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SECOND DIVISION

[G.R. No. 194255, June 13, 2012]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NURFRASIR HASHIM Y SARABAN A.K.A "FRANZ/FRANS," MAKDUL JAMAD Y BUKIN (AL) A.K.A. "MACKY," A CERTAIN "TAS," AND A CERTAIN "JUN," ACCUSED, BERNADETTE PANSACALA A.K.A. "NENENG AWID," ACCUSED-APPELLANT.

DECISION

SERENO, J.:

On appeal is the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00644-MIN promulgated on 20 July 2010, which affirmed the conviction of herein accused-appellant Bernadette Pansacala a.k.a Neneng Awid, together with co-accused Nurfrasier Hashim y Saraban a.k.a "Franz/Frans," Makdul Jamad y Bukin a.k.a. "Macky," a certain "Tas" and a certain "Jun" for the crime of illegal recruitment as defined under Section 6 in relation to Section 7(b) of Republic Act. No. (R.A.) 8042 or the Migrant Workers and Overseas Filipinos Act of 1995.

The Facts

On 10 March 2004, accused-appellant was charged as follows:^[2]

That on or about June 11, 2003 and for sometime prior or subsequent thereto, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, mutually aiding and assisting with one another without having previously obtained from the Philippine Overseas Employment Administration, license or authority to engage in the recruitment and deployment of overseas workers, did then and there willfully [sic], unlawfully and feloniously, illegally recruit for a promised employment abroad particularly in Brunei and Malaysia, thus causing and prompting the persons of BBB and AAA^[3] to apply which employment however did not materialize because in truth and in fact, the promised employment is non-existent, in flagrant violation of the above-mentioned law and causing damage and prejudice to said complainants; further, the commission of the above stated offense tantamount to economic sabotage in that the same was committed by a syndicate.

Only accused-appellant and Nurfrasier Hashim y Saraban were arrested, and both

entered a plea of "not guilty" when arraigned.

Private complainants AAA and BBB, Police Chief Inspector Ronald Añonuevo, and police officers Edmond Ranel Villareal and Renato Rabuya dela Peña were presented by the prosecution to prove the following:

On 10 June 2003, accused-appellant approached AAA, who was then doing her job as a waitress at a stall in Paseo de Zamboanga, Buenavista, Zamboanga City, to encourage AAA to work in Malaysia, as accused-appellant knew certain persons who would soon be leaving for that country.

On the next day, 11 June 2003, private complainant BBB was at her house in Talon-talon Loop, Zamboanga City, when accused-appellant paid her a visit and invited her to work as a saleslady in Brunei. After being assured that the prospective employment was above board and that she would be well compensated, BBB accepted the invitation.

The day after, accused-appellant, together with co-accused Makdul Amad y Bukin a.k.a. "Macky" (Macky) and a certain "Jun," returned to the house of BBB. Accused-appellant informed BBB that the latter would be escorted to Malaysia by the two men, and that they would meet the next day at 1:00 p.m. at Plaza Pershing, Zamboanga City.

On 13 June 2003, BBB, Macky and Jun met as planned. They proceeded to Shop-O-Rama, where they met with co-accused Nurfrasier Hashim, a.k.a. "Franz" (Franz), who assured BBB that she would be easily hired because of her beauty and height. They then agreed to meet at 3:00 p.m. that same day at Paseo de Zamboanga.

At Paseo de Zamboanga, BBB, accused-appellant, Macky, and Jun met with AAA, a certain CCC (allegedly another recruit) and Arlene (allegedly AAA's employer). Then at 7:00 p.m. of that same day, they all proceeded to the wharf, where they met accused Franz and a certain Cristy, who was also allegedly invited by accused-appellant to work in Malaysia.

Thereafter, AAA, BBB, CCC, Cristy, Macky and Jun boarded the *M/V Grand Flora* and were given pieces of paper containing a name. Franz, accused-appellant Bernadette and a certain Titing did not board the boat. Accused-appellant informed private complainants and their companions that she and Franz would follow and bring their passports. We quote the Decision of the CA to describe the journey of the group after boarding the *M/V Flora* bound for Bongao, Tawi-Tawi, at 10:00 p.m.:^[4]

On June 14, 2003, they (BBB, AAA, CCC, Cristy, accused Macky) and Jun disembarked at Bongao, Tawi-Tawi, and then they proceeded to Sitangkai, Tawi-Tawi where they stayed for two days. On June 16, 2003, they went to Pundohan, which is a terminal going to Lahad Datu, Sabah, Malaysia.

On June 17, 2003, at 6:00 o'clock [sic] in the morning[,] they arrived at Lahad Datu and soon thereafter [sic] they boarded a van going to Samporna, Malaysia where they met accused Macky's cousin named Pat. They waited at Samporna until 5:00 o'clock [sic] in the afternoon when accused Franz and

Tash[,] who was allegedly their financier[,] arrived. Accused Franz then distributed to AAA, BBB, CCC and Cristy their respective passports.

Thereafter, they boarded a bus going to Kota Kinabalu, Malaysia, and they arrived thereat at 7:00 o'clock [sic] in the morning of June 18, 2003. Later, they boarded again a bus going to Minumpo, Malaysia and then a barge going to Labuan, Malaysia where they stayed at a hotel [the Classic Hotel] for three nights or from the night of June 18, 2003 until June 20, 2003.

On June 21, 2003, accused Franz instructed BBB, AAA, CCC and Cristy to wear "sexy clothes" because they were going to meet their supposed boss named Bunso at Cape Imperial located at Labuan, Malaysia.

When they arrived at Cape Imperial, accused Macky and Jun talked to Bunso but they failed to reach an agreement on the purported compensation of the four girls. So, accused Macky and Jun brought the girls to Golden Lotus Barber Salon (Salon for brevity) where the latter were introduced to a certain person named Mommy Cindy, the alleged owner of the salon, and their purported manager Hako who was called Mommy Susan.

The prosecution also alleged that while the group was staying at the Classic Hotel in Labuan, BBB was forced on numerous occasions to have sexual intercourse with Franz at his bidding, even in the presence of other people. She followed his orders for fear that he would inflict physical harm on her.

At first, private complainants were not aware of the circumstances surrounding their employment at the Golden Lotus. It was only after they agreed to stay there for employment that they were forced to become sex workers to earn money and pay off the debts they incurred from their travel from Zamboanga City to Labuan, Malaysia.

Thus, from 21 June 2003 to 13 July 2003, AAA and BBB worked as prostituted women. Each of the girls would be booked to a customer for the whole night for 300 Ringgit at a certain hotel near the Golden Lotus. Meanwhile, during the day, they would be hired by customers for a "short time" for 150 Ringgit in one of the rooms of the Golden Lotus. The girls were told that they would be made to pay a fine of 150 Ringgit if they refused to have sexual intercourse with the customers.

On 12 July 2003, BBB had a customer who was a law enforcer at Kota Kinabalu, Malaysia. She sought his help for her return to the Philippines, and he agreed.

The following day, on 13 July 2003, the Golden Lotus was raided by the Immigration Officers of Kota Kinabalu, Malaysia, and the prostituted Filipino women, including AAA and BBB, were detained at the Balay Polis (Police Department) in Labuan until all the women were deported to the Philippines.

The defense, on the other hand, presented three witnesses: accused-appellant Bernadette, her common-law partner Majujie Jailya Misuari, and co-accused Franz.

According to accused-appellant, she and BBB were friends and neighbors in Talon-talon, Zamboanga City. Sometime in April 2003, when asked by BBB why accused-appellant returned to the Philippines from Malaysia, the latter said that she had been made a prostituted woman in Malaysia.

Accused-appellant denied having offered BBB a job in Malaysia, a denial corroborated by Majujie Jailya Misuari. Accused-appellant also denied knowing AAA and Franz. She claimed that she only met AAA when the latter, together with BBB, visited her in jail and offered to withdraw the case if accused-appellant would give them money.

Co-accused Franz merely denied knowing AAA, BBB or accused-appellant.

On 27 June 2008, after trial on the merits, the Regional Trial Court (RTC) of Zamboanga City rendered a Decision,^[5] the dispositive portion of which states:^[6]

WHEREFORE, the Court finds both accused NURFRASIR HASHIM y SARABAN a.k.a "FRANZ/FRAS" and BERNADETTE PANSACALA a.k.a "NENENG AWID" **GUILTY BEYOND REASONABLE DOUBT** of the crime of ILLEGAL RECRUITMENT defined under Section 6 and penalized under Section 7(b) of Republic Act No. 8042 otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995", as principals by direct participation, committed by a syndicate, against BBB and AAA, and SENTENCES each of said accused to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of P1,000,000.00 each;^[7] to pay each of the above victims P50,000.00 as moral damages; P300,000.00 as exemplary damages, and to pay the costs.

SO ORDERED.

The trial court considered that, in the course of the trial, the prosecution and the defense had entered into a stipulation that neither accused-appellant Bernadette nor Franz had a license or an authority to recruit or deploy workers for overseas employment.

Moreover, the trial court found that the crime was committed in conspiracy by the accused and other persons. It painstakingly enumerated the overt acts of the accused-appellant showing her direct participation in the commission of the crime. These acts included inducing AAA and BBB to work in Malaysia; introducing Macky, Jun and Franz to the victims; and escorting them to the wharf, where the victims boarded the vessel that took them away from their families and their country and brought them to Malaysia, where – heretofore unbeknownst to them – they were made to work as prostituted women.

It further held that the credible and positive testimonies of the witnesses for the prosecution prevailed over those of the defense of mere denial, absent any showing that the witnesses for the prosecution had any ill motive to falsely testify and implicate the accused in the commission of the crime charged.

On appeal, the CA affirmed the findings of fact of the trial court in the former's assailed Decision, but modified the award of damages, to wit:^[8]

WHEREFORE, the Appeal is **DISMISSED**. The assailed Decision dated June 27, 2008 of the Regional Trial Court, Branch 16 of Zamboanga City in Criminal Case No. 19921 is **AFFIRMED with MODIFICATION** that the amount of exemplary damages in favor of the private complainants be reduced to P25,000.00 each.

SO ORDERED.

In the present appeal, instead of filing a supplemental brief, both accused-appellant and the Office of the Solicitor General opted to adopt their respective Briefs filed with the CA.

The appeal is unmeritorious.

To be convicted of the crime of illegal recruitment committed by a syndicate, the following elements must occur:^[9]

1. The accused have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers.
2. The accused engaged in this activity of recruitment and placement by actually recruiting, deploying and transporting.
3. Illegal recruitment was committed by three persons conspiring and confederating with one another.

As to the first element, accused-appellant admitted that she did not have a valid license to recruit persons for overseas employment, consistent with her defense that she did not engage in the recruitment of persons for employment.

Anent the second element, both victims, AAA and BBB, narrated in great detail how they were induced by accused-appellant to accept an employment opportunity, and how they were successfully transported from Zamboanga City to Malaysia where they eventually worked as prostituted women.

On the third element, accused-appellant posits that the prosecution failed to prove that there were more than two persons involved in the alleged crime of illegal recruitment, since the trial court held only two of the accused liable for the crime. The prosecution, she alleges, failed to establish that the other accused Macky, Jun, and Tas also had no license or authority to recruit workers for overseas employment.

In the recent case *People v. Lalli*,^[10] we affirmed the trial court's findings in which 2 of the 3 accused were convicted of illegal recruitment committed by a syndicate, even

though the third accused was at-large. In so ruling, we took note of the fact that the victim would not have been able to go to Malaysia were it not for the concerted efforts of the three accused. We held thus:

Flight in criminal law is the evading of the course of justice by voluntarily withdrawing oneself in order to avoid arrest or detention or the institution or continuance of criminal proceedings. The unexplained flight of an accused person may as a general rule be taken into consideration as evidence having a tendency to establish his guilt. Clearly, in this case, the flight of accused Relampagos, who is still at-large, shows an indication of guilt in the crimes he has been charged.

It is clear that through the concerted efforts of Aringoy, Lalli and Relampagos, Lolita was recruited and deployed to Malaysia to work as a prostitute. **Such conspiracy among Aringoy, Lalli and Relampagos could be deduced from the manner in which the crime was perpetrated — each of the accused played a pivotal role in perpetrating the crime of illegal recruitment, and evinced a joint common purpose and design, concerted action and community of interest.**

For these reasons, this Court affirms the CA Decision, affirming the RTC Decision, declaring accused Ronnie Aringoy y Masion and Hadja Jarma Lalli y Purih guilty beyond reasonable doubt of the crime of illegal recruitment committed by a syndicate in Criminal Case No. 21930, with a penalty of life imprisonment and a fine of P500,000 imposed on each of the accused. (Emphasis supplied.)

In the case at bar, the prosecution was similarly able to establish that accused-appellant Bernadette and Franz were not the only ones who had conspired to bring the victims to Malaysia. It was also able to establish at the very least, through the credible testimonies of the witnesses, that (1) Jun and Macky were the escorts of the women to Malaysia; (2) a certain Tash was their financier; (3) a certain Bunso negotiated with Macky for the price the former would pay for the expenses incurred in transporting the victims to Malaysia; and (4) Mommy Cindy owned the prostitution house where the victims worked. The concerted efforts of all these persons resulted in the oppression of the victims.

Clearly, it was established beyond reasonable doubt that accused-appellant, together with at least two other persons, came to an agreement to commit the felony and decided to commit it. It is not necessary to show that two or more persons met together and entered into an explicit agreement laying down the details of how an unlawful scheme or objective is to be carried out. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated; or from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.^[11]

Findings of fact of the CA, when they affirm those of the trial court, are binding on this Court, unless the findings of the trial and the appellate courts are palpably unsupported by the evidence on record, or unless the judgment itself is based on a misapprehension of facts.^[12]

Likewise, we have time and again ruled that mere denial cannot prevail over the positive testimony of a witness. A mere denial, just like an alibi, is a self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declarations of credible witnesses who testify on affirmative matters. As between a categorical testimony that has the ring of truth on the one hand and a bare denial on the other, the former is generally held to prevail.^[13]

We, however, find it proper to modify the amount of moral and exemplary damages awarded by the CA.

On 12 May 2003, Congress passed R.A. 9208 or the Anti-Trafficking in Persons Act. This law was approved on 26 May 2003. Ironically, only a few days after, private complainants found themselves in a situation that this law had sought to prevent.

In *Lalli*, we increased the amount of moral and exemplary damages from P50,000 to P500,000 and from P50,000 to P100,000, respectively, having convicted the accused therein of the crime of trafficking in persons. In so doing, we said:

The Civil Code describes moral damages in Article 2217:

Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Exemplary damages, on the other hand, are awarded in addition to the payment of moral damages, by way of example or correction for the public good, as stated in the Civil Code:

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

The payment of P500,000 as moral damages and P100,000 as exemplary damages for the crime of Trafficking in Persons as a Prostitute finds basis in Article 2219 of the Civil Code, which states:

Art. 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in Article 309;
- (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. In fact, it is worse. To be trafficked as a prostitute without one's consent and to be sexually violated four to five times a day by different strangers is horrendous and atrocious. There is no doubt that Lolita experienced physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, and social humiliation when she was trafficked as a prostitute in Malaysia. Since the crime of Trafficking in Persons was aggravated, being committed by a syndicate, the award of exemplary damages is likewise justified. (Emphasis supplied.)

We find no legal impediment to increasing the award of moral and exemplary damages in the case at bar. Neither is there any logical reason why we should differentiate between the victims herein and those in that case, when the circumstances are frighteningly similar. To do so would be to say that we discriminate one from the other, when all of these women have been the victims of unscrupulous people who capitalized on the poverty of others. While it is true that accused-appellant was not tried and convicted of the crime of trafficking in persons, this Court based its award of damages on the Civil Code, and not on the Anti-Trafficking in Persons Act, as clearly explained in *Lalli*.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00644-MIN dated 20 July 2010 is hereby **AFFIRMED with MODIFICATIONS**. Accused-appellant Bernadette Pansacala a.k.a. "Neneng Awid" is **ORDERED** to pay AAA and BBB the sum of P500,000 each as moral damages and P100,000 each as exemplary damages and to pay the costs.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

[1] *Rollo*, pp. 3-18; penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Edgardo A. Camello and Nina G. Antonio-Valenzuela concurring.

[2] *Rollo*, p. 4.

[3] The real names of private complainants were disclosed in the proceedings before the Regional Trial Court and the Court of Appeals. However, pursuant to Section 6 of R.A. 9208 or the Anti-Trafficking in Persons Act of 2003, the real names of private complainants herein are withheld and replaced with fictitious initials to protect their identity. While the case was not prosecuted under R.A. 9208, the policy behind the confidentiality provision – to protect human dignity – is nevertheless applicable to the case at bar.

[4] *Rollo*, pp. 6-7.

[5] *CA rollo*, pp. 21-43.

[6] *Id.* at 43.

[7] At the time of the conviction, the amount of the fine imposed by R.A. 8042 was not less than P500,000 and not more than P1 million. It was later amended by R.A. 10022, which was passed on 8 March 2010.

[8] *Rollo*, p. 18.

[9] *People v. Lalli*, G.R. No. 195419, 12 October 2011.

[10] *Id.*

[11] *People v. Fegidero*, 392 Phil. 36 (2000).

[12] *Pangonorom v. People*, 495 Phil. 195 (2005).

[13] *People v. Villanueva*, 440 Phil. 409 (2002).



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