

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO MANUNGAS, JR. Y GO @ “PERCY”,
ACCUSED-APPELLANT.**

G.R. Nos. 91552-55. March 10, 1994

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal by accused-appellant Fernando Manungas, Jr. alias "Percy" from the decision[1] dated October 31, 1989 of the Regional Trial Court of Lingayen, Pangasinan, Branch 38 in Criminal Cases Nos. L-3993, L-3994, L-3996 and L-4000 finding him guilty beyond reasonable doubt of the crimes of ESTAFA and ILLEGAL RECRUITMENT, the dispositive portion of which reads:

"In the light of what has been stated and discussed above, the court finds and holds the accused Fernando Manungas y Go alias "Percy" guilty beyond peradventure of doubt of the crimes filed against him and conformable thereto, hereby pronounces judgment as follows:

"In Criminal Case No. L-3993, the court declares accused, Fernando Manungas y Go alias "Percy" guilty of estafa for the sum of P16,800.00 as alleged in the information filed against him and there being no aggravating nor mitigating circumstance, and applying the Indeterminate Sentence Law in his favor, said accused is hereby sentenced to suffer the prison term from two (2) years, eleven (11) months and ten (10) days as minimum to five (5) years, five (5) months and eleven (11) days of prision correccional as maximum and to pay the costs of the proceedings.

"The court further orders the accused to reimburse the offended party, Wilfrey Mabalot, the sum of sixteen thousand eight hundred (P16,800.00) pesos which is the amount of money paid and delivered to him by said complaining witness without subsidiary imprisonment in case of insolvency.

"In Criminal Case No. L-3994, the court likewise declares the accused, Fernando Manungas y Go alias "Percy" guilty of estafa for the sum of P17,550.00 as charged in the information. And there being no aggravating nor mitigating circumstance present, and applying the Indeterminate Sentence Law in his favor, the accused is hereby sentenced to suffer an indeterminate prison term from two (2) years, eleven (11) months and ten (10) days as minimum to five (5) years, five (5) months and eleven (11) days of prision correccional as maximum and to pay the costs.

"The court further directs the accused to reimburse the offended party, Danilo Ramirez the sum of seventeen thousand five hundred fifty (P17,550.00) pesos which the accused took from the complainant without subsidiary imprisonment in case of insolvency.

"In Criminal Case No. L-3996, the court also declares the accused, Fernando Manungas y Go alias "Percy" guilty of estafa for eighteen thousand six hundred (P18,600.00) pesos as charged in the information filed against him. There being no aggravating nor mitigating circumstance present, and applying the Indeterminate Law in his favor, said accused is hereby sentenced to suffer an indeterminate prison term from two (2) years, eleven (11) months and ten (10) days as minimum to five (5) years, five (5) months and eleven (11) days of

prision correccional as maximum and to pay the costs of the proceedings.

"The court also directs the accused to reimburse the offended party the sum of eighteen thousand six hundred (P18,600.00) pesos which is the amount paid and delivered by the offended party to him without subsidiary imprisonment in case of insolvency.

"In Criminal Case No. L-4000, the court likewise holds the accused, Fernando Manungas y Go alias "Percy" guilty of the crime of Illegal Recruitment on Large Scale as charged in the information filed against him, defined and penalized under the provisions of Article 39, par. (a) of Presidential Decree No. 2018 amending Articles 38 and 39 of P.D. No. 442, otherwise known as the Labor Code of the Philippines, and conformable thereto, hereby sentences the said accused to suffer the penalty of Life Imprisonment and to pay a fine of One Hundred Thousand (P100,000.00) pesos without subsidiary imprisonment in case of insolvency pursuant to law.

"The accused shall serve the penalties herein imposed against him successively or one after the other according to their severity."[2]

Based on the evidence adduced before the trial court, the facts of the case are as follows:

Sometime in April of 1987, accused-appellant Fernando Manungas, Jr. went to Barangay Legaspi, Tayug, Pangasinan where he stayed in the house of Arturo and Lilia de Vera to recruit workers for employment abroad. During his stay, accused-appellant was able to convince complainants Wilfrey Mabalot, Danilo Ramirez, Leonardo Estanoco and Crisanto Collado to apply as janitors in Saudi Arabia. He told them to bring all the necessary documents for the processing of their applications to his office in Manila.

On April 29, 1987, complainants went to accused-appellant's office located at Room 611, L & S Bldg., 1414 Roxas Blvd., Ermita, Manila and paid accused-appellant P250.00 each for their medical examination. Thereafter, accused-appellant required the complainants to pay, on various occasions, placement fees and other expenses incurred in the processing of their papers and issued corresponding receipts for said amounts. The total amount paid by the complainants to accused-appellant are the following: Wilfrey Mabalot - P16,800.00; Danilo Ramirez - P17,550.00; Leonardo Estanoco - 18,600.00; and Crisanto Collado - 13,300.00.

When complainants failed to leave for Saudi Arabia, they requested Luis "Jing" Ramirez, a brother of complainant Danilo Ramirez, to verify with the Philippine Overseas Employment Administration (POEA) whether accused-appellant was licensed to recruit workers for abroad. They subsequently learned that he was not as shown by the Certification issued by the POEA.[3]

Thereafter, complainants filed against accused-appellant complaints for Estafa defined under par. 2(a), Article 315 of the Revised Penal Code and Illegal Recruitment on a Large Scale. In due course, informations for three (3) counts of Estafa (Criminal Cases Nos. L-3993, L-3994 & L-3996) and Illegal Recruitment on a Large Scale (Criminal Case No. L-4000) were filed against accused-appellant before the Regional Trial Court of Lingayen, Pangasinan.

On the other hand, accused-appellant maintained that he was the operations manager of the ZG Recruitment and Placement Agency, a duly licensed recruitment agency. Sometime in April 1987, he went to Barangay Legaspi, Tayug, Pangasinan and recruited complainants to work in Saudi Arabia as janitors. Unfortunately, the job order for the janitorial services was awarded to Express Placement Agency instead of ZG Recruitment & Placement agency. Thereafter, accused-appellant transferred complainants' application for overseas employment to Nora Cunanan of Express Placement Agency. Accused-appellant also turned over the fees paid by the complainants to Nora Cunanan as evidenced by the receipts[4] issued by the latter. When Nora Cunanan absconded with the money of the complainants, accused-appellant filed an estafa case against Nora Cunanan after securing a Special

Power of Attorney from the complainants to prosecute and collect their money. However, he was not able to attend the hearing as he was arrested in connection with these cases.

Accused-appellant maintains that he did not make false representations to the complainants when he recruited the latter for employment abroad as he had told complainants that he is only an employee of a licensed recruitment agency in Manila. He further claims that he was not motivated by any deceitful intentions and had not caused any damage to the complainants because the amounts of money given to him by the latter were actually spent for their medical tests and other documents necessary for their overseas employment.

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 instant case, accused-appellant told complainants to submit to him their pictures, birth certificates, NBI clearances and other necessary documents for the processing of their employment in Saudi Arabia. Thereafter, accused-appellant collected from each of the complainants payment for their respective passport, training fee, placement fee, medical tests and other sundry expenses which unquestionably constitutes acts of recruitment within the meaning of the law. Besides, there is illegal recruitment when one gives the impression of his ability to send a worker abroad^[5] and there is evidence that accused-appellant had represented to the complainants that he could send them abroad as janitors in Saudi Arabia. And because of his representation, complainants gave their hard-earned money to accused-appellant in consideration of the same representation. As pointed out by the Solicitor General in his brief:

"It may be that at the time appellant recruited private complainants, he was then the operations manager of the ZGR Placement Agency, a duly licensed recruitment agency. But, as amply established by the evidence, the recruitment of private complainants was appellant's own personal undertaking. He did not do it for the agency. This is clearly shown by the sequence of events that led to the consum[m]ation of the transaction in question. Thus: it was appellant who talked private complainants into applying for employment abroad; when private complainants signified their interest, he alone was the one who informed them of the documents that they have to secure; he too was the one who demanded and received from them the fees for medical examination, passport, authentication, training, placement and psycho and AIDS test; also, he was the one who assured them of employment abroad and of the return of their money in the event of their non-deployment; moreover, it was he who undertook to inform private complainants of their departure.

"But that is not all. When private complainants failed to receive notice of their departure as promised them by appellant, they had somebody verify with the POEA if appellant was a licensed recruiter. This circumstance shows all the more that indeed appellant represented himself to be the recruiter, otherwise it would have been the status of the agency with which he allegedly worked for, that private complainants would have requested to be verified."^[6]

As to accused-appellant's claim that he did not misappropriate the money given to him by the complainants as he had turned over the latters' placement fees to Nora Cunanan, who subsequently absconded with the complainants' money, the trial court correctly held that:

"The version of the defense has the nature of a cock and bull story which is difficult and hard to accept. It is something that is fantastic and ridiculous. It is within the realm of fiction and patently a mere fabrication to exculpate the accused from the consequences of his nefarious and deceitful activities. If it is really true that the complainants were transferred and accommodated by the agency of Nora Cunanan, why did not the accused

and Mrs. Lydia Zamora who appear to be both intelligent take the necessary prudence and caution of putting the supposed agreement to transfer in writing considering the amounts of funds involved in the alleged transfer. Logic and common sense dictate that under such a situation, the accused and Mrs. Zamora take ordinary care of their concerns. To impress the court that there was really a transfer made, the accused claimed that there was a estafa case filed against Mrs. Cunanan before the City Fiscal's Office in Manila. It is however surprising why Atty. Jose Torre Franca who was engaged by the accused to file the estafa case did not present any letter-complaint or any charge sheet filed against Mrs. Cunanan. He did not even mention the Fiscal who investigated the case. More intriguing is the fact that counsel does not know what happened to the alleged case of estafa after he filed the same. Likewise, when Mrs. Lydia Zamora declared, she claimed that the case filed against Nora Cunanan was before the Regional Trial Court and not in the City Fiscal's Office.

"Defense also made capital of the special power of atty. executed by the complainants (exhibit 4) and their letters sent to the accused (exhibits 5, 6, 7 and 8) to convince the court that the real culprit in the whole mess is Nora Cunanan. The complainants made convincing explanation why they signed the special power of attorney. Wilfrey Mabalot declared that when the accused asked him to sign the document, he was told that its purpose is to facilitate their departure and when he signed the letter exhibit '6' he was just told to sign by the accused and because the latter was in [a] hurry, he signed without knowing its contents. He likewise explained that being a mere high school graduate he was not able to understand the imports of its contents. Danilo Ramirez explained that when he signed the special power of attorney, he did not read the contents because the accused was in [a] hurry in returning to Manila and that he sent the three letters to the accused while he was confined in jail because Manungas asked him to help him (accused) recover the money given to Mrs. Cunanan. Leonardo Estanoco declared, that he signed exhibit '4' because the accused told him that the document will be used to facilitate the processing of their papers. He did not understand its contents because he only understands little English." [7]

Thus, accused-appellant is guilty of the crimes of Estafa and Illegal Recruitment. Under Article 38 of the Labor Code, as amended, the crime of illegal recruitment is qualified when the same is committed against three (3) or more persons.

A person who violates any of the provisions under Article 13(b) and Article 34 of the Labor Code can be charged and convicted separately of illegal recruitment and estafa [Revised Penal Code, Article 315, 2(a)] because illegal recruitment is a *malum prohibitum* where the criminal intent of the accused is not necessary for a conviction while estafa is a *malum in se* where criminal intent of the accused is necessary for a conviction.

WHEREFORE, finding the accused-appellant guilty of the crimes of estafa and illegal recruitment in a large scale, the decision of the trial court is hereby **AFFIRMED**.

SO ORDERED.

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

[1] Penned by Judge Antonio M. Belen.

[2] Rollo, pp. 68-69.

[3] Folder of Exhibits, Exhibit "H-1".

[4] Id., Exhibits "9", "10" and "11".

[5] *Flores vs. People*, 211 SCRA 622 [1992].

[6] Rollo, Appellee's Brief, pp. 13-15.

[7] Id., p. 67.

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