

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO BALLESTEROS, ACCUSED-APPELLANT.

G.R. Nos. 116905-908. August 06, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

This is an appeal from the Decision[1] dated July 6, 1994 of the Regional Trial Court of Manila, Branch 49, in Criminal Cases Nos. 93-121321, 93-121322, 93-121323 and 93-121324, convicting appellant Eduardo Ballesteros (“Appellant” for brevity) of the crimes of illegal recruitment in large-scale and estafa. The trial court sentenced appellant to life imprisonment plus three indeterminate penalties ranging from two years, eleven months and ten days of prision correccional as minimum to nine years, eight months and one day of prision mayor as maximum.

The Charge

On May 26, 1993, the Assistant City Prosecutor of Manila filed an Information[2] charging appellant with the crime of illegal recruitment in large-scale,[3] docketed as Criminal Case No. 93-121321, as follows:

“That on or about May 23, 1992, November 27, 1992 and January 3, 1993, in the City of Manila, Philippines, the said accused representing himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there wilfully and unlawfully for a fee, recruit and promise employment job placement in Japan to the following persons: Arnel Vilorio y Vilorio, Santiago Ricamonte y Leocario and Nenita Sorita y Ramos, without first having secured the required license or authority from the Department of Labor.

Contrary to law.”

The Assistant City Prosecutor also charged appellant, based on the same incident, of three counts of estafa committed on each of the private complainants under Criminal Cases Nos. 93-121322,[4] 93-121323[5] and 93-121324.[6] The Informations were identical, except for the name of the private complainants, as follows:

“That on or about May 23, 1992, the accused, did then and there willfully, unlawfully and feloniously defraud ARNEL VILORIA Y VILORIA in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which he/they/she made to said ARNEL VILORIA Y VILORIA to the effect that he had the power and capacity to recruit and employ ARNEL VILORIA Y VILORIA 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 ARNEL VILORIA Y VILORIA to give and deliver, as in fact he gave and delivered to said accused the amount of P50,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely, to obtain, as in fact he did obtain the amount of P50,000.00 which amount once in his possession, with intent to defraud, willfully, unlawfully and feloniously misappropriated, misapplied and converted to his own personal use and benefit, to the damage and prejudice of said ARNEL VILORIA Y VILORIA in the aforesaid amount of P50,000.00, Philippine Currency.

Contrary to law.”

Arraignment and Plea

Upon arraignment on June 18, 1983 for each of the charges, appellant, assisted by counsel de parte, entered a plea of “Not Guilty” to all the charges. Trial then followed.

The Trial

The prosecution presented as its witnesses the three private complainants, Arnel Vilorio (“Viloria” for brevity), Santiago Ricamonte (“Ricamonte” for brevity), and Nenita Sorita (“Sorita” for brevity), as well as SPO4 Benjamin Lotivio. The defense presented appellant as its lone witness.

Version of the Prosecution

The facts^[7] of the case are as follows:

Santiago Ricamonte, Arnel Vilorio and Nenita Sorita all dreamt of seeking “greener pastures” in foreign shores. It was most unfortunate for them to have fallen into the deceptive acts and machinations of the appellant who lured them into a false sense of security with promises of foreign employment in Japan.

Santiago Ricamonte was a driver at the Monte Merchandizing when he thought of applying as a construction worker in Japan. Ricky de la Torre (hereinafter “dela Torre”), who was a cousin of Ricamonte’s friend, introduced him to Engineer Jose Mendoza, a recruiter of workers to Japan. On November, 1992, dela Torre and Mendoza brought Ricamonte to an office in the Army and Navy Club, located at T. M. Kalaw St., Manila, and introduced him to appellant, Cecilia Legarbes Zabala (hereinafter “Zabala”) and Alfredo Hunsayan, Jr. (hereinafter “Hunsayan”). When inside the office, Ricamonte saw, on one of the tables, a name plate bearing the name of ‘Judge Cornejo’. He found out that the office belonged to a former fiscal named Crisanto Cornejo, who was on vacation at that time, and who allowed the appellant to hold office there while he was away.

Once introduced, Ricamonte was informed of each of the person’s duties in that office. He found out that Zabala was in charge of arranging papers of recruits to Japan while Hunsayan was the one who had contacts in Japan and that both of them were associated in the business of recruiting workers for employment in Japan. The appellant told Ricamonte that there was a job offer in Japan and that Zabala knew everything about the recruitment. The appellant also impressed upon Ricamonte that the recruitment of persons for employment in Japan was a transaction of people with money so that if he did not have any money, he might as well forget setting foot in Japan. The appellant added that Ricamonte needed to prepare P80,000.00 for the processing of his employment papers and his plane ticket.

On November 23, 1992, in the office of the appellant, Ricamonte gave P20,000.00, as the first installment of his payment, to de la Torre who counted the money and thereafter gave it to Zabala who then issued a receipt for the amount (Exhibits ‘A’ and ‘3’). The appellant and Mendoza were present and witnessed the transaction. Ricamonte thereafter signed an application for employment which would be allegedly sent by Zabala to his prospective employer in Japan.

On another occasion, Ricamonte again went to the office of the appellant to give an additional P50,000.00. The same process was followed. The money was given to Zabala who issued a receipt for the amount while the appellant, Mendoza, dela Torre, and Hunsayan were present as witnesses. Zabala then told him that his visa would be released soon and asked him to return on a specified date.

When Ricamonte returned to the office of the appellant on the specified date, Zabala was nowhere to be found. He asked the appellant, who was in the office at that time, where Zabala was, but the appellant told him that he had

nothing to do with Zabala and that it was up to him to look for her. When Ricamonte returned to the office of the appellant sometime in December 1992, he found the office already padlocked.

Nenita Sorita was 56 years old and had already worked in Bahrain for some time, when she, too, was promised an employment in Japan.

On April, 1992, Sorita's nephew and niece borrowed money from her and asked her to pay the money to a certain recruitment agency where she met Engineer Mendoza. Mendoza offered Sorita a job in Japan but she initially refused since she was not yet interested at that time. However, it was not long after that first conversation when she gave in to the offer of employment in a garment factory in Japan. Mendoza showed her a letter of invitation from his contact in Japan for persons to work there and assured her that this contact person would be responsible for everything.

Convinced, Sorita paid P10,000.00 to Mendoza for the processing of her papers and her visa for which Mendoza signed a receipt (Exhibits 'G' and '6'). He was able to get a passport for Sorita as a tourist but still, after a long wait, failed to send her to Japan. Mendoza told Sorita that he had a misunderstanding with his Japanese contact so he could not procure employment for her in Japan but, nevertheless, assured her that he had friends who could secure employment for her in Japan.

So, on November 20, 1992, Mendoza brought Sorita to the house of the appellant in Singalong, Manila where she met Cecilia Legarbes Zabala. The appellant and Zabala told Sorita that she would have to pay P60,000.00 for the processing of her employment papers, visa and her plane tickets to and from Japan. However, the P10,000.00 which she had earlier paid Mendoza would be deducted from the amount. After laying down the terms and conditions of their agreement, Sorita was asked to deliver the money to the office of the appellant at the Army and Navy Club.

On January 3, 1993, Sorita went to the office of the appellant with only P21,500.00. This notwithstanding, the appellant and Mendoza instructed her to give the money to Zabala. Once inside the office, Sorita saw the name plate of "Judge Cornejo" on one table and that of the appellant, "Captain" on another table. After giving them the P21,000.00, Sorita told the three that she could not produce the rest of the money because the person who was supposed to buy her personal properties, the proceeds of which she would use to pay the balance of her recruitment fee, failed to do so. Nevertheless, the three told Sorita to bring her personal properties to the office so that they could buy them from her for P30,000.00.

On the same day, Sorita brought her personal properties to the office of the appellant consisting of: 1 Ladies' ring with Tampok; 1 wedding band; a 24 karat necklace; 1 14" colored TV (Goldmaster brand); and 1 Sony Walkman (Exhibits '5' and 'H'). The appellant, Zabala and Mendoza were still there when Sorita arrived. Zabala then gave Sorita a signed receipt for the cash amount of P21,000.00 and her personal properties (Exhibits 'H' and '5'). However, Zabala instructed Sorita to bring her Sony Walkman and television to the house of the appellant where he himself received the items. Sorita, however, never got any receipt for the items since Zabala assured her that there was no more problem. Zabala then told her that she would procure a tourist visa for her and enable her to work as a 'TNT' (tago ng tago) in Japan and guaranteed her that she, together with the others, would endeavor to bring her to Japan.

However, the day of Sorita's departure never came. Like Ricamonte, when she returned to the office of the appellant, the office was already padlocked.

Arnel Vloria was a 5th year Engineering student at the Technological Institute of the Philippines when he fell into the same "employment trap."

Viloria's mother and Nenita Sorita were close friends. On one occasion when Viloria went to the house of Sorita, he met Engineer Jose Mendoza. About a month thereafter, because of Mendoza's incessant efforts, Viloria was convinced to apply for a construction job in Japan. It was also upon the prodding of Mendoza that Viloria no longer enrolled for the incoming semester in school.

On November 23, 1992, Viloria, together with his parents and Sorita, went to the office of the appellant at the Army and Navy Club to apply as a construction worker in Japan. Once there, Mendoza introduced Viloria to the appellant and Zabala and informed him that these people were his associates and that Zabala was the one responsible for the processing and approval of his employment application. The appellant informed Viloria that he had to pay P80,000.00 for his employment papers and plane ticket. Viloria paid the total amount of P50,000.00 in three installments for which he was given receipts by Zabala (Exhibits M-3, L, M, J) and was also given the same assurance that he would soon be leaving for Japan.

However, as the same story goes, when Viloria returned to the office of the appellant to claim his visa and employment papers, the office was already closed. Viloria then inquired from the Philippine Overseas Employment Administration if the appellant, Zabala and Mendoza were licensed to procure workers for employment in Japan and was informed that they were not. Upon learning this, Viloria tried to contact the appellant but, naturally, the latter refused to see him. When Viloria finally managed to talk to the appellant over the telephone, the appellant got mad at him and told him that he had nothing to do with his problem.

Finally, Santiago Ricamonte, Arnel Viloria and Nenita Sorita, after conferring with each other and realizing that they were defrauded, executed a "Joint Affidavit of Complaint" against the appellant with the Western Police District (Exhibit 'D') on May 11, 1993.

On the same date, members of the Western Police District arrested the appellant. After the Inquest Investigation, the Investigator recommended that the appellant be charged of estafa and illegal recruitment (large-scale) (Exhibit '0-2'). Two days after the appellant was arrested, Cecilia Zabala was also arrested upon information received by the police that she was staying at the Arevalo Building in Manila. The police found the passports of Arnel Viloria and Santiago Ricamonte and the receipts signed by the appellant (Exhibits 'E' and 'E-2') in her possession and turned them over to Viloria and Ricamonte. An Inquest Investigation was conducted on May 14, 1993. However, a month thereafter, Zabala managed to escape from the Western Police and is, up to now, still at large.

Version of the Defense

The facts,[8] according to the defense, are as follows:

Appellant categorically denies having recruited or having been involved in the recruitment of the offended parties to Japan. He, however, admits that he and Mendoza were once close friends, having worked together in a vessel, appellant as the Captain, and Mendoza, as his Engineer. However, appellant claims that the relations between them became strained when Mendoza refused to repay appellant for his expenses in the baptism of Mendoza's son.

Appellant narrates that he was the Chairman of the Board of Directors of PSBN Marine Salvage, Inc., a company he established, with offices at No. 2336 Espiritu St., Singalong, Manila, which was also his residence at that time. Appellant claims that his relations with Mendoza became further strained when he found out that the latter tampered with his company's Articles of Incorporation by erasing the name of one of the Directors and replacing it with his own (Exhibits 19 and 19-B).

Appellant also states that he transferred his office to the Army and Navy Club upon the permission of a former Assistant City Fiscal Crisanto Cornejo, who originally rented the office, and who was on vacation at that time.

Appellant claims that he arranged to pay for the rentals of the office, in exchange for its use since Cornejo was three months in arrears in its payment.

Appellant narrates that sometime in November 1992, Mendoza, Zabala, and Almonte arrived in his office and sought to rent one table for a monthly rental of P2,000.00. He claims that Mendoza and Zabala were brokers besides being engaged in the recruitment of workers for employment abroad. However, appellant claims that he never meddled in their business and tended to his own. Appellant also asserts that Cornejo knew of this arrangement and insisted that money transactions should not be done inside the office. Accordingly, whenever Mendoza, Zabala and Almonte had business conferences with their clients, they went to the canteen inside the club, about 25 meters away from the office.

It was also in November 1992, on different occasions, that Sorita, Vilorio and Ricamonte, who were applicants for employment abroad, were brought to the office by Mendoza and the other recruiters. In the process, appellant admitted that “he advised the three that if they had no money or somebody to finance their employment abroad they might as well forget any plans of working abroad.”

Appellant says that Mendoza and the others paid the rent for the use of the table promptly for the first three months or until January 1993 (Exhibit Q-4). Appellant signed two receipts acknowledging the payment of the rent. At one point, one of the applicants, Sorita, delivered to his house a television set and a Sony walkman. Appellant was surprised by this act, but claims, that on the same day, Zabala took the said items. Sorita told him that Zabala had already signed the receipt for the said goods.

Sometime in January or February of 1993, the office of the appellant was padlocked for non-payment of rent for 6 months. Subsequently, appellant entered into a contract for shipping services with a new company.

On May 3, 1993, appellant claims that police operatives of the Western Police District sought his help in locating Mendoza, Zabala, and Alfredo Hunsayan, Jr., for defrauding Sorita, Vilorio and Ricamonte. Appellant agreed to help and informed them where Zabala could be found. After two days, Zabala was arrested by the police but managed to escape after a month. Appellant, however, claims that, in spite of the help he gave to the police, he was still placed under arrest and charged for the crime of illegal recruitment (large-scale) and estafa.

Ruling of the Trial Court

The trial court accorded full faith and credence to the testimony of the private complainants. The trial court was “convinced, beyond a shadow of doubt, that they testified in a spontaneous, straight-forward and sincere manner, bereft of the affectations and tell-tale signs of perjured and/or rehearsed witnesses.”[9] The trial court held that appellant was in cahoots with Cecilia Legarbes Zabala, Jose Mendoza, Perla Almonte, Ricky de la Torre and Alfredo Hunsayan, Jr. in recruiting private complainants for employment in Japan. The trial court found that appellant received various sums of money and personal properties from the private complainants as placement fees, expenses for processing of employment papers, issuance of visas to Japan and for purchase of plane tickets.

After trial on the merits, the trial court convicted appellant of illegal recruitment in large-scale and three counts of estafa, stating that:[10]

“In view of the foregoing disquisitions of the Court, judgment is hereby rendered against the Accused as follows:

1. In ‘People versus Eduardo Ballesteros, Criminal Case No. 93-121321’, the Accused is hereby found guilty beyond reasonable doubt of the crime of illegal recruitment defined in Article 13 (b) in relation to Article 38 of the Labor Code as amended and hereby meted the penalty of life imprisonment and to pay a fine of P100,000.00 without subsidiary imprisonment in case of insolvency;

2. In 'People versus Eduardo Ballesteros, Criminal Case No. 93-121322', the Accused is found guilty beyond reasonable doubt of the crime of Estafa defined in Article 315, paragraph 2 (a) of the Revised Penal Code and hereby meted an indeterminate penalty of from Two (2) Years, Eleven (11) Months and Ten (10) Days of Prison Correccional as Minimum, to Eight (8) Years, Eight (8) Months and One (1) Day of Prison Mayor as Maximum, and ordered to refund to Arnel Vilorio the amount of P50,000.00, with interests thereon, at the legal rate from November 23, 1992 until the said amount is paid in full;

3. In 'People versus Eduardo Ballesteros, Criminal Case Number 93-121323', the Accused is hereby found guilty beyond reasonable doubt of the crime of Estafa defined in Article 315 (2) (a) of the Revised Penal Code and hereby meted an indeterminate penalty of from Two (2) Years, Eleven (11) Months and Ten (10) Days of Prison Correccional as Minimum, to Eight (8) Years, Eight (8) Months and One (1) Day of Prison Mayor as Maximum and ordered to refund to Santiago Ricamonte the amount of P50,000.00 plus interests thereon at the legal rate from November 27, 1992, until the said amount is paid in full;

4. In 'People versus Eduardo Ballesteros, Criminal Case Number 93-121324', the Court found the Accused guilty beyond reasonable doubt of the crime of Estafa defined in Article 315 (2) (a) of the Revised Penal Code and hereby sentences the Accused to an indeterminate penalty of from Two (2) Years, Eleven Months and Ten (10) Days of Prison Correccional, as Minimum, to Nine (9) Years, Eight (8) Months and One (1) Day of Prison Mayor, as Maximum, and to refund to Nenita Sorita the amount of P31,000.00 and to return to her the following described properties:

1 Ladies ring with tampok

- 1 Wedding band
- 1 Necklace – 24 karat
- 1 TV colored 14” Goldmaster brand

1 Sony Walkman

and if he is unable to do so, or refuses to do so, to pay to her the value thereof in the amount of P30,000.00, said amounts with interests thereon at the legal rate from January 3, 1993, up to the time the said amounts are paid in full.

The Accused shall be entitled to the full credit of his detention at the City Jail of Manila provided that he agreed to abide by and comply strictly with the rules and regulations of the said Jail. With costs against the Accused.

SO ORDERED.”

In view of the penalty of life imprisonment, the appellant filed his appeal directly with this Court.

Issues

The appeal is anchored on the following assigned errors:

“I

THE TRIAL COURT ERRED IN CONCLUDING THAT THE ACCUSED CONSPIRED WITH CECILIA LEGARBES ZABALA, ENGINEER JOSE MENDOZA, PERLA ALMONTE, RICKY DE LA TORRE AND ALFREDO HUNSAYAN, JR., THE ALLEGED RECRUITERS, IN COMMITTING THE CRIME OF ILLEGAL RECRUITMENT ALLEGED IN THE INFORMATION.

II

THE TRIAL COURT ERRED IN FINDING THAT THERE IS NO EVIDENCE ON RECORD ADDUCED BY THE ACCUSED THAT PRIVATE COMPLAINANTS ARNEL VILORIA, SANTIAGO RICAMONTE

AND NENITA SORITA, HAD ANY DEVIOUS OR ILL-MOTIVE TO FABRICATE THE CHARGES AGAINST THE ACCUSED.

III

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDIT TO THE TESTIMONIAL EVIDENCE OF THE PROSECUTION NOTWITHSTANDING THE INCREDIBLE AND UNBELIEVABLE TESTIMONIES OF THE PROSECUTION WITNESSES.

IV

THE TRIAL COURT ERRED IN NOT FINDING THAT THE COMPLAINTS BY THE PRIVATE COMPLAINANTS BROUGHT AGAINST THE ACCUSED WERE MERELY AN AFTERTHOUGHT, AND THAT THE COMPLAINANTS' TESTIMONY IN SUPPORT OF THE SAME WERE UNCONVINCING AND IMPLAUSIBLE AND FALL SHORT OF THE REQUIRED PROOF BEYOND REASONABLE DOUBT.

V

THE TRIAL COURT ERRED IN NOT GIVING WEIGHT TO ACCUSED'S CLAIM THAT THE FACT THAT THE GROUP OF CECILIA LEGARBES ZABALA HAD SUBLEASED A PORTION OF THE OFFICE AT THE ARMY AND NAVY CLUB FROM THE ACCUSED AS CARETAKER OF THE OFFICE DOES NOT MEAN THAT ACCUSED HAD KNOWLEDGE OR PARTICIPATION IN THEIR BUSINESS ACTIVITIES AS THEIR TRANSACTIONS WERE NOT DONE IN THE OFFICE BUT IN THE CANTEEN OF THE CLUB.

VI

THE TRIAL COURT ERRED IN PLACING HEAVY RELIANCE ON THE RECEIPTS, EXHIBITS 'E' AND 'E-2', SHOWING THAT ACCUSED RECEIVED COMMISSIONS FROM CECILIA LEGARBES ZABALA AND OTHERS, AND IN NOT HOLDING THAT THE SAID RECEIPTS WERE NOT FOR COMMISSIONS AS INDICATED IN THE RECEIPTS BUT WERE ACTUALLY RECEIPTS OF PAYMENT OF RENTALS OF THE SAID PERSONS OF A PORTION OF THE OFFICE FOR ABOUT THREE (3) MONTHS.

VII

THE TRIAL COURT ERRED IN HOLDING, WITHOUT VALID, SUFFICIENT, CONVINCING AND SUBSTANTIAL EVIDENCE, THAT THE AFOREMENTIONED RECEIPTS, EXHIBITS 'E' AND 'E-2', CONFIRMED THE PROSECUTION'S CLAIM THAT THE ACCUSED WAS DIRECTLY INVOLVED IN THE ILLEGAL RECRUITMENT ACTIVITIES OF THE SAID CECILIA LEGARBES ZABALA AND OTHERS CONSIDERING THAT ACCUSED HAD NEVER ENGAGED AND HAD NOT ACTUALLY ENGAGED IN ILLEGAL RECRUITMENT ACTIVITIES.

VIII

THE TRIAL COURT ERRED IN NOT FINDING THAT ACCUSED WAS NOT GUILTY OF ILLEGAL RECRUITMENT (LARGE-SCALE) CONSIDERING ITS ADMISSION THAT THE PROSECUTION HAS NOT ADDUCED ANY EVIDENCE TO PROVE THAT THE ACCUSED RECEIVED FROM CECILIA LEGARBES ZABALA ANY CASH AMOUNT FROM THE PAYMENTS OF PLACEMENT FEES BY PRIVATE COMPLAINANT NENITA SORITA. MOREOVER, FURTHER PROOF THAT ACCUSED HAD NEVER ENGAGED AND HAS NOT ACTUALLY ENGAGED IN ILLEGAL RECRUITMENT IS PLAIN AND EVIDENT FROM THE UNIFORM TESTIMONIES OF THE COMPLAINANTS THAT ACCUSED HAD NEVER RECEIVED MONEY AS ALLEGED PLACEMENT FEES PERSONALLY FROM THE

SAID COMPLAINING WITNESSES.

IX

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED IS NOT GUILTY OF ESTAFA.

X

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIMES OF ILLEGAL RECRUITMENT (LARGE-SCALE) AND THREE (3) COUNTS OF ESTAFA AND IN NOT ACQUITTING HIM OF THE CRIMES CHARGED, THE SAME NOT HAVING BEEN PROVED BEYOND REASONABLE DOUBT.”[11]

The thrust of the appeal is twofold. First, the trial court erred in finding appellant responsible for the illegal recruitment of the complaining witnesses and in finding that there was conspiracy between appellant and his alleged cohorts. Second, the trial court erred in convicting appellant of estafa despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

The Court’s Ruling

We find no reason to reverse appellant’s conviction. Hence, we affirm but with modification.

Illegal Recruitment In Large-Scale

Article 13, par. (b), of the Labor Code defines recruitment and placement as:

“(b) ‘Recruitment and placement’ refer 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; 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 Article 38 of the same Code thus:

“Article 38. Illegal Recruitment:

(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.

(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.”

We have held that to constitute illegal recruitment in large-scale, three elements must concur:

- The accused undertook any recruitment activity defined under Art. 13 (b) or any prohibited practice enumerated under Art. 34 of the Labor Code.
- He did not have the license or the authority to lawfully engage in the recruitment and placement of workers.
- He committed the same against three or more persons, individually or as a group.[12]

The prosecution sufficiently established the foregoing elements in the instant case. First, as found by the trial court:

“The Accused represented to and assured Santiago Ricamonte that, indeed, there was a job offer for a construction worker in Japan and even told the latter to prepare and pay the amount of P80,000.00, payable in installments for the processing of his papers for his employment in Japan and his plane ticket to Japan. The Accused even impressed on Santiago Ricamonte that the matter of employment of workers in Japan was a transaction only of people with money and unless the applicant has the amount demanded of him, he could not possibly procure employment in Japan. Santiago Ricamonte gave and paid to Cecilia Legarbes Zabala the amount of P20,000.00 on November 23, 1992, and the amount of P30,000.00 on December 3, 1992, in the presence of the Accused in the latter’s office at the Army and Navy Club where Cecilia Legarbes Zabala signed the Receipts (Exhibits “A” and “B”). Santiago Ricamonte relied on the assurances and representations of the Accused and his cohorts and was impressed by the office of the Accused. After all, on one of the tables was the name plate of ‘Judge Cornejo’. The Court cannot then begrudge Santiago Ricamonte into trusting the Accused and his cohorts and in believing that they would not deceive and defraud him.”[13]

Second, there is no need to show that appellant represented himself as a licensed recruiter since it is enough to show that he did not possess the requisite authority or license to undertake recruitment activities.[14] The prosecution established that the Philippine Overseas Employment Administration (POEA) did not authorize or license appellant and his cohorts to engage in recruitment Activities.[15] Despite the absence of such authority or license, appellant recruited the complainants.

The appellant need not have expressly represented that he had authority or license from POEA. It is sufficient that appellant gave the impression that he could find jobs for complainants in Japan, inducing complainants to agree to pay him recruitment fees.[16] On several occasions, this Court has held that there is illegal recruitment when one, without authority or license to do so, represents to others that he could send workers abroad for employment.[17]

Assuming *arguendo* that appellant did not actually receive any fee, his representations that he had the capacity to secure employment for private complainants made him liable for illegal recruitment since he had no authority or license from the POEA.[18] In the recent case of *People v. Arabia*,[19] we held that:

“While it may be true that complainants herein were not able to present receipts to prove that they in fact paid the placement fee of P16,000.00 each to accused Arabia with accused Tomas witnessing the payment, it has been ruled that the absence of receipts in a criminal case for illegal recruitment does not warrant acquittal of the accused and is not fatal to the case of the prosecution. As long as the witnesses had positively shown through their respective testimonies that the accused is the one involved in the prohibited recruitment, he may be convicted of the offense despite absence of receipts. (*People v. Goce* 247 SCRA 780; *People v. Senden* 228 SCRA 489; *People v. Naparan* 225 SCRA 714; *People v. Pabala* 262 SCRA 553).” (Emphasis supplied)

Clearly, the actual receipt of a fee is not an element of the crime.

Third, since there are at least three victims in this case, appellant thus committed large-scale illegal recruitment.

Appellant also argues that the prosecution failed to prove that he conspired with the others in the commission of the crime of illegal recruitment and estafa. We find no cogent reason to disturb the findings of the lower court that there was conspiracy among appellant, Cecilia Legarbes Zabala, Jose Mendoza, Perla Almonte, Ricky de la Torre and Alfredo Hunsayan, Jr. The evidence on record indubitably shows that there was a delineation of roles among the appellant and his cohorts, but with a common design and a unity of purpose. As aptly pointed out by the trial court:

“The Accused was at the forefront, not merely as a passive onlooker as the Accused wanted the Court to believe in the recruitment of the Private Complainants. xxx In November, 1992, the Accused, Cecilia Legarbes

Zabala and Jose Mendoza, agreed to the use the office (sic) of former Assistant City Fiscal of Pasay City as their base of operations or office in their recruitment activities. Jose Mendoza and Ricky de la Torre looked for applicants who sought employment in Japan, Cecilia Legarbes Zabala was the one tasked to receive the sums of money paid by the recruits signed and issued Receipts for said amounts. The Accused, on the other hand, fixed the amounts to be paid by the recruits and directly negotiated and transacted with them and received his commissions from Cecilia Legarbes Zabala from the payments of the recruits. All the actuations of the Accused, Cecilia Legarbes Zabala, Jose Mendoza, Perla Almonte and Ricky de la Torre, were geared and designed to achieve a common purpose or objective – the recruitment of persons for employment in Japan and eke out sums of money from them although the Accused was not authorized to recruit workers for employment abroad. Under the circumstances, it is abundantly clear that the Accused conspired with Jose Mendoza, Cecilia Legarbes Zabala, Perla Almonte, Ricky de la Torre and Alfredo Hunsayan, Jr. and that, therefore, the Accused is liable for the wrongful acts and its consequences.”[20]

Direct proof of previous agreement to commit a crime is not necessary. [21] Such previous agreement may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused which point to a joint purpose and design, concerted action and community of interest.[22]

In his attempt to exculpate himself, appellant denies having received money from private complainants. However, as against the positive assertion of complainants, the appellant’s denial is worthless and at most self-serving. Private complainants testified that Cecilia Legarbes Zabala signed and issued receipts for the cash amount and other personal properties complainants turned over as payment for processing their employment applications abroad. The documentary evidence of the prosecution shows that appellant received his commission from recruitment fees paid by the private complainants. Exhibits “E” and “E-2”, which bear appellant’s signature, establish this fact, to wit:

“December 3, 1992

Received the amount of four thousand five hundred pesos (P4,500.00) from Cely Zabala as commission.”[23] (Emphasis supplied)

and

“December 7, 1992

Received the amount of Two Thousand Pesos from Cely Zabala as commission (P2,000.00).”[24] (Emphasis supplied)

These receipts show no indication that the amounts were accepted as payment for the rental of the Army and Navy Club office space as alleged by appellant. On the contrary, the testimonial and documentary evidence establish beyond any doubt that appellant received the amounts stated as “commission” for his participation in the illegal recruitment activities. As correctly observed by the trial court:

“When he testified before the Court, the Accused resolutely claimed that he was issued Receipts for the rentals of Jose Mendoza and Cecilia Legarbes Zabala and the Accused readily referred to the Receipts, Exhibits “E” And “E-2” bearing his signatures. Ironically, instead of buttressing his stance, the Receipts, Exhibits “E” and “E-2”, in fact, belied said claim and placed his defense in a quagmire of inconsistency. For, as can be easily gleaned from said Receipts, the amounts of P4,500.00 and P2,000.00 mentioned therein were the “commissions” of the Accused from Cecilia Legarbes Zabala which he received from her and not rentals xxx.

xxx

The Court found the claim of the Accused puerile and preposterous. The Accused is a businessman, a Captain of a vessel no less. If the amounts were, in fact, rental payments, the Accused, for sure, should have refused to

sign the Receipt and should have insisted, before he signed the Receipts, that the same be stated therein in unequivocal terms. And then again, the Accused has not enlightened the Court why Cecilia Legarbes Zabala would have the temerity and audacity to place the word “commission” in the Receipts instead of placing the word “rental” or the motive of Cecilia Legarbes Zabala in placing “commission” in the Receipts. After all, the Accused even allowed her and her companions to rent his office.

On the other hand, the Receipts, Exhibits “E” and “E-2” galvanized the case of the Prosecution and confirmed its claim that, indeed, the Accused was directly involved in the illegal recruitment activities of Cecilia Legarbes Zabala, more particularly the recruitment of the Private Complainants to Japan. This is so because, as the Receipts indubitably show, the Accused received, from Cecilia Legarbes Zabala, the said amounts of P4,500.00 and P2,000.00 as his commission for the recruitment of Santiago Ricamonte and Arnel Vilorio. Indeed, the evidence of the Prosecution shows that Cecilia Legarbes Zabala received, from Santiago Ricamonte, the amount of P30,000.00 on December 3, 1992 (Exhibit “B”). Arnel Vilorio paid to Cecilia Legarbes Zabala, on December 7, 1992, the amount of P10,000.00 (Exhibit “M”). The payments were made in the presence of the Accused. It was precisely on December 3, 1992 when the Accused received P4,500.00 from Cecilia Legarbes Zabala as his commission and on December 7, 1992, when the Accused received, from Cecilia Legarbes Zabala, the amount of P2,000.00 as his commission. The only logical conclusion is that the amounts given to the Accused by Cecilia Legarbes Zabala on those dates must have come from the amounts paid by Santiago Ricamonte and Arnel Vilorio on those dates respectively. The Accused has not adduced a morsel of evidence that the Accused transacted business with third persons as agent of Cecilia Legarbes Zabala for which he was entitled to said amounts as commissions from her.”[25]

We find no reason to disturb the findings of the trial court, which is in the best position to appreciate complainants’ truthfulness, honesty and candor.[26] As against the positive and categorical testimonies of the complainants, appellant’s mere denial cannot prevail.[27]

In light of these established facts, appellant is guilty beyond reasonable doubt of one count of illegal recruitment in large-scale. The appellant should suffer the penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00) for the crime of illegal recruitment in large-scale under Article 39(a) of the Labor Code.[28]

Conviction for Estafa

The trial court also did not err in finding appellant guilty of estafa. It is well-settled that a person, for the same acts, may be charged and convicted separately of the crime of illegal recruitment under the Labor Code and estafa under paragraph 2(a) of Article 315 of the Revised Penal Code.[29] Illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is necessary for conviction.[30] In other words, a person convicted under the Labor Code may also be convicted of offenses punishable by other laws for the same acts.

The elements of estafa are as follows: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation.[31] In the instant case, the prosecution proved beyond reasonable doubt that appellant and his cohorts Cecilia Legarbes Zabala, Jose Mendoza, Perla Almonte, Ricky de la Torre and Alfredo Hunsayan, Jr. deceived private complainants into believing that they had the authority and capability to send complainants to Japan for employment. Because of the assurances given by appellant and his cohorts, private complainants parted with their hard-earned money in exchange for what they thought was a promising future abroad. The acts of appellant and his cohorts constitute estafa punishable under Article 315, paragraph 2(a) of the Revised Penal Code.

The penalty for estafa depends on the amount of the defraudation.[32] Article 315 of the Revised Penal Code provides:

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

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 12,000 pesos but does not exceed 22,000 pesos, 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 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, 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.

2nd. The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos.

3rd. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By arresto mayor in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

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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 deceptions.

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We ruled in *People v. Gabres*[33] that:

“The fact that the amounts involved in the instant case exceed P22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the estafa charge against accused-appellant is prision correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded P22,000.00, plus an additional one (1) year for each additional P10,000.00.”

In addition, appellant is liable to indemnify the private complainants in the amounts which they respectively paid him and his cohorts: P50,000.00 to Arnel Vilorio; P50,000.00 to Santiago Ricamonte; and P31,000.00 to Nenita Sorita plus P30,000.00 as reparation[34] for her unrecovered personal properties. Hence, pursuant to Article 315 of the Revised Penal Code and our ruling in *Gabres*, the penalties imposed on appellant for estafa should be modified as follows:

In Criminal Case Nos. 93-121322 and 93-121323 (which pertain to private complainant Arnel Vilorio and Santiago Ricamonte), the amount involved is P50,000.00.[35] The minimum term of the indeterminate penalty, as fixed by the trial court, is two (2) years, eleven (11) months and ten (10) days of prision correccional, which is within the lawful range of the allowable minimum period of the indeterminate sentence, while the maximum term is six (6) years and one (1) day of prision mayor plus a period of two (2) years (an additional of one year for every

P10,000.00 in excess of P22,000.00), or a maximum of eight (8) years and one day of prision mayor.

In Criminal Case No. 93-121324 (pertaining to private complainant Nenita Sorita), the total amount involved is P61,000.00. The minimum term of the indeterminate penalty is two (2) years, eleven (11) months and ten (10) days of prision correccional (which is within the lawful range of the allowable minimum period of the indeterminate sentence) while the maximum term is nine (9) years and one day of prision mayor.

WHEREFORE, the assailed Decision dated July 6, 1994 of the Regional Trial Court of Manila, Branch 49, finding appellant EDUARDO BALLESTEROS guilty beyond reasonable doubt of the crimes of Illegal Recruitment in Large-Scale in Criminal Case No. 93-121321 and of Estafa in Criminal Cases Nos. 93-121322 to 93-121324, is AFFIRMED with the following modifications:

- In Criminal Case No. 93-121322 (for estafa involving P50,000.00), appellant is sentenced to suffer the indeterminate penalty of two (2) years, eleven (11) months and ten (10) days of prision correccional, as minimum, to eight (8) years and one day of prision mayor, as maximum, and ordered to refund Arnel Vilorio the sum of P50,000.00 with legal interest from November 23, 1992 until the amount is fully paid.
- In Criminal Case No. 93-121323 (for estafa involving P50,000.00), appellant is sentenced to suffer the indeterminate penalty of two (2) years, eleven (11) months and ten (10) days of prision correccional, as minimum, to eight (8) years and one day of prision mayor, as maximum, and ordered to refund Santiago Ricamonte the sum of P50,000.00 with legal interest from November 27, 1992 until the amount is fully paid.
- In Criminal Case No. 93-121324 (for estafa involving a total of P61,000.00), appellant is sentenced to suffer the indeterminate penalty of two (2) years, eleven (11) months and ten (10) days of prision correccional, as minimum, to nine (9) years and one day of prision mayor, as maximum, and ordered to pay Nenita Sorita the sum of P31,000.00 plus P30,000.00 as reparation for the unrecovered personal properties, all with legal interest from January 3, 1993 until the amount is fully paid.
- In Criminal Case No. 93-121321 (for illegal recruitment in large-scale), appellant is sentenced to suffer the penalty of life imprisonment, and to pay a fine of P100,000.00.

SO ORDERED. Puno, (Chairman), Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Judge Romeo J. Callejo (now a member of the Court of Appeals).

[2] Rollo, p. 8.

[3] The Information specifically referred to the violation of Article 38 (a) of PD No. 442, as amended by PD No. 1412 (the New Labor Code of the Philippines), in relation to Article 13 (b) & (c) of the Labor Code, as further amended by PD No. 1693, 1920 and 2018. Illegal recruitment for overseas employment is now punished under RA No. 8042, the Migrant Workers and Overseas Filipinos Act of 1995.

[4] Rollo, pp. 10-11.

[5] Ibid., pp. 12-13.

[6] Ibid., pp. 14-15.

[7] Based on the Decision of the trial court, pp. 4-11; Rollo, pp. 176-183.

[8] Ibid., pp. 11-14; Rollo, pp. 183-186.

[9] Rollo, p. 40.

[10] Decision, pp. 29-30; Rollo, pp. 48-49.

[11] Appellant's Brief, pp. 1-3; Rollo, pp. 76-78.

[12] People v. Gamboa, 341 SCRA 451 (2000) citing People v. Enriquez, 306 SCRA 739 (1999); People v.

Reyes, 282 SCRA 105 (1997); People v. Diaz, 259 SCRA 441 (1996); People v. Calonzo, 262 SCRA 535 (1996); People v. Bautista, 241 SCRA 216 (1995); People v. Cabacang, 246 SCRA 530 (1995).

[13] Decision, p. 16; Rollo, p. 36.

[14] People v. Cabacang, 246 SCRA 530 (1995).

[15] Records of Criminal Case Nos. 93-121321 to 93-121324, p. 24 and p. 58.

[16] People v. Gomez, 325 SCRA 61 (2000) citing People v. Villas, 277 SCRA 391 (1997).

[17] Ibid.

[18] Ibid.

[19] G.R. Nos. 138431-36, September 12, 2001.

[20] Decision, p. 19; Rollo, p. 39.

[21] People v. Gamboa, 341 SCRA 451 (2000) citing People v. Benemerito, 264 SCRA 677 (1996).

[22] Ibid.

[23] Records of Criminal Case Nos. 93-121321 to 93-121324, p. 59.

[24] Ibid., p. 60.

[25] Decision, pp. 23 & 25; Rollo, pp. 42 & 44.

[26] People v. Cabais, G.R. No. 129070, March 16, 2001, citing People v. Yabut, 316 SCRA 237 (1999).

[27] Ibid., citing People v. Ong, 322 SCRA 38 (2000).

[28] People v. Logan, G.R. Nos. 135030-33, July 20, 2001; People v. Tan Tiong Meng, 271 SCRA 125 (1997); People v. Benemerito, 246 SCRA 677; People v. Turla, 233 SCRA 705 (1994).

[29] Ibid.

[30] Ibid.

[31] People v. Pascua, G.R. No. 125081, October 3, 2001.

[32] Ibid.

[33] 267 SCRA 581 (1997); also cited in People v. Logan, G.R. Nos. 135030-33, July 20, 2001.

[34] People v. Iligan, 369 Phil 1005 (1999).

[35] Supra, see note 32.

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