

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NENITA MARIA OLIVIA GALLARDO (AT LARGE), AND REMEDIOS MALAPIT, ACCUSED, REMEDIOS MALAPIT, ACCUSED-APPELLANT.

G.R. Nos. 140067-71. August 29, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Remedios Malapit and Nenita Maria Olivia Gallardo were charged with one (1) count of illegal recruitment committed in large-scale, three (3) counts of estafa, and one (1) count of simple illegal recruitment before the Regional Trial Court of Baguio City, Branch 3.[1] The Informations read as follows:

Criminal Case No. 15320-R (Illegal Recruitment Committed in Large Scale)[2]

The undersigned (Public Prosecutor) accuses NENITA MARIA OLIVIA GALLARDO and REMEDIOS MALAPIT of the crime of ILLEGAL RECRUITMENT COMMITTED IN LARGE SCALE, defined and penalized under Article 13(b) in relation to Article 38(b), 34, and 39 of P.D. No. 442, otherwise known as the New Labor Code of the Philippines, as amended by P.D. No. 1693, 1920, 2018 and R.A. No. 8042, committed as follows:

That during the period from January 1997 to June, 1997, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously for a fee, recruit and promise employment as contract workers in Canada, to the herein complainants, namely: Rommel Suni, Myrna Castro, Marilyn Mariano, Bryna Paul Wong, Mary Grace Lanozo, Ana Liza Aquino, Marie Purificacion Abenoja, Florence Bacoco and Lorna Domingo, without said accused having first secured the necessary license or authority from the Department of Labor and Employment.

Criminal Case No. 15323-R (Estafa)[3]

That in March 1997 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another did then and there willfully, unlawfully and feloniously defraud one MARILYN MARIANO by way of false pretenses, which are executed prior to or simultaneously with the commission of the fraud, as follows; to wit: the accused knowing fully well that he/she they is/are not authorized job recruiters for persons intending to secure work abroad convinced said Marilyn Mariano and pretended that he/she/they could secure a job for him/her abroad, for and in consideration of the sum of P36,500.00, when in truth and in fact they could not; the said Marilyn Mariano deceived and convinced by the false pretenses employed by the accused parted away the total sum of P36,500.00, in favor of the accused, to the damage and prejudice of the said Marilyn Mariano in the aforementioned amount of THIRTY SIX THOUSAND FIVE HUNDRED PESOS (P36,500.00), Philippine Currency.

Criminal Case No. 15327-R (Estafa)[4]

That on June 6, 1997 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there

willfully, unlawfully and feloniously defraud one MARIE PURIFICACION ABENOJA by way of false pretenses, which are executed prior to or simultaneously with the commission of the fraud, as follows, to wit: the accused knowing fully well that he/she they is/are not authorized job recruiters for persons intending to secure work abroad convinced said Marie Purificacion Abenoja and pretended that he/she/they could secure a job for him/her abroad, for and in consideration of the sum of P36,500.00, when in truth and in fact they could not; the said Marie Purificacion Abenoja deceived and convinced by the false pretenses employed by the accused parted away the total sum of P36,500.00 in favor of the accused, to the damage and prejudice of the said Marie Purificacion Abenoja in the aforementioned amount of THIRTY SIX THOUSAND FIVE HUNDRED PESOS (P36,500.00), Philippine currency.

Criminal Case No. 15570-R (Illegal Recruitment)[5]

The under signed (Public Prosecutor) accuses NENITA MARIA OLIVIA-GALLARDO and REMEDIOS MALAPIT of the crime of ILLEGAL RECRUITMENT, defined and penalized under Article 13(b) in relation to Article 38(b), 34, and 39 of Presidential Decree No. 442, otherwise known as the New Labor Code of the Philippines, as amended by R.A. No. 8042, committed as follows:

That on or about the 6th day of June, 1997, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously for a fee, recruit and promise employment as contract worker in Canada, to the herein complainant ARACELI D. ABENOJA, without said accused having first secured the necessary license or authority from the Department of Labor and Employment.

Criminal Case No. 15571-R (Estafa)[6]

That on or about the 11th day of June, 1997 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating & mutually aiding one another, did then and there willfully, unlawfully and feloniously defraud one ARACELI D. ABENOJA by way of false pretenses, which are executed prior to or simultaneously with the commission of the fraud, as follows; to wit: the accused knowing fully well that he/she/they is/are not authorized job recruiters for persons intending to secure work abroad convinced said Araceli D. Abenoja and pretended that he/she/they could secure a job for him/her abroad, for and in consideration of the sum of P35,000.00, when in truth and in fact they could not; the said Araceli D. Abenoja deceived and convinced by the false pretenses employed by the accused parted away the total sum of P35,000.00 in favor of the accused, to the damage and prejudice of the said Araceli D. Abenoja in the aforementioned amount of THIRTY FIVE THOUSAND PESOS (P35,000.00), Philippine currency.

Only accused-appellant Remedios Malapit was brought to the jurisdiction of the trial court. Her co-accused, Nenita Maria Olivia Gallardo, remained at large.

Upon arraignment, accused-appellant pleaded “not guilty” to all charges. The five (5) cases were consolidated and tried jointly.

Marie Purificacion Abenoja and Marilyn Mariano met accused-appellant at her beauty parlor in Lopez Building, Session Road, Baguio City. Marie met accused-appellant sometime in January 1997 through her friend, Florence Bacoco. A month later, Marilyn was introduced to accused-appellant by Grace Lanozo, a fellow nurse at the PMA Hospital.

Marie claims that accused-appellant enticed her to apply for work as a caregiver in Canada. Accused-appellant showed her a piece of paper containing a job order saying that Canada was in need of ten (10) caregivers and some messengers. Accused-appellant also promised her that she will be receiving a salary of CN\$2,700.00 (Canadian Dollars) and will be able to leave for Canada in a month’s time. Heeding accused-appellant’s guaranty, Marie eventually applied for the overseas job opportunity.

On June 6, 1997, accused-appellant introduced Marie to co-accused Nenita Maria Olivia-Gallardo in Tandang Sora, Quezon City. On the same day, Marie submitted herself to a physical examination and personally handed to Gallardo a partial payment of P18,000.00, for which the latter issued a receipt.[7] Marie made another payment in the amount of P52,000.00, for which accused-appellant issued a provisional receipt.[8] This amount included the placement fee of her sister, Araceli Abenoja, who became interested in the opportunity to work abroad. Accused-appellant issued to Marie the receipt[9] for Araceli in the amount of P35,000.00, signed by Gallardo.

Three months lapsed without any news on Marie's deployment to Canada. Her sister, Araceli, had already left for work abroad through the efforts of their other town-mate. The weekly follow-ups made by Marie to accused-appellant pertaining to her application and that of Araceli's were to no avail. Accused-appellant just promised Marie that she will return her money. Realizing that she had been hoodwinked, Marie decided to file a complaint against the accused-appellant and Gallardo with the National Bureau of Investigation. She no longer verified the authority of both accused-appellant and Gallardo in recruiting workers overseas because she was told by Gallardo that she is a direct recruiter.[10]

Marilyn Mariano, on the other hand, was told by accused-appellant that she was recruiting nurses from Baguio City and was looking for one more applicant to complete the first batch to fly to Canada. After giving her all the information about the job opportunity in Canada, accused-appellant encouraged her to meet Gallardo. Not long after, Grace Lanozo accompanied her to meet Gallardo at the latter's house in Quezon City.

Gallardo required her to undergo a medical check-up, to complete her application papers within the soonest possible time and to prepare money to defray the expenses for her deployment to Canada. Upon the instruction of accused-appellant, Marilyn paid a total amount of P36,000.00 to Gallardo, which was evidenced by a receipt. Of this amount, the P1,500.00 [11] was for her medical check-up, P20,000.00 [12] for processing of papers and P15,000.00[13] for her visa.

Marilyn was further made to accomplish a form, prepared by both accused-appellant and Gallardo, at the residence of accused-appellant in Baguio City. Thereafter, she was informed that the processing of her papers abroad shall commence within the next three months. She was also made to attend a meeting conducted by both accused-appellant and Gallardo at the former's house in Baguio City, together with other interested applicants.

After three months of waiting with no forthcoming employment abroad, Marilyn and the other applicants proceeded to the Philippine Overseas Employment Agency, Regional Administrative Unit, of the Cordillera Administrative Region in Baguio City, where they learned that accused-appellant and Gallardo were not authorized recruiters.[14] Marilyn confronted accused-appellant about this, whereupon the latter assured her that it was a direct hiring scheme. Thereafter, Marilyn reported accused-appellant and Gallardo to the NBI. [15]

After trial on the merits, accused-appellant was found guilty of the crimes of Illegal Recruitment in Large Scale and Estafa on three (3) counts. The dispositive portion of the decision reads:

WHEREFORE, the Court finds accused Remedios Malapit GUILTY beyond reasonable doubt with the crimes of Illegal Recruitment in Large Scale, and Estafa in three (3) counts, and she is hereby sentenced as follows:

1. To suffer Life Imprisonment at the Correctional Institution for Women, Mandaluyong City in Criminal Cases Nos. 15320-R and 15770-R for Illegal Recruitment in Large Scale; to pay a Fine to the Government in the amount of One Hundred Thousand (P100,000.00) Pesos; and to pay private complainants, Marie Purificacion Abenoja, the amount of Thirty Five Thousand (P35,000.00) Pesos; Araceli Abenoja also the amount of Thirty Five Thousand (P35,000.00) Pesos; and Marilyn Mariano, the amount of Thirty Six Thousand Five Hundred (P36,500.00) Pesos, all amounts with legal interest.

2. To suffer Imprisonment at the same Institution from Six (6) Years, Five (5) Months, and Eleven (11) Days as Minimum to Seven (7) Years, Eight (8) Months, and Twenty (20) Days as Maximum of Prison Mayor for each Estafa case in Criminal Cases Nos. 15323-R, 15327-R, and 15571-R.

3. To pay costs of suit.[16]

Accused-appellant is now before us on the following assignment of errors:

I

THE TRIAL COURT ERRED IN CONCLUDING THAT THE PROSECUTION SUCCEEDED IN PROVING THE GUILT OF ACCUSED APPELLANT BEYOND REASONABLE DOUBT FOR THE CRIME OF ILLEGAL RECRUITMENT.

II

THE TRIAL COURT ERRED IN CONCLUDING THAT THE PROSECUTION SUCCEEDED IN PROVING THE GUILT OF ACCUSED-APPELLANT BEYOND REASONABLE DOUBT FOR THREE COUNTS OF ESTAFA.

III

THE TRIAL COURT ERRED IN NOT DISMISSING CRIMINAL CASES NOS. 15570-R AND 15571-R FOR ABSENCE OF EVIDENCE RESULTING FROM THE FAILURE OF THE COMPLAINING WITNESS TO APPEAR AND SUBSTANTIATE HER COMPLAINT.

IV

GRANTING ARGUENDO THAT ACCUSED-APPELLANT COMMITTED ILLEGAL RECRUITMENT, THE TRIAL COURT ERRED IN CONVICTING HER OF ILLEGAL RECRUITMENT IN LARGE SCALE.

Accused-appellant maintains that she did not commit any of the activities enumerated in the Labor Code on illegal recruitment in connection with the applications of the private complainants. It was Nenita Maria Olivia Gallardo who convinced and promised private complainants employment overseas. It was also Gallardo who received and misappropriated the money of private complainants. Accordingly, she cannot be convicted of estafa.

We do not agree.

Illegal recruitment is committed when two (2) essential elements concur:

(1) that the offender has no valid license or authority required by law to enable him to lawfully engage in the recruitment and placement of workers, and

(2) that the offender undertakes any activity within the meaning of “recruitment and placement” defined under Article 13(b), or any prohibited practices enumerated under Article 34 of the Labor Code.[17]

Article 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 shall be deemed engaged in recruitment and placement.

In the case at bar, the first element is present. Nonette Legaspi-Villanueva, the Overall Supervisor of the Regional Office of the POEA in Baguio City, testified that per records, neither accused-appellant nor Gallardo were

licensed or authorized to recruit workers for overseas employment in the City of Baguio or in any part of the Cordillera Region.

The second essential element is likewise present. Accused-appellant purported to have the ability to send Marie Purificacion Abenoja, Araceli Abenoja and Marilyn Mariano for employment abroad through the help of her co-accused Gallardo, although without any authority or license to do so. Accused-appellant was the one who persuaded them to apply for work as a caregiver in Canada by making representations that there was a job market therefor.[18] She was also the one who helped them meet Gallardo in order to process their working papers and personally assisted Marie, Araceli and Marilyn in the completion of the alleged requirements.[19] Accused-appellant even provided her house in Baguio City as venue for a meeting with other applicants that she and Gallardo conducted in connection with the purported overseas employment in Canada.[20] Accused-appellant, therefore, acted as an indispensable participant and effective collaborator of co-accused Gallardo, who at one time received placement fees[21] on behalf of the latter from both Marie and Araceli Abenoja. The totality of the evidence shows that accused-appellant was engaged in the recruitment and placement of workers for overseas employment under the above-quoted Article 13 (b) of the Labor Code. Hence, she cannot now feign ignorance on the consequences of her unlawful acts.

Accused-appellant's claim that the other private complainants in Criminal Case No. 15320-R, for illegal recruitment in large scale, have executed their individual affidavits of desistance pointing to Gallardo as the actual recruiter, deserves scant consideration. The several Orders[22] issued by the trial court show that the dismissal of the complaints of the other private complainants were based on their failure to substantiate and prosecute their individual complaints despite due notice.*

The foregoing notwithstanding, the existence of the adverted affidavits of desistance does not appear in the records of this case and, thus, may not be given any probative weight by this Court. Any evidence that a party desires to submit for the consideration of the court must be formally offered by him, otherwise, it is excluded and rejected.[23] Evidence not formally offered before the trial court cannot be considered on appeal, for to consider them at such stage will deny the other parties their right to rebut them.[24] By opting not to present them in court, such affidavits of desistance are generally hearsay and have no probative value since the affiants thereof were not placed on the witness stand to testify thereon.[25] The reason for the rule prohibiting the admission of evidence that has not been formally offered is to afford the other party the chance to object to their admissibility.[26]

All told, the evidence against accused-appellant has established beyond a shadow of doubt that she actively collaborated with co-accused Gallardo in illegally recruiting the complainants in this case. As correctly pointed out by the trial court, the private complainants in this case would not have been induced to apply for a job in Canada were it not for accused-appellant's information, recruitment, and introduction of the private complainants to her co-accused Gallardo.

Likewise untenable are accused-appellant's claims that she did not represent herself as a licensed recruiter,[27] and that she merely helped complainants avail of the job opportunity. It is enough that she gave the impression of having had the authority to recruit workers for deployment abroad. In fact, even without consideration for accused-appellant's "services", she will still be deemed as having engaged in recruitment activities, since it was sufficiently demonstrated that she promised overseas employment to private complainants.[28] Illegal recruitment is committed when it is shown that the accused-appellant gave the private complainants the distinct impression that she had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed.[29] To be engaged in the practice and placement, it is plain that there must at least be a promise or offer of an employment from the person posing as a recruiter whether locally or abroad.[30]

Undoubtedly, the acts of accused-appellant showed unity of purpose with those of co-accused Gallardo. All these acts establish a common criminal design mutually deliberated upon and accomplished through coordinated moves. There being conspiracy, accused-appellant shall be equally liable for the acts of her co-accused even if she herself did not personally reap the fruits of their execution.

While accused-appellant is guilty of illegal recruitment, we do not agree with the trial court that the same qualifies as large scale.

Accused-appellant's conviction of the illegal recruitment in large scale was based on her recruitment of Marie Purificacion Abenoja and Marilyn Mariano, private complainants in Criminal Case No. 15320-R, and Araceli Abenoja, private complainant in Criminal Case No. 15570-R. It was error for the trial court to consider the three private complainants in the two criminal cases when it convicted accused-appellant of illegal recruitment committed in large scale. The conviction of illegal recruitment in large scale must be based on a finding in each case of illegal recruitment of three or more persons, whether individually or as a group. In *People v. Reichl, et al.*,^[31] we reiterated the rule we laid down in *People v. Reyes*^[32] that:

x x x When the Labor Code speaks of illegal recruitment "committed against three (3) or more persons individually or as a group," it must be understood as referring to the number of complainants in each case who are complainants therein, otherwise, prosecutions for single crimes of illegal recruitment can be cumulated to make out a case of large scale illegal recruitment. In other words, a conviction for large-scale illegal recruitment must be based on a finding in each case of illegal recruitment of three or more persons whether individually or as a group. (Underscoring ours)

Accused-appellant likewise assails the decision of the trial court in Criminal Cases Nos. 15570-R and 15571-R for simple illegal recruitment and estafa, respectively, saying that these two criminal cases should have been dismissed for lack of evidence. The only evidence presented in these cases was the testimony of Marie Purificacion Abenoja, Araceli Abenoja's sister, on her alleged payment of the placement fees for Araceli's application. By Araceli's failure to testify, she failed to prove the facts and circumstances surrounding her alleged recruitment and the person accountable therefor.

We are not persuaded. In *People v. Gallarde*,^[33] we held:

Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. The prosecution is not always tasked to present direct evidence to sustain a judgment of conviction; the absence of direct evidence does not necessarily absolve an accused from any criminal liability. Even in the absence of direct evidence, conviction can be had on the basis of circumstantial evidence, provided that the established circumstances constitute an unbroken chain which leads one to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person, i.e., the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.

The rules on evidence and precedents sustain the conviction of an accused through circumstantial evidence, as long as the following requisites are present: (1) there must be more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all circumstances produces a conviction beyond reasonable doubt of the guilt of the accused.

The circumstantial evidence in the case at bar, when scrutinized and taken together, leads to no other conclusion than that accused-appellant and co-accused Gallardo conspired in recruiting and promising a job overseas to Araceli Abenoja. Moreover, Marie Purificacion Abenoja had personal knowledge of the facts and circumstances surrounding the charges filed by her sister, Araceli, for simple illegal recruitment and estafa. Marie was privy to the recruitment of Araceli as she was with her when both accused-appellant and Gallardo required Araceli to

undergo physical examination to find out whether the latter was fit for the job abroad.[34] Accused-appellant even admitted that she was the one who introduced Marie and Araceli to Gallardo when they went to the latter's house.[35] Marie was the one who shouldered the placement fee of her sister Araceli.[36]

Furthermore, the private complainants in this case did not harbor any ill motive to testify falsely against accused-appellant and Gallardo. Accused-appellant failed to show any animosity or ill-feeling on the part of the prosecution witnesses which could have motivated them to falsely accuse her and Gallardo. It would be against human nature and experience for strangers to conspire and accuse another stranger of a most serious crime just to mollify their hurt feelings.[37] As such, the testimony of private complainants that accused-appellant was the person who transacted with them, promised them jobs and received money therefor, was correctly given credence and regarded as trustworthy by the trial court.

In sum, accused-appellant is only guilty of two (2) counts of illegal recruitment. Under Section 7 of Republic Act No. 8042[38] otherwise known as the "Migrant Workers Act of 1995," any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than two hundred thousand pesos (P200,000.00) nor more than five hundred thousand pesos (P500,000.00).

The provisions of the Indeterminate Sentence Law are applicable, as held in *People v. Simon*: [39]

It is true that Section 1 of said law, after providing for indeterminate sentence for an offense under the Revised Penal Code, states that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same." We hold that this quoted portion of the section indubitably refers to an offense under a special law wherein the penalty imposed was not taken from and is without reference to the Revised Penal Code, as discussed in the preceding illustrations, such that it may be said that the "offense is punished" under that law.

Guided by the foregoing principle, accused-appellant shall be made to suffer a prison term of six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P200,000.00, for each count of illegal recruitment.

The Court likewise affirms the conviction of accused-appellant for estafa on three (3) counts. It is settled that a person may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under the Revised Penal Code, Article 315, paragraph 2(a). As we held in *People v. Yabut*: [40]

In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2 (a) of Art. 315 of the Revised Penal Code. The offense of 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 crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2 (a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and vice versa.

The prosecution has proven beyond reasonable doubt that accused-appellant was guilty of estafa under the Revised Penal Code, Article 315 paragraph (2) (a), which provides that estafa is committed:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of 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.

The evidence is clear that in falsely pretending to possess the power to deploy persons for overseas placement, accused-appellant deceived Marie, Araceli and Marilyn into believing that the recruitment would give them greener opportunities as caregivers in Canada. Accused-appellant's assurance constrained the private complainants to part with their hard-earned money in exchange for a slot in the overseas job in Canada. The elements of deceit and damage for this form of estafa are indisputably present. Hence, the conviction of accused-appellant for three (3) counts of estafa in Criminal Cases Nos. 15323-R, 15327-R and 15571-R should be upheld.

Under the Revised Penal Code, an accused found guilty of estafa shall be sentenced to:

x x x 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; x x x.

In applying the provisions of the Indeterminate Sentence Law, we had occasion to reiterate our ruling in *People v. Ordonez*[41] in the very recent case of *People v. Angeles*,[42] to wit:

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 circumstances 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.

Similarly, in *People v. Saulo*,[43] we further elucidated on how to apply the Indeterminate Sentence Law for the charge of estafa:

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 in degree is 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.

In fixing the maximum term, the prescribed penalty of prision correccional maximum to prision mayor minimum should be divided into three equal portions of time, each of which portion shall be deemed to form one period, as follows—

Minimum Period: From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days

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

Maximum Period: From 6 years, 8 months and 21 days to 8 years

pursuant to Article 65, in relation to Article 64, of the Revised Penal Code.

When the amounts involved in the offense exceeds P22,000, the penalty prescribed in Article 315 of the Revised Penal Code shall be imposed in its maximum period, adding one year for each additional P10,000.00, although the total penalty which may be imposed shall not exceed twenty (20) years.

In Criminal Case No. 15323-R, Marilyn Mariano testified that upon instruction of accused-appellant she gave

accused Gallardo a total of P36,500.00.

In Criminal Case Nos. 15327-R and 15571-R, Marie Purificacion Abenoja testified that she gave the amounts of P18,000.00 and P52,000.00 to accused Gallardo and accused-appellant. Out of the amount of P52,000.00, P35,000.00 was intended to answer for the placement fee of her sister Araceli Abenoja, the private complainant in Criminal Case No. 15571-R. The remaining P17,000.00 formed part of the balance of Marie's placement fee. Accordingly, accused-appellant shall be criminally liable for the amount of P35,000.00 in Criminal Cases No. 15327-R and P35,000.00 in Criminal Case No. 15571-R.

WHEREFORE, in view of the foregoing, the appealed Decision of the Regional Trial Court of Baguio City, Branch 3 is **AFFIRMED** with the following **MODIFICATIONS**:

(1) In Criminal Case No. 15320-R, accused-appellant Remedios Malapit is found **GUILTY** beyond reasonable doubt of the crime of Simple Illegal Recruitment only, and is sentenced to suffer a prison term of six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P200,000.00.

(2) In Criminal Case No. 15323-R, accused-appellant Remedios Malapit is found **GUILTY** beyond reasonable doubt of the crime of Estafa and sentenced to suffer a prison term of four (4) years and two (2) months of prison correccional, as minimum, to nine (9) years and four (4) months of prison mayor, as maximum, and is **ORDERED** to indemnify Marilyn Mariano the amount of P36,500.00.

(3) In Criminal Case No. 15327-R, accused-appellant Remedios Malapit is found **GUILTY** beyond reasonable doubt of the crime of Estafa and sentenced to suffer a prison term of four (4) years and two (2) months of prison correccional, as minimum, to nine (9) years and four (4) months of prison mayor, as maximum, and is **ORDERED** to indemnify Marie Purificacion Abenoja the amount of P35,000.00.

(4) In Criminal Case No. 15570-R, accused-appellant Remedios Malapit is found **GUILTY** beyond reasonable doubt of the crime of Simple Illegal Recruitment and is sentenced to suffer a prison term of six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P200,000.00.

(5) In Criminal Case No. 15571-R, accused-appellant Remedios Malapit is found **GUILTY** beyond reasonable doubt of the crime of Estafa and sentenced to suffer a prison term of four (4) years and two (2) months of prison correccional, as minimum, to nine (9) years and four (4) months of prison mayor, as maximum, and is **ORDERED** to indemnify Araceli Abenoja the amount of P35,000.00

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Austria-Martinez, JJ., concur.

[1] Presided by Judge Fernando Vil Pamintuan.

[2] Records, Criminal Case No. 15320-R, p. 1.

[3] Ibid., Criminal Case No. 15323-R, p. 1

[4] Id., Criminal Case No. 15327-R, p. 1.

[5] Id., Criminal Case No. 15570-R, p. 1.

[6] Id., Criminal Case No. 15571-R, p. 1.

[7] Exhibit "E-1"; Records, p. 94.

[8] Exhibit "E-2"; Ibid.

[9] Exhibit "E"; Id.

[10] TSN, July 1, 1998, pp. 4-22.

- [11] Exhibit "A"; Records, p. 110.
- [12] Exhibit "C"; Ibid.
- [13] Exhibit "B"; Id.
- [14] Exhibit "X"; Id. at 111.
- [15] TSN, September 8, 1998, pp. 19-24 & 26-27.
- [16] Rollo, p. 41.
- [17] *People v. Navarra*, 352 SCRA 84 (2001).
- [18] TSN, July 1, 1998, pp. 4-6, 10-11; TSN, September 8, 1998, pp. 17-19.
- [19] Ibid., at 6-7; Ibid., at 19-21.
- [20] TSN, September 8, 1998, pp. 22-23.
- [21] Ibid., at p. 12-18.
- [22] Records, pp. 168, 183 & 190.
- * The witness who failed to appear were Bryan Paul Wong, Mary Grace Lanozo, Myrna Castro and Rommel Suni, Analiza Aquino (already in Saudi Arabia) & Araceli Abenoja (out of the country). Marie Purificacion Abenoja, the sister of Araceli Abenoja, testified that the latter was already working abroad.
- [23] *Alonte v. Savellano, Jr.*, 287 SCRA 245 (1998).
- [24] *Ong v. Court of Appeals*, 301 SCRA 387 (1999).
- [25] *People v. Rendoque*, 322 SCRA 622 (2000); *Lim v. CA*, 323 SCRA 102 (2000).
- [26] *Ong Chia v. Republic*, 328 SCRA 749 (2000).
- [27] *People v. Saley*, 291 SCRA 715 (1998).
- [28] *People v. Dionisio*, G.R. No. 130170, January 29, 2002.
- [29] *People v. Angeles*, G.R. No. 132376, April 11, 2002.
- [30] Ibid.
- [31] G.R. Nos. 141221-36, March 7, 2002.
- [32] 242 SCRA 264 (1995).
- [33] 325 SCRA 835 (2000).
- [34] TSN, September 8, 1998, pp. 6-7.
- [35] TSN, February 18, 1999, pp. 6-7.
- [36] TSN, September 8, 1998, pp. 9-11.
- [37] *Supra*, note 31.
- [38] Took effect on July 15, 1995; See *Asian Center for Career and Employment System and Services, Inc. v. NLRC, et al.*, 358 Phil. 380 (1998).
- [39] 234 SCRA 555 (1994); *People v. Ganguso*, 250 SCRA 269 (1995).
- [40] 316 SCRA 237 (1999); *People v. Ortiz-Miyake*, 279 SCRA 180 (1997).
- [41] 335 SCRA 331 (2000).
- [42] G.R. No. 132376, April 11, 2002.
- [43] 344 SCRA 605 (2000).

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