

619 Phil. 443

SECOND DIVISION**[G.R. No. 179931, October 26, 2009]****PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NIDA ADESER Y RICO, APPELLANT.****DECISION****QUISUMBING, J.:**

On appeal is the Decision^[1] dated June 28, 2007, of the Court of Appeals in CA-G.R. CR-H.C. No. 01902, affirming the Decision^[2] dated May 2, 2005, of the Regional Trial Court (RTC) of Pasay City, Branch 118 in Criminal Cases Nos. 03-2700 and 03-2701. The RTC convicted appellant of the crimes of syndicated illegal recruitment constituting economic sabotage and *estafa*.

On November 12, 2003, the Office of the City Prosecutor of Pasay filed before the RTC two Informations^[3] against appellant Nida Adeser y Rico, Lourdes Chang, and the spouses Roberto and Mel Tiongson. The Informations read as follows:

Criminal Case No. 03-2700

That on or about and sometime in the month of May, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, by means of false representation and fraudulent allegation to the effect that they could secure employment abroad for complainant JOSEPHINE R. PALO, did then and there wilfully, unlawfully and feloniously recruit for a fee aforesaid person without the corresponding license from the Philippine Overseas Employment Administration, a syndicated illegal recruitment involving economic sabotage.

Contrary to law.^[4]

Criminal Case No. 03-2701

That on or about and sometime in the month of May, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, defrauded private complainant JOSEPHINE R. PALO, in the following manner to wit: that said accused, by means of false

representations and fraudulent allegations that they could facilitate private complainant's working and travel papers, did then and there wilfully, unlawfully, and feloniously ask, demand and receive from the said complainant the amount of P80,000.00 as placement fee for the latter's supposed deployment to Australia as "Apple Picker/Office Worker"; and said private complainant carried away by said misrepresentations, in fact gave and delivered to said accused the amount of P80,000.00, which amount accused in turn misapplied, misappropriated and converted to their own personal use and benefit, failing, however, to deploy private complainant to Australia, and despite repeated demands accused failed and refused to do so, or account for the said amount, to the damage and prejudice of the said private complainant in the aforesaid amount of P80,000.00.

Contrary to law.^[5]

Upon arraignment, appellant pleaded not guilty^[6] to both charges while her co-accused remained at large. Trial on the merits thereafter ensued.

Private complainant Josephine R. Palo and her sister Teresa Caraig testified that sometime in November 2002, the spouses Roberto and Mel Tiongson, agents of Naples Travel and Tours, introduced Palo to appellant, owner and general manager of Naples, to discuss employment opportunities in Australia. During their meeting held at the Naples office in Villaruel Tower, Villaruel Street, Pasay City, appellant and the spouses Tiongson informed Palo that for a placement fee of P80,000, she can work as an apple picker in Australia with a monthly salary of \$1,400.

Thus, on November 8, 2002, Palo and Caraig went to the Naples office and gave Roberto Tiongson and Lourdes Chang, operations manager of Naples, P15,000 as first installment for the placement fee. Palo was issued a voucher^[7] signed by Roberto and Chang stating therein that the P15,000 was for Palo's visa application.

On November 11, 2002, Palo and Caraig returned to the Naples office and paid P58,500. She was again issued a voucher^[8] signed by Roberto and Chang stating therein that the amount paid was for Palo's visa application. Palo insisted that the voucher should indicate that her payments were for "placement fees" but they were able to convince her that it is not necessary because they know her.

After making her payments, she was required to submit her resume and pictures and was promised that she would be employed within three months.

More than three months passed, however, but Palo was not deployed to Australia. Neither did she get her Australian visa.

In May 2003, she learned from the National Bureau of Investigation (NBI) that Naples had closed down. NBI likewise informed her that Naples had no license to operate and deploy workers abroad. Upon advice of the NBI, Palo filed a complaint^[9] against appellant, the spouses Tiongson and Chang.

Appellant on the other hand denied the charges against her. She admitted that she was the owner and general manager of Naples which was a travel agency that offered visa assistance, ticketing, documentation, airport transfer and courier services, but denied having engaged in recruitment. She claimed that she cannot remember meeting Palo in her office and asserted that she met her for the first time only at the fiscal's office when Palo was already claiming for a refund. She testified that Roberto, to whom Palo claims to have given her payment, was neither her employee nor her agent but was only her driver's brother. Based on her records, Roberto endorsed to her office P30,000 from Palo for tourist visa assistance. Appellant also admitted that she and Roberto offered to settle the P30,000 but not the amount claimed by Palo per vouchers issued to her.

On May 2, 2005, the trial court rendered a Decision finding appellant guilty of both charges. The dispositive portion reads:

WHEREFORE, all the foregoing considered NIDA ADESER is hereby found GUILTY beyond reasonable doubt of the crime of Syndicated Illegal Recruitment constituting Economic Sabotage in Criminal Case No. 03-2700 and *Estafa* in Criminal Case No. 03-2701. Accordingly, she is hereby sentenced to suffer the following penalties:

1. In Criminal Case No. 3-2700 - LIFE IMPRISONMENT and a FINE of Five Hundred Thousand Pesos (P500,000.00), and
2. In Criminal Case No. 03-2701 - Indeterminate imprisonment of six (6) years of *prision correccional*, as minimum, to 13 years of *reclusion temporal*, as maximum, and to indemnify Josephine R. Palo the sum of Eighty Thousand Pesos (P80,000.00) with legal interest from the time of the filing of the information.

Cost against the accused.

SO ORDERED.^[10]

Appellant appealed her conviction but the same was affirmed by the Court of Appeals in its Decision dated June 28, 2007. The appellate court did not give credence to appellant's denials and found that the prosecution evidence fully supports the finding that appellant and her co-accused engaged in recruitment and placement as defined under the Labor Code despite having no authority to do so. It likewise held that the same evidence proving the commission of the crime of illegal recruitment also established that appellant and her co-accused acted in unity in defrauding Palo and in misrepresenting to her that upon payment of the placement fee, they could obtain employment abroad for her. The appellant's act of deception and the resultant damage suffered by Palo render appellant guilty of *estafa*.

In this appeal, appellant raises the following lone assignment of error:

THE [APPELLATE] COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.^[11]

Essentially, the issue is whether appellant's guilt for the crimes of syndicated illegal recruitment and *estafa* was proven beyond reasonable doubt.

Appellant argues that she was able to prove that she was not part of the group that defrauded Palo. She points out that as can be gleaned from the facts established and even from Palo's testimony, she was not involved in the evil scheme orchestrated by Roberto and Chang as her signature did not even appear on the vouchers issued to Palo.

Appellant likewise contends that the elements of the crime of illegal recruitment were not established with moral certainty. Naples was never into recruitment as it was only engaged in the business of assisting clients procure passports and visas. She argues that it should be Roberto and Chang who should be convicted as she had no hand in recruiting Palo.

Appellant's arguments are bereft of merit.

Illegal recruitment is committed when these two elements concur: (1) the offenders have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers, and (2) the offenders undertake any activity within the meaning of recruitment and placement defined in Article 13(b) or any prohibited practices enumerated in Article 34 of the Labor Code. Under Article 13(b), recruitment and placement refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." In the simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.^[12] The law imposes a higher penalty when the crime is committed by a syndicate as it is considered as an offense involving economic sabotage. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph of Article 38 of the Labor Code.^[13]

Undoubtedly, what transpired in the instant case is illegal recruitment by a syndicate. As categorically testified by Palo and Caraig, appellant, together with her co-accused, made representations to Palo that they could send her to Australia to work as an apple picker. There is no denying that they gave Palo the distinct impression that they had the power or ability to send her abroad for work such that the latter was convinced to part with a huge amount of money as placement fee in order to be employed. And this act was committed by appellant and her co-accused even if they did not have the required license to do so. Appellant herself admitted that Naples, the travel agency which she owned and managed, only offered visa assistance, ticketing, documentation,

airport transfer and courier services. Clearly, neither she nor her agents had a license to recruit Palo to work abroad. It is the lack of the necessary license or authority that renders the recruitment unlawful or criminal.^[14]

Thus, as against the positive and categorical testimonies of Palo and Caraig, appellant's denials cannot prevail.^[15] Moreover, there is no reason to overturn the trial and appellate courts' findings on the credibility of the prosecution witnesses as there is no showing that any of them had ill motives against appellant or her co-accused and especially since it appears they were motivated solely by the desire to bring appellant and her co-accused to justice for the crimes they have committed.^[16]

Neither can this Court sustain appellant's contention that her participation in the recruitment is negated by the fact that her signature does not even appear on the vouchers issued to Palo. Even if Palo did not present receipts signed by appellant, this would not rule out the fact that appellant did receive the money. This Court has consistently ruled that absence of receipts as to the amounts delivered to a recruiter does not mean that the recruiter did not accept or receive such payments. Neither in the Statute of Frauds nor in the rules of evidence is the presentation of receipts required in order to prove the existence of a recruitment agreement and the procurement of fees in illegal recruitment cases. Such proof may come from the credible testimonies of witnesses^[17] as in the case at bar.

We likewise uphold appellant's conviction for *estafa*. A person who is convicted of illegal recruitment may also be convicted of *estafa* under Article 315(2) (a) of the Revised Penal Code provided the elements of *estafa* are present. *Estafa* under Article 315, paragraph 2(a) of the Revised Penal Code is committed by any person who defrauds another by using a fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of the fraud. The offended party must have relied on the false pretense, fraudulent act or fraudulent means of the accused and as a result thereof, the offended party suffered damage.^[18]

Such is the case before us. Palo parted with her money upon the prodding and enticement of appellant and her co-accused on the false pretense that they had the capacity to deploy her for employment in Australia. Unfortunately, however, Palo was not able to work abroad nor get her Australian visa. Worse, she did not get her money back.

As to the penalties, Section 7 of Republic Act No. 8042^[19] or the Migrant Workers' Act of 1995 provides the penalties for illegal recruitment:

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 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. (Emphasis supplied.)

x x x x

As appellant was found guilty of syndicated illegal recruitment constituting economic sabotage, she was aptly meted out the penalty of life imprisonment and to pay a fine of P500,000.

With respect to the *estafa* case, Article 315 of the Revised Penal Code reads:

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;

x x x x

Considering that the total amount paid by Palo is P73,500 or P51,500 in excess of the P22,000 limit, an additional sentence of five years should be imposed based on the above-quoted provision. Thus, appellant was correctly meted the maximum penalty of 13 years of *reclusion temporal*.

As to the amount to be indemnified to Palo, contrary to the findings of the trial and appellate courts, Palo's testimony and the vouchers she presented establish that the total amount she paid is only P73,500^[20] and not the P80,000 quoted as placement fee. Thus, she should only be indemnified the said amount, plus legal interest of 12% per annum from the time of filing of the information.^[21]

WHEREFORE, the appeal is **DENIED**. The Decision dated June 28, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01902 is hereby **AFFIRMED with MODIFICATION**. The amount to be indemnified to private complainant Josephine R. Palo is reduced to Seventy-Three Thousand Five Hundred Pesos (P73,500) with legal interest of 12% per annum from the time of filing of the information until fully paid.

No pronouncement as to costs.

SO ORDERED.

*Carpio**, *Carpio Morales*, *Brion*, and *Abad, JJ.*, concur.

* Additional member per Special Order No. 757.

[1] *Rollo*, pp. 2-15. Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok concurring.

[2] *CA rollo*, pp. 61-72. Penned by Judge Pedro B. Corales.

[3] *Records*, Vol. 1, pp. 1-2; *Records*, Vol. 2, pp. 1-2.

[4] *Records*, Vol. 1, p. 1.

[5] *Records*, Vol. 2, p. 1.

[6] *Records*, Vol. 1, p. 20; *Records*, Vol. 2, p. 23.

[7] *Records*, Vol. 1, p. 9.

[8] *Id.*

[9] *Records*, Vol. 2, p. 8.

[10] *CA rollo*, pp. 71-72.

[11] *Id.* at 48.

[12] *People v. Lapis*, G.R. Nos. 145734-35, October 15, 2002, 391 SCRA 131, 141-142.

[13] *People v. Hernandez*, G.R. Nos. 141221-36, March 7, 2002, 378 SCRA 593, 610.

[14] *People v. Borromeo*, G.R. No. 117154, March 25, 1999, 305 SCRA 180, 202, citing *People v. Señorón*, G.R. No. 119160, January 30, 1997, 267 SCRA 278, 286.

[15] *People v. Mercado*, G.R. Nos. 108440-42, March 11, 1999, 304 SCRA 504, 527.

[16] *People v. Sagaydo*, G.R. Nos. 124671-75, September 29, 2000, 341 SCRA 329, 337.

[17] *People v. Alvarez*, G.R. No. 142981, August 20, 2002, 387 SCRA 448, 464-465, citing *People v. Pabalan*, G.R. Nos. 115350 and 117819-21, September 30, 1996, 262 SCRA 574, 585.

[18] *People v. Hernandez*, supra note 13, at 611.

[19] 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 June 7, 1995.

[20] Records, Vol. 1, p. 9.

[21] *People v. Billaber*, G.R. Nos. 114967-68, January 26, 2004, 421 SCRA 27, 43-44.



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