

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARY ROSE ONDO @ BABY AND SIMEON ORTEGA, ACCUSED, MARY ROSE ONDO @ BABY, ACCUSED-APPELLANT.

G.R. No. 101361. November 08, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 109, Pasay City, in Criminal Case No. 89-3949, convicting Mary Rose Ondo @ Baby of illegal recruitment.

Appellant and Simeon Ortega were charged with violation of Article 38 of the Labor Code, committed as follows:

"That on or about and sometime from the month of December 1988 to August 1989, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, by falsely representing themselves to have the power and capacity to contract, enlist and transport workers for employment abroad, did then and there, willfully, unlawfully and feloniously recruit Erlinda Cortez, Fidela Engada, Myra Siguenza, Dulce Garcia and Emilinda Padua and charged them placement fees and processing fees and promising said persons non-existing jobs abroad, thus participating to the recruitment, placement of deployment of said workers under false pretenses" (Rollo, p. 22).

The court a quo accepted, as established by the evidence on record, the version of the prosecution, which was summarized in the brief of the Solicitor General, as follows:

"On January 9, 1989, Perfecta Calderon, the sister and cousin of private complainants Frederico Calderon and Erlinda Cortez, respectively, received a call from her sister Angelita Calderon who was in Italy. Angelita instructed her to wait for the call of appellant regarding the recruitment of her brother Frederico and cousin Erlinda Cortez for jobs in Italy. A few days thereafter, she received a call from appellant who asked for the passports, pictures and birth certificates of Frederico and Erlinda so that appellant could process the requisite documentations for their departure to Italy. Likewise, appellant also demanded the amount of 5,000 US Dollars (sic) as payment for the plane tickets of both applicants (tsn., pp. 3-4, May 10, 1990).

On January 15, 1989, appellant called her up telling her to bring the documents (passports, pictures and Birth Certificates) to appellant's residence at 1754 Lacaba Compound, Tramo Street, Pasay City, which she did.

At the residence of appellant, Perfecta handed over the documents and the 5,000 US Dollars (sic) to Simeon Ortega who signed a receipt (Exhs. "J" to "J-1") to evidence payment. Ortega then handed the money to appellant. Before leaving appellant's residence, Perfecta inquired for the date of departure of her brother and cousin, but was told by appellant to wait for her call (tsn., pp. 5-8, May 10, 1989). The call, however, never came, so she demanded for the return of the money and the documents. Only the documents were returned (tsn., p. 9, May 10, 1990).

Her brother and cousin though were able to leave for and are already working in Italy through the assistance of

another travel agency (tsn., *ibid.*).

Sometime in December 1988, private complainant Fidela Engada was introduced by her brother Wilfredo to appellant through a letter. Wilfredo Engada instructed her auntie Lucy Engada by phone to bring complainant to appellant for the latter to process her papers for abroad.

On December 28, 1988, private complainant and Lucy Engada went to appellant's residence in 1754 Lacaba Compound, Tramo Street, Pasay City, where she was introduced to appellant. Private complainant manifested her desire to go abroad through the help of appellant per her brother's recommendation. Appellant then intimated to her that the amount P65,000.00 was needed to defray for all the expenses. Outright, she handed a down payment of P30,000.00 which was duly receipted ([Exhs. "A" to "A-1"] tsn., pp. 5-8, May 2, 1990). Appellant asked for her passport for processing and told her to get in touch with appellant to ascertain the date of her departure.

After numerous follow-ups, private complainant was informed by appellant of her departure on August 18, 1989 and appellant demanded another amount of 200 US Dollars (sic) for the purchase of her plane ticket for Italy. This event was duly acknowledged by appellant (Exhs. "B" to "B-1", tsn., pp. 10-11, May 2, 1990).

On August 18, 1989, however, private complainant was not able to depart for Italy. She then tried to see appellant at her residence but to no avail; appellant could no longer be located. For four more times she went to appellant's place but with the same result. In her last attempt though, private complainant met the other victims of appellant and it was then that they decided to file their complaints with the Pasay City Prosecutor's Office against appellant through a "Magkasanib na Pahayag" ([Exh. "C"], tsn., pp. 12--14, May 2, 1990).

Private complainant Dulce Garcia was introduced to appellant through a letter from appellant's friend, Lilia Gonzales. On the last week of April 1989, appellant called her about 11:00 o'clock (sic) in the evening and introduced herself as a balikbayan from Italy and a recruiter who could deploy workers for abroad. Private complainant, desirous of trying her luck abroad, asked what the requirements were. Appellant told her that the amount of P65,000.00 was needed to pay for the package-deal-arrangement in processing her travel documents i.e., passports, plane ticket and placement fees (tsn., pp. 14-15, May 10, 1990).

Three days after, appellant called her up again and told her to prepare the necessary requirements and to go to her (appellant's) address at 1754-A Lacaba Compound, Tramo Street, Pasay City with the P65,000.00. While at appellant's residence, she was told that she could depart on the first week of June 1989. On May 10, 1989, appellant called her up anew and told her to see her (appellant) again at her said residence and bring with her the necessary documents and the P65,000.00.

In the afternoon of the next day (May 11, 1989), private complainant went to appellant's residence where she handed the documents and the amount of P53,000.00 in the presence of Emmanuel Balboa, appellant's boyfriend. Appellant issued a receipt in acknowledgement therefor (Exhs. "K" to "K-1"), with the entry appearing thereat: "received the amount of Fifty-three Thousand Pesos Payment for the plane ticket in going to Italy" (Exh. "K-2"). Appellant then told her to wait for another call yet. Five days after, appellant called her up and told her to bring along her Birth Certificate and ID pictures so that she could accompany her to the Passport Division of the Department of Foreign Affairs at the Film Center. Private complainant was further told that her personal appearance at the Passport Division was important (tsn., pp. 16-19, May 10, 1990).

At the Passport Division, private complainant was interviewed, after which appellant told her to give the balance of the P65,000.00. In the morning of May 22, 1989, she went to appellant's residence and paid the amount of P11,500.00, which payment was duly receipted (Exhs. "L" to "L-2") with the entry: "received from Dulce Garcia, P11,510.00 payment for travel abroad." Appellant then showed private complainant her passport which was never handed over to her up to now. She was assured though that her departure would be on June 6, 1989 (tsn., pp. 20-21, May 10, 1990). June 6, 1989 came but private complainant was not able to depart because a day before (June 5, 1989), appellant called her up and told her that she (appellant) was hospitalized.

Her departure was, however, re-scheduled for August 8, 1989. On this said scheduled date (August 8, 1989), she was not able to leave because appellant told her that nobody would fetch her at the airport in Italy. Thus, the departure was again reset to any other day of August. The month of August 1989 passed, but she was not able to leave. So she demanded for the return of the entire amount of P64,510.00 but appellant failed to return the money. She, together with the other "victims" of appellant, decided to file complaints against the latter with the Pasay Fiscal's Office in a "Sinumpaang Salaysay" ([Exhs. "M" to "M-2"], tsn., pp. 21-23, May 10, 1990)" (Rollo, pp. 72-79).

After convicting appellant of illegal recruitment, the court a quo sentenced her to life imprisonment and to pay a fine of P100,000.00 in accordance with Article 39 of the Labor Code (Decision, p. 19; Rollo, p. 40).

In her appeal, appellant questions the findings of the trial court that she had committed acts constituting a violation of Article 38 of the Labor Code (Appellant's Brief, pp. 6-7; Rollo, p. 57).

The evidence on record shows that the complainants positively identified appellant as the one who recruited them for jobs in Italy as domestic helpers and who demanded P65,000.00 from each of them as payment for the facilitation of their travel documents. It was appellant's promise to complainants of job opportunities abroad that lured them to part with their money.

In the absence of any proof that the decision of the trial court was based on conjectures or surmises, the same must be upheld on appeal. The trial court is in a better position to observe and evaluate the demeanor of the witnesses (People v. Pido, 200 SCRA 45 [1991]).

Devoid of merit is the defense of the appellant that the Felixim Travel Agency was the one which recruited the complainants. No proof whatsoever was adduced to show that the officers or employees of said agency had personally transacted with private complainants in connection with their overseas employment. The complainants themselves had testified that the Felixim Travel Agency had nothing to do with their transaction with appellant.

We agree with the findings of the court a quo that appellant is guilty of illegal recruitment.

Article 38 of the Labor Code, as amended, provides that:

"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.

Article 13 (b) of the Labor Code, defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for employment locally or abroad, whether for profit or not."

As can be gleaned from the aforementioned provisions, illegal recruitment has two essential elements, to wit: (1) the accused must be engaged in the recruitment and placement of workers, whether locally or overseas and; (2) the accused has not complied with such guidelines, rules and regulations issued by the Secretary of Labor and Employment, particularly with respect to the securing of license or authority to recruit and deploy workers either locally or overseas.

These essential elements are present in the case at bench. Appellant promised overseas employment to the complainants for a fee, which the latter paid. In fact, appellant admitted that the money she received from the complainants was in connection with the processing of their visas, passports and plane tickets. She also admitted that she failed to make good her promise to send them abroad (TSN, October 5, 1990, p. 6).

Appellant is neither licensed nor authorized to recruit workers for overseas employment as testified by Virginia

Santiago of the Inspection Division of the Licensing Board of the Philippine Overseas Employment Administration (POEA).

Appellant insists that being a minor, she should be placed under the custody of the barangay captain of Sambol, Lemery, Batangas as provided for by Article 191 of P.D. No. 603.

Article 191 of P.D. 603 provides:

"Care of Youthful Offender Held for Examination or Trial.- A youthful offender held for physical and mental examination or trial or pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Services and Development or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance in court whenever required: Provided, That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court may, in its discretion, upon recommendation of the Department of Social Services and Development or other agency or agencies authorized by the court, release a youthful offender on recognize, to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required. However, in the case of those whose cases fall under the exclusive jurisdiction of the Military Tribunals, they may be committed at any military detention or rehabilitation center. (Underscoring supplied)

This issue is mooted in view of the fact that the trial of the appellant was terminated while her appeal was resolved with this decision. As can be inferred from its wordings, the provision is operative only during the trial or pending the appeal of the minor-accused.

Nevertheless the law uses the word "may," which denotes that it is directory in nature and implies discretion on the part of the trial court to place the minor under the custody of his or her parents or any suitable person.

Appellant further invokes the provisions of Article 192, which she alleges the court a quo failed to apply to her benefit. Under said Article, the trial court shall suspend the sentencing and commitment of youthful offenders and instead commit them to the custody of the Department of Social Services and Development or to any training institution until they shall have reached 21 years of age.

Again, appellant's contention cannot be sustained.

Said Article provides that it "x x x shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted of an offense punishable by death or life imprisonment" (underscoring supplied).

Appellant was convicted by the court a quo of illegal recruitment and was sentenced to suffer the penalty of life imprisonment. Clearly, her case falls under the exception provided for by the Child and Youth Welfare Code.

Under Section 39 of the Labor Code, as amended, the penalty of life imprisonment is correctly imposed where illegal recruitment is committed in "large scale," which means that it is committed against three or more persons (People v. Duque, 212 SCRA 607 [1992]). In this case, appellant victimized Erlinda Cortez, Fidela Engada, Myra Siguenza, Dulce Garcia and Emilinda Padua.

We noted that appellant was only 16 years of age at the time she committed the offense (TSN, October 5, 1990, p. 2). If she were prosecuted under the Revised Penal Code, appellant is entitled to a reduction of the penalty imposed by law by one degree because of the attendance of the privileged mitigating circumstance of minority (Article 68, Revised Penal Code). But the benign provisions of the Revised Penal Code are not applicable to offenders prosecuted and punished under special laws. Likewise, appellant is not entitled to the benefits of the

Indeterminate Sentence Law, which requires the sentencing court to fix a minimum term within the range of the penalty next lower to that prescribed by law, because the penalty imposed on her is "life imprisonment" (Act 4103 as amended by Act 4225, Sec. 2).

Under the circumstances, we can only recommend that executive clemency be extended to her (People v. Beralde, 139 SCRA 426 [1985]; People v. Lagasca, 148 SCRA 264 [1987]; People v. Mangusan, 189 SCRA 624 [1990]).

WHEREFORE, the appealed decision is AFFIRMED in toto but in view of the minority of appellant at the time she committed the offense, we recommend to the Secretary of Justice that a case study of appellant be undertaken to determine whether she is deserving of executive clemency. Costs de oficio.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

Griño-Aquino, J., retired.

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