

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. RODOLFO GALLO Y GADOT, ACCUSED-APPELLANT, FIDES PACARDO Y JUNGCO AND PILAR MANTA Y DUNGO, ACCUSED.

G.R. No. 187730. June 29, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the Decision[1] dated December 24, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02764 entitled *People of the Philippines v. Rodolfo Gallo y Gadot (accused-appellant), Fides Pacardo y Jungco and Pilar Manta y Dungo (accused)*, which affirmed the Decision[2] dated March 15, 2007 of the Regional Trial Court (RTC), Branch 30 in Manila which convicted the accused-appellant Rodolfo Gallo y Gadot ("accused-appellant") of syndicated illegal recruitment in Criminal Case No. 02-206293 and estafa in Criminal Case No. 02-206297.

The Facts

Originally, accused-appellant Gallo and accused Fides Pacardo ("Pacardo") and Pilar Manta ("Manta"), together with Mardeolyn Martir ("Mardeolyn") and nine (9) others, were charged with syndicated illegal recruitment and eighteen (18) counts of estafa committed against eighteen complainants, including Edgardo V. Dela Caza ("Dela Caza"), Sandy Guantero ("Guantero") and Danilo Sare ("Sare"). The cases were respectively docketed as Criminal Case Nos. 02-2062936 to 02-206311. However, records reveal that only Criminal Case No. 02-206293, which was filed against accused-appellant Gallo, Pacardo and Manta for syndicated illegal recruitment, and Criminal Case Nos. 02-206297, 02-206300 and 02-206308, which were filed against accused-appellant Gallo, Pacardo and Manta for estafa, proceeded to trial due to the fact that the rest of the accused remained at large. Further, the other cases, Criminal Case Nos. 02-206294 to 02-206296, 02-206298 to 02-206299, 02-206301 to 02-206307 and 02-206309 to 02-206311 were likewise provisionally dismissed upon motion of Pacardo, Manta and accused-appellant for failure of the respective complainants in said cases to appear and testify during trial.

It should also be noted that after trial, Pacardo and Manta were acquitted in Criminal Case Nos. 02-206293, 02-206297, 02-206300 and 02-206308 for insufficiency of evidence. Likewise, accused-appellant Gallo was similarly acquitted in Criminal Case Nos. 02-206300, the case filed by Guantero, and 02-206308, the case filed by Sare. However, accused-appellant was found guilty beyond reasonable doubt in Criminal Case Nos. 02-206293 and 02-206297, both filed by Dela Caza, for syndicated illegal recruitment and estafa, respectively.

Thus, the present appeal concerns solely accused-appellant's conviction for syndicated illegal recruitment in Criminal Case No. 02-206293 and for estafa in Criminal Case No. 02-206297.

In Criminal Case No. 02-206293, the information charges the accused-appellant, together with the others, as follows:

The undersigned accuses MARDEOLYN MARTIR, ISMAEL GALANZA, NELMAR MARTIR, MARCELINO MARTIR, NORMAN MARTIR, NELSON MARTIR, MA. CECILIA M. RAMOS, LULU MENDANES, FIDES PACARDO y JUNGCO, RODOLFO GALLO y GADOT, PILAR MANTA y DUNGO, ELEONOR PANUNCIO and YEO SIN UNG of a violation of Section 6(a), (l) and (m) of Republic Act 8042, otherwise known as the Migrant Workers and Overseas Filipino Workers Act of 1995, committed by a syndicate and in large scale, as follows:

That in or about and during the period comprised between November 2000 and December, 2001, inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping with one another, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully and unlawfully, for a fee, recruit and promise employment/job placement abroad to FERDINAND ASISTIN, ENTICE BRENDON, REYMOND G. CENA, EDGARDO V. DELA CAZA, RAYMUND EDAYA, SANDY O. GUANTENO, RENATO V. HUFALAR, ELENA JUBICO, LUPO A. MANALO, ALMA V. MENOR, ROGELIO S. MORON, FEDILA G. NAIPA, OSCAR RAMIREZ, MARISOL L. SABALDAN, DANILO SARE, MARY BETH SARDON, JOHNNY SOLATORIO and JOEL TINIO in Korea as factory workers and charge or accept directly or indirectly from said FERDINAND ASISTIN the amount of P45,000.00; ENTICE BRENDON - P35,000.00; REYMOND G. CENA - P30,000.00; EDGARDO V. DELA CAZA - P45,000.00; RAYMUND EDAYA - P100,000.00; SANDY O. GUANTENO - P35,000.00; RENATO V. HUFALAR - P70,000.00; ELENA JUBICO - P30,000.00; LUPO A. MANALO - P75,000.00; ALMA V. MENOR - P45,000.00; ROGELIO S. MORON - P70,000.00; FEDILA G. NAIPA - P45,000.00; OSCAR RAMIREZ - P45,000.00; MARISOL L. SABALDAN - P75,000.00; DANILO SARE - P100,000.00; MARY BETH SARDON - P25,000.00; JOHNNY SOLATORIO - P35,000.00; and JOEL TINIO - P120,000.00 as placement fees in connection with their overseas employment, which amounts are in excess of or greater than those specified in the schedule of allowable fees prescribed by the POEA Board Resolution No. 02, Series 1998, and without valid reasons and without the fault of the said complainants failed to actually deploy them and failed to reimburse the expenses incurred by the said complainants in connection with their documentation and processing for purposes of their deployment.[3] (Emphasis supplied)

In Criminal Case No. 02-206297, the information reads:

That on or about May 28, 2001, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping with [sic] one another, did then and there willfully, unlawfully and feloniously defraud EDGARDO V. DELA CAZA, in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which they made to the latter, prior to and even simultaneous with the commission of the fraud, to the effect that they had the power and capacity to recruit and employ said EDGARDO V. DELA CAZA in Korea as factory worker and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof; induced and succeeded in inducing said EDGARDO V. DELA CAZA to give and deliver, as in fact, he gave and delivered to said accused the amount of P45,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and untrue and were made [solely] for the purpose of obtaining, as in fact they did obtain the said amount of P45,000.00 which amount once in their possession, with intent to defraud said [EDGARDO] V. DELA CAZA, they willfully, unlawfully and feloniously misappropriated, misapplied and converted the said amount of P45,000.00 to their own personal use and benefit, to the damage and prejudice of the said EDGARDO V. DELA CAZA in the aforesaid amount of P45,000.00, Philippine currency.

CONTRARY TO LAW.[4]

When arraigned on January 19, 2004, accused-appellant Gallo entered a plea of not guilty to all charges.

On March 3, 2004, the pre-trial was terminated and trial ensued, thereafter.

During the trial, the prosecution presented as their witnesses, Armando Albines Roa, the Philippine Overseas

Employment Administration (POEA) representative and private complainants Dela Caza, Guanteno and Sare. On the other hand, the defense presented as its witnesses, accused-appellant Gallo, Pacardo and Manta.

Version of the Prosecution

On May 22, 2001, Dela Caza was introduced by Eleanor Panuncio to accused-appellant Gallo, Pacardo, Manta, Mardeolyn, Lulu Mendanes, Yeo Sin Ung and another Korean national at the office of MPM International Recruitment and Promotion Agency ("MPM Agency") located in Malate, Manila.

Dela Caza was told that Mardeolyn was the President of MPM Agency, while Nelmar Martir was one of the incorporators. Also, that Marcelino Martir, Norman Martir, Nelson Martir and Ma. Cecilia Ramos were its board members. Lulu Mendanes acted as the cashier and accountant, while Pacardo acted as the agency's employee who was in charge of the records of the applicants. Manta, on the other hand, was also an employee who was tasked to deliver documents to the Korean embassy.

Accused-appellant Gallo then introduced himself as a relative of Mardeolyn and informed Dela Caza that the agency was able to send many workers abroad. Together with Pacardo and Manta, he also told Dela Caza about the placement fee of One Hundred Fifty Thousand Pesos (PhP 150,000) with a down payment of Forty-Five Thousand Pesos (PhP 45,000) and the balance to be paid through salary deduction.

Dela Caza, together with the other applicants, were briefed by Mardeolyn about the processing of their application papers for job placement in Korea as a factory worker and their possible salary. Accused Yeo Sin Ung also gave a briefing about the business and what to expect from the company and the salary.

With accused-appellant's assurance that many workers have been sent abroad, as well as the presence of the two (2) Korean nationals and upon being shown the visas procured for the deployed workers, Dela Caza was convinced to part with his money. Thus, on May 29, 2001, he paid Forty-Five Thousand Pesos (PhP 45,000) to MPM Agency through accused-appellant Gallo who, while in the presence of Pacardo, Manta and Mardeolyn, issued and signed Official Receipt No. 401.

Two (2) weeks after paying MPM Agency, Dela Caza went back to the agency's office in Malate, Manila only to discover that the office had moved to a new location at Batangas Street, Brgy. San Isidro, Makati. He proceeded to the new address and found out that the agency was renamed to New Filipino Manpower Development & Services, Inc. ("New Filipino"). At the new office, he talked to Pacardo, Manta, Mardeolyn, Lulu Mendanes and accused-appellant Gallo. He was informed that the transfer was done for easy accessibility to clients and for the purpose of changing the name of the agency.

Dela Caza decided to withdraw his application and recover the amount he paid but Mardeolyn, Pacardo, Manta and Lulu Mendanes talked him out from pursuing his decision. On the other hand, accused-appellant Gallo even denied any knowledge about the money.

After two (2) more months of waiting in vain to be deployed, Dela Caza and the other applicants decided to take action. The first attempt was unsuccessful because the agency again moved to another place. However, with the help of the Office of Ambassador Señeres and the Western Police District, they were able to locate the new address at 500 Prudential Building, Carriedo, Manila. The agency explained that it had to move in order to separate those who are applying as entertainers from those applying as factory workers. Accused-appellant Gallo, together with Pacardo and Manta, were then arrested.

The testimony of prosecution witness Armando Albines Roa, a POEA employee, was dispensed with after the prosecution and defense stipulated and admitted to the existence of the following documents:

- Certification issued by Felicitas Q. Bay, Director II, Licensing Branch of the POEA to the effect that "New Filipino Manpower Development & Services, Inc., with office address at 1256 Batangas St., Brgy. San Isidro, Makati City, was a licensed landbased agency whose license expired on December 10, 2001 and was delisted from the roster of licensed agencies on December 14, 2001." It further certified that "Fides J. Pacardo was the agency's Recruitment Officer";
- Certification issued by Felicitas Q. Bay of the POEA to the effect that MPM International Recruitment and Promotion is not licensed by the POEA to recruit workers for overseas employment;
- Certified copy of POEA Memorandum Circular No. 14, Series of 1999 regarding placement fee ceiling for landbased workers.
- Certified copy of POEA Memorandum Circular No. 09, Series of 1998 on the placement fee ceiling for Taiwan and Korean markets, and
- Certified copy of POEA Governing Board Resolution No. 02, series of 1998.

Version of the Defense

For his defense, accused-appellant denied having any part in the recruitment of Dela Caza. In fact, he testified that he also applied with MPM Agency for deployment to Korea as a factory worker. According to him, he gave his application directly with Mardeolyn because she was his town mate and he was allowed to pay only Ten Thousand Pesos (PhP 10,000) as processing fee. Further, in order to facilitate the processing of his papers, he agreed to perform some tasks for the agency, such as taking photographs of the visa and passport of applicants, running errands and performing such other tasks assigned to him, without salary except for some allowance. He said that he only saw Dela Caza one or twice at the agency's office when he applied for work abroad. Lastly, that he was also promised deployment abroad but it never materialized.

Ruling of the Trial Court

On March 15, 2007, the RTC rendered its Decision convicting the accused of syndicated illegal recruitment and estafa. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered as follows:

- Accused FIDES PACARDO y JUNGO and PILAR MANTA y DUNGO are hereby ACQUITTED of the crimes charged in Criminal Cases Nos. 02-206293, 02-206297, 02-206300 and 02-206308;
- Accused RODOLFO GALLO y GADOT is found guilty beyond reasonable doubt in Criminal Case No. 02-206293 of the crime of Illegal Recruitment committed by a syndicate and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ONE MILLION (Php1,000,000.00) PESOS. He is also ordered to indemnify EDGARDO DELA CAZA of the sum of FORTY-FIVE THOUSAND (Php45,000.00) PESOS with legal interest from the filing of the information on September 18, 2002 until fully paid.
- Accused RODOLFO GALLO y GADOT in Criminal Case No. 02-206297 is likewise found guilty and is hereby sentenced to suffer the indeterminate penalty of FOUR (4) years of prision correccional as minimum to NINE (9) years of prision mayor as maximum.
- Accused RODOLFO GALLO y GADOT is hereby ACQUITTED of the crime charged in Criminal Cases Nos. 02-206300 and 02-206308.

Let alias warrants for the arrest of the other accused be issued anew in all the criminal cases. Pending their arrest, the cases are sent to the archives.

The immediate release of accused Fides Pacardo and Pilar Manta is hereby ordered unless detained for other

lawful cause or charge.

SO ORDERED.[5]

Ruling of the Appellate Court

On appeal, the CA, in its Decision dated December 24, 2008, disposed of the case as follows:

WHEREFORE, the appealed Decision of the Regional Trial Court of Manila, Branch 30, in Criminal Cases Nos. 02-206293 and 02-206297, dated March 15, 2007, is AFFIRMED with the MODIFICATION that in Criminal Case No. 02-206297, for estafa, appellant is sentenced to four (4) years of prision correccional to ten (10) years of prision mayor.

SO ORDERED.[6]

The CA held the totality of the prosecution's evidence showed that the accused-appellant, together with others, engaged in the recruitment of Dela Caza. His actions and representations to Dela Caza can hardly be construed as the actions of a mere errand boy.

As determined by the appellate court, the offense is considered economic sabotage having been committed by more than three (3) persons, namely, accused-appellant Gallo, Mardeolyn, Eleonor Panuncio and Yeo Sin Ung. More importantly, a person found guilty of illegal recruitment may also be convicted of estafa.[7] The same evidence proving accused-appellant's commission of the crime of illegal recruitment in large scale also establishes his liability for estafa under paragraph 2(a) of Article 315 of the Revised Penal Code (RPC).

On January 15, 2009, the accused-appellant filed a timely appeal before this Court.

The Issues

Accused-appellant interposes in the present appeal the following assignment of errors:

I

The court a quo gravely erred in finding the accused-appellant guilty of illegal recruitment committed by a syndicate despite the failure of the prosecution to prove the same beyond reasonable doubt.

II

The court a quo gravely erred in finding the accused-appellant guilty of estafa despite the failure of the prosecution to prove the same beyond reasonable doubt.

Our Ruling

The appeal has no merit.

Evidence supports conviction of
the crime of Syndicated Illegal
Recruitment

Accused-appellant avers that he cannot be held criminally liable for illegal recruitment because he was neither an officer nor an employee of the recruitment agency. He alleges that the trial court erred in adopting the asseveration of the private complainant that he was indeed an employee because such was not duly supported by competent evidence. According to him, even assuming that he was an employee, such cannot warrant his outright conviction sans evidence that he acted in conspiracy with the officers of the agency.

We disagree.

To commit syndicated illegal recruitment, three elements must be established: (1) the offender undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13(b), or any of the prohibited practices enumerated under Art. 34 of the Labor Code; (2) he has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers;^[8] and (3) the illegal recruitment is committed by a group of three (3) or more persons conspiring or confederating with one another.^[9] When illegal recruitment is committed by a syndicate or in large scale, i.e., if it is committed against three (3) or more persons individually or as a group, it is considered an offense involving economic sabotage.^[10]

Under Art. 13(b) of the Labor Code, "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".

After a thorough review of the records, we believe that the prosecution was able to establish the elements of the offense sufficiently. The evidence readily reveals that MPM Agency was never licensed by the POEA to recruit workers for overseas employment.

Even with a license, however, illegal recruitment could still be committed under Section 6 of Republic Act No. 8042 ("R.A. 8042"), otherwise known as the Migrants and Overseas Filipinos Act of 1995, viz:

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 act, 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;

x x x x

(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 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.

In the instant case, accused-appellant committed the acts enumerated in Sec. 6 of R.A. 8042. Testimonial evidence presented by the prosecution clearly shows that, in consideration of a promise of foreign employment,

accused-appellant received the amount of Php 45,000.00 from Dela Caza. When accused-appellant made misrepresentations concerning the agency's purported power and authority to recruit for overseas employment, and in the process, collected money in the guise of placement fees, the former clearly committed acts constitutive of illegal recruitment.[11] Such acts were accurately described in the testimony of prosecution witness, Dela Caza, to wit:

PROS. MAGABLIN

Q:

How about this Rodolfo Gallo?

A:

He was the one who received my money.

Q:

Aside from receiving your money, was there any other representations or acts made by Rodolfo Gallo?

A:

He introduced himself to me as relative of Mardeolyn Martir and he even intimated to me that their agency has sent so many workers abroad.

x x x x

PROS. MAGABLIN

Q:

Mr. Witness, as you claimed you tried to withdraw your application at the agency. Was there any instance that you were able to talk to Fides Pacardo, Rodolfo Gallo and Pilar Manta?

A:

Yes, ma'am.

Q:

What was the conversation that transpired among you before you demanded the return of your money and documents?

A:

When I tried to withdraw my application as well as my money, Mr. Gallo told me "I know nothing about your money" while Pilar Manta and Fides Pacardo told me, why should I withdraw my application and my money when I was about to be [deployed] or I was about to leave.

x x x x

Q:

And what transpired at that office after this Panuncio introduced you to those persons whom you just mentioned?

A:

The three of them including Rodolfo Gallo told me that the placement fee in that agency is Php 150,000.00 and

then I should deposit the amount of Php 45,000.00. After I have deposited said amount, I would just wait for few days...

x x x x

Q:

They were the one (sic) who told you that you have to pay Php 45,000.00 for deposit only?

A:

Yes, ma'am, I was told by them to deposit Php 45,000.00 and then I would pay the remaining balance of Php105,000.00, payment of it would be through salary deduction.

Q:

That is for what Mr. Witness again?

A:

For placement fee.

Q:

Now did you believe to (sic) them?

A:

Yes, ma'am.

Q:

Why, why did you believe?

A:

Because of the presence of the two Korean nationals and they keep on telling me that they have sent abroad several workers and they even showed visas of the records that they have already deployed abroad.

Q:

Aside from that, was there any other representations which have been made upon you or make you believe that they can deploy you?

A:

At first I was adamant but they told me "If you do not want to believe us, then we could do nothing." But once they showed me the [visas] of the people whom they have deployed abroad, that was the time I believe them.

Q:

So after believing on the representations, what did you do next Mr. Witness?

A:

That was the time that I decided to give the money.

x x x x

PROS. MAGABLIN

Q:

Do you have proof that you gave the money?

A:

Yes, ma'am.

Q:

Where is your proof that you gave the money?

A:

I have it here.

PROS. MAGABLIN:

Witness is producing to this court a Receipt dated May 28, 2001 in the amount of Php45,000.00 which for purposes of record Your Honor, may I request that the same be marked in the evidence as our Exhibit "F".

x x x x

PROS. MAGABLIN

Q:

There appears a signature appearing at the left bottom portion of this receipt. Do you know whose signature is this?

A:

Yes, ma'am, signature of Rodolfo Gallo.

PROS. MAGABLIN

Q:

Why do you say that that is his signature?

A:

Rodolfo Gallo's signature Your Honor because he was the one who received the money and he was the one who filled up this O.R. and while he was doing it, he was flanked by Fides Pacardo, Pilar Manta and Mardeolyn Martir.

x x x x

Q:

So it was Gallo who received your money?

A:

Yes, ma'am.

PROS. MAGABLIN

Q:

And after that, what did this Gallo do after he received your money?

A:

They told me ma'am just to call up and make a follow up with our agency.

x x x x

Q:

Now Mr. Witness, after you gave your money to the accused, what happened with the application, with the promise of employment that he promised?

A:

Two (2) weeks after giving them the money, they moved to a new office in Makati, Brgy. San Isidro.

x x x x

Q:

And were they able to deploy you as promised by them?

A:

No, ma'am, they were not able to send us abroad.[12]

Essentially, Dela Caza appeared very firm and consistent in positively identifying accused-appellant as one of those who induced him and the other applicants to part with their money. His testimony showed that accused-appellant made false misrepresentations and promises in assuring them that after they paid the placement fee, jobs in Korea as factory workers were waiting for them and that they would be deployed soon. In fact, Dela Caza personally talked to accused-appellant and gave him the money and saw him sign and issue an official receipt as proof of his payment. Without a doubt, accused-appellants' actions constituted illegal recruitment.

Additionally, accused-appellant cannot argue that the trial court erred in finding that he was indeed an employee of the recruitment agency. On the contrary, his active participation in the illegal recruitment is unmistakable. The fact that he was the one who issued and signed the official receipt belies his profession of innocence.

This Court likewise finds the existence of a conspiracy between the accused-appellant and the other persons in the agency who are currently at large, resulting in the commission of the crime of syndicated illegal recruitment.

In this case, it cannot be denied that the accused-appellant together with Mardeolyn and the rest of the officers and employees of MPM Agency participated in a network of deception. Verily, the active involvement of each in the recruitment scam was directed at one single purpose - to divest complainants with their money on the pretext of guaranteed employment abroad. The prosecution evidence shows that complainants were briefed by Mardeolyn about the processing of their papers for a possible job opportunity in Korea, as well as their possible salary. Likewise, Yeo Sin Ung, a Korean national, gave a briefing about the business and what to expect from the company. Then, here comes accused-appellant who introduced himself as Mardeolyn's relative and specifically told Dela Caza of the fact that the agency was able to send many workers abroad. Dela Caza was even showed several workers visas who were already allegedly deployed abroad. Later on, accused-appellant signed and issued an official receipt acknowledging the down payment of Dela Caza. Without a doubt, the nature and extent of the actions of accused-appellant, as well as with the other persons in MPM Agency clearly show unity of action towards a common undertaking. Hence, conspiracy is evidently present.

In *People v. Gamboa*,^[13] this Court discussed the nature of conspiracy in the context of illegal recruitment, viz:

Conspiracy to defraud aspiring overseas contract workers was evident from the acts of the malefactors whose

conduct before, during and after the commission of the crime clearly indicated that they were one in purpose and united in its execution. Direct proof of previous agreement to commit a crime is not necessary as it may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused pointing to a joint purpose and design, concerted action and community of interest. As such, all the accused, including accused-appellant, are equally guilty of the crime of illegal recruitment since in a conspiracy the act of one is the act of all.

To reiterate, in establishing conspiracy, it is not essential that there be actual proof that all the conspirators took a direct part in every act. It is sufficient that they acted in concert pursuant to the same objective.[14]

Estafa

The prosecution likewise established that accused-appellant is guilty of the crime of estafa as defined under Article 315 paragraph 2(a) of the Revised Penal Code, viz:

Art. 315. Swindling (estafa). - Any person who shall defraud another by any means mentioned hereinbelow...

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.

The elements of estafa in general are: (1) that the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.[15] Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed; and which deceives or is intended to deceive another so that he shall act upon it, to his legal injury.

All these elements are present in the instant case: the accused-appellant, together with the other accused at large, deceived the complainants into believing that the agency had the power and capability to send them abroad for employment; that there were available jobs for them in Korea as factory workers; that by reason or on the strength of such assurance, the complainants parted with their money in payment of the placement fees; that after receiving the money, accused-appellant and his co-accused went into hiding by changing their office locations without informing complainants; and that complainants were never deployed abroad. As all these representations of the accused-appellant proved false, paragraph 2(a), Article 315 of the Revised Penal Code is thus applicable.

Defense of Denial Cannot Prevail over Positive Identification

Indubitably, accused-appellant's denial of the crimes charged crumbles in the face of the positive identification made by Dela Caza and his co-complainants as one of the perpetrators of the crimes charged. As enunciated by this Court in *People v. Abolidor*,^[16] "[p]ositive identification where categorical and consistent and not attended by any showing of ill motive on the part of the eyewitnesses on the matter prevails over alibi and denial."

The defense has miserably failed to show any evidence of ill motive on the part of the prosecution witnesses as to falsely testify against him.

Therefore, between the categorical statements of the prosecution witnesses, on the one hand, and bare denials of the accused, on the other hand, the former must prevail.[17]

Moreover, this Court accords the trial court's findings with the probative weight it deserves in the absence of any compelling reason to discredit the same. It is a fundamental judicial dictum that the findings of fact of the trial court are not disturbed on appeal except when it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have materially affected the outcome of the case. We find that the trial court did not err in convicting the accused-appellant.

WHEREFORE, the appeal is DENIED for failure to sufficiently show reversible error in the assailed decision. The Decision dated December 24, 2008 of the CA in CA-G.R. CR-H.C. No. 02764 is AFFIRMED.

No costs.

SO ORDERED.

Corona, C.J., Chairperson, Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 2-19. Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rebecca De Guia-Salvador and Vicente S.E. Veloso.

[2] Id. at 15-35. Penned by Judge Lucia Peña Purugganan.

[3] CA rollo, p. 16.

[4] Rollo, pp. 5-6.

[5] CA rollo, pp. 34-35.

[6] Rollo, pp. 18-19.

[7] People v. Alona Buli-e, et al., G.R. No. 123146, June 17, 2003; People v. Spouses Ganaden, et al., G.R. No. 125441, November 27, 1998.

[8] People v. Soliven, G.R. No. 125081, October 3, 2001.

[9] See Sec. 6, R.A. 8042; See also People v. Buli-e, et al., G.R. No. 123146, June 17, 2003.

[10] Sec. 6 (m), R.A. 8042.

[11] People v. Ong, G.R. No. 119594, January 18, 2000.

[12] TSN, August 12, 2004, pp. 15-23.

[13] G.R. No. 135382, September 29, 2000, 341 SCRA 451.

[14] Fortuna v. People, G.R. No. 135784, December 15, 2000.

[15] People v. Soliven, G.R. No. 125081, October 3, 2001.

[16] G.R. No. 147231, February 18, 2004, 423 SCRA 260.

[17] People v. Carizo, G.R. No. 96510, July 6, 1994, 233 SCRA 687; People v. Miranda, 235 SCRA 202; People v. Bello, G.R. No. 92597, October 4, 1994, 237 SCRA 347.

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