

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIOSCORA MERCADO DE ARABIA AND FRANCISCA LITTAUA TOMAS, ACCUSED-APPELLANTS.

G.R. No. 128112. May 12, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision[1] dated August 30, 1995, of the Regional Trial Court of Quezon City, Branch 93 in Criminal Case No. Q-93-43368 finding accused-appellants Dioscora Mercado de Arabia (Mercado, for brevity) and Francisca Littaua Tomas (Tomas, for brevity) guilty beyond reasonable doubt of the crime of Illegal Recruitment in Large Scale in violation of Article 38 (b) in relation to Article 39 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, the dispositive portion of which reads:

Wherefore, in view of the foregoing considerations, and in the light of the above-quoted decision of the Supreme Court, this Court finds the evidence submitted by the prosecution to be substantial to prove his guilt of the accused beyond reasonable doubt and with moral certainty and in view thereof finds both accused guilty beyond reasonable doubt of Violation of Article 38, paragraph (b) in relation to Article 39 of Presidential Decree No. 442 and pursuant to the said law, sentences both accused to suffer the penalty of life imprisonment in case of insolvency and to indemnify the complainants Lourdes Pastor in the amount of P17,500.00; Romeo Pastor in the amount of P17,500.00; Imelda Corre in the amount of P10,000.00; Cristina Arellano in the amount of P12,000.00 and Lilibeth Mabalot in the amount of P7,000.00 and the pay the costs.

SO ORDERED.[2]

Accused-appellants Mercado and Tomas were charged with the crime of Illegal Recruitment in Large Scale pursuant to Article 38 (b) in relation to Article 39 (a) of the Labor Code, as amended by Presidential Decree No. 2018. The Information against them stated:

That on or about the period comprised from November 3, 1992 to December 12, 1992, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, without any authority of law and for a fee, did, then and there wilfully, unlawfully and feloniously recruit and promise employment/job placement abroad to the following persons: CRISTINA ARELLANO, LOURDES PASTOR, ROMEO PASTOR, IMELDA O. CORRE feloniously recruit and promise employment/job placement abroad to the following persons: CRISTINA ARELLANO, LOURDES PASTOR, ROMEO PASTOR, IMELDA O. CORRE and LILIBETH O. MABALOT, without first securing the required license or authority from the Department of Labor and Employment, in violation of the aforesaid law.

That the crime described above is committed in large scale as the same was perpetrated against three or more persons individually or as a group as penalized under Art. 38(a) and 39(b) as amended by PD 2018 of the Labor Code of the Philippines. (PD 442)

CONTRARY TO LAW.[3]

Upon arraignment, both Mercado and Tomas pleaded Not Guilty to the offense.

The prosecution presented the testimony of five complainants, namely: Lourdes Pastor, Romeo Pastor, Imelda Corre, Lilibeth Mabalot and Cristina Arellano, and one corroborating witness, Antonia Reodique. The testimony of complainant Cristina Arellano was, however, expunged from the records due to her failure to take the witness stand for cross-examination.[4]

Complainant Lourdes Pastor (Lourdes, for brevity), testified that sometime during the last week of November 1992, she and her brother Romeo Pastor and another companion went to a house in Villa Nova Subdivision, Novaliches, Quezon City to visit a fortune teller. The fortune teller introduced herself as Dioscora Mercado de Arabia. While Lourdes and Romeo were in Mercado's residence, they noticed a passport with money inserted in it. When they inquired from Mercado what the passport and money were for, she replied that she is capable of sending persons abroad for employment.[5] She assured Lourdes and Romeo that if they will be able to give her their passport and placement fee in the amount of P17,500.00 each, she could facilitate their employment and departure for Taiwan by January 1993. Mercado added that they would be working as factory workers in Taiwan with a monthly salary of P25,000.00. Lourdes discussed the prospective job in Taiwan with Mercado in the latter's residence about four times during the period between the last week of November and first week of December 1992. On December 8, 1992, Lourdes gave her passport and placement fee in the amount of P17,500.00 to Mercado in the presence of co-accused Tomas.[6] When Lourdes asked for a receipt, Mercado told her that she could not be issued one because she was being hired on a direct basis.[7] On January 16, 1993, however, Lourdes was unable to leave for Taiwan as promised by Mercado. When she went to the latter's house to inquire as to the reason for her failure to leave for Taiwan, Mercado explained that January 16 was a holiday in Taiwan. After January 16, 1993, Mercado kept on promising that Lourdes and the other applicants would leave soon.[8]

On February 4, 1993, Mercado called Lourdes at home and asked the latter to come to her house. Upon arriving at Mercado's residence in Villa Nova Subdivision, Lourdes and the other applicants who were then present were informed by Mercado that they would all be going to the office of the National Bureau of Investigation (NBI, for brevity) to cause the surveillance of a certain Rebecca Sipagan. Although Lourdes did not know and had never met Sipagan, she went with Mercado and about twenty other applicants to the NBI.[9]

At the NBI office, Lourdes and the other applicants waited for Mercado while the latter talked to a lawyer-investigator in a separate room. Thereafter, Mercado, who was holding a blank affidavit form, went to the room where they were waiting and told them that they were going to Malacañang to sign some papers. However, instead of proceeding to Malacañang, they went to a house under the Nagtahan bridge, which house was owned by a certain Sgt. Bass.[10] Inside the said house, Mercado distributed copies of the blank affidavit form to Lourdes and the other applicants and dictated to them what to write in the blanks.[11]

In accordance with Mercado's instructions, Lourdes wrote the name of Rebecca Sipagan as respondent in the affidavit form and alleged therein that she gave Sipagan P30,000.00 as placement fee.[12] On direct examination, however, Lourdes testified that she does not know Rebecca Sipagan and that she only executed the affidavit following Mercado's instructions. Lourdes clarified that she had no intention of filing a complaint against Sipagan because she never met the latter and could not have possibly given money to her.[13]

Lourdes further testified that subsequently, she went back to the NBI to explain that she wanted to file a complaint not against Rebecca Sipagan but against Dioscora Mercado, since the latter was the person who recruited her. After talking to a certain Atty. Arugay of the NBI, Lourdes executed another affidavit, this time alleging that it was Dioscora Mercado who recruited her and who received her passport and placement fee but who failed to send her to Taiwan for employment.[14]

When asked about Tomas' participation in Mercado's recruitment activities, Lourdes replied that Tomas was always present during her meetings with Mercado, but it was Mercado who received her money.[15]

Lourdes' brother and co-complainant Romeo Pastor (Romeo, for brevity) testified that he met accused Mercado and Tomas for the first time during the first week of November 1992 when he went to Mercado's house in Villa Nova Subdivision, Novaliches, Quezon City together with his sister Lourdes Pastor. On that day, he saw that there were several other persons in Mercado's house. When he inquired from Mercado what these people were doing in her house, she informed him that they were applicants who were about to leave the country for employment as factory workers in Taiwan.[16] Mercado told him that if he was interested to work as a factory worker earning a monthly salary of P25,000.00, he could leave for Taiwan together with the second batch in December 1992 upon submission of his passport and payment of a placement fee in the amount of P17,500.00.[17] On December 9, 1992, Romeo submitted his documents and passport together with his placement fee of P17,500.00 to Mercado and Tomas. When he asked for a receipt, Mercado told him that since he was being hired on a direct basis, it was no longer needed.[18] When he failed to leave for Taiwan in December as promised by Mercado, he talked to her and she guaranteed that he could leave by January 16, 1993. His departure for Taiwan in January 16 was postponed again because according to Mercado, the said date was a holiday in that country.[19]

On February 3, 1993, Mercado called him up and asked him to go to her house the following day, February 4, 1993. When Romeo went to Mercado's house in February 4, he saw that there were many other applicants waiting there. Later, he was told that they would be proceeding to the NBI to cause the surveillance of one Rebecca de Jesus Sipagan. Romeo testified that he did not know anyone by that name. Still, he went with Mercado and some twenty other applicants. When they were at the NBI, he and the other applicants waited together in one area while Mercado talked for along time to an NBI investigator inside another room. Later, Mercado went out of the room and asked them who would speak on behalf of the applicants. When Romeo was asked by Mercado if he wanted to be their spokesperson, he declined. Thereafter, about five persons, including Mercado and his sister Lourdes, entered the investigation room. They were able to get copies of an affidavit form. Subsequently, Mercado told him and the other applicants that they were going to Malacañang to accomplish the affidavit forms. However, Romeo and the other applicants were brought to an apartment under the Nagtahan Bridge instead.[20]

While they were in said apartment, Mercado instructed them to fill in the affidavit forms, and to allege therein that Rebecca Sipagan promised to send them to Taiwan and to return their money. After Romeo accomplished the affidavit form given to him, he gave the same to Mercado.[21] During his direct and cross-examinations, however, Romeo explained that he filed an affidavit-complaint against Sipagan only because that was what Mercado wanted and he was promised by her that his money would be returned to him if he filed a complaint against Sipagan.[22]

However, since his money was still not returned after he accomplished said affidavit and gave the same to Mercado, Romeo, his sister Lourdes and another complainant, Lilibeth O. Mabalot, went to a police station in Valenzuela, Metro Manila to file a complaint against Mercado and Tomas. They were advised by the Valenzuela police to return to the NBI and file a complaint against the persons responsible for their recruitment. Thus, Romeo, Lourdes and Lilibeth Mabalot explained to an NBI investigator the circumstances surrounding the execution of their respective affidavits against Sipagan. Thereafter, they executed separate affidavits alleging that Mercado and Tomas recruited them for employment as factory workers in Taiwan and took their money.

Another complainant, Imelda Corre, (Imelda, for brevity) testified that sometime in 1991, she met Mercado and Tomas at their residence in Novaliches, Quezon City. They talked about Mercado being a manghihilot and a fortune teller. Imelda's sister also learned that Mercado had the capacity to send workers abroad. In October 1992, Imelda went to Mercado's house to inquire about the possibility of working in Taiwan. When she arrived in said

residence, she noticed that there were about ten persons waiting to submit their respective passports to Mercado. Mercado told Imelda that she could facilitate her employment abroad as a factory worker earning P25,000.00 monthly, but she had to submit her passport so that her departure for Taiwan would be processed. Mercado also asked her to give P10,000.00 as placement fee.[23]

On November 3, 1992, Imelda went back to Mercado's residence to give her passport, other requirements and the P10,000.00 placement fee. Mercado received these from Imelda in the presence of Tomas. When Imelda asked for a receipt, Mercado told her that it was no longer necessary because she was being hired on a direct basis. Mercado also told her that she would leave for Taiwan on January 16, 1993.[24] However, Imelda was unable to depart for Taiwan on said date. When she confronted Mercado about this, she was told that the trip had to be postponed for February as it turned out that January 16, 1993 was a holiday in Taiwan. Like the other complainants, Imelda was still unable to leave for Taiwan thereafter, despite Mercado's promises.[25]

Imelda further testified that on February 4, 1993, Tomas called her up and asked her to proceed to Mercado's residence. Tomas explained that they were going to cause the surveillance of a certain Rebecca de Jesus, whom Imelda had never seen nor heard of. Eager to recover her money, Imelda went to the NBI on February 5, 1995 and joined Mercado and the other applicants, including Romeo, Lourdes, Lilibeth Mabalot and Cristina Arellano. At the NBI, Mercado, her husband and some of Mercado's friends entered a room. Imelda and the other applicants waited outside. After about forty-five minutes, Mercado went out of the room and called Lourdes. After another fifteen minutes, Mercado called Imelda and asked her to sign a piece of paper which she likened to an attendance sheet. After signing the paper, Mercado went inside the room again. Thereafter, Mercado went out of the room again and told Imelda to go home already. Instead of going home, Imelda proceeded together with some twenty other applicants to a house in Nagtahan.[26]

While they were at the house in Nagtahan, Imelda and the other applicants were given one affidavit form each which they filled in with the information which Mercado dictated to them. Mercado also asked Imelda and the others to sign their respective affidavits. When Imelda inquired why they had to sign the affidavit, Mercado explained that it was the only way by which they could get back their money. After signing the affidavit, Imelda gave the same to Mercado. Imelda was not given a copy thereof. Thereafter, Mercado told her that she could go home and that the former would just get in touch with her. She was not present when the said document was notarized.[27]

Subsequently, Mercado called up Imelda and asked her if she wanted to apply for overseas employment with another agency. Sometime in February, Mercado again urged Imelda to apply for employment with another agency, and said that if Imelda could leave the country through another employment agency, she could still have the opportunity to earn what she had spent earlier.[28]

Imelda grew even more suspicious of Mercado. Thus, together with her fellow applicants Cristina Arellano and Lilibeth Mabalot, she went to the Philippine Overseas Employment Authority (POEA, for brevity) and inquired whether Mercado and Tomas were licensed recruiters. They discovered that the two were not licensed to recruit applicants for employment.[29]

On March 3, 1993, Imelda, Romeo, Lourdes, Cristina Arellano and Lilibeth Mabalot returned to the NBI to follow up the status of the complaints against Rebecca Sipagan, for which they executed affidavits earlier on February 5, 1993. They told the NBI agents that they actually did not know Rebecca Sipagan. Imelda related everything that transpired relative to her application and the money which she gave to Mercado. Thereafter, she accomplished another affidavit before NBI administering officer Britanico which she subscribed before Assistant City Prosecutor Arturo delos Reyes. In said affidavit, Imelda stated that it was Mercado and Tomas who committed

illegal recruitment and estafa against her as well as against her fellow applicants Lourdes, Romeo, Lilibeth Mabalot and Cristina Arellano.[30]

Imelda further stated that on March 11, 1993, the NBI invited Mercado and Tomas for questioning. After the investigation, they were brought to the NBI headquarters in Quezon City and charges of illegal recruitment and estafa were filed against them.[31]

Complainant Lilibeth Mabalot (Lilibeth, for brevity) likewise testified that she met accused Mercado for the first time in 1991 at the wake of a common friend. She was introduced to Mercado by her sister, Imelda Corre. She met Mercado for the second time on November 3, 1992, at the latter's residence in Novaliches. She went there together with her sister Imelda because they received information that Mercado and Tomas were recruiting applicants for employment in Taiwan.[32] Mercado told her that she could be employed in Taiwan as a factory worker with a monthly salary of ranging from P25,000.00 to P30,000.00 if she could submit her passport and other documents and pay a placement fee of P7,000.00.[33] Tomas said she would take care of facilitating the processing of Lilibeth's papers.[34]

On or about November 7, 1992, Lilibeth together with her sister Imelda returned to Mercado's house in Novaliches to talk to the latter and Tomas. Lilibeth gave her placement fee of P7,000.00 to Mercado. When she asked for a receipt, Mercado told her that no receipt could be issued because she was being sent abroad on a direct hiring basis.[35] Lilibeth was told by Mercado that she would be able to leave for Taiwan either in December 1992 or January 1993.[36]

Like the other complainants, Lilibeth was unable to leave for Taiwan as promised by Mercado.[37] She was unable to retrieve the sum of P7,000.00 which she gave to Mercado for the processing of her application for employment in Taiwan.[38]

Thus, on March 3, 1993, Lilibeth, together with Imelda, Cristina Arellano, Romeo and Lourdes went to the NBI to file complaints for illegal recruitment and estafa against Mercado and Tomas.[39]

Corroborating witness Antonia Reodique (Antonia, for brevity) for her part testified that she met accused Tomas for the first time in the morning of December 12, 1992 through complainant Lilibeth Mabalot when she accompanied her sister Cristina Arellano to Tomas' house to inquire about the possibility of finding employment in Taiwan. Antonia said that it was Lilibeth who informed Cristina Arellano that Tomas and Mercado were recruiting applicants for employment as factory workers in Taiwan. Antonia testified that she overheard the conversation of Cristina Arellano and accused Tomas, particularly, that Cristina was being required to pay a placement fee of P12,000.00. On the afternoon of the same day, Cristina went back to Tomas' house and gave her passport and the placement fee of P12,000.00 to Tomas, who instructed Cristina to wait for the processing of her employment papers. Cristina was however, unable to leave for Taiwan.[40]

On the other hand, accused Mercado and Tomas raised the defense that they were not recruiters, but, like the complainants, they too were recruited by Rebecca de Jesus Sipagan as applicants for employment abroad. Mercado and Tomas denied having recruited Lourdes Pastor, Romeo Pastor, Lilibeth Mabalot and Imelda Corre.

Mercado testified that she first met Rebecca Sipagan sometime in September 1992 when the latter came to her house for a massage. In the course of their conversation, Sipagan represented that she could send persons for employment in Taiwan. She said that if Mercado was interested in working abroad, she can go to her (Sipagan's) office in Fairview. Subsequently, when Mercado went to Sipagan's residence and office in Fairview, the latter told her that for purposes of facilitating her employment abroad, she had to submit her birth certificate, marriage contract, pictures and give a placement fee of P30,000.00.[41]

Mercado also stated that she met complainants Lourdes Pastor, Romeo Pastor, Lilibeth Mabalot, Imelda Corre as well as Cristina Arellano for the first time on November 8, 1992 in the house of Rebecca Sipagan, where like her, they were applying for work abroad. She met them again at Sipagan's house sometime in December, 1992 when they were all following up the status of their respective applications for employment.[42]

Mercado further testified that she first met co-accused Tomas at the house of Sipagan on November 28, 1992. Tomas was then renting a room therein and was also processing her employment abroad through Sipagan. Mercado and Tomas became friends and the latter eventually transferred to the former's residence.[43]

Mercado stated that when she was unable to leave for Taiwan on January 16, 1993 as promised by Sipagan, she went back to the latter's house but unfortunately, she did not see Sipagan there. Due to her failure to depart for Taiwan, she called Imelda, Lourdes, Romeo, Lilibeth on February 5, 1993 and asked them to go with her to the NBI to file a complaint for illegal recruitment and estafa against Sipagan.[44]

For her part, accused Tomas testified that she met co-accused Mercado for the first time in October, 1992 in the house of Rebecca Sipagan in Fairview, as they were both applying for overseas employment in Taiwan through Sipagan. On that same day, she accepted Mercado's offer to lease a room in the latter's residence in Novaliches, Quezon City while awaiting her departure for Taiwan.[45]

As to her application for employment in Taiwan, Tomas said that she gave her passport and other pertinent documents plus P30,000.00 as placement fee to Sipagan. She was not given a receipt by the latter who explained that she was being sent to Taiwan on direct hiring basis.[46] She further stated that she was unable to leave for Taiwan as promised by Sipagan, whose whereabouts she eventually lost track of. She then planned to file a complaint against Sipagan, so she talked to Mercado who was then the oldest among the applicants.[47] On February 5, 1993, Tomas together with Mercado and the other applicants went to the NBI to file a complaint against Sipagan.

Tomas denied that there was any truth to the charges against her and Mercado. She explained that the complainants filed charges against them upon the prodding of NBI Agent Jessie Camara, a cousin of Lourdes and Romeo Pastor.

She clarified that she met complainants Lourdes Pastor and Romeo Pastor at the house of Mercado only once, on January 2, 1993, when they discussed the details of their departure for Taiwan scheduled on January 16, 1993.[48] She added that she met Cristina Arellano in Mercado's house in December 1992 when they could no longer find their recruiter, Rebecca Sipagan.[49]

On August 30, 1995, the Regional Trial Court rendered the assailed Decision finding both Mercado and Tomas guilty of illegal recruitment. The two accused filed a Motion for Reconsideration with the trial court on November 7, 1995. However, said motion was denied by the lower court.[50]

Hence, this appeal which raises the following error:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF ILLEGAL RECRUITMENT ON A LARGE SCALE.[51]

Accused-appellant Mercado contends that the prosecution failed to show that she had given the complainants the distinct impression that she had the power or ability to send the complainants abroad such as to convince them to part with their money in order to be so employed,[52] as required in *Darvin vs. Court of Appeals*. [53]

Mercado pointed out that as a mere fortune teller and manghihilot who reached only Grade 2 in elementary school, she could not have possibly deceived complainants, who are all high school graduates, into believing that

she could send them to Taiwan to work as factory workers. She added that she did not even work in a travel agency or an office which could have lent a semblance of distinction to a fraudulent scheme on her part.[54]

Tomas, on the other hand, claims that the prosecution failed to prove that she actively participated in recruiting the complaining witnesses for employment as factory workers in Taiwan. She pointed out that all the witnesses testified that they handed their money over to Mercado and that it was the latter who constantly enticed them to work in Taiwan. Tomas only called up one complainant, Imelda Corre, to inform her that they would cause the surveillance of Rebecca Sipagan.[55]

With regard to accused-appellant Mercado, this Court finds that the trial court did not err in finding her guilty beyond reasonable doubt of Illegal Recruitment in Large Scale.

Illegal recruitment has been defined to include the act of engaging in any of the activities mentioned in Article 13 (b) of the Labor Code without the required license or authority from the POEA. Under the aforesaid provision, any of the following activities would constitute recruitment and placement: canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, including referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not. Article 13 (b) further provides 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. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons, individually or as a group.[56]

The essential elements of the crime of illegal recruitment in large scale are that: (1) the accused engages in acts of recruitment and placement of workers defined under Article 13 (b) or in any prohibited activities under Article 34 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 the securing of a license or an authority to recruit and deploy workers, either locally or overseas; and (3) the accused commits the unlawful acts against three or more persons, individually or as a group.[57]

All the foregoing elements are present in the case at bar.

Mercado's representations made to each of the complainants that she could send them to Taiwan for employment as factory workers constitute a promise of employment which amounts to recruitment as defined under Article 13 (b) of the Labor Code.

Mercado was positively identified by all the complainants as the person who promised them employment abroad for a fee.[58]

Mercado's self-serving statements that she was just an applicant for employment like the complainants and that they were all recruited by Rebecca Sipagan are belied by the testimonies of the complainant-witnesses. Lourdes Pastor testified in this wise:

FISCAL:

x x x

q. Now, you said in Villa Nova Subdv., Novaliches, what is that place, is that an office or a residence of the accused?

a. It is a residence being utilized as an office, mam (sic).

q. When you went to that place, what did you do there?

a. Dioscora Arabia, first time we went to her place, Miss Arabia is a fortune teller, at the same time,

"manghihilot", we saw a passport with money inserted between the pages. We asked her about the passport, she told us that she is capable of sending persons abroad and at the same time a recruiter.

x x x

q. When you said the accused showed you the passport that she could recruit employees for employment abroad, did you believe her?

a. Yes, mam (sic).

q. Did you ask her questions regarding the recruitment?

a. Yes, mam (sic).

q. What did you talk about?

a. She told us that if we would be able to give our passport together with our money, she could facilitate our leaving by January, mam (sic).

q. What other arrangement did you have aside from the passport and money?

a. She told us to wait for our departure and that further assured us that we would be able to leave by January 16.

q. To what country was she supposed to send you?

a. Taiwan, mam (sic).

q. What was the nature of the job that she would give (sic) you?

a. Factory worker, mam(sic).

q. Did she tell you how much salary you would receive?

a. She promised that we would earn P25,000.00, mam (sic).

q. How about the amount of money that you were about to give to her, how much?

a. P17,500.00, mam (sic).

q. What was that amount for?

a. For placement fee, medical and processing of papers.

x x x

q. Were you able to give her the P17,500.00 and your passport?

a. Yes, mam (sic).[59]

x x x

q. Now, in this Affidavit, you stated in the second paragraph that you are filing a complaint for Estafa and Illegal Recruitment against Rebecca de Jesus, who is that Rebecca de Jesus?

a. I don't know her, mam (sic).

q. Why did you state that you are filing a case against Rebecca de Jesus?

a. Because it was what Dioscora dictated to us, the answer, mam (sic).

q. Do you know the implications of this, why are you filing a case against Rebecca de Jesus, are you filing a case against Rebecca?

x x x

a. I was not complaining against Rebecca de Jesus, because I don't know her, the contents of the Affidavit were dictated to me by Dioscora Arabia.

q. Why did you follow her instructions?

a. Because I was already confused, I was thinking of the money I borrowed. They told us so many things for us not to distrust her, not to worry about the money.[60]

Romeo Pastor also testified as follows:

q. When you went to see the accused [Mercado] at Villanova, what is that place, is it the residence or office?

a. It is a residence and at the same time an office.

q. When you went to the place for the first time, what did you see?

a. There were other applicants because when I arrived, I asked Dioscora Mercado why there were other persons around. I was told they were applicants.

q. Applicants for what?

a. Applicants for work in Taiwan as factory workers.

q. Did you submit your application to them?

a. Yes, ma'am. That was December 9 in the morning when I gave my documents, passport, money to Dioscora Arabia and Francisca Tomas.

q. What was your arrangement then?

a. First, I was told that the people around were applicants who were about to leave. If we are interested we can apply and would be included in second.

q. Did she tell when would be the second batch?

a. She said that the second batch would leave sometime in December.

q. When you gave the passport together with the money to Dioscora Arabia, how much did you give (sic) her?

a. P17,500.00

x x x

q. Before I forget, what job did you apply in Taiwan (sic)?

a. Factory worker.

q. Did she tell you how much you would receive as salary?

a. P25,000.00 per month.[61]

x x x

FISCAL DATES:

x x x

q. You stated during the last hearing, Mr. Witness, that you were complaining against Deoscora Mercado and Francisca Tomas, why are you telling this Honorable Court that you filled up a form against Sipagan?

a. That was what Deoscora Arabia wanted.

q. Did you ask her why she wanted for you to file a complaint against Sipagan?

a. Because she promised that she could send us to Taiwan and that our money would be returned.[62]

x x x

ATTY. LAYAWEN:

q. But you have known this Rebecca de Jesus [Sipagan] before, when you went to the NBI, together with the two (2) accused, is it not?

a. We do not know and we have not seen Rebecca de Jesus Sipagan.

q. Why did you go with her [Mercado] to complaint (sic) against Rebecca Sipagan to the NBI if you did not know Rebecca Sipagan?

a. Because we were after the return of our money and Arabia informed us that Rebecca has machineries (sic) worth millions so that we could get our money.

q. You admitted that you have signed the Affidavit which was executed on February 5, 1993, when you signed that Affidavit, are you in a right senses (sic)?

a. Yes, sir. I was in a right senses (sic).

q. If you were in your right senses, why did you state in your Affidavit that it is Rebecca de Jesus whom you are complaining for illegal recruitment?

a. As I have said, that everything in what we signed, referring to the Affidavit, was the will and orders (sic) of Arabia [Mercado].

x x x

q. Is it not a fact that what prompted you to file this case against Deoscora Arabia [Mercado] and Francisca Tomas was infact (sic), you failed to locate this Rebecca de Jesus because she was then at large, when you lodged this complaint against her on February 5, 1993?

a. If we know Rebecca de Jesus we could have complained her (sic) also, but since we gave our money to Arabia [Mercado] and Tomas, plus our documents that is why we filed a complaint against them.[63]

Imelda Corre had a similar story to tell:

q. What made you meet them [Mercado and Tomas] again in October, 1992 (sic)?

a. I was going to verify things about going to Taiwan.

q. Why were you verifying something about going to Taiwan?

a. Because according to them, they have capacity to sent (sic) employees to Taiwan.

q. Who told you that they have capacity?

a. Deoscora Arabia.

x x x

q. What was the result of your verification after that?

a. Their words are believable.

q. Did you believe what they said?

a. Yes, ma'am.

q. What did you do thereafter?

a. I gathered the requirements they required.

COURT:

q. As far as you can recollect, what did the accused tell you?

a. Deoscora Arabia told me to submit my passport so they could facilitate the early leaving.

q. For working for you to travel to work abroad, what was the consideration mentioned?

a. For me to work in Taiwan, I was asked by Deoscora Arabia a placement fee in the amount of P10,000.00.

q. Did Deoscora Arabia tell you what was your job in Taiwan?

a. Factory worker.

q. Did she tell you how much you were supposed to receive as salary?

a. Yes, Ma'am.

q. How much?

a. P25,000.00 a month.

q. When you were asked to give your passport and P10,000.00 did you comply with that?

a. Yes, ma'am.

x x x

q. To whom did you personally give the P10,000.00?

a. It was handed to Deoscora Arabia.

x x x

q. Who personally received your passport?

a. Deoscora Arabia.[64]

For her part, Lilibeth Mabalot testified thus:

q. When you were introduced to those persons [Mercado and Tomas] on said date [November3, 1992] and on said place [Villa Nova Subd., Novaliches, Quezon City], do you remember whether or not you were able to talk to both of them?

a. Yes, ma'am.

q. Will you please inform the Hon. Court what was the subject matter of your conversation?

a. Whether I could want (sic) to apply for work abroad.

q. What was your answer, if any?

a. I said yes.

q. After that, what happened next, if any.

a. We went back to see them because we were told to give them P7,000.00, so we could leave.

x x x

q. To whom did you give that amount of P7,000.00?

a. To Deoscora Arabia.[65]

x x x

q. Is it not true that you were only convinced by somebody to file a complaint against Dioscora Arabia and Francisca Tomas because the real accused by the name of Rebecca de Jesus could not be found anymore?

a. No sir, they [Mercado and Tomas] were really the ones we were suing.[66]

This Court also finds no merit in Mercado's argument that she cannot be held liable for illegal recruitment because as a mere fortune teller and manghihilot who only had formal education up to Grade 2, she could not have made the complainants, who are all high school graduates, believe that someone like her had the capacity to recruit persons for employment abroad. Contrary to her claim, Mercado herself categorically declared that she could send persons for employment abroad, as testified to by all the complainants.[67]

Mercado's lack of a license from the POEA to recruit persons for employment was admitted by both parties.[68]

The prosecution also established that accused Mercado promised employment to four individuals, namely, Lourdes Pastor, Romeo Pastor, Imelda Corre and Lilibeth Mabalot.

It is thus clear from the foregoing that the elements of the crime of Illegal Recruitment in Large Scale are present and that accused-appellant Mercado is guilty beyond reasonable doubt of the same.

The Court, however, does not find that the guilt of accused-appellant Tomas was likewise demonstrated beyond reasonable doubt. It notes that the prosecution failed to discharge its burden of proving Tomas' participation in the crime charged. Her presence alone when complainant Lourdes Pastor gave her placement fee to Mercado is not sufficient to establish Tomas' guilt.[69] Neither is Romeo Pastor's testimony that he remitted his placement fee to both Mercado and Tomas adequate to convict the latter. The Court notes that while Romeo said that he gave his placement fee to the two accused,[70] in other portions of his testimony, he only referred to accused Mercado and made no mention of Tomas, thus:

ATTY. LAYAWEN:

q. In the second time that you met Deoscora Mercado, did you have any transaction with her?

a. The only thing she told us, my sister and I, that she promised that she could make us leaving for abroad if we could give her money.

q. After the second time, did you see Deoscora Arabia again?

a. No, sir.

q. Are you saying that it was in the second week of November, when you gave your money to Deoscora

Arabia?

a. No sir, we still look for the money that we gave her (sic).

q. When did you give the money to Dioscora Arabia? My sister and I gave the money on December. We counted the same in front of her.[71]

Similar inconsistencies are likewise found in the testimony of complainant Lilibeth Mabalot. While she answered during direct examination that it was Mercado and Tomas who enticed her to work abroad,[72] in the other portions of her testimony, she only mentioned Mercado as the person who received her placement fee, who explained why a receipt could not be issued to her for the placement fee that she gave.[73]

Complainant Imelda Corre identified only accused Mercado as the person who told her that they [Mercado and Tomas] had the capacity to send workers abroad, and who received her passport and placement fee. Although she admitted also having met Tomas, she made no mention of the latter in her testimony.[74]

Clearly, the prosecution has failed to establish the guilt of accused-appellant Tomas beyond reasonable doubt. Hence, this Court cannot sustain her conviction. Among the fundamental rights of an accused under our Bill of Rights is to be presumed innocent until the contrary is proved, and to overcome the presumption, the prosecution must establish his or her guilt beyond reasonable doubt. If the prosecution fails in this, it is not only the right of the accused but also the duty of the courts to set him or her free.[75]

Although accused-appellant Tomas is acquitted of the charge of Illegal Recruitment in Large Scale, she is still liable for the reimbursement of Cristina Arellano's placement fee of P12,000.00 which she received, as established by the testimony of Antonia Reodique, and which was not rebutted by Tomas. It is settled that the extinction of the penal action by a judgment of acquittal does not carry with it the extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil liability might arise did not exist.[76]

WHEREFORE, the Decision of the Regional Trial Court is hereby **AFFIRMED** with respect to accused-appellant Dioscora Mercado de Arabia, **WITH THE MODIFICATION** that she shall be ordered to indemnify the complainants Lourdes Pastor in the amount of Seventeen Thousand Five Hundred (P17,500.00) Pesos, Romeo Pastor in the amount of Seventeen Thousand Five Hundred (P17,504.00) Pesos, Imelda Corre in the amount of Ten Thousand (P10,000.00) Pesos and Lilibeth Mabalot in the amount of Seven Thousand (P7,000.00) Pesos and to pay the costs.

Accused-appellant Francisca Littaua Tomas is hereby **ACQUITTED** of the crime charged on grounds of reasonable doubt and her immediate release from custody is ordered unless she is being held on other legal grounds. However, she is ordered to reimburse Cristina Arellano the amount of Twelve Thousand (P12,000.00) Pesos.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.s

[1] Rollo, pp. 25-59.

[2] Id., at 59.

[3] Information, dated March 12, 1993, Rollo, p. 9.

[4] Records, p. 1; TSN, December 15, 1993, p. 7.

[5] TSN, July 13, 1993, pp. 3, 15.

- [6] Id., at 4.
- [7] Id., at 5.
- [8] Id., at 5-6.
- [9] Id., at 6-7.
- [10] Id., at 7.
- [11] Id., at 8.
- [12] Id., at 8.
- [13] Id., at 9.
- [14] Id., at 10-11.
- [15] Id., at 14.
- [16] TSN, July 19, 1993, pp. 2-3.
- [17] Id., at 3 and 4.
- [18] Id., at 4.
- [19] Ibid.
- [20] Id., at 5-7.
- [21] TSN August 3, 1993, p. 2.
- [22] Id., at 2, 13-14.
- [23] TSN, August 9, 1993, pp. 2-4.
- [24] Id., at 4-5; see also TSN, August 24, 1993, p. 3.
- [25] TSN, August 9, 1993, pp. 4-5.
- [26] Id., at 5-7.
- [27] Id., at 8-9.
- [28] Id., at 9.
- [29] Id., at 11.
- [30] Id., at 10.
- [31] Id., at 12.
- [32] TSN, December 14, 1993, p. 4.
- [33] Ibid.
- [34] TSN, December 15, 1993, p. 6.
- [35] Id., at 4; TSN, December 14, 1993, p. 5.
- [36] TSN, December 14, 1993, pp. 4-5.
- [37] Id., at 5.
- [38] TSN, December 14, 1993, p. 7.
- [39] TSN, December 15, 1993, p. 3.
- [40] TSN, September 29, 1993, pp. 2-3.
- [41] TSN, March 8, 1995, pp. 1-2.
- [42] Id., at 2.
- [43] Id., at 3.
- [44] Ibid.
- [45] Id., at 4.
- [46] TSN, August 1, 1995, pp. 7-8.
- [47] Id., at 2.
- [48] Id., at 5-6.
- [49] Id., at 5.
- [50] Order dated January 30, 1996, Rollo, p. 141.

- [51] Accused-appellants' Brief, Rollo, p. 100.
- [52] Id., at 100-101.
- [53] G.R. No. 125044, July 13, 1998.
- [54] Accused-appellants' Brief, Rollo, p. 101.
- [55] Id., at 101-102.
- [56] Article 38 (a), Labor Code.
- [57] *People vs. Sanchez*, 291 SCRA 333, 345 (1998); *People vs. Sadosa*, 290 SCRA 92 (1998).
- [58] See TSN, July 13, 1993, p. 2; August 9, 1993, p. 2; September 29, 1993, p. 2; December 14, 1993, pp. 2-3.
- [59] TSN, July 13, 1993, pp. 3-4.
- [60] Id., at 8-9.
- [61] TSN, July 19, 1993, p. 3.
- [62] Id.
- [63] Id., at 13-14, (cross-examination).
- [64] TSN, August 9, 1993, pp. 3-5.
- [65] TSN, December 14, 1993, p. 4.
- [66] TSN, December 15, 1993, p. 5.
- [67] TSNs, July 13, 1993, p. 3; July 19, 1993, pp. 3-4; August 9, 1993, p. 3; December 15, 1993, p. 2.
- [68] See TSN, December 15, 1993, p. 7.
- [69] See TSN, July 13, 1993, p. 3.
- [70] TSN, July 19, 1993, p. 4.
- [71] TSN, August 3, 1993, p. 11.
- [72] TSN, December 14, 1993, p. 4.
- [73] See TSN, December 14, 1993, pp. 3-6.
- [74] See TSN, August 9, 1993, p. 2-3.
- [75] *People vs. Torion*, G.R. No. 120469, May 18, 1999.
- [76] *Banal vs. Tadeo, Jr.*, 156 SCRA 325, 330 (1987).

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