SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Appellee,

- versus -

LARRY LAURO DOMINGO, Appellant.

G.R. No. 181475

Present:

QUISUMBING, *Chairperson*,
CARPIO MORALES,
TINGA,
VELASCO, JR., and
BRION, *JJ*.

Promulgated:
April 7, 2009

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D E C I S I O N

CARPIO MORALES, *J*.:

On appeal via Petition for Review on Certiorari is the Court of Appeals Decision[1] dated September 28, 2007 affirming the Joint Decision[2] dated October 19, 2004 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 11 which convicted Larry Domingo (appellant) of *Illegal Recruitment* (Large Scale) in Criminal Case No. 1224-M-2001 and *Estafa* in Criminal Case Nos. 1243-M-2001 and 1246-M-2001, and acquitting him in Criminal Case Nos. 1225-M-2001 to 1242-M-2001 and 1244-M-2001, 1245-M-2001 and 1247-M-2001, also for *Estafa*.

The Information[3] in Criminal Case No. 1224-M-2001 reads:

> The undersigned Asst. Provincial Prosecutor accuses Larry Lauro Domingo y Cruz of the crime of illegal recruitment, defined and penalized under the provisions of Article 38 in relation to Articles 34 and 39 of the Labor Code of the Philippines, as amended by presidential Decree Nos. 1920 and 2018, committed as follows:

> That in or about the month of November 1999 to January 20, 2000, in the Municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a non-licensee or non-holder of authority from the Department of Labor and Employment to recruit and/or place workers under local or overseas employment, did then and there willfully and feloniously, with false pretenses, undertake illegal recruitment, placement or deployment of Wilson A. Manzo, Florentino M. Ondra, Feliciano S. del Rosario, Leo J. Cruz, Norberto S. Surio, Genaro B. Rodriguez, Mariano Aguilar, Dionisio Aguilar, Mario J. Sorel, Marcial Boy A. dela Cruz, Edgardo P. Jumaquio, Midel Clara Buensuceso, Remigio S. Carreon, Jr., Romeo Manasala, Magno D. Balatbat, Jose Armen F. Sunga, Rogelio M. Cambay, Junior Balisbis, Ma. Leah Vivas, Simeon S. Cabigao, Edcil P. Mariano, Juanito C. Bartolome, Angelito R. Acevedo, Godofredo P. Samson, Eugenio del Rosario y Tolentino, William B. Bautista, Rodolfo M. Marcelino, Roberto B. Bohol, Felipe H. Cunanan, Carlos P. Dechavez, Carlos J. Cruz, Reynaldo C. Chico, Renato D. Jumaquio, Narciso F. Sunga, Enrico R. Espiritu, Leonardo C. Sunga, Jr., and Iglecerio H. Perez. This offense involved economic sabotage, as it was committed in large scale.
>
> Contrary to law. (Underscoring supplied)

The Informations[4] for 23 counts of *Estafa*, all of which were similarly worded but varying with respect to the name of each complainant and the amount which each purportedly gave to appellant, read:

> That in or about the month of November, 1999 to January, 2000, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit, false pretenses and fraudulent manifestations, and with intent of gain, did then and there willfully, unlawfully and feloniously defraud one [Wilson A. Manzo] by then and there falsely representing that he has the power and capacity to recruit and employ persons in Saipan and could facilitate the necessary papers in connection therewith if given the necessary amount, and by means of deceit of similar import, when in truth and in fact, as the accused knew fully well his representation was false and fraudulent and designed to inveigle [Wilson A. Manzo] to give, as in fact the latter gave and delivered the amount of [P14,000.00] to him, which the accused misappropriated to himself, to the damage and prejudice of Wilson A. Manzo in the said amount of [P14,000.00].
>
> Contrary to law.

Of the 23 complainants, only five testified, namely: Rogelio Cambay, Florentino Ondra, Dionisio Aguilar, Ma. Leah Vivas, and Simeon Cabigao. The substance of their respective testimonies follows:

Rogelio Cambay: Appellant recruited him for a painting job in Marianas Island for which he paid him the amount of ₱15,000 in two installments ₱2,500 during his medical examination at Newton Clinic in Makati City, and the balance of ₱12,500 before the scheduled departure on January 25, 2000.

On his scheduled departure, appellant did not show up at their meeting place in Malolos, Bulacan, hence, the around one hundred people who waited for him organized a search party to look for him in Zambales. Appellant was arrested on February 25, 2000 at the Balintawak tollgate.

A verification[5] with the Department of Labor and Employment showed that appellant was not a licensed recruiter.

Florentino Ondra: He was recruited by appellant for employment as laborer in Saipan, for which he gave ₱14,700 representing expenses for passporting, NBI clearance, and medical examination.

Dionisio Aguilar: In September, 1999, he met appellant thru a friend whereupon he was interviewed, tested for a hotel job, and scheduled for medical examination. He gave ₱30,000 to appellant inside the latters car on November, 1999 after his medical examination. While he was twice scheduled for departure, it did not materialize.

Ma. Leah Vivas: After meeting appellant thru Eddie Simbayan on October 19, 1999, she applied for a job as a domestic helper in Saipan, for which she paid appellant ₱10,000, but like the other complainants, she was never deployed.
Simeon Cabigao: He was recruited by appellant in September, 1999 for employment as carpenter in Saipan with a guaranteed salary of $375 per month. For the promised employment, he paid appellant ₱3,000 for medical fee, and an additional ₱9,000, supposedly to bribe the examining physician because, per information of appellant, he (Cabigao) was found to have an ailment. He was scheduled for departure on February 23, 2000, but the same never took place.

He was among those who looked for appellant in Zambales.

Private complainant Cabigao later recanted this testimony, per his affidavit[6] dated March 3, 2003. Testifying anew, this time for the defense, he averred that the one who actually recruited him and his co-complainants and received their money was Danilo Gimeno (Gimeno), and that they only agreed among themselves to file a case against appellant because Gimeno was nowhere to be found.

Appellant, denying all the accusations against him, claimed as follows: He was a driver hired by the real recruiter, Gimeno, whom he met inside the Victory Liner Bus bound for Manila in September, 2000. It was Gimeno who undertakes recruitment activities in Dakila, Malolos, Bulacan at the residence of Eddie Simbayan, and that the other cases for illegal recruitment filed against him before other courts have all been dismissed.

Appellant likewise presented as witnesses private complainants Enrico Espiritu and Roberto Castillo who corroborated his claim that it was Gimeno who actually recruited them, and that the filing of the complaint against appellant was a desperate attempt on their part to get even because Gimeno could not be located.

By Joint Decision dated October 19, 2004, the trial court found appellant guilty beyond reasonable doubt of *Illega*
l Recruitment (Large Scale) and of 2 counts of *Estafa*, *viz*:

> WHEREFORE, in Criminal case No. 1224-M-2001, for Illegal Recruitment (Large Scale), this Court finds the accused LARRY DOMINGO GUILTY beyond reasonable doubt of violation of Article 38(b) of the Labor Code, as amended, in relation to Article 13 (b) and 34 of the same Code (Illegal Recruitment in Large Scale) and hereby sentences him to suffer the penalty of life imprisonment and pay a fine of P100,000.00.
>
> Accused is further ordered to pay the following complainants the amounts opposite their names as actual or compensatory damages, to wit:
>
> 1. Rogelio Cambay P15,000.00
> 2. Dionisio Aguilar P30,000.00
> 3. Florentino Ondra P14,700.00
> 4. Ma. Lea Vivas P10,000.00
>
> In Criminal Case No. 1243-M-2001 for *Estafa*, this Court finds the accused LARRY DOMINGO GUILTY beyond reasonable doubt of *Estafa* under Article 315 par. 2(a) of the Revised Penal Code and hereby sentences him to a prison term ranging from Two (2) Years, Eleven (11) Months and Eleven (11) Days of prision correcional as minimum up to Eight (8) Years of prision mayor as maximum.
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> In Criminal Case No. 1246-M-2001 for *Estafa*, this Court finds the accused LARRY DOMINGO GUILTY beyond reasonable doubt of *Estafa* under Article 315 par. 2(a) of the Revised Penal Code and hereby sentences him to a prison term ranging from Two (2) Years, Eleven (11) Months and eleven (11) Days of prision correcional as minimum up to Nine (9) Years of prision mayor as maximum.
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> In Criminal Cases Nos. 1225-M-2001 to 1242-M-2001 and 1244-M-2001, 1245-M-2001

and 1247-M-2001, accused is hereby ACQUITTED for lack of evidence.

SO ORDERED.

On appeal to the Court of Appeals, appellant maintained that the trial court erred in finding him guilty beyond reasonable doubt, no receipts to show that he actually received money from private complainant having been submitted in evidence. And he faulted the trial court for failing to give weight to Cabigaos retraction.

The appellate court affirmed the trial courts decision by the challenged Decision dated September 28, 2007, holding that the straightforward and consistent testimonies of the complaining witnesses sufficiently supported the trial courts conclusion that appellant undertook recruitment activities beginning September up to December 1999 in Dakila, Malolos, Bulacan without the license therefor, and failed to deploy those he recruited.

Respecting the non-presentation of receipts of payment to appellant in consideration of the promised jobs, the appellate court affirmed the trial courts ruling that the same had no bearing on his culpability in light of the categorical assertions of the complaining witnesses that appellant was the one who recruited them.

As for Cabigaos recantation, the appellate court found it immaterial as was the other complainants failure to prosecute their claims. The appellate court held that the mere retraction by a prosecution witness does not necessarily vitiate his original testimony and that, in any event, the prosecution had proven beyond reasonable doubt that at least three were illegally recruited by the accused - Cambay, Ondra, Aguilar and Ma. Leah.

As for the *estafa* cases, the appellate court held that the elements constituting the crime, as penalized under Article 315 paragraph 2(a) of the Revised Penal Code, were sufficiently established, *viz*: Appellant deceived the complainants by assuring them of employment abroad provided that they submit certain documents and pay the required placement fee; complainants paid appellant the amount he asked on account of appellants representations which turned out to be false; and complainants suffered damages when appellant failed to return the amounts they paid and the papers they submitted, despite demand.

Hence, the present appeal, appellant raising the same contentions as those he raised in the appellate court.

The appeal is bereft of merit.

The term recruitment and placement is defined under Article 13(b) of the Labor Code of the Philippines as follows:

> (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. (Emphasis supplied)

On the other hand, Article 38, paragraph (a) of the Labor Code, as amended, under which the accused stands charged, provides:

> Art. 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 Ministry 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**. (Emphasis supplied)

From the foregoing provisions, it is clear that any recruitment activities to be undertaken by non-licensee or non-holder of authority shall be deemed illegal and punishable under Article 39 of the Labor Code of the Philippines. *Illegal recruitment* is deemed committed <u>in large scale</u> if committed against three (3) or more persons individually or as a group.

To prove *illegal recruitment* in large scale, the prosecution must prove three essential elements, to wit: (1) the person charged undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) he/she did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) he/she committed the prohibited practice against three or more persons individually or as a group.[7]

The Court finds that the prosecution ably discharged its onus of proving the guilt beyond reasonable doubt of appellant of the crimes charged.

That no receipt or document in which appellant acknowledged receipt of money for the promised jobs was adduced in evidence does not free him of liability. For even if at the time appellant was promising employment no cash was given to him, he is still considered as having been engaged in recruitment activities, since Article 13(b) of the Labor Code states that the act of recruitment may *be for profit or not*. It <u>suffices that appellant promised or offered employment for a fee to the complaining witnesses to warrant his conviction for illegal recruitment</u>.

That one of the original complaining witnesses, Cabigao, later recanted, via an affidavit and his testimony in open court, does not necessarily cancel an earlier declaration. Like any other testimony, the same is subject to the test of credibility and should be received with caution.[8] For a testimony solemnly given in court should not be set aside lightly, least of all by a mere affidavit executed after the lapse of considerable time. In the case at bar, the Affidavit of Recantation was executed three years after the complaint was filed. It is thus not unreasonable to consider his retraction an afterthought to deny its probative value.[9]

AT ALL EVENTS, and even with Cabigaos recantation, the Court finds that the prosecution evidence consisting of the testimonies of the four other complainants, whose credibility has not been impaired, has not been overcome.

As to the conviction of appellant for two counts of *estafa*, it is well established that a person may be charged and convicted of both *illegal recruitment* and *estafa. People v. Comila,*[10] enlightens:

> x x x The reason therefor is not hard to discern: **illegal recruitment is *malum prohibitum,* while *estafa* is *malum in se.* In the first, the criminal intent of the accused is not necessary for conviction. In the second, such an intent is imperative**. ***Estafa* under Article 315, paragraph 2, of the Revised Penal Code, is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud**. x x x (Emphasis supplied)

Appellant, who did not have the authority or license to recruit and deploy, misrepresented to the complaining witnesses that he had the capacity to send them abroad for employment. This misrepresentation, which induced the complaining witnesses to part off with their money for placement and medical fees, constitutes *estafa* under Article 315, par. 2(a) of the Revised Penal Code.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

CONCHITA CARPIO MORALES
Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING
Associate Justice
Chairman

DANTE O. TINGA
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ARTURO D. BRION
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

REYNATO S. PUNO
Chief Justice

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[1] *Rollo*, pp. 2-12. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[2] Records I, pp. 318-330. Penned by Judge Basilio R. Gabo, Jr.

[3] Records I, pp. 1-3.

[4] Records II, p. 1-2.

[5] See Exh. B, Certification of Atty. Napoleon V. Fernando, DOLE RO III Director, records I, p. 5.

[6] Exh. 2, records I, pp. 295-296.

[7] *People v. Jamilosa*, G.R. No. 169076, January 23, 2007, 512 SCRA 340, 351.

[8] *People v. Davatos*, G.R. No. 93322, February 4, 1994, 229 SCRA 647, 651.

[9] *Vide People v. Dalabajan*, G.R. No. 105668, October 16, 1997, 280 SCRA 696, 707.

[10] G.R. No. 171448, February 28, 2007, 517 SCRA 153, 167.