

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZENAIDA E. VILLAFUERTE, ACCUSED-APPELLANT.

G.R. Nos. 93723-27. May 06, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

This is an appeal from the February 16, 1990 Decision of the Quezon City Regional Trial Court, Branch 89, finding accused-appellant Zenaida E. Villafuerte guilty beyond reasonable doubt of the crime of estafa under the Revised Penal Code and illegal recruitment in large scale under the Labor Code.

Four separate informations for estafa under Art. 315, par. 2(a) of the Revised Penal Code[1] were filed against appellant on April 10, 1989. The information in Criminal Case No. Q-89-3276 reads as follows:

"That on or about the 13th and the 20th of May 1988 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there, wilfully, unlawfully and feloniously defraud one URSULITO B. MANZANO in the following manner, to wit: on the date and place aforementioned, accused falsely pretended to the offended party that she had connection and capacity to deploy workers for overseas employment and she could secure employment/placement for said URSILITO B. MANZANO, and believing said misrepresentation, the offended party was later induced to give accused, as in fact he did give the total amount of P15,660.00, Philippine Currency, and once in possession of said amount and far from complying from her commitment and despite repeated demands made upon her to return said amount, did then and there, wilfully, unlawfully and feloniously, and with intent to defraud, misappropriate, misapply and convert the same to her own personal use and benefit, to the damage and prejudice of the said offended party in the aforementioned amount and in such amount as may be awarded to her under the provisions of the New Civil Code of the Philippines.

CONTRARY TO LAW."[2]

The three other informations contained basically the same allegations except for the name of the offended party, the amount involved and the time of the commission of the crime: Criminal Case No. Q-89-3277 alleged that in April 1988, appellant defrauded Norberto Cayabyab of the amount of P16,770.00;[3] Criminal Case No. Q-89-3278 stated that on March 21, 1988, Hermelina D. de Vera was defrauded by the appellant in the amount of P15,000.00;[4] and Criminal Case No. Q-89-3279 inculpated appellant with having defrauded Isidro A. Arias, Jr. in the amount of P12,365.00 in April 1988.[5]

On the same day, another information for violation of Arts. 38 and 39 of the Labor Code (P.D. No. 442) as amended by P.D. No. 2018[6] was filed against appellant and docketed as Criminal Case No. Q-89-3280. It states as follows:

"That on or about the period comprised from March 1988 up to June 1988, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, wilfully, unlawfully and feloniously recruit and promise employment abroad, to the following:

1. EDWIN M. ESTABILLO

-

P 6,365.00

2. AURORA S. GERONIMO

-

7,365.00

3. JOSELITO S. GERONIMO

-

7,865.00

4. CLODEVIO E. BALBEDINA

-

125.00

5. NORBERTO CAYABYAB

-

16,770.00

6. ERLE M. JAVIER

-

5,605.00

7. LETICIA M. QUINSAY

-

7,500.00

8. URSILITO B. MANZANO

-

15,660.00

9. ISIDRO A. ARIAS

-

12,365.00

10. ROLANDO E. DE GUIA

-

8,365.00

11. HERMELINA D. DE VERA

-

15,000.00

12. CATHERINE M. JAVIER

-

4,000.00

after requiring them to submit certain documentary requirements and exacting from them the said amount, as recruitment fees, such recruitment activities being done without the required license or authority from the Philippine Overseas Employment Administration, Department of Labor.

That the crime described above is committed in large scale as the same was perpetrated against 3 or more persons under Articles 38 & 39 of PD 442 as amended.

CONTRARY TO LAW."[7]

Upon arraignment, appellant pleaded not guilty to the charges.[8] All five cases were thereafter jointly tried.

The evidence for the prosecution consisted of the testimonies of private complainants and the receipts issued them.

Prosecution witness Edwin Estabillo[9] testified that in the months of March and April 1988, his officemate, Sally Valdemina, introduced appellant to him. Looking for an overseas job, he and Rolly de Guia, Aurora Geronimo, and Joselito Geronimo went to appellant's residence in Quezon City. Appellant promised them jobs abroad and required them to submit their respective filled-up bio-data forms.

Before the date of his promised departure or on April 27, 1988, Estabillo gave appellant herself the amount of P6,000.00 for which the latter signed a receipt in his presence.[10] When appellant failed to fulfill her promise, some of the complainants verified with the Philippine Overseas Employment Administration (POEA) and found out that appellant was not authorized to recruit workers. The POEA, through Hermogenes C. Mateo, chief of its licensing branch, issued a certification to that effect.[11] Estabillo's group thereafter verbally requested appellant several times to return to them the money they had given her as processing fees but she failed to do so. Hence, Estabillo and the others filed a complaint against her.

Norberto Cayabyab[12] also applied for a job abroad through appellant. In April 1988, he submitted his bio-data form, passport and clearances to appellant at her residence at No. 32, Moore St., San Francisco del Monte, Quezon City. Cayabyab gave appellant in her house the amount of P15,700.00 and P1,020.00 for "terminal fees" but she signed and issued a receipt only for P15,750.00.[13] Unable to leave for abroad, Cayabyab sought verification from the POEA and learned that appellant was not a licensed recruiter. For several times, they demanded that appellant return to them the amounts they had given her but to no avail. When their demands remained unheeded, they filed a complaint against appellant.

According to Hermelina D. de Vera,[14] sometime in February 1988, appellant went to her house in 61-B Ocampo St., U.P. Diliman, Quezon City and presented to her certain papers purportedly showing that appellant was a licensed recruiter. Enticed to work in Australia, de Vera secured the following papers required by appellant: NBI clearance, police clearance and her bio-data. Appellant also asked her to pay a recruitment fee of P15,000.00 which de Vera gave appellant in the latter's residence in two (2) payments: P5,000.00 in the first week of March, 1988 and the balance of P10,000.00 a week later. She did not demand a receipt for the first payment because appellant promised her that she would issue a receipt upon her payment of the second installment. It was de Vera

herself who prepared the receipt but appellant signed it in her presence.[15] Appellant kept on promising her that she would leave for abroad soon. When such promises were not realized, de Vera went to appellant's house and demanded the return of her money. Appellant having failed to give her back the amount, de Vera went to the POEA and found out that appellant was not a licensed recruiter. Hence, de Vera and her companions went to the NBI and lodged a complaint against appellant.

For his part, Ursulito Manzano[16] testified that appellant recruited him for a janitorial job abroad. As with the others, appellant told him to get a passport and an NBI clearance and to submit his bio-data. She also asked Manzano for P600.00 for which no receipt was issued. The second time around, appellant asked Manzano for P10,000.00 which he gave and a receipt was correspondingly issued stating that the amount was "for processing fee." [17] It was Manzano's father who gave appellant an additional P5,000.00 on May 20, 1988.[18]

Appellant promised him that he would leave for abroad as soon as he made the payments. However, there were no developments even after giving her the required amounts. In July 1988, he demanded from appellant the return of his money but appellant failed to make the reimbursement. With his companions, they sought verification from the POEA and was informed that she was not licensed to recruit.

Isidro Arias, Jr.[19] was promised a cashier's job in London by appellant sometime in April 1988. Having complied with the requirements of submission of passport, quarantine certification, NBI clearance and bio-data, Arias gave appellant the amount of P12,000.00 on a "staggered basis" - P6,000.00 on April 30, 1988, P3,000.00 on May 3, 1988 and another P3,000.00 on May 9, 1988. All these amounts were covered by receipts signed by appellant in Arias' presence.[20] Appellant then told Arias that in one or two weeks' time, he would be leaving for abroad. Arias waited for the "go signal" from appellant but it never came. Hence, like the other complainants, he verified from the POEA about appellant's status as a recruiter and found to his dismay that appellant was not a licensed recruiter. Consequently, he filed a complaint with the NBI.

It was towards the end of May 1988 that Leticia Quinsay[21] went to appellant's residence looking for an overseas job. Appellant offered her the job of a personal secretary and asked her to submit the necessary papers and to pay the processing and placement fees. Quinsay gave appellant an initial payment of P5,000.00 and on June 7, 1988, a second payment in the amount of P7,000.00. She paid appellant the said amounts at the latter's residence in San Francisco del Monte in Quezon City and appellant issued a temporary receipt therefor but only for P7,500.00.[22] Quinsay followed up her application through telephone calls but after a month, appellant could not produce the necessary papers for her employment and those of her friends Aurora and Joselito Geronimo. Like the rest of the complainants, Quinsay found out that appellant was not a licensed recruiter.

The prosecution also presented Hermogenes C. Mateo, the Chief of the Licensing Division of the POEA, who authenticated the document he had issued certifying that appellant was "not authorized in her private capacity to undertake recruitment." [23]

The defense presented appellant[24] as its sole witness. She denied that she had recruited the complainants and asserted that she "was not the one who got money from them but Rosalina Balbedina and John del Valle" who were the officemates of the complainants. Balbedina and del Valle who was her partner in her scrap iron business in Coto Mines, Zambales were holding office at 2698-B Dominga St., Malate, Manila so that appellant failed to see the "actual giving of the money" but del Valle asked her to prepare the receipts.

Appellant, however, was unable to explain why Estabillo, Cayabyab, Manzano, Arias, de Vera and Quinsay would file a complaint against her. Appellant insisted that Balbedina and del Valle were the recruiters. On cross-examination, appellant admitted that she did not only prepare the receipts but that she signed them. However, she qualified this by stating that Exhibits "D", "G", "H" and "J" were in Balbedina's handwriting but she

was made to sign the receipts.

On February 16, 1990, appellant was convicted in a decision penned by Judge Rodolfo A. Ortiz, the dispositive portion of which states:

"ACCORDINGLY, judgment is hereby rendered as follows:

1. Convicting the accused, ZENAIDA E. VILLAFUERTE, beyond reasonable doubt of the crime of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code charged in Criminal Case Nos. Q-89-3276, Q-89-3277 and Q-89-3278, and in accordance therewith, the said accused is sentenced in each case to suffer the indeterminate penalty of imprisonment of from FOUR (4) YEARS and TWO (2) MONTHS of prision correccional in its medium period, as the minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and TWENTY (20) DAYS of prision mayor in its minimum period, as the maximum, with all the accessory penalties provided for by law and to return to: private complainant Ursilito Manzano the amount of P15,660.00; private complainant Norberto Cayabyab the amount of P16,770.00; private complainant Hermelina de Vera the amount of P15,000.00 as well as to pay the costs in each case.

2. Convicting the accused, ZENAIDA E. VILLAFUERTE beyond reasonable doubt of the crime of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code charged in Criminal Case No. Q-89-3279, and in accordance therewith, the said accused is sentenced to suffer an indeterminate penalty of imprisonment of from FOUR (4) MONTHS and TWENTY (20) DAYS of arresto mayor in its maximum period, as the minimum, to TWO (2) YEARS, ELEVEN (11) MONTHS and TEN (10) DAYS of prision correccional in its medium period, as the maximum, with all the accessory penalties provided for by law and to return to private complainant Isidro Arias, Jr., the sum of P12,000.00 as well as to pay the costs.

3. Convicting the accused, ZENAIDA E. VILLAFUERTE, beyond reasonable doubt of the crime of Violation of Articles 38 and 39 of the Labor Code, as amended, charged in Criminal Case No. Q-89-3280, and in accordance therewith the said accused is sentenced to suffer the penalty of life imprisonment, or reclusion perpetua, and to pay a fine of P100,000.00, without subsidiary imprisonment in case of insolvency since the penalty imposed is more than prision correccional and to return to: private complainant Aurora S. Geronimo the amount of P7,000.00; private complainant Joselito Geronimo the amount of P7,400.00; private complainant Erle Javier the amount of P5,000.00; private complainant Leticia M. Quimsay (sic) the amount of P7,500.00 and to private complainant Rolando de Guia the amount of P8,000.00, and to pay the costs.

The accused being detained, and conformably with the practice in the Quezon City Jail for all detention prisoners to agree in writing that they be governed by the same rules concerning convicted prisoners, she is credited with the full extent of the period during which she was under detention.

SO ORDERED."[25]

Hence, the instant appeal wherein appellant contends that the trial court erred in declaring that (a) she received the monies from the offended parties and (b) she recruited the offended parties for overseas employment.

It is the position of appellant that she did not actually receive the money from the complainants but was merely instructed by del Valle and/or Balbedina to sign the receipts. Because of this, the receipts do not express the true intent and agreement of the parties. Therefore, parol evidence consisting of her testimony should be admitted in accordance with Section 9, Rule 130, of the Rules of Court. Moreover, appellant avers that assuming she issued the receipts and received the money, it is not conclusive of the fact that she recruited the complainants.

We view this position of the appellant as a pathetic and belated attempt to extricate herself from the situation she had single-handedly gotten herself into.

Appellant admitted that she prepared and signed all the receipts except Exhibits "D", "G", "H" and "J" which were

supposedly in Balbedina's handwriting but were signed by her as instructed by the former. That someone else prepared the receipt is not material as even prosecution witness Hermelina D. de Vera testified that she wrote the receipt and accused simply signed it. What is important is that private complainants were united in stating that appellant personally signed the receipts in their presence after receiving money from them.[26]

Her allegation that she did not actually receive the monies given by the complainants is worthless considering that it is based on her own self-serving testimony. By her failure to present the persons who were allegedly responsible for the recruitment of private complainants, appellant risked the adverse inference and legal presumption that evidence suppressed would be adverse if produced.[27] In *People v. Bodozo*,[28] the appellants therein similarly tried to exculpate themselves by passing on the liability to third persons. The Court in rejecting such argument explained:

"Accused-appellants point, to a certain Belen Hernandez, a manager of Mcgleo International Management and Service Contractor a duly registered and licensed recruiter, and Jing Evangelista of Ultragen, Inc. as the persons who were responsible for the recruitment of private complainants. If such allegations were true, why did accused-appellants not present any one of them as witness to corroborate their claim? For reasons only known to them, they chose to suppress such testimony as evidence and instead risked the adverse inference and legal presumption that 'evidence wilfully suppressed would be adverse if produced.'

Besides, if it was Belen Hernandez and Jing Evangelista who were the recruiters, why did accused-appellants issue the receipts acknowledging payments made by private complainants.

Accused-appellant Nimfa Bodozo alleged that she was forced to issue and sign receipts marked as Exhibits J and N because private complainants Prudencio Renon and Fernando Gagtan were mad and refused to leave the house. On the other hand, accused-appellant Joey Bodozo claimed that he, too, was forced to issue and sign Exhibits L and E at Kalaw Street, Ermita, Manila because private complainants Angelino Obiacoro and Domingo Obiacoro would kill him.

We find accused-appellant's alibi not convincing. Such allegations are self-serving. No evidence of force was represented by accused-appellant Nimfa Bodozo to bolster her claim that she was forced except to state that she was afraid of private complainants' anger. In the case of accused-appellant Joey Bodozo, it will be noted that the alleged force happened in a busy public street. Neither did the accused-appellants file any case against private complainants for forcing them to sign and issue said receipts. At most, their claim of force may be said to be merely an afterthought to exculpate themselves from the charges levelled against them by private complainants.[29]

Appellant denied that she ever recruited private complainants to work abroad. Such denial will not prevail over the positive testimony of private complainants that appellant was the person who promised them employment abroad, who received money from them as placement fees, processing fees or terminal fees and required them to submit such documents as NBI clearance, bio-data, passport, etc. The undisputable fact was that she gave private complainants the distinct impression that she had the power or ability to send people abroad for work so that they were convinced to give her the money she demanded to enable them to be employed abroad.[30]

Moreover, appellant was not able to explain what motivated private complainants in filing the cases against her. The absence of evidence as to an improper motive actuating the principal witnesses of the prosecution strongly tends to sustain no improper motive existed and their testimony is worthy of full faith and credit.[31] Accused-appellant's denial cannot prevail over the positive assertions of complainants who had no motive to testify falsely against her except to tell the truth.[32]

The dispositive portion of the lower court's decision must be modified in accordance with the following guidelines. Firstly, in the charge of illegal recruitment committed in large scale or involving economic sabotage,

the appealed decision sentenced appellant "to suffer the penalty of life imprisonment or reclusion perpetua, and to pay a fine of P100,000.00 ..." Once again, we point out that the penalty of reclusion perpetua, not being synonymous with life imprisonment, is imposable only on crimes committed under the Revised Penal Code. The penalty that attaches to a violation of Article 38 of the Labor Code, as amended, is life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00).[33] Secondly, the amounts ordered to be reimbursed to private complainants Ursulito Manzano and Norberto Cayabyab were those stated in the information, i.e., P15,660.00 and P16,770.00, respectively. However, during the trial, they were able to prove that they incurred only the amounts of P15,600.00 and P16,720.00, respectively. Thirdly, other discrepancies with respect to private complainant Joselito Geronimo are: the information showed that he paid P7,865.00; the lower court ordered reimbursement of P7,400.00 while the receipt showed he paid P7,500.00

Except for the foregoing modifications, the Court finds every reason to affirm the rulings of the lower court finding appellant guilty beyond reasonable doubt of the charge of illegal recruitment in large scale or involving economic sabotage under Article 38 in relation to Article 39 of P.D. No. 442, as amended by P.D. No. 2018, in Criminal Case No. Q-89-3280 and of four counts of estafa through false pretenses under Article 315, par. 2(a) of the Revised Penal Code in Criminal Cases Nos. Q-89-3276, Q-89-3277, Q-89-3278 and Q-89-3279. The Court accords great respect to the factual findings of the lower court. This applies with greater force to criminal cases which generally hang on the credibility of witnesses and their testimonies, for it is the trial court which has the fullest opportunity to observe the demeanor of witnesses as they testify.[34]

WHEREFORE, the appealed decision is hereby AFFIRMED subject to the deletion of the phrase "or reclusion perpetua" and the modification in the amounts to be reimbursed to the following complainants, as properly proved during the trial:

1. Ursulito Manzano - P 15,600.00
2. Norberto Cayabyab - 16,720.00
3. Joselito Geronimo - 7,500.00

SO ORDERED.

Feliciano, (Chairman), Bidin, Melo, and Vitug, JJ., concur.

[1] Art. 315. Swindling (estafa)

x x x x x x x x

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

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.

[2] Original Records, p.1.

[3] Ibid, p. 5.

[4] Ibid, p. 7.

[5] Ibid, p. 9.

[6] Art. 38. Illegal Recruitment.

(a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Ministry (Department) of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense, involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

x x x x x x x x.

Art. 39. Penalties.

(a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

[7] Ibid, p. 11.

[8] Ibid, p. 30.

[9] TSN, October 19, 1989, pp. 2-11.

[10] Exhibit "A", p. 66.

[11] Exhibit "B", p. 67.

[12] TSN, October 19, 1989, pp. 11-17.

[13] Exhibit "C", p. 68.

[14] TSN, October 19, 1989, pp. 18-22; TSN, October 24, 1989, pp. 2-7.

[15] Exhibit "D", p. 69.

[16] TSN, October 24, 1989, pp. 8-12.

[17] Exhibit "E", p. 70.

[18] Exhibit "F", p. 71.

[19] TSN, October 24, 1989, pp. 13-18. (Sometimes spelled Isidoro, Isodoro)

[20] Exhibits "G", "H" and "I", pp. 72-74.

[21] TSN, October 26, 1989, pp. 3-7.

[22] Exhibit "J", p. 75.

[23] TSN, October 25, 1989, p. 3.

[24] TSN, January 24, 1990, pp. 3-10.

[25] Original Records, pp. 110-112.

[26] *People v. Bugnoan*, G.R. No. 87542, March 6, 1990, 183 SCRA 62.

[27] *People v. Bodozo*, G.R. No. 96620, October 21, 1992, 215 SCRA 33.

[28] *Ibid.*

[29] *Ibid.*, pp. 40-41.

[30] *Flores v. People*, G.R. Nos. 93411-12, July 20, 1992, 211 SCRA 622.

[31] *People v. Bodozo*, p. 42.

[32] *People v. Alforte*, G.R. Nos. 91711-15, March 3, 1993, 219 SCRA 458, 468.

[33] Article 39, Labor Code as amended. See also, *People v. Avendano*, G.R. Nos. 96277-82, December 2, 1992, 216 SCRA 187.

[34] *People v. Diga*, G.R. No. 94546, April 24, 1992, 208 SCRA 306.

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