CARMEN RITUALO Y RAMOS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 178337. June 25, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] of the Court of Appeals promulgated on 23 April 2007 in CA-G.R. CR. No. 29393 entitled, "People of the Philippines v. Carmen Ritualo y Ramos," affirming with modification, the Decision[2] dated 1 December 2004 of the Regional Trial Court (RTC), Branch 199, Las Piñas City, in Criminal Cases No. 01-0076 and No. 01-0077.

In this Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, petitioner Carmen Ritualo y Ramos (petitioner Ritualo) prays for the reversal of the appellate court's decision affirming with modification the decision of the trial court finding her "guilty beyond reasonable doubt of [committing] the crimes of x x x Simple Illegal Recruitment [defined and punished] under Section 7 of Republic Act No. 8042, otherwise known as the `Migrant Workers Act of 1995,'"[3] and "Estafa."[4]

This case originated from two Informations, both dated 2 January 2001, which charged Ritualo with the crimes of Illegal Recruitment defined and penalized by Republic Act No. 8042; and Estafa under Art. 315, par. 2(a) of the Revised Penal Code, respectively. The accusatory portion of the first Information reads as follows:

> That on or about the 1[st] day of May, 2000, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, falsely representing herself to have the capacity and power to contract, enlist and recruit workers for employment abroad, did then and there willfully, unlawfully, and feloniously collect for a fee, recruit and promise employment/job placement abroad to Felix Biacora without first securing the required license or authority from the Department of Labor and Employment.[5]

The one for Estafa states, viz:

> That during the periods (sic) from May 1, 2000 to June 1, 2000, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with intent of gain, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously defraud the Complainant Felix Biacora amounting to P80,000.00 committed in the following manner to wit: that the Accused represented to the Complainant that she was authorized or licensed by the Department of Labor and Employment to recruit workers for overseas employment and that she could send Complainant to work abroad (Australia) as farm worker as soon as possible, knowing very well that such representation is false and was intended only to get money from the Complainant and the Complainant after relying from the said representations made by the accused, handed to the accused the said amount and the accused, once in possession of the money, misappropriated, misapplied and converted the same for her personal use and benefit, and not withstanding repeated demands failed and refused to pay the said amount of P80,000.00 to the damage and prejudice of the Complainant in the aforementioned amount of P80,000.00.[6]

The foregoing were docketed as Criminal Cases No. 01-0076 and No. 0077 and raffled to Branch 275 of the Regional Trial Court (RTC) of Las Piñas City.

Upon arraignment on 24 May 2001, petitioner Ritualo, duly assisted by counsel de oficio, pleaded "Not Guilty" to the crimes charged.[7]

On 26 May 2003, during the joint trial of the cases, petitioner Ritualo orally manifested in open court that earnest efforts were being undertaken to settle the civil aspect thereof. Thus, with the conformity of the accused, herein petitioner Ritualo, coupled with the latter's express waiver apropos the attachment of double jeopardy, the RTC ordered[8] the provisional dismissal of the two cases.

On 13 October 2003, however, the RTC ordered[9] the revival of the cases upon the motion of the prosecution, on the ground that Ritualo reneged on her undertaking as embodied in a handwritten note entitled, "Kasunduan" viz:

> May 26, 2003
>
> Kasunduan
>
> Ako si Carmen Ritualo, ay sa araw na ito May 26, 2003, nagbabayad kay Felix Biacora ng halagang Sampung-libong Piso (P10,000.00) at ang natirang Twenty One Thousand Pesos ay babayaran ko sa loob ng Tatlong Buwan magmula ngayon.
>
> (Sgd.)
> Carmen Ritualo
> Akusado
>
> Sumang-ayon:
>
> (Sgd.)
> Felix Biacora
> Complainant[10]

In the ensuing trial, the prosecution presented two witnesses, namely, Felix Biacora, the victim;[11] and Belen Blones, employee of the Licensing Branch of the Philippines Overseas Employment Agency (POEA). Taken altogether, the evidence of the prosecution established the following facts:

In 1993, Felix Biacora went to Saudi Arabia for overseas employment that was facilitated by one Cynthia Libutan (Libutan) who worked for a recruitment agency.[12] Several years after his return to the country, Biacora accidentally met Libutan in Baclaran Church sometime in 2000. After they exchanged pleasantries, the former signified to the latter his desire to seek another overseas employment. Libutan then gave Biacora the name, address and contact number of her friend, one Carmen Ritualo, the petitioner herein, who was able to help Libutan's sister find work in Australia. Biacora thereafter called petitioner Ritualo to set up a meeting.

On 1 May 2000, accompanied by his wife, Biacora went to the house of petitioner Ritualo and inquired from her whether she could help him secure overseas employment in Australia. Petitioner Ritualo answered in the affirmative, and to be convincing, brought out travel documents of several people she was able to "help," who were then supposedly scheduled to leave for abroad pretty soon.[13] Biacora was then assured that:

> [He could] leave for Australia [in a month's time] if [he] will give [petitioner Ritualo] a total amount of P160,000.00, and [his] salary would be US$700.00 per month as a farm worker.[14]

On the above-quoted representation on the same date, Biacora paid petitioner Ritualo the amount of P40,000.00 as downpayment, with the balance to be completed before he left for Australia. Upon receipt of the money, petitioner

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Ritualo issued Biacora a Cash Voucher[15] as evidence of said payment. To complete their transaction, Biacora left her a copy of his Bio-data.[16]

On 4 May 2000, Biacora again gave petitioner Ritualo P20,000.00 as additional payment, making the total amount received by the latter P60,000.00. Again, petitioner Ritualo issued a Cash Voucher.[17]

Subsequently, Biacora was informed by petitioner Ritualo that all he needed in securing an employment in Australia was his Passport and an endorsement from the Representative of his district. Accompanied by petitioner Ritualo and one Anita Seraspe, the assistant[18] of the former, Biacora went to the Batasan Pambansa to secure the necessary endorsement. Thereafter, all three went to the Australian Embassy to apply for Biacora's working visa.

On 1 June 2000, Biacora went to see petitioner Ritualo to follow up the date of his departure. Petitioner Ritualo asked from Biacora another P20,000.00 and told the latter to be patient. As with the other amounts given, proof of payment[19] was similarly issued to acknowledge receipt thereof.

Several dates were set for Biacora's departure, but none pushed through. To top it all, his Australian Visa application was denied by the Australian Embassy. Consequently, on 9 September 2000, Biacora demanded from petitioner Ritualo the return of the P80,000.00. The latter promised to pay back the money on the 13[th] of September 2000. None came.

Thereafter, Biacora filed the subject criminal complaints against petitioner Ritualo.

In two Certifications dated 23 October 2000[20] and 5 November 2003,[21] respectively, both identified by Belen Blones of the Licensing Division of the POEA, it was confirmed that "per available records of [its] Office, CARMEN RITUALO, in her personal capacity is not licensed by this Administration to recruit workers for overseas employment"[22]; and that "[a]ny recruitment activity undertaken by [her] is deemed illegal."[23]

To rebut the foregoing evidence presented by the prosecution, the defense presented a diametrically opposed version of the facts of the present case through the sole testimony of Ritualo.

In her testimony, Ritualo narrated that it was Libutan and Biacora who asked her to introduce them to a certain Anita Seraspe, the person responsible for sending petitioner Ritualo's own sister to Australia;[24] that she had no agreement with Biacora respecting the latter's employment in Australia; that any talk of money was made among Libutan, Biacora and Seraspe only; that she received a total of P80,000.00 from Biacora, but that the same was merely entrusted to her because Libutan and Biacora had just met Seraspe,[25] and that she turned over all the payments to Seraspe who acknowledged receipt of the same by writing on pieces of paper said acceptance; that she accompanied Biacora to Batasan Pambansa at his request; that she did not earn any money out of her referral and introduction of Libutan and Biacora to Seraspe; that even if she did not earn any money out of the subject transaction, she returned P10,000.00 and P31,000.00, or a total of P41,000.00, to Biacora out of fear that the latter would file charges against her; that she tried to find Seraspe, but the latter could not be found at her last known address; and that she gave Biacora an additional P6,000.000 to obviate any more scandal befalling her family.[26]

On 1 December 2004, after trial, the RTC found the evidence presented by the prosecution to be more credible and logical than that presented by the defense and thus, convicted Ritualo for the crimes of Simple Illegal Recruitment and Estafa, defined and penalized under the Migrant Workers and Overseas Filipino Act of 1995 and the Revised Penal Code, respectively. The dispositive portion of the trial court's judgment stated:

> WHEREFORE, in view of the foregoing, the Court finds accused CARMEN RITUALO y RAMOS, GUILTY beyond reasonable doubt of the crimes of:

> - Simple Illegal Recruitment (Criminal Case Number 01-0076) under Section 7 of Republic Act No. 8042 otherwise known as the `Migrant Workers Act of 1995,' and sentences her to suffer an Indeterminate penalty of imprisonment of Six (6) years and ONE (1) day, as minimum, to EIGHT (8) years, as maximum, and to pay a fine of P200,000.00.
>
> - In Criminal Case Number 01-0077 for Estafa, herein accused is hereby sentenced to suffer an indeterminate penalty of prison term of six (6) months and One (1) day of Prission (sic) Correctional (sic), as minimum, to seven (7) years, eleven (11) months and eleven (11) days of Prision Mayor, as maximum and is ORDERED to indemnify Felix Biacora actual damages in the amount of P66,000.00 which is minus the amount of P14,000.00 which the private complainant admitted to have been refunded to him.
>
> Cost de oficio.[27]

Ritualo's Motion for Reconsideration of the trial court's decision was subsequently denied in an Order[28] dated 21 January 2005.

In an Order[29] dated 1 March 2005, the RTC granted and approved the Notice of Appeal[30] filed by Ritualo.

The Court of Appeals, in its Decision promulgated on 23 April 2007, affirmed the judgment of the RTC insofar as the conviction of Ritualo was concerned. As reasoned by the Court of Appeals, "[a]s against the positive and categorical testimony of the [Biacora], [Ritualo's] denials cannot prevail."[31] Particularly, the appellate court held that Ritualo's "acts of promising and assuring employment overseas to [Biacora] [fell] squarely within the ambit of recruitment and placement as defined by [The Migrant Workers Act or Republic Act No. 8042]."[32] With respect to the charge of Estafa under the Revised Penal Code, the appellate court likewise found that all the elements of said crime existed in the case at bar, i.e., "[Ritualo] misrepresented herself to the [Biacora] as the person who could send him to Australia for employment, and by reason of misrepresentations, false assurances and deceit, [Biacora] was induced to part with his money in payment of placement fees, thereby causing him damage and prejudice."[33]

The penalties imposed on Ritualo by the trial court, however, were modified by the Court of Appeals on the ground that the latter erred in imposing in the Illegal Recruitment case, an indeterminate sentence ranging from six (6) years and one (1) day, as minimum, to eight (8) years, as maximum, and to pay a fine of P200,000.00,"[34] in view of the penalty prescribed under Sec. 7 of Republic Act No. 8042; and, in the Estafa case, another indeterminate sentence ranging from six (6) months and one (1) day of prision correcional, as minimum, to seven (7) years, eleven (11) months and eleven (11) days of prision mayor, as maximum, contrary to the wordings of Art. 315 of the Revised Penal Code.

The fallo of the Court of Appeals decision is restated:

> UPON THE VIEW WE TAKE OF THESE CASES, THUS, the appealed decision finding the accused-appellant Carmen Ritualo y Ramos guilty beyond reasonable doubt of Simple Illegal Recruitment and Estafa is AFFIRMED, with the following MODIFICATIONS -
>
> - In Criminal Case No. 01-0076 (Simple Illegal Recruitment), the accused-appellant is sentenced to suffer the penalty of imprisonment of twelve (12) years and to pay a fine of P500,000.00.
>
> - In Criminal Case No. 01-0077 (Estafa), the accused-appellant is sentenced to an indeterminate prison term of four (4) years and two (2) months of prision correctional (sic), as minimum, to twelve (12) years of prision mayor, as maximum, and to indemnify the private complainant Felix Biacora the sum of P66,000.00 with the interest thereon at the legal rate from September 21, 2000 until the same is fully paid.
>
> Costs shall also be taxed against the accused-appellant.[35]

Hence, Ritualo filed the instant petition for review.

In this petition, Ritualo prayed for the reversal of the decision of the RTC, as affirmed with modification by the Court of Appeals, on the basis of the following assignment of errors:

> I.
> WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING WITH MODIFICATION THE DECISION OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT THE EVIDENCE ON RECORD COULD NOT SUPPORT A CONVICTION; and
>
> II.
> ASSUMING ARGUENDO THAT THE PETITIONER IS CULPABLE, THE HONORABLE COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE REGIONAL TRIAL COURT AS REGARDS THE TERM OF SENTENCE IN THE ILLEGAL RECRUITMENT CASE.[36]

Essentially, she argues that there "was no proof beyond reasonable doubt that x x x [she] gave Biacora a distinct impression that she had the power or ability to send him abroad for work such that the latter was convinced to part with his money."[37] Petitioner Ritualo maintains that Biacora transacted with Seraspe and not with her. Assuming for the sake of argument that she and Biacora had any agreement with each other, petitioner Ritualo insisted that it was merely to facilitate the latter's application for an Australian Visa. Particularly, she pointed out that the prosecution failed to present other witnesses who could have corroborated the claim of Biacora that she (Ritualo) promised him employment abroad. Anent the penalty imposed by the courts, petitioner disputed the appellate court's reasoning and claimed that the same was improper in view of the ruling of this Court in People v. Gallardo,[38] in which therein respondent was also convicted of Simple Illegal Recruitment.

The Office of the Solicitor General, for the People of the Philippines, on the other hand, asserted that the findings of the Court of Appeals were supported by the records of the case, i.e., "Biacora was consistent in his testimony that it was petitioner who illegally recruited him for work as a farmhand in Australia." Thus, "[a]s against the positive and categorical testimony of the private complainant (Biacora), petitioner's denial cannot prevail."

We find no merit in the petition.

Having weighed the evidence for the contending parties, there is no cogent reason to reverse the findings and conclusion of the RTC as affirmed by the Court of Appeals.

The crime of Simple Illegal Recruitment is defined and penalized under Sec. 6 of Republic Act. No. 8042, which reads:

> 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:
>
> (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;
>
> (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

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(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(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 worker 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 an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if 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.

Art. 315, par. 2(a) of the Revised Penal Code, on the other hand, enumerates one of the modes of committing estafa, thus:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit,

> agency, business or imaginary transactions, or by means of other similar deceits.

Illegal recruitment is committed when two essential elements concur:

> (1) that the offender has no valid license or authority required by law to enable him to lawfully engage in the recruitment and placement of workers, and
>
> (2) that the offender undertakes 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.[39]

Article 13(b) of the Labor 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. (Emphasis supplied.)

In this case, the first element is, indeed, present. The prosecution established, through Belen Blones of the Licensing Branch of the POEA, who identified and confirmed the two Certifications issued by the POEA Licensing Branch, that "per available records of [its] Office, CARMEN RITUALO, in her personal capacity is not licensed by this Administration to recruit workers for overseas employment."[40]

As to the second element, it must be shown that the accused gave the private complainant the distinct impression that he/she had the power or ability to send the private complainant abroad for work, such that the latter was convinced to part with his/her money in order to be employed.[41] Thus, to be engaged in illegal recruitment, it is plain that there must at least be a promise or an offer of employment from the person posing as a recruiter whether locally or abroad.[42] In the case at bar, the second element is similarly present. As testified to by Biacora, petitioner Ritualo professed to have the ability to send him overseas to be employed as a farm worker in Australia with a monthly salary of US$700.00.[43] To further wet Biacora's appetite, petitioner Ritualo even showed him purported travel documents of other people about to depart, whose overseas employment she supposedly facilitated. That petitioner Ritualo personally assisted Biacora in the completion of the alleged requirements, i.e., securing a Letter of Request and Guarantee from the Representative of his Congressional District in Batangas to ensure the approval of Biacora's application for an Australian Visa, even accompanying Biacora to the Australian Embassy, all clearly point to her efforts to convince Biacora that she (petitioner Ritualo) had, indeed, the ability and influence to make Biacora's dream of overseas employment come true.

The claim of petitioner Ritualo that it was Anita Seraspe who was really the recruiter and the one who profited from the subject illegal transaction holds no water. Petitioner Ritualo's act of receiving payment from Biacora and issuing personal receipts therefor; of personally assisting Biacora to complete the "necessary" documents; of failing to present evidence to corroborate her testimony despite several opportunities given her by the trial court; of petitioner Ritualo having been positively identified as the person who transacted with Biacora and promised the latter an overseas employment and who personally received money from Biacora, all unhesitatingly point to petitioner Ritualo as the culprit.

The following oral and documentary evidence are worth reproducing:

> COURT:
>
> Q: How many times did you receive money from private complainant?
>
> WITNESS:
>
> Three (3) times, Your Honor.

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Q: The first time?

A: My first time is Php40,000.00, Your Honor.

Q: The second time?

A: Php20,000.00, Your Honor.

Q: Third time?

A: Php20,000.00, Your Honor.

Q: When you received these amounts of money, who issued the private complainant a receipt?

A: I was the one, Your Honor.[44]

The first Cash Voucher issued by petitioner Ritualo declares:

CASH VOUCHER

5-1-2000

Payment for document Australia fourty (sic) thousand (sic) pesos (sic) only (P40,000.00)

RECEIVED from Felix Evangelista Biacora the amount of PESOS fourty thousand pesos (P40,000.00) in full payment of amount described above.

By: (Sgd.) Carmen Ritualo[45]

The second, on 4 May 2000, states:

CASH VOUCHER

5-4-2000

Payment for document Australia twenty (sic) thousand (sic) pesos (sic) only (P20,000.00)

RECEIVED from Felix Biacora the amount of PESOS twenty thousand (P20,000.00) in full payment of amount described above.

By: (Sgd.) Carmen Ritualo[46]

And the third receipt reads:

RECEIPT

No. _____ Date: 6-1-2000

RECEIVED from Felix Biacora the sum of Pesos Twenty thousand (P20,000.00) as payment for for Visa.

Partial _____ Cash _____?_____

Balance _____ Check No. _____

(Sgd.) Carmen Ritualo

Authorized Signature[47]

Petitioner Ritualo next tried to impress upon this Court that she received nary a centavo from the subject illegal transaction; therefore, she should not be held liable.

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We reject this outright. In the first place, it has been abundantly shown that she really received the monies from Biacora. Secondly, even without consideration for her services, she still engaged in recruitment activities, since it was satisfactorily shown that she promised overseas employment to Biacora. And, more importantly, Sec. 6 of Republic Act No. 8042 does not require that the illegal recruitment be done for profit.

Petitioner Ritualo boldly but vainly tried to inject reasonable doubt by complaining that the RTC and the Court of Appeals affirmed her conviction despite failure of the prosecution to present other vital witness, i.e., Biacora's wife, who accompanied her husband to the house of petitioner Ritualo and, hence, witnessed what happened on the first meeting between the latter and Biacora. Non-presentation of said witness, according to petitioner Ritualo, raises the presumption that her testimony, if presented, would be adverse to the prosecution.

The prosecution is entitled to conduct its own case and to decide what witnesses to call to support its charges.[48] The defense posture that the non-presentation of the wife of Biacora constitutes suppression of evidence favorable to petitioner Ritualo is fallacious. In fact, the same line of reasoning can be used against petitioner Ritualo. If the defense felt that the testimony of Biacora's wife would support her defense, what she could and should have done was to call her (Biacora's wife) to the stand as her own witness. One of the constitutional rights of the accused is "to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf." And, in the same vein, since petitioner Ritualo is setting the cloak of liability on Seraspe's shoulder, she (petitioner Ritualo) could and should have had the former subpoenaed as well.

As held by this Court, the adverse presumption of suppression of evidence does not, moreover, apply where the evidence suppressed is merely corroborative or cumulative in nature.[49] If presented, Biacora's wife would merely corroborate Biacora's account which, by itself, already detailed what occurred on the day of the parties' first meeting at the house of petitioner Ritualo. Hence, the prosecution committed no fatal error in dispensing with the testimony of Biacora's wife.

Finally, Biacora, the private complainant in this case, did not harbor any ill motive to testify falsely against petitioner Ritualo. The latter failed to show any animosity or ill feeling on the part of Biacora that could have motivated him to falsely accuse her of the crimes charged. It would be against human nature and experience for strangers to conspire and accuse another stranger of a most serious crime just to mollify their hurt feelings.[50]

The totality of the evidence in the case at bar, when scrutinized and taken together, leads to no other conclusion than that petitioner Ritualo engaged in recruiting and promising overseas employment to Felix Biacora under the above-quoted Sec. 6 of Republic Act No. 8042 vis-à-vis Article 13(b) of the Labor Code. Hence, she cannot now feign ignorance of the consequences of her unlawful acts.

As to the sentence imposed upon petitioner Ritualo for the crime of simple illegal recruitment, this Court clarifies that the penalty imposed by the Court of Appeals - a sentence of 12 years imprisonment and a fine of P500,000.00 - is partly incorrect, as petitioner Ritualo is a non-licensee.[51] Under Sec. 7(a) of Republic Act No. 8042, simple illegal recruitment is punishable by imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two Hundred Thousand Pesos (P200,000.00) nor more than Five Hundred Thousand Pesos (P500,000.00). Applying the provisions of Section 1 of the Indeterminate Sentence law, however, the correct penalty that should have been imposed upon petitioner Ritualo is imprisonment for the period of eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum.[52] The imposition of a fine of P500,000.00 is also in order.

With respect to the criminal charge of estafa, this Court likewise affirms the conviction of petitioner Ritualo for said crime. The same evidence proving petitioner Ritualo's criminal liability for illegal recruitment also established her liability for estafa. It is settled that a person may be charged and convicted separately of illegal

recruitment under Republic Act No. 8042 in relation to the Labor Code, and estafa under Art. 315, paragraph 2(a) of the Revised Penal Code. As this Court held in People v. Yabut[53]:

> In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is malum prohibitum where the criminal intent of the accused is not necessary for conviction, while estafa is malum in se where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and vice versa.

The prosecution has proven beyond reasonable doubt that petitioner Ritualo was similarly guilty of estafa under Art. 315 (2)(a) of the Revised Penal Code committed --

> By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

Both elements of the crime were established in this case, namely, (a) petitioner Ritualo defrauded complainant by abuse of confidence or by means of deceit; and (b) complainant Biacora suffered damage or prejudice capable of pecuniary estimation as a result.[54] Biacora parted with his money upon the prodding and enticement of petitioner Ritualo on the false pretense that she had the capacity to deploy him for employment in Australia. In the end, Biacora was neither able to leave for work overseas nor did he get his money back, thus causing him damage and prejudice. Hence, the conviction of petitioner Ritualo of the crime of estafa should be upheld.

While this Court affirms the conviction of the petitioner Ritualo for estafa, we find, however, that both the trial court and the appellate court erroneously computed the penalty of the crime. The amount of which the private complainant, Biacora, was defrauded was Eighty Thousand Pesos (P80,000.00) and not merely Sixty Six Thousand Pesos (P66,000.00).

Under the Revised Penal Code, an accused found guilty of estafa shall be sentenced to:

> Art. 315. Swindling (estafa). -- Any person who shall defraud another by any of the means mentioned herein below shall be punished by:
>
> 1st. 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 amount 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 under the provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.
>
> 2nd. The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;
>
> 3rd. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and
>
> 4th. By arresto mayor in its maximum period, if such amount does not exceed 200 pesos, x x x.

Computing the penalty for the crime of Estafa based on the above-quoted provision, the proper penalty to be imposed upon petitioner Ritualo is the maximum term of prision correccional maximum to prision mayor minimum as mandated by Article 315 of the Revised Penal Code. But considering that the amount defrauded exceeded Twenty-Two Thousand Pesos (P22,000.00), per the same provision, the prescribed penalty is not only imposed in its maximum period, but there is imposed an incremental penalty of one (1) year imprisonment for every Ten Thousand Pesos (P10,000.00) in excess of the cap of Twenty-Two Thousand Pesos (P22,000.00).[55] As this Court held in People v. Gabres,[56] "[t]he fact that the amounts involved in the instant case exceed P22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence."[57] And with respect to the computation of the minimum term of the indeterminate sentence, in this case, given that the penalty prescribed by law for the estafa charge against petitioner Ritualo is prision correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional minimum to medium per Art. 64 in relation to Art. 65, both of the Revised Penal Code.

Preceding from the above discussion, thus, the prison term to be imposed upon petitioner Ritualo vis-à-vis the crime of Estafa is as follows: the minimum term should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months of prision correccional; while the maximum term of the indeterminate sentence should be within the range of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of prision mayor considering that the amount involved exceeds P22,000.00, plus an added five (5) years, as there are five (5) increments of P10,000.00 over the cap of P22,000.00.[58]

Lastly, regarding the award of indemnity due from petitioner Ritualo, both the RTC and Court of Appeals ordered her to pay Biacora the amount of Sixty-Six Thousand Pesos (P66,000.00), instead of the original amount defrauded, which is Eighty Thousand Pesos (P80,000.00), in view of petitioner Ritualo's payment of Fourteen Thousand Pesos (P14,000.00). A thorough scrutiny of the record of the case, however, yields the finding that as of the date of revival of the case before the RTC, or on 13 October 2003, only the amount of Twenty-One Thousand Pesos (P21,000.00) remains unpaid. The Motion to Revive Case dated 2 October 2003 filed by the prosecution attached the letter-request of private complainant Biacora, elucidating thus:

> I, MR. FELIX BIACORA, complainant against MRS. CARMEN RITUALO with Case No. 01-0076-77. This case is temporary (sic) dismissed on May 26, 2003 in Branch 1999 (sic).
>
> On May 26, 2003 MRS. CARMEN RITUALO made written promise that she will pay the balance amounting P21,000.00 Twenty Thousand Pesos after 3 months but she failed.
>
> Due that (sic) her promise did not materialized (sic), I personally request the Hon. Court to REVIVE this case.
>
> Respectfully yours,
>
> (Sgd.) MR. FELIX BIACORA

With the foregoing submission of Biacora, out of the amount of Eighty Thousand Pesos (P80,000.00), only Twenty-One Thousand Pesos (P21,000.00) remains unpaid. Accordingly, the civil liability of petitioner Ritualo is now merely Twenty-One Thousand Pesos (P21,000.00).

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. CR No. 29393 promulgated on 23 April 2007 is AFFIRMED with the following MODIFICATIONS:

(1) In Criminal Case No. 01-0076, petitioner Carmen Ritualo is found GUILTY beyond reasonable doubt of the crime of Simple Illegal Recruitment, and is sentenced to suffer an indeterminate prison term of eight (8) years and one (1) day as minimum, to twelve (12) years, as maximum, and to pay a fine of P500,000.00; and

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(2) In Criminal Case No. 01-0077, petitioner Carmen Ritualo is also found GUILTY beyond reasonable doubt of the crime of Estafa and sentenced to suffer an indeterminate prison term of four (4) years and two (2) months of prision correccional, as minimum, to eleven (11) years and eight (8) months and twenty-one (21) days of prision mayor, as maximum.

Petitioner Carmen R. Ritualo is similarly ORDERED to indemnify Felix E. Biacora the amount of P21,000.00. Costs de oficio.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Peralta, and Bersamin[*], JJ., concur.

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[*] Associate Justice Lucas P. Bersamin was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 22 June 2009.

[1] Penned by Court of Appeals Associate Justice Renato C. Dacudao with Associate Justices Noel G. Tijam and Sesinando E. Villon, concurring; rollo, pp. 95-115.

[2] Penned by Hon. Joselito J. Vibandor, Presiding Judge, RTC Branch 199, Las Piñas City; id. at 58-70.

[3] Records, p. 269.

[4] Id.

[5] Id. at 1.

[6] Id. at 3.

[7] Id. at 83.

[8] Id. at 130.

[9] Id. at 134.

[10] Id. at 170.

[11] TSN, 10 March 2003; TSN, 5 May 2003.

[12] Id. at 4-5.

[13] Records, p. 8.

[14] Id.

[15] Id. at 164.

[16] TSN, 10 March 2003; TSN, 5 May 2003.

[17] Records, p. 164.

[18] TSN, 5 May 2003, p. 20.

[19] Denominated as "Receipt"; records, p. 165.

[20] Certification issued by Hermogenes C. Mateo, Director II, Licensing Branch, POEA; Exhibit "E"; records, p. 168.

[21] Felicitas Q. Bay, Director II, Licensing Branch, POEA; Exhibit "F-1"; records, p. 169.

[22] Id. at 168.

[23] Id. at 169.

[24] TSN, 16 February 2004, pp. 55-56.

[25] Id. at 56.

[26] TSN, 14 April 2004, pp. 85-86.

[27] Rollo, p. 70.

[28] Records, p. 289.

[29] Id. at 304.

[30] Id. at 300-301.

[31] Rollo, p. 111.

[32] Id. at 112.

[33] Id. at 113.

[34] Id. at 112.

[35] Id. at 114.

[36] Id. at 24-25.

[37] Id. at 27.

[38] 436 Phil. 698 (2002).

[39] People v. Navarra, Sr., 404 Phil. 693, 701 (2001).

[40] Records, pp. 168-169.

[41] People v. Angeles, 430 Phil. 333, 346 (2002).

[42] Id.

[43] Complaint-affidavit which was admitted in evidence and its contents confirmed on the witness stand by Biacora.

[44] TSN, 16 February 2004, pp. 18-19.

[45] Exhibit "B-1"; records, p. 164.

[46] Exhibit "B-3"; id. at 164.

[47] Exhibit "C"; id. at 165.

[48] People v. Armentano, G. R. No. 90803, 3 July 1992, 211 SCRA 82, 87.

[49] Tarapen v. People, G.R. No. 173824, 28 August 2008, 563 SCRA 577, 593, citing People v. De Jesus, G.R. No. 93852, January 24, 1992, 205 SCRA 383, 391.

[50] People v. Reichl, 428 Phil. 643, 664 (2002).

[51] Sec. 7, Republic Act. No. 8042.

SEC. 7. Penalties. -

(a) Any persons found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine or not less that Two hundred thousand pesos (P200,000.00) nor more than Five hundred thousand pesos (P500,000.00);

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than One million pesos (P1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

[52] People v. Hu, G.R. No. 182232, 6 October 2008, 567 SCRA 696, 713-714.

[53] 374 Phil. 575, 586 (1999).

[54] People v. Temporada, G.R. No. 173473, 17 December 2008.

[55] Provided that the total penalty that may be imposed shall not exceed 20 years.

[56] 335 Phil. 242 (1997).

[57] Id. at 257.

[58] The additional five (5) years is in view of the five (5) increments of Ten Thousand Pesos (P10,000.00) representing the difference of the amount defrauded by petitioner Ritualo, which is Eighty Thousand Pesos (P80,000.00), or Fifty Eight Thousand Pesos (P58,000.00) more than the cap of Twenty-Two Thousand Pesos (P22,000.00) provided by law.

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