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**SECOND DIVISION****[ G.R. No. 208686, July 01, 2015 ]****PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALELIE TOLENTINO  
A.K.A. "ALELIE TOLENTINO Y HERNANDEZ," APPELLANT.****D E C I S I O N****CARPIO, J.:**

This is an appeal from the 29 November 2012 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 04558, affirming the trial court's decision, finding appellant Alelie Tolentino (appellant) guilty beyond reasonable doubt of illegal recruitment and estafa.

**The Facts**

Appellant was charged with illegal recruitment and five (5) counts of estafa under Article 315, paragraph 2(a) of the Revised Penal Code. The Informations against appellant read:

CRIM. CASE NO. 02-755

The undersigned Assistant City Prosecutor accuses ALELIE TOLENTINO of the crime of Illegal Recruitment committed as follows:

That on or about [or sometime in] the last week of August, 2001 and 1st week of November, 2001 and thereafter, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused jointly with NARCISA SANTOS did then and there willfully, unlawfully and feloniously advertise for employment, enlist, contract and promise employment to the following persons: LEDERLE PANESA, ORLANDO LAYOSO, JIMMY LEJOS, MARCELINO LEJOS and DONNA MAGBOO for a fee without first securing license and/or permit from the government agency concerned.

Contrary to law.<sup>[2]</sup>

CRIM. CASE NO. 02-756

The undersigned Assistant City Prosecutor accuses ALELIE TOLENTINO of the crime of Estafa under Art. 315 Par. 2(a) of the Revised Penal Code, as amended, committed as follows:

That on or about or sometime in the first week of August 2001 and thereafter, in the City of Muntinlupa, Philippines and. within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit, fraudulent acts and false pretenses executed prior to or simultaneously with the commission of the fraud, did [then] and there willfully, unlawfully and feloniously defraud one LEDERLE PANESA, in the following manner: accused represented to the said complainant that she could secure work for the said complainant at Korea and she is capable of processing the travel visa and other documents for her travel and employment at Korea and demanded from the said complainant to pay the amount of P75,000.00 as placement fee; accused well knew that such representations were false and made only to induce complainant to part with her money as in fact complainant gave and delivered the amount of PI 5,000.00 as partial payment to the accused; and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same to her own personal use and benefit to the damage and prejudice of the said complainant in the amount of P15,000.00.

Contrary to law.<sup>[3]</sup>

#### CRIM. CASE NO. 02-757

The undersigned Assistant City Prosecutor accuses ALELIE TOLENTINO of the crime of Estafa under Art. 315 Par,, 2(a) of the Revised Penal Code, as amended, committed as follows:

That on or about or sometime in the first week of November, 2001 and thereafter, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with NARCISA SANTOS, and both of them mutually helping and aiding one another, by means of deceit, fraudulent acts and false pretenses executed prior to or simultaneously with the commission of the fraud, did [then] and there willfully, unlawfully and feloniously defraud one ORLANDO LAYOSO, in the following manner: accused represented to the said complainant that she could secure work for the said complainant at Korea and she is capable of processing the travel visa and other documents for [his] travel and employment at Korea and demanded from the said complainant to pay the amount of P80,000.00 as placement fee; accused well knew that such representations were false and made only to induce complainant to part with [his] money as in fact complainant gave and delivered the amount of P35,000.00 as partial payment to the accused; and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same to her own personal use and benefit to the damage and prejudice of the said complainant in the amount of P35,000.00.

Contrary to law.<sup>[4]</sup>

CRIM. CASE NO. 02-758

The undersigned Assistant City Prosecutor accuses ALELIE TOLENTINO of the crime of Estafa under Art. 315 Par. 2(a) of the Revised Penal Code, as amended, committed as follows:

That on or about or sometime in the first week of November, 2001 and thereafter, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with NARCISA SANTOS, and both of them mutually helping and aiding one another, by means of deceit, fraudulent acts and false pretenses executed prior to or simultaneously with the commission of the fraud, did [then] and there willfully, unlawfully and feloniously defraud one DONNA MAGBOO, in the following manner: accused represented to the said complainant that she could secure work for the said complainant at Korea and she is capable of processing the travel visa and other documents for her travel and employment at Korea and demanded from the said complainant to pay the amount of P80,000.00 as placement fee; accused well knew that such representations were false and made only to induce complainant to part with her money as in fact complainant gave and delivered the amount of P35,000.00 as partial payment to the accused; and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same to her own personal use and benefit to the damage and prejudice of the said complainant in the amount of P35,000.00.

Contrary to law.<sup>[5]</sup>

CRIM. CASE NO. 02-759

The undersigned Assistant City Prosecutor accuses ALELIE TOLENTINO of the crime of Estafa under Art. 315 Par. 2(a) of the Revised Penal Code, as amended, committed as follows:

That on or about or sometime in the first week of November, 2001 and thereafter, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with NARCISA SANTOS, and both of them mutually helping and aiding one another, by means of deceit, fraudulent acts and false pretenses executed prior to or simultaneously with the commission of the fraud, did [then] and there willfully, unlawfully and feloniously defraud one JIMMY LEJOS, in the following manner: accused represented to the said complainant that she could secure work for the said complainant at Korea and she is capable of processing the travel visa and other documents for [his] travel and employment at Korea and demanded from the said complainant to pay the amount of P80,000.00 as placement fee; accused

well knew that such representations were false and made only to induce complainant to part with [his] money as in fact complainant gave and delivered the amount of P35,000.00 as partial payment to the accused; and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same to her own personal use and benefit to the damage and prejudice of the said complainant in the amount of P35,000.00.

Contrary to law.<sup>[6]</sup>

#### CRIM. CASE NO. 02-760

The undersigned Assistant City Prosecutor accuses ALELIE TOLENTINO of the crime of Estafa under Art. 315 Par. 2(a) of the Revised Penal Code, as amended, committed as follows: That on or about or sometime in the first week of November, 2001 and thereafter, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with NARCISA SANTOS, and both of them mutually helping and aiding one another, by means of deceit, fraudulent acts and false pretenses executed prior to or simultaneously with the commission of the fraud, did [then] and there willfully, unlawfully and feloniously defraud one MARCELINO LEJOS, in the following manner: accused represented to the said complainant that she could secure work for the said complainant at Korea and she is capable of processing the travel visa and other documents for [his] travel and employment at Korea and demanded from the said complainant to pay the amount of P80,000.00 as placement fee; accused well knew that such representations were false and made only to induce complainant to part with [his] money as in fact complainant gave and delivered the amount of P20,000.00 as partial payment to the accused; and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same to her own personal use and benefit to the damage and prejudice of the said complainant in the amount of P20,000.00.

Contrary to law.<sup>[7]</sup>

Private complainants Orlando Layoso, Donna Magboo, Jimmy Lejos, and Marcelino Lejos<sup>[8]</sup> alleged that sometime in the first week of November 2001, they had a meeting with appellant Alelie Tolentino (appellant) in her office at the 3<sup>rd</sup> floor, Arevalo Building, Alabang, Muntinlupa City. Appellant told them the procedure for overseas employment and offered them assistance to find work abroad for a fee of P80,000. Appellant showed them pictures of those she allegedly helped find work abroad and told them that they would be earning \$630 monthly as factory workers in Korea. When asked about her license to recruit overseas workers, appellant told private complainants that she would show it to them at some other time. On 14 November 2001, private complainants again met with appellant at her office and each of them gave appellant P20,000 as partial payment of the agreed fee, which included expenses for medical examination and

processing of their documents for work in Korea. Appellant promised to secure their visas and employment contracts within three months.

On 30 January 2002, private complainants met with appellant, who was accompanied by a certain Narcisa Santos, at Wendy's in Arquiza Street, Manila for signing of contract. However, the names written on the employment contracts were not private complainants' names. Appellant explained that the contracts were supposedly for other applicants who sought her services but later backed out. Appellant assured them that original contracts bearing their names would subsequently be provided. Private complainants signed the contracts and paid P15,000 each as their second partial payment.

On 7 February 2002, private complainants received information that the Criminal Investigation and Detection Group arrested appellant for illegal recruitment. When private complainants confronted appellant at the Manila City Hall where she was held, they demanded the return of their payments amounting to P35,000 each, except for Marcelino Lejos whose total payment only amounted to P-20,000. Appellant denied the charges against her and promised them that they would get their money back. Subsequently, private complainants were able to secure a certification from the Philippine Overseas Employment Administration (POEA) that appellant was not licensed to recruit workers for overseas employment.

Another complainant, Lederle Panesa, alleged that in August 2001, she met with appellant, who offered her work in Korea for a placement fee of P75,000. On 7 September 2001, Panesa gave appellant P15,000 as initial payment. Appellant assured Panesa that she would be leaving for Korea on the second week of November 2001 and that the balance of the placement fee could be paid upon her receipt of the visa. However, after said meeting, Panesa no longer heard from appellant, which prompted Panesa to visit appellant's office. Appellant informed Panesa that there were no job openings in Korea at that time. Appellant offered Panesa employment in other countries such as Malaysia and Palau, but Panesa refused the offer and demanded the return of her money. Nevertheless, appellant was able to persuade Panesa to wait until December 2001. Appellant never contacted Panesa thereafter. On 7 February 2002, Panesa was informed that appellant was apprehended for illegal recruitment. Panesa proceeded to the Office of the City Prosecutor in Manila, but failed to confront appellant. It was only then that Panesa learned about appellant not being authorized by the POEA to recruit workers for overseas employment.

For the defense, appellant was presented as the lone witness. Appellant denied the charges against her. She testified that she was introduced to private complainants by a certain Cezar Manonson and that the owner of the office she is renting is her relative. Private complainants allegedly sought her help regarding possible work in Korea and that she merely explained the procedure for overseas employment to them. She was hesitant to help them because she does not recruit workers as she herself was also applying for work as factory worker through Narcisa Santos. She admitted having received money from private complainants and issuing receipts for the payments, upon instructions from Narcisa Santos. She confirmed her signature on the petty cash vouchers she issued to private complainants, evidencing their payments. She testified that she gave the payments to Narcisa Santos. However, she admitted that she does

not have proof that she indeed turned over the money to Narcisa Santos.

On 9 June 2010, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, the Court finds accused Alelie (*also known as Alelie Tolentino*) guilty beyond reasonable doubt of the offense of large scale illegal recruitment, which constitutes economic sabotage in Criminal Case No. 02-755 and sentences her to life imprisonment and to pay a fine of P500,000.00; and five counts of estafa under Article 315 2(a) of the Revised Penal Code, as amended, in the following criminal cases and sentences her, as follows:

In Criminal Case No. 02-756, an indeterminate penalty of six months of *arresto mayor* in its maximum to four years two months and one day of *prision correccional* in its maximum as the maximum period, and to pay the private complainant the amount of P5,000.00 as and for moral damages. Accused is further ordered to return the amount of P15,000.00 she illegally collected from the private complainant.

In Criminal Case Nos. 02-757, 02-758 and 02-759, an indeterminate penalty [of] six months of *arresto mayor* in its maximum to twelve years of *prision mayor* in its maximum, and to pay the private complainants individually each in the amount of P15,000.00 as and for moral damages. Accused is further ordered to return the amount of P35,000.00 she illegally collected each from the private complainants.

In Criminal Case No. 02-760, an indeterminate penalty of six months of *arresto mayor* in its maximum as the minimum period to six years and one day of *prision mayor* in its minimum as the maximum period, and to pay the private complainant the amount of P8,000.00 as and for moral damages. Accused is further ordered to return the amount of P20,000.00 she illegally collected from the private complainant.

Her full period of preventive imprisonment shall be credited in her favor in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.<sup>[9]</sup>

### **The Ruling of the Court of Appeals**

On appeal, the Court of Appeals affirmed the trial court's decision. The Court of Appeals held that the prosecution adequately proved that appellant engaged in illegal recruitment in large scale. The Court of Appeals noted that appellant admitted that she had no authority or valid license to engage in recruitment and placement of workers. The testimonies and the documentary evidence submitted by the prosecution showed that appellant led complainants to believe that she had the power or ability to send private complainants to Korea to work as factory workers and that the latter were

convinced to give their payment to appellant in order to be employed. Appellant even issued petty cash vouchers acknowledging receipt of private complainants' payment and she made them sign Trainee Agreements, which were purportedly their contract with their Korean employer. Based on the facts and evidence presented, the Court of Appeals concluded that appellant clearly engaged in illegal recruitment activities. Appellant's claim that it was Narcisa Santos who recruited the private complainants and who profited from the illegal transaction was disregarded by the Court of Appeals for lack of evidence. The Court of Appeals noted that it was appellant who dealt directly with private complainants.

On the charge of estafa, the Court of Appeals likewise upheld appellant's conviction for said crime. The evidence presented to prove appellant's liability for illegal recruitment also established her liability for estafa. The Court of Appeals ruled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042 (RA 8042) in relation to the Labor Code, and estafa under Article 315, paragraph 2(a) of the Revised Penal Code.

Hence, this appeal.

### **The Court's Ruling**

We find the appeal without merit. The Court of Appeals was correct in affirming the ruling of the trial court that the appellant's guilt of the crimes she was accused of was clearly established by the witnesses and the evidence of the prosecution.

### ***Illegal Recruitment in Large Scale***

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."**

Illegal recruitment, on the other hand is defined under Article 38 of the Labor Code as follows:

#### *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 Department 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.**

(c) The Secretary of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Secretary shall order the search of the office or premises and seizure of documents, paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishments and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so. (Emphases supplied)

Illegal recruitment, as defined under Article 38 of the Labor Code, encompasses recruitment activities for both local and overseas employment. However, illegal recruitment under this article is limited to recruitment activities undertaken by non-licensees or non-holders of authority.<sup>[10]</sup> Thus, under the Labor Code, to constitute illegal recruitment in large scale, three elements must concur:

1. The accused undertook any recruitment activity defined under Art. 13 (b) or any prohibited practice enumerated under Art. 34 of the Labor Code.
2. He did not have the license or the authority to lawfully engage in the recruitment and placement of workers.
3. He committed the same against three or more persons, individually or as a group.<sup>[11]</sup>

RA 8042,<sup>[12]</sup> otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," established a higher standard of protection and promotion of the welfare of the migrant workers, their families and overseas Filipinos in distress. RA 8042 also broadened the concept of illegal recruitment for overseas employment and increased the penalties, especially for Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate, which are considered offenses involving economic sabotage.<sup>[13]</sup> Part II of RA 8042 defines and penalizes illegal recruitment for employment abroad, whether undertaken by a non-licensee or non-holder of authority or by a licensee or holder of authority.

Section 6 of RA 8042 provides for the definition of illegal recruitment, while Section 7 enumerates the penalties therefor, thus:

**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 for 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:**

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment: and

(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.**

The persons liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

#### 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.** (Emphases supplied)

Unlike illegal recruitment as defined under the Labor Code which is limited to recruitment activities undertaken by non-licensees or non-holders of authority, under Article 6 of RA 8042, illegal recruitment (for overseas employment) may be committed not only by non-licensees or non-holders of authority but also by licensees or holders of authority. Article 6 enumerates thirteen acts or practices [(a) to (m)] which constitute illegal recruitment, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority. Except for the last two acts [(1) and (m)] on the list under Article 6 of RA 8042, the first eleven acts or practices are also listed in

Article 34<sup>[14]</sup> of the Labor Code under the heading "Prohibited practices." Thus, under Article 34 of the Labor Code, it is unlawful for any individual, entity, licensee or holder of authority to engage in any of the enumerated prohibited practices, but such acts or practices do not constitute illegal recruitment when undertaken by a licensee or holder of authority. However, under Article 38(A) of the Labor Code, when a non-licensee or non-holder of authority undertakes such "prohibited practices," he or she is liable for illegal recruitment. RA 8042 broadened the definition of illegal recruitment for overseas employment by including thirteen acts or practices which now constitute as illegal recruitment, whether committed by a non-licensee, non-holder, licensee or holder of authority.

Under RA 8042, a non-licensee or non-holder of authority commits illegal recruitment for overseas employment in two ways: (1) by 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; and (2) by undertaking any of the acts enumerated under Section 6 of RA 8042. On the other hand, a licensee or holder of authority is also liable for illegal recruitment for overseas employment when he or she undertakes any of the thirteen acts or practices [(a) to (m)] listed under Section 6 of RA 8042. To constitute illegal recruitment in large scale, the offense of illegal recruitment must be committed against three or more persons, individually or as a group.

In this case, the prosecution sufficiently proved that appellant engaged in large-scale illegal recruitment.

*First*, appellant is a non-licensee or non-holder of authority. Part of the evidence submitted by the prosecution is a POEA Certification<sup>[15]</sup> dated 10 March 2003, stating that appellant is not licensed by the POEA to recruit workers for overseas employment. Appellant admitted that she has no valid license or authority required by law to lawfully engage in recruitment and placement of workers.

*Second*, despite the absence of a license or authority to undertake recruitment activities, appellant gave the impression that she has the power or ability to secure work for private complainants in Korea. Private complainants Orlando Layoso, Donna Magboo, and Jimmy Lejos all testified that appellant promised them work as factory workers in Korea and induced them to pay placement fees, which included the expenses for medical examination and the processing of their documents for work in Korea. Appellant even showed pictures of previous applicants, whom she allegedly helped find work abroad. Appellant also explained to them the procedure for overseas employment and promised them that she would secure their visas and employment contracts within three months. The testimonies of Orlando Layoso, Donna Magboo, and Jimmy Lejos were corroborated by private respondents Marcelino Lejos and Lederle Panesa, whose Affidavits of Complaint were adopted as their direct testimonies.

This Court has held in several cases that an accused who represents to others that he could send workers abroad for employment, even without the authority or license to do so, commits illegal recruitment.<sup>[16]</sup>

*Third*, there are at least three victims in this case which makes appellant liable for large-scale illegal recruitment.

Appellant denies that she gave private complainants the distinct impression that she had the power or ability to send them abroad for work. She insists that she herself had been applying then as a factory worker in Korea through Narcisa Santos, who had previously deployed her as domestic helper in Hongkong. Although appellant admits having received payments from private complainants and issuing receipts, she submits that she did so only upon the instructions of Narcisa Santos, to whom she turned over the money collected from private complainants.

The Court is not swayed by appellant's contentions. As found by the trial court and the appellate court, it was clearly established that appellant dealt directly with the private complainants: she explained to them the procedure for overseas employment; she charged them placement fees to cover their medical examination and the processing of their travel documents; she issued petty cash vouchers with her signature, acknowledging receipts of their payments; she promised the eventual release of their visas and employment contracts; and she made them sign Trainee Agreements, purportedly their contract with their Korean employer. Clearly, appellant, despite being a non-licensee or non-holder of authority, engaged in recruitment activities, making her liable for illegal recruitment.

Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.<sup>[17]</sup> Appellant's mere denial cannot prevail over the positive and categorical testimonies of the complainants.<sup>[18]</sup> The trial court's findings are accorded great respect unless the trial court has overlooked or misconstrued some substantial facts, which if considered might affect the result of the case.<sup>[19]</sup> Furthermore, factual findings of the trial court, when affirmed by the Court of Appeals, are deemed binding and conclusive.<sup>[20]</sup>

Thus, we affirm the finding of both the trial court and the appellate court that appellant is guilty beyond reasonable doubt of illegal recruitment in large scale. However, we modify the penalty imposed.

The penalty imposed by the trial court in this case for large-scale illegal recruitment, which constitutes economic sabotage, is life imprisonment and a fine of P500,000. Section 7 of RA 8042 provides that the penalty of life imprisonment and a fine of not less than P5 00,000 nor more than P1,000,000 shall be imposed if illegal recruitment constitutes economic sabotage. Said article further provides that **the maximum penalty shall be imposed if committed by a non-licensee or non-holder of authority**. Thus, the proper penalty in this case is life imprisonment and a fine of P1,000,000.

### ***Estafa***

We likewise affirm appellant's conviction for five counts of estafa under Article 315(2) (a) of the Revised Penal Code. It is settled that a person, for the same acts, may be

convicted separately for illegal recruitment under RA 8042 (or the Labor Code), and estafa under Article 315(2)(a)<sup>[21]</sup> of the Revised Penal Code.<sup>[22]</sup>

The elements of estafa are: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation.<sup>[23]</sup> In this case, the prosecution proved beyond reasonable doubt that appellant deceived private complainants into believing that she had the authority and capability to send them to Korea for employment, despite her not being licensed by the POEA to recruit workers for overseas employment. She even showed them pictures of past applicants whom she allegedly sent abroad for work. She also assured them that she would be able to secure their visas and employment contracts once they pay the placement fee. Because of the assurances given by appellant, private complainants paid appellant a portion of the agreed placement fee, for which appellant issued petty cash vouchers<sup>[24]</sup> with her signature, evidencing her receipt of the payments. Clearly, these acts of appellant constitute estafa punishable under Article 315 (2)(a) of the Revised Penal Code.

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

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

1<sup>st</sup>. 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;

x x x x

Thus, when the amount of fraud is over P12,000 but not exceeding P22,000, the penalty imposed is *prision correccional* in its maximum period to *prision mayor* in its minimum period, 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, which is *prision correccional* in its minimum to medium period. The time included in this penalty is from 6 months and 1 day to 4 years and 2 months.

When the amount of fraud exceeds P22,000, the penalty shall be imposed in its maximum period, and adding one year for every P10,000 in excess of P22,000. But, the total penalty imposed should not exceed 20 years. The maximum term under the Indeterminate Sentence Law is that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code. The range of penalty under

Article 315 is composed of only two periods. To compute the maximum period of the indeterminate sentence, the total number of years included in the two periods should be divided into three equal portions, with each portion forming a period. Following this computation, the minimum, medium, and maximum periods of the prescribed penalty are:

1. Minimum Period - 4 years, 2 months and 1 day to 5 years, 5 months and 10 days;
2. Medium Period - 5 years, 5 months and 11 days to 6 years, 8 months and 20 days;
3. Maximum Period - 6 years, 8 months and 21 days to 8 years.

Any incremental penalty, i.e. one year for every PI 0,000 in excess of P22,000, shall be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the court's discretion, provided the total penalty does not exceed 20 years.<sup>[25]</sup>

We find that the penalty imposed by the trial court, and affirmed by the appellate court, is not in accord with the penalty prescribed. The trial court erroneously imposed the minimum period of "six months of *arresto mayor* in its maximum." Hence, we modify the penalty imposed on the five counts of estafa and we delete the moral damages awarded for having no basis in law. Considering the number of victims defrauded, we find that a minimum period of 2 years of *prision correccional* is appropriate.

In Criminal Case No. 02-756, where the amount defrauded is PI5,000, and in the absence of any mitigating or aggravating circumstance, the maximum term shall be taken from the medium period of the penalty prescribed (*i.e.* 5 years, 5 months and 11 days to 6 years, 8 months and 20 days). Appellant should be sentenced to 2 years of *prision correccional* as minimum to 6 years and 1 day of *prision mayor* as maximum.

In Criminal Case Nos. 02-757, 02-758, and 02-759, where the amount defrauded is P35,000 each, the maximum period (anywhere from 6 years, 8 months and 21 days to 8 years) shall be imposed, plus the incremental penalty of one year (additional 1 year imprisonment for the PI0,000 in excess of P22,000). We fix the maximum term at 7 years of *prision mayor*. Adding the incremental penalty of 1 year to the maximum term, appellant should be sentenced in each of these cases to 2 years of *prision correccional* as minimum to 8 years of *prision mayor* as maximum.

In Criminal Case No. 02-760, where the amount defrauded is P20,000, appellant should be sentenced to 2 years of *prision correccional* as minimum to 6 years and 1 day of *prision mayor* as maximum.

Furthermore, appellant should indemnify private complainants for the amounts paid to her, with legal interest at the rate of 6% per annum, from the time of demand, which shall be deemed as the same day the Informations were filed against appellant, until the amounts are fully paid.<sup>[26]</sup>

**WHEREFORE,** we **AFFIRM WITH MODIFICATIONS** the Decision dated 29 November 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04558 to read as follows:

1. In Criminal Case No. 02-755, appellant Alelie Tolentino is found GUILTY beyond reasonable doubt of illegal recruitment in large scale, constituting economic sabotage, as defined and penalized in Section 6 and Section 7(b) of RA 8042. She is sentenced to suffer the penalty of life imprisonment and is ordered to pay a fine of One Million Pesos (P1,000,000).
2. In Criminal Case No. 02-756, appellant Alelie Tolentino is found GUILTY beyond reasonable doubt of estafa, as defined and penalized in Article 315(2)(a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of 2 years of *prision correccional* as minimum to 6 years and 1 day of *prision mayor* as maximum. She is ordered to indemnify private complainant Lederle Panesa in the amount of Fifteen Thousand Pesos (P15,000) as actual damages, with legal interest of six percent (6%) per annum from 28 June 2002, until the said amount is fully paid.
3. In Criminal Case No. 02-757, appellant Alelie Tolentino is found GUILTY beyond reasonable doubt of estafa, as defined and penalized in Article 315(2)(a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of 2 years of *prision correccional* as minimum to 8 years of *prision mayor* as maximum. She is ordered to indemnify private complainant Orlando Layoso in the amount of Thirty Five Thousand Pesos (P35,000) as actual damages, with legal interest of six percent (6%) per annum from 28 June 2002, until the said amount is fully paid.
4. In Criminal Case No. 02-758, appellant Alelie Tolentino is found **GUILTY** beyond reasonable doubt of estafa, as defined and penalized in Article 315(2)(a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of 2 years of *prision correccional* as minimum to 8 years of *prision mayor* as maximum. She is ordered to indemnify private complainant Donna Magboo in the amount of Thirty Five Thousand Pesos (P35,000) as actual damages, with legal interest of six percent (6%) per annum from 28 June 2002, until the said amount is fully paid.
5. In Criminal Case No. 02-759, appellant Alelie Tolentino is found **GUILTY** beyond reasonable doubt of estafa, as defined and penalized in Article 315(2)(a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of 2 years of *prision correccional* as minimum to 8 years of *prision mayor* as maximum. She is ordered to indemnify private complainant Jimmy Lejos in the amount of Thirty Five Thousand Pesos (P35,000) as actual damages, with legal interest of six percent (6%) per annum from 28 June 2002, until the said amount is fully paid.
6. In Criminal Case No. 02-760, appellant Alelie Tolentino is found GUILTY beyond reasonable doubt of estafa, as defined and penalized in Article 315(2)(a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of 2 years of *prision correccional* as minimum to 6 years and 1 day of *prision mayor* as maximum. She is ordered to indemnify private complainant Marcelino Lejos in the amount of Twenty Thousand Pesos (P20,000) as actual damages, with legal interest of six percent (6%) per annum from 28 June 2002, until the said amount is fully paid.

## **SO ORDERED.**

*Bersamin, [\*] Del Castillo, Mendoza, and Leonen, JJ., concur.*

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[\*] Designated acting member per Special Order No. 2079 dated 29 June 2015.

[1] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario concurring. Rollo, pp. 2-33.

[2] Records, p. 1.

[3] Id. at 4.

[4] Id. at 7.

[5] Id. at 10.

[6] Id. at 12.

[7] Id. at 15.

[8] Private complainants Orlando Layoso, Donna Magboo, and Jimmy Lejos were presented as witnesses for the prosecution, while Marcelino Lejos adopted his Joint Affidavit of Complaint as his direct testimony.

[9] CA rollo, pp. 30-31.

[10] Article 13(f) of the Labor Code defines authority as "a document issued by the Department of Labor authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity."

[11] *People v. Ballesteros*, 435 Phil. 205 (2002).

[12] AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES. Approved on 7 June 1995 and took effect on 15 July 1995.

[13] *People v. Nogra*, 585 Phil. 712 (2008).

[14] Article 34 of the Labor Code reads:

ART. 34. Prohibited practices. - It shall be unlawful for any individual, entity, licensee, or holder of authority:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of



Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under this Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor;

(i) To substitute or alter employment contracts approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the periods of the expiration of the same without the approval of the Department of Labor;

(j) To become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency; and

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this Code and its implementing rules and regulations.

[15] Records, p. 176.

[16] *People v. Velasco*, G.R. No. 195668, 25 June 2014; *People v. Lalli*, 675 Phil. 126 (2011); *People v. Abat*, 661Phil. 127(2011).

[17] *People v. Pareja*, G.R. No. 202122, 15 January 2014, 714 SCRA 131; *People v. Bonaagua*, G.R. No. 188897, 6 June 2011, 650 SCRA 620; *People v. Oliquino*, 546 Phil.

410 (2007); *People v. Diunsay-Jalandoni*, 544 Phil. 163 (2007); *Navarrete v. People*, 542 Phil. 496 (2007).

[18] *People v. Calimon*, 597 Phil. 110 (2009); *People v. Ballesteros*, 435 Phil. 205 (2002).

[19] *People v. Bonaagua*, G.R. No. 188897, 6 June 2011, 650 SCRA 620; *Nombrefia v. People*, 542 Phil. 355 (2007); *People v. Arnaiz*, 538 Phil. 479 (2006).

[20] *Heirs of Spouses Angel Liwagon and Francisca Dumalagan v. Heirs of Spouses Demetrio Liwagon and Regina Liwagon*, G.R. No. 193117, 26 November 2014; *Republic v. Remman Enterprises, Inc.*, G.R. No. 199310, 19 February 2014, 717 SCRA 171; *David v. David*, G.R. No. 162365, 15 January 2014, 713 SCRA 326; *People v. Nogra*, 585 Phil. 712 (2008).

[21] Article 315(2)(a) of the Revised Penal Code defines estafa as:

Art. 315. *Swindling (estafa)*. - Any person who shall defraud another by any 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 fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

[22] *People v. Daud*, G.R. No. 197539, 2 June 2014; *People v. Chua*, G.R. No. 187052, 13 September 2012, 680 SCRA 575; *People v. Ocdan*, G.R. No. 173198, 1 June 2011, 650 SCRA 124; *People v. Ballesteros*, 435 Phil. 205 (2002).

[23] *People v. Ballesteros*, 435 Phil. 205 (2002).

[24] Records, pp. 170, 177, 181.

[25] *People v. Daud*, G.R. No. 197539, 2 June 2014; *People v. Chua*, G.R. No. 187052, 13 September 2012, 680 SCRA 575.

[26] *People v. Daud*, G.R. No. 197539, 2 June 2014.



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