

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICIA CABACANG Y MAZAMBIQUE, ACCUSED-APPELLANT.

G.R. No. 113917. July 17, 1995

Ponente: PUNO, J.

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PUNO, J.:

An Illegal Recruitment case was filed against appellant FELICIA MAZAMBIQUE CABACANG for allegedly committing the following act:

"That in or about and during the period comprised from March 22, 1990 to April 27, 1990, both dates inclusive, in the City of Manila, Philippines, the said accused, representing herself 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 the following persons: Romeo Eguia, Ronnie Reyes, Armando Castro and Dante Eguia, without first having secured the required license or authority from the Department of Labor and Employment." [1]

The case was raffled off to Branch 5 of the Regional Trial Court of Manila, [2] and docketed as Criminal Case No. 91-93606. A not guilty plea was entered by appellant upon her arraignment on July 17, 1991.

The records reveal that the four private complainants are related. DANTE [3] and ROMEO EGUIA are brothers, and RONNIE REYES [4] and ARMANDO CASTRO are their brothers-in-law. RAMON EGUIA and prosecution witness WILMA GREGORIO [5] are Dante's and Romeo's siblings.

The prosecution evidence show that appellant who is not a recruiter licensed by the Philippine Overseas Employment Administration (POEA), [6] handled the processing of the papers of cousins Ramon Eguia and Edgardo Santos. In June, 1988, the two were deployed to Abu Dhabi for employment as janitors. [7] Private complainants were encouraged by their deployment, and decided to apply for overseas janitorial work as well. [8]

According to private complainant Ronnie Reyes, he was approached in Lipa by appellant who represented herself as the Assistant Manager of the Lakas Agency Management Corporation located near Robinson's Department Store in Ermita, Manila. Appellant informed him that there would be a second batch of overseas workers to be deployed to Abu Dhabi. Ronnie relayed the information to Wilma, who made further inquiries and verifications from appellant about the job opportunity. [9] Wilma then directly worked out with appellant, the overseas job applications of private complainants.

Private complainants filed their applications and appellant assured them that they would be able to leave for Abu Dhabi after the processing of their papers. [10] She instructed them to pay their processing fees [11] directly to her. During the period from March 3, 1990 to April 27, 1990, inclusive, private complainants through Wilma paid appellant a total of THIRTY-TWO THOUSAND FIVE HUNDRED PESOS (P32,500.00). [12]

Appellant assured private complainants they could leave for Abu Dhabi on May 10, 1990, at 8:00 p.m. [13] The date of departure came without private complainants leaving Philippine soil. Thereafter, appellant told them to

stay put and wait for the arrival in the Philippines of their prospective Middle Eastern employer. However, no employer arrived, and the four complainants failed to be deployed by appellant overseas.[14]

Private complainants and Wilma returned to the Lakas Agency to look for appellant. They did not find her. It was then that they found out from the agency's Manager, MR. NARCISO DELA FUENTE, that appellant was merely renting a table in the office and was not employed with Lakas.[15] The revelation moved private complainants to file a complaint against appellant with the National Bureau of Investigation (NBI).[16]

The NBI was able to work out a settlement between the parties. Appellant agreed in writing to pay back the processing fees of private complainants.[17] Nonetheless, appellant did not fully fulfill her obligation under the agreement. She only refunded a total of SIX THOUSAND SEVEN HUNDRED PESOS (P6,700.00) to private complainants.[18]

For her part, appellant admits that she received from private complainants, through Wilma Gregorio, the sum of THIRTY-TWO THOUSAND FIVE HUNDRED PESOS (P32,500.00).[19] She, however, denied that she was merely renting a table at the office of the Lakas Agency Management Corporation. She insisted that she was an employee of that recruitment office owned and managed by Mr. Narciso dela Fuente,[20] and that she acted as its liaison officer and messenger. As liaison officer, she assisted applicants in the processing of their documents in the POEA. She also signed documents and receipts in behalf of the recruitment agency.[21]

According to appellant, it is the Lakas Agency's policy that each applicant be charged FIVE THOUSAND PESOS (P5,000.00) as processing fee, and that the airline fare of FIFTEEN THOUSAND PESOS (P15,000.00) in cases of deployment to Abu Dhabi be shouldered by the applicant.[22] The agency adopted the policy as a result of its alleged unfortunate experience with Ramon Eguia and Edgardo Santos. The two, she claimed, refused to pay back the cost of their tickets (THIRTY THOUSAND PESOS [P30,000.00]) which was advanced by the agency.[23]

Appellant blamed private complainants for their failure to leave for Abu Dhabi as they were unable to produce the money for their air fare.[24] Allegedly, Wilma insisted that the SIXTY THOUSAND PESOS (P60,000.00) for private complainants' tickets be advanced by Lakas Agency and be repaid by the four once they start working in Abu Dhabi. Her proposal did not sit well with the recruitment agency, resulting in the shelving of private complainants' deployment abroad.[25]

Appellant further testified that private complainant Ronnie Reyes later withdrew his application and demanded the refund of his processing fees, plus SEVEN HUNDRED PESOS (P700.00) to cover miscellaneous expenses.[26] Since private complainants' papers had already been processed in the POEA, Ronnie was informed that the agency was not obliged to make the refund to him. He was, however, insistent, so appellant took it upon herself to pay him back.[27] As guarantee for her promise to make the refund, Ronnie allegedly took her Sony stereo worth FOUR THOUSAND SEVEN HUNDRED PESOS (P4,700.00), which he never returned to her even after she had given him SIX THOUSAND SEVEN HUNDRED PESOS (P6,700.00).[28]

Appellant also alleged that no similar refunds were made to the three other private complainants. Their processing fees were merely off-set against the existing obligation of Romeo Eguia and Edgardo Santos with the Lakas agency.[29]

At trial's end, appellant was found guilty of illegal recruitment and sentenced as follows:

"WHEREFORE, premises considered, judgment is hereby rendered finding the accused Felicia Cabacang y Mosambique (sic) guilty beyond reasonable doubt of illegal recruitment and hereby sentences her to suffer the penalty of LIFE IMPRISONMENT and a fine of One Hundred Thousand (P100,000.00) Pesos." [30]

Appellant now assails the trial court's Decision with the following arguments:

"1. The court a quo erred by failing to appreciate the facts (1) that (appellant) never represented herself as licensed by the Department of Labor and Employment - Philippine Overseas Employment Administration as labor recruited, (2) that what she represented to the applicants is that her employer LAKAS MANAGEMENT AGENCY is a duly licensed recruitment agency with principals-employers abroad, and (3) that the accused told applicants that she can help them get employed with the same employer of their relatives who are now working there through her help.

"2. The court a quo erred in finding (appellant) at fault and liable for the failure or negligence of her employer LAKAS MANAGEMENT AGENCY to register her name as its employee at the Philippine Overseas Employment Administration.

"3. The court a quo erred in finding (appellant) at fault or liable for the decision/policy of her employer, LAKAS MANAGEMENT AGENCY, or requiring the four (4) complaining witnesses to pay the cost of their plane tickets from Manila to the jobsite (Abu Dhabi, UAE);

"4. The court a quo erred in finding (appellant) guilty of illegal recruitment based on (appellant's) receipt of the P32,000.00 from Wilma Eguia Gregorio intended as placement fees of the four (4) complaining witnesses."

We affirm appellant's conviction with modifications.

The centerpiece of appellant's defense is two-fold: (1) that she cannot be held liable for illegal recruitment since she never represented herself to private complainants as a POEA-licensed recruiter; and (2) that she was not the one responsible for the recruitment of private complainants nor for their non-deployment for work abroad, since she was merely an employee of the POEA-licensed Lakas Agency Management Corporation. We reject these contentions.

Firstly, it is incorrect to maintain that to be liable for illegal recruitment, one must represent himself/herself to the victims as a duly-licensed recruiter. Illegal recruitment is defined in Article 38 (a) of the Labor Code, as amended, as "(a)ny recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority." Article 13 (b) of the same Code defines "recruitment and placement" as referring to:

"(A)ny 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."

Clearly, to prove illegal recruitment, only two elements need to be shown, viz: (1) the person charged with the crime must have undertaken recruitment activities (or any of the activities enumerated in Article 34 of the Labor Code, as amended); and (2) said person does not have a license^[31] or authority^[32] to do so. It is not required that it be shown that such person wrongfully represented himself as a licensed recruiter.

Secondly, appellant cannot successfully contend she merely performed her duties as an employee of a licensed recruitment agency. Apart from her uncorroborated testimony on the matter, she failed to present credible evidence to buttress her claim of employment. Thus, she failed to follow the immutable rule on burden of proof that "each party must prove his own affirmative allegations by the amount of evidence required by law."^[33]

On the other hand, the documentary evidence of the prosecution show that appellant received private complainants' processing fees from Wilma Gregorio in her own behalf. The wordings of Exhibits "C" to "G", inclusive, are strongly persuasive on this factual issue. They read, as follows:

Exh. "C": "Received from Wilma Gregorio the amount of 5,000 only";

Exh. "D": "Received from Romeo Eguia amount 5,000";

Exh. "E": Received from Wilma the amount of 5,000 Wilma - only"

Exh. "F": "Received from Wilma Gregorio amount 7,500 pesos only"; and

Exh "G": "Received the amount of 10,000 pesos from Wilma Gregorio as Deposit, 4 applicants."

These receipts — which are not written on Lakas agency stationary -- show no indication that the payments were accepted by appellant in behalf of the Lakas Agency Management Corporation. Exh. "J", which is the Commitment/Agreement executed and signed by appellant before the NBI further proves that she was acting in her own behalf in receiving Wilma's payment. For, why else would she personally "promise to return to Wilma Gregorio xxx the amount of P32,500.00" if said sum was for the benefit of the Lakas agency?

More importantly, the prosecution demonstrated beyond reasonable doubt that appellant performed recruitment activities without any license to do so. She informed private complainant Ronnie Reyes that there would be a second batch of janitors to be deployed to Abu Dhabi. After she accepted private complainants' job applications, she assured them that they would be able to fly to that Middle Eastern nation after their papers are processed by the POEA. She told them, through Wilma, to pay their processing fees directly to her, and later personally received the same, in the total amount of THIRTY-TWO THOUSAND PESOS (P32,000.00). She issued and signed the receipts evidencing payment to her of such fees. She processed private complainants' papers at the POEA, and she assured them that they were to fly to Abu Dhabi on May 10, 1990, at 8:00 p.m. Throughout the entire transaction, private complainants and Wilma Gregorio dealt with appellant, and with appellant alone. The only time they talked to the manager of the Lakas Agency was after their aborted flight to Abu Dhabi, when they were trying to locate the whereabouts of appellant.

Clearly, it was appellant who directly recruited private complainants within the meaning of Article 38 (a) and (b) the Labor Code. Since it is undisputed that appellant is not a holder of a license or authority to recruit from the Department of Labor, through the POEA, her acts constitute illegal recruitment.

Illegal recruitment carries with it the penalty of life imprisonment, and a fine which varies by degrees in accordance with the enumeration made in Article 39 of the Labor Code, as amended. In the case at bench, since appellant was charged with and convicted of illegally recruiting four (4) people, her crime is classified as having been committed in large scale.[34] As such, it is considered as involving economic sabotage, and carries with it a fine of ONE HUNDRED THOUSAND PESOS (P100,000.00).[35] In addition to these penalties, appellant must also be ordered to indemnify private complainants the unrefunded portion of their processing fees.

IN VIEW WHEREOF, the Decision, dated January 25, 1994, of the Regional Trial Court of Manila, Branch 5, in Criminal Case No. 91-93606 is AFFIRMED, subject to the modification that, in addition to being sentenced to suffer LIFE IMPRISONMENT and pay a fine of ONE HUNDRED THOUSAND PESOS (P100,000.00), appellant Felicia Mazambique Cabacang is likewise ordered to indemnify private complainants in the amount of TWENTY-FIVE THOUSAND EIGHT HUNDRED PESOS (P25,800.00). Costs against appellant.

SO ORDERED.

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

[1] Information, dated April 3, 1991; Rollo, p. 3.

[2] Presided over by Judge Cesar J. Mindaro.

[3] Testified on June 8, 1992.

[4] Testified on July 6, 1992, July 15, 1992, and on August 5, 1992.

[5] Testified on June 8, 1992.

[6] See Testimony of POEA representative ELIZA ROQUE; TSN of June 8, 1992, pp. 4-9.

[7] TSN of June 8, 1992, pp. 12, 27; TSN of July 6, 1992, p. 3; TSN of July 6, 1992, p. 18; TSN of March 24, 1993, p. 3.

[8] TSN of June 8, 1992, p. 28; TSN of July 6, 1992, p. 18.

[9] Ibid., at p. 5.

[10] TSN of June 8, 1992, p. 29.

[11] In the amount of SEVEN THOUSAND FIVE HUNDRED PESOS (P7,500.00) per applicant. See TSN of August 5, 1992, p. 2.

[12] See Exhibits "C" to "G", inclusive, which are receipts issued in the name of Wilma Gregorio and signed by appellant. Exhs. "C", "D", and "E", respectively dated March 3, 22 and 27, 1990, each cover FIVE THOUSAND PESOS (P5,000.00); Exh. "F", dated April 9, 1990, is for SEVEN THOUSAND FIVE HUNDRED PESOS (P7,500.00); and Exh. "G", dated April 27, 1990, evidences the payment of TEN THOUSAND PESOS (P10,000.00).

[13] TSN of June 8, 1992, p. 24; TSN of July 6, 1992, p. 14.

[14] Ibid.

[15] TSN of June 8, 1992, p. 24.

[16] TSN of July 6, 1992, p. 14.

[17] See Exh. "J"; TSN of July 6, 1992, p. 16.

[18] As evidenced by Exhs. "1", "2", "3" and "4" which are receipts signed by private complainant Ronnie Reyes.

[19] In her testimony, she admitted that she received TWENTY-SEVEN THOUSAND FIVE HUNDRED PESOS (P27,500.00) from Wilma. (TSN of March 24, 1993, p. 13). However, it is stated in the impugned decision that appellant admitted in her memorandum that she received the amount of (P32,000.00) from Wilma. Since appellant admits the existence and due execution of Exhs. "C" to "G", inclusive, this Court deems her admission to cover the entire amount of P32,500.00.

[20] TSN of March 24, 1993, p. 2.

[21] Ibid., at p. 3

[22] Id.

[23] Id., at pp. 4, 10.

[24] Id., at p. 6.

[25] Id., at p. 10.

[26] Id., at pp. 7-8.

[27] *Id.*, at p. 11.

[28] *Id.*, at p. 9.

[29] *Ibid.*

[30] Impugned Decision, p. 6; Rollo, p. 17.

[31] Defined in Article 13 (d) of the Labor Code, as amended, as "a document issued by the Department of Labor authorizing a person or entity to operate a private employment agency.

[32] Defined in Article 13 (f) of the Labor Code, as amended, as "a document issued by the Department of Labor authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity.

[33] See Rule 131, Section 1, Revised Rules of Court; See also *Widows and Orphans Association v. Court of Appeals*, G.R. No. 91797, 212 SCRA 360 (1992); *Dizon v. Eduardo*, G.R. No. L-59118, 158 SCRA 470 (1988); *Filinvest Credit Corporation v. Relova*, G.R. No. 50378, 117 SCRA 420 (1982).

[34] See Article 38 (b), Labor Code, as amended.

[35] See Article 39 (a), Labor Code, as amended.

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