ROSA C. RODOLFO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 146964. August 10, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner was charged before the Regional Trial Court (RTC) of Makati for illegal recruitment alleged to have been committed as follows:

> That in or about and during the period from August to September 1984, in Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, 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 VILLAMOR ALCANTARA, NARCISO CORPUZ,[1] NECITAS R. FERRE, GERARDO H. TAPAWAN and JOVITO L. CAMA, without first securing the required license or authority from the Ministry of Labor and Employment.[2]

After trial on the merits, Branch 61 of the Makati RTC rendered its Judgment on the case,[3] the decretal portion of which reads:

> WHEREFORE, PREMISES ABOVE CONSIDERED, the Court finds the accused ROSA C. RODOLFO as GUILTY of the offense of ILLEGAL RECRUITMENT and hereby sentences her [to] a penalty of imprisonment of EIGHT YEARS and to pay the costs.[4] (Underscoring supplied)

In so imposing the penalty, the trial court took note of the fact that while the information reflected the commission of illegal recruitment in large scale, only the complaint of the two of the five complainants was proven.

On appeal, the Court of Appeals correctly synthesized the evidence presented by the parties as follows:

> [The evidence for the prosecution] shows that sometime in August and September 1984, accused-appellant approached private complainants Necitas Ferre and Narciso Corpus individually and invited them to apply for overseas employment in Dubai. The accused-appellant being their neighbor, private complainants agreed and went to the former's office. This office which bore the business name "Bayside Manpower Export Specialist" was in a building situated at Bautista St. Buendia, Makati, Metro Manila. In that office, private complainants gave certain amounts to appellant for processing and other fees. Ferre gave P1,000.00 as processing fee (Exhibit A) and another P4,000.00 (Exhibit B). Likewise, Corpus gave appellant P7,000.00 (Exhibit D). Appellant then told private complainants that they were scheduled to leave for Dubai on September 8, 1984. However, private complainants and all the other applicants were not able to depart on the said date as their employer allegedly did not arrive. Thus, their departure was rescheduled to September 23, but the result was the same. Suspecting that they were being hoodwinked, private complainants demanded of appellant to return their money. Except for the refund of P1,000.00 to Ferre, appellant was not able to return private complainants' money. Tired of excuses, private complainants filed the present case for illegal recruitment against the accused-appellant.
>
> To prove that accused-appellant had no authority to recruit workers for overseas employment, the prosecution

> presented Jose Valeriano, a Senior Overseas Employment Officer of the Philippine Overseas Employment Agency (POEA), who testified that accused-appellant was neither licensed nor authorized by the then Ministry of Labor and Employment to recruit workers for overseas employment.
>
> For her defense, appellant denied ever approaching private complainants to recruit them for employment in Dubai. On the contrary, it was the private complainants who asked her help in securing jobs abroad. As a good neighbor and friend, she brought the private complainants to the Bayside Manpower Export Specialist agency because she knew Florante Hinahon,[5] the owner of the said agency. While accused-appellant admitted that she received money from the private complainants, she was quick to point out that she received the same only in trust for delivery to the agency. She denied being part of the agency either as an owner or employee thereof. To corroborate appellant's testimony, Milagros Cuadra, who was also an applicant and a companion of private complainants, testified that appellant did not recruit them. On the contrary, they were the ones who asked help from appellant. To further bolster the defense, Eriberto C. Tabing, the accountant and cashier of the agency, testified that appellant is not connected with the agency and that he saw appellant received money from the applicants but she turned them over to the agency through either Florantino Hinahon or Luzviminda Marcos.[6] (Emphasis and underscoring supplied)

In light thereof, the appellate court affirmed the judgment of the trial court but modified the penalty imposed due to the trial court's failure to apply the Indeterminate Sentence Law.

The appellate court thus disposed:

> WHEREFORE, finding no merit in the appeal, this Court DISMISSES it and AFFIRMS the appealed Decision EXCEPT the penalty x x x which is hereby changed to five (5) years as minimum to seven (7) years as maximum with perpetual disqualification from engaging in the business of recruitment and placement of workers.[7] (Underscoring supplied)

Petitioner's Motion for Reconsideration having been denied,[8] the present petition was filed, faulting the appellate court

> I
>
> x x x IN GIVING CREDENCE TO THE TESTIMONIES OF THE COMPLAINING WITNESSES, [AND]
>
> II
>
> x x x IN FINDING THE PETITIONER-ACCUSED GUILTY WHEN THE PROSECUTION FAILED TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[9] (Underscoring supplied)

Petitioner bewails the failure of the trial court and the Court of Appeals to credit the testimonies of her witnesses, her companion Milagros Cuadra, and Eriberto C. Tabing who is an accountant-cashier of the agency.

Further, petitioner assails the trial court's and the appellate court's failure to consider that the provisional receipts she issued indicated that the amounts she collected from the private complainants were turned over to the agency through Minda Marcos and Florante Hinahon. At any rate, she draws attention to People v. Señoron[10] wherein this Court held that the issuance or signing of receipts for placement fees does not make a case for illegal recruitment.[11]

The petition fails.

Articles 38 and 39 of the Labor Code, the legal provisions applicable when the offense charged was committed,[12] provided:

> ART. 38. Illegal Recruitment. – (a) Any recruitment activities, including the prohibited practices enumerated

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> 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. x x x
>
> Article 39. Penalties. – x x x x
>
> (c) Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine, at the discretion of the court;
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> x x x x (Underscoring supplied)

The elements of the offense of illegal recruitment, which must concur, are: (1) that the offender has no valid license or authority required by law to lawfully engage in recruitment and placement of workers; and (2) that the offender undertakes any activity within the meaning of recruitment and placement under Article 13(b), or any prohibited practices enumerated under Article 34 of the Labor Code.[13] If another element is present : that the accused commits the act against three or more persons, individually or as a group, it becomes an illegal recruitment in a large scale.[14]

Article 13 (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." (Underscoring supplied)

That the first element is present in the case at bar, there is no doubt. Jose Valeriano, Senior Overseas Employment Officer of the Philippine Overseas Employment Administration, testified that the records of the POEA do not show that petitioner is authorized to recruit workers for overseas employment.[15] A Certification to that effect was in fact issued by Hermogenes C. Mateo, Chief of the Licensing Division of POEA.[16]

Petitioner's disclaimer of having engaged in recruitment activities from the very start does not persuade in light of the evidence for the prosecution. In People v. Alvarez, this Court held:

> Appellant denies that she engaged in acts of recruitment and placement without first complying with the guidelines issued by the Department of Labor and Employment. She contends that she did not possess any license for recruitment, because she never engaged in such activity.
>
> We are not persuaded. In weighing contradictory declarations and statements, greater weight must be given to the positive testimonies of the prosecution witnesses than to the denial of the defendant. Article 38 (a) clearly shows that illegal recruitment is an offense that is essentially committed by a non-licensee or non-holder of authority. A non-licensee means any person, corporation or entity to which the labor secretary has not issued a valid license or authority to engage in recruitment and placement; or whose license or authority has been suspended, revoked or cancelled by the POEA or the labor secretary. A license authorizes a person or an entity to operate a private employment agency, while authority is given to those engaged in recruitment and placement activities.
>
> x x x x
>
> That appellant in this case had been neither licensed nor authorized to recruit workers for overseas employment was certified by Veneranda C. Guerrero, officer-in-charge of the Licensing and Regulation Office; and Ma. Salome S. Mendoza, manager of the Licensing Branch – both of the Philippine Overseas Employment Administration. Yet, as complainants convincingly proved, she recruited them for jobs in Taiwan.[17] (Italics in the original; underscoring supplied)

The second element is doubtless also present. The act of referral, which is included in recruitment,[18] is "the act

of passing along or forwarding of an applicant for employment after an initial interview of a selected applicant for employment to a selected employer, placement officer or bureau."[19] Petitioner's admission that she brought private complainants to the agency whose owner she knows and her acceptance of fees including those for processing betrays her guilt.

That petitioner issued provisional receipts indicating that the amounts she received from the private complainants were turned over to Luzviminda Marcos and Florante Hinahon does not free her from liability. For the act of recruitment may be "for profit or not." It is sufficient that the accused "promises or offers for a fee employment" to warrant conviction for illegal recruitment.[20] As the appellate court stated:

> x x x Sec. 13(b) of P.D. 442 [The Labor Code] does not require that the recruiter receives and keeps the placement money for himself or herself. For as long as a person who has no license to engage in recruitment of workers for overseas employment offers for a fee an employment to two or more persons, then he or she is guilty of illegal recruitment.[21]

Parenthetically, why petitioner accepted the payment of fees from the private complainants when, in light of her claim that she merely brought them to the agency, she could have advised them to directly pay the same to the agency, she proferred no explanation.

On petitioner's reliance on Señoron,[22] true, this Court held that issuance of receipts for placement fees does not make a case for illegal recruitment. But it went on to state that it is "rather the undertaking of recruitment activities without the necessary license or authority" that makes a case for illegal recruitment.[23]

A word on the penalty. Indeed, the trial court failed to apply the Indeterminate Sentence Law which also applies to offenses punished by special laws.

Thus, Section 1 of Act No. 4103 (An Act to Provide for an Indeterminate Sentence and Parole for All Persons Convicted of Certain Crimes by the Courts of the Philippine Islands; To Create A Board of Indeterminate Sentence and to Provide Funds Therefor; and for Other Purposes) provides:

> SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225) (Underscoring supplied)

While the penalty of imprisonment imposed by the appellate court is within the prescribed penalty for the offense, its addition of "perpetual disqualification from engaging in the business of recruitment and placement of workers" is not part thereof. Such additional penalty must thus be stricken off.

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the Court of Appeals are AFFIRMED with MODIFICATION in that the accessory penalty imposed by it consisting of "perpetual disqualification from engaging in the business of recruitment and placement of workers" is DELETED.

Costs against petitioner.

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SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga and Velasco, Jr., JJ., concur.

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[1] In the Verification, petitioner signed as Rosa P. "Rodolfo" Canan, rollo, p. 29.

[2] Records, p. 1.

[3] Id. at 381-383.

[4] Id. at 383.

[5] Also named Florantino is some parts of the records.

[6] CA rollo, pp. 90-91.

[7] Id. at 93.

[8] Id. at 108.

[9] Rollo, p. 52.

[10] 334 Phil. 932 (1997).

[11] Rollo, p.53.

[12] R.A. 8042, the "Migrant Workers and Overseas Filipinos Act of 1995" now covers and provides for the penalties for illegal recruitment in overseas deployment.

[13] People v. Gallardo, 436 Phil. 698, 708 (2002).

[14] People v. Baytic, 446 Phil. 23, 29 (2003); People v. Ortiz-Miyake, 344 Phil. 598, 612 (1997).

[15] TSN, July 30, 1986, p. 440.

[16] Exhibit "C," records, p. 104.

[17] 436 Phil. 255, 271-272 (2002).

[18] People v. Saley, 353 Phil. 897, 928-929 (1998); People v. Agustin, 317 Phil. 897, 907 (1995).

[19] People v Agustin, 317 Phil. 897, 907 (1995).

[20] Vide People v. Dela Piedra, 403 Phil. 31, 57 (2001).

[21] CA rollo, p. 92.

[22] Supra note 10.

[23] Id. at 938.

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