds the accused Romulo Saulo:

A. In Criminal Case No. Q-91-21908, guilty beyond reasonable doubt of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code as amended, without any mitigating or aggravating circumstances, and this Court hereby sentences the accused Romulo Saulo to suffer the indeterminate penalty of imprisonment of three (3) years, four (4) months and one (1) day of prision correccional as minimum to seven (7) years and one (1) day of prision mayor as maximum, and to indemnify the complainant Beny Maligaya in the amount of P35,000.00, with interest thereon at 12% per annum until the said amount is fully paid, with costs against the said accused.

B. In Criminal Case No. Q-91-21909, guilty beyond reasonable doubt of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code as amended, without any mitigating or aggravating circumstances, and this Court hereby sentences the accused Romulo Saulo to suffer the indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum, and to indemnify the complainant Angeles Javier in the amount of P20,000.00 with interest thereon at 12% per annum until the said amount is fully paid, with costs against said accused.

C. In Criminal Case No. Q-91-21910, guilty beyond reasonable doubt of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code as amended, without any mitigating or aggravating circumstances, and this Court hereby sentences the accused Romulo Saulo to suffer the indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum, and to indemnify the complainant Leodigario Maullon in the amount of P30,400.00 with interest thereon at 12% per annum until the said amount is fully paid, with costs against said accused.

D. In Criminal Case No. Q-91-21911, guilty beyond reasonable doubt of Illegal Recruitment in Large Scale as defined and punished under Article 38 (b) in relation to Article 39 (a) of the Labor Code of the Philippines as amended, and this Court sentences the accused Romulo Saulo to suffer the penalty of life imprisonment and to pay a fine of One Hundred Thousand Pesos (P100,000.00).

Being a detention prisoner, the accused Romulo Saulo shall be entitled to the benefits of Article 29 of the Revised Penal Code as amended.

SO ORDERED.[9]

The Court finds no merit in the instant appeal.

The essential elements of illegal recruitment in large scale, as defined in Art. 38 (b) of the Labor Code and penalized under Art. 39 of the same Code, are as follows:

(1) the accused engages in the recruitment and placement of workers, as defined under Article 13 (b) or in any prohibited activities under Article 34 of the Labor Code;

(2) accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, whether locally or overseas; and

(3) accused commits the same against three (3) or more persons, individually or as a group.[10]

Under Art. 13 (b) of the Labor Code, 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.

After a careful and circumspect review of the records, the Court finds that the trial court was justified in holding that accused-appellant was engaged in unlawful recruitment and placement activities. The prosecution clearly established that accused-appellant promised the three complainants - Benny Maligaya, Angeles Javier and Leodigario Maullon employment in Taiwan as factory workers and that he asked them for money in order to process their papers and procure their passports. Relying completely upon such representations, complainants entrusted their hard-earned money to accused-appellant in exchange for what they would later discover to be a vain hope of obtaining employment abroad. It is not disputed that accused-appellant is not authorized[11] nor licensed[12] by the Department of Labor and Employment to engage in recruitment and placement activities. The absence of the necessary license or authority renders all of accused-appellants recruitment activities criminal.

Accused-appellant interposes a denial in his defense, claiming that he never received any money from the complainants nor processed their papers. Instead, accused-appellant insists that he was merely a co-applicant of the complainants and similarly deceived by the schemes of Amelia and Clodualdo de la Cruz. He contends that the fact that Benny Maligaya and Angleles Javier went to the house of Amelia and Clodualdo de la Cruz in Novaliches, Quezon City, to get back their money and to follow-up their application proves that complainants knew that it was the de la Cruz who received the processing fees, and not accused-appellant. Further, accused-appellant argues that complainants could not have honestly believed that he could get them their passports since they did not give him any of the necessary documents, such as their birth certificate, baptismal certificate, NBI clearance, and marriage contract.

Accused-appellants asseverations are self-serving and uncorroborated by clear and convincing evidence. They cannot stand against the straightforward and explicit testimonies of the complainants, who have identified accused-appellant as the person who enticed them to part with their money upon his representation that he had the capability of obtaining employment for them abroad. In the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial courts assessment of the credibility of the witnesses shall not be interfered with by this Court.[13]

The fact that accused-appellant did not sign all the receipts issued to complainants does not weaken the case of the prosecution. A person charged with illegal recruitment may be convicted on the strength of the testimonies of the complainants, if found to be credible and convincing.[14] The absence of receipts to evidence payment does not warrant an acquittal of the accused, and it is not necessarily fatal to the prosecutions cause.[15]

Accused-appellant contends that he could not have committed the crime of illegal recruitment in large scale since Nancy Avelino, a labor and employment officer at the POEA, testified that licenses for recruitment and placement are issued only to corporations and not to natural persons.This argument is specious and illogical. The Labor Code states 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.[16] Corrolarily, a *nonlicensee or nonholder of authority* is any person, corporation or entity which has not been issued a valid license or authority to engage in recruitment and placement by the Secretary of Labor, or whose license or authority has been suspended, revoked, or canceled by the POEA or the Secretary.[17] It also bears stressing that agents or representatives appointed by a licensee or a holder of authority but whose appointments are not previously authorized by the POEA fall within the meaning of the term *nonlicensee* or *nonholder of authority*.[18] Thus, any person, whether natural or juridical, that engages in recruitment activities without the necessary license or authority shall be penalized under Art. 39 of the Labor Code.

It is well established in jurisprudence that a person may be charged and convicted for both illegal recruitment and estafa. The reason for this is that illegal recruitment is a *malum prohibitum*, whereas estafa is *malum in se*, meaning that the criminal intent of the accused is not necessary for conviction in the former, but is required in the latter.[19]

The elements of estafa under Art. 315, paragraph 2 (a), of the Revised Penal Code are: (1) that the accused has defrauded another by abuse of confidence or by deceit, and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.[20] The trial court was correct in holding accused-appellant liable for estafa in the case at bench. Owing to accused-appellants false assurances that he could provide them with work in another country, complainants parted with their money, to their damage and prejudice, since the promised employment never materialized.

Under Art. 315 of the Revised Penal Code, the penalty for the crime of estafa is as follows:

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 cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

xxx xxx xxx

Under the Indeterminate Sentence Law, the maximum term of the penalty shall be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code, and the minimum shall be within the range of the penalty next lower to that prescribed for the offense. Since the penalty prescribed by law for the estafa charge against accused-appellant is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower in degree is *prision correccional* minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months.

In fixing the maximum term, the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum should be divided into three equal portions of time, each of which portion shall be deemed to form one period, as follows

Minimum Period : From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days

Medium Period : From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days

Maximum Period : From 6 years, 8 months and 21 days to 8 years pursuant to Article 65, in relation to Article 64, of the Revised Penal Code.

When the amounts involved in the offense exceeds P22,000, the penalty prescribed in Article 315 of the Revised Penal Code shall be imposed in its maximum period, adding one year for each additional P10,000.00, although the total penalty which may be imposed shall not exceed twenty (20) years.[21]

Accordingly, the following penalties shall be imposed upon accused-appellant:

In *Criminal Case No. Q-91-21908* where accused-appellant defrauded Benny Maligaya in the amount of P35,000.00, one year for the additional amount of P13,000.00 in excess of P22,000.00 provided for in Article 315 shall be added to the maximum period of the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum. Thus, accused-appellant shall suffer the indeterminate penalty of four (4) years, and two (2) months of *prision correccional* medium, as minimum to nine (9) years of *prision mayor* as maximum.[22] Accused-appellant shall also pay Benny Maligaya P35,000.00 by way of actual damages.

In *Criminal Case No. Q-91-21909* where accused-appellant defrauded Angeles Javier in the amount of P20,000.00, accused-appellant shall suffer the indeterminate penalty of one (1) year, eight (8) months and twenty-one (21) days of *prision correccional* minimum to five (5) years, five (5) months and eleven (11) days of *prision correccional* maximum. Accused-appellant shall also pay Angeles Javier P20,000.00 by way of actual damages.

In *Criminal Case No. Q-91-21910* where accused-appellant defrauded Leodigario Maullon in the amount of P30,400.00, accused-appellant shall suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum to eight (8) years of*prision mayor*, as maximum.[23] Accused-appellant shall also pay Leodigario Maullon P30,400.00 by way of actual damages.

In addition, for the crime of illegal recruitment in large scale (Criminal Case No. Q-91-21911) and pursuant to Article 39 (a) of the Labor Code, accused-appellant shall suffer the penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00).

WHEREFORE, the March 6, 1996 Decision of the trial court finding accused-appellant guilty beyond reasonable doubt of the crime of illegal recruitment in large scale and estafa is hereby AFFIRMED subject to the following modifications:

In *Criminal Case No. Q-91-21908* where accused-appellant defrauded Benny Maligaya in the amount of P35,000.00, one year for the additional amount of P13,000.00 in excess of P22,000.00 provided for in Article 315 shall be added to the maximum period of the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum. Thus, accused-appellant shall suffer the indeterminate penalty of four (4) years, and two (2) months of *prision correccional* medium, as minimum to nine (9) years of *prision mayor* as maximum. Accused-appellant shall also pay Benny Maligaya P35,000.00 by way of actual damages.

In *Criminal Case No. Q-91-21909* where accused-appellant defrauded Angeles Javier in the amount of P20,000.00, accused-appellant shall suffer the indeterminate penalty of one (1) year, eight (8) months and twenty-one (21) days of *prision correccional* minimum to five (5) years, five (5) months and eleven (11) days of *prision correccional* maximum. Accused-appellant shall also pay Angeles Javier P20,000.00 by way of actual damages.

In *Criminal Case No. Q-91-21910* where accused-appellant defrauded Leodigario Maullon in the amount of P30,400.00, accused-appellant shall suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum to eight (8) years of*prision mayor*, as maximum. Accused-appellant shall also pay Leodigario Maullon P30,400.00 by way of actual damages.

In addition, for the crime of illegal recruitment in large scale (Criminal Case No. Q-91-21911) and pursuant to Article 39 (a) of the Labor Code, accused-appellant shall suffer the penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00).

Costs against accused-appellant.

SO ORDERED.

Melo, (Chairman), Vitug, and *Panganiban, JJ.,* concur.

---

[1] Presidential Decree No. 442.

[2] *Rollo*, 368-369.

[3] *Ibid*., 366-368.

[4] TSN, May 26, 1994, 2-17.

[5] TSN, June 16, 1994, 2-13.

[6] TSN, April 21, 1994, 2-15.

[7] TSN, August 18, 1994, 3-4.

[8] TSN, December 2, 1994, 2-15; TSN, December 8, 1994, 2-9; TSN, December 14, 1994, 1-12.

[9] *Rollo*, 371-372.

[10] People *v*. Sadiosa, 290 SCRA 92 (1998); People *v*. Benedictus, 288 SCRA 319 (1998).

[11] Art. 13 of the Labor Code provides

(f) Authority means a document issued by the Department of Labor authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity.

[12] Art. 13 of the Labor Code provides

(d) License means a document issued by the Department of Labor authorizing a person or entity to operate a private employment agency.

[13] People *v*. Cabiles, 284 SCRA 199 (1998); People *v*. Obello, 284 SCRA 79 (1998).

[14] People *v*. Saley, 291 SCRA 715 (1998); People *v*. Sanchez, 291 SCRA 333 (1998).

[15] People *v*. Juego, 298 SCRA 22 (1998); People *v*. Saley, *id*.

[16] Art. 13 (b).

[17] Abaca *v*. Court of Appeals, 290 SCRA 657 (1998), citing Sec. 1 (d) of the Rules Implementing P.D. 1920 promulgated on July 12, 1984.

[18] *Id*., citing Sec. 1, Rule V, Book II of the POEA Rules and Regulations on Overseas Employment promulgated on May 21, 1985.

[19] People *v*. Sanchez, *supra*; People *v*. Sadiosa, *supra.*

[20] People *v*. Saley, *supra.*

[21] *Id.*

[22] People vs. Menil, G. R. No. 115054-66, prom. September 12, 2000.

[23] *Ibid.*