

## FIRST DIVISION

[ G.R. No. 218582, September 03, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. SAGISAG ATLAS "PAUL" BAUTISTA, ARLETH BUENCONSEJO' AND ROSAMEL CARA DE GUZMAN, ACCUSED, SAGISAG ATLAS "PAUL" BAUTISTA, ACCUSED-APPELLANT.**

### D E C I S I O N

**CAGUIOA, J:**

For review in this ordinary appeal<sup>[1]</sup> is the Decision<sup>[2]</sup> dated June 27, 2014 of the Court of Appeals, Tenth Division (CA), in CA-G.R. CRHC No. 05781, which affirmed the Joint Decision<sup>3</sup> dated September 26, 2012 of the Regional Trial Court of Mandaluyong City, Branch 211 (RTC) in Criminal Case Nos. MC09-12510 to MC09-12516, MC09-12518 to 20, which found accused-appellant Sagisag Atlas "Paul" Bautista (accused-appellant Bautista) guilty beyond reasonable doubt of three counts of estafa under Article 315, paragraph 2(a) of the Revised Penal Code (RPC), and in Criminal Case No. MC09-12517, for violation of Section 6 of Republic Act No. (R.A.) 8042 or the Migrant Workers and Overseas Filipinos Act of 1995.

#### The Facts

In 11 separate Informations, accused-appellant Bautista, together with co-accused Arleth Buenconsejo (Buenconsejo) and Rosamel Cara De Guzman (De Guzman), was charged with 10 counts of *estafa* under Article 315, paragraph 2(a) of the RPC, and one count of violation of R.A. 8042. The accusatory portions of said Informations read:

#### **CRIMINAL CASE NO. MC09-12510 (Estafa)**

"That on or about the month of September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud RANDY PAJARILLO, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there wilfully, unlawfully and feloniously pretend and falsely represent themselves to have power, capacity and qualifications to deploy complainant for employment in Korea as factory worker for a fee, in the amount of fifty thousand pesos (P50,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and i[n] fact, said complainant gave and delivered the total amount of P50,000.00, as payment

for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying RANDY PAJARILLO for employment in Korea and despite repeated demands accused failed[,] refused and continue to fail and refuse to deploy him or return the above sum demanded and received, to the damage and prejudice of said RANDY PAJARILLO in the aforementioned amount.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12511 (Estafa)**

"That on or about the months from [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud EFREN D. DINGLE, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in South Korea as factory worker for a fee, in the amount of one hundred fifty[-]nine thousand pesos (PI 59,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of PI59,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying EFREN D. DINGLE for employment in South Korea and despite repeated demands, accused failed[,] refuse[d] and continue to fail and refuse to so deploy him or return the above sum demanded and received, to the damage and prejudice of said EFREN D. DINGLE in the aforementioned amount.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12512 (Estafa)**

"That on or about the month of September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud MARY ANN C. MALLARI, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of thirty thousand pesos (P30,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in

fact, said complainant gave and delivered the total amount of P30,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying MARY ANN C. MALLARI for employment in Italy and despite repeated demands, accused failed[,] refused and continue to fail and refuse to deploy [her] or return the above sum demanded and received, to the damage and prejudice of said MARY ANN C. MALLARI in the aforementioned amount.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12513 (Estafa)**

"That on or about the months from [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud SALVE D. VILLAFUERTE, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity and qualifications to deploy complainant for employment i[n] Korea as factory worker for a fee, in the amount of one hundred twenty[-]three thousand pesos (P123,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P123,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying SALVE D. VILLAFUERTE for employment in Korea and despite repeated demands, accused failedf,] refused and continue to fail and refuse to so deploy [her] or return the above sum demanded and received, to the damage and prejudice of said SALVE D. VILLAFUERTE in the aforementioned amount.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12514 (Estafa)**

"That on or about the months from [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud MARIBETH D. CABBAB, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity and qualifications to deploy complainant for employment in Korea as factory worker for a fee, in the amount of one hundred forty[-]eight thousand pesos (PI48,000.00), and by means of other

similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver [and] in fact, said complainant gave and delivered the total amount of P148,000.00, as payment [for] the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying MARIBETH D. CABBAB for employment in [Korea] and despite repeated demand[s], accused failed[,] refused and continue to fail and refuse to so deploy [her] or return the above sum demanded and received, to the damage and prejudice of said MARIBETH D. CABBAB in the aforementioned amount.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12515 (Estafa)**

"That on or about the months from [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud ROLANDO L. DE VERA, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to' deploy complainant for employment in South Korea as factory worker for a fee, in the amount of one hundred forty[-four] thousand pesos (PI44,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of PI44,000.00, as [payment for the alleged processing fee, but the accused, once in possession] of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying ROLANDO L. DE VERA for employment in South Korea and despite repeated demands, accused failed[,] refused and continue to fail and refuse to so deploy him or return the above sum demanded and received, to the damage and prejudice of said ROLANDO L. DE VERA in the aforementioned amount.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12516 (Estafa)**

"That on or about the month of August 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud FREDERICK BAUTISTA, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have

the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of forty [-]five thousand pesos (P45,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P45,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying FREDERICK BAUTISTA for employment in Italy and despite repeated demands accused failed [,] refused and continue to fail and refuse to so deploy him or return the above sum demanded and received, to the damage and prejudice of said FREDERICK BAUTISTA in the aforementioned amount.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12517 (Section 6 of R.A. No. 8042)**

"That from the period covering [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating together and mutually helping and aiding one another representing themselves to have the capacity to contract, enlist and transport workers for employment abroad as factory workers, particularly in Korea and Italy, did, then and there willfully, unlawfully and feloniously, for a fee, recruit and promise employment/job placement abroad, to the following complainants and accordingly collected and received money from them, to wit:

<u>Complainant/s</u>	<u>Amount Paid</u>
FREDERICK BAUTISTA	P 45,000.00
MARIBETH D. CABBAB	P148,000.00
ROLANDO L. DE VERA	P144,000.00
MARY ANN C. MALLARI	P 30,000.00
RANDY PAJARILLO	P 50,000.00
ROWENA G. PANGANIBAN	P 30,000.00
VICKY B. PANGANIBAN	P 40,000.00
RANDY REDILLA	P 35,000.00
SALVE D. VILLAFUERTE	P123,000.00
EFREN B. DINGLE	P159,000.00

without first securing the required license and authority from the Department of Labor and Employment and/or from the [Philippine] Overseas Employment Agency, in violation of the above-cited law making illegal recruitment in large scale, an offense involving economic sabotage.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12518 (Estafa)**

"That on or about the month of August 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud VICKY PANGANIBAN, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of forty thousand pesos (P40,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P40,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without however, deploying VICKY PANGANIBAN for employment in Italy and despite repeated demands, accused failed[,] refused and continue to fail and refuse to so deploy [her] or return the above sum demanded and received, to the damage and prejudice of said VICKY PANGANIBAN in the aforementioned amount.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12519 (Estafa)**

"That on or about the month of September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud ROWENA PANGANIBAN, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of thirty thousand pesos (P30,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P30,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying ROWENA PANGANIBAN for employment in Italy and despite repeated demands, accused failed[,] refused and continue to fail and refuse to deploy [her] or return the above sum demanded and received, to the damage and prejudice of said ROWENA PANGANIBAN in the aforementioned amount.

CONTRARY TO LAW."

**CRIMINAL CASE NO. MC09-12520 (Estafa)**

"That on or about the month of August 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud RANDY REDILLA, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of thirty[-]five thousand pesos (P35,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P35,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying RANDY REDILLA [for] employment in Italy and despite repeated .demands, accused failed[,] refused and continue to fail and refuse to deploy him or return the above sum demanded and received, to the damage and prejudice of said RANDY REDILLA in the aforementioned amount.

CONTRARY TO LAW."<sup>[4]</sup>

The foregoing Informations were consolidated and during arraignment, accused-appellant Bautista pleaded not guilty.<sup>[5]</sup>

*Evidence of the Prosecution*

During trial, the prosecution presented the testimonies of Rowena G. Panganiban (Rowena), Randy Pajarillo (Randy), Rolando De Vera (Rolando) and Efren Dingle (Efren) (collectively, private complainants), although the partial testimony of Rowena was stricken off the record after she left for abroad and could no longer be cross-examined.

<sup>[6]</sup>

Randy, private complainant in Criminal Case No. MC09-12510, and one of the complainants in Criminal Case No. MC09-12517, testified that Randy met accused-appellant Bautista sometime in 2008, when the latter recruited him to work as a factory worker in Korea. Randy further testified that on September 1, 2008, he paid accused-appellant Bautista P50,000.00 for the processing fee, in exchange for which accused-appellant Bautista issued a receipt under the name of Baler Aurora Travel & Tours, Inc.

<sup>[7]</sup> After his payment, Randy later learned that accused-appellant Bautista was arrested following an entrapment operation. Randy, along with other persons who were also recruited by accused-appellant Bautista, visited the latter in Camp Crame, but they

failed to see accused-appellant Bautista in person. They were instead told to go and see accused-appellant Bautista's co-accused Buenconsejo, who was supposedly the one who would speak to them about the money that they had given to accused-appellant Bautista. Buenconsejo, in turn, issued checks to Randy's companions, equivalent to the monies they had given accused-appellant Bautista. Randy, for his part, refused to accept a check as payment, suspicious that such would turn out to be unfunded. The checks Buenconsejo issued later bounced, and Randy has since remained unable to recover the money he parted with in favor of accused-appellant Bautista.<sup>[8]</sup>

On cross-examination, Randy recounted how his former agent from Seven Blazy Agency, one Maribel Ramos (Maribel), introduced accused-appellant Bautista to him as the runner of accused Buenconsejo, and the one in charge of the processing of documents and Korean language instruction. Randy further claimed that accused-appellant Bautista represented that accused Buenconsejo was the owner of the recruitment agency, who later on denied having any connections with the said agency. Randy finally noted that he did not bother to check whether Fil Overseas Sandigan agency was registered with the Philippine Overseas Employment Administration (POEA), since the office of the former was located right beside the POEA office.<sup>[9]</sup>

The prosecution also presented the testimony of Rolando, private complainant in Criminal Case No. MC09-12515 and one of the complainants in Criminal Case No. MC09-12517. He testified that similarly to Randy, Rolando was also introduced to accused-appellant Bautista by Maribel, who told him that accused-appellant Bautista was looking for workers to be sent to South Korea, as replacement for those applicants who backed out.<sup>[10]</sup> On the promise that he would be deployed to South Korea, Rolando gave accused-appellant Bautista a total of P144,000.00 paid in seven installments, to supposedly cover the swapping fee, the visa processing expenses, as well as airfare costs. Rolando added that after submitting to accused-appellant Bautista his passport, National Bureau of Investigation (NBI) clearance, medical certificate and a Certificate of Korean language proficiency, accused-appellant Bautista issued in his favor a Standard Labor Contract.<sup>[11]</sup>

Finally, the prosecution presented Efren, the private complainant in Criminal Case No. MC09-12511 and one of the complainants in Criminal Case No. MC09-12517. For his part, Efren testified that he also met accused-appellant Bautista through Maribel, and that accused-appellant Bautista also represented that he was recruiting applicants for work in South Korea. Efren added that in order to be included among the list of recruits, he gave accused-appellant Bautista a total of P1 59,000.00. Despite said payments, however, accused-appellant Bautista failed to deploy Efren to South Korea as promised, and he later discovered that the recruitment agency he paid fees to had already closed.<sup>[12]</sup>

### *Evidence of the Defense*

Accused-appellant Bautista countered that he was merely an administrative assistant of Baler Aurora Travel & Tours, Inc., which in turn is owned by his co-accused Buenconsejo

and De Guzman.<sup>[13]</sup> He alleged that he met Randy, Rolando, and Efren when they purchased plane tickets for Korea. He claimed that it was his co-accused De Guzman who received the payments for the tickets, and that he was merely instructed to issue provisional receipts for the payments. He further denied conspiring with his co-accused to misrepresent and promise work in South Korea in exchange for money. He said that whenever he accepted money from the complainants, he merely did so in behalf of his co-accused De Guzman, and that in cases when he accepted money on his own behalf, he did so on the understanding that the money was for the payment of the tuition fee for the Korean language classes he conducted.<sup>[14]</sup>

### **Ruling of the RTC**

After trial on the merits, the RTC convicted accused-appellant Bautista of the crimes charged in its Joint Decision dated September 26, 2012, the dispositive portion of which reads:

**WHEREFORE**, premises considered, judgment is hereby rendered as follows:

1. In **Criminal Case No. MC09-12510**, the Court finds accused Sagisag Atlas "Paul" Bautista GUILTY beyond reasonable doubt of the crime of *Estafa* as defined in *Article 315 par. 2 (a) of the Revised Penal Code* and is hereby sentenced to suffer an Indeterminate Penalty of Six (6) months and One (1) day of prision correctional as minimum to Seven (7) years, Two (2) months and One (1) day of prision mayor as maximum.

Furthermore, accused Sagisag Atlas "Paul" Bautista is order to indemnify private complainant Randy Pajarillo the amount of P50,000.00 with twelve percent (12%) interest per annum stalling from the filing of the Information until the finality of the judgment.

2. In **Criminal Case No. MC09-12511**, the Court finds accused Sagisag Atlas "Paul" Bautista **GUILTY** beyond reasonable doubt of the crime of *Estafa* as defined in *Article 315 par. 2(a) of the Revised Penal Code* and is hereby sentenced to suffer an Indeterminate Penalty of Six (6) months and One (1) day of prision correctional as minimum to Sixteen [(16)] years, Two (2) months and One (1) day of *reclusion temporal* as maximum.

Furthermore, accused Sagisag Atlas "Paul" Bautista is ordered to indemnify private complainant Efren D. Dingle the amount of P151,000.00 with twelve percent (12%) interest per annum starting from the filing of the Information until the finality of the judgment.

3. In **Criminal Case No. MC09-12515**, the Court finds accused Sagisag Atlas "Paul" Bautista GUILTY beyond reasonable doubt of the crime of *Estafa* as defined in *Article 315 par. 2(a) of the Revised Penal Code* and is hereby sentenced to suffer an Indeterminate Penalty of Six (6) months and One (1) day of prision correctional as minimum to Fourteen (14) years, Two (2) months and One (1) day of *reclusion temporal* as maximum.

Furthermore, accused Sagisag Atlas "Paul" Bautista is ordered to indemnify private complainant Rolando L. De Vera the amount of PI 15,000.00 with twelve percent (12%) interest per annum starting from the filing of the Information until the finality of the judgment.

4. In **Criminal Case No. MC09-12517**[,] the Court finds accused Sagisag Atlas "Paul" Bautista **GUILTY** beyond reasonable doubt of the crime of illegal recruitment in large scale, as defined under *Section 6 of R.A. 8042* and is hereby sentenced to suffer the penalty of life imprisonment and a fine of P500,000.00 pursuant to *Section 7 of R.A. 8042*.

5. Considering that the prosecution failed to adduce any evidence in Criminal Case Nos. **MC09-12512, MC09-12513, MC09-12514, MC09-12516, MC09-12518, MC09-12519,** and MC09-12520, the Court finds accused Sagisag Atlas "Paul" Bautista **NOT GUILTY** OF seven (7) counts of Estafa as defined in *Article 315 par. 2(a) of the Revised Penal Code*.

6. Considering that the other two (2) accused, Arleth Buenconsejo and Rosamel Cara De Guzman, are still at large and the court has not yet acquired jurisdiction over their person, let alias warrants of arrest be issued against them and let the records of the eleven (11) cases be **ARCHIVED** to be revived upon their apprehension.

SO ORDERED.<sup>[15]</sup>

In finding accused-appellant Bautista guilty, the RTC found that the prosecution was able to establish the requisites for a finding of estafa as committed against Randy, Rolando, and Efren. It found that in Criminal Case No. MC09-12510, the prosecution was able to prove that Randy did give him the money on the false promise of a job in Korea, and that accused-appellant Bautista and the agency he represented failed to deploy Randy as assured.<sup>[16]</sup>

The RTC also found in Criminal Case No. MC09-12511 that similar to Randy, Efren also parted with a total of PI 51,000.00 after much persuasion from accused-appellant Bautista and with the goal of employment in Korea, and that he also was not deployed as promised.<sup>[17]</sup>

Finally, the same modus was also established in Criminal Case No. MC09-12515, where Rolando was shown to have relied on the misrepresentations of accused-appellant Bautista and paid a total of PI 15,000.00 for work deployment in Korea which never materialized.<sup>[18]</sup>

On the other hand, the RTC exonerated accused-appellant Bautista in all the other criminal cases<sup>[19]</sup> for estafa filed against him, considering that the private complainants therein were not present before it for the substantiation of the allegations therein.<sup>[20]</sup>

With respect to the charge of illegal recruitment in violation of Section 6 of R.A. 8042,

the RTC ruled that the prosecution sufficiently established that the two elements of illegal recruitment concurred, namely: (1) that accused-appellant Bautista did not have the required license or authority to engage in the recruitment and placement of workers, and (2) that accused-appellant Bautista nevertheless undertook (a) recruitment and placement activity as defined under Article 13(b) of the Labor Code, or otherwise (b) any prohibited practice under Article 34 of the same Code. Specifically, it found that the first element was established by no less than the POEA Certification dated October 7, 2008 that accused-appellant Bautista and his co-accused were not licensed or otherwise authorized to recruit workers for overseas employment.<sup>[21]</sup>

For the second element, the RTC also found that, as the private complainants consistently testified to, they all gave various sums of money with the promise of overseas deployment as consideration, and that accused-appellant Bautista and his agency, contrary to this promise and representation, failed to deploy all of them and further failed to return the money the private complainants parted with.<sup>[22]</sup>

The RTC further dismissed accused-appellant Bautista's argument that he was a mere administrative employee and therefore could not be held guilty of the agency's illegal recruitment, holding instead that an employee of a company found to have engaged in illegal recruitment may be held liable as a principal together with his employer for as long as the employee could be proven to have actively and consciously participated in the illegal recruitment, as accused-appellant Bautista was accordingly found.

Aggrieved, accused-appellant Bautista filed an appeal to the CA, arguing that the prosecution failed to overthrow the presumption of innocence in his favor.<sup>[23]</sup> He submitted that with respect to the charges of estafa against him were merely founded on the offense of an unfulfilled promise which was not attended by any deceitful or fraudulent misrepresentation.<sup>[24]</sup> Accused-appellant Bautista argued that his act of issuing provisional receipts in favor of the private complainants was merely ministerial and part of his job as a clerk of his co-accused's agency, and maintained that the money given by the private complainants were under the control of his co-accused De Guzman.<sup>[25]</sup> He countered that the RTC failed to appreciate conspiracy between him and his co-accused, so that De Guzman's act of running away with the private complainants' money could not be imputed against him, and the element of damage in the crime of estafa is not present.

Accused-appellant Bautista further argued that with respect to the charge of illegal recruitment against him, he questioned the proof of the first element, i.e., the absence of the license or authority to undertake recruitment for overseas employment. Specifically, he challenges the probative value of the POEA Certification, given that the person who signed the same, one Melchor B. Dizon, was not presented in court for purposes of authentication of the said certification.<sup>[26]</sup> For this reason, accused-appellant Bautista argued that the contents of the POEA Certification should have been considered hearsay and inadmissible in evidence.<sup>[27]</sup>

Accused-appellant Bautista also questioned the evidentiary merit of the POEA Certification, and argued that the same only stated that he and his co-accused were

not licensed or authorized to recruit workers for overseas employment in their personal capacities, and that nowhere in the certification was it said that the agency, Baler Aurora Travel & Tours, Inc., was similarly without authority or license to recruit.<sup>[28]</sup> Grounding his argument on the fact that the POEA Certification did not say that the agency itself was not licensed to undertake recruitment, then it followed that accused-appellant Bautista and his co-accused could not also be said to be unauthorized to recruit for overseas employment on the agency's behalf.<sup>[29]</sup>

He further proffered that under the Equipoise Rule, since the inculpatory circumstance of his case admit of two explanations, one of which is consistent with his claim of innocence, the prosecution must be deemed to have failed in hurdling the test of moral certainty, and he should therefore be acquitted.<sup>[30]</sup>

### **Ruling of the CA**

In the assailed Decision<sup>[31]</sup> dated June 27, 2014, the CA was unpersuaded by accused-appellant Bautista's contentions, and held instead that the RTC correctly convicted him of the charges of *estafa* and illegal recruitment, as all the elements of these charges were duly established.

In affirming the RTC's conviction,<sup>[32]</sup> the CA first rejected accused-appellant Bautista's claim that no fraud could be attributed to him, and that his only offense was his failure to make good on the promise of deploying the private complainants for work abroad. On the contrary, the CA found that fraud in the contemplation of the crime of *estafa* under Article 315 paragraph 2(a) is a generic term which embraces all multifarious deceitful means which are resorted to by an individual in order to secure an advantage over another by false suggestions or suppression of truth.<sup>[33]</sup> The CA found that the fraudulent means with which accused-appellant Bautista took undue advantage of private complainants were proven, further noting that in all three cases for which accused-appellant Bautista was convicted, the private complainants dealt significantly only with accused-appellant Bautista.<sup>[34]</sup>

The CA dismissed the argument that no conspiracy was proven in this case, ruling that such a finding was irrelevant in light of the fact that accused-appellant Bautista's actions themselves, as shown by evidence mounted against him, showed that he clearly engaged in *estafa* and illegal recruitment in a large scale.<sup>[35]</sup> Similarly, accused-appellant Bautista's defense that he was merely an administrative assistant of the agency was also dismissed as immaterial in view of the misrepresentations he made to the private complainants with respect to the scope of his official work. The CA found that accused-appellant Bautista repeatedly recruited people for work overseas, collected and received money from them even though he had no capacity or authority to do so.<sup>[36]</sup>

Hence, the instant appeal.

### **Issue**

The sole issue for the Court's resolution is whether the lower courts erred in convicting accused-appellant Bautista of three counts of *estafa* under Article 315, paragraph 2(a) of the RPC, and violation of Section 6 of R.A. 8042.

### **The Court's Ruling**

The appeal is bereft of merit, and we affirm the assailed judgment of the CA with modification on the award of damages.

At the outset, it bears noting that an illegal recruiter may be held liable for the crimes of illegal recruitment committed in large scale and *estafa* without risk of being put in double jeopardy, for as long as the accused has been so charged under separate Informations.<sup>[37]</sup> In the present case, since accused-appellant Bautista was separately charged for illegal recruitment in large scale and *estafa*, he may be properly, as he was, prosecuted simultaneously for both crimes.

#### *Estafa*

Against the charge of ten counts of *estafa*, accused-appellant Bautista counters that in all instances, what were involved were only unfulfilled promises, absent deceit or misrepresentation.<sup>[38]</sup> He proffers that there was no fraud, but merely a non-compliance of the supposed promise of job placements abroad.<sup>[39]</sup> This allegation flies in the face of the actual non-realization of said guarantee, and the machinations undertaken by accused-appellant Bautista and his co-accused, in order to induce herein private complainants to part with their money and latch their hopes onto a promise that would remain unfulfilled.

*Estafa* under Article 315, paragraph 2 of the RPC is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of the fraud. In this situational context, the offended party must have relied on the false pretense, fraudulent act or fraudulent means used by accused-appellant Bautista and sustained damages as a result thereof.<sup>[40]</sup>

Here, it is not disputed that private complainants Randy, Rolando and Efren all relied on accused-appellant Bautista's promise that he would be able to arrange for their placements in jobs in South Korea, but that despite payments of varying amounts of fees and the processing of the supposedly required documents, they were unable to leave the country to work abroad as they were assured, and as a consequence, all three suffered damages. These facts squarely fall within the definition of *estafa*, and belies accused-appellant Bautista's insistence that these were merely cases of benign unfulfilled promises. Instead, and as found by the lower courts, these consisted of a series of deceitful acts that are precisely within the contemplation of *estafa* under Article 315, paragraph 2 of the RPC.

#### *Illegal Recruitment*

Illegal recruitment is committed by a person who: (a) undertakes any recruitment activity defined under Article 13(b) or any prohibited practice enumerated under Articles 34 and 38 of the Labor Code; and (b) does not have a license or authority to lawfully engage in the recruitment and placement of workers.<sup>[41]</sup> It is committed in large scale when it is committed against three or more persons individually or as a group.

Together with R.A. 8042, the law governing illegal recruitment is the Labor Code which, under Article 13(b) thereof 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 x x x." The same Code also defines and punishes illegal recruitment, under Articles 38 and 39 which provide:

*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, x x x

(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.

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

x x x x *Art. 39. Penalties. —*

(a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined hereinf.]

xxxx

To prove illegal recruitment, two elements must be shown, namely: (1) the person charged with the crime must have undertaken recruitment activities, or any of the activities enumerated in Article 34 of the Labor Code, as amended; and (2) said person does not have a license or authority to do so. Contrary to accused-appellant Bautista's mistaken notion, therefore, it is not the issuance or signing of receipts for the placement fees that makes a case for illegal recruitment, but rather the undertaking of recruitment activities without the necessary license or authority.<sup>[42]</sup>

Further, to establish that the offense of illegal recruitment was conducted in a large scale, it must be proven that: (1) the accused engaged in acts of recruitment and placement of workers defined under Article 13(b) or in any prohibited activities under Article 34 of the Labor Code; (2) the accused has not complied with the guidelines

issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, either locally or overseas; and (3) the accused commits the unlawful acts against three or more persons, individually or as a group.<sup>[43]</sup>

All three elements have been established beyond reasonable doubt.

To overthrow the finding of guilt for this charge, accused-appellant Bautista questions the admissibility of the POEA Certification which stated that he had no authority or license to recruit for overseas employment, since said document was not authenticated in court by the signatory thereto.<sup>[44]</sup> Accused-appellant Bautista here misleads.

On the contrary, as found by the trial court, the veracity and probative import of the POEA Certification was already stipulated on by all parties involved, including accused-appellant Bautista, to *wit*:

xxx The supposed testimony of Johnson Bolivar, the Philippine Overseas Employment Agency (POEA) representative, was dispensed with after the prosecution and the defense agreed to stipulate on his supposed testimony, as follows: a) that he is a bonafide employee of the POEA; b) that he is presently assigned at the licensing branch of the POEA; c) that he was duly authorized to appear as representative of Miss Liberty Casco, officer-in-charge; d) that a certification was duly issued by the POEA regarding the non-issuance of authority to accused Arleth Buenconsejo, Rosamel Cara de Guzman and Sagisag Atlas Paul Bautista; and e) that the certification forms part of the official record of the POEA non-licensing branch.<sup>[45]</sup>

Clearly, accused-appellant Bautista may not now turn back on their stipulations and question the admissibility of a crucial document, the due issuance of which he stipulated and agreed on.

In addition, the probative value of the POEA Certification is covered by Section 44 of the Rules of Evidence, which provides that entries in official records are *prima facie* proof of the facts stated therein.<sup>[46]</sup> Said POEA Certification, as stipulated on with respect to its due issuance, sufficiently established that accused-appellant Bautista and his co-accused were neither licensed nor authorized to recruit workers for overseas employment.

Clearly, as testified to by the private complainants, the accused nevertheless engaged in recruitment and placement activities without the requisite authority, and were therefore properly charged with illegal recruitment.<sup>[47]</sup>

Accused-appellant Bautista's reliance on the Equipose Rule<sup>[48]</sup> is likewise misplaced. The Equipose Rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused. This Rule cannot find application in accused-appellant Bautista's case because, contrary to his submission, the evidence submitted and evaluated by both lower courts mount high against accused-appellant Bautista's denial and ineffective and

uncorroborated feigning of innocence. The total evidence presented by both parties is asymmetrical, with the prosecution's submissions indubitably demonstrating accused-appellant Bautista's guilt.

As for the penalties, the Court notes that those imposed by the trial court for the conviction on the counts of estafa are accordingly modified and adjusted pursuant to R.A. 10951,<sup>[49]</sup> which amended the RPC and adjusted the amounts or values of the property or damage on which penalties for certain crimes were based.

Particularly, pertaining to the threshold amounts relevant to the charges against accused-appellant Bautista for which he was convicted (P50,000.00, P151,000.00, and P115,000.00, respectively), R.A. 10951 provides under Section 85 thereof the amendments to the penalties imposed for the crime of estafa, to wit:

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

x x x x

"3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

x x x x

Correspondingly, the penalties imposed on accused-appellant Bautista for the charges of *estafa* should be adjusted in consonance therewith, pursuant in particular to Section 100 of the same statute which provides its retroactive effect to the extent favorable to the accused.

As amended, the prescribed penalty for estafa, where the amount is over P40,000.00 but does not exceed P1,200,000.00 is *arresto mayor* in its maximum period to *prision correccional* in its minimum period, ranging from four months and one day to two years and four months. Applying the Indeterminate Sentence Law, there being no modifying circumstance, the maximum term of the penalty should be anywhere within the medium period of the prescribed penalty, which is one year and one day to one year, eight months.' And the minimum term should be one degree lower from the prescribed penalty, which is *arresto mayor* in its minimum and medium periods, ranging from one month and one day to four months.

Under R.A. 10951 therefore, accused-appellant Bautista is liable to suffer the indeterminate penalty of imprisonment ranging from one month and one day of *arresto mayor* as minimum, to one year and one day to one year and eight months of *prision correccional* as maximum, for each count of estafa found against him.

Finally, the Court modifies the amount of interest in accordance with the Court's ruling in *Nacar v. Gallery Frames*?<sup>[50]</sup> The indemnity accused-appellant Bautista is due to pay each of the private complainants shall earn legal interest at the rate of 12% per annum

from the filing of the Information until June 30,2013, and 6%per annum from July 1,2013 until full payment.<sup>[51]</sup>

More so, with respect to the charge of illegal recruitment, the same was proven to have been committed against three victims, and therefore constitutes illegal recruitment in large scaled2 and is further deemed to constitute economic sabotage.<sup>53</sup> The penalties in Section 7 of R.A. 8042 have already been amended by Section 6 of R.A. 10022, and have been increased to a fine of not less than P2,000,000.00 but not more than P5,000,000.00. However, since the crime was committed in 2008, the Court applies the penalties in the old law, R.A. 8042. Accordingly, the Court affirms the RTC's imposition of the penalty of life imprisonment, and the awarded fine of P500,000.00, pursuant to Section 7 of R.A. 8042.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated June 27, 2014 of the Court of Appeals, Tenth Division, in CA-G.R. CR HC No. 05781 which found accused-appellant Sagisag Atlas "Paul" Bautista **GUILTY** beyond reasonable doubt of three (3) counts of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code, and for violation of Section 6 of Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 is hereby **AFFIRMED with MODIFICATION**, as follows:

1. In Criminal Case No. MC09-12510, accused-appellant Bautista is hereby sentenced to suffer the indeterminate penalty of one (1) month and one (1) day of *arresto mayor* as minimum, to one (1) year and one (1) day of *prision correccional* as maximum, and ordered to indemnify private complainant Randy Pajarillo the amount of P50,000.00 plus legal interest;
2. In Criminal Case No. MC09-12511, accused-appellant Bautista is sentenced to suffer the indeterminate penalty of one (1) month and one (1) day of *arresto mayor* as minimum, to one (1) year and one (1) day of *prision correccional* as maximum, and ordered to indemnify private complainant Efren D. Dingle the amount of PI 51,000.00 with legal interest; and
3. In Criminal Case No. MC09-12515, accused-appellant Bautista is sentenced to suffer the indeterminate penalty of one (1) month and one (1) day of *arresto mayor* as minimum, to one (1) year and one (1) day of *prision correccional* as maximum, and ordered to indemnify private complainant Rolando L. De Vera the amount of PI 15,000.00 with legal interest.

Finally, all sums due shall earn legal interest at the rate of twelve percent (12%) per annum from the filing of the Informations until June 30, 2013, and six percent (6%)per annum from July 1, 2013 until full satisfaction thereof.

**SO ORDERED.**

*Peralta, C.J., Chairperson, Caguioa, J. Reyes, Jr., Lazaro-Javier, and Lopez, JJ. concur.*

\* Also appears as "Buencosejo" in some parts of the records.

[1] See Notice of Appeal with Compliance dated July 14, 2014; rollo, pp. 16-19.

[2] Id. at 2-15. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr.

[3] CA *rollo*, pp. 42-60. Penned by Presiding Judge Ofelia L. Calo.

[4] Id. at 42-48.

[5] Id. at 48-49.

[6] Id. at 49.

[7] Also appears as "Baler Aurora Travel and Tours" in some parts of the records.

[8] CA *rollo*, p. 49.

[9] Id. at 50.

[10] Id.

[11] Id. at 50-51.

[12] Id. at 51.

[13] Id. at 53.

[14] Id. at 54.

[15] Id. at 58-60

[16] Id at 55.

[17] Id. at 55-56.

[18] Id. at 56.

[19] Id.; namely Criminal Case Nou. MC09 12512, MC09-I2513, MC09-12514, MC09-12516, MC09-12518. MC09-1251S and MC09-12520.

[20] Id.

[21] Id. at 57-58.

[22] Id. at 58.

[23] Id. at 34.

[24] Id. at 35.

[25] Id.

[26] Id. at 36.

[27] Id.

[28] Id. at 38.

[29] Id.

[30] Id. at 39-40.

[31] Supra note 2.

[32] Id. at 14.

[33] Id. at 12.

[34] Id. at 13.

[35] Id.

[36] Id. at 13-14.

[37] *People v. Bayker*, G.R. No. 170192, February 10, 2016, 783 SCRA 346, 350.

[38] CA rollo, n 3 5

[39] Id.

[40] See *People v. Sagaydo*, G.R. Nos. 12467! -75, September 29, 2000, 341 SCRA 346, 350.

[41] *Nasi-Villar v. People*, G.R. No. 176169, November 14, 2008, 571 SCRA 202, 208; *People v. Ortiz- Miyake*, G.R. Nos. 115338-39, September 16, 1997, 279 SCRA 180, 193; *People v. Bayker* supra note 37 at 359.

[42] *People v. Senoron*, G.R. No. 119160, January 30, 1997, 267 SCRA 278, 284.

[43] *People v. Dujua*, G.R. Nos. 149014-16, February 5, 2004, 422 SCRA 169, 177, citing *People v. Sanchez*,

G.R. No. 122508, June 26, 1998. 291 SCRA 333.

[44] *CA rollo*, p. 37.

[45] *Id.* at 49.

[46] Section 44, Rules on Evidence provides:

**Sec. 44.** *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law are prima facie evidence of the facts therein stated. (38)

[47] *People v. Racho*, G.R. No. 227505, October 2, 2017, 841 SCRA 449, 463, citing *People v. Lalli*, G.R. No. 195419, October 12, 2011, 659 SCRA 105, 120.

[48] *CA rollo*, p. 37.

[49] An Act Adjusting the Amount or the Value of Property and Damage on which a penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as Amended, August 29, 2017.

[50] 716 Phil. 267, 279 (2013).

[51] *People v. Aquino*, G.R. No. 234818, November 5, 2018.

[52] As provided under Articles 38 and 39 of the Labor Code.

[53] See *People v. Bacos*, G.R. No. 178774, December 8, 2010, 637 SCRA 593, 598.



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