

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GENER TURDA ALIAS "BOY"; (A.K.A. GUADALUPE TURDA, JR.), ACCUSED-APPELLANT.

G.R. Nos. 97044-46. July 06, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

GENER TURDA alias "Boy" (a.k.a. Guadalupe Turda, Jr.) together with his wife Milagros Turda and Carmen Manera, was charged with illegal recruitment in Crim. Case No. 57218 and two (2) counts of estafa in Crim. Cases Nos. 57219 and 57220. However, Milagros Turda and Carmen Manera were never apprehended so that only Gener Turda could be arraigned and tried. As the three (3) cases involve the same factual milieu, they were jointly tried.

In the first week of August 1986, appellant Gener Turda, his wife Milagros Turda nicknamed "Mila," and Carmen Manera went to the house of complainant Florante Rosales at 28 Ilocos Sur St., Bago Bantay, Quezon City, to convince his family that the former could secure an overseas job for Florante in Italy and another for his sister Shirley Cabalu in France for a fee. Florante and Shirley accepted the offer and their father, Roberto Rosales, paid P70,000.00 for both. However, he did not ask for a receipt because of his trust in appellant and his wife who were Shirley's "compadre" and "comadre" for the past seventeen (17) years.[1]

On 13 August 1986, the spouses Gener and Mila, together with Carmen Manera, brought Florante and Shirley to the airport for their supposed departure for abroad at five o'clock that afternoon. The Turdas used their Volkswagen in bringing their two (2) "recruits" to the airport for the customary "send-off." After a long wait, appellant and his co-accused told Florante and Shirley that their passports had not been released and that their departure had to be rescheduled, with the assurance however that they could leave as soon as their papers were released.[2]

Despite several promises, Florante and Shirley were still unable to leave. They visited the Turdas several times at their house but the former were given more promises instead. Florante even went to the agency of accused Carmen Manera, the International Friendship and General Services, at Mabini St., Ermita, Manila, but was unable to talk to her because at that time there were many applicants inside the office. Complainant and his sister finally demanded the return of their money, but the Turdas failed to give their money back. Consequently, Florante Rosales went to the Office of the City Fiscal of Quezon City to file the corresponding complaint.

Sometime before September 1987, another complainant, Celina Andan, learned that her application for an immigrant visa with the Canadian Embassy was denied. While her application was pending, Celina's mother, Milagros Andan, was persuaded by Milagros Turda to entrust to her the processing of Celina's papers since she (Milagros Turda) had already been abroad and had gone through the application process previously. The Andans and the Turdas had known each other for more than ten (10) years as their stores which sold rice and LPG, respectively, were near each other.[3]

After the denial of Celina Andan's application, Gener and Mila undertook the processing of Celina's travel papers for which they were given a downpayment of P25,000.00 with the promise to refund the amount if she would not be able to leave for Canada within 45 days. However, should they succeed, Celina would have to pay them an additional amount of P35,000.00 upon delivery to her of her visa.

On 14 September 1987, the mother of Celina gave a check in her store for P14,500.00 and cash of P500.00 to Mila Turda for which the latter gave a receipt in the presence of appellant Gener. On 22 September 1987, Celina's mother again gave a check to the Turdas in the amount of P10,000.00 for which a receipt was likewise issued by Milagros Turda.

After forty-five (45) days, Celina Andan was still unable to leave for abroad. She went with her mother to the house of the Turdas where they only met appellant. They were told that Mila went somewhere. Celina wanted to get her passport and money back because nothing happened to her visa application, but appellant told her that he would just relay the message to his wife. Celina returned the following day only to be told by the spouses that her passport had been sent to her mother's store and that their downpayment of P25,000.00 could be withdrawn from the person to whom they (Turdas) gave it. Celina went back to the house of appellant but she never succeeded in talking to the spouses. They were always out. Hence, she decided to charge the Turda spouses with estafa and illegal recruitment. On 22 February 1989, Gener Turda, his wife Milagros Turda and Carmen Manera were jointly charged with illegal recruitment and two (2) counts of estafa in three (3) separate Informations.

Accused-appellant Gener Turda, on his part, denies having ever engaged in illegal recruitment activities. He claims that he was himself a victim of the illegal recruitment activities of his co-accused Carmen Manera. Bienvenido Villanueva, brother-in-law of appellant's wife, and Darlene Turda, appellant's daughter, corroborated appellant's testimony that sometime in January 1986 his wife brought Carmen Manera and the latter's secretary to their house where she told him that Manera was engaged in recruitment for overseas jobs and was running a recruitment agency in Ermita, Manila. His wife further told him that she would be given a commission for every person sent abroad. Appellant then informed Manera that he also wanted to apply for a job in the United States.

One week later, Manera returned and told him to pay P100,000.00 so he could go straight to the United States without passing through another country. He then paid the agency an initial amount of P30,000.00. At that time, Bienvenido Villanueva, Armando Revilla, Shirley Cabalu and Florante Rosales were also there to pay their fees. After a week, he gave Manera a diamond ring worth more than P30,000.00.

Appellant further contended that when he could not leave for abroad, he and his wife started to have fights which in fact resulted in their eventual separation. He also denied any knowledge of the payments made by complainant Celina Andan or that they were made in his presence. He admitted however having made several trips to the airport but explaining that he was also supposed to leave for abroad himself, and on several occasions, drove for his wife in her recruitment activities.

The court a quo sustained the prosecution. It found the following circumstances supportive of the guilt of accused-appellant in the three (3) cases: (a) Appellant was aware of the recruitment activities of his wife and of Carmen Manera; (b) The meetings between the three (3) accused and the complainants were held at the Bago Bantay residence of appellant where he was always around to provide the "moral support" by "seconding" whatever Mila or Carmen would say about their capability of sending applicants for overseas employment; (c) The amounts of P25,000.00 and P70,000.00 paid by Celina and Florante, respectively, were received by his wife in their residence in the presence of appellant; (d) Appellant took active part in making it appear that complainant Rosales and his sister Shirley were to take their departure flight by driving them to the airport in his Volkswagen car and waiting along with them at the terminal and, on the pretext that their passports were not yet released,

brought them back to their house in Quezon City to await their scheduled flight, which never materialized.

In its joint decision dated 30 August 1990, the trial court thus found appellant guilty beyond reasonable doubt in Crim. Case No. 57218 of illegal recruitment under Art. 39, par. (a), in relation to Art. 38 of P.D. No. 442, as amended, and sentenced him to life imprisonment and to pay a fine of P100,000.00. In Crim. Case No. 57219, the court a quo convicted appellant of estafa under Art. 315, 1st par., in relation to 4th par., subpar. 2(a), of the same article, and imposed upon him an indeterminate prison term of two (2) years, four (4) months and one (1) day as minimum, to six (6) years, eight (8) months and twenty-one (21) days as maximum. The trial court further ordered appellant to refund the amount of P25,000.00 to complainant Celina Andan. In Crim. Case No. 57220, the trial court found appellant guilty beyond reasonable doubt of estafa under the same penal provision and imposed upon him an indeterminate prison term of eight (8) years and one (1) day as minimum, to fourteen (14) years, eight (8) months and one (1) day as maximum. The court also directed appellant to refund the amount of P70,000.00 to complainant Florante Rosales.[4]

Appellant now assails the trial court for not acquitting him since not all the requisites of criminal conspiracy were present, and for imposing a penalty under a statute enacted in 1990 for an act done in 1986. He argues that nothing in the record shows that he and his two (2) co-accused had come to an agreement concerning the commission of illegal recruitment and/or estafa and that they decided to commit the crime thereafter; that he even disapproved of his wife's recruitment activities that led to frequent altercations between them; that his presence during the transactions between his wife and complainants was only natural as these took place in his house; that his supposed active part in the aborted departure of complainant Florante Rosales and Shirley Cabalu was sufficiently explained by him during the cross-examination, i.e., that he was even among those slated to leave for employment abroad so he rode with them to the airport; that as stated in the Information, the unlawful acts of illegal recruitment were committed sometime between August 1986 and September 1987 at which time the law on illegal recruitment only imposed a penalty of imprisonment for not less than four (4) years nor more than eight (8) years; and, thus the trial court erred in imposing upon him a life sentence based on the new law on illegal recruitment which was not yet in force at the time the alleged acts were committed.

The pertinent portions of Art. 38 of the Labor Code, as amended by P.D. No. 2018, read -

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 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.

Article 13, par. (b), of the same Code defines recruitment 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."

A review of the testimonies of complainants leads us to no other conclusion than that appellant, his wife, and

Manera were conspirators in the illegal recruitment business by contributing acts in pursuance of the financial success of their joint venture for their mutual benefit. All the complainants have testified that in every recruitment transaction, appellant was always present with the other accused. With respect to the recruitment of Rosales and Shirley Cabalu, both testified that the three (3) accused went to their house to induce them to apply for overseas work for a fee, and that appellant was likewise around when the amount of P70,000.00 was quoted by the other accused as the recruitment service fee. For her part, complainant Celina Andan categorically testified that appellant and his wife were together when the latter was paid the downpayment in check for her trip to Canada. Celina further asserted that the Turdas were always together in their recruitment transactions; in fact, all the complainants confirmed that appellant even drove them to the airport for the supposed trip abroad not only once but thrice.

Appellant's explanation that his reason for driving the complainants to the airport was because he himself was also scheduled to leave for abroad, is weak and uncorroborated. It is a self-serving negative evidence which cannot prevail over his positive identification by the complaining witnesses as one of those who actively participated in recruiting them. Besides, how could he be driving his Volkswagen to the airport if he himself was leaving for abroad, unless he was ready to abandon his car after taking off?

The findings of the trial court on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that said court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which do not obtain in the present case. There is no doubt that the acts of appellant and his wife conclusively established a common criminal design mutually deliberated upon and accomplished through coordinated moves. Such acts constitute enlisting, contracting or procuring workers or promising them overseas employment under Art. 13, par. (b), of the Labor Code.[5] Since appellant did not have the license or authority to recruit[6] and yet recruited at least three (3) persons, he is guilty of large-scale illegal recruitment under Art. 38, penalized under Art. 39, of the Labor Code.

We are not persuaded by appellant's argument that the trial court erred in imposing upon him the penalty of life imprisonment because this was imposed by a new law not in force when the offense was allegedly committed. P.D. No. 2018[7] has increased the penalty to life imprisonment if the illegal recruitment constitutes economic sabotage. As defined in Art. 38, as amended, illegal recruitment constitutes economic sabotage if undertaken 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 of Art. 38.

As correctly pointed out by the Solicitor General, Sec. 2 of P.D. No. 2018, promulgated on 26 January 1986, has provided for its immediate effectivity. It was published on 10 February 1986 in Vol. 82, No. 6, Page 922, of the Official Gazette. Hence, when appellant committed the acts of illegal recruitment from August 1986 to September 1987, the amendments to the law, which took effect on 28 July 1986,[8] were already in force and effect.

The rule is settled that the recruitment of persons for overseas employment without the necessary recruiting permit or authority from the POEA constitutes illegal recruitment; however, where some other crimes or felonies are committed in the process, conviction under the Labor Code does not preclude punishment under other statutes. In *People v. Alvarez*[9] we said:

x x x x the test for determining whether or not a prosecution for one crime constitutes an obstacle to a subsequent action for another distinct crime upon the same facts, is to inquire whether the facts alleged in the second information, if proven, would have been sufficient to support the former information, of which the accused may have been acquitted or convicted. The gist of the question is whether or not the same evidence supports the two actions.

Stated in another way x x x x where two different laws define two crimes, the conviction of one of them is no obstacle to that of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other x x x x 'The safest general rule is that the two offenses must be in substance precisely the same or of the same nature or of the same species, so that the evidence which proves the one would prove the other; or if this is not the case, then the one crime must be an ingredient of the other' (16 C.J., 264, sec. 444) x x x x 'A single act may be an offense against two statutes, and, if each statute requires proof of an additional act which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other. And there is no doubt that it is within the power of the legislature to create two or more offenses which may be committed by a single act, each of which is punishable by itself. A conviction or acquittal in such case under either statute would be no bar to a conviction under the other, for the accused would not be twice in jeopardy for one offense, but only once in jeopardy for each offense' (8 R.C.L., 149, sec. 135).

Applying the foregoing principle, not all acts which constitute estafa necessarily establish illegal recruitment, for estafa is wider in scope and covers deceits whether or not related to recruitment activities. More importantly, the element of damage, which is essential in estafa cases, is immaterial in illegal recruitment;^[10] and, while estafa is malum in se, illegal recruitment is malum prohibitum.

Hence, as to the two (2) counts of estafa, we need only reiterate our ruling in *People v. Romero*^[11] -

The elements of estafa in general are: (1) that the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third party (*People vs. Ong*, 204 SCRA 942 [1991]).

In the instant case, all the elements of estafa are present because complainant Doriza Dapnit gave the total amount of P21,000.00 to accused-appellant on the latter's promise that she will be sent to Taiwan as a factory worker as soon as she paid the placement fee. It will be observed that accused-appellant gave complainant the distinct impression that she had the power or ability to send people abroad for work so that complainant was convinced to give her the money she demanded to enable her to be employed as a factory worker in Taiwan x x x x

While we also affirm the conviction of the accused for estafa in *Crim. Cases Nos. 57219 and 57220*, we modify however the penalties imposed by particularly denominating them in accordance with the Revised Penal Code as well as amend accordingly the penalty imposed in *Crim. Case No. 57220*.

Article 315 of the Revised Penal Code provides the penalty for estafa -

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

In *Crim. Case No. 57219*, the amount defrauded was P25,000.00. The imposable penalty under Art. 315 is prision correccional in its maximum period, the range of which is four (4) years, two (2) months and one (1) day to six (6) years, to prision mayor in its minimum period, the range of which is six (6) years and one (1) day to eight (8) years. Dividing the range of the penalty prescribed for the offense, i.e., prision correccional maximum to prision mayor minimum into three (3) periods in accordance with Art. 65, the minimum period should be from four (4) years, two (2) months and one (1) day, to five (5) years, five (5) months and ten (10) days, the medium period from five years, five (5) months and eleven (11) days to six (6) years, eight (8) months and twenty (20) days, and

the maximum period from six (6) years, eight (8) months and twenty-one days (21) to eight (8) years. Considering the amount defrauded, the maximum penalty should be taken from the maximum period prescribed by law, i.e., prision mayor minimum, the range of which is six (6) years, eight (8) months and twenty-one (21) days to eight (8) years, while the minimum should be taken from the penalty next lower in degree, i.e., prision correccional minimum and medium, the range of which is six (6) months and one (1) day to four (4) years and two (2) months, in any of its periods. From the facts of the case, the trial court is correct in the imposition of the proper penalty except that the minimum should be taken from prision correccional minimum and medium, while the maximum from the maximum period of prision correccional maximum to prision mayor minimum.

As regards Crim. Case No. 57220 where the amount defrauded was P70,000.00, the same principle as in the preceding case should apply, except that for every P10,000.00 in excess of P22,000.00 a prison term of one (1) year should be additionally imposed. Since there are four (4) P10,000.00 in excess of P22,000.00, and any excess below P10,000.00 not being considered, the proper penalty should be the maximum of the imposable penalty plus four (4) years. Consequently, the maximum penalty to be imposed in Crim. Case No. 57220 should be six (6) years, eight (8) months and twenty-one (21) days, to eight (8) years, plus four (4) years, i.e., ten (10) years, eight (8) months and twenty-one (21) days to twelve (12) years as maximum, while the minimum should be taken from the penalty next lower in degree as aforesaid, or six (6) months and one (1) day to four (4) years and two (2) months of prision correccional minimum and medium. Apparently, in Crim. Case No. 57220, the trial court erred in imposing the maximum penalty on the accused.

WHEREFORE, the conviction of the accused GENER TURDA for ILLEGAL RECRUITMENT ON LARGE SCALE in Crim. Case No. 57218 (G.R. No. 97044), for ESTAFA in Crim. Case No. 57219 (G.R. No. 97045) and Crim. Case No. 57220 (G.R. No. 97046) is AFFIRMED except that in Crim. Case No. 57219 (G.R. No. 97045) the penalty should read: "two (2) years, four (4) months and one (1) day of prision correccional medium as minimum, to six (6) years, eight (8) months and twenty-one (21) days of prision mayor minimum as maximum," while the penalty in Crim. Case No. 57220 (G.R. No. 97046) is modified to four (4) years and two (2) months of prision correccional medium as minimum, to twelve (12) years of prision mayor maximum as maximum.

Appellant Gener Turda is further directed to refund to Celina Andan and Florante Rosales the amounts of P25,000.00 and P70,000.00 respectively, which appellant unlawfully collected from them.

In the service of the prison terms herein imposed on appellant, Art. 70 of The Revised Penal Code should be strictly observed.

Costs against accused-appellant.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] TSN, 7 August 1989, pp. 3-9.

[2] TSN, 7 August 1989, pp. 12-16.

[3] TSN, 31 July 1989, pp. 7, 22-24.

[4] Penned by Judge Tomas v. Tadeo, Jr., of the Regional Trial Court of Quezon City, Br. 105.

[5] People v. Baltazar de Leon, G.R. No. 104995, 26 August 1993.

[6] Records, p. 3.

[7] "Further Amending Articles 38 and 39 of the Labor Code by Making Illegal Recruitment a Crime of Sabotage and Punishable by Life Imprisonment."

[8] P.D. No. 2018, promulgated 26 January 1986, provided for its immediate effectivity. It was published in the 10 February 1986 issue of the Official Gazette, Vol. 82, No. 6, p. 922, and was released for circulation on 28 July 1986 by the Sales and Distribution Division, Bureau of Printing.

[9] 45 Phil. 472, 478-479 (1923).

[10] See Art. 34, Labor Code of the Philippines.

[11] G.R. Nos. 103385-88, 26 July 1993.

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