

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABELARDO C. AVENDAÑO, ACCUSED-APPELLANT.

G.R. Nos. 96277-82. December 02, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Six (6) separate informations for Illegal Recruitment of some 38 workers were filed against appellant Abelardo Avendaño y Crespo which were docketed as Criminal Cases Nos. 6113-MN, 6114-MN, 6125-MN, 6131-MN, 6143-MN and 6148-MN in the Regional Trial Court, Branch 170, at Malabon, Metro Manila. The informations alleged the following:

"The undersigned Assistant Fiscal accused Abelardo Avendaño of the crime of Illegal Recruitment, committed as follows:

"1. Criminal Case No. 6113-MN

"That sometime in the months of June and July, 1986, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, with accused CARMELITO SORIANO, JR., whose identity and whereabouts is not yet known and helping with one another, representing himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did, then and there, wilfully, unlawfully and feloniously, for a fee, recruit and promise employment/job placement abroad to MARINO NOVESTRO y RONATO, ROLANDO CRUCENA y RONO, ZOCIMO DEL ROSARIO y CUBILLA, RUPERTO LEGASPI y DIGMA and GUILLERMO ROMASANTA y LEGASPI without first securing the required license or authority from the Department of Labor and Employment." (p. 8, Rollo.)

"2. Criminal Case 6114-MN

"That sometime in the months of June, 1986, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating with accused CARMELITO SORIANO, JR. whose identity and whereabouts are not yet known and helping with one another, representing himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did, then and there, wilfully, unlawfully and feloniously, for a fee, recruit and promise employment/job placement abroad to FELICIANO BAGO, FEDERICO MOJICA Y DEROY, DANILO PANGANIBAN y LEGASPI and ALBERTO ESPINELLI y LEGASPI, without first securing the required license or authority from the Department of Labor and Employment." (p. 10, Rollo.)

"3. Criminal Case No. 6125-MN

"That sometime in the year 1986 covering the months of June, October, and November, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, with accused CARMELITO SORIANO, JR. whose identity and whereabouts is not yet known and helping with one another, representing himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did, then and there, wilfully, unlawfully

and feloniously, for a fee, recruit and promise employment/job placement abroad to ELIODORO BAGO y RONO, PAMFILO LLAMADO y ROMASANTA, LEOPOLDO CUBILLA y EMELO, TOMAS LIVETA y FERRERA, VIRGILIO FLORALDE y CAGITLA, RUBEN AMBAT y LIVETA, ARTEMIO PEÑUS y PARANTAL, EDGARDO RODIL y RAMOS, JAIME FERRERA y MIRANDA, ZOCIMO FERRERA y EYAYA, IRENEO RAMOS y NOCEDA, LOPE COSTELO y DELALUYA, REYNALDO PANGANIBAN y FERRERA and APOLONIO MOJICA y VIDALLO, without first securing the required license or authority from the Department of Labor and Employment." (p. 11, Rollo.)

"4. Criminal Case No. 6131-MN

"That sometime in the year 1984, 1985, 1987 covering the months of November, September and May in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating with accused CARMELITO SORIANO, JR. whose identity and whereabouts is not yet known and helping with one another, representing himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did, then and there, wilfully, unlawfully and feloniously, for a fee, recruit and promise employment/job placement abroad to HILARION PASIA y ROBLES, FELIPE EDILLOR y EDILLON, BAYANI AFABLE y BONDOC, LEODEGARIO ROBLES y RAMOS, and NEL-JUNE EVANGELISTA y SARMIENTO, without first securing the required license or authority from the Department of Labor and Employment." (p. 13, Rollo.)

"5. Criminal Case No. 6143-MN

"That sometime in the year 1986 covering the months of January, March, April and September, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating with accused CARMELITO SORIANO, JR., whose whereabouts is not yet known and helping with one another, representing himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did, then and there, wilfully, unlawfully and feloniously, for a fee, recruit and promise employment/job placement abroad to DOMINGO ESCUBIN y ECUBI, RODOLFO LAUZON y SERRANO, ANGELO ROBLES y MENESES, WILFREDO MORA y ARMEROLA, BERNARDO CANILANG y AQUINO, LEOPOLDO CO y FERNANDEZ, MARLINO CANILANG y COLOMA, JESSI SORIANO y MANUEL and MAURO CABARDO y SANTOS, JR., without first securing the required license or authority from the Department of Labor and Employment." (p. 15, Rollo.)

"6. Criminal Case No. 6148-MN

"That on or about the 15th day of April, 1985, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating with accused CARMELITO SORIANO, JR., MANUEL CALANOG and RENATO M. SORIANO whose whereabouts are not yet known and helping with one another, representing himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did, then and there, wilfully, unlawfully and feloniously for a fee, recruit and promise employment/job placement abroad to HENRY CAMBA y LIVARA, without first securing the required license or authority from the Department of Labor and Employment." (p. 17, Rollo.)

Upon arraignment, Avendaño pleaded not guilty to the six (6) informations. His co-accused, Carmelito Soriano, Jr., Renato M. Soriano and Manuel Calanog have remained at large. (pp. 8-17, Rollo.)

The cases were consolidated and jointly tried.

Except for the amounts, the circumstances, and the names of the victims, the factual scenario of these six criminal cases are summarized in the decisions of the trial court as follows:

The accused (Abelardo C. Avendaño) is the Treasurer of MCBRAJ Agro-Industrial Development Company

(MAINDECO), with offices at 26 Sta. Cecilia St., Sto. Rosario Village, Malabon, Metro Manila, which is also his residence. The company is not licensed nor authorized to recruit workers for overseas employment. Carmelito Soriano, Jr. is the President of said Company. Manuel Calanog is the personnel manager (pp. 17-18, tsn, June 21, 1988; pp. 22-23, Rec.)

In Criminal Case No. 6113, the evidence shows that Rolando Crucena and Zosimo del Rosario went to the house of the accused sometime in June, 1986 to apply as plumber and steel bender, respectively, in Papua, New Guinea. Guillermo Romasanta likewise applied for a job as plumber when he went to the house of accused in July, 1986. They were all required to submit papers, such as bio-data, birth certificate, marriage contract, certification of previous employment and clearances. Each one of them was asked by the accused to give P5,500.00. After giving said amount to the accused, the latter told them that they could leave within ninety days. Said period expired but they were not able to leave and were asked to wait, with a promise that they would be able to leave later, and they waited for almost one year, until they got tired of waiting and filed a complaint against the accused.

In Criminal Case No. 6114, Feliciano Bago, Federico Mojica and Alberto Espinelli went to the house of the accused to apply for jobs in Papua, New Guinea as steel fixer and plumbers sometime in June, 1986, submitted their papers and paid P5,500.00 to the accused, who told them they could leave within ninety days but which did not materialize.

In Criminal Case No. 6125, Reynaldo Panganiban and Apolonio Mojica applied as steelman and warehouseman, respectively, with MAINDECO in June, 1986, submitted documents and paid P5,500.00 to the accused, who assured them that they could leave for Papua, New Guinea, which did not materialize despite a long period of time. Ruben Ambat applied with MAINDECO as electrician in November, 1986 and submitted documents and paid P5,500.00 to the accused, who told him he could leave for Papua, New Guinea before Christmas or three months thereafter, but was not able to do so. However, Pamfilo Llamado and Tomas Liveta, who likewise applied with MAINDECO for jobs in Papua, New Guinea in June, 1986 and October, 1985, respectively, admitted that the accused only received the placement fee of P4,500.00 from them and issued receipts therefor, but did not promise them jobs in Papua New Guinea, which promise was made to them by the President and Personnel Manager of MAINDECO.

In Criminal Case No. 6131, Bayani Afafe and Leodegario Robles went to MAINDECO in March, 1987 and applied as electricians in Papua, New Guinea and talked with the accused, who asked them to give P5,000.00 each. They gave the money and the documents required by the office in connection with their job applications to the accused, who assured them that they could leave for abroad.

In Criminal Case No. 6143, Rodolfo Lauzon applied on March 5, 1986 with MAINDECO for a job as janitor in Papua, New Guinea and was asked to pay a placement fee of P5,500.00. He paid said amount to the accused, who then told him that he could leave after three months.

In Criminal Case No. 6148, Henry Camba applied in April, 1985 with MAINDECO for a job as electrician in Papua, New Guinea, submitted the papers required by said company and paid the amount of P4,000.00 to the accused and he was told that he could leave within three to six months. However, two years lapsed and Henry Camba was still not able to leave and he demanded for the reimbursement of the money he paid, to no avail.

It appears that the receipts issued by the accused to the complainants show that the payments made by them were in the form of trust deposit for one unit of share in the company. The receipts were subsequently surrendered to the company in exchange of certificates of common share in MCARM Agro-Industrial Development Corporation, making the complainants stockholders of the corporation. However, Henry Camba refused to surrender his receipt in exchange for a certificate of common share as he was insisting that the money he paid be returned to him. Moreover, while some of the complainants paid P5,500.00, the receipts issued to them reflected only the amount of P4,500.00 as the balance of P1,000.00 was allegedly for the processing of their passport and physical examination. Some of the complainants underwent physical

examination and made to attend orientation seminars while waiting for their departure to Papua New Guinea. The complainants finally got tired of waiting for the promised employment abroad and filed their complaints against the accused.

On the other hand, the accused tried to show that MAINDECO, which was engaged in the construction business, was duly registered with the Securities and Exchange Commission. He was appointed treasurer of the corporation and, as such, he received payments and issued receipts. MAINDECO was invited by the government of Papua, New Guinea to a joint venture tuna industry (Exh. '3'), for which reason, it sold stocks to private individuals with the promise that they would be sent to Papua, New Guinea should the joint venture materialize. He denied having talked to the complainants regarding jobs in Papua, New Guinea, claiming that the officials who talked to them were the President, Vice-President and Manager and his duty was only to issue receipts to the complainants upon payment of their shares in the corporation. However, the joint venture with Papua, New Guinea did not materialize because the President had already disappeared. He admitted that he joined MAINDECO because of the offer made to him by the Vice-President to go to Papua, New Guinea.

It is admitted that MAINDECO is not licensed or authorized by the Department of Labor and Employment to engage in recruitment of persons for overseas employment. Consequently, the recruitment activities undertaken by MAINDECO are illegal. Illegal recruitment, when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage. 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, and it is deemed committed in large scale if committed against three (3) or more persons individually or as a group. (Article 38, paragraphs [a] and [b], Labor Code). The penalty of life imprisonment and a fine of P100,000.00 shall be imposed if illegal recruitment constitutes economic sabotage. Any person who is neither a licensee nor a holder of authority found violating any provision of the Code shall suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000.00 nor more than P100,000.00 or both such imprisonment and fine at the discretion of the court. If the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation. (Article 39, paragraphs [a], [c] and [d], Labor Code.)

The accused admitted that the complainants, who paid for certificates of stock of MAINDECO, were told by the President of the corporation that they would be sent to Papua, New Guinea pursuant to the joint venture tuna industry (tsn, Feb. 13, 1990, p. 5). In other words, the accused was aware that the complainants were offered job opportunities in Papua, New Guinea. The assurance that they would be sent abroad, in addition to being stockholders of the corporation, impelled the complainants to give their money to the accused. Thus, aside from being required to pay for the certificates of stock, the complainants were likewise required to submit documents, such as bio-data, birth certificates, marriage contracts, clearances and certificates of previous employment. With respect to the complainants who paid P5,500.00, only the amount of P4,500.00 was receipted as trust deposit by the accused, who told them that the balance of P1,000.00 was intended for the processing of their passport and for their physical examination. Some of the complainants underwent physical examination and attended orientation seminars while waiting for their departure. In view of the fact that MAINDECO is not a licensed or authorized recruitment entity and, therefore, not authorized to recruit anyone for employment, said corporation made it appear that the payment made to it was for the purchase of certificates of stock and that complainants were stockholders of the corporation as a cover-up to their illegal activities.

On October 2, 1990, the trial court rendered a single decision convicting Avendaño of the crime charged and sentenced him as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Abelardo Avendaño y Crespo guilty beyond reasonable doubt of the crime of Illegal Recruitment committed in large scale, thus constituting economic sabotage, defined and penalized in Article 39, paragraph (a) of the Labor Code, in

Criminal Cases Nos. 6113, 6114 and 6125 and sentences him to suffer the penalty of life imprisonment and to pay a fine of P100,000.00 in each case. In Criminal Cases Nos. 6131, 6143 and 6148, accused Abelardo Avendaño y Crespo is found guilty beyond reasonable doubt of the crime of Illegal Recruitment defined and penalized in Article 38, paragraph (c) of the Labor Code and sentenced to suffer the penalty of imprisonment of four (4) years, as minimum to eight (8) years as maximum and to pay a fine of P20,000.00, in each case.

"Costs against the accused in all the above-entitled cases.

"Let the accused be credited with whatever preventive imprisonment he has undergone by reason of these cases, pursuant to Article 29 of the Revised Penal Code." (pp. 43-44, Rollo.)

Because the accused was sentenced to suffer the penalty of life imprisonment in three (3) of the six (6) cases, he appealed to this Court, assigning the following errors against the judgment of the lower court:

"1. The trial court erred in appreciating only the evidence of the prosecution and in disregarding the evidence of the defense.

"2. The trial court erred in convicting accused-appellant of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt." (p. 56, Rollo.)

The appeal has no merit.

The trial court correctly found Avendaño to have conspired with his co-accused Carmelito Soriano, Jr., Manuel Calanog and Renato M. Soriano, to illegally recruit some 38 persons for overseas employment, charging and collecting a fee of P5,500.00 from each job applicant although they (the accused) did not have the required license and authority from the Department of Labor to engage in recruiting workers for overseas employment. They defrauded the job applicants of the "fees" (P5,500.00) which the latter paid for the false hope of obtaining employment in Papua, New Guinea, which was never realized. Appellant's pretext that the fee of P5,500.00 paid by each job applicant was not a placement fee but payment for a share of stock in MAINDECO, supposedly a prerequisite for the deployment of the "stockholder" in Papua, New Guinea, must be rejected for the simple reason that those who purchased the "shares" did not intend to invest, but to obtain a job placement, in Papua, New Guinea. They were not investors but job seekers. Further proof that they were being swindled is that those who paid P5,500.00 each received a receipt for only P4,500.00 from the appellant who informed them that the unreceipted amount of P1,000.00 was to pay for their medical examination and the processing of their passports, although no passports were ever issued to them.

Appellant's allegation that he allowed his residence to be used as MAINDECO's office because he was induced to join the corporation by Gapuz, MAINDECO's Vice-President, who promised him a job abroad, is unbelievable. At no time in the course of his testimony did he mention any attempt on his part to follow up his supposed application for overseas employment.

Appellant's pretense that he was a "victim" like the complainants, is absurd for it was he who collected the placement fees of the complainants.

Appellant and his co-accused committed Illegal Recruitment on a Large Scale as defined and penalized in Articles 38(b) and 39(a) of the Labor Code, because they had victimized more than three (3) job applicants – thirty eight (38) in fact.

"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 of Labor and Employment or any law enforcement officers may initiate complainants 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."

"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:

"xxx xxx xxx

“(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;

"(d) If the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation; and if such officer is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings;" (Underscoring supplied)

In Crim. Cases Nos. 6113-MN and 6114-MN where Avendaño acted in conspiracy with his co-accused to fleece three (3) job applicants in each case of their placement fees for non-existent overseas jobs, and in Crim. Case No. 6125-MN where they victimized five (5) persons, the crimes committed were illegal recruitment by a syndicate (Art. 38, Labor Code). When illegal recruitment is committed by a syndicate or in large scale, it becomes an offense involving economic sabotage (Art. 38, Labor Code) and shall be penalized with life imprisonment and a fine of P100,000 (Art. 39, par. [a], Labor Code).

In Crim. Case No. 6131-MN where only two persons were defrauded, and in Crim. Cases Nos. 6143-MN and 6148-MN where there was only one victim in each case, the crimes committed were simple illegal recruitment penalized in par. (c), Art. 39.

WHEREFORE, as the trial court did not commit any reversible error in finding Avendaño guilty of large scale illegal recruitment in Criminal Cases Nos. 6113, 6114 and 6125, and of simple illegal recruitment in Criminal Cases Nos. 6131, 6143 and 6148, and as the penalties imposed are in accordance with the law, the appealed decision is hereby AFFIRMED in toto.

SO ORDERED.

Cruz, (Chairman), Padilla, and Bellosillo, JJ., concur.

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