

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOMA GOCE Y OLALIA, DAN GOCE AND NELLY D. AGUSTIN, ACCUSED.
NELLY D. AGUSTIN, ACCUSED-APPELLANT.**

G.R. No. 113161. August 29, 1995

Ponente: REGALADO, J.

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REGALADO, J.:

On January 12, 1988, an information for illegal recruitment committed by a syndicate and in large scale, punishable under Articles 38 and 39 of the Labor Code (Presidential Decree No. 442) as amended by Section 1(b) of Presidential Decree No. 2018, was filed against spouses Dan and Loma Goce and herein accused-appellant Nelly Agustin in the Regional Trial Court of Manila, Branch 5, alleging -

"That in or about and during the period comprised between May 1986 and June 25, 1987, both dates inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully and unlawfully, for a fee, recruit and promise employment/job placement abroad, to (1) Rolando Dalida y Piernas, (2) Ernesto Alvarez y Lubangco, (3) Rogelio Salado y Savillo, (4) Ramona Salado y Alvarez, (5) Dionisio Masaya y de Guzman, (6) Dave Rivera y de Leon, (7) Lorenzo Alvarez y Velayo, and (8) Nelson Trinidad y Santos, without first having secured the required license or authority from the Department of Labor." [1]

On January 21, 1987, a warrant of arrest was issued against the three accused but not one of them was arrested. [2] Hence, on February 2, 1989, the trial court ordered the case archived but it issued a standing warrant of arrest against the accused. [3]

Thereafter, on learning of the whereabouts of the accused, one of the offended parties, Rogelio Salado, requested on March 17, 1989 for a copy of the warrant of arrest. [4] Eventually, at around midday of February 26, 1993, Nelly Agustin was apprehended by the Parañaque police. [5] On March 8, 1993, her counsel filed a motion to revive the case and requested that it be set for hearing "for purposes of due process and for the accused to immediately have her day in court." [6] Thus, on April 15, 1993, the trial court reinstated the case and set the arraignment for May 3, 1993, [7] on which date Agustin pleaded not guilty [8] and the case subsequently went to trial.

Four of the complainants testified for the prosecution. Rogelio Salado was the first to take the witness stand and he declared that sometime in March or April, 1987, he was introduced by Lorenzo Alvarez, his brother-in-law and a co-applicant, to Nelly Agustin in the latter's residence at Factor, Dongalo, Parañaque, Metro Manila. Representing herself as the manager of the Clover Placement Agency, Agustin showed him a job order as proof that he could readily be deployed for overseas employment. Salado learned that he had to pay P5,000.00 as processing fee, which amount he gave sometime in April or May of the same year. He was issued the corresponding receipt. [9]

Also in April or May, 1987, Salado, accompanied by five other applicants who were his relatives, went to the office of the placement agency at Nakpil Street, Ermita, Manila where he saw Agustin and met the spouses Dan and Loma Goce, owners of the agency. He submitted his bio-data and learned from Loma Goce that he had to give P12,000.00, instead of the original amount of P5,000.00 for the placement fee. Although surprised at the new and higher sum, they subsequently agreed as long as there was an assurance that they could leave for abroad.[10]

Thereafter, a receipt was issued in the name of the Clover Placement Agency showing that Salado and his aforesaid co-applicants each paid P2,000.00, instead of the P5,000.00 which each of them actually paid. Several months passed but Salado failed to leave for the promised overseas employment. Hence, in October, 1987, along with the other recruits, he decided to go to the Philippine Overseas Employment Administration (POEA) to verify the real status of Clover Placement Agency. They discovered that said agency was not duly licensed to recruit job applicants. Later, upon learning that Agustin had been arrested, Salado decided to see her and to demand the return of the money he had paid, but Agustin could only give him P500.00.[11]

Ramona Salado, the wife of Rogelio Salado, came to know through her brother, Lorenzo Alvarez, about Nelly Agustin. Accompanied by her husband, Rogelio, Ramona went to see Agustin at the latter's residence. Agustin persuaded her to apply as a cutter/sewer in Oman so that she could join her husband. Encouraged by Agustin's promise that she and her husband could live together while working in Oman, she instructed her husband to give Agustin P2,000.00 for each of them as placement fee, or the total sum of P4,000.00.[12]

Much later, the Salado couple received a telegram from the placement agency requiring them to report to its office because the "NOC" (visa) had allegedly arrived. Again, around February, or March, 1987, Rogelio gave P2,000.00 as payment for his and his wife's passports. Despite follow-up of their papers twice a week from February to June, 1987, he and his wife failed to leave for abroad.[13]

Complainant Dionisio Masaya, accompanied by his brother-in-law, Aquiles Ortega, applied for a job in Oman with the Clover Placement Agency at Parañaque, the agency's former office address. There, Masaya met Nelly Agustin, who introduced herself as the manager of the agency, and the Goce spouses, Dan and Loma, as well as the latter's daughter. He submitted several pertinent documents, such as his bio-data and school credentials.[14]

In May, 1986, Masaya gave Dan Goce P1,900.00 as an initial down payment for the placement fee, and in September of that same year, he gave an additional P10,000.00. He was issued receipts for said amounts and was advised to go to the placement office once in a while to follow up his application, which he faithfully did. Much to his dismay and chagrin, he failed to leave for abroad as promised. Accordingly, he was forced to demand that his money be refunded but Loma Goce could give him back only P4,000.00 in installments.[15]

As the prosecution's fourth and last witness, Ernesto Alvarez took the witness stand on June 7, 1993. He testified that in February, 1987, he met appellant Agustin through his cousin, Larry Alvarez, at her residence in Parañaque. She informed him that "madalas siyang nagpapalakad sa Oman" and offered him a job as an ambulance driver at the Royal Hospital in Oman with a monthly salary of about \$600.00 to \$700.00.[16]

On March 10, 1987, Alvarez gave an initial amount of P3,000.00 as processing fee to Agustin at the latter's residence. In the same month, he gave another P3,000.00, this time in the office of the placement agency. Agustin assured him that he could leave for abroad before the end of 1987. He returned several times to the placement agency's office to follow up his application but to no avail. Frustrated, he demanded the return of the money he had paid, but Agustin could only give back P500.00. Thereafter, he looked for Agustin about eight times, but he could no longer find her.[17]

Only herein appellant Agustin testified for the defense. She asserted that Dan and Loma Goce were her neighbors

at Tambo, Parañaque and that they were licensed recruiters and owners of the Clover Placement Agency. Previously, the Goce couple was able to send her son, Reynaldo Agustin, to Saudi Arabia. Agustin met the aforementioned complainants through Lorenzo Alvarez who requested her to introduce them to the Goce couple, to which request she acceded.[18]

Denying any participation in the illegal recruitment and maintaining that the recruitment was perpetrated only by the Goce couple, Agustin denied any knowledge of the receipts presented by the prosecution. She insisted that the complainants included her in the complaint thinking that this would compel her to reveal the whereabouts of the Goce spouses. She failed to do so because in truth, so she claims, she does not know the present address of the couple. All she knew was that they had left their residence in 1987.[19]

Although she admitted having given P500.00 each to Rogelio Salado and Alvarez, she explained that it was entirely for different reasons. Salado had supposedly asked for a loan, while Alvarez needed money because he was sick at that time.[20]

On November 19, 1993, the trial court rendered judgment finding herein appellant guilty as a principal in the crime of illegal recruitment in large scale, and sentencing her to serve the penalty of life imprisonment, as well as to pay a fine of P100,000.00.[21]

In her present appeal, appellant Agustin raises the following arguments: (1) her act of introducing complainants to the Goce couple does not fall within the meaning of illegal recruitment and placement under Article 13(b) in relation to Article 34 of the Labor Code; (2) there is no proof of conspiracy to commit illegal recruitment among appellant and the Goce spouses; and (3) there is no proof that appellant offered or promised overseas employment to the complainants.[22] These three arguments being interrelated, they will be discussed together.

Herein appellant is accused of violating Articles 38 and 39 of the Labor Code. Article 38 of the Labor Code, as amended by Presidential Decree No. 2018, provides that any recruitment activity, including the prohibited practices enumerated in Article 34 of said Code, undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 thereof. The same article further provides that illegal recruitment shall be considered an offense involving economic sabotage if any of these qualifying circumstances exist, namely, (a) when illegal recruitment is committed by a syndicate, i.e., if it is carried out by a group of three or more persons conspiring and/or confederating with one another; or (b) when illegal recruitment is committed in large scale, i.e., if it is committed against three or more persons individually or as a group.

At the outset, it should be made clear that all the accused in this case were not authorized to engage in any recruitment activity, as evidenced by a certification issued by Cecilia E. Curso, Chief of the Licensing and Regulation Office of the Philippine Overseas Employment Administration, on November 10, 1987. Said certification states that Dan and Loma Goce and Nelly Agustin are neither licensed nor authorized to recruit workers for overseas employment.[23] Appellant does not dispute this. As a matter of fact her counsel agreed to stipulate that she was neither licensed nor authorized to recruit applicants for overseas employment. Appellant, however, denies that she was in any way guilty of illegal recruitment.[24]

It is appellant's defensive theory that all she did was to introduce complainants to the Goce spouses. Being a neighbor of said couple, and owing to the fact that her son's overseas job application was processed and facilitated by them, the complainants asked her to introduce them to said spouses. Allegedly out of the goodness of her heart, she complied with their request. Such an act, appellant argues, does not fall within the meaning of "referral" under the Labor Code to make her liable for illegal recruitment.

Under said Code, 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.[25] On the other hand, referral is the act of passing along or forwarding of an applicant for employment after an initial interview of a selected applicant for employment to a selected employer, placement officer or bureau.[26]

Hence, the inevitable query is whether or not appellant Agustin merely introduced complainants to the Goce couple or her actions went beyond that. The testimonial evidence hereon show that she indeed further committed acts constitutive of illegal recruitment. All four prosecution witnesses testified that it was Agustin whom they initially approached regarding their plans of working overseas. It was from her that they learned about the fees they had to pay, as well as the papers that they had to submit. It was after they had talked to her that they met the accused spouses who owned the placement agency.

As correctly held by the trial court, being an employee of the Goces, it was therefore logical for appellant to introduce the applicants to said spouses, they being the owners of the agency. As such, appellant was actually making referrals to the agency of which she was a part. She was therefore engaging in recruitment activity.[27]

Despite Agustin's pretensions that she was but a neighbor of the Goce couple, the testimonies of the prosecution witnesses paint a different picture. Rogelio Salado and Dionisio Masaya testified that appellant represented herself as the manager of the Clover Placement Agency. Ramona Salado was offered a job as a cutter/sewer by Agustin the first time they met, while Ernesto Alvarez remembered that when he first met Agustin, the latter represented herself as "nagpapaalis papunta sa Oman." [28] Indeed, Agustin played a pivotal role in the operations of the recruitment agency, working together with the Goce couple.

There is illegal recruitment when one gives the impression of having the ability to send a worker abroad.[29] It is undisputed that appellant gave complainants the distinct impression that she had the power or ability to send people abroad for work such that the latter were convinced to give her the money she demanded in order to be so employed.[30]

It cannot be denied that Agustin received from complainants various sums for purpose of their applications. Her act of collecting from each of the complainants payment for their respective passports, training fees, placement fees, medical tests and other sundry expenses unquestionably constitutes an act of recruitment within the meaning of the law. In fact, appellant demanded and received from complainants amounts beyond the allowable limit of P5,000.00 under government regulations. It is true that the mere act of a cashier in receiving money far exceeding the amount allowed by law was not considered per se as "recruitment and placement" in contemplation of law, but that was because the recipient had no other participation in the transactions and did not conspire with her co-accused in defrauding the victims.[31] That is not the case here.

Appellant further argues that "there is no evidence of receipts of collections/payments from complainants to appellant." On the contrary, xerox copies of said receipts/vouchers were presented by the prosecution. For instance, a cash voucher marked as Exhibit D,[32] showing the receipt of P10,000.00 for placement fee and duly signed by appellant, was presented by the prosecution. Another receipt, identified as Exhibit E,[33] was issued and signed by appellant on February 5, 1987 to acknowledge receipt of P4,000.00 from Rogelio and Ramona Salado for "processing of documents for Oman." Still another receipt dated March 10, 1987 and presented in evidence as Exhibit F, shows that appellant received from Ernesto Alvarez P2,000.00 for "processing of documents for Oman." [34]

Apparently, the original copies of said receipts/vouchers were lost, hence only xerox copies thereof were

presented and which, under the circumstances, were admissible in evidence. When the original writing has been lost or destroyed or cannot be produced in court, upon proof of its execution and loss or destruction, or unavailability, its contents may be proved by a copy or a recital of its contents in some authentic document, or by the recollection of witnesses.[35]

Even assuming *arguendo* that the xerox copies presented by the prosecution as secondary evidence are not allowable in court, still the absence thereof does not warrant the acquittal of appellant. In *People vs. Comia*,[36] where this particular issue was involved, the Court held that the complainants' failure to ask for receipts for the fees they paid to the accused therein, 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 said accused was involved in the entire recruitment process. Their testimonies in this regard, being clear and positive, were declared sufficient to establish that *factum probandum*.

Indeed, the trial court was justified and correct in accepting the version of the prosecution witnesses, their statements being positive and affirmative in nature. This is more worthy of credit than the mere uncorroborated and self-serving denials of appellant. The lame defense consisting of such bare denials by appellant cannot overcome the evidence presented by the prosecution proving her guilt beyond reasonable doubt.[37]

The presence of documentary evidence notwithstanding, this case essentially involves the credibility of witnesses which is best left to the judgment of the trial court, in the absence of abuse of discretion therein. The findings of fact of a trial court, arrived at only after a hearing and evaluation of what can usually be expected to be conflicting testimonies of witnesses, certainly deserve respect by an appellate court.[38] Generally, the findings of fact of the trial court on the matter of credibility of witnesses will not be disturbed on appeal.[39]

In a last-ditch effort to exculpate herself from conviction, appellant argues that there is no proof of conspiracy between her and the Goce couple as to make her liable for illegal recruitment. We do not agree. The evidence presented by the prosecution clearly establish that appellant confabulated with the Goces in their plan to deceive the complainants. Although said accused couple have not been tried and convicted, nonetheless there is sufficient basis for appellant's conviction as discussed above.

In *People vs. Sendon*, [40] we held that the non-prosecution of another suspect therein provided no ground for the appellant concerned to fault the decision of the trial court convicting her. The prosecution of other persons, equally or more culpable than herein appellant, may come later after their true identities and addresses shall have been ascertained and said malefactors duly taken into custody. We see no reason why the same doctrinal rule and course of procedure should not apply in this case.

WHEREFORE, the appealed judgment of the court *a quo* is hereby **AFFIRMED** in toto, with costs against accused-appellant Nelly D. Agustin.

SO ORDERED.

Narvasa, C.J., (Chairman), Puno, Mendoza, and Francisco, JJ., concur.

[1] Original Record, 1.

[2] *Ibid.*, 8-9.

[3] *Ibid.*, 17.

- [4] Ibid., 24.
- [5] Ibid., 27.
- [6] Ibid., 30.
- [7] Ibid., 33.
- [8] Ibid., 44.
- [9] TSN, May 12, 1993, 2-3, 8, 12.
- [10] Ibid., id., 3-5, 10, 13.
- [11] Ibid., id., 7-8, 12-16.
- [12] Ibid., May 25, 1993, 15-17.
- [13] Ibid., id., 18-20.
- [14] Ibid., id., 3-5, 11-12.
- [15] Ibid., id., 5-9.
- [16] Ibid., June 7, 1993, 2-5.
- [17] Ibid., id., 4-10.
- [18] Ibid., June 30, 2-3.
- [19] Ibid., id., 5.
- [20] Ibid., id., 6-7.
- [21] Penned by Presiding Judge Cesar J. Mindaro.
- [22] Appellant's Brief, 10; Rollo, 194.
- [23] Original Record, 153.
- [24] TSN, June 11, 1993, 8.
- [25] Article 13(b), Labor Code.
- [26] Webster's Third New International Dictionary, 1986 Ed., 1908.
- [27] Decision, 7; Original Record, 172.
- [28] TSN., June 7, 1993, 3.
- [29] People vs. Manungas, Jr., G.R. Nos. 91552-55, March 10, 1994, 231 SCRA 1.
- [30] People vs. Villafuerte, G.R. Nos. 93723-27, May 6, 1994, 232 SCRA 225.
- [31] People vs. Gaoat, G.R. No. 97028, May 21, 1993, 222 SCRA 385.
- [32] Original Record, 155.
- [33] Ibid., 156.
- [34] Ibid., 157.

[35] Section 4, Rule 130, Rules of Court.

[36] G.R. No. 109761, September 1, 1994, 236 SCRA 185.

[37] People vs. Resuma, G.R. Nos. 106640-42, June 15, 1994.

[38] People vs. Jumao-as, G.R. No. 101334, February 14, 1994, 230 SCRA 70.

[39] People vs. Yap, G.R. No. 103517, February 9, 1994, 229 SCRA 787.

[40] G.R. Nos. 101579-89, December 15, 1993, 228 SCRA 489.

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