

## SECOND DIVISION

[ G.R. No. 233089, June 29, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCILLE M. DAVID, ACCUSED-APPELLANT.**

### DECISION

**INTING, J.:**

This is an appeal<sup>[1]</sup> filed by Lucille M. David (accused-appellant) from the Decision<sup>[2]</sup> dated January 16, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07816 that affirmed the Joint Judgment<sup>[3]</sup> dated September 15, 2015 of Branch 166, Regional Trial Court (RTC), Pasig City. The RTC found accused-appellant guilty beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale in Criminal Case No. 143740, and the crime of Estafa under paragraph 2(a), Article 315 of the Revised Penal Code (RPC) in Criminal Case Nos. 143742, 143743, 143744, 143745, and 143747.

#### *The Antecedents*

Accused-appellant was charged with the following violations in the following Informations filed on April 6, 2010:

Criminal Case No. 143740 for Large Scale Illegal Recruitment in violation of Section 6(l) and (m) of Republic Act No. (RA) 8042<sup>[4]</sup>

"That sometime in the months of February 2008 to November 2008 or thereabout, at Block 32, Lot 5, Phase 2-C2, Kaalinsabay Street, Karangalan Village, Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused LUCILLE M. DAVID, of Jasin International Manpower Services, did then and there willfully, unlawfully and criminally recruit, enlist and promise overseas employment to the private complainants, namely: CHERRY C. MARCO, JILL R. GRIJALDO, LEILANIE C. PENERA, ADORACION CASINTAHAN, JOVY MITRA [*sic*], MABELLA [*sic*] R. PINEDA AND ERWIN D. ENRIQUEZ as waitresses and service crew in Canada and the United States, the said accused thereby charging, exacting and collecting from the said private complainants amounts ranging from P45,000.00 to P220,000.00, more or less, and despite the payment of the said fees, the said accused failed to actually deploy the private complainants without valid reasons as determined by the Department of Labor and Employment and despite demand, said accused failed and refused to reimburse the expenses incurred by the said private complainants in connection with their documentation and processing for the purpose of their supposed deployment, to the damage and prejudice of said private complainants.

Contrary to law.<sup>[5]</sup>

Criminal Case No. 143742 for *Estafa* under paragraph 2(a), Article 315 of the Revised Penal Code (RPC)<sup>[6]</sup>

"That sometime in June 2008 or thereabout, at JASIA IMS principal place of business located at Block 32; Lot 5, Phase 2-C2, Kaalinsabay Street, Karangalan Village, Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being then the president and/or proprietor of JASIA IMS, a holder of a POEA suspended license to recruit workers for deployment abroad by means of deceit, fraudulent acts and false pretenses executed prior to or simultaneous with the commission of the fraud, did then and there willfully, unlawfully, and criminally defraud and deceive private complainant MABELLE R. PINEDA, and misrepresent herself as having the capacity to contract, enlist, and transport or actually deploy Filipino workers for employment in Canada and the United States; demand and receive from said private complainant the total amount of SIXTY THOUSAND PESOS (P60,000.00) which was deposited upon the instruction of said accused to her account no. 1110117769 maintained at Banco de Oro on June 13, 2008, as payment of said private complaint Pineda's application and processing fee, and by reason of above-named accused misrepresentation, false assurance and deceit, complainant Pineda was induced to part with and deliver the aforesaid amount to herein accused; that said accused, once in possession of said amount misappropriated the same and contrary to her representations and assurances, she failed to actually deploy said private complainant; that by reason of said unjustified failure to deploy, private complainant Pineda demanded the return and/or reimbursement of the amount of SIXTY THOUSAND PESOS (P60,000.00) which said accused fail and refuse to return and /or reimburse despite repeated demands, to the damage and prejudice of herein complainant MABELLE R. PINEDA."

CONTRARY TO LAW.<sup>[7]</sup>

Criminal Case Nos. 143743, 143744, 143745, and 143747 are also for *Estafa* under paragraph 2(a), Article 315 of the RPC wherein the Informations are similarly worded with the Information in Criminal Case No. 143742 except for the names of the private complainants, the amounts involved, and the dates covered.<sup>[8]</sup>

In Criminal Case No. 143743, private complainant Jovy S. Mira (Jovy), who alleged that accused-appellant fraudulently took from her P65,000.00 on June 27, 2008.<sup>[9]</sup>

In Criminal Case No. 143744, private complainant Adoracion P. Casintahan (Adoracion), who alleged that accused-appellant fraudulently took from her US\$800.00 and P181,000.00 sometime in November 2008.<sup>[10]</sup>

In Criminal Case No. 143745, private complainant Cherry C. Marco (Cherry), who alleged that accused-appellant fraudulently took from her P45,000.00 sometime in

February 2008.<sup>[11]</sup>

In Criminal Case No, 143747, private complainant Jill D. Grijaldo (Jill), who alleged that accused-appellant fraudulently took from her P45,000.00 sometime in February 2008.<sup>[12]</sup>

Two other Informations also for *Estafa* under paragraph 2(a) of Article 315 of the RPC were also filed against accused-appellant in Criminal Case No. 143741 and 143746. However, the RTC, in its Order<sup>[13]</sup> dated April 25, 2014 granted the Demurrer to Evidence in Criminal Case Nos. 143741 and 143746. Thus, the RTC acquitted accused-appellant in Criminal Case Nos. 143741 and 143746.<sup>[14]</sup>

### *Version of the Prosecution*

#### I. In Criminal Case Nos. 143740 and 143742

Purita R. Pineda (Purita), the mother and attorney-in-fact of Mabelle R. Pineda (Mabelle), testified that on June 13, 2008, she and Mabelle went to Banco de Oro (BDO), Ermita and deposited P60,000.00 in Account No. 1110117769 that is under accused-appellant's name as placement fee for Mabelle's job application in Canada.<sup>[15]</sup> Purita further testified that she and Mabelle went to JASIA International Manpower Services (JASIA) office where they talked to accused-appellant. The accused-appellant told Purita that she was going to Canada with her daughter and that it would not take long before her daughter goes to Canada. Mabelle then told accused-appellant that they already deposited the placement fee in accused-appellant's account.<sup>[16]</sup> While accused-appellant confirmed that she received the amount, Mabelle was never deployed to Canada and was not able to recover the amount she deposited despite mediation efforts.<sup>[17]</sup>

#### II. In Criminal Case Nos. 143740 and 143743

Jovy testified that while he was in Riyadh, he came to know JASIA in various websites stating that there were openings for housekeepers in Canada. He called the agency regarding the job openings. Upon arriving in the Philippines, he met up with the accused-appellant who then asked him to pay P60,000.00 as cash bond.<sup>[18]</sup> He deposited the amount in accused-appellant's BDO account on June 27, 2008.<sup>[19]</sup>

Jovy narrated that a year later, accused-appellant informed him that the employment contract and his Canadian visa had arrived. Accused-appellant then asked him to sign the contract and pay CAD\$150.00 as processing fee. However, accused-appellant did not give him the original copy of the contract considering that the contract had to be submitted to the Canadian Embassy for processing. Accused-appellant then told him to wait within two weeks for a letter through the mails which would direct him to undergo medical examination in an accredited clinic. However, three weeks passed without Jovy receiving any letter.<sup>[20]</sup>

Jovy further testified that he found out from the Philippine Overseas Employment

Administration (POEA) that Jani King, the supposed Canadian employer, was not an accredited overseas employer; and that no job order under such name was listed in the POEA. He tried to contact accused-appellant, but found out that JASIA was already closed.<sup>[21]</sup>

### III. In Criminal Case Nos. 143740 and 143744

Adoracion testified that sometime in November 2008, she and her friend, Lailanie C. Penera<sup>[22]</sup> (Lailanie), went to JASIA. because accused-appellant told the in to apply as housekeepers in the United States (US). During the orientation which they attended, accused-appellant told the participants that there were already job orders and that they just needed to produce US\$4,500.00 each in exchange for the respective job orders. She was able to raise US\$800.00 which she delivered to accused-appellant. Upon payment, accused-appellant told her to wait for her job order considering that she was not included in the first batch.<sup>[23]</sup>

Adoracion narrated that sometime in February 2009, accused-appellant asked her to come to JASIA's new office. She had then an interview in the US Embassy on March 6, 2009 and was given a visa. Accused-appellant then told her that she passed the interview. Accused-appellant then asked her to pay P130,000.00 as processing fee to be paid to the POEA and P51,000.00 for her plane ticket.<sup>[24]</sup> After giving the placement fee and amount for the plane ticket, accused-appellant told her to wait for the processing of her papers by the POEA and for the plane ticket.<sup>[25]</sup>

Adoracion further narrated that later in March 2009, accused-appellant informed her that she had the plane ticket already. After accused-appellant gave her a photocopy of the travel itinerary, she went home; she was surprised to find out that the ticket was dated year 2004. She called accused-appellant in her office but she was told that the latter was busy. She called again but accused-appellant could no longer be reached. She and Lailani then discovered at the POEA that JASIA's license was suspended. Thus, she was never deployed to the US and never recovered the money she gave to accused-appellant.<sup>[26]</sup>

### IV. In Criminal Case Nos. 143740 and 143745

Cherry testified that she came to know of JASIA from her former manager. The former manager arranged a meeting and Cherry was able to talk to accused-appellant's husband, who told her that there was a hiring for service crew in Canada. She then sent to accused-appellant the required documents through LBC. A week later, she, together with a certain Jill, met accused-appellant in JASIA's office. Accused-appellant told them to pay the initial placement fee and/or bond of P60,000.00. Thus, Cherry deposited the amount of P45,000.00 in accused-appellant's bank account. Accused-appellant then confirmed receipt of the payment and asked Cherry the date for the payment of the balance. After a week, Cherry followed up her application and was promised deployment by December 2008. However, time passed without her being deployed.<sup>[27]</sup>

Cherry further testified that in 2009, accused-appellant asked her if she wanted to be deployed instead in the US while waiting for the Canadian job order. She agreed, but her US visa application was denied. She wanted to pull out her application and requested for the refund of her money, but she would not contact accused-appellant anymore.<sup>[28]</sup> She no longer went to accused-appellant's office because she learned through her co-applicants that accused-appellant's office was already closed and padlocked.<sup>[29]</sup>

#### V. In Criminal Case Nos. 143740 and 143747

Jill testified that in February 2008, she asked her cousin, Cherry to go with her to JASIA and apply as service crew in Canada. Accused-appellant told them that there were vacant slots for service crew in Canada, but also told them that they needed to pay a placement fee in the amount of P90,000.00. Jill then deposited P45,000.00 in accused-appellant's account as she could only pay half. She also gave all her employment requirements with accused-appellant's promise that she will be deployed in Canada before December 2008. However, she was not deployed because according to accused-appellant, there was a problem with the employer in Canada. The accused-appellant then offered her employment in the US and scheduled her for an interview at the US Embassy. However, she was denied a visa because there was proof of employment for her in the US. She then asked for the return of her placement fee which accused-appellant was unable to do.<sup>[30]</sup>

#### *Version of the Accused-Appellant*

Accused-appellant filed a Demurrer to Evidence (With Prior Leave of Court).<sup>[31]</sup> However, the RTC denied it with respect to Criminal Case Nos. 143740, 143742, 143743, 143744, 143745, and 143747 in its Order<sup>[32]</sup> dated April 25, 2014.

On the witness stand, accused-appellant testified that she was the sole proprietor of JASIA; and that it was JASIA's practice to collect US\$300.00 per applicant for its services only after the applicant was successfully deployed abroad.<sup>[33]</sup>

Accused-appellant further testified that she knows the private complainants; that Jovy went to JASIA to follow-up his job application in Canada which JASIA already forwarded to the employer; that after a few months, Jovy became impatient for the Labor Market Opinion (LMO) to arrive; that consequently, she mentioned to Jovy the ongoing interview conducted by a US employer to which Jovy signified his interest; that she explained to Jovy that if he would withdraw his application in Canada, the cash bond could not be refunded anymore since it was already forwarded to the Canadian employer; and that Jovy, however, did not show up at his scheduled interview in the US Embassy.<sup>[34]</sup>

Accused-appellant furthermore testified that Jovy did not sign an employment contract with Jani King considering that he has not paid a cash bond for his application, and that Jovy signed a contract with New Hope and not with Jani King.

As to Adoracion, accused-appellant testified that she thought Adoracion was able to leave the country since she never heard from her again from the time her US visa was approved. It was also her US employer and not accused-appellant who processed her plane ticket.<sup>[35]</sup>

As regards Cherry and Jill, accused-appellant argued that each of them only paid P45,000.00 and that it was JASIA which shouldered the balance; that both were not deployed in Canada because they pulled out their applications, were unable to wait for the arrival of the LMO, and wanted to apply in the US instead. However, both failed in their interview at the US Embassy.<sup>[36]</sup>

Accused-appellant explained that the same thing happened to Mabelle, who became impatient waiting for the arrival of the LMO. Thus, Mabelle withdrew her application for a job in Canada and became interested in working in the US. She however failed to pass the interview for her visa.<sup>[37]</sup>

Accused-appellant finally argued that she is not obliged to return the cash bonds the applicants paid because all the monies she received were delivered to the foreign employer. Moreover, the transactions happened in 2008 when she still had her license. Thus, she cannot be held liable for *Estafa*. Further, she asserted that while a suspension order was issued against JASIA, it was issued only in May 2009 after JASIA had processed in full all of the private complainants' applications.<sup>[38]</sup>

#### *Ruling of the RTC*

On September 15, 2015, the RTC rendered its Joint Judgment<sup>[39]</sup> finding accused-appellant guilty beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale, defined and punished under RA 8042 in Criminal Case No. 143740; and the crime of *Estafa* defined and punished under paragraph 2(a), Article 315 of the RPC in Criminal Case Nos. 143742, 143743, 143744, 143755, and 143747. The dispositive portion of the RTC Joint Judgment provides:

WHEREFORE, premises considered, judgment is rendered finding the accused, Lucille M. David, guilty beyond reasonable doubt of the crimes of Illegal Recruitment (Large Scale) and *Estafa* under Art. 315, par. 2(a) of the Revised Penal Code.

Accordingly, in Criminal Case No. 143740 (Illegal Recruitment in Large Scale), the accused is sentenced to suffer the penalty of life imprisonment and a fine of P500,000.00 pursuant to Section 7(b) of Republic Act No. 8042.

In Criminal Cases Nos. 143742 and 143743 (*Estafa* in the amounts of P66,550.00 and P65,500.00, respectively), the accused is sentenced to suffer the indeterminate penalty of imprisonment ranging from 6 months and 1 day of prision correccional, as minimum in penalty, to 10 years, 8 months and 21 days of prision mayor maximum, as maximum penalty, together with its accessory penalty.

In Criminal Case No. 143744 (Estafa in the amount of P217,000.00), the accused is sentenced to suffer the indeterminate penalty of imprisonment ranging from 6 months and 1 day of prision correccional, as minimum penalty, to 20 years of reclusion temporal, as maximum penalty, together with its accessory penalty.

In Criminal Cases Nos. 143745 and 143747 (Estafa in the amount of P45,000.00 each), the accused is sentenced to suffer the indeterminate penalty of imprisonment ranging from 6 months and 1 day of prision correccional, as minimum penalty, to 8 years, 8 months and 1 day of prision mayor medium, as maximum penalty, together with its accessory penalty.

Considering that the parties have already executed a Compromise Agreement and the court already rendered a Partial Decision on the Civil Aspect of the Case, dated January 19, 2012, the same is adopted is judgment on the civil aspect of these cases.

The period of preventive imprisonment is ordered credited in favor of the accused.

SO ORDERED.<sup>[40]</sup>

#### *Ruling of the CA*

Accused-appellant appealed the RTC Joint Judgment. But the CA, in its Decision<sup>[41]</sup> dated January 16, 2017, denied the appeal and affirmed the RTC's Joint Judgment.

Hence, the accused-appellant filed the instant appeal.<sup>[42]</sup>

The Court required both parties to file their respective supplementary briefs,<sup>[43]</sup> however, they opted not to file.<sup>[44]</sup>

#### *The Courts Ruling*

The Court denies the appeal.

In *People v. Oela Cruz*,<sup>[45]</sup> the Court reiterated the rule that the "findings of the trial court on the credibility of witnesses deserve great weight."<sup>[46]</sup> Moreover, the "factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect if not conclusive effect."<sup>[47]</sup> This is because the "trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their demeanor and manner of testifying under grueling examination."<sup>[48]</sup> This rule requires stricter adherence when the factual findings are sustained by the CA.<sup>[49]</sup>

#### *Illegal Recruitment in Large Scale*

Here, accused-appellant was charged with Illegal Recruitment in Large Scale under Section 6(l) and (m) of RA 8042, also known as the "Migrant Workers and Overseas Filipinos Act of 1995."

RA 8042, Section 6 (l) and (m) states that:

SECTION 6. Definition. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

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- (l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and
- (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered 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 or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

Illegal recruitment may be undertaken by either non-license or license holders.<sup>[50]</sup> Non-license holders are liable by the simple act of engaging in recruitment and placement activities, while license holders may also be held liable for committing the acts prohibited under Section 6 of RA 8042.<sup>[51]</sup>

Thus, the defense of accused-appellant that she still had a license when her transaction, with private complainants happened is unavailing.

Further, illegal recruitment is deemed done in large scale and is considered as an offense involving economic sabotage if it is committed against three or more persons individually or as a group.

The Court finds that the prosecution, through its witnesses, was able to prove accused-appellant's guilt beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale under Section 6(l) of RA 8042 as to Jovy and Cherry.

Section 6(l) refers to the failure to actually deploy the worker without valid reason as determined by the Department of Labor and Employment (DOLE). This provision requires independent evidence from DOLE, such as the absence of a proper job order, to establish the reason for non-deployment.<sup>[52]</sup>

Undisputedly, Jovy was not able to leave for work to Canada or US. Further, the Office of the Solicitor General correctly argued in its Brief for the Appellee<sup>[53]</sup> before the CA that the prosecution offered as evidence the POEA Certification<sup>[54]</sup> dated May 25, 2011 stating that New Hope and Jani King, which were based in Canada, were not registered with JASIA or any other licensed recruitment agencies.<sup>[55]</sup>

On the other hand, accused-appellant alleged in her testimony that Cherry's employer was New Hope.<sup>[56]</sup> However, this allegation is also negated by the POEA Certification dated May 25, 2011.

While there was no testimony on the POEA Certification, such does not negate its probative value. In *People v. Banzales*,<sup>[57]</sup> the Court ruled that a POEA certification is a public document issued by a public officer in the performance of official duty; hence, it is *prima facie* evidence of the facts stated therein pursuant to Section 23 of Rule 132 of the Rules of Court.<sup>[58]</sup> Further, public documents are entitled to a presumption of regularity. Consequently, the burden of proof rests upon him who alleges the contrary.<sup>[59]</sup>

Here, the POEA Certification dated May 25, 2011, being a public document, is a *prima facie* evidence of the facts stated therein. Unfortunately, accused-appellant failed to counter the contents of the certification.

The Court also finds that the prosecution, through its witnesses, was able to prove accused-appellant's guilt beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale under Section 6(m) of RA 8042, having committed the act against the five private complainants.

Here, as correctly ruled by the RTC, the prosecution established that: (1) as admitted by accused-appellant, she received monies from the five private complainants with the understanding that these will be for the processing of their employment abroad; (2) the five private complainants were not deployed for work abroad; and (3) accused-appellant failed to reimburse the expenses incurred by private complainants after they were not deployed.<sup>[60]</sup>

The RTC findings of fact were affirmed by the CA.<sup>[61]</sup>

Further, contrary to accused-appellant's argument, the Court finds that the non-deployment of private respondents was without any fault on their part.

As correctly ruled by the CA, white accused-appellant claimed that she delivered the monies paid by Mabelle, Jovy, Cherry, and Jill to the foreign employers as bonds, she failed to prove that the foreign employers received the monies.<sup>[62]</sup>

Furthermore, as to Mabelle, there is no question that she was not deployed either in Canada or the US. While the defense seemingly imputed fault on her as she allegedly failed to pass the interview of the consul at the US Embassy, the Court does not find this fatal to the case of the prosecution.<sup>[63]</sup> To begin with, while accused-appellant alleged that Mabelle's foreign principal was North American Management, she failed to adduce any evidence to substantiate the allegation.<sup>[64]</sup>

Moreover, while accused-appellant offered in evidence the POEA Certification<sup>[65]</sup> dated April 6, 2015 stating that there was an approved job order for 40 housekeepers with North American Management as the direct employer, the Certification indicated that the date of approval of the job order for 40 housekeepers with North American Management was April 15, 2009. Thus, there was no approved job order at the time Mabelle deposited her placement fee in accused-appellant's BDO bank account on June 13, 2008.

As regards Jovy, the Court agrees with the RTC's factual finding in its Order<sup>[66]</sup> dated April 25, 2014. The RTC adopted the factual finding in its Joint Judgment-that Jovy was not deployed in Canada despite paying P65,500.00 and signing an employment contract dated April 28, 2009 with Jani King.<sup>[67]</sup> Moreover, the Court finds that while accused-appellant testified that Jovy signed a contract with New Hope as evidenced by the Contract of Service<sup>[68]</sup> dated July 2, 2008, a perusal of the contract shows that the contract was not signed by any representative from New Hope.<sup>[69]</sup> Thus, the Contract of Service has no probative value. More importantly, Jovy convincingly testified that he learned from the POEA that there was no job order listed therein for either Jani King or New Hope. In fact, Jovy's testimony was supported by the POEA Certification<sup>[70]</sup> dated May 25, 2011.

With respect to Adoracion, accused-appellant told Adoracion sometime in November 2008 that she can deploy her for work abroad and that there was already a job order for the US. Thus, Adoracion paid US\$800.00 to accused-appellant. However, accused-appellant told her after payment to wait for the job order because she was not included in the first batch. Thus, Adoracion waited.<sup>[71]</sup> Upon being asked by accused-appellant, Adoracion paid P130,000.00 and P51,000.00 as processing fees at the POEA and as payment for her plane ticket. However, as aptly observed by the RTC which the CA affirmed, Adoracion was not deployed because the ticket given to her by the accused-appellant was outdated and invalid considering that it was dated 2004.<sup>[72]</sup> Further, as correctly found by the RTC, Adoracion convincingly testified that she was not able to go

to the airport because accused-appellant did not return her passport and other travel documents after supposedly processing her papers at the POEA. [73]

As regards Cherry and Jill, accused-appellant cannot impute fault on them for not having paid the full amount of: P65,000.00 each. The CA correctly observed that while both Cherry and Jill were not able to pay the full amount, the accused-appellant still accepted the partial amount of P45,000.00 from each of them. The accused-appellant then admitted, during cross-examination, that she shouldered the remaining P15,000.00 in Cherry and Jill's respective applications. [74]

Moreover, while accused-appellant alleged in her testimony that Cherry and Jill's foreign principals in Canada are New Hope and Global, respectively, she failed to present any evidence to prove her allegation and at least show that there is in fact an available employment for Cherry and Jill. [75]

Finally, while accused-appellant imputes fault on Cherry and Jill for failing to pass the interviews at the US Embassy as part of their job application in the US and after their employment in Canada failed to materialize, the Court does not find this fact prejudicial to the case of the prosecution. In the first place, accused-appellant failed to identify Cherry and Jill's foreign principals in the US. This gives credence to the RTC's factual finding, which was affirmed by the CA, that their visa applications were denied by the US Embassy because there was no proof of employment for them in the US. [76]

#### *Estafa under Article 315(2)(a) of the RPC*

As to the charge of *Estafa* under paragraph 2(a), Article 315 of the RPC provides in part:

Art. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

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2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The elements of *Estafa* under paragraph 2(a), Article 315 of the RPC are as follows: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage. [77]

The fact that accused-appellant had a license does not negate the fact that accused-appellant employed deceit against private respondents. Here, the prosecution was able to prove that the accused-appellant misrepresented to the private complainants that she could provide them with overseas employment when in fact there was none at the time she made such misrepresentation. Because of the assurances, private complainants parted with their money with the expectation of employment abroad which did not materialize; thus causing damage to private complainants to the extent of the sums of money they turned over to the accused-appellant. Further, as to Adoracion, she was made to believe that accused-appellant would purchase her a plane ticket for which she paid P51,000.00. However, she was not deployed because the ticket given to her by the accused-appellant was outdated and invalid, it being dated 2004.<sup>[78]</sup> Thus, the RTC correctly found the accused-appellant guilty of *Estafa*.

### *Penalties*

As to the offense of Illegal Recruitment in Large Scale, the Court is aware that the penalties in Section 7 of RA 8042 has been amended by Section 6 of RA 10022. Thus, for illegal recruitment constituting economic sabotage, the penalty under Section 7(b) of RA 8042 of "life imprisonment and a fine of not less than P500,000.00 nor more than P1,000,000.00" has been increased to "life imprisonment and a fine of not less than P2,000,000.00 nor more than P5,000,000.00 under Section 6 of RA 10022."

In this case, the affidavits of the private complainants executed on various dates on July 2009, as well as their testimonies, indicate that the offenses were committed earlier than March 8, 2010, the date of effectivity of RA 10022. Since the penalties in Section 7 of RA 8042 are more favorable to accused-appellant, the penalties stated in RA 8042 should still apply.

Consequently, considering the accused-appellant's guilt beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale under Section 6(m) of RA 8042, the Court finds no reason to modify the penalty imposed upon her in Criminal Case No. 143740, *i.e.*, penalty of life imprisonment and a fine of P500,000.00.

As to the crime of *Estafa* for five counts, there is a need to modify the penalties imposed by the RTC and affirmed by the CA, in view of the enactment of RA 10951 which increased the amounts that would correspond to the penalties provided in Article 315 of the RPC. Since the amendment is favorable to accused-appellant, it shall have retroactive effect. As explained in *People v. Dejolde*,<sup>[79]</sup> Article 315 of the RPC, as amended by RA 10951, now provides that the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed if the amount involved is over P40,000.00 but does not exceed P1,200,000.00. Moreover, there being no mitigating and aggravating circumstance, the maximum penalty should be between one (1) year and one (1) day to one (1) year and eight (8) months of *prision correccional*.<sup>[80]</sup> Applying the Indeterminate Sentence Law,<sup>[81]</sup> the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, *i.e.*, between one (1) month and one (1) day to four (4) months.

In this case, considering that the amounts involved in Criminal Case Nos. 143742,

143743, 143744, 1434745, 143747 are P66,550.00, P65,500.00, P217,000.00, P45,000.00 and P45,000.00, respectively, the indeterminate penalty for each count of *Estafa* should be modified to a prison term of one (1) month and one (1) day of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum.

**WHEREFORE**, the appeal is **DISMISSED**. The Decision dated January 16, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07816 is **AFFIRMED** with **MODIFICATION** in that, for each count of *Estafa* under paragraph 2(a), Article 315 of the Revised Penal Code in Criminal Case Nos. 143742, 143743, 143744, 143745, 143747, accused-appellant Lucille M. David is sentenced to suffer the indeterminate penalty of imprisonment ranging from one (1) month and one (1) day of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum.

**SO ORDERED.**

*Perlas-Bernabe, Senior Associate Justice, (Chairperson), Caguioa,\* Delos Santos, and Gaerlan,\*\* JJ., concur.*

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\* Designated additional Member per Raffle dated July 3, 2019.

\*\* Designated additional Member as per Special Order No. 2780 dated May 11, 2020.

[1] See Notice of Appeal dated February 6, 2017, *rollo*, pp. 20-21.

[2] *Id.* at 2-19; penned by Associate Justice Jose C. Reyes, Jr. (now a member of the Court) with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a member of the Court), concurring.

[3] *CA rollo*, pp. 33-47; penned by Presiding Judge Rowena De Juan-Quinagoran.

[4] Records, pp. 1-3.

[5] *Id.* at 1-2.

[6] *Id.* at 84-86.

[7] *Id.* at 84-85.

[8] *Rollo*, pp. 3-4.

[9] *Id.* at 4.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Records, pp. 308-313.

[14] *Id.* at 313.

[15] *Rollo*, p. 4.

[16] TSN, June 27, 2013, pp. 10-12.

[17] *Rollo*, p. 4.

[18] *Id.* at 5.

[19] Records, p. 237.

[20] *Rollo*, p. 5.

[21] *Id.*

[22] Referred to as Leilanie C. Pinera in some parts of the records.

[23] *Rollo*, p. 5.

[24] *Id.* at 6; TSN, April 25, 2012, pp. 12-13.

[25] *Id.* at 6.

[26] *Id.*

[27] *Id.*

[28] *Id.* at 6-7.

[29] TSN, September 22, 2011, pp. 24-25.

[30] *Rollo*, p. 7.

[31] Records, pp. 284-294.

[32] *Id.* at 308-313.

[33] *Rollo*, pp. 7-8.

[34] *Id.* at 8.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *CA rollo*, pp. 33-47.

[40] *Id.* at 46-47.

[41] *Rollo*, pp. 2-19.

[42] *Id.* at 20.

[43] *Id.* at 27-28.

[44] *Id.* at 30-32 and 36-38.

[45] 811 Phil. 745 (2017).

[46] *Id.* at 763.

[47] *Id.*

[48] *Id.* at 764.

[49] *People v. Escobal*, G.R. No. 206292, October 11, 2017, 842 SCRA 432, 453. Citations omitted.

[50] *People v. Sison*, 816 Phil. 8, 22 (2017).

[51] *Id.*

[52] *People v. Nogra*, 585 Phil. 712, 722 (2008).

[53] *CA rollo*, pp. 104-182.

[54] *Records*, p. 246.

- [55] *CA rollo*, p. 176.
- [56] TSN, September 18, 2014, p. 86.
- [57] 390 Phil. 1189 (2000).
- [58] *Id.* at 1202, citing *People v. Benedictus*, 351 Phil. 560, 567 (1998).
- [59] *Id.*, citing *Cacho v. CA*, 336 Phil. 154, 168 (1997).
- [60] *Rollo*, pp. 44-45.
- [61] *Id.* at 16-17.
- [62] *Id.*; TSN, September 18, 2014, pp. 21-22, 25, 51-52, 59, 64-67.
- [63] *CA rollo*, p. 42.
- [64] TSN, September 18, 2014, pp. 87-88.
- [65] *Records*, p. 393.
- [66] *Id.* at 308-313.
- [67] *CA rollo*, p. 44.
- [68] *Records*, p. 368.
- [69] TSN, September 18, 2014, pp. 25-26, 85.
- [70] *Records*, p. 246.
- [71] TSN, April 25, 2012, p. 9.
- [72] *Records*, p. 193.
- [73] TSN, June 14, 2012, pp. 14, 18-20.
- [74] *Rollo*, pp. 15-16.
- [75] TSN, September 18, 2014, p. 86.
- [76] *Rollo*, pp. 15-16.

[77] *Gamaro, et al. v. People*, 806 Phil. 483, 496 (2017), citing *Franco v. People*, 658 Phil. 600, 613 (2011).

[78] Records, p. 193.

[79] 824 Phil. 939 (2018).

[80] Article 64 of the RPC provides in part:

Art. 64. *Rules for the application of penalties which contain three periods.* - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

xxx

[81] Section 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law, provides:

Section 1. *Hereafter in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly in posed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (Italics supplied.)*



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