

Republic of the Philippines
SUPREME COURT

FIRST DIVISION

G.R. No. 168445 November 11, 2005

PEOPLE OF THE PHILIPPINES, Appellee,
vs.
CAPT. FLORENCIO O. GASACAO, Appellant.

DECISION

YNARES-SANTIAGO, J.:

This is an appeal from the May 18, 2005 Decision¹ of the Court of Appeals in CA-G.R. CR No. 00800 dismissing the appeal of appellant, Florencio O. Gasacao and affirming the March 5, 2001 Joint Decision² of the Regional Trial Court (RTC) of Quezon City, Branch 218, finding appellant guilty beyond reasonable doubt of Large Scale Illegal Recruitment in Crim. Case No. Q-00-94240 and acquitting him of the charge in Crim. Case No. Q-00-94241.

The factual antecedents are as follows:

Appellant was the Crewing Manager of Great Eastern Shipping Agency Inc., a licensed local manning agency, while his nephew and co-accused, Jose Gasacao, was the President. As the crewing manager, appellant's duties included receiving job applications, interviewing the applicants and informing them of the agency's requirement of payment of performance or cash bond prior to deployment.

On August 4, 2000, appellant and Jose Gasacao were charged with Large Scale Illegal Recruitment defined under Section 6, paragraphs (a), (l) and (m) of Republic Act (RA) No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995, and penalized under Section 7 (b) of the same law, before the RTC of Quezon City.

The informations read:

In Criminal Case No. Q-00-94240

That sometime in the months of May to December, 1999 or thereabout, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and criminally recruit, enlist and promise overseas employment to the private complainants, namely, Lindy M. Villamor, Dennis Cabangahan, Erencio C. Alaba, Victorino U. Caderao, Rommel B. Patolen, Joseph A. Demetria and Louie A. Arca, as overseas seamen/seafarers, the said accused thereby charging, exacting and collecting from the said private complainants cash bonds and/or performance bonds in amounts ranging from P10,000.00 to P20,000.00 without any authority to do so and despite the fact that the same is prohibited by the POEA Rules and Regulations, which amount is greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, and despite the payment of the said fees, the said accused failed to actually deploy the private complainants without valid reasons as determined by the Department of Labor and Employment and despite the failure of deployment, the said accused failed to reimburse the expenses incurred by the said private complainants in connection with their documentation and processing for the purpose of their supposed deployment.

CONTRARY TO LAW.³

In Criminal Case No. Q-00-94241

That sometime in the months of September to November 1999 or thereabout, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and criminally recruit, enlist and promise overseas employment to the private complainants, namely, Melvin I. Yadao, Frederick Calambro and Andy Bandiola, as overseas seamen/seafarers, the said accused thereby charging, exacting and collecting from the said private complainants cash bonds and/or performance bonds in amounts ranging from P10,000.00 to P20,000.00 without any authority to do so and despite the fact that the same is prohibited by the POEA Rules and Regulations, which amount is greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, and despite the payment of said fees, the said accused failed to actually deploy the private complainants without valid reasons as determined by the Department of Labor and Employment and despite the failure of deployment, the said accused failed to reimburse the expenses incurred by the said private complainants in connection with their documentation and processing for the purpose of their supposed deployment.

SO ORDERED.⁴

Only the appellant was arrested while Jose Gasacao remained at large. When arraigned, appellant pleaded not guilty to the offense charged. Thereafter, trial on the merits ensued. On March 5, 2001, the RTC of Quezon City, Branch 218, rendered its Joint Decision convicting appellant of Large Scale Illegal Recruitment in Crim. Case No. Q-00-94240 and acquitting him of the charge in Crim. Case No. Q-00-94241. The dispositive portion of the joint decision reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In Crim. Case No. Q-00-94240, the prosecution having established the guilt of the accused beyond reasonable doubt, the Court finds Florencio O. Gasacao GUILTY of Large Scale Illegal Recruitment punishable under Section 7, (b) of R.A. 8042. He is sentenced to suffer life imprisonment and a fine of P500,000.00. He shall also indemnify Dennis C. Cabangahan in the amount of P8,750.00; Lindy M. Villamor for P20,000.00; Victorino U. Caderao for P20,000.00; Rommel B. Patolen for P20,000.00; and Erencio C. Alaba for P20,000.00. Complainants Louie A. Arca and Joseph A. Demetria did not testify.

2. In Crim. Case No. Q-00-94241, complainants Melvin I. Yadao, Frederick Calambro and Andy Bandiola did not testify. Moreover, the Court believes all these complainants should have been grouped in just one (1) information. Hence, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, the Court finds Florencio O. Gasacao NOT GUILTY of the offense charged.

SO ORDERED.⁵

Conformably with our pronouncement in *People v. Mateo*,⁶ which modified pertinent provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as in this case, as well as this Court's Resolution dated September 19, 1995, we resolved on February 2, 2005 to transfer the case to the Court of Appeals for appropriate action and disposition.⁷

On May 18, 2005, the Court of Appeals promulgated the assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Joint Decision dated March 5, 2001 of the trial court in Criminal Case No. Q-00-94240 is hereby AFFIRMED and UPHELD.

With costs against the accused-appellant.

SO ORDERED.⁸

Hence, this appeal.

The core issue for resolution is whether error attended the trial court's findings, as affirmed by the Court of Appeals, that appellant was guilty beyond reasonable doubt of the crime of large scale illegal recruitment.

RA No. 8042 defines illegal recruitment as follows:

II. ILLEGAL RECRUITMENT

Sec. 6. DEFINITIONS. – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensuree or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, that such non-licensuree or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any persons, whether a non-licensuree, non-holder, licensuree or holder of authority.

(a) To charge or accept directly or indirectly any amount greater than the specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

....

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the workers in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered as offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

A license is a document issued by the Department of Labor and Employment (DOLE) authorizing a person or entity to operate a private employment agency, while an authority is a document issued by the DOLE authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity. However, it appears that even licensurees or holders of authority can be held liable for illegal recruitment should they commit any of the above-enumerated acts.

Thus, it is inconsequential that appellant committed large scale illegal recruitment while Great Eastern Shipping Agency, Inc. was holding a valid authority. We thus find that the court below committed no reversible error in not appreciating that the manning agency was a holder of a valid authority when appellant recruited the private complainants.

There is no merit in appellant's contention that he could not be held liable for illegal recruitment since he was a mere employee of the manning agency, pursuant to Section 6 of RA No. 8042 which provides:

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

Contrary to appellant's claim, he is not a mere employee of the manning agency but the crewing manager. As such, he receives job applications, interviews applicants and informs them of the agency's requirement of payment of performance or cash bond prior to the applicant's deployment. As the crewing manager, he was at the forefront of the company's recruitment activities.

Private complainant Lindy Villamor testified that it was appellant who informed him that if he will give a cash bond of P20,000.00, he will be included in the first batch of applicants to be deployed. Notwithstanding the payment of the cash bond as evidenced by a receipt dated December 15, 1999 and issued by the appellant, Villamor was not deployed overseas. He further testified that when he found out that appellant was no longer connected with Great Eastern Shipping Agency Inc., he confronted Jose Gasacao and showed to him a photocopy of the receipt. Jose Gasacao gave him the address of the appellant but he failed to recover the amount from the latter.

Another private complainant, Erencio C. Alaba testified that he applied as a seaman with Great Eastern Shipping Agency Inc. in May 1999 and submitted all the requirements to appellant. The latter told Alaba that after payment of a cash bond, he will be deployed within three months. On June 3, 1999, Alaba gave P10,000.00 to the appellant as evidenced by a cash voucher which was approved and signed by the appellant in the presence of Alaba.

Afterwards, appellant asked Alaba to have his medical examination. He was also informed that those who had completed paying the P20,000.00 cash bond will have priority in deployment. Thus, Alaba gave another P10,000.00 to appellant on August 2, 1999 and was again informed that he will be deployed in a dredging or supply boat within three months from August 1999. Despite appellant's representations, Alaba was never deployed and was also unable to recover the amount of the cash bond that he paid.

Private complainant Dennis Cabangahan testified that he applied as a seaman with Great Eastern Shipping Agency Inc. on July 27, 1999 and paid the cash bond of P19,000.00 as evidenced by a receipt issued by appellant. The latter informed him that he will be deployed abroad within three months. As what had happened to the other complainants, Cabangahan was never deployed overseas nor did he recover his money.

Victoriano Cadirao⁹ also testified that on August 1, 1999, he applied with the manning agency for the position of mess man. He submitted his application to appellant who told him to come back when he has the money to cover the cash bond of P20,000.00. Appellant told him that the payment of the cash bond is optional, but that his deployment will be fast-tracked if he pays the cash bond. On August 10, 1999, he gave P20,000.00 to appellant who issued a receipt. When the promised employment failed to materialize, the appellant told Cadirao to wait for another dredging vessel. In December 1999, he found out that appellant was no longer connected with Great Eastern Shipping Agency Inc. so he went to his residence and demanded the return of his money. Appellant however refused to return the amount of the cash bond.

On the other hand, Rommel B. Patolen testified that he applied with Great Eastern Shipping Agency Inc. as an ordinary seaman in May 1999. After complying with the requirements, appellant told him to report to the agency thrice a week. From May to December 1999, Patolen reported to the agency as instructed. On December 11, 1999, he gave P20,000.00 to appellant who acknowledged its receipt. Patolen further testified that he paid the cash bond because appellant told him that his prospective employer will arrive in December 1999 from Saudi Arabia with a vessel to accommodate him. He was further advised that he could leave within three months if he paid the cash bond. However, Patolen was never deployed and when he found out that appellant was no longer connected with Great Eastern Shipping Agency Inc., he went to the house of the latter and informed him that he was withdrawing his application. Appellant asked him to wait for his new agency, Ocean Grandeur, which has no license yet.

The foregoing testimonies of the private complainants clearly established that appellant is not a mere employee of Great Eastern Shipping Agency Inc. As the crewing manager, it was appellant who made representations with the private complainants that he can secure overseas employment for them upon payment of the cash bond.

It is well settled that to prove illegal recruitment, it must be shown that appellant gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed.¹⁰ Appellant's act of promising the private complainants that they will be deployed abroad within three months after they have paid the cash bond clearly shows that he is engaged in illegal recruitment.

The trial court's appreciation of the complainants' testimonies deserves the highest respect since it was in a better position to assess their credibility.

Even assuming that appellant was a mere employee, such fact is not a shield against his conviction for large scale illegal recruitment. In the case of *People v. Cabais*,¹¹ we have held that an employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in the recruitment process. We further stated that:

In this case, evidence showed that accused-appellant was the one who informed complainant of job prospects in Korea and the requirements for deployment. She also received money from them as placement fees. All of the complainants testified that they personally met the accused-appellant and transacted with her regarding the overseas job placement offers. Complainants parted with their money, evidenced by receipts signed by accused Cabais and accused Forneas. Thus, accused-appellant actively participated in the recruitment of the complainants.¹²

Clearly, the acts of appellant vis-à-vis the private complainants, either as the crewing manager of Great Eastern Shipping Agency Inc. or as a mere employee of the same, constitute acts of large scale illegal recruitment which should not be countenanced.

We find no reason to deviate from the findings of the trial court that appellant is guilty beyond reasonable doubt of large scale illegal recruitment. It was established that he promised overseas employment to five applicants, herein private complainants. He interviewed and required them to complete and submit documents purportedly needed for their employment. Although he informed them that it is optional, he collected cash bonds and promised their deployment notwithstanding the proscription against its collection under Section 60 of the Omnibus Rules and Regulations Implementing R.A. No. 8042¹³ which state that:

SEC. 60. **Prohibition on Bonds and Deposits.** – In no case shall an employment agency require any bond or cash deposit from the worker to guarantee performance under the contract or his/her repatriation.

We find as flimsy and self serving appellant's assertion that he was unaware of the prohibition against the collection of bonds or cash deposits from applicants. It is an established dictum that ignorance of the law excuses no one from compliance therewith.¹⁴ The defense of good faith is neither available.

It is also undisputed that appellant failed to deploy the private complainants without any valid reason, this notwithstanding his promise to them that those who can pay the cash bond will be deployed within three months from payment of the same. Such failure to deploy constitutes a violation of Section 6 (l) of RA No. 8042. Worse, when it became clear that appellant cannot deploy the private complainants without their fault, he failed to return the amount of the cash bond paid by them.

Illegal recruitment is deemed committed in large scale if committed against three or more persons individually or as a group. In this case, five complainants testified against appellant's acts of illegal recruitment, thereby rendering his acts tantamount to economic sabotage. Under Section 7 (b) of RA No. 8042, the penalty of life imprisonment and a fine of not less than P500,000.00 nor more than P1,000,000.00 shall be imposed if illegal recruitment constitutes economic sabotage.

Verily, the trial court and the Court of Appeals correctly found appellant guilty beyond reasonable of large scale illegal recruitment.

WHEREFORE, the May 18, 2005 Decision of the Court of Appeals in CA-G.R. CR No. 00800 is **AFFIRMED**.

SO ORDERED.

CONSUELO YNARES-SANTIAGO

Associate Justice

WE CONCUR:

(On Official Leave)

HILARIO G. DAVIDE, JR.

Chief Justice

LEONARDO A. QUISUMBING, ANTONIO T. CARPIO

Associate Justice Associate Justice

ADOLFO S. AZCUNA

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LEONARDO A. QUISUMBING

Associate Justice Acting Chairman, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO

Acting Chief Justice

Footnotes

¹ Rollo, pp. 131-143. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Regalado E. Maambong and Fernanda Lampas Peralta.

² *Id.* at 25-32. Penned by Judge Hilario L. Laqui.

³ *Id.* at 11-12.

⁴ *Id.* at 14-15.

⁵ *Id.* at 32.

⁶ G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

⁷ Rollo, p. 129.

⁸ *Id.* at 142.

⁹ Spelled as Caderao in other parts of the records.

¹⁰ *People v. Angeles*, 430 Phil. 333, 343 (2002).

¹¹ G.R. No. 129070, March 16, 2001, 354 SCRA 553, 561.

¹² *Id.* at 562.

¹³ Issued on February 29, 1996.

¹⁴ Article 3, Civil Code of the Philippines.