

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARITESS MARTINEZ Y DULAY, APPELLANT.

G.R. No. 158627. March 05, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

No less than the Constitution ordains that labor - local and overseas, organized and unorganized - shall be given full protection. Further it mandates the promotion of full employment and equality of employment opportunities. Thus, if an individual illegally recruits another for employment abroad, he shall be meted the penalty of life imprisonment and fined. The same individual could also be held liable for the crime of Estafa.[1]

This appeal assails the December 11, 2002 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 24144 which affirmed with modifications the October 12, 1999 Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 3, finding appellant guilty of the crimes of Illegal Recruitment in large scale and four counts of Estafa.

Factual Antecedents

On June 21, 1995, herein appellant Maritess Martinez and her daughter, Jenilyn Martinez, were charged with seven counts of Estafa before the RTC of Manila. The cases were docketed as Criminal Case Nos. 95-143311,[4] 95-143312,[5] 95-143313,[6] 95-143314,[7] 95-143315,[8] 95-143316,[9] and 95-143317.[10]

Except for the dates of commission of the crimes, the amounts defrauded, and the names of the complainants, the Informations for Estafa were similarly worded as follows:

That in or about and during the period comprised between _____,[11] inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating and helping with one Julius Martinez who was previously charged [with] the same offense before the Regional Trial Court of Manila, Branch ___, docketed under Criminal Case No[s]. 94-139797 to 139803 did then and there willfully and feloniously defraud _____[12] in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which she/he/they made to said _____[13] to the effect that he had the power and capacity to recruit and employ as factory worker in Korea and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said _____[14] to give and deliver, as in fact he/she/they gave and delivered to said accused the amount of _____[15] on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact she/he/they did obtain the amount of _____[16] which amount once in her/his/their possession, with intent to defraud, willfully, unlawfully and feloniously misappropriated, misapplied and converted to her/his/their own personal use and benefit, to the damage and prejudice of said _____[17] in the aforesaid amount of _____[18] Philippine Currency.

Contrary to law.

On even date, appellant together with her children Jenilyn Martinez and Julius Martinez, were also charged with the crime of Illegal Recruitment in large scale which was docketed as Criminal Case No. 95-143318.[19] The accusatory portion of the Information reads:

That in or about and during the period comprised between February 1993 and July, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully and unlawfully for a fee recruit and promise employment/job placement abroad to the following persons, to wit: NELSON LAPLANO, CRIZALDO FERNANDEZ Y MARTINEZ, WALTER ISUAN Y ORTIZ, NECITO SERQUINA[20] Y TUVERA, DOMINADOR ILASIN[21], ARNULFO SUYAT Y LOYOLA, and VIVENCIO[22] MARTINEZ Y CORNELIO without first having secured the necessary license or authority from the Department of Labor and Employment (POEA).

Contrary to law.[23]

The cases were raffled to Branch 3 of the RTC of Manila. Thereafter, warrants of arrest[24] were issued against the three accused. However, the same were served only against appellant[25] and Julius Martinez[26] whereas accused Jenilyn Martinez remains at large.

During his arraignment on August 18, 1995, Julius Martinez pleaded not guilty to the charge of Illegal Recruitment.[27] Meanwhile, appellant was arraigned on September 6, 1995 where she entered a plea of not guilty to the charges of Estafa and Illegal Recruitment in large scale.[28]

The cases were consolidated upon motion of the prosecution.[29] Trial on the merits thereafter ensued.

The following complainants were presented by the prosecution as witnesses, to wit: Dominador Ilacin, Necito Serquiña, Vivencio Martinez, and Arnulfo Suyat. However, complainants Walter Isuan, Nelson Laplano, and Crizaldo Fernandez failed to testify despite being given several opportunities.[30] Thus, on February 14, 1996, the trial court issued an Order viz:

For failure of the complaining witnesses, Nelson Laplano y Malapit, Crizaldo Fernandez y Martinez, and Walter Isuan y Ortiz, to appear at today's trial, despite personal service of notice of this setting, as prayed for by the accused' counsel and without objection from the public prosecutor, insofar as Crim. Case No. 95-143312, 95-143314, and 95-143316 are concerned, the same are hereby PROVISIONALLY DISMISSED, with the express consent of accused Maritess Martinez y Dulay only. With costs de oficio.

SO ORDERED.[31]

Ruling of the Regional Trial Court

On October 12, 1999, the trial court issued its Decision acquitting Julius

Martinez of the crime of Illegal Recruitment in large scale while finding appellant guilty of Illegal Recruitment and four counts of Estafa.

The trial court found that appellant was not a holder of a license or authority to deploy workers abroad; that appellant falsely represented herself to have the capacity to send complainants as factory workers in South Korea; that she asked from complainants various amounts allegedly as placement and processing fees; that based on said false representations, complainants parted with their money and gave the same to appellant; that appellant appropriated for herself the amounts given her to the damage and prejudice of the complainants; and that she failed to deploy complainants for work abroad.

The trial court did not lend credence to appellant's allegation that she merely assisted complainants in their

applications with JH Imperial Organization Placement Corp. Instead, it held that complainants directly applied with the appellant, viz:

x x x Maritess was not licensed to recruit workers for overseas employment by the POEA. She is directly accountable to complainants as the recipient of the money. Besides, no one from Imperial Agency was even presented to show that it was the entity handling the recruitment. They relied on her representations that she could send them abroad to work. x x x[32]

The dispositive portion of the trial court's Decision reads:

WHEREFORE, accused Julius Martinez is acquitted while accused Maritess Martinez is FOUND GUILTY of estafa on 4 counts and illegal recruitment. She is hereby sentenced to an imprisonment of from 10 years, 8 months and 21 days to 11 years, 11 months and 10 days of prision mayor for 4 counts of estafa. Further, she shall suffer an imprisonment of from 5 years, 5 months and 11 days to 6 years, 8 months and 20 days of prision correccional for illegal recruitment.

Accused shall also indemnify private complainants for actual damages, as follows: P40,000.00 to Dominador Ilacin, P40,000.00 to Necito Serquiña, P55,000.00 to Vivencio Martinez, and P45,000.00 to Arnulfo Suyat; and to pay the costs.

SO ORDERED.[33]

Ruling of the Court of Appeals

Appellant appealed to the CA arguing that no evidence was presented to show that she falsely represented herself as having the capacity to send complainants as factory workers in South Korea.[34] She alleged that there was no proof that she personally undertook to deploy them for work abroad.[35] She maintained that she merely assisted complainants in their applications with JH Imperial Organization Placement Corp. and that she was merely an agent of the latter.[36] She claimed that there is no truth to the claim of the complainants that she was holding office in her residence considering its very limited space and that the same is occupied by her six family members.[37]

On December 11, 2002, the CA rendered its assailed Decision denying the appeal for lack of merit. It found appellant guilty of Illegal Recruitment in large scale for having "committed acts of recruitment such as making promises of profitable overseas employment to complainants"[38] and of "collecting from the complainants payment for their passports, placement fees and other sundry expenses".[39] It likewise found that appellant "did not have the authority to recruit workers for overseas employment".[40] The appellate court disregarded appellant's argument that she merely assisted complainants in their applications with JH Imperial Organization Placement Corp. The CA likewise affirmed appellant's conviction for four counts of Estafa.

The dispositive portion of the CA Decision reads:

Accordingly, the Court modifies the penalties imposed by the trial court, viz:

In Criminal Case No. 95-143311, the amount involved is P30,000.00 ([appellant] having returned to complainant Dominador Ilacin the amount of P10,000.00). The minimum term of the indeterminate sentence should be four (4) years and two (2) months of prision correccional and the maximum term should be eight (8) years of prision mayor.

In Criminal Case No. 95-143313, the amount involved is P40,000.00. The minimum term of the indeterminate sentence should be four (4) years and two (2) months of prision correccional and the maximum term should at least be eight (8) years of prision mayor plus a period of one (1) year [one (1) year for each additional P10,000.00] or a total maximum period of nine (9) years of prision mayor.

In Criminal Case No. 95-143315, the amount involved is P39,000.00 ([appellant] having returned to complainant Vivencio Martinez the amount of P16,000.00). The minimum term of the indeterminate sentence should be four (4) years and two (2) months of prision correccional and the maximum term should be at least eight (8) years of prision mayor plus a period of one (1) year [one (1) year for each additional P10,000.00] for a total maximum period of nine (9) years of prision mayor.

In Criminal Case No. 95-143317, the amount involved is P29,000.00 ([appellant] having returned to complainant Arnulfo Suyat the amount of P16,000.00). The minimum term of the indeterminate sentence should be four (4) years and two (2) months of prision correccional and the maximum term should be eight (8) [years] of prision mayor.

In Criminal Case No. 95-143318, large scale illegal recruitment is punishable with life imprisonment and a fine of One Hundred Thousand Pesos (Article 39, Labor Code).

The amount of actual damages awarded to the three complainants is modified there being partial payments made by the appellant, viz:

- 1) Dominador Ilacin - P30,000.00
- 2) Vivencio Martinez - P39,000.00
- 3) Arnulfo Suyat - P29,000.00

WHEREFORE, considering that the imposable penalty in Criminal Case No. 95-143318 (Illegal Recruitment in Large Scale) is life imprisonment consistent with Section 13, paragraph (b), Rule 124 of the 2000 Revised Rules on Criminal Procedure, the Court hereby certifies this case and elevates the entire records to the Honorable Supreme Court for the mandated review.

SO ORDERED.[41]

Hence, this appeal filed by appellant raising the following assignment of errors:

Issues

I.

THE COURT OF APPEALS COMMITTED PALPABLE ERROR IN NOT FINDING [THAT] THE PROSECUTION EVIDENCE IS INSUFFICIENT TO PROVE THE GUILT OF THE [APPELLANT].

II.

THE COURT OF APPEALS DECIDED [THE CASE] IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT.[42]

Appellant's Arguments

As regards the crime of Illegal Recruitment in large scale, appellant maintains that she could not be convicted of the same because she merely assisted complainants in their applications with the recruitment agency. She likewise insists that she turned over the amounts she received from the complainants to JH Imperial Organization Placement Corp.[43]

Appellant insists that the courts below erred in finding her guilty of the crime of Estafa because there is no proof that she falsely represented to have the capacity to send complainants as factory workers in South Korea. She also avers that there is no evidence presented to show that she personally undertook to deploy complainants for work abroad.[44]

Appellee's Arguments

Appellee argues that the trial court and the CA correctly convicted appellant of the crime of Illegal Recruitment in large scale. There is proof beyond reasonable doubt that she impressed upon the complainants that she had the authority to deploy them for employment abroad. She even received money from the complainants and issued corresponding receipts. There was also proof that she was not a licensee or holder of authority to deploy workers abroad. In fact, her admission that she merely "referred" the complainants to JH Imperial Organization Placement Corp. was already an act of recruitment under Article 13(b) of the Labor Code. Appellee also argues that all the elements of Estafa were satisfactorily proven by the prosecution.

Our Ruling

The appeal lacks merit.

Article 13(b) of the Labor Code defines "recruitment and placement" viz:

(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.

In this case, all the four complainants unanimously declared that appellant offered and promised them employment abroad. They also testified that they gave various amounts to appellant as payment for placement and processing fees. Notwithstanding said promises and payments, they were not able to leave for abroad to work. These testimonies, as well as the documentary evidence they submitted consisting of the receipts issued them by the appellant, all prove that the latter was engaged in recruitment and placement activities.

Even conceding that appellant merely referred the complainants to JH Imperial Organization Placement Corp., the same still constituted an act of recruitment. As explicitly enumerated in Article 13(b) of the Labor Code, "recruitment and placement" includes the act of making referrals, whether for profit or not. Thus, the CA correctly held that:

x x x Even if [appellant] did no more than "suggest" to complainants where they could apply for overseas employment, her act constituted "referral" within the meaning of Article 13(b) of the Labor Code (*People v. Ong*, 322 SCRA 38). Referral 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. (*People v. Goce*, 247 SCRA 780).[45]

Having already established that appellant was engaged in "recruitment and placement," the issue that must be resolved next is whether such activities may be considered illegal and whether the acts were committed in large scale.

Article 38 of the Labor Code defines "illegal recruitment" as:

ART. 38. ILLEGAL RECRUITMENT. - (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[46] shall be deemed illegal and punishable under Article 39 of this Code. x x x

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if

committed against three (3) or more persons individually or as a group.

In the instant case, the prosecution satisfactorily established that appellant was not a licensee or holder of authority to deploy workers abroad. By this fact alone, she is deemed to have engaged in illegal recruitment and the same was committed in large scale because it was carried out against the four complainants.

The fact that JH Imperial Organization Placement Corp. was a holder of a valid license to deploy workers abroad did not serve to benefit herein appellant. There was no evidence at all that said recruitment agency authorized herein appellant to act as its agent. As aptly noted by the appellate court:

From the testimonies of the complainants, it is clearly shown that [appellant] did more than just make referrals. It was [appellant] whom they approached regarding their plans of working overseas. It was [appellant] who collected the fees and receipts [therefor] were issued in her name. It was x x x [appellant] from whom they learned what papers or documents to submit. Despite the denial, [appellant], nevertheless, failed to explain why recruitment activities were done in her residence. Likewise, she failed to present Milagros Lopez, one of the staff of Imperial, to whom she allegedly turned over the money she collected from the complainants or any officer from the recruitment agency to prove that she was merely a conduit thereof. x x x [47]

The three elements of the crime of illegal recruitment, to wit: a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of RA 8042); and c) the offender committed the same against three or more persons, individually or as a group, [48] are present in the instant case. Consequently, we rule that the trial court and the CA correctly found appellant guilty of Illegal Recruitment in large scale.

In the instant case, the applicable law at the time of the commission of the crime of Illegal Recruitment in large scale was Article 39 of the Labor Code. Under said law, the imposable penalty is life imprisonment and a fine of P100,000.00. The CA therefore correctly imposed upon herein appellant the penalty of life imprisonment and a fine of P100,000.00 in Criminal Case No. 95-143318.

We also affirm the findings of the trial court and the CA that appellant is guilty of four counts of Estafa, the elements of which are: a) the accused defrauded another by abuse of confidence or by means of deceit; and b) the offended party suffered damage or prejudice capable of pecuniary estimation. [49] In the instant case, we agree with the observations of the CA that:

In this case, [appellant] misrepresented herself to the complainants as one who can make arrangements for job placements in South Korea as factory workers. By reason of her misrepresentations, false assurances, and deceit, complainants were induced to part with their money. The recruits waited for at least a year, only to realize that they were hoodwinked, as no jobs were waiting for them abroad.

Criminal liability for estafa already committed is not affected by the fact that [appellant] returned a portion of their money. Compromise or novation of contract pertains and affects only the civil aspect of the case. Estafa is a public offense that must be prosecuted and punished by the Court in its motion even though complete reparation should have been made of the damage suffered by the offended party. x x x [50]

Anent the penalties for the four counts of Estafa, we held in *People v. Temporada* [51] that:

The prescribed penalty for estafa under Article 315, par. 2(d) of the RPC, when the amount defrauded exceeds P22,000.00, is prison correccional maximum to prison mayor minimum. The minimum term is taken from the penalty next lower or anywhere within prison correccional minimum and medium (i.e., from 6 months and 1 day to 4 years and 2 months). Consequently, the RTC correctly fixed the minimum term for the five estafa

cases at 4 years and 2 months of prision correccional since this is within the range of prision correccional minimum and medium.

On the other hand, the maximum term is taken from the prescribed penalty of prision correccional maximum to prision mayor minimum in its maximum period, adding 1 year of imprisonment for every P10,000.00 in excess of P22,000.00, provided that the total penalty shall not exceed 20 years. However, the maximum period of the prescribed penalty of prision correccional maximum to prision mayor minimum is not prision mayor minimum as apparently assumed by the RTC. To compute the maximum period of the prescribed penalty, prision correccional maximum to prision mayor minimum should be divided into three equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65 of the RPC. Following this procedure, the maximum period of prision correccional maximum to prision mayor minimum is from 6 years, 8 months and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court.

In computing the incremental penalty, the amount defrauded shall be subtracted by P22,000.00, and the difference shall be divided by P10,000.00. Any fraction of a year shall be discarded as was done starting with the case of *People v. Pabalan* in consonance with the settled rule that penal laws shall be construed liberally in favor of the accused. x x x[52]

Following the aforementioned procedure, we find that the penalties imposed by the appellate court are proper.

WHEREFORE, the December 11, 2002 Decision of the Court of Appeals in CA-G.R. CR No. 24144 which affirmed with modifications the October 12, 1999 Decision of the Regional Trial Court of Manila, Branch 3, finding appellant Maritess Martinez guilty of the crimes of Illegal Recruitment in large scale and four counts of Estafa is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] *People v. Africa*, G.R. No. 176638, December 2, 2009. (Unsigned Resolution)

[2] CA rollo, pp. 101-113; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Bernardo P. Abesamis and Edgardo F. Sundiam.

[3] Records, pp. 378-381; penned by Judge Antonio I. De Castro.

[4] *Id.* at 2-3.

[5] *Id.* at 8-9.

[6] *Id.* at 14-15.

[7] *Id.* at 18-19.

[8] *Id.* at 45-46.

[9] *Id.* at 50-51.

[10] *Id.* at 57-58.

[11] February 9, 1993 and February 24, 1993 for Criminal Case No. 95-143311, *id.* at 2; February 5, 1993 for Criminal Case No. 95-143312, *id.* at 8; November 29, 1993 and February 8, 1994 for Criminal Case No. 95-143313, *id.* at 14; October 26, 1993 for Criminal Case No. 95-143314, *id.* at 18; February 4, 1993 and August

14, 1994 for Criminal Case No. 95-143315, id. at 45; February 8, 1993 for Criminal Case No. 95-143316, id. at 50; and November 1993 and July 1994 for Criminal Case No. 95-143317, id. at 57.

[12] Dominador Ilacin y Pascua for Criminal Case No. 95-143311, id. at 2; Nelson Laplano y Malapit for Criminal Case No. 95-143312, id. at 8; Necito Serquina y Tuvera for Criminal Case No. 95-143313, id. at 14; Crizaldo Fernandez y Martinez for Criminal Case No. 95-143314, id. at 18; Vevencio Martinez y Cornelio for Criminal Case No. 95-143315, id. at 45; Walter Isuan y Ortiz for Criminal Case No. 95-143316, id. at 50; and Arnulfo Suyat y Loyola for Criminal Case No. 95-143317, id. at 57.

[13] Id.

[14] Id.

[15] P40,000.00 in Criminal Case No. 95-143311, id. at 2; P25,000.00 in Criminal Case No. 95-143312, id. at 8; P40,000.00 95-143313, id. at 14; P40,000.00 in Criminal Case No. 95-143314, id. at 18; P55,000.00 in Criminal Case No. 95-143315, id. at 45; P23,000.00 in Criminal Case No. 95-143316, id. at 50; and P45,000.00 in Criminal Case No. 95-143317, id. at 57.

[16] Id.

[17] Supra note 12.

[18] Supra note 15.

[19] Records, pp. 61-62.

[20] Sometimes spelled as "Serquiña" in the records.

[21] Sometimes spelled as "Ilacin" in the records.

[22] Sometimes spelled as "Vevencio" in the records.

[23] Records, p. 61.

[24] Id. at 78-79.

[25] Id. at 89.

[26] Id. at 92.

[27] Id. at 110.

[28] Id. at 124.

[29] Id. at 1.

[30] Id. at 182, 186, 191, 195.

[31] Id. at 203; penned by Judge Antonio I. De Castro.

[32] Id. at 380.

[33] Id. at 381. Underscoring in the original text.

[34] CA rollo, p. 54.

[35] Id.

[36] Id.

[37] Id. at 55.

[38] Id. at 110.

[39] Id.

[40] Id.

[41] Id. at 112-113.

[42] Rollo, p. 14.

[43] Id. at 16.

[44] Id. at 15.

[45] CA rollo, p. 110.

[46] This has been amended by Republic Act (RA) No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995, which considers as illegal recruiter even a licensee or holder of authority who commits acts prohibited under Article 34 of the Labor Code. Moreover, the failure to deploy recruits is also considered as illegal recruitment under Section 6 of RA 8042.

[47] CA rollo, p. 110.

[48] See *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 279.

[49] Id. at 282-283.

[50] CA rollo, p. 111.

[51] *Supra* note 48.

[52] Id. at 283-284.

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