

ENCARNACION FLORES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. Nos. 93411-12. July 20, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

Petitioner Encarnacion Flores seeks by this petition for review on certiorari to have the decision, dated 11 May 1990, of respondent Court of Appeals in CA-G.R. Nos. 06943 and 06944[1] reversed and set aside on the ground that the said decision is not in accord with law and the applicable decisions of this Court. The challenged decision of respondent court affirmed in toto the judgment of the Regional Trial Court of Manila, Branch XLI, finding petitioner guilty of the charges of Illegal Recruitment and Estafa, in two (2) separate informations which read as follows:

FOR ILLEGAL RECRUITMENT

(Crim. Case No. 86-48113)

“That in or about and during the period comprised between February 1986 and March 1986, both dates inclusive in the City of Manila, Philippines, the said accused, representing her-self 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 Pedro R. Oval without first having secured the required license or authority from the Ministry of Labor.”

Contrary to Law.”[2]

FOR ESTAFA

(Crim. Case No. 86-48114)

“That in or about and during the period comprised between February 1986 and March, 1986, both dates inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully, and feloniously defraud Pedro R. Oval in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which she made to said Pedro R. Oval to the effect that she had the power and capacity to recruit and employ him abroad as can maker in Japan and could facilitate 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 the said Pedro R. Oval to give and deliver, as in fact the latter gave and delivered to said accused the amount of P15,000.00 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 she did obtain the amount of P15,000.00 which amount once in her possession, with intent to defraud, she wilfully, unlawfully and feloniously appropriated, mis-applied and converted to her own personal use and benefit, to the damage and prejudice of said Pedro R. Oval in the aforesaid amount of P15,000, Philippine Currency.”

Contrary to Law.”[3]

When arraigned, petitioner pleaded not guilty to both charges. Thereafter, the two (2) cases were tried jointly.

The facts which gave rise to this case are the following:

Upon learning from the sister of petitioner that the latter was able to send her brother overseas to work, private complainant Pedro Oval went to the residence of petitioner on 15 February 1986 to inquire if she could send people abroad to work, to which inquiry petitioner replied in the affirmative but on condition that money first be given to her. On the same occasion, Oval met one Pacifico de Jesus who was likewise in petitioner's house for the same purpose.

On 20 March 1986, Oval gave P2,000.00 for his passport to the petitioner who received the amount. On 26 March 1986, petitioner demanded P13,000.00 from Oval to enable him to leave for his job as can maker in Japan. Again, Oval gave the amount demanded. No receipts were issued to him by the petitioner for both amounts.

Petitioner was able to secure a passport and a visa for Oval. However, Oval was not able to leave for the job in Japan because what was issued to him was a tourist visa and not a work visa. For this reason, Oval demanded that petitioner return his money. Petitioner then gave Oval P1,000.00 and promised to return the balance on 15 August 1986.

Pacifico de Jesus underwent a similar experience regard-ing petitioner's commitment that she would be able to send him abroad to work and, consequently, he gave petitioner money in consideration of the overseas employment promised him.

Because of their frustration in not being able to work overseas as promised by petitioner and because of her failure to return their money, Oval and de Jesus reported the matter to the police authorities. Two (2) policemen brought petitioner to the police detachment at the Cultural Center of the Philippines (CCP) on Roxas Boulevard for investigation. There, petitioner acknowledged her obli-gation to Oval and de Jesus and signed a promissory note in the amount of P23,000.00 representing the amounts they gave her, payable to both Oval and de Jesus on or before 15 August 1986.

When petitioner failed to return his money as promised, Oval filed against the petitioner the complaints for Illegal Recruitment and Estafa defined under par. 2(a), Article 315 of the Revised Penal Code. In due course, informations for Illegal Recruitment (Criminal Case No. 86-48113) and Estafa (Criminal Case No. 86-48114) were filed against the peti-tioner before the Regional Trial Court of Manila, Branch XLI.

On 22 August 1988, the trial court rendered a consolidated decision convicting petitioner Encarnacion Flores of the crimes charged. On appeal to the respondent court, the decision of the court a quo was affirmed in toto.

Not content with the respondent court's decision, petitioner is now before us raising the following issues for our resolution:

“I. WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW BY AFFIRMING THE DECI-SION OF THE RTC OF MANILA, BR. XLI CONVICTING THE PETITIONER OF ILLEGAL RECRUITMENT AND ESTAFA DESPITE THE FACT THAT THE EVIDENCE ON RECORD CANNOT SUSTAIN A VERDICT OF GUILT BEYOND PERADVERTURE OF DOUBT.

II. WHETHER OR NOT THE ‘RECEIPT’ SIGNED BY PETITIONER PURPORTEDLY ACKNOWLEDGING HER OBLIGATION TO REPAY THE AMOUNT OF P23,000.00 SHOULD HAVE BEEN GIVEN PROBATIVE WEIGHT CONSIDERING THAT IT WAS SIGNED IN THE PRESENCE OF POLICE OFFICERS SHORTLY AFTER PETITIONER'S ARREST (WITHOUT WARRANT) AND

WITHOUT THE BENEFIT OF COUNSEL HENCE, A FLAGRANT VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS TO REMAIN SILENT AND TO COUNSEL.

III. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE AFFIDAVIT OF RECANTATION EXECUTED BY PEDRO R. OVAL CONSIDERING THE SUPREME COURT RULING IN THE CASE OF ALONZO VS. IAC, 151 SCRA 552 WHERE THE COURT RULED THAT ONE SUCH AFFIDAVIT 'MAY CREATE SERIOUS DOUBT AS TO THE LIABILITY OF THE ACCUSED.'"[4]

It is contended by the petitioner that the term "recruiter" cannot be applied to her. Quoting from the Random House Dictionary, she argues that to recruit means to "engage" or "hire" (as new employees, members), but the record shows that she did not invite much less entice people for possible employment overseas. The truth is, she avers, it was Pedro Oval who sought her help to enable him to work abroad after he learned that she was able to send her brother to work abroad. Certainly, petitioner continues the single act of sending her brother abroad through an agency cannot be equated with recruitment, much less illegal recruitment. She also stresses that she did not pass herself off as a licensed recruiter as she never applied with the POEA for a license or permit to engage in the business of recruiting workers. That is why, she reasons out, her name does not appear in the POEA as one of the licensed recruiters. According to petitioner, she merely extended Oval assistance by referring him to the placement agency to which she had previously referred her brother.

Petitioner further asserts that she did not make false representation to the offended party (Oval) and that the amount delivered to her was given voluntarily, hence, no estafa was committed by her. Assuming, she continues, that she committed herself to assist Oval in working abroad, the mere fact that the whole transaction did not succeed does not justify Oval into imputing misrepresentation to her. Deceit, petitioner points out, should be proved and established by acts distinct from and independent of non-compliance with the promise, and that in the absence of proof that her representation was actually false, criminal intent to deceive cannot be inferred. Petitioner submits that non-performance on her part and her failure to return the money give rise only to civil liability, citing *Abeto vs. People*, 90 Phil. 581.

Dismissing the prosecution's averment that the receipt she signed is an admission or acknowledgment by her of an obligation, petitioner claims that said receipt should not have been given probative weight, as being in the nature of or tantamount to an admission of guilt, the same was extracted from her without having been first informed of her constitutional right to remain silent and to counsel. Hence, it is inadmissible in evidence.

Alleging that she signed the receipt under duress, petitioner contends that respondent court erred in giving full credence to the trial court's conclusion that she, being an educated woman, could not have been easily cowed by the presence of two (2) policemen into signing the receipt. Petitioner asserts that under a tense atmosphere not unlike that attending a custodial investigation, and being alone by herself in confrontation with her captors and suitors (sic), it was but natural for her to acknowledge an obligation she never incurred.

Finally, petitioner alleges that although concededly recanted testimony is frowned upon by the courts, it may nevertheless create serious doubt as to the liability of the accused. In the case at bar, Pedro Oval recanted his previous testimony, thus clearing petitioner of all guilt.

In fine, petitioner submits that she should be acquitted on the ground of reasonable doubt as the evidence on record is insufficient to prove that she employed deceit or false representations.

We agree with the respondent court that there is evidence that accused-petitioner had represented to Oval that she could send the latter abroad for employment as a can maker in Japan. And because of this representation, Oval and his companion, Pacifico de Jesus, gave her money in consideration of the same representation.

Petitioner's defense that she did not recruit Oval for employment abroad is beside the point. The undisputable fact is that she gave Oval the distinct impression that she had the power or ability to send people abroad for work so that he was convinced to give her the money she demanded to enable him to be employed as a can maker in Japan.

“Q. Why did you go to the place of her residence on February 15, 1986?

“A. I asked her if she really send people abroad.

“Q. Then what was her reply to you?

“A. She said she can send people abroad if they give money.

“Q. After she had informed you of that fact, what did you do, if any?

“A. I gave her the money.

“Q. When was that when you gave her the money?

“A. March 20, the first time I gave her the money.

“Q. Then after you have given the amount of P2,000.00 on March 20, 1986, what happened?

“A. On March 26, 1986, she also got to me the P13,000.00.” (tsn, pp. 3-4, January 20, 1987)

The term “recruit” or “recruitment” must be understood in the light of what the law contemplates and not how a dictionary defines it. As aptly explicated by respondent court -

“The crime of illegal recruitment is defined in Art. 38 (a) of PD No. 442, otherwise known as the Labor Code of the Philippines as amended, which is quoted as follows:

“Article 38. Illegal Recruitment -

a) The following recruitment activities are deemed illegal and punishable as provided herein;

1. Those undertaken in any form or manner by non-licensees or non-holders of authority;

x x x

Article 13. Definition -

b) Recruitment and placement - refers to any act of canvassing, enlisting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not. Pro-vided, 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. (The Labor Code, as amended).”[5]

By her own admission, she is not licensed by the POEA to recruit workers for employment here or abroad.

It would seem that the promissory note in question was indeed signed by petitioner without the presence of counsel. Nonetheless, there is no direct or positive evidence on record that the degree of constraint or duress either actually inflicted or threatened was sufficient to overcome petitioner's mind and will as to make her sign the promissory note. The “duress” under which she allegedly was at the time was merely petitioner's strong apprehension that she might be kept in detention by the two (2) policemen whom she perceived to have the power to do so. The truth is, she promised to send Oval to Japan as a can maker and demanded payment - which she actually received - for the effort. Petitioner's claim that she did not receive the amounts from Oval and de Jesus

deserves scant consideration. Why would she give a refund of P1,000.00 to Oval and promise to return the rest of the amount she received if indeed she did not demand and receive the P15,000.00 from Oval?

Petitioner, finally, makes capital of the recanted testimony of Oval which she points out clears her of all guilt.

The unreliable character of this evidence is shown by the fact that Oval merely deposed that in his confusion he mistakenly stated before the fiscal and the court that he gave the money to Mrs. Flores. It is quite incredible that after going through the process of having the petitioner arrested by the police, positively identifying her as the person who took his money after promising him a job abroad and then repeating the same accusation before the court, Oval would suddenly remember that he was confused when he made the statement before the fiscal and the court that he gave the money to petitioner. At most, the retraction is an afterthought which should not be given probative value.

“As a general rule a motion for new trial will not be granted if based on an affidavit of recantation of a witness whose effect, is to free the appellant from participation in the commission of the crime. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another, for such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable (*de Guzman vs. IAC*, 184 SCRA 128 [April 4, 1990]).”[6]

In the light of all the foregoing, we find that the respondent court committed no reasonable error in affirming the decision of the court a quo.

WHEREFORE, the petition for review is hereby DENIED with costs against petitioner.

SO ORDERED.

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

[1] Penned by Justice Cezar D. Francisco with the concurrence of Justices Nathanael P. de Pano, Jr., and Celso L. Magsino.

[2] Rollo, p. 18.

[3] *Ibid.*, pp. 18-19.

[4] *Ibid.*, p. 9.

[5] Rollo, p. 32.

[6] *People vs. Mangulabnan*, G.R. No. 65864, August 16, 1991, 200 SCRA 611.

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