

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RACHELLE BALAGAN AND HERMINIA AVILA, APPELLANTS.

G.R. No. 183099. February 03, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the November 29, 2007 Decision[1] of the Court of Appeals which affirmed with modification the July 19, 2006 Decision[2] of the Regional Trial Court, Branch 118, Pasay City convicting Rachelle Balagan and Herminia Avila (appellants) in Criminal Case Nos. 03-2683 and 03-2684, for syndicated illegal recruitment and estafa, respectively, appellants come to the Court.

The Informations in the cases read:

Criminal Case No. 03-2683
(For Syndicated Illegal Recruitment)

That on or about the period comprising March 21, 2003 to March 28, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, by falsely representing themselves to have the capacity to contract, enlist, employ, and recruit workers for overseas deployment/employment as Factory Worker in Ireland, did then and there willfully, unlawfully, feloniously, for a fee recruit and promise overseas deployment/employment to private complainant Michael O. Fernandez without first securing the required license or authority from the Philippine Overseas Employment Agency.

Contrary to law.[3] (emphasis in the original)

Criminal Case No. 03-2684
(For Estafa)

That on or about the period comprising March 21, 2003 to March 28, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, defrauded private complainant Michael O. Fernandez in the following manner to wit: that accused, with deliberate intent to defraud and deceive and pretending to possess the capacity to contract, enlist and employ or deploy private complainant as a Factory Worker in Ireland, did then and there willfully, unlawfully and feloniously demand and did actually receive from private complainant the total amount of Php.57,000.00 for and as his supposed work permit, job placement or overseas deployment and POEA processing fees, knowing said manifestation and representation to be false and fraudulent and once in possession of said amount and far from complying with their promise of employment or deployment and despite demands to return the amount paid, accused with intent to defraud, did misappropriate, misapply and convert to their own personal use and benefit private complainant's Php. 57,000.00, to the damage and prejudice of the said complainant in the total amount of Php. 57,000.00.

Contrary to law.[4] (emphasis in the original; underscoring supplied)

As summarized by the trial court which is supported by the records of the cases, the evidence for the prosecution and that for the defense are as follows:

EVIDENCE OF THE PROSECUTION

Fernandez testified that sometime in February 2003, he together with a friend who knows Rosabel Balagan, mother of Rachel, went to EGI Building located at Gil Puyat Street, Pasay City purposely to apply for work abroad. Once in the said office, he was able to talk to Rosabel, Rachel Herminia and some other applicants. He knows that Rachelle and Herminia were clerk and secretary, respectively, at the said office and they entice people that they could send workers abroad. The accused asked him if he was really interested in applying for work and when he answered in the affirmative, Rosabel told him to submit his passport, ID pictures and a "bank account" of P500.00. After he had submitted the requirements, Rosabel told him that the amount of P150,000.00 is needed for deployment to Ireland and he will be able to leave by 28 March 2003. Rachel and Herminia affirmed to him the statements of Rosabel.

On 21 March 2003, he gave P37,000.00 to Rosabel and on the following day additional P20,000.00, or a total of P57,000.00 out of the P150,000.00 asked by the accused. He was supposed to give the money personally to Rosabel but the latter told him to hand the same to Herminia who then issued official receipts nos. 263 and 264 to him. The receipts were signed by Rosabel.

He and the other complainants whom he got acquainted with were not able to leave the country on 28 March 2003. He then asked Rosabel to return the money to him but the latter refused to do so. When he later on went to the POEA he learned that the accused are not licensed to recruit workers for abroad. Thereafter, he lodged a complaint before the CIDG where he executed his two (2) affidavits.

On cross-examination, he testified that it was Rosabel who promised to send him abroad; that the family of Rosabel owns the travel agency that recruited him and he has no proof whatsoever that Rachel and Herminia are business partners of the former; and that Herminia and Cristino were more than mere employees of Rosabel because they act as her agents.

On additional cross-examination, he admitted that the receipts issued to him were for documentation purposes only; that he was aware that the office was only a Travel Consultancy; and that if not for his companion, Kim Folgueras, who referred him to the office of the accused, he would not have come to know of Rosabel.

On redirect examination, he identified an application for tenant contractor identification card showing, among others, the names of Rosabel Balagan as General Manager, Herminia Avila as Secretary, Rachelle Balagan as Clerk, and an advertisement in the souvenir program of San Manuel Town Fiesta 2003 showing the greetings from Rosabel Travel Consultancy, with the name of Rosabel as President and General Manager, Herminia as Secretary and Administrative Assistant, and Rachelle as Clerk and other names of the office staff.

He positively identified Rachel and Herminia. He also identified his two (2) affidavits.

When the prosecution called on Bolivar, the defense stipulated that said witness is a Senior Labor and Employment officer at the POEA; that Rachel and Herminia were both not authorized by POEA to engage in the business of recruitment for abroad as evidenced by a certification issued by said office; and that a license for travel agency is different from that of a recruitment agency.

EVIDENCE OF THE DEFENSE

Herminia denied that she has anything to do with the cases filed by Fernandez, much less with receipt for the total amount of P57,000.00 which were signed by Rosabel and that she was connected with Rosabel Travel Consultancy. She alleged that she and her husband Edwin were also applicants at Rosabel Travel Consultancy as evidenced by an official receipt issued by Rosabel which shows that they paid said office for their travel to Australia. To further support her claim, she also presented her passport.

She further testified that she met Fernandez at the boarding house and often saw him when the latter was following up his application at the agency; that she was included as an accused so that Fernandez could use her in going after Rosabel who at that time was not yet arrested; and since she was then living in the boarding house of Rosabel, Fernandez suspected that she might know where Rosabel was hiding.

On cross-examination, she readily identified the name and picture appearing in the advertisement in the souvenir program of San Manuel Town Fiesta 2003 as hers and admitted that she has no conflict or misunderstanding whatsoever with Fernandez.

Like Herminia, Rachel denied Fernandez' accusation and that allegation that she received the total amount of P57,000.00; that she had conspired with Herminia; that she was connected with Rosabel Travel Consultancy; that she has any position in the said agency; and that she ever talked to any of its clients. She identified the signatures on the receipts to be that of her mother Rosabel. She testified that she only met Fernandez in the courtroom.

Again, like Herminia, Rachel admitted that her name and picture appear on the Tenants Contractors Identification and Souvenir Program of San Manuel Town Plaza.[5] (*italics, underscoring and capitalization in the original*)

By Decision of July 19, 2006, the trial court, as reflected earlier, convicted appellants of the crimes charged, disposing as follows:

WHEREFORE, all the foregoing considered, Rachelle Balagan and Herminia Avila are hereby found GUILTY beyond reasonable doubt of the crime of Syndicated Illegal Recruitment in Criminal Case No. 03-2683 and Estafa in Criminal case No. 03-2684. Accordingly, they are hereby sentenced to suffer the following penalties:

1. In Criminal Case No. 03-2863- LIFE IMPRISONMENT and a FINE of One Million Pesos (P1,000,000.00), each the maximum penalty under the law because the crime was committed by non-licensees or non-holders of authority; and
2. In Criminal Case No. 03-2864-Indeterminate imprisonment of four (4) years and two (2) months of prison correccional medium, as minimum, to eleven (11) years of prison mayor maximum, as maximum. The accused are also ordered to indemnify Michael Fernandez the sum of Fifty Seven Thousand Pesos (P57,000.00) with legal interest from the time of the filing of the information.

In the meantime, let the cases be archived with respect to Arnel Cristino. Let an alias warrant be issued against him.

Cost against the accused.[6] (*italics and capitalization in the original; underscoring supplied*)

As reflected too earlier, the appellate court affirmed the trial court's decision. It modified the penalty imposed in the case for estafa, however.

In the case for Syndicated Illegal Recruitment, the appellate court credited the position of the Office of the Solicitor General that the prosecution failed to establish that the illegal recruitment was committed by a syndicate.[7] It instead found appellants culpable of Simple Illegal Recruitment.

Modifying the penalty imposed, in the case for Estafa, the appellate court, citing *People v. Logan*,[8] thus disposed in the two cases:

WHEREFORE, in view of the foregoing disquisitions, the appealed decision of the Regional Trial Court of Pasay City, Branch 118 is AFFIRMED with the following MODIFICATIONS:

- (1) In Criminal Case No. 03-2683, appellants Rachelle Balagan and Herminia Avila are found GUILTY beyond reasonable doubt of the crime of Simple Illegal Recruitment only, and are each sentenced to suffer a

prison term of six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P200,000.00

(2) In Criminal Case No. 03-2684, appellants Rachelle Balagan and Herminia Avila are found GUILTY beyond reasonable doubt of the crime of Estafa and are each sentenced to suffer a prison term of four (4) years and two (2) months of prision correccional, as minimum, to nine (9) years and one (1) day of prision mayor, as maximum and is ORDERED to indemnify Michael O. Fernandez in the amount of Fifty Thousand Pesos (Php57,000.00) . (capitalization, emphasis and italics in the original; underscoring supplied)

Hence, the present appeal.

After a review of the records of the cases, the Court affirms the Decision of the appellate court but modifies the penalty it imposed in the case for Estafa, following *People v. Temporada*[9] which instructs:

The prescribed penalty for estafa under Article 315, par. 2(d) of the RPC, when the amount defrauded exceeds P22,000.00, is prision correccional maximum to prision mayor minimum. The minimum term is taken from the penalty next lower or anywhere within prision correccional minimum and medium (i.e., from 6 months and 1 day to 4 years and 2 months). Consequently, the RTC correctly fixed the minimum term for the five estafa cases at 4 years and 2 months of prision correccional since this is within the range of prision correccional minimum and medium.

On the other hand, the maximum term is taken from the prescribed penalty of prision correccional maximum to prision mayor minimum in its maximum period, adding 1 year of imprisonment for every P10,000.00 in excess of P22,000.00, provided that the total penalty shall not exceed 20 years. However, the maximum period of the prescribed penalty of prision correccional maximum to prision mayor minimum is not prision mayor minimum as apparently assumed by the RTC. To compute the maximum period of the prescribed penalty, prision correccional maximum to prision mayor minimum should be divided into three equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65 of the RPC. Following this procedure, the maximum period of prision correccional maximum to prision mayor minimum is from 6 years, 8 months and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court.

In computing the incremental penalty, the amount defrauded shall be subtracted by P22,000.00, and the difference shall be divided by P10,000.00. Any fraction of a year shall be discarded as was done starting with the case of *People v. Pabalan* in consonance with the settled rule that penal laws shall be construed liberally in favor of the accused. The doctrine enunciated in *People v. Emerito*, insofar as the fraction of a year was utilized in computing the total incremental penalty should, thus, be modified. In accordance with the above procedure, the maximum term of the indeterminate sentences imposed by the RTC should be as follows:

In Criminal Case No. 02-208372, where the amount defrauded was P57,600.00, the RTC sentenced the accused to an indeterminate penalty of 4 years and 2 months of prision correccional as minimum, to 9 years and 1 day of prision mayor as maximum. Since the amount defrauded exceeds P22,000.00 by P35,600.00, 3 years shall be added to the maximum period of the prescribed penalty (or added to any where from 6 years, 8 months and 21 days to 8 years, at the discretion of the court). The lowest maximum term, therefore, that can be validly imposed is 9 years, 8 months and 21 days of prision mayor, and not 9 years and 1 day of prision mayor.[10] (italics in the original; emphasis and underscoring supplied)

WHEREFORE, the assailed November 29, 2007 Decision of the Court of Appeals is AFFIRMED with MODIFICATION in that in the case for Estafa, each appellant is sentenced to suffer a prison term of four (4) years and two (2) months of prision correccional, as minimum, to nine (9) years, eight (8) months, and twenty-one (21) days of prision mayor, as maximum.

In all other respects, the Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] CA rollo, pp. 105-130. Penned by Justice Jose L. Sabio, Jr., with the concurrence of Justices Jose C. Reyes, Jr. and Myrna Dimaranan-Vidal.

[2] Records, Criminal Case No. 03-2684, pp. 132-144.

[3] Records, Criminal Case No. 03-2683, p. 1.

[4] Records, Criminal Case No. 03-2684, p. 1.

[5] Id. at 147-150.

[6] Id. at 156-157.

[7] Under Section 6 of Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995, 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.

[8] G.R. Nos. 135030-33, July 20, 2001, 361 SCRA 581.

[9] G.R. No. 173473, December 17, 2008, 574 SCRA 258.

[10] Id. at 283-284.

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