

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENRIQUE TAGUBA AND MIRAFE TAGUBA, ACCUSED-APPELLANTS.

G.R. Nos. 95207-17. January 10, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

Enrique Taguba and Mirafe Taguba were both charged with eight counts of illegal recruitment and three counts of estafa in separate informations[1] commonly worded (except only as to the date of the offense, the name of the complainant and the amount involved) as follows:

The undersigned Assistant City Fiscal accuses ENRIQUE C. TAGUBA, MIRAFE TAGUBA and JANE DOE, true name, real identity and present whereabouts of the last-mentioned accused still unknown, of the crime of "ILLEGAL RECRUITMENT," committed as follows:

That (date of commission) in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, representing themselves to have the capacity to contract, enlist and recruit workers for employment abroad did then and there wilfully, unlawfully and feloniously, for a fee recruit and promise employment/job placement to one (name of complainant), without first securing the required license or authority from the Ministry of Labor and Employment.

Contrary to law.

x x x

The undersigned Assistant City Fiscal accuses ENRIQUE C. TAGUBA, MIRAFE TAGUBA and JANE DOE, true name, real identity and present whereabouts of the last-mentioned accused still unknown, of the crime of "ESTAFA," committed as follows:

That (date of commission) in Caloocan City, Metro Manila, the above-named and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, defrauded and deceived one (name of plaintiff) in the following manner, to wit: said accused, by means of false manifestations and fraudulent representation which they made to said complainants to the effect that they have the capacity and power to recruit and employ complainant abroad and could facilitate the necessary papers in connection therewith if given the necessary amount to meet the requirements thereof, knowing said manifestations and representations to be false and fraudulent and were made only to induce said complainant to give and deliver, as in fact the latter did give and deliver to said accused the amount of P_____, but said accused, once in possession of the said amount, with intent to defraud, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert to their own personal use and benefit, to the damage and prejudice of the complainant in the aforementioned amount of P_____.

Contrary to law.

Trial of the cases was held jointly.

The complainants, namely, Jesus Garcia, Gilbert Fabrigas, Josefina Sarrion, Myrna Roxas, Elena Santiago, Federico Sagurit, Manuel Aquiban, Violeta Porte, Renelito Cerbito, Danilo Pacheco, narrated almost identical versions of the deception practiced on them by the accused.

These witnesses testified that Enrique and Mirafe approached them on separate occasions and assured them that upon their payment of a specified sum of money they would be sent to Korrer, Palau, to work variously as a waiter,[2] fisherman,[3] master cutter,[4] dressmaker,[5] farmer,[6] laborer,[7] mason carpenter[8] or macho dancer.[9]

The consideration for their recruitment ranged from P2,200.00 to P20,000.00 while the promised monthly wages ranged from \$300.00 to \$500.00.

The required payments were made by them from loans they had contracted or from the proceeds of the sale of their properties. However, no overseas employment materialized. Only Gilbert Fabrigas and Norman Sarrion (the son of Josefina Sarion) were able to reach Korrer but after three months, during which they were not given any work, they were deported to Manila for expired visas.[10] The rest of the complainants were never even able to leave the Philippines.

In his defense, Enrique Taguba first claimed that he merely happened to be at the RAY/DECO office when the complainants submitted their papers. RAY/DECO is a corporation licensed to recruit workers for employment abroad with which he had entered into a joint venture. From the office, the documents were submitted to the foreign employer, who brought them to Korrer.[11]

He later declared that a special power of attorney issued to him by RAY/DECO authorized him to recruit and hire contract workers. It was by virtue of this authorization that he recruited the complainants. At the same hearing, however, he retracted this statement, reiterating his earlier claim that he had no participation in the complainants' transactions with the company. The sole exception was when he accompanied Gilbert Fabrigas and Norman Sarrion korrer upon RAY/DECO's request.[12]

Mirafe, on the other hand, averred that she was working as a domestic helper in Korrer when the alleged irregularities happened. She presented a round-trip Continental Airline ticket issued in her name on May 3, 1985, for Manila - Korrer - Manila[13] and a certification issued by the Manager of Air Nauru that on March 3, 1986, she was a passenger on Air Nauru Flight No. 420 bound for Manila from Korrer.[14]

After trial, Judge Adoracion C. Angeles of the Regional Trial Court in Caloocan City declared them guilty of all the charges in a decision dated June 4, 1990.[15]

For the offense of illegal recruitment on a grand scale, each was sentenced to a penalty of reclusion perpetua and a fine of P100,000.00. They were also held jointly and severally liable for the reimbursement of the money they received from the complainants.[16]

For each of the three counts of estafa, they were both meted the penalty of four years, two months and one day of prision correccional. In addition, they were held solidarily liable for the return of the money given them by the complainants.[17]

In their challenge to the decision, the appellants stress what they call the failure of the prosecution to prove that they were not holders of licenses to engage in the recruitment and placement of workers abroad; the un rebutted evidence of Mirafe Taguba's absence in the Philippines during the commission of the alleged crimes; the imposition of a penalty which was not yet in effect when the alleged crime of illegal recruitment on a grand scale were committed; and the lack of sufficient evidence to support their conviction for estafa.

The appellants argue that before one can be held guilty of illegal recruitment, two elements have to be established, to wit, that (1) the offender is not a licensee or holder of authority to lawfully engage in the recruitment and placement of workers; and (2) the offender undertook the recruitment activities defined under Article 13(b) or any of the prohibited practices enumerated under Article 34 of the Labor Code. Their argument is that the prosecution has the burden of proving beyond reasonable doubt each of the elements of the offense charged and that this burden had not been discharged in the cases against them.

The appellants also contend that the penalty of life imprisonment for illegal recruitment committed on a large scale is not applicable to them because the presidential decree imposing this penalty was published in the Official Gazette only on February 10, 1986. P.D. 2018 was thus not yet effective at the time of the alleged commission of the crimes imputed to them. Only two of the eight complainants for illegal recruitment testified that they were recruited after February 10, 1986. If at all, therefore, the appellants can only be convicted of eight separate counts of illegal recruitment under Art. 39 (c) of the Labor Code, which is subject to a lesser penalty.

Regarding the charges of estafa, the appellants' claim they had made no representation that they had the capacity to recruit and send the complainants abroad. This is clear from the testimony of Josefina Sarrion herself, who declared as follows:

Q.

The accused in this case did not say that they had (a) recruitment office to you (sic)?

A.

They did not, sir.

Q.

The accused did not say to you or represent to you that they had (a) permit to recruit?

A.

They did not, sir.[18]

The Solicitor General maintains in the appellee's brief that it was incumbent on the accused to prove that they were licensed to recruit workers, conformably to the well-settled rule that any party who asserts the affirmative of an issue has the burden of presenting evidence required to obtain a favorable judgment.[19] He agrees, however, that PD 2018 is inapplicable and that the appellants can only be held guilty of eight counts of illegal recruitment and penalized in accordance with Sec. 39 (c) of the Labor Code.

Our rulings follow.

The record shows that the prosecution indeed failed to establish that the appellants had not been issued licenses to recruit for overseas employment. It had moved to present Cecilia E. Curso, Chief of the Licensing and Evaluation Division of the Philippine Overseas Employment Agency, so she could testify that the accused were not licensed recruiters, but this was never done.

Rule 131 Sec. 2, of the Rules of Court provides:

Sec. 2. Burden of proof in criminal cases. - In criminal cases the burden of proof as to the offense charged lies on the prosecution. A negative fact alleged by the prosecution need not be proved unless it is an essential ingredient of the offense.

Non-possession of a license to recruit is an essential ingredient of the crime of illegal recruiting. As it is an

indispensable requisite for the conviction of the pretended recruiter, the burden of establishing this element is upon the prosecution. In the case before us, the prosecution cannot deny its failure to show that no license had indeed been issued to either of the appellees by the Philippine Overseas Employment Administration.

This would have been a fatal omission under ordinary circumstances. Fortunately for the prosecution, however, this flaw was repaired by appellant Enrique Taguba himself when he testified as follows:

Q.

In connection with the operation of your office, do you have the authority to recruit?

A.

I have a special power of attorney issued by the general manager of Ray/Deco, International Development Corporation.

Q.

Mr. Taguba you stated that you were clothed with a special power of attorney, is that correct?

A.

Yes, sir.

Q.

And according to you the special power of attorney you were then authorized as attorney-in-fact of Ray/Deco to recruit and hire Filipino contract workers?

A.

Yes, sir.

Q.

And this is the only evidence or authority for your having recruited Filipino contractual workers?

A.

I have submitted several papers, sir.

Q.

By virtue of the special power of attorney you recruited all these complainants namely: (At this juncture, the prosecuting fiscal read the names listed in the information)?

A.

Yes, sir.[20]

The special power of attorney[21] granted to Enrique by RAY/DECO did not operate as a license to recruit workers on his own behalf, which is what he did. Besides, the special power of attorney only authorized him:

- To represent our Agency, RAY/DECO International Development and Employment Corporation, and to negotiate and deal with any person, company, Employer or Principal in foreign countries who may be interested in engaging the services of and appointing our Agency in the recruitment and hiring of Filipino contractual workers for employment abroad.
- To enter into such conditions he may deem proper, reasonable and advantageous to the Agency and to see to

it that all documents and papers necessary, required and proper in the appointment of our Agency by the Principal or Employer as well as in the recruitment and hiring of the workers are all in proper order; and

- Finally, it is a condition of this Power of Attorney that our aforesaid Legal Representative shall not demand, collect and receive from the Principal or Employer any fee or sums of money without our prior consent and approval.

It is clear from the above-quoted document that Enrique's authority was confined to negotiating with foreign employers for the appointment of RAY/DECO as their agency in the recruiting of Filipino workers for employment abroad. What he was supposed to recruit was not Filipino overseas workers but the foreign employers to which the workers were to be assigned.

It is significant that the only authority the appellants could invoke was this special power of attorney although he did speak of "several papers." These did not include any license. It strikes us that if they had been issued a license to recruit, there would have been no reason why they did not present it in evidence to exculpate them from liability under the Labor Code.

Mirafe's defense of alibi is not acceptable either. The fact that she left for Korrer on May 3, 1985, and arrived in Manila on March 3, 1986, does not prove that in between these dates, she did not come back to the Philippines to practice her deceptions. The tickets and certification she submitted were not the best evidence to establish her absence from the Philippines on the dates the offenses were committed. What she should have submitted to the trial court was her passport, where the holder's departure/arrivals are officially indicated.

Curiously, the ticket issued to her on May 3, 1985, by Continental for Manila – Korrer- Manila was used by her in going to Korrer but not in coming back to Manila. She claims to have returned to Manila on March 3, 1986, but via Air Nauru instead. Why she did not avail herself of the pre-paid Continental return trip ticket to Manila raises some doubt on her credibility. Could it be that she had earlier used the return ticket in coming back to Manila and that she went back later to Korrer, from which she returned to the Philippines on March 3, 1986, on board Air Nauru Flight 420? At any rate, the certification by the Manager of Air Nauru is hearsay and inadmissible because he was not presented at the trial to affirm it.

The appellees argue that they cannot be held liable for estafa because they were prevented from complying with their promise due to their incarceration. This is not true. Enrique Taguba accompanied Norman Sarrion and Gilbert Fabrigas to Korrer on December 29, 1985. After a week, Taguba came back to the Philippines, leaving the two to stay there for three months and fend for themselves without any work. All this happened before Enrique and Mirafe were arrested and detained on March 9, 1986 and March 10, 1986, respectively.[22]

In the case of Jesus Garcia, the promised employment on March 2, 1986, never came. Learning that Enrique had been apprehended, Garcia even gave him money for his bail. The money was an additional consideration for his overseas employment, but even after Enrique's release, Garcia remained unemployed. In fact, Enrique cannot validly argue that his detention prevented him from fulfilling his obligation because he had in fact already defaulted prior to his arrest.

The appellants' claim that they made no representation that they could send complainants abroad is belied by the following testimonies of the complainants:

Myrna Roxas:

Q.

Did you talk with the two accused at that time?

A.

Yes, sir.

Q.

What did you talk about?

A.

They told us, sir, that they are having us employed as dressmakers at Palau.

Q.

Who is this who told you that you would be employed at Palau?

A.

Enrique Taguba and Mirafe Taguba, your Honor.

Q.

What was or what were the conditions for your employment at Palau, Guam?

A.

They told us sir that if we give P5,000.00 we will have medical examination, NBI clearance and then passport.[23]

Gilbert Fabrigas:

Q.

Did he tell you how you were supposed to go for employment abroad?

A.

Yes, sir. He told me as long as I pay.

Q.

For how much did he require you to pay for your employment abroad?

A.

P20,000.00, sir.

Q.

Were you able to comply with that requirement to pay P20,000.00 in order to go abroad for employment?

A.

Yes, sir.

Q.

When did you pay that or give that amount of P20,000.00 to Atty. Taguba?

A.

On November 23, 1985, I gave him P10,000.00 and on December 27, 1985, I gave him another P10,000.00,

sir.[24]

Substantially similar narrations were made by the other complainants.

The indisputable fact is that the appellants gave the distinct assurance that they had the ability to send the complainants abroad, employing false pretenses and imaginary business transactions to beguile their victims. The complainants willingly gave their hard-earned money to the appellants in hopes of the overseas employment deceitfully promised them by the latter.

It is also evident from the testimonies of the complainants that the deceptions were practiced on them by both appellants, who cooperated with each other in fleecing the complainants of their money. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[25] It is clear from the evidence of record that appellants, who were live-in partners, were moved by a common design to victimize the complainants. As a consequence, they are enmeshed in the same criminal liability for their conspiracy, which makes the act of one the act of both.

The Court agrees that the appellants cannot be convicted of illegal recruitment on a large scale because only two of the complainants, Jesus Garcia and Elena Santiago, categorically testified that their recruitment came after February 10, 1986. This was the date when P.D. 2018, the law defining and penalizing illegal recruitment in a large scale, took effect.

P.D. 2018 has amended Articles 38 and 39 of the Labor Code by providing inter alia as follows:

ART. 38. Illegal Recruitment. - x x x

(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 this 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

ART. 39. Penalties. - (a) The penalty of the imprisonment and a fine of One Hundred Thousand Pesos (P100,000) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein;

x x x

(c) 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.

P.D. 2018 cannot apply to the appellants retroactively as it would be an ex post facto law as to them. A law is ex post facto if it refers to a criminal act, punishes an act which was innocent when done, and retroacts to the disadvantage of the accused.[26] Prior to the said date, recruiting on a large scale was not yet punished with the penalty imposed in the said decree.

Moreover, each of the eight informations for illegal recruitment charged the appellants with illegally recruiting only one person. It is a basic right of the accused to be informed of the nature and cause of the accusation against him and, if he is found guilty, to be penalized only for the offense specified in the information or necessarily

included in such offense.[27] Under the decree, illegal recruiting on a large scale can take place only when it is committed against three or more persons, individually or as a group.

The proper penalty for the illegal recruitment committed by the appellants is provided for in Art. 39 (c) of the Labor Code, to wit, imprisonment of not less than four years nor more than eight years or fine of not less than P20,000.00 nor more than P100,000.00 or both such imprisonment and fine, at the court's discretion. We hereby fix the penalty at from four to eight years and a fine of P50,000.00 for each of the eight charges. The amounts ordered reimbursed to the complainants are affirmed except the amount reimbursable to Manuel Aquiban, which is reduced from P10,000.00 to P6,000.00, the amount actually delivered by him to the appellants.

Regarding the estafa, we shall accept the modification of the penalty as suggested by the Solicitor General, after applying the Indeterminate Sentence Law, to two years, eleven months and ten days of prision correccional, as minimum, to six years, eight months and twenty days of prision mayor, as maximum, for each count of the offense. The monetary awards made by the trial court are affirmed.

Duplicity is condemnable under any circumstance but it becomes doubly deplorable when exercised on the poor and unemployed, as in the case before us. The complainants were desperate for a living and were willing to work even away from their families so they could lift themselves from their penury. The appellants took advantage of their plight and enticed them with dollar earnings abroad. The complainants succumbed to their wiles and raised the money demanded of them, borrowing what they could and selling what little they had. All they got was disenchantment. The appellants were like vultures preying on the victims and feeding on their broken dreams.

WHEREFORE, the appealed decision is AFFIRMED, but with the following modifications:

(1) For each of the 8 counts of illegal recruiting in Criminal Cases Nos. C-26359; C-26364; C-26367; C-26368; C-26370; C-26371; C-26374 and C-26389, the appellants are sentenced to a penalty of four to eight years imprisonment and a fine of P50,000.00. The amounts ordered by the trial court to be reimbursed to the respective complainants are affirmed except the amount reimbursable to Manuel Aquiban, which is reduced to P6,000.00.

(2) For each of the 3 counts of estafa in Criminal Cases Nos. C-26343; C-26347 and C-26348, the appellants are sentenced to two years, eleven months and ten days of prision correccional, as minimum, to six years, eight months and twenty days of prision mayor, as maximum. The amounts ordered reimbursed to the respective complainants are affirmed. SO ORDERED.

Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] Rollo, pp. 5-15. The complainants in the informations for illegal recruiting were Jesus Garcia, Violeta Porte, Federico Sagurit, Jr., Manuel Aquiban, Elena Santiago, Renelito Cerbito, Danilo Pacheco and Myrna Roxas. The complainants in the informations for estafa were Jesus Garcia, Josefina Sarrion and Gilbert Fabrigas.

[2] TSN, March 30, 1987, p. 18.

[3] TSN, March 18, 1987, p. 13.

[4] TSN, June 15, 1990, p. 5.

[5] TSN, February 11, 1987, p. 4.

[6] TSN, October 13, 1986, p. 7.

[7] TSN, February 11, 1987, p. 12.

- [8] Ibid., p. 18.
- [9] TSN, July 28, 1987, p. 6.
- [10] TSN, March 30, 1987, p. 20; TSN, March 18, 1987, pp. 18-19.
- [11] TSN, July 3, 1989, pp. 5, 7, 8.
- [12] TSN, Jan. 15, 1990, p. 6; TSN, July 3, 1989, pp. 2-3.
- [13] Exhibit 1, for Mirafe Taguba.
- [14] Exhibit 2, for Mirafe Taguba.
- [15] Rollo, pp. 28-40.
- [16] Garcia, P18,000.00; Aquiban, P6,000.00; Roxas, P5,000.00; Porte, P5,000.00; Cerbito, P8,000.00 & \$40.00; Pacheco, P5,000.00 & \$50.00; Fabrigas, P20,000.00; Sarrion, P15,000.00; Santiago, P5,000.00; Sagurit, P8,000.00.
- [17] Garcia, P18,000.00; Fabrigas, P20,000.00; Sarrion, P15,000.00.
- [18] TSN, March 30, 1987, p. 30.
- [19] Republic v. Court of Appeals, 182 SCRA 290.
- [20] TSN, July 3, 1989, p. 8; TSN, January 15, 1990, pp. 4-5.
- [21] Exhibit 1, Enrique Taguba.
- [22] Exhibit B & B-1.
- [23] TSN, February 10, 1987, p. 3.
- [24] TSN, March 18, 1987, pp. 9-10.
- [25] Article 8, Revised Penal Code.
- [26] Mckin v. Wofe, 2 Phil. 74, In re: Kay Villegas Kami Inc., 35 SCRA 429; Tan v. Barrios, 190 SCRA 686.
- [27] Rule 120 Sec. 4 of the Rules of Court.

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