

769 Phil. 526

THIRD DIVISION

[G.R. No. 205153, September 09, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SUZETTE ARNAIZ A.K.A. "BABY ROSAL", ACCUSED-APPELLANT.

DECISION

VILLARAMA, JR., J.:

On appeal is the June 25, 2012 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 04762 affirming the conviction of appellant Suzette Arnaiz a.k.a. "Baby Rosal" for illegal recruitment in large scale and two counts of *estafa*.

Facts

In Criminal Case No. 02-199399, appellant Suzette Arnaiz, Ruel P. Garcia and Chita Lorenzo were charged with the crime of illegal recruitment committed in large scale and by a syndicate. In Criminal Case No. 02-199404, appellant and her two co-accused were charged with *estafa*. In Criminal Case No. 02-199406, appellant and her two co-accused were also charged with *estafa*.

Appellant pleaded not guilty to the charges against her. Trial on the merits ensued.

Prosecution witness Edenelda Cayetano testified that she learned that appellant was recruiting workers for Australia. On December 16, 1999, Cayetano gave appellant P30,000 for the processing of her papers. She gave another P40,000 on January 19, 2000, P30,000 on February 4, 2000, and \$500 on March 8, 2000. However, she was not able to leave for Australia. She then confronted appellant, who tried to refund the amount by issuing a check for P175,000. Unfortunately, Cayetano was not able to recover her money since the account was already closed.^[2]

Witness Napoleon Bunuan testified that in June 2000, he went to appellant's travel agency, Florida Travel and Tours located in Manila after learning that it was recruiting factory workers for South Korea. On June 6, 2000, Bunuan gave appellant P45,000 believing that he will be deployed soon. On June 19, 2000, he gave appellant another P25,000 for which he was issued a receipt, even though he had no employment contract. Bunuan again paid P20,000 but this time he was not given a receipt. After paying a total of P90,000, Bunuan discovered that appellant sent 26 persons to Korea but all were sent back to the Philippines. He went to appellant's office only to find out that it was already padlocked.^[3]

Another witness, Flerminio Cantor, Jr., testified that he went to appellant's office

sometime in May 2000 to apply as a factory worker in Korea. He gave appellant the total amount of P110,000 evidenced by cash vouchers. When he arrived in Korea, he was sent back by the Immigration Officer after confirming that his visa and passport were fake. Cantor, Jr. reported back to appellant, who promised that she will change Cantor, Jr.'s name in the passport. He later found out that appellant was arrested by the National Bureau of Investigation.^[4]

During trial, all the complainants identified appellant in open court as Suzette Arnaiz also known as Baby/Rosita Rosal to whom they gave their money.^[5]

The Labor and Employment Officer of the Philippine Overseas Employment Administration (POEA), Mildred N. Versoza, confirmed that based on the records of their office, appellant and Florida Travel and Tours were not licensed to recruit workers for deployment abroad.^[6]

On the other hand, appellant testified that her office was only a travel agency and they only processed the issuance of visas in the different embassies in the Philippines. She claimed that Bunuan went to her office in June 2000 with Julie Landicho, and it was Landicho who recruited Bunuan and assisted him in getting a visa from their office. Appellant averred that Bunuan went to their office with Cantor, Jr. who said that his brother in Korea instructed him to get a Korean visa. Two weeks later, Bunuan and Cantor, Jr. were able to get their visas after paying P65,000, covering the airfare, consultancy and visa assistance fees. The two were able to leave for Korea but were held at the airport. Appellant claimed that she was able to refund Bunuan and Cantor, Jr. the amount of P135,000 each.^[7] She asserted that the signature appearing on the voucher was that of her secretary Suzette Arnaiz who is now residing abroad, and insisted that her name is Rosita Rosal.^[8]

In its Decision,^[9] the Regional Trial Court (RTC) found appellant guilty of illegal recruitment in large scale in Criminal Case No. 02-199399. Appellant was sentenced to life imprisonment and ordered to pay a fine of P500,000. The RTC also found appellant guilty of *estafa* in Criminal Case No. 02-199404 and sentenced her to an indeterminate penalty of 4 years and 2 months of *prision correccional* as minimum, to 14 years of *reclusion temporal* as maximum. She was ordered to pay the amount of P70,000 as payment for the sums paid by Bunuan. The RTC likewise found appellant guilty of *estafa* in Criminal Case No. 02-199406 and sentenced her to an indeterminate penalty of 4 years and 2 months of *prision correccional* as minimum, to 15 years of *reclusion temporal* as maximum. She was ordered to pay Cantor, Jr. the amount of P100,000.

The RTC held that the prosecution was able to establish that appellant undertook recruitment activities and promised employment abroad to the complainants without a valid license or authority to engage in recruitment and placement of workers.

On the *estafa* charges, the RTC noted the elements of the crime of *estafa* under Article 315(2)(a) of the Revised Penal Code, as amended, and held that appellant, by her false pretenses that she can deploy the complainants for work abroad, was able to induce them to part with their money which caused them damage. We note, however, that the

fallo of the RTC Decision convicted appellant of two counts of *estafa* under Article 315(1)(b) of the Revised Penal Code, as amended.

Appellant appealed to the CA.

The CA denied the appeal and affirmed the conviction of appellant for illegal recruitment in large scale and two counts of *estafa*. However, it reduced the penalty of imprisonment imposed in Criminal Case No. 02-199404 to an indeterminate penalty of 6 months and 1 day of *prision correccional* as minimum, to 10 years of *prision mayor* as maximum. Appellant was also ordered to refund to Bunuan the reduced amount of P45,000.

In affirming appellant's conviction for illegal recruitment in large scale, the CA cited the testimonies of the complainants that appellant led them to believe that she had the power to send them to work in Korea and Australia. They were required to submit their bio-data and passports. They were also asked to give substantial amounts of money on several occasions for the processing of their visas and other documents necessary for deployment. Still, they were not able to leave the country and work abroad. Efforts to have their money refunded also failed, said the CA.

On the *estafa* charges, the CA ruled that the elements of *estafa* under Article 315(2)(a) of the Revised Penal Code, as amended, were present. The CA again noted the clear and categorical testimonies of the complainants that they were made to believe that appellant had the authority to send them to work in Australia and Korea, for which reason they gave her substantial amounts of money.

Hence, this appeal.

Issue

The essential issue is whether appellant's guilt was proven beyond reasonable doubt.

Our Ruling

We rule in the affirmative. The appeal lacks merit.

Section 6 of Republic Act No. 8042 (RA 8042) defines illegal recruitment as follows:

SEC. 6. Definition. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee 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 any such non-licensee 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 person, whether a non-licensee, non-holder, licensee or holder of authority:

X X X X

(m) Failure to reimburse expenses incurred by the worker 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 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 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.

To constitute illegal recruitment in large scale, three elements must concur: (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 under Article 34 of the said Code (now Section 6 of RA 8042); and (c) the offender committed the same against three or more persons, individually or as a group.^[10]

Article 13(b) of the Labor Code defines recruitment and placement as "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." In the simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.^[11]

The elements of illegal recruitment in large scale were proven in this case. One, appellant has no valid license or authority to engage in recruitment and placement of workers. The Labor and Employment Officer of the POEA, Mildred N. Versoza, confirmed that based on the records of their office, appellant and Florida Travel and Tours were not licensed to recruit workers for deployment abroad. Two, appellant clearly engaged in recruitment activities and promised employment abroad to the complainants as proven by their testimonies. Three, appellant committed illegal recruitment against three persons.

Thus, we uphold appellant's conviction for illegal recruitment in large scale. We also agree with the RTC and CA in imposing the penalty of life imprisonment and ordering appellant to pay a fine of P500,000 for being in conformity with Section 7^[12] of RA 8042.

Appellant insists on the veracity of her own testimony in claiming that the prosecution failed to prove that she is guilty of illegal recruitment in large scale. Her testimony, however, was rejected by the RTC which found the testimonies of the complainants credible and truthful.^[13] Settled is the rule that the findings and conclusion of the trial

court on the credibility of witnesses are entitled to great respect because the trial courts have the advantage of observing the demeanor of witnesses as they testify.^[14] The CA likewise believed the complainants' testimonies and found them to be clear and categorical.^[15] The determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, as in this case, is accorded full weight and credit as well as great respect, if not conclusive effect.^[16]

We also agree with the CA that appellant is guilty of two counts of *estafa* under Article 315(2)(a) of the Revised Penal Code, as amended. It is settled that a person may be charged and convicted separately of illegal recruitment under RA 8042, in relation to the Labor Code, and *estafa* under Article 315(2)(a) of the Revised Penal Code.^[17] Article 315(2)(a) of the Revised Penal Code, as amended, defines *estafa* as:

ART. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The elements of *estafa* are: (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.^[18] These elements were proven in this case. By means of deceit, appellant made complainants believe that she had the proper authority to send them to work in Australia and Korea, for which reason they gave her substantial amounts of money. Appellant clearly misled the complainants who believed she had the power to send them to work in Australia and Korea. They were required to submit their bio-data and passports, and were asked to give substantial amounts of money for the processing of their visas and other documents necessary for deployment. Efforts to recover their money after they were not deployed for the promised work abroad failed resulting to monetary damages on their part.

The penalty for *estafa* depends on the amount defrauded. Per Article 315 of the Revised Penal Code:

ART. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. 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 pesos 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; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

The prescribed penalty for *estafa* under Article 315 of the Revised Penal Code, when the amount of fraud is over P12,000 but not exceeding P22,000, is *prision correccional* maximum to *prision mayor* minimum (*i.e.*, from 4 years, 2 months, and 1 day to 8 years). Under the Indeterminate Sentence Law, the minimum term shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code, or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months).^[19]

The maximum term under the Indeterminate Sentence Law shall be that which, in view of attending circumstances, could be properly imposed under the rules of the Revised Penal Code. To compute the minimum, medium, and maximum periods of the prescribed penalty for *estafa* when the amount of fraud exceeds P12,000, 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 minimum period for *prision correccional* maximum to *prision mayor* minimum is from 4 years, 2 months and 1 day to 5 years, 5 months and 10 days; the medium period is from 5 years, 5 months and 11 days to 6 years, 8 months and 20 days; and the maximum period is from 6 years, 8 months and 21 days to 8 years. Any incremental penalty (*i.e.*, one year for every P10,000 in excess of P22,000) shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court, provided that the total penalty does not exceed 20 years.^[20]

Based on the foregoing discussion, the RTC and the CA correctly sentenced appellant to suffer an indeterminate penalty of 4 years and 2 months of *prision correccional* as minimum to 15 years of *reclusion temporal* as maximum in Criminal Case No. 02-199406. The CA was also correct in imposing an indeterminate penalty of 6 months and 1 day of *prision correccional* as minimum to 10 years of *prision mayor* as maximum in Criminal Case No. 02-199404.

Interest at the rate of 6% per annum shall also be paid by appellant to Bunuan and Cantor, Jr. from the time the Informations (February 8, 2002) were filed until the amounts paid by them are fully paid.^[21]

WHEREFORE, we **DISMISS** the appeal. We **AFFIRM with MODIFICATIONS** the Decision dated June 25, 2012 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04762 to read as follows:

1. In Criminal Case No. 02-199399, appellant Suzette Arnaiz a.k.a. "Baby Rosal" is found guilty beyond reasonable doubt of the crime of illegal recruitment in large scale and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.

2. In Criminal Case No. 02-199404, appellant Suzette Arnaiz a.k.a. "Baby Rosal" is found guilty beyond reasonable doubt of the crime of *estafa* under Article 315(2) (a) of the Revised Penal Code, as amended, and is hereby sentenced to suffer an indeterminate penalty of 6 months and 1 day of *prision correccional* as minimum to 10 years of *prision mayor* as maximum. Appellant is further ordered to indemnify Napoleon R. Bunuan in the amount of P45,000 as actual damages, with legal interest of 6% per annum computed from the filing of the Information, *i.e.*, February 8, 2002, until the amount is fully paid.

3. In Criminal Case No. 02-199406, appellant Suzette Arnaiz a.k.a. "Baby Rosal" is found guilty beyond reasonable doubt of the crime of *estafa* under Article 315(2) (a) of the Revised Penal Code, as amended, and is hereby sentenced to suffer an indeterminate penalty of 4 years and 2 months of *prision correccional* as minimum to 15 years of *reclusion temporal* as maximum. Appellant is further ordered to indemnify Herminio Cantor, Jr. in the amount of P100,000 as actual damages, with legal interest of 6% per annum computed from the filing of the Information, *i.e.*, February 8, 2002, until the amount is fully paid.

With costs against the appellant.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Perez, and Leonen,** JJ., concur.*

October 2, 2015

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **September 9, 2015** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 2, 2015 at 2:10 p.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

* Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

** Designated additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated January 5, 2015.

[1] *Rollo*, pp. 2-16. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio concurring.

[2] TSN, August 15, 2005, pp. 5-33.

[3] TSN, January 22, 2007, pp. 6-11.

[4] *Id.* at 16-20.

[5] TSN, August 15, 2005, pp. 9, 38; TSN, January 22, 2007, pp. 5, 16.

[6] TSN, August 1, 2008, pp. 3-7.

[7] TSN, May 27, 2009, pp. 4-8.

[8] *Id.* at 12.

[9] *CA rollo*, pp. 50-60. Penned by Presiding Judge Reynaldo G. Ros.

[10] *People v. Gallemit*, G.R. No. 107539, June 2, 2014, 724 SCRA 359, 376-377.

[11] *People v. Gallemit*, *id.* at 375.

[12] SEC. 7. *Penalties.* -

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (P200,000.00) nor more than Five hundred thousand pesos (P500,000.00).

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than One million pesos (P1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

[13] *CA rollo*, p. 57.

[14] *People v. Lazaro, Jr.*, 619 Phil. 235, 254 (2009).

[15] *Rollo*, pp. 11-13.

[16] *People v. Sabadlab*, 679 Phil. 425, 438 (2012).

[17] *People v. Gallemit*, supra note 10, at 382.

[18] *People v. Gallemit*, id. at 383.

[19] *People v. Gallemit*, id. at 385, citing *People v. Temporada*, 594 Phil. 680, 714-715.

[20] *People v. Gallemit*, id. at 386, citing *People v. Temporada*, id.

[21] *People v. Gallemit*, id. at 387.



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