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SECOND DIVISION

[G.R. No. 186132, February 27, 2012]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NESTOR TUGUINAY,
APPELLANT.**

DECISION

BRION, J.:

We resolve the appeal, filed by accused Nestor Tuguinay (*appellant*), from the July 21, 2008 decision of the Court of Appeals (CA) in CA-G.R. H.C. CR- No. 02206.^[1]

The RTC Ruling

In its October 29, 2003 decision,^[2] the Regional Trial Court (RTC) of Baguio City, Branch 60, convicted the appellant of illegal recruitment in large scale^[3] and four counts of estafa.^[4] It gave full credence to the straightforward testimonies of complainants Ferdinand Aguilar y Pontino, Sakio Balicdang, Lim U. Tany and Jordan B. Bangcawayan, pointing to the appellant and his co-accused, Nida Bermudez,^[5] as the persons who recruited and promised them overseas employment in exchange for sums of money. It found that the appellant was not licensed to recruit workers for overseas employment, per the June 6, 2001 Certification of the Philippine Overseas Employment Administration. It noted that the appellant defrauded Aguilar, Balicdang, Tany and Bangcawayan in the amounts of P63,500.00, P75,000.00, P70,000.00 and P70,000.00, respectively. It rejected the appellant's bare and uncorroborated denial.

For the crime of illegal recruitment in Criminal Case No. 19287-R, the RTC sentenced the appellant to suffer the penalty of life imprisonment and ordered him to pay a P100,000.00 fine. For each count of estafa committed against Aguilar, Tany and Bangcawayan in Criminal Case Nos. 19288-R, 19290-R and 19291-R, it sentenced the appellant to suffer an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 12 years of *prision mayor*, as maximum. For the crime of estafa committed against Balicdang in Criminal Case No. 19289-R, the RTC sentenced the appellant to suffer an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 13 years of *reclusion temporal*, as maximum. It did not impose any civil liability on the appellant, noting that he had already settled his civil obligations to the complainants.

The CA Ruling

On intermediate appellate review,^[6] the CA affirmed the RTC's decision, giving full respect to the RTC's assessment of the testimonies and credibility of the complainants.

We now rule on the final review of the case.

Our Ruling

We deny the appeal, but modify the penalties imposed.

The three elements of the crime of illegal recruitment in large scale, to wit: a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of Republic Act No. 8042); and c) the offender committed the same against three or more persons, individually or as a group, are present in this case.

The prosecution adduced proof beyond reasonable doubt that the appellant enlisted the four complainants for overseas employment without any license to do so. The four complainants adequately testified on the demand for placement fees made by the appellant, and the payments they made. No motive affecting their credibility was ever imputed against them. We, therefore, rule that the lower courts correctly found the appellant guilty of illegal recruitment in large scale.

Section 7(b) of Republic Act No. 8042 prescribes a penalty of life imprisonment and a fine of not less than P500,000.00 nor more than P1,000,000.00 if the illegal recruitment constitutes economic sabotage, i.e., illegal recruitment in large scale and illegal recruitment committed by a syndicate. The RTC, as affirmed by the CA, imposed upon the appellant the penalty of life imprisonment and a fine of only P100,000.00. Since the fine of P100,000.00 is below the minimum set by law, we increase the same to P500,000.00.

We likewise affirm the appellant's conviction for the crime of estafa. The two elements of estafa – (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person – are also present in this case. The prosecution evidence duly proved that due to the appellant's false representations of overseas jobs, the complainants paid placement fees to the appellant who failed to secure the promised overseas jobs.

Article 315 of the Revised Penal Code prescribes the penalty for estafa, when the amount of fraud is over P22,000.00, of *prision correccional* maximum to *prision mayor* minimum, adding one year to the maximum period for each additional P10,000.00, provided that the total penalty shall not exceed 20 years. Applying the Indeterminate Sentence Law (ISL), we take the minimum term from the penalty next lower than the minimum prescribed by law, or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). Thus, the lower courts correctly imposed the minimum term in the 4 counts of estafa at 4 years and 2 months of *prision correccional*, since this is within the range of *prision correccional* minimum and medium.

For the maximum term under the ISL, we take the maximum period of the prescribed penalty, adding one year of imprisonment for every P10,000.00 in excess of P22,000.00, provided that the total penalty shall not exceed 20 years. To compute the maximum period of the prescribed penalty, the time included in *prision correccional* maximum to *prision mayor* minimum shall be divided into three equal portions, with each portion forming a period. Following this computation, the maximum period for *prision correccional* maximum to *prision mayor* minimum is from 6 years, 8 months, and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months, and 21 days to 8 years, at the discretion of the court. In computing the incremental penalty, the amount defrauded shall be subtracted by P22,000.00, the difference shall be divided by P10,000.00, and any fraction of a year is discarded.^[7]

Upon review, we modify the maximum term of the indeterminate sentence imposed on the appellant in Criminal Case Nos. 19288-R to 19291-R.

In Criminal Case No. 19288-R, since the amount defrauded of P63,500.00 exceeds P22,000.00 by P41,500.00, 4 years shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months, and 21 days to 8 years). In the absence of any aggravating circumstance, we add the 4 years of incremental penalty to the lowest of the maximum period, which is 6 years, 8 months and 21 days. The maximum term, therefore, of the appellant's indeterminate sentence in Criminal Case No. 19288-R is only 10 years, 8 months and 21 days of *prision mayor*.

In Criminal Case No. 19289-R, since the amount defrauded of P75,000.00 exceeds P22,000.00 by P53,000.00, 5 years shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months and 21 days to 8 years). In the absence of any aggravating circumstance, we add the 5 years of incremental penalty to the lowest of the maximum period, which is 6 years, 8 months and 21 days. The maximum term, therefore, of the appellant's indeterminate sentence in Criminal Case No. 19289-R is only 11 years, 8 months and 21 days of *prision mayor*.

In Criminal Case Nos. 19290-R and 19291-R, since each of the amounts defrauded of P70,000.00 exceeds P22,000.00 by P48,000.00, 4 years shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months and 21 days to 8 years) in each case. In the absence of any aggravating circumstance in these cases, we add the 4 years of incremental penalty to the lowest of the maximum period, which is 6 years, 8 months and 21 days. The maximum term, therefore, of the appellant's indeterminate sentence in Criminal Case Nos. 19290-R and 19291-R is only 10 years, 8 months and 21 days of *prision mayor*.

WHEREFORE, the July 21, 2008 decision of the Court of Appeals in CA-G.R. H.C. CR No. 02206 is hereby **AFFIRMED** with **MODIFICATION**. Appellant Nestor Tuguinay is found guilty beyond reasonable doubt of illegal recruitment in large scale in Criminal Case No. 19287-R and is sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00. He is likewise found guilty beyond reasonable doubt of four counts of estafa and sentenced to an indeterminate penalty of 4 years and 2 months of

prision correccional, as minimum, to 10 years, 8 months and 21 days of *prision mayor*, as maximum, in Criminal Case Nos. 19288-R, 19290-R and 19291-R; and an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 11 years, 8 months and 21 days of *prision mayor*, as maximum, in Criminal Case No. 19289-R.

SO ORDERED.

Carpio, (Chairperson), *Abad*, * *Perez*, and *Sereno, JJ.*, concur.

* Additional member in lieu of Associate Justice Bienvenido L. Reyes, per Raffle dated February 8, 2012.

[1] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), and concurred in by Associate Justices Vicente Q. Roxas and Apolinario D. Bruselas, Jr.; *rollo*, pp. 4-19.

[2] Docketed as Criminal Case Nos. 19287-R to 19291-R; *CA rollo*, pp. 31-43.

[3] See LABOR CODE OF THE PHILIPPINES, Article 13(b), in relation to Articles 34, 38(b) and 39, as amended by Presidential Decree Nos. 1693, 1920 and 2018 and Republic Act No. 8042, otherwise known as "The Migrant Workers and Overseas Filipinos Act of 1995."

[4] See REVISED PENAL CODE, Article 315, paragraph 2(a).

[5] Remains at large.

[6] The RTC forwarded the records of the case to the Court for automatic review. However, pursuant to *People v. Mateo* (G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640), we referred the case to the CA for intermediate appellate review; *CA rollo*, pp. 62-63.

[7] *People of the Philippines v. Rosario "Rose" Ochoa*, G.R. No. 173792, August 31, 2011; *People of the Philippines v. Dolores Ocdan*, G.R. No. 173198, June 1, 2011; and *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 299.



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