THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EVANGELINE P. ORDOÑO, ACCUSED-APPELLANT.

G.R. Nos. 129593 & 143533-35. July 10, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 25, Tagudin, Ilocos Sur, finding the accused-appellant Evangeline P. Ordoño guilty of: (1) two counts of illegal recruitment and sentencing her to suffer for each count the penalty of life imprisonment and a fine of P100,000.00; and, (2) two counts of estafa for which she was sentenced to suffer: (a) in Criminal Case No. 450-T, six (6) years and one (1) day to ten (10) years and one (1) day of prision mayor and to indemnify the offended party Jerry Lozano in the total amount of P48,500.00 and to pay him P40,000.00 in moral damages; and, (b) in Criminal Case No. 451-T, ten (10) years and one (1) day of prision mayor to fourteen (14) years and one (1) day of reclusion temporal and to indemnify the offended party Presenio Lorena in the total amount of P65,000.00.

In Criminal Case Nos. 448-T and 449-T (for illegal recruitment), the informations, save for the names of the complainants and the amounts involved, alleged -

> That on or about the month of December 1992, in the municipality of Tagudin, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully, and feloniously, in violation of and in disregard of the provisions of the Labor Code of the Philippines, rules and regulations, engage in the recruitment and placement of workers by then and there offering and undertaking to secure overseas employment for [name],[2] particularly in Korea, without the requisite authority or license from the Department of Labor and Employment, charging, collecting and receiving fee in the amount of [amount].[3]
>
> CONTRARY TO LAW.

On the other hand, in Criminal Case Nos. 450-T and 451-T (for estafa), the informations, save for the names of the complainants and the amounts involved, alleged -

> That sometime in the month of December 1992 and for sometime thereabout, in the municipality of Tagudin, Province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully, and feloniously defraud one [name][4] as follows, to wit: That Evangeline Ordoño, by means of false pretenses and fraudulent representations which she made to the effect that she possessed power, qualifications, agency, or business and holding herself out as [an] authorized agent to recruit laborers for employment abroad particularly in Korea, where in truth she has no qualifications, provided the amount of [amount in words (amount)][5] be delivered to her in advance to defray expenses in the preparation of the necessary matters, and by means of these false pretenses and fraudulent acts, she was able to convince and induce [name] to deliver to her the amount of [amount], as in fact she received the said amount from [name], said accused instead of complying with her aforestated obligation of securing foreign employment for [name] to Korea, failed to send and secure his foreign employment and when he demanded

> from her the return of his money in the amount of [amount], the said accused refused and continued refusing to return the money to [name], notwithstanding repeated demands made on her but instead, she did then and there wilfully (sic), unlawfully and feloniously convert and misappropriate for her personal use and benefit the sum of [amount] to the damage and prejudice of [name] in the said sum.
>
> CONTRARY TO LAW.

Accused-appellant entered a plea of not guilty to all the charges.[6] Thereafter, the cases were tried jointly, all indictments being based on the same facts.

The evidence for the prosecution established the following facts:

Complainant Presenio Lorena is a resident of Libtong, Tagudin, Ilocos Sur. He only finished grade school. He earns his living as a farmer. He was introduced to accused-appellant by her relative, Zenaida Ordoño, when they went to his residence. Accused-appellant represented herself as one connected with a recruitment agency and able to deploy workers abroad, particularly in Korea. Attracted by the alleged high salaries in Korea, he was convinced to apply for an overseas job by the accused-appellant. He paid the accused-appellant P20,000.00 on December 10, 1992, for which he was issued a receipt indicating that the amount was "partial payment for deposit" (Exh. A).[7] On December 15, 1992, he paid the accused-appellant an additional amount of P10,000.00. This payment was also covered by a receipt (Exh. B)[8] issued by the accused-appellant. Later, on January 5, 1993, he paid the accused-appellant P10,000.00 for which he was issued a receipt (Exh. C)[9] stating that the amount was partial payment for complainant's plane ticket. He paid the additional amount of P21,000.00, but he was told that no receipt was going to be issued to him because he was leaving for abroad.

Accused-appellant secured for Lorena a passport (Exh. F),[10] a two-way plane ticket (Exh. D),[11] and some pocket money in U.S. currency from the money she received from him. Accused-appellant informed Lorena that Kuala Lumpur is in Korea and that, upon arrival there, he would be fetched by a certain Joy Mejia from the Metro Hotel, where he was told to check in. He was also told by the accused-appellant that if he was lucky enough to reach Korea, half of what he paid for his ticket would be refunded to him. On January 23, 1993, Lorena took a Philippine Airlines flight to Kuala Lumpur, Malaysia. As instructed, he stayed at the Metro Hotel for several days, but no one came to fetch him. Lorena went to the Philippine Embassy for assistance, but he was asked to give U.S. $500.00 for the processing of his work permit. As he did not have enough money, he came back to the Philippines on February 4, 1993. He went to see accused-appellant to confront her, but she told him that if he wanted to try his luck again in finding employment abroad, he must recruit two more persons so that the placement fees they would pay would be used for his second job application.[12]

The other complainant, Jerry Lozano, is also a resident of Libtong, Tagudin, Ilocos Sur. Like Lorena, he is also a farmer. He never reached high school. Sometime in December 1993, he was called to Lorena's house upon accused-appellant's request. There, Lorena introduced accused-appellant to him. Accused-appellant introduced herself to Lozano as a recruiter of overseas workers for Korea. Lozano was convinced to apply in the hope of landing a good job in Korea. Accused-appellant required him to pay her in cash for the processing of his passport and employment papers. Lozano paid her the total amount of P41,000.00 in two installments. These payments were covered by receipts issued by accused-appellant. One receipt (Exh. G),[13] dated February 9, 1993, was for P20,000.00 and another one (Exh. G-1),[14] dated February 14, 1993, was for P21,000.00.

Lozano departed from the country on February 27, 1993. His passport, two-way ticket (Exh. H),[15] and pocket money in U.S. dollars were obtained from the money he had paid to accused-appellant. He arrived in Kuala Lumpur, Malaysia, not in Korea as he was promised. There, he was apprehended by the Malaysian police at the airport after finding that he had no other travel documents with him except his passport. He was kept in a flooded

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jail for one night. The next day, he was deported to the Philippines.

After arriving home, he saw accused-appellant and confronted her. As in Lorena's case, he was told to recruit two persons so that the money they would pay for their placement fees would be used by him for another overseas employment application.[16]

Lorena and Lozano filed complaints in the National Bureau of Investigation (NBI) Regional Office in San Fernando, La Union. NBI Agent Melchor Acosta secured a certification (Exh. J)[17] from the Department of Labor and Employment (DOLE) Regional Office in La Union that accused-appellant had no authority to recruit workers for overseas employment in the region. The complaints were referred to the Office of the Provincial Prosecutor in Vigan, Ilocos Sur which filed the informations in court.[18]

Accused-appellant Evangeline Ordoño testified in her behalf. She admitted that she and Zenaida Ordoño, who is her sister-in-law, went to the house of Presenio Lorena in Libtong, Tagudin, Ilocos Sur. But she claimed they went to Lorena's house to buy fish. During their conversation with Lorena and the latter's mother, Zenaida happened to mention that accused-appellant had worked in Malaysia and that the latter's brothers were still working there. Lorena became interested, and he and his mother sought the help of accused-appellant in getting a job abroad. Accused-appellant told them that she went to Malaysia as a tourist for which purpose she had a passport, a two-way ticket, and "show" money. She sought in turn the assistance of her friend, a certain Joy Mejia, in finding employment for Lorena. According to accused-appellant, Lorena asked her to secure a passport for him for which he gave her P1,500.00. She admitted having received from Lorena the total amount of P45,000.00, of which P5,000.00 was not covered by any receipt. She claimed that she used the money in purchasing a two-way plane ticket for Lorena, U.S. $550.00 "show" money, and P3,500.00 for the escort at the immigration. She claimed that she offered to return the balance of P3,000.00 to Lorena, but the latter told her to keep it. On the day of Lorena's flight, accused-appellant asked Lorena to sign a document. The document (Exh. 1)[19] reads:

> 23 Jan. 1993
>
> To Whom it May Concern:
>
> I, Presenio Lorena, of legal age, residing at Libtong, Tagudin, Ilocos Sur, ay kusang loob na humingi ng tulong kay Mrs. Evangeline Ordoño sa aking bia[h]e sa Malaysia na bilang tourist lang.
>
> At walang pananagutan si Mrs. Evangeline Ordoño tungkol dito. Ako'y buong pusong nagpapasalamat sa kanya.
>
> (Sgd.)
>
> (Sgd.)
>
> Presenio Lorena
>
> Mrs. Consuelo Mejia

Accused-appellant claims that Lorena was able to work in Malaysia but that he came back to the Philippines because he did not like his job.[20]

With regard to Jerry Lozano, accused-appellant said that it was Presenio Lorena who introduced Lozano to her. Like Lorena, Lozano sought her assistance in procuring for him a passport, a two-way ticket to Kuala Lumpur, and some "show" money in going abroad to work. Accused-appellant said she received from Lozano P41,000.00: P20,000.00 (Exh. G) covered by the receipt, dated February 9, 1993, which she used to buy Lozano's plane ticket, and P21,000.00 covered by the receipt (Exh. G-1), dated February 14, 1993, which she used to purchase Lozano's

"show" money in the amount of U.S. $650.00. She claimed she bought the U.S. $650.00 for less than P20,000.00.[21]

The defense presented Lorena as an adverse witness to show that despite his sad experience in Malaysia, he did not tell Lozano about it. Lorena said, however, that he did not tell Lozano about his being sent to Malaysia instead of Korea because he did not know what Lozano and accused-appellant had talked about. He thought Lozano was bound for Korea.[22]

Consuelo Mejia, Joy's mother, took the witness stand for accused-appellant. She testified that Lorena was introduced to her by the accused-appellant by phone. Lorena requested her to ask for her daughter Joy's help in finding him a job in Kuala Lumpur. On the day of Lorena's flight, she sent, through him, a package of cooked food for Joy. She claimed it was she who had written the document (Exh. 1) allegedly signed by Lorena upon the accused-appellant's request. Consuelo also sent books through Lozano to her son, Jun, who was also in Malaysia. After Lozano had returned to the Philippines, he and Lorena went to her house to return the package of books.[23]

Another defense witness was Rosalinda Zulueta. She testified that she worked as a domestic helper in Malaysia and is Joy Mejia's friend. According to her, she accompanied Joy at the Metro Hotel to get the package sent through Lorena. However, they missed Lorena, because he had already left before they arrived.[24]

Zenaida Ordoño testified that she and accused-appellant went to Libtong to buy fish from Lorena. Lorena's mother was her friend. She introduced accused-appellant to the Lorenas and told them that accused-appellant had just arrived from abroad. As a result, Lorena and his mother asked her to accompany them to Manila to see accused-appellant. Ordoño said she declined and instead simply gave the accused-appellant's address. She told them to take a Philippine Rabbit bus and look for accused-appellant's husband, a conductor of the bus line, so that they could be taken to accused-appellant.[25]

On rebuttal, Lorena took the stand to refute accused-appellant's testimony. He denied the signature appearing on the handwritten document (Exh. 1), claiming it was a forgery. He stated that he came to Manila with his mother only on the day of his departure when he first saw his plane ticket. He did not have the chance to read the same as the accused-appellant inserted it in his passport.[26]

Lorena's mother, Magdalena Lorena, corroborated her son's testimony. She denied that the accused-appellant went to their house to buy fish because they were not fishermen. She stated that the accused-appellant actually came to recruit workers for overseas employment. Accused-appellant told them that she could send Lorena to Korea and his salaries for three months would be enough to pay for their debts. They paid accused-appellant sums of money for Lorena's passport and overseas job application. Accused-appellant visited them in their houses about five to six times.[27] Lozano's mother, Anita Lozano, also denied that accused-appellant went to Libtong in order to buy fish. The first time she met her, accused-appellant presented herself as someone who could send workers abroad. Accused-appellant asked for P45,000.00, and they paid her. She believed accused-appellant because the latter told her that if Lozano would be sent home, he would get his money back.[28]

Lorena's aunt, Lourdes Lorena, testified that she learned from her sister that accused-appellant came as a recruiter.[29]

Mila Tagle was presented on sur-rebuttal. She is the cousin of accused-appellant. She used to work for her as a househelper. She knew Lorena and Lozano because they went to her cousin's house several times to follow up their applications for overseas employment. She never knew what the accused-appellant's work was. She knew that Lorena went to Malaysia as a tourist because she was able to talk to him. She was merely informed by accused-appellant about Lozano.[30]

On November 5, 1996, the trial court rendered a decision, the dispositive portion of which reads:

> Thus we find accused guilty beyond reasonable doubt of the crime of Illegal Recruitment in Criminal Case Nos. 448-T and 449-T and hereby sentences her to suffer the penalty for the first offense of life imprisonment and a fine of P100,000.00 and for the second offense a penalty of life imprisonment and a fine of P100,000.00.
>
> The accused is also charged of estafa in both cases. In estafa, the accused is supposed to deceive another by any of the means mentioned hereinbelow.
>
> 1. With unfaithfulness or abuse of confidence, namely:
>
> . . .
>
> (b) By misappropriation or converting to the prejudice of another money, goods, or any other personal property received by the offender in trust or on commission, of for administration, or under any obligation involving the duty to make delivery of or return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.
>
> . . .

Accused denied having received anything from [complainants] except certain amounts used by [them] in getting their passports, visas, and pocket money to go abroad.

We tend to believe however the testimony of both the witnesses for the prosecution. Hence we believe that they did pay the amount of P45,000.00 or more for the services of accused for them to go abroad.

We therefore find accused Evangeline Ordoño guilty beyond reasonable doubt of having received P45,000.00 or more for her services as a recruiter and having maintained in court that she did not receive any amount from them except those amounts for their passport and pocket money which is apart and distinct from the amount she received from them, said accused is found guilty as charged of the crime of estafa and [the court] hereby sentences her to suffer the penalty of 6 years and 1 day . . . to 10 years and 1 day [of prision mayor] in the first case and to indemnify the offended party, Jerry Lozano, in the amount of P45,000.00, P1,500.00 for his passport, and P2,000.00 for his pocket money. Since Jerry Lozano landed in prison for having gone to Malaysia, the amount of P40,000.00 as [moral] damages is likewise charged against the accused.

In the case of Presenio Lorena, he having actually paid the amount of P61,000.00, the accused shall suffer the penalty of 10 years and 1 day of prision mayor to fourteen (14) years and one (1) day of reclusion temporal and to indemnify the offended party, Presenio Lorena, in the amount of P61,000.00, P2,000.00 for his passport, and P2,000.00 for his pocket money in going abroad.

In the case of illegal recruitment she shall suffer the penalty of life imprisonment for both cases. Thus she shall suffer the penalty of life imprisonment for recruiting Presenio Lorena and another [term of] life imprisonment for recruiting Jerry Lozano.

SO ORDERED.[31]

Hence, this appeal. The accused-appellant contends that

- THE TRIAL COURT GRAVELY ERRED IN NOT MAKING A FINDING OF FACTS IN ITS DECISION AND SUCH FAILURE IS A REVERSIBLE ERROR.

- THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT AND IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE

ACCUSED-APPELLANT.

- THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE PENALTY OF LIFE IMPRISONMENT UPON ACCUSED-APPELLANT FOR SEPARATE INCIDENTS OF SIMPLE ILLEGAL RECRUITMENT.

- THE TRIAL COURT GRAVELY ERRED IN IMPOSING PENALTIES IN THE ESTAFA CASES.

- THE TRIAL COURT GRAVELY ERRED IN NOT IMPOSING AN INDETERMINATE SENTENCE UPON ACCUSED-APPELLANT.

First. Accused-appellant contends that the decision of the trial court does not contain findings of facts as required by Art. VIII, §14 of the 1987 Constitution and Rule 120, §2 of the Rules on Criminal Procedure and, for this reason, it is void. She claims that the trial court "merely contended itself [with] paraphrasing the testimony of the witnesses, resulting in a forty (40) page decision."

The trial court indeed went over the testimonies of each and every witness for both parties, but it did make findings of facts which form the basis of its decision convicting accused-appellant. Thus, after summarizing the testimonies, the trial court stated in its decision:

> Thus we find the accused Evangeline Ordoño guilty of having given the complainants the information that they would be going to Korea to work when in truth and in fact they landed in Kuala Lumpur instead.
>
> She had to inform her friends in Kuala Lumpur of their having gone there in the hopes of landing a job for them but for one reason or another the visit of Joy Mejia to see complainant Presenio Lorena did not materialize so he had to come back to the country due to his failure to land a job there because no job was ready for him. Besides, he landed in Kuala Lumpur, not in Korea.
>
> We are therefore inclined to blame accused for all the trouble that both complainants underwent in their desire to land a job abroad for instead of going to Korea as they thought they would go to, both of them landed in Kuala Lumpur.
>
> [Presenio Lorena] had no job waiting for [him] because he did not see the person whom accused thought could help him find a job, while [Jerry Lozano] landed in jail at the time he arrived in Kuala Lumpur and had to be returned to the Philippines.
>
> For all these misdeeds and because they did not land in the place where both complainants claimed they should have gone in the first place which is Korea, the accused has to be blamed . . . and no other.[32]

There is no hard and fast rule as to the form of a decision. Whether or not the trial court chooses to summarize the testimonies of the witnesses of both parties is immaterial. What is called for is that the judgment must be written in the official language, personally and directly prepared, and signed by the judge and that it should contain clearly and distinctly a statement of facts proved or admitted by the parties and the law upon which the judgment is based.[33] The assailed decision complied with this requirement.

Second. Illegal recruitment is committed when two elements concur, namely: (1) the offender has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and (2) he undertakes either any activity within the meaning of "recruitment and placement" defined under Art. 13(b), or any of the prohibited practices enumerated under Art. 34 of the Labor Code.[34] Art. 13(b) of the Labor Code defines "recruitment and placement" as "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, is considered engaged in recruitment and placement."[35]

In these cases, these elements concur. The certification issued by the DOLE Regional Office in La Union that at the time material to these cases the accused-appellant had no authority to engage in recruitment activities is unrebutted. Complainants testified that accused-appellant represented to them that she could deploy workers abroad for which reason they paid her considerable sums of money in expectation of being employed in Korea. The testimonies of complainants corroborated each other and were buttressed by other prosecution witnesses. There is no showing that they had ill-motives against the accused-appellant. What is more, their testimonies were straightforward, credible, and convincing.[36] Their testimonies remained consistent, and steadfast even under gruelling cross-examination by defense counsel. The acts of accused-appellant, consisting of her promise of employment to the complainants and of transporting them abroad, fall squarely within the ambit of recruitment and placement as defined by law.[37]

Indeed, accused-appellant admitted that she referred complainants to a certain Joy Mejia so that they could find employment abroad. Recruitment includes the act of referral or the act of passing along or forwarding of an applicant for employment after initial interview of a selected applicant for employment to a selected employer, placement officer, or bureau.[38]

Accused-appellant cites the following circumstances to show that complainants Presenio Lorena and Jerry Lozano were never recruited by her but that it was they who sought her help in going to Malaysia as tourists and taking their chances later of finding employment there: (1) the plane tickets purchased by accused-appellant for the complainants Presenio Lorena and Jerry Lozano in going to Malaysia were two-way tickets; (2) the use of "show" money by complainants to establish their status as tourists going to Malaysia; (3) Lorena's testimony that he went to see Joy Mejia at the Philippine Embassy in Malaysia; (4) the failure of Lorena to inform his friend Lozano of his experience in Malaysia; (5) the document (Exh. 1) signed by Lorena, acknowledging accused-appellant's help in his going to Malaysia as a tourist; and (6) the fact that both complainants went to accused-appellant's house after they arrived from Malaysia which they would not have done if she had deceived them.

These circumstances do not show that accused-appellant did not recruit them for overseas employment. First of all, the idea of complainants going abroad as tourists and once there, of working could only have been thought of by accused-appellant because admittedly she had done the same thing before. Complainants are simple farmers who had not gone beyond elementary schooling. The plan would necessarily involve getting two-way tickets and "show" money. As Presenio Lorena testified, accused-appellant told him that if he was lucky enough to reach Korea, he would get a refund of one half of the price of the ticket.[39] Indeed, his plight can best be described in the local proverb: "Naghangad ng kagitna, isang salop ang nawala."[40]

Another indication that accused-appellant recruited complainants was the fact that Presenio Lorena's "contact" in Kuala Lumpur was Joy Mejia, who is a close friend of accused-appellant. Indeed, accused-appellant's claim that she did not represent herself as a licensed recruiter but that she merely tried to help complainants secure "tourist visas" could not make her less guilty of illegal recruitment, it being enough that she gave the impression of having had the authority to recruit workers for deployment abroad.[41]

That both complainants went to see accused-appellant after their arrival from Malaysia in no way indicates her innocence. Naturally, they would seek her out because they wanted to confront her. Lorena testified that he went to accused-appellant's house "to ask why I landed in Malaysia [when] she recruited me for Korea and in Malaysia I have no work."[42] One cannot fault Lorena for not telling Lozano about what he went through in Malaysia on February 23, 1993 because Lozano was already scheduled to depart on that day. At that point, Lozano must have been hoping that accused-appellant might still find a way for him to work overseas or to refund his money. On March 23, 1993, when this was not forthcoming, he and Lozano filed a sworn complaint in the NBI (Exh. E)[43] against accused-appellant.

As for the document (Exh. 1) which Lorena allegedly signed absolving accused-appellant of liability, the same cannot be given credence. For one, Lorena denied ever signing such a document. Even assuming he did, its execution precisely shows accused-appellant's attempt to escape liability. This conclusion is even supported by the testimony of accused-appellant's witness, Consuelo Mejia, who said that it was accused-appellant's idea to have the document prepared to protect herself from liability.[44]

Accused-appellant is, therefore, guilty of illegal recruitment. But accused-appellant is correct that she cannot be sentenced to suffer life imprisonment and pay a fine of P100,000.00 for each count of illegal recruitment. This is the penalty for illegal recruitment committed either by a syndicate or in large scale, but this has not been shown in Criminal Case Nos. 448-T and 449-T.

Illegal recruitment in large scale requires, among other things, that the illegal recruitment is committed against three or more persons, whether individually or as a group.[45] Illegal recruitment by a syndicate, on the other hand, is committed by a group or three or more persons conspiring and confederating with one another.[46] The informations in Criminal Case Nos. 448-T and 449-T do not allege the offense of illegal recruitment committed in large scale or by a syndicate but only of illegal recruitment. Nor does the evidence show that the illegal recruitment was committed in large scale or by a syndicate. Hence, the applicable penalty is that provided under Art. 39(c) of the Labor Code which states:

Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine, at the discretion of the court;

Section 1 of the Indeterminate Sentence Law, provides that the court imposes on the accused an indeterminate sentence, "the maximum term of which shall not exceed the maximum fixed by the said law and the minimum shall not be less than the minimum term prescribed by the same." Accordingly, a penalty of five (5) to seven (7) years imprisonment should be imposed on accused-appellant for each of the two cases of illegal recruitment. In addition, the fine of P100,000.00 imposed in each case should be reduced to P50,000.00.

Third. Accused-appellant also contends that the trial court erred in finding her guilty of estafa under Art. 315(1)(b) which provides that the same be committed:

> 1. With unfaithfulness or abuse of confidence, namely:
>
> . . . .
>
> (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

The trial court held accused-appellant guilty under this provision because it found accused-appellant to have denied receiving money from complainants.

Accused-appellant's contention is correct. In the first place, accused-appellant in fact admitted receiving money from complainants.[47] In the second case, the informations in Criminal Case Nos. 450-T and 451-T charged violations of Article 315(2) (a) of the Revised Penal Code which punishes estafa committed -

> By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

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> (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.

The elements of the crime are: (a) the accused defrauded another by abuse of confidence or by means of deceit; and (b) damage or prejudice capable of pecuniary estimation is caused to the offended party.[48] Both elements have been proven in these cases. The prosecution's evidence shows that the complainants gave money to accused-appellant because of her misrepresentation that she can get them employed in high-paying jobs in Korea. Accused-appellant, however, failed to make good her promise, thus causing damage and prejudice to complainants.[49]

Accused-appellant contends that the trial court should have applied the Indeterminate Sentence Law in imposing the penalties for estafa.

This contention is likewise meritorious. Art. 315 of the Revised Penal Code provides in pertinent part:

> 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 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 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 People v. Gabres,[50] it was held:

> Under the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which, in view of the attending circumstances, could be properly imposed" under the Revised Penal Code, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

In Criminal Case No. 450-T, the amount involved is P41,000.00. Accused-appellant admitted having received this amount from Jerry Lozano,[51] and this was also established by the receipts (Exhs. G and G-1) signed by her. Jerry Lozano also admitted giving this amount to her.[52] Hence, the minimum of the indeterminate sentence (prision correccional minimum to medium period) should be from six (6) months and one (1) day of prision correccional minimum to four (4) years and two (2) months of prision correccional medium. On the other hand, in fixing the maximum term of the indeterminate sentence (prision correccional maximum to prision mayor minimum), the same should be first divided into three periods in accordance with Arts. 64-65 of the Revised Penal Code, thus:

Minimum Period

Medium Period

Maximum Period

From 4 years, 2
months and 1 day to

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5 years, 5 months,
and 10 days

From 5 years, 5
months and 11 days
to 6 years, 8 months,
and 20 days

From 6 years, 8
months, and 21
days to 8 years

As the amount involved exceeds P22,000.00, the penalty should be imposed in its maximum period as provided in Article 315 of the Revised Penal Code, adding one year for every additional P10,000.00, provided the total penalty should not exceed 20 years. Hence, each one-year period should be added to the maximum period, which is from six (6) years, eight (8) months, and twenty-one (21) days to eight (8) years. Accordingly, in Criminal Case No. 450-T, accused-appellant should be sentenced to an indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to nine (9) years of prision mayor, as maximum.[53] The award of P40,000.00 moral damages in favor of Jerry Lozano for his overnight stay in a flooded Malaysian jail is affirmed as the same undoubtedly caused him mental anguish and distress.[54]

The same principles in determining the appropriate penalty applies to Criminal Case No. 451-T. While the receipts presented (Exh. A, B, and C) show that Presenio Lorena only gave a total of P40,000.00, he was able to adequately prove in his testimony[55] that he actually gave accused-appellant a total of P61,000.00.[56] Accordingly, accused-appellant should be sentenced to an indeterminate prison term of four (4) years and two (2) months of prision correccional, as minimum, to eleven (11) years of prision mayor as maximum.

WHEREFORE, the decision appealed from is AFFIRMED with the modifications that, in Criminal Case Nos. 448-T and 449-T, accused-appellant is found GUILTY of illegal recruitment; and in Criminal Case Nos. 450-T and 451-T, of estafa under Art. 315(2)(a) of the Revised Penal Code and sentenced as follows:

1. In Criminal Case No. 448-T, accused-appellant is sentenced to an indeterminate prison term of five (5) years, as minimum, to seven (7) years, as maximum, and to pay a fine of P50,000.00.

2. In Criminal Case No. 449-T, accused-appellant is likewise sentenced to an indeterminate prison term of five (5) years, as minimum, to seven (7) years, as maximum, and to pay a fine of P50,000.00.

3. In Criminal Case No. 450-T, the accused-appellant is sentenced to an indeterminate prison term of four (4) years and two (2) months of prision correccional, as minimum, to nine (9) years of prision mayor, as maximum, and to pay the complainant Jerry Lozano P41,000.00 as actual damages and P40,000.00 as moral damages.

4. In Criminal Case No. 451-T, the accused-appellant is sentenced to an indeterminate prison term of four (4) years and two (2) months of prision correccional, as minimum, to eleven (11) years of prision mayor, as maximum, and to pay the complainant Presenio Lorena P61,000.00 as actual damages.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Judge Herminia M. Pascua.

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[2] Presenio Lorena and Jerry Lozano.

[3] P61,000.00 (Crim. Case No. 448-T) and P41,000.00 (Crim. Case No. 449-T).

[4] Jerry Lozano and Presenio Lorena.

[5] P41,000.00 (Crim. Case No. 450-T) and P61,000.00 (Crim. Case No. 451-T).

[6] Records (Crim. Case No. 448-T), p. 23.

[7] Id., p. 55.

[8] Ibid.

[9] Records (Crim. Case No. 448-T), p. 56.

[10] Id., p. 68.

[11] Id., p. 54.

[12] TSN, pp. 2-24, May 18, 1994.

[13] Records (Crim. Case No. 448-T), p. 61.

[14] Ibid.

[15] Records (Crim. Case No. 448-T), p. 58.

[16] TSN, pp. 4-29, June 24, 1994.

[17] Records (Crim. Case No. 448-T), p. 66.

[18] TSN, pp. 2-7, July 29, 1994.

[19] Records (Crim. Case No. 448-T), p. 127.

[20] TSN, pp. 3-27, Feb. 15, 1995.

[21] TSN, pp. 2-18, May 30, 1995.

[22] TSN, pp. 7-14, Aug. 31, 1995.

[23] TSN, pp. 2-10, Nov. 28, 1995.

[24] Id., pp. 14-17.

[25] TSN, pp.
2-14, Feb. 26, 1996.

[26] TSN, pp. 2-5, May 2, 1996.

[27] TSN, pp. 2-10, June 18, 1996.

[28] TSN, pp. 2-5, May 30, 1996.

[29] TSN, p. 6, May 2, 1996.

[30] TSN, pp.
11-22, June 18, 1996.

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[31] Decision, pp. 36-40; Rollo, pp. 67-71.

[32] Id., pp. 35-36; Id., pp. 66-67.

[33] See People v. Bugarin, 273 SCRA 384, 391-393 (1997).

[34] Abaca v. Court of Appeals, 290 SCRA 657, 668 (1998).

[35] People v. Señoron, 267 SCRA 278, 284 (1997).

[36] People v. Tan Tiong Meng, 271 SCRA 125, 133 (1997).

[37] People v. Ganaden, 299 SCRA 433, 438 (1998).

[38] People v. Saley, 291 SCRA 715, 747 (1998).

[39] TSN, p. 19, May 18, 1994.

[40] People v. De Leon, 267 SCRA 644, 652 (1997).

[41] People v. Diaz, 259 SCRA 441, 456 (1996).

[42] TSN, p. 4, May 2, 1996.

[43] Records (Crim. Case No. 448-T), p. 64

[44] TSN, pp. 6-7, Nov. 28, 1995.

[45] Labor Code, Art. 39 (b).

[46] Ibid.

[47] TSN, p. 23, Feb. 15, 1995; TSN, p. 15, May 30, 1995.

[48] People v. Mercado, 304 SCRA 504 (1999).

[49] People v. Ong, G.R. No. 119594, Jan. 18, 2000.

[50] 267 SCRA 581, 595-596 (1997).

[51] TSN, p. 15, May 30, 1995.

[52] TSN, p. 9, June 24, 1994.

[53] People v. Saley, supra.

[54] Civil Code, Art. 2217.

[55] TSN, pp. 4-6, May 18, 1994.

[56] See People v. Mercado, supra; People v. Comia, 236 SCRA 185 (1994).

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