

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MELISSA CHUA, APPELLANT.

G.R. No. 184058. March 10, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Melissa Chua (appellant) was indicted for Illegal Recruitment (Large Scale) and was convicted thereof by the Regional Trial Court (RTC) of Manila. She was also indicted for five counts of Estafa but was convicted only for three. The Court of Appeals, by Decision[1] dated February 27, 2008, affirmed appellant's conviction.

The Information[2] charging appellant, together with one Josie Campos (Josie), with Illegal Recruitment (Large Scale), docketed as Criminal Case No. 04-222596, reads:

The undersigned accuses JOSIE CAMPOS and MELISSA CHUA of violation of Article 38 (a) PD 1413, amending certain provisions of Book I, PD 442, otherwise known as the New Labor Code of the Philippines, in relation to Art. 13 (b) and (c) of said Code, as further amended by PD Nos. 1693, 1920 and 2019 and as further amended by Sec. 6 (a), (1) and (m) of RA 8042 committed in a [sic] large scale as follows:

That sometime during the month of September, 2002, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and knowingly for a fee, recruit and promise employment/job placement abroad to ERIK DE GUIA TAN, MARILYN O. MACARANAS, NAPOLEON H. YU, JR., HARRY JAMES P. KING and ROBERTO C. ANGELES for overseas employment abroad without first having secured the required license from the Department of Labor and Employment as required by law, and charge or accept directly from:

ERIK DE GUIA TAN

-

P73,000.00

MARILYN D. MACARANAS

-

83,000.00

NAPOLEON H. YU, JR.

-

23,000.00

HARRY JAMES P. KING

-

23,000.00

ROBERTO C. ANGELES

-

23,000.00

For purposes of their deployment, which amounts are in excess of or greater than that specified in the schedule of allowable fees as prescribed by the POEA, and without valid reasons and without the fault of said complainants, failed to actually deploy them and failed to reimburse expenses incurred in connection with their documentation and processing for purposes of their deployment.

x x x x

The five Informations[3] charging appellant and Josie with Estafa, docketed as Criminal Case Nos. 04-222597-601, were similarly worded and varied only with respect to the names of the five complainants and the amount that each purportedly gave to the accused. Thus each of the Information reads:

x x x x

That on or about . . . in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously defraud xxx in the following manner, to wit: the said accused by means of false manifestations which they made to the said . . . to the effect that they had the power and capacity to recruit the latter as factory worker to work in Taiwan and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said xxx to give and deliver, as in fact he gave and delivered to the said accused the amount of . . . on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact they did obtain the amount of . . . which amount once in their possession, with intent to defraud, they willfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage of said . . . in the aforesaid amount of . . ., Philippine Currency.

x x x x

Appellant pleaded not guilty on arraignment. Her co-accused Josie remained at large. The cases were consolidated, hence, trial proceeded only with respect to appellant.

Of the five complainants, only three testified, namely, Marilyn D. Macaranas (Marilyn), Erik de Guia Tan (Tan) and Harry James King (King). The substance of their respective testimonies follows:

Marilyn's testimony:

After she was introduced in June 2002 by Josie to appellant as capacitated to deploy factory workers to Taiwan, she paid appellant P80,000 as placement fee and P3,750 as medical expenses fee, a receipt[4] for the first amount of which was issued by appellant.

Appellant had told her that she could leave for Taiwan in the last week of September 2002 but she did not, and despite appellant's assurance that she would leave in the first or second week of October, just the same she did not.

She thus asked for the refund of the amount she paid but appellant claimed that she was not in possession thereof but promised anyway to raise the amount to pay her, but she never did.

She later learned in June 2003 that appellant was not a licensed recruiter, prompting her to file the complaint

against appellant and Josie.

Tan's testimony:

After he was introduced by Josie to appellant at the Golden Gate, Inc., (Golden Gate) an agency situated in Paragon Tower Hotel in Ermita, Manila, he underwent medical examination upon appellant's assurance that he could work in Taiwan as a factory worker with a guaranteed monthly salary of 15,800 in Taiwan currency.

He thus paid appellant, on September 6, 2002, P70,000[5] representing placement fees for which she issued a receipt. Appellant welched on her promise to deploy him to Taiwan, however, hence, he demanded the refund of his money but appellant failed to. He later learned that Golden Gate was not licensed to deploy workers to Taiwan, hence, he filed the complaint against appellant and Josie.

King's testimony:

His friend and a fellow complainant Napoleon Yu introduced him to Josie who in turn introduced appellant as one who could deploy him to Taiwan.

On September 24, 2002,[6] he paid appellant P20,000 representing partial payment for placement fees amounting to P80,000, but when he later inquired when he would be deployed, Golden Gate's office was already closed. He later learned that Golden Gate's license had already expired, prompting him to file the complaint.

Appellant denied the charges. Claiming having worked as a temporary cashier from January to October, 2002 at the office of Golden Gate, owned by one Marilyn Calueng,[7] she maintained that Golden Gate was a licensed recruitment agency and that Josie, who is her godmother, was an agent.

Admitting having received P80,000 each from Marilyn and Tan, receipt of which she issued but denying receiving any amount from King, she claimed that she turned over the money to the documentation officer, one Arlene Vega, who in turn remitted the money to Marilyn Calueng whose present whereabouts she did not know.

By Decision of April 5, 2006, Branch 36 of the Manila RTC convicted appellant of Illegal Recruitment (Large Scale) and three counts of Estafa, disposing as follows:

WHEREFORE, the prosecution having established the guilt of accused Melissa Chua beyond reasonable doubt, judgment is hereby rendered convicting the accused as principal of a large scale illegal recruitment and estafa three (3) counts and she is sentenced to life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) for illegal recruitment.

The accused is likewise convicted of estafa committed against Harry James P. King and she is sentenced to suffer the indeterminate penalty of Four (4) years and Two (2) months of prision correctional as minimum, to Six (6) years and One (1) day of prision mayor as maximum; in Criminal Case No. 04-22598; in Criminal Case No. 04-222600 committed against Marilyn Macaranas, accused is sentence [sic] to suffer the indeterminate penalty of Four (4) years and Two (2) months of prision correctional as minimum, to Twelve (12) years and one (1) day of reclusion temporal as maximum; and in Criminal Case No. 04-222601 committed against Erik de Guia Tan, she is likewise sentence [sic] to suffer an indeterminate penalty of Four (4) years and Two (2) months of prision correctional as minimum, to Eleven (11) years and One (1) day of prision mayor as maximum.

Accused Melissa Chua is also ordered to return the amounts of P20,000.00 to Harry James P. King, P83,750.00 to Marilyn D. Macaranas, and P70,000.00 to Erik de Guia Tan.

As regards Criminal Cases Nos. 04-222597 and 04-222599, both are dismissed for lack of interest of complainants Roberto Angeles and Napoleon Yu, Jr.

In the service of her sentence, the accused is credited with the full period of preventive imprisonment if she agrees in writing to abide by the disciplinary rules imposed, otherwise only 4/5 shall be credited.

SO ORDERED.

The Court of Appeals, as stated early on, affirmed the trial court's decision by the challenged Decision of February 27, 2008, it holding that appellant's defense that, as temporary cashier of Golden Gate, she received the money which was ultimately remitted to Marilyn Calueng is immaterial, she having failed to prove the existence of an employment relationship between her and Marilyn, as well as the legitimacy of the operations of Golden Gate and the extent of her involvement therein.

Citing *People v. Sagayaga*,^[8] the appellate court ruled that an employee of a company engaged in illegal recruitment may be held liable as principal together with his employer if it is shown that he, as in the case of appellant, actively and consciously participated therein.

Respecting the cases for *Estafa*, the appellate court, noting that a person convicted of illegal recruitment may, in addition, be convicted of *Estafa* as penalized under Article 315, paragraph 2(a) of the Revised Penal Code, held that the elements thereof were sufficiently established, viz: that appellant deceived the complainants by assuring them of employment in Taiwan provided they pay the required placement fee; that relying on such representation, the complainants paid appellant the amount demanded; that her representation turned out to be false because she failed to deploy them as promised; and that the complainants suffered damages when they failed to be reimbursed the amounts they paid.

Hence, the present appeal, appellant reiterating the same arguments she raised in the appellate court.

The appeal is bereft of merit.

The term "recruitment and placement" is defined under Article 13(b) of the Labor Code of the Philippines as follows:

(b) "Recruitment and placement" refers to 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)

On the other hand, Article 38, paragraph (a) of the Labor Code, as amended, under which appellant was charged, provides:

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. The Ministry of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(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.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group. (emphasis supplied)

From the foregoing provisions, it is clear that any recruitment activities to be undertaken by non-licensee or

non-holder of contracts, or as in the present case, an agency with an expired license, shall be deemed illegal and punishable under Article 39 of the Labor Code of the Philippines. And illegal recruitment is deemed committed in large scale if committed against three or more persons individually or as a group.

Thus for illegal recruitment in large scale to prosper, the prosecution has to prove three essential elements, to wit: (1) the accused undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) the accused did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) the accused committed such illegal activity against three or more persons individually or as a group.[9]

In the present case, Golden Gate, of which appellant admitted being a cashier from January to October 2002, was initially authorized to recruit workers for deployment abroad. Per the certification from the POEA, Golden Gate's license only expired on February 23, 2002 and it was delisted from the roster of licensed agencies on April 2, 2002.

Appellant was positively pointed to as one of the persons who enticed the complainants to part with their money upon the fraudulent representation that they would be able to secure for them employment abroad. In the absence of any evidence that the complainants were motivated by improper motives, the trial court's assessment of their credibility shall not be interfered with by the Court.[10]

Even if appellant were a mere temporary cashier of Golden Gate, that did not make her any less an employee to be held liable for illegal recruitment as principal by direct participation, together with the employer, as it was shown that she actively and consciously participated in the recruitment process. [11]

Assuming arguendo that appellant was unaware of the illegal nature of the recruitment business of Golden Gate, that does not free her of liability either. Illegal Recruitment in Large Scale penalized under Republic Act No. 8042, or "The Migrant Workers and Overseas Filipinos Act of 1995," is a special law, a violation of which is *malum prohibitum*, not *malum in se*. Intent is thus immaterial. And that explains why appellant was, aside from *Estafa*, convicted of such offense.

[1]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. *Estafa* under Article 315, paragraph 2, of the Revised Penal Code, is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud.[12] (emphasis supplied)

WHEREFORE, the appeal is hereby DENIED.

SO ORDERED.

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

[1] Penned by Associate Justice Remedios Salazar-Fernando and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzas; rollo, pp. 2-15.

[2] Records, pp. 2-3.

[3] *Id.* at 61-76.

[4] *Vide* Cash Voucher dated September 6, 2002, *id.* at 13.

[5] Vide Cash Voucher dated September 6, 2002, id. at 10.

[6] Vide Cash Voucher receipt, id. at 19.

[7] Spelled as GOLDEN GATE INTERNATIONAL CORPORATION and as MARILEN L. CALLUENG per certification dated June 23, 2003 of Atty. Felicitas Q. Bay, Director II, Licensing Branch of the POEA, id. at 8.

[8] G.R. No. 143726, February 23, 2004, 423 SCRA 468.

[9] People v. Jamilosa, G.R. No. 169076, January 23, 2007, 512 SCRA 340, 352.

[10] People v. Saulo, G.R. No. 125903, November 15, 2000, 344 SCRA 605, 614.

[11] People v. Nogra, G.R. No. 170834, August 29, 2008, 563 SCRA 723, 724.

[12] People v. Comila, G.R. No. 171448, February 28, 2007, 517 SCRA 153, 167.

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