418 Phil. 777

SECOND DIVISION

[G.R. No. 125081, October 03, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REMEDIOS PASCUA, LETICIA AVIGUETERO, AND AURORA SOLIVEN, ACCUSED, AURORA SOLIVEN, ACCUSED-APPELLANT.

D E C I S I O N

BUENA, J.:

This is an appeal by accused-appellant Aurora Soliven from the Decision[1] of the Regional Trial Court of Quezon City, Branch 76, convicting her of illegal recruitment in large scale and three counts of estafa. The dispositive portion of the decision reads, as follows:

> "WHEREFORE, finding the accused Aurora Soliven guilty beyond reasonable doubt of the crime of illegal recruitment on large scale described and penalized under Sec. 13 (b) in relation to Sec. 39 of the Labor Code as amended by PD 1920 to 2018 for recruiting Marlon Sotero, Jaylord Balauro and Shirley Velasco, she is hereby sentenced to suffer life imprisonment and to pay a fine of P100,000.00.
>
> "Likewise, the court also finds the accused Aurora Soliven guilty beyond reasonable doubt of the crime of estafa described and penalized under Sec. 2 of Art. 315 of the Revised Penal Code applying the indeterminate sentence law there being no modifying circumstance, sentences her to suffer imprisonment of 8 years and 1 day of *prision mayor*, to 12 years and 1 day of reclusion temporal each, in Crim. Cases No. 58865; 58867; and 58870 and to indemnify the offended parties as follows:
>
> Marlon Sotero - P21,600.00
> Jaylord Balauro - 8,700.00
> Shirley Velasco - 27,000.00
>
> "For failure to prosecute Criminal Cases Nos. 58866, 58868 and 58869 the said cases are hereby dismissed. Remedios Pascua is hereby acquitted of the crime charged against her.
>
> "Let the cases against Leticia Aviguetero who has not been arraigned be archived. Let warrant of arrest be issued against her.
>
> "SO ORDERED."

The Amended Information in Criminal Case No. Q-94-58864 charged appellant Aurora Soliven and one Leticia Aviguetero, with the crime of illegal recruitment in large scale committed as follows:

> "That on or about the months of November 1993 to May 1994 in Quezon City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another did then and there willfully, unlawfully and feloniously recruit herein complainants, namely: Jaylord Balauro; Shirley A. Velasco; Roel F. Ilustre; Marlon B. Sotero; Edwin R. Pernia and Rafael Cales for employment as factory workers or engineer in Malaysia, for and in consideration of the sum, ranging from P25,000.00 to P32,000.00 as placement fee which the complainants delivered and paid to herein accused in the total amount of P164,000.00 without said accused having secured the necessary license or authority from the Department of Labor and Employment.
>
> "CONTRARY TO LAW."

The amended information in Criminal Case No. Q-94-58865 charged them with Estafa allegedly committed, thus:

> "That on or about the months of February and March 1994 in Quezon City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously recruit and promise employment as factory worker to Shirley A. Velasco in Malaysia for a total consideration of P28,600.00 as placement fee, knowing that they had no power, capacity or lawful authority whatsoever, and with no intention to fulfill their promise, but merely as pretext, scheme or excuse to get or exact money from the said complainant as they did in fact collect and receive the amount of P28,600.00 from the said Shirley Velasco to the latter's damage, loss and prejudice in the aforesaid amount.
>
> "CONTRARY TO LAW."[2]

The informations in Criminal Cases Nos. Q-94-58866, Q-94-58867, Q-94-58868, Q-94-58869 and Q-94-58870, charging accused-appellant and Leticia Aviguetero with Estafa in each case, contain substantially the same allegations as that in Criminal Case No. Q-94-58865, except as to the names of the complainants and the amounts involved *viz.*, (a) Roel Ilustre and P27,000.00 in Criminal Case No. Q-94-58866;[3] (b) Marlon B. Sotero and P25,000.00 in Criminal Case No. Q-94-58867;[4] (c) Rafael Cales and P32,000.00 in Criminal Case No. Q-94-58868;[5] (d) Edwin Pernia and P27,000.00 in Criminal Case No. Q-94-58869;[6] and (e) Jaylord Balauro and P27,000.00 in Criminal

Case No. Q-94-58870.[7]

When arraigned, appellant pleaded not guilty.[8] Leticia Aviguetero went into hiding before she could be arraigned and she remains at-large to date. The above-mentioned cases were then jointly heard.

The trial court summarized the evidence for the prosecution as follows:

> "Witness Marlon Sotero narrated that Aviguetero, a relative and neighbor in Sta. Ignacia, Tarlac, visited him and his wife sometime in November 1993, and asked him if he wanted to work as a factory worker in Malaysia as she knew Aurora Soliven who had a recruitment agency in Cubao, Quezon City. He replied that he had a job but if the overseas employment were certain, then he would be interested. He was given a bio-data form by Aviguetero and after filling it up, he gave it to her and she in turn gave the papers to Soliven. He paid P1,500.00 for the passport and was told that if he could make full payment of the processing and placement fees then he would be able to leave sooner. So he gave the amount of P27,000.00 in Soliven's house in Cubao, Quezon City. He left the country on February 19, 1994 on a tourist visa. He saw Pascua only before he left and learned with some companions in Penang, Butterworth, Malaysia, there was no work for them. They stayed at the Paktai Hotel with instructions that a certain Abdul Hamid Asari, the contact of the accused would give them working permits. When Asari arrived at the hotel, he took their passports and even their pocket money, purportedly to show to their prospective employer. Later they were brought to the Tiktak Factory and they started to work at the rate of 15 ringits or the equivalent of P150.00 a day. After a month, they decided to report the matter to the police. Pascua who arrived in Malaysia took his ticket. He returned to Manila on May 8, 1994 and immediately went to the TV program `Hoy, Gising' to relate his unfortunate flight in Malaysia. He was referred to Camp Crame and soon Pascua and Soliven were apprehended. The case was referred to the Department of Justice. He executed a statement marked Exh. `D.' He went to the POEA and was told that the three accused were not licensed recruiters. (see Exhs. A, B, and C).
>
> "Jaylord Balauro, civil engineering graduate is also a relative of Aviguetero and he also resides in Sta. Ignacia, Tarlac. He knows Soliven but denies knowing Pascua. He recalls that sometime in 1993 Aviguetero informed him that there were job openings abroad. He was then working as stock engineer at Procter and Gamble. There (sic) some neighbors who were earlier recruited by Aviguetero, one of them, his uncle Edmund Pasamonte. Aviguetero introduced him and his mother to Soliven, a recruiter with a licensed agency. Aviguetero and Soliven told them the placement fee was about P27,000.00. they also promised a lot of things: first, there was a job placement for an engineer in Singapore, then after about 2 to 3 months, he was told to wait for a working visa to Bahrain. Having given some amount to Soliven at her agency at El Niño Apartelle in N. Domingo St. cor. Banahaw

St., Cubao, QC, he was anxious to leave. It was his father who made complete payment of P27,000.00 at Soliven's residence in Cubao. (see photocopy of cash voucher dated March 28 showing full payment of P27,000.00 by Jaylord Balauro marked Exh. E, signed by Mrs. Soliven). Finally, he was told that he could work as engineer in Malaysia. He left on a tourist visa. His passport was stamped in Kuala Lumpur, Malaysia good for 7 days. There were three of them who arrived on April 1, 1994. Their contact, Maribel Banigued was supposed to fetch them at the airport but she did not. He called her up and she instructed them to take a bus to Traveller's Inn where he met Banigued. She told them that an employer would fetch them, but no one came. They stayed for 21 days in Kuala Lumpur and one day in Singapore. When he ran out of funds, he had to sell some pieces of jewelry and he wrote Aviguetero telling her about his predicament. His father told him to come home and he did come back on April 23, 1994. His father asked for reimbursement from Soliven and Aviguetero and he was given P18,300.00 on April 30, 1994. His affidavit-complaint is marked Exh. `F.'

"Shirley Velasco was introduced by her aunt Zenaida Santiago to Mrs. Soliven on February 10, 1994 at Soliven's residence at E. Rodriguez St., QC. Santiago was earlier recruited by Soliven as a factory worker in Malaysia. After the introduction, she submitted a bio-data form to Ms. Soliven who told her to come back for her passport for which she paid P1,600.00. After a week Soliven told her she was ready to leave and work as a factory worker. On February 18, 1994 she was asked to pay P27,000.00 as full payment of placement/processing fee and that was when she met Mrs. Pascua at Soliven's residence. She gave the amount to Pascua upon instruction of Soliven. Pascua was supposed to fly with her and other recruits. But at the departure area, when she presented her passport with an entry `service staff,' immigration people asked for some documents which she could not produce, hence was not allowed to leave. She saw Soliven and Aviguetero at the canteen. Soliven just took her baggage and told her to go home."[9]

The defense presented the accused-appellant whose testimony is summarized by the trial court as follows:

"In her defense, Aurora Soliven testified that she was an agent for Cocolife since 1994 and the nature of her work brought her to different places to solicit insurance. She denies having recruited the private complainants in these cases. She explained that it was Remedios Pascua who facilitated the employment of her son Pedro Che Soliven and son-in-law Allan Deticio in Malaysia (see receipt dated March 25, 1994 marked Exh. `4'). Another son Peter was also recruited by Maribel Banigued, Pascua's colleague to whom she paid P20,000.00 (see cash voucher dated December 16, 1993 marked Exh. `5'). She clarified that the Sotero spouses introduced themselves to her as relatives of Aviguetero, her close friend and comadre. They were asking for help to work abroad. Relating her children's experience who left as tourists, she told them that if they were really interested, she would introduce them to Pascua and she gave them Pascua's address at the back of UST. Before he left, Sotero dropped by her place to ask for her son`s address in Malaysia. Then he came back, he went to her place to ask for financial help as it was enrollment time and he had no money. Taking pity on him, she gave him several amounts: P3,000.00; P500.00; P1,100.00 and P800.00, respectively (see certification dated June 2, 1994 marked Exhibit `1'). Sotero's wife Ligaya also asked for a loan in the amount of P17,000.00 (see letter dated May 24, 1994 marked Exh. `6' bearing the signature of Ligaya Sotero).

"She met Jaylord Balauro sometime in November 1994. Sotero introduced Balauro to her as a relative of Aviguetero. Balauro also wanted to work abroad so she told them that Sotero already knew Pascua and Banigued. Balauro used to frequent her place before he left abroad as he had nowhere else to go in the city. She clarified that although Exh. `2' shows that she promised to pay Juanito Balauro the amount of P18,300.00 the money came from Banigued, who sent a certain Mr. Sacramento to pay Balauro.

"Regarding Shirley Velasco, she recalls that Velasco came to her residence bringing a letter from her aunt Zenaida Santiago. She too was asking for assistance to work abroad. She gave Velasco the address of Pascua. She denies seeing Velasco off at the airport. She also denies receiving any amount from her. During the preliminary investigation at the DOJ she told Pascua to give back the money paid by Velasco so she would desist from her complaint. So Pascua gave the money to Soliven's sister, Lolita Graza, who, in turn gave it to Velasco."[10]

In its Decision dated April 16, 1996, the trial court declared that "with respect to the accused Aurora Soliven, the court is morally convinced that the elements of the offense of illegal recruitment on a large scale has been sufficiently proved: she offered overseas employment to several persons for a fee, without the necessary license to recruit from the POEA." The trial court likewise found her "guilty beyond reasonable doubt of the crime of estafa for pretending to be a licensed recruiter and offering overseas jobs to the complainants for a fee which representations were false and resorted to only for the purpose of getting money from said complainants." The trial court stated that "it is of no moment that she made partial reimbursement to the complainants because the offense was already consummated. The accused assertions of innocence appears inconsistent with her actuations in these cases."

In due time, the accused-appellant filed her appeal and in her Appellant's Brief contends that the trial court committed the following errors:

"I

"The trial court gravely erred in convicting accused-appellant of the crimes charged despite failure of the prosecution to prove her guilt beyond reasonable doubt.

"II

"The trial court gravely erred in not considering the defense interposed by accused-appellant."

Being interrelated, the assigned errors shall be discussed jointly.

Accused-appellant claims that the prosecution failed to prove her guilt for illegal recruitment and estafa; that the trial court considered private complainants' testimonies at face value; and that it failed to consider some facts and circumstances which show that she never recruited private complainants and that she never pretended to be a licensed recruiter. Accused-appellant quoted in her brief the testimonies of private complainants Marlon Sotero and Jaylord Balauro showing that it was their relative Aviguetero who recruited them to work abroad. As to private complainant Shirley Velasco, appellant avers that although the former claimed in her testimony that it was accused-appellant who recruited her, this was belied by her affidavit of desistance (Exhibit "3"), thus:

"3. That we are no longer interested in the prosecution of this case as the filing arose out of misunderstanding or misapprehension of facts."

Accused-appellant further maintains that while it is true that she has no license or authority to recruit or engage in recruitment activities, this is of no moment considering that she is not engaged in recruitment activities nor pretended to be a licensed recruiter or owner of a licensed recruitment agency.

Accused-appellant also contends that based on the foregoing arguments, she could not have likewise committed the crime of estafa under Article 315, 2(a) of the Revised Penal Code.

The appeal is partly meritorious.

Article 38 of the Labor Code, as amended, defines illegal recruitment thus:

"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.

"(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

> "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 hereof. (Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.)

Article 13(b) of the same Code defines "recruitment and placement" as:

> "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."

To prove illegal recruitment, only two elements need be shown, viz., (1) the offender undertakes either any activity within the meaning of "recruitment and placement" defined under Art. 13 (b), or any of the prohibited practices enumerated under Article 34 of the Labor Code; and (2) he has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers.[11] A license is a document issued by the Department of Labor and Employment (DOLE) authorizing a person or entity to operate a private employment agency, while an authority is a document issued by the DOLE authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity.[12]

The accused-appellant having admitted that she has no license or authority to recruit or engage in recruitment activities, only the first element of the crime has to be discussed, i.e., whether or not said appellant has undertaken recruitment activities (or any of the activities enumerated in Article 34 of the Labor Code, as amended).

The following testimonies of the three private complainants attest to accused-appellant's engagement in recruitment activities:

Private complainant Marlon Sotero on cross-examination:

> "Q: Under what circumstances did you meet accused Aurora Soliven?
> "A: She was introduced to me by Mrs. Aviguetero.
>
> "Q: How did Mrs. Aviguetero introduce Aurora Soliven to you?
> "A: She was introduced to me as a recruiter with an agency in Manila.
>
> "Q: When Mrs. Soliven was introduced to you as a recruiter, did

you ask Mrs. Soliven if she has a license?
"x x x x x x x x x
"A: Yes, ma'am, and she said she has a license.

"x x x x x x x x x

"Q: What did you discuss with accused Soliven at the time?
"A: About the salary and the working permit in Malaysia.

"Q: Did you ask accused Soliven where you were supposed to work?
"A: Yes, sir.

"Q: What did she tell you?
"A: In a factory in Malaysia.

"Q: What were you supposed to do in that factory, Mr. Witness?
"A: Machine operator."[13]

Private complainant Jaylord Balauro, on direct examination:

"Q: So what transpired next when she made that offer to you?
"A: Because I have no money to pay for placement fee, my mother met Aviguetero and Aurora Soliven and she introduced Soliven as a recruiter in Manila with a licensed agency."[14]

"x x x x x x x x x

"Q: You mentioned about money. What is this money you are referring to?
"A: *Placement fee*.

"Q: How much was it?
"A: Around P27,000.00.

"Q: Who told you that this amount was needed for you to be able to go abroad?
"A: The two of them, Aviguetero and Soliven.

"Q: At that time, where was the prospective place where you were supposed to work?
"A: They promised me a lot of things but it did not proceed."[15]

"x x x x x x x x x

"Q: You said you had given the money. How much was this?
"A: I had given a first payment of P12,500.00.

"x x x x x x x x x

"Q: To whom did you give this amount?
"A: I gave it to Soliven here in Manila."[16]

Private complainant Shirley Velasco, on direct examination:

"Q: What transpired on February 10, 1994 at that address, Ms. Witness?
"A: She introduced me to Aurora Soliven before she left for Malaysia.

"Q: Who introduced you to Mrs. Soliven?
"A: My auntie, Zenaida Santiago.

"Q: What transpired after you were introduced by your auntie to Mrs. Soliven?
"A: Several days after, I went back to Mrs. Soliven to fill up a bio-data form.

"x x x x x x x x x

"Q: After giving the bio-data to Mrs. Soliven, what transpired next?
"A: After that, she told me to come back after several days to secure a passport for me.

"x x x x x x x x x

"Q: What transpired on that day when you went back?
"A: I was asked to pay P1,600.00 for the passport.

"Q: To whom did you pay the P1,600.00?
"A: To Aurora Soliven.

"x x x x x x x x x

"Q: After you paid that amount, what did you do next?
"A: A week after, she told me that I am scheduled to fly or to leave.

"x x x x x x x x x

"Q: What was going to be this job, according to them, in Malaysia?
"A: Factory worker.

"Q: Who told you that you were going to be a factory worker?
"A: Aurora Soliven."[17]

The foregoing excerpts show that accused-appellant indeed engaged in recruitment activities. The acts of the accused consisting of her promise of employment to certain persons and of transporting them abroad fall squarely within the ambit of recruitment and placement as defined by law.[18]

With regard to accused-appellant's claim that she did not pretend to be a licensed recruiter or owner of a licensed recruitment agency, the same is belied by the private complainants' testimony that she was personally introduced by Aviguetero to them as a recruiter with a licensed agency. And at any rate, it is not required that it be shown that such person wrongfully represented himself as a licensed recruiter.[19]

Accused-appellant also faults the trial court for allegedly considering private complainants' testimonies at face value.

It is a well settled rule that the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not.[20] Such findings of the trial court will not be disturbed on appeal absent any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could have affected the result of the case.[21] This Court finds that the trial court did not overlook, misunderstand or misapply facts or circumstances of weight or substance which could have affected the result of the case.

There is large-scale illegal recruitment if it is committed against three (3) or more persons individually or as a group; its elements, therefore, are the two above-mentioned plus the fact that it is committed against three or more persons.

Large-scale illegal recruitment involves economic sabotage, and is penalized by Article 39 (a) of the Labor Code, as amended, with life imprisonment and a fine of P100,000.00.

The accused-appellant having recruited at least three persons, giving them the impression of her ability to send workers abroad, assuring them of their employment in Malaysia, and collecting various amounts for alleged processing and placement fees without license nor authority to so recruit or offer job placements abroad, thus committed large scale illegal recruitment.

The trial court also did not err in finding the accused guilty of estafa. The elements of estafa in general are: (1) that the accused defrauded another: (a) by abuse of confidence, or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

All these elements are present in the instant case: the accused-appellant deceived the complainants into believing that she had the authority and capability to send them abroad for employment; that there were available jobs for them in Malaysia for which they would be hired; and that by reason or on the strength of such assurance, the complainants parted with their money in payment of the various processing and placement fees. As all these representations of the accused-appellant proved false, paragraph 2(a), Article 315 of the Revised Penal Code is thus applicable.

The penalty for estafa depends on the amount defrauded. Art. 315 of the Revised Penal Code states:

> "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;
>
> "2nd The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;"

The trial court sentenced accused-appellant Aurora Soliven to suffer imprisonment of eight (8) years and one (1) day of *prision mayor*, to twelve (12) years and one (1) day of reclusion temporal each in Criminal Cases Nos. Q-94-58865, Q-94-58867 and Q-94-58870. Pursuant to the aforequoted Art. 315 of the Revised Penal Code, the penalties imposed on appellant Aurora Soliven should be reduced as follows:

In Criminal Case No. Q-94-58865 (which pertains to private complainant Shirley Velasco), the amount involved is P27,000.00. The penalty prescribed by law therefor is *prision correccional* maximum to *prision mayor* minimum to be imposed in its maximum period. Applying the Indeterminate Sentence Law, the proper penalty to be imposed on accused-appellant is a prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to seven (7) years and four (4) months of *prision mayor*, as maximum.[22]

In Criminal Case No. Q-94-58867, accused-appellant defrauded private complainant Marlon B. Sotero in the amount of P21,600.00 (appellant having returned to the latter the amount of P5,400.00). The penalty prescribed by law therefor is *prision correccional* maximum to *prision mayor* minimum. Applying the Indeterminate Sentence Law, the proper penalty to be imposed on accused-appellant is a prison term of four (4) years and two (2) months of *prision correccional* medium as minimum, to six (6) years and four (4) months of *prision mayor* minimum as maximum.[23]

In Criminal Case No. Q-94-58870, accused-appellant defrauded private complainant Jaylord Balauro in the amount of P8,700.00 (appellant having returned to the latter the amount of P18,300). Hence, the penalty prescribed should be that imposed in paragraph 2 of Art. 315 of the Revised Penal Code, in its medium period. The maximum period ranges from one (1) year, eight (8) months and twenty-one (21) days, to two (2) years, eleven (11) months and ten (10) days. Applying the Indeterminate Sentence Law, the accused-appellant may be sentenced to an indeterminate penalty the minimum of which shall be within the range of the penalty next lower in degree than that prescribed by law, *viz*., *arresto mayor* in its medium and maximum periods - two (2) months and one (1) day to six (6) months and the maximum of which shall be the abovementioned imposable penalty. The indeterminate penalty can range, therefore, from six (6) months of *arresto mayor*, as minimum, to two (2) years and eleven (11) months of *prision correccional*, as maximum.

WHEREFORE, the Decision in Criminal Case Nos. Q-94-58864 to Q-94-58870 is AFFIRMED, except as to the penalties imposed in the three cases which are reduced, as stated below. As modified, accused-appellant AURORA SOLIVEN is thus sentenced in the said cases to suffer, as follows:

1. In Criminal Case No. Q-94-58865, an indeterminate penalty ranging from four (4) years and two (2) months of *prision correccional*, as minimum, to seven (7) years and four (4) months of *prision mayor,* as maximum and to indemnify complainant Shirley Velasco in the amount of Twenty Seven Thousand (P27,000.00) Pesos;

2. In Criminal Case No. Q-94-58867, an indeterminate penalty ranging from four (4) years and two (2) months of *prision correccional*, medium as minimum, to six (6) years and four (4) months of *prision mayor*, minimum as maximum, and to indemnify complainant Marlon Sotero in the amount of Twenty One Thousand Six Hundred (P21,600.00) Pesos;

3. In Criminal Case No. Q-94-58870, an indeterminate penalty ranging from six (6) months of *arresto mayor*, as minimum to two (2) years and eleven (11) months of *prision correccional*, as maximum, and to indemnify complainant Jaylord Balauro in the amount of Eight Thousand Seven Hundred (P8,700.00) Pesos.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and *De Leon, Jr., JJ.,* concur.

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[1] RTC Decision, Original Records, pp. 414-423. Per Judge Monina A. Zenarosa.

[2] Original Records, p. 118.

[3] Original Records, p. 127.

[4] *Ibid.*, p. 136.

[5] *Ibid.*, p. 145.

[6] *Ibid.*, p. 153.

[7] *Ibid.*, p. 162.

[8] *Ibid.*, pp. 174-175.

[9] RTC Decision, pp. 5-7.

[10] Original Records, p. 7.

[11] Abaca vs. Court of Appeals, 290 SCRA 657 [1998]; People vs. Juego, 298 SCRA 22 [1998].

[12] Article 13 (d) and (f), Labor Code, as amended.

[13] TSN, June 19, 1995, pp. 10-13; Folder of Original TSN, pp. 47-50.

[14] TSN, June 26, 1995, pp. 9-10; Folder of Original TSN, pp. 78-79.

[15] TSN, June 26, 1995, pp. 12-13; Folder of Original TSN, pp. 81-82.

[16] TSN, June 26, 1995, p. 14; Folder of Original TSN, p. 83.

[17] TSN, October 3, 1995, pp. 9-12; Folder of Original TSN, pp. 140-143.

[18] ***People vs. Ganaden,*** 299 SCRA 433 [1998].

[19] ***People vs. Cabacang***, 246 SCRA 530 [1995]

[20] ***People vs. Baccay***, 284 SCRA 296 [1998].

[21] ***People vs. Pulusan***, 290 SCRA 353 [1998].

[22] ***People vs. Borromeo,*** 305 SCRA 204 [1999].

[23] ***People vs. Juego,*** 298 SCRA 34 [1998].
