

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. 132029 July 30, 2004

PEOPLE OF THE PHILIPPINES, appellee,
vs.
MARIO ALZONA, appellant.

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is the Decision¹ of the Court of Appeals dated July 28, 1997 rendered in CA-G.R. CR No. 17228, the dispositive portion of which reads:

WHEREFORE, the joint decision of the trial court finding appellant MARIO ALZONA guilty beyond reasonable doubt of illegal recruitment in large scale and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P100,000.00 (Criminal Case No. 92-113702) and estafa (Criminal Case Nos. 92-113706 to 92-113709) is AFFIRMED with modification in the sense that the penalty which should be imposed upon herein appellant in Criminal Case No. 92-113709 is the indeterminate penalty of 4 years and 2 months of prision correccional, as minimum, to 9 years of prision mayor, as maximum.

Pursuant to Section 13(2), Rule 124 of the 1985 Rules of Criminal Procedure, as amended, let this case be certified and the entire records thereof be elevated to the Supreme Court for review.

Costs against the appellant.

SO ORDERED.

On December 4, 1996, an Information for Large Scale Illegal Recruitment against appellant Mario Alzona, docketed as Criminal Case No. 92-113702 and seven Informations for Estafa against appellant and his wife, Miranda Alzona, docketed as Criminal Cases Nos. 92-113703 to 92-113709, were filed before Branch 1 of the Regional Trial Court of Manila (RTC for brevity). All eight cases were consolidated and jointly tried by the RTC. However, due to the failure of private complainants to testify and present their evidence, Criminal Cases Nos. 92-113703 to 92-113705 were dismissed but only as against appellant Mario Alzona.

In Criminal Case No. 92-113702, the Information charges appellant as follows:

That in (sic) or about and during the period comprised between August 2, 1991 and March 30, 1992, inclusive, in the City of Manila, Philippines, the said accused, representing himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, and unlawfully, for a fee, recruit and promise employment/job placement abroad to the following persons, namely: LYDIA C. RAMOS, MELINDA P. GONZALES, MARCELA R. MERCADO, FERNANDO P. DELA CRUZ, LEONARDO C. MERCURIO, MARIO REGINO P. DECENA and JAMES M. MAZON, without first having secured the required license or authority from the Department of Labor.

CONTRARY TO LAW.

In Criminal Cases Nos. 92-113706 to 92-113709, the Informations allege that appellant, conspiring and confederating with his wife, Miranda Alzona, defrauded private complainants Fernando Dela Cruz, James Mazon, Leonardo Mercurio and Mario Regino Decena, by means of false manifestations and fraudulent representation that they had the power and capacity to recruit and employ the private complainants and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceptions, induced and succeeded

in inducing said private complainants to give and deliver, as in fact private complainants delivered sums of money to appellant and his wife, the latter well knowing that their representations were false and fraudulent and were made solely to obtain sums of money from private complainants, which money, once in their possession, they misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of the private complainants.

Upon arraignment, appellant pleaded not guilty to the foregoing charges. Trial ensued. Accused Miranda Alzona remains at-large.

The facts of the case, as established by the prosecution, are as follows.

Private complainant Mario Regino Decena came to know of appellant because a friend of his, Goring Rodil, was able to work abroad through the facilitation of appellant. Decena met appellant at the latter's house at 1532 Hizon St., Sta. Cruz, Manila, where appellant asked him to prepare ₱38,000.00, inclusive of the ₱1,000.00 for the passport, so he can leave within one month. Said amount was supposed to pay for his fare going to Korea where appellant said he would be employed as a factory worker with a monthly salary of \$450.00. Both appellant and Miranda convinced him to apply for work abroad. He then paid the ₱1,000.00 for the passport and on February 10, 1992, he paid another ₱33,000.00, received by appellant himself. The latter refused to give him a receipt for the amounts he paid. Despite having paid the total of ₱34,000.00, appellant failed to send him to work in Korea and also failed to return his money.²

Another private complainant, Leonardo Mercurio, also went to appellant's house in Sta. Cruz, Manila and applied to appellant and his wife for work abroad. Mercurio and his brother-in-law, Fernando Dela Cruz, were accompanied by Decena who had also applied to the spouses Alzona for overseas work. Mercurio talked mainly to appellant's wife, Miranda, in the presence of appellant. She asked him to pay ₱1,000.00 for the passport. Appellant was seated around the same table where he and Miranda were talking. Appellant and Miranda asked Mercurio and his brother-in-law to pay ₱20,000.00 each on March 30, 1992. Thus, on March 30, 1992, Mercurio delivered to appellant the amount of ₱20,000.00 and despite his request for a receipt, appellant refused to issue one. The total fees being asked for by appellant was ₱38,000.00. After receiving the ₱20,000.00, appellant reminded Mercurio to pay the balance so he can depart within a week for Korea where appellant promised him employment as a factory worker with a monthly salary of at least \$450.00. Appellant instructed Mercurio to buy an attaché case and a coat and tie. Mercurio was not able to depart by the first week of April as promised by appellant but he continued to follow-up his application. Sometime in July of 1992, Mercurio became impatient and demanded from appellant for the return of his money. On August 21, 1992, Mercurio filed a complaint with the police against appellant.³

Private complainant Fernando Dela Cruz corroborated the testimony of Mercurio on all material points. On some of the occasions that he and Mercurio followed-up their applications, Dela Cruz talked to appellant himself who would always tell him to prepare because they will soon be leaving for Korea. The last time they went to appellant's house, the Barangay Captain of the place informed them that appellant had already been apprehended.⁴

Private complainant James Mazon had a similar experience with appellant and Miranda. After having heard that appellant and Miranda were accepting applicants for employment abroad, Mazon went to appellant's residence during the first week of January, 1992. Appellant and Miranda promised that he would be deployed to Korea where he will be employed as a factory worker. He was told to pay the placement fee of ₱38,000.00 inclusive of charges for the passport. Appellant told Mazon that he was in-charge of booking and procuring tickets, while Miranda was the one who made arrangements with regard to the application for a job abroad. On January 10, 1992, he gave ₱15,000.00 to appellant who did not issue a receipt. Upon receiving such partial payment, appellant promised him that he would be deployed within one to two months. He was never deployed to Korea and he heard from the other private complainants who were also from Mulanay, Quezon, that appellant was already in jail.⁵

Risa Balverde, a Licensure Officer III of the Philippine Overseas Employment Administration (POEA) testified that appellant was neither licensed nor authorized by the POEA to recruit workers for overseas employment.⁶

For his defense, appellant merely denied that he ever met, talked to or received money from the aforementioned four private complainants; nor had he been involved in illegal recruitment. He presented the alibi that he, being a jeepney driver, was out of their house everyday from 7 o' clock in the morning to around 9 o'clock in the evening, so private complainants could not have talked to him at his house at 1532 Hizon St., Sta. Cruz, Manila. He, however, admitted that in 1989, he found out that his wife was engaged in recruiting workers for abroad. In fact, his wife had been going back and forth to Korea around six times a year since 1990, to accompany people. He stopped being a jeepney driver on July 15, 1992, because so many people were going to their house.⁷

Appellant's daughter, Marites Alzona, corroborated her father's testimony that he is a jeepney driver and is out of their house everyday from 6 o'clock in the morning to 10 o'clock in the evening, and therefore, private complainants could not have met her father. She admitted that she had seen private complainants talking to her mother at their house beginning August 1991 but she was unaware as to what their purpose was for coming to their house. She would see them at their house around four times a month, but the last time she saw them was in July 1992. Her mother left for Korea on July 15, 1992 and thereafter, every time private complainants would come looking for her mother, she would be the one to talk to them. When she told them that her mother had left for Korea, private complainants became angry. On August 5, 1992, she and her father were arrested at their house.⁸

Appellant's sister, Esther Panday, testified that she owns the jeepney being driven by appellant everyday, twelve hours a day. Such being the case, she believed appellant could not have engaged in any other sideline such as recruiting workers for abroad.⁹

After both parties had rested their case, the trial court rendered judgment,¹⁰ the dispositive portion of which read as follows:

WHEREFORE, this court finds the accused Mario Alzona GUILTY beyond reasonable doubt of Illegal Recruitment in large scale in Criminal Case No. 92-113702 and of four (4) separate crimes of estafa in Criminal Cases Nos. 92-113706, 92-113707, 92-113708 and 92-113709 and, as a consequence thereof, sentences him as follows:

(1) In Criminal Case No. 92-113702, to suffer the penalty of life imprisonment and to pay a fine of P100,000.00; and

(2) In Criminal Cases Nos. 92-113706, 92-113707, 92-113708 and 92-113709, to suffer in each case the indeterminate penalty of one (1) year and eight (8) months of prison correccional minimum as minimum to five (5) months and eleven (11) days of prison correccional maximum as maximum.

Further, the accused shall indemnify the private complainants Fernando dela Cruz, James Mazon, Leonardo Mercurio and Mario Regino P. Decena the respective sums of P21,000.00, P15,000.00, P21,000.00, and P34,000.00, with interest thereon at the legal rate from judicial demand until fully paid.

Costs against the accused in all the above-mentioned cases.

Anent Criminal Cases No. 92-113703, 92-113704 and 92-113705, the same are hereby ordered dismissed as against accused Mario Alzona for lack of evidence.

No costs.

SO ORDERED.¹¹

Appellant appealed the criminal cases to the Court of Appeals with the following Assignment of Errors:

I

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT ILLEGALLY RECRUITED THE COMPLAINANTS.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF 4 COUNTS OF ESTAFA DESPITE PROSECUTION'S FAILURE TO PROVE THAT HE CONSPIRED WITH HIS WIFE IN DEFRAUDING THE COMPLAINANTS.

Appellant points out that the testimonies of Mercurio, Dela Cruz and Mazon showed that it was actually only Miranda who transacted with private complainants. Therefore, argues appellant, there was no sufficient evidence to prove that appellant was acting in confederation with his wife. Furthermore, appellant claims that private complainants merely implicated him because they could no longer find Miranda who was the one who recruited private complainants for overseas employment.

On July 28, 1997, the Court of Appeals rendered its Decision, the decretal portion of which has been quoted earlier.

First, we tackle the charge of Illegal Recruitment against appellant. Pertinent provisions of the Labor Code state thus:

Article 13. Definitions. -

...

(b) '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.

...

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 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, ...

Article 39. Penalties. - (a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein; ...

Pursuant to the foregoing, the prosecution must prove the following elements of the crime of illegal recruitment in large scale, to wit:

(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.¹²

The testimonies of prosecution witnesses, namely: private complainants Decena, Mercurio, Dela Cruz, and Mazon and Licensure Officer III Balverde, of the POEA, prove that appellant and his wife Miranda promised overseas employment to private complainants upon payment of placement fees, without the necessary license therefor. Appellant maintains that he could not have transacted with private complainants as he was out of their house as a jeepney driver from 6 o'clock in the morning to 9 o'clock in the evening, seven days a week. With these conflicting versions of the parties, it is quite clear that the resolution of this case revolves around the credibility of witnesses.

We are constrained to scrutinize the entire records of the case and determine whether the prosecution evidence has proven the existence of all the elements of the crimes of Illegal Recruitment and Estafa.

It is important to keep in mind the oft-repeated rule 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 the trial, circumstances that carry great weight in appreciating credibility. The trial court is thus in a better position to settle such an issue.¹³

We have carefully reviewed the records of the case and find no cogent reason to overturn the factual findings of the trial court, especially its evaluation of the credibility of the prosecution witnesses, thus: "the testimonies of private complainants ... given in clear, logical and straightforward manner, mentioning details of the incidents that could not have been merely concocted, reflecting spontaneity and sincerity in the narration of events, are indicative of the truth of what actually happened."¹⁴

The testimonies of the four private complainants, viewed in their totality, have indeed established that appellant and Miranda cooperated with each other in convincing private complainants to pay them a placement fee of P38,000.00 for employment as factory workers in Korea, despite the absence of the required license therefor. The alleged segmented portions of the testimonies of Mercurio, Dela Cruz, and Mazon, quoted by appellant in his appellant's brief, that supposedly would show that only his wife Miranda was involved in illegal recruitment, were obviously taken out of context. A scrutiny of the entirety of all four private complainants' testimonies would show that sometimes, it would be appellant who would transact business with private complainants and at other times, it would be appellant's wife Miranda. Most damning for appellant, however, is the fact that all the private complainants categorically stated that it was appellant who received sums of money from them and refused to issue a receipt. Such fact shows that he actively engaged in the recruitment of three or more workers for employment abroad despite the lack of the necessary license from the POEA, which act constitutes the crime of illegal recruitment in large scale.

Next, we come to the charges of four separate counts of estafa against appellant. Article 315, paragraph 2 (a) of the Revised Penal Code provides thus:

ART. 315. *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 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 10,000.00; but the total penalty which may be imposed shall not exceed twenty years. In such case, 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.

.....

2. By means of any of the following false 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 deceits.

...

Verily, the very same evidence proving appellant's commission of the crime of illegal recruitment in large scale also established that appellant and Miranda acted with unity of purpose in defrauding private complainants by misrepresenting that they (appellant and Miranda) had the power, influence, agency and business to obtain overseas employment for private complainants upon payment of a placement fee, which complainants did pay and deliver to appellant. Thus, private complainants suffered damages to the extent of the various sums of money they delivered to appellant, i.e., P34,000.00 from Decena, P21,000.00 each from Mercurio and Dela Cruz, and P15,000.00 from Mazon. The prosecution has established beyond reasonable doubt that appellant is guilty of the four counts of estafa.

The Court of Appeals was correct in modifying the penalty imposed on appellant with regard to Criminal Case No. 92-113709, competently explaining thus:

We note, however, that the trial court imposed the wrong penalty in Criminal Case No 92-113709 ... involving the amount of P34,000.00. Pursuant to Article 315 of the Revised Penal Code, if the amount defrauded exceeds P22,000.00, the penalty of prision correccional in its maximum period to prision mayor in the minimum period shall be imposed in its maximum period (6 years, 8 months and 21 days to 8 years) adding one year for each additional P10,000.00; but the total penalty shall not exceed 20 years.

The amount defrauded, as stated above, is P34,000.00. Hence, the penalty should be imposed in the maximum period (6 years, 8 months and 21 days to 8 years) plus one year, there being only one P10,000.00 in excess of P22,000.00. Applying the Indeterminate Sentence Law, the maximum penalty should be taken from the aforementioned maximum period, while the minimum term shall be within the range of the penalty next lower in degree, i.e., prision correccional in its minimum and medium period which has a duration of 6 months and 1 day to 4 years and 2 months. Accordingly, the correct penalty should be 4 years and 2 months of prision correccional, as minimum, to 9 years of prision mayor as maximum.

An appeal in a criminal case opens the entire case for review.¹⁵ The typographical error in the dispositive portion of the decision rendered by the RTC regarding the penalty to be imposed on appellant in Criminal Cases Nos. 92-113706 to 92-113708 should be corrected from "one (1) year and eight (8) months of prision correccional minimum as minimum to five (5) months and eleven (11) days of prision correccional maximum as maximum" to "one (1) year and eight (8) months of prision correccional as minimum to five (5) years and eleven (11) days of prision correccional as maximum."

WHEREFORE, the Decision of the Court of Appeals dated July 28, 1997 in CA-G.R. CR No. 17228 is **AFFIRMED** with **MODIFICATION** only as to Criminal Cases Nos. 92-113706 to 92-113708 where appellant is hereby sentenced in each case, to suffer the indeterminate penalty of one (1) year and eight (8) months of prision correccional as minimum to five (5) years and eleven (11) days of prision correccional as maximum.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

Footnotes

¹ Penned by then Court of Appeals Associate Justice, now Supreme Court Associate Justice Angelina Sandoval-Gutierrez, concurred in by Court of Appeals Associate Justices Fidel P. Purisima and Bernardo Ll. Salas.

² TSN of July 19, 1993, pp. 3-11.

³ TSN, July 21, 1993, pp. 2-8.

⁴ TSN, July 29, 1993, pp. 4-7.

⁵ TSN, August 11, 1993, pp. 2-10.

⁶ TSN, January 10, 1994, pp. 2-4.

⁷ TSN, February 21, 1994, pp. 3-11.

⁸ TSN, February 28, 1994, pp. 4-12; TSN, March 7, 1994, pp. 2-5.

⁹ TSN, April 21, 1994, pp. 3-8.

¹⁰ Penned by Judge Rebecca G. Salvador.

¹¹ CA *Rollo*, pp. 26-27.

¹² *People vs. Olermo*, 406 SCRA 412, 425-426 (2003).

¹³ *Id.* at p. 426.

¹⁴ RTC Decision, CA *Rollo*, p. 22.

¹⁵ *People vs. Feliciano*, 365 SCRA 613, 629 (2001).

