

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. 124439 February 5, 2004

PEOPLE OF THE PHILIPPINES, appellee
vs.
FLOR GUTIERREZ Y TIMOD, appellant.

D E C I S I O N

TINGA, J.:

In its decision dated 22 March 1996, the Regional Trial Court (RTC) of Pasay City, Branch 108¹ found accused Flor Gutierrez y Timod guilty beyond reasonable doubt of Illegal Recruitment in Large Scale and sentenced her to suffer the penalty of life imprisonment and to pay a fine of P100,000.00.

The *Information* in Criminal Case No. 95-6796 reads as follows:

That from the months of April to August 1994 in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, accused FLOR GUTIERREZ Y TIMOD conspiring and confederating with CECILIA BAUTISTA, ESTHER GAMILDE, LINDA RABAINO and MARILYN GARCIA (whose present whereabouts are unknown) and mutually helping one another, acting in common accord, did then and there, willfully, unlawfully and feloniously, engage in recruitment activities for overseas job placement and actually contract, enlist and recruit EVELYN V. RAMOS, ROSEMARIE I. TUGADE, GENEROSA G. ASUNCION and ROSALYN B. SUMAYO as domestic helpers in Dubai, United Arab Emirates, for a fee of various amounts ranging from P10,000.00 to P15,000.00 each, without first obtaining the required license and/or authority from the Philippine Overseas Employment Administration (POEA).

CONTRARY TO LAW.²

Arraigned on April 24, 1995, the accused entered a plea of not guilty. The version of the prosecution is as follows:

On April 18, 1994, Rosemarie Tugade went to the house of one Celia Bautista, a "recruiter-agent" of the accused, at Brgy. Bulala, Vigan, Ilocos Sur.³ Celia told Rosemarie that she had to submit the following requirements for her application to work in Dubai as a domestic helper: P4,000.00 as placement fee, P1,200.00 for passport, P850.00 for "medical," six (6) 2x2 pictures and her original birth certificate.⁴

The next day, Rosemarie, together with "recruiter-agent" Celia Bautista and fellow applicant Evelyn Ramos, traveled to Manila to the house of one Esther Gamilde, another of the accused's "recruiter-agents."⁵ There, Rosemarie and Evelyn filled out their bio-data forms. The two then underwent a medical examination before having their whole-body picture taken. Esther told them that they would know the results of their application from Celia.⁶

Two weeks later, Celia told Rosemarie that her application for Dubai was already approved and that she will be receiving \$150.00-dollars per month. For the first three (3) months, however, there will be salary deductions.⁷

On August 27, 1994, Rosemarie and Evelyn, along with Celia and Esther, went to the accused's office at Sanifudin Manpower and General Services at EDSA Extension, Pasay City.⁸ The accused told Rosemarie that she needed to pay P2,000.00 more.⁹ The accused said she had received all of Rosemarie's documents and the money paid to Celia.¹⁰ Trusting in Celia, Rosemarie did not demand a receipt from the accused.

On August 31, 1994, the accused asked Rosemarie to give P500.00 as terminal fee for her departure in a week's time.¹¹ Rosemarie paid the amount, as evidenced by a receipt.¹² The scheduled departure did not push through, however. Instead, Rosemarie was told that she was to leave on September 15, 1994, but, again, this did not materialize.¹³ A series of postponements followed until finally she was told that she would be leaving before Christmas 1994. Almost predictably, her trip never came to pass.¹⁴

Private complainant Evelyn Ramos was with Rosemarie when she went to Celia Bautista's house on April 19, 1994.¹⁵ Celia told Evelyn that for P4,000.00 she could leave for Dubai to work as a domestic helper.¹⁶ Like Rosemarie, Evelyn gave all her documents and paid the fees to Celia, who in turn handed them to Esther Gamilde in Tondo.¹⁷ On June 10, 1994, Ramos gave Bautista P8,000.00, which was also turned over to Gamilde.¹⁸

On August 22, 1994, Celia told Evelyn that she only had to wait one more week before she left for Dubai.¹⁹ On August 27, 1994, Esther brought Evelyn to the accused's office,²⁰ where the accused asked for an additional P2,000.00 as processing fee for the Philippine Overseas Employment Agency (POEA).²¹ Evelyn paid the amount on August 31, 1994,²² including a terminal fee of P500.00. Like Rosemarie, Evelyn was not able to leave the country despite the accused's promises.

Another complainant, Rosalyn D. Sumayo, also applied for overseas job placement as a domestic helper in Dubai. Her experience was more agonizing. In her case, it was one Marilyn Garcia who assisted Rosalyn.²³ She submitted a copy of her birth certificate, six (6) copies of 2 x 2 pictures,

two (2) copies of her whole-body picture, passport, and medical certificate.²⁴ Marilyn also asked Rosalyn to pay: a processing fee of P7,500.00, P2,620.00 as full tax, P500.00 as terminal fee, and P3,000.00 as service charge.²⁵

All the documents and money given by Rosalyn to Marilyn were subsequently remitted to the accused at her office on June 28, 1994.²⁶ The accused told Rosalyn that she would be leaving anytime, but after three months, Rosalyn's departure did not push through.²⁷

Despite the setback, the accused kept assuring Rosalyn that she would still be able to leave.²⁸ One time, the accused brought her to the airport and instructed her to hide in the airport restroom.²⁹ After fifteen minutes, the accused told her that they had to leave the airport because "*mahigpit sa immigration*."³⁰ On another occasion, the accused directed Rosalyn to hide inside the Kayumanggi Restaurant for fifteen (15) minutes.³¹ Nothing happened after, though, and they went home.

On November 14, 1994, Rosalyn was again at the airport.³² The accused warned her, though, that if the Immigration Officer insisted on seeing her papers, it would be better for her to leave.³³ As directed, she left the airport when she was asked to produce her documents.³⁴

Exasperated, Rosalyn went to the accused's house and demanded the return of her money and her documents. Instead of acceding to Rosalyn's demands, the accused shouted at her and warned her that she had to pay a cancellation fee of \$300.00.³⁵ Rosalyn was not able to give the amount so she stayed with the accused, who assured her that she would still be able to leave the country and that she would receive a monthly salary of \$150 to \$200.³⁶ These promises were never fulfilled. Rosalyn thus went to the POEA, where POEA Administrator Felicisimo Joson, Jr. informed her that the accused did not have a license to recruit.³⁷

Generosa Asuncion suffered the same fate as her co-applicants. In August 1994, she applied for overseas job placement with one Linda Rabaino.³⁸ Generosa submitted her passport, medical certificate, clearance from the National Bureau of Investigation (NBI), birth certificate, bio-data and pictures.³⁹ She also paid P15,000.00 in two installments on September 9 and 12, 1994,⁴⁰ which payments were not receipted.

Linda told Generosa she would be leaving on September 13, 1994.⁴¹ However, she was not able to leave because, according to Linda, at 25, Generosa was under-aged.⁴²

Linda then referred Generosa to the accused in the latter's office, where Linda turned over Generosa's documents as well as the P15,000.00 to the accused.⁴³ The accused promised that Linda would be able to leave, but her departure never took place.⁴⁴ When Generosa demanded the return of her money and her documents, the accused told her that she had to pay a cancellation fee of \$600.00.⁴⁵ Stunned, Linda just opted to await the further outcome of her application.⁴⁶ Her waiting was all for naught.

With the promises of jobs abroad unfulfilled, complainants decided to verify if the accused was a licensed recruiter. Upon learning from the POEA that she was not so licensed,⁴⁷ they proceeded to the Philippine Anti-Crime Commission (PACC) to execute their respective affidavits.⁴⁸

SPO4 Johnny Marqueta investigated the women's complaint. He confirmed with the POEA that the accused was not licensed or authorized to recruit overseas contract workers.⁴⁹ The four complainants also informed him that the accused wanted to meet with the group on January 26, 1995.⁵⁰ SPO4 Marqueta thus had their money, totaling P2,000.00,⁵¹ marked at the National Bureau of Investigation (NBI) Forensic Section for their entrapment operation.⁵²

On January 26, 1995, the accused met with the four complainants at Jollibee, Commonwealth Avenue, Quezon City. As soon as she finished counting the marked money and wrapping it in Jollibee napkins, the accused was arrested.⁵³

In her defense, the accused claimed that as an "employee" of a duly licensed agency who was tasked to recruit and offer job placements abroad, she could not be held liable for illegal recruitment.⁵⁴ She admitted that she had no authority to recruit in her personal capacity,⁵⁵ but that her authority emanated from a Special Power of Attorney (SPA) and a Certification issued by a licensed agency.⁵⁶

At the time complainants applied for overseas employment, the accused was "employed" as a Marketing Directress of Sarifudin Manpower and General Services,⁵⁷ a duly licensed agency with License No. OS-91-LB-61193-NL issued by the Department of Labor and Employment.⁵⁸ A Special Power of Attorney (SPA) from Sarifudin, dated May 1, 1994,⁵⁹ states that she was authorized:

1. To negotiate, enter into business transactions for manpower supply particularly in the Middle East countries;
2. For and in behalf of SARIFUDIN, MANPOWER AND GENERAL SERVICES using as guidelines and terms and conditions by both parties to secure:
 - (a) Verified Job Orders;
 - (b) Special Power of Attorney;
 - (c) Copy of Certified Certificate of Business Registration;
 - (d) VISA Authorization and/or NOC VISA.

A Certification⁶¹ dated February 3, 1995, issued by the same agency, also states that: "MRS. FLOR T. GUTIERREZ was (sic) employed as OVERSEAS MARKETING DIRECTRESS of SARIFUDIN MANPOWER AND GENERAL SERVICES, effective May 1994, up to the present"⁶²

The defense also submitted several documents to prove compliance with the requirements of the agency for her to assume her duties under the SPA. These include receipts⁶³ for a cash bond in the amount of P30,000.00 that she paid in several installments. She also paid a royalty fee of P4,000.00⁶⁴ and an office rental fee of P3,000.00.⁶⁵

The accused was also required by the agency to submit a monthly report for June 1994, as evidenced by a Memorandum signed by the General Manager, Leah Salud.⁶⁶ She submitted said monthly report, indeed, several monthly reports.⁶⁷ A document calling on all Marketing Directresses/Directors to attend a meeting on July 8, 1994, was also presented.⁶⁸

The accused did not receive any salary or allowances from Sarifudin but received commissions from the agency's principals, the employers from foreign countries (ten in the Middle East and two in Singapore) at the rate of U.S. \$100.00 per person.⁶⁹ From her commissions, she paid rent and royalty to Sarifudin.⁷⁰

Edwin Cristobal, POEA Labor Employment Officer, confirmed that Sarifudin was duly licensed to engage in recruitment activities.⁷¹ He presented a Certification issued by Ma. Salome S. Mendoza, Manager of the Licensing Branch⁷² and containing the list of officers and staff of Sarifudin. On said list appear the names "Florina Gutierrez" and "Flor Gutierrez,"⁷³ apparently, one and the same person.⁷⁴ In the same Certification, appears the following:

It is further certified that the said agency revoked the appointment of Ms. Flor Gutierrez as Overseas Mktg. Director/Manager in a letter dated Dec. 15, 1995, although this Office has not received nor acknowledged the representation of Ms. Gutierrez.⁷⁵

Cristobal explained that the POEA, "Never had a letter from Sarifudin registering or authorizing Flor Gutierrez... rather, [what] we received [was a] revocation of her appointment."⁷⁶ He also revealed that the name of the accused does not appear in the records of the POEA as being employed by the agency from the assumption of its license on June 11, 1993, up to its termination on June 11, 1995.⁷⁷

The defense likewise alleged that complainants Rosemarie Tugade and Evelyn Ramos executed Affidavits of Desistance dated May 12, 1995,⁷⁸ stating that the accused had returned to them the amounts they paid her and that the complaint was a result of a misunderstanding.

On March 22, 1996, the trial court rendered its *Decision* finding the accused guilty beyond reasonable doubt of Illegal Recruitment in Large Scale:

WHEREFORE, after evaluating all the foregoing, the accused FLOR GUTIERREZ is hereby found guilty beyond reasonable doubt of Illegal Recruitment in Large Scale, and judgment is hereby rendered as follows:

- (a) Convicting the accused of Illegal Recruitment in Large Scale and sentencing her to suffer the penalty of life imprisonment and payment of P100,000.00 fine;
- (b) No reimbursement to complainants is needed since their money have already been returned;
- (c) Accused to pay moral damages in the amount of P50,000.00 to each complainant;
- (d) Accused to pay exemplary damages in the amount of P50,000.00 to each complainant; and
- (e) To pay the costs of the suit.⁷⁹

Accused Flor Gutierrez filed the present appeal seeking the reversal of her conviction.

Illegal recruitment is committed when two elements concur, namely: (1) the offender has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and (2) he undertakes either any activity within the meaning of "recruitment and placement" defined under Art. 13(b), or any of the prohibited practices enumerated under Art. 34 of the Labor Code.⁸⁰ Art. 13(b) of the Labor Code defines "recruitment and placement" as "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."⁸¹

The crime becomes Illegal Recruitment in Large Scale when the two elements concur, with the addition of a third element: the recruiter committed the same against three or more persons, individually or as a group.⁸²

Appellant argues that as a representative of a duly licensed recruitment agency, she cannot be held guilty of Illegal Recruitment in Large Scale. We disagree.

Section 11, Rule II, Book II of the Rules and Regulations Governing Overseas Employment requires the prior approval of the POEA of the appointment of representatives or agents:

Section 11. **Appointment of Representatives.** Every appointment of representatives or agents of licensed agency shall be subject to prior approval or authority of the Administration.

The approval may be issued upon submission of or compliance with the following requirements:

- a. Proposed appointment or Special Power of Attorney;
- b. Clearances of the proposed representative or agent from NBI;
- c. A sworn or verified statement by the designating or appointing person or company assuming full responsibility for all the acts of the agent or representative done in connection with the recruitment and placement of workers.

Approval by the Administration of the appointment or designation does not authorize the agent or representative to establish a branch or extension office of the licensed agency represented.

Any revocation or amendment in the appointment should be communicated to the administration. Otherwise, the designation or appointment shall be deemed as not revoked or amended.

Section 1, Rule X of the same Book, in turn, provides that "recruitment and placement activities of agents or representatives appointed by a licensee, whose appointments were not authorized by the Administration shall likewise constitute illegal recruitment."

The Certification from the POEA that it "has not received nor acknowledged the representation of Ms. Gutierrez" establishes that the appointment of appellant by Serafudin as a representative or agent was not authorized by the POEA. It may be true that the POEA received from Serafudin a revocation of appellant's appointment, but still is of no consequence since Serafudin in the first place did not submit her appointment to the POEA, and so the POEA has nothing to approve.

As found by the trial court⁸³ the evidence on record, notably appellant's own version, indicates that she was running her own labor recruitment business.

Appellant cannot escape liability by claiming that she was not aware that before working for her employer in the recruitment agency, she should first be registered with the POEA.⁸⁴ Illegal recruitment in large scale is *malum prohibitum*, not *malum in se*.⁸⁵ Good faith is not a defense.

That appellant engaged in recruitment and placement is beyond dispute. The complaining witnesses categorically testified that the accused promised them on several occasions that they would be leaving for work abroad. Appellant received complainants' money and documents, a fact that the complainants themselves witnessed and which the accused acknowledged when she returned the same to them after the filing of the case against her. Appellant even brought complainant Rosalyn Sumayo to the airport three times, raising her expectations, but leaving her hanging in mid-air. The accused even had the audacity to demand cancellation fees from the complainants when they asked for a refund.

The Affidavits of Desistance executed by two of the complainants deserve little weight. The Court attaches no persuasive value to affidavits of desistance, especially when executed as an afterthought. As held in the case of *People v. Ubina*,⁸⁶ "it would be a dangerous rule for courts to reject testimonies solemnly taken before the courts of justice simply because the witnesses who had given them later on changed their mind for one reason or another; for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses."⁸⁷

As appellant committed illegal recruitment against three or more persons, she is liable for Illegal Recruitment in Large Scale.

WHEREFORE, the *Decision* of the Regional Trial Court, finding appellant Flor Gutierrez y Timod guilty beyond reasonable doubt of the crime of Illegal Recruitment in Large Scale and sentencing her to life imprisonment and to pay a fine of P100,000.00 is AFFIRMED.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

Footnotes

¹ Judge Priscilla C. Mijares presiding.

² Records, p. 2.

³ TSN, May 12, 1995, p. 4.

⁴ Id., p. 5.

⁵ Id., p. 6.

⁶ *Id.*, pp. 6-7.

⁷ *Id.*, p. 7.

⁸ *Id.*, pp. 8-9.

⁹ *Id.*, p. 8.

¹⁰ *Id.*, pp. 9-10.

¹¹ *Id.*, p. 10.

¹² Exhs. B and B-1.

¹³ *Id.*, p. 12.

¹⁴ *Ibid.*

¹⁵ TSN, May 12, 1995, p. 19.

¹⁶ *Ibid.*

¹⁷ *Id.*, pp. 21-22.

¹⁸ *Id.* At 24.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Id.*, p. 25.

²² Exhs. D, D-1.

²³ TSN, May 19, 1995, p. 28.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Id.*, p. 30.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Id.*, p. 31.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Id.*, p. 32.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Id.*, pp. 32-33.

³⁶ *Id.*, p. 40.

³⁷ *Id.*, p. 34.

³⁸ TSN, May 19, 1995, p. 46.

³⁹ *Id.*, p. 47.

⁴⁰ *Ibid.*

⁴¹ *Id.*, p. 48.

⁴² *Ibid.*

⁴³ *Id.*, pp. 48-49.

⁴⁴ *Id.*, p. 50.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Exhs. G and G-1, the POEA Certification.

⁴⁸ Exhs. A, C, E, and F.

⁴⁹ Exhs. G, J, and J-1.

⁵⁰ TSN, August 2, 1995, p. 12.

⁵¹ Exhs. Q-1-a to Q-1-t.

⁵² *Id.*, p. 13.

⁵³ Exh. Q.

⁵⁴ TSN, September 1, 1995, p. 4.

⁵⁵ TSN, September 8, 1995, p. 9.

⁵⁶ *Ibid.*

⁵⁷ *Id.*, p. 15.

⁵⁸ Exh. 7.

⁵⁹ Exhs. 1, 1-A and 1-B.

⁶⁰ *Ibid.*

⁶¹ Exh. 2.

⁶² *Ibid.*

⁶³ Exhs. 3 and 3-a.

⁶⁴ Exh. 3-c.

⁶⁵ Exh. 3-b.

⁶⁶ Exhs. 4 and 4-a.

⁶⁷ Exhs. 6- 6-d.

⁶⁸ Exh. 5.

⁶⁹ TSN, September 8, 1995, pp. 11-12.

⁷⁰ *Id.*, p. 14.

⁷¹ TSN, September 25, 1995, p. 6.

⁷² Exh. 8.

⁷³ Exhs. 8-a and 8-b respectively.

⁷⁴ TSN, September 25, 1995, p. 10.

⁷⁵ Exh. W-1a.

⁷⁶ *Id.*, p. 11.

⁷⁷ TSN, September 25, 1995, p. 13.

⁷⁸ TSN, May 19, 1995, p. 2.

⁷⁹ Records, p. 192.

⁸⁰ *People v. Ordone*, G.R. Nos. 129593 & 143533-35, July 10, 2000, 335 SCRA 331.

⁸¹ *Id.*, p. 345.

⁸² *People v. Banzales*, G.R. No. 132289, July 18, 2000, 336 SCRA 64, *citing* *People v. Castillon*, G.R. No. 130940, April 21, 1999, 306 SCRA 271.

⁸³ Rollo, p. 19.

⁸⁴ *People v. Fajardo*, G.R. No. 128583, November 22, 2000, 345 SCRA 395.

⁸⁵ *Id.*, p. 409.

⁸⁶ 97 Phil. 515 (1955).

⁸⁷ *Re: Complaint of Mrs. Rotilla A. Marcos and Her Children Against Judge Ferdinand J. Marcos*, RTC, Br 20, Cebu City, A.M. No. 97-2-53 RTC, July 6, 2001, 360 SCRA 539.