

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARY LOU OMICTIN Y SINGCO, ACCUSED-APPELLANT.*G.R. No. 188130. July 26, 2010*

Ponente: VELASCO JR., J.

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This is an appeal from the November 25, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02793, entitled *People of the Philippines v. Mary Lou Omictin y Singco*. The CA Decision affirmed the Decision[2] dated May 3, 2007 of the Regional Trial Court (RTC), Branch 104 in Quezon City, finding accused-appellant Mary Lou Omictin guilty of violating Section 6, in relation to Sec. 7(b), of Republic Act No. (RA) 8042 or the Migrant Workers and Overseas Filipinos Act of 1995. Specifically, accused-appellant was charged with and adjudged guilty of illegal recruitment in large scale and three (3) counts of Estafa.

The Facts

Primo Arvin Guevarra, one of the private complainants, arrived home sometime in September 2003 after his employment contract in Libya expired. In January 2004, he contacted a college classmate, Rebecca Joy Roque, who previously informed him that she knew of a recruiter for overseas employment. Roque thus set up a meeting between him and the recruiter, who turned out to be accused-appellant Omictin.[3]

Omictin met Guevarra along with Anthony Ambrosio and Elisa Dotimas.[4] In that meeting, the three agreed to pay Omictin PhP 40,000 each for their deployment in London as caregivers. All three each gave Omictin, there and then, PhP 10,000 as initial payment. Omictin assured them that they would leave for London within 60 to 90 days.[5]

For such deployment, Guevarra had a medical examination, during which occasion he paid Omictin an additional PhP 10,000. Later, Guevarra completed his placement payment by giving Omictin the balance of PhP 20,000. Upon said payment, Omictin informed Guevarra that she would schedule an orientation and contract signing at a later date. However, the promised orientation and contract signing never took place. Sometime in February 2004, Guevarra was able to meet with Omictin, who promised to return his money during the first week of March. Like the earlier promises, the promise to reimburse remained unfulfilled.[6]

Another private complainant, Veronica Caponpon, was assured of employment in New Zealand as an apple picker, for which she was required by Omictin to pay PhP 20,000 as placement fee for the deployment. Caponpon initially paid Omictin PhP 10,000 and was then promised by the latter that she would leave for New Zealand within two months provided that she complies with all the requirements for deployment.[7] On April 22, 2003, Caponpon submitted her resumé to Omictin and paid the amount of PhP 8,000. The remaining PhP 2,000 was paid on April 27, 2003. For all her efforts and the repeated promises of Omictin, Caponpon still was not able to leave for New Zealand.[8]

Roy Fernandez Mago, another private complainant, was promised employment abroad as a caregiver within three months from payment of a placement fee of PhP 40,000 and submission of the required documents. Mago paid the total placement fee and submitted the required documents. However, the promised overseas employment remained unfulfilled.[9]

For PhP 40,000, Omictin undertook to send private complainant Anthony Ambrosio overseas for employment within three to four months. Ambrosio was only able to pay the amount of PhP 16,000. The promised employment never materialized.[10]

On March 8, 2004, all four private complainants filed complaints against Omictin with the National Bureau of Investigation (NBI) for Illegal Recruitment and Estafa. Before Joffrey Dela Merced, the Supervising Agent of the Bureau's Counter-Intelligence Division, Mago related that, the previous day, he was able to contact Omictin, who required him to pay an additional PhP 60,000 for his deployment abroad. The designated place for the payment was McDonald's Restaurant at the corner of EDSA and Quezon Avenue. Thus, the NBI prepared an entrapment operation to arrest Omictin and provided Mago with PhP 60,000 marked money.[11]

On March 9, 2004, the entrapment operation was set in motion. After receiving the marked money, Omictin was arrested by the accompanying NBI agents.[12]

As a result, separate informations were filed before the Quezon City RTC charging Omictin with illegal recruitment in large scale and estafa, docketed as Criminal Case Nos. Q-04-125442 to 45. The informations read:

Crim. Case No. Q-04-125442

That on or about the 9[th] day of March 2004, in Quezon City, Philippines, the said accused, without any authority of law, did then and there willfully, unlawfully, and feloniously for a fee, enlist, recruit, and promise overseas employment to the following persons, to wit: PRIMO ARVIN S. GUEVARRA, ANTHONY P. AMBROSIO, ROY FERNANDEZ MAGNO and VERONICA G. CAPONPON, without first securing the required license from the Department of Labor and Employment, in violation of said law.

That the above-described crime is committed in large scale, as the same was perpetrated against four (4) persons individually or as a group as penalized under Migrant Workers and Overseas Filipino Act of 1995.

Crim. Case Nos. Q-04-125443-45

That on or about the period comprised from January to March 2004, in Quezon City, Philippines, the said accused did then and there willfully, unlawfully, and feloniously defraud [Roy Fernandez Magno, Anthony P. Ambrosio, Primo Arvin S. Guevarra, respectively] in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which she made to said complainant[s] to the effect that she had the power and capacity to recruit and employ the said complainant[s] in U.K. London as caregiver[s] 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 [complainants] to give and deliver, as in fact, gave and delivered to said accused the amount[s] of [PhP 40,000, PhP 16,000, PhP 40,000, respectively] x x x, on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made to solely [obtain], as in fact she did obtain the amount[s] of [PhP 40,000, PhP 16,000, PhP 40,000, respectively], which amount[s] once in possession, with intent to defraud [said complainants] willfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit, to the damage and prejudice of said [complainants] in the aforesaid amount[s] of [PhP 40,000, PhP 16,000, PhP 40,000, respectively] x x x.[13]

During trial, Omictin gave the following version of the facts: She claimed that she was merely asked by the private complainants to help them in the processing of their visas for the United Kingdom and other papers for

possible employment in London. They agreed in their preliminary meeting to pay her PhP 40,000 each for the processing fees. A week after, she averred that Dotimas issued a check for PhP 106,000 as the initial payment for the processing fees of all four private complainants. Then, on January 31, 2004, Mago and Guevarra paid her their respective balances for the processing fees, but both later backed out from the placement agreement. She thus promised Mago and Guevarra that they would be reimbursed. On March 9, 2004, she met with Mago at McDonald's Restaurant at the corner of EDSA and Quezon Ave. to discuss the possibility of changing his United Kingdom visa application to a United States visa application. For such purpose, she asked from Mago the amount of PhP 60,000. After Mago paid her the money, she was arrested by the NBI agents.[14]

On May 3, 2007, the RTC rendered a Decision finding Omictin guilty as charged, the dispositive portion reading:

WHEREFORE, judgment is hereby rendered as follows:

(1) In Criminal Case No. 04-125442, the Court finds accused MARY LOU OMICTIN guilty beyond reasonable doubt as principal of ILLEGAL RECRUITMENT IN LARGE SCALE defined and penalized in Section 6 in relation to Section 7(b) of Republic Act No. 8042, and sentences her to life imprisonment and a fine of One Million Pesos.

(2) In Criminal Case No. 04-125443, the Court finds accused MARY LOU OMICTIN guilty beyond reasonable doubt as principal of the crime of ESTAFA, defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and sentences her to an indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional as minimum to seven (7) years of prision mayor as maximum, and to indemnify complainant Roy Fernandez Mago in the amount of Forty Thousand (P40,000.00) Pesos.

(3) In Criminal Case No. 04-125444, the Court finds accused MARY LOU OMICTIN guilty beyond reasonable doubt as principal of the crime of estafa defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and sentences her to an indeterminate penalty of two (2) years, eleven (11) months and eleven days of prision correccional as minimum to six (6) years, eight (8) months and twenty (20) days of prision mayor as maximum, and to indemnify complainant Anthony Ambrosio in the amount of Sixteen Thousand (P16,000.00) Pesos.

(4) In Criminal Case No. 04-125445, the Court finds accused MARY LOU OMICTIN guilty beyond reasonable doubt as principal of the crime of ESTAFA, defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and sentences her to an indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of prision correccional as minimum to seven (7) years of prision mayor as maximum, and to indemnify complainant Arvin Guevarra in the amount of Forty Thousand (P40,000.00) Pesos.

SO ORDERED.[15]

Aggrieved, Omictin appealed[16] to the CA, raising in her Brief for the Accused-Appellant,[17] the following issues:

(1) Primo Guevarra was not the one who paid the accused, but Elisa Dotenes,[18] who issued a check in favor of accused-appellant in behalf of Guevarra. Thus, without the supporting testimony of Dotenes who was not presented by the prosecution, Guevarra's testimony is unsubstantiated and hearsay;[19] and

(2) As to private complainant Ambrosio, there was no receipt presented to show payment to accused-appellant, rendering his testimony uncorroborated and self-serving.[20]

Eventually, the CA rendered the assailed decision, the dispositive portion of which states:

WHEREFORE, in light of the [foregoing] disquisitions, the decision of the Regional Trial Court of Quezon City, Branch 104, in Criminal Case Nos. Q-04-125442, Q-04-125443, Q-04-125444, and Q-04-125445,

finding appellant Mary Lou Omictin, guilty beyond reasonable doubt of the crimes charged, is hereby AFFIRMED in toto.

SO ORDERED.[21]

Hence, we have this appeal.

Through a Manifestation (In lieu of Supplemental Brief)[22] dated October 12, 2009, Omictin repleads and adopts all the defenses and arguments raised in her Brief for the Accused-Appellant[23] dated January 22, 2008.

The Ruling of the Court

The appeal is without merit.

An examination of the issues raised by Omictin in her Brief would readily reveal that the same are all factual issues. Subject to well-defined exceptions, the Court, not being a trier of facts, will not delve once more into the factual findings of the trial court as affirmed by the appellate court. The Court, in *Dueñas v. Guce-Africa*,^[24] has articulated the rule as follows:

We will not review, much less reverse, the factual findings of the Court of Appeals especially where, as in this case, such findings coincide with those of the trial court, since we are not a trier of facts. The established rule is that the factual findings of the Court of Appeals affirming those of the RTC are conclusive and binding on us. We are not wont to review them, save under exceptional circumstances as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (Emphasis supplied.)

None of the foregoing exceptions is present in the instant case. We thus perceive no reason to disturb the findings of fact and conclusions of law arrived at by the courts a quo.

Omictin, however, maintains that the trial and appellate courts overlooked certain facts, which, if considered, would lead to her acquittal. Omictin asserts in her brief the following:

The testimony of Primo Guevarra undoubtedly shows that he was not the one who paid the accused-appellant. His testimony, to the effect that the check, issued by a certain Elisa Dotenes, was paid by the bank, clearly falls within the rules proscribing the admission of hearsay evidence. It bears stressing that the failure of the prosecution to present Elisa Dotenes renders the testimony of witness Guevarra as unsubstantiated and hearsay.

Another prosecution witness, Mr. Anthony Ambrosio, testified that he gave the accused-appellant the amount of sixteen thousand (16,000.00) pesos, representing initial payment in consideration of the work abroad. It is borne on record however, that Anthony's testimony was unsubstantiated by any proof that he made such payment, i.e., receipts.

A perusal of the records will show that Anthony's testimony that he was divested of said amount, through the misrepresentation of the accused-appellant, amounts to nothing but a mere uncorroborated and self-serving allegation.

Surely, mere allegation, without proof, is not enough to prove the guilt of the accused beyond reasonable

doubt.

It is submitted that the trial court should have first considered these testimonies before rendering a judgment of conviction.[25]

These contentions are erroneous.

First, the testimony of Ambrosio cannot be considered as self-serving evidence. The phrase "self-serving evidence" is a concept which has a well-defined judicial meaning. *Hernandez v. Court of Appeals*[26] clarified what self-serving evidence is and what it is not, thus:

The common objection known as "self-serving" is not correct because almost all testimonies are self-serving. The proper basis for objection is "hearsay" (Wenke, *Making and Meeting Objections*, 69).

Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court (*National Development Co. v. Workmen's Compensation Commission*, 19 SCRA 861 [1967]).

Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.

This principle was reiterated in the more recent *People v. Villarama*,[27] where the Court ruled, "x x x [A] self-serving declaration is one that is made by a party, out of court and in his favor. It does not include the testimony he gives as a witness in court." Assayed against the foregoing standards, Ambrosio's testimony is not self-serving and is admissible in evidence.

We can hypothetically assume, as a second consideration, that the testimonies of Guevarra and Ambrosio are unsubstantiated and self-serving. Still, the unsubstantiated and self-serving nature of said testimonies would not carry the day for Omictin, since she admitted, during trial, the substance of their testimonies. Omictin testified thus before the RTC:

Q

So how much did each of the four complainants paid (sic) you for the processing of their visa?

A

Arvin [Guevarra] and Roy [Mago], P40,000.00 each.

Q

How about this Anthony Ambrosio?

A

P16,000.00[28]

Through her testimony, Omictin admitted and established the fact that she was paid by Guevarra the amount of PhP 40,000 and Ambrosio the amount of PhP 16,000.

In all, we find no compelling reason to disturb the findings and core disposition of the CA, confirmatory of that of the trial court.

WHEREFORE, the petition is DENIED for lack of merit. Accordingly, the November 25, 2009 CA Decision in CA-G.R. CR-H.C. No. 02793 is hereby AFFIRMED IN TOTO.

No costs.

SO ORDERED.

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

[1] Rollo pp. 2-32. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal.

[2] CA rollo, pp. 14-18.

[3] Rollo, p. 7.

[4] Also referred to by accused-appellant Omictin as "Dotenes" in her pleadings.

[5] Rollo, p. 8.

[6] Id. at 8-9.

[7] Id. at 9.

[8] Id. at 9-10.

[9] Id. at 10.

[10] Id. at 12.

[11] Id. at 11.

[12] Id. at 11-12.

[13] Id. at 4-7.

[14] Id. at 13-14.

[15] CA rollo, pp. 60-61.

[16] Id. at 64.

[17] Id. at 80-94.

[18] Referred to as "Dotimas" by the courts a quo.

[19] CA rollo, pp. 90-91.

[20] Id. at 91.

[21] Rollo, pp. 30-31.

[22] Id. at 46-48.

[23] Id. at 46-47.

[24] G.R. No. 165679, October 5, 2009, 603 SCRA 11, 20-21.

[25] CA rollo, pp. 91-92.

[26] G.R. No. 104874, December 14, 1993, 228 SCRA 429, 436.

[27] G.R. No. 139211, February 12, 2003, 397 SCRA 306, 319.

[28] CA rollo, p. 116.

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