

FIRST DIVISION

[G.R. No. 121907, May 27, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NORMA S. FERRER, ACCUSED-APPELLANT.**

D E C I S I O N

VITUG, J.:

An information for "Illegal Recruitment on a Large Scale," penalized under Presidential Decree ("P.D.") No. 442, as amended by P.D. No. 2018, was filed on 01 December 1993 against appellant Norma S. Ferrer. The information, filed before the Regional Trial Court of Dagupan City, Branch 41, and docketed Criminal Case No. D-12331, read:

"That during the months of March, 1993 and May, 1993, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, NORMA S. FERRER, not being a licensee nor holder of authority, did then and there, wilfully, unlawfully and criminally, undertake and perform recruitment activities, in large scale, by recruiting CRISTINA T. SAPIGAO, ZENAIDA I. LUCAS and MAY LIZA C. CORPUZ, for supposed jobs abroad.

"Contrary to PD 442, as amended by PD 2018."^[1]

Three (3) other informations were filed with the same court, docketed Criminal Case No. D-12349, Case No. D-12350 and Case No. 94-00155-D, charging the same appellant with the crime of Estafa under Article 315, subdivision 2(a), of the Revised Penal Code.

Appellant, when arraigned, pleaded "not guilty" to the charges.

The four cases were tried jointly.

In a joint decision, dated 27 June 1995, the court a quo, upon the conclusion of trial, adjudged:

"WHEREFORE, finding accused guilty beyond reasonable doubt of the offense charged in Criminal Case No. D-12331 (Violation of Article 38 of 2018 as amended), she is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of P100,000.00.

"In Criminal Case Nos. D-12350, D-12349 and 94-00155-D, accused is hereby acquitted for failure of the prosecution to prove her guilt beyond reasonable doubt.

"In the civil aspect of Criminal Case No. D-12350, D-12349 and 94-00155-D, accused is hereby ordered to pay to Jesusa Cabang and Zenaida Lucas, the sum of P13,500.00 each as reimbursement of placement fees which they paid to the former, plus temperate damages in the amount of P3,000.00 each for expenses incurred by them in making a collection of their claim.

"Accused is likewise ordered to pay to Cristina Sapigao the sum of P16,500.00 as reimbursement of placement fees and other expenses she incurred in pursuing her claim judicially and extra-judicially, plus an exemplary damage of P5,000.00 which she shall pay to each of the above-named complainants.

"SO ORDERED."^[2]

Norma Ferrer appealed to this Court raising a number of errors allegedly committed by the court a quo and assailing, in fine, her conviction on the contention that her guilt had not been established beyond reasonable doubt.

Appellant would insist that her transactions with private complainants were purely civil in nature, and that the sums received from them were really "advance rentals" for the lease of an apartment unit. Private complainants Zenaida Lucas, Cristina Sapigao, May Liza Corpuz and Jesusa Cabang categorically declared, upon the other hand, that sometime in March and May 1993, they had sought the help of appellant who, representing herself to be a labor recruiter, undertook to get them employed in London as nursing aides. The complainants were required to give their bio-data, pictures and copies of school transcripts and diploma, as well as to each pay a placement fee of P13,500.00, to appellant. Private complainants complied by submitting the above documentary requirements and by paying the solicited fees except for May Liza Corpuz who, in her case, was only able to hand over P6,800.00 to appellant. The latter issued the corresponding receipts for the payments.^[3]

Appellant assured private complainants that soon they could all leave for London. Several days passed but the promise failed to materialize. The supposed dates of departure were postponed several times. Fed up, private complainants firmly asked appellant if she really could have them employed abroad. Appellant again gave them verbal assurances. In truth, of course, she was unable to send any of private complainants for deployment overseas.^[4]

Private complainants ultimately demanded from appellant the refund of their payments. Instead, she gave them promissory notes in exchange for the receipts she had issued. Except for May Liza Corpuz who was able to recover a part of the amount she had paid, the rest were unable to recover any sum from appellant despite the latter's incessant promises to make a refund.^[5]

Private complainants thereupon reported the matter to the local police which, in turn, referred them to the National Bureau of Investigation ("NBI") in Dagupan City. Upon the advice of the NBI, private complainants obtained from the Department of Labor and

Employment ("DOLE") a certification to the effect that appellant was not a licensed recruiter.^[6]

Article 38, paragraph (a) of the Labor Code provides -

"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 Ministry of Labor and Employment or any law enforcement officer may initiate complaints under this Article."

The Code so defines recruitment and placement as referring 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: 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."^[7]

The Court subscribes to the disquisition thus aptly made by the trial court; it said:

"In the wake of the contrasting versions narrated by both parties, one imputing criminal responsibility, and the other, a mere civil obligation, which of them should be accorded credence and belief?

"This court, after a circumspectious study of the facts, is of the well considered opinion that the prosecution's evidence should be given unequivocal belief and credence for the following reasons:

"FIRST: - The testimony of accused cannot prevail over the positive assertions of complainants (People vs. Tibayan, 85 SCRA 378, 395), whose testimony is negative in character. In the absence of improper motives, which has not been shown here by accused, there is no reason why complainants would testify falsely against her (People vs. Lanseta, 95 SCRA 166).

"SECOND: - The story narrated by complainant is more consistent with logic and reason because they, being fresh graduates, their natural tendency would be to go looking for a job, instead of searching for an apartment to rent for a huge amount of money which they have very little, if no need, at all. This argument was strongly articulated by the prosecutor in the course of the proceedings. A convincing and logical argument which cannot be overlooked.

"THIRD: - Accused could not present any note or memorandum of her alleged lease agreement with complainants. Neither did she declare or explain the terms and conditions thereof in court to show that their agreement was indeed a contract of lease.

"It is indeed very unusual that accused, an operator of a canteen and boarding house who considers a written evidence of an agreement important (Exhibit `I'), would fail to draw a formal agreement with lessees which involved such a huge amount entailing reimbursement if the same is not consummated. This is not normal business practice.

"Furthermore, if the reimbursements she gave to complainants and the promissory notes she executed in their favor truly referred to her apartment or boarding house, why did she not mention such facts in those documents? Was it because she was afraid to express such a brazen lie while her victims were looking?

"In the opinion of this court, her act of retrieving the receipts of payments to her by complainants and replacing them with promissory notes was a carefully planned and deliberated scheme. Even the omission of the purpose for which said promissory notes referred to was deliberate so that in case of any suit arising from its non-payment, said notes will be capable of two interpretations, one of which accused can manipulate in her favor.

"It is reasoning tested by time, experience and application that a believable testimony should pass the test of credulity, having reference to the narrator himself and the story told. Briefly stated, it must not only proceed from a credible source, but must itself also be credible in itself. Judged according to this rule, the testimony of accused is not by itself credible."^[8]

In the crime of illegal recruitment in large scale, it needs only to be established (1) that the accused is engaged in the recruitment and placement of workers defined under Article 13(b) or in any of the prohibited activities under Article 34 of the Labor Code; (2) that the accused has failed to comply with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the need for a license or an authority to recruit and deploy workers, either locally or overseas; and (3) that the accused commits the infraction against three or more persons, individually or as a group.^[9]

Appellant faults the trial judge, who did not personally try the case, for deciding it solely on the basis of the records before him. It is not essential for a judge in coming down with a decision that he himself should have tried the case. In *People vs. Collado*,^[10] this Court has made that clear. Hence -

"It is not unusual for a judge who did not try a case to decide it on the basis of the record for the trial judge might have died, resigned, retired, transferred, etc. (*People v. Escalante, et al.*, G.R. No. L-37147, August 22, 1984, 131 SCRA 237). The fact that the judge who heard the evidence is not the one who rendered the judgment and that for that reason the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous."^[11]

In *People vs. CFI of Quezon, Branch X*,^[12] the Court has observed:

"[T]o-day, when stenographers are employed in the courts in the trial of cases and when a complete, authentic record of everything that transpires during the trial is kept and when from said record, every one x x x may read x x x x said record, and be informed fully of every act, objection, or exception taken or made during the trial, there seems to be but little reason for asserting that one qualified person may not be able to reach a just and fair conclusion from said record x x x x Every person may ascertain for himself the correctness of any disputed fact in said record."^[13]

Relative to appellant's claim that she was denied due process, the records would disclose otherwise. Evident during the trial were her participation in the proceedings and her own testimony in court given on 27 February 1995, 14 March 1995 and 03 April 1995. The right to due process of law would only require that an opportunity to be heard was duly accorded the accused. Undoubtedly she was given that opportunity.

Appellant avers that former Assistant Prosecutor Gregorio Domagas, in filing eight different estafa and illegal recruitment cases against her in different branches of the Regional Trial Court and the Municipal Trial Court in Dagupan City,^[14] has openly violated the Supreme Court's Administrative Circular No. 04-94, dated 08 February 1994, on forum-shopping.

The argument is misplaced.

Administrative Circular No. 04-94 concerns only the subject of additional requisites for civil complaints, petitions and other initiatory pleadings filed in courts and other agencies. Paragraph 1 thereof is explicit; it states:

"The complaint and other initiatory pleadings referred to and subject of this Circular are the original civil complaint, counterclaim, cross-claim, third (fourth, etc.) party complaint, or complaint-in-intervention, petition, or application wherein a party asserts his claim for relief." (Underscoring supplied.)

Parenthetically, the criminal cases filed against appellant in different courts appear to have distinct causes of action involving different offended parties who are said to have all been victimized by appellant.

WHEREFORE, the appealed decision is **AFFIRMED** in toto. Costs against appellant.
SO ORDERED.

Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.
Padilla, (Chairman), J., on leave.

^[1] Record, p. 1.

^[2] *Rollo*, pp. 33-34.

[3] TSN, 14 March 1994, pp. 2-4; 05 April 1994, pp. 3 and 8; 24 May 1994, p. 3; 16 August 1994, pp. 3-5.

[4] TSN, 14 March 1994, p. 4; 05 April 1994, pp. 4-5; 24 May 1994, p. 4; 16 August 1994, p. 3.

[5] TSN, 14 March 1994, pp. 3-4; 05 April 1994, pp. 3-5; 24 May 1994, pp. 4-5; 16 August 1994, pp. 3-5.

[6] Exhibit C, Folder of Exhibit, p. 3.

[7] Article 13(b), Labor Code; see *People vs. Bautista*, 241 SCRA 216; also *People vs. Goce*, 247 SCRA 780.

[8] *Rollo*, pp. 282-284.

[9] *People vs. Bautista*, *supra*.

[10] 196 SCRA 519.

[11] At p. 532.

[12] 227 SCRA 457, citing *United States vs. Abreu*, 30 Phil. 402.

[13] At p. 460.

[14] Appellant's Brief, p. 16, *Rollo*, p. 139.



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