DELIA D. ROMERO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, ROMULO PADLAN AND ARTURO SIAPNO, RESPONDENTS.

G.R. No. 171644. November 23, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is to resolve the Petition for Review on Certiorari[1] dated March 25, 2006 of petitioner Delia D. Romero assailing the Decision[2] dated July 18, 2005 and Resolution[3] dated February 13, 2006 of the Court of Appeals (CA), affirming the Decision[4] dated February 24, 2004 of the Regional Trial Court (RTC), Branch 44, Dagupan City, finding petitioner guilty beyond reasonable doubt of the crime of Illegal Recruitment as defined in paragraph (a) of Article 38 of Presidential Decree (P.D.) No. 2018.

The records contain the following antecedent facts:

Private respondent Romulo Padlan (Romulo) was a former classmate of petitioner in college. Sometime in September 2000 Romulo went to petitioner's stall (wedding gown rentals) at W. A. Jones St., Calasiao, Pangasinan to inquire about securing a job in Israel. Convinced by petitioner's words of encouragement and inspired by the potential salary of US$700.00 to US$1,200.00 a month, Romulo asked petitioner the amount of money required in order for him to be able to go to Israel. Petitioner informed him that as soon as he could give her US$3,600.00, his papers would be immediately processed. To raise the amount, Romulo secured a loan from a bank and borrowed some more from his friends. When he was able to raise the amount, Romulo went back to petitioner and handed her the money. Petitioner contacted Jonney Erez Mokra who instructed Romulo to attend a briefing at his (Jonney's) house in Dau, Mabalacat, Pampanga. Romulo was able to leave for Israel on October 26, 2000 and was able to secure a job with a monthly salary of US$650.00. Unfortunately, after two and a half months, he was caught by Israel's immigration police and detained for 25 days. He was subsequently deported because he did not possess a working visa. On his return, Romulo demanded from petitioner the return of his money, but the latter refused and failed to do so.

On the other hand, private respondent Arturo Siapno is petitioner's nephew. Sometime in August 2000, he went to petitioner's stall. He was convinced by the petitioner that if he could give her US$3,600.00 for the processing of his papers, he could leave the country within 1 to 2 weeks for a job placement in Israel. Arturo contacted a relative in the U.S. to ask the latter to cover the expenses for the former's overseas job placement. The relative sent the US$3,000.00 to Teresita D. Visperas, petitioner's sister in Israel. Petitioner processed Arturo's papers and contacted Jonney Erez Mokra. Jonney instructed Arturo to attend a briefing in Dau, Mabalacat, Pampanga. Afterwards, Arturo left for Israel sometime in September 2000. He was able to work and receive US$800.00 salary per month. After three months of stay in Israel, he was caught by the immigration officials, incarcerated for ten days and was eventually deported. After arriving in the country, Arturo immediately sought the petitioner. Petitioner promised him that she would send him back to Israel, which did not happen.

Arturo, after learning that Romulo suffered the same fate, checked with the Department of Labor and

Employment (DOLE) Dagupan District Office whether petitioner, Teresita D. Visperas and Jonney Erez Mokra had any license or authority to recruit employees for overseas employment. Finding that petitioner and the others were not authorized to recruit for overseas employment, Arturo and Romulo filed a complaint against petitioner, Teresita and Jonney before the National Bureau of Investigation (NBI).

Consequently, an Information dated June 18, 2001 was filed against petitioner and Jonney Erez Mokra for the crime of Illegal Recruitment which reads as follows:

> That sometime in the month of August and September 2000 in the Municipality of Calasiao, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being licensee or holder of authority, conspiring, confederating and mutually helping one another, did then and there, wilfully, unlawfully and feloniously undertake and perform recruitment activity by recruiting ARTURO SIAPNO and ROMULO PADLAN to a supposed job abroad particularly in Israel, for a fee, without first securing the necessary license and permit to do the same.
>
> CONTRARY to Art. 38 (a) of P.D. 442, as amended by P.D. 2018.

Upon arraignment on August 20, 2001, petitioner, with the assistance of her counsel pleaded not guilty, whereas accused Jonney Erez Mokra was and is still at-large. Thereafter, trial on the merits ensued.

To establish the facts earlier mentioned, the prosecution presented the testimonies of Romulo Padlan and Arturo Siapno. Petitioner, on the other hand, offered her own testimony, as well as Satchi Co Pontace’s to prove that petitioner did not recruit the private respondents. According to petitioner, private respondents went to her to inquire about the working status of her sister in Israel. She told them that her sister was doing well. When private respondents asked her how her sister was able to go to Israel, petitioner told them that she does not know and that she will have to ask her sister about that matter. Petitioner then called her sister and told her that the private respondents wanted to ask for her help in going to Israel. It was petitioner's sister and the private respondents who communicated with each other, and the petitioner had no knowledge as to the content of the former's conversations and agreements.

The RTC found petitioner guilty as charged. The dispositive portion of its decision reads as follows:

> WHEREFORE, the Court finds accused Delia Romero guilty beyond reasonable doubt of the crime of Illegal Recruitment as defined in paragraph (a) of Article 38 of Presidential Decree No. 442, as amended by Presidential Decree No. 2018, and pursuant to law hereby sentences accused Delia Romero to suffer the penalty of Eight (8) Years and a fine of P100,000.00 plus costs.
>
> Accused Delia Romero is directed to return the amount of $3,600.00 or its equivalent to complainant Romulo Padlan and the amount of $3,600.00 or its equivalent to Arturo Siapno.
>
> The case as against Jonney Mokra aka Erez, is hereby ordered archived subject to reinstatement upon his arrest.
>
> SO ORDERED.

On appeal, the CA affirmed in toto the decision of the RTC, the fallo of which states:

> WHEREFORE, premises considered, the appealed Decision is AFFIRMED in toto.
>
> SO ORDERED.

Hence, the present petition after petitioner's motion for reconsideration was denied by the CA. Petitioner enumerates the following assignment of errors:

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First Assignment of Error

The Court of Appeals erred in affirming the conviction of the accused of the offense charged (Illegal Recruitment) for said finding is contrary to law and evidence in record.

Second Assignment of Error

The Court of Appeals erred in affirming the conviction of the accused in interpreting the gesture of good faith of the petitioner as referral in the guise of illegal recruitment.

Third Assignment of Error

The Court of Appeals erred in affirming the conviction of the accused based merely on a certification from the DOLE-Dagupan District Office without said certification being properly identified and testified thereto.

Fourth Assignment of Error

The Court of Appeals erred in affirming the conviction of accused based on speculations and probabilities and not on the evidence on record.

Fifth Assignment of Error

The Court of Appeals erred in not acquitting the accused on the ground of reasonable doubt.

Illegal recruitment is defined in Article 38 of the Labor Code, as amended, as follows:

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, shall be deemed illegal and punishable under Article 39 of this Code. The [Department] of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(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.

Article 13 (b) of the same Code defines, “recruitment and placement” as: “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.”

The crime of illegal recruitment is committed when two elements concur, namely: (1) the offender has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and (2) he undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13 (b), or any prohibited practices enumerated under Article 34 of the Labor Code.[5]

In disputing the absence of the first element, petitioner offers her opinion that the CA erred in affirming the trial court's reliance on a mere certification from the DOLE Dagupan District Office that she does not have the necessary licence to recruit workers for abroad. She claims that the prosecution committed a procedural lapse in not procuring a certification from the agency primarily involved, the Philippine Overseas Employment Administration (POEA). The said argument, however, is flawed.

Under the first element, a non-licensee or non-holder of authority is any person, corporation or entity which has not been issued a valid license or authority to engage in recruitment and placement by the Secretary of Labor, or whose license or authority has been suspended, revoked or cancelled by the POEA or the Secretary.[6] Clearly, the creation of the POEA did not divest the Secretary of Labor of his/her jurisdiction over recruitment and placement of activities. The governing rule is still Article 35[7] of the Labor Code. This is further discussed in this Court's ruling in Trans Action Overseas Corp. v. Secretary of Labor,[8] wherein it was ruled that:

> In the case of Eastern Assurance and Surety Corp. v. Secretary of Labor, we held that:
>
> The penalties of suspension and cancellation of license or authority are prescribed for violations of the above-quoted provisions, among others. And the Secretary of Labor has the power under Section 35 of the law to apply these sanctions, as well as the authority, conferred by Section 36, not only to "restrict and regulate the recruitment and placement activities of all agencies," but also to "promulgate rules and regulations to carry out the objectives and implement the provisions" governing said activities. Pursuant to this rule-making power thus granted, the Secretary of Labor gave the POEA, on its own initiative or upon a filing of a complaint or report or upon request for investigation by any aggrieved person, "xxx (authority to) conduct the necessary proceedings for the suspension or cancellation of the license or authority of any agency or entity" for certain enumerated offenses including -
>
> 1) the imposition or acceptance, directly or indirectly, of any amount of money, goods or services, or any fee or bond in excess of what is prescribed by the Administration, and
>
> 2) any other violation of pertinent provisions of the Labor Code and other relevant laws, rules and regulations.

The Administrator was also given the power to "order the dismissal of the case or the suspension of the license or authority of the respondent agency or contractor or recommend to the Minister the cancellation thereof."

This power conferred upon the Secretary of Labor and Employment was echoed in People v. Diaz, viz.:

> A non-licensee or non-holder of authority means any person, corporation or entity which has not been issued a valid license or authority to engage in recruitment and placement by the Secretary of Labor, or whose license or authority has been suspended, revoked or cancelled by the POEA or the Secretary.[9]

Thus, the trial court did not err in considering the certification from the DOLE-Dagupan District Office stating that petitioner has not been issued any license by the POEA nor is a holder of an authority to engage in recruitment and placement activities. The Office of the Solicitor General (OSG), in its Comment[10] dated October 9, 2006, also gives a valid observation as to the admissibility of the certification as evidence for the prosecution, thus:

> x x x Notably, there is nothing on record to show that petitioner objected to the admissibility of the certification for the purpose for which it was offered. Thus, petitioner's argument that the certification was inadmissible because it was not properly identified by the issuing officer should be rejected. It is well-settled that "[e]very objections to the admissibility of evidence shall be made at the time such evidence is offered or as soon thereafter as the ground for objection shall have become apparent, otherwise the objection shall be considered waived." Accordingly, the certification has been accepted as admissible by the trial court and properly considered as evidence for the party who submitted it.[11]

Anent the second element, petitioner insists that the CA was wrong in affirming the factual findings of the trial court. According to her, the accommodation extended by the petitioner to the private respondents is far from the referral as contemplated in Article 13 (b) of the Labor Code.

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.[12] After all, the trial court is in the best position to determine the value and weight of the testimonies of witnesses.[13]

Nevertheless, the testimonies of the private respondents clearly establish the fact that petitioner's conduct falls within the term recruitment as defined by law. As testified by Romulo Padlan, petitioner convinced him and Arturo Siapno to give her US$3,600.00 for the processing of their papers, thus:

> Q: In September 2000, did you see the accused?
> A: There was, sir.
>
> Q: Where did you see each other?
> A: At her stall, sir.
>
> x x x x
>
> Q: What was your purpose in going to her stall?
> A: My purpose is to inquire about my application to Israel, sir.
>
> Q: What happened when you inquired from her about your application in going to Israel?
> A: I inquired from her and she responded with me with sweet words, sir.
>
> Q: What did you ask her when you first met her in her stall [in] September 2000?
> A: I asked her about the possible placement and the condition about the job in Israel.
>
> Q: And what was her response?
> A: Her response was positive and very encouraging, sir.
>
> Q: What was the very good and very encouraging response of the accused?
> A: Regarding the salary amounting to $700.00 to $1,000.00 dollars a month, sir.
>
> Q: When you were informed that the salary is quite good in Israel, what did you do, if any?
> A: I planned to produce money so that I can apply for Israel, sir.
>
> Q: And what transpired next after that?
> A: She told me that, “If you can produce $3,600.00 dollars then I will begin to process your papers.
>
> Q: After telling you that, what did you do, if any?
> A: So I planned to have a loan [from] Rural Bank of Central Pangasinan and borrow some money [from] my other friends, sir.
>
> x x x x
>
> Q: After producing that money, what did you do?
>
> x x x x
>
> A: I [went] to her stall [in] September 26 around 10:00 P.M. and handed the money to Mrs. Delia Romero, sir.
>
> x x x x
>
> Q: How much money did you give to the accused [in] September 2000?
> A: [In] September 2000, I gave her $1,500.00 US dollars, sir.[14]

Arturo Siapno also testified as to how petitioner convinced him to apply for a job in Israel and offered her services for a fee, thus:

> Q: [I]n August 2000, where were you?

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A: I was residing in Puelay-Carangalaan. Dagupan City.

Q: On the same month, did you have any transaction with the accused?
A: Yes sir[.] I met the accused at the appliance store which is located at Puelay and she offered me a job in Israel.

Q: [When] she offered you a job in Israel, what did you do?
A: I went to their stall which is located [in] Calasiao, and in the same place I also met several applicants.

Q: When did you go to the stall of the accused?
A: The following day, sir.

x x x x

Q: And what did you do at the stall of the accused in Calasiao, Pangasinan?
A: When I went to the stall of the accused, since I saw other applicants, I was convinced to apply and I called up my aunt and asked for help.

Q: Since you were at the stall of the accused in Calasiao, what transpired next?
A: When I talked to her, she told me if I have a money of P3,600.00 I could easily depart within one (1) week or two (2) weeks.[15]

From the above testimonies, it is apparent that petitioner was able to convince the private respondents to apply for work in Israel after parting with their money in exchange for the services she would render. The said act of the petitioner, without a doubt, falls within the meaning of recruitment and placement as defined in Article 13 (b) of the Labor Code.

As to petitioner's contention that the testimony of Arturo Siapno that the latter paid a certain amount of money to the former must not be given any credence due to the absence of any receipt or any other documentary evidence proving such, the same is without any merit. In People v. Alvarez,[16] this Court ruled that in illegal recruitment cases, the failure to present receipts for money that was paid in connection with the recruitment process will not affect the strength of the evidence presented by the prosecution as long as the payment can be proved through clear and convincing testimonies of credible witnesses. It was discussed that:

In illegal recruitment, mere failure of the complainant to present written receipts for money paid for acts constituting recruitment activities is not fatal to the prosecution, provided the payment can be proved by clear and convincing testimonies of credible witnesses.

x x x x

x x x The Court has already ruled that the absence of receipts in a case for illegal recruitment is not fatal, as long as the prosecution is able to establish through credible testimonial evidence that accused-appellant has engaged in illegal recruitment. Such case is made, not by the issuance or the signing of receipts for placement fees, but by engagement in recruitment activities without the necessary license or authority.

In People v. Pabalan, the Court held that the absence of receipts for some of the amounts delivered to the accused did not mean that the appellant did not accept or receive such payments. Neither in the Statute of Frauds nor in the rules of evidence is the presentation of receipts required in order to prove the existence of a recruitment agreement and the procurement of fees in illegal recruitment cases. Such proof may come from the testimonies of witnesses.[17]

With regard to the penalty imposed by the RTC and affirmed by the CA, this Court finds it to be inappropriate. The trial court imposed the penalty of eight (8) years imprisonment and a fine of P100,000.00 plus cost and ordered petitioner to return the amount of US$3,600.00 or its equivalent to Romulo Padlan and the amount of

US$3,600.00 or its equivalent to Arturo Siapno. Under Article 39 (c) of the Labor Code, which prescribes the penalty for illegal recruitment, any person who is neither a licensee nor a holder of authority under the law and 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 (4) years but not more than eight (8) years or a fine of not less than P20,000.00 nor more than P100,000.00 or both such imprisonment and fine, at the discretion of the court. Clearly, the trial court, by imposing a straight penalty, disregarded the application of the Indeterminate Sentence Law.[18] In Argoncillo v. Court of Appeals,[19] this Court ruled that the application of the Indeterminate Sentence Law is mandatory to both the Revised Penal Code and the special laws, and in the same ruling, this Court summarized the application and non-application of the Indeterminate Sentence Law, to wit:

> x x x It is basic law that x x x the application of the Indeterminate Sentence Law is mandatory where imprisonment exceeds one (1) year, except only in the following cases:
>
> a. Offenses punished by death or life imprisonment.
> b. Those convicted of treason (Art. 114) conspiracy or proposal to commit treason (Art. 115).
> c. Those convicted of misprision of treason (Art. 116), rebellion (Art. 134), sedition (Art. 139) or espionage (Art. 117).
> d. Those convicted of piracy (Art. 122).
> e. Habitual delinquents (Art. 62, par. 5).
>
> Recidivists are entitled to an Indeterminate sentence. (People v. Jaramilla, L-28547, February 22, 1974) Offender is not disqualified to avail of the benefits of the law even if the crime is committed while he is on parole. (People v. Calreon, CA 78 O. G. 6701, November 19, 1982).
>
> f. Those who escaped from confinement or those who evaded sentence.
> g. Those granted conditional pardon and who violated the terms of the same. (People v. Corral, 74 Phil. 359).
> h. Those whose maximum period of imprisonment does not exceed one (1) year.

Where the penalty actually imposed does not exceed one (1) year, the accused cannot avail himself of the benefits of the law, the application of which is based upon the penalty actually imposed in accordance with law and not upon that which may be imposed in the discretion of the court. (People v. Hidalgo, [CA] G.R. No. 00452-CR, January 22, 1962).

> i. Those who are already serving final judgment upon the approval of the Indeterminate Sentence Law.

The need for specifying the minimum and maximum periods of the indeterminate sentence is to prevent the unnecessary and excessive deprivation of liberty and to enhance the economic usefulness of the accused, since he may be exempted from serving the entire sentence, depending upon his behavior and his physical, mental, and moral record. The requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the Revised Penal Code or by special laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law must, therefore, be deemed mandatory.[20]

The Indeterminate Sentence Law provides that if, as in this case, the offense is punished by a law other than the Revised Penal Code, 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. The imposable penalty is imprisonment of not less than four (4) years but not more than eight (8) years; hence, the proper penalty imposed should be within the range of four (4) years to eight (8) years. Thus, applying the Indeterminate Sentence Law, the Court can impose the minimum and maximum terms of the penalty of imprisonment within the range of four (4) years to eight (8) years.

WHEREFORE, the Petition for Review on Certiorari dated March 25, 2006 of petitioner Delia D. Romero is

hereby DENIED. Consequently, the Decision dated July 18, 2005 and Resolution dated February 13, 2006 of the Court of Appeals, affirming the Decision dated February 24, 2004 of the Regional Trial Court, finding petitioner guilty beyond reasonable doubt of the crime of Illegal Recruitment as defined in paragraph (a) of Article 38 of Presidential Decree (P.D.) No. 2018, are hereby AFFIRMED with the MODIFICATION that the penalty imposed should be imprisonment of four (4) years, as minimum, to seven (7) years, as maximum, and a fine of P100,000.00 plus cost and for petitioner to return the amount of $3,600.00 or its equivalent to Romulo Padlan and the amount of $3,600.00 or its equivalent to Arturo Siapno.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Perez,[*] and Mendoza, JJ., concur.

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[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

[1] Rollo, pp. 12-104.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Jose L. Sabio, Jr. and Edgardo P. Cruz, concurring; id., at 83-94.

[3] Id. at 96-98.

[4] Penned by Judge Crispin C. Laron, id. at 34-41.

[5] People v. Naparan, Jr., G.R. No. 98443, August 30, 1993, 225 SCRA 714, 723.

[6] Abaca v. Court of Appeals and People, G.R. No. 127162, June 5, 1998, 290 SCRA 657, 663, citing Sec. 1 (d) of the Rules Implementing P.D. 1920 promulgated on July 12, 1984.

[7] Art. 35. Suspension and/or Cancellation of License or Authority. - The Secretary of Labor shall have the power to suspend or cancel any license or authority to recruit employees for overseas employment for violation of rules and regulations issued by the Secretary of Labor, the Overseas Employment Development Board, and the National Seamen Board, or for violation of the provisions of this and other applicable laws, General Orders and Letters of Instruction.

[8] G.R. No. 109583, September 5, 1997, 278 SCRA 584.

[9] Id. at 589-560.

[10] Rollo, pp. 142-144.

[11] Id. at 142.

[12] People v. Nogra, G.R. No. 170834, August 29, 2008, 563 SCRA 723, 735, citing People v. Aguila, G.R. No. 171017, December 6, 2006, 510 SCRA 642.

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

[14] TSN, September 21, 2001, pp. 3-6.

[15] TSN, January 10, 2002, pp. 4-5.

[16] G.R. No. 142981, August 20, 2002, 387 SCRA 448, 464-465, citing People v. Ong, G.R. No. 119594, January 18, 2000, 322 SCRA 38, 54; People v. Saley, G.R. No. 121179, July 2, 1998, 291 SCRA 715; People v.

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Señoron, G.R. No. 119160, January 30, 1997, 267 SCRA 278, 284; People v. Pabalan, G.R. Nos. 115350 and 117819-21, September 30, 1996, 262 SCRA 574, 587.

[17] Id. at 449-465.

[18] Act No. 4103, as amended.

[19] G.R. No. 118806, July 10, 1998, 292 SCRA 313.

[20] Id. at 330-331, citing Spouses Jose and Trinidad Bacar v. Judge Salvador P. de Guzman, Jr., A.M. No. RTJ-96-1349, April 18, 1997, 271 SCRA 328.

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