ARLENE N. LAPASARAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 179907. February 12, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court, filed by petitioner Arlene N. Lapasaran, assails the Court of Appeals Decision[1] dated June 28, 2007 and its Resolution[2] dated September 12, 2007, in CA-G.R. CR No. 29898.

The facts of the case follow:

In September 2001, private complainant Menardo Villarin (Menardo) and his sister Vilma Villarin (Vilma) met petitioner Arlene N. Lapasaran, who worked at Silver Jet Travel Tours Agency (Silver Jet) at SIMCAS Building, Makati. For a fee of P85,000.00, petitioner undertook the processing of the papers necessary for the deployment (under a tourist visa) and employment of Menardo in South Korea. Petitioner informed Menardo that he would be employed as "factory worker," which was, subsequently, changed to "bakery worker."[3] Thereafter, Menardo paid the said fee in installments, the first in September 2001 in the amount of P10,000.00, which was received by a certain Pastor Paulino Cajucom;[4] the second installment was P35,000.00; while the third and last payment was P40,000.00; the last two installments were delivered to the petitioner.[5]

After two postponements in his flight schedule, Menardo finally left for South Korea on November 25, 2001. Unfortunately, he was incarcerated by South Korean immigration authorities and was immediately deported to the Philippines because the travel documents issued to him by the petitioner were fake.[6] He immediately contacted petitioner and informed her of what happened. Thereupon, petitioner promised to send him back to South Korea, but the promise was never fulfilled. Consequently, Menardo and his sister Vilma demanded the return of the money they paid, but petitioner refused and even said, "Magkorte na lang tayo."[7] It was later found out that petitioner was no longer connected with Silver Jet.

Hence, the separate charges for illegal recruitment and estafa against petitioner before the Regional Trial Court (RTC) of Manila. Raffled to Branch 34, the cases were docketed as Criminal Case No. 03-215331 for Illegal Recruitment and Criminal Case No. 03-215332 for Estafa.[8] When arraigned, she pleaded not guilty to both charges.

In her defense, petitioner testified that she owned a travel agency named A&B Travel and Tours General Services, engaged in the business of visa assistance and ticketing. She averred that it was Vilma who solicited her assistance to secure a tourist visa for Menardo. She admitted transacting with the Villarins, but committed only to securing a tourist visa and a two-way airplane ticket for Menardo, for which she received P70,000.00 as payment. She denied having recruited Menardo Villarin; she likewise denied having promised him employment in South Korea.[9]

On February 15, 2005, the RTC rendered a Decision finding petitioner guilty beyond reasonable doubt of illegal recruitment and estafa.[10]

On appeal, the Court of Appeals (CA) affirmed the RTC Decision with a modification in the penalty imposed in Criminal Case No. 03-215332 for estafa.[11]

Petitioner now comes before this Court on the sole issue of:

> WHETHER OR NOT THE LAWS ON ILLEGAL RECRUITMENT AND ESTAFA ARE APPLICABLE IN THESE CASES.[12]

We deny the petition.

Both the trial and appellate courts found the testimonies of the prosecution witnesses credible and convincing. We are, therefore, inclined to respect such finding. The best arbiter of the issue of the credibility of the witnesses and their testimonies is the trial court. When the inquiry is on that issue, appellate courts will not generally disturb the findings of the trial court, considering that the latter was in a better position to decide the question, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial. Its finding thereon will not be disturbed, unless it plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case. We find no cogent reason to disturb the trial court's conclusion, as affirmed by the CA.[13]

In the first case, petitioner was charged with illegal recruitment, defined and penalized by the Labor Code as amended by Republic Act (R.A.) No. 8042.[14] Illegal recruitment is committed when it is shown that petitioner gave the complainant the distinct impression that she had the power or ability to send the complainant abroad for work, such that the latter was convinced to part with his money in order to be employed.[15] To be engaged in the practice of recruitment and placement, 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.[16] Petitioner's misrepresentations concerning her purported power and authority to recruit for overseas employment, and the collection from Menardo of various amounts, clearly indicate acts constitutive of illegal recruitment.

Petitioner's claim that she did not represent herself as a licensed recruiter, but that she merely tried to help the complainants secure a tourist visa could not make her less guilty of illegal recruitment, it being enough that she gave the impression of having had the authority to recruit workers for deployment abroad.[17]

As provided in Section 7(a)[18] of R.A. No. 8042, the CA correctly affirmed the imposition of the indeterminate penalty of six (6) years and one (1) day to eight (8) years, and the payment of a fine of P200,000.00, in Criminal Case No. 03-215331.

In the second case, petitioner was charged with violation of Article 315(2)(a) of the Revised Penal Code (RPC) which punishes estafa committed as follows:

> 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.

The elements of the crime are: (a) the accused defrauded another by abuse of confidence or by means of deceit; and (b) damage or prejudice capable of pecuniary estimation is caused to the offended party.[19]

Here, it has been sufficiently proven that petitioner represented herself to Menardo as capable of sending him to

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South Korea for employment, even if she did not have the authority or license for the purpose. Undoubtedly, it was this misrepresentation that induced Menardo to part with his hard-earned money in exchange for what he thought was a promising future abroad. The act of petitioner clearly constitutes estafa under the above-quoted provision.[20]

It is well established in jurisprudence that a person may be convicted of both illegal recruitment and estafa. The reason, therefore, is not hard to discern: illegal recruitment is malum prohibitum, while estafa is malum in se. In the first, the criminal intent of the accused is not necessary for conviction. In the second, such an intent is imperative.[21]

Lastly, the CA correctly modified the penalty imposed by the RTC for the crime of estafa in Criminal Case No. 03-215332.

Article 315 of the RPC fixes the penalty for Estafa, viz.:

> 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 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 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.

As the amount involved is P75,000.00 which exceeds P22,000.00, the penalty should be imposed in its maximum period which is six (6) years, eight (8) months and twenty-one (21) days to eight (8) years adding one year for every additional P10,000.00, provided the total penalty does not exceed 20 years. Hence, since the amount of the fraud exceeds P22,000.00 by P53,000.00, then a total of five (5) years should be added to the above-stated maximum period.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC as discussed above. On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code, which is prision correccional in its minimum and medium periods ranging from six (6) months and one (1) day to four (4) years and two (2) months.

Accordingly, in Criminal Case No. 03-215332, the CA correctly imposed the indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to eleven (11) years, eight (8) months and twenty-one (21) days of prision mayor, as maximum.

WHEREFORE, premises considered, the petition is DENIED for lack of merit. The Decision of the Court of Appeals dated June 28, 2007 and its Resolution dated September 12, 2007, in CA-G.R. CR No. 29898, are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Peralta, JJ., concur.

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[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring; rollo, pp. 11-29.

[2] Rollo, pp. 8-9.

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[3] Id. at 14.

[4] Id. at 28.

[5] Id. at 14.

[6] Id. at 15.

[7] Id.

[8] Id. at 11-12.

[9] Id. at 15-16.

[10] Id. at 13-14.

[11] Id. at 28-29.

[12] Id. at 39.

[13] People v. Alvarez, 436 Phil. 255, 271 (2002).

[14] Otherwise known as the "Migrant Workers Act of 1995."

[15] People v. Gasacao, G.R. No. 168445, November 11, 2005, 474 SCRA 812, 822.

[16] People v. Gallardo, 436 Phil. 698, 711 (2002).

[17] People v. Ordoño, 390 Phil. 649, 666 (2000).

[18] Sec. 7. Penalties.

(a) Any person 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 of not less than Two hundred thousand pesos (P200,000.00) nor more than Five hundred thousand pesos (P500,000.00).

[19] People v. Ordoño, supra note 17, at 669.

[20] People v. Comila, G.R. No. 171448, February 28, 2007, 517 SCRA 153, 167-168; People v. Ballesteros, 435 Phil. 205, 228 (2002).

[21] People v. Comila, supra note 20, at 167.

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