

408 Phil. 328

FIRST DIVISION**[G.R. No. 128280, April 04, 2001]****PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALICIA A. CHUA, ACCUSED-APPELLANT.****D E C I S I O N****PARDO, J.:**

Accused Alicia Chua has appealed from the decision^[1] of the Regional Trial Court, Manila, Branch V finding her guilty beyond reasonable doubt of illegal recruitment committed in large scale and sentencing her to life imprisonment and a fine of P100,000.00, and eight (8) counts of estafa sentencing her to various penalties therefor.

On October 05, 1993, Assistant City Prosecutor Leocadio H. Ramos, Jr. of Manila filed with the Regional Trial Court, Manila an information^[2] against accused Alicia A. Chua reading as follows:

Crim. Case No. 93-127418:

"That in or about and during the period comprised between October 29, 1992 and January 19, 1993, inclusive, in the City of Manila, Philippines, the said accused, representing herself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully, for a fee, recruit and promise employment/job placement abroad to the following persons, namely: DOMINGO F. TERCENIO, MARTIN B. BERMEJO, EVANGELINE F. GAVINA, DANTE F. BALUIS, EDUARD V. ESTILLER, EDGAR B. ABONAL, VIOLETA F. REGALADO, GLORIA J. RICAFFRENTE and LONITO F. BALUIS, without first having secured the required license or authority from the Department of Labor.

"Contrary to law."^[3]

On the same date, the same prosecutor filed with the Regional Trial Court, Manila nine (9) other informations against the accused for estafa:

Crim. Case No. 93-127419:

"The undersigned accuses ALICIA A. CHUA of the crime of estafa, committed as follows: That on or about October 29, 1992, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud DOMINGO F. TERCENIO in the following manner, to wit:

the said accused, by means of false manifestations and fraudulent representation which she made to said DOMINGO F. TERCENIO to the effect that she had the power and capacity to recruit and employ said DOMINGO F. TERCENIO and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof and by means of other similar deceits, induced and succeeded in inducing said DOMINGO F. TERCENIO to give and deliver, as in fact he gave and delivered to said accused the amount of P15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain as in fact she did obtain the amount of P15,000.00 which amount once in her possession with intent to defraud, willfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit, to the damage and prejudice of said DOMINGO F. TERCENIO in the aforesaid amount of P15,000.00 Philippine Currency.

"CONTRARY TO LAW."^[4]

Crim. Case No. 93-127420:

"That on or about November 21, 1992, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously defraud MARTIN B. BERMEJO in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he/they/she made to said MARTIN B. BERMEJO to the effect that she had the power and capacity to recruit and employ MARTIN BERMEJO in Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said MARTIN B. BERMEJO to give and deliver, as in fact he gave and delivered to said accused the amount of P15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact she did obtain the amount of P15,000.00 which amount once in her possession with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit to the damage and prejudice of said MARTIN B. BERMEJO in the aforesaid amount of P15,000.00, Philippine Currency.

"CONTRARY TO LAW."^[5]

Crim. Case No. 93-127421:

"That on or about November 6, 1992, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously defraud EVANGELINE F. GAVINA in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he/they/she made to said EVANGELINE F. GAVINA to the effect that she had the power and capacity to recruit and employ EVANGELINE F. GAVINA and

could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits induced and succeeded in inducing said EVANGELINE F. GAVINA to give and deliver, as in fact she gave and delivered to said accused the amount of P15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely, to obtain, as in fact she did obtain the amount of P15,000.00 which amount once in her possession with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit to the damage and prejudice of said EVANGELINE F. GAVINA in the aforesaid amount of P15,000.00, Philippine Currency.

"CONTRARY TO LAW."^[6]

Crim. Case No. 93-127422:

"That on or about December 10, 1992, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously defraud DANTE F. BALUIS in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he/they/she made to said DANTE F. BALUIS to the effect that she had the power and capacity to recruit and employ DANTE F. BALUIS in Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said DANTE F. BALUIS to give and deliver, as in fact he gave and delivered to said accused the amount of P11,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact she did obtain the amount of P11,000.00 which amount once in her possession with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit to the damage and prejudice of said DANTE G. BALUIS in the aforesaid amount of P11,000.00, Philippine Currency.

"CONTRARY TO LAW."^[7]

Crim. Case No. 93-127423:

"That on or about November 24, 1992, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously defraud EDUARD V. ESTILLER in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he/she/they made to said EDUARD V. ESTILLER to the effect that she had the power and capacity to recruit and employ EDUARD V. ESTILLER in Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said EDUARD V. ESTILLER to give and deliver, as in fact he/she/they gave and delivered to

said accused the amount of P15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely, to obtain, as in fact she did obtain the amount of P15,000.00 which amount once in her possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit to the damage and prejudice of said EDUARD V. ESTILLER, in the aforesaid amount P15,000.00 Philippine Currency.

"CONTRARY TO LAW."^[8]

Crim. Case No. 93-127424:

"That on or about December 11, 1992, in the City of Manila, Philippines, the said accused, did then and therein wilfully, unlawfully and feloniously defraud EDGAR B. ABONAL in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he/she/they made to said EDGAR B. ABONAL to the effect that she had the power and capacity to recruit and employ EDGAR B. ABONAL in Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said EDGAR B. ABONAL to give and deliver, as in fact he/she/they gave and delivered to said accused the amount of P15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely, to obtain, as in fact she did obtain the amount of P15,000.00 which amount once in her possession with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit to the damage and prejudice of said EDGAR B. ABONAL in the aforesaid amount P15,000.00 Philippine Currency.

"CONTRARY TO LAW."^[9]

Crim. Case No. 93-127425:

"That on or about, December 10, 1992, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously defraud VIOLETA F. REGALADO in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he/she/they made to said VIOLETA F. REGALADO to the effect that she had the power and capacity to recruit and employ VIOLETA F. REGALADO in Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said VIOLETA F. REGALADO to give and deliver, as in fact he/she/they gave and delivered to said accused the amount of P15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely, to obtain, as in fact

she did obtain the amount of P15,000.00 which amount once in her possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit to the damage and prejudice of said VIOLETA F. REGALADO in the aforesaid amount P15,000.00 Philippine Currency.

"Contrary to law."^[10]

Crim. Case No. 93-127426:

"That on or about January 19, 1993, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously defraud GLORIA J. RICAFFRENTE in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he/she/they made to said GLORIA J. RICAFFRENTE to the effect that she had the power and capacity to recruit and employ GLORIA J. RICAFFRENTE in Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said GLORIA J. RICAFFRENTE to give and deliver, as in fact he/she/they gave and delivered to said accused the amount of P15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely, to obtain, as in fact she did obtain the amount of P15,000.00 which amount once in her possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit, to the damage and prejudice of said GLORIA J. RICAFFRENTE in the aforesaid amount of P15,000.00, Philippine Currency.

"CONTRARY TO LAW."^[11]

Crim. Case No. 93-127427:

"That on or about October 29, 1992, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously defraud LONITO F. BALUIS in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he/she/they made to said LONITO F. BALUIS to the effect that she had the power and capacity to recruit and employ LONITO F. BALUIS in Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said LONITO F. BALUIS to give and deliver, as in fact he/she/they gave and delivered to said accused the amount of P15,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely, to obtain, as in fact she did obtain the amount of P15,000.00 which amount once in her possession, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit to the damage and prejudice

of said LONITO F. BALUIS in the aforesaid amount P15,000.00, Philippine Currency.

"CONTRARY TO LAW."^[12]

On November 8, 1993, the trial court arraigned the accused. She pleaded not guilty to each case.^[13] Trial ensued. The cases were consolidated and tried jointly.

The facts are as follows:

In September 1992, accused Chua received a facsimile message from Harmony Electronics Company in Taiwan.^[14] The message was written in Chinese characters except for the names of To-ong Zenon Tumenlaco and Tercenio Domingo Fornaliza. Harmony asked her to call up To-ong and Tercenio and tell them that they were needed in Taiwan. Accused Chua contacted To-ong and told him the message.^[15]

In October 1992, To-ong and Tercenio went to the office of accused Chua, and the latter told them that she could send them to Taiwan upon payment of a placement fee of P15,000.00 each. She also asked them to secure NBI clearances and medical certificates.^[16] On October 29, 1992, Tercenio, together with private complainant Lonito Baluis, went back to the office of accused Chua and submitted the requirements. Tercenio and Lonito Baluis paid P15,000.00 each for which they were issued a receipt bearing the name Man Tai Trading and General Services with accused Chua's signature.^[17]

Accused Chua assured Tercenio and Lonito Baluis that they would be able to leave for Taiwan soon. Three months passed, but they were not deployed. Tercenio became apprehensive and told accused Chua that he would withdraw his application and ask for refund of the placement fee. Accused Chua repeatedly promised that she would give back the money to him, but she never did. After a few more months, Tercenio could not anymore locate accused Chua.^[18]

Accused Chua used the same *modus operandi* on the other private complainants. After requiring each complainant to pay a placement fee of P15,000.00 each, to secure NBI clearances and to undergo medical examinations, she would go in hiding.

In time, complainants inquired from the Philippine Overseas Employment Agency (POEA) about accused Chua's activities. The POEA issued a certification that accused Chua was not licensed to recruit persons/workers for overseas employment.^[19]

On October 3, 1995, the trial court promulgated a decision, the dispositive portion^[20] of which reads:

"WHEREFORE, premises considered, Alicia A. Chua is hereby found:

"1) Guilty beyond reasonable doubt of the crime of Illegal Recruitment committed in large scale in Criminal Case No. 93-127418 and is therefore

sentenced to serve a penalty of life imprisonment and a fine of P100,000.00;

"2) Guilty beyond reasonable doubt of the crime of Estafa in Criminal Case No. 93-127419 and is sentenced to serve indeterminate sentence of four (4) years of *prision correccional* maximum, as minimum to six (6) years and eight (8) months of *Prision Mayor* minimum as maximum, and to pay the complainant the sum of P15,000.00 plus legal interest from the filing of the case until fully paid;

"3) Guilty beyond reasonable doubt of the crime of Estafa in Criminal Case No. 93-127420 and is sentenced to serve an indeterminate sentence of four (4) years of *prision correccional* maximum as minimum to six (6) years and eight (8) months of *prision mayor* minimum as maximum, and to pay the complainant the sum of P15,500.00 plus legal interest from the filing of the case until fully paid;

"4) Guilty beyond reasonable doubt of the crime of Estafa in Criminal Case No. 93-127421 and is sentenced to serve an indeterminate sentence of four (4) years of *prision correccional* maximum as minimum to six (6) years and eight (8) months of *prision mayor* minimum as maximum, and to pay the complainant the sum of P15,500.00 plus legal interest from the filing of the case until fully paid;

"5) Guilty beyond reasonable doubt of the crime of Estafa in Criminal Case No. 93-127422 and is therefore sentenced to serve an indeterminate sentence of six (6) months of *Arresto Mayor* maximum, as minimum to two (2) years and eleven (11) months of *prision correccional* medium, as maximum, and to pay the complainant the sum of P11,500.00 plus legal interest from the filing of the case until fully paid;

"6) Guilty beyond reasonable doubt of the crime of Estafa in Criminal Case No. 93-127423 and is therefore sentenced to serve an indeterminate sentence of four (4) years of *prision correccional* maximum, as minimum to six (6) years and eight (8) months of *prision mayor* minimum, as maximum and to pay the complainant the sum of P15,500.00 plus legal interest from the filing of the case until fully paid;

"7) Guilty beyond reasonable doubt of the crime of Estafa in Criminal Case No. 93-127425 and is therefore sentenced to serve an indeterminate sentence of four (4) years of *prision correccional* maximum, as minimum to six (6) years and eight (8) months of *prision mayor* minimum as maximum, and to pay the complainant the sum of P14,500.00 plus legal interest from the filing of the case until fully paid;

"8) Guilty beyond reasonable doubt of the crime of Estafa in Criminal Case No. 93-127426 and is therefore sentenced to serve indeterminate sentence of four (4) years of *prision correccional* maximum, as minimum to six (6) years and eight (8) months of *prision mayor* minimum as maximum, and to pay the complainant the sum of P14,500.00 plus legal interest from the

filing of the case until fully paid;

"9) Guilty beyond reasonable doubt of the crime of Estafa in Criminal Case No. 93-127427 and is sentenced to serve indeterminate sentence of four (4) years of *prision correccional* maximum, as minimum to six (6) years and eight (8) months of *prision mayor* minimum as maximum, and to pay the complainant the sum of P15,000.00 plus legal interest from the filing of the case until fully paid.

"As earlier stated, Criminal Case No. 93-127424 is dismissed for failure of the prosecution to adduce evidence.

"SO ORDERED.

"Manila, September 20, 1995.

"(Sgd.) ZEUS C. ABROGAR
"Judge."

Hence, this appeal.^[21]

In her brief, accused-appellant anchors her defense on the approval of her application for a license to recruit on April 13, 1993, which, according to her, rendered her a genuine holder of authority. She also claimed that she was denied her constitutional right to compulsory process.^[22]

On the other hand, the Solicitor General contends that appellant was a non-licensee and had no authority to recruit anyone for overseas employment, and that she failed to proffer any compelling reason to justify her request for the production of POEA records.^[23]

We find the appeal devoid of merit.

Appellant interposes the defense that the approval of her application for a service contractor's authority on April 13, 1993 should be given a retroactive effect as to make all her previous recruitment activities valid. However, this issue was not raised in the trial court. She cannot now be allowed to raise it for the first time on appeal without offending basic rules of fair play, justice and due process.^[24]

The records show that the license was not issued due to her failure to comply with post-licensing requirements.^[25] It is the issuance of the license which makes the holder thereof authorized to perform recruitment activities. The law specifically provides that "every license shall be *valid* for at least two (2) years *from the date of issuance* unless sooner cancelled or revoked by the Secretary.^[26]

Appellant herself admitted that she had no authority to recruit private complainants, thus:

ATTY. MONTERO (to witness):

Q: Now what was the reply of Harmony Electronics Company when you questioned them about the use of your company?

A: They wrote back to me and they told me that "never mind, we only need Cenon To-ong and Domingo Tersenio." **But I told them that I am not in the position to employ these people because I am not a licensed agency for that matter** and they said that "I would just send you an authority and show this to the pertaining government agency who could at least send these two people."

Q: So what did you do after that?

A: I told them to send me something if I can do the way out of it, I will ask anybody from my colleagues to do the hiring of these people.

Q: Did you ask anybody from your colleagues to do the hiring of these two?

A: I did but Alcamojar was not also licensed.

Q: So what happened after that?

A: I told Cenon because Cenon is much better to understand that, he looked for one company who could just or whom I can transfer the authority that the Harmony Electronics would be sending me, so I will just transfer the authority to any agency who could send them back to Taiwan.^[27]

Appellant cannot now claim that she was a genuine holder of authority from the Secretary of Labor and Employment to recruit factory workers for Harmony Electronics Company based in Taiwan.

As to her claim of denial of the constitutional right to compulsory process, we find the same to be without merit.

The 1973 and 1987 Constitutions expanded the right to compulsory process which now includes the right to secure the production of evidence in one's behalf.^[28] By analogy, *U.S. vs. Ramirez*^[29] which laid down the requisites for compelling the attendance of witnesses, may be applied to this expanded concept. Thus, the movant must show: (a) that the evidence is really material; (b) that he is not guilty of neglect in previously obtaining the production of such evidence; (c) that the evidence will be available at the time desired; and (d) that no similar evidence could be obtained.

In the case at bar, the trial court correctly denied appellant's motion for the production of the records which were the basis in issuing the POEA Certification dated February 3, 1994,^[30] as the same would not in any way alter the undisputed fact that appellant was not issued a license until then.^[31]

WHEREFORE, the Court **AFFIRMS** the appealed decision *in toto*, with costs against

appellant.

SO ORDERED.

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

[1] Crim. Cases Nos. 93-127418-27, promulgated on October 3, 1995, Judge Zeus C. Abrogar, presiding. (Original Record, pp. 225-231).

[2] Rollo, pp. 6-7.

[3] Rollo, pp. 8-9.

[4] Rollo, pp. 8-9.

[5] Rollo, pp. 10-11.

[6] Rollo, pp. 12-13.

[7] Rollo, pp. 14-15.

[8] Rollo, pp. 16-17.

[9] Rollo, p. 18. This case was dismissed for failure to adduce evidence.

[10] Rollo, pp. 19-20.

[11] Rollo, pp. 21-22.

[12] Rollo, pp. 23-24.

[13] Records, p. 46.

[14] Exh. I.

[15] TSN, January 17, 1995, pp. 2-5.

[16] TSN, January 3, 1994, pp. 4-6.

[17] TSN, February 4, 1994, pp. 2-3.

[18] TSN, January 3, 1994, pp. 7-8.

- [19] *Ibid.*, p. 8; Exh. C.
- [20] Decision, pp. 5-7 (Original Record, pp. 229-231).
- [21] Notice of Appeal, Rollo, p. 41.
- [22] Appellee's Brief, pp. 1-2 (Rollo, pp. 76-77).
- [23] Appellant's Brief, pp. 17-36 (Rollo, pp. 136-155).
- [24] *Ysmael vs. Court of Appeals*, 318 SCRA 215, 227 (1999).
- [25] TSN, February 4, 1994, p. 8.
- [26] Section 5, Rule II, Book Two, Rules and Regulations governing Overseas Employment (cited in Appellee's Brief, pp. 26-27; emphasis supplied).
- [27] TSN, January 17, 1995, pp. 7-8.
- [28] Article III, Sec. 14(2), 1987 Constitution.
- [29] 39 Phil. 738, 742 (1919).
- [30] Exh. C.
- [31] TSN, February 4, 1994, pp. 6-10.



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