

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARLYN P. BACOS, APPELLANT.

G.R. No. 178774. December 08, 2010

Ponente: BRION, J.

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BRION, J.:

For review is the decision,[1] dated April 18, 2007, of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01713 which affirmed the decision[2] of the Regional Trial Court (RTC), Branch 79, Quezon City, in Criminal Case No. Q-96-65212 finding Marlyn P. Bacos (appellant) guilty beyond reasonable doubt of illegal recruitment in large scale. The RTC sentenced her to suffer life imprisonment and to pay a fine of P100,000.00.

This is not the first time we have passed upon this case as we previously disposed of the appellant's appeal in our Resolutions dated April 14, 2010 and August 23, 2010. We are once more passing upon this case as we committed an oversight in our previous Resolutions; one of the justices of the Court who then participated and voted for the denial of the present appeal was also a member of the Division that handled the case at the CA. Hence, the need to resubmit this case for another consideration and decision, with a new Member replacing the Justice who should not have participated in resolving this case before this Court.

The Facts

Together with her common law husband Efren Dimayuga, the appellant was charged of illegal recruitment in large scale before the RTC, based on the complaints filed by ten (10) individuals. The appellant and Dimayuga pleaded not guilty, and a joint trial ensued. Dimayuga died during the pendency of the trial, leaving the appellant to face the charges.

Of the ten (10) complainants, only three (3) testified, namely: Cynthia Deza, Elizabeth Paculan and Ramelo Gualvez (complainants). The complainants claimed that within the period of December 1993 to September 1994, they met Dimayuga and the appellant at their house. Dimayuga represented that he was a recruiter who could send them to work in Japan. The appellant likewise assured the complainants that they (she and Dimayuga) could send them abroad. Believing that Dimayuga was a legitimate recruiter, the complainants parted with their money to be used as placement and processing fees. The money was given by the complainants either to Dimayuga while in the presence of the appellant, or handed to the appellant who gave it to Dimayuga. Dimayuga issued receipts for the money received.

The complainants were not deployed within the period promised by Dimayuga. The complainants also discovered that Dimayuga and the appellant moved to another house. Believing that they had been duped, the complainants and the other applicants filed complaints for illegal recruitment against Dimayuga and the appellant before the authorities.

The prosecution presented documentary evidence consisting of two (2) Certifications (dated December 1, 1999 and January 19, 2000) from the Philippine Overseas Employment Administration stating that Efren Dimayuga,

Marlyn P. Bacos and Marlyn Reyes y Bacos are not authorized to recruit workers for overseas employment.

In her defense, the appellant testified that she had no participation in the transactions between her husband and the complainants. She denied having received any money from the complainants, and likewise denied signing any receipt for payments made. The appellant claimed that she only served the complainants snacks whenever they came to where she and Dimayuga then resided.

The defense presented Pulina Luching who testified that Dimayuga and the appellant were both known to her, having lived with them for a time. The witness denied having any knowledge of the nature of Dimayuga's business.

The RTC Ruling

The RTC gave credence to the testimonies of the complainants, which it found to be straightforward and consistent. The RTC observed that the appellant did not refute the allegation that Dimayuga was engaged in the recruitment and placement business. The RTC ruled that sufficient evidence existed establishing that the two accused conspired in engaging in illegal recruitment activities. The RTC found that the appellant gave indispensable assistance to Dimayuga in perpetrating the fraud by receiving the amounts of money for placement fees and assuring the complainants that Dimayuga can deploy them for employment abroad. Under the circumstances, the RTC ruled that the appellant's denial deserved little credence in light of the positive testimony coming from credible prosecution witnesses.

The CA Ruling

The CA upheld the factual findings of the RTC on appeal. The CA ruled that all the elements of illegal recruitment, as defined under Article 13(b) of the Labor Code in relation to Article 34 of the same Code, were sufficiently proven by the prosecution evidence. The CA held that the appellant is liable as principal, considering that she actively participated in the recruitment process by giving the victims the assurance that Dimayuga could deploy them for employment abroad. The CA declared that the appellant's acts fall within the legal definition by enumeration of what constitutes "recruitment."

The Issues

The appellant assigns the following errors for the Court's consideration:

- (1) In finding the appellant as principal in the crime charged absent any direct and clear evidence of her active participation in the illegal recruitment; and
- (2) In the alternative, the appellant is only liable as an accomplice under the circumstances.

The Court's Ruling

We deny the appeal and affirm the appellant's conviction, with modification on the award of damages.

Together with Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), the law governing illegal recruitment is the Labor Code which 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." [3] The same Code also defines and punishes Illegal recruitment. Its Articles 38 and 39 state:

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. x x x

(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.

x x x Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Art. 39. Penalties. -

(a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein[.]

Applying these legal provisions to the facts, no doubt exists in our mind that the appellant committed illegal recruitment activities together with Dimayuga. The prosecution evidence clearly showed that despite the lack of license or authority to engage in recruitment, the appellant admitted that she gave the complainants "assurances" that she and Dimayuga could deploy them for employment in Japan. The complainants, in this regard, were categorical in saying that they relied not only on the representations of Dimayuga but also on the assurances of the appellant that they would be deployed for work in Japan.

We arrive at this conclusion after additionally considering the following established acts of the appellant: (a) her acceptance of the placement fee given by the complainants; (b) the fact that she communicated to the complainants the date of their departure; and (c) her information on how the balance of the placement fee should be paid. These acts indubitably show that she was engaged in illegal recruitment activities together with Dimayuga. Thus, the appellant's liability under the circumstances cannot be considered as that of a mere accomplice, but rather as a principal directly and actively engaged in illegal recruitment activities.

Lastly, the appellant's argument that she did not derive any consideration from the transactions or that she made the assurances after Dimayuga's representations were made to the complainants cannot serve to exonerate her from the crime. We emphasize that the absence of a consideration or misrepresentations employed by the appellant is not material in the prosecution for illegal recruitment. By its very definition, illegal recruitment is deemed committed by the mere act of promising employment without a license or authority and whether for profit or not. Moreover, we previously held that the time when the misrepresentation was made, whether prior or simultaneous to the delivery of the money of the complainants, is only material in the crime of estafa under Article 315(2)(a) of the Revised Penal Code, as amended, and not in the crime of illegal recruitment.[4]

For all these reasons, we affirm the CA's finding that the appellant committed illegal recruitment in large scale.

The Penalty

The illegal recruitment having been committed against three victims is illegal recruitment in large scale, as provided under the aforementioned Articles 38 and 39 of the Labor Code. We, thus, likewise affirm the CA's ruling imposing the penalty of life imprisonment and a fine of P100,000.00, pursuant to the first paragraph of Article 39 of the Labor Code, as amended. Committed in large scale, the illegal recruitment is deemed to constitute economic sabotage.

We find as well that the CA decision should be modified by adding an award of legal interest with respect to the complainants' civil indemnity. The amounts of civil indemnity represent the amount of placement fees that the complainants paid to Dimayuga and the appellant. The legal interest of twelve percent (12%) per annum shall be

imposed, reckoned from the filing of the information until the finality of the judgment, consistent with prevailing jurisprudence.[5]

WHEREFORE, premises considered, the Court resolves to:

- (1) RECALL the Resolutions dated April 14, 2010 and August 23, 2010.
- (2) DENY the appeal for failure to sufficiently show that a reversible error was committed by the Court of Appeals in the assailed decision; and
- (3) AFFIRM with MODIFICATION the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01713 which affirmed the decision of the Regional Trial Court, Branch 79, Quezon City, in Criminal Case No. Q-96-65212, finding Marlyn P. Bacos guilty beyond reasonable doubt of illegal recruitment in large scale. Appellant is ordered to indemnify the complainants the following amounts:
 - (a) Cynthia Deza - P20,000;
 - (b) Elizabeth Paculan - P10,000; and
 - (c) Ramelo Gualvez - P5,000

representing the amounts paid by the complainants as placement fees, plus 12% legal interest per annum that shall be reckoned from the filing of the information until the finality of the judgment.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Penned by CA Associate Justice Romeo F. Barza and concurred in by CA Associate Justices Mariano C. Del Castillo (now Supreme Court Associate Justice) and Arcangelita M. Romilla-Lontok, dated April 18, 2007. Rollo, pp. 2-13.

[2] Penned by Judge Fernando T. Sagun, Jr., dated November 14, 2005.

[3] Labor Code, Article 13(b).

[4] *People v. Calimon*, G.R. No. 175229, January 29, 2009, 577 SCRA 116.

[5] *People v. Hu*, G.R. No. 182232, October 6, 2008, 567 SCRA 696.

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