

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAGED T. GHARBIA, MARY G. ALWIRAIKAT AND LAILA VILLANUEVA ACCUSED-APPELLANT.**

*G.R. No. 123010. July 20, 1999*

Ponente: ROMERO, J.

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**ROMERO, J.:**

Apellant Maged Gharbia, with Laila Villanueva and Mary Gut-Omen[1] Alwiraikat who are both at large, were charged with the crime of illegal recruitment committed by a syndicate before the Regional Trial Court[2] of Quezon City, Branch 84, in an amended information which reads:

"That on various occasions from November 1991 to September 1992, in Quezon City, Metro Manila, and within the jurisdiction of this Honorable Court, above-named accused, conspiring and confederating with one another, did then and there wilfully, unlawfully, and feloniously, while representing themselves to possess the power and capacity to contract, enlist and accept amounts directly, greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor, from LEIDELYN AWAL, NANCY AMANGAN, PRISCILLA CIANO, JOHNNY CIANO, JOSEPHINE COMENDAL, CAROLYN C. DECOY, JUANA BENATIC, LORNA BAGUIOEN, RODA PALTICAN, PETRA PALTICAN, SANDRA CALALANOY, JOY MADINO, WALTER BINOS, ESTEPhANIA PAGUSAN, PATRICIA LANG-AYAN, SUSAN BAUCAN, VINCENT BUSLOTAN, DELBY ROSADO, PETER TUAZON, RICHARD COLAS, FRANKLIN COLALING, ROBERTO LONGBUAN, MILTON BUSOY, MARY BUSLAYAN, ALFREDO DALLOG, WILLIS TALLAYOG, ROLLY SAPGUIAN, MELVIN BATURI, ALLAN TANEDO, CRISTINA EBAN, REYNALDA CAMED, TESSIE KERYAO, NESTOR APID, CORAZON ABUQUE, JOEL DESIERTO, for employment to Taiwan without first obtaining the required license and or authority therefor.

CONTRARY TO LAW."[3]

When appellant entered a plea of not guilty upon arraignment on November 18, 1992, trial on the merits ensued.

Nineteen of the thirty-five complainants, majority of whom hails from Baguio City, were presented by the prosecution to establish the scheme perpetrated by appellant in his illegal recruitment activities. The record shows that Gharbia and Villanueva, who represented themselves as husband and wife, and purportedly doing business under the name and style of Fil-Ger Recruitment Agency with office address at 20-H Zaragosa St., Araneta Ave., Quezon City, conspired with co-accused Mary Alwiraikat, likewise of Baguio City, in convincing the complainants that employment opportunities as factory workers abound in Taiwan. Allegedly that upon full payment of the prescribed fees which, surprisingly, were exacted in different amounts ranging from P20,000.00 to as high as P48,000.00, the applicants would then be able to fly to Taiwan to commence work thereat.

To put a semblance of legality to appellant's activities, complainants were made to undergo medical examinations conducted at L & R Medical Center at Finlandia St., Makati City; a seminar fee was paid to study the Mandarin language and culture of Taiwan which seminar, expectedly, never took place; and complainants were made to sign documents that appear to be contracts of employment.

As the promised departure on September 27, 1992 was moved three days later, the complainants suspected the veracity of appellant's claim that he could send workers abroad; thus, the complainants checked with the China Airlines office in Ermita, Manila if indeed appellant procured tickets for them. While it was confirmed that their names were booked, no tickets were, however, purchased for the September 30, 1992 departure. Accordingly, an inquiry from the Philippine Overseas Employment Authority (POEA) revealed that appellant and his group were neither licensed nor authorized to recruit workers for overseas employment.

The defense, on the other hand, presented seven witnesses who denied appellant's complicity in the charge and solely imputed the same to co-accused Laila Villanueva.

Jordanian Fayyad Assad, a former neighbor of appellant Gharbia occupying the apartment unit number 20-E Zaragosa Street, Araneta Avenue, Quezon City from 1988-1993, testified that he knew the accused, as lessee of apartment 20-H sharing the same with an Egyptian friend Mohamad and as a student taking his masteral degree at De La Salle University. After Mohamad allegedly left sometime in June 1992, Laila Villanueva came and shared the apartment with Gharbia. Since then he noticed numerous applicants for overseas work frequented their place. Due to the unusual flock of applicants, appellant consistently argued with Laila regarding the privacy of their home to the point that appellant would seek refuge at his house for some rest. A few months later, or sometime in September 1992, four police officers in civilian clothes, armed with M-16 rifles, arrested the appellant for the crime of illegal recruitment. He said the officers held the appellant at gunpoint, forcing the latter to go with them to Camp Crame for investigation. In the afternoon of the same day, appellant narrated that he was released for lack of evidence against him. The following day, appellant was invited to Camp Crame but failed to come home that night, prompting him to go there himself to look for his friend. Upon reaching Camp Crame, he saw the appellant together with the applicants who were complaining against Laila Villanueva only but not against the former.

Ric Blanco, residing at 512 Bulacan St., Gagalangin, Tondo, Manila and bookkeeper for L & R Medical Clinic, testified that the nature of his work requires him to receive the referral medical slips for job applicants and that nowhere in the several transactions he handled did the name Maged Gharbia appear.

Maila Neri, a registered nurse by profession, averred that he knew Maged Gharbia through Laila Villanueva, who tried to recruit her for work in Taiwan as factory worker. She allegedly paid the amount of P10,000.00 to Laila at her residence in Araneta Avenue, Quezon City. While there, she noticed a number of applicants who dealt with Laila alone and no other.

Saber Ali Farraj, a housemate for six months and compatriot of appellant, narrated to the court that the latter and Laila Villanueva were having a relationship. Furthermore, appellant allegedly confined himself to his studies and imputed the crime of illegal recruitment to his girlfriend Laila. The testimony of Farraj was substantially corroborated by Susan Yonson, a real estate broker, who was initially implicated in the case as her name and that of Laila Villanueva appeared in a special power of attorney and job order issued in their favor by a certain Mr. Wong who wanted to recruit workers for his business establishments in Taiwan. In the course of the negotiations, however, she was left out and Laila took charge of recruitment activities held mostly in Baguio City. In two instances, Yonson accompanied Laila and appellant to Baguio as the latter borrowed her car purportedly for sightseeing purposes.

Special Police Officer 3 Ismael Fajardo of the Philippine National Police based in Camp Crame testified that on September 30, 1992, several complainants appeared in their office and filed a complaint against Laila Villanueva, Maged Gharbia and Mary Alwiraikat for estafa and illegal recruitment. Presented by the complainants were several documents and receipts relative to the conduct of the accused's recruitment activities showing the same

either to have been executed or issued by Laila and Mary. However, as Fajardo would aptly describe it, when he, along with other police officers, accompanied the complainants to the accused's base of operations, the complainants positively identified appellant as one of those who recruited them. Forthwith, they invited appellant and Mary for further investigation at the police headquarters where they were apprised of their constitutional rights.

Appellant Gharbia testified that he knew Laila Villanueva as he shared the apartment with her at 20-H Zaragosa St., Araneta Village, Quezon City. He averred that Laila stayed thereat until September 1992 when she suddenly disappeared. Subsequently, several police officers and prospective applicants for work abroad came to their apartment questioning him regarding their illegal recruitment activities and Laila's whereabouts. At gunpoint, he was forced to go with them to Camp Crame where he was further investigated.

The record shows that accused Mary Alwiraikat jumped bail even before she could be arraigned, while the warrant of arrest for Laila Villanueva remained unserved.

In a decision dated December 7, 1994, the trial court convicted the accused, the dispositive portion of which reads:

"WHEREFORE, finding accused Maged T. Gharbia guilty beyond reasonable doubt of the crime of large scale illegal recruitment, he is hereby condemned to

- a) suffer the penalty of life imprisonment;
- b) to pay the fine of P100,000; and,
- c) to indemnify private complainants the actual damages they suffered, as follows:

Complainant

Amount

Evidence/Exhibit

1.

Johnny Ciano

-

P20,000.00

A

2.

Priscilla Ciano

-

41,000.00

A-1, A-2

3.

Walter Binos

-

48,000.00

D to I

4.

Nancy Amangan

-

26,000.00

M

5.

J. Comendal

-

40,000.00

P, Q

6.

Rolly Sapguian

-

40,000.00

R to U

7.

Alfredo Dallog

-

37,000.00

W to W-4, C

8.

Joy Madino

-

33,000.00

X, X-1

9

Joel Desierto

-

34,600.00

Y to Y-5

10.

S. Calalanoy

-

39,000.00

Z, Z-1

11.

P. Lang-ayan

-

25,000.00

AA, AA-1

12.

M. Bayan

-

30,000.00

TSN, 4/12/93

J. Tactay

-

31,000.00

BB

13.

Violeta Bascarse

-

31,620.00

CC

14.

Tessie Keryao

-

25,000.00

CC, DD

15.

Roda Paltican

-

32,000.00

DD, DD-1

16.

Juana Benatic

-

38,000.00

EE to EE-3

17.

Reynalda Cam-ed

-

28,000.00

EE to EE-2

(TSN 4/12/93 p 19)

18.

Petra Paltican

-

40,000.00

FF to FF-2

(TSN 4/12/93)

19.

Willies Tallayo

-

37,950.00

FF to FF-2

20.

Peter Tuazon

-

19,000.00

GG, GG-1

21.

Roberto Longbaon

-

37,000.00

HH, HH-1

22.

Allan Tanedo

-

38,000.00

II, II-1

23.

Vincent Buslotan

-

34,950.00

JJ to JJ-3

24.

Delby Rosado

-

25,000.00

(TSN, 4/26/93)

Total - P839,939.00

vvvvvvvvvvvv

With costs. Let this case be archived against the other two accused pending their apprehension.

SO ORDERED."[4]

In controverting the finding of conviction, appellant argues that the trial court failed to prove his guilt beyond reasonable doubt.

In his brief, appellant advances the view that the prosecution's failure to adduce documentary evidence that he received payments from private complainants as proof of his participation in the crime of illegal recruitment, is fatal and should, therefore, result in a finding of acquittal. Furthermore, the conspiracy theory is allegedly without basis as payment of the fees either to Laila or Mary in the presence of the appellant does not by itself make the latter a party to the former's transactions.

We are unable to agree with appellant's line of defense.

The crime of illegal recruitment in large scale requires the concurrence of three elements, viz: That (1) the accused engages in the recruitment and placement of workers, defined under Article 13 (b),[5] or in any prohibited activities under Article 34,[6] of the Labor Code; (2) the accused has not complied with the guidelines issued by the secretary of Labor and Employment, particularly with respect to having a license or an authority to recruit and deploy workers, either locally or overseas, and (3) the accused commits the offense against three or more persons, individually or as a group.[7]

Contrary to appellant's assertions, the prosecution has presented clear and compelling evidence fingering him as one of those who recruited complainants. The illegality of the recruitment was bolstered by the POEA certification whereby Ms. Nenita Mercado attested that neither appellant nor Fil-Ger Recruitment Agency is licensed or authorized to recruit workers for overseas employment. The following are the testimonies of several complainants showing appellant's involvement in the recruitment activities of co-accused Laila Villanueva and Mary Alwiraikat. Priscilla Ciano testified:

"Q: During that transaction when you paid that said amount, will you please tell us if you had any conversation with the accused?

Atty. Lacuna

Who of the accused?

Prosecutor

The accused Maged.

A: Yes sir.

Q: Could you please tell us who were present then?

A: Laila, Mary and Maged.

Q: You said there was conversation, will you please tell us what was this conversation?

A: They convinced us that I can recover something good after two to three months.

Q: Who told you this? This statement that you could recover the amount you paid in two to three months.

A: The three of them.

Q: You mean the accused Maged Gharbia, Laila and Mary?

A: Yes, sir."[8]

Complainant Nancy Amangan asserted that, after having been introduced to appellant, she was enticed to apply with them for work abroad as the latter allegedly assured her and other co-applicants that if the requisite fees are paid and the necessary documents completed, they will be able to leave in two weeks' time.[9]

Another witness, Alfredo Dallog, testified that while he is unable to show a receipt as evidence of payment to appellant as it was Mary Alwiraikat who issued the same, he nevertheless declared witnessing Mary deliver to appellant all payments made to her.[10] Notwithstanding appellant's claims, the Court has ruled that:

"It is not the issuance or signing of receipts for the placement fees that makes a case for illegal recruitment but rather the undertaking of recruitment activities without the necessary license or authority."[11]

On this score, we defer to the findings of the trial court which ruled that while it is true that none of the receipts issued to the complainants was signed by appellant, it is incorrect for him to argue that his indictment was based on such issuance alone. The totality of the evidence shows that appellant took an active and direct part in misrepresenting that they have the authority and the power to facilitate workers' employment abroad.

The testimony of the other complainants substantially corroborate those previously mentioned with respect to appellant's degree of participation in the illegal recruitment charge, but differ only as to the amounts exacted from each of them. The Court, therefore, finds it unnecessary to state them in detail.

In view of the prosecution's overwhelming evidence, the Court is constrained to affirm the trial court's finding of conviction. As is well-settled in this jurisdiction, greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime.[12] In a recent case,[13] the Court held that illegal recruitment in large scale is *malum prohibitum*, not *mala in se*, and, therefore the fact of commission thereof in violation of the law negates appellant's defense of lack of criminal intent. Furthermore, there is no showing that any of the complainants had ill-motives against accused other than to bring him to the bar of justice for the crime of illegal recruitment and the testimonies of the witnesses for the prosecution were straightforward, credible and convincing.[14]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court dated December 7, 1994 finding appellant Maged Gharbia guilty beyond reasonable doubt of the crime of illegal recruitment in large scale is hereby **AFFIRMED**. Costs against appellant.

**SO ORDERED.**

Vitug, Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

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[1] Sometimes referred to as Gatomen.

[2] Presided by Judge Teodoro P. Regino.

[3] Records, pp. 1-2.

[4] Rollo, p. 60.

[5] Art. 13 (b). "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.

[6] ART. 34. Prohibited practices. -- It shall be unlawful for any individual, entity, 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, 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 this Code;
- d) To induce or to attempt to induce a worker already employed to quit his employment in order to offer him to another unless the transfer is designed to liberate the worker from oppressive terms and conditions of employment;
- e) To influence or to 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 or by his duly authorized representatives;
- h) To fail to file reports on the status of employment, placement, vacancies, remittances of foreign exchange earnings, separation from jobs, departures and such other matters of information as may be required by the Secretary of Labor;
- i) To substitute or alter employment contracts approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the periods of expiration of the same without the approval of the Secretary of Labor;
- j) 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; and
- k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this Code and its implementing rules and regulations.

[7] People v. Bautista, 241 SCRA 216, 1995; People v. Garcia, 271 SCRA 621, 1997.

[8] TSN, January 6, 1993, pp. 4-5.

[9] TSN, February 9, 1993, p. 5.

[10] TSN, March 17, 1993, p. 9.

[11] People v. Señorón, 267 SCRA 278, 1997.

[12] People v. Alvarado, 275 SCRA 727, 1997.

[13] People v. Enriquez, G.R. No. 127159, May 5, 1999.

[14] People v. Tan Tiong Meng, 271 SCRA 125, 1997.

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