

PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. ELMA ROMERO Y CRUZ, ACCUSED-APPELLANT.

G.R. Nos. 103385-88. July 26, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal from a Joint Decision[1] of the Regional Trial Court of Pasig, Branch 168 in Criminal Cases Nos. 78507-10[2] finding accused-appellant Elma Romero y Cruz guilty beyond reasonable doubt of the crimes of ESTAFA and ILLEGAL RECRUITMENT.

Two (2) separate Informations were filed by Assistant Fiscal Edmundo O. Legaspi in behalf of complainant Doriza Dapnit against Elma Romero for the crimes of ESTAFA and ILLEGAL RECRUITMENT committed as follows:

CRIMINAL CASE NO. 78507 - ESTAFA

"That sometime during the month of January, 1989, in the Municipality of Mandaluyong, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud one Doriza Dapnit of the amount of P21,000.00, by means of deceit and false representations which she made to the latter to the effect that she could facilitate the employment overseas of said Doriza Dapnit, and would need certain amount for expenses in the processing of her employment and travel papers, which representation the accused well knew were false and fraudulent and were only made by her to induce said Doriza Dapnit to give and pay, as the latter gave and paid to her the amount of P21,000.00 which the accused once in possession of the said amount, misappropriate, misapply and convert to her own personal use and benefit, to the damage and prejudice of said Doriza Dapnit, in the aforementioned amount of P21,000.00."[3]

CRIMINAL CASE NO. 78510 - ILLEGAL RECRUITMENT

"That in or about and during the period comprised from January, 1989, up to February, 1989, in the Municipality of Mandaluyong, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing that she was neither authorized nor licensed by the Philippine Overseas Employment Agency, did then and there willfully, unlawfully and feloniously recruit workers for overseas employment and collect from the following persons, to wit:

Doriza Dapnit P21,000.00

Bernardo T. Salazar..... 24,000.00

Richard Quillope..... 15,600.00

by falsely representing to the latter that she was a lawful recruiter and in a position to obtain for their job placement abroad."[4]

Upon arraignment, accused Elma Romero pleaded "NOT GUILTY" and trial ensued.

The facts as found by the trial court are as follows:

Sometime in January of 1989, complainant Doriza Dapnit went to the residence of accused-appellant Elma Romero at Esteban Street, Mandaluyong, Metro-Manila accompanied by Genalie Cruz, a cousin of accused-appellant. At such meeting, complainant Doriza Dapnit told accused-appellant of her desire to work abroad and the latter informed her that she can work in Taiwan as a factory worker with a monthly salary of US\$5,000.00.[5]

Thereafter, complainant Doriza Dapnit, relying upon the representation of the accused-appellant that she can leave on April 1, 1989 for Taiwan as a factory worker, paid the placement fee charged by the latter as evidenced by the receipts issued by the accused-appellant totalling P21,000.00 which were paid as follows: P3,000.00 on January 24, 1989,[6] P15,000.00 on February 4, 1989[7] and P3,000.00 on February 27, 1989.[8] Complainant Doriza Dapnit also paid accused-appellant the amount of P1,800.00 for the processing of her passport which is not included in her claim as she was issued a passport.[9]

When complainant Doriza Dapnit was not able to leave on April 1, 1989 for Taiwan, accused-appellant told her to wait as her visa was not yet issued. However, after spending more than two (2) months futilely following up her visa with the accused-appellant, complainant Doriza Dapnit went to the office of the Philippine Overseas Employment Administration (POEA) and found out that accused-appellant is not a licensed recruiter as shown by the Certification issued by the POEA.[10]

On June 30, 1989, complainant Doriza Dapnit executed an affidavit[11] at the office of the POEA charging accused-appellant for illegal recruitment and/or estafa.

Complainant Bernardo Salazar testified that sometime in the middle of January 1989, he went to RSI Enterprises located at Shaw Boulevard, Mandaluyong, Metro-Manila and met accused-appellant where he applied for a job in Taiwan. During said meeting, accused-appellant promised complainant Bernardo Salazar that he can leave for Taiwan on April 1, 1989 as a factory worker with a monthly salary of US\$600.00[12] as soon as he paid the placement fee.

After paying accused-appellant the amount of P24,000.00 as placement fee which were evidenced by the five (5) receipts[13] issued by accused-appellant, complainant Bernardo Salazar was not able to leave on April 1, 1989 and accused-appellant told him that his departure was delayed because she is still waiting for the issuance of his visa.

When accused-appellant failed to send complainant Bernardo Salazar to Taiwan, the latter went to the Anti-illegal Recruitment Branch of the POEA on June 30, 1989 and executed an affidavit[14] charging accused-appellant for illegal recruitment and/or estafa.

When complainant Richard Quillope was presented to the court and sworn in, prosecution's counsel manifested that complainant Quillope will testify to the following:

"x x x; that on January 25, 1989, Elma Romero made representation to him as having capacity to send workers abroad, overseas workers abroad. As made by Elma Romero that she has the capacity of sending overseas workers abroad he paid the following amount, first, in the amount of P3,000.00 dated March 10, 1989; second payment dated January 10, 1989 in the amount of P10,000.00; third in the amount of P1,600.00 dated February 17, 1989. That all these receipts except that amount of P1,000.00 are for processing fee for visa for Taipeh. That this witness was not able to go or was deployed as promised by the accused, he found out that she was not licensed nor engaged in the recruitment of overseas employment. That there was representation made by Elma Romero that this witness will be sent abroad as factory worker in Taipeh or Taiwan." [15]

to which accused-appellant's counsel did not object when he admitted said manifestation in court, as follows:

"ATTY. JAKOSALEM:

We have no objection and we admit the testimony of the witness. So, we can dispense with the cross-examination of the said witness.

"COURT:

He (We) dispensed with the cross-examination of the witness."[16]

On January 18, 1990, the trial court issued an Order[17] dismissing Criminal Cases Nos. 78508 and 78509 on the basis of the Joint Affidavit of Desistance[18] executed by complainants Richard Quillope and Bernardo Salazar on December 14, 1989.

On August 8, 1991, the trial court rendered its Joint Decision, the dispositive portion of which reads as follows:

"WHEREFORE, finding the accused ELMA ROMERO guilty beyond reasonable doubt of the crime of Estafa, the Court hereby sentences her to suffer the penalty of imprisonment of one (1) year, 8 months and 21 days of prision correccional as MINIMUM to 5 years, 5 months and 11 days of prision correccional as MAXIMUM and to indemnify complainant Doriza Dapnit the sum of P21,000.00;

"Finding the accused ELMA ROMERO guilty beyond reasonable doubt of the crime of Illegal Recruitment constituting economic sabotage, the Court, hereby sentences her to suffer the penalty of life imprisonment (reclusion perpetua) and a fine of One Hundred Thousand Pesos (P100,000.00)."[19]

Hence, this appeal.

Accused-appellant contends that there was no misrepresentation nor misappropriation on her part because the money paid by complainant Doriza Dapnit was for the purpose of facilitating the processing of the latter's passport and visa only as indicated in the receipts issued to the complainant and not in consideration of a promised job placement abroad.

We do not agree.

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.[20]

In the instant case, all the elements of estafa are present because complainant Doriza Dapnit gave the total amount of P21,000.00 to accused-appellant on the latter's promise that she will be sent to Taiwan as a factory worker as soon as she paid the placement fee. It will be observed that accused-appellant gave complainant the distinct impression that she had the power or ability to send people abroad for work so that complainant was convinced to give her the money she demanded to enable her to be employed as a factory worker in Taiwan. Furthermore, accused-appellant's defense that she did not misrepresent herself as capable of finding complainant Doriza Dapnit employment abroad is negated by the latter's testimony when she testified that:

"Q: Did you have any conversation with Elma Romero?

A: Yes, sir.

Q: What was your conversation about, will you tell the Court?

A: She told me that I could be deployed as one of the factory workers in Taiwan.

Q: Did you ask her how much would be your salary if you will be deployed as one of the factory workers in Taiwan?

A: Yes, sir.

Q: How much?

A: US\$5,000.00.

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Q: Was there any consideration for your employment abroad as promised by Elma Romero?

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For the promise to be deployed as factory worker in Taiwan?

A: She told me that I will have to pay the full payment.

Q: How much was the full payment as told to you by Elma Romero?

A: P21,000.00.

Q: Were you able to pay this full amount of P21,000.00?

A: Yes, sir.

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Q: Do you have receipt corresponding to that payment?

A: Yes, sir.”[21]

From the foregoing testimony, accused-appellant cannot claim that complainant paid her only for the processing of her travel documents and not in consideration of finding a job for her in Taiwan. Thus, accused-appellant is guilty of the crimes of estafa and illegal recruitment.

The contention of the accused-appellant that she cannot be convicted of large-scale illegal recruitment which requires at least three (3) persons to be victimized considering that only one victim testified against her while the other two complainants executed a joint affidavit of desistance which resulted in the dismissal of their complaints against her is without merit.

The records show that aside from complainant Doriza Dapnit, complainants Bernardo Salazar and Richard Quillope testified that they were both victims of accused-appellant's illegal recruitment activities. Bernardo Salazar's testimony is as follows:

"Q: And at the middle part of January 1989 where did you see Elma Romero?

"A: At the RSI Enterprises, sir.

"Q: What was your purpose in going to RSI Enterprises?

"A: My purpose in going to her office is to apply for employment abroad.

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"Q: Were you able to talk with Elma Romero with respect to your employment abroad as factory worker in Taiwan?

"A: Yes, sir.

"Q: What was the result of that conversation?

"A: Elma Romero promised us employment in Taiwan, sir.

"Q: Did Elma Romero mentioned (sic) about your salary?

"A: Yes, sir.

"Q: How much is the salary?

"A: Six hundred dollars (\$600), sir.

"Q: After the meeting with Elma Romero and she promised you that she will sent (sic) you to Taiwan, what transpired after that?

"A: Elma Romero promised us that we could leave for abroad and from April 1 we were told to wait up to April 4, sir.

"Q: Were you able to live (sic) on April 4?

"A: No, sir.

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"Q: How much was the placement fee?

"A: Eighteen thousand pesos, sir. (P18,000.00)

"Q: Did you give this eighteen thousand (P18,000.00) pesos to Elma Romero?

"A: Yes, sir.

"Q: Was there any receipt of your P18,000.00 that you give to Elma Romero?

"A: Yes, sir.

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"Q: After you have pay (sic) the P18,000.00 to Elma Romero what transpired next?

"A: We keep (sic) on talking to Elma Romero, sir.

"Q: Do you have any companion, Mr. Witness in applying for employment abroad?

"A: Yes, sir.

"Q: Will you please tell the Honorable Court who are your companion (sic) you are referring to?

"A: My other companions are Richard Quillopo and Doriza Dapnit, sir.

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"Q: When you were not able to leave for Taiwan, what did you do next?

"A: When we were not able to leave for Taiwan we proceed (sic) to the Office of the Anti-illegal Recruitment at the POEA to tell our problem.

(TSN, April 5, 1990, pp. 5-11)"[22]

The fact that complainants Bernardo Salazar and Richard Quillope executed a Joint Affidavit of Desistance does not serve to exculpate accused-appellant from criminal liability insofar as the case for illegal recruitment is concerned since the Court looks with disfavor the dropping of criminal complaints upon mere affidavit of desistance of the complainant, particularly where the commission of the offense, as is in this case, is duly supported by documentary evidence.[23]

Generally, the Court attaches no persuasive value to affidavits of desistance, especially when it is executed as an afterthought. It would be a dangerous rule for courts to reject testimonies solemnly taken before the courts of justice simply because the witnesses who had given them, later on, changed their mind for one reason or another; for such rule would make solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witness.[24]

Complainants Bernardo Salazar and Richard Quillope may have a change of heart insofar as the offense wrought on their person is concerned when they executed their joint affidavit of desistance but this will not affect the public prosecution of the offense itself. It is relevant to note that "the right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign power instinctly charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights." [25] This cardinal principle which states that to the State belongs the power to prosecute and punish crimes should not be overlooked since a criminal offense is an outrage to the sovereign State. As provided by the Civil Code of the Philippines:

"Art. 2034. There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty."

The trial court had correctly found accused-appellant ELMA ROMERO guilty beyond reasonable doubt of the crime of ILLEGAL RECRUITMENT COMMITTED IN LARGE SCALE.

The penalty imposed under Article 39 of the New Labor Code for illegal recruitment committed in large scale is life imprisonment. However, life imprisonment is not synonymous or interchangeable with reclusion perpetua. Accordingly, reclusion perpetua should be deleted from the appealed decision.

WHEREFORE, the decision of the trial court is hereby AFFIRMED with the modification that the term "reclusion perpetua" be deleted from said decision.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Penned by Judge Benjamin V. Pelayo.

[2] Criminal Case Nos. 78508 and 78509 were dismissed by the trial court by the Order dated Jan. 18, 1990.

[3] Rollo, p. 4.

[4] Id., at p. 7.

[5] T.S.N., December 30, 1989, p. 9.

[6] Exhibit "B", Original Records, p. 126.

[7] Exhibit "C", Original Records, p. 126.

- [8] Exhibit "D", Original Records, p. 126.
- [9] T.S.N., December 21, 1989, pp. 7-8 & 11-12.
- [10] Exhibit "E", Original Records p. 124.
- [11] Exhibit "A", Original Records p. 125.
- [12] T.S.N., April 5, 1990, pp. 5-7.
- [13] Exhibits "F-J", Original Records, pp. 127-128.
- [14] Exhibit "K", Original Records, p. 129.
- [15] T.S.N., April 5, 1990, p. 18.
- [16] Id., at p. 19.
- [17] Original Records, p. 90.
- [18] Exhibits "7", Original Records, p. 73.
- [19] Regional Trial Court's Decision, Original Records, p. 237.
- [20] People vs. Ong, 204 SCRA 942 [1991].
- [21] T.S.N., December 20, 1989, pp. 9-11.
- [22] Appellee's Brief, pp. 8-10.
- [23] Quinio vs. Borbolla, 79 SCRA 155 [1977].
- [24] Castillo vs. Calanog, Jr., 199 SCRA 75 [1991].
- [25] United States vs. Pablo, 35 Phil. 94 [1916].

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