

735 PHIL. 340

## SECOND DIVISION

[ G.R. No. 199211, June 04, 2014 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERIC FERNANDEZ Y JAURIGUE, APPELLANT.**

### RESOLUTION

**BRION, J.:**

We decide the appeal, filed by appellant Jeric Fernandez, assailing the April 6, 2011 decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03313.<sup>[1]</sup>

#### The RTC Ruling

In its February 11, 2008 decision,<sup>[2]</sup> the Regional Trial Court (RTC), Branch 211, Mandaluyong City, convicted the appellant of the crimes of illegal recruitment in large scale and five (5) counts of estafa committed against complainants Airene Etac, Jewel A. Baja, Joemar Aquino, Luis M. Bernardo and Anthony M. Canlas. The RTC gave full faith and credence to the testimonies of the complainants that the appellant promised them employment abroad. The trial court ruled that the appellant represented to the complainants that he had the power and ability to send them in Hongkong, and that by virtue of this representation and fraud, the complainants were convinced to part with their money in order to be employed. It also disregarded the appellant's defenses of denial and alibi.

For the crime of illegal recruitment in large scale in Criminal Case No. MC03-6278, the RTC sentenced the appellant to suffer the penalty of life imprisonment, and to pay a P100,000.00 fine. For the crime of estafa, the RTC sentenced the appellant to suffer the following indeterminate penalties: (a) four (4) years of *prision correccional*, as minimum, to nine (9) years of *prision mayor*, as maximum in Criminal Case No. MC03-6279; (b) four (4) years of *prision correccional*, as minimum, to seven (7) years of *prision mayor*, as maximum in Criminal Case No. MC03-6280; (c) four (4) years of *prision correccional*, as minimum, to seven (7) years of *prision mayor*, as maximum in Criminal Case No. MC03-6281; (d) four (4) years of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum in Criminal Case No. MC03-6282 ; and (e) four (4) years of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum in Criminal Case No. MC03-6283.

The RTC also ordered the appellant to indemnify Etac the sum of P35,000.00; Baja the sum of P29,550.00; Aquino the sum of P45,800.00; Bernardo the sum of P30,500.00; and Canlas the sum of P29,550.00.

#### The CA Ruling

On appeal, the CA upheld the factual findings of the RTC. It agreed with the trial court that all the elements of illegal recruitment, as defined under Article 13(b), in relation to Article 34 of the of the Labor Code, were sufficiently established by the prosecution's evidence. The CA held that the appellant's acts of promising the complainants that they would be deployed for work abroad after they paid him their placement fees, and his misrepresentations concerning his purported power and authority despite the lack of license, are constitutive of illegal recruitment in large scale.

The CA also declared that appellant's assurances that he could deploy the complainants for employment in Hongkong constitutes estafa.

### **Our Ruling**

**We deny the appeal and affirm the appellant's convictions. We however, modify the penalties imposed in the five counts of estafa.**

### ***Illegal Recruitment In Large Scale***

Article 38 of the Labor Code defines illegal recruitment as "any recruitment activities, including the prohibited practices enumerated under Article 34 of (the Labor Code), to be undertaken by non-licensees or non-holders of authority." The term "recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, including 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. The law imposes a higher penalty when the illegal recruitment is committed by a syndicate or in large scale as they are considered an offense involving economic sabotage. 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. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.<sup>[3]</sup>

For illegal recruitment in large scale to prosper, the prosecution has to prove three essential elements, namely: (1) the accused undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) the accused did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) the accused committed such illegal activity against three or more persons individually or as a group.

In the present case, the appellant promised the *five complainants* that there were jobs available for them in Hongkong; and that through his help, they could be deployed for work within a month or two. He exacted money from them for the plane ticket, hotel accommodation, processing of visa and placement fees. Notably, the prosecution presented a Certification dated January 10, 2003 issued by Felicitas Q. Bay, Director II of the Philippine Overseas Employment Agency (POEA) Licensing Branch, showing that the appellant had no authority or license to lawfully engage in the recruitment and

placement of workers. These acts, to our mind, constitute illegal recruitment. There is illegal recruitment when one who does not possess the necessary authority or license gives the impression of having the ability to send a worker abroad. Corollarily, where the offense is committed against three or more persons, as in this case, it is qualified to illegal recruitment in large scale which provides a higher penalty under Article 39(a) of the Labor Code.

### ***Estafa***

We point out that conviction under the Labor Code for illegal recruitment does not preclude punishment under the Revised Penal Code for the crime of estafa.<sup>[4]</sup> We are convinced that the prosecution proved beyond reasonable doubt that appellant violated Article 315(2)(a) of the Revised Penal Code, as amended, which provides that estafa is committed by any person who defrauds another by using a fictitious name; or by falsely pretending to possess power, influence, qualifications, property, credit, agency, business; by imaginary transactions or similar forms of deceit executed prior to or simultaneous with the fraud.<sup>[5]</sup>

The appellant's act of falsely pretending to possess power and qualifications to deploy the complainants to Hongkong, even if he did not have the authority or license for the purpose, undoubtedly constitutes estafa under Article 315(2)(a) of the Revised Penal Code. The elements of deceit and damage are clearly present; the appellant's false pretenses were the very cause that induced the complainants to part with their money.

### ***Penalties***

The CA correctly imposed the penalty for illegal recruitment in large scale.

As regards the penalties imposed in the crime of estafa, Article 315 of the RPC provides that an accused found guilty of estafa shall be sentenced to the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos.

Applying the Indeterminate Sentence Law, the minimum term is taken from the penalty next lower or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). On the other hand, the maximum term is taken from the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum in its maximum period, adding 1 year of imprisonment for every P10,000.00 in excess of P22,000.00, provided that the total penalty shall not exceed 20 years.

Applying these principles to the present case, the maximum period of the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum is not *prision mayor* minimum as apparently assumed by the RTC. To compute the maximum period of the prescribed penalty, *prision correccional* maximum to *prision mayor* minimum should be divided into three equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65 of the RPC. Following this

procedure, the maximum period of *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, jurisprudence tells us that the amount defrauded should be subtracted by P22,000.00, and the difference shall be divided by P10,000.00. Any fraction of a year shall be discarded. Accordingly, the imposable penalty should be as follows:

In **Criminal Case No. MC03-6279**, where the amount defrauded was P45,800.00, the appellant should be sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 8 years, 8 months and 21 days of *prision mayor*, as maximum. Since the amount defrauded exceeds P22,000.00 by P23,800.00, 2 years shall be added to the maximum period of the prescribed penalty.

In **Criminal Case No. MC03-6280**, where the amount defrauded was P29,550.00, the appellant should be sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 6 years, 8 months and 21 days of *prision mayor*, as maximum.

In **Criminal Case No. MC03-6281**, where the amount defrauded was P29,550.00, the appellant should be sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 6 years, 8 months and 21 days of *prision mayor*, as maximum.

In **Criminal Case No. MC03-6282**, where the amount defrauded was P30,500.00, the appellant should be sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 6 years, 8 months and 21 days of *prision mayor*, as maximum.

In **Criminal Case No. MC03-6283**, where the amount defrauded was P35,000.00, the appellant should be sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 7 years, 8 months and 21 days or *prision mayor*, as maximum. Since the amount defrauded exceeds P22,000.00 by P13,000.00, 1 year shall be added to the maximum period of the prescribed penalty.

**WHEREFORE**, premises considered, the assailed decision of the Court of Appeals dated April 6, 2011 in CA-G.R. CR-HC No. 03313 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

- (1) In Criminal Case No. MC03-6279, the appellant is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 8 years, 8 months and 21 days of *prision mayor*, as maximum.
- (2) In Criminal Case No. MC03-6280, the appellant is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 6 years, 8 months and 21 days of *prision mayor*, as maximum.

- (3) In Criminal Case No. MC03-6281, the appellant is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 6 years, 8 months and 21 days of *prision mayor*, as maximum.
- (4) In Criminal Case No. MC03-6282, the appellant is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 6 years, 8 months and 21 days of *prision mayor*, as maximum.
- (5) In Criminal Case No. MC03-6283, the appellant is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to 7 years, 8 months and 21 days or *prision mayor*, as maximum.

**SO ORDERED.**

*Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.*

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[1] *Rollo*, pp. 1-47; penned by Associate Justice Amy C. Lazaro-Javier, and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon.

[2] *Records*, pp. 16-25.

[3] See *People v. Hernandez, et al.*, 428 Phil. 643, 656-657 (2002).

[4] See *People v. Ortiz-Miyake*, 344 Phil. 598, 613-614 (1997).

[5] *People v. Sagaydo*, 395 Phil. 538, 549 (2000).



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