

FIRST DIVISION

[G.R. No. 127848. July 17, 2003]

**PEOPLE OF THE PHILIPPINES, *appellee*, vs. MARLENE OLERMO @
Marlene Tolentino, *appellant*.**

DECISION

AZCUNA, J.:

In separate informations filed before the Regional Trial Court (RTC) of Valenzuela, Metro Manila, Branch 172, Marlene Olermo a.k.a. Marlene Tolentino was accused of illegal recruitment in large scale and five counts of estafa.

In Criminal Case No. 2860-V-93, a prosecution for illegal recruitment in large scale, the information reads:

That during the period of February to June 1993, in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, representing herself to have the capacity to contract, enlist and recruit workers for employment abroad, did then and there wil[l]fully and unlawfully, for a fee, recruit and promise employment/job placement in a large scale to ARISTON B. VILLANUEVA, MARY JANE AQUINO-VILLANUEVA, ALFRED BRYANT BERADOR, FRENNIE MAJARUCON and WILFREDO TUBALE, without said accused having secured first the necessary license or authority to engage in recruitment activity from the Philippine Overseas Employment Administration (POEA), in violation of the aforementioned provision of Law.

Contrary to Law.ⁱⁱⁱ

The five informations for estafa, on the other hand, docketed as Criminal Cases Nos. 2861-V-93, 2862-V-93, 2863-V-93, 2864-V-93, and 2865-V-93, alleged that the appellant violated paragraph 2(a), Article 315 of the Revised Penal Code, thus:

In Criminal Case No. 2861-V-93:

That sometime in the month of February 1993 or thereabouts in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, defrauded and deceived one NAPOLEON APARICIO y CLEMENTE in the following manner to wit: said accused, by means of false manifestations and fraudulent representation made to the said complainant to the effect that she has the

capacity and power to recruit and employ complainant abroad and facilitate the necessary amount to meet the requirements thereof, knowing said manifestations and representation to be false and fraudulent and made only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to ₱40,000, but said accused, once in possession of the same, with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert [the same] to her own personal use and benefit, [and] despite demands made upon her to return the said amount of ₱40,000, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant in the aforementioned amount of ₱40,000.

Contrary to Law.^[21]

In Criminal Case No. 2862-V-93:

That sometime in May 1993 or thereabouts in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, defrauded and deceived one MARY JANE AQUINO-VILLANUEVA in the following manner to wit: said accused, by means of false manifestations and fraudulent representation made to the said complainant to the effect that she has the capacity and power to recruit and employ complainant abroad and facilitate the necessary amount to meet the requirements thereof knowing said manifestations and representation to be false and fraudulent and made only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to ₱35,000, but said accused, once in possession of the same, with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert [the same] to her own personal use and benefit, [and] despite demands made upon her to return the said amount of ₱35,000, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant in the aforementioned amount of ₱35,000.

Contrary to Law.^[21]

In Criminal Case No. 2863-V-93:

That sometime in May and June 1993 or thereabouts in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, defrauded and deceived one ARISTON B. VILLANUEVA in the following manner to wit: said accused, by means of false manifestations and fraudulent representation made to the said complainant to the effect that she has the capacity and power to recruit and employ complainant abroad and facilitate the necessary amount to meet the requirement thereof, knowing said manifestations and representation to be false and

fraudulent and made only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to ₱35,000, but said accused, once in possession of the same, with the intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert [the same] to her own personal use and benefit, [and] despite demands made upon her to return the said amount of ₱35,000, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant in the aforementioned amount of ₱35,000.

Contrary to Law.¹⁴¹

In Criminal Case No. 2864-V-93:

That sometime in the month of March 1993 or thereabouts in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, defrauded and deceived one FRENNIE MAJARUCON y BACO in the following manner to wit: said accused, by means of false manifestations and fraudulent representation made to the said complainant to the effect that she has the capacity and power to recruit and employ complainant abroad and facilitate the necessary amount to meet the requirements thereof, knowing said manifestations and representation to be false and fraudulent and made only to induce said complainant to give, as in fact, the latter did give and deliver to said accused, cash money amounting to ₱20,000, but said accused, once in possession of the same, with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert [the same] to her own personal use and benefit, [and] despite demands made upon her to return the said amount of ₱20,000, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant in the aforementioned amount of ₱20,000.

Contrary to Law.¹⁵¹

In Criminal Case No. 2865-V-93:

That sometime in the month of February 1993 or thereabouts in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, defrauded and deceived one ALFRED BRYANT BERADOR y OCHOA in the following manner to wit: said accused, by means of false manifestations and fraudulent representation made to the said complainant to the effect that she has the capacity and power to recruit and employ complainant abroad and facilitate the necessary amount to meet the requirements thereof, knowing said manifestations and representation to be false and fraudulent and made only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting

to ₱25,350, but said accused, once in possession of the same, with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert [the same] to her own personal use and benefit, [and] despite demands made upon her to return the said amount of ₱25,350, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant in the aforementioned amount of ₱25,350.

Contrary to Law.^[6]

Complainant Napoleon C. Aparicio,^[7] jobless, testified that he came to know appellant through his sister in February 1993. He allegedly talked with appellant Marlene Olermo a.k.a. Marlene Tolentino regarding the latter's offer to give him a job overseas. She informed complainant Aparicio that he needed to pay her ₱40,000 for a work permit and a plane ticket to Saipan where he is allegedly to be employed. Aparicio agreed to pay her the said amount. He made his first payment of ₱20,000 on March 30, 1993. Appellant allegedly called him up and instructed him to deliver the money, which he did, to a certain Jennifer Balduesa at Danding Building, Municipal Site, Valenzuela, Metro Manila where appellants' office, Jirk Manpower Services, is located. Complainant Aparicio made his second payment on April 21, 1993. Again, he delivered the amount of ₱20,000 to Jennifer Balduesa in appellants' office in Valenzuela upon the instructions of appellant. He was issued a cash voucher for each payment he made.^[8] Appellant promised him that he would leave for Saipan on May 3, 1993 and she even showed him his plane ticket. However, he was not able to leave on said date. The date of his departure was moved several times by appellant until he began to suspect something was amiss. Hence, he reported the matter to the National Bureau of Investigation (NBI). Appellant thereafter pretended to refund the amounts he paid by issuing him a check, which, however, bounced when it was presented for payment.^[9] He later learned that appellant was not a duly-licensed recruiter.

Complainant Ariston Villanueva,^[10] jobless, is married to another complainant Mary Jane Aquino-Villanueva. They were not married yet when they first encountered appellant. He testified that he read the advertisement of appellant in a newspaper, sometime in April 1993, offering assistance to those who would like to work overseas.^[11] He called the number indicated therein and spoke to appellant. They first agreed to meet in Greenbelt, Makati, but during the appointed hour, appellant did not show up. The following day, they spoke again on the telephone and agreed to meet in the office of appellant in Valenzuela. When they met, appellant informed him and complainant Aquino-Villanueva that she can help them find work in Hong Kong. However, they must pay her ₱35,000 each for their plane fares and placement fees. On May 3, 1993, complainant Villanueva paid appellant an initial amount of ₱40,000. On May 20, 1993, he gave appellant ₱30,000. Appellant issued him a receipt for each payment he made.^[12] Their departure, however, kept on being postponed by appellant. Finally, they asked for a refund of their payments. Appellant issued three checks on different dates amounting to ₱70,000. However, these checks were dishonored when they were presented for payment.^[13] In the end, appellant gave back only ₱19,000. Complainants Villanueva and Aquino-Villanueva subsequently

inquired with the Philippine Overseas Employment Agency (POEA) whether or not appellant was licensed to recruit persons for overseas employment. They were informed that appellant is not a licensed recruiter and they procured a certification to this effect.^[14]

Complainant Alfred Bryant Berador,^[15] a cook, testified that on or about February 22, 1993, he was introduced to appellant by one of her partners in the agency. He met her in their office in front of the Municipal Hall of Valenzuela. He paid her a total amount of ₱24,000 as placement and processing fees for his employment in Japan. He was issued a receipt for each payment made.^[16] He was not, however, allowed to leave for Japan immediately. Complainant Berador was first required by appellant to undergo a seminar to learn Nippongo for one week. However, on the fourth day of the seminar, appellant was arrested by the authorities. Complainant Berador subsequently learned that appellant did not have a license to recruit workers for overseas employment. He went to the POEA and was issued a certification stating this fact.^[17]

Complainant Frennie Majarucon,^[18] jobless, testified that she was introduced to appellant by her *kumadre* named Elvie sometime in March 1993. They first met in the office of appellant in front of the Municipal Hall of Valenzuela. Appellant informed her that she had an available job for her in Hong Kong and that she would need ₱45,000 for placement and processing fees and ₱2,000 for her passport. Complainant Majarucon was only able to give ₱22,000, which was evidenced by the receipts issued to her by appellant.^[19] However, complainant Majarucon never left for Hong Kong. She thus inquired from the people in appellants office whether the amount she paid to appellant can be refunded. She was promptly informed, however, that appellant had been arrested and was already in jail for illegal recruitment. Complainant Majarucon then proceeded to the POEA where she found out that the appellant was indeed not a licensed recruiter.

For her part, appellant Olermo denied all the charges against her.^[20] She alleged that she was engaged only in visa assistance. She denied ever having represented herself as possessing authority to deploy workers for overseas employment. She thus explained that she only offered complainants Villanueva, Aquino-Villanueva, Aparicio and Majarucon assistance in processing their tourist visas. With respect to the accusation of complainant Berador, appellant alleged that she was only helping him process his trainees visa.

On August 23, 1996, the trial court rendered a decision convicting appellant of the crimes charged. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered as follows:

(1) In Crim. Case No. 2860-V-93, the Court finds accused Marlene Olermo @ Marlene Tolentino guilty beyond reasonable doubt and as principal of the crime of Illegal Recruitment in large scale as defined and penalized under Article 38 in relation to Article 39 (a) of the Labor Code, as amended by P.D. 2018, without any attending mitigating or aggravating circumstance and hereby sentences her to a penalty of life

imprisonment and a fine of ₱100,000, without subsidiary imprisonment in case of insolvency;

(2) In Crim. Case No. 2861-V-93, the Court finds accused Marlene Olermo @ Marlene Tolentino guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences her to a penalty of SIX (6) YEARS and TWO (2) MONTHS of *prision mayor* as minimum to TEN (10) YEARS and ONE (1) DAY of *prision mayor* as maximum. The accused is further sentenced to pay complaining witness Napoleon Aparicio the amount of ₱40,000, without subsidiary imprisonment in case of insolvency, plus the costs of suit;

(3) In Crim. Case No. 2862-V-93, the Court finds accused Marlene Olermo @ Marlene Tolentino guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstances and, applying the Indeterminate Sentence Law, hereby sentences her to a penalty of SIX (6) YEARS and TWO (2) MONTHS of *prision mayor* as minimum to TEN (10) YEARS and ONE (1) DAY of *prision mayor* as maximum. The accused is further sentenced to pay complaining witness Mary Jane Aquino-Villanueva the amount of ₱35,000, without subsidiary imprisonment in case of insolvency, plus the costs of suit;

(4) In Crim. Case No. 2863-V-93, the Court finds accused Marlene Olermo @ Marlene Tolentino guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstances and, applying the Indeterminate Sentence Law, hereby sentences her to a penalty of SIX (6) YEARS and TWO (2) MONTHS of *prision mayor* as minimum to TEN (10) YEARS and ONE (1) DAY of *prision mayor* as maximum. The accused is further sentenced to pay complaining witness Ariston B. Villanueva the amount of ₱35,000, without subsidiary imprisonment in case of insolvency, plus the costs of suit;

(5) In Crim. Case No. 2864-V-93, the Court finds accused Marlene Olermo @ Marlene Tolentino guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstances and, applying the Indeterminate Sentence Law, hereby sentences her to a penalty 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. The accused is further sentenced to pay complaining witness Frennie Majarucon y Baco the amount of ₱20,000, without subsidiary imprisonment in case of insolvency, plus the costs of suit.

(6) In Crim. Case No. 2865-V-93, the Court finds accused Marlene Olermo @ Marlene Tolentino guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstance, and, applying the Indeterminate Sentence Law, hereby sentences her to a penalty of FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* as minimum to EIGHT (8) YEARS of *prision mayor* as maximum. The accused is further sentenced to pay complaining witness Alfred Bryant Berador y Ochoa the amount of ₱25,350, without subsidiary imprisonment in case of insolvency, plus the costs of suit.

SO ORDERED.^[21]

Appeal followed and the following are assigned as errors:

I

The trial court gravely erred in giving full weight and credence to the testimonies of the prosecution witnesses and in not considering the defense interposed by the accused-appellant.

II

The court *a quo* gravely erred in convicting accused-appellant of the crimes charged despite failure of the prosecution to prove her guilt beyond reasonable doubt.

III

The court *a quo* gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of large-scale recruitment despite its lack of jurisdiction.

IV

The court *a quo* gravely erred in disregarding the right of the appellant to have a competent and independent counsel.

V

The court *a quo* gravely erred in finding the accused-appellant guilty beyond reasonable doubt for the crime of estafa.

VI

The court *a quo* gravely erred in ordering the payment of P35,000, to complainant Mary Jane Aquino Villanueva; P35,000, to complainant Napoleon Aparicio; P20,000, to complainant Frennie Majarucon and P35,000, [sic] to complainant Alfred Bryant Berador.^[22]

First and Second Issues: Credibility of Witnesses and Proof Beyond Reasonable Doubt in Illegal Recruitment in Large Scale

Appellant contends that the prosecution failed to prove beyond reasonable doubt all the essential elements of the crime of illegal recruitment in large scale. Furthermore, she contends that her alleged act of illegally recruiting at least three persons was not sufficiently established by the testimonies of the witnesses for the prosecution.

Article 13, paragraph (b) of the Labor Code enumerates the acts which constitute recruitment and placement:

(b) 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 shall be deemed engaged in recruitment and placement.

Appellants acts of promising, offering and assuring employment overseas to complainants fall squarely within the ambit of recruitment and placement as defined above. The fact that she did not sign nor issue some of the receipts for amounts received from complainants has no bearing on her culpability. The complainants have shown through their respective testimonies and evidence that she was indeed involved in the prohibited recruitment. In fact, it was even proven that appellant advertised her services in a newspaper.

Article 38 of the Labor Code renders illegal those recruitment activities without the necessary license or authority from the POEA. Article 38 provides:

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

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

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

Article 39 of the Labor Code, in turn, provides:

Article 38. Illegal Recruitment. --- (a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein; x x x.

The elements of illegal recruitment in large scale are: (1) the person undertakes any recruitment activity defined under Article 13, paragraph (b), or any prohibited practice enumerated under Article 34 of the Labor Code; (2) said person does not have a license or authority to engage in the recruitment and placement of workers; and (3) the act is committed against three or more persons, individually or as a group.^[23]

All these three elements were proven by the prosecution beyond reasonable doubt. *First*, the complaining witnesses have satisfactorily established that appellant promised them employment and assured them of placement overseas. Appellant even had her office advertised in a newspaper, undoubtedly to reach more people seeking jobs abroad. *Second*, appellant did not have any license to recruit persons for overseas work. The Licensing Division of the POEA issued a certification to this effect. *Third*, appellant undertook the recruitment of not less than three workers. The complainants herein were recruited individually on different occasions. The law applies whether the workers were recruited individually or as a group.

It is not material that complainants Mary Jane Aquino Villanueva and Wilfredo Tubale were not presented in court to substantiate their claims against appellant. The law applies if appellant committed the illegal act against at least three persons, individually or as a group. In the case at bar, the prosecution proved beyond reasonable doubt that at least three persons were recruited by appellant: Ariston B. Villanueva, Alfred Bryant Berador and Frennie Majarucon.

With respect to the credibility of these witnesses, it is settled that where the issue is on credibility, the findings of the trial court will generally not be disturbed. The trial court has the advantage of hearing the witnesses and observing their conduct during trial, circumstances that carry great weight in appreciating credibility.^[24] The trial court is thus in a better position to settle such an issue.

Third Issue: Jurisdiction or Venue

The defense argues that appellant cannot be convicted of large scale illegal recruitment because the alleged prohibited acts against complainants were committed beyond the jurisdiction of the Regional Trial Court of Valenzuela. She points out that in complainant Villanuevas affidavit, he stated that he first met appellant in her residence in Quezon City. However, during complainant Villanuevas testimony in court, he stated that he first met appellant in her office in Valenzuela.

The Rules of Court provide that in all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any of the essential ingredients thereof took place.^[25] In the case at bar, the prosecution proved that the element of offering, promising, and advertising overseas employment to the complainants took place in appellants office in Valenzuela. Furthermore, it is elementary that jurisdiction in criminal cases is determined by the allegations in the information.^[26] In this case, the information filed against appellant for illegal recruitment in large scale clearly placed the *locus criminis* in Valenzuela. As stated earlier, it was in Valenzuela where the complainants were offered or promised overseas employment by appellant. Furthermore, based on the prosecutions evidence, the Court is sufficiently convinced that at least one element of the crime of illegal recruitment in large scale took place in Valenzuela. Where some acts material and essential to the crime and requisite to its consummation occur in one province or city and some in another, the court of either province or city has jurisdiction to try the case, it being understood that the court first taking cognizance of the case will exclude the others.^[27]

Fourth Issue: Right to Competent Counsel

Appellant, next maintains that the court *a quo* gravely erred in disregarding her right to a competent and independent counsel. Appellant notes that during the presentation of the prosecutions first witness on August 11, 1993, appellant was represented by Atty. Hortensio Domingo, who was not her retained counsel for the case. During the hearing, Atty. Domingo manifested that appellant herself requested him to represent her in that days hearing since her counsel, Atty. Yuseco, was still in Cagayan. During the second, third, fourth, and fifth hearings, appellant was represented by another counsel, a *de officio* one, a certain Atty. Ricardo Perez, again because counsel for appellant was not around. Because of these instances, appellant claims that she was deprived of her right to competent counsel because the lawyers who represented her in the abovementioned hearings were not familiar with her case and, hence, were not able adequately to protect her interests.

Article III, Section 12, paragraph (1) of the Constitution provides:

Any person under investigation for the commission of an offense shall have the right x x x to have competent and independent counsel preferably of his own choice. x x x.

The right to counsel is intended to preclude the slightest coercion as would lead the appellant to admit something false.^[28] Moreover, the words preferably of his own choice do not mean that the choice of a lawyer by appellant is exclusive as to preclude other equally competent and independent attorneys from handling the defense. If this were so, the tempo of justice would be solely within the control of appellant who could choose to impede the judicial process by simply selecting a lawyer who, for one reason or another, is not available to defend her.

Fifth and Sixth Issues: Proof Beyond Reasonable Doubt in the Charges of Estafa, and the Order of Payment

Five separate informations were filed against appellant charging her of violating subdivision 2(a) of Article 315 of the Revised Penal Code. Except for the names of the offended parties, the dates of the commission of the crime, and the amounts involved, all informations were similarly worded:

That sometime in the month of February 1993 or thereabouts in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, defrauded and deceived one NAPOLEON APARICIO y CLEMENTE in the following manner to wit: said accused by means of false manifestations and fraudulent representation made to the said complainant to the effect that she has the capacity and power to recruit and employ complainant abroad and facilitate the necessary amount to meet the requirements thereof, knowing said manifestations and representation to be false and fraudulent and made only to induce said complainant to give, as in fact, the latter did give and deliver to said appellant cash money amounting to P40,000, but said accused, once in possession of the same, with intent to defraud and deceive the herein complainant, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert [the same] to her own personal use and benefit, [and] despite demands made upon her to return the said amount of P40,000, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant in the aforementioned amount of P40,000.

Contrary to Law.^[29]

Except in Criminal Case No. 2862-V093, the prosecution was able to prove beyond reasonable doubt appellants guilt in the cases of estafa.

Subdivision 2(a) of Article 315 of the Revised Penal Code lists ways by which estafa may be committed:

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

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

There are three ways of committing estafa under this provision: (1) by using a fictitious name; (2) by falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; and (3) by means of other similar deceptions. Under this class of estafa, the element of deceit is indispensable. Such deceit consists of the false statement or fraudulent representation of the appellant, which was made prior to, or at least simultaneously with, the delivery of the thing by the complainant, it being essential that such false statement or fraudulent representation constitutes the very cause or the only motive which induces the complainant to part with the thing of value. If there is no prior or simultaneous false statement or fraudulent representation, any subsequent act of appellant, however fraudulent and suspicious it may appear, cannot serve as a basis for prosecution for this class of estafa.

The Solicitor General, correctly states in the appellees brief, that all the elements of the abovementioned crime have been established beyond reasonable doubt. Appellant represented herself, personally and by way of the advertisement in the newspaper, that she can provide complainants with work abroad. Hence, relying on her representations, complainants parted with their money and delivered the same to appellant. The truth, however, was that appellant never had the license from the POEA to recruit persons for overseas employment. Complainants were never given any employment abroad and thus they suffered damage by reason of appellants illegal acts.

We note, however, that in Criminal Case No. 2863-V-93, the trial court only ordered appellant to pay complainant Ariston B. Villanueva a total amount of P35,000 in actual damages. The fundamental principle of the law on damages is that one injured by a breach of contract or by a wrongful or negligent act or omission shall have a fair and just compensation, commensurate with the loss sustained as a consequence of the defendants acts. Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement.^[30] To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.^[31] In this case, it was duly proven by the receipts presented by complainant Villanueva and his testimony during trial that he handed appellant a total amount of P70,000 and only got back P19,000. Hence, correction of the trial courts award is called for. Appellant should be ordered to pay complainant Ariston B. Villanueva the total amount of P51,000 in actual damages in Criminal Case No. 2863-V-93.

Correction of the trial courts penalty imposed upon appellant in Criminal Case No. 2863-V-93 is therefore likewise called for. Article 315 of the Revised Penal Code provides:

Article 38. Swindling (estafa). ---Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over ₱12,000 but does not exceed ₱22,000; 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; 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 and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be; x x x.

Hence, applying the Indeterminate Sentence Law, the accused in Criminal Case No. 2863-V-93 shall be sentenced to a penalty of four (4) years and two (2) months of *prision correccional* as minimum to ten (10) years of *prision mayor* as maximum.

With respect to Criminal Case No. 2862-V093, the prosecution failed to fulfill its duty to produce evidence showing appellants guilt beyond reasonable doubt of the charges of estafa committed against Mary Jane Aquino-Villanueva. Absolute certainty of guilt is not demanded by the law to convict of any criminal charge but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense.^[32] In the said criminal case for estafa, no proof whatsoever was adduced by the prosecution. The offended party, Mary Jane Aquino-Villanueva, was not even asked to testify in open court.

WHEREFORE, judgment is hereby rendered as follows:

I. The judgment of the trial court in Criminal Case No. 2860-V-93 finding appellant Marlene Olermo a.k.a. Marlene Tolentino guilty of Illegal Recruitment in Large Scale and sentencing her to life imprisonment, as well as to pay a fine of One Hundred Thousand Pesos (₱100,000) is AFFIRMED.

II. The judgments in Criminal Cases Nos. 2861-V-93, 2864-V-93 and 2865-V-93, finding appellant guilty beyond reasonable doubt of four separate offenses of estafa are AFFIRMED *in toto*.

III. The judgment in Criminal Case No. 2863-V-93 finding appellant guilty beyond reasonable doubt of estafa is MODIFIED, insofar as appellant is hereby sentenced to FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* as minimum to TEN (10) YEARS of *prision mayor* as maximum and that appellant is further ordered to pay complainant Ariston B. Villanueva the amount of ₱51,000, without subsidiary imprisonment in case of insolvency, plus costs of suit.

IV. The judgment in Criminal Case No. 2862-V-93 is REVERSED and appellant is ACQUITTED from the charge of estafa.

Costs *de officio*.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago, and Carpio, JJ., concur.

^[1] *Rollo*, p. 7.

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

^[3] *Rollo*, p. 9.

^[4] *Rollo*, p. 10.

^[5] *Rollo*, p. 11.

^[6] *Rollo*, p. 12.

^[7] TSN, October 13, 1993, pp. 2-6.

^[8] Exhibits K and L, Folder of Exhibits, pp. 11-12.

^[9] Exhibit M, Folder of Exhibits, p.13.

^[10] TSN, September 7, 1993, pp. 2-13.

^[11] Exhibit B, Folder of Exhibits, p. 3.

^[12] Exhibits C and D, Folder of Exhibits, pp. 4-5.

^[13] Exhibits F, G, and H, Folder of Exhibits, pp. 7-9.

^[14] Exhibit E, Folder of Exhibits, p. 6.

^[15] TSN, November 3, 1993, pp. 3-30.

^[16] Exhibits O to O-4, Folder of Exhibits, pp. 14-18. .

^[17] Exhibit Q, Folder of Exhibits, p.19.

^[18] TSN, September 13, 1993, pp. 2-5.

^[19] Exhibits J and J-1, Folder of Exhibits p.10.

^[20] TSN, May 5, 1995, pp. 2- 51.

^[21] Decision, pp. 12-13; *Rollo*, pp. 32-33.

^[22] Appellants Brief, pp. 1-2; *Rollo*, pp. 55-56.

^[23] [*People v. Dulay*](#), 348 SCRA 239, 248 (2000).

^[24] *Ibasco v. CA*, 261 SCRA 449 (1996).

^[25] Rules of Criminal Procedure, Rule 110, Sec. 15 (a).

^[26] [*People v. Bayong, G.R. No. 132064*](#), September 7, 2001.

^[27] *People v. Gorospe*, 157 SCRA 154 (1988).

^[28] People v. Enanoria, 209 SCRA 577 (1992).

^[29] *Rollo*, p. 22.

^[30] Ong v. CA, 301 SCRA 387 (1999).

^[31] People v. Guillermo, 302 SCRA 257 (1999).

^[32] People v. Gabilan, 115 SCRA 1 (1982).