

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO BACCAY, ACCUSED-APPELLANT.

Ponente: SORONGON, E. D., J.

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SORONGON, E. D., J.:

Convicted of illegal recruitment in large scale and estafa, Domingo Baccay (accused-appellant) appeals the Decision[1] dated March 22, 1996 of the Regional Trial Court of Valenzuela, Branch 172, the fallo of which reads:

“WHEREFORE, judgment is hereby rendered as follows:

(1) In Crim. Case No. 4520-V-94, the Court finds accused DOMINGO BACCAY y SINGAYAN guilty beyond reasonable doubt and as principal of the crime of Illegal Recruitment in large scale as defined and penalized under Article 38 in relation to Article 39(a) of the Labor Code, as amended by P.D. 2018, without any attending mitigating or aggravating circumstance and hereby sentences him to a penalty of life imprisonment and a fine of P100,000.00, without subsidiary imprisonment in case of insolvency;

(2) In Crim. Case No. 4521-V-94, the Court finds accused DOMINGO BACCAY y SINGAYAN guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to a penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor as maximum. The accused is further sentenced to pay complaining witness Merlinda Torda the amount of P20,000.00 without subsidiary imprisonment in case of insolvency, plus the costs of suit;

(3) In Crim. Case No. 4522-V-94, the Court finds accused DOMINGO BACCAY y SINGAYAN guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to a penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor as maximum. The accused is further sentenced to pay complaining witness Julita Balanag the amount of P15,000.00 without subsidiary imprisonment in case of insolvency, plus the costs of suit;

(4) In Crim. Case No. 4523-V-94, the Court finds accused DOMINGO BACCAY y SINGAYAN guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to a penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor as maximum. The accused is further sentenced to pay complaining witness Joseph Pablo y Campos the amount of P14,000.00 without subsidiary imprisonment in case of insolvency, plus the costs of suit;

(5) In Crim. Case No. 4524-V-94, the Court finds accused DOMINGO BACCAY y SINGAYAN guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to a penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor as maximum. The accused is further sentenced to pay complaining witness Joel Allan Ruiz the amount of P23,000.00 without subsidiary imprisonment in case of insolvency, plus the costs of suit;

(6) In Crim. Case No. 4525-V-94, the Court finds accused DOMINGO BACCAY y SINGAYAN guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to a penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor as maximum. The accused is further sentenced to pay complaining witness Rogelio Awigan the amount of P20,000.00 without subsidiary imprisonment in case of insolvency, plus the costs of suit;

(7) In Crim. Case No. 4526-V-94, the Court finds accused DOMINGO BACCAY y SINGAYAN guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to a penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor as maximum. The accused is further sentenced to pay complaining witness Basilio Tein the amount of P45,000.00 without subsidiary imprisonment in case of insolvency, plus the costs of suit;

(8) In Crim. Case No. 4527-V-94, the Court finds accused DOMINGO BACCAY y SINGAYAN guilty beyond reasonable doubt and as principal of the crime of Estafa as defined and penalized under paragraph 2(a) in relation to the first paragraph of Article 315 of the Revised Penal Code without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to a penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS and ONE (1) DAY of prision mayor as maximum. The accused is further sentenced to pay complaining witness Geminiano Bautista the amount of P11,500.00 without subsidiary imprisonment in case of insolvency, plus the costs of suit;

The accused being a detention prisoner, he shall be credited the preventive imprisonment he has undergone in the service of his sentence.

SO ORDERED.”

In Criminal Case No. 4520-V-94, the Information[2] for Illegal Recruitment in Large Scale against accused-appellant alleged:

“That on or about February to August 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused representing himself to have the capacity to contract, enlist and recruit workers for employment abroad, did then and there willfully, unlawfully and feloniously for a fee recruit and promise employment/job placement in a large scale to: JOSEPH PABLO, JOE ALLAN RUIZ, JULITA BALANAG, MERLINDA TORDA, REYNALDO AMBI, ROGELIO AWIGAN, BASILIO TEIN and GEMINIANO BAUTISTA without said accused having secured first the necessary license or authority to engage in recruitment activities from the Philippine Overseas Employment Administration (POEA), in violation of Article 38 of the Labor Code (PD 442) as amended by Presidential Decree No. 2018.

Contrary to Law.”

In Criminal Cases Nos. 4521-V-94 to 4527-V-94, all for estafa, accused-appellant was charged[3] under the following Informations, to wit:

Criminal Cases Nos. 4521-V-94

“That sometime in February & July 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, defrauded and deceived one MERLINDA TORDA in the following manner, to wit: said accused by means of false manifestation and fraudulent representation which he made to the said complainant to the effect that he has the capacity and power to recruit and employ complainant abroad and facilitate the necessary papers in connection therewith if given the necessary amount to meet the requirement thereof, knowing said manifestations and representation to be false and fraudulent and where only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to P20,000.00, but said accused, once in possession of the same with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit, despite demands made upon him to return the said amount of P20,000.00 said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the said complainant in the aforementioned amount of P20,000.00.

Contrary to Law.”

Criminal Case No. 4522-V-94

“That sometime in February & July 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, defrauded and deceived one JULITA BALANAG in the following manner, to wit: said accused by means of false manifestation and fraudulent representation which he made to the said complainant to the effect that he has the capacity and power to recruit and employ complainant abroad and facilitate the necessary papers in connection therewith if given the necessary amount to meet the requirement thereof, knowing said manifestations and representation to be false and fraudulent and where only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to P15,000.00, but said accused, once in possession of the same with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit, despite demands made upon him to return the said amount of P15,000.00 said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the said complainant in the aforementioned amount of P15,000.00.

Contrary to Law.”

Criminal Case No. 4523-V-94

“That sometime in April 17, 1994 and May 22, 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, defrauded and deceived one JOSEPH PABLO y CAMPOS in the following manner, to wit: said accused by means of false manifestation and fraudulent representation which he made to the said complainant to the effect that he has the capacity and power to recruit and employ complainant abroad and facilitate the necessary papers in connection therewith if given the necessary amount to meet the requirement thereof, knowing said manifestations and representation to be false and fraudulent and where only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to P14,000.00, but said accused, once in possession of the same with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit, despite demands made upon him to return the said amount of P14,000.00 said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the said complainant in the aforementioned amount of P14,000.00.

Contrary to Law.”

Criminal Case No. 4524-V-94

“That on or about the 22nd day of May 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, defrauded and deceived one JOEL ALLAN RUIZ in the following manner, to wit: said accused by means of false manifestation and fraudulent representation which he made to the said complainant to the effect that he has the capacity and power to recruit and employ complainant abroad and facilitate the necessary papers in connection therewith if given the necessary amount to meet the requirement thereof, knowing said manifestations and representation to be false and fraudulent and where only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to P23,000.00, but said accused, once in possession of the same with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit, despite demands made upon him to return the said amount of P23,000.00 said accused failed and refused and still fails and refuses to do so, to the damages and prejudice of the said complainant in the aforementioned amount of P23,000.00.

Contrary to Law.”

Criminal Case No. 4525-V-94

“That sometime in July 27, 1994 and August 10, 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, defrauded and deceived one ROGELIO AWIGAN in the following manner, to wit: said accused by means of false manifestation and fraudulent representation which he made to the said complainant to the effect that he has the capacity and power to recruit and employ complainant abroad and facilitate the necessary papers in connection therewith if given the necessary amount to meet the requirement thereof, knowing said manifestations and representation to be false and fraudulent and where only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to P20,000.00, but said accused, once in possession of the same with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit, despite demands made upon him to return the said amount of P20,000.00 said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the said complainant in the aforementioned amount of P20,000.00.

Contrary to Law.”

Criminal Case No. 4526-V-94

“That sometime in July to August 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, defrauded and deceived one BASILIO TEIN Y CAPARIDA in the following manner, to wit: said accused by means of false manifestation and fraudulent representation which he made to the said complainant to the effect that he has the capacity and power to recruit and employ complainant abroad and facilitate the necessary papers in connection therewith if given the necessary amount to meet the requirement thereof, knowing said manifestations and representation to be false and fraudulent and where only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to P45,000.00, but said accused, once in possession of the same with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit, despite demands made upon him to return the said amount of P45,000.00 said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the said complainant in the aforementioned amount of P45,000.00.

Contrary to Law.”

Criminal Case No. 4527-V-94

“That on or about the 17[th] day of August 1997 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, defrauded and deceived one GEMINIANO BAUTISTA in the following manner, to wit: said accused by means of false manifestation and fraudulent representation which he made to the said complainant to the effect that he has the capacity and power to recruit and employ complainant abroad and facilitate the necessary papers in connection therewith if given the necessary amount to meet the requirement thereof, knowing said manifestations and representation to be false and fraudulent and where only to induce said complainant to give, as in fact, the latter did give and deliver to said accused cash money amounting to P11,500.00, but said accused, once in possession of the same with intent to defraud and deceive the herein complainant, did then and there willfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit, despite demands made upon him to return the said amount of P11,500.00 said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the said complainant in the aforementioned amount of P11,500.00.

Contrary to Law.”

Accused-appellant, with the assistance of his counsel, pleaded “NOT GUILTY” to all charges. The eight (8) cases were thus consolidated and tried jointly.

We adopt the summary of facts presented by the Office of the Solicitor General in its Brief, thus:

“On July 1994, complainant Rogelio Awigan (hereinafter referred to as Rogelio) met the accused-appellant Domingo Baccay. The latter was introduced to the complainant by Reynaldo Ambi (hereinafter referred to as Reynaldo), a compadre of Rogelio.

Reynaldo introduced the accused-appellant to the complainant as a person who is helping those who have been victimized by scrupulous persons. According to Reynaldo, the accused-appellant is a person from the media.

Accused-appellant represented himself to be a person from the media and he can help complainant to go to Japan and work there. The latter gave his passport and the sum of P5,000.00 to the accused-appellant in the presence of Reynaldo. The said P5,000 is a processing fee in order for the complainant to be able to work in Japan. In addition, the latter gave an amount of P15,000 to accused-appellant as an additional payment.

Complainant was not able to leave for Japan and he thereafter learned that the authorities were looking for accused-appellant.

Also on July 1994, Basilio Tein met accused-appellant. The former told the latter about his plan to work abroad, specifically in Taiwan as a factory worker. Further, complainant told accused-appellant of his (Basilio Tein) pending application before an agency. Domingo Baccay told complainant that their office would take only 45 days of processing upon payment of P1,500.00 processing fee and the total amount needed is P45,000.00.

On 10 July 1994, complainant gave the amount P1,500.00 including his passport and NBI clearance to Domingo Baccay. Thereafter, complainant gave an additional amount of P2,000.00 to expedite the processing in POEA plus P12,000.00 to be paid to the POEA.

On August 4, 1994, complainant gave accused-appellant the sum of P10,000.00 for processing of his (complainant) papers in the POEA, DOLE, and Embassy. When complainant asked for a receipt, Domingo Baccay did not give any and replied that it is their practice to not give any receipt and that they could really be trusted because they used to help those who were or have been victimized by fake/illegal recruiters.

On August 5, 1994, complainant gave accused-appellant the sum of P16,000.00 for visa payment. The latter demanded an additional amount of P3,500.00, for full payment, and complainant gave in to the demands of accused-appellant.

According to Geminiano Bautista, he was recruited by Domingo Baccay for employment in Taiwan as a factory worker after the latter represented himself as a member of the press.

The accused-appellant required the complainant to give P11,500.00 and P1,500.00 for processing fee and for tax so that his (Geminiano Bautista) entry in Taiwan would be legal. Accused-appellant promised the complainant that he will be able to leave in August 1994. The promised of the accused-appellant for employment in Taiwan was never fulfilled and thereafter complainant learned that accused-appellant, Domingo Baccay was arrested.

On an earlier date, 19 November 1993, accused-appellant promised employment abroad to one Joseph Pablo provided that the latter will give him a sum of money. Subsequently, on 17 April 1994, complainant gave P8,000 to accused-appellant Domingo Baccay. Thereafter, complainant gave an additional amount of P7,000 to accused-appellant. According to accused-appellant, he can send Joseph Pablo to Dubai to work there. After conversing with the accused-appellant about the promise to work abroad and giving the total amount of P15,000.00, the former never showed-up anymore.

Joseph Pablo was able to verify with the POEA that Domingo Baccay is an illegal recruiter.

Also sometime in the year 1994, complainant Joe Allan Ruiz (hereinafter referred to as Joe Allan) met Domingo Baccay in the house of Mr. Joseph Pablo. Accused-appellant asked Joe Allan if he wanted to work in Dubai as a waiter. The latter said yes and was able to give a total amount of Php23,000.00 as payment for the travel in order to work and train abroad. Joe Allan was not able to leave for Dubai in July 1994 and because of that he filed a complaint against accused-appellant.”[4]

Upon the other hand, accused-appellant denied the accusations imputed against him and averred in his Brief that,

“The private complainant Reynaldo Ambi introduced the private complainants Roger Awigan and Basilio Tein to him and sought assistance in getting their money back from a certain Vilma Aquino who recruited them for employment abroad. After successfully facilitating the return of Awigan's Forty Thousand Pesos (Php40,000.00) to him, he returned to the accused with two (2) more companions who also asked his assistance. The accused talked to Aquino at her office. When the accused and Awigan's two (2) more companions returned there, however, Aquino was no longer at the agency. This prompted them to seek the assistance from the National Bureau of Investigation. The accused accompanied them at the NBI's office. The accused was surprised when he learned that the charges of illegal recruitment and estafa are filed against them.

The accused likewise claimed that out of fifty-four (54) persons who came to him for assistance in the return of their payments made to a certain recruiter, only eight (8) were unsuccessful in getting their money back. He also claimed that he never met the private complainants Julita Balanag, Merlinda Torda, Basilio Tein and Geminiano Bautista.”[5]

In finding the accused-appellant guilty as charged, the trial court gave full weight and credence to the testimony of the private complainants rather than to his bare denial. Thus:

“Proffered to satisfy the first element of the crime of illegal recruitment as well as the crime of estafa as charged in the informations are the testimonies of the complaining witnesses clearly showing that the accused falsely represented himself to have the capacity and power to contract, enlist and recruit workers for employment abroad; and that as consideration thereof the accused demanded and collected from the complaining witnesses various amount of money.

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The accused gave the impression that the recruitment activity was undertaken by a certain Vilma Aquino. But he never presented Aquino as witness fro the defense. He could have availed of the compulsory process of the Court to compel the appearance of Aquino in Court to testify. That no such effort was exerted by the accused

gives rise to the suspicion that Aquino was only fictitious person used by the accused to give the impression that he has the power to send people abroad. xxx”[6]

Accused-appellant filed this appeal based on the propositions that:

I. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF ILLEGAL RECRUITMENT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ELEMENTS OF THE CRIME CHARGED.

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT; and

III. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT IN CRIM. CASES NOS. 4521-V-94 AND 4522-V-94 BASED SOLELY ON THE AFFIDAVITS OF MERLINDA TORDA AND JULITA BALANAG.

Simply put, accused-appellant is challenging the sufficiency of the prosecution's evidence to establish that he was guilty of illegal recruitment in large scale and estafa.

The appeal is devoid of merit.

The crime of illegal recruitment in large scale is defined in Section 6 of Republic Act No. 8042, also known as the Migrant Workers and Overseas Filipinos Act of 1995, viz:

Sec. 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-license 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: (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange

earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(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.

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To constitute illegal recruitment in large scale, three elements must concur, to wit: (1) the offender has no valid license or authority required by law to enable one to engage lawfully in recruitment and placement of workers; (2) he or she undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13, paragraph (b), or any prohibited practices enumerated under Article 34 of the Labor Code; and (3) that the accused commits the acts against three or more persons, individually or as a group.[7]

Furthermore, it is well-settled that to prove illegal recruitment, it must be shown that accused-appellant gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed[8]. It is important that there must at least be a promise or offer of an employment from the person posing as a recruiter, whether locally or abroad[9].

At bar, the prosecution was able to adequately establish the elements of the crime beyond reasonable doubt.

First, the testimonies of the private complainants are substantially the same pointing to the fact that accused-appellant promised or offered them employment abroad for a consideration. They even parted their hard earned money to herein accused-appellant confident that the latter will stay true to his promise of employment overseas. All the private complainants positively identified the accused-appellant to have misrepresented himself as a media man and lured them to engage him as a recruiter of workers abroad in exchange for sums of money. To these allegations private complainants testified with resolve, credibility and honesty and their testimonies dovetail in all material points. Hence, the acts of the accused-appellant which consist of a promise or offer of employment to certain persons and of transporting these persons abroad fall squarely within the ambit of recruitment and placement as defined by law.

Secondly, We cannot find any reason for herein private complainants to falsely impute to the accused-appellant

such a serious crime and delusively testify against him other than the interest of vindicating a crime committed against them.

Thirdly, accused-appellant's defense of passing the buck to one Vilma Aquino, who he claims was the one responsible for the recruitment of the private complainants, smacks of a desperate attempt to escape culpability if not to mislead the trial court. However, such defense crumbles against the categorical, positive and corroborated account of the private complainants. Needless to state, the mere denial of the accused-appellant and his pinpointing of the crime to one Vilma Aquino who was never presented in court cannot prevail over the positive testimonies of the private complainants. As the Supreme Court held in another illegal recruitment case, "with the accused-appellant's failure to present the person who was allegedly responsible for the recruitment of the complainants, she risked the adverse inference and legal presumption that evidence suppressed would be adverse if produced"[10]. An affirmative testimony is far stronger than a negative testimony especially when the former comes from the mouth of a credible witness. Denial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted[11].

Jurisprudence abounds that credibility of a witness is a question of fact. Thus, it is incumbent upon the trial court to weigh and assign probative value to the testimony of a witness. It is well-settled that the findings of fact and the assessment of the credibility of witnesses are matters best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath – all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial court's findings are accorded finality unless there appears on the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case[12].

Here, accused-appellant miserably failed to show that the trial had overlooked or misapprehended certain fact or circumstance which could materially affect the result of the case warranting review by this Court.

Anent the penalty of illegal recruitment in large scale, Section 7 of R.A. 8042 pertinently provides that: The penalty of life imprisonment and a fine of not less than Five Hundred Thousand Pesos (P500,000.00) nor more than One Million Pesos (P1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

While the trial court correctly sentenced accused-appellant to suffer the penalty of life imprisonment in Criminal Case No. 4520-V-94 (Illegal Recruitment in Large Scale and Estafa), however it failed to impose the proper fine. The trial court meted upon accused-appellant the penalty of life imprisonment and a fine of only P100,000.00 which is below the minimum set by law. Thus, consistent with the above provision of law, the fine is increased to P500,000.00[13].

As regards the conviction of accused-appellants for seven (7) counts of estafa in Criminal Cases Nos. 4521-V-94, 4522-V-94, 4523-V-94, 4524-V-94, 4525-V-94, 4526-V-94 and 4527-V-94, the Supreme Court in a catena of cases have ruled that a person convicted of illegal recruitment under the Labor Code can be convicted of violation of the Revised Penal Code provisions on estafa, provided the elements of the crime are present.

The Supreme Court in the case of *People v. Yabut* [14] has this to say:

“In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted

separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and vice versa."

The elements of estafa are: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person[15].

As discussed earlier, We are convinced that private complainants were led to believe by the accused-appellant that he can provide them with employment overseas. This is the very reason why they readily parted with their money thinking of the greener pastures awaiting them abroad. Unfortunately, such dream or aspiration did not come to reality because they were defrauded by the accused-appellant through deceitful machinations.

The penalty for estafa depends on the amount of defraudation. According to Article 315 of the Revised Penal Code:

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 12,000.00 pesos but does not exceed 22,000.00 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 10,000.00 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.

The prescribed penalty for estafa under Article 315 of the Revised Penal Code, when the amount of fraud is over P22,000.00, is prision correccional maximum to prision mayor minimum, adding one year to the maximum period for each additional P10,000.00, provided that the total penalty shall not exceed 20 years.

Applying the Indeterminate Sentence Law, we take the minimum term from the penalty next lower than the minimum prescribed by law, or anywhere within prision correccional minimum and medium (i.e., from 6 months and 1 day to 4 years and 2 months).[16]

Prescinding therefrom, the trial court correctly imposed the penalty for estafa in Criminal Cases Nos. 4521-V-94, 4522-V-94, 4523-V-94, 4524-V-94, 4525-V-94 and 4527-V-94. However, with respect to Criminal Case No. 4526-V-94, where the amount of the fraud is P45,000.00, the penalty imposed ought to be rectified.

Accordingly, pursuant to Article 315 of the Revised Penal Code, the penalty for Swindling or Estafa is prision correccional in its maximum period to prision mayor in its minimum period. Applying the Indeterminate Sentence Law, the range of the penalty should be within six (6) months and one (1) day to four (4) years and two (2) months of prision correccional as minimum and six (6) years eight (8) months and twenty one (21) days to eight (8) years of prision mayor as maximum. Considering that the amount of the fraud in this particular case is Php45,000.00, two (2) years shall be added to the impossible penalty, with the maximum penalty being at ten (10) years.

WHEREFORE, the assailed Decision of the Regional Trial Court of Valenzuela City, Branch 172 is AFFIRMED with the following MODIFICATIONS: a) The fine imposed against accused-appellant in Criminal Case No. 4520-V-94 is hereby increased to FIVE HUNDRED THOUSAND PESOS (P500,000.00); and b) The accused-appellant in Criminal Case No. 4526-V-94 is hereby sentenced to suffer the indeterminate prison term of four (4) years two (2) months and one (1) of prision correccional as minimum to eight (8) years of prision mayor as maximum.

SO ORDERED.

Reyes, Jr. A.B., Chairperson, and Rosario, R.R., JJ., concur.

[1] Rollo, pp. 25-35

[2] Rollo, p. 12

[3] Rollo, pp. 13-19

[4] Rollo, pp. 120-158

[5] Rollo, pp. 76-96

[6] Supra at note 1

[7] People v. Baytic, G.R. No. 150530, 20 February 2003.

[8] People v. Gasacao, 511 Phil. 435, 445 (2005).

[9] People v. Angeles, G.R. No. 132376, April 11, 2002, 380 SCRA 519, 526-527.

[10] People vs. Enriquez, 306 SCRA 739 (1999).

[11] People v. Bulfango, 438 Phil. 651, 657 (2002)

[12] People v. Parreno, G.R. No. 144342, July 7, 2004

[13] People vs. Ocden, G.R. No. 173198, June 1, 2011

[14] 374 Phil. 575 (1999).

[15] Article 315 of the Revised Penal Code

[16] People vs. Ocden, Supra at note 19

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