

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERLINDA RACHO Y SOMERA, ACCUSED-APPELLANT.*G.R. No. 227505. October 02, 2017*

Ponente: PERLAS-BERNABE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-227505/>**PERLAS-BERNABE, J.:**

Before the Court is an ordinary appeal[1] filed by accused-appellant Erlinda Racho y Somera (Racho) assailing the Decision[2] dated October 15, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06932, which affirmed the Decision[3] dated May 28, 2014 of the Regional Trial Court of Makati City, Branch 62 (RTC) in Criminal Case Nos. 05-1935, 05-1938, 05-1941, 05-1943, 05-1945, 05-1948, 05-1949, and 05-1951 convicting Racho of Illegal Recruitment in Large Scale, as defined and penalized under Section 6 (l) and (m), in relation to Section 7 (b) of Republic Act No. (RA) 8042,[4] otherwise known as the Migrant Workers Overseas Filipino Act of 1995, and six (6) counts of Estafa under Article 315 paragraph 2 (a) of the Revised Penal Code.

The Facts

This case stemmed from, among others, an Information[5] dated August 19, 2005 charging Radio for the crime of Illegal Recruitment in Large Scale, docketed as Criminal Case No. 05-1935, the accusatory portion of which reads:

CRIMINAL CASE NO. 05-1935

That in or about during [sic] the period from November, 2004 up to February 07, 2005 or prior thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there without first obtaining a license or authority to recruit workers for overseas employment from the Philippine Overseas Employment Administration, willfully, unlawfully and feloniously recruit and promise employment/job placement and collect fee[s] from complainants Bernardo Pena, Arsenio N. Sevania, Maximo V. Gambon, Simeon Adame Filarca, Vincent B. Baidoz, Odelio C. Gasmen, Cirilo A. Arruejo, Romeo E. Torres, Renato P. Velasco, Rex D. Villaruz, Celso V. Doctolero, Renato L. Pescador, Rodolfo C. Pagal, William D. Villaruz, Franklin B. Delizo[,] and Dominador S. Pena as contract workers, without any license/authority from the Philippine Overseas Employment Administration (POEA) or by the Department of Labor and Employment (DOLE) to recruit workers for overseas employment.

CONTRARY TO LAW.

Racho was also charged with sixteen (16) counts[6] of Estafa, of which only six (6) cases prospered and eventually, were appealed before the Court. The Informations for these six (6) cases are similarly worded, except for the details pertaining to the date of commission of the offense, name of the complainant, job recruited for, and the amount involved. Among others, the accusatory portion of the Information[7] for Criminal Case No. 05-1938 involving the complainant Odelio C. Gasmen (Odelio) reads:

CRIMINAL CASE NO. 05-1938

That on or about the 26[th] of November, 2004 or prior thereto, in Makati, The Philippines, the above-named accused, did then and there willfully, unlawfully and feloniously defraud one Odelio C. Gasmen in the following manner, to wit: The said accused by false pretenses or fraudulent acts committed prior to or simultaneously with the commission of the fraud, to the effect that she can recruit workers for overseas employment and deploy complainant as construction worker in East Timor for a fee of Php100,000.00, which representation [she] well knew to be false and was only made to induce the aforementioned complainant to give and deliver, as in fact the said complainant gave and delivered, to her the said amount of [Php100,000.00], to the damage and prejudice of the said Odelio C. Gasmen in the aforementioned amount of Php100,000.00.

CONTRARY TO LAW.

The variations in the Informations for the other five (5) criminal cases, i.e., Criminal Case Nos. 05-1941, 05-1945, 05-1948, 05-1949, and 05-1951, are summarized below:

Criminal Case No.

Date of Commission of the Offense

Complainant

Job Recruited For

Amount Involved

05-1941

January 13, 2005

Simeon Adame Filarca (Simeon)

Carpenter

P80,000.00

05-1945

January 13, 2005

Bernardo Peña (Bernardo)

Plumber/electrician

P80,000.00

05-1948

January 17, 2005

Renato L. Pescador (Renato)

Carpenter

P100,000.00

05-1949

January 18, 2005

William D. Villaruz (William)

Contract worker

P80,000.00

05-1951

February 24, 2005

Rodolfo C. Pagal (Rodolfo)

Contract worker

P60,000.00

All of the cases against Radio were consolidated and tried jointly.[8] On May 24, 2011, Racho was arraigned and pleaded not guilty to all the charges against her.[9]

During trial, the prosecution presented the testimonies of Bella Diaz (Bella), a senior Labor and Employment Officer from the Philippine Overseas Employment Administration, as well as of the complainants in the above-cited criminal cases (i.e., Odelio, Simeon, Bernardo, Renato, and Rodolfo), with the exception of William, the complainant in Criminal Case No. 05-1949, who failed to appear despite his receipt of the Subpoenas dated February 28, 2012 and June 20, 2012 (Subpoenas).[10] Another witness, Rex Villaruz (Rex), who was the complainant in Criminal Case No. 05-1937, gave his testimony in court.[11] However, this latter case was provisionally dismissed by the RTC and as such, did not reach this Court.[12]

In particular, Bella Diaz confirmed that Racho was neither licensed nor authorized to recruit workers for employment abroad as certified in a document dated July 12, 2012.[13]

Meanwhile, Odelio, Simeon, Bernardo, Renato, Rodolfo, and Rex uniformly alleged that they heard either from a radio advertisement or a friend about an employment opportunity in East Timor linked to Racho. On separate dates, they went to meet with Racho either at her residence in Vigan, Ilocos Sur or her office in Makati City where they were briefed about the available position for them and the corresponding compensation. They were then asked to provide documents, fill out bio-data forms, and pay placement fees, which they did. They then left the Philippines on different dates and stayed in East Timor while waiting for their working visas. However, two to three months passed and yet no working visas were issued despite Radio's promises. Thus, they went back to the Philippines, and after failing to find Racho, filed their complaints before the Presidential Anti-Illegal Recruitment Task Force Hunter.[14]

In the course of the proceedings, Racho moved that some cases be provisionally dismissed[15] due to the failure of the other complainants to give their testimonies despite due notice. In an Order[16] dated September 17, 2012, the RTC provisionally dismissed nine (9) Estafa cases,[17] leaving the following cases to proceed: (a) the Illegal Recruitment in Large Scale case, i.e., Crim. Case No. 05-1935; (b) the above-stated six Estafa cases - Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, 05-1949, and 05-1951; and (c) an additional Estafa case, namely Criminal Case No. 05-1943 filed by complainant Dominador S. Pena (Dominador), who, same as William, failed to give his testimony.

As to the cases which proceeded, the defense countered with the sole testimony of Racho, who denied the charges against her and argued that she was an auditor of PET Plans, Inc. from March 23, 2000 to August 31, 2005, making it highly unlikely for her to have engaged in the business of recruitment and promised employment abroad. She also belied the claim that she received the amounts allegedly paid by the complainants and insisted that the latter only found out about the employment abroad from another person over the radio.[18]

The RTC Ruling

In a Decision[19] dated May 28, 2014, the RTC found Racho guilty beyond reasonable doubt of: (a) Illegal Recruitment in Large Scale in Criminal Case No. 05-1935, and accordingly, sentenced her to suffer life imprisonment and to pay a fine of P1,000,000.00; and (b) six (6) counts of Estafa in Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, 05-1951, including Criminal Case No. 05-1949, and accordingly, sentenced her to suffer imprisonment for indeterminate periods[20] and to pay[21] complainants the amounts they paid as placement fees plus twelve percent (12%) per annum from the filing of the information until finality of its judgment.[22]

At the outset, the RTC dismissed Criminal Case No. 05-1943 involving Dominador for failure of the prosecution to present any evidence.[23]

On the other hand, in the Illegal Recruitment in Large Scale case, the RTC was convinced that Racho offered and promised employments in East Timor to complainants despite not having any license to recruit them. It found that Racho indeed required the complainants to submit their bio-data, birth certificates, and passports, as well as pay placement fees.[24] As to the six (6) Estafa cases, the RTC held that the prosecution has proven Racho's misrepresentation that she could provide jobs to complainants in East Timor despite lack of authority from the POEA and that she demanded payment of placement fees. It added that Racho's deceit was underscored by the fact that complainants were stranded in East Timor without any jobs and upon their return to the country, could not find her to recover their payments.[25]

Aggrieved, Racho appealed[26] to the CA.

The CA Ruling

In a Decision[27] dated October 15, 2015, the CA affirmed Racho's convictions in toto.[28] It held that Racho's representation that she had the authority to deploy workers in East Timor for employment despite the absence of the required license or authority from the POEA, as well as her demand for payment of placement fees from the complainant, proved her guilt in the Illegal Recruitment in Large Scale and six (6) Estafa cases;[29] hence, the instant appeal involving these cases.

The Issue Before the Court

The core issue for the Court's resolution is whether or not Racho is guilty beyond reasonable doubt of Illegal Recruitment in Large Scale and of Estafa.

The Court's Ruling

Settled is the rule that an appeal in a criminal case throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those raised as errors by the parties.[30] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law." [31]

In this light, the Court affirms Racho's convictions in Criminal Case No. 05-1935 for Illegal Recruitment in Large Scale, as well as the Estafa cases docketed as Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, and 05-1951, but acquits her in Crim. Case No. 05-1949, i.e., the Estafa case filed by William, for lack of evidence. Moreover, the Court reduces the damages awarded to Rodolfo, the complainant in Criminal Case No. 05-1951, from P60,000.00 to P35,000.00 to conform with the amount proven in court. Finally, the Court adjusts the penalties imposed on Racho as regards the Estafa cases in view of the recent amendment under RA 10951,[32] as

well as the interest rate pursuant to law.

I.

Illegal Recruitment in Large Scale is defined under Section 6 of RA 8042, to wit:

Section 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, contact 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 acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

x x x x

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. (Emphasis and underscoring supplied)

The elements of the offense are: (a) the offender has no valid license or authority to enable him to lawfully engage in recruitment and placement of workers; (b) he undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b) of the Labor Code or any prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of RA 8042); and (c) he commits the same against three or more persons, individually or as a group.[33] Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.[34]

In this case, both the RTC and the CA found that all these elements are present. The POEA certification,[35] as confirmed by Bella Diaz, sufficiently established that Racho is neither licensed nor authorized to recruit workers for overseas employment. Clearly, a person or entity engaged in recruitment and placement activities without the requisite authority is engaged in illegal recruitment.[36] The definition of "recruitment and placement" under Article 13 (b) of the Labor Code includes 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. Thus, Racho's act of offering and promising to deploy the complainants to East Timor for work and collecting placement fees from more than three (3) persons, despite not being authorized to do so, renders her liable for Illegal Recruitment in Large Scale. In this relation, her defense of denial cannot overcome complainants' categorical and positive testimonies against her.[37] Therefore, the Court finds no cogent reason to deviate from the lower courts' findings on this score. Racho is therefore sentenced to suffer the penalty of life imprisonment and penalized with a fine of P1,000,000.00.

As to the penalty, although Section 7 of RA 8042 has been amended by Section 6 of RA 10022[38] which, accordingly, increased the penalty for the crime, the old law, i.e., RA 8042 - which is more advantageous to the accused - still applies considering that the crime was committed from 2004 to 2005 when the old law was still in effect.[39] Thus, the courts a quo correctly imposed the penalty of life imprisonment and fine of P1,000,000.00.[40]

II.

Racho's conviction for Estafa in Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, and 05-1951 is likewise warranted. Article 315 of the RPC states:

Article 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned herein below x x x:

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.

x x x x

Under this provision, Estafa by means of deceit is committed when these elements concur: (a) the accused used fictitious name or false pretense that he possesses power, influence, qualifications, property, credit, agency, business or imaginary transactions, or other similar deceits; (b) he used such deceitful means prior to or simultaneous with the commission of the fraud; (c) the offended party relied on such deceitful means to part with his money or property; and (d) the offended party suffered damage.[41]

Case law holds that the same pieces of evidence that establish liability for illegal recruitment in large scale confirm culpability for Estafa. In *People v. Chua*: [42]

[W]e agree with the appellate court that the same pieces of evidence which establish appellant's liability for illegal recruitment in large scale likewise confirm her culpability for estafa.

It is well-established in jurisprudence that a person may be charged and convicted for both illegal recruitment and estafa. The reason therefor is not hard to discern: illegal recruitment is *malum prohibitum*, while estafa is *mala in se*. In the first, the criminal intent of the accused is not necessary for conviction. In the second, such intent is imperative. Estafa under Article 315, paragraph 2 (a) 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.[43]

Records show that Racho defrauded Odelio, Simeon, Bernardo, Renato, and Rodolfo by representing that she can provide them with jobs in East Timor even though she had no license to recruit workers for employment abroad. She even collected the irrelevant documents and placement fees of varying amounts. Although complainants were able to fly to East Timor, they remained unemployed there due to Racho's failure to obtain their working visas. When they returned to the country and looked for Racho, complainants could not locate her to recover the amounts they paid. Undeniably, the prosecution was able to prove beyond reasonable doubt that Racho committed Estafa against the five (5) complainants.

However, the Court acquits Racho in Criminal Case No. 05-1949 due to the prosecution's failure to present any evidence to prove the crime charged. Records show that William, the complainant in this particular Estafa case, failed to testify before the RTC despite receipt of two Subpoenas ordering him to appear and testify. No documentary or other testimonial evidence was also presented. Therefore, an acquittal is warranted for this

particular case and, accordingly, the award of actual damages to William is deleted. Therefore, Racho's conviction for Estafa is affirmed only for five (5) counts.

III.

For another, the Court reduces the actual damages awarded to Rodolfo in Criminal Case No. 05-1951 to P35,000.00. Even though the amount alleged in the Information was P60,000.00,[44] Rodolfo's testimony revealed that he paid only P35,000.00 as placement fee.[45] "A party is entitled to adequate compensation only for such pecuniary loss actually suffered and duly proved." [46]

Furthermore, the Court modifies the penalties for the five (5) counts of Estafa pursuant to the recently-enacted RA 10951, which adjusted the base amounts that determine the incremental penalties to be imposed in Estafa cases and effectively reduced the imposable penalties. Notably, Section 100[47] of RA 10951 echoes the rule that a penal law may have retroactive effect when it is favorable to the accused,[48] as in this case.

The defrauded amounts involved in this case are: P100,000.00 in Criminal Case Nos. 05-1938 and 05-1948; P80,000.00 in Criminal Case Nos. 05-1941 and 05-1945; and P35,000.00 in Criminal Case No. 05-1951.[49]

Prior to RA 10951, the imposable penalty when the amount involved exceeds P22,000.00 is the maximum period of prision correccional in its maximum, as minimum, to prision mayor in its minimum (i.e., six [6] years, eight [8] months, and twenty one [21] days to eight [8] years), as maximum, plus one year for each additional P10,000.00.

With the enactment of RA 10951,[50] the imposable penalties were effectively reduced. For instance, when the amount involved is over P40,000.00 but not exceeding P1,200,000.00, the prescribed penalty is only arresto mayor in its maximum period to prision correccional in its minimum period (i.e., four [4] months and one [1] day to two [2] years and four [4] months), which applies to Criminal Case Nos. 05-1938, 05-1941, 05-1945, and 05-1948 in this case. Applying the Indeterminate Sentence Law (ISL),[51] the minimum term should be taken from arresto mayor in its minimum and medium periods (i.e., one [1] month and one [1] day to four [4] months), while the maximum term should be within the medium period of the prescribed penalty (i.e., one [1] year and one [1] day to one [1] year and eight [8] months) there being no aggravating or mitigating circumstances present in this case. In view of the circumstances in the above-cited criminal cases, the Court finds it proper to impose a penalty of four (4) months of arresto mayor, as minimum, to one (1) year and one (1) month of prision correccional, as maximum.

On the other hand, if the amount involved is less than P40,000.00, the imposable penalty is only arresto mayor in its medium and maximum periods (i.e., two [2] months and one [1] day to six [6] months), as is applicable to Criminal Case No. 05-1951. The ISL no longer applies because the imposable penalty is less than one (1) year.[52] Thus, a straight penalty of six (6) months of arresto mayor is proper.

In sum, the Court modifies the penalties imposed on Racho as follows:

Criminal Case No.

Amount Defrauded

Minimum Penalty

Maximum Penalty

05-1938

P100,000.00

Four (4) months of arresto mayor

One (1) year and one (1) month of prision correccional

05-1941

P80,000.00

Four (4) months of arresto mayor

One (1) year and one (1) month of prision correccional

05-1945

P80,000.00

Four (4) months of arresto mayor

One (1) year and one (1) month of prision correccional

05-1948

P100,000.00

Four (4) months of arresto mayor

One (1) year and one (1) month of prision correccional

05-1951

P35,000.00

Six (6) months of arresto mayor

IV.

Finally, the Court adjusts the interest imposed. Records show that the CA affirmed the RTC's imposition of interest at the rate of twelve percent (12%) per annum, reckoned from the filing of the Information until finality of judgment. In line with the Court's ruling in *Nacar v. Gallery Frames*[53] applying Resolution No. 796 of the Bangko Sentral ng Pilipinas Monetary Board, the interest rate should, however, be modified to the rate of twelve percent (12%) per annum from the filing of the Informations in said cases on October 18, 2005 until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.[54] The amounts owed to complainants constitute forbearances of money whose corresponding interests are treated under the said parameters.

WHEREFORE, the appeal is PARTLY GRANTED. The Decision dated October 15, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06932, is hereby AFFIRMED with MODIFICATIONS:

(1) Erlinda Racho y Somera (Racho) is found GUILTY of Illegal Recruitment in Large Scale in Criminal Case No. 05-1935 and, accordingly SENTENCED to suffer the penalty of life imprisonment and ORDERED to pay a fine of P1,000,000.00 therefor;

(2) Racho is likewise found GUILTY of five (5) counts of Estafa. Accordingly, she is sentenced to suffer the penalty of imprisonment as follows:

(a) In Criminal Case No. 05-1938, four (4) months of arresto mayor, as minimum, to one (1) year and one (1) month of prision correccional, as maximum;

(b) In Criminal Case No. 05-1941, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum;

(c) In Criminal Case No. 05-1945, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum;

(d) In Criminal Case No. 05-1948, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum; and

(e) In Criminal Case No. 05-1951, six (6) months of *arresto mayor*.

(3) Moreover, Racho is ORDERED to pay the following complainants actual damages in these amounts: (a) P100,000.00 to Odelio Gasmen; (b) P80,000.00 to Simeon Filarca; (c) P80,000.00 to Bernardo Pena; and (d) P100,000.00 to Renato Pescador; and (e) P35,000.00 to Rodolfo Pagal. These monetary awards are subject to interest at the rate of twelve percent (12%) per annum from the filing of the Informations on October 18, 2005 until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.

(4) Finally, Racho is ACQUITTED of the *Estafa* charge in Criminal Case No. 05-1949 for lack of evidence.

SO ORDERED.

Carpio, (Chairperson), Peralta, Caguioa, and Reyes, Jr., JJ., concur.

[1] See Notice of Appeal dated November 2, 2015; rollo, pp. 15-16.

[2] *Id.* at 2-14. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando concurring.

[3] CA rollo, pp. 44-59. Penned by Judge Selma Palacio Alaras.

[4] Entitled "AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on June 7, 1995.

[5] CA rollo, p. 23.

[6] *Id.* at 24-39.

[7] *Id.* at 26.

[8] Rollo, p. 4.

[9] *Id.* See also records, pp. 140-141.

[10] Records, pp. 186 and 193.

[11] See rollo, p. 4.

[12] See Order dated September 17, 2012; records, pp. 204-205.

[13] See rollo, p. 7.

[14] See *id.* at 4-7.

[15] See RTC's Order dated August 14, 2012 (records, p. 203) which reads:

Considering that the witnesses, the private complainants in this case were duly notified for several times but failed to appear, the prosecution is given fifteen (15) days from today to formally offer its evidence. The defense is given ten (!0) days from receipt of the formal offer to file their comment/opposition, thereafter, the incident is submitted for resolution. The defense likewise moved that considering the failure of the prosecution to offer evidence in some cases, let those cases be considered PROVISIONALLY DISMISSED.

The Court holds in abeyance the ruling on the motion until such time it has identified the cases where there was no evidence offered by the prosecution. (Emphases supplied)

[16] Records, pp. 204-205.

[17] These were the cases that were provisionally dismissed: Criminal Case Nos. 05-1936, 05-1937, 05-1939, 05-1940, 05-1942, 05-1944, 05-1946, 05-1947, and 05-1950. (See id.)

[18] Rollo, p.1.

[19] CA rollo, pp. 44-59.

[20] See id. at 58-59. Pursuant to Article 315 of the RPC in relation to the Indeterminate Sentence Law, the RTC imposed indeterminate penalties summarized as follows:

Crim. Case No.

Minimum Penalty

Maximum Penalty

05-1938

Two (2) years, eleven (11) months, and eleven (11) days of prision correccional Thirteen (13) years, eight (8) months, and twenty one (21) days of reclusion temporal

05-1941

Two (2) years, eleven (11) months, and eleven (11) days of prision correccional Eleven (11) years, eight (8) months, and twenty one (21) days of prision mayor

05-1945

Two (2) years, eleven (11) months, and eleven (11) days of prision correccional Eleven (11) years, eight (8) months, and twenty one (21) days of prision mayor

05-1948

Two (2) years, eleven (11) months, and eleven (11) days of prision correccional Thirteen (13) years, eight (8) months, and twenty one (21) days of reclusion temporal

05-1949

Two (2) years, eleven (11) months, and eleven (11) days of prision correccional Eleven (11) years, eight (8) months, and twenty one (21) days of prision mayor

05-1951

Two (2) years, eleven (11) months, and eleven (11) days of prision correccional Nine (9) years, eight (8) months, and twenty one (21) days of prision mayor

(Emphases supplied).

[21] See *id.*

Crim. Case No.

Complainant

Amount

05-1938

Odelio C. Gasmen

P100,000.00

05-1941

Simeon Adame Filarca

P80,000.00

05-1945

Bernardo Peña

P80,000.00

05-1948

Renato L. Pescador

P100,000.00

05-1949

William D. Villaruz

P80,000.00

05-1951

Rodolfo C. Pagal

P60,000.00

(Emphases supplied).

[22] See *id.* at 58-59.

[23] *Id.* at 59.

[24] See *id.* at 52-55.

[25] See *id.* at 55-56.

[26] See Notice of Appeal dated June 9, 2014; records, p. 480.

[27] Rollo, pp. 2-14.

[28] *Id.* at 13-14.

[29] See *id.* at 10-13.

[30] See *Ramos v. People*, G.R. Nos. 218466 and 221425, January 23, 2017.

[31] *Id.*

[32] Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE', AS AMENDED," approved on August 29, 2017.

[33] *People v. Daud*, 734 Phil. 698, 715 (2014).

[34] See Section 6 (m) of RA 8042.

[35] Records, p. 256.

[36] *People v. Lalli*, 675 Phil. 126, 150 (2011).

[37] See *People v. Molina*, G.R. No. 207811, June 1, 2016, 792 SCRA 14, 29.

[38] Entitled "AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," lapsed into law on March 8, 2010 without the signature of the President, in accordance with Section 27 (1), Article VI, of the 1987 Constitution.

[39] Although Section 7 of RA 8042 has been amended by Section 6 of RA 10022, which amendment increased the penalty in RA 8042, the old penalty still applies considering that the crime was committed from 2004 to 2005 when RA 8042 had yet to be amended and thus, was still in effect. (See *People v. Lalli*, *supra* note 36, at 151.)

[40] Section 7. Penalties. -

x x x x

(b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (P500,000.00) nor more than one million pesos (P1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

x x x x (Underscoring supplied)

[41] *Lopez v. People*, 715 Phil. 839, 847 (2013).

[42] 695 Phil. 16 (2012).

[43] *Id.* at 31.

[44] Records, p. 35.

[45] See TSN, October 24, 2011, p. 91.

[46] *PNOC Shipping and Transport, Corp. v. CA*, 358 Phil. 38, 43 (1998).

[47] Section 100. Retroactive Effect. - This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment. (Emphasis supplied)

[48] *People v. Derilo*, 338 Phil. 350, 379 (1997).

[49] Summarized as follows:

Crim. Case No.

Complainant

Amount

05-1938

Odelio C. Gasmen

P100,000.00

05-1941

Simeon Adame Filarca

P80,000.00

05-1945

Bernardo Peña

P80,000.00

05-1948

Renato L. Pescador

P100,000.00

05-1951

Rodolfo C. Pagal

P35,000.00

[50] The relevant provision, as amended, reads:

SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

"ART. 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

"3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

"4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40,000): x x x

x x x x

[51] Pertinently, Section 1 of Act No. 4103, or ISL, provides:

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which

shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x. (Underscoring supplied)

[52] Section 2 of the ISL reads:

SEC. 2. This Act shall not apply to x x x those whose maximum term of imprisonment does not exceed one year x x x.

(See also *People v. Mancera*, 108 Phil. 785, 787-788 (1960); and *Humilde v. Pablo*, A.M. No. 604-CFI, February 20, 1981, 102 SCRA 731, 732.)

[53] 716 Phil. 267 (2013).

[54] See *id.* at 281-283. See also *People v. Villanueva*, 755 Phil. 28, 40 (2015).

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