

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPOUSES FELIPE GANADEN AND MYRNA GANADEN, SPOUSES GERRY GANADEN (ALIAS ELVIS SANCHEZ) AND EMMA SANCHEZ GANADEN AND POLLY GUILL...

G.R. No. 125441. November 27, 1998

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

SPOUSES Felipe and Myrna Ganaden and spouses Gerry and Emma Ganaden, together with one Polly Guillermo, were charged with Illegal Recruitment in Large Scale and four (4) counts of Estafa by Maritess Umblas, Elma Jimenez, Evelyn Escaño and Ilarde Ventula. Only Felipe Ganaden was arraigned as his co-accused Myrna, Gerry and Emma have remained at large.

On 21 May 1996 the Regional Trial Court of Makati City, Br. 14,[1] found the accused Felipe Ganaden guilty as charged and sentenced him accordingly. In Crim. Case No. 94-5248, the trial court found Felipe Ganaden guilty of Illegal Recruitment in Large Scale constituting economic sabotage. He was sentenced to life imprisonment, to pay a fine of P100,000.00, and to indemnify private complainants as follows: Evelyn Escaño, P51,350.00; Ilarde Ventula, P15,000.00 and US \$400; Elma Jimenez, P20,000.00 plus P6,466.00 representing the value of her jewelry given to accused-appellant; and, Maritess Umblas, P38,000.00. In Crim. Case No. 94-5249, Felipe Ganaden was found guilty of Estafa and sentenced to an indeterminate prison term of six (6) years as minimum to fourteen (14) years as maximum taking into account the amount involved in the fraud which was P51,350.00, and to indemnify private complainant Evelyn Escaño in the same amount. In Crim. Case No. 94-5250, Felipe Ganaden was found guilty of Estafa and sentenced to an indeterminate prison term of six (6) years as minimum to twelve (12) years as maximum taking into account the amount involved in the fraud which was P26,466.00, and to indemnify private complainant Elma Jimenez in the same amount. In Crim. Case No. 94-5251, Felipe Ganaden was found guilty of Estafa and sentenced to an indeterminate prison term of six (6) years as minimum to thirteen (13) years as maximum taking into account the amount involved in the fraud which was P38,000.00, and to indemnify private complainant Maritess Umblas in the same amount. In Crim. Case No. 94-5252, Felipe Ganaden was found guilty of Estafa and sentenced to an indeterminate prison term of six (6) years as minimum to twelve (12) years as maximum taking into account the amount involved in the fraud which was P15,000.00 plus US \$400.00 which was converted by the trial court into pesos at the rate of P25.00 per dollar or a total of P25,000.00 and to indemnify private complainant Ilarde Ventula in the same amount.

The facts of these cases have been sufficiently established. In November 1993 Maritess Umblas went to MZ Ganaden Consultancy Services in Pasong Tamo, Makati, and applied for employment overseas. Accused-appellant Felipe Ganaden and his wife Myrna offered Maritess a job as domestic helper in Switzerland with a monthly salary of between US \$400.00 to US \$500.00. However she was told to prepare a fee of P50,000.00. Unable to raise the full amount, she gave accused-appellant P38,000.00 which the latter accepted and for which the corresponding receipt was issued.

Elma Jimenez also went to the office of accused-appellant and was likewise promised a job in Switzerland. She was asked to pay P50,000.00 as placement fee but was able to give accused-appellant only P20,000 in cash and three (3) pieces of jewelry valued at P6,466.00.

Evelyn Escaño followed suit. She also wanted to work abroad so she went to see the accused-appellant at his Makati office. On 15 November 1993 she paid him P51,350.00 in consideration of his promise to facilitate her employment overseas. Her payment was duly receipted.

Ilarde Ventula came all the way from Tamban, Alcala, Cagayan, to visit accused-appellant at his office at Pasong Tamo, Makati, upon the prodding of his townmate, Polly Guillermo, who was working there. Ventula applied for a job abroad and paid P25,000.00 (P15,000.00 and US \$400.00) to accused-appellant on the strength of the latter's assurance that a factory job was waiting for him in Singapore.

On 20 November 1993 Umblas, Jimenez, Escaño and Ventula flew to Singapore. There they were met by accused Gerry Ganaden who brought them to Bencoolen House where they stayed for some time. Umblas was told to meet her Swiss employer in Singapore but, much to her disappointment, the meeting did not take place. Her prospective "employer" did not show up. When accused-appellant Felipe Ganaden arrived in Singapore, Umblas, Jimenez, Escaño and Ventula confronted him and demanded that he make good his promise to give them jobs. Accused-appellant could not provide them any job.

Jimenez and Ventula likewise stayed for a number of days in Singapore while waiting for their job placements. However, when their tourist visas were about to expire, they were brought by Gerry Ganaden to Kuala Lumpur, Malaysia. From there they were transferred to Penang, Malaysia, where they were again assured of work in a factory. They were billeted in a hotel in Penang but were not allowed to go out. Their passports were even confiscated by a certain K. M. Madi Balan. After waiting for a week and with no work coming, they were taken back to Kuala Lumpur where they sought assistance from the Philippine Embassy and some Filipino communities.

Giving up hope of employment either in Singapore or Malaysia, Ventula returned to the Philippines. On the other hand, Jimenez re-entered Singapore still hoping to land a job there and meet her employer. But accused-appellant still could not provide her with a job. Frustrated, Jimenez returned to the Philippines together with Umblas who had stayed in Singapore for twenty-six (26) days, now almost penniless. Finally, accused-appellant escorted them back to Manila.

After staying for two (2) days in Bencoolen House in Singapore, Evelyn Escaño became convinced that there was really no prospect of an employment for her there. Apprehensive of having to stay in a foreign country without any source of income, she telephoned her father in the Philippines for financial assistance. Upon receipt of the money from her father she immediately flew back home.

After their arrival in Manila, Umblas, Escaño, Jimenez and Ventula asked accused-appellant to return their money and reimburse them for their expenses. But he turned a deaf ear to their demands. Verification by the group with the Licensing Division of the Philippine Overseas Employment Administration uncovered the dismal fact that MZ Ganaden Consultancy Service, accused-appellant and his wife, were neither authorized nor licensed to recruit workers for deployment abroad.

Accused-appellant assails his conviction by the trial court, disclaiming participation in the operations of MZ Ganaden Consultancy Service. He maintains that the business was owned and managed by his common-law wife, Myrna Ganaden; that complainants went to MZ Ganaden Consultancy Service not to apply for employment abroad but to seek assistance in travelling as tourists; that his dealings with the complainants consisted only in

helping them facilitate the issuance of their travel documents; and, that the fees paid to him were barely enough to cover their fare, hotel accommodations and expenses incurred in the processing of their passports.

We are not moved by the protestations of accused-appellant. Article 13, par. (b), of the Labor Code defines recruitment and placement as -

(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.

The acts of accused-appellant consisting of his promise of employment to complainants and of transporting them abroad fall squarely within the ambit of recruitment and placement as defined above. The Labor Code renders illegal all recruitment activities without the necessary license or authority from the Philippine Overseas Employment Administration. Specifically, its Art. 38 provides that -

x x x x

(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 (now Department of Labor and Employment) or any law enforcement officer may initiate complaints under this Article.

If the illegal recruitment is committed by a syndicate or in large scale, the Code considers it an offense involving economic sabotage and imposes a much harsher penalty therefor in accordance with its Art. 39. In *People v. Calonzo*,^[2] illegal recruitment in large scale is committed when a person "(a) undertakes any recruitment activity defined under Art. 13, par. (b), or any prohibited practice enumerated under Art. 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 (3) or more persons, individually or as a group.

Indisputably, all three (3) elements exist in the case at bar. First, the complaining witnesses have satisfactorily established that accused-appellant had actively promised them employment and, in fact, transported them to Singapore and Malaysia, only for them to discover that he never made any arrangements with their supposed employers. Second, the Licensing Division of the Philippine Overseas Employment Administration issued a certification that neither MZ Ganaden Consultancy Service, accused-appellant Felipe Ganaden nor Myrna Ganaden had license or authority to recruit workers for deployment abroad. Thirdly, accused-appellant recruited four (4) workers - the complainants herein.

Accused-appellant has not explained why complaining witnesses would haul him to court on these serious charges. All four (4) came from different places and became acquainted with each other only after they met for the first time in the office of accused-appellant in Makati before deployment in Singapore. Nonetheless, they were unanimous in pointing to accused-appellant as the person who assured them of jobs abroad and who collected money from them in consideration of such promise. Complaining witnesses Maritess Umblas even claimed to be a distant relative of accused-appellant.

Conviction under the Labor Code does not preclude conviction under other statutes. Particularly, a person found guilty of Illegal Recruitment in Large Scale may, at the same time, be convicted of Estafa. There is estafa when a person defrauded another by abuse of confidence or by means of deceit causing damage or prejudice capable of pecuniary estimation to the offended party or third person.

In the instant case, we are sufficiently convinced that accused-appellant is guilty of estafa. Through insidious words and machinations, he deluded complainants into believing that for a fee he would provide them overseas

employments. In their honest belief that accused-appellant could deliver, they parted with their hard-earned money - some probably even borrowed - enticed by the prospect of a well-paying job in a foreign land and the promise of a better life for themselves and their families. All these turned out to be mere pipe dreams. Worse, when they demanded from accused-appellant the refund of their monies and the reimbursement of their expenses, accused-appellant still failed to deliver. His defense that the fees he received from complaining witnesses were spent for the processing of their tourist visas, hotel accommodations and air fare collapses in the face of positive testimonies that the various amounts were demanded in exchange for job placements abroad.

Article 315 of the Revised Penal Code provides for the penalty for estafa, thus -

Ist. The penalty of prison correccional in its maximum period to prison mayor in its minimum period, if the amount of the fraud is over P12,000 but does not exceed P22,000, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional P10,000; but the total penalty which may be imposed shall not exceed twenty years. In such a case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prison mayor or reclusion temporal, as the case may be.

Prison correccional in its maximum period to prison mayor in its minimum period ranges from four (4) years two (2) months and one (1) day to eight (8) years adding one (1) year for each additional P10,000.00. Applying the Indeterminate Sentence Law, the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code which is prison correccional in its minimum and medium periods, the range of which is from six (6) months and one (1) day to four (4) years and two (2) months.

WHEREFORE, the appealed decision finding accused-appellant FELIPE GANADEN guilty beyond reasonable doubt of Illegal Recruitment in Large Scale and four (4) counts of Estafa is AFFIRMED but with MODIFICATIONS in the imposed penalties as follows:

1. In Crim. Case No. 94-5248 (Illegal Recruitment in Large Scale), accused-appellant FELIPE GANADEN is sentenced to life imprisonment and to pay a fine of P100,000.00.
2. In Crim. Case No. 94-5249 (Estafa), accused-appellant FELIPE GANADEN is ordered to suffer a prison term of from four (4) years and two (2) months of prison correccional as minimum, to eight (8) years eight (8) months and twenty-one (21) days of prison mayor as maximum, and to indemnify Evelyn Escaño the amount of P51,350.00.
3. In Crim. Case No. 94-5250 (Estafa), accused-appellant FELIPE GANADEN is sentenced to suffer a prison term of from six (6) months and one (1) day of prison correccional as minimum, to six (6) years eight (8) months and twenty-one (21) days of prison mayor as maximum and to indemnify Elma Jimenez the amount of P26,466.00.
4. In Crim. Case No. 94-5251 (Estafa), accused-appellant FELIPE GANADEN is sentenced to suffer a prison term of one (1) year eight (8) months and twenty-one (21) days of prison correccional as minimum, to seven (7) years eight (8) months and twenty-one (21) days of prison mayor as maximum and to indemnify Maritess Umblas the amount of P38,000.00.
5. In Crim. Case No. 94-5252 (Estafa), accused-appellant FELIPE GANADEN is sentenced to suffer a prison term of from six (6) months and one (1) day of prison correccional as minimum, to six (6) years eight (8) months and twenty-one (21) days of prison mayor as maximum and to indemnify Ilarde Ventula the amount of P25,000.00.

In the service of the various prison terms herein imposed upon accused-appellant, the provisions of Art. 70 of the

Revised Penal Code shall be ordered. Costs against accused-appellant.

SO ORDERED.

Davide, Jr. (Chairman), Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Decision penned by Judge Manuel D. Victorio.

[2] G.R. Nos. 115150-55, 27 September 1996, 262 SCRA 541.

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