

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARMELITA PUERTOLLANO COMIA, ACCUSED-APPELLANT.***G.R. No. 109761. September 01, 1994*

Ponente: DAVIDE, JR., J.

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For falsely representing herself to have the capacity and power to contract, enlist, and recruit workers for employment abroad, Carmelita Puertollano Comia was charged with illegal recruitment in large scale under paragraphs (a) and (b) of Article 38, in relation to paragraph (a) of Article 39, of the Labor Code. The information[1] was filed with the Regional Trial Court of Makati, Metro Manila, docketed therein as Criminal Case No. 91-6443, and assigned to Branch 141 of the said court. After trial on the merits, the court promulgated on 4 February 1993 its decision[2] finding the accused guilty beyond reasonable doubt of the offense charged and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P100,000.00.

The complaining victims of the illegal recruitment activities of the accused were Fe Dadap, Susana Belloso, Marilyn Bibar, Sandra Cosart, and Remedios Asis. With the exception of Fe Dadap, who withdrew her complaint because she had moved to the province with her two children, they testified in open court that the accused defrauded each of them of sizeable cash on the assurance that they would be given janitorial jobs in Hongkong.

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

“The evidence for the prosecution shows that complainant Susana Belloso came to know Carmelita Comia, the accused herein, thru her husband who was selling ice candy within the premises of Tambo Elementary School in Parañaque, M.M. She had known the accused for five years. She was working as a janitress of the above-mentioned school. It was her husband who applied to the accused Comia for a job employment abroad as a janitress. She paid the following amounts to Comia: P2,600.00 at her house at Pulang Lupa, Las Piñas; P450.00 at the elementary school; P750.00 at the same school; again, P247.00 at her residence in Las Piñas; and P2,500.00 at the Chinese General Hospital in Blumentritt, Manila. After paying these amounts, the accused Comia told her to await for a certain Doctora who will be coming from Hong Kong. This Doctora is her boss there. On a date which she cannot remember the accused told her that they would be leaving for Hong Kong and to bring with her her personal belongings. At the airport, the accused Comia told them that the Doctora will be coming at the airport. However, they were not able to leave and so they went to the Immigration Office where she and her companions were told that they were not scheduled to leave for abroad. A certain Sgt. Afuang brought them to the NBI where they were investigated. The payments she gave to Comia were never receipted by her and everytime she would ask for receipts, accused Comia would get angry and tell her that the money would be eventually given to the Doctora.

The second complainant, Marilyn Bibar, had known the accused for two years, also thru her husband. It was the husband of the accused Comia who told her that the accused came from Hong Kong, and being interested to work in Hong Kong, she talked to the accused. She was supposed to work as a janitress in Hong Kong. The accused told her that her employer has a hospital in Hong Kong and her name is Dr. Zenaida Andres. She was asked to produce the originals of her birth certificate, NBI clearance, ECG, marriage contract and x-ray. She

paid the amount of P2,600.00 in the month of March 1991. She also paid the amount of P720.00 for immigration fee in the month of August 1991; P450.00 for processing fee of the passport in July 1991; and P2,500.00 in August of 1991. All these amounts were paid at Tambo Elementary School in Parañaque. She was not given receipts for the payments she made to the accused, who told her that the receipts will be kept by her. When nothing happened to her promise for employment abroad, complainant, together with her other companions, asked when they would be leaving but the accused merely told her to wait until they are finally scheduled. Then, the accused told her and her companions that they were about to leave and were advised to pack up to leave for abroad. She and her companions proceeded to NAIA on September 31, 1991. Her companions were Susana Belloso, Sandra Cosart, Fe Dadap, and Remedios Asis. At the airport, they arrived at about 12 noon, and the accused Comia told her to wait for her boss, Dra. Zenaida Andres. She, together with her companions, waited until 7:00 in the evening. When the Doctora did not arrive, her husband inquired with the Immigration Office, but there was no such person by the name of Dra. Zenaida Andres. She has never been introduced to Dra. Zenaida Andres by the accused. After that they agreed among themselves to call up Dra. Zenaida Andres but the number they called was that of McDonald's. Accused Comia even called the same number but after waiting for a while for somebody to answer the call, a policeman grabbed the telephone receiver and found out that there was nobody on the other line. The policeman, after that, told them to bring accused Comia to the NBI. Sgt. Afuang of the Immigration Office accompanied them to the NBI and accused Comia was handcuffed. At the NBI a certain Atty. Vaplor informed them that they should proceed with their charges against accused Comia but first, they should secure a certification from the POEA regarding the accused's authority or license to recruit. They were able to secure the certification dated October 1, 1991, which is Exhibit B.

The third witness for the prosecution and who is also a complainant, Sandra Cosart, identified the accused Comia and stated that she knew the accused a long time ago. The accused came to her house located at Fortunato Village, Feliciano Cpd., Sucat, Parañaque, M.M. in March 1991. The accused received money from her in the amount of P2,600.00 for the processing of her papers. The papers are the NBI clearance, ECG, medical certificate, x-ray and visa. These papers were intended for Hong Kong for her to work as janitress in one of the hospitals there and her employer would be one Dra. Zenaida Andres. This was told to her by the accused Comia. She did not receive any receipts from the accused when she gave the amount of P2,600.00. The accused simply told her to trust her. She also gave the accused the additional sums of P3,000.00, then P750.00, then P450.00, and then P3,000.00,[3] which payments she gave to the accused sometime in July and August of 1991. She paid these additional amounts to the accused in her house. The accused did not issue to her any receipts and told her to just trust her. The additional amounts were for her plane ticket, visa and passport. Nothing happened to her intended employment in Hong Kong, and in September of 1991 the accused Comia told her they will go to NAIA and it will be there where she will give her passport, ticket and visa. She was with Marilyn Bibar, Susana Belloso, Fe Dadap and Remedios Asis. They were not able to leave and so she and her companions complained at the Immigration Office at the NAIA and they were told that no such Zenaida Andres was leaving for abroad. They complained to the police and the police arrested accused Comia who was brought to the NBI. Then the NBI told them to go to POEA and there, they were able to verify that there was no person by the name of Zenaida Andres registered as a recruiter. Comia is also not registered as a recruiter. She identified Exh. B, which is a certification to this effect.

The fourth witness, Remedios Asis, after identifying the accused Comia, stated that she came to know the accused because the latter was doing laundry work near their place sometime in the first part of 1991. She and accused Comia talked about her employment as a janitress in Hong Kong. For this reason, accused Comia received money from her for her employment abroad as a janitress in Hong Kong. She gave to the accused Comia P6,970.00 at her residence in 843 Manuyo St., Las Piñas, M.M. She gave the said amount last year. She did not demand any receipt from the accused because the accused just told her to trust her. She was not able to work as a janitress in Hong Kong. The accused Comia just told her to wait for her employer, a certain Doctora, whose name she cannot recall.”[4]

It also summarized the testimony of the accused, to wit:

“The defense did not introduce any documentary evidence and the accused was the only witness. The accused denied having received any money from any of the complainants. She claimed that since she did not receive any money from the complainants why should she give receipts? She claimed that she was also one of the victims of Dra. Zenaida Andres. She was applying with said Doctor in Tramo in the same place where she (accused) resides. In fact, she claimed to have given an application fee in the amount of P450.00 and P2,500.00. With respect to the P2,500.00 she was able to raise this amount because she also used to work with other families as laundrywoman. This P2,500.00 was given to Dr. Andres in installment. Dr. Andres gave her a receipt before she was to leave for abroad because her husband was demanding for a receipt. However, she could not produce this receipt because the NBI allegedly took all the contents of her bag, including the receipt. She claimed that she is only Grade II but could not read and can only write her name. She denied that she told one of the complainants that she had been in Hong Kong.”[5]

The trial court accepted the version of the prosecution because the statements of the complaining witnesses were positive and affirmative in nature and were worthy of credit than the mere uncorroborated and self-serving denial of the accused. It further observed that the accused had not shown any ill motive on the part of the complainants and that the accused’s reference to a certain Dr. Zenaida Andres as the employer and, therefore, the real recruiter does not inspire belief. As to the latter, it stated:

“To the mind of the Court, Dr. Zenaida Andres is a non-existent person invented by the accused to ward off suspicion from her when the moment of truth came, that is, when the complainants started to show their impatience to the accused as to their inability to leave for Hongkong. To appease the complainants, the accused, true to her criminal mind, made up the story about leaving for Hongkong on September 31, 1991 and even pretended to be one of them. In vain, they waited for the fictitious Dra. Andres to come, after which they agreed to call her but the telephone number they dialed turned out to be McDonald’s. Accused dialed the phone number again, pretending to be waiting for somebody to answer the call. A policeman grabbed the telephone from the accused and found out that there was nobody on the other line.”[6]

The accused seasonably filed her notice of appeal which did not, however, indicate the court to which she was appealing.[7] In its order of 23 February 1993, the trial court erroneously directed the elevation of the records of the case to the Court of Appeals.[8] The latter rectified the error by transmitting the records to this Court after its receipt thereof.[9]

In her Appellant’s Brief,[10] the accused contends that the trial court erred:

“I

X X X IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE FOUR COMPLAINANTS AND IN DISREGARDING THE TESTIMONY OF THE ACCUSED-APPELLANT.

II

X X X IN CONVICTING THE ACCUSED-APPELLANT FOR ILLEGAL RECRUITMENT DESPITE OF [sic] THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.”[11]

In the Appellee’s Brief,[12] the Office of the Solicitor General maintains that the trial court committed no error and prays that the assailed decision be affirmed in toto.

The appeal is without merit.

Article 38 of the Labor Code provides in part as follows:

“Illegal Recruitment. -- (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Ministry of Labor and Employment or any law enforcement officers may initiate complaints under this Article.

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

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.”

Article 13(b) of the same Code defines recruitment as follows:

“Recruitment and placement refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.”

It is clear from the foregoing provisions that there is illegal recruitment in large scale when a person (a) undertakes any recruitment activity defined under Article 13(b) or any prohibited practice enumerated under Article 34 of the Labor Code; (b) does not have a license or authority to lawfully engage in the recruitment and placement of workers; and (c) commits the same against three or more persons, individually or as a group.

In this case, the presence of the second and third elements is beyond dispute. That the accused is not authorized by the Philippine Overseas Employment Administration (POEA) to engage in the recruitment and placement of workers is evidenced by a certification of the said agency dated 1 October 1991. In fact, to abbreviate the proceedings, the parties duly stipulated on the due issuance, authenticity, and truth of the said certification.[13] There are no less than four complainants who patiently endured the rigors of trial to denounce the accused and expose her illegal recruitment activities.

Proffered to satisfy the first element of the crime were the testimonies of the complainants pointing to the accused as the person who promised them employment abroad and who collected and received various amounts from them. The accused questions the sufficiency of the said testimonies contending that Article 13(b), which defines recruitment and placement, specifically provides that the offer or promise of employment must be “for a fee” thereby making receipts indispensable in proving alleged payment. Since none of the four complaining witnesses presented a single receipt to prove alleged payment of a fee, the accused contends that their claim of payment without being issued receipts defies belief as this fact is contrary to the ordinary course of nature and ordinary habits of life[14] and runs against the presumption that persons take ordinary care of their concerns.[15]

The complainants’ failure to ask for receipts for the fees they paid to the accused, as well as their consequent failure to present receipts before the trial court as proof of the said payments, is not fatal to their case. The complainants duly proved by their respective testimonies that the accused was involved in the entire recruitment process. She gave the impression that she knows a certain Dr. Zenaida Andres who owns a hospital in Hongkong and has the power to hire people for janitorial jobs thereat. She relayed the requirements to them, monitored their compliance, and, most especially, collected and received fees. Their testimonies in this regard, being clear and positive, are sufficient. The accused’s contention that she would not have hesitated to issue receipts if it were true that she did transact with them is purely hypothetical and hence, does not detract from the fact adduced by the complainants that she got their money. In *People vs. Naparan*[16] and *People vs. Sendon*,[17] this Court did not

fault the victims of illegal recruitment for not asking for receipts explaining that inasmuch as they were inexperienced and titillated by the prospect of earning easy money abroad, they fell easy prey to the accused-appellant's glibness and roseate promises and were deluded into relying on her assurance that receipts for their money would be issued later.

Nor is the lack of corroboration of the testimonies of the four complainants damaging to their case. Corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness is prevaricating or that his observations were inaccurate.[18] In the case at bench, the combined weight of the complainants' testimonies, unerringly narrating how they were similarly wheedled by the accused to part with their money without receipts, render unnecessary any corroborating evidence.

Moreover, this matter essentially involves the credibility of the complainants, the best judge of which is the trial court. It has long been settled that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[19] Since the trial court found the positive declarations of the complainants more credible than the sole testimony of the accused denying the transactions, there must be a well-founded reason in order to deny great weight to its evaluation of the complainant's testimonies. The accused has failed to provide that reason.

The accused anchors her denial on another supposition, i.e., if it were true that she had received money from the complainants, she could have easily transferred or fled to an unknown address where she could not be located or arrested after getting the complainants' money. However, we have held that non-flight is not conclusive proof of innocence.[20] Unlike flight of an accused, which is competent evidence against him as having a tendency to establish his guilt,[21] non-flight is simply inaction, which may be due to several factors. Hence, it may not be positively construed as an indication of innocence.

The accused cannot feign innocence of the illegal recruitment by claiming that she too was a victim of the illegal recruitment of Dr. Andres. Firstly, all the transactions from the beginning to the end were handled by the accused. In fact, none of the complainants ever met said Dr. Andres. Noteworthy is the fact that when the complainants asked to be introduced to Dr. Andres, the accused brought them to the Chinese General Hospital only to be told by the accused that the doctor had already left.[22] Secondly, if the accused were a victim of Dr. Andres and she really felt aggrieved, she could have filed a case against her for illegal recruitment. At the very least, in order to save her own neck, she could have utilized the compulsory process of the court to summon Dr. Andres to appear and testify as a hostile witness. The records of the case are bereft of any indication that the said courses of action were taken. Nor was there any allegation that said Dr. Andres was nowhere to be found. All these raise a well-founded belief that said Dr. Andres is a fictitious person conjured by the accused to support her nefarious scheme in the recruitment process.

This Court is fully aware of the use of fictitious persons by illegal recruiters so as to give the impression that they have the power to send people abroad for work. In *People vs. Sendon*,[23] we considered the failure of the accused therein to present evidence that the alluded person really existed and was not merely a figment of her imagination as the factor that assumed the crucial and decisive role against the former's bid for exculpation. Assuming *arguendo*, as it was similarly done in the *aforecited* case, that there is really such a person, still there is sufficient evidence to hold the accused liable. The prosecution of other persons equally culpable or even more so than the accused herein may come later as soon as their true identities and addresses become known. The thrust of the defense to deflect liability from the accused by claiming that she is also a victim of Dr. Andres, who should be held responsible for the whole mess, is unavailing.

Affirmance of the appealed decision is thus inevitable. However, the dispositive portion thereof failed to adjudge the restitution of the amounts the accused had obtained from the complainants which, as proved, are P6,270.000 from Marilyn Bibar; P6,547.00 from Susana Beloso; P6,800.00 from Sandra Cosart; and P6,970.00 from Remedios Asis. The accused is ordered to restore to each of them the above amounts.

WHEREFORE, the appealed decision of the Regional Trial Court of Makati, Metro Manila, in Criminal Case No. 91-6443 is hereby AFFIRMED, subject to the above modification decreeing the restitution of the amounts the accused had obtained from the complainants.

Costs against accused Carmelita Puertollano Comia.

SO ORDERED.

Bellosillo, Quiason, and Kapunan, JJ., concur.

Cruz, (Chairman), J., on official leave.

[1] Original Records (OR), 1.

[2] Rollo, 18-26. Per Judge Marcelino F. Bautista, Jr.

[3] The last amount of P3,000.00 should be deleted. See TSN, 23 January 1992, 6.

[4] OR, 196-200; Rollo, 18-22.

[5] OR, 200-201; Rollo, 22-23.

[6] Id., 203-204; Id., 25-26.

[7] OR, 209.

[8] Id., 210.

[9] Rollo, 1.

[10] Id., 43-57.

[11] Id., 45.

[12] Id., 84 et seq.

[13] TSN, 16 January 1992, 20.

[14] Citing Section 3(y), Rule 131, Rules of Court.

[15] Citing Section 3(d), Id.

[16] 225 SCRA 714 [1993].

[17] G.R. Nos. 101579-82, 15 December 1993.

[18] People vs. Dela Cruz, 207 SCRA 632 [1992].

[19] People vs. Pascual, 208 SCRA 393 [1992]; People vs. Simon, 209 SCRA 148 [1992]; People vs. Garcia, 209 SCRA 164 [1992]; People vs. Florida, 214 SCRA 227 [1992]; People vs. Matrimonio, 215 SCRA 613 [1992].

[20] *People vs. Hangdaan*, 201 SCRA 568 [1991]; *People vs. Macalino*, 209 SCRA 788 [1992]; *People vs. Genobia*, G.R. No. 110058, 3 August 1994.

[21] *U.S. vs. Alegado*, 25 Phil. 510 [1913]; *People vs. Garcia*, *supra*; *People vs. Genobia*, *supra*.

[22] TSN, 17-18 January 1992, 19.

[23] *Supra* at footnote 17.

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