

665 Phil. 268

FIRST DIVISION**[G.R. No. 173198, June 01, 2011]****PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOLORES
OCDEN, ACCUSED-APPELLANT.****D E C I S I O N****LEONARDO-DE CASTRO, J.:**

For Our consideration is an appeal from the Decision^[1] dated April 21, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00044, which affirmed with modification the Decision^[2] dated July 2, 2001 of the Regional Trial Court (RTC), Baguio City, Branch 60, in Criminal Case No. 16315-R. The RTC found accused-appellant Dolores Ocden (Ocden) guilty of illegal recruitment in large scale, as defined and penalized under Article 13(b), in relation to Articles 38(b), 34, and 39 of Presidential Decree No. 442, otherwise known as the New Labor Code of the Philippines, as amended, in Criminal Case No. 16315-R; and of the crime of estafa under paragraph 2(a), Article 315 of the Revised Penal Code, in Criminal Case Nos. 16316-R, 16318-R, and 16964-R.^[3] The Court of Appeals affirmed Ocden's conviction in all four cases, but modified the penalties imposed in Criminal Case Nos. 16316-R, 16318-R, and 16964-R,

The Amended Information^[4] for illegal recruitment in large scale in Criminal Case No. 16315-R reads:

That during the period from May to December, 1998, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously for a fee, recruit and promise employment as factory workers in Italy to more than three (3) persons including, but not limited to the following: JEFFRIES C. GOLIDAN, HOWARD C. GOLIDAN, KAREN M. SIMEON, JEAN S. MAXIMO, NORMA PEDRO, MARYLYN MANA-A, RIZALINA FERRER, and MILAN DARING without said accused having first secured the necessary license or authority from the Department of Labor and Employment.

Ocden was originally charged with six counts of estafa in Criminal Case Nos. 16316-R, 16318-R, 16350-R, 16369-R, 16964-R, and 16966-R.

The Information in Criminal Case No. 16316-R states:

That sometime during the period from October to December, 1998 in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud JEFFRIES C. GOLIDAN, by way of false pretenses, which are executed prior to or simultaneous with the commission of the fraud, as follows, to wit: the accused knowing fully well that she is not (sic) authorized job recruiter for persons intending to secure work abroad convinced said Jeffries C. Golidan and pretended that she could secure a job for him/her abroad, for and in consideration of the sum of P70,000.00 when in truth and in fact they could not; the said Jeffries C. Golidan deceived and convinced by the false pretenses employed by the accused parted away the total sum of P70,000.00, in favor of the accused, to the damage and prejudice of the said Jeffries C. Golidan in the aforementioned amount of SEVENTY THOUSAND PESOS (P70,000,00), Philippine Currency.^[5]

The Informations in the five other cases for estafa contain substantially the same allegations as the one above-quoted, except for the private complainants' names, the date of commission of the offense, and the amounts defrauded, to wit:

<u>Case No.</u>	<u>Name of the</u> <u>Private</u> <u>Complainant</u>	<u>Date of Commission of</u> <u>the Offense</u>	<u>Amount</u> <u>Defrauded</u>
16318-R	Howard C. Golidan	Sometime during the period from October to December 1998	P70,000.00
16350-R	Norma Pedro	Sometime in May, 1998	P65,000.00
16369-R	Milan O. Daring	Sometime during the period from November 13, 1998 to December 10, 1998	P70,000.00
16964-R	Rizalina Ferrer	Sometime in September	P70,000.00
16966-R	Marilyn Mana-a	Sometime in September 1998	P70,000.00 ^[6]

All seven cases against Ocden were consolidated on July 31, 2000 and were tried jointly after Ocden pleaded not guilty.

The prosecution presented three witnesses namely: Marilyn Mana-a (Mana-a) and Rizalina Ferrer (Ferrer), complainants; and Julia Golidan (Golidan), mother of complainants Jeffries and Howard Golidan.

Mana-a testified that sometime in the second week of August 1998, she and Isabel Dao-as (Dao-as) went to Ocden's house in Baguio City to apply for work as factory workers in Italy with monthly salaries of US\$1,200.00. They were required by Ocden to submit their bio-data and passports, pay the placement fee of P70,000.00, and to undergo medical examination.

Upon submitting her bio-data and passport, Mana-a paid Ocden P500.00 for her certificate of employment and P20,000.00 as down payment for her placement fee. On September 8, 1998, Ocden accompanied Mana-a and 20 other applicants to Zamora Medical Clinic in Manila for their medical examinations, for which each of the applicants paid P3,000.00. Mana-a also paid to Ocden P22,000.00 as the second installment on her placement fee. When Josephine Lawanag (Lawanag), Mana-a's sister, withdrew her application, Lawanag's P15,000.00 placement fee, already paid to Ocden, was credited to Mana-a.^[7]

Mana-a failed to complete her testimony, but the RTC considered the same as no motion to strike the said testimony was filed.

Ferrer narrated that she and her daughter Jennilyn were interested to work overseas. About the second week of September 1998, they approached Ocden through Fely Alipio (Alipio). Ocden showed Ferrer and Jennilyn a copy of a job order from Italy for factory workers who could earn as much as \$90,000.00 to \$100,000.00.^[8] In the first week of October 1998, Ferrer and Jennilyn decided to apply for work, so they submitted their passports and pictures to Ocden. Ferrer also went to Manila for medical examination, for which she spent P3,500.00. Ferrer paid to Ocden on November 20, 1998 the initial amount of P20,000.00, and on December 8, 1998 the balance of her and Jennilyn's placement fees. All in all, Ferrer paid Ocden P140,000.00, as evidenced by the receipts issued by Ocden.^[9]

Ferrer, Jennilyn, and Alipio were supposed to be included in the first batch of workers to be sent to Italy. Their flight was scheduled on December 10, 1998. In preparation for their flight to Italy, the three proceeded to Manila. In Manila, they were introduced by Ocden to Erlinda Ramos (Ramos). Ocden and Ramos then accompanied Ferrer, Jennilyn, and Alipio to the airport where they took a flight to Zamboanga. Ocden explained to Ferrer, Jennilyn, and Alipio that they would be transported to Malaysia where their visa application for Italy would be processed.

Sensing that they were being fooled, Ferrer and Jennilyn decided to get a refund of their money, but Ocden was nowhere to be found. Ferrer would later learn from the Baguio office of the Philippine Overseas Employment Administration (POEA) that Ocden was not a licensed recruiter.

Expecting a job overseas, Ferrer took a leave of absence from her work. Thus, she lost income amounting to P17,700.00, equivalent to her salary for one and a half months. She also spent P30,000.00 for transportation and food expenses.^[10]

According to Golidan, the prosecution's third witness, sometime in October 1998, she inquired from Ocden about the latter's overseas recruitment. Ocden informed Golidan that the placement fee was P70,000.00 for each applicant, that the accepted applicants would be sent by batches overseas, and that priority would be given to those who paid their placement fees early. On October 30, 1998, Golidan brought her sons, Jeffries and Howard, to Ocden. On the same date, Jeffries and Howard handed over to Ocden their passports and P40,000.00 as down payment on their placement fees. On December 10, 1998, Jeffries and Howard paid the balance of their placement fees

amounting to P100,000.00. Ocden issued receipts for these two payments.^[11] Ocden then informed Golidan that the first batch of accepted applicants had already left, and that Jeffries would be included in the second batch for deployment, while Howard in the third batch.

In anticipation of their deployment to Italy, Jeffries and Howard left for Manila on December 12, 1998 and December 18, 1998, respectively. Through a telephone call, Jeffries informed Golidan that his flight to Italy was scheduled on December 16, 1998. However, Golidan was surprised to again receive a telephone call from Jeffries saying that his flight to Italy was delayed due to insufficiency of funds, and that Ocden went back to Baguio City to look for additional funds. When Golidan went to see Ocden, Ocden was about to leave for Manila so she could be there in time for the scheduled flights of Jeffries and Howard.

On December 19, 1998, Golidan received another telephone call from Jeffries who was in Zamboanga with the other applicants. Jeffries informed Golidan that he was stranded in Zamboanga because Ramos did not give him his passport. Ramos was the one who briefed the overseas job applicants in Baguio City sometime in November 1998. Jeffries instructed Golidan to ask Ocden's help in looking for Ramos. Golidan, however, could not find Ocden in Baguio City.

On December 21, 1998, Golidan, with the other applicants, Mana-a and Dao-as, went to Manila to meet Ocden. When Golidan asked why Jeffries was in Zamboanga, Ocden replied that it would be easier for Jeffries and the other applicants to acquire their visas to Italy in Zamboanga. Ocden was also able to contact Ramos, who assured Golidan that Jeffries would be able to get his passport. When Golidan went back home to Baguio City, she learned through a telephone call from Jeffries that Howard was now likewise stranded in Zamboanga.

By January 1999, Jeffries and Howard were still in Zamboanga. Jeffries refused to accede to Golidan's prodding for him and Howard to go home, saying that the recruiters were already working out the release of the funds for the applicants to get to Italy. Golidan went to Ocden, and the latter told her not to worry as her sons would already be flying to Italy because the same factory owner in Italy, looking for workers, undertook to shoulder the applicants' travel expenses. Yet, Jeffries called Golidan once more telling her that he and the other applicants were still in Zamboanga.

Golidan went to Ocden's residence. This time, Ocden's husband gave Golidan P23,000.00 which the latter could use to fetch the applicants, including Jeffries and Howard, who were stranded in Zamboanga. Golidan traveled again to Manila with Mana-a and Dao-as. When they saw each other, Golidan informed Ocden regarding the P23,000.00 which the latter's husband gave to her. Ocden begged Golidan to give her the money because she needed it badly. Of the P23,000.00, Golidan retained P10,000.00, Dao-as received P3,000.00, and Ocden got the rest. Jeffries was able to return to Manila on January 16, 1999. Howard and five other applicants, accompanied by Ocden, also arrived in Manila five days later.

Thereafter, Golidan and her sons went to Ocden's residence to ask for a refund of the

money they had paid to Ocden. Ocden was able to return only P50,000.00. Thus, out of the total amount of P140,000.00 Golidan and her sons paid to Ocden, they were only able to get back the sum of P60,000.00. After all that had happened, Golidan and her sons went to the Baguio office of the POEA, where they discovered that Ocden was not a licensed recruiter.^[12]

The defense presented the testimony of Ocden herself.

Ocden denied recruiting private complainants and claimed that she was also an applicant for an overseas job in Italy, just like them. Ocden identified Ramos as the recruiter.

Ocden recounted that she met Ramos at a seminar held in St. Theresa's Compound, Navy Base, Baguio City, sometime in June 1998. The seminar was arranged by Aida Comila (Comila), Ramos's sub-agent. The seminar was attended by about 60 applicants, including Golidan. Ramos explained how one could apply as worker in a stuff toys factory in Italy. After the seminar, Comila introduced Ocden to Ramos. Ocden decided to apply for the overseas job, so she gave her passport and pictures to Ramos. Ocden also underwent medical examination at Zamora Medical Clinic in Manila, and completely submitted the required documents to Ramos in September 1998.

After the seminar, many people went to Ocden's house to inquire about the jobs available in Italy. Since most of these people did not attend the seminar, Ocden asked Ramos to conduct a seminar at Ocden's house. Two seminars were held at Ocden's house, one in September and another in December 1998. After said seminars, Ramos designated Ocden as leader of the applicants. As such, Ocden received her co-applicants' applications and documents; accompanied her co-applicants to Manila for medical examination because she knew the location of Zamora Medical Clinic; and accepted placement fees in the amount of P70,000.00 each from Mana-a and Ferrer and from Golidan, the amount of P140,000.00 (for Jeffries and Howard).

Ramos instructed Ocden that the applicants should each pay P250,000.00 and if the applicants could not pay the full amount, they would have to pay the balance through salary deductions once they start working in Italy. Ocden herself paid Ramos P50,000.00 as placement fee and executed a promissory note in Ramos's favor for the balance, just like any other applicant who failed to pay the full amount. Ocden went to Malaysia with Ramos's male friend but she failed to get her visa for Italy.

Ocden denied deceiving Mana-a and Ferrer. Ocden alleged that she turned over to Ramos the money Mana-a and Ferrer gave her, although she did not indicate in the receipts she issued that she received the money for and on behalf of Ramos.

Ocden pointed out that she and some of her co-applicants already filed a complaint against Ramos before the National Bureau of Investigation (NBI) offices in Zamboanga City and Manila.^[13]

On July 2, 2001, the RTC rendered a Decision finding Ocden guilty beyond reasonable doubt of the crimes of illegal recruitment in large scale (Criminal Case No. 16315-R)

and three counts of estafa (Criminal Case Nos. 16316-R, 16318-R, and 16964-R). The dispositive portion of said decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 16315-R, the Court finds the accused, DOLORES OCDEN, GUILTY beyond reasonable doubt of the crime of Illegal Recruitment committed in large scale as defined and penalized under Article 13(b) in relation to Article 38(b), 34 and 39 of the Labor Code as amended by P.D. Nos. 1693, 1920, 2018 and R.A. 8042. She is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P100,000.00;
2. In Criminal Case No. 16316-R, the Court finds the accused, DOLORES OCDEN, GUILTY beyond reasonable doubt of the crime of estafa and sentences her to suffer an indeterminate penalty ranging from two (2) years, eleven (11) months and ten (10) days of prision correccional, as minimum, up to nine (9) years and nine (9) months of prision mayor, as maximum, and to indemnify the complainant Jeffries Golidan the amount of P40,000.00;
3. In Criminal Case No. 16318-R, the Court finds the accused, DOLORES OCDEN, GUILTY beyond reasonable doubt of the crime of estafa and sentences her to suffer an indeterminate penalty ranging from two (2) years, eleven (11) months and ten (10) days of prision correccional, as minimum, up to nine (9) years and nine (9) months of prision mayor, as maximum, and to indemnify Howard Golidan the amount of P40,000.00;
4. In Criminal Case No. 16350-R, the Court finds the accused, DOLORES OCDEN, NOT GUILTY of the crime of estafa for lack of evidence and a verdict of acquittal is entered in her favor;
5. In Criminal Case No. 16369-R, the Court finds the accused, DOLORES OCDEN, NOT GUILTY of the crime of estafa for lack of evidence and a verdict of acquittal is hereby entered in her favor;
6. In Criminal Case No. 16964-R, the Court finds the accused, DOLORES OCDEN, GUILTY beyond reasonable doubt of the crime of estafa and sentences her to suffer an indeterminate penalty of Four (4) years and Two (2) months of prision correccional, as minimum, up to Twelve (12) years and Nine (9) months of reclusion temporal, as maximum, and to indemnify Rizalina Ferrer the amount of P70,000.00; and
7. In Criminal Case No. 16966-R, the Court finds the accused, DOLORES OCDEN, NOT GUILTY of the crime of estafa for insufficiency of evidence and a verdict of acquittal is hereby entered in her favor.

In the service of her sentence, the provisions of Article 70 of the Penal Code shall be observed.^[14]

Aggrieved by the above decision, Ocden filed with the RTC a Notice of Appeal on August 15, 2001.^[15] The RTC erroneously sent the records of the cases to the Court of Appeals, which, in turn, correctly forwarded the said records to us.

In our Resolution^[16] dated May 6, 2002, we accepted the appeal and required the parties to file their respective briefs. In the same resolution, we directed the Superintendent of the Correctional Institute for Women to confirm Ocden's detention thereat.

Ocden filed her Appellant's Brief on August 15, 2003,^[17] while the People, through the Office of the Solicitor General, filed its Appellee's Brief on January 5, 2004.^[18]

Pursuant to our ruling in *People v. Mateo*,^[19] we transferred Ocden's appeal to the Court of Appeals. On April 21, 2006, the appellate court promulgated its Decision, affirming Ocden's conviction but modifying the penalties imposed upon her for the three counts of estafa, *viz*:

[T]he trial court erred in the imposition of accused-appellant's penalty.

Pursuant to Article 315 of the RPC, the penalty for estafa is *prision correccional* in its maximum period to *prision mayor* in its minimum period. If the amount of the fraud exceeds P22,000.00, the penalty provided shall be imposed in its maximum period (6 years, 8 months and 21 days to 8 years), adding 1 year for each additional P10,000.00; but the total penalty which may be imposed shall not exceed 20 years.

Criminal Case Nos. 16316-R and 16318-R involve the amount of P40,000.00 each. Considering that P18,000.00 is the excess amount, only 1 year should be added to the penalty in its maximum period or **9 years**. Also, in Criminal Case No. 16964-R, the amount involved is P70,000.00. Thus, the excess amount is P48,000.00 and only **4 years** should be added to the penalty in its maximum period.

WHEREFORE, the instant appeal is **DISMISSED**. The assailed Decision, dated 02 July 2001, of the Regional Trial Court (RTC) of Baguio City, Branch 60 is hereby **AFFIRMED with the following MODIFICATIONS**:

1. In **Criminal Case No. 16316-R**, accused-appellant is sentenced to 2 years, 11 months, and 10 days of *prision correccional*, as minimum to 9 years of *prision mayor*, as maximum and to indemnify Jeffries Golidan the amount of P40,000.00;
2. In **Criminal Case No. 16318-R**, accused-appellant is sentenced to 2 years, 11 months, and 10 days of *prision correccional*, as minimum to 9 years of *prision mayor*, as maximum and to indemnify Howard

Golidan the amount of P40,000.00; and

3. In **Criminal Case No. 16964-R**, accused-appellant is sentenced to 4 years and 2 months of *prision correccional*, as minimum to 12 years of *prision mayor*, as maximum and to indemnify Rizalina Ferrer the amount of P70,000.00.^[20]

Hence, this appeal, in which Ocden raised the following assignment of errors:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF ILLEGAL RECRUITMENT COMMITTED IN LARGE SCALE ALTHOUGH THE CRIME WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF ESTAFA IN CRIMINAL CASES NOS. 16316-R, 16318-R AND 16^[9]64-R.^[21]

After a thorough review of the records of the case, we find nothing on record that would justify a reversal of Ocden's conviction.

Illegal recruitment in large scale

Ocden contends that the prosecution failed to prove beyond reasonable doubt that she is guilty of the crime of illegal recruitment in large scale. Other than the bare allegations of the prosecution witnesses, no evidence was adduced to prove that she was a non-licensee or non-holder of authority to lawfully engage in the recruitment and placement of workers. No certification attesting to this fact was formally offered in evidence by the prosecution.

Ocden's aforementioned contentions are without merit.

Article 13, paragraph (b) of the Labor Code defines and enumerates the acts which constitute recruitment and placement:

(b) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising for advertising for employment locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

The amendments to the Labor Code introduced by Republic Act No. 8042, otherwise

known as the Migrant Workers and Overseas Filipinos Act of 1995, broadened the concept of illegal recruitment and provided stiffer penalties, especially for those that constitute economic sabotage, *i.e.*, illegal recruitment in large scale and illegal recruitment committed by a syndicate. Pertinent provisions of Republic Act No. 8042 are reproduced below:

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:**

(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.

x x x x

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 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. (Emphasis ours.)

It is well-settled that to prove illegal recruitment, it must be shown that appellant gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed.^[22] As testified to by Mana-a, Ferrer, and Golidan, Ocden gave such an impression through the following acts: (1) Ocden informed Mana-a, Ferrer, and Golidan about the job opportunity in Italy and the list of necessary requirements for application; (2) Ocden required Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, to attend the seminar conducted by Ramos at Ocden's house in Baguio City; (3) Ocden received the job applications, pictures, bio-data, passports, and the certificates of previous employment (which was also issued by Ocden upon payment of P500.00), of Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard; (4) Ocden personally accompanied Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, for their medical examinations in Manila; (5) Ocden received money paid as placement fees by Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, and even issued receipts for the same; and (6) Ocden assured Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, that they would be deployed to Italy.

It is not necessary for the prosecution to present a certification that Ocden is a non-licensee or non-holder of authority to lawfully engage in the recruitment and placement of workers. Section 6 of Republic Act No. 8042 enumerates particular acts which would constitute illegal recruitment "whether committed by any person, whether a non-licensee, non-holder, licensee **or holder of authority.**" Among such acts, under Section 6(m) of Republic Act No. 8042, is the "[f]ailure 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."

Since illegal recruitment under Section 6(m) can be committed by any person, even by a licensed recruiter, a certification on whether Ocden had a license to recruit or not, is inconsequential. Ocden committed illegal recruitment as described in said provision by receiving placement fees from Mana-a, Ferrer, and Golidan's two sons, Jeffries and Howard, evidenced by receipts Ocden herself issued; and failing to reimburse/refund to Mana-a, Ferrer, and Golidan's two sons the amounts they had paid when they were not able to leave for Italy, through no fault of their own.

Ocden questions why it was Golidan who testified for private complainants Jeffries and Howard. Golidan had no personal knowledge of the circumstances proving illegal recruitment and could not have testified on the same. Also, Jeffries and Howard already executed an affidavit of desistance. All Golidan wants was a reimbursement of the placement fees paid.

Contrary to Ocden's claims, Golidan had personal knowledge of Ocden's illegal recruitment activities, which she could competently testify to. Golidan herself had personal dealings with Ocden as Golidan assisted her sons, Jeffries and Howard, in completing the requirements for their overseas job applications, and later on, in getting back home from Zamboanga where Jeffries and Howard were stranded, and in demanding a refund from Ocden of the placement fees paid. That Golidan is seeking a

reimbursement of the placement fees paid for the failed deployment of her sons Jeffries and Howard strengthens, rather than weakens, the prosecution's case. Going back to illegal recruitment under Section 6(m) of Republic Act No. 8042, failure to reimburse the expenses incurred by the worker when deployment does not actually take place, without the worker's fault, is illegal recruitment.

The affidavit of desistance purportedly executed by Jeffries and Howard does not exonerate Ocden from criminal liability when the prosecution had successfully proved her guilt beyond reasonable doubt. In *People v. Romero*,^[23] we held that:

The fact that complainants Bernardo Salazar and Richard Quillope executed a Joint Affidavit of Desistance does not serve to exculpate accused-appellant from criminal liability insofar as the case for illegal recruitment is concerned since the Court looks with disfavor the dropping of criminal complaints upon mere affidavit of desistance of the complainant, particularly where the commission of the offense, as is in this case, is duly supported by documentary evidence.

Generally, the Court attaches no persuasive value to affidavits of desistance, especially when it is executed as an afterthought. It would be a dangerous rule for courts to reject testimonies solemnly taken before the courts of justice simply because the witnesses who had given them, later on, changed their mind for one reason or another, for such rule would make solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witness.

Complainants Bernardo Salazar and Richard Quillope may have a change of heart insofar as the offense wrought on their person is concerned when they executed their joint affidavit of desistance but this will not affect the public prosecution of the offense itself. It is relevant to note that "the right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign power instinctly charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights." This cardinal principle which states that to the State belongs the power to prosecute and punish crimes should not be overlooked since a criminal offense is an outrage to the sovereign State.^[24]

In her bid to exculpate herself, Ocden asserts that she was also just an applicant for overseas employment; and that she was receiving her co-applicants' job applications and other requirements, and accepting her co-applicants' payments of placement fees, because she was designated as the applicants' leader by Ramos, the real recruiter.

Ocden's testimony is self-serving and uncorroborated. Ocden's denial of any illegal recruitment activity cannot stand against the prosecution witnesses' positive identification of her in court as the person who induced them to part with their money

upon the misrepresentation and false promise of deployment to Italy as factory workers. Besides, despite several opportunities given to Ocden by the RTC, she failed to present Ramos, who Ocden alleged to be the real recruiter and to whom she turned over the placement fees paid by her co-applicants.

Between the categorical statements of the prosecution witnesses, on the one hand, and the bare denial of Ocden, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when the former comes from the mouth of a credible witness. Denial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted.^[25]

Moreover, in the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment of the credibility of the witnesses shall not be interfered with by this Court.^[26] It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by the Supreme Court, particularly when the Court of Appeals affirmed such findings. After all, the trial court is in the best position to determine the value and weight of the testimonies of witnesses. The absence of any showing that the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, or that its assessment was arbitrary, impels the Court to defer to the trial court's determination according credibility to the prosecution evidence.^[27]

Ocden further argues that the prosecution did not sufficiently establish that she illegally recruited at least three persons, to constitute illegal recruitment on a large scale. Out of the victims named in the Information, only Mana-a and Ferrer testified in court. Mana-a did not complete her testimony, depriving Ocden of the opportunity to cross-examine her; and even if Mana-a's testimony was not expunged from the record, it was insufficient to prove illegal recruitment by Ocden. Although Ferrer testified that she and Mana-a filed a complaint for illegal recruitment against Ocden, Ferrer's testimony is competent only as to the illegal recruitment activities committed by Ocden against her, and not against Mana-a. Ocden again objects to Golidan's testimony as hearsay, not being based on Golidan's personal knowledge.

Under the last paragraph of Section 6, Republic Act No. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in a large scale, that is, committed against three or more persons individually or as a group.

In *People v. Hu*,^[28] we held that a conviction for large scale illegal recruitment must be based on a finding in each case of illegal recruitment of three or more persons, whether individually or as a group. While it is true that the law does not require that at least three victims testify at the trial, nevertheless, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons. In this case, there is conclusive evidence that Ocden recruited Mana-a, Ferrer, and Golidan's sons, Jeffries and Howard, for purported employment as factory workers in

Italy. As aptly observed by the Court of Appeals:

Mana-a's testimony, although not completed, sufficiently established that accused-appellant promised Mana-a a job placement in a factory in Italy for a fee with accused-appellant even accompanying her for the required medical examination. Likewise, Julia Golidan's testimony adequately proves that accused-appellant recruited Jeffries and Howard Golidan for a job in Italy, also for a fee. Contrary to the accused-appellant's contention, Julia had personal knowledge of the facts and circumstances surrounding the charges for illegal recruitment and estafa filed by her sons. Julia was not only privy to her sons' recruitment but also directly transacted with accused-appellant, submitting her sons' requirements and paying the placement fees as evidenced by a receipt issued in her name. Even after the placement did not materialize, Julia acted with her sons to secure the partial reimbursement of the placement fees.^[29]

And even though only Ferrer and Golidan testified as to Ocden's failure to reimburse the placements fees paid when the deployment did not take place, their testimonies already established the fact of non-reimbursement as to three persons, namely, Ferrer and Golidan's two sons, Jeffries and Howard.

Section 7(b) of Republic Act No. 8042 prescribes a penalty of life imprisonment and a fine of not less than P500,000.00 nor more than P1,000,000.00 if the illegal recruitment constitutes economic sabotage. The RTC, as affirmed by the Court of Appeals, imposed upon Ocden the penalty of life imprisonment and a fine of only P100,000.00. Since the fine of P100,000 is below the minimum set by law, we are increasing the same to P500,000.00.

Estafa

We are likewise affirming the conviction of Ocden for the crime of estafa. The very same evidence proving Ocden's liability for illegal recruitment also established her liability for estafa.

It is settled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042 in relation to the Labor Code, and estafa under Article 315, paragraph 2(a) of the Revised Penal Code. We explicated in *People v. Yabut*^[30] that:

In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar

conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and vice versa.^[31]

Article 315, paragraph 2(a) of the Revised Penal Code 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 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.^[32]

Both these elements are present in the instant case. Ocden represented to Ferrer, Golidan, and Golidan's two sons, Jeffries and Howard, that she could provide them with overseas jobs. Convinced by Ocden, Ferrer, Golidan, and Golidan's sons paid substantial amounts as placement fees to her. Ferrer and Golidan's sons were never able to leave for Italy, instead, they ended up in Zamboanga, where, Ocden claimed, it would be easier to have their visas to Italy processed. Despite the fact that Golidan's sons, Jeffries and Howard, were stranded in Zamboanga for almost a month, Ocden still assured them and their mother that they would be able to leave for Italy. There is definitely deceit on the part of Ocden and damage on the part of Ferrer and Golidan's sons, thus, justifying Ocden's conviction for estafa in Criminal Case Nos. 16316-R, 16318-R, and 16964-R.

The penalty for estafa depends on the amount of defraudation. According to 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 P22,000.00, is *prision correccional* maximum to *prision mayor* minimum, adding one year to the maximum period for each additional P10,000.00, provided that the total penalty shall not exceed 20 years.

Applying the Indeterminate Sentence Law, we take the minimum term from the penalty next lower than the minimum prescribed by law, or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months).^[33] Consequently, both the RTC and the Court of Appeals correctly fixed the minimum term in Criminal Case Nos. 16316-R and 16318-R at 2 years, 11 months, and 10 days of *prision correccional*; and in Criminal Case No. 16964-R at 4 years and 2 months of *prision correccional*, since these are within the range of *prision correccional* minimum and medium.

As for the maximum term under the Indeterminate Sentence Law, we take the maximum period of the prescribed penalty, adding 1 year of imprisonment for every P10,000.00 in excess of P22,000.00, provided that the total penalty shall not exceed 20 years. To compute the maximum period of the prescribed penalty, 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 maximum period for *prision correccional* maximum to *prision mayor* minimum is from 6 years, 8 months, and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months, and 21 days to 8 years, at the discretion of the court.^[34]

In computing the incremental penalty, the amount defrauded shall be subtracted by P22,000.00, and the difference shall be divided by P10,000.00. Any fraction of a year shall be discarded as was done starting with *People v. Pabalan*.^[35]

In Criminal Case Nos. 16316-R and 16318-R, brothers Jeffries and Howard Golidan were each defrauded of the amount of P40,000.00, for which the Court of Appeals sentenced Ocden to an indeterminate penalty of 2 years, 11 months, and 10 days of *prision correccional* as minimum, to 9 years of *prision mayor* as maximum. Upon review, however, we modify the maximum term of the indeterminate penalty imposed on Ocden in said criminal cases. Since the amount defrauded exceeds P22,000.00 by P18,000.00, 1 year shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months, and 21 days to 8 years). There being no aggravating circumstance, we apply the lowest of the maximum period, which is 6 years, 8 months, and 21 days. Adding the one year incremental penalty, the maximum term of Ocden's indeterminate sentence in these two cases is only 7 years, 8 months,

and 21 days of *prision mayor*.

In Criminal Cases No. 19694-R, Ferrer was defrauded of the amount of P70,000.00, for which the Court of Appeals sentenced Ocden to an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 12 years of *prision mayor*, as maximum. Upon recomputation, we also have to modify the maximum term of the indeterminate sentence imposed upon Ocden in Criminal Case No. 19694-R. Given that the amount defrauded exceeds P22,000.00 by P48,000.00, 4 years shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months, and 21 days to 8 years). There likewise being no aggravating circumstance in this case, we add the 4 years of incremental penalty to the lowest of the maximum period, which is 6 years, 8 months, and 21 days. The maximum term, therefor, of Ocden's indeterminate sentence in Criminal Case No. 19694-R is only 10 years, 8 months, and 21 days of *prision mayor*.

WHEREFORE, the instant appeal of accused-appellant Dolores Ocden is **DENIED**. The Decision dated April 21, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00044 is **AFFIRMED** with **MODIFICATION** to read as follows:

1. In Criminal Case No. 16315-R, the Court finds the accused, Dolores Ocden, **GUILTY** beyond reasonable doubt of the crime of Illegal Recruitment committed in large scale as defined and penalized under Article 13(b) in relation to Articles 38(b), 34 and 39 of the Labor Code, as amended. She is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00;

2. In Criminal Case No. 16316-R, the Court finds the accused, Dolores Ocden, **GUILTY** beyond reasonable doubt of the crime of estafa and sentences her to an indeterminate penalty of 2 years, 11 months, and 10 days of *prision correccional*, as minimum, to 7 years, 8 months, and 21 days of *prision mayor*, as maximum, and to indemnify Jeffries Golidan the amount of P40,000.00;

3. In Criminal Case No. 16318-R, the Court finds the accused, Dolores Ocden, **GUILTY** beyond reasonable doubt of the crime of estafa and sentences her to an indeterminate penalty of 2 years, 11 months, and 10 days of *prision correccional*, as minimum, to 7 years, 8 months, and 21 days of *prision mayor*, as maximum, and to indemnify Howard Golidan the amount of P40,000.00; and

4. In Criminal Case No. 16964-R, the Court finds the accused, Dolores Ocden, **GUILTY** beyond reasonable doubt of the crime of estafa and sentences her to an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years, 8 months, and 21 days of *prision mayor*, as maximum, and to indemnify Rizalina Ferrer the amount of P70,000.00.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Peralta, and Perez, JJ., concur.*

* Per Special Order No. 994 dated May 27, 2011.

[1] *Rollo*, pp. 3-20; penned by Associate Justice Noel G. Tijam with Associate Justices Elvi John S. Asuncion and Arcangelita Romilla-Lontok, concurring.

[2] Records (Crim. Case No. 16964-R), pp. 253-262; penned by Judge Edilberto T. Claravall.

[3] Originally, Ocden was indicted for six counts of Estafa (Criminal Case Nos. 16316-R, 16318-R, 16350-R, 16369-R, 16964-R and 16966-R).

[4] Records (Crim. Case No. 16315-R), p. 1.

[5] Records (Crim. Case No. 16316-R), p. 1.

[6] *Rollo*, p. 4.

[7] TSN, October 10, 2000, pp. 1-6.

[8] TSN, January 8, 2001, p. 4.

[9] Records (Crim. Case No. 16964-R), p. 179; Exhibits A, A-1 and A-2.

[10] TSN, January 8, 2001, pp. 1-15.

[11] Records (Crim. Case No. 16318-R), pp. 54-55, Exhibits A-1 and A-2.

[12] TSN, November 14, 2000, pp. 1-9; November 20, 2000, pp. 1-15.

[13] TSN, February 27, 2001, pp. 1-15; March 6, 2001, pp. 1-6.

[14] Records (Crim. Case No. 16964-R), pp. 261-262.

[15] *Id.* at 263.

[16] *CA rollo*, p. 38.

[17] *Id.* at 67-85.

[18] *Id.* at 111-134.

[19] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[20] *Rollo*, pp. 18-19.

- [21] CA rollo, p. 69.
- [22] *People v. Gasacao*, 511 Phil. 435, 445 (2005).
- [23] G.R. Nos. 103385-88, July 26, 1993, 224 SCRA 749.
- [24] *Id.* at 757.
- [25] *People v. Bulfango*, 438 Phil. 651, 657 (2002).
- [26] *People v. Saulo*, 398 Phil. 544, 554 (2000).
- [27] *People v. Nogra*, G.R. No. 170834, August 29, 2008, 563 SCRA 723, 735.
- [28] G.R. No. 182232, October 6, 2008, 567 SCRA 696, 705.
- [29] *Rollo*, p. 16.
- [30] 374 Phil. 575 (1999).
- [31] *Id.* at 586.
- [32] *People v. Ballesteros*, 435 Phil. 205, 228 (2002).
- [33] *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 299.
- [34] *Id.*
- [35] 331 Phil. 64, 85 (1996).



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