

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FUJITA ZENCHIRO, ACCUSED-APPELLANT.

G.R. No. 176733. August 11, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Accused-appellant Fujita Zenchiro (Zenchiro), a Japanese national, and one Eva Regino (Eva) were, in an Information filed before the Regional Trial Court (RTC) of Malolos, Bulacan where it was docketed as Criminal Case No. 3261-M-2001, charged to have conspired in committing illegal recruitment in large scale as follows:

Criminal Case No. 3261-M-2001:

x x x x

That in or about the month of January, 1999, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping each other, non-licensees or non-holders of authority from the Department of Labor and Employment to recruit and/or place workers in employment either locally or overseas, did then and there willfully, unlawfully and feloniously, with false pretenses, undertake illegal recruitment and placement for a fee of Alberto M. Anatalio, Freddie[1] P. Ocampo and Alicia A. Diaz for overseas employment.[2] (Underscoring supplied)

Zenchiro and Eva were, in Informations also filed before the same court where they were docketed as Criminal Cases No. 3262-M-2001, 3263-M-2001, and 3264-M-2001, likewise charged to have conspired in committing three counts of estafa under Article 315, paragraph 2 (a) of the Revised Penal Code as follows:

Criminal Case No. 3262-M-2001:

That on or about the 2[nd] day of February, 1999, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping each other, with intent of gain, did then and there willfully, unlawfully and feloniously defraud Alberto M. Anatalio and Freddie P. Ocampo in the sum of P50,000.00 each, by then and there misrepresenting that they have the power and qualification to recruit and employ the said Alberto M. Anatalio and Freddie P. Ocampo as worker[s] or assist them in securing employment abroad, more particularly in Japan, and could facilitate the processing and approval of the necessary papers in connection therewith, when in truth and in fact, as they well knew, they did not have such qualifications, that pursuant to such misrepresentation and defraudation, said accused demanded and received from Alberto M. Anatalio and Freddie P. Ocampo the sum of P50,000.00 each; that said accused failed and refused to comply with their aforementioned undertakings and instead, misappropriated the sum of P50,000.00 each, for their benefit, to the damage and prejudice of the said Alberto M. Anatalio and Freddie P. Ocampo, in the total amount of P100,000.00.[3] (Underscoring supplied)

Criminal Case No. 3263-M-2001:

That on or about the 10[th] of March, 1999, in the municipality of Meycauayan, province of Bulacan,

Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping each other, with intent of gain, did then and there willfully, unlawfully and feloniously defraud one Alicia A. Diaz in the sum of P10,000.00, by then and there misrepresenting that they have the power and qualification to recruit and employ the said Alicia A. Diaz as worker or assist her in securing employment abroad, more particularly in Japan, and could facilitate the processing and approval of the necessary papers in connection therewith, when in truth and in fact, as they well knew, they did not have such qualifications; that pursuant to such misrepresentation and defraudation, said accused demanded and received from Alicia A. Diaz the sum of P10,000.00; that said accused failed and refused to comply with their aforementioned undertakings and instead, misappropriated the sum of P10,000.00 for their benefit, to the damage and prejudice of the said Alicia A. Diaz in the said amount of P10,000.00.[4] (Underscoring supplied)

Criminal Case No. 3264-M-2001:

That on or about the 12[th] of March, 1999, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping each other, with intent of gain, did then and there willfully, unlawfully, and feloniously defraud one Alicia A. Diaz in the sum of P40,000.00, by then and there misrepresenting that they have the power and qualification to recruit and employ the said Alicia A. Diaz as worker or assist her in securing employment abroad, more particularly in Japan, and could facilitate the processing and approval of the necessary papers in connection therewith, when in truth and in fact, as they well knew they did not have such qualifications, that pursuant to such misrepresentation and defraudation, said accused demanded and received from Alicia A. Diaz the sum of P40,000.00; that said accused failed and refused to comply with their aforementioned undertakings and instead, misappropriated the sum of P40,000.00 for their benefit, to the damage and prejudice of the said Alicia A. Diaz in the said amount of P40,000.00.[5] (Underscoring supplied)

Zenchiro pleaded not guilty to all the charges on arraignment.[6] Eva has remained at large.

From the testimonies of prosecution witnesses-private complainants Alberto Anatalio (Anatalio) and his cousin Freddie Ocampo (Ocampo), the following version is gathered:[7]

In January 1999, Eva introduced private complainants to Zenchiro, telling them that Zenchiro could deploy them to work in Japan. Speaking in "broken" Tagalog, Zenchiro told the two that he would take care of everything because he knows many persons who could work on their papers, and that they would receive a monthly salary of 30 lapad, a lapad being equivalent to P3,500.

Eva and Zenchiro charged P250,000 each of the private complainants who each gave him P50,000 on February 2, 1999 as downpayment for the processing of their papers. Ocampo's sister, Florinda Cadorna, also a prosecution witness, paid P400,000 representing the total balance of Anatalio and Ocampo. [8]

On June 26, 1999, Anatalio and Ocampo, escorted by Zenchiro, went to Japan where they were met by Eva who thereupon accompanied them to her aunt's house in Tokyo where they stayed.

Contrary, however, to Eva's promises that they would be hired at her sister's hanger factory, Anatalio and Ocampo were idle for two months, and whenever they asked her and Zenchiro (who alternately stayed in Japan for one month and the Philippines for another month) about why, Zenchiro and Eva would merely converse with each other in Japanese.

In September 1999, Anatalio and Ocampo returned to the Philippines upon which they asked Zenchiro to refund the amounts they paid him. Zenchiro did promise to refund them, but he welched thereon, prompting the filing of complaints against him that led to the filing of the Informations.

Anatalio and Ocampo were later to learn that Zenchiro and Eva are neither licensed nor authorized to recruit

workers for overseas employment.

From the testimony of private complainant Alicia Diaz (Alicia),[9] the following version is gathered:

Zenchiro offered Alicia a job at the hanger factory in Japan of Eva's sister for a P250,000 placement fee, he undertaking to take care of the processing of all her travel documents. Alicia accepted the offer and thus paid Zenchiro the amount in several installments for which she was issued receipts.

On January 12, 1999, Alicia, accompanied by Zenchiro, left for Japan where Eva met them. Eva at once brought her to "Movara" where she stayed with Zenchiro and two Filipinos. After the lapse of a week, she was transferred to Chiba but she remained jobless. Via overseas telephone call to Zenchiro who had gone back to the Philippines, she asked him what they were doing to her, but he gave no answer. Eva even scolded her for calling Zenchiro.

Alicia returned to the Philippines on March 16, 1999 and confronted Eva and Zenchiro who asked for forgiveness, they promising to deploy her to work. The promise remained unfulfilled, however, hence, she demanded the refund of her money, but Zenchiro refunded her only P50,000.[10]

Anatalio, Ocampo, and Alicia identified Zenchiro in open court.[11]

In addition to testimonial evidence, the prosecution presented documentary evidence consisting of private complainants' sworn statements, a certification from the Philippine Overseas Employment Administration[12] that the accused are not licensed to recruit workers for employment overseas, receipts signed by Zenchiro acknowledging receipt of payments for "replayment fee" to Japan,[13] receipts for "VISA ASSISTANCE GOING TO JAPAN" signed by Eva,[14] and receipt signed by Alicia, bearing Zenchiro's signature, acknowledging a partial refund of P50,000[15] from Zenchiro.

Upon the other hand, Zenchiro, denying having promised private complainants that he would deploy them for work in Japan,[16] claimed that his involvement in the transactions was limited to assistance in the processing of their travel documents and escorting them to Japan;[17] and that private complainants in fact landed on jobs in Japan[18] in support of which he presented certificates, worded in Japanese, issued by Yugengaisha P-I and Kabushikigaisha Sekine Kagaku Kogyo, said to attest that Anatalio and Ocampo worked in Japan in July up to September 1999.[19]

By Joint Decision[20] of July 5, 2005, Branch 11 of the RTC of Malolos convicted Zenchiro in Criminal Case Nos. 3261-M-2001 (for illegal recruitment), 3263-M-2001 (for Estafa on complaint of Alicia), and 3264-M-2001 (for Estafa on complaint of Alicia). It dismissed Criminal Case No. 3262-M-2001 (for Estafa on complaint of Anatalio and Ocampo) on the ground of double jeopardy.[21]

In arriving at its Joint Decision, the trial court noted the following findings:

When the three (3) complainants went to the residence of the Regino's at Sto. Niño, Meycauayan on different occasions, in the early part of January 1999, and the matter of their supposed employment in Japan was taken up Zenchiro was personally present. Regino did much of the talking but as testified to by the complainants she talked with Zenchiro in Nippongo, every now and then ostensibly to apprise him of what was being talked about. Foremost was the representation by Regino, which Zenchiro appears to have acquiesced into, that he was in a position to find work for the complainants in Japan. On this point, Zenchiro's own admission that he offered his own services to work for complainants' Japanese visa was a dead giveaway on his part of his active involvement in the illicit recruitment of the latter to work in Japan. xxx This coupled with the uncontroverted fact that he even escorted the complainants in going to Japan in the months of June, 1999 and January 2000 even living under the same house with Anatalio and Ocampo therein make a strong case against him for the offense charged.

That the complainants were duped into shelling large amounts for fictitious employment in Japan has been convincingly shown. All three (3) were categorical in their assertion that the accused demanded, and received, from each of them the amount of P250,000.00 as placement fee, adducing receipts in substantiation of these exactions. In the case of Anatalio and Ocampo, the two (2) were uncontradicted in their claim that, on February 2, 1999, both gave P50,000.00 each to Regino as initial payment of their supposed placement fee in the presence of Zenchiro, and on this occasion, the latter told them that he would take care of their papers. Two (2) days later, before their departure to Japan or on June 24, 1999, Florinda "Bong" Cadorna handed over to Zenchiro P400,000.00 duly receipted by the latter who even signed his name in Japanese character[s].

The same situation holds true with Diaz. In her case on March 10, 1999, she gave Regino the initial amount of P10,000.00 in her place at Sto. Niño, Meycauayan, Bulacan and two (2) days later or on March 12, 1999, she gave her the additional amount of P40,000.00 as downpayment for her replacement fee. After her visa was issued, on December 20, 1999 she gave the amount of P100,000.00 in cash and a check worth P100,000.00 to Zenchiro personally xxx to complete her employment fee. xxx This transaction between Diaz and the accused is fully substantiated by the receipt dated December 20, 1999 signed by Zenchiro again in Japanese characters. Although Zenchiro made it appear in said receipt that the payment was for visa assistance, the enormity of the amount does not warrant belief to such a pretension[.]

Zenchiro's attempt to show that complainants worked in different firms in Japan is futile. All that he has to show to prove his point are purported certifications from dubious Japanese firms attesting to their supposed employment which from the mere fact that these are written in Japanese characters without any official translation in English hardly deserve any evidentiary value[.]

With the Certification from the POEA that the accused are not licensed to recruit workers either for local and foreign employment, both stand liable for qualified illegal recruitment in large scale under the provisions of the Labor Code, the same having been committed against three (3) persons.[22] (Citations omitted; underscoring supplied)

The trial court thus disposed:

WHEREFORE, in Criminal Case No. 3261-M-2001, this Court finds the accused Fujita Zenchiro GUILTY beyond reasonable doubt of the crime of Illegal Recruitment in Large Scale defined and penalized under Article 38 (b) in relation to Articles 34 and 39 of the Labor Code of the Philippines, P.D. No. 442, as amended and hereby sentences him to suffer the penalty of Life Imprisonment and a fine of P100,000.00. Accused is likewise ordered to pay the private complainants the following amounts as actual damages, to wit:

- P250,000.00 to Alberto Anatalio;
- P250,000.00 to Freddie Ocampo; and
- P250,000.00 to Alicia Diaz.

In Criminal Case No. 3263-M-2001, this Court finds the accused Fujita Zenchiro GUILTY beyond reasonable doubt of Estafa under Art. 315, par. 2(a) of the Revised Penal Code, as amended and hereby sentences him to a prison term ranging from four (4) months and Twenty (20) days of Arresto Mayor, as minimum, up to Two (2) years, Eleven (11) months and Ten (10) days of prision correccional, as maximum and to pay Alicia Diaz the amount of P10,000.00 as actual damages.

In Criminal Case No. 3264-M-2001, this Court finds the accused Fujita Zenchiro GUILTY beyond reasonable doubt of Estafa under Art. 315 par. 2(a) of the Revised Penal Code, as amended and hereby sentences him to a prison term ranging from Four (4) Years, Nine (9) months and Eleven (11) days of prision correccional, as minimum, up to Six (6) years, Eight (8) months, and one (1) day of prision mayor as maximum and to pay Alicia Diaz the amount of P40,000.00 as actual damages.

Criminal Case No. 3262-M-2001 is hereby DISMISSED.

The cases against Eva Regino are hereby ARCHIVED.

SO ORDERED.[23] (Emphasis and underscoring supplied)

On appeal to the Court of Appeals, Zenchiro assigned to the trial court the following errors:

I

. . . CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF LARGE SCALE ILLEGAL RECRUITMENT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT HIS ACT OF SECURING COMPLAINANTS' JAPANESE VISAS IS UNDER THE TERM "RECRUITMENT AND PLACEMENT".

II

. . . FINDING THE ACCUSED-APPELLANT GUILTY FOR THE CRIME OF ESTAFA DESPITE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT THERE WAS DECEPTION ON HIS PART.[24]

The Court of Appeals affirmed the trial court's decision,[25] hence, Zenchiro's appeal to this Court.[26]

Zenchiro maintains that what he promised to private complainants was assistance in securing their visas, not employment. And he argues that he is not guilty of estafa because there was no deceit, he not having misrepresented that he could obtain jobs for them in Japan.

As a general rule, the factual findings of the trial court, especially when affirmed by the appellate court as in the cases at bar, are binding and conclusive on the Supreme Court.[27] The above-quoted portions of the trial court's factual findings are supported by the evidence. More particularly, Zenchiro's claim that his involvement in the transaction was limited to mere assistance in the processing of private complainants' travel documents is negated by documentary evidence showing that he received "replayment" fees from them.

Zenchiro goes on to reiterate his argument that Eva promised employment to private complainants without his knowledge, he being a Japanese national and could not understand the conversation in Tagalog between Eva and the private complainants. The Court of Appeals' brushing aside such argument is well taken.

In the first place, appellant during his arraignment even assented to the reading of the information in Filipino because according to his counsel it is a language known and understood by him. And as testified to by the private complainants, appellant even spoke to them in broken Tagalog when he was promising them employment in Japan upon payment of placement fee to him and his co-accused Regino. Private complainant Diaz also testified that during their conversation regarding the proposed employment in Japan, while it was Regino who was explaining things to them, Regino would first talk to appellant in Japanese and hence appellant cannot feign ignorance of the dealings and undertakings by Regino with private complainants. Appellant knew and cooperated in the misrepresentations and fraudulent scheme of Regino as they both duped private complainants into shelling substantial amounts of money for those promised jobs as factory workers in Japan.[28] (Underscoring supplied)

In fine, Zenchiro's disclaimer of the charges fails.

Illegal recruitment is deemed committed in large scale if it is committed against three or more persons individually or as a group.[29] Clearly, Zenchiro committed illegal recruitment against the three private complainants.

His conviction in Criminal Case Nos. 3261-M-2001, 3263-M-2001 must thus be affirmed. Section 7 (b) of the

Migrant Workers and Overseas Filipinos Act of 1995 imposes a fine of not less than P500,000 nor more than P1,000,000 if illegal recruitment for overseas employment constitutes economic sabotage - illegal recruitment committed by a syndicate or in large scale. Since Zenchiro's act was committed in large scale, the fine of P100,000 imposed upon him in Criminal Case No. 3261-M-2001 must be increased to P500,000.

Considering that Zenchiro already gave Alicia a partial refund of P50,000, the actual damages awarded to her in Criminal Case No. 3261-M-2001 is reduced to P200,000, and the awards of actual damages to Alicia in Criminal Cases Nos. 3263-M-2001 and 3264-M-2001 are deleted.

Respecting the penalty imposed in Criminal Case No. 3264-M-2001, Article 315 of the Revised Penal Code provides:

Article 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1[st]. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amounts exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be. (Underscoring supplied)

Applying the Indeterminate Sentence Law, the minimum of the penalty should be taken from the range of the penalty next lower in degree to that prescribed under the Revised Penal Code. In this case, the penalty next lower in degree is prision correccional in its minimum and medium periods. This Court imposes a minimum penalty of two years of prision correccional.

With regard to the maximum penalty in Criminal Case No. 3264-M-2001, since the amount involved exceeds P22,000, the impossible penalty shall be taken from the maximum period of prision correccional maximum period to prision mayor minimum period, which, when divided into three equal portions following Article 65 of the Revised Penal Code, have the following periods:

Minimum period - four years, two months, and one day to five years, five months, and ten days.

Medium period - five years, five months, and 11 days to six years, eight months, and 20 days

Maximum period - six years, eight months and 21 days to eight years.[30]

Following the above-quoted portion of the provision of Article 315 of the Revised Penal Code, the maximum term of the penalty imposed by the trial court in Criminal Case No. 3264-M-2001 should be increased by one year.

Adding one year to the maximum period of the prescribed penalty, which is from six years, eight months and 21 days to eight years of prision mayor, the maximum penalty may be taken from seven years, eight months and 21 days to nine years of prision mayor.[31] Thus, the maximum penalty imposed by the trial court in Criminal Case No. 3264-M-2001 is increased to seven years, eight months, and 21 days of prision mayor.

WHEREFORE, the October 23, 2006 Decision of the Court of Appeals is AFFIRMED with the MODIFICATION that the fine in Criminal Case No. 3261-M-2001 is P500,000. In Criminal Case No. 20-M-2001, the minimum term of the imprisonment imposed is two years of prision correccional and the maximum term of the imprisonment imposed is Seven Years, Eight Months and 21 Days of prision mayor.

In all other aspects, the appellate court's decision is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Corona, Velasco, Jr., and Brion, JJ., concur.

* Additional member in lieu of Justice Dante O. Tinga per Special Order No. 512 dated July 16, 2008.

- [1] Sometimes spelled "Freddie."
- [2] Records (Criminal Case No. 3261-M-2001), p. 2.
- [3] Records (Criminal Case No. 3262-M-2001), p. 3.
- [4] Records (Criminal Case No. 3263-M-2001), p. 2.
- [5] Records (Criminal Case No. 3264-M-2001), p. 1.
- [6] Records (Criminal Case No. 3261-M-2001), p. 45.
- [7] TSN, April 25, 2002, pp. 3-18; TSN, July 5, 2002, pp. 2-10.
- [8] TSN, May 2, 2002, pp. 25-40.
- [9] TSN, May 17, 2002, pp. 2-19; TSN, May 24, 2002, pp. 2-19.
- [10] Exhibit "J," records (Criminal Case No. 3261-M-2001), p. 83.
- [11] TSN, April 25, 2002, p. 12; TSN, July 5, 2002, p. 3; TSN, May 17, 2002, p. 12.
- [12] Exhibit "B," records, p. 78.
- [13] Exhibits "C," "C-1," "D," "D-1," "E," "E-1," "F," "F-1," "G," "G-1," records (Criminal Case No. 3261-M-2001, pp. 79-80, 84.
- [14] Exhibits "F," "F-1," "G," "G-1," records (Criminal Case No. 3261-M-2001), p. 81.
- [15] Exhibit "J" and its derivatives; Exhibit "4" and its derivatives, records (Criminal Case No. 3261-M-2001) p. 83.
- [16] TSN, September 13, 2002, p. 5.
- [17] Vide TSN, September 13, 2002, pp. 3-10; TSN, December 13, 2002, pp. 2-8; TSN, February 21, 2003, pp. 3-13.
- [18] TSN, September 13, 2002, pp. 5-7.
- [19] Exhibits "10" and "12" and their derivatives, Records (Criminal Case No. 3261-M-2001), pp. 287-288, 292-293.
- [20] Records (Criminal Case No. 3261-M-2001), pp. 307-312.
- [21] Vide id. at 311.
- [22] Records (Criminal Case No. 3261-M-2001), pp. 310-311.
- [23] Records (Criminal Case No. 3261-M-2001), pp. 311-312.
- [24] CA rollo, pp. 54-55.

[25] Decision of October 23, 2006, penned by Court of Appeals Associate Justice Martin S. Villarama, Jr. with the concurrence of Associate Justices Lucas P. Bersamin and Monina Arevalo-Zenarosa; id at 104-135.

[26] Id. at 146-147.

[27] Vide *Manliclic v. Calaunan*, G.R. No. 150157, January 25, 2007, 512 SCRA 642, 660. Citations omitted.

[28] CA rollo, p. 132.

[29] Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042), Section 6 (m).

[30] *Bonifacio v. People*, G.R. No. 153198, July 11, 2006, 494 SCRA 527, 533.

[31] Vide *People v. Cabais*, G.R. No. 129070, March 16, 2001, 354 SCRA 553, 564.

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