

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYDANTE CALONZO Y AMBROSIO, ACCUSED-APPELLANT.

G.R. Nos. 115150-55. September 27, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

REYDANTE CALONZO Y AMBROSIO was charged with Illegal Recruitment in Large Scale and five (5) counts of Estafa by Bernardo Miranda, Danilo de los Reyes, Elmer Clamor, Belarmino Torregrosa and Hazel de Paula. On 5 April 1994 the Regional Trial Court of Pasig found the accused guilty as charged and sentenced -

1. In Criminal Case No. 98850 for Estafa, to suffer an indeterminate prison term of eleven (11) years, eleven (11) months and eleven (11) days of prison mayor to fifteen (15) years, eight (8) months and twenty-one (21) days of reclusion temporal, to reimburse the complainant-victim Bernardo Miranda in the amount of P120,000.00 and to pay the costs.
2. In Criminal Case No. 98851 for Estafa, to suffer an indeterminate prison term of eleven (11) years, eleven (11) months and eleven (11) days of prison mayor to fifteen (15) years, eight (8) months and twenty-one (21) days of reclusion temporal, to reimburse the complainant-victim Danilo de los Reyes in the amount of P120,000.00 and to pay the costs.
3. In Criminal Case No. 98852 for Estafa, to suffer an indeterminate prison term of eleven (11) years, eleven (11) months and eleven (11) days of prison mayor to fifteen (15) years, eight (8) months and twenty-one (21) days of reclusion temporal, to reimburse the complainant-victim Elmer Clamor in the amount of P120,000.00 and to pay the costs.
4. In Criminal Case No. 98853 for Estafa, to suffer an indeterminate prison term of nine (9) years, eleven (11) months and eleven (11) days of prison mayor to thirteen (13) years, eight (8) months and twenty-one (21) days of reclusion temporal, to reimburse the complainant-victim Belarmino Torregrosa in the amount of P100,000.00 and to pay the costs.
5. In Criminal Case No. 98854 for Estafa, to suffer an indeterminate prison term of eleven (11) years, eleven (11) months and eleven (11) days of prison mayor to fifteen (15) years, eight (8) months and twenty-one (21) days of reclusion temporal, to reimburse the complainant-victim Hazel de Paula in the amount of P120,000.00 and to pay the costs.
6. In Criminal Case No. 98855 for Illegal Recruitment (Large Scale), to suffer the penalty of life imprisonment, to pay a fine of One Hundred Thousand Pesos (P100,000.00) and to pay the costs.

In the successive service of his sentences, the accused shall be credited in full with the period of his preventive imprisonment.

The above terms shall also be subject to the application of the Three-Fold Rule.[1]

Accused-appellant in this appeal assails his conviction by the trial court. He claims that the court below erred in disregarding the testimony of Nenita Mercado, an employee of the Philippine Overseas Employment

Administration (POEA), who categorically stated that their records indicated that Calonzo never processed complainants' applications for employment abroad. He concludes from that fact alone that he cannot be deemed to have engaged in the recruitment of workers for employment abroad.

As regards the estafa cases, accused-appellant contends that the court a quo erred in giving credence to the testimonies of prosecution witnesses considering that the amounts claimed to have been collected by him did not correspond to the amounts indicated in the receipts presented by the complaining witnesses.

The antecedents: Sometime in February 1992 Danilo de los Reyes and his brother-in-law Belarmino Torregrosa met Reydante Calonzo in the house of Loreta Castañeda at No. 10 P. Burgos Street, Pasig, Metro Manila. In that meeting Calonzo lost no time in informing them that he could provide them employment abroad, particularly Italy, for a fee. Calonzo was so glib and persuasive that De los Reyes and Torregrosa were quickly convinced to cast their lot with him. Upon returning home they took stock of their assets and resources and came up with the figures sufficient for the processing of their applications for employment abroad. Two months after their initial meeting, or on 13 April 1992, De los Reyes gave Calonzo P50,000.00. He also pledged the Ford Fiera of his brother-in-law to Calonzo for P70,000.00 in order to come up with the P120,000.00 processing fee imposed by Calonzo. The latter then informed De los Reyes of his "scheduled" departure for Italy on 29 April 1992. However, despite the lapse of the period, De los Reyes and Torregrosa remained in the Philippines although their recruiter reiterated his promise to send them to Italy.

On 1 May 1992, instead of sending them to Italy, they were billeted at Aloha Hotel along Roxas Boulevard. The following day, or on 2 May 1992, they boarded a plane that was supposed to take them to Italy. But Calonzo had another destination in mind. They landed in Bangkok instead where their visas for Italy, according to Calonzo, would be processed. They stayed at P.S. Guest Hotel for one and a half months. While in Bangkok the accused again collected money from them purportedly to defray the expenses for their visas. They also incurred expenses for food and accommodation, and for overstaying, De los Reyes had to pay 2800 bahts to the immigration authorities only to discover to their utter dismay that Calonzo had already returned to the Philippines.

In their helplessness in a foreign land they sought the help of Loreta Castañeda by calling her up in Manila. Castañeda promptly fetched them from Bangkok and brought them back to the Philippines. The day following their arrival they went to the office of Calonzo on Padre Faura. Despite their frustrations in Bangkok Calonzo still insisted that he would send them to Italy as he promised. In their naivetè which was no match to the unmitigated audacity of Calonzo, De los Reyes and Torregrosa still clung to the promises of Calonzo hoping against hope that the latter would still fulfill them. However the promises remained unfulfilled so they looked again for Calonzo. But this time their quarry had already absconded.

They verified from the POEA whether Calonzo or his R. A. C. Business Agency was duly authorized and licensed to recruit people for employment abroad. The POEA certified that R. A. C. Business Agency was not licensed to recruit workers for overseas employment.

Torregrosa substantiated the above account. He testified that he gave Calonzo a total of P100,000.00. On cross-examination however he stated that he gave such amount on 27 April 1992 and not on 13 April 1992 as testified to by De los Reyes. But the date appearing on the receipt marked Exhibit A is 13 April 1992. Torregrosa also claimed that while in Bangkok he gave Calonzo an additional amount of US\$100.00.

On her part, Hazel de Paula testified that she first met appellant and the other complainants at the house of Loreta Castañeda at No. 10 P. Burgos Street, Pasig, Metro Manila. Convinced that she would eventually be employed in Italy as a domestic helper she gave Calonzo P120,000.00. Unlike the other complaining witnesses, she was not able to fly to Bangkok on 2 May 1992 as her passport was not yet available. She left only on 6 May 1992 where

she was met by Calonzo at the airport and brought to the P.S. Guest Hotel where her companions who had arrived earlier were already billeted. She said that while in Bangkok Calonzo asked money again from her.

Elmer Clamor, a 28-year old resident of Gen. Trias, Cavite, was similarly situated with Hazel de Paula. Clamor narrated that he gave Calonzo P120,000.00 for the latter's commitment to send him to Italy, and in fact while in Bangkok he gave Calonzo US\$250.00 more.

Bernardo Miranda, a construction worker from Talisay, Batangas, was another victim of Calonzo. Lured by the latter's assurances that he would be sent to Italy, he gave Calonzo a total of P120,000.00 for the processing of his application for work in Italy. But, like all the rest of them, Miranda only reached Bangkok. The promised job, his hard-earned money and Calonzo himself eventually disappeared.

Senior Labor Employment Officer Nenita Mercado of the POEA confirmed that neither Reydante Calonzo nor his R. A. C. Business Agency was authorized to recruit workers for employment abroad.

Reydante Calonzo tells us his own story. He admits being engaged in the consultancy business through his R. A. C. Business Agency but denies any involvement in recruitment activities. He admits knowing Loreta Castañeda and Leticia Solis as the two have sought his assistance regarding their real estate business. He denies knowing the complaining witnesses except Danilo de los Reyes and Belarmino Torregrosa who once visited him in his office. While he disclaims the receipts presented by the prosecution as official receipts of his R. A. C. Business Agency he admits that the signatures thereon were similar to his.

We frustrate the expectations of the accused. Article 13, par. (b), of the Labor Code defines recruitment and placement as -

(A)ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not; Provided, that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

Illegal recruitment is specifically defined in Art. 38 of the Code thus -

(a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code x x x x

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

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

All the five (5) complaining witnesses met each other for the first time at the house of Loreta Castañeda. They were not in any way acquainted with one another prior to that meeting save for Danilo de los Reyes and his brother-in-law Belarmino Torregrosa. They all came from different places, yet, they were all united in pointing to the Calonzo as the person who enticed them to apply for employment abroad. Of course, Calonzo could not explain what motivated the complaining witnesses to file these cases against him. The most that Calonzo could do on the witness stand was to deny all the charges against him. Alas, his denial is at most lame and cannot prevail over the positive assertions of the complaining witnesses. In *People v. Villafuerte* [2] we ruled -

x x x The absence of evidence as to an improper motive actuating the principal witnesses of the prosecution strongly tends to sustain no improper motive existed and their testimony is worthy of full faith and credit. Accused-appellant's denial cannot prevail over the positive assertions of complainants who had no motive to testify falsely against her except to tell the truth.

Illegal recruitment in large scale is committed when a person "(a) undertakes any recruitment activity defined under Article 13(b) or any prohibited practice enumerated under Article 34 of the Labor Code; (b) does not have a license or authority to lawfully engage in the recruitment and placement of workers; and (c) commits the same against three or more persons, individually or as a group." [3] The testimony of complainants evidently showed that Calonzo was engaged in recruitment activities in large scale. Firstly, he deluded complainants into believing that jobs awaited them in Italy by distinctly impressing upon them that he had the facility to send them for work abroad. He even showed them his passport to lend credence to his claim. To top it all, he brought them to Bangkok and not to Italy. Neither did he have any arrangements in Bangkok for the transfer of his recruits to Italy. Secondly, POEA likewise certified that neither Calonzo nor R. A. C. Business Agency was licensed to recruit workers for employment abroad. Appellant admitted this fact himself. Thirdly, appellant recruited five (5) workers thus making the crime illegal recruitment in large scale constituting economic sabotage.

In his attempt to exculpate himself, although belatedly, Calonzo denies having received money from the complainants. But as against their positive testimonies, this denial of appellant is worthless and at most self-serving. All the complaining witnesses testified that they gave their money to Calonzo through Loreta Castañeda who in turn gave the amounts to Calonzo in their presence. In support thereof complainants even presented receipts issued by the R. A. C. Business Agency with Calonzo's signature affixed thereon. Nobody corroborated Calonzo's denial. Even Loreta who could have confirmed such denial testified that all the amounts given by the complainants were turned over by her to Calonzo. The attempt of the defense at reinforcing such denial proved futile when it presented Carmeo Alix to testify that appellant owned another import-export business as it had no relevance to his defense.

As regards the conviction of Calonzo for estafa on five (5) counts we ruled in *People v. Turda* [4] that recruitment of persons for overseas employment without the necessary recruiting permit or authority from the POEA constitutes illegal recruitment; however, where some other crimes or felonies are committed in the process, conviction under the Labor Code does not preclude punishment under other statutes. In *People v. Romero* [5] we said that the elements of estafa were: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Corollarily, Art. 315 of the Revised Penal Code provides for its penalty thus -

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over P12,000 but does not exceed P22,000, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional P10,000; but the total penalty which may be imposed shall not exceed twenty years. In such a case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

In the case before us, we are convinced that Calonzo defrauded complainants through deceit. They were obviously misled into believing that he could provide them employment in Italy. As a result, the five (5) complainants who desperately wanted to augment their income and improve their lot parted with their hard-earned money. In *Crim. Cases Nos. 98850, 98851, 98852 and 98854* the amount defrauded of each complainant was P120,000.00. In consonance with Art. 315 of the Revised Penal Code, the imposable penalty is prision correccional in its maximum period to prision mayor in its minimum period the range of which is four (4) years, two (2) months and

one (1) day, to five (5) years, five (5) months and ten (10) days as minimum, while the medium period is from five (5) years, five (5) months and eleven (11) days, to six (6) years, eight (8) months and twenty (20) days, and the maximum is six (6) years, eight (8) months and twenty-one (21) days, to eight (8) years. Since the amount of P120,000.00 was defrauded in each case, the maximum penalty should be taken from the maximum period of the penalty prescribed, plus one (1) year for every P10,000.00 in excess of P22,000.00 which, in these four (4) cases is equivalent to nine (9) additional years. Hence, the maximum imposable penalty should be fifteen (15) years, eight (8) months and twenty-one (21) days, to seventeen (17) years of reclusion temporal medium. Applying the Indeterminate Sentence Law, the minimum penalty shall be within the range of the penalty next lower in degree to that prescribed in the Code, i.e., prision correccional minimum to prision correccional medium in any of its periods. Prision correccional minimum to prision correccional medium ranges from six (6) months and one (1) day, to four (4) years and two (2) months. Clearly, the penalty imposed by the court below in each of the aforesaid cases, which is eleven (11) years, eleven (11) months and eleven (11) days of prision mayor medium, to fifteen (15) years, eight (8) months and twenty-one (21) days of reclusion temporal medium, is properly within the range of the imposable penalty.

The same principle would apply to Crim. Case No. 98853 where the amount defrauded was P100,000.00. The trial court therefore correctly imposed the penalty of nine (9) years, eleven (11) months and eleven (11) days of prision mayor medium, to thirteen (13) years, eight (8) months and twenty-one (21) days of reclusion temporal minimum, which is properly within the range of the imposable penalty.

WHEREFORE, the judgment of the court a quo finding accused-appellant REYDANTE CALONZO Y AMBROSIO guilty of Illegal Recruitment in Large Scale in Crim. Case No. 98855 (G.R. No. 115155), and of Estafa in Crim. Case No. 98850 (G.R. No. 115150), Crim. Case No. 98851 (G.R. No. 115151), Crim. Case No. 98852 (G.R. No. 115152), Crim. Case No. 98853 (G.R. No. 115153) and Crim. Case No. 98854 (G.R. No. 115154) as well as the corresponding penalties imposed by the court a quo is AFFIRMED, with costs against accused-appellant.

In the service of the various prison terms herein imposed upon accused-appellant, the provisions of Art. 70 of the Revised Penal Code shall be observed.

SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Decision penned by Judge Martin S. Villarama Jr., RTC-Br. 156, Pasig City; Rollo, pp. 34-35.

[2] G.R. Nos. 93723-27, 6 May 1994, 232 SCRA 225, 236.

[3] *People v. Comia*, G.R. No. 109761, 1 September 1994, 236 SCRA 193.

[4] G.R. Nos. 97044-46, 6 July 1994, 233 SCRA 713.

[5] G.R. Nos. 103385-88, 26 July 1993, 224 SCRA 755.

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