

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO NOGRA, ACCUSED-APPELANT.

G.R. No. 170834. August 29, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is an appeal from the Decision[1] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. C.R. No. 00244 affirming the Judgment of the Regional Trial Court (RTC), Branch 19, Naga City in Criminal Case No. 98-7182, convicting Antonio Nogra (appellant) of large scale illegal recruitment under Section 6(m) in relation to Section 7(b) of Republic Act No. 8042 (R.A. No. 8042),[2] otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995." [3]

The inculpatory portion of the Information charging one Lorna G. Orciga and appellant with large scale illegal recruitment reads as follows:

That sometime during the period of March 1997 to November, 1997 in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the General Manager and Operations Manager of LORAN INTERNATIONAL OVERSEAS RECRUITMENT CO., LTD., with office at Concepcion Grande, Naga City, conspiring, confederating together and mutually helping each other, representing themselves to have the capacity to contract, enlist, hire and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and criminally, for a fee, recruit and promise employment/job placement to the herein complaining witnesses RENATO ALDEN, OLIVER SARMIENTO, FE ZABALLA, TEOFILA LUALHATI, PILIPINA MENDOZA and KERWIN DONACAO, but failed to actually deploy them without valid reason, as well as to reimburse their documentation, placement and processing expenses for purposes of deployment despite their repeated demands for the return of the same, to their damage and prejudice in the amounts as may be proven in court.

CONTRARY TO LAW.[4]

Only appellant was brought to the jurisdiction of the trial court since Lorna G. Orciga was then and still is at large. Arraigned with the assistance of counsel, appellant entered a plea of "NOT GUILTY" to the crime charged. Thereafter, trial of the case ensued.

Of the six complainants, the prosecution was able to present five of them, namely: Renato Alden, Fe Zaballa, Teofila Lualhati, Filipina Mendoza and Kerwin Donacao. Anaielyn Sarmiento, wife of complainant Oliver Sarmiento, also testified for the prosecution.

The facts, as established by the prosecution, are aptly summarized by the Office of the Solicitor General (OSG), as follows:

Appellant held office at Loran International Overseas Recruitment Co., (Loran) in Concepcion Grande, Naga City (p. 4, TSN, October 19, 1998). A nameplate on his table prominently displayed his name and position as operations manager (p. 11, TSN, November 17, 1998; p. 4, TSN, January 12, 1999; p. 21, TSN, November 19,

1998). The license of Loran also indicated appellant as the operations manager (p. 5, TSN, February 10, 1999). The POEA files also reflect his position as operations manager of Loran (Exhibit L to L-4, pp. 5-9, TSN, November 19, 1998).

Sometime in December 1996, Renato Alden went to Loran to apply for a job as hotel worker for Saipan. He was interviewed by appellant, who required Alden to submit an NBI clearance and medical certificate and to pay the placement fee. Alden paid the amount of P31,000.00. The additional amount of P4,000.00 was to be paid prior to his departure to Saipan (pp. 5-6, TSN, November 17, 1998). Appellant promised Alden that he would leave within a period of three to four months. After one year of waiting Alden was not able to leave. Alden filed a complaint with the NBI when he was not able to recover the amount and could no longer talk with appellant (p. 6, TSN, November 17, 1998).

On April 18, 1997, Teofila Lualhati applied for employment as hotel worker for Saipan with Loran (pp. 1-3, 10, TSN, November 19, 1998). Appellant required her to submit an NBI clearance and medical certificate and to pay the processing fee in the amount of P35,000.00 so she could leave immediately. She paid the amount of P35,000.00 to Loran's secretary in the presence of appellant. She was promised that within 120 days or 4 months she would be able to leave (pp. 11-13, TSN, November 19, 1998). Despite repeated follow-ups, Lualhati was unable to work in Saipan. She demanded the refund of the processing fee. When the amount was not returned to her, she filed a complaint with the NBI (pp. 14-15, TSN, November 19, 1998).

Sometime in April 1998, Filipina Mendoza went to Loran to apply for employment as hotel worker (p. 4, TSN, July 12, 1999). She paid the amount of P35,000.00 as placement fee. When she was not able to work abroad, she went to Loran and sought the return of P35,000.00 from appellant (p. 7, TSN, January 21, 1999).

Sometime in October 1997, Kerwin Donacao went to Loran to apply for employment as purchaser in Saipan (p. 4, TSN, February 10, 1999). He was required to submit NBI clearance, police clearance, previous employment certificate and his passport. He paid the placement fee of P35,000.00 (pp.4-5, TSN, February 10, 1999). After paying the amount, he was told to wait for two to three months. When he was not able to leave for Saipan, he demanded the return of the placement fee, which was not refunded (pp. 6-7, TSN, February 10, 1999).

During the first week of November 1997, Annelyn Sarmiento and her husband, Oliver Sarmiento, applied for overseas employment. For the application of Oliver Sarmiento, they submitted his medical certificate and certification of previous employment. They were also made to pay the amount of P27,000.00 as processing fee. Oliver Sarmiento was promised that within 1 month, he would be able to leave. Initially, Oliver Sarmiento was told that allegedly his visa was yet to be obtained. When he was not able to leave and what he paid was not refunded, he filed a complaint with the NBI (pp. 4-6, TSN, April 23, 1999).

Sometime in May 1997, Fe Zaballa applied for overseas employment in Saipan with Loran (p. 4, TSN, May 21, 1999). She was required to submit her medical certificate, original copy of her birth certificate, NBI clearance and police clearance. She was also required to pay the amount of P35,000.00 as placement fee. When she could not be deployed, she sought to recover the amount she paid, which was not returned (pp. 7-8, TSN, May 2, 1999).[5]

On the other hand, appellant presented the following evidence:

The defense presented [appellant] Antonio Nogra and the agency's secretary and cashier, Maritess Mesina.

From their testimonies it was established that LORAN INTERNATIONAL OVERSEAS RECRUITMENT CO., LTD., (LORAN, for brevity) was owned by accused Lorna Orciga and Japanese national Kataru Tanaka (TSN, September 30, 2000, p. 7). Sometime in July 1994, [appellant] Antonio Nogra read from outside the agency's main office at Libertad, Mandaluyong City that it was in need of a liaison officer. He applied for the position. The part-owner and co-accused, Lorna Orciga, hired him instead as Operations Manager as the

agency was then still in the process of completing the list of personnel to be submitted to the POEA. (TSN, January 31, 2001, p. 5).

[Appellant] Nogra started working with LORAN in October 1994. In 1995, he was transferred to Naga City when the agency opened a branch office thereat. Although he was designated as the Operations Manager, [appellant] Nogra was a mere employee of the agency. He was receiving a monthly salary of P5,000.00 and additional P2,000.00 monthly meal allowance. He was in-charge of the advertisement of the company. He also drove for the company. He fetched from the airport the agency's visitors and guests and drove them to hotels and other places. (TSN, May 3, 2000, pp. 2-9).

Although part-owner Lorna Orciga was stationed in Manila, she, however, actually remained in control of the branch office in Naga City. She conducted the final interview of the applicants and transacted with the foreign employers. She also controlled the financial matters and assessment fees of the agency in Naga City (TSN, September 20, 2000, pp. 8-9). The placement and processing fees collected by the agency in Naga City were all deposited in the bank account of Lorna Orciga and not a single centavo went to the benefit of [appellant] Nogra (TSN, January 10, 2000, pp. 14-22).[6]

On March 26, 2003, the RTC rendered Judgment[7] finding appellant guilty beyond reasonable doubt of the crime charged. The fallo of the decision reads:

WHEREFORE, the Court finds the accused ANTONIO NOGRA guilty beyond reasonable doubt of the crime of Illegal Recruitment Committed in Large Scale defined under Sections 6(m) and 7(b) of RA 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995 and, accordingly, hereby imposes upon him the penalty of life imprisonment and a fine of Five hundred thousand pesos (P500,000.00).

SO ORDERED.[8]

On April 10, 2003, appellant filed a Notice of Appeal.[9] The RTC ordered the transmittal of the entire records of the case to this Court.

Conformably to the ruling in *People v. Mateo*,[10] the case was referred to the CA for intermediate review.[11]

On August 31, 2005, the CA rendered a Decision[12] affirming the decision of the RTC. The CA held that being an employee is not a valid defense since employees who have knowledge and active participation in the recruitment activities may be criminally liable for illegal recruitment activities, based upon this Court's ruling in *People v. Chowdury*[13] and *People v. Corpuz*,[14] that appellant had knowledge of and active participation in the recruitment activities since all the prosecution witnesses pinpointed appellant as the one whom they initially approached regarding their plans of working overseas and he was the one who told them about the fees they had to pay, as well as the papers that they had to submit; that the mere fact that appellant was not issued special authority to recruit does not exculpate him from any liability but rather strongly suggests his guilt; that appellant's invocation of non-flight cannot be weighed in his favor since there is no established rule that non-flight is, in every instance, an indication of innocence.

A Notice of Appeal[15] having been timely filed by appellant, the CA forwarded the records of the case to this Court for further review.

In his Brief, appellant assigns as errors the following:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS A MERE EMPLOYEE OF THE RECRUITMENT AGENCY DESPITE HIS DESIGNATION AS ITS OPERATIONS MANAGER.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE-CHARGED DESPITE THE FACT THAT UNDER THE LAW, HE WAS NOT CRIMINALLY LIABLE FOR HIS AGENCY'S TRANSACTIONS.[16]

Appellant argues that the agency was under the management and control of Orciga, and that he was a mere employee; that he could not be held personally liable for illegal recruitment in the absence of any showing that he was validly issued special authority to recruit workers, which was approved by the Philippine Overseas Employment Administration (POEA); that his non-flight is indicative of his innocence.

Appellee, through the OSG, counters that appellant is not a mere clerk or secretary of Loran, but its Operations Manager who directly participated in the recruitment scheme by promising private complainants work abroad, but failed to deploy them and refused to reimburse the applicants' placement fees when demanded.

The appeal fails. The CA did not commit any error in affirming the decision of the RTC.

R.A. No. 8042 broadened the concept of illegal recruitment under the

Labor Code[17] and provided stiffer penalties, especially those that constitute economic sabotage, i.e., Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate.

Section 6 of R.A. No. 8042 defined when recruitment is illegal:

SEC. 6. Definition. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

x x x x

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the workers in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered as offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices, and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable. (Emphasis and underscoring supplied)

In the present case, evidence for the prosecution showed that Loran

International Overseas Recruitment Co., Ltd. is a duly licensed recruitment agency with authority to establish a branch office. However, under R.A. No. 8042, even a licensee or holder of authority can be held liable for illegal

recruitment, should he commit or omit to do any of the acts enumerated in Section 6.

Appellant was charged with illegal recruitment in large scale under Section 6 (l) and (m) of R.A. No. 8042. Section 6 (l) refers to the failure to actually deploy without valid reason, as determined by the Department of Labor and Employment (DOLE). Section 6 (m) involves the failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases in which the deployment does not actually take place without the worker's fault.

A thorough scrutiny of the prosecution's evidence reveals that it failed to prove appellant's liability under Section 6 (l) of R.A. No. 8042. The law requires not only that the failure to deploy be without valid reason "as determined by the Department of Labor and Employment." The law envisions that there be independent evidence from the DOLE to establish the reason for non-deployment, such as the absence of a proper job order. No document from the DOLE was presented in the present case to establish the reason for the accused's failure to actually deploy private complainants. Thus, appellant cannot be held liable under Section 6 (l) of R.A. No. 8042.

As to Section 6 (m) of R.A. No. 8042, the prosecution has proven beyond reasonable doubt that private complainants made payments to Loran, and appellant failed to reimburse the amounts paid by private complainants when they were not deployed. The prosecution presented the receipts issued by Loran to private complainants evidencing payment of placement fees ranging from P27,000.00 to P35,000.00.

Appellant does not dispute that private complainants were not deployed for overseas work, and that the placement fees they paid were not returned to them despite demand. However, he seeks to exculpate himself on the ground that he is a mere employee of Loran.

The Court is unswayed by appellant's contention.

The penultimate paragraph of Section 6 of R.A. No. 8042 explicitly states that those criminally liable are the "principals, accomplices, and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable." Contrary to appellant's claim, the testimonies of the complaining witnesses and the documentary evidence for the prosecution clearly established that he was not a mere employee of Loran, but its Operations Manager. The license of Loran, the files of the POEA and the nameplate prominently displayed on his office desk reflected his position as Operations Manager. As such, he received private complainants' job applications; and interviewed and informed them of the agency's requirements prior to their deployment, such as NBI clearance, police clearance, medical certificate, previous employment certificate and the payment of placement fee. He was also responsible for the radio advertisements and leaflets, which enticed complaining witnesses to apply for employment with the agency. Clearly, as Operations Manager, he was in the forefront of the recruitment activities.

The defense of being a mere employee is not a shield against his conviction for large scale illegal recruitment. In *People v. Gasacao*[18] and *People v. Sagayaga*,[19] the Court reiterated the ruling in *People v. Cabais*,[20] *People v. Chowdury*[21] and *People v. Corpuz*[22] that an employee of a company or corporation engaged in illegal recruitment may be held liable as principal by direct participation, together with its employer, if it is shown that he actively and consciously participated in the recruitment process.

In the present case, it was clearly established that appellant dealt directly with the private complainants. He interviewed and informed them of the documentary requirements and placement fee. He promised deployment within a three or four month-period upon payment of the fee, but failed to deploy them and to reimburse, upon demand, the placement fees paid.

The Court is not persuaded by appellant's argument that his non-flight is indicative of his innocence. Unlike the

flight of an accused, which is competent evidence against him tending to establish his guilt, non-flight is simply inaction, which may be due to several factors. It may not be construed as an indication of innocence.[23]

Of marked relevance is the absence of any showing that the private complainants had any ill motive against appellant other than to bring him to the bar of justice to answer for the crime of illegal recruitment. Besides, for strangers to conspire and accuse another stranger of a most serious crime just to mollify their hurt feelings would certainly be against human nature and experience.[24] Where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand under the solemnity of an oath deserve full faith and credence.[25]

It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by the Supreme Court, particularly when the CA affirmed such findings.[26] After all, the trial court is in the best position to determine the value and weight of the testimonies of witnesses.[27] The absence of any showing that the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, or that its assessment was arbitrary, impels the Court to defer to the trial court's determination according credibility to the prosecution evidence.

Under the last paragraph of Section 6 of R.A. No. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in large scale, viz, committed against three or more persons individually or as a group. In the present case, five complainants testified against appellant's acts of illegal recruitment, thereby rendering his acts tantamount to economic sabotage. Under Section 7 (b) of R.A. No. 8042, the penalty of life imprisonment and a fine of not less than P500,000.00 nor more than P1,000,000.00 shall be imposed if illegal recruitment constitutes economic sabotage.

Thus, the RTC and the CA correctly found appellant guilty beyond reasonable doubt of large scale illegal recruitment.

WHEREFORE, the appeal is DISMISSED. The Decision dated August 31, 1995 of the Court of Appeals affirming the conviction of appellant Antonio Nogra for large scale illegal recruitment under Sections 6 (m) and 7 (b) of Republic Act No. 8042 is AFFIRMED.

SO ORDERED.

Ynares-Santiago, Chico-Nazario, Velasco, Jr.[*], and Reyes, JJ., concur.

[*] Justice Presbitero J. Velasco, Jr. as additional member per the July 30, 2008 Division Raffle, vice Justice Antonio Eduardo B. Nachura.

[1] Penned by Associate Justice Eugenio S. Labitoria (now retired) and concurred in by Associate Justices Eliezer R. delos Santos (now deceased) and Arturo D. Brion (now a member of this Court), CA rollo, p. 123.

[2] An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress and for Other Purposes.

[3] Now often referred to as the Magna Carta for Overseas Filipino Workers.

[4] CA rollo, p. 17.

[5] Rollo, pp. 27-30.

[6] Brief for Appellant, CA rollo, pp. 58-59.

[7] Id. at 33.

[8] CA rollo, pp. 38-39.

[9] Id. at 40.

[10] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[11] Id. at 50-a.

[12] Id. at 123.

[13] 582 Phil. 459 (2000).

[14] 459 Phil. 100 (2003).

[15] CA rollo, p. 137.

[16] Id. at 59-60.

[17] Article 13(b) of the Labor Code of the Philippines defines recruitment and placement as follows:

(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.

[18] G.R. No. 16445, November 11, 2005, 474 SCRA 812, 822.

[19] 467 Phil. 961, 971 (2004).

[20] 407 Phil. 37 (2001).

[21] Supra note 14.

[22] Supra note 15.

[23] People v. Omar, 383 Phil. 979, 987 (2000).

[24] People v. Logan, 414 Phil. 113, 124 (2001).

[25] People v. Cabbab, Jr., G.R. No. 173479, July 12, 2007, 527 SCRA 589, 602.

[26] People v. Aguila, G.R. No. 171017, December 6, 2006, 510 SCRA 642.

[27] Abarquez v. People, G.R. No. 150762, January 20, 2006, 479 SCRA 225, 233.

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