407 Phil. 37

FIRST DIVISION

[G.R. No. 129070, March 16, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NELLIE CABAIS Y GAMUELA, ACCUSED-APPELLANT.

D E C I S I O N

PARDO, J.:

The case is an appeal from the decision of the Regional Trial Court, Baguio City, Branch 6, convicting accused Nellie Cabais y Gamuela of illegal recruitment committed in large scale by a syndicate, sentencing her to life imprisonment and a fine of one hundred thousand pesos (P100,000.00) and costs, and two counts of estafa, for which she was sentenced: (a) in Criminal Case No.13999-R, to six (6) months and one (1) day of *prision correccional*, as minimum, to seven (7) years, eight (8) months and twenty-one (21) days of *prision mayor*, as maximum, and to indemnify the offended party Joan Merante, in the amount of P40,000.00 as actual damages, and costs; (b) in Criminal Case No. 14000-R, to six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years, eight (8) months and twenty (20) days of *prision mayor*, as maximum, and to indemnify the offended party, Nancy Oidi, in the amount of P21,000.00 as actual damages, and costs.

On September 28, 1995, Prosecutor II Alfredo R. Centeno of Baguio City filed with the Regional Trial Court, Baguio City an information charging Harm Yong Ho, Nellie Cabais y Gamuela and Anita Pornias with illegal recruitment in large scale, resulting to economic sabotage,[1] committed as follows:

> **Criminal Case No. 13997-R**
>
> "That during the period from February 1994 to May 1994, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, representing themselves to have the capacity to contract, enlist, hire and transport Filipino workers for employment abroad, conspiring, confederating and mutually, unlawfully and feloniously collect fees, recruit and promise employment/job placement to the following persons:
>
> 1. IMELDA MORTERA
> 2. FLORENTINO BALANON, JR.
> 3. JOAN MERANTE

4. NANCY OIDI

5. JOYCE LEANO

6. DAISY TOSTOS

in South Korea, without first securing and/or obtaining license or authority from the proper government agency.

"CONTRARY TO LAW."[2]

Also, on the same date, Prosecutor Centeno filed three separate informations for estafa against the three accused, two of which are reproduced here:

Criminal Case No. 13999-R

"That on or about the 21st day of February 1994 and subsequent thereto in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another did then and there willfully, unlawfully aiding one another did then and there willfully, unlawfully and feloniously defraud one JOAN MERANTE by way of false pretenses, which are executed prior to or simultaneously with the commission of the fraud, as follows, to wit: the accused knowing fully well that he/she/they is/are not authorized job recruiters for persons intending to secure work abroad convinced said JOAN MERANTE and pretended that he/she/they could secure a job for him/her abroad, for and in consideration of the sum of P37,000.00 when in truth and in fact they could not; the said JOAN MERANTE deceived and convinced by the false pretenses employed by the accused parted away the total sum of P37,000.00, in favor of the accused, to the damage and prejudice of the said JOAN MERANTE in the aforementioned amount of THIRTY SEVEN THOUSAND PESOS (P37,000.00), Philippine Currency.

CONTRARY TO LAW."[3]

Criminal Case No. 14000-R

"That on or about the 26th day of May, 1994, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another did then and there willfully, unlawfully and feloniously defraud one NANCY OIDI by way of false pretenses, which are executed prior to or simultaneously with the commission of the fraud, as follows, to wit: the accused knowing fully well that he/she/they is/are not authorized job recruiters for persons intending to secure work abroad convinced said NANCY OIDI and pretended that he/she/they could secure a job for him/her abroad, for and in consideration of the sum of P21,000.00 when in truth and in fact they could not; the said NANCY OIDI, deceived and convinced by the false pretenses employed by the accused, parted away the total sum of

> P21,000.00, in favor of the accused, to the damage and prejudice of the said NANCY OIDI in the aforementioned amount of TWENTY ONE THOUSAND PESOS (P21,000.00), Philippine Currency.
>
> CONTRARY TO LAW."[4]

Of the three accused, only Nellie Cabais and Harm Yong Ho were arrested. Accused Anita Forneas remained at large.

At the arraignment on January 31, 1995, Nellie Cabais pleaded not guilty to the charges against her.[5]

On May 10, 1996, the City Jail Warden of Cabanatuan City transferred accused Harm Yong Ho to Muntinlupa National Penitentiary to serve a life sentence meted out by the Regional Trial Court, Manila, Branch 34, in Criminal Case No. 95-145278 for illegal recruitment in large scale.[6]

Thus, trial in the instant cases proceeded only for accused Nellie Cabais.

The facts are as follows:

Sometime in February 1994, complainant Joan Merante, 37 years old, met accused Nellie Cabais in Maharlika, Baguio City. Accused Cabais informed her that she was connected with Red Sea Employment Agency (RSEA), a Manila-based agency which was licensed to recruit overseas contract workers.[7]

Also, sometime in April 1994, accused Cabais met complainant Nancy Oidi, 27 years old, in a restaurant. She told her that she was a legal recruiter working with a licensed recruitment agency based in Manila.[8]

Meanwhile, Florentino Balanon, Jr., 18 years old, heard from his mother that accused Nellie Cabais was a recruiter. Sometime in 1994, he went to Maharlika Building in Baguio City to see accused Nellie Cabais in connection with his intention to apply for work as a factory worker.[9] She told him to submit his application because there was available work in South Korea.

Imelda Mortera, 30 years old, knew accused Cabais because the latter was a cousin of Imelda's husband. Accused Cabais came to Mortera's canteen at Easter School and showed her papers for job opportunities in South Korea. She believed accused Cabais.[10]

Thus, accused Cabais talked to complainants several times during the period of February 1994 up to May 1994, persuading them to be contract workers in South Korea. In subsequent meetings, accused Cabais introduced accused Anita Forneas as her boss and the owner of RSEA. Accused Cabais and Forneas tried to convince them to submit their applications so that RSEA could process them. Later on, accused Cabais introduced to them a certain Korean named Harm Yo Hong. Harm Yo Hong managed to persuade the complainants to apply as contract workers in South Korea.

Convinced of the prospect of immediate employment abroad, Mortera, Balanon, Jr., Oidi and Merante submitted application forms, bio-data, medical examination, NBI clearance, and paid the placement fee. On February 21, 1994, Joan Merante paid twenty thousand (P20,000.00) pesos to accused Anita Forneas in Baguio City.[11] On April 13, 1994, Joan Merante paid seventeen thousand (P17,000.00) pesos to accused Cabais for her placement fee and three thousand (P3,000) pesos for her passport.[12] Nancy Oidi paid twenty one thousand (P21,000.00) pesos to accused Anita Forneas in Baguio City.[13] Imelda Mortera likewise paid twenty thousand (P20,000.00) pesos to accused Forneas as placement fee.[14] Florentino Balanon paid eight thousand (P8,000.00) pesos to accused Cabais and accused Forneas in Baguio City,[15] and an additional amount of three thousand (P3,000.00) pesos to accused Cabais in Manila, for placement fee, and five hundred (P500.00) pesos for his passport. All payments were duly receipted.

After complying with all the requirements, complainants were told to wait for their deployment. They waited and repeatedly inquired about the status of their applications. However, several months passed and they were not deployed as promised.

When they could wait no longer, complainants checked with the office of the Philippine Overseas Employment Administration (POEA) in Baguio and learned that Harm Yong Ho, Nellie Cabais and Anita Forneas were not licensed to recruit in Baguio or in any part of the Cordillera Administrative Region.[16] The three accused likewise did not possess the required provincial authority.

Thus, complainants demanded the return of the money given. However, they never saw Anita Forneas and Harm Yong Ho again. The money paid was not returned to complainants.

On June 27, 1995, Mortera, Balanon, Jr., Oidi and Merante filed their affidavit-complaints with the City Prosecutor's Office of Baguio against the three accused.

For her part, accused Cabais denied all the charges against her.[17] She alleged that right after she arrived from Korea in 1993 where she worked as a baby-sitter, she immediately looked for another agency that could provide her with work abroad. Thus, she filed with RSEA an application for job placement overseas. While waiting for RSEA to process her papers, accused Cabais was hired as an employee to augment her insufficient payment of the placement fee. As such employee, her duties included processing other applications for job placement, entertaining applicants, accompanying accused Anita Forneas and doing errands for the latter. Accused Cabais denied involvement in the recruitment of complainants, claiming that it was her boss who was doing recruitment activities. She admitted, though, that she received payments from complainants, but alleged that she was merely acting upon the instruction of Forneas and that she turned over all the payments to her employer.

On February 6, 1997, the trial court rendered a decision convicting accused Nellie Cabais of the crimes charged. The dispositive portion of the decision reads:

"WHEREFORE, Judgment is hereby rendered as follows:

"1. In Crim. Case No. 13997-R, the Court finds the accused Nellie Cabais guilty beyond reasonable doubt by direct participation in conspiracy with others (who will still be tried separately) of the offense of illegal recruitment in a large scale and by a syndicate as defined and penalized under Article 38 (a) and (b) in relation to Article 13 (b), 16, 34 and 39 (a) of PD 442 as amended by PD 1920 and PD 2018 of the Labor Code of the Philippines and hereby sentences her to Life Imprisonment and to pay the Fine of P100,000.00 and to pay the costs.

"The accused Nellie Cabais being a detention prisoner is entitled to be credited with 4/5 of her preventive imprisonment in accordance with Article 29 of the Revised Penal Code in the service of her sentence.

"2. In Crim. Case No. 13999-R, the Court finds accused Nellie Cabais guilty beyond reasonable doubt by direct participation in conspiracy with others (who will still be tried separately) of the crime of estafa as defined and penalized under Article 315 first paragraph in relation to No. 2 (a) of the same Article and sentences her, applying the Indeterminate Sentence Law, to an imprisonment ranging from 6 months and 1 day of prision correccional as minimum to 7 years 8 months and 21 days of prision mayor as maximum and to indemnify the offended party, Joan Merante, the amount of P40,000.00 as actual damages without subsidiary imprisonment in case of insolvency and the pay the proportionate costs.

"The accused Nellie Cabais being a detention prisoner is entitled to be credited with 4/5 of her preventive imprisonment in accordance with Article 29 of the Revised Penal Code in the service of her sentence.

"3. In Crim. Case No. 14000-R, the Court finds the accused Nellie Cabais guilty beyond reasonable doubt by direct participation in conspiracy with others (who will still be tried separately) of the crime of estafa as defined and penalized under Article 315, first paragraph in relation to No. 2 (a) of the same Article and sentences her, applying the Indeterminate Sentence Law, to an imprisonment ranging from 6 months and 1 day of prision correccional as minimum to 6 years 8 months and 20 days of prision mayor as maximum; and to indemnify the offended party, Nancy Oidi, the amount of P21,000.00 as actual damages without subsidiary imprisonment in case of insolvency and to pay the proportionate costs.

"The accused Nellie Cabais being a detention prisoner is entitled to be credited 4/5 of her preventive imprisonment in accordance with Article 29 of the Revised Penal Code in the service of her sentence.

"4. In Criminal Case No. 14001-R, the prosecution having failed to prove her guilty beyond reasonable doubt, the Court hereby acquits Nellie Cabais of the offense of estafa as charged in the said information where Daisy Tostos is the complainant. Costs de oficio.

> "The City Jail Warden is directed to release accused Nellie Cabais insofar as Crim. Case No. 14001-R is concerned where Daisy Tostos is the complainant unless held for other charges.
>
> "SO ORDERED.
>
> "Given this 6th day of February, 1997, in the City of Baguio, Philippines.
>
> "(sgd.) RUBEN C. AYSON
> Judge"[18]

Hence, this appeal.[19]

Accused-appellant Nellie Cabais contends that she is not liable for illegal recruitment and estafa considering that she was merely an employee of Red Sea Employment Agency and did not actually recruit applicants. Moreover, she did not appropriate to her own use the placement fees she received.

The appeal lacks merit.

The essential elements of illegal recruitment committed in large scale are: (1) that the accused engaged in acts of recruitment and placement of workers as defined under Article 13 (b) or in any prohibited activities under Article 34 of the Labor Code; (2) that the accused had not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the requirement to secure a license or an authority to recruit and deploy workers, either locally or overseas; and (3) that the accused committed the unlawful acts against three (3) or more persons, individually or as a group.[20]

Accused-appellant contends that she was not involved in recruitment but was merely an employee of a recruitment agency. An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in illegal recruitment.[21] Recruitment is "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."[22] In this case, evidence showed that accused-appellant was the one who informed complainants of job prospects in Korea and the requirements for deployment. She also received money from them as placement fees. All of the complainants testified that they personally met accused-appellant and transacted with her regarding the overseas job placement offers. Complainants parted with their money, evidenced by receipts signed by accused Cabais and accused Forneas. Thus, accused-appellant actively participated in the recruitment of the complainants.

There is no showing that any of the complainants had any ill-motive to testify falsely against accused-appellant. We find no cogent reason to disturb the findings of the trial court, which is in the best position to make an assessment of the witnesses' credibility and to appreciate complainants' truthfulness, honesty and candor.[23] As against the positive and categorical testimonies of the complainants, accused-appellant's mere denial cannot prevail.[24]

Furthermore, accused-appellant did not possess any license to engage in recruitment activities, as evidenced by a certification from the POEA and the testimony of a representative of said government agency.[25]

Her acts constituted recruitment, and considering that she admittedly had no license or authority to recruit workers for overseas employment, accused-appellant is guilty of illegal recruitment. Despite the fact that she was just an ordinary employee of the company, her criminal liability would still stand for being a conspirator with the corporate officers in undertaking illegal recruitment activities.[26] Since the recruitment involves three or more persons, accused-appellant is guilty of illegal recruitment in a large scale punishable under Article 39 of the Labor Code with life imprisonment and a fine of one hundred thousand pesos.

As to the charges of estafa, accused-appellant contends that she is not liable for the offenses charged because she did not appropriate for her own use the money given to her by complainants as placement and passport fees.

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.[27] From the foregoing, the fact that the money was appropriated by accused for her own use is not an element of the crime of estafa. Thus, accused-appellant Cabais' contention under such ground is untenable.

Moreover, accused-appellant misrepresented herself to complainants as one who can make arrangements for job placements in Korea. Complainants were successfully induced to part with their money, causing them damage and prejudice. Consequently, accused-appellant is guilty of estafa.

The law prescribes the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period for estafa in case the amount of the fraud is over P12,000.00 but does not exceed P22,000.00. If such amount exceeds the latter sum, the penalty shall be imposed in its maximum period, adding one year for each additional P10,000.00, but the total penalty which may be imposed shall not exceed twenty years.[28]

In Criminal Case No. 14000-R, the amount defrauded was P21,000.00. Applying the Indeterminate Sentence Law, the minimum of the indeterminate sentence shall be taken from the penalty next lower in degree to the prescribed penalty, which is *prision correccional* in its minimum period to *prision correccional* in its medium period. Thus, the minimum of the indeterminate sentence is anywhere within six (6) months and one

(1) day to four (4) years and two (2) months of *prision correccional.* The maximum of the indeterminate sentence in the absence of any modifying circumstance, shall be within the range of the medium period of the penalty prescribed by law, which is five (5) years, five (5) months, and eleven (11) days of *prision correccional* to six (6) years, eight (8) months and twenty (20) days of *prision mayor*.

In Criminal Case No. 13999-R, the amount defrauded was P40,000.00. Applying the Indeterminate Sentence Law, the minimum of the penalty next lower in degree to the prescribed penalty is *prision correccional* in its minimum and medium periods. Thus, the minimum of the indeterminate sentence is anywhere within six (6) months and one (1) day to four (4) years and two (2) months of *prision correccional.* There are no modifying circumstances attendant; however, as the amount involved exceeds P22,000.00, the prescribed penalty shall be imposed in the maximum period as provided in Article 315 of the Revised Penal Code, adding one year for every additional P10,000.00, provided the total penalty shall not exceed twenty (20) years of *reclusion temporal.*[29] The one-year period shall be added to the maximum period of the prescribed penalty, which is from six (6) years, eight (8) months, twenty-one (21) days to eight (8) years of *prision mayor,* making a total of from seven (7) years, eight (8) months and twenty-one (21) days to nine (9) years of *prision mayor.* The maximum term of the indeterminate sentence shall be fixed anywhere within the aforesaid period. Thus, the maximum term that the lower court imposed is, therefore, correct.

With respect to Criminal Case No. 13997-R for illegal recruitment in large scale, the trial court correctly imposed the penalty of life imprisonment and a fine of one hundred thousand (P100,000.00) pesos.

WHEREFORE, the Court AFFIRMS the decision of the Regional Trial Court, Baguio City, Branch 6, convicting accused-appellant Nellie Cabais y Gamuelan of illegal recruitment in a large scale by a syndicate, and sentencing her to life imprisonment and to pay a fine of one hundred thousand (P100,000.00) pesos, and costs; in Criminal Case No. 13999-R, sentencing her to an indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to seven (7) years, eight (8) months and twenty one (21) days of *prision mayor*, as maximum, and to indemnify the offended party Joan Merante, in the amount of P40,000.00 as actual damages, and costs; and in Criminal Case No. 14000-R, sentencing her to an indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years, eight (8) months and twenty (20) days of *prision mayor*, as maximum, and to indemnify the offended party, Nancy Oidi, in the amount of P21,000.00 as actual damages, and costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and *Ynares-Santiago, JJ.,* concur.

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[1] Violation of Article 38 (a) in relation to Article 13 (b), 16, 34, and 39 (c) of P. D. 442, as amended by P. D. 1920 and P. D. 2018, Labor Code of the Philippines.

[2] Information, Criminal Case No. 13997-R, RTC Record, p. 1.

[3] Information, RTC Record, Criminal Case No. 13999-R, p. 1.

[4] Information, Criminal Case No. 14000-R, RTC Record, p. 1.

[5] Order, Criminal Case No. 13997-R, RTC Record, pp. 33-34.

[6] Order, RTC Record, Criminal Case No. 13997-R, pp. 65-66.

[7] TSN, June 19, 1996, pp. 17-19.

[8] TSN, June 19, 1996, p. 38.

[9] TSN, July 3, 1996, pp. 5-6.

[10] TSN, July 3, 1996, pp. 26-27.

[11] TSN, June 19, 1996, pp. 19-20.

[12] TSN, June 19, 1996, p. 21.

[13] TSN, June 19, 1996, p. 40.

[14] TSN, July 3, 1996, pp. 35-36.

[15] Petty Cash Voucher, RTC Record, Criminal Case No. 13997-R, p. 116.

[16] Certification, Criminal Case No. 13997-R, RTC Record, p. 111.

[17] TSN, August 8, 1996, pp. 3-25; TSN, August 26, 1996, pp. 2-19.

[18] Decision, Criminal Case No. 13997-R, RTC Record, pp. 21-23.

[19] Notice of Appeal, Rollo, pp. 50-51. On December 17, 1997, we accepted the appeal, Rollo, p. 53.

[20] People v. Mercado, 304 SCRA 504 (1999).

[21] People v. Chowdury, G. R. Nos. 129577-80, February 15, 2000.

[22] Article 13 (b), Labor Code of the Philippines.

[23] People v. Yabut, 316 SCRA 237 (1999).

[24] People v. Ong, 322 SCRA 38 (2000).

[25] Testimony of Nonette L. Villanueva, TSN, June 19, 1996, pp. 2-14.

[26] People v. Cosa, 354 Phil. 301 (1998).

[27] People v. Banzales, G. R. No. 132289, July 18, 2000, *citing* People v. Romero, 224 SCRA 755 (1993).

[28] Article 315, Revised Penal Code.

[29] People v. Ordoño, G. R. Nos. 129593 & 143533-35, July 10, 2000; People v. Saley, 353 Phil. 897, 936-937 (1998).
