

## ROSARIO NASI-VILLAR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. No. 176169. November 14, 2008*

Ponente: TINGA, J.

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### TINGA, J.:

This is a Petition for Review[1] under Rule 45 of the Rules of Court filed by petitioner Rosario Nasi-Villar assailing the Decision[2] dated 27 June 2005 and Resolution[3] dated 28 November 2006 of the Court of Appeals. This case originated from an Information[4] for Illegal Recruitment as defined under Sections 6 and 7 of Republic Act (R.A.)

No. 8042[5] filed by the Office of the Provincial Prosecutor of Davao del Sur on 5 October 1998 for acts committed by petitioner and one Dolores Placa in or about January 1993. The Information reads:

That on [sic] or about the month of [January 1993], in the Municipality of Sta. Cruz, Province of Davao del Sur, Philippines and within the jurisdiction of the Honorable Court, the aforementioned accused, conspiring together, confederating with and mutually helping one another through fraudulent representation and deceitful machination, did then and there [willfully], unlawfully and feloniously recruit Nila Panilag for employment abroad[,] demand and receive the amount of P6,500.00 Philippine Currency [sic] as placement fee[,] the said accused being a non-licensee or non-holder of authority to engage in the recruitment of workers abroad to the damage and prejudice of the herein offended party.

CONTRARY TO LAW.[6]

On 3 July 2002, after due trial, the Regional Trial Court (RTC), Br. 18, Digos City, Davao del Sur found the evidence presented by the prosecution to be more credible than that presented by the defense and thus held petitioner liable for the offense of illegal recruitment under the Labor Code, as amended.[7] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court hereby finds accused ROSARIO NASI-VILLAR GUILTY BEYOND REASONABLE DOUBT of Illegal Recruitment and, in accordance with the penalty set forth under the Labor Code, as amended, said accused is hereby sentenced to an indeterminate penalty ranging from FOUR YEARS as minimum to FIVE YEARS as maximum.

On the civil aspect of the case, there being no substantial proof presented to justify a grant of civil damages, this Court makes no pronouncement thereon.

With respect to accused Ma. Dolores Placa, who is still at large, the records of this case are hereby sent to the archives to be retrieved in the event that said accused would be apprehended. Issue an alias warrant of arrest for the apprehension of said accused.

SO ORDERED.[8]

Petitioner appealed to the Court of Appeals raising as sole issue the alleged error by the trial court in finding her

guilty of illegal recruitment on the basis of the trial court's appreciation of the evidence presented by the prosecution.

The Court of Appeals, in its Decision dated 27 June 2005,[9] following the principle that an appeal in a criminal case throws the whole case wide open for review, noted that the criminal acts alleged to have been committed happened sometime in 1993. However, R.A. No. 8042, under which petitioner was charged, was approved only on 7 June 1995 and took effect on 15 July 1995. Thus, the Court of Appeals declared that petitioner should have been charged under the Labor Code, in particular Art. 13(b) thereof, and not under R.A. No. 8042. Accordingly, it made its findings on the basis of the provisions of the Labor Code and found petitioner liable under Art. 38, in relation to Art. 13(b), and Art. 39 of the Labor Code. The appellate court affirmed with modification the decision of the RTC, decreeing in the dispositive portion, thus:

WHEREFORE, in view of all the foregoing, the appealed Decision of the Regional Trial Court, 11[th] Judicial Region, Br. 18, City of Digos, Province of Davao del Sur, finding Rosario Nasi-Villar guilty beyond reasonable doubt o the crime of Illegal Recruitment is AFFIRMED with MODIFICATION in that Rosario Nasi-Villar is ORDERED to pay Nila Panilag the sum of P10,000.00 as temperate damages.

SO ORDERED.[10]

On 28 November 2006, the appellate court denied petitioner's motion for reconsideration.[11]

Hence, petitioner filed the instant petition for review.

Petitioner alleges that the Court of Appeals erred in failing to consider that R.A. No. 8042 cannot be given retroactive effect and that the decision of the RTC constitutes a violation of the constitutional prohibition against ex post facto law. Since R.A. No. 8042 did not yet exist in January 1993 when the crime was allegedly committed, petitioner argues that law cannot be used as the basis of filing a criminal action for illegal recruitment. What was applicable in 1993 is the Labor Code, where under Art. 38, in relation to Art. 39, the violation of the Code is penalized with imprisonment of not less than four (4) years nor more than eight (8) years or a fine of not less than P20,000.00 and not more than P100,000.00 or both. On the other hand, Sec. 7(c) of R.A. No. 8042 penalizes illegal recruitment with a penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine not less than P200,000.00 nor more than P500,000.00. Thus, the penalty of imprisonment provided in the Labor Code was raised or increased by R.A. No. 8042. Petitioner concludes that the charge and conviction of an offense carrying a penalty higher than that provided by the law at the time of its commission constitutes a violation of the prohibition against ex post facto law and the retroactive application of R.A. No. 8042.

In its Comment[12] dated 7 September 2007, the Office of the Solicitor General (OSG) argues that the Court of Appeals' conviction of petitioner under the Labor Code is correct. While conceding that there was an erroneous designation of the law violated by petitioner, the OSG stresses that the designation of the offense in the Information is not determinative of the nature and character of the crime charged against her but the acts alleged in the Information. The allegations in the Information clearly charge petitioner with illegal recruitment as defined in Art. 38, in relation to Art. 13(b) of the Labor Code, and penalized under Art. 39(c) of the same Code. The evidence on record substantiates the charge to a moral certainty. Thus, while there was an erroneous specification of the law violated by petitioner in the Information, the CA was correct in affirming the RTC's imposition of the penalty for simple illegal recruitment under the Labor Code, the OSG concludes.

The petition is denied. We find no reversible error in the decision arrived at by the Court of Appeals.

In *Gabriel v. Court of Appeals*,[13] we held that the real nature of the crime charged is determined, not from the

caption or preamble of the information nor from the specification of the law alleged to have been violated—these being conclusions of law—but by the actual recital of facts in the complaint or information. What controls is not the designation but the description of the offense charged. From a legal point of view, and in a very real sense, it is of no concern to the accused what the technical name of the crime of which he stands charged is. If the accused performed the acts alleged in the body of the information, in the manner stated, then he ought to be punished and punished adequately, whatever may be the name of the crime which those acts constitute.[14]

In the case at bar, the prosecution established beyond reasonable doubt that petitioner had performed the acts constituting the offense defined in Art. 38, in relation to Art. 13(b) and punished by Art. 39 of the Labor Code, as alleged in the body of the Information. To prove illegal recruitment, two elements must be shown, namely: (1) the person charged with the crime must have undertaken recruitment activities, or any of the activities enumerated in Article 34 of the Labor Code, as amended; and (2) said person does not have a license or authority to do so.[15] Art. 13(b) 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, is considered engaged in recruitment and placement." The trial court found these two elements had been proven in the case at bar. Petitioner has not offered any argument or proof that countervails such findings.

The basic rule is that a criminal act is punishable under the law in force at the time of its commission. Thus, petitioner can only be charged and found guilty under the Labor Code which was in force in 1993 when the acts attributed to her were committed. Petitioner was charged in 1998 under an Information that erroneously designated the offense as covered by R.A. No. 8042, but alleged in its body acts which are punishable under the Labor Code. As it was proven that petitioner had committed the acts she was charged with, she was properly convicted under the Labor Code, and not under R.A. No. 8042.

There is no violation of the prohibition against ex post facto law nor a retroactive application of R.A. No. 8042, as alleged by petitioner. An ex post facto law is one which, among others, aggravates a crime or makes it greater than it was when committed or changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed.[16] Penal laws and laws which, while not penal in nature, nonetheless have provisions defining offenses and prescribing penalties for their violation operate prospectively. Penal laws cannot be given retroactive effect, except when they are favorable to the accused.[17]

R.A. No. 8042 amended pertinent provisions of the Labor Code and gave a new definition of the crime of illegal recruitment and provided for its higher penalty. There is no indication in R.A. No. 8042 that said law, including the penalties provided therein, would take effect retroactively. A law can never be considered ex post facto as long as it operates prospectively since its strictures would cover only offenses committed after and not before its enactment.[18] Neither did the trial court nor the appellate court give R.A. No. 8042 a retroactive application since both courts passed upon petitioner's case only under the aegis of the Labor Code. The proceedings before the trial court and the appellate court did not violate the prohibition against ex post facto law nor involved a retroactive application of R.A. No. 8042 in any way.

WHEREFORE, the petition is DENIED. The assailed Decision dated 27 June 2005 and Resolution dated 28 November 2006 of the Court of Appeals are AFFIRMED.

**SO ORDERED.**

Quisumbing, Acting C.J., (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., concur.

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[1] Rollo, pp. 21-36.

[2] Id. at 87-108.

[3] Id. at 117-120.

[4] Id. at 37-38.

[5] Migrant Workers and Overseas Filipinos Act of 1995, which amended the overseas employment provisions of the Labor Code, gave a new definition of the crime of illegal recruitment and increased the penalty therefore.

[6] Rollo, p. 37.

[7] Id. at 39-54. Decision penned by Judge Marivic Trabajo Daray.

[8] Id. at 53.

[9] Supra note 2.

[10] Id at. 106.

[11] Supra note 3.

[12] Id. at 174-192.

[13] G.R. No. 128474, 6 October 2004, 440 SCRA 136, 150.

[14] United States v. Lim San, 17 Phil. 273, 279 (1910).

[15] People v. Señoron, 334 Phil. 932, 937-938 (1997).

[16] Benedicto v. Court of Appeals, 416 Phil. 722, 748 (2001), citing In Re: Kay Villegas Kami Inc., 35 SCRA 429, 431(1970) citing Calder v. Bull (1798), 3 Dall. 386, Makin v. Wolfe, 2 Phil. 74 (1903).

[17] Benedicto v. Court of Appeals, 416 Phil. 722, 749 (2001).

[18] I.A. CRUZ, CONSTITUTIONAL LAW (1993 ed.), p. 253.

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