

778 Phil. 207

THIRD DIVISION**[G.R. No. 196784, January 13, 2016]****PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MA. FE TORRES SOLINA A.K.A. MA. FE BAYLON GALLO, ACCUSED-APPELLANT.****D E C I S I O N****PERALTA, J.:**

Accused-appellant Ma. Fe Torres Solina a.k.a. Ma. Fe Bay Ion Gallo appeals her case to this Court after the Court of Appeals (CA) in its Decision^[1] dated March 11, 2010 affirmed with modification her conviction beyond reasonable doubt of the crime of illegal recruitment in large scale under Republic Act No. 8042, otherwise known as the *Migrant Workers and Overseas Filipinos Act of 1995 (R.A. 8042)* imposing the penalty of life imprisonment and ordered to pay a fine in the amount of =P200,000.00 with subsidiary liability in case of insolvency and six (6) counts of Estafa under Article 315 (2) (a) of the Revised Penal Code (RPC), imposing the indeterminate penalty of one (1) year, eight (8) months and twenty (20) days *prision correccional*, as minimum, to five (5) years, five (5) months and eleven (11) days of *prision mayor*, as maximum, for each count and ordered to return to each complainant the amount of P20,000.00 as actual damages, handed down by the Regional Trial Court (RTC), Branch 147, in Makati City.

Accused-appellant was arraigned and tried under an Information dated June 16, 2006 charging her of the crime of illegal recruitment in large scale under R.A. 8042, thus:

That in or about and sometime during the period from September, 2005 up to February 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, representing herself to have capacity to contract, enlist, transport and refer workers for employment abroad, did then and there, without any license or authority, recruit for overseas employment and for a fee, the following complainants, to wit:

MONICA B. HIMAN
ERWIN B. DELA VEGA
GLADYS Z. REMORENTO
JOEY P. BACOLOD
MARLON B. DELA CRUZ
AUGUSTO A. CEZAR GARCES
LEYNARD B. TUTANES

thus in a large scale amounting to economic sabotage but said accused failed to deploy said complainants and likewise failed to return the money incurred by them and the documents submitted despite demands, to the latter's damage and prejudice.

CONTRARY TO LAW.^[2]

Accused-appellant was also charged and tried under seven (7) separate informations for estafa under Article 315 par. 2 (a) of the RPC, to wit:

1) That in or about and sometime during the month of September 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant MONICA I-IIMAN y BASAMOT in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of P20,000.00.

CONTRARY TO LAW.^[3]

2) That in or about and sometime during the month of October, 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant JOEY BACOLOD y PORTILLES in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of P20,000.00.

CONTRARY TO LAW.^[4]

3) That in or about and sometime during the month of October, 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant MARLON DEL A CRUZ y BOLESA in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of P20,000.00.

CONTRARY TO LAW.^[5]

4) That in or about and sometime during the month of November, 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant ERWIN DELA VEGA y BRIONES in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of P20,000.00.

CONTRARY TO LAW.^[6]

5) That in or about and sometime during the month of November, 2005, in the City of Fvfkati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant GLADYS REMORENTO y ZAMORA in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the

strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of P20,000.00.

CONTRARY TO LAW.^[7]

6) That in or about and sometime during the month of February, 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant AUGUSTO CEZAR GARCES y ALIMAGNO in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of P20,000.00.

CONTRARY TO LAW.^[8]

7) That in or about and sometime during the month of February, 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant LEYNARD TUTANES y BADIOLA in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of P20,000.00.

CONTRARY TO LAW.^[9]

Accused-appellant pleaded "not guilty" and after trial on the merits, the RTC found accused-appellant guilty beyond reasonable doubt of the crimes charged except for one charge of estafa which was provisionally dismissed by the RTC, upon motion of accused-appellant, without prejudice to reinstatement considering that the subpoena sent to complainant Monica B. Himan had not been duly served upon her person. The

dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is rendered in these cases as follows:

1. In Crim. Case No. 06-1275, finding herein accused Ma. Fe Torres Solina a.k.a. Ma. Fe Baylon Gallo, Guilty Beyond Reasonable Doubt of Illegal Recruitment in Large Scale and sentencing her to suffer the indeterminate penalty of six (6) years and one (1) day as minimum to eight (8) years as maximum, and to pay a fine in the amount of P200,000.00 with subsidiary liability in case of insolvency;

2. In Crim. Cases Nos. 06-1277 to 06-1282, finding the said accused Ma. Fe Torres Solina a.k.a. Ma. Fe Baylon Gallo, Guilty Beyond Reasonable Doubt of six (6) counts of Estafa under Art. 315, par. 2 (a), Revised Penal Code, and sentencing her to suffer for each count, the indeterminate penalty of one (1) year, eight (8) months, and twenty (20) days *prision correccional* as minimum to five (5) years, five (5) months, and eleven (11) days of *prision mayor* as maximum; to return to each private complainant, namely, Joey P. Bacolod, Marlon B. dela Cruz, Erwin B. Dela Vega, Gladys Z. Remorento, Augusto Cezar A. Garces, and Leynard B. Tutanés, the amount of P20,000.00 as actual damages.

SO ORDERED.

Makati City, October 30, 2007.^[10]

Thereafter, accused-appellant filed a Notice of Appeal,^[11] thus elevating the cases to the CA. On March 11, 2010, the CA affirmed the decision of the RTC with modification, the dispositive portion of which reads as follows:

WHEREFORE, the foregoing considered, the instant appeal is hereby DENTED. However, the assailed Decision dated 30 October 2007 is MODIFIED in that the appellant is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT as penalty for the crime of illegal recruitment in large scale and is ordered to pay a fine in the amount of P200,000.00 with subsidiary liability in case of insolvency. No costs.

SO ORDERED.

Thus, the case is now before this Court after accused-appellant filed her Notice of Appeal on March 24, 2010.^[12]

Accused-appellant and the Office of the Solicitor General (OSG) both adopted their respective briefs filed before the CA.^[13]

In her Brief, accused-appellant assigned the following errors:

I.

THE COURT A *QUO* GRAVELY ERRED IN REJECTING THE ACCUSED-APPELLANT'S DEFENSE.

II.

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

Accused-appellant maintains her denial that she was engaged in the business of recruiting possible workers for jobs abroad. She insists that like all the private complainants, she was also an applicant for a job as an overseas worker and that she merely accompanied them to a recruitment agency. She alleges that private complainant Dela Vega and Dela Cruz conspired together, used her name, and represented themselves to the other applicants as being authorized to collect documents and fees and that she only met the other private complainants in the trainings/seminars she attended. Anent the acknowledgment receipt signed by her and presented by the prosecution as evidence, accused-appellant argues that it does not prove that the money received by her was the consideration for private complainant Garces' placement abroad.

As to the charges of estafa, accused-appellant claims that the prosecution failed to prove that she employed deceit to entice private complainants to part with their money because she did not represent or pass herself off as a licensed recruiter.

After a careful review of the records, this Court finds no reason to reverse the decision of the CA.

All the elements of the crime of illegal recruitment in large scale are present, namely: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (2) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b)^[14] of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of R.A. 8042); and (3) the offender committed the same against three (3) or more persons, individually or as a group. More importantly, all the said elements have been established beyond reasonable doubt. Thus, as ruled by the CA:

First off, the first element is admittedly present. Appellant had no license to recruit or engage in placement activities and she herself had admitted to her lack of authority to do so. The Certification dated 7 April 2006 issued by the POHA also undeniably establishes this fact.

In like manner, the second and third elements also obtain in this case. On separate occasions and under different premises, appellant met with and herself recruited the private complainants, six (6) in number, giving them the impression that she had the capability to facilitate applications for employment as factory workers in Japan. All these complainants testified that appellant had promised them employment for a fee amounting to P2(),000.00. Their testimonies corroborate each other on material points, such as the amount exacted by appellant as placement fee, the country of destination, the training that they had to undergo to qualify for employment and the submission of documentary requirements needed for the same. The private complainants were positive and categorical in testifying that they personally met the appellant and that she asked for, among others, the payment of placement fees in consideration for the promised employment in Japan.^[15]

Accused-appellant's defense of denial cannot overcome the positive testimonies of the witnesses presented by the prosecution. As is well-settled in this jurisdiction, greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime.^[16] Based on the factual findings of the RTC, the combined and corroborative testimonies of the witnesses for the prosecution show that: it was appellant herself who informed them of the existence of the job vacancies in Japan and of the requirements needed for the processing of their applications. It was properly established that it was accused-appellant who accompanied the private complainants to undergo training and seminar conducted by a person who represented himself as connected with the Technical Education and Skills Development Authority (*TESDA*). Evidence was also presented that the private complainants, relying completely on accused-appellant's representations, entrusted their money to her. Finally, since there were six (6) victims, the RTC therefore did not commit any error in convicting accused-appellant of the charge of illegal recruitment in large scale.

This Court is also in agreement with the ruling of the CA that accused-appellant is guilty of six (6) counts of estafa under Article 315, par. 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 R.A. 8042, in relation to the Labor Code, and *estafa* under Article 315 (2) (a) of the Revised Penal Code.^[17] 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] As aptly found by the RTC and affirmed by the CA, accused-appellant defrauded the private complainants into believing that she had the authority and capability to send them for overseas employment in Japan and because of such assurances, private complainants each parted with P20,000.00 in exchange for said promise of future work abroad. Still, accused-appellant's promise never materialized, thus, private complainants suffered damages to the extent of the sum of money that they had delivered to accused-appellant.

To reiterate, 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.^[19] 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.^[20]

Anent the CA's modification as to the penalty imposed, this Court finds no reason for its correction. The trial court imposed the indeterminate penalty of six (6) years and one (1) day, as minimum, to eight (8) years, as maximum, for the crime of illegal recruitment in large scale, whereas the proper penalty should have been life imprisonment, as provided under Section 7 (b) of R.A. 8042. As ruled by the CA:

Be that as it may, this Court finds reversible error on the part of the trial court respecting the penalty imposed on the appellant for the crime of large scale illegal recruitment. Under the last paragraph of Section 6 of R.A. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in large scale, *viz.*, committed against three or more persons individually or as a group. In the present case, six (6) private complainants testified against appellant's acts of illegal recruitment, thereby rendering her acts tantamount to economic sabotage. Under Section 7 (b) of R.A. 8042, the penalty of life imprisonment and a fine of not less than P500,000.00 nor more than P1,000,000.00 shall be imposed if illegal recruitment constitutes economic sabotage.

Nevertheless, the CA erred in not increasing the amount of fine imposed by the RTC. In modifying the penalty to life imprisonment, the CA cited Section 7 (b) of R.A. 8042 because the present case involves economic sabotage, however, the same provision reads, *[t]he 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.* Hence, the fine imposed should have been not less than five hundred thousand pesos (P500,000.00) nor more than one million pesos (P1,000,000.00) and not two hundred thousand pesos (P200,000.00) as ruled by the RTC and the CA.

WHEREFORE, the appeal is **DISMISSED** and the Court of Appeals Decision dated March 11, 2010 is **AFFIRMED** with the **MODIFICATION** that accused-appellant Ma. Fe Torres Solina a.k.a. Ma Fe Baylon Gallo is **ORDERED** to **PAY** a fine in the amount of Five Hundred Thousand (P500,000.00) Pesos with subsidiary liability in case of insolvency, instead of the P200,000.00 adjudged earlier by the RTC and the CA for the crime of illegal recruitment in large scale. Anent the six (6) counts of Estafa under Article 315, paragraph 2 (a), Revised Penal Code, accused-appellant is **ORDERED** to **RETURN** to each private complainant the amount of Twenty Thousand Pesos (P20,000.00), plus the legal interest of six percent (6%) per annum from the finality of judgment until fully paid, as actual damages.

SO ORDERED.

Velasco, Jr., (Chairperson), Villarama, Jr., Reyes, and Jardeleza, JJ., concur.

February 2, 2016

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on January 13, 2016 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 February 2, 2016 at 2:04 p.m.

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

[1] Penned by Associate Justice Josefina Guevara-Salonga, with the Associate Justices Pampio A. Abarinlos and Jane Aurora C. Lantion, concurring; *rollo*, pp. 2-13.

[2] *CA rollo*, p. 9.

[3] *Id.* at 11.

[4] *Id.* at 12.

[5] *Id.* at 13.

[6] *Id.* at 14.

[7] *Id.* at 15.

[8] *Id.* at 16.

[9] *Id.* at 17.

[10] *Id.* at 32.

[11] *Id.* at 33.

[12] *Id.* at 130-131.

[13] *Id.* at 40-67 (for accused-appellant); 84-108 (for the OSG).

[14] [A]ny 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; 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 or placement.

[15] *Rollo*, p. 126.

[16] *People v. Ghurbia*, 369 Phil. 942, 953 (1999).

[17] *People v. Gallemit*, G.R. No. 197539, June 2, 2014, 724 SCRA 359, 382.

[18] *People v. Arnaiz*, G.R. No. 205153, September 9, 2015.

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

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



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